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KEVIN BILLIOUPS, #350010

Claimant,

v.

CLAIM NO. T20140291

STATE OF TENNESSEE,

Defendant

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**ORDER DENYING CLAIMANT'S MOTION TO ALTER OR AMEND JUDGMENT**

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**THIS CAUSE** is before the Commission on Claimant's "Motion to Alter or Amend a Judgment"; "Defendant's Response in Opposition to Claimant's Motion to Alter or Amend a Judgment" and the entire record in this cause.

This matter was originally decided by Commissioner Nancy Miller-Herron who issued a "Judgment" on June 11, 2015. Commissioner Miller-Herron's term as Claims Commissioner concluded on June 30, 2015. Following his appointment Commissioner James A. Hamilton III assumed the duties of Claims Commissioner effective August 1, 2015. Commissioner Hamilton, pursuant to Rule 63 of the Tennessee Rules of Civil Procedure, certifies he has familiarized himself with the entire record in this cause and has determine he can rule upon the Claimant's pending "Motion to Alter or Amend a Judgment" without prejudice to either party.

**CHRONOLOGY OF EVENTS**

A review of the record shows the procedural history to be as follows:

- 1) Claimant's 15" LED TV was allegedly damaged by a correctional officer when Claimant was being transferred on August 14, 2013. After the TV was plugged in Claimant found it was not working properly.
- 2) Claimant filed a Notice of Claim on August 23, 2013 pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(F), alleging his 15" LED TV was damaged while it was in the care, custody and control of Defendant.
- 3) A denial letter dated October 9, 2013, was sent to Claimant denying his claim.
- 4) Claimant filed a Complaint Form on or about October 29, 2013, again outlining the damage allegedly sustained to his 15" LED TV.
- 5) An Answer was filed on behalf of Defendant on February 10, 2014, in response to Claimant's Complaint Form.
- 6) Claimant filed a "Motion Seeking Transfer to the Regular Docket" on March 12, 2014.
- 7) The Commission granted Claimant's Motion and entered "Order Granting Claimant's Motion Seeking Transfer to the Regular Docket."
- 8) Claimant filed a "Motion for Ruling on the Pleading."
- 9) The Commission issued a "Judgment" on June 11, 2015.
- 10) Claimant submitted his "Motion to Alter or Amend a Judgment" on June 24, 2015, to the office of the Claims Commissioner.<sup>1</sup>
- 11) On July 1, 2015, "Defendant's Response in Opposition to Claimant's Motion to Alter or Amend a Judgment" was filed.

In his Complaint Form Claimant sued Defendant for the sum of One Hundred Seventy Seven and 80/100 Dollars (\$177.80) that being the purchase price of Claimant's TV. The record establishes the TV had been purchased on or about November 13, 2012, or approximately nine (9) months prior to the incident on August 14, 2013. The only proof of damages presented by Claimant prior to the issuance of the

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<sup>1</sup> The Motion to Alter or Amend a Judgment was returned to Claimant for proper filing with the Clerk of the Commission. The filing of the Motion to Alter or Amend a Judgment was not actually made with the Clerk until July 21, 2015.

Commission's Judgment was the purchase price of One Hundred Seventy Seven and 80/100 Dollars (\$177.80).

In her "Judgment" the Commissioner made clear that damages for the loss or destruction of personal property are measured by the *market value of the property at the time of its loss*. Alternatively, if no market for the property exists, or if the market value is inadequate, the proper measure of the damages for the loss of personal property is the actual value of the property to the owner. The Commission's Judgment further makes clear that regardless of the method used, damages, such as those being claimed by Claimant, must to be calculated based on the value of the property on the date of the loss, not the date the property was acquired or purchased.

The Commission then proceeded to award Claimant a judgment in the amount of Seventy Five and 00/100 Dollars (\$75.00).

Claimant timely filed a Motion to Alter or Amend a Judgment wherein he contends the judgment of Seventy Five and 00/100 Dollars (\$75.00) falls far below the "actual cash value" of the property loss suffered. Claimant again contends that the damages to which he is entitled is One Hundred Seventy Seven and 80/100 Dollars (\$177.80). Defendant denies Claimant's contention he is entitled to damages of One Hundred Seventy Seven and 80/100 Dollars (\$177.80) as is clearly set forth in Defendant's Response in Opposition to Claimant's Motion to Alter or Amend a Judgment.

The Commission **FINDS** the damages sought by Claimant are clearly not consistent with the law as succinctly set forth in the Commission's "Judgment" dated June 11, 2015. First, any measure of damage must use the date of loss, not the date

of purchase. Second, the measure of damages is either the market value of the property at the time of loss or, if no market value for the property exists, such measure of damages is the actual value of the property to the owner. Claimant seeks a judgement which is sufficient to cover the cost of replacing the TV. Claimant's claimed measure of damages is not in accordance with applicable law.

The Commission **FINDS** that Claimant's Motion to Alter or Amend a Judgment is without merit and should be **DISMISSED**.

**IT IS, THEREFORE, ORDERED** that Claimant's Motion to Alter or Amend a Judgment be and the same is hereby **DENIED**.



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**James A. Hamilton III**  
**COMMISSIONER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been mailed by first class U.S. mail, postage prepaid, electronically transmitted, or hand-delivered to:

Kevin Billiouns #350010  
NWCX  
960 State Rt. 212  
Tiptonville, TN 38079

Madeline B. Brough, Esq.  
Assistant Attorney General  
Civil Rights and Claims Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207

on this the 19<sup>th</sup> day of February, 2016.

  
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