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CLERK OF THE SEDGWICK COUNTY DISTRICT COURT  
CASE NUMBER: 2023-CV-000035-OT



**Court:** Sedgwick County District Court  
**Case Number:** 2023-CV-000035-OT  
**Case Title:** State of Kansas, ex rel. Marc Bennett, District At vs. HOMESERVE, USA CORP., et al.  
**Type:** Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in cursive script, reading "Deborah K. Hernandez Mitchell".

/s/ Honorable Deborah K Hernandez Mitchell

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IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS

STATE OF KANSAS, *ex rel.* )  
DEREK SCHMIDT, Attorney General, )  
& )  
MARC A. BENNETT, District Attorney )  
Eighteenth Judicial District of Kansas )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
HOMESERVE, USA CORP. )  
& )  
HOMESERVE USA REPAIR MANAGEMENT CORP. )  
Foreign corporations, )  
 )  
Defendants. )  
 )

(Pursuant to K.S.A. Chapters 60)

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this date, the Parties' Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b) of the Kansas Consumer Protection Act ("KCPA"). Plaintiffs appear

by and through Derek Schmidt, Attorney General for the State of Kansas, with counsel Deputy Attorney General Frances R. Oleen and Assistant Attorney General Melanie S. Jack; and Marc Bennett, District Attorney for the Eighteenth Judicial District, with counsel Assistant District Attorney Jason P. Roach. Defendants appear by Clayton S. Friedman, Troutman Pepper Hamilton Sanders LLP, and Kansas counsel Rachel B. Ommerman, Troutman Pepper Hamilton Sanders LLP (collectively the “Parties”).

**WHEREUPON**, the Parties advise the Court that they have stipulated and agreed to the following:

**PARTIES**

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas.

2. Marc A. Bennett is the duly elected and acting District Attorney for the Eighteenth Judicial District (Sedgwick County) in the State of Kansas.

3. The Attorney General’s and District Attorney's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, (hereinafter the “KCPA”), K.S.A. 50-623 *et seq.*

4. HomeServe USA Corp., is a Pennsylvania corporation with principal offices at 601 Merritt 7, 6th Floor, Norwalk, CT 06851.

5. HomeServe USA Repair Management Corp., (collectively with HomeServe USA Corp., “Defendants”) is a Delaware corporation with principal offices at 601 Merritt 7, 6<sup>th</sup> Floor, Norwalk, CT 06851.

**JURISDICTION AND VENUE**

6. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act as provided by K.S.A. 50-638(a).

7. Venue is proper in the Eighteenth Judicial District of Kansas, Sedgwick County pursuant to K.S.A. 50-638(b).

### **DEFINITIONS**

8. “Clear and Conspicuous” shall mean that the statement, representation, or term being disclosed is of such size, color, and/or contrast and is presented so as to be readily noticed and understood by the consumer to whom it is disclosed.

### **GENERAL ALLEGATIONS**

9. Defendants acted as a “supplier” within the definition of K.S.A. 50-624(l).

10. Defendants engaged in “consumer transactions” with “consumers” as defined in K.S.A. 50-624(c) and 50-624(b).

11. On or about September 2014, through December 2019, HomeServe USA Corp. entered into an agreement (hereinafter “the agreement”) with Westar Energy, Inc., now known as Evergy Kansas Central, Inc., (“Westar”) related to the solicitation and sale of home repair plans to Westar customers offered by Defendants.

12. Defendants’ home repair plans offered Westar customers coverage for interior and exterior electrical repairs (“electrical home repair plan”) in residential homes.

13. The agreement allowed Defendants to obtain Westar customer data to solicit home repair plans offered by Defendants.

14. The agreement allowed Defendants to use the Westar logo on Defendants communication pieces and marketing materials.

15. The agreement provided for a link to be placed on the Westar website for easy access to Defendants home repair plans.

16. The marketing materials, mail solicitations, and online solicitations prominently bore the Westar logo and name and Plaintiffs allege this caused the reasonable consumer to form a mistaken belief that the solicitation and marketing materials were directly from Westar.

17. Defendants conducted solicitations for home repair plans by direct mail, through the internet, and via telephone.

18. Plaintiffs allege that over 4.9 million home repair plan solicitations (hereinafter “mailers” or “solicitations”) were sent to Kansas consumers between 2014 and 2016.

19. Plaintiffs allege some of Defendants solicitations were sent to Kansas customers who were unable to receive a benefit from the home repair plans due to ineligibility.

20. Plaintiffs allege Defendants sold over 44,000 home repair plans to Kansas consumers.

21. Plaintiffs allege that certain renters, owners of manufactured homes, and homeowners with an electrical service of 80 amps or less were unable to receive a material benefit from the Defendants’ home repair plans. These consumers paid for coverage although they were “ineligible consumers” pursuant to the terms of the repair plan.

22. Plaintiffs allege Defendants’ solicitations caused consumers to believe Westar, the consumers’ electrical utility, offered electrical home repair plans for sale.

**ALLEGATIONS REGARDING VIOLATIONS OF  
THE KANSAS CONSUMER PROTECTION ACT**

23. Plaintiffs allege that at all times relevant hereto, Defendants engaged in unfair and deceptive acts and practices in violation of the KCPA, K.S.A. §50-623, *et seq.*

24. Plaintiffs allege each solicitation for which Defendants used the Westar logo is deemed a deceptive and unconscionable act and practice in violation of the KCPA because:

a. The solicitation is a willful use, in any oral or written representation, of ambiguity as to a material fact, pursuant to K.S.A. 50-626(b)(2); or

b. The solicitation is a representation, made knowingly or with reason to know, that services have characteristics, ingredients, or benefits that they do not have, pursuant to K.S.A. 50-626(b)(1)(A); or

c. The consumer was unable to receive a material benefit from the subject of the transaction, pursuant to K.S.A. 50-627(b)(3); or

d. The supplier took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's inability to understand the language of an agreement or similar factor, i.e. the limitations of eligibility, pursuant to K.S.A. 50-627(b)(1).

25. Defendants are entering into this Consent Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendants expressly deny. Defendants do not admit any violation of the KCPA and do not admit any wrongdoing that was or could have been alleged. No part of this Consent Judgment shall constitute evidence of any liability, fault, or wrongdoing by Defendants. This document and its contents are not intended for use by any third party for any purpose.

26. This Consent Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Defendants in any other action, or of Defendants' right to defend themselves from, or make any arguments in, any other private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Consent Judgment. This Consent Judgment is made without trial or adjudication of any issue of fact or

law or finding of liability of any kind. Notwithstanding the foregoing, Plaintiffs may file an action to enforce the terms of this Consent Judgment.

**INJUNCTIVE RELIEF**

27. Defendants and their principals, officers, directors, managers, employees, and agents of the Defendants (“Representatives”), in their capacity as Representatives of the Defendants, and any affiliates, assignees, and/or successors of the Defendants and their Representatives (in their capacity as such) through which Defendants acted or hereafter will act shall comply with the provisions of this section in connection with the offer for sale and sale of home repair plans in residential homes in Kansas.

28. Within sixty (60) days after approval of this Consent Judgment, Defendants have an affirmative duty to notify the following persons about the terms of the Consent Judgment as follows:

a. Defendants shall deliver or otherwise communicate the applicable requirements of this Consent Judgment to all officers, directors, and any managers or agents with control over the offer for sale and sale of home repair plans in residential homes; and

b. Defendants shall deliver a copy of this Consent Judgment to successors.

29. Defendants agree to comply with all provisions of the Kansas Consumer Protection Act, K.S.A. §50-623, *et seq.*

30. Defendants shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

31. Defendants agree, from the time of the execution of this Consent Judgment, to be permanently enjoined from engaging in deceptive and unconscionable acts or practices in connection with a consumer transaction; specifically, but not limited to, the violations addressed herein.

32. Defendants are enjoined from use of a third party logo, unless they make a Clear and Conspicuous statement that Defendants are an independent company(ies), separate from the third party.

33. In the event Defendants directly or indirectly compensates a third party for use of its logo, Defendants shall include a Clear and Conspicuous statement indicating the third party has been compensated for use of its logo.

34. Defendants agree to include a Clear and Conspicuous statement in all applicable solicitations involving home repair plans that that the plans are offered by Defendants.

35. Defendants are enjoined from sending or delivering a solicitation for goods or services that could reasonably be interpreted or construed as a bill, invoice or statement of account due.

36. Defendants shall waive any amperage requirements in all current home repair plans.

37. Defendants shall remove any amperage requirement from any new home repair plans within 120 days of the effective date of this Consent Judgment.

38. Defendants shall continue to use reasonable efforts when soliciting consumers in connection with any offer for electrical home repair plans in order to exclude consumers who are ineligible for the product or service.



## **MONETARY RELIEF AND RESTITUTION**

39. Defendants shall pay a \$500,000.00 monetary payment to the State of Kansas. The State of Kansas shall designate a portion of these funds to reimburse the State of Kansas and Sedgwick County, Kansas for costs of investigating this case. No portion of this payment shall be designated as a fine or civil penalty.

40. Defendants shall pay \$350,000.00 in restitution to the State of Kansas, to be distributed to qualified consumers as determined by Plaintiffs.

41. Plaintiffs will notify qualified consumers of their potential eligibility for a refund. Qualified consumers include Kansas consumers who were enrolled in certain electrical home repair plans with Defendants from 2014-2019, and who reside:

- a. in multi-family dwellings (as renters or owners);
- b. in any dwelling as a renter;
- c. in a manufactured/mobile home; or
- d. in a home built in 1950 or before.

Defendants and Plaintiffs will work together in good faith to draft restitution communications.

42. After processing all consumer restitution claims, the State of Kansas and/or Sedgwick County, Kansas will use any remaining restitution funds solely for enforcing and implementing the consumer protection laws of the State of Kansas that are within the jurisdiction of the Kansas Attorney General and the Sedgwick County District Attorney.

43. Consumer restitution will be based upon the number of timely, valid claims submitted. The Kansas Attorney General and Sedgwick County District Attorney have sole authority to decide the amount of restitution, and to whom to award restitution.

44. Defendants will review all consumer claims previously denied for reasons involving amperage, and, to the extent it has not already done so, Defendants will provide a full refund to any consumer whose claim was denied for inadequate amperage, or for ineligibility related to amperage.

45. Within thirty (30) days of Court approval of this Consent Judgment, Defendants shall wire transfer payment comprised of \$500,000 and \$350,000 in one payment to the State of Kansas, payable to the Office of the Kansas Attorney General, marked CP-11-002246, pursuant to instructions provided by the State of Kansas within that thirty (30) day period.

46. To the extent it has not already done so, Defendants shall review its records to identify any consumers who are making duplicate or triplicate payments on home repair plans. Once identified, Defendants shall issue a full refund for all duplicative payments, close the duplicate or triplicate accounts, and give written notice to the affected consumers.

#### **GENERAL PROVISIONS**

47. Upon Court approval of this Consent Judgment, Plaintiffs agree to release and discharge Defendants and their Representatives, and any affiliates, assignees, and/or successors of Defendants and their Representatives, from all claims Plaintiffs could have brought related to the acts alleged in this Consent Judgment or other conduct covered by the terms of this order, provided such conduct is known to Plaintiffs at the time of signing this Consent Judgment and such conduct occurred prior to the effective date of this Order.

48. Compliance with this Consent Judgment does not relieve the Defendants of any obligation imposed by applicable federal, state, or local law, regulation or tariff; nor shall the Attorney General nor District Attorney be precluded from taking appropriate legal action to enforce civil or criminal statutes for any future conduct.

49. Defendants agree that if any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

50. This Consent Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Defendants in any other action, or of Defendants' right to defend itself from, or make any arguments in, any other private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Consent Judgment. This Consent Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, Plaintiffs may file an action to enforce the terms of this Consent Judgment.

51. Nothing in this Consent Judgment shall be construed to grant or limit the rights of any consumer from pursuing any and all legal remedies which they may be entitled to assert against the Defendants.

52. Defendants acknowledge and agree that this Court has continuing jurisdiction over this matter pursuant to K.S.A. 50-632(b) and any breach of any of the terms or conditions set forth herein shall be treated as a violation of the Court's order and shall be subject to contempt and/or further penalties under the law.

53. This Court shall also retain such jurisdiction for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and relief as may be necessary or appropriate for the modification or compliance of any provisions contained herein. This Court shall also retain jurisdiction if any violation of any term of this Consent Judgment is committed.

54. This Consent Judgment represents the entire agreement between Plaintiffs and

Defendants, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

55. By signing this Consent Judgment, Defendants and the representatives of Defendants warrant that they have been duly authorized by Defendants to execute this Consent Judgment on behalf of Defendants, thus binding Defendants to the provisions of this Consent Judgment. Defendants further represent that they have had an opportunity to consult with and obtain the advice of legal counsel prior to entering into this Consent Judgment.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** the stipulations and agreements of the parties contained herein are found to be reasonable and are hereby adopted and approved as the findings of facts and conclusions of law of this Court and any monies owed hereunder by Defendants immediately becomes a Judgment upon filing.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that judgment is hereby entered against the Defendants, in favor of Plaintiffs in the amount of \$500,000.00, monetary payment and \$350,000.00 in restitution to the State of Kansas.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing this Judgment, and rendering any additional equitable relief, orders, decrees, or judgments as may be requested by the parties or may be deemed appropriate by the Court.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, pursuant to the Kansas Consumer Protection Act and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

**IT IS SO ORDERED.**

**THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF ITS  
ELECTRONIC FILING.**



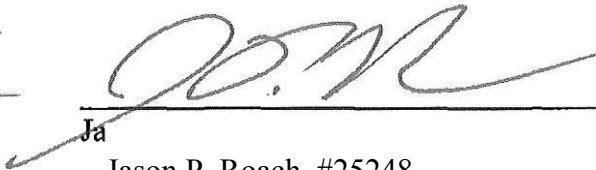
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*For Defendants*

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HomeServe USA Repair Management Corp.