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CLERK OF THE SHERIDAN COUNTY DISTRICT COURT  
CASE NUMBER: 2018-CV-000004



**Court:** Sheridan County District Court  
**Case Number:** 2018-CV-000004  
**Case Title:** State Of Kansas ex rel. Derek Schmidt Atty General  
vs. Energy Guard Midwest LLC, et al.  
**Type:** Journal Entry Of Consent Judgment

SO ORDERED.



A handwritten signature in black ink, appearing to read "Kevin N. Berens".

/s/ Honorable Kevin N. Berens, District Court Judge

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**IN THE DISTRICT COURT OF SHERIDAN COUNTY, KANSAS  
 FIFTEENTH JUDICIAL DISTRICT**

|  |   |                           |
|--|---|---------------------------|
| <b>STATE OF KANSAS, <i>ex rel.</i></b>       | ) |                           |
| <b>DEREK SCHMIDT, Attorney General,</b>      | ) |                           |
|  | ) |                           |
| <b>Plaintiff,</b>                            | ) |                           |
|  | ) |                           |
| <b>v.</b>                                    | ) | <b>Case No. 2018-CV-4</b> |
|  | ) |                           |
|  | ) |                           |
| <b>TIM HENRY, an individual</b>              | ) |                           |
| <b>ELIZABETH WILLIS HENRY, an individual</b> | ) |                           |
| <b>ENERGY GUARD MIDWEST, LLC</b>             | ) |                           |
|  | ) |                           |
| <b>Defendants.</b>                           | ) |                           |
|  | ) |                           |

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**(Pursuant to K.S.A. Chapter 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). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Sarah M. Dietz, Assistant Attorney General. Defendants appear by and through Mark J. Lazzo.

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

## **PARTIES, JURISDICTION AND VENUE**

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

2. The Attorney General'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 ("KCPA"), K.S.A. 50-623 *et seq.*

3. Defendant Tim Henry ("Defendant Tim Henry") is an individual with a residential address [REDACTED] Kansas [REDACTED].

4. Defendant Elizabeth Willis Henry ("Defendant Elizabeth Henry") is an individual with a residential address at [REDACTED] Kansas [REDACTED].

5. Defendant Energy Guard Midwest, LLC ("Defendant Energy Guard") is a Kansas limited liability company.

6. Defendant Energy Guard has a principal place of business at 2124 North Garland Street, Wichita, Kansas 67203.

7. All references to the Defendant herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates and successors.

8. All references to the term "customer" herein include commercial entities, business entities, and consumers.

9. Jurisdiction and venue are appropriate in District Court of Sheridan County, Kansas, pursuant to K.S.A. 50-638(a) and (b), respectively.

10. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-638(a).

### ALLEGATIONS

11. Defendants Tim and Elizabeth Henry are co-managers of Defendant Energy Guard.

12. At all times relevant hereto, and in the ordinary course of business, Defendant Energy Guard acted as a “roofing contractor,” as that term is defined by K.S.A. 50-6,122(a)(1), and as a “supplier,” as that term is defined by K.S.A. 50-624(l).

13. Defendants have acted as “suppliers” in Kansas, as that term is defined by K.S.A. 50-624(l).

14. Defendants have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

15. Defendants have engaged in consumer transactions with “consumers,” as that term is defined in K.S.A. 50-624(b).

16. Plaintiff alleges that, were this matter to be litigated, the following could be proven:

- a. Defendants abandoned a roofing contract without legal grounds after a deposit of money or other consideration had been paid, in violation of K.S.A. 2017 Supp. 50-6,133(a)(1).
- b. Defendants diverted funds or property entrusted to a roofing contract, in violation of K.S.A. 2017 Supp. 50-6,133(a)(2).
- c. Defendants willfully used, in an oral or written representation, an exaggeration, falsehood, innuendo or ambiguity as to a material fact violation of K.S.A. 2017 Supp. 50-626(b)(2).
- d. Defendants entered into consumer transactions from which the consumers were unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. 50-627(b)(3).
- e. Defendants entered into consumer transactions that were excessively one-sided in favor of the supplier, in violation of K.S.A. 50-627(b)(5).
- f. Defendant engaged in deceptive or unconscionable acts or practices against a protected consumer, as that term is defined in K.S.A. 50-676(a).

17. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by Defendants of a violation of the Kansas Consumer Protection Act or Roofing Registration Act. Notwithstanding, Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law and solely for the purpose of settlement.

#### **INJUNCTIVE RELIEF**

18. The Defendants shall be permanently enjoined from violating all Kansas Laws, statutes, rules and regulations relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.* and the Kansas Roofing Registration Act, K.S.A. § 50-6,121 *et seq.*

19. The 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.

20. The Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

20. The Defendants agree to fully cooperate with the Office of the Kansas Attorney General in any future complaints filed with our office and agree to respond to our office within twenty (20) days after receiving a copy of the complaint.

21. The Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

22. The Defendants shall fund and maintain an operating account for business expenses such as operating costs and employee payroll. The Defendants shall maintain a separate account in which funds paid from customers shall be kept. From the customer account, Defendants shall purchase materials and pay for work already performed. Defendants shall keep and maintain accurate records of funds deposited, funds withdrawn broken down by materials and labor, materials purchased, and work performed for each customer contract. Defendants shall only withdraw from the customer account for materials needed and work performed for each separate customer contract. Defendants shall be enjoined from expending funds paid into the customer account by one customer to pay for materials or services on behalf of a different customer. Defendants' withdrawals must not exceed the limit of funds deposited by a customer. If Defendants must purchase additional materials, or perform additional labor, exceeding the amount of funds in the account for that customer, Defendants must use personal funds from the operating account. Defendants must provide each customer a detailed report by the 1<sup>st</sup> of each month detailing the status of their account with Defendants: the amount of funds deposited, the amount withdrawn by Defendants broken down by labor and materials, the materials purchased, the work performed, and the balance remaining in the account for that customer.

23. When withdrawing from the customer account for payment for work completed, the amount withdrawn by Defendants must not exceed the stated labor cost outlined in the contract or the insurance estimate by more than 25% unless agreed to pursuant to paragraph 24. The Defendants shall include, as part of the customer contract, a start date, an estimate of the total amount due, and a projected timeline of the project including a projected completion date.

24. In the event that Defendants have started work on a contract and the cost of the project

exceeds the estimate by 25%, Defendants must renegotiate the contract, prior to completion of the contract with the customer. If the customer declines, Defendants must submit that information to the Attorney General's Office within fourteen (14) days of receiving notice of the declined offer and the Attorney General's Office will assist to mediate a resolution.

25. In the event the time of the project exceeds the projected time frame by thirty (30) days, Defendants must renegotiate the contract with the customer. If the customer declines, Defendants must submit that information to the Attorney General's Office within fourteen (14) days of receiving notice of the declined offer and the Attorney General's Office will assist to mediate a resolution.

26. If Defendants and the customer are not able to come to an agreement under paragraphs 24-25 within sixty (60) days of notice to the Attorney General's Office, Defendants must provide the customer and the Attorney General's Office with a final accounting of the project including funds deposited, withdrawn broken down by materials and labor, materials purchased, work performed, and remaining balance. Defendants must refund any remaining balance and deliver to the customer any purchased, but undelivered, materials within fourteen (14) days of providing the customer and the Attorney General's Office with the final accounting.

27. The obligations under paragraphs 24-25 to renegotiate and submit information to the Attorney General's Office must be a part of each customer contract.

28. Paragraphs 22-27 are required during the pendency of the bankruptcy plan set forth in paragraph 30.

#### **SUSPENDED INJUNCTIVE RELIEF**

29. Judgment is hereby entered in favor of Plaintiff and the Defendants are permanently

enjoined from conducting consumer transactions in the State of Kansas, including all door-to-door sales under K.S.A. 50-640, pursuant to K.S.A. 21-6423. *Provided, however,* this permanent injunction shall be suspended against Defendants so long as the Court makes no finding(s), as provided in the section of this Consent Judgment titled “Right to Reopen,” that Defendants have violated any provision of this Consent Judgment. Defendants are hereby notified, pursuant to K.S.A. 21-6423, if the Court finds Defendants have violated any provision of this Consent Judgment and permanently enjoins Defendants from conducting consumer transactions, including door-to-door sales, in Kansas, Defendants may be subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony, for further participating in any door-to-door sales while prohibited from conducting door-to-door sales. Defendants are hereby notified, if the Court finds Defendants to have violated any provision of this Consent Judgment and permanently enjoins Defendants from conducting consumer transactions, including door-to-door transactions, in Kansas, if the Defendants then cause, direct, employ, enable or assist others in engaging in door-to-door sales in the state of Kansas in violation of this Order, Defendants are committing a crime and may be subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony. Defendants are hereby notified that the criminal liability imposed by K.S.A. 21-6423 will not relieve Defendants of any civil liability for violating the terms of this Order or any other judgments and civil sanctions and liability may be imposed in addition to any authorized criminal penalties.

### **CONSUMER RESTITUTION**

30. The Defendants shall be held jointly and severally liable and agree to issue a refund in



the amount of \$183,986.20 in the form of a cashier's check, money order or other certified funds, marked with Case No. CP-18-000644, payable to the Office of the Kansas Attorney General, to be dispersed to the consumers listed in paragraph 30, mailed to:

Sarah M. Dietz, Assistant Attorney General  
Office of the Kansas Attorney General  
120 SW 10th Ave., 2nd Floor  
Topeka, Kansas 66612

31. The adjusted consumer relief sought in the Fourth Amended Petition to be disbursed to the consumers:

- a. T.D. \$19,871.05
- b. J.M. \$3,000
- c. J.S. \$9,000
- d. C.T. \$4,000
- e. B.S. \$11,818.16
- f. T.A. \$49,684.72
- g. T.M.D. \$3,190.46
- h. K.S. \$5,451.02
- i. E.S. \$43,482
- j. K.W. \$20,488.79
- k. J.L. \$10,000
- l. K.F. \$4,000

32. Any and all payments made under paragraphs 30-31 are subject to the Bankruptcy Plan filed in Case No. 18-11070.

33. Defendants agree and shall reopen the Bankruptcy Case No. 18-11070 to include any

and all consumers listed in paragraph 30, who did not receive notice of the bankruptcy filing and who were not provided a refund. This shall include, but not be limited to consumers J.M. and J.S.

### **SUSPENDED MONETARY JUDGMENT**

34. Judgment is hereby entered in favor of Plaintiff and against Defendants, jointly and severally, in the amount of \$10,000 for the payment of consumer protection investigative fees and expenses, pursuant to K.S.A. 50-636. *Provided, however,* \$10,000 of this monetary judgment shall be suspended against Defendants so long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled “Right to Reopen,” that Defendants have violated any provision of this Consent Judgment.

35. Judgment is hereby entered in favor of Plaintiff and against Defendants, jointly and severally, in the amount of \$150,000 for the payment of civil penalties for violations of the Kansas Consumer Protection Act and Kansas Roofing Registration Act, as designated by the Attorney General, pursuant to K.S.A. 50-636. *Provided, however,* \$150,000 of this monetary judgment shall be suspended against Defendants so long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled “Right to Reopen,” that Defendants have violated any provision of this Consent Judgment.

### **RIGHT TO REOPEN**

36. Plaintiff’s agreement to Suspended Injunctive Relief contained in this Consent Judgment is expressly premised upon Defendants’ material compliance with the terms of this Consent Judgment.

37. Plaintiff's agreement to Suspended Monetary Judgment contained in this Consent Judgment is expressly premised upon Defendants' material compliance with the terms of this Consent Judgment.

38. Defendants' "material compliance" with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 10-34.

39. If, upon motion by the Attorney General to the Court, the Court finds that the Defendants have violated a material term of this Consent Judgment, the suspension of the monetary judgment as to the Defendants will be terminated and the entire judgment amount shall become immediately due and payable to the Plaintiff, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

40. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

#### **OTHER PROVISIONS**

41. Jurisdiction is retained by this Court 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 directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

42. 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 from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

43. Compliance with this Consent Judgment does not relieve Defendants of any

obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Plaintiff from taking appropriate legal action to enforce any other statutes under his jurisdiction or from any other Federal or State agency to enforce any other federal, state, or local law under its jurisdiction.

44. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Defendants' business practices, nor shall the Defendants represent the Consent Judgment as such approval. The parties further understand and agree that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Defendants, nor shall any inaction by the Attorney General be considered a waiver by the attorney general of any rights under this Consent Judgment or applicable law.

45. This Consent Judgment represents the entire agreement between Plaintiff and the 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.

46. Defendants hereby represent and warranty that Defendants have had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of Defendants under this Consent Judgment and the consequences of breach hereunder. Defendants represent that the Defendants have read the Consent Judgment and knows and understands the contents thereof. Defendants further represent and warranty that Defendants are signing this Consent Judgment as the result of his own free act,

and that Defendants have not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on his behalf, except for those contained in this Consent Judgment.

47. By signing this Consent Judgment, the representative of the Defendants represent and warranty that such person is duly and legally authorized to execute this Consent Judgment on behalf of the Defendants, thus binding the Defendants to the provisions of this Consent Judgment.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved as findings of fact and conclusions of law of the Court and any monies owed hereunder by the Defendants immediately becomes a judgment upon filing.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that judgment is entered against Defendants, jointly and severally liable, in favor of the Plaintiff in the amount of \$183,986.20 for restitution to be dispersed to the consumers, subject to the Bankruptcy Plan filed in Case No. 18-11070.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants, jointly and severally liable, in favor of Plaintiff in the amount of \$150,000.00 in civil penalties, subject to the suspension herein.

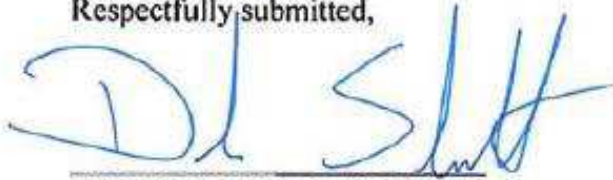
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant in favor of Plaintiff in the amount of \$10,000.00 in investigative fees, subject to the suspension herein.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, 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.

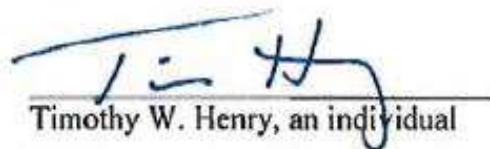
THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE STAMP.

Respectfully submitted,



DEREK SCHMIDT, #17781  
KANSAS ATTORNEY GENERAL

Approved by:



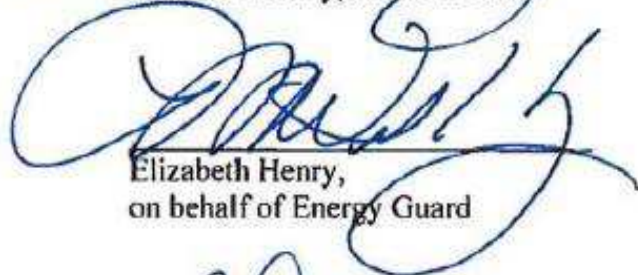
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Elizabeth Henry, an individual



Elizabeth Henry,  
on behalf of Energy Guard



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