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 KS. DISTRICT COURT
 THIRD JUDICIAL DIST
 TOPEKA, KS
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
v.)	
)	CASE NO. 2018-CV-363
FIVE STAR TREE & LAWN, LLC)	DIV NO. 7
)	
)	
Defendant.)	
<hr/>		
(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.

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 Five Star Tree & Lawn, LLC (“Defendant”) is a Missouri limited liability company with a primary business address at 601 S. 23rd St., Lexington, Missouri 64067.

4. All references to the Defendants 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.

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

6. 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

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

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

9. Defendants have engaged in consumer transactions with “consumers,” as that term is defined in K.S.A. 50-624(b), and “protected consumers,” as that term is defined by K.S.A. 50-676(a).

10. Defendants have made or caused to be made “door-to-door sales,” as that term is defined by K.S.A. 50-640(c)(1).

11. At all times relevant hereto, Defendants have engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, which acts and practices include, but are not limited to:

- a. Defendants failed, in the course of making or causing to be made door-to-door solicitations, to furnish consumers with receipts providing notice to the consumers of their right to cancel the transaction at any time until the third business day following the transaction, in violation of K.S.A. 50-640(b)(1).
- b. Defendants failed, in the course of making or causing to be made door-to-door solicitations, to furnish consumers with duplicate notice of the consumer's right to cancel the transaction at any time until the third business day following the transaction, in violation of K.S.A. 50-640(b)(2).
- c. Defendants, in the course of making or causing to be made door-to-door solicitations, transferred notes of indebtedness prior to midnight of the fifth day following the date the contract was signed or the property or services were purchased, in violation of K.S.A. 50-640(b)(8).

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

INJUNCTIVE RELIEF

13. The Defendant agrees to comply with 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.*

14. The Defendant 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.

15. The Defendant 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.

16. The Defendant agrees 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.

MONETARY RELIEF

17. The Defendant agrees to issue a refund in the amount of \$1000.00 in the form of a cashier's check, money order or other certified funds payable to The Office of the Kansas Attorney General, to be dispersed to Mary Lou Conway, mailed to:

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

18. Defendant agrees to pay the Office of the Kansas Attorney General \$3,000.00 in investigative fees and expenses, pursuant to K.S.A. 50-636, in a second and separate payment in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

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

OTHER PROVISIONS

19. 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.

20. 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.

21. Compliance with this Consent Judgment does not relieve Defendant 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.

22. 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 Defendant 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 Defendant, 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.

23. This Consent Judgment represents the entire agreement between Plaintiff and the Defendant, 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.

24. Defendant hereby represents and warranties that Defendant has 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 Defendant under this Consent Judgment and the consequences of breach hereunder. Defendant represent that the Defendant has read the Consent Judgment and knows and understands the contents thereof. Defendant further represents and warranties that Defendant is signing this Consent Judgment as the result of

his own free act, and that Defendant has 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.

25. By signing this Consent Judgment, the representative of the Defendant represents and warranties that such person is duly and legally authorized to execute this Consent Judgment on behalf of the Defendant, thus binding the Defendant to the provisions of this Consent Judgment.

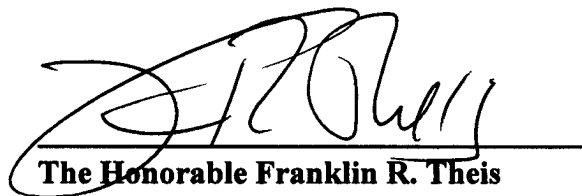
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as findings of fact and conclusions of law of the Court and any monies owed hereunder by the Defendant immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$3,000.00.

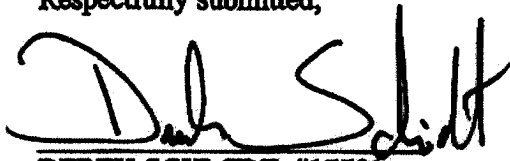
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

5/9/2018
Date


The Honorable Franklin R. Theis

Respectfully submitted,



DEREK SCHMIDT, #17781
KANSAS ATTORNEY GENERAL



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Approved by:

Five Star Tree & Lawn LLC - 8004
Five Star Tree & Lawn LLC

Brent A. McCoy #24303
Brent A. McCoy #24303

Attorney for Defendant

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