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FILED
APP DOCKET NO.

2013 FEB 15 A 11: 23

CLERK OF DIST COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS
BY

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS
Division _____

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
ENERGY GUARD LLC)
)
Defendant.)

Case No. 13CV0502

COPY

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this _____ day of _____, 2013, Plaintiff's 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 Meghan E. Stoppel, Assistant Attorney General. Defendant appears by and through Michael Shultz of Shultz Law Office, P.A.

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, qualified 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, K.S.A. 50-623, *et seq.*

3. Defendant Energy Guard LLC ("Defendant") has a principal place of business at 1919 N. Amidon Avenue, Suite 115, Wichita, Kansas 67203.

4. All references to Defendant herein include acts performed individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

5. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

6. Defendant stipulates and admits that venue is proper in this Court.

ALLEGATIONS

7. Defendant acted as a "telephone solicitor" in Kansas, as that term is defined by K.S.A. 50-670(a)(3).

8. Defendant engaged in "consumer telephone calls" in Kansas, as that term is defined by K.S.A. 50-670(a)(1).

9. Defendant contacted Kansas consumers by phone for the purpose of soliciting the sale of Defendant's home repair and improvement services, including the sale and installation of residential siding, windows, doors, and roofing materials.

10. Plaintiff alleges that Defendant, while conducting the aforementioned solicitations in Kansas, engaged in acts and practices in violation of the Kansas No Call Act, K.S.A. 50-670 *et seq.*, which acts and practices include, but are not limited to:

- a. making, or causing to be made, unsolicited consumer telephone calls to Kansas consumers whose telephone numbers are listed on the National Do-Not-Call Registry, in violation of K.S.A. 50-670a(e); and

- b. failing to consult the National Do-Not-Call Registry prior to making unsolicited consumer telephone calls in Kansas, in violation of K.S.A. 50-670a(b).

11. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

INJUNCTIVE RELIEF

12. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph ten (10), and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

13. 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.* and the Kansas No-Call Act, K.S.A. 50-670, *et seq.*

14. Defendant agrees to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division.

15. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

16. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment, or within fifteen (15) days after any person assumes such position or responsibilities.

INVESTIGATIVE FEES AND CIVIL PENALTIES

17. Defendant agrees to pay to the Office of the Kansas Attorney General twenty thousand dollars (\$20,000.00) in investigative fees and civil penalties for violations of the Kansas No-Call Act, pursuant to K.S.A. 50-632 and 50-670(g).

18. Defendant agrees to pay the aforementioned fees and penalties in seven (7) installments as follows:

a. Defendant shall pay \$4,000.00 to the Office of the Kansas Attorney General by no later than February 28, 2013.

b. The remaining \$16,000.00 shall be paid in five (5) equal installments of \$2,666.00 due on or before the first day of each month thereafter, beginning on April 1, 2013, with a final installment of \$2,670.00 due on or before September 1, 2013.

19. Payment shall be made payable to the Office of the Kansas Attorney General, mailed to:

Office of the Kansas Attorney General
ATTN: Meghan E. Stoppel, Assistant Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612

20. Defendant agrees that time is of the essence for each of the aforementioned payments and shall be responsible for the timely submission of each payment.

21. Defendant shall have the right, at any time and without penalty, to prepay the obligations to Plaintiff set forth in paragraphs seventeen (17) and eighteen (18).

22. Defendant agrees that pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

OTHER PROVISIONS

23. The provisions of this Consent Judgment will be applicable to the Defendant, and every employee, agent or representative of the Defendant.

24. 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.

25. 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.

26. Compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

27. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendant nor shall the Defendant represent the decree as such an approval. The parties further understand 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 the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

28. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into 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 the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff in the amount of twenty thousand dollars (\$20,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay all costs associated with this action.

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.

MARK VINING

DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

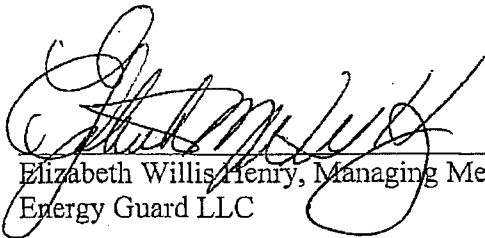


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Attorneys for Plaintiff

DEFENDANT:



Elizabeth Willis Henry, Managing Member
Energy Guard LLC



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