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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF PIMA**

13  
14 STATE OF ARIZONA, *ex rel.* THOMAS  
15 C. HORNE, Attorney General,

16 Plaintiff

17 vs.

18 American Residential Services, L.L.C., a  
19 Delaware limited liability company, doing  
20 business in Arizona as American  
21 Residential Services L.L.C.; American  
22 Residential Services; Goettl Air  
23 Conditioning; ARS; ARS Rescue Rooter;  
24 Russett Services/ARS Rescue Rooter;  
25 and American Residential Services  
26 Management Corp.,

27 Defendants.

**No. C20116630**

**JOINT MOTION TO ENTER CONSENT  
JUDGMENT**

**Assigned to the Honorable Kenneth Lee**

25 The parties, by and through undersigned counsel, respectfully move this Court  
26 to enter an Order Re: Consent Judgment, a copy of which Order is filed  
27 contemporaneously with this Motion.

28 1. The State of Arizona filed a Complaint alleging violations of A.R.S. § 44-

1 1521 *et seq.*, the Consumer Fraud Act, against defendants American Residential  
2 Services, L.L.C., a Delaware limited liability company, doing business in Arizona as  
3 American Residential Services L.L.C.; American Residential Services; Goettl Air  
4 Conditioning; ARS; ARS Rescue Rooter; Russett Services/ARS Rescue Rooter; and  
5 American Residential Services Management Corp.

6 2. The State of Arizona, by its counsel, and defendants, American  
7 Residential Services, L.L.C., et al., by its counsel, have agreed to the entry of this  
8 Order by the Court without trial or adjudication of any issue of fact or law.

9 3. The Court has jurisdiction over the subject matter of this Consent  
10 Judgment and over all parties.

11 4. The terms of the Consent Judgment ("Judgment") shall be governed by  
12 the laws of the State of Arizona.

13 **THE COURT HEREBY FINDS AND ORDERS:**

14 A. The State of Arizona filed a complaint alleging violations of the A.R.S.  
15 § 44-1521, *et seq.*, and the Defendants American Residential Services, L.L.C., a  
16 Delaware limited liability company, doing business in Arizona as American Residential  
17 Services L.L.C.; American Residential Services; Goettl Air Conditioning; ARS; ARS  
18 Rescue Rooter; Russett Services/ARS Rescue Rooter; and American Residential  
19 Services Management Corp., waived service of the complaint. The Defendants have  
20 been fully advised of their right to a trial in this matter and have waived same. The  
21 Defendants admit that this Court has jurisdiction over the subject matter and the  
22 parties for purposes of entry of this Consent Judgment and acknowledge that this  
23 Court retains jurisdiction for the purpose of enforcing this Consent Judgment.

24 B. The Defendants dispute the allegations in the complaint, but they have  
25 agreed to a voluntary compromise of the disputed claims, and have agreed with the  
26 State of Arizona on a basis for the settlement of these matters in dispute.

27 C. This Consent Judgment does not constitute an admission by the  
28 Defendants for any purpose of any violation of any state law, rule or regulation nor

1 does this Consent Judgment constitute evidence of any liability of the Defendants.  
2 This Consent Judgment is made without trial or adjudication of any issues of fact or  
3 law or finding of liability of any kind.

4 D. The Defendants acknowledge that the State of Arizona's acceptance of  
5 this Consent Judgment is solely for the purpose of settling this litigation and, except as  
6 expressly provided herein, does not preclude the Attorney General, or any other  
7 agency or officer of this State, or subdivision thereof, from instituting other civil or  
8 criminal proceedings as may be appropriate now or in the future.

9 **APPLICATION**

10 1. This Order applies to American Residential Services, L.L.C., a Delaware  
11 limited liability company, doing business in Arizona as American Residential Services  
12 L.L.C.; American Residential Services; Goettl Air Conditioning; ARS; ARS Rescue  
13 Rooter; Russett Services/ARS Rescue Rooter; and American Residential Services  
14 Management Corp. and to its future principals, officers and directors, assigns and  
15 successors, managerial or supervisory employees, and to any other employee or  
16 agent having responsibilities with respect to the subject matter of this Order.

17 **DEFINITIONS**

18 2. For purposes of this Consent Judgment, the following definitions shall  
19 apply:

20 a. Advertisement shall have the same meaning as that term is  
21 defined in A.R.S. § 44-1521(1), as it is currently written or as  
22 amended in the future.

23 b. Clear and Prominent shall mean, when referring to a statement,  
24 disclosure or disclaimer, that such statement, disclosure or  
25 disclaimer shall be in such size, color, contrast, location, duration,  
26 and audibility that it is noticeable, readable, and understandable to  
27 the least sophisticated consumer.

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1 c. Effective Date shall mean the date the Court enters the Consent  
2 Judgment.

3 d. Eligible Consumers shall mean those consumers who, in the sole  
4 discretion of the Attorney General, are entitled to distribution and  
5 consumer satisfaction.

6 e. HVAC shall mean Heating, Ventilation and Air Conditioning.

7 **INJUNCTION**

8 3. ARS shall comply with A.R.S. § 44-1521, *et seq.*, as it is currently written  
9 or as amended in the future.

10 4. ARS shall retain for no less than three years from the date of execution  
11 any documents that are required to be signed pursuant to this Consent Judgment and  
12 all releases consumers sign when entering an agreement with ARS regarding  
13 compensation and/or repair. From time to time, the Attorney General may require  
14 ARS to provide originals or copies of same.

15 **THREE DAY RIGHT TO CANCEL**

16 5. ARS shall comply with the Federal Trade Commission Rule Concerning  
17 Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR  
18 Part 429 *et seq.* (the "Rule").

19 6. ARS shall train its salespeople, technicians, and call center employees  
20 on the Rule, and shall maintain a written acknowledgment from those who have  
21 received the training.

22 **CONTRACTS**

23 7. In all circumstances in which ARS visits a consumer's home for a service  
24 or sales call, and prior to any sale, ARS shall give the consumer a written contract of  
25 the equipment and services being sold and have the consumer sign the contract  
26 before commencing work.

27 8. Within 30 days of the Effective Date, ARS shall ensure that its contracts  
28 Clearly and Prominently include, at a minimum, the following:

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- a. The aggregate price of the equipment and installation. With regard to a new HVAC and/or plumbing system, ARS will include the make, model and model number of the equipment. If, however, a consumer so requests, ARS shall set out the price charged to that consumer for new HVAC or plumbing equipment.
- b. The price of the Gold Key or other maintenance program.
- c. The price of any warranty which is in addition to the manufacturer's warranty.
- d. The tax.
- e. Any other amounts ARS charges the consumer.
- f. An itemization of any discounts, credits, rebates, trade-ins or buybacks that have been applied.

9. At the time consumers sign the contracts, ARS shall provide the

following:

- a. All applicable ARS guarantees.
- b. A copy of any warranty ARS proposes to sell the consumer which is in addition to the manufacturer's warranty that comes with the system.
- c. A copy of the manufacturer's warranty, which shall be provided by the time of installation if it is not available when the consumers sign the contracts.
- d. A complete copy of the Gold Key or any other maintenance program, including its limitations.

**GOLD KEY, MAINTENANCE PROGRAMS, AND HOME VISITS**

10. If ARS sells consumers a Gold Key or other type of maintenance program, ARS agrees not to send an HVAC technician or salesperson to any consumer's home on the same day as a plumbing technician or salesperson unless requested by the consumer.



1 limited to representations concerning:

2 (a) the safety, dangers, or maintenance of a consumer's HVAC,  
3 electrical, plumbing, or other household systems, fixtures, or  
4 appliances; or

5 (b) the sales price for new equipment or services, including the  
6 availability and source of rebates, warranties, and other  
7 incentives.

8 19. ARS shall not disseminate, or cause the dissemination of, any  
9 advertising that misrepresents, through the use of federal, state, or local government  
10 logos, markings, or language, that the advertising is an official governmental notice.

11 20. ARS shall conspicuously place its name, telephone number, and/or logo  
12 on any advertising.

13 21. ARS shall not employ the phrases "Public Notice" or "Safety Notice" in its  
14 advertising.

15 22. ARS shall not employ any advertising that resembles a check or other  
16 negotiable instrument.

17 23. ARS shall honor all of its promotions and guarantees, including its  
18 advertised prices.

19 24. Upon request, ARS shall provide the Attorney General's Office with  
20 written substantiation of any advertising claim that it makes.

21 **MONETARY TERMS**

22 25. Within thirty (30) days of the Effective Date, ARS shall pay the Attorney  
23 General's Office the sum of two hundred and forty thousand dollars (\$240,000) to be  
24 deposited into a separate interest-bearing trust account to be used, in the sole  
25 discretion of the Attorney General, for distribution and consumer satisfaction.  
26 Consumers who have not filed complaints with the Attorney General or the BBB for  
27 work performed between January 1, 2008 and December 1, 2011, have forty (40) days  
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1 from the Effective Date to file a complaint with the Attorney General. The Attorney  
2 General will take into consideration any settlements that ARS has already made with  
3 consumers in determining the amount of distribution to which consumers may be  
4 entitled. Any interest the account accrues shall be deposited back into the account.

5 a. In the event this amount is not sufficient to fully satisfy Eligible  
6 Consumers, the Attorney General, in his sole discretion, shall  
7 distribute the amount to consumers on a pro rata basis.

8 b. In the event this amount is sufficient to provide full satisfaction to  
9 Eligible Consumers, the Attorney General shall deposit any  
10 excess funds into the fund established under A.R.S. § 44-1531.01  
11 and used for the purposes specified therein.

12 26. Within 30 days of the Effective Date, ARS shall provide to the Attorney  
13 General's Office copies of all releases signed by consumers from September 14, 2011  
14 through the Effective Date.

15 a. If the releases do not set out the payment ARS made, the person  
16 to whom the payment was made, the address, and the amount of  
17 payment, ARS shall provide that information along with the  
18 releases.

19 27. Within ten (10) business days of the Effective Date, ARS shall deliver to  
20 the Attorney General's Office the sum of one hundred and fifty-five thousand dollars  
21 (\$155,000) for costs and attorneys' fees. The Attorney General shall deposit the funds  
22 into the fund established under A.R.S. § 44-1531.01 and used for the purposes  
23 specified therein.

24 28. Should ARS default on any payment under this Consent Judgment to the  
25 State, the entire amount becomes immediately due and owing. Interest on any unpaid  
26 balance shall accrue at the annual rate of 10%.

1 GENERAL TERMS

2 29. Defendants shall not represent or imply that the Attorney General, the  
3 State of Arizona, or any agency thereof has approved any of their actions in Arizona or  
4 has approved any of their past, present or future business practices in Arizona, and  
5 the Defendants are enjoined from directly or indirectly representing anything to the  
6 contrary.

7 30. Before initiating any proceeding to enforce this Consent Judgment, the  
8 Attorney General shall provide at least thirty (30) days written notice to the Defendants  
9 to provide them a reasonable opportunity to cure any alleged violation. Whenever  
10 possible, the parties shall seek to resolve an alleged violation of this Consent  
11 Judgment by discussion. In addition, in determining whether to enforce this Consent  
12 Judgment or to seek an order for monetary, civil contempt, or any other relief or  
13 sanction, the Attorney General shall give good faith consideration to whether the  
14 Defendants have taken corrective action designed to cause the claimed violation to be  
15 cured and to prevent future occurrences.

16 31. The State acknowledges by its execution hereof that this Consent  
17 Judgment constitutes a complete settlement of its allegations against the Defendants  
18 and it agrees that it shall not institute any additional civil action against it based on  
19 those allegations or the alleged violations of the Arizona Consumer Fraud Act, as  
20 described in the State's Complaint through the date of entry of this Consent Judgment.

21 32. Notwithstanding the foregoing, the State may institute an action or  
22 proceeding to enforce the terms and provisions of this Consent Judgment or to take  
23 action based on future conduct by the Defendants.

24 33. This Consent Judgment is entered as a result of a compromise and a  
25 settlement agreement between the parties. Only the parties to this action may seek  
26 enforcement of this Consent Judgment. Nothing herein is intended to create a private  
27 right of action by other parties.

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34. Nothing in this Consent Judgment shall limit the rights of any consumer to pursue a private right of action or assert any available right or remedy against the Defendants.

Dated this 23<sup>rd</sup> day of April, 2012.

Thomas C. Horne  
Attorney General

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Assistant Attorney General  
Attorney for State of Arizona

For American Residential Services, L.L.C., a Delaware limited liability company, doing business in Arizona as American Residential Services L.L.C.; American Residential Services; Goettl Air Conditioning; ARS; ARS Rescue Rooter; Russett Services/ARS Rescue Rooter; and American Residential Services Management Corp

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