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8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

CV 2015-012371

11 In the Matter of
12 Karl Holik and Rastra Holding, LLC,
13 Respondents.

Case No:
ASSURANCE OF DISCONTINUANCE

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17 The Attorney General of the State of Arizona and Respondents Karl Holik and Rastra
18 Holding, LLC (collectively "Respondents") agree to the entry of the following Assurance of
19 Discontinuance ("Assurance") pursuant to Arizona Revised Statutes ("A.R.S.") § 44-1530 of the
20 Arizona Consumer Fraud Act, i.e., A.R.S. §§ 44-1521 to 44-1534.

- 21 1. Respondent Rastra Holding, LLC ("Rastra") is a Nevada limited liability company
22 doing business in Arizona since January of 2006.
23 2. Respondent Karl Holik ("Holik") is the managing member of Respondent Rastra
24 Holding, LLC.
25 3. Respondent Holik was president and director of Rastra Corporation, a Delaware
26 corporation doing business in Arizona from May of 2004 until dissolution in February of 2010.

1 4. Respondent Karl Holik was president and director of Rastra Engineering, Inc., a
2 Nevada corporation doing business in Arizona from June of 2005 until dissolution in June of
3 2014.

4 5. Respondent Rastra Holding, LLC, Rastra Corporation, and Rastra Engineering,
5 Inc. (collectively "Rastra Entities") primarily conducted business at 7621 E. Gray Road in
6 Scottsdale, Arizona.

7 6. For the purposes of this Assurance, Respondent Rastra is a successor-in-interest to
8 Rastra Corporation and Rastra Engineering, Inc.

9 7. The Rastra Entities marketed and sold construction materials insulated with post-
10 recycled plastic ("Rastra Materials").

11 8. The State received around 15 consumer complaints against the Rastra Entities
12 between 2012 and 2015.

13 9. Based upon information contained in the consumer complaints, the State believes,
14 and therefore alleges, that Respondents:

15 a. Marketed, accepted, and processed orders for Rastra Materials that it could
16 not adequately fulfill;

17 b. Accepted down payments for Rastra Materials, knowing that it did not have
18 the ability or capacity to ship the product;

19 c. Deceptively misrepresented to consumers that the orders would be fulfilled
20 by a certain date, knowing that the fulfillment was not possible;

21 d. Misappropriated consumers' down payments to pay operating and other
22 costs, knowing that the orders would not ship;

23 e. Failed to fully deliver products on numerous consumer orders;

24 f. Fabricated excuses such as weather problems, sickness, travel, and other
25 maladies to prevent or delay consumer complaints or legal action;

26 g. Blamed failure to ship Rastra Materials on a manufacturer, when

1 Respondents had not ordered or paid for the materials; and

2 h. Made numerous promises to cancel orders and repay consumers, without
3 the intent or ability to complete repayment.

4 10. Respondents collected \$162,000 in down payments for Rastra Product that it could
5 not produce or deliver.

6 11. The Arizona Attorney General believes, and therefore alleges, that Respondents
7 actions, as described in paragraphs 9 through 10 above, violate the Arizona Consumer Fraud Act
8 A.R.S § 44-1522 *et seq.*

9 12. Respondents neither admit nor deny the State's allegations, but agree to enter into
10 this Assurance of Discontinuance for the purposes of resolving the consumer complaints.

11 13. The Arizona Attorney General is willing to accept this Assurance of
12 Discontinuance, pursuant to A.R.S. § 44-1530.

13 NOW, THEREFORE, Respondents and their members, officers, agents, servants,
14 employees, successors, assignees, and all other persons in active concert or participation with
15 them, agree, undertake and assure:

16 14. Respondents will permanently refrain from:

17 A. Engaging in any and all deceptive or unfair acts or practices, fraud, false
18 pretense, false promises, misrepresentations, and/or concealment, suppression or omission of
19 material fact in violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1522, *et seq.*, as it is
20 currently written, or as it is amended in the future;

21 B. Accepting, demanding, charging, or receiving payment for any products or
22 services unless Respondents have the intent and ability to deliver the product and/or complete
23 the service for which the payment was tendered; and

24 C. Failing to promptly provide a refund in the event that a product or service
25 cannot be timely delivered or completed.

26 15. Respondents shall pay to the State of Arizona the amount of One Hundred Sixty

1 Two Thousand Dollars (\$162,000) to be paid as consumer restitution, pursuant to A.R.S. § 44-
2 1530, for consumers who filed a complaint against Respondents with the Arizona Attorney
3 General and have not already received a refund. Restitution is due at the time of entry of this
4 Assurance, with interest thereon at five percent (5%) per annum from the date of entry until
5 paid. The restitution payments ordered herein shall be deposited by the Attorney General into
6 the Consumer Restitution Subaccount of the Consumer Remediation Revolving Fund, pursuant
7 to A.R.S. § 44-1531.02, and distributed to eligible consumers by the Attorney General's Office.
8 In the event the amount ordered as restitution herein is not sufficient to fully restore eligible
9 consumers the amounts they paid Respondents, the amount shall be distributed to them on a pro
10 rata basis. In the event any portion of the restitution ordered herein cannot be distributed to
11 eligible consumers, or exceeds the amount of restitution, such portion shall be deposited into the
12 Consumer Protection – Consumer Fraud Revolving Fund.

13 16. Respondents shall pay to the State of Arizona the amount of Nine Thousand Five
14 Hundred Dollars (\$9,500) for attorneys' fees and costs of investigation, pursuant to A.R.S. § 44-
15 1530, due at the time of entry of this Assurance of Discontinuance, with interest thereon at five
16 percent (5%) per annum from the date of entry until paid. Said payment shall be deposited by
17 the Attorney General's Office into the Consumer Protection – Consumer Fraud Revolving Fund
18 in accordance with to A.R.S. § 44-1531.01, and used for the purposes set forth therein.

19 17. Respondents shall make monthly payments of no less than One Thousand Five
20 Hundred Dollars (\$1,500) each until the balance of restitution, attorneys' fees, and interest has
21 been paid. The payments ordered herein shall be made payable to the Office of the Attorney
22 General each month, beginning on February 1, 2016, with each subsequent payment due on the
23 first day of each month thereafter until fully paid. The State shall use the initial monies paid by
24 Respondents to pay claims for restitution, and subsequent payments shall be applied to
25 attorneys' fees and investigative costs.

26 18. If Respondents fail to make a payment under paragraph 17 above within fifteen

1 (15) days of the date it is due, they will be deemed in default of the payment obligation. In the
2 event of a default of any payment obligation imposed by this Assurance, and in addition to any
3 other relief or remedy elected or pursued by the State, all payments set forth herein shall be
4 accelerated and shall immediately become due and owing, including interest and costs of
5 collection, less any amount previously paid.

6 19. This Assurance applies to Respondent Rastra, any successor entity or entities,
7 whether by acquisition, merger or otherwise, Rastra's current or future officers, directors,
8 managerial or supervisory employees, and to any other employees or agents having
9 responsibilities with respect to the subject matter of this Assurance.

10 20. Respondents shall not participate, directly or indirectly, in any activity, or form a
11 separate corporation or entity for the purpose of engaging in acts or practices in whole or in part
12 within the State, that is prohibited by this Assurance or for any other purpose that would
13 otherwise circumvent any part of this Assurance.

14 21. Acceptance of this Assurance by the State shall not be deemed approval of or
15 sanction by the State of Respondents' past, present or future business practices, and
16 Respondents are prohibited from making any representations to the contrary. Further, neither
17 Respondents nor anyone acting on their behalf shall state or imply or cause to be stated or
18 implied that the State, or any other governmental unit, has approved, sanctioned, or authorized
19 any of Respondents' acts or practices.

20 22. Nothing in this Assurance shall be construed of relieving Respondents of their
21 obligation to comply with all applicable state and federal laws, regulations, or rules, or granting
22 it permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

23 23. In the event that any statute, rule, or regulation pertaining to the subject matter of
24 this Assurance is enacted, promulgated, modified, or interpreted by a federal or state court, or
25 any federal or state government, or any federal or state agency, or a court of competent
26 jurisdiction holds that such statute, rule, or regulation is in conflict with any provision of this

1 Assurance, Respondents must comply with such statute, rule, or regulation and such action shall
2 not per se constitute a violation of this Assurance.

3 24. Nothing in this Assurance shall be construed to affect, restrict, limit, alter, waive,
4 or create any private right of action that a consumer may hold against Respondents, unless
5 expressly set forth in state law.

6 25. This Assurance is made without trial or adjudication of any issue of fact or law.
7 The settlement negotiations resulting in this Assurance have been undertaken by the Parties in
8 good faith and for settlement purposes only.

9 26. Neither this Assurance nor any evidence of any settlement negotiation or
10 settlement communications resulting in this Assurance shall be offered or received in evidence
11 in any action or proceeding for any purpose other than the enforcement of this Assurance or
12 related actions or enforcement proceedings.

13 27. This Assurance contains the entire agreement between the Parties. If any clause,
14 provision, or section of this Assurance shall, for any reason, be held illegal, invalid, or
15 unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause,
16 provision, or section of this Assurance, and this Assurance shall be construed and enforced as if
17 such illegal, invalid, or unenforceable clause, section, or other provision had not been contained
18 herein.

19 28. No waiver, modification, or amendment of the terms of this Assurance shall be
20 valid or binding unless made in writing, signed by the Parties, and then only to the extent
21 specifically set forth in such written waiver, modification, or amendment. To the extent that a
22 waiver, modification, or amendment of this Assurance must be approved and entered by the
23 Court, the State and Respondents agree to submit such waiver, modification, or amendment to
24 the Court for approval.

25 29. Nothing in this Assurance shall be construed to require, prevent, or prohibit the
26 Parties from agreeing to extend any time period set forth herein, including but not limited to any

1 notice requirement specified herein.

2 30. Respondents represent that they have fully read this Assurance and understand the
3 legal consequences involved in signing this Assurance.

4 31. Respondents represent that the corporate signatory signing below is fully
5 authorized to act on behalf of Respondent Rastra.

6 32. The titles and headers in each section of this Assurance are used for convenience
7 purposes only and are not intended to lend meaning to the actual terms and conditions of this
8 Assurance.

9 33. This Assurance may only be enforced by the Parties.

10 34. This Assurance is entered pursuant and subject to the provisions of A.R.S. § 44-
11 1530 and shall remain in force and effect until 11:59 p.m. on the day that is six (6) years after
12 the date of entry, after which it will expire on its own terms and without any further action
13 required by the Parties.

14 35. Respondents acknowledge that a violation of this Assurance within six (6) years of
15 entry constitutes prima facie evidence of a violation of A.R.S. § 44-1522.

16 36. The Attorney General shall file and seek Court approval of this Assurance. This
17 Court retains jurisdiction over the parties and the subject matter for purposes of enabling the
18 parties to apply to the Court at any time for orders and directions as may be necessary or
19 appropriate to enforce compliance with or punish violations of this Assurance. None of the
20 parties will object on the basis of jurisdiction to enforcement of this Assurance under this
21 paragraph.

22 37. This Assurance does not in any way limit the right of the Attorney General to: (a)
23 bring a legal action against Respondents for any future acts which violate the Consumer Fraud
24 Act, whether or not such acts are in violation of this Assurance; or (b) enforce this Assurance.

25 38. This Assurance may be executed in counterparts, and a facsimile or.pdf signature
26 shall be deemed to be, and shall have the same force and effect as, an original signature.

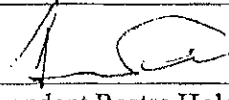
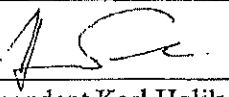
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DATED this 26th day of October, 2015.

MARK BRNOVICH, ATTORNEY GENERAL

BY: 

Jordan Christensen
Assistant Attorney General
Office of the Arizona Attorney General
Attorneys for State of Arizona

By:  Respondent Rastra Holding, LLC (Karl Holik as Trustee)	Dated: <u>October 26, 2015</u>
By:  Respondent Karl Holik	Dated: <u>October 26, 2015</u>