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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.*
MARK BRNOVICH, Attorney General,

Plaintiff,

v.

ISLAND DON INC., an Arizona corporation,
doing business as BRIGHT & SHINY
KIRBY COMPANY, BRIGHT & SHINY
CLEANING SERVICES, or SUN WEST
KIRBY; DONALD M. BURKHARDT,
individually; and DONALD M.
BURKHARDT and JESSICA
BURKHARDT, husband and wife,

Defendants.

CV 2018-013332

Case No: _____

**CIVIL COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF**

(Non-classified: Consumer Fraud)

Plaintiff, the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (“Plaintiff” or “the State”) alleges as follows:

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INTRODUCTION

1. Defendants use deceptive means to collect consumers' names and phone numbers, and call thousands of consumers on the federal Do Not Call Registry without express consent for the purpose of coordinating sales presentations of Kirby vacuums.

2. Defendants use a deceptive telemarketing script to gain access to consumers' homes in order to expose consumers to high-pressure sales pitches for Kirby vacuum cleaners.

3. Defendant Donald Burkhardt has operated several past businesses using similar business practices, and even entered into a Consent Judgment on behalf of one of his former businesses with the Arizona Attorney General in 2005 for similar deceptive business practices.

4. Overall, Defendants used deceptive business practices and illegal telemarketing tactics to sell over \$12 million in Kirby vacuums from January 13, 2014 to the present.

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JURISDICTION AND VENUE

5. The Plaintiff brings this action under the Arizona Telephone Solicitations Statute ("ATSS"), A.R.S. §§ 44-1271 *et seq.*, and the Arizona Consumer Fraud Act ("CFA"), A.R.S. §§ 44-1521, *et seq.*, to obtain restitution, civil penalties, disgorgement of profits, injunctive relief, attorney's fees and costs, and other relief to prevent the unlawful acts and practices alleged in this Complaint and to remedy the consequences of past unlawful acts and practices.

6. This Court has jurisdiction to enter appropriate orders both prior to and following a determination of liability pursuant to the ATSS and CFA.

7. Venue is proper in Maricopa County, Arizona pursuant to A.R.S. § 12-401 because Defendants have, at all relevant times, resided in Maricopa County.

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PARTIES

8. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General, who is

1 authorized to bring this action by the CFA and ATSS.

2 9. Defendant Island Don Inc., doing business as (“d.b.a.”) Bright & Shiny Kirby
3 Company, Bright & Shiny Cleaning Services, or Sun West Kirby (“Bright & Shiny”), is an
4 Arizona corporation that has operated since at least January 13, 2014 to the present, with its
5 principal place of business in Sun City, Arizona. Bright & Shiny conducts business throughout
6 Arizona and in other states.

7 10. Defendant Donald M. Burkhardt (“Burkhardt”) resides in Maricopa County,
8 Arizona.

9 11. Defendant Burkhardt directs and controls Bright & Shiny (together “Defendants”),
10 as the sole officer, director, and shareholder of the corporation.

11 12. Defendant Burkhardt had knowledge of and actively participated in the acts and
12 practices described in this Complaint both as an individual and as the sole officer and director of
13 Bright & Shiny.

14 13. Defendant Jessica Burkhardt resides in Maricopa County, Arizona and is named
15 solely for any interest she possesses in her marital community with Defendant Donald
16 Burkhardt.

17 **DEFENDANTS’ BUSINESS PRACTICES**

18 **I. Defendants Donald Burkhardt and Bright & Shiny’s Current Business Practices**

19 **A. Background**

20 14. The Kirby Company contracts with and authorizes independent Kirby field
21 distributors, including Defendants, to sell Kirby vacuums.

22 15. Defendants advertise and sell Kirby vacuums.

23 16. Defendants sell Kirby vacuums to consumers through in-home sales
24 demonstrations.

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1 17. Defendants hire, employ, train, and compensate persons, commonly known as
2 “dealers,” to make in-home sales demonstrations and sell Kirby vacuums to consumers.

3 18. Defendants compensate dealers primarily through commission paid on each Kirby
4 vacuum the dealers sell to consumers.

5 19. From approximately January 13, 2014 to the present, Bright & Shiny marketed
6 and sold Kirby Vacuum Cleaners both in the State of Arizona and in other states as a distributor
7 of The Kirby Company.

8 **B. Defendants Rely on Deceptive Telephone Calls**

9 20. Defendants operate using a scheme to gain access to consumers’ homes through
10 deception.

11 21. Defendants sell most of their Kirby vacuums by soliciting consumers over the
12 phone and then presenting their Kirby vacuum products in consumers’ homes.

13 22. Defendants use three different methods to obtain consumer names and phone
14 numbers.

15 **i. Defendants Purchase Leads from Third Parties**

16 23. First, Defendants’ employees buy lists of telephone numbers online from third-
17 party websites such as NewPros Communications, Telephonelists.biz, and Leadsmart.

18 24. Defendants later use these leads to call consumers, purportedly to offer consumers
19 a free carpet cleaning or a free gift.

20 **ii. Defendants Obtain Phone Numbers from Trade Shows**

21 25. Second, Defendants obtain consumer names and phone numbers from trade shows.

22 26. At trade shows, Defendants set up a booth and advertise promotions such as the
23 giveaway of \$1,000 or a free Kirby.

24 27. Consumers fill out slips to enter into the promotions for the free giveaway of

1 various prizes.

2 28. The slips contain lines for consumers' names, relationship statuses, addresses, and
3 phone numbers, among other categories of information. Examples of such slips are attached as
4 Exhibit A.

5 29. Each slip also contains a question which asks the consumers if they would like a
6 free carpet cleaning. Consumers are asked to check a box if they would like a free carpet
7 cleaning.

8 30. The slips do not contain any disclosure to notify consumers that consumers will be
9 called by Defendants for purposes unrelated to the free giveaway.

10 31. Defendants later use these slips to call consumers, purportedly to offer consumers
11 a free carpet cleaning or the free gift.

12 **iii. Defendants Obtain Phone Numbers from Door-to-Door Visits**

13 32. Third, Defendants also obtain consumer telephone numbers by collecting
14 information door-to-door.

15 33. Defendants' employees knock on doors and ask consumers if they would like to
16 enter in a free drawing for prizes such as \$1,000 of free groceries.

17 34. If the consumer responds that they would like to enter into the free drawing,
18 Defendants' employees will then have the person fill out a tear-away slip with personal
19 information such as name, phone number, and address. Examples of tear away slips used by
20 Defendants for obtaining information door-to-door are included as Exhibit B.

21 35. The tear-away slips contain the language "**NOTHING TO BUY.**"

22 36. Further, the tear-away slips used to collect information door-to-door say nothing
23 about Kirby, and state that the promotion is sponsored by "Distributors of the Golden West
24 Division."

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1 48. The telemarketers are told via the script to emphasize that **“THIS IS A**
2 **COMPLIMENTARY CARPET SHAMPOO.”**

3 49. Consumers are told that the free carpet cleaning will cover one room or a suite of
4 furniture.

5 50. Telephone scripts used by telemarketers do state that the person coming to provide
6 the complimentary carpet cleaning will be showing the consumer the new Avalir by Kirby.

7 51. However, as evidenced by numerous consumer complaints submitted to the
8 Attorney General’s Office and the Better Business Bureau, telemarketers often do not actually
9 mention anything about Kirby during their calls.

10 52. The script instructs telemarketers to emphasize that **“THERE IS NO COST OR**
11 **OBLIGATION for the services we are providing, and we just appreciate the fact that you**
12 **are helping us advertise!!”**

13 53. The script never reveals to consumers that the purpose of the free carpet cleaning
14 is to gain access to consumers’ homes in order to engage in a sales presentation of a Kirby
15 vacuum.

16 54. Bright & Shiny telemarketers are instructed to tell consumers that the free cleaning
17 would last approximately one hour.

18 **C. Defendants Rely on Unlawful In-Home Sales Practices**

19 55. Once consumers have been tricked into agreeing to a “free carpet cleaning” that
20 will purportedly only last an hour, Defendants’ dealers go to consumers’ homes to engage in a
21 high-pressure sales presentation.

22 56. Once in consumers’ homes, dealers tell consumers that they must sit through a
23 presentation or demonstration of the Kirby vacuum.

24 57. The sales presentation and the “free cleaning” are often one and the same event.

1 58. As evidenced by consumer complaints to the Arizona Attorney General's Office
2 and the Better Business Bureau, during many in-home visits, the Bright & Shiny dealers either
3 do not provide the free cleaning as promised or clean only a small portion of the consumers'
4 floor or furniture.

5 59. Further, Defendants know that most presentations take at least one hour and
6 twenty minutes instead of the one hour that telemarketers are instructed to tell consumers.

7 60. In fact, many consumers complained to the Attorney General' Office and the
8 Better Business Bureau that some sales presentations from persistent sales people lasted far
9 longer.

10 61. In multiple instances, sales presentations reportedly lasted three hours or longer,
11 with the longest reported sales presentations lasting five hours.

12 62. Once Bright & Shiny dealers manage to close a sale with a consumer, it is
13 common to take the consumer's old vacuum as a "trade-in."

14 63. The trade-in value of the old vacuum is contingent on the type of vacuum the
15 consumer owned and the age of the vacuum. Trading in an old vacuum is not mandatory to
16 purchase a Kirby vacuum, but many consumers do trade in their old vacuum in order to get
17 credit towards the new Kirby vacuum.

18 64. Some consumers who purchased a Kirby from Defendants cancel the purchase
19 within three days, as permitted under the federal Cooling-Off Rule.

20 65. However, Defendants sometimes fail to give consumers back the same vacuum
21 that the consumer traded in when purchasing the Kirby vacuum.

22 66. As evidenced by consumer complaints to the Arizona Attorney General's Office
23 and the Better Business Bureau, Defendants often do not give consumers who cancel the sale the
24

1 same vacuums that they traded in. It seems that Defendants do not retain possession of
2 consumers' old vacuums or otherwise lose or dispose of the vacuums.

3 **D. Defendants Violated Do Not Call Laws**

4 67. The State subpoenaed Bright & Shiny's call detail records from VoIP Street, Inc.
5 on April 26, 2018. The State obtained call detail records for one of Bright & Shiny's main
6 telephone lines used for making telephone solicitations: 623-498-8720. The call records showed
7 Bright & Shiny's outbound call records from September 1, 2017 to April 20, 2018.

8 68. The analysis revealed that Bright & Shiny placed a total of 49,248 calls to
9 consumers between September 1, 2017 and April 20, 2018 using the phone line: 623-498-8720.

10 69. An analysis of the data from the call detail records revealed that Bright & Shiny
11 placed calls to 28,577 phone numbers of Arizona consumers listed on the federal Do Not Call
12 Registry during the approximately eight-month period using this one telephone line alone.

13 70. In other words, the data shows that over 58% of Bright & Shiny's telephone
14 solicitations from this telephone line were placed to numbers listed on the federal Do Not Call
15 Registry.

16 71. Further, as evidenced by multiple consumers who complained to the Arizona
17 Attorney General's Office, the Federal Trade Commission, and the Better Business Bureau,
18 Bright & Shiny continued to call after consumers told Bright & Shiny's telemarketers that their
19 numbers were on the federal Do Not Call Registry and after consumers instructed Bright &
20 Shiny's telemarketers to take their number off the call list.

21 **II. Defendant Burkhardt's Prior Business**

22 72. This is not the first time the Attorney General's Office has investigated or filed
23 suit against Defendant Burkhardt and his businesses for consumer fraud.

24 73. Defendant Burkhardt has operated Kirby distributorships for many years.

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1 74. In 2003, Defendant Burkhardt began to operate Dyer Resources, Inc. d.b.a. Aloha
2 Systems (“Dyer”), a Kirby vacuum distributorship in Maricopa County, Arizona.

3 75. On August 23, 2005, after the Attorney General filed a complaint against
4 Defendant Burkhardt and Dyer, Burkhardt, on behalf of Dyer, entered into a Consent Judgment
5 with the State. The Consent Judgment is attached to this Complaint as Exhibit D.

6 76. The conduct for which the Consent Judgment was entered included: deceptive
7 statements, fraudulent statements, false promises, and misrepresentations in telephone scripts
8 used to solicit consumers.

9 77. As with Defendants in this matter, Dyer telemarketers set up free cleanings in
10 consumers’ homes without disclosing that the true purpose of the free cleaning was to set up a
11 sales call for a Kirby vacuum cleaner.

12 78. Further, as noted in the Consent Judgment, Dyer’s salespeople would sometimes
13 only clean a small portion of the consumer’s carpet or furniture and represent that the home visit
14 would take only a short time, when in fact persistent sales pitches often lasted for hours.

15 79. The injunctive relief in the Consent Judgment prohibited Dyer and Defendant
16 Burkhardt from violating the CFA, A.R.S. § 44-1521 *et seq.*, and specifically prohibited
17 (1) misrepresenting the nature of the cleaning by characterizing the cleaning as a gift when it
18 was in fact a demonstration of a Kirby product for sale, and (2) allowing dealers to stay in
19 consumers’ homes for an unreasonable period of time.

20 80. The Consent Judgment also required Dyer to abide by the provisions of the federal
21 Do Not Call Registry, retain consumers’ trade-in vacuum cleaners until all applicable refund or
22 cancellation periods had expired, expressly provide an opportunity for consumers to terminate
23 the sales presentations after one hour, leave the consumer’s home immediately upon a
24 consumer’s request that the dealer leave, and, in instances where consumers canceled their

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1 transactions pursuant to A.R.S. § 44-5001 *et seq.* (Arizona's version of the federal Cooling-Off
2 Rule), issue refunds, return trade-ins, and retrieve vacuum cleaners after cancellation in
3 accordance with A.R.S. § 44-5006.

4 81. As a part of the Consent Judgment, Dyer agreed to pay \$20,000 in restitution,
5 \$35,000 in civil penalties, and \$5,000 in attorneys' fees and costs, or, alternatively, \$35,000 to
6 be used for restitution, provided the \$35,000 was timely paid in two installments by February 1,
7 2006.

8 CLAIMS FOR RELIEF

9 **I. VIOLATIONS OF A.R.S. § 44-1278(B)(6)—TELEMARKETING SALES RULE** 10 **(DO NOT CALL & FAILURE TO STOP CALLING)**

11 82. Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth
12 herein.

13 83. Defendants were sellers or solicitors under the ATSS.

14 84. The ATSS, in A.R.S. § 44-1278(B)(6), states that it is an unlawful practice
15 pursuant to the Arizona CFA for any seller or solicitor to initiate an outbound call except as
16 provided in 47 CFR § 64.1200 or 16 CFR § 310.4.

17 85. Under 16 CFR § 310.4(b)(1)(iii)(B), sellers or solicitors cannot initiate any
18 outbound telephone call to a person if that person's telephone number is on the federal Do Not
19 Call Registry of persons who do not wish to receive outbound telephone solicitations.

20 86. Further, under 16 CFR 310.4(b)(1)(iii)(A), it is an abusive telemarketing act or
21 practice to initiate an outbound telephone call to a person when that person previously has stated
22 that he or she does not wish to receive an outbound telephone call made by or on behalf of the
23 seller whose goods or services are being offered.

24 87. From September 1, 2017 to April 20, 2018, Defendants, from their call center in

1 Sun City, Arizona, initiated at least 28,577 telephone calls to Arizona consumers whose
2 numbers were already entered in the Do Not Call Registry, in violation of 16 CFR
3 § 310.4(b)(1)(iii)(B).

4 88. As evidenced by numerous consumer complaints to the Arizona Attorney
5 General's Office, the Federal Trade Commission, and the Better Business Bureau, Defendants
6 continued to call consumers after consumers requested that Defendants stop calling, in violation
7 of 16 CFR § 310.4(b)(1)(iii)(A).

8 89. Defendants' violations of 16 CFR §§ 310.4(b)(1)(iii)(B) and 310.4(b)(iii)(A) are
9 *per se* violations of the CFA, pursuant to A.R.S. § 44-1278(B).

10 90. At all times relevant to this Complaint, Defendants knew or should have known
11 that their actions of calling consumers listed in the Do Not Call Registry and continuing to call
12 consumers who told Defendants that they did not wish to be called were of the nature prohibited
13 by the CFA, and Defendants acted "willfully" as defined in A.R.S. § 44-1531(B).

14
15 **II. VIOLATIONS OF A.R.S. § 44-1522—CONSUMER FRAUD ACT**

16 91. Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth
17 herein.

18 92. The CFA, in A.R.S. § 44-1522, prohibits the act, use or employment by any
19 person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise,
20 misrepresentation, or concealment, suppression or omission of any material fact with intent that
21 others rely on such concealment, suppression or omission, in the connection with the sale or
22 advertisement of any merchandise whether or not any person has in fact been misled, deceived
23 or damaged thereby.

1 93. Defendants engaged in a practice of concealing, suppressing, or omitting material
2 facts from consumers by failing to inform them that Defendants would use their personal
3 information from promotional drawing slips at trade shows in order to solicit consumers for
4 sales presentations of Kirby vacuums.

5 94. Defendants engaged in a practice of concealing, suppressing, or omitting material
6 facts from consumers by failing to inform consumers that Defendants would use consumer
7 information from the promotional drawing tear-away slips collected door-to-door by Defendants
8 to solicit consumers for sales presentations of Kirby vacuums.

9 95. Defendants engaged in a practice of concealing, suppressing, or omitting material
10 facts from consumers by failing to place any mention of Kirby on tear-away slips used to collect
11 information door-to-door.

12 96. Defendants made misrepresentations to consumers by stating that there was
13 **“NOTHING TO BUY”** on tear-away slips used to collect consumer information door-to-door,
14 when in fact, Defendants intended to use the information to coordinate sales presentations of
15 Kirby vacuums with consumers at a later date.

16 97. Defendants misrepresented the nature of free carpet cleanings or visits to deliver
17 free gifts by failing to mention that the purpose of the visits was to conduct sales presentations
18 of Kirby vacuums.

19 98. Defendants’ employees misrepresented the length of the free carpet cleanings
20 (actually sales presentations) to consumers. Defendants knew that most sales presentations
21 lasted well over an hour, but Defendants told consumers that the free carpet cleaning would only
22 last an hour. Further, some sales presentations lasted from three to five hours.

23 99. Defendants made false promises to consumers by telling consumers that the free
24 cleaning would either include one room of the consumers’ homes or a suite of furniture. In fact,

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1 Bright & Shiny salespeople often failed to provide the full carpet cleaning by cleaning only a
2 small portion of the consumers' floors, or by failing to provide the cleaning altogether.

3 100. At all times relevant to this Complaint, Defendants knew or should have known
4 that their actions were of the nature prohibited by the CFA, and the Defendants acted "willfully"
5 as defined in A.R.S § 44-1531(B).

6
7 **PRAYER FOR RELIEF**

8 Wherefore, the Plaintiff respectfully requests that the Court:

9 101. Permanently enjoin Defendant Donald Burkhardt and Defendant Island Don, Inc.
10 d.b.a. Bright & Shiny, its officers, agents, servants, and employees, and any successor entity or
11 entities, whether by acquisition, merger or otherwise, from:

- 12 a. engaging in the unlawful acts and practices alleged in this Complaint, and from
13 doing any acts in furtherance of such acts and practices pursuant to A.R.S. § 44-
14 1528;
- 15 b. initiating telephone solicitations to consumers;
- 16 c. selling merchandise over the phone; and
- 17 d. selling merchandise through in-home sales.

18 102. Order Defendants, pursuant to A.R.S. § 44-1528, to restore to consumers all
19 monies or property obtained by means of their fraudulent and unlawful scheme;

20 103. Order Defendants, pursuant to A.R.S. § 44-1528, to disgorge and pay the State of
21 Arizona all profits, gain, gross receipts, and other benefits obtained by means of Defendants
22 fraudulent and unlawful scheme, in the amount of at least \$12 million;

23 104. Order Defendants, pursuant to A.R.S. § 44-1282(B), to pay the State of Arizona a
24

1 civil penalty of no more than \$1,000 for each willful violation of A.R.S. § 44-1278, in the
2 amount of at least \$12 million;

3 105. Order Defendants to pay the State of Arizona a civil penalty of no more than
4 \$10,000 for each willful violation of the CFA, pursuant to A.R.S. § 44-1531;

5 106. Order Defendants to pay the State of Arizona its costs of investigation and
6 prosecution, including attorneys' fees, pursuant to A.R.S. § 44-1534;

7 107. Enter an order providing that this Court retain jurisdiction of this action in order to
8 implement and carry out the terms of all orders and decrees that may be entered herein, and in
9 order to entertain any suitable applications or motions by Plaintiff for additional relief within the
10 jurisdiction of this Court; and

11 108. Order such other relief as the Court deems just and proper.

12
13 RESPECTFULLY SUBMITTED: October 24, 2018.

14
15 MARK BRNOVICH,
16 ATTORNEY GENERAL

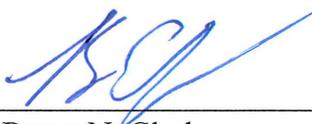
17
18 BY: 
19 Bryce N. Clark
20 Assistant Attorney General

EXHIBIT A

\$1,000 of a FREE KIRBY

NAME MARRIED SINGLE SIGNIFICANT OTHER

ADDRESS [REDACTED]

CITY/ZIP [REDACTED] PHONE [REDACTED]

APARTMENT RENT HOUSE OWN MOBILE CONDO/TOWNHOUSE

TYPE OF VACUUM _____

HOW OLD _____

WOULD YOU LIKE 2 ROOMS OF CARPET SHAMPOOED FREE

WOULD YOU PREFER A ROOM TO BE TURBO MOPPED

WOULD YOU PREFER FURNITURE DEEP CLEANED

MR. WORKS DAYS WORKS NIGHTS OTHER

MRS. WORKS DAYS WORKS NIGHTS OTHER

\$1,000 of a FREE KIRBY

NAME MARRIED SINGLE SIGNIFICANT OTHER

ADDRESS [REDACTED]

CITY/ZIP [REDACTED] PHONE [REDACTED]

APARTMENT RENT HOUSE OWN MOBILE CONDO/TOWNHOUSE

TYPE OF VACUUM _____

HOW OLD _____

WOULD YOU LIKE 2 ROOMS OF CARPET SHAMPOOED FREE

WOULD YOU PREFER A ROOM TO BE TURBO MOPPED

WOULD YOU PREFER FURNITURE DEEP CLEANED

MR. WORKS DAYS WORKS NIGHTS OTHER

MRS. WORKS DAYS WORKS NIGHTS OTHER

\$1,000 of a FREE KIRBY

NAME MARRIED SINGLE SIGNIFICANT OTHER

ADDRESS [REDACTED]

CITY/ZIP [REDACTED] PHONE [REDACTED]

APARTMENT RENT HOUSE OWN MOBILE CONDO/TOWNHOUSE

TYPE OF VACUUM _____

HOW OLD _____

WOULD YOU LIKE 2 ROOMS OF CARPET SHAMPOOED FREE

WOULD YOU PREFER A ROOM TO BE TURBO MOPPED

WOULD YOU PREFER FURNITURE DEEP CLEANED

MR. WORKS DAYS WORKS NIGHTS OTHER

MRS. WORKS DAYS WORKS NIGHTS OTHER

\$1,000 of a FREE KIRBY

NAME MARRIED SINGLE SIGNIFICANT OTHER

ADDRESS [REDACTED]

CITY/ZIP [REDACTED] PHONE [REDACTED]

APARTMENT RENT HOUSE OWN MOBILE CONDO/TOWNHOUSE

TYPE OF VACUUM cordless

HOW OLD 29.5

WOULD YOU LIKE 2 ROOMS OF CARPET SHAMPOOED FREE

WOULD YOU PREFER A ROOM TO BE TURBO MOPPED

WOULD YOU PREFER FURNITURE DEEP CLEANED

MR. WORKS DAYS WORKS NIGHTS OTHER

MRS. WORKS DAYS RETIRED OTHER

\$1,000 of a FREE KIRBY

NAME MARRIED SINGLE SIGNIFICANT OTHER

ADDRESS [REDACTED]

CITY/ZIP [REDACTED] PHONE [REDACTED]

APARTMENT RENT HOUSE OWN MOBILE CONDO/TOWNHOUSE

TYPE OF VACUUM _____

HOW OLD _____

WOULD YOU LIKE 2 ROOMS OF CARPET SHAMPOOED FREE

WOULD YOU PREFER A ROOM TO BE TURBO MOPPED

WOULD YOU PREFER FURNITURE DEEP CLEANED

MR. WORKS DAYS WORKS NIGHTS OTHER

MRS. WORKS DAYS WORKS NIGHTS OTHER

\$1,000 of a FREE KIRBY

NAME MARRIED SINGLE SIGNIFICANT OTHER

ADDRESS [REDACTED]

CITY/ZIP [REDACTED] PHONE [REDACTED]

APARTMENT RENT HOUSE OWN MOBILE CONDO/TOWNHOUSE

TYPE OF VACUUM Rainbow

HOW OLD ?

WOULD YOU LIKE 2 ROOMS OF CARPET SHAMPOOED FREE

WOULD YOU PREFER A ROOM TO BE TURBO MOPPED

WOULD YOU PREFER FURNITURE DEEP CLEANED

MR. WORKS DAYS WORKS NIGHTS OTHER

MRS. WORKS DAYS RETIRED OTHER

EXHIBIT B

NOTHING TO BUY

NO OBLIGATION

FREE DRAWING WIN \$ 1000.00 of GROCERIES

AT YOUR LOCAL SUPERMARKET

SPONSORED BY: Distributors of the Golden West Division

Keep by your Phone

No purchase necessary to register or win.
Plus You May Receive a Gift with the
Presentation of a Availir

DRAWING TO BE HELD _____

ONE PER FAMILY

NEED NOT BE PRESENT TO WIN

ADULTS ONLY

Name _____

Phone _____

Address _____

Zip Code _____

Initials _____

Date _____

Rep _____

NS 000104

NS 100104

EXHIBIT C

Cold Call Pitch

Hello _____ (first name) This is _____ (your name) with Bright & Shiny Kirby and the reason for my call is you were selected to receive a COMPLIMENTARY Carpet Shampoo as well as entry into our \$1000 grocery drawing that is going to be held on _____ (date). CONGRATULATIONS!!

Most folks that have received this offer in the past have either chosen the living room or the dining room however; you can choose whichever room gets the most traffic. Which room would you prefer to have done? (Wait 3-5 seconds MAX) KEEP IN MIND (first name) _____ THIS IS A COMPLIMENTARY CARPET SHAMPOO.

If they have NO carpet, or just had there carpets shampooed
For folks like yourself, the company is allowing you to exchange the shampooing for a deep clean on a suit of furniture instead.

OK great! I just need to get a little information:

Name, Address, (nearest cross streets) City, Phone #

In order to give you the most convenient appointment possible, do you and your husband/wife work days or evening?

Wow! As chance may have it, I have an opening _____ day at _____ o'clock! We can get it don't quickly.

Now just a couple more quick questions:

Do you own or rent your home?

Is this a one or two family home?

Color of the outside of your home, so my rep can find you?

Last question, what type of vacuum do you own?

Now before we finish up let me explain a couple of things to you. First of all the rug shampoo is a dry extraction foam system which is made up of less than 10% water, which is the most highly recommended method due to the fact that I doesn't saturate your carpet and will dry in approximately 60 minutes depending on environmental conditions.

The only thing I need you to do before we get there is vacuum over the area and just move the lighter or more breakable things. When the Rep gets there, they will be showing, and using the new Avalir by Kirby. I need you to keep in mind that **THERE IS NO COST OR OBLIGATION** for the services we are providing, and we just appreciate the fact that you are helping us advertise!! So we will see you on _____ (date) at _____ (time) to shampoo carpet and show you the new Avalir!! And again Thank You!!

EXHIBIT D

9/1/05 FILED 9:45
MICHAEL K. JEANES, Clerk
By *E. Schneider*
E. Schneider, Deputy

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7

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

11 STATE OF ARIZONA, ex rel.)
TERRY GODDARD, Attorney General,)
12 Plaintiff,) No. CV2004-016545
13 v.)
14 DONALD M. BURKHARDT, a)
single man, d.b.a. BURKHARDTS G4) CONSENT JUDGMENT RE
15 COMPANY, BURKHARDTS G4,) DEFENDANTS DYER RESOURCES,
16 BURKHARDT'S COMPANY,) INC. AND GLOBESTAR UNITED
BURKHARDTS COMPANY,) DISTRIBUTION CORPORATION
17 BURKHARDT'S and BURKHARDT,)
18 sole proprietorships; DYER)
RESOURCES, INC., a Delaware) (Assigned to The Honorable
19 corporation, d.b.a. ALOHA SYSTEMS;) Colin Campbell)
20 GLOBESTAR UNITED)
DISTRIBUTION CORPORATION, a)
21 Delaware corporation,)
22 Defendants.)
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25 The State of Arizona filed a complaint alleging violations of the Arizona Consumer
26 Fraud Act, A.R.S. § 44-1421, et seq. Defendant Donald Burkhardt, d.b.a. Burkhardts G4
27 Company, Burkhardts G4, Burkhardt's Company, Burkhardts Company, Burkhardt's and
28 Burkhardt, as well as Defendants Dyer Resources, Inc., d.b.a. Aloha Systems ("Dyer"),

1 and Globestar United Distribution Corporation (“Globestar”), were served with copies of
2 the summons and complaint. Defendants Globestar and Dyer were fully advised of the
3 right to a trial in this matter and have waived the same¹. Defendants Globestar and Dyer
4 admit the jurisdiction of the Court. For the purposes of this proceeding only, Defendants
5 Globestar and Dyer admit that the findings of fact and conclusions of law are correct, and
6 stipulate that the Court may enter this judgment. The Court’s findings of fact are for use in
7 this case only, and shall not be used in other legal, equitable or administrative proceedings.
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10 FINDINGS OF FACT

- 11 1. Defendant Donald Burkhardt (“Burkhardt”), a resident of Maricopa County,
12 Arizona, was the owner of a Kirby vacuum cleaner distributorship that operated
13 under the names Burkhardts G4 from in or about September 1994 to April 1999,
14 and Burkhardt’s Company from in or about April 1999 to July 2003. On May 6,
15 2003, Burkhardt assigned his Kirby vacuum distributorship to Globestar United
16 Distribution Corporation. In or about August 2003, Dyer Resources, Inc. d.b.a
17 Aloha Systems, opened for business as a Kirby vacuum cleaner distributorship
18 and continues to operate as of the date of this Consent Judgment. Burkhardt is
19 the sole officer and director of Globestar and Dyer. As such, he supervised,
20 directed, and controlled the business policies, practices and activities of
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25 ¹ This judgment is entered against Defendants Dyer and Globestar only. The Court retains
26 jurisdiction over the lawsuit against Defendant Donald Burkhardt in his individual capacity.
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1 Globestar and Dyer (hereinafter Burkhardt, Globestar, and Dyer are collectively
2 referred to as "Defendants").

3
4 2. During the relevant periods described in paragraph 1 above, Defendants sold
5 Kirby vacuum cleaner products to consumers in their homes.

6 3. During the relevant periods described in paragraph 1 above, Defendants
7 operated a telemarketing operation through which telemarketers call consumers
8 to set up appointments for sales presentations of Kirby vacuum cleaners. Sales
9 presentations are subsequently made in consumers' homes.
10

11 4. Defendants Globestar and Dyer's principal place of business is 6025 North 27th
12 Avenue, Phoenix, Arizona 85017.

13
14 5. In conducting this business, Defendant Burkhardt, as the sole officer and
15 director of Globestar and Dyer, hires employees to make telemarketing calls to
16 consumers throughout the State of Arizona, writes the scripts to use when
17 making those unsolicited telephone calls, provides those scripts to employees
18 and supervises and manages all employees making telemarketing calls. During
19 the relevant periods described in paragraph 1, Defendants contracted with
20 dealers to conduct the in-home sales presentations and sell Kirby vacuum
21 cleaners.
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23
24 6. The script drafted by Defendant Burkhardt on behalf of Globestar and Dyer and
25 used through at least September of 2003 contained deceptive statements,
26 fraudulent statements, false promises and misrepresentations. The script stated
27 that the reason for the call was to notify the consumer that he had been
28

1 automatically entered into a free grocery drawing and to schedule the delivery
2 of a free advertising gift. Additional examples misleading statements in the
3 telemarketing script and rebuttal script include the following:
4

5 a. "Our job is just to show [the vacuum cleaner] to you, give you a gift just
6 for your opinion on it and we get paid for your opinion okay!"

7 b. "Please don't misunderstand me, the reason there's no charge is because
8 we have a new product called the *Ultimate G* cleaning system and what
9 we do is select a few people in each zip code of the state to preview it, and
10 we give you a free gift for your opinion and we get paid for your opinion
11 and that's why there's no charge, that makes sense right!!!"
12

13 c. "Just keep in mind that this all comes out of our advertising budget so
14 there is no cost to you whatsoever. All we hope for is an open mind on
15 our product and for you to remember us by the nice gift we give you!
16 Thats (*sic*) fair enough right!?!"
17

18 d. "Well actually the guy gets paid just for showing it to you so there's no
19 high pressure or anything like that, okay!?!"
20

21 7. In fact, the undisclosed purpose of every sales call was to sell a Kirby vacuum
22 cleaner.

23 8. Defendants Globestar and Dyer knew or should have known that telemarketers
24 under their direction and control were making additional deceptive statements,
25 false promises and misrepresentations to consumers during the unsolicited
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1 telephone calls in order to induce consumers to schedule an appointment for a
2 sales presentation. Examples of such statements include:

- 3
- 4 a. Representations that a consumer had been automatically entered into a
5 \$1000 grocery drawing, when in fact Defendants conducted two separate
6 drawings. All consumers that Defendants' telemarketers called were
7 placed in a pre-drawing and three consumers were selected from the pre-
8 drawing. The names of the three selected consumers from the pre-
9 drawing were actually entered into a final drawing for the groceries that
10 included consumers from three states.
- 11
- 12 b. Representations that the purpose of the call was to provide carpet cleaning
13 services as a free gift.
- 14
- 15 c. Representations that the caller was simply interested in obtaining the
16 consumer's opinion on a cleaning system, evasively responding to
17 questions from consumers who explicitly asked the telemarketers what
18 they were selling, and further, representations that the dealer would be
19 paid simply for obtaining the consumer's opinion.
- 20
- 21 d. Failure to disclose that the purpose of the call was to arrange for a sales
22 presentation.
- 23
- 24 e. Failure to disclose that the product to be demonstrated in the sales
25 presentation was a Kirby vacuum cleaner.
- 26 9. Defendant Burkhardt, as the sole officer and director of Globestar and Dyer,
27 oversees the training and implementation of the in-home sales presentations of
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1 Kirby vacuum cleaners. Defendants Globestar and Dyer knew or should have
2 known that dealers were making numerous deceptive statements, false promises
3 and misrepresentations to consumers during the in-home sales presentations
4 and were engaging in threatening and intimidating behavior in order to induce
5 consumers to purchase a Kirby vacuum cleaner. Examples of this conduct
6 follow:
7

- 8 a. Not always delivering the promised gift to consumers, and sometimes
9 cleaning only a small portion of the consumer's carpet or furniture.
- 10 b. Representations that the home visit would take only a short time, when in
11 fact persistent sales pitches often lasted for hours.
- 12 c. Misleading suggestions regarding the health benefits of using a Kirby
13 vacuum through the use of a flyer regarding the American Lung
14 Association's Health House project.
- 15 d. Use of misleading "phone close" phone calls to the main office in order to
16 make consumers believe they were getting a special deal, when in fact
17 dealers were authorized to reduce prices on their own.
- 18 e. Use of consumers' telephones for long distance phone calls without
19 informing consumers that they would be billed for the calls.
- 20 f. Occasional representations to consumers who were canceling their
21 transactions pursuant to A.R.S. § 44-5001 *et seq.* that the vacuum cleaner
22 needed to be returned prior to the consumer receiving his or her refund.
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CONCLUSIONS OF LAW

10. The actions described in paragraphs 1 – 10 above constitute violations of A.R.S. § 44-1521 *et seq.*

11. While engaging in the acts or practices alleged above, Defendants were at all times acting willfully as defined by A.R.S. § 44-1531(B).

ORDER

NOW, therefore, it is ORDERED, ADJUDGED, AND DECREED:

A. The injunctive provisions of this Consent Judgment apply to Defendants Globestar and Dyer and their officers, directors, employees, agents, servants and representatives of any of them, including Donald Burkhardt, and the successors and assigns of each thereof.

B. Defendants Globestar and Dyer are prohibited from:

1. Engaging in any and all deceptive acts and practices, fraud, false pretenses, false promises, misrepresentations, and the concealment, omission and suppression of material facts in violation of the Arizona Consumer Fraud Act A.R.S. § 44-1521 *et seq.*;
2. Misrepresenting the nature of the free grocery drawing.
3. Misrepresenting the nature of the cleaning. Defendant shall not characterize the cleaning as a gift when in fact it is a demonstration of the Kirby product for sale;
4. Misrepresenting the terms of a refund policy;

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- 5. Refusing to honor requests for refunds where such requests are made in accordance with the represented refund policy;
- 6. Misrepresenting the terms of a cancellation policy;
- 7. Refusing to honor requests for cancellations where such requests are made in accordance with the represented cancellation policy;
- 8. Dropping dealers off at consumers' homes, thereby leaving them without the means to leave the consumers' homes upon request.

In the event that Defendant has dealers working within a five mile radius, he may coordinate transportation and drop dealers off, provided that he implements procedures to ensure that dealers will always leave upon the request of a consumer and will not raise the issue of not having a ride or ask the consumer if he can wait for a ride inside the home;

- 9. Allowing dealers to use consumers' telephones for any telephone calls, unless the dealer uses a calling card or a toll free number to call Defendants, and no expense is placed on consumers.

Defendant Burkhardt shall be responsible for ensuring that every dealer has an operable cell phone, a valid calling card or a toll free number for use on sales calls.

- 10. Allowing dealers to stay in consumers' homes for an unreasonable period of time;

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11. Misrepresenting the payment / commission structure, *i.e.*
representing that a dealer will be compensated simply for showing
or demonstrating the Kirby product;

12. Misrepresenting the health benefits of the Kirby product.

C. Defendants Globestar and Dyer are specifically required to:

1. Ensure that all telemarketers and dealers working for or contracting with them are informed of the requirements of this Consent Judgment.
2. Disclose in a clear and conspicuous manner that the purpose of the initial telemarketing call is to set up an appointment for a sales presentation regarding a Kirby vacuum cleaner. This disclosure must occur PRIOR to setting an appointment time or asking the consumer for any information regarding an appointment or appointment time;
3. Enter all consumers to whom a representation is made regarding a grocery drawing into the grocery drawing;
4. Disclose a phone number to call if a consumer changes his / her mind about an appointment;
5. Abide by the provisions of the federal Do Not Call Registry (16 CFR Part 310 and 47 CFR Part 64);
6. If the vacuum cleaner being sold is used and therefore carries less than a three year warranty, disclose that fact prior to sale;

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- 7. Retain consumers' traded-in vacuum cleaners until all applicable refund or cancellation periods have expired;
- 8. Expressly provide an opportunity for consumers to terminate the sales presentation after one hour. This opportunity shall be provided in a clear and conspicuous manner. Examples of such an opportunity are "I told you I would take an hour of your time and it has been an hour. I will leave now unless you have additional questions," and "My hour is up, is it okay with you if I continue? The decision is entirely up to you."
- 9. Leave a consumer's home immediately upon a consumer's request that the dealer leave;
- 10. In instances where consumers cancel their transactions pursuant to A.R.S. 44-5001 *et seq.*, issue refunds, return trade-ins and retrieve vacuum cleaners in accordance with A.R.S. 44-5006.
- 11. Inquire about a consumer's eligibility for the Golden Ager program (a program implemented and required by The Kirby Company) upon any complaint made directly to Defendants from the consumer about the Kirby vacuum or sales presentation or upon any inquiry from the consumer made directly to Defendants about a refund or cancellation as long as the consumer's complaint or inquiry about refund or cancellation is made directly to Defendant within one year of purchase. Any consumer meeting

1 the Golden Ager age requirement (67 at the time of execution of
2 this Judgment) at the time of purchasing a Kirby vacuum shall be
3 entitled to cancel the sale and obtain a refund. The burden of
4 determining eligibility for this program shall be on the Defendants,
5 and not on the consumers. Defendants shall return all deposits,
6 trade-in merchandise and down payments to the consumer. If the
7 trade-in merchandise is no longer available, the Defendants shall
8 return to the Golden Ager consumer merchandise of an equal
9 value and a similar type as that of the trade-in merchandise.
10 Defendants shall return all deposits to the Golden Ager consumer
11 within 72 hours of Defendant's receipt of the Kirby vacuum from
12 the eligible Golden Ager. Defendants, at their discretion, shall
13 have the right to require a consumer to provide proof of their birth
14 date in order to confirm the consumer's age at the time of
15 purchase.
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- 20 D. Plaintiff is awarded restitution against Defendants Globestar and Dyer, jointly
21 and severally, in the amount of Twenty Thousand Dollars (\$20,000).
22 E. Plaintiff is awarded judgment against Defendants Globestar and Dyer for civil
23 penalties in the amount of Thirty-Five Thousand Dollars (\$35,000); provided,
24 however, that this may be satisfied by a lesser amount as set forth in Paragraph
25 G below. Liability for payment of penalties is joint and several.
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F. Plaintiff is awarded judgment against Defendants Globestar and Dyer for attorneys' fees and costs in the amount of Five Thousand Dollars (\$5,000); provided, however, that this may be satisfied by a lesser amount as set forth in Paragraph G below. Liability for payment of attorneys' fees and costs is joint and several.

G. The monetary portion of this judgment shall be considered satisfied in full if Defendants Globestar and Dyer pay to the State of Arizona the total sum of Thirty-Five Thousand Dollars (\$35,000) payable in two installments. The first payment of Twenty-Five Thousand Dollars (\$25,000) shall be paid within fifteen (15) days of the entry of this Judgment; the second payment of Ten Thousand Dollars (\$10,000) shall be paid on or before February 1, 2006.

H. The State shall use the monies paid by Defendants Globestar and Dyer to pay the claims for restitution to all eligible consumers. Eligible consumers are those consumers who purchased a Kirby vacuum cleaner from Defendants and have submitted a complaint to the Arizona Attorney General's Office, the Better Business Bureau, or The Kirby Company and have not received a full refund. Eligible consumers must have submitted a complaint prior to the entry of this Judgment or must submit one within the thirty (30) day period immediately following the entry of the Judgment. In the event that the total amount of restitution owed to eligible consumers exceeds the sum of Defendants' payments, as described above, the monies shall be distributed to consumers on a pro-rata basis, taking into consideration the amount of monies

1 each consumer paid to Defendants and reducing said amount by any refunds
2 previously paid by Defendants. Any monies remaining after the distribution of
3 restitution shall be deposited in the Consumer Protection Revolving Fund
4 established by A.R.S. §44-1531.01. In the event that an eligible consumer or
5 his or her heirs or assigns cannot be located after reasonable efforts, then that
6 eligible consumer's restitution shall be paid to the Office of the Attorney
7 General and distributed to the remaining eligible consumers as provided above.
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10 I. Each payment is to be delivered or mailed and postmarked, postage prepaid, to
11 the Attorney General on or before the above-designated dates. If all payments
12 are made in a timely fashion, the judgment shall bear no interest or collection
13 costs. Failure to make a payment on the date due is a default provided that
14 Defendants Globestar and Dyer are provided written notice of said default to
15 their last known address and are given a ten (10) day period upon receipt of
16 said written notice to cure any default. If the default is not cured within that ten
17 (10) day period, the entire unpaid balance or \$20,000 in restitution, \$35,000 in
18 civil penalties, and \$5,000 in attorneys' fees and costs, plus interest at a rate of
19 ten percent (10%) from the date of entry of the judgment, and costs of
20 collection, less any amount previously paid, shall be immediately due and
21 owing.
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25 J. Nothing in this Consent Judgment shall be construed as an approval by the
26 State or this Court of Defendants' past, present or future conduct, and
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Defendants are enjoined from directly or indirectly representing anything to the contrary.

K. Jurisdiction is retained by this Court for the purpose of entertaining an application by Plaintiff for the enforcement of this Consent Judgment and facilitating the award of restitution to consumers.

L. Pursuant to Rule 54(b) of the Arizona Rules of Civil Procedure, the Court has determined that there is no just reason for delay and hereby directs that this Judgment against Defendants Globestar and Dyer be entered forthwith.

Dated this 2nd day of August, 2005.



JUDGE OF THE SUPERIOR COURT

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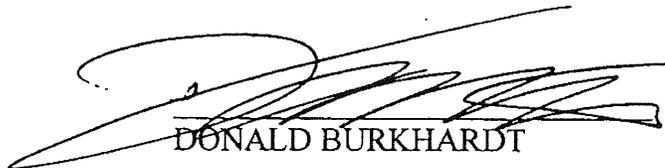
CONSENT TO JUDGMENT

1. Defendants Globestar and Dyer acknowledge that they were served with a copy of the Summons and Complaint, have read the Findings of Fact, Conclusions of Law and Order, are aware of their right to a trial in this matter and have waived the same.
2. Defendants Globestar and Dyer admit the jurisdiction of the Court, admit for the purposes of this litigation only that the Findings of Fact and Conclusions of Law are true, and consent to the entry of the foregoing judgment.
3. Defendants Globestar and Dyer state that no promise of any kind or nature whatsoever was made to them to induce them to enter into this Consent Judgment and that they have entered into the Consent Judgment voluntarily.
4. Defendants Globestar and Dyer acknowledge that their acceptance of this Consent Judgment is solely for the purpose of settling this litigation and does not preclude any other agency or officer of this State or subdivision thereof from instituting other civil or criminal proceedings as may be appropriate now or in the future.

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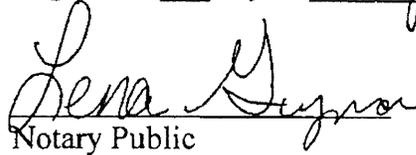
5. Donald Burkhardt represents that his is the owner and or principal of all named defendants and that, as such, he is authorized to enter into this Consent Judgment for and on behalf of Globestar and Dyer, the entities bound by this Consent Judgment.

DATED this 23 day of August, 2005.

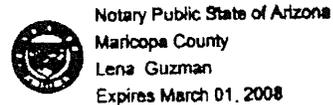

DONALD BURKHARDT

State of _____)
County of _____) §.

Subscribed, sworn to, and acknowledged this 23rd day of Aug, 2005, by DONALD BURKHARDT.


Notary Public

My commission expires: March 1st 2008

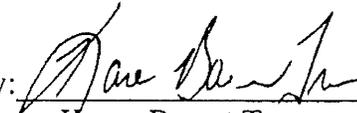


APPROVED AS TO FORM AND CONTENT:

RYNN & JANOWSKY, LLP

TERRY GODDARD
Attorney General

By: see counterpart
Lewis P. Janowsky
Attorney for Defendant

By: 
Karen Baerst Treon
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Attorneys for Plaintiff

