

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
3 Firm Bar No. 14000
4 BRYCE N. CLARK (No. 034080)
5 ASSISTANT ATTORNEY GENERAL
6 OFFICE OF THE ATTORNEY GENERAL
7 2005 N. Central Ave, Suite 100
8 Phoenix, AZ 85004
9 Telephone: (602) 542-3702
10 Facsimile: (602) 542-4377
11 consumer@azag.gov
12 Attorneys for the State of Arizona

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

10 **IN AND FOR THE COUNTY OF MARICOPA**

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

14 Plaintiff,

15 v.

16 ORANGUTAN HOME SERVICES, INC.,
17 an Arizona Corporation

18 Defendant.

Case No. CV2018-011348

**STIPULATED CONSENT
JUDGMENT**

(Assigned to the Hon. Rosa Mroz)

19
20 The State of Arizona filed a complaint alleging violations of the Arizona
21 Consumer Fraud Act, Arizona Revised Statutes (“A.R.S.”) § 44–1521, *et seq.*, and the
22 Arizona Telephone Solicitation Statute, A.R.S. § 44–1271, *et seq.* Defendant Orangutan
23 Home Services, Inc. (“Orangutan”) waived service of the Complaint and Summons and
24 has been fully advised of the right to a trial in this matter and has waived the same.
25 Defendant admits that this Court has jurisdiction and stipulates that this Court may enter
26 the following Findings of Fact, Conclusions of Law and Judgment.

1 **I. PARTIES**

2 1. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General
3 (“the State”), who is authorized to bring this action under the Arizona Consumer Fraud
4 Act, A.R.S. §§ 44–1521, *et seq.* (the “CFA”).

5 2. Defendant Orangutan is an HVAC installation and repair company
6 incorporated in Arizona in 1994 and headquartered in Maricopa County at all times
7 relevant to this Judgment.

8 **II. STIPULATED FINDINGS OF FACT**

9 4. Between April of 2017 and October of 2017, Orangutan initiated intrastate
10 telephone solicitations to telephone numbers belonging to Arizona consumers and
11 registered on the Federal Trade Commission’s Do Not Call Registry when Orangutan was
12 not authorized or permitted to make such solicitations.

13 5. At all relevant times, Orangutan should have known that the actions
14 described above were of the nature prohibited by the CFA.

15 **III. STIPULATED CONCLUSIONS OF LAW FOR PURPOSE OF THIS**
16 **CONSENT JUDGMENT**

17 6. Pursuant to A.R.S. § 44–1278, the acts and practices set forth in the
18 Stipulated Findings of Fact constitute unlawful practices in violation of the CFA.

19 7. Defendant Orangutan should have known that its conduct was of the nature
20 prohibited by the CFA.

21 NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

22 **IV. INJUNCTION**

23 8. Orangutan and any person acting on behalf of or in concert with it, as well
24 as Orangutan’s officers, agents, servants, employees, and those persons in active concert
25 or participation with them who receive actual notice of this order:

26 A. Shall comply with the CFA, A.R.S. §§ 44–1521, *et seq.*, as currently

1 written and as amended in the future; and

2 B. Shall comply with the ATSS, A.R.S. §§ 44–1271, *et seq.*, as
3 currently written and as amended in the future.

4 **V. PAYMENT**

5 9. Defendant shall pay to the Arizona Attorney General the amount of One
6 Hundred and Fifty Thousand Dollars (\$150,000.00) in civil penalties (the “Civil Penalty
7 Award”), with interest thereon at six percent (6.00%) per annum until paid. Defendant
8 shall pay the Civil Penalty Award according to the schedule found in Paragraphs 11
9 through 15 of this Judgment, and the Civil Penalty Award and interest thereon shall be
10 deposited into the Consumer Protection – Consumer Fraud Revolving Fund in accordance
11 with A.R.S. § 44–1531.01, and used for the purposes set forth therein.

12 10. Defendant shall pay to the Arizona Attorney General the amount of Six
13 Thousand Dollars (\$6,000.00) in attorneys’ fees and costs (the “Fees Award”), with
14 interest thereon at six percent (6.00%) per annum until paid. Defendant shall pay the Fees
15 Award according to the schedule found in Paragraphs 11 through 15, and the Fees Award
16 shall be deposited by the Attorney General into the Consumer Protection – Consumer
17 Fraud Revolving Fund in accordance with A.R.S. § 44–1531.01 and used for the purposes
18 set forth therein.

19 11. Pursuant to this Judgment, Defendant shall pay the Arizona Attorney
20 General’s Office a total of One Hundred and Fifty-Six Thousand Dollars (\$156,000.00)
21 plus applicable interest.

22 12. Within five (5) days of signing this agreement, Defendant shall make an
23 initial payment of Ten Thousand Dollars (\$10,000.00). Timely payment in full of the
24 amount due under this Paragraph is a material term of this Consent Judgment, and if
25 Defendant fails to comply with this term, the State may, in its sole discretion, reopen
26 proceedings and proceed with this case as though this Consent Judgment had not been

1 entered, provided that Defendant shall be entitled to an offset for any amount actually paid
2 to the State and not refunded to the Defendant by the State.

3 13. Defendant shall pay the remaining One Hundred and Forty-Six Thousand
4 Dollars (\$146,000.00) in twenty-four (24) monthly installments due by the first day of
5 each month beginning October 1, 2018.

6 14. The minimum amount due on the first of each month is listed on the
7 payment schedule attached hereto as Exhibit 1.

8 15. Failure to make a minimum monthly payment within thirty (30) days of the
9 date due is a default, and the entire unpaid balance, including any suspended interest, and
10 costs of collection less any amount previously paid shall be accelerated and shall become
11 immediately due and owing.

12 16. The payments required herein shall be paid in the form of business checks,
13 cashier's checks, or money orders made payable to "The State of Arizona." Payment shall
14 be delivered, or mailed and postmarked, to:

15 Ms. Stephanie Paine
16 The Office of the Arizona Attorney General
17 Consumer Protection and Advocacy Section
18 2005 N. Central Ave, Suite 100
19 Phoenix, AZ 85004

20 17. Each partial payment made by Defendant shall be applied first to the Fees
21 Award, then the Civil Penalty Award, and then, if applicable, any interest owed.

22 18. The payment of the interest accrued on the Civil Penalty Award and Fees
23 Award shall be suspended unless and until Defendant defaults on any payment obligation,
24 or materially breaches any provision of this Consent Judgment. Upon payment of the full
25 One Hundred and Fifty-Six Thousand Dollars (\$156,000.00) without default or material
26 breach, Defendant will have completed its financial obligation under this Consent
Judgment, all suspended interest amounts will be waived by the State, and Defendant will

1 have no obligation to pay any accrued interest.

2 **VI. GENERAL TERMS**

3 19. Defendant warrants and represents that there is not pending any case,
4 proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation,
5 dissolution, or recomposition of Defendant or its debts under any law relating to
6 bankruptcy, insolvency, reorganization, or the relief of debtors, or seeking the appointment
7 of a receiver, trustee, custodian, or other similar official for Defendant. Defendant further
8 warrants and represents that it will not file, or cause to be filed, any such case, proceeding,
9 or other action prior to ninety-one (91) days after the payments provided for in Paragraphs
10 9 through 14 of this Consent Judgment are actually made to the State. If Defendant does
11 file or cause to be filed such a case, proceeding, or other action prior to the expiration of
12 that time, then the State shall have the right, at its sole discretion, to treat that as a material
13 breach of this Consent Judgment, reopen proceedings, and proceed with this case as
14 though this Consent Judgment had not been entered, provided that Defendant shall be
15 entitled to an offset for any amount actually paid to the State and not refunded to
16 Defendant by the State.

17 20. Defendant shall provide the State with written notice within fifteen (15)
18 days of Defendant filing or causing to be filed any case, proceeding, or other action
19 seeking reorganization, arrangement, adjustment, liquidation, dissolution, or
20 recomposition of Defendant or its debts under any law relating to bankruptcy, insolvency,
21 reorganization, or the relief of debtors, or seeking the appointment of a receiver, trustee,
22 custodian, or other similar official prior to complete payment of all amounts due under
23 Paragraphs 9 through 14 of this Consent Judgment. If Defendant fails to provide the
24 notice as required, the State may, at its sole discretion, accelerate the remaining payments
25 under those Paragraphs. If the State chooses to accelerate the remaining payments, all
26 amounts awarded under this Consent Judgment not previously paid to the State shall

1 become due and immediately payable in full to the State, with interest thereon at the
2 statutory rate from the date the State serves notice of acceleration on Defendant.

3 21. Defendant agrees that the facts as alleged in the Complaint in this action
4 and the Stipulated Facts and Conclusions of Law in this Consent Judgment shall be taken
5 as true without further proof in any bankruptcy case or subsequent civil litigation pursued
6 by Plaintiff to enforce its rights to any payment or money judgment pursuant to this
7 Judgment, including but not limited to a nondischargeability complaint in any bankruptcy
8 case. Defendant further stipulates and agrees that the facts alleged in the Complaint
9 establish all elements necessary to sustain an action by Plaintiff pursuant to Section
10 523(a)(2)(A) and/or Section 523(a)(7) of the Bankruptcy Code, 11 U.S.C. § 523(a), and
11 that this Consent Judgment shall have collateral estoppel effect for such purposes.

12 22. The effective date of this Consent Judgment is the date when the Court has
13 signed this judgment and entered it with the Clerk of Court.

14 23. The terms of this Consent Judgment apply to Defendant Orangutan and to
15 any successor entities which substantially continue the same business enterprise, despite
16 alterations of the entity name, or due to acquisition, merger, inheritance, sale, purchase, or
17 otherwise.

18 24. Defendant shall not participate directly or indirectly in any activity to form
19 a separate entity or corporation for the purpose of engaging in acts prohibited in this
20 Consent Judgment or for any other purpose which would otherwise circumvent any part of
21 this Consent Judgment or the spirit or purposes of this Consent Judgment.

22 25. The State acknowledges by its execution hereof that this Consent Judgment
23 constitutes a complete settlement of the consumer fraud allegations contained in the
24 State's complaint against Defendant, including all calls to consumers listed on the federal
25 Do Not Call registry from April 1, 2017 through the date on which the parties signed this
26 Consent Judgment. Notwithstanding the foregoing, the State may institute an action or

1 proceeding to enforce the terms and provisions of this Consent Judgment, take action
2 based on future conduct by the Defendant, and take action based on past and present
3 conduct of the Defendant that is not addressed by the allegations in the State's complaint
4 against Defendant.

5 26. The Defendant is enjoined from representing or implying that the State of
6 Arizona, or any agency or officer thereof, has approved any of its past, present, or future
7 actions or practices.

8 27. This Court retains jurisdiction of this matter for the purpose of entertaining
9 an application by the State for the enforcement of this Consent Judgment or application by
10 the State seeking penalties for a violation of this Judgment pursuant to A.R.S. § 44-1532.

11 28. This Consent Judgment is the result of a compromise and settlement
12 agreement between the Parties. Only the Parties may seek enforcement of this Consent
13 Judgment. Nothing herein is intended to create a private right of action by other parties.

14 29. If any portion of this Consent Judgment is held invalid by operation of law,
15 the remaining terms thereof shall not be affected and shall remain in full force and effect.

16 30. This Consent Judgment resolves all outstanding claims in this action.
17 Because no further matters remain pending, this is a final judgment entered pursuant to
18 Ariz. R. Civ. P. 54(c).

19
20 DATED this _____ day of _____, 2018.

21
22
23
24 _____
25 The Honorable Rosa Mroz
26 Judge of the Superior Court

1 **CONSENT TO JUDGMENT**

2
3 1. Orangutan Home Services, Inc. states that no promise of any kind or nature
4 whatsoever was made to induce it to enter into this Consent Judgment and that it has
5 entered into the Consent Judgment voluntarily.

6 2. Orangutan Home Services, Inc. has fully read and understands this Consent
7 Judgment and understands the legal consequences involved in signing it.

8 3. Orangutan Home Services, Inc. asserts that this is the entire agreement of
9 the parties, and that there are no other representations or agreements not stated in writing
10 herein, and that no force, threats, or coercion of any kind have been used to obtain its
11 signature.

12 4. Orangutan Home Services, Inc. acknowledges that Plaintiff's acceptance of
13 this Consent Judgment is solely for the purpose of settling this litigation and does not
14 preclude Plaintiff, or any other agency or officer of this State, or subdivision thereof, from
15 instituting other civil or criminal proceedings as may be appropriate now or in the future.

16 5. Orangutan Home Services, Inc. represents and warrants that the person
17 signing below on its behalf is duly appointed an authorized to do so.

18 DATED this 17 day of SCOT, 2018.
19 **ORANGUTAN HOME SERVICES, INC.**

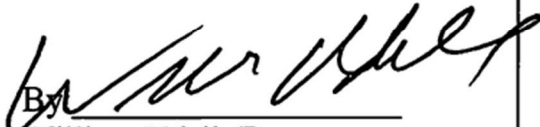
20
21 By: 
22 Jordy S. Tessler, President/CEO
23
24
25
26

1 APPROVED AS TO FORM AND CONTENT

2 MARK BRNOVICH
3 ATTORNEY GENERAL

UDALL LAW OFFICES

4
5 By: 
6 Bryce Clark, Esq.
7 Assistant Attorney General
Counsel for Plaintiff


By: _____
William Udall, Esq.
Counsel for Defendant

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Exhibit 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1-Oct	2018	\$6,083.33
1-Nov	2018	\$6,083.33
1-Dec	2018	\$6,083.33
1-Jan	2019	\$6,083.33
1-Feb	2019	\$6,083.33
1-Mar	2019	\$6,083.33
1-Apr	2019	\$6,083.33
1-May	2019	\$6,083.33
1-Jun	2019	\$6,083.33
1-Jul	2019	\$6,083.33
1-Aug	2019	\$6,083.33
1-Sep	2019	\$6,083.33
1-Oct	2019	\$6,083.33
1-Nov	2019	\$6,083.33
1-Dec	2019	\$6,083.33
1-Jan	2020	\$6,083.33
1-Feb	2020	\$6,083.33
1-Mar	2020	\$6,083.33
1-Apr	2020	\$6,083.33
1-May	2020	\$6,083.33
1-Jun	2020	\$6,083.33
1-Jul	2020	\$6,083.33
1-Aug	2020	\$6,083.33
1-Sep	2020	\$6,083.41
Total:		\$146,000.00

eSignature Page 1 of 1

Filing ID: 9729885 Case Number: CV2018-011348
Original Filing ID: 9724827

Granted as Submitted



/S/ Rosa Mroz Date: 9/21/2018
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2018-011348

SIGNATURE DATE: 9/21/2018

E-FILING ID #: 9729885

FILED DATE: 9/25/2018 8:00:00 AM

BRYCE CLARK

ORANGUTAN HOME SERVICES INC
NO ADDRESS ON RECORD