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

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

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

15 Plaintiff,

16 v.

17 ISLAND DON INC., *et al.*,

18 Defendants.
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Case No. CV2018-013332

CONSENT JUDGMENT

(Assigned to the Hon. Teresa Sanders)

1 The State of Arizona, ex rel. Mark Brnovich, Attorney General (the “State”), filed a
2 Complaint alleging violations of the Arizona Telephone Solicitations Statute (“ATSS”), A.R.S.
3 §§ 44-1271, *et seq.*, and the Arizona Consumer Fraud Act (“CFA”), A.R.S. §§ 44-1521, *et seq.*
4 Defendants Island Don Inc. d.b.a. Bright & Shiny Kirby Company, Bright & Shiny Cleaning
5 Services, or Sun West Kirby; Donald Burkhardt; and Jessica Burkhardt (collectively
6 “Defendants”) have been fully advised of their rights to trial in this matter and have waived the
7 same. Defendants admit that this Court has jurisdiction over the subject matter and the parties;
8 stipulate that this Court may enter the following Findings of Fact, Conclusions of Law, and
9 Judgment; and acknowledge that this Court shall retain jurisdiction for the purpose of enforcing
10 this Consent Judgment. Defendants neither admit nor deny, however, any of the Findings of
11 Fact, Conclusions of Law, nor any of the allegations in the State’s Complaint. Any and all
12 stipulations entered into herein are solely for the purposes of settlement and to avoid incurring
13 costs associated with continuing litigation.

14 **I. PARTIES**

15 1. The State is authorized to bring this action under the CFA, A.R.S. §§ 44-1521, *et*
16 *seq.*

17 2. Defendant Island Don Inc., d.b.a. Bright & Shiny Kirby Company, Bright & Shiny
18 Cleaning Company, or Sun West Kirby (“Bright & Shiny”) is an Arizona corporation that has
19 operated from at least January 13, 2014, to the present, with its principal place of business in
20 Sun City, Arizona. Bright & Shiny conducts business in Arizona and in other states.

21 3. Defendant Donald Burkhardt directs and controls Bright & Shiny as the sole
22 officer and director of Bright & Shiny.

23 4. Defendant Jessica Burkhardt resides in Maricopa County, Arizona and is named
24 solely for any interest she possesses in her marital community with Defendant Donald
25 Burkhardt.

26 5. At all times relevant to the Consent Judgment, the Burkhardts were married to
27 each other, and Donald Burkhardt was acting for the benefit of himself and the Burkhardt
28 marital community.

1 6. The Court has jurisdiction over the Complaint and the parties necessary for the
2 Court to enter this Consent Judgment and any orders hereafter appropriate pursuant to A.R.S.
3 § 44-1528 and this Consent Judgment.

4 7. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401 because all
5 Defendants reside in Maricopa County.

6 **II. FINDINGS OF FACT**

7 8. The Kirby Company contracts with and authorizes independent Kirby field
8 distributors, including Defendants, to sell Kirby vacuums.

9 9. Defendants have advertised and sold Kirby vacuums to consumers in Arizona and
10 surrounding states through in-home sales demonstrations since approximately January 2014.

11 10. Defendants solicit consumers by phone to set up sales presentations for Kirby
12 vacuum cleaners in consumers' homes.

13 11. The State alleges that between September 2017 and July 2018, Defendants
14 initiated telephone solicitations to telephone numbers belonging to Arizona consumers that were
15 registered on the National Do Not Call Registry maintained by the Federal Trade Commission
16 when Defendants were not authorized or permitted to make such solicitations.

17 12. The State alleges that Defendants misled some consumers by offering "free carpet
18 cleaning[s]," free furniture cleanings, and/or "free gift[s]" over the phone without disclosing that
19 the true purpose of the visits to consumers' homes was to conduct sales presentations for Kirby
20 vacuum cleaners.

21 13. The State alleges that Defendants failed to provide the free carpet or furniture
22 cleanings to some consumers that Defendants promised to those consumers over the phone.

23 14. The State alleges that Defendants misrepresented the length of sales presentations
24 to some consumers over the phone.

25 15. The State alleges that Defendants knew or should have known that the actions
26 described above were of the nature prohibited by the CFA.

1 **III. CONCLUSIONS OF LAW FOR PURPOSES OF THIS CONSENT JUDGMENT**

2 16. Pursuant to A.R.S. § 44-1278, the State alleges that the acts and practices set forth
3 in the Findings of Fact constitute unlawful practices in violation of the ATSS and the CFA.

4 17. Pursuant to A.R.S. § 44-1521, the State alleges that the acts and practices set forth
5 in the Findings of Fact constitute unlawful practices in violation of the CFA.

6 **ORDER**

7 **NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

8 **IV. INJUNCTION**

9 18. The injunctive terms listed in Section IV apply to (a) Defendants, including
10 Donald Burkhardt and Jessica Burkhardt in their individual capacities; (b) Bright & Shiny's
11 officers, agents, servants, employees, and attorneys; (c) any entity established by Defendants,
12 whether a partnership, corporation, or limited liability company; and (d) all persons in active
13 concert or participation with Defendants, directly or indirectly, who receive actual notice of this
14 Consent Judgment by personal service or otherwise.

15 19. Pursuant to A.R.S. § 44-1528, Defendants are permanently enjoined, restrained,
16 and prohibited from:

- 17 a. Engaging in any and all acts or practices in violation of the ATSS, A.R.S.
18 §§ 44-1271, *et seq.*, as currently written or as may be amended in the
19 future;
- 20 b. Engaging in any and all acts or practices in violation of the CFA, A.R.S.
21 §§ 44-1521, *et seq.*, as currently written or as may be amended in the
22 future;
- 23 c. Characterizing Kirby sales presentations to consumers as anything other
24 than sales presentations for Kirby vacuum cleaners;
- 25 d. Failing to provide any consumer with a complimentary carpet cleaning or
26 furniture cleaning if that consumer was previously promised a
27 complimentary carpet cleaning or furniture cleaning;
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- 1 e. Misrepresenting the length of time that sales presentations are expected to
2 take;
- 3 f. Failing to include a disclosure on any raffle or promotional materials that
4 includes the full name of Defendants' business entity and affirmatively
5 states that the business is a Kirby vacuum distributorship.

6 **V. PAYMENT**

7 20. Pursuant to A.R.S. § 44-1528(A)(2), Defendants are jointly and severally liable
8 and obligated to pay the Attorney General the amount of five hundred thousand dollars
9 (\$500,000) in consumer restitution to be deposited into the Consumer Restitution and
10 Remediation Revolving Fund, pursuant to A.R.S. § 44-1531.02(B). The Arizona Attorney
11 General shall have sole discretion as to how and when restitution funds are distributed to
12 consumers and the eligibility of any consumer to receive restitution. One year from the date that
13 this Consent Judgment is entered, all unclaimed restitution shall be deposited into the Consumer
14 Protection – Consumer Fraud Revolving Fund established by A.R.S. § 44-1531.01 and used for
15 the purposes set forth therein. The State shall provide Defendants with a one-time, full
16 accounting of any and all restitution funds paid to consumers, and of funds paid to the Consumer
17 Fraud Revolving Fund at the end of the one-year period.

18 21. Pursuant to A.R.S. § 44-1531, Defendants are jointly and severally liable and
19 obligated to pay the Attorney General the amount of one million one hundred thousand dollars
20 (\$1,100,000) in civil penalties, with interest accruing thereon at the statutory rate until paid, to
21 be deposited into the Consumer Protection – Consumer Fraud Revolving Fund established by
22 A.R.S. § 44-1531.01 and used for the purposes set forth therein. Defendants shall pay one
23 hundred thousand dollars (\$100,000) of the civil penalties by April 24, 2021. Defendants shall
24 pay the remaining civil penalties, if any, by April 24, 2025. Notwithstanding the foregoing, one
25 million dollars (\$1,000,000) of civil penalties shall be deemed paid and discharged upon
26 Defendants making on-time payments of all other amounts due under this Consent Judgment.

1 22. The State acknowledges that, prior to the filing of this Consent Judgment,
2 Defendants have made an initial payment of \$500,000 in complete satisfaction of their
3 restitution obligations under paragraph 20 of this Consent Judgment.

4 23. Should Defendants default on any payment obligation imposed by this Consent
5 Judgment, and further fail to cure the deficiency within 10 calendar days after having received
6 written notice from the State of any amounts past due, in addition to any other penalties and
7 remedies provided by law, all payments set forth herein shall be accelerated and shall become
8 due and owing in their entirety as of the date of the default, with interest accruing thereon at the
9 statutory rate for the full amount owing as of that date.

10 24. Defendants may prepay all or any part of the balance outstanding hereunder at any
11 time without penalty.

12 25. If Defendants pay the total combined monetary award in this Consent Judgment,
13 excluding any amounts deemed paid or discharged, on or before April 24, 2021, without
14 committing any breach of the Consent Judgment or defaulting on any payment terms, the State
15 agrees to forego the collection of all interest accrued under this Consent Judgment.

16 26. The payments required herein shall be paid in the form of cashier's check or
17 money orders made payable to "The State of Arizona." Payment shall be delivered, or mailed
18 and postmarked, to:

19 Consumer Protection and Advocacy Section
20 Office of the Arizona Attorney General
21 2005 N. Central Ave.
 Phoenix, AZ 85004

22 27. Defendants agree that the facts as alleged in the Complaint in this action and the
23 Findings of Fact and Conclusions of Law in this Consent Judgment shall be taken as true
24 without further proof only in any bankruptcy case or subsequent civil litigation pursued by the
25 State of Arizona to enforce its rights to any payment or money judgment pursuant to this
26 Consent Judgment, including, but not limited to, a nondischargability complaint in any
27 bankruptcy case. Defendants further stipulate and agree that the facts alleged in the Complaint
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1 establish all elements necessary to sustain an action by Plaintiff pursuant to Section
2 523(a)(2)(A) and/or Section 523(a)(7) of the Bankruptcy Code, 11 U.S.C. § 523(a), and that this
3 Consent Judgment shall have collateral estoppel effect for such purposes. The Findings of Fact
4 and Conclusions of Law in this Consent Judgment shall not be admissible for any other purpose,
5 in any subsequent civil, criminal, or administrative proceeding.

6 28. Defendants shall provide the State with written notice within 15 days of
7 Defendants filing or causing to be filed any case, proceeding, or other action seeking
8 reorganizing, arrangement, adjustment, liquidation, dissolution, or recomposition of Defendants
9 or their debts under any law relating to bankruptcy, insolvency, reorganization, or the relief of
10 debtors, or seeking the appointment of a receiver, trustee, custodian, or other similar official
11 prior to complete payment of all amounts due under this Consent Judgment. If Defendants fail
12 to provide the notice as required, the State may, at its sole discretion, accelerate the remaining
13 payments due under this Consent Judgment. If the State chooses to accelerate the remaining
14 payments, all amounts awarded under this Consent Judgment not previously paid to the State
15 shall become due and immediately payable in full to the State, including interest accrued from
16 the date the Consent Judgment is entered by the Court.

17 **VI. GENERAL PROVISIONS**

18 29. Nothing in this Consent Judgment shall be construed as an approval by the
19 Attorney General, the Court, the State of Arizona, or any agency thereof of Defendants' past,
20 present, or future conduct. Defendants shall not represent or imply that the Attorney General,
21 the Court, the State of Arizona, or any agency thereof has approved or approves of any of
22 Defendants' actions or any of Defendants' past, present, or future business practices.

23 30. This Consent Judgment represents the entire agreement between the parties, and
24 there are no representations, agreements, arrangements, or understandings, oral or written,
25 between the parties relating to the subject matter of this Consent Judgment which are not fully
26 expressed herein or attached hereto.

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

1 32. Jurisdiction is retained by this Court for the purpose of entertaining an application
2 by the State for the enforcement of this Consent Judgment.

3 33. This Consent Judgment is the result of a compromise and settlement agreement
4 between the parties in this action. Only the parties to this action may seek enforcement of this
5 Consent Judgment. Nothing herein is intended to create a private right of action by other
6 parties.

7 34. This Consent Judgment shall not limit the rights of any private party to pursue any
8 remedies allowed by law.

9 35. The effective date of this Consent Judgment is the date that it is entered by the
10 Court.

11 36. This Consent Judgment resolves all outstanding claims expressly identified in the
12 Complaint as to Defendants. As no further matters remain pending, this is a final judgment
13 entered pursuant to Ariz. R. Civ. P. 54(c).

14
15 37. IT IS FURTHER ORDERED vacating the Oral Argument currently set for
16 January 7, 2020 at 9:30a.m. and the Pre-Trial Conference/ Trial Setting Conference currently set
17 for April 28, 2020 at 9:15 a.m.

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19 DATED this ____ day of _____, 2019.

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22 _____
23 Honorable Teresa A. Sander
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1 **CONSENT TO JUDGMENT**

2 1. Defendants acknowledge that they were served with a copy of the Summonses and
3 Complaint, have read the Findings of Fact, Conclusions of Law, and Order, and are aware of
4 their right to a trial in this matter and have waived the same.

5 2. Defendants admit the jurisdiction of the Court and consent to the entry of the
6 foregoing Findings of Fact, Conclusions of Law, and Order.

7 3. Defendants state that no promise of any kind or nature whatsoever was made to
8 induce them to enter into this Consent Judgment and declare that they have entered into this
9 Consent Judgment voluntarily.

10 4. This Consent Judgment is entered as a result of a compromise and a settlement
11 agreement between the parties. Only the parties to this action may seek enforcement of this
12 Consent Judgment. Nothing herein is intended to create a private right of action by other
13 parties; however, this Consent Judgment shall not limit the rights of any private party to pursue
14 any remedies allowed by law.


15 5. Defendants acknowledge that their acceptance of this Consent Judgment is solely
16 for the purpose of settling the ongoing consumer fraud lawsuit filed by the State, and further
17 acknowledge that this Consent Judgment does not preclude any other agency or officer of this
18 State or subdivision thereof from instituting other civil or criminal proceedings as may be
19 appropriate.

20 6. This Consent to Judgment may be executed in counterparts and be delivered by
21 facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart
22 hereof, all of which together will constitute one and the same document.

23 7. Defendant Island Don Inc. represents and warrants that the person signing below
24 on its behalf is duly appointed and authorized to do so.

1 DATED this 3rd day of December, 2019.

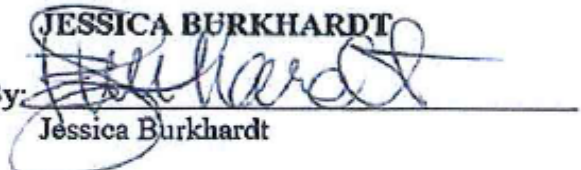
2
3 **ISLAND DON INC.**

4 By: 
5 Donald Burkhardt
6 CEO/Shareholder

7 **DONALD BURKHARDT**

8 By: 
9 Donald Burkhardt

10 **JESSICA BURKHARDT**

11 By: 
12 Jessica Burkhardt

13 **APPROVED AS TO FORM AND CONTENT:**

14 **MARK BRNOVICH**
15 **Attorney General**

UDALL SHUMWAY

16
17 By: 

18 Bryce Clark
19 Neil Singh
20 Joshua Weiss
21 Assistant Attorneys General
22 Attorneys for State of Arizona

By: 
23 Michael Kielsky
24 Attorney for Defendants

ADAMS & ASSOCIATES

25
26 By: 
27 Ashley Adams
28 Attorney for Defendants

eSignature Page 1 of 1

Filing ID: 11165143 Case Number: CV2018-013332
Original Filing ID: 11152394

Granted with Modifications



/S/ Teresa Sanders Date: 12/9/2019
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2018-013332

SIGNATURE DATE: 12/9/2019

E-FILING ID #: 11165143

FILED DATE: 12/10/2019 8:00:00 AM

ASHLEY D ADAMS

BRYCE CLARK

ISLAND DON INC
NO ADDRESS ON RECORD

JESSICA BURKHARDT
NO ADDRESS ON RECORD