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

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

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

Case No.

17 Plaintiff,

18 v.

19 AMERA SUN CITY PEST CONTROL, INC.,
20 an Arizona corporation; LOUIS PLETT, in his
21 individual capacity as owner of the corporate
22 Defendant; WILMA LEE PLETT, as spouse of
23 Defendant Louis Plett;

CONSENT JUDGMENT

24 ATOMIC BEE & PEST CONTROL, LLC, an
25 Arizona limited liability company; JOHN
26 NELSON BEEBE, in his individual capacity as
27 President of the corporate Defendant; JULIE
28 ANNE BEEBE, as spouse of Defendant John
Nelson Beebe,

Defendants.

(Assigned to the Hon. _____)

29 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the "State"), filed a
30 Complaint alleging violations of the Arizona Consumer Fraud Act, Ariz. Rev. Stat.

1 (“A.R.S.”) §§ 44-1521 to 1534. Defendants Atomic Bee & Pest Control, LLC, an Arizona
2 limited liability company (“Atomic”), John Nelson Beebe in his individual capacity as President
3 of Atomic, Amera Sun City Pest Control, Inc., an Arizona corporation (“Amera Sun City”), and
4 Louis Plett in his individual capacity as owner of Amera Sun City (collectively, “Defendants”)
5 have waived service of the Complaint and have been fully advised of the right to a trial in this
6 matter and have waived the same. Defendants have denied all allegations of wrongdoing but
7 have entered into this Consent Judgment in order to resolve the issues asserted by the State and
8 to seek an equitable resolution for the affected consumers. Defendants admit the jurisdiction of
9 this Court over the subject matter and parties and stipulate that this Court may enter the
10 following Findings of Fact, Conclusions of Law, and Judgment and acknowledge that this Court
11 shall retain jurisdiction for the purpose of enforcing this Consent Judgment. Defendants have
12 consented and stipulated to entry of this Consent Judgment to compromise and settle claims in
13 connection with an investigation under the Arizona Consumer Fraud Act and not out of any
14 admission of guilt, wrongdoing, violation, or sanction.

15 **I. PARTIES**

16 1. The State is authorized to bring this action under the Arizona Consumer Fraud
17 Act, A.R.S. § 44-1521, *et seq.* (the “CFA”).

18 2. Defendant Louis Plett (“Defendant Plett”) is and has at all relevant times been a
19 resident of Maricopa County.

20 3. Defendant Plett was the owner, operator, and CEO of Defendant Amera Sun City,
21 a pest-control business that operated primarily in Sun City, Arizona, from 1994 to October 1,
22 2017.

23 4. Defendant Wilma Lee Plett resides in Maricopa County, Arizona, and is named
24 solely for any interest she possesses in her marital community with Defendant Louis Plett.

25 5. Defendant John Beebe is and has at all relevant times been a resident of Maricopa
26 County.

27 6. Defendant John Beebe (“Defendant Beebe”) is the President of Defendant Atomic,
28 a pest-control business that operates throughout Arizona and has its primary place of business in

1 Mesa, Arizona. He and his wife, Julie Ann Beebe, are trustees of the John and Julie Beebe
2 Family Trust, an Arizona trust which owns Defendant Atomic.

3 7. Defendant Julie Anne Beebe resides in Maricopa County, Arizona, and is named
4 solely for any interest she possesses in her marital community with Defendant John Beebe.

5 8. All events, acts and practices described in, and relevant to, this Consent Judgment
6 took place in Maricopa County, Arizona.

7 9. This Court has jurisdiction over the Complaint and the parties necessary for the
8 Court to enter this Consent Judgment and any orders hereafter appropriate pursuant to
9 A.R.S. § 44-1528 and this Consent Judgment.

10 10. Venue is proper in Maricopa County.

11 **II. FINDINGS OF FACT**

12 11. The terms “Consumer(s)” or “Customer(s)” are used interchangeably in this
13 Consent Judgment and should be interpreted in accordance with the context of the specific usage
14 as well as the overall purpose of this Consent Judgment. However, the use of either
15 “Consumer(s)” or “Customer(s)” is intended to represent only those individuals that purchased
16 warranties from Amera Sun City prior to its October 2, 2017 transaction with Atomic.

17 12. None of the following findings of fact shall be treated as an admission in any
18 ongoing or future litigation between any of the Defendants. Defendants enter into this Consent
19 Judgment solely to ensure that Consumers in the community are justly compensated and taken
20 care of in the future. Additionally, Defendants waive all offensive and/or defensive use of this
21 Consent Judgment in any separate proceeding between the Defendants.

22 13. During its operation, Amera Sun City would treat Consumers’ homes for, among
23 other pests, termites. Amera Sun City would often spray the Consumers’ homes with chemicals,
24 and allow Consumers to purchase warranties on the termite treatment. Some of the purchased
25 warranties entitled the Consumer to an annual inspection and any necessary re-treatments free of
26 further charge.

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1 14. The prices Consumers paid for these warranties varied based on square footage,
2 damage present at the time the contract was entered into, and various promotions Amera Sun
3 City offered over the years.

4 15. In 2017, Amera Sun City entered into a purchase agreement with Atomic that
5 included, among other things, the sale of all customer lists and all of the equipment and
6 chemicals Amera Sun City owned at the time for its operation as a pest-control company.
7 Consistent with the absence of any reference in the asset purchase agreement to any assumption
8 of liabilities, Atomic claims the purchase agreement did not contain any assumption of any of the
9 liabilities of Amera Sun City by Atomic. Amera Sun City claims it did not maintain any
10 equipment or information necessary to service the Customers, but all such equipment and
11 information was transferred to Atomic in the sale.

12 16. The asset purchase agreement was finalized on October 2, 2017.

13 17. Atomic claims it was unaware of the identities of all of the Customers of Amera
14 Sun City at the time of the purchase agreement and of the number of warranty contracts
15 previously executed by Amera Sun City. Consistent with the absence of any reference in the
16 asset purchase agreement to any assumption of liabilities, Atomic claims it did not purchase any
17 of the warranty contracts previously executed by Amera Sun City. Amera Sun City claims
18 Atomic assumed the warranty contracts previously executed by Amera Sun City. For
19 approximately fifteen (15) months following the finalization of the purchase agreement, Atomic
20 tried to work with the Amera Sun City Customers by providing termite services to them. Plett
21 had no involvement and was not informed regarding Atomic's warranty services.

22 18. After approximately fifteen (15) months, Atomic determined that servicing
23 warranties entered into by Consumers with Amera Sun City would be too costly for Atomic, and
24 informed Consumers that Atomic was not responsible for honoring the termite-warranty
25 contracts entered into by Consumers with Amera Sun City. Consistent with the absence of any
26 reference in the asset purchase agreement to any assumption of liabilities, Atomic offered
27 Consumers the opportunity to pay a \$125 "activation fee" in exchange for Atomic providing
28 termite services to the Customers under the terms of their previous Amera Sun City warranties.

19. As of September 2020, Atomic was not honoring the Amera Sun City termite-warranty contracts without payment of the \$125 “activation fee”.

20. As of September 2020, Amera Sun City was in the process of dissolution and deactivation with the Arizona Corporation Commission. Louis Plett is retired, and neither Amera Sun City nor Plett was honoring the Amera Sun City termite-warranty contracts.

21. As the direct result of the events described herein, Consumers have been unable to receive their paid-for termite treatment with Amera Sun City without paying Atomic's "activation fee."

22. While Defendants maintain that they have committed no wrongdoing, they enter into this agreement to ensure that Customers are properly cared for and receive just settlement to their claims.

23. Consistent with the absence of any reference in the asset purchase agreement to any assumption of liabilities, Atomic's position remains that it did not assume Amera Sun City's liabilities. For purposes of this Consent Judgment, it is not essential that a finding be made on this issue, and no finding is here made.

III. CONCLUSIONS OF LAW

24. An investigation by the Attorney General's Office has determined that the actions described in Paragraphs 14 through 22 above constitute violations of the CFA. Atomic denies these conclusions.

25. Pursuant to the CFA, the violations described in this Consent Judgment entitle the State to injunctive relief and awards of restitution, attorneys' fees and costs, investigative expenses, and other relief necessary to prevent the unlawful acts and practices described in this Consent Judgment, and to remedy the consequences of past unlawful practices. Atomic denies these conclusions.

ORDER

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

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IV. PAYMENT

26. In an effort to ensure Customers are taken care of in the future, Defendant Atomic agrees to honor the termite-warranty contracts entered into by Eligible Consumers (as defined below) of which Atomic has been presently put on notice by the State, may be put on notice by the State through the notice process set forth below, or may be put on notice through direct contact from Eligible Consumers. Defendant Atomic will honor these termite-warranty contracts through the earlier of the termination of the contract previously entered into with Amera Sun City or December 31, 2024, at no further cost to the Customer, and to continue to honor in full the warranties of those Customers that have paid the Atomic \$125 activation fee. The State acknowledges that the true number of affected Customers is unknown. The State additionally acknowledges that Atomic has been cooperative and forthcoming in the State's investigation and acknowledges that Atomic is volunteering financial assistance, even though no finding is being entered on the issue of whether Atomic assumed Amera Sun City's liabilities.

27. None of the foregoing findings of fact, nor the agreement to enter into this payment requirement, shall be treated as an admission of any wrongdoing by any of the Defendants, nor may any Defendant use this Consent Judgment in any separate proceeding(s) for offensive or defensive purposes, including but not limited to any form of claim or issue preclusion, such as collateral estoppel and/or res judicata. Defendants enter into this payment obligation solely to ensure that Consumers in the community are justly compensated and taken care of to the full extent of said Consumers' contractual rights. Pursuant to A.R.S. § 44-1528(A)(2), Defendants are jointly and severally liable and obligated to pay to the Attorney General the amount of ONE-HUNDRED THOUSAND DOLLARS (\$100,000) (the "Initial Payment") in consumer restitution to be paid within thirty (30) days of the entry of this Consent Judgment, to be deposited into the Consumer Restitution and Remediation Revolving Fund and to be distributed to Eligible Consumers (defined below) by the Attorney General's Office, pursuant to A.R.S. § 44-1531.02(B). The Arizona Attorney General shall have sole discretion as to how and when restitution funds are distributed to consumers and the eligibility of any consumer to receive restitution. Among other things, the Arizona Attorney General intends to use the restitution

1 payment to provide full refunds to consumers who paid the Atomic \$125 activation fee. The
2 Arizona Attorney General shall provide a report to the Defendants as to the consumers that are
3 anticipated to receive a restitution payment, the basis for the restitution payment, and in what
4 amount.

5 28. “Eligible Consumers” means Consumers who had an active termite-warranty
6 contract with Amera Sun City on October 2, 2017, and who have filed a complaint with the State
7 within ninety (90) days of the entry of this Consent Judgment. The State shall provide Atomic
8 with the names and addresses of all Eligible Consumers known to the State so that Atomic can
9 begin to provide any appropriate services to an Eligible Consumer, consistent with the terms of
10 such warranties, and subject to all applicable contract defenses to such warranties, including but
11 not limited to statutes of limitation and waiver.

12 29. Subject to the limitations set forth above, in the event the Initial Payment herein is
13 insufficient to fully restore Eligible Consumers, the State will submit to the Defendants within
14 one hundred and twenty (120) days after this Consent Judgment’s effective date, a proposed
15 Order of Additional Payment with the total amount the Defendants are jointly and severally
16 obligated to pay. Any disputes that arise with respect to the payment of the Additional Payment
17 shall be resolved by this Court. The proposed final Order of Additional Payment shall be filed
18 with this Court. Defendants shall pay the Additional Payment within sixty (60) days of the entry
19 of the final Order of Additional Payment, with interest accruing at the statutory rate until paid.
20 The Additional Payment shall be deposited into the Consumer Restitution and Remediation
21 Revolving Fund and shall be distributed to Eligible Consumers.

22 30. In the event that any portion of the Initial Payment or Additional Payment ordered
23 herein cannot be distributed to Eligible Consumers, such portion shall be deposited by the
24 Attorney General’s Office into the Consumer Protection – Consumer Fraud Revolving Fund,
25 pursuant to A.R.S. § 44-1531.01, and used for the purposes specified therein.

26 31. Pursuant to A.R.S. § 44-1534, Defendants are jointly and severally liable and
27 obligated to pay to the Attorney General the total amount of TEN THOUSAND DOLLARS
28 (\$10,000) in attorneys’ fees and costs (“Fee Payment”) due within thirty (30) days of the entry of

1 this consent judgment, with interest accruing thereon at the statutory rate until paid, to be
2 deposited into the Consumer Protection – Consumer Fraud Revolving Fund pursuant to A.R.S.
3 § 44-1531.01, and used for the purposes set forth therein.

4 32. Prior to the filing of this Consent Judgment by the State, Defendants have made the
5 Initial Payment and Fee Payment, totaling ONE HUNDRED AND TEN THOUSAND
6 DOLLARS (\$110,000) in complete satisfaction of their obligations under Paragraphs 27 and 31
7 herein.

8 33. The payments required herein shall be paid in the form of cashier's checks, wires,
9 or money orders made payable to "The State of Arizona." Payment shall be delivered, or mailed
10 and postmarked, to:

11 Consumer Protection and Advocacy Section
12 The Office of the Arizona Attorney General
13 2005 N. Central Ave.
14 Phoenix, AZ 85004

15 34. Each Defendant warrants as to themselves and represents as to themselves that
16 there is not pending any case, proceeding, or other action seeking reorganization, arrangement,
17 adjustment, liquidation, dissolution, or recomposition of any Defendant or its debts under any
18 law relating to bankruptcy, insolvency, reorganization, or the relief of debtors, or seeking the
19 appointment of a receiver, trustee, custodian, or other similar official for any Defendant. Each
20 Defendant further warrants and represents as to themselves that they will not file, or cause to be
21 filed, any such case, proceeding, or other action prior to 91 days after the Initial Payment. If any
22 Defendant does file or cause to be filed such a case, proceeding, or other action prior to the
23 expiration of that time, then the State shall have the right, at its sole discretion, to treat that as a
24 material breach of this Consent Judgment, reopen proceedings as to that Defendant, and proceed
25 with this case as though this Consent Judgment had not been entered as to that Defendant.

26 35. Each Defendant shall provide the State with written notice within fifteen (15) days
27 of that Defendant filing or causing to be filed any case, proceeding, or other action seeking
28 reorganization, arrangement, adjustment, liquidation, dissolution, or recomposition of that

1 Defendant or its debts under any law relating to bankruptcy, insolvency, reorganization, or the
2 relief of debtors, or seeking the appointment of a receiver, trustee, custodian, or other similar
3 official prior to complete payment of all amounts due under this Consent Judgment.

4 36. This Consent Judgment is contingent on Defendants' future cooperation, and any
5 refusal to comply with the cooperation provisions in Paragraphs 29 and 32 through 34 of this
6 Consent Judgment is a material breach of this Consent Judgment as to the non-cooperating
7 Defendant only. In the event of a material breach, in addition to all other remedies available
8 under Arizona law and the penalties specifically provided under A.R.S. § 44-1532, the State may,
9 in its sole discretion, reopen proceedings and continue with this case as though this Consent
10 Judgment had not been entered as to that Defendant.

11 V. GENERAL PROVISIONS

12 37. Nothing in this Consent Judgment shall be construed as the State attempting to
13 unduly influence any private litigation between any of the Defendants, and this Consent
14 Judgment is entered into for the purpose of resolving the State's claims against all of the
15 Defendants in an efficient manner that spares the expense of litigation.

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

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

24 40. Jurisdiction is retained by this Court for the purpose of entertaining an application
25 by the State for the enforcement of this Consent Judgment.

26 41. This Consent Judgment is the result of a compromise and settlement agreement
27 between the parties. Only the parties to this action may seek enforcement of this Consent
28 . . .

Judgment. Nothing herein is intended to create a private right of action by other parties, nor a third-party beneficiary contract.

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

43. The effective date of this Consent Judgment is the date that it is entered by the Court.

44. This Consent Judgment constitutes a complete settlement of the allegations contained in this Consent Judgment, and the State agrees not to institute any further civil action against any of the Defendants or their employees or agents for the violations of the CFA described herein. Notwithstanding the foregoing, the State may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment, take action based on future conduct by the Defendants, take action based on past conduct not specified in this Consent Judgment, and/or institute an action or proceeding to prevent the discharge of any debt acquired through this Consent Judgment.

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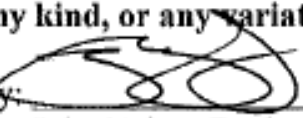
1 45. This Consent Judgment resolves all outstanding claims expressly identified in the
2 Complaint. As no further matters remain pending, this is a final judgment entered pursuant to
3 Ariz. R. Civ. P. 54(c).

4 DATED this _____ day of _____, 2020.

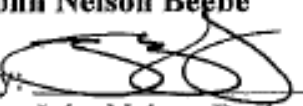
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7 _____
JUDGE OF THE SUPERIOR COURT
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1 DATED this 11th day of February, 2021.

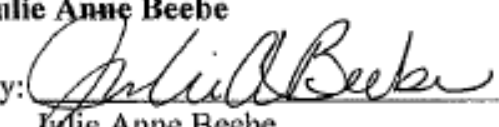
2 Atomic Bee & Pest Control, LLC
3 (including all "doing business as" names,
4 formal corporate names, fictitious names of
5 any kind, or any variations of the same)

6 By: 
7 John Nelson Beebe, President

8 John Nelson Beebe

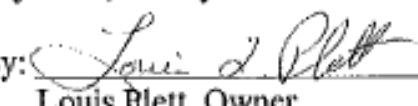
9 By: 
10 John Nelson Beebe

11 Julie Anne Beebe

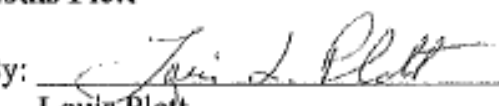
12 By: 
13 Julie Anne Beebe

14 Amera Sun City Pest Control, Inc.

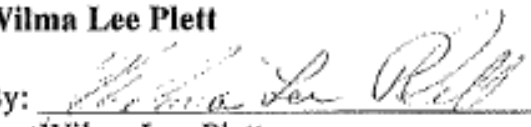
15 (including all "doing business as" names,
16 formal corporate names, fictitious names of
17 any kind, or any variations of the same)

18 By: 
19 Louis Plett, Owner

20 Louis Plett

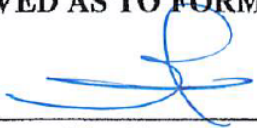
21 By: 
22 Louis Plett

23 Wilma Lee Plett

24 By: 
25 Wilma Lee Plett

26 [...] 27 28

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

2
3 By: 

Date: 2/25/21

4 D. Lamar Hawkins

5 Guidant Law, PLC

6 Attorney for Defendants Atomic Bee & Pest Control, LLC, and John Nelson Beebe

7 By: 

Date: 2-9-21

8 Tejay Coon

9 The Dodds Law Firm, PLC

10 Attorney for Defendants Amera Sun City Pest Control, Inc., and Louis Plett

11 MARK BRNOVICH

12 Attorney General

13 By: 

14 Matthew du Mee

15 Consumer Litigation Unit Chief Counsel

16 Attorneys for the State of Arizona

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19 #PXLAY0YT0D00PLv1