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

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

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

15 Plaintiff,

16 v.

17 LANDMARK HOME WARRANTY, LLC,

18 Defendant.  
19

Case No. CV2021-001326

**CONSENT AGREEMENT**

(Assigned to the Hon. Sally S. Duncan)

20 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), filed a  
 21 Complaint against Landmark Home Warranty, LLC (“Defendant”) alleging violations of the  
 22 Arizona Consumer Fraud Act, A.R.S. §§ 44-1521–1534 (the “CFA”). Defendant has waived  
 23 service of the Complaint, has been advised of the right to a trial in this matter, and has waived the  
 24 same. Defendant admits the jurisdiction of this Court over the subject matter and parties,  
 25 stipulates that this Court may enter the following stipulated Consent Agreement and the  
 26 accompanying Judgment, and acknowledges that this Court will retain jurisdiction for the purpose  
 27 of enforcing this Consent Agreement.

28 . . .

1 The parties enter into this Consent Agreement without trial or adjudication of any issue of  
2 fact or law and without admission or finding of any violations of any law. Defendant neither  
3 admits nor denies any of the allegations in the State’s Complaint or in any of the provisions of this  
4 Consent Agreement. Defendant, not out of any admission of guilt, wrongdoing or violation, has  
5 consented and stipulated to entry of this Consent Agreement to compromise an inquiry by the  
6 Arizona Attorney General’s Office. This Consent Agreement is entered into solely for the  
7 purposes of settlement and to avoid incurring costs associated with litigation with the State.

8 **PARTIES**

9 1. The State is authorized to bring this action under the CFA.

10 2. Defendant is a limited liability company, incorporated in Utah, with its principal  
11 place of business in Arizona.

12 3. This Court has jurisdiction over the Complaint and the parties as is necessary for the  
13 Court to enter this Consent Agreement and any orders hereafter appropriate pursuant to A.R.S.  
14 § 44-1528 and this Consent Agreement.

15 4. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

16 **FACTUAL ALLEGATIONS**

17 5. As explained in the Complaint filed in this action, the State has alleged that  
18 Defendant violated the CFA, regarding emergency HVAC repairs. Defendant denies the State’s  
19 allegations.

20 6. The parties have engaged in good faith negotiations to achieve a settlement of the  
21 claims brought by the State and memorialized in this Consent Agreement. The State, through its  
22 counsel, has concluded, after discovery and investigation of the facts and after carefully  
23 considering the circumstances of the litigation, including the claims and causes of action asserted  
24 and the possible legal and factual defenses thereto, that it is in the best interests of the State to  
25 enter into this Consent Agreement. Likewise, Defendant has concluded that it is in Defendant’s  
26 best interests to enter into this Consent Agreement for the purposes of settlement and to avoid  
27 incurring costs associated with litigation with the State.

28 . . .

1 **NO ADMISSIONS**

2 7. Nothing contained in this Consent Agreement, nor any actions taken to negotiate or  
3 in furtherance of this Consent Agreement, nor any information, documentation, and/or data  
4 transmitted by Defendant in connection thereto, nor any communications relating thereto shall  
5 constitute or be deemed or construed as an admission of liability, wrongdoing or violation of law,  
6 or of any fact alleged whatsoever in connection with any matters in any pending or potential  
7 litigation, including litigation arising out of or relating in any way to the subject matter of this  
8 Consent Agreement and/or the Complaint, whether or not alleged therein. In particular,  
9 Defendant has always denied and has never admitted to the State's allegations, and further denies  
10 that it has engaged in any unlawful conduct. Defendant has entered into this Consent Agreement  
11 solely for the purpose of resolving the State's lawsuit, and this Consent Agreement should not be  
12 construed to be an admission by Defendant of any wrongdoing, liability, and/or violation of law.  
13 This settlement, including this Consent Agreement, any documents being executed or delivered  
14 pursuant to this settlement or this Consent Agreement, or any communications relating thereto is  
15 not intended to (i) be admissible in evidence before any court or other tribunal to establish liability  
16 or damages in relation to any claim relating to litigation arising out of or relating in any way to the  
17 subject matter of the litigation, and (ii) constitute or be used as precedent or evidence in any future  
18 matter involving or against Defendant.

19 **ORDER**

20 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND AGREED:

21 8. The injunctive relief set forth in this Consent Agreement is binding upon any of the  
22 following that receive actual notice of this Consent Agreement through personal service or  
23 otherwise: (a) Defendant; and (b) its officers, agents, servants, employees, and attorneys.

24 9. Pursuant to A.R.S. § 44-1528, Defendant is enjoined, restrained and prohibited from  
25 including emergency services clauses in new contracts or contract renewals for the duration of this  
26 Consent Agreement, which shall be five years after the date of the Court's approval of this  
27 Consent Agreement, or earlier if the parties agree and/or if a change in the governing law requires  
28 Defendant to modify its practices (in which case the parties shall confer). Inasmuch as Defendant

1 has already removed emergency service terms from its contracts with Arizona consumers,  
2 Defendant is enjoined, restrained and prohibited from reincorporating those terms into its  
3 contracts for the duration of this Consent Agreement.

4 10. Defendant is further enjoined, restrained and prohibited from advertising emergency  
5 services in Arizona for the duration of this Consent Agreement. Defendant may continue to  
6 provide expedited services in cases of emergency in its discretion and as defined by Defendant,  
7 but Defendant does not and cannot guarantee a timeframe for completing an emergency repair or  
8 replacement.

9 **PAYMENT**

10 11. Except for the Claims Administration Expenses described in Paragraphs 12 and 13,  
11 Defendant has agreed to pay a maximum of \$1,750,000 to the State to resolve this dispute, and  
12 this amount will be the maximum, full, total, and sole amount that Defendant is obligated to pay  
13 in consideration of this Consent Agreement (“Maximum Payment Amount”). The State has  
14 accepted the amount in full and complete satisfaction of Defendant’s alleged liabilities under all  
15 causes of action and remedies that can arise from the facts related to this Consent Agreement. The  
16 parties agree that this amount is the full scope of the financial consideration provided in this  
17 Consent Agreement, and that this payment will fully satisfy the payment obligations of Defendant  
18 with respect to this Consent Agreement. This amount includes all attorneys’ fees and  
19 investigative costs, and the parties agree that neither Defendant nor its affiliates, under any  
20 circumstances, will be responsible for, or liable for, payment of any amount greater than  
21 \$1,750,000 with respect to this Consent Agreement, except for the Claims Administration  
22 Expenses described in Paragraphs 12 and 13.

23 12. Defendant will pay to the Claims Administrator the Maximum Payment Amount  
24 within thirty (30) business days after the entry of this Consent Agreement, to be held in escrow by  
25 the Claims Administrator. The Attorney General will have the discretion to select the Claims  
26 Administrator, with the consent of Defendant, who will be responsible for distributing the  
27 Maximum Payment Amount. The parties will evenly split the expenses of the Claims  
28 Administrator, which shall be capped at \$115,000 (the “Claims Administration Expenses”).

1 Defendant will have the opportunity to audit the Claims Administrator’s data security measures to  
2 ensure adequate protections. The Claims Administrator will provide the necessary assurances that  
3 it will maintain the confidentiality and security of all personally identifying information provided  
4 under this Consent Agreement.

5 13. The Maximum Payment Amount will be distributed as follows:

6 a. Consumer restitution in the amount of up to \$1,000,000, to be distributed to all  
7 unique Arizona holders of Landmark contracts that were in effect from January  
8 1, 2017 through July 8, 2020 (“Eligible Customers”) as follows:

9 i. a single cash payment of \$25 to each Eligible Customer, for a  
10 maximum of \$675,000; and

11 ii. an additional cash payment of up to \$1,000 for Eligible Customers  
12 who submit a separate claim to the Claims Administrator for alleged  
13 and reasonable out-of-pocket, unreimbursed expenses incurred by  
14 those Eligible Customers who submitted an HVAC claim to  
15 Defendant during a heat emergency, with a cap of \$1,000 per claimant  
16 (“Eligible Out-of-Pocket Expenses”), subject to pro rata reduction if  
17 the total claims exceed \$325,000. Eligible Customers seeking  
18 reimbursement for Eligible Out-of-Pocket Expenses shall submit  
19 documentary proof of those unreimbursed expenses.

20 b. The remaining monies from the Maximum Payment Amount not distributed to  
21 Eligible Customers pursuant to paragraphs 13(a)(i)–(ii) above shall be treated as  
22 payments to the State and shall be transferred by the Claims Administrator  
23 (minus the State’s half of the Claims Administration Expenses) to the State to be  
24 deposited into the Consumer Protection-Consumer Fraud Revolving Fund  
25 pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein.

26 c. Under no circumstances shall Defendant be obligated to pay more than the  
27 Maximum Payment Amount and its half of the Claims Administration Expenses.  
28 In other words, Defendant’s maximum financial commitment pursuant to this

1 Consent Agreement shall be \$1,807,500.00.

- 2 d. The State shall have sole discretion to distribute the Maximum Payment  
3 Amount, consistent with the provisions of this Consent Agreement. Subject to  
4 the foregoing provisions, the State will have sole discretion as to how and when  
5 restitution funds are distributed to Eligible Customers and the eligibility of any  
6 consumer to receive additional restitution from the claims process. However, at  
7 minimum, for a consumer to be eligible for additional restitution, the consumer  
8 must have filed an air conditioning claim with Defendant and not had a  
9 technician arrive within 24 hours. The parties will attempt to agree on the  
10 language to accompany the restitution payments to Eligible Customers described  
11 in paragraphs 13(a)(i) and (ii) and any other communications with Eligible  
12 Customers. However, if the parties cannot agree on the language, the State will  
13 have sole discretion on the final version of all language in communications to  
14 Eligible Customers. Defendant will provide the Claims Administrator with the  
15 list of Eligible Customers, which the Claims Administrator will keep  
16 confidential and secure and use solely for the purpose of providing notice and  
17 administering claims pursuant to this Consent Agreement.
- 18 e. In administering the payments, the Claims Administrator will utilize appropriate,  
19 industry-leading anti-fraud measures, including identity validation, for each  
20 Eligible Customer to ensure that correct payments are made only to the Eligible  
21 Customers.

22 **RELEASE**

23 14. Upon Defendant's payment of the Maximum Payment Amount, the State agrees to  
24 release, waive, discharge, relinquish, settle, and acquit Defendant and its affiliates from liability  
25 for violations of the CFA prior to the date of the entry of this Consent Agreement arising out of  
26 Defendant's practices alleged in this Consent Agreement and the State's Complaint ("Released  
27 Claims"). The State releases and discharges Defendant and its affiliates from all potential liability  
28 for violations of the CFA that the State has or might have asserted or otherwise are based on the

1 Released Claims, including all violations that the State had asserted or might have timely asserted  
2 under the maximum statute of limitations period permitted by law and the maximum tolling  
3 period permitted by law. The State releases Defendant, its affiliates and any of Defendant's or its  
4 affiliates' former, present or future owners, shareholders, directors, officers, employees, attorneys,  
5 parent companies, subsidiaries, predecessors, successors, dealers, agents, assigns and  
6 representatives (collectively, the "Released Parties"), from all claims arising from a violation of  
7 the CFA as related to this Consent Agreement and/or the State's Complaint, including without  
8 limitation: (i) restitution or other monetary payments or injunctive relief to consumers;  
9 (ii) penalties, fines, restitution or other monetary payments or injunctive relief to the State; and  
10 (iii) all other remedies available under Arizona law and the remedies provided in the CFA. The  
11 State covenants and agrees that it will not hereafter seek to establish liability under the CFA  
12 against, or seek any recovery from, any Released Party based, in whole or in part, on any of the  
13 Released Claims. The State, for good and valuable consideration received, expressly waives and  
14 releases all Released Claims, without regard to the subsequent discovery or existence of different  
15 or additional facts relevant to the Released Claims.

16 15. Upon Defendant's payment of the Maximum Payment Amount, the State hereby  
17 releases, acquits, and discharges the Released Parties of and from any liability whatsoever under  
18 the CFA in respect to the Released Claims and agrees and covenants not to sue, or join in or  
19 cooperate in any suit, against the Released Parties, in any capacity, related to the Released Claims.

20 16. The Maximum Payment Amount paid by Defendant is in consideration of the  
21 covenant not to sue, as well as the release of the Released Parties from the Released Claims.

22 17. The parties acknowledge that they may hereafter discover information or facts  
23 different from, in addition to, and/or contrary to those which they now know to be or believe to be  
24 true with respect to any alleged damages, injuries, losses, or conduct related to the Released  
25 Parties and the Released Claims, which arise out of the subject matter of the litigation, whether or  
26 not alleged therein. This specifically includes, but is not limited to, any and all information, facts,  
27 events or legal rulings arising out of the subject matter of the initiated litigation, whether or not  
28 alleged herein, information or facts directly or indirectly derived from information the Released

1 Parties or any other source may later produce or disclose, and any information a party would have  
2 obtained as a result of any and all past and pending discovery requests, motions, and disputes, as  
3 well as information or facts derived from or obtained by any other means or from any other source  
4 whatsoever, including, but not limited to, any rulings from state or federal court. The parties  
5 agree that this Consent Agreement, including payment of the Maximum Payment Amount by the  
6 Released Parties, the covenant not to sue, and the release from any and all claims set forth herein,  
7 will be and remain effective in all respects, notwithstanding any such different, additional,  
8 contrary or non-disclosed information or facts if later learned or obtained by the State.

9 18. This Consent Agreement will be the exclusive source of remedy for any and all  
10 Released Claims. The Released Parties and their affiliates shall not be subject to liability or  
11 expense of any kind regarding the Released Claims except as provided in this Consent Agreement.

#### 12 **MATERIAL BREACH**

13 19. In the event of a material breach of this Consent Agreement, in addition to all other  
14 remedies available under Arizona law and the penalties specifically provided under A.R.S. § 44-  
15 1532, the State may, in its sole discretion, reopen proceedings and continue with this case as  
16 though this Consent Agreement had not been entered.

17 20. Before initiating any proceeding to enforce this Consent Agreement or reopen  
18 proceedings, the Attorney General will provide at least thirty (30) days written notice to  
19 Defendant to provide it a reasonable opportunity to cure any alleged breach.

#### 20 **GENERAL PROVISIONS**

21 21. This Consent Agreement is not intended to be used as an admission or evidence of  
22 any alleged wrongdoing or liability by Defendant in any other civil, criminal, or administrative  
23 court, arbitration, administrative agency, or other tribunal anywhere in the world.

24 22. Nothing in this Consent Agreement shall be construed as an approval by the  
25 Attorney General, the Court, the State of Arizona, or any agency thereof of Defendant's past,  
26 present, or future conduct. Defendant must not represent or imply that the Attorney General, the  
27 Court, the State of Arizona, or any agency thereof has approved or approves of any of Defendant's  
28 actions or any of Defendant's past, present or future business practices.



1           23.    The State agrees not to share or disclose with any third party any documents, data,  
2 or other information that Defendant has provided to the State during the course of the State's  
3 investigation without advance written notice to Defendant and providing Defendant a reasonable  
4 opportunity (in no event, fewer than 10 business days) to object and seek an appropriate court  
5 order, including an order prohibiting or limiting such disclosure or requiring the recipient(s) of  
6 these materials to take steps to maintain the confidentiality thereof. This specific agreement does  
7 not extend to disclosures to law enforcement offices. The State agrees and represents that it is  
8 aware of no current, pending, or anticipated criminal investigations against Defendant by any law  
9 enforcement office.

10           24.    This Consent Agreement represents the entire agreement between the parties, and  
11 there are no representations, agreements, arrangements, or understandings, oral or written,  
12 between the parties relating to the subject matter of this Consent Agreement which are not fully  
13 expressed herein or attached hereto.

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

16           26.    Jurisdiction is retained by this Court for the purpose of entertaining an application  
17 by the State, Defendant, or any of the Released Parties for the enforcement of this Consent  
18 Agreement. Nothing in this Consent Agreement shall be construed to limit the State's remedies in  
19 an action to enforce this Consent Agreement or address violations of the terms of this Consent  
20 Agreement.

21           27.    This Consent Agreement is the result of a compromise and settlement agreement  
22 between the parties. Only the State, Defendant, and the Released Parties may seek enforcement of  
23 this Consent Agreement. Nothing herein is intended to create a private right of action by other  
24 parties.

25 . . .

26           28.    The effective date of this Consent Agreement is the date that it is entered by the  
27 Court.

28           29.    This Consent Agreement may be executed by the parties in counterparts and be

1 delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original  
2 counterpart hereof, all of which together will constitute one and the same document.

3 30. This Consent Agreement resolves all outstanding claims in this action on all  
4 remedies provided under the CFA against Defendant and its affiliates. As no further matters  
5 remain pending, this is a final judgment entered pursuant to Ariz. R. Civ. P. 54(c).

6 ELECTRONICALLY SIGNED.

7  
8  
9 \_\_\_\_\_  
The Honorable Timothy Thomason for the Honorable Sally S. Duncan

1 **CONSENT TO JUDGMENT**

2  
3 1. Defendant acknowledges that it has waived service of the Summons and Complaint,  
4 has read the Consent Agreement and Order, and is aware of its right to a trial in this matter and  
5 has waived the same.

6 2. Defendant admits the jurisdiction of this Court, and consent to the entry of the  
7 foregoing Consent Agreement and Order.

8 3. Defendant states that no promise of any kind or nature whatsoever was made to  
9 induce it to enter into this Consent Agreement and declare that it has entered into this Consent  
10 Agreement voluntarily.

11 4. This Consent Agreement is entered as a result of a compromise and a settlement  
12 agreement between the parties. The State, Defendant, or any of the Released Parties may seek  
13 enforcement of this Consent Agreement.

14 5. Defendant acknowledges that its acceptance of this Consent Agreement is only for  
15 the purpose of resolving the ongoing inquiry and lawsuit filed by the State, and further  
16 acknowledges that this Consent Agreement does not preclude any agency or officer of this State  
17 or subdivision thereof from instituting other proceedings, if appropriate.

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

21 7. Defendant represents and warrants that the person signing below on its behalf is  
22 duly appointed and authorized to do so.

23  
24 **Landmark Home Warranty, LLC**

25 

26  
27 \_\_\_\_\_  
28 By: Jeffrey A. Fiarman  
Senior Vice President, General Counsel & Secretary

\_\_\_\_\_  
March 3, 2021  
Date

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

2 **MARK BRNOVICH**  
3 **Attorney General**

**Gibson, Dunn & Crutcher LLP**

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6  
7 



8 By: Mark James Ciafullo  
9 Assistant Attorney General  
10 Attorney for the State of Arizona

Christopher Chorba  
Gibson, Dunn & Crutcher LLP  
Attorney for Landmark Home Warranty

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# eSignature Page 1 of 1

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Original Filing ID: 12611887

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**Granted with Modifications**



/S/ Timothy Thomason Date: 3/8/2021  
Judicial Officer of Superior Court

**ENDORSEMENT PAGE**

CASE NUMBER: CV2021-001326

SIGNATURE DATE: 3/8/2021

E-FILING ID #: 12625245

FILED DATE: 3/10/2021 8:00:00 AM

MARK JAMES CIAFULLO

LANDMARK HOME WARRANTY L L C  
P O BOX 570 RIVERTON UT 84065