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*Attorneys for State of Arizona*

**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,

vs.

HAPPY HANDS, LLC; STANDING TREE,  
LLC; ACTION POINT, LLC; and ROBERT  
FOSTER AND LISA SMITH, husband and  
wife,

Defendants.

Case No.: CV2015-012344

**STIPULATED CONSENT JUDGMENT**

(Assigned to the Hon. Lori Bustamante)

The State of Arizona (“State”), having filed a complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, and Defendants Happy Hands, LLC, Standing Tree, LLC, Action Point, LLC, Robert Foster, and Lisa Smith (collectively “Defendants”) having been fully advised of their right to a trial in this matter and having waived their right to the same, admit that this Court has jurisdiction over the subject matter and the parties for the purposes of entry of this Consent Judgment and acknowledge that this Court retains jurisdiction for the purpose of enforcing this Consent Judgment.

1 Defendants have agreed to a voluntary compromise of certain disputed claims, and the  
2 State and Defendants have negotiated the following terms to settle the dispute. Defendants  
3 stipulate that the Court may enter the following Findings of Fact, Conclusions of Law, and  
4 Judgment.

5 **PARTIES**

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

9 2. Defendant Happy Hands, LLC (“Happy Hands”) is an Arizona Limited Liability  
10 Company that conducted business at 3118 W Thomas Rd #701 in Phoenix, Arizona.  
11 Defendant Happy Hands engaged in the telemarketing and sale of household goods from  
12 approximately September, 2010 to June 2014.

13 3. Defendant Standing Tree, LLC (“Standing Tree”) is an Arizona Limited  
14 Liability Company conducting business at 3116 W Thomas Rd # 608 in Phoenix, Arizona.  
15 Defendant Standing Tree engaged in the telemarketing and sale of household goods from  
16 approximately June, 2014 to May, 2015.

17 4. Defendant Action Point, LLC (“Action Point”) is an Arizona Limited Liability  
18 Company conducting business at 3116 W Thomas Rd # 608 in Phoenix, Arizona. Defendant  
19 Action Point sporadically engaged in the telemarketing and sale of household goods from  
20 approximately April, 2012 to May, 2015.

21 5. Defendant Robert Foster (“Foster”) is the sole owner and manager of Defendants  
22 Happy Hands, Standing Tree, and Action Point. At all times material to the State’s Complaint,  
23 Defendant Foster ratified, controlled, had the authority to control, or participated in the acts  
24 and practices of Defendants Happy Hands, Standing Tree, and Action Point. As such,  
25 Defendant Foster is responsible for the deceptive acts, practices, omissions, and  
26 misrepresentations of Defendants Happy Hands, Standing Tree, and Action Point.



1 comply with the enumerated requirements for sellers under the Arizona Telephone Solicitation  
2 Statute (“TSS”), A.R.S. § 44-1271, *et.seq.*

3 4. Defendants made outbound telephonic solicitations from Arizona without first  
4 filing a verified registration statement with the Arizona Secretary of State, in violation of  
5 A.R.S. § 44-1272.

6 5. Defendants made outbound telephonic solicitations from Arizona without first  
7 obtaining a bond in the amount of one hundred thousand dollars (\$100,000.00) and filing a  
8 copy with the Arizona State Treasurer, in violation of A.R.S. § 44-1274.

9 6. Defendants failed to register with, or attain access to, the National Do Not Call  
10 Registry (“DNC Registry”) of telephone numbers maintained by the Federal Trade Commission  
11 pursuant to 16 C.F.R § 310.4(b)(1)(iii)(B).

12 7. While telemarketing, acting directly or through one or more intermediaries,  
13 Defendants initiated numerous telephone solicitations to telephone numbers belonging to  
14 consumers that were registered on the DNC Registry and had been on the Registry for at least  
15 30 days at the time Defendants initiated the call.

16 8. Defendants failed to identify and remove all telephone numbers on the DNC  
17 Registry from their lead lists and/or automatic dialing system.

18 9. Defendants’ telephone solicitors failed to provide consumers with their toll free  
19 telephone number or address upon request.

20 10. Defendants continued to initiate telephone solicitations to telephone numbers  
21 belonging to Arizona consumers that had previously asked Defendants not to call their  
22 telephone numbers and without being excepted from such solicitations pursuant to A.R.S § 44-  
23 1278(B)(2) (a-d).

24 11. Defendants’ telephone solicitors failed to provide the Notice of Cancellation  
25 mandated by A.R.S. § 44-1276(D). After receiving merchandise from Defendants, consumers  
26 attempted to exercise their right to cancel the orders under A.R.S. § 44-1276(C), but

1 Defendants refused to honor the cancellation requests in violation of the statute.

2 12. Defendants used a cloud-based automatic dialing system that initiated hundreds  
3 of telemarketing calls per day.

4 13. At any given time, Defendants employed approximately 4-8 telephone solicitors  
5 to conduct sales presentations when the automatic dialing system detected a live person  
6 having answered their telephone.

7 14. Defendants marketed products such as light bulbs, trash bags, plastic food  
8 containers, multi-purpose cleaner, kitchen shears, kitchen towels, bed linens, candles and air  
9 fresheners.

10 15. Defendants kept an inventory of the products held for sale. Defendants  
11 purchased the inventory from retailers such as Costco and WalMart.

12 16. Defendants marked up the prices of the products they sold hundreds of times  
13 more than the cost at which they purchased them. For example, Defendants sold thirty count  
14 standard-sized fifteen-gallon garbage bags for nearly \$90, 100 quart-sized Ziploc bags for  
15 nearly \$90, and a fruit cake for nearly \$90 after shipping and handling. Each of these items  
16 cost around \$5 at most retail outlets. The prices that Defendants charged consumers for these  
17 items constituted an approximate 1800% markup.

18 17. Defendants sold products to consumers by appealing to the consumers' sense of  
19 charity. Defendants' telephone solicitors stated that the markup paid by the consumers would  
20 be used to "help" the callers, who claimed to be personally disadvantaged.

21 18. Defendants telephone solicitors misrepresented, directly or by implication, that  
22 they were Veterans of the U.S Armed Services, handicapped or disabled, and/or economically  
23 disadvantaged persons that would receive "help" through the consumers' purchase of  
24 Defendants' overpriced products.

1           19. Defendants often misled, directly or by implication, consumers to believe that by  
2 purchasing products from Defendants, the consumers were donating money to a charitable  
3 organization.

4           20. Defendants Happy Hands, Standing Tree, and Action Point are not charitable  
5 organizations as defined by A.R.S § 44-6551 or U.S.C § 501(c)(3).

6           21. Defendants' knowingly misrepresented that their solicitations were being  
7 conducted on behalf of a charitable organization, in violation of A.R.S § 44-6561.

8           22. Defendants did not train their telephone solicitors to make misrepresentations as  
9 to the charitable application of the consumers' purchases. However, Defendants were aware  
10 that the telephone solicitors frequently made such misrepresentations and did not place  
11 policies or procedures in effect to prevent the misrepresentations from occurring.

12           23. The consumers that purchased Defendants' products would likely never have  
13 purchased Defendants' products at such exorbitant prices had they known the surplus was not  
14 being used for charitable purposes.

15           24. Defendants were unrelenting in their efforts to persuade consumers to purchase  
16 products. When some consumers declined to place an order, Defendants continued to  
17 frequently call back, badgering the consumers until they changed their minds and made a  
18 purchase. In some instances, Defendants made up to ten outbound telemarketing calls per day  
19 to individual consumers. Such patently harassing and annoying conduct was employed to  
20 wear consumers down to the point of agreeing to purchase a product just to make the calls  
21 stop.

22           25. Usually, after a consumer agreed to place an order, Defendants would  
23 continually initiate weekly or monthly calls in an attempt to persuade that consumer to  
24 purchase additional products. Despite admonitions that such calls were not welcome,  
25 Defendants continued to make them.

26

1           26. Often, consumers attempted to return unused or unwanted products to  
2 Defendants when they discovered the true nature of the products. Defendants refused to  
3 accept returns.

4           27. Defendants often refused to take “no” for an answer. Defendants often mailed  
5 products to consumers who did not order them and included invoices stating or implying that  
6 consumers authorized the purchase and shipment of the products. Usually, the consumers had  
7 unequivocally refused to purchase any products.

8           28. In order to induce consumers to pay the invoices for unordered and unwanted  
9 products, Defendants misrepresented that the consumers were obligated to pay for such  
10 unordered, unauthorized, or unwanted products because they failed to refuse delivery.  
11 Defendants billed consumers for such products and commenced collection efforts despite  
12 having no legal right to do so.

13           29. Defendants engaged in unfair debt collection practices in violation of 15 U.S.C §  
14 1692. Defendants threatened to send consumers’ accounts to collections agencies and report  
15 delinquent balances to credit bureaus, despite some consumers never having ordered  
16 products.

17           30. As a result of Defendants’ aggressive telemarketing and collections practices,  
18 consumers often surrendered to Defendants’ demands for payment and paid the invoices.

19           31. Defendants targeted senior citizens, usually those with memory problems,  
20 dementia, Alzheimers, residual stroke damage, or other mental infirmities, due to such  
21 consumers being less aware that they agreed to purchase products or more likely to believe  
22 they had agreed to purchase products from Defendants when they had not.

23           32. Defendants’ telephone solicitors often sold gift certificates to the consumers they  
24 viewed as most vulnerable. The gift certificates held a face value of \$100 to \$5,000. If a  
25 consumer did not use a gift certificate within one calendar year, it expired.

26



1 connection with the advertisement, sale, or brokerage of any merchandise are permanently  
2 enjoined from:

3           A.     Engaging in any and all deceptive acts or practices, fraud, false pretense,  
4 false promises, misrepresentations, and/or concealment, suppression or omission of material  
5 fact in violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1522, *et seq.*, as it is  
6 currently written, or as it is amended in the future;

7           B.     Engaging in any and all conduct in violation of the Arizona Telephone  
8 Solicitations statute, A.R.S. § 44-1271, *et seq.*, as it is written and as it may be amended in the  
9 future.

10           C.     Initiating an outbound telephone solicitation call to any person on the  
11 Federal Trade Commission's National Do Not Call registry unless:

12                   i.     Defendants have obtained express agreement, in writing, of such  
13 person to place such calls to him or her, or

14                   ii.    Defendants have an established business relationship with such  
15 person and such person has not previously stated that he or she does not wish to receive such  
16 calls;

17           D.     Initiating any outbound telephone solicitation call to a person or when  
18 that party has previously stated that he or she does not wish to receive such telephone  
19 solicitations from, or on behalf of, Defendants, even if such person is not on the National Do  
20 Not Call Registry;

21           E.     Failing to obtain independent verification that each telephone number  
22 called is not on the National Do Not Call Registry before initiating each telephone solicitation;

23           F.     Failing to disclose truthfully, promptly, and in a clear and conspicuous  
24 manner the Defendants' true identity and purpose of each outbound telephone call;

1           G.     Initiating any outbound telephone solicitation call in which Defendants  
2 fail to transmit the Defendants' name and customer service telephone number to any Caller  
3 Identification Service in use by the recipient of the call;

4           H.     Failing to orally advise consumers of the Notice of Cancellation required  
5 by A.R.S § 44-1276;

6           I.     Failing to honor cancellation requests submitted by consumers within  
7 three business days pursuant to A.R.S § 44-1276;

8           J.     Making any false or misleading statements, orally or in writing, to induce  
9 consumers to pay for Defendants' products, such as:

10           i.     Stating that a consumer's purchase will significantly help  
11 handicapped, disabled, or economically disadvantaged persons;

12           ii.    Stating that persons employed by or working on behalf of  
13 Defendants are handicapped, disabled, or economically disadvantaged;

14           iii.   Stating that persons employed by or working on behalf of  
15 Defendants are veterans of the United States Armed Services; or

16           iv.   Stating that Defendants operate a charitable organization, as  
17 defined by A.R.S § 44-6551;

18           K.     Failing to disclose to consumers that Defendants operate a for-profit  
19 business venture;

20           L.     Unfairly initiating telemarketing calls to senior citizens or other  
21 vulnerable individuals that may have a diminished capacity to fully comprehend a sales  
22 transaction;

23           M.     Mailing products and/or invoices to consumers that did not expressly  
24 order a product from Defendants;

25           N.     Misrepresenting to consumers that they had agreed to purchase a product  
26 from Defendants when they had not;

1 O. Selling consumers' personal information to any other entity for any use  
2 whatsoever;

3 P. Selling gift certificates without adequately disclosing the terms and  
4 conditions for the use of such gift certificates; and

5 Q. Engaging in debt collection practices that violate the Fair Debt Collection  
6 Practices Act, 15 U.S.C. § 1692.

7 2. Defendants shall not sell any existing customer or lead lists to any third party  
8 and shall relinquish all existing originals and copies of such customer and lead lists to the  
9 Attorney General within 30 days of entry of this Consent Judgment.

10 3. Defendant Robert Foster shall not own, operate, consult for, manage, or  
11 supervise, in any capacity, an outbound telemarketing call center for a period of two (2) years  
12 after the entry of this Consent Judgment.

13 4. Defendants shall immediately cease all outbound telemarketing sales calls  
14 related to Defendants Happy Hands, Standing Tree, and Action Point, and shall refrain from  
15 engaging in any collection activities against existing accounts receivable.

16 5. Defendants shall return all checks received the entry of this Consent Judgment  
17 for invoice payment to the sender.

18 6. Within ten (10) days of entry of this Consent Judgment, Defendant Robert Foster  
19 shall permanently dissolve Defendants Happy Hands, Standing Tree, and Action Point.

20 7. Defendants shall, jointly and severally, pay to the Arizona Attorney General  
21 Thirty Thousand Eight Hundred dollars (\$30,800) in restitution, with interest thereon accrued  
22 at a rate of five percent (5%) per annum from the date of entry until paid. Defendants shall,  
23 jointly and severally, pay additional restitution of an undetermined amount to refund eligible  
24 consumers who have not yet filed a complaint with the State. Such additional restitution shall  
25 not exceed seventy five thousand dollars (\$75,000) in aggregate. For purposes of this Consent  
26 Judgment, "eligible consumers" shall be defined as all consumers who file a complaint with

1 the Arizona Attorney General's Office before March 1, 2016, (i) whose complaint arose as a  
2 result of purchasing a product from Defendants, (ii) whose allegations arise from Defendants'  
3 illegal conduct as outlined in this Consent Judgment, (iii) who were not previously provided a  
4 refund by Defendants, and (iv) whose claims were not otherwise resolved. The payment  
5 ordered herein shall be deposited by the Attorney General into the consumer restitution  
6 subaccount of the interest-bearing consumer restitution and remediation revolving fund  
7 pursuant to A.R.S. § 44-1531.02(B) and distributed to eligible consumers by the Attorney  
8 General's Office. In the event the amount ordered as restitution herein is not sufficient to fully  
9 restore eligible consumers the amounts they paid Defendants, the amount shall be distributed  
10 to them on a pro rata basis. In the event that any portion of the restitution ordered herein  
11 cannot be distributed to eligible consumers, or exceeds the amount of restitution, such portion  
12 shall be deposited by the Attorney General's Office into the Consumer Protection – Consumer  
13 Fraud Revolving Fund in accordance with A.R.S. § 44-1531.01 and used for the purposes  
14 specified therein.

15 8. Defendants may send eligible consumers, who are scheduled to receive  
16 restitution pursuant to paragraph 5 above, one (1) letter requesting the return of unused  
17 products and gift certificates still in the consumers' possession within 30 days of receipt of the  
18 letter. Defendants must include a prepaid mailing label with each letter. Defendants may not  
19 initiate telephone calls to such eligible consumers to demand return of unused products or gift  
20 certificates. Defendants may choose to dishonor eligible consumers' attempted use of gift  
21 certificates for which the eligible consumers received full restitution under this Consent  
22 Judgment.

23 9. Defendants shall, jointly and severally, pay to the Arizona Attorney General the  
24 amount of One Hundred Thousand dollars (\$120,000) in civil penalties, with interest thereon  
25 at ten percent (10%) per annum from the date of entry until paid, to be deposited into the  
26 Consumer Protection – Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and

1 used for the purposes set forth therein. Ninety Thousand dollars (\$90,000) of such civil  
2 penalties shall be suspended contingent upon Defendants' full compliance with all injunctive  
3 provisions in the Order. If this Court later determines that Defendants have violated any  
4 provision in this Order, Defendants shall pay the suspended civil penalty, in full, within ten  
5 (10) business days of entry of the Court's order, with interest thereon at five (5%) per annum  
6 from the date of entry of the Court's order until paid. In the event of such a determination,  
7 Defendants obligation to pay the suspended civil penalties shall be in addition to any other  
8 monetary or other sanctions which may be imposed for any such violations of this Consent  
9 Judgment.

10 10. Defendants shall, jointly and severally, pay to the Arizona Attorney General the  
11 amount of Twelve Thousand Four Hundred and Twenty Dollars (\$12,420) in attorneys' fees  
12 and investigative costs, with interest thereon accrued at a rate of five percent (5%) per annum  
13 from the date of entry until paid, to be deposited into the Consumer Protection – Consumer  
14 Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and used for the purposes set forth  
15 herein.

16 11. Defendants shall make monthly payments of no less than One Thousand Five  
17 Hundred (\$1,500) each until the entire balance of restitution, civil penalties, and fees and costs  
18 have been paid. The payments ordered herein shall be made payable to the Office of the  
19 Arizona Attorney General in monthly payments, beginning on December 1, 2015, with each  
20 subsequent payment due on the first day of each month thereafter until fully paid. The State  
21 shall use the initial monies paid by Defendants to pay claims for restitution to all eligible  
22 consumers. After the distribution of restitution, payments made by Defendants shall be  
23 applied to the civil penalty, attorneys' fees, costs, and interest in that order.

24 12. If Defendants fail to make a payment under paragraph 11 above within thirty  
25 (30) days of the date it is due, Defendants will be deemed in default of their payment  
26 obligation. In the event of a default of any payment obligation imposed by this Consent

1 Judgment, and in addition to any other relief or remedy elected or pursued by the State, all  
2 payments set forth herein shall be accelerated and shall become due and owing in their entirety  
3 as of the date of the default, including interest accrued at the rate of ten percent (10%) per  
4 annum from the date this Consent Judgment was entered.

5 13. The effective date of this Consent Judgment is the date it is entered by the Court.

6 14. This Court retains jurisdiction of this matter for the purpose of entertaining an  
7 application by the State for the enforcement of this Consent Judgment.

8 15. This Consent Judgment does not in any way limit the right of the Attorney  
9 General to: (a) bring a legal action against Defendants for any future acts which violate the  
10 Consumer Fraud Act, whether or not such acts are in violation of this Consent Judgment; or  
11 (b) enforce this Consent Judgment.

12 16. Defendants shall not represent or imply that the Attorney General, the State, or  
13 any agency thereof, has approved any of their past actions or has approved any of their present  
14 or future actions or practices, and Defendants are enjoined from representing anything to the  
15 contrary.

16 17. This Consent Judgment is entered as the result of a compromise and a settlement  
17 agreement between the parties. Only the parties to this action may seek enforcement of this  
18 Consent Judgment. Nothing herein is intended to create a private right of action by other  
19 parties.

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

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

26



1 **CONSENT TO JUDGMENT**

2 1. Defendants state that no promise of any kind or nature whatsoever was made to  
3 them to induce them to enter into this Consent Judgment and have entered into the Consent  
4 Judgment voluntarily.

5 2. Defendants, or their authorized representative, have fully read and understand  
6 this Consent Judgment, understand the legal consequences involved in signing it, assert that  
7 this is the entire agreement of the parties, and that there are no other representations or  
8 agreements not stated in writing herein, and no force, threats, or coercion of any kind have  
9 been used to obtain its signature.

10 3. Defendants understand that acceptance of this Consent Judgment is solely for the  
11 purpose of settling this litigation and does not preclude the Plaintiff, or any other agency or  
12 officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings  
13 as may be appropriate for any acts unrelated to this litigation or committed after the entry of  
14 this Consent Judgment.

15 4. Defendant Happy Hands, LLC represents and warrants that the person signing  
16 below on its behalf is duly appointed and authorized to do so.

17 5. Defendant Standing Tree, LLC represents and warrants that the person signing  
18 below on its behalf is duly appointed and authorized to do so.

19 6. Defendant Action Point, LLC represents and warrants that the person signing  
20 below on its behalf is duly appointed and authorized to do so.

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DATED this 21 day of October, 2015.

By: Robert Foster  
Happy Hands, LLC  
Robert Foster, Manager

By: Robert Foster  
Standing Tree, LLC  
Robert Foster, Manager

By: Robert Foster  
Action Point, LLC  
Robert Foster, Manager

By: Robert Foster  
Defendant Robert Foster

By: [Signature]  
Defendant Lisa Smith



**APPROVED AS TO FORM AND CONTENT:**

**Mark Brnovich**  
**Attorney General**

By: [Signature]  
Jordan Christensen  
Assistant Attorney General

By: [Signature]  
Kamille Dean, Esq  
Attorney for Defendants

State of Arizona  
County of Maricopa

On this 21 day of October, 2015 before me personally appeared Robert Foster Lisa (name of signer), whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed the above attached document.

(Seal)

[Signature]  
Notary Public

#4477799 V4

# eSignature Page 1 of 1

Filing ID: 6966608 Case Number: CV2015-012344  
Original Filing ID: 6961920

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Granted as Submitted



/S/ Lori Bustamante Date: 10/28/2015  
Judicial Officer of Superior Court

**ENDORSEMENT PAGE**

CASE NUMBER: CV2015-012344

SIGNATURE DATE: 10/28/2015

E-FILING ID #: 6966608

FILED DATE: 10/30/2015 8:00:00 AM

JORDAN JOHN CHRISTENSEN

ACTION POINT L L C  
NO ADDRESS ON RECORD

HAPPY HANDS L L C  
NO ADDRESS ON RECORD

LISA SMITH  
NO ADDRESS ON RECORD

ROBERT FOSTER  
NO ADDRESS ON RECORD

STANDING TREE L L C  
NO ADDRESS ON RECORD