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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

v.

EVANS GLASS, INC., a Washington
corporation,

Defendant.

NO. 09-2-33914-7-SEA

CONSENT DECREE

1. JUDGMENT SUMMARY

1.1. Judgment Creditor	State of Washington
1.2. Judgment Debtors	Evans Glass, Inc., a Washington corporation;
1.3. Costs & Attorneys Fees:	
a. Costs	\$ 60,000.00
b. Attorneys Fees	\$ 2,500.00
Civil Penalties	\$ 57,500.00
	\$ 25,000.00 (conditionally suspended)
1.4. Total Judgment	\$ 85,000.00 (\$25,000 conditionally suspended)
1.5. Post Judgment Interest Rate	12% per annum
1.6. Attorneys for Judgment Creditor:	Jack G. Zurlini, Jr. Assistant Attorney General
1.7. Attorneys for Judgment Debtor:	Claudia Kilbreath Short Cressman & Burgess PLLC

COPY

1 1.8. Plaintiff State of Washington, having commenced this action and filed its
2 Complaint simultaneously with this Consent Decree on September 16, 2009, pursuant to the
3 Unfair Business Practices - Consumer Protection Act, chapter 19.86 RCW (CPA); and

4 1.9. Defendant, having been served with the Summons and Complaint; and
5 Washington, appearing by and through its attorneys, Robert M. McKenna, Attorney General and
6 Jack G. Zurlini, Jr., Assistant Attorney General; and defendant Evans Glass, Inc., appearing by
7 and through its attorney Claudia Kilbreath, Short Cressman & Burgess PLLC; and

8 1.10. Washington and Defendant having agreed on a basis for the settlement of the
9 matters alleged in the Complaint and to the entry of this Consent Decree against Defendant
10 without the need for trial or adjudication of any issue of law or fact; and

11 1.11. Defendant, by entering into this Consent Decree, does not admit the allegations of
12 the Complaint and specifically denies the allegations; and

13 1.12. Washington and Defendant agree this Consent Decree does not constitute
14 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation
15 of any law alleged by Washington; and

16 1.13. Defendant recognizes and states this Consent Decree is entered into voluntarily
17 and that no promises, representations, or threats have been made by the Attorney General's Office
18 or any member, officer, agent, or representative thereof to induce it to enter into this Consent
19 Decree, except for the promises and representations provided herein; and

20 1.14. Defendant waives any right it may have to appeal from this Consent Decree; and

21 1.15. Defendant further agrees it will not oppose the entry of this Consent Decree on the
22 ground it fails to comply with Rule 65(d) of the Rules of Civil Procedure, and hereby waives any
23 objections based thereon; and

24 1.16. Defendant further agrees this Court shall retain jurisdiction of this action and
25 jurisdiction over Defendant for the purpose of implementing and enforcing the terms and
26 conditions of the Consent Decree and for all other purposes related to this matter; and

1
2 **3. INJUNCTION**

3 **3.1.** The injunctive provisions of this Consent Decree shall apply to Defendant and to
4 its owners, members, directors, successors, assigns, transferees, officers, agents, servants,
5 employees, and representatives, and all other persons or entities in active concert or participation
6 with Defendant.

7 **3.2.** Defendant shall immediately inform its owners, members, directors, successors,
8 assigns, transferees, officers, agents, servants, and management level employees of the terms and
9 conditions of this Consent Decree by providing Defendant's owners, members, directors,
10 successors, assigns, transferees, officers, agents, servants, and management level employees a
11 copy of this Consent Decree. The Consent Decree shall be distributed to each such person on or
12 before the third business day after this Consent Decree has been entered by the court. Defendant
13 shall inform lower level employees of the prohibitions imposed on Evans Glass by this Consent
14 Decree, as outlined in paragraph 3.4 herein.

15 **3.3.** The following definitions shall apply to this Consent Decree:

16 **a.** "Customer" shall refer to any person, whether a business or individual.

17 **b.** "Advertise" or "Advertisement" shall refer to any direct or indirect
18 representation or promotional device used to market or promote the sale of products or
19 services and/or to educate, inform or attract customers, including but not limited to
20 those that are telephonic, Internet-based, electronic, digital, oral, visual, aural, written,
21 video or printed.

22 **c.** "Competent and Reliable Scientific Evidence" shall mean tests,
23 analyses, research, studies, or other evidence based on the expertise of professionals in
24 the relevant area or governmental agencies that have been conducted and evaluated in
25 an objective manner by persons qualified to do so using procedures generally accepted
26 in the profession to yield accurate and reliable results or by governmental agencies.

1 3.4. Defendant and its owners, members, directors, successors, assigns, transferees,
2 officers, agents, servants, employees, representatives, and all other persons in active concert or
3 participation with Defendant are hereby enjoined, restrained, and prevented from directly or
4 indirectly engaging in the following acts or practices in the State of Washington and from
5 failing to comply with the provisions of the CPA, as amended, including but not limited to the
6 following:

7 a. misrepresenting in any manner, expressly or by implication, its products
8 and services to customers;

9 b. using high-pressure sales tactics against customers such as scare tactics,
10 creating a false sense of urgency, or prolonging direct communications with customers
11 (either telephonically or in person) after a customer has communicated to Defendant he
12 wishes to end the communication;

13 c. misrepresenting to customers in any manner, expressly or by
14 implication, that Defendant's employees are not employed by it, or are employees of
15 another company;

16 d. misrepresenting in any manner, expressly or by implication, the purpose
17 of any appointment Defendant makes or solicits customers to make with it or another
18 person;

19 e. misrepresenting in any manner, expressly or by implication, any rebate,
20 discount, guarantee or price offered to customers;

21 f. using ruses to gain entry into homes or to otherwise solicit customers;

22 g. using fraudulent endorsements or testimonials or otherwise
23 misrepresenting in any manner, expressly or by implication, any endorsement or
24 testimonial to advertise its products and services;

25 h. engaging in false reference pricing of any type;
26

1 i. unless at the time the representation is made Defendant possesses and
2 relies upon Competent and Reliable Scientific Evidence that substantiates the
3 representation: (i) representing, in any manner, expressly or by implication, that any
4 condition in a home poses a health risk to homeowners or that its products or services
5 will abate any purported health risk, provide customers with any specific health benefit;
6 or (ii) representing, in any manner, expressly or by implication, that customers will
7 realize specific energy cost savings if they purchase Defendant's products and services;

8 j. failing to clearly and conspicuously disclose material limitations of any
9 offer, guarantee, cost or price of a product or service;

10 k. using fraudulent documents to advertise its products and services;

11 l. failing to perform pursuant to any agreement it entered to resolve a
12 customer complaint;

13 m. failing to timely provide notice of cancellation rights or failing to timely
14 provide refunds as required by 16 C.F.R. § 429.1(f) and (g), as amended;

15 n. engaging in conduct the natural consequences of which is to harass,
16 intimidate or torment any person, including but not limited to making repeated
17 telephone calls, sending multiple emails, repeatedly canvassing homes, or otherwise
18 repeatedly soliciting customers who have communicated they are not interested in
19 purchasing Defendant's products or services;

20 o. misrepresenting in any manner, expressly or by implication, the persons
21 who manufacture its products;

22 p. misrepresenting in any manner, expressly or by implication, the persons
23 who install, repair or service its products;

24 q. making any other misrepresentations or omissions in any manner,
25 expressly or by implication, in advertising its products or services;
26

1 r. engaging in any other unfair acts and practices in trade or commerce,
2 and/or unfair methods of competition.

3 3.5. Defendant shall in good faith review and resolve customer complaints or
4 inquiries it receives from customers or from another person on behalf of a customer, such as
5 the Better Business Bureau or the Washington State Attorney General's Office, within 90 days
6 of Defendant first receiving the complaint or inquiry. In addition, Defendant shall for the five
7 years following entry of this Consent Decree keep records of each customer complaint or
8 inquiry it receives that at a minimum shall include the identity of the customer along with his
9 most current address, telephone number and email address if available; a detailed description
10 of the complaint or inquiry and of its resolution; and an explanation by Defendant of why it
11 chose the particular resolution of each complaint or inquiry. Defendant shall also keep as part
12 of these records all documents related to each complaining customer, including but not limited
13 to customer files, for the same five year period. Defendant shall make the customer complaint
14 records and related documents available to Washington within thirty days of first receiving
15 written notice of Washington's request to review them. Defendant's failure to keep the
16 customer complaint records as required by this Consent Decree shall be a material breach of
17 the Consent Decree.

18
19 **4. ATTORNEY'S FEES AND COSTS**

20 4.1. Washington's attorneys have expended over 191 hours and paralegals and
21 investigators have expended over 102 hours in the investigation and litigation of this case. As a
22 result, Washington has incurred a total of over \$ 52,000.00 (fifty two thousand dollars) in attorney
23 fees and a total of over \$10,000.00 (ten thousand dollars) in paralegal and investigator fees for the
24 period ending August 31, 2009. In addition, Washington has incurred over \$2,500 (twenty five
25 hundred dollars) in costs. (See: Declaration of Jack G. Zurlini, Jr., Re: Consent Decree,
26 concurrently filed herewith.)

1 hundred dollars) by the 30th of each month until the principal amount of \$60,000 (sixty thousand
2 dollars) is paid in full. Interest shall accrue at the rate of twelve percent (12%) per annum on any
3 late payment until such payment is made.

4 6.2. Defendant's payments shall apply to Washington's attorney's fees and costs until
5 the attorney's fees and costs are paid in full.

6 6.3. Defendant shall make all payments by bank cashier's check payable to the
7 Attorney General - State of Washington, and shall be mailed or delivered to the Office of the
8 Attorney General, Consumer Protection Division, 800 5th Avenue, Suite 2000, Seattle,
9 Washington, 98164-1012, Attention: Cynthia Lockridge, unless otherwise agreed to in writing by
10 Washington.

11 6.4. Defendant's failure to timely make payment as required by this Consent Decree,
12 without written agreement by Washington, shall be a material breach of this Consent Decree.

13 7. ENFORCEMENT

14 7.1. If after notice to Defendant and an opportunity to be heard at an evidentiary
15 hearing the Court finds by a preponderance of evidence that Defendant has violated a material
16 condition of the Consent Decree, Washington may seek imposition of additional conditions,
17 civil penalties, restitution, injunctive relief, attorney's fees, costs and such other remedies as the
18 Court may deem appropriate against Defendant.

19 7.2. The violation of any term of this Consent Decree shall constitute a violation of the
20 Consumer Protection Act, RCW 19.86.020.

21 7.3. Jurisdiction is retained by this Court for the purpose of enabling any party to this
22 Consent Decree with or without the prior consent of the other party to apply to the Court at any
23 time for enforcement of compliance with this Consent Decree, to punish violations thereof, or
24 otherwise address the provisions of this Consent Decree.
25
26

1 7.4. Nothing in this Consent Decree shall be construed to limit or bar any other
2 governmental entity or person from pursuing other available remedies against Defendant or any
3 other person.

4 7.5. Under no circumstances shall this Consent Decree, or the name of the State of
5 Washington, the King County Superior Court, the Office of the Attorney General, the
6 Consumer Protection Division, or any of their employees or representatives be used by
7 Defendant or any of its owners, members, directors, successors, assigns, transferees, officers,
8 agents, servants, employees, representatives, and all other persons or entities in active concert
9 or participation with Defendant, in connection with any selling, advertising, or promotion of
10 products or services, or as an endorsement or approval of Defendant's acts, practices, or
11 conduct of business.

12 7.6. Washington shall be permitted, upon advance notice of twenty days to
13 Defendant, to access, inspect and/or copy, all business records or documents in possession,
14 custody or under control of Defendant to monitor compliance with this Consent Decree,
15 provided that the inspection and copying shall avoid unreasonable disruption of Defendant's
16 business activities.

17 7.7. Washington shall be permitted to question Defendant or any owner, member,
18 officer, director, agent, or employee of Defendant by deposition pursuant to the provisions of
19 CR 30 to monitor compliance with this Consent Decree provided that Washington attempts in
20 good faith to schedule the deposition at a time convenient for the deponent and his or her legal
21 counsel.

22 7.8. This Consent Decree in no way limits Washington from conducting any lawful
23 non-public investigation to monitor Defendant's compliance with this Consent Decree or to
24 investigate other alleged violations of the CPA, which may include but is not limited to secret
25 shopping or interviewing former employees of Defendant.
26

1 7.9. Defendant shall fully cooperate with Washington and other civil regulatory
2 agencies in any civil investigation of any other person who advertised, marketed, or sold any of
3 Defendant's products or services. Defendant also shall fully cooperate with Washington and
4 other civil regulatory agencies in any civil investigation of any other agent, employee,
5 independent contractor, or representative of Defendant who is alleged to have violated any of
6 the provisions of this Consent Decree after having received the Consent Decree required
7 pursuant to paragraph 3.2 herein. Defendant's failure to fully cooperate as required by this
8 paragraph 7.9 shall be a material breach of this Consent Decree.

9 7.10. The Complaint is hereby dismissed with prejudice with respect to Defendant and
10 this Judgment and Consent Decree is entered pursuant to RCW 19.86.080.

11 7.11. The Clerk of the Court is ordered to enter the foregoing Judgment and Consent
12 Decree immediately.

SEP 16 2009

13 DONE IN OPEN COURT this _____ day of September, 2009.

14 **ERIC WATNESS**

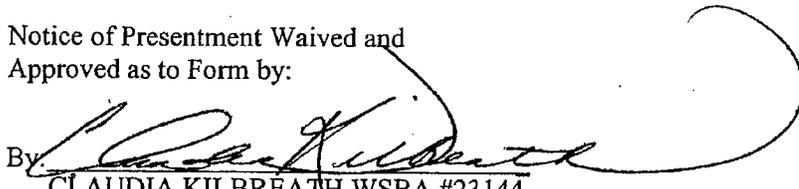
15 _____
JUDGE

16 Presented By:

17 ROBERT M. MCKENNA
18 Attorney General

19 By: 
20 JACK G. ZURLINI, JR., WSBA #30621
21 Assistant Attorney General
Attorneys for Plaintiff State of Washington

22
23 Notice of Presentment Waived and
24 Approved as to Form by:

25 By: 
26 CLAUDIA KILBREATH WSBA #23144
Short Cressman & Burgess PLLC
Attorneys for Defendant Evans Glass, Inc.