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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

THE PRESERVATION GROUP, LLC,  
an Arizona Limited Liability Company,  
and KEVIN DONALD BOTERMAN,  
and JANE DOE BOTERMAN, as a  
member of a marital community with  
KEVIN DONALD BOTERMAN, and  
ROBERT J. FEINHOLZ and JANE  
DOE FEINHOLZ as a member of a  
marital community with ROBERT J.  
FEINHOLZ,

Defendants.

NO. 10-2-26494-9SEA

CONSENT DECREE

[CLERK'S ACTION REQUIRED]

**I. JUDGMENT SUMMARY**

**1.1 Judgment Creditor:**

State of Washington

**1.2 Judgment Debtors:**

The Preservation Group, LLC, an Arizona Limited Liability Company; Kevin Donald Boterman and Jane Doe Boterman as a member of a marital community with Kevin Donald Boterman; and Robert J. Feinholz and Jane Doe Feinholz as a member of a marital community with Robert J. Feinholz

**1.3 Principal Judgment Amount:**

**a. Civil Penalty**

\$25,000 suspended (conditioned on compliance with the terms of the Consent Decree)



1 paragraph shall limit the Attorney General from relying on this Consent Decree for the purpose  
2 of enforcing it against Defendants; and

3 Defendants recognize and state that this Consent Decree is entered into voluntarily and  
4 that no promises or threats have been made by the Attorney General's Office or any member,  
5 officer, agent or representative thereof to induce it to enter into this Consent Decree, except as  
6 provided herein; and

7 Defendants waive any right they may have to appeal from this Consent Decree; and

8 Defendants further agree that they will not oppose the entry of this Consent Decree on  
9 the grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure,  
10 and hereby waives any objections based thereon; and

11 Defendants further agree that this Court shall retain jurisdiction of this action for the  
12 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for  
13 all other purposes; and

14 The Court finding no just reason for delay;

15 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as  
16 follows:

## 17 II. DEFINITIONS

18 2.1 "Estate Distribution Document" shall mean any one or more of the following  
19 documents, instruments, or writings prepared, or intended to be prepared, for a specific person  
20 or as marketing materials for distribution to any person: a last will and testament or any writing,  
21 however designated, that is intended to have the same legal effect as a last will and testament,  
22 and any codicil thereto; revocable and irrevocable inter vivos trusts and any instrument which  
23 purports to transfer any of the trustor's current and/or future interest in real or personal property  
24 thereto; or, any agreement that fixes the terms and provisions of the sale of a decedent's interest  
25 in any real or personal property at or following the date of the decedent's death.

26

1 **III. GENERAL**

2 **3.1** Jurisdiction. This Court has jurisdiction over the subject matter of this action  
3 and over the parties. The Plaintiff's Complaint in this matter states claims upon which relief  
4 may be granted under the provisions of the Consumer Protection Act, RCW19.86, and the  
5 Estate Distribution Documents Act, RCW 19.295.

6 **3.2** Defendants. For purposes of this Consent Decree the term "Defendants" where  
7 not otherwise specified shall mean The Preservation Group, LLC, a limited liability company  
8 registered in Arizona, Kevin Donald Boterman, Registered Agent and Manager of The  
9 Preservation Group, LLC and Robert J. Feinholz.

10 **IV. INJUNCTIONS**

11 **4.1** Application of Injunctions. The injunctive provisions of this Consent Decree  
12 shall apply to the Defendants, and the Defendants' successors, assigns, transferees, members,  
13 partners, officers, agents, servants, employees, representatives and affiliates, in connection with  
14 the marketing and offering for sale of Estate Distribution documents.

15 **4.2** Notice. Within thirty (30) days following the entry of this Consent Decree,  
16 Defendants shall inform all members, managers and employees, including those employees with  
17 supervising responsibilities, of the terms and conditions of this Consent Decree.

18 **4.3** Injunctions. Defendants are hereby permanently enjoined and restrained from  
19 directly or indirectly engaging in the following acts or practices in the State of Washington:

20 a. Engaging in the following practices without being authorized to practice  
21 law or without a statutory exemption:

22 i) Soliciting persons, or receiving compensation directly or indirectly, for  
23 services related to marketing estate distribution documents, including  
24 but not limited to wills or trusts, as defined by RCW 19.295.010;

25 ii) Agreeing to prepare or gather the information necessary for the creation  
26 of a will, a trust, or an estate distribution document as defined by

- 1 RCW 19.295.010;
- 2 iii) Advising a person regarding his or her legal rights or obligations under a  
3 will, a trust, or an estate distribution document as defined by  
4 RCW 19.295.010;
- 5 iv) Advising a person regarding the qualities, attributes or deficiencies of a  
6 will, a trust, or an estate distribution document as defined by  
7 RCW 19.295.010; and
- 8 v) Selecting, modifying or completing a will, a trust, or an estate  
9 distribution document as defined by RCW 19.295.010.
- 10 b. Obtaining financial and estate information from a person under the pretext  
11 of informing that person about wills, trusts, or estate distribution documents as defined by  
12 RCW 19.295.010, when that information will be used for selling estate planning or other  
13 financial services;
- 14 c. Receiving any compensation or thing of value pursuant to any  
15 agreement or understanding that a person shall be referred to another for purposes of obtaining  
16 a will, a trust, or an estate distribution document as defined by RCW 19.295.010;
- 17 d. Paying any compensation or thing of value to obtain the referral of any  
18 person who has obtained a will, a trust, or an estate distribution document as defined by  
19 RCW 19.295.010;
- 20 e. Intentionally representing to anyone known to be a Washington  
21 consumer that a person who is not an attorney licensed in the state of Washington is qualified  
22 to advise an individual consumer as to whether any estate distribution document or corporate  
23 formation would be appropriate for that particular consumer or whether a living trust,  
24 community property agreement, will, living will, other estate distribution document or  
25 corporate formation is valid or useful for that particular consumer;
- 26 f. Misrepresenting the probate process by using survey, statistical, anecdotal,

1 or other materials not produced by sources commonly recognized as authoritative in the legal  
2 community and estate planning industry and which is not specifically applicable to Washington  
3 State estate planning and probate processes;

4 g. Dissuading consumers from consulting with an attorney, or disparaging  
5 attorneys' estate planning advice or documents; and

6 Engaging in fee-splitting or unauthorized practice of law with a Washington-  
7 licensed attorney.

## 8 V. CONSUMER RESTITUTION

9 5.1 Pursuant to RCW 19.86.080, Defendants hereby agree to pay up to \$40,000 in  
10 restitution to consumers.

11 5.2 Within thirty (30) days of the date of this Consent Decree, Defendants shall send a  
12 letter by U.S. mail to the last known address of each of their Washington customers known to  
13 have purchased any Estate Distribution Document from Sam Eck or the Preservation Group.  
14 Defendants shall not be required to take additional efforts to obtain current addresses for  
15 Washington customers. However, Defendants shall identify any Washington customers whose  
16 letter was returned so that the Attorney General's Office may attempt to locate them. The text  
17 of the letter shall contain the following language:

18  
19 We have met with the Washington State Attorney General's Office and resolved  
20 certain issues regarding our activities in the State of Washington. While we have  
21 reached an agreement to provide a refund to Washington consumers, there has  
22 been no determination or admission that a violation of law occurred. As a  
23 purchaser of a will, trust or other estate distribution document, you may be entitled  
24 to receive a refund (to be paid approximately one year from now) in an amount  
25 which will be determined based on the number of persons participating in the  
26 refund program. If you wish to obtain a refund, please fill out the attached form  
and certify that you have paid for the services provided. If you have any questions,  
you may call the Washington State Attorney General's Office toll-free at 1-800-  
692-5082 or locally at 206-464-6811, or visit the Web site at [www.atg.wa.gov](http://www.atg.wa.gov).

You must file your claim by \_\_\_\_\_ [45 days from the date the  
notice is sent] in order to be eligible for a refund." The restitution funds will be  
disbursed by this office by \_\_\_\_\_, 2011 (*use the date one year  
after your signing the Consent Decree*).

1 [The certification shall be in the following form:]

2 I, \_\_\_\_\_, hereby certify that I have paid  
3 \$\_\_\_\_\_ (list the amount you paid to Sam Eck or the Preservation  
4 Group) for a trust, will or other estate planning document and that I would like to  
5 be refunded the fullest amount possible under the Preservation Group's agreement  
6 with the State of Washington.

7 **5.3** The consumers will have forty-five (45) days from the date the notices are sent (or  
8 resent based on the Attorney General's Office providing a new address), to make a claim.  
9 Restitution will be distributed to the claimants within one year of the expiration of the forty-five  
10 (45) day claim period. The amount of restitution to each will be the amount the consumer paid to  
11 the Defendants for the Estate Distribution Documents purchased from Defendants. In the event the  
12 amount of claims exceeds the \$40,000 restitution fund, the amounts will be distributed to  
13 consumers on a *pro rata* basis as approved by the Attorney General. In the event distribution on a  
14 *pro rata* basis is required, Defendants will notify the Attorney General, which will provide  
15 Defendants with an reasonable distribution schedule. No distributions to claimants will be made or  
16 required pending the Attorney General's decision on an unreasonable distribution schedule.

17 **5.4** Defendants agree that they will make no effort, either personally or through any  
18 agent, to discourage, delay or confuse any of the consumers entitled to receive restitution under this  
19 section.

20 **5.5** Within fifteen (15) days of the end of the restitution period, Defendants shall  
21 submit to the Office of the Attorney General a list of all eligible claimants, along with their  
22 addresses and amounts each one is due under the refund program.

23 **5.6** Within one year of the expiration of the forty-five (45) day claim period set forth  
24 in paragraph 5.3, Defendants shall send refund checks to all listed claimants.

25 **5.7** Within one hundred (100) days of sending the checks, Defendants shall provide  
26 to the Office of the Attorney General a report identifying (1) the names, addresses, amounts and  
27 dates of refunds made to all consumers; (2) all claimants who did not cash their checks; and (3)  
28 all claimants whose checks were returned in the mail.

**5.8** If the Attorney General's Office is able to locate a claimant whose check has

1 | been returned or not cashed, and is able to verify that the claimant desires that refund,  
2 | Defendants shall re-issue checks to that claimant.

3 | **VI. ATTORNEY'S COSTS & FEES**

4 | **6.1** Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay the  
5 | costs and reasonable attorney's fees incurred by the Plaintiff in pursuing this matter in the  
6 | amount of \$10,215, payable within one year after the entry of this Consent Decree, through  
7 | monthly payments of \$851.25, ~~through bi-annual payments within one year of \$5,107.50 (strike~~  
8 | ~~through the provision which does not apply).~~ In no event shall any portion of this payment be  
9 | characterized as the payment of a fine, civil penalty or forfeiture by Defendants.

10 | **6.2** In any successful action to enforce any part of this Consent Decree, Defendants  
11 | will pay the Attorney General its attorney's fees and costs, including reasonable attorney's fees  
12 | as provided by RCW 19.86.080.

13 | **6.3** Payment under this provision shall be in the form of a valid check paid to the  
14 | order of the "Attorney General—State of Washington." Payment shall be sent to the Office of  
15 | the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth  
16 | Avenue, Suite 2000, Seattle, Washington, 98104-3188.

17 | **VII. CIVIL PENALTY**

18 | **7.1** Pursuant to RCW 19.86.140, a civil penalty of \$25,000 is imposed against  
19 | Defendants. However, the entire civil penalty shall be suspended upon Defendants' compliance  
20 | with the terms of this Consent Decree.

21 | **7.2** Any payment that becomes due and owing under this provision shall be in the  
22 | form of a valid check paid to the order of the "Attorney General—State of Washington" and  
23 | shall be due and owing immediately upon order of the Court. Payment shall be sent to the  
24 | Office of the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager,  
25 | 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.

1 **VIII. ENFORCEMENT**

2 **8.1** Violation of any of the injunctions contained in this Consent Decree, as  
3 determined by the Court, shall subject the Defendants to a civil penalty of not more than  
4 \$25,000 pursuant to RCW 19.86.140.

5 **8.2** Violation of any of the terms of this Consent Decree, as determined by the Court,  
6 shall constitute a violation of the Consumer Protection Act, RCW 19.86.020.

7 **8.3** This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is  
8 retained for the purpose of enabling any party to this Consent Decree with or without the prior  
9 consent of the other party to apply to the Court at any time for enforcement of compliance with  
10 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

11 **8.4** Representatives of the Office of the Attorney General shall be permitted to  
12 access, inspect and/or copy such business records or documents under control of Defendants  
13 reasonable necessary to monitor compliance with this Consent Decree within Fourteen (14)  
14 days of written request to Defendants, provided that the inspection and copying shall be done in  
15 such a way as to avoid disruption of Defendant's business activities. Said notice shall also  
16 reasonably identify the documents Plaintiff seeks to inspect and copy. During the Fourteen (14)  
17 day period Defendants shall have the right to file a motion with this court objecting to the scope  
18 and/or reasonableness of Plaintiff's request.

19 **8.5** Representatives of the Office of the Attorney General may be permitted to  
20 question Defendants, or any officer, director, agent, or employee of any corporation affiliated  
21 with Defendants, in deposition, pursuant to the provisions and notice requirements of CR 30, in  
22 order to monitor compliance with this Consent Decree. Prior to any deposition sought pursuant  
23 to this paragraph, the Attorney General shall contact Defendants in an attempt to resolve issues  
24 and answer questions informally.

25 **8.6** Nothing in this Consent Decree shall be construed as to limit or bar any other  
26 governmental entity or consumer from pursuing other available remedies against Defendants.



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Approved for entry and presented by:

ROBERT M. MCKENNA  
Attorney General

\_\_\_\_\_  
JAMES T. SUGARMAN, WSBA #39107  
Assistant Attorney General  
State of Washington  
Attorneys for Plaintiff

Approved for Entry, Notice of Presentation  
Waived:

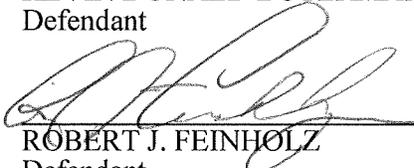
BADGLEY MULLINS LAW GROUP, PLLC

\_\_\_\_\_  
DONALD H. MULLINS, WSBA #4966  
NICHOLAS GUNN, WSBA #36926  
Attorneys for Defendants

\_\_\_\_\_  
THE PRESERVATION GROUP, LLC  
Defendant  
By: KEVIN DONALD BOTERMAN



\_\_\_\_\_  
KEVIN DONALD BOTERMAN  
Defendant



\_\_\_\_\_  
ROBERT J. FEINHOLTZ  
Defendant

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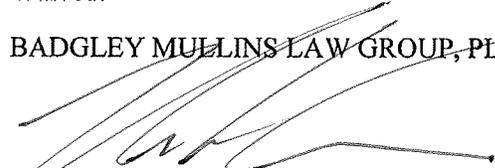
Approved for entry and presented by:

ROBERT M. MCKENNA  
Attorney General

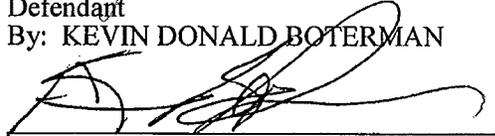
  
JAMES T. SUGARMAN, WSBA #39107  
Assistant Attorney General  
State of Washington  
Attorneys for Plaintiff

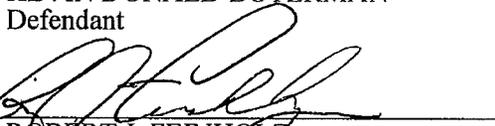
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Attorneys for Defendants

  
THE PRESERVATION GROUP, LLC  
Defendant  
By: KEVIN DONALD BOTERMAN

  
KEVIN DONALD BOTERMAN  
Defendant

  
ROBERT J. FEINHOLZ  
Defendant