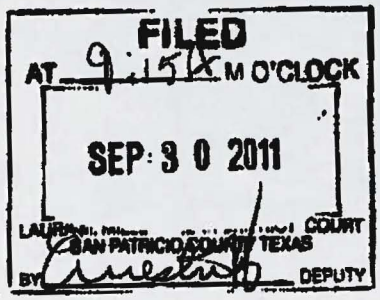

NO. S-11-5520CV-A

STATE OF TEXAS, Plaintiff,	§	IN THE DISTRICT COURT
v.	§	SAN PATRICIO COUNTY, TEXAS
HOLDEN ROOFING, INC. and BRETT HOLDEN, Individually, Defendants.	§	36TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

1. On this day, came before the Court Plaintiff STATE OF TEXAS and Defendants HOLDEN ROOFING, INC. and BRETT HOLDEN in the above entitled and numbered cause. The STATE OF TEXAS, by and through Texas Attorney General GREG ABBOTT, and Defendants, by and through her attorney of record, announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled, presented to the Court this Agreed Final Judgment and Permanent Injunction ("Judgment"), and asked the Court to render and sign this Judgment based on the agreement of the parties.

STIPULATIONS

2. By their duly authorized signatures affixed below, the parties stipulated to the Court the following: that they understand the terms of this Judgment; that they agree to the terms of this Judgment; that their agreement is freely and voluntarily made without duress; that they actively participated in the negotiations leading up to this Judgment and are aware of the duties placed upon them by it, and are desirous and capable of carrying out those duties in full; that each named party acknowledge receipt of copies of this Judgment and have full and actual notice of

the terms of this Judgment; that the issuance and service of a writ of injunction are waived; that the terms of this Judgment are sufficiently detailed and specific to be enforceable by the Court in conformance with TEX.R.CIV.P. 683 and enforceable by the Court pursuant to TEX.R.CIV.P. 692; that they have waived all rights of appeal from this Judgment; that this Judgment represents a compromise and settlement of all matters arising out of facts alleged by the STATE OF TEXAS in this cause.

3. Pursuant to their agreement, the parties submitted to the jurisdiction of the Court and do not contest the entry of this Judgment. The parties acknowledge that this agreement was reached through the full cooperation of Defendants who agreed to modify certain of its business practices; and that this Judgment represents an amicable solution to any issues raised by the State of Texas and the Office of the Attorney General regarding these matters. Defendants desire to resolve the Attorney General's concerns without a trial or adjudication of any issue of fact or law, and their consent to the entry of this Judgment is not an admission of liability by Defendants as to any issue of fact or law, but is because of the uncertainty of litigation and the costs associated therewith. Neither the injunctive relief nor any other term of this agreement entered into voluntarily by Defendants constitute an admission by Defendants of any violations of the Texas Deceptive Trade Practices – Consumer Protection Act, the Home Solicitation Act, the Texas Debt Collection Act, or any other law.

4. It is further agreed by and between the parties that this Judgment shall constitute the record of this cause and that the making of a further record in this cause is waived.

FINDINGS

5. It appears to the Court that all parties agree to the entry of this Judgment and that they have approved its entry by their duly authorized signatures and the signature of their respective attorneys below, the Court, upon the stipulations of the parties and after being fully advised in this matter, finds as follows:

a. That it has jurisdiction of the parties and subject matter of this suit;

b. That the settlement of this dispute is fair, reasonable, and just;

c. That this Judgment is in accord with the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* ("DTPA"); Chapter 601 of the Texas Business and Commerce Code, Cancellation of Certain Consumer Transactions, TEX. BUS. & COM. CODE ANN. § 601.001, *et seq.* ("Home Solicitation Act" or "HSA"); and the Texas Debt Collection Act, TEX. FIN. CODE ANN.§392.001 *et seq.* ("TDCA"), and is proper in all respects;

d. That the civil penalty payable to and for the benefit of the State of Texas is not dischargeable under bankruptcy pursuant to 11 U.S.C. § 523(a)(7); and

e. That it would be in the best interests of the parties if the Court approved the settlement and rendered judgment accordingly.

6. Based on these findings, and having heard and considered the stipulations and representations made by the parties, the Court is of the opinion that a permanent injunction should issued as granted in this Judgment and that Plaintiff STATE OF TEXAS is entitled to recover of and from Defendants as set forth below.

INJUNCTIVE RELIEF

7. IT IS THEREFORE ORDERED that Defendants HOLDEN ROOFING, INC. and BRETT HOLDEN, their officers, agents, servants, employees, attorneys, and any other persons acting in concert or participation with Defendants who receive actual notice of this injunction by personal service or otherwise, shall permanently desist and refrain from engaging in, or attempting to engage in, the following described acts:

a. Failing to provide consumers with a copy of the Consultation Agreement containing the statement, giving notice of the consumer's right to cancel, in the form and format required by HSA § 601.052(a) and (b), at the time of the agreement's execution;

b. Failing to attach a completed "Notice of Cancellation" form (in duplicate and easily detachable), in the form and format required by HSA § 601.053, to the Consultation Agreement at the time of the agreement's execution;

c. Failing to inform consumers orally at the time the Consultation Agreement is signed of their right to cancel the transaction;

d. Failing to provide consumers with a copy of the Roofing Contract containing the statement, giving notice of the consumer's right to cancel, in the form and format required by HSA § 601.052(a) and (b), at the time of the contract's execution;

e. Failing to attach a completed "Notice of Cancellation" form (in duplicate and easily detachable), in the form and format required by HSA § 601.053, to the Roofing Contract at the time of the contract's execution;

f. Failing to inform consumers orally at the time the Roofing Contract is signed of their right to cancel the transaction;

g. Including in any contract or agreement, including the Consultation Agreement and Roofing Contract, a liquidated damages clause which does not plainly set forth the dollar amount of any liquidated damages in good faith to be recoverable in the event of breach;

h. Failing to specify, in dollar and cents, the cost or price of the services that consumers will be charged under the Consultation Agreement;

i. Accepting money from, or pursuing a legal action against, consumers for any breach of the old Consultation Agreement;

j. Accepting money from, or pursuing a legal action against, consumers who cancelled the old Roofing Contract before any roofing work was performed;

k. Threatening to file a lawsuit, or actually filing suit, against any consumer for recovery of liquidated damages for the breach of an old Consultation Agreement or Roofing Contract that was entered into prior to the date the parties signed and agreed to this Judgment;

l. Misrepresenting the purpose, nature, or effect of the Consultation Agreement;

m. Putting a condition on a consumer's right to cancel during the applicable three day cancellation period (including, but not limited to, the payment of a restocking fee); and

n. Representing, directly or by implication, that this Court or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendants, or has approved any business practice of Defendants.

8. IT IS FURTHER ORDERED that Defendants shall:

a. Non-suit or dismiss any and all pending lawsuits filed by Defendants that is related to the collection of liquidated damages from breach of the old Consultation and Assistance Agreement or old Roofing Contract;

b. Notify all consumers, who received a demand letter from Defendants related to a claim arising under the liquidated damages clause of the old Consultation Agreement and old Roofing Contract, that no lawsuit will be filed.

MONETARY JUDGMENT

9. IT IS FURTHER ORDERED by the Court that Plaintiff STATE OF TEXAS have and recover from Defendants HOLDEN ROOFING, INC. and BRETT HOLDEN, the sum of $35,000.00 comprised of the following amounts:

a. The amount of $25,000.00 as a civil penalty to the STATE OF TEXAS; and

b. The amount of $10,000.00 as reasonable and necessary attorney's fees to the STATE OF TEXAS in the prosecution of this action against Defendants.

10. IT IS FURTHER ORDERED by the Court that Defendants shall refund all money paid by consumers to Defendants to satisfy a demand or claim arising under the liquidated damages clause of the old Consultation Agreement and/or the old Roofing Contract; that Defendants shall pay $500.00 to each consumer who was sued by Defendants (on a claim arising under the liquidated damages clause of the old Consultation Agreement or old Roofing Contract), but who has not paid any money to Defendants; and that Defendants shall provide documentation, in a form acceptable to the State, evidencing that the refunds and payments, mandated herein, have been made.

11. IT IS FURTHER ORDERED by the Court that the payment of the above sum shall be made in the form of a certified check or money order and made payable to the Office of the Attorney General of Texas. The certified check or money order shall bear the identifying number "AG No. 113259998," and shall be delivered to the Office of the Attorney General, Consumer Protection and Public Health Division, 3201 N. McColl Road, Suite B, McAllen, Texas 78501.

12. IT IS FURTHER ORDERED that all costs of court expended or incurred in this cause are adjudged against the party incurring same.

13. IT IS FURTHER ORDERED that Plaintiff shall have all writs of execution and other process necessary to enforce this Judgment.

14. The express mention or enumeration of the duties and obligations imposed by this injunction and ordered herein, does not imply the exclusion of all other duties and obligations imposed on Defendants by applicable state and federal laws and regulations and does not release Defendants from adhering to, abiding by, or complying with, other provisions of such laws and regulations.

15. This Judgment is final, disposes of all claims and all parties. The Court retains the jurisdiction to enforce this Judgment.

16. All relief not expressly granted herein is denied.

SIGNED on Sept. 30, 2011.

M E Welborn

JUDGE PRESIDING

MICHAEL E. WELBORN

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

RICARDO "RIC" MADRIGAL
Assistant Attorney General
State Bar No. 12802200
Office of the Attorney General
Consumer Protection and
Public Health Division
3201 N. McColl, Suite B
McAllen, Texas 78501
(956) 682-4547; Fax (956) 682-1957
Attorney for Plaintiff

SCOTT HANSON McLEMORE
McLemore, Reddell, Ardion & Story, PLLC
State Bar No. 90001899
3355 W. Alabama, Suite 1150
Houston, Texas 77098
(713)888-0906
Fax: (713)888-0906
Attorney for Defendants

BRETT HOLDEN
Defendant

Name: Brett Holden
Title: President
Corporate Agent who has authority to sign herein on behalf of HOLDEN ROOFING, INC.