

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
- CIVIL DIVISION -**

**OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,**

CASE NO:

Plaintiff,

v.

HOME PERFORMANCE ALLIANCE, INC.,
a Florida corporation,

Defendant.

MOTION FOR ENTRY OF CONSENT FINAL JUDGMENT

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General”) hereby requests that this Court approve and enter the Consent Final Judgment attached hereto as **Attachment A**. In support of this Motion, the Attorney General hereby notifies the Court that the parties have reached an agreement to settle this case subject to, and in accordance with, the terms of the proposed Consent Final Judgment against Home Performance Alliance, Inc.

WHEREFORE, the Attorney General hereby requests that the Court enter the attached Consent Final Judgment against Home Performance Alliance, Inc.

Dated this 13th day of October 2020

Respectfully submitted,

ASHLEY B. MOODY
ATTORNEY GENERAL

/s/ Robert J. Follis

Robert J. Follis
Assistant Attorney General
Florida Bar No. 560200
Robert.follis@myfloridalegal.com
Office of the Attorney General
Consumer Protection Division
3507 E. Frontage Road, Suite 325
Tampa, Florida 33607
(813) 287-7256 (telephone)
(813) 281-5515 (facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed through the Florida Courts E-Filing Portal, which has simultaneously effected service via email to all counsel of record, on this 13th day of October 2020.

/s/ Robert J. Follis

Robert J. Follis
Assistant Attorney General

ATTACHMENT A

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
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**OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,**

CASE NO:

Plaintiff,

v.

HOME PERFORMANCE ALLIANCE, INC.,
a Florida corporation

Defendant.

CONSENT FINAL JUDGMENT

Pursuant to the stipulation for Consent Final Judgment executed below by Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General”), and Defendant, Home Performance Alliance, Inc. (“HPA” or “Defendant”), and the Court having reviewed the Consent Final Judgment, and upon consideration of the papers filed and consent of the parties hereto, it is hereby **ORDERED** and **ADJUDGED**:

INITIALS

AMQ

I. JURISDICTION

The Attorney General and Defendant (collectively, “Parties”) agree that this Court has subject matter jurisdiction over this matter, jurisdiction over the Parties, and continuing jurisdiction over this matter and the Parties. The Attorney General filed a Complaint in this action for injunctive relief, restitution, disgorgement, civil penalties, attorney’s fees and costs, and other statutory relief (“Complaint”) pursuant to Chapter 501, Part II, Florida Statutes, Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”). The Complaint filed in this matter states claims upon which relief may be granted under the provisions of FDUTPA.

II. GENERAL PROVISIONS

2.1 Agreement. The Parties have agreed on a basis for settlement of the matters alleged in the Complaint. Further, the Parties agree to entry of this Consent Final Judgment (“Judgment”) without the need for trial, discovery in this action, or adjudication of any issue of law or fact, and waive entry of findings of fact and conclusions of law and any hearing on the entry of this Judgment. This Judgment does not constitute evidence or an admission regarding the existence or non-existence of any issue, fact, or violation of any law alleged by the Attorney General. Defendant has entered into this Judgment freely and neither admits nor denies any allegation in the Complaint, except that for purposes of this Judgment and notwithstanding anything to the contrary stated herein, Defendant admits the facts

necessary to establish the Court's jurisdiction over Defendant and the subject matter of this action. Defendant, HPA, a Florida corporation, located at 1780 102nd Avenue North, Suite 500, St. Petersburg, Florida 33716 acknowledges that the provisions of this Judgment have been read and that it is able to abide by them. Defendant further acknowledges that a violation of this Judgment may result in relief pursuant to FDUTPA and other relief as appropriate, including adjudication for contempt of Court.

2.2 Waiver/Release. The Attorney General and Defendant waive all rights to seek appellate review, rehearing, or otherwise to challenge or contest the validity of this Judgment. Defendant further waives and releases any and all claims it may have against the Attorney General, its employees, representatives or agents with respect to this action and Judgment. The Attorney General waives and releases any and all claims it may have against the Defendant, its officers, directors, shareholders, employees, independent contractors, representatives, agents, successors and assigns with respect to this action and Judgment other than as reserved herein, and Defendant agrees that this paragraph does not limit the Attorney General's right to pursue any and all claims based on unknown information, including, but not limited to, any information that Defendant has not disclosed or unknown consumer complaints.

2.3 Compliance with Law. Nothing herein relieves Defendant of its duty to comply with applicable laws of the State of Florida and all federal or local laws, regulations, ordinances and codes, nor constitutes authorization by the Attorney General for Defendant to engage in acts and practices prohibited by such laws.

2.4 Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of Defendant's past or future practices. Defendant shall not make any representation to the contrary regarding this Judgment, or use the name of the Office of the Attorney General, State of Florida, Department of Legal Affairs, or any of its current or former employees or representatives, in connection with its manufacturing, sale or installation of windows or doors, or as an endorsement or approval of Defendant's acts, practices or conduct of business.

2.5 Preservation of Private Claims and Other Law Enforcement Action. Nothing herein shall be construed as a waiver or release of any private rights, causes of action or remedies of any person against Defendant with respect to the acts and practices covered by this Judgment. Nothing herein shall be construed to limit or bar any other governmental entity from pursuing other available remedies against Defendant for violation of laws other than FDUTPA.

2.6 Use of Settlement as Defense. Nothing herein shall be interpreted to prevent the Attorney General from taking enforcement action to address conduct of Defendant occurring after the entry of this Judgment that the Attorney General

believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Judgment shall not be a defense to any such enforcement action.

2.7 Effective Date. Shall mean the date this Judgment is signed by the Circuit Court Judge.

2.8 No Bond Required. Pursuant to Section 60.08, Florida Statutes, the Attorney General is not required to post a bond to obtain permanent injunctive relief under Section 501.207, Florida Statutes.

2.9 No Avoidance of Judgment. Defendant agrees that it shall not effect any change in the form of doing business or the organizational identity of HPA for the purposes of avoiding the terms and conditions set forth in this Judgment. In the event that HPA is sold, assigned, or transferred to a third-party within three years from the date of this Consent Final Judgment, a copy of this Judgment shall be provided by HPA to said purchaser, assignee, or transferee.

2.10 This Judgment is continuing in nature and shall be binding on any and all successors or assigns of Defendant.

III. COMPLIANCE

3.1 Permanent Injunction. Defendant and its officers, directors, shareholders, employees, independent contractors, representatives, agents, successors and assigns, who are acting under the actual direction or control of the

Defendant and those persons and entities in active concert or participation with the Defendant, or any other person or entity who, directly or indirectly, acts under or who will act under, by, through, or on behalf of the Defendant, shall not engage in any of the following practices:

- a. Notarizing any document where a notary public does not actually witness the signing;
- b. Creating and/or knowingly using forged or falsely executed documents;
- c. Submitting notices of completion to financing companies without the customer's knowledge and consent;
- d. Misrepresenting contractual terms to consumers;
- e. Causing to be filed in the public record any false documents;
- f. Causing, allowing, authorizing, making or assisting others in making any high-pressure, false, misleading, threatening or other unethical sales tactics related to any offer, solicitation, attempt to collect or collection of a fee or cost related to the purchase of any product or services, including, but not limited to:
 - i. Threatening consumers with physical harm, lawsuits, liens, collection activities, or negative reporting to credit bureaus if they decline to enter into a contract with Defendant or attempt to properly cancel a contract, or decline to make a purchase from Defendant;

- ii. Refusing to leave a consumer's residence when asked; and,
 - iii. Falsely claiming or labeling a document as an "estimate" when, in fact, it is a contract.
- g. Substituting any customer's ordered products with different products without prior written disclosure to and approval from the customer, other than in regard to normal substitutions in accordance with typical and commercially reasonable industry practices.

3.2 Required Acts. Defendant asserts that it has taken multiple steps to increase its customer quality control, including by: (i) Employing a customer relations manager, (ii) Implementing policies to ensure proper procedures to prepare, execute, notarize, and file documents into the public record, and (iii) Providing to consumers a dedicated toll-free telephone number for customer concerns. Defendant shall engage or continue to engage in the following practices:

- a. Include (or, if already doing so, continue to include) the legally required state and/or federal three (3) day cancellation and applicable refund right provision in all Defendant' contracts, which shall apply to all services, products, fees, costs and down payments included or referenced in said contracts;
- b. Employ (or, if already doing so, continue to maintain) a customer relations manager;

- c. Implement and maintain (or, if already doing so, continue to maintain) policies to ensure that Defendant follows appropriate procedures to prepare, execute, notarize, and file documents into the public record;
- d. Disclose (or, if already doing so, continue to disclose) all material terms, conditions, uses and benefits of a product to a consumer before executing any contracts;
- e. Disclose, (or, if already doing so, continue to disclose) as applicable, all financial terms to a consumer before executing any contracts;
- f. Provide (or, if already doing so, continue to maintain) to consumers a dedicated toll-free telephone number established and maintained by Defendant which consumers can call concerning any issues related to construction activities. Defendant shall have adequate and competent staff to answer and respond to all consumer inquiries within forty-eight (48) hours, and Defendant shall establish (or, if already doing so, continue to maintain) a process for dispute escalation and methods for tracking the resolution or escalation of complaints; and
- g. Establish (or, if already doing so, continue to maintain) a uniform point of contact to communicate with the Attorney General about issues relating to this settlement.

3.3 Subcontractor Oversight: Defendant shall adopt and maintain (or, if already doing so, continue to maintain) the following policies and processes in regard to agents, independent contractors and entities retained by Defendant to provide any sales, installation, consultation, or construction services to consumers (collectively, such activities are “Construction Activities” and such providers are “Third-Party Providers”):

- a. Perform appropriate due diligence of Third-Party Providers’ qualifications, expertise, capacity, reputation, complaints, business continuity, and financial viability;
- b. Ensure that all agreements or oversight policies with Third-Party Providers comply with Defendant’ applicable policies and procedures (which will incorporate any applicable aspects of this Judgment) and require Third-Party Providers comply with applicable state and federal laws, rules and regulations;
- c. Ensure that agreements, contracts or policies provide for adequate oversight of Third-Party Providers, including measures to enforce Third-Party Provider contractual obligations, and to ensure timely action with respect to Third-Party Provider performance failures;
- d. Conduct periodic reviews of all Third-Party Providers. These reviews shall include the following:

- i. A review of any complaints made and any disciplinary actions taken against any of the Third-Party Providers; and
 - ii. A review of the Third-Party Providers' licensing to provide for compliance with Defendant' policies and procedures concerning Construction Activities;
- e. Include a requirement in its agreements and contracts that the Third-Party Provider(s) disclose to Defendant any imposition of sanctions or professional disciplinary action taken against them for misconduct related to performance of Construction Activities.

3.4 Records: Defendant shall preserve and retain all relevant business and financial records relating to the acts and practices at issue in this Judgment for three (3) years from the Effective Date of the Judgment, and shall make any and all books and records available to the Attorney General within ten (10) days of any reasonable request. In addition, Defendant shall:

- a. Provide to the Attorney General the name and contact information of a person who will act as liaison on behalf of HPA. Said liaison shall be made available to representatives of the Attorney General to answer questions and provide information establishing compliance with the terms of this Judgment.

- b. Permit representatives of the Attorney General to interview any employer, consultant, independent contractor, representative, agent, or employee of the Defendant who has agreed to such an interview, relating in any way to any conduct subject to the Judgment. The person interviewed may have counsel present.
- c. Beginning sixty (60) days after the Effective Date of the Judgment, every six (6) months thereafter and continuing for three (3) years, Defendant shall create a written report (“Compliance Report”), sworn to under oath, setting forth in detail the manner and form in which Defendant has complied and is complying with the Judgment. The Compliance Report shall be made available to the Attorney General within five (5) business days of the Attorney General’s written request. For purposes of this sub-paragraph, an e-mail will suffice as the Attorney General’s written request.
- d. In addition to the foregoing and beginning sixty (60) days after the Effective Date, Defendant shall create written reports for two (2) years listing all complaints, including complaints received via email, phone or written complaints (but excluding complaints which solely regard normal and customary matters such as warranty claims, service requests and the like which are promptly and successfully resolved by

Defendant), received from Florida consumers directly or from the Attorney General, or other state or federal agencies after the Judgment is entered (the “Complaint Report”). These Complaint Reports must be sortable by issue and include Defendant’s complaint resolutions, and any remediation completed by Defendant following the complaint review. These Complaint Reports shall be made available to the Attorney General within five (5) business days of the Attorney General’s written request. For purposes of this sub-paragraph, an e-mail will suffice as the Attorney General’s written request. Further, all parties agree that, upon written request by the Attorney General, Defendant shall provide a copy of any complaint identified on the quarterly reports and a copy of the consumer’s complete file for review, including all contracts, purchase orders, consumer correspondences, and Defendant’s response to the complaint.

IV. MONETARY RELIEF

4.1 Restitution. Defendant has refunded, reduced, or forgiven amounts owed to it by consumers in the amount of SIX HUNDRED FIFTEEN THOUSAND SIX HUNDRED TWENTY-FOUR DOLLARS AND 13/100 CENTS (\$615,624.13). In addition, Defendant has released construction liens against

consumers totaling NINETY-FOUR THOUSAND EIGHT HUNDRED THIRTY-EIGHT DOLLARS AND 12/100 CENTS (\$94,838.12).

4.4 Penalty. Judgment is hereby entered against Defendant in the total amount of NINETY THOUSAND DOLLARS AND NO CENTS (\$90,000.00) for civil penalties in this matter, pursuant to Chapter 501, Part II, Florida Statutes, Florida Deceptive and Unfair Trade Practices Act, for which let execution issue forthwith.

SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$75,000.00) of afore-described judgement for civil penalties (the “Senior Penalties”) is specifically being entered against Defendant pursuant to Section 501.2077(5), Florida Statutes for alleged violations of Chapter 501, Florida Statutes committed by Defendant against senior citizens. The Senior Penalties shall be deposited into the Department of Legal Affairs’ Revolving Trust Fund. The remaining \$15,000.00 for penalties entered pursuant to Section 501.2075 shall be deposited into the General Revenue Fund.

4.5 Attorney’s Fees and Costs. Judgment is hereby entered against Defendant in the total amount of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) (“Attorney’s Fees and Costs”) for attorney’s fees and costs in this matter, for which let execution issue forthwith. Attorney’s Fees and Costs shall be deposited into the Department of Legal Affairs’ Revolving Trust Fund.

4.6 Payment. Defendant shall make the payments referenced in paragraphs 4.4 and 4.5 herein in installments in accordance with the following schedule:

1. TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00) shall be paid by Defendant to the Attorney General by or before September 15, 2020, and shall be deposited into the Department of Legal Affairs' Revolving Trust Fund as Senior Penalties.
2. TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00) shall be paid by Defendant to the Attorney General by or before October 15, 2020, and shall be deposited into the Department of Legal Affairs' Revolving Trust Fund as Senior Penalties.
3. TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00) shall be paid by Defendant to the Attorney General by or before November 15, 2020, and shall be deposited into the Department of Legal Affairs' Revolving Trust Fund as Senior Penalties.
4. FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00) shall be paid by Defendant to the Attorney General by or before December 15, 2020, and shall be deposited in the General Revenue Fund as general civil penalties.
5. TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) shall be paid by Defendant to the Attorney General by or before January 15, 2021, and shall be deposited into the Department of Legal Affairs' Revolving Trust Fund as towards Attorney's Fees and Costs.

Should the date upon which any of Defendant's installment payments are due under this subsection fall on a Saturday, Sunday or Federal holiday, the affected installment shall be delivered to the Attorney General on the last non-holiday business day which occurs immediately prior to the scheduled installment date.

(b) The installment payments described above shall be made by cashier's check, money order, wire transfer, or other certified funds **payable to the Department of Legal Affairs Revolving Trust Fund** and deposited as instructed above. Such installment payments shall be delivered to the Office of the Attorney General, State of Florida, Department of Legal Affairs, Robert J. Follis, Assistant Attorney General, 3507 E. Frontage Road, Suite 325, Tampa, FL 33607. Defendant may at any time pre-pay any portion of the balance due without a penalty. If Defendant complies with all the terms of this Judgment, the Attorney General shall take no action to execute or otherwise enforce upon such Judgment.

4.7 Default. Defendant agrees that failure to make each installment payment as required under the Section 4 of this Judgment within ten (10) days of their respective due dates shall constitute a default ("Default"). Time is of the essence in the performance of all terms and conditions of this Judgment, and interest computed at the statutory rate of 6.33% per annum pursuant to Section 55.03, Florida Statutes, will immediately begin to accrue on any unpaid balance due and owing and will be rendered immediately due and payable by Defendant upon Default. In the event of Default, Defendant shall owe a penalty of ONE HUNDRED DOLLARS (\$100.00) per day to the Attorney General for any payment made pursuant to this Section that arrives more than ten (10) days late. Further, immediately upon the

Default, Defendant shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet, attached hereto as **Exhibit A**), including all required attachments, and serve it on the Attorney General. Satisfaction of the monetary obligations of this Section shall not relieve Defendant from any obligations under this Judgment.

V. FUTURE VIOLATIONS

Any subsequent failure to comply with the provisions of this Judgment is, by statute, *prima facie* evidence of a violation of Chapter 501, Part II, Florida Statutes, and will subject Defendant to any and all civil penalties and sanctions authorized by law, including attorney's fees and costs. However, If the Attorney General contends that Defendant failed to comply with any of the injunctive terms or conditions of this Judgment as described in Sections 3.1 through and including 3.4 above (collectively, the "Injunctive Terms"), the Attorney General shall provide a detailed written notice to Defendant of said alleged deficiencies or failure to comply with the Injunctive Terms of this Judgment. The Attorney General shall afford Defendant a reasonable opportunity to cure said deficiencies within 10 business days without adverse consequences. If the Defendant fails to cure, the Attorney General may proceed with formal legal proceedings after providing written notice to Defendant of the Attorney General's dissatisfaction with Defendant's efforts to cure. In the event that a court of competent jurisdiction makes a determination that a violation of any provision of

this Judgment has occurred, then Defendant may be liable for additional civil penalties, as well as any additional attorneys' fees and costs, and other relief as may be allowed by law.

VI. SEVERABILITY

The provisions of this Judgment are separate and severable, and if any provisions are stayed or determined to be invalid, the remaining provisions shall remain in all force and effect.

VII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over this matter for all purposes, including to enforce the terms of this Judgment and to enter any further Orders as may be necessary to ensure compliance with this Judgment, including by contempt, civil and/or criminal proceedings.

VIII. PERSONAL GUARANTY

The undersigned individual, Gary A. Delia, as the principal owner and/or operator of Defendant, having read and understood this Judgment, hereby personally agrees to be bound on an individual basis to the monetary payment obligations of Section 4.6, as if the undersigned individual were the Defendant himself. Further, the undersigned individual agrees and attests that he will not, directly or indirectly, attempt to evade or avoid, or assist Home Performance Alliance, Inc., in attempting

to evade or avoid the terms of this Judgment. The undersigned individual understands and acknowledges that Plaintiff would not otherwise agree to enter into this Judgment with the Defendant without the undersigned individual personally agreeing to be bound by the aforestated provisions of this Judgment and the other terms in this Section VIII. The Parties intend this paragraph to be interpreted broadly, in keeping with its plain meaning and intent.

IX. DISMISSAL

This action is dismissed, subject to reopening for enforcement, modification or construction.

[Remainder of this page intentionally left blank.]

HOME PERFORMANCE ALLIANCE, INC.

Agreed to and signed this 26th day of August, 2020, by the below-stated person who states and affirms as follows:

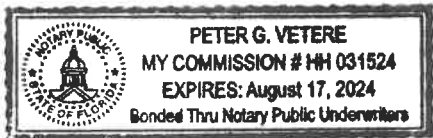
BY MY SIGNATURE, I, Gary A. Delia, hereby affirm that I am acting in my capacity and within my authority over **Home Performance Alliance, Inc.**, and that I have the full authority to bind **Home Performance Alliance, Inc.** to the terms and conditions of this Consent Final Judgment.

By: [Signature]
Name: Gary A Delia
Title: President/ceo

STATE OF Florida)
COUNTY OF Pinellas)

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, Gary A. Delia personally appeared as Known to Me AS President of **Home Performance Alliance, Inc.** He acknowledged before me that he executed the foregoing instrument for the purposes therein stated on the 26 day of August, 2020.

Subscribed to before me this 26 day of August, 2020.



[NOTARIAL SEAL]

[Signature]
Notary Public
Personally known
OR Produced Identification # _____
Type of Identification Produced _____

GARY A. DELIA FOR THE LIMITED PURPOSES OF ARTICLE VIII – PERSONAL GUARANTY

Agreed to and signed this 26th day of August, 2020, by the below-stated person who states and affirms as follows:

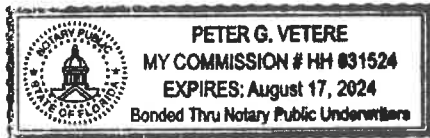
BY MY SIGNATURE, I affirm that my signature below binds me personally and individually to the terms and conditions of Article VIII – Personal Guaranty of this Consent Final Judgment.

By: [Signature]
Gary A. Delia, Individually

STATE OF FLORIDA)
COUNTY OF (Pinellas)

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, Gary A. Delia personally appeared, individually. He acknowledged before me that he executed the foregoing instrument for the purposes therein stated on the 26 day of August, 2020.

Subscribed to before me this 26 day of August, 2020.



[Signature]


Notary Public
Personally known
OR Produced Identification # _____
Type of Identification Produced _____

[NOTARIAL SEAL]

OFFICE OF THE ATTORNEY GENERAL
STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS


ASHLEY MOODY
ATTORNEY GENERAL

Dated this 10th day of September, 2020.

By: 
ROBERT J. FOLLIS
Assistant Attorney General
Florida Bar No. 0560200
Office of the Attorney General
Department of Legal Affairs

3507 East Frontage Road, #325
Tampa, Florida 33607
Telephone: (813) 287-7950
Facsimile: (813) 281-5515

Dated this 14th day of Sept, 2020.

By: 
VICTORIA BUTLER
Director, Consumer Protection Div.
Office of the Attorney General
Department of Legal Affairs

3507 East Frontage Road, #325
Tampa, Florida 33607
Telephone: (813) 287-7950
Facsimile: (813) 281-5515

ORDERED AND ADJUDGED in chambers in Pinellas County, Florida, this
____ day of _____, 2020.

By: _____
Circuit Court Judge

Conformed copies to:

Office of the Attorney General
Department of Legal Affairs
Attn: Robert J. Follis, Esq.
3507 East Frontage Road, Suite 325
Tampa, Florida 33607
Counsel for Plaintiff

D.S. Berenson
Berenson LLP
4495 Military Trail
Suite 203
Jupiter, Florida 33458
Counsel for Defendant

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
- CIVIL DIVISION -**

**OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,**

CASE NO:

Plaintiff,

v.

HOME PERFORMANCE ALLIANCE, INC.,
a Florida corporation

Defendants.

AFFIDAVIT OF GARY DELIA

Being duly sworn upon his oath, on information and belief states as follows:

1. I am over twenty-one (21) years of age and under no legal disability.
2. I have personal knowledge of the facts presented herein.
3. I am the President of Home Performance Alliance, Inc., with the authority to act on behalf of Home Performance Alliance, Inc., with regard to the above-captioned matter.
4. Home Performance Alliance, Inc., has refunded, reduced, offset or forgiven amounts owed to it by consumers in the amount of at least SIX HUNDRED FIFTEEN THOUSAND SIX HUNDRED TWENTY-FOUR DOLLARS AND 13/100 CENTS (\$615,624.13).

