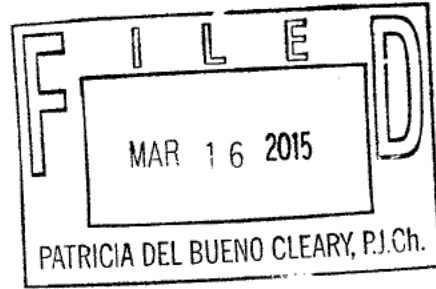


JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs



By: Natalie A. Serock (040892010)  
Deputy Attorney General  
[REDACTED]

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MONMOUTH COUNTY  
DOCKET NO.: MON-C-71-14

JOHN J. HOFFMAN, Acting Attorney General of  
the State of New Jersey, and STEVE C. LEE,  
Acting Director of the New Jersey Division of  
Consumer Affairs,

Plaintiffs,

v.

STEPHEN'S LANDSCAPING, L.L.C. d/b/a  
STEPHEN'S GARDEN CENTER; JANE AND  
JOHN DOES 1-20, individually and as owners,  
officers, directors, shareholders, founders,  
managers, agents, servants, employees,  
representatives and/or independent contractors of  
STEPHEN'S LANDSCAPING, L.L.C. d/b/a  
STEPHEN'S GARDEN CENTER; and XYZ  
CORPORATIONS 1-20,

Defendants.

Civil Action

**FINAL CONSENT JUDGMENT**

The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs, (collectively, "Plaintiffs")

and defendant Stephen's Landscaping, L.L.C. d/b/a Stephen's Garden Center ("Defendant"), (collectively, "Parties"). As evidenced by their signatures below, the Parties do consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

### **PRELIMINARY STATEMENT**

Plaintiffs commenced this Action with the filing of a Complaint on April 29, 2014. Plaintiffs filed a First Amended Complaint on August 11, 2014, alleging that Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), through its offering for Sale and/or Sale of generators and Motor Fuel to Consumers after Governor Christie declared a State of Emergency on October 27, 2012, just prior to Tropical Storm Sandy reaching New Jersey. Among other things, Plaintiffs alleged that: (1) from October 30, 2012 through November 3, 2012, Defendant's markup for generators rose from approximately 75.21% to a markup ranging from 82.35% to 155.56%, which represented an increase in markup ranging from 7.14% to 80.35%; and (2) Defendant sold five-gallon gas cans containing Motor Fuel to Consumers when it did not maintain a license to engage in the retail sale of Motor Fuel with the New Jersey Division of Taxation. Defendant denies all of the allegations.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties' agreement and for good cause shown:

**IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

#### **1. JURISDICTION**

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for

the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

## **2. VENUE**

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Monmouth County.

## **3. EFFECTIVE DATE**

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

## **4. NO ADMISSION OF LIABILITY**

4.1 The Parties enter into this Consent Judgment to settle disputed claims and to avoid the significant cost, expense, distraction, uncertainty, delay and inconvenience that would be associated with the continuation of the Action. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken thereunder shall constitute, or be construed as: (a) an admission by Defendant that any of its acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate the CFA and/or the Hazardous Products Regulations; (b) a concession by Defendant as to the validity of the Action; and/or (c) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Defendant. Neither the existence of, nor the terms of this Consent Judgment shall be deemed to constitute evidence or precedent of any kind, except in: (a) any action or proceeding by one of the Parties to enforce, rescind or

otherwise implement or affirm any or all of the terms of this Consent Judgment; and/or (b) any action or proceeding involving a Released Claim (as defined in Section 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

## 5. DEFINITIONS

As used in this Consent Judgment, the following capitalized words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

5.1 “Action” shall refer to the action titled John J. Hoffman, Acting Attorney General of the State of New Jersey, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs v. Stephen’s Landscaping, L.L.C. d/b/a Stephen’s Garden Center, Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. MON-C-71-14, and all pleadings and proceedings related thereto, including the Complaint, filed April 29, 2014, and the First Amended Complaint, filed August 11, 2014.

5.2 “Affected Consumer” shall refer to any Consumer who purchased Merchandise from the Defendant, including Motor Fuel and/or generators.

5.3 “Attorney General” shall refer to the Acting Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

5.4 “Consumer” means any Person to whom Defendant directly or indirectly offered Merchandise for Sale.

5.5 “CPSC” shall refer to the Consumer Product Safety Commission.

5.6 "Division" or "Division of Consumer Affairs" shall refer to the New Jersey Division of Consumer Affairs.

5.7 "Excessive Price Increase" shall be defined in accordance with N.J.S.A. 56:8-108.

5.8 "Hazardous Products Regulations" mean the Rules Concerning Hazardous Products, N.J.A.C. 13:45A-4.1 et seq.

5.9 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes generators and Motor Fuel.

5.10 "Motor Fuel" shall be defined in accordance with N.J.S.A. 56:6-1.

5.11 "New Jersey" and "State" shall refer to the State of New Jersey.

5.12 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

5.13 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e).

5.14 "State of Emergency" shall be defined in accordance with N.J.S.A. 56:8-108.

## **6. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

6.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA and the Hazardous Products Regulations.

6.2 Defendant shall be permanently enjoined from offering for Sale and/or selling Merchandise, specifically generators, at a price constituting an Excessive Price Increase during a State of Emergency or within thirty (30) days after termination of the State of Emergency, in violation of N.J.S.A. 56:8-109.

6.3 Defendant shall be permanently enjoined from charging an assembly fee for generators that require only minimal assembly without explaining the assembly process to Consumers prior to Sale and without providing Consumers with the option to choose whether or not they want to incur such assembly fee, in violation of N.J.S.A. 56:8-2.

6.4 Defendant shall be permanently enjoined from offering for Sale and/or selling Motor Fuel to Consumers without the requisite license from the Division of Taxation in violation of N.J.S.A. 56:8-2.

6.5 Defendant shall be permanently enjoined from offering for Sale and/or selling Merchandise contrary to an order issued by the CPSC, in violation of N.J.S.A. 56:8-2 and N.J.A.C. 13:45A-4.1.

## **7. SETTLEMENT AMOUNT**

7.1 The Parties have agreed to a settlement of the Action in the amount of Seventy-Eight Thousand Eight Hundred Seventy and 50/100 Dollars (\$78,870.50) ("Settlement Amount") pursuant to the CFA, N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, and N.J.S.A. 56:8-19.

7.2 Defendant shall pay Thirty-Three Thousand and 00/100 Dollars (\$33,000.00) of the Settlement Amount ("Settlement Payment") in the following manner: (a) Eleven Thousand and 00/100 Dollars (\$11,000.00) on or before April 24, 2015; (b) Eleven Thousand and 00/100 Dollars (\$11,000.00) on or before May 24, 2015; and (c) Eleven Thousand and 00/100 Dollars (\$11,000.00) on or before June 24, 2015.

7.3 The Settlement Payment shall be made by certified check, cashier's check, money order, wire transfer or credit card made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Natalie A. Serock, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

7.4 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

7.5 For a period of one (1) year from the Effective Date, the Forty-Five Thousand Eight Hundred Seventy and 50/100 Dollars (\$45,870.50) balance of the Settlement Amount shall be suspended and automatically vacated at the end of that period ("Suspended Penalty") provided:

- (a) Defendant complies in all material respects with the injunctive relief and business practices set forth in Section 6; and
- (b) Defendant makes the Settlement Payment in the manner required under Section 7.2.

7.6 In the event Defendant materially fails to comply with Section 7.5, Plaintiffs shall provide Defendant with notice seeking payment of the entire Suspended Penalty, as well as any unpaid portion of the Settlement Payment. In any such notice, however, Plaintiffs shall provide Defendant with the specific details of Defendant's alleged noncompliance, as well as any supporting documents. Defendant shall be afforded a fifteen (15) day period from receipt of such notice within which to cure any such noncompliance.

7.7 In the event of Defendant's failure to cure any such noncompliance, Plaintiffs may move on notice or by Order to Show Cause to have a Judgment entered for the Suspended Penalty, as well as any unpaid portion of the Settlement Payment. Defendant shall have the right to submit opposition to any motion or Order to Show Cause application filed by Plaintiffs and to contest same on any return date. Upon entry by the Court of any such Judgment, Plaintiffs shall then arrange for entry of such Judgment upon the Statewide docket.

#### **8. DISMISSAL OF ACTION**

8.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action.

#### **9. GENERAL PROVISIONS**

9.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

9.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

9.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

9.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendant.



9.5 Except as otherwise explicitly provided for in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

9.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

9.7 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

9.8 Nothing contained in this Consent Judgment shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Judgment with respect to any of the matters contained herein.

9.9 The Parties represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

9.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

#### **10. RELEASE**

10.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendant making the Settlement Payment in the manner referenced in Section 7, Plaintiffs hereby release Defendant from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against

Defendant for violations of the CFA and the Hazardous Products Regulations as alleged in the Action, as well as the matters specifically addressed in this Consent Judgment (“Released Claims”).

10.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) actions to enforce this Consent Judgment; and (b) any claims against Defendant by any other agency or subdivision of the State.

### **11. PENALTIES FOR FAILURE TO COMPLY**

11.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

11.2 The Parties agree that any future violation of the injunctive provisions of this Consent Judgment, the CFA and/or the Hazardous Products Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Defendant may be liable for enhanced civil penalties.

### **12. COMPLIANCE WITH ALL LAWS**

12.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of its obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to

oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

**13. NOTICES UNDER THIS CONSENT JUDGMENT**

13.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by the United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

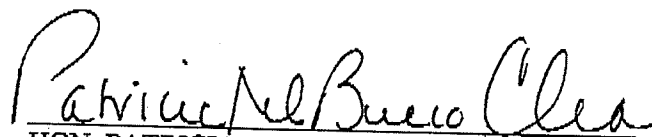
For the Plaintiffs:

Natalie Serock, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor, P.O. Box 45029  
Newark, New Jersey 07101

For the Defendant:

Robert A. Weir, Jr., Esq.  
Weir and Plaza, LLC  
25 Sycamore Avenue  
Little Silver, New Jersey 07739

IT IS ON THE 16 DAY OF MARCH 2015 SO ORDERED,  
ADJUDGED AND DECREED.

  
HON. PATRICIA DEL BUENO CLEARY, P.J., CH.

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: *Natalie Serock*  
Natalie Serock  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
[REDACTED]

Dated: March 16, 2015

FOR DEFENDANT:

WEIR & PLAZA, LLC

By: *Robert A. Weir, Jr.*  
Robert A. Weir, Jr., Esq.  
Weir & Plaza, LLC  
25 Sycamore Avenue  
Little Silver, New Jersey 07739  
Telephone: (732) 741-8181

Dated: March 11, 2015

STEPHEN'S LANDSCAPING, L.L.C.

By: *Stephen P. Foggia*  
Stephen P. Foggia  
Chief Executive Officer

Dated: 3/11/2015, 2015