

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM

DANA NESSEL, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN, *ex rel* The
People of the State of Michigan,

Case No. 24-

0003

-CP

Plaintiff,

HON.

WANDA M. STOKES

v

MICHIGAN'S CHOICE TREE SERVICE,
LLC, STORM SUPPORT EMERGENCY
TREE REMOVAL, LLC, and DAVID
FOSTER,

Defendants.

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An Ex Parte Petition for Civil Investigation (entering an Assurance of Voluntary Compliance) between these parties arising out of the same transaction or occurrence as alleged in the Complaint has been previously filed in Otsego County Circuit Court. The action is no longer pending. The docket number and judge assigned to the action are: 22-19121-CP and Judge George J. Mertz.

This matter also arises from, or at least relates to, an Investigation of Canary Date Sculpting, Inc. and other tree services, as described in the Attorney General's Ex Parte Petition for Civil Investigative Subpoenas filed with this Court under docket number 22-9-PZ and assigned to Judge Joyce Draganchuk.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Dana Nessel, Attorney General of the State of Michigan, *ex rel* the People of the State of Michigan, through Assistant Attorneys General Darrin F. Fowler and Daniel J. Ping, state the following for her complaint:

I. Parties, Jurisdiction and Venue

1. The Plaintiff in this lawsuit is Attorney General Dana Nessel. She is a constitutional officer charged with enforcing the laws of the State of Michigan. In this capacity, she has authority to seek the imposition of fines upon entities that transact business in Michigan without a certificate of authority, and to request an injunction against the operation of such a business. See MCL 450.5007. The Attorney General is also authorized to enforce the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* To this end, she may commence actions for injunctive relief, and for the imposition of civil fines upon those who persistently and knowingly violate the MCPA. See MCL 445.905(1).

2. Defendant Michigan's Choice Tree Service, LLC (Michigan's Choice) is a limited liability company that was formed under the laws of the State of Michigan on March 12, 2019.

3. Defendant Storm Support Emergency Tree Removal, LLC (Storm Support) is a limited liability company formed under the laws of the State of Wyoming on March 24, 2023.

4. Defendant David Foster (Foster) is a resident of Rockford, Michigan. Foster is the sole member and owner of Michigan's Choice. Upon information and belief, Foster is also the owner and principal of Storm Support.

5. Pursuant to MCL 445.905, this Court is an appropriate venue for this action against Storm Support both because it is a Wyoming company and because it has conducted business in Ingham County. All Defendants, whether directly or through an instrumentality, have conducted business in Ingham County.

6. This matter arises from, or at least relates to, the Attorney General's investigation of Canary Date Sculpting and other tree services, as described in the Attorney General's *Ex Parte* Petition for Civil Investigative Subpoenas filed with this Court under docket number 22-9-PZ. In that Petition, it is explained that Canary Date Sculpting engages in practices like those that will be alleged here against the Defendants. It is also explained that Canary's owner, Justin Hartmann, has held classes teaching other tree service companies about billing for tree services. Defendant Foster regards, or has at least in the past regarded, Hartmann as an idol in the tree services industry. Foster has also attended one or more classes presented by Hartmann.

II. Factual Background

A. Prior investigation of Michigan's Choice

7. Last year, the Attorney General sought to commence a formal investigation of Michigan's Choice by filing a petition for civil investigative subpoenas with the Otsego County Circuit Court. Through that petition, the Attorney General presented evidence establishing probable cause to believe Michigan's Choice was engaged in a pattern of confusing consumers about their legal rights and obligations and misleading consumers about the nature of the

agreements they were signing, the cost of the services it was providing, and the potential for financial responsibility for costs not paid for by insurance. Michigan's Choice also showed a pattern of charging grossly excessive prices for its tree services.

8. The Petition detailed the experiences of consumers such as Karen [REDACTED] of Gaylord, Fay [REDACTED] of Gaylord, Korey [REDACTED] of Grand Rapids, and Kristy [REDACTED] of Rockford. Each of these consumers had at least one tree or tree limb that had fallen onto their home as a result of a tornado or storm. Through oral representations (and text messages with Kristy), Defendant Foster led each of these consumers to believe Michigan's Choice would work directly with their insurers for payment for emergency tree services, and that they would have no out-of-pocket costs.

9. During the time period during which Defendants Foster and Michigan's Choice were interacting with the consumers identified in the preceding paragraph, Michigan's Choice's website stated that it would work directly with insurers for emergency tree services and that its customers would have no out-of-pocket costs.

10. Defendants Foster and Michigan's Choice did not present any of the consumers identified in ¶ 8 with any quote or cost estimate for the emergency tree services to be provided before asking them to sign a contract with Michigan's Choice. Nor did these Defendants present quotes or cost estimates to these consumers before commencing the work. After the representations made by

Defendant Foster about how he would work with their insurance companies, each of these consumers signed a contract with Michigan's Choice purporting to hold them liable for any project costs not paid for by their insurers.

11. Following completion of the emergency tree services, Defendant Michigan's Choice presented the consumers' insurance companies with invoices. The charges in these invoices were grossly in excess of the prices at which similar services are generally provided. The invoice for the work at Karen's home was for \$20,491.42 even though the job took only 3.5 hours. The invoice for the work at Kristy's home was for \$33,449.08 for the removal of a single, large tree that took less than a full day. And the invoice for the work at Korey's home was for \$14,773.72, even though the removal of the single limb was accomplished in less than two hours. Not only were these invoices in grossly excessive amounts, the costs charged were actually not consistent with the contracts themselves.

12. After the insurers for Karen and Fay refused to pay Michigan's Choice the full amount invoiced, Defendant Foster caused liens to be placed upon their homes. Its contracts with Kristy and Korey gave Michigan's Choice the power to do the same, or to pursue them for costs not paid by their insurance companies.

13. Upon a finding that the Attorney General had supplied evidence establishing probable cause to believe Defendants had committed MCPA violations, the Otsego County Circuit Court authorized the issuance of investigative subpoenas. The Attorney General thus obtained documents from Michigan's Choice and testimony from Defendant Foster.

14. Upon information and belief, the consumers identified in ¶ 8 are not the only consumers having similar experiences with Defendants Foster and Michigan's Choice during 2022—they are simply examples of a pattern.

15. After reviewing the evidence obtained during the investigation, the Attorney General issued a notice of intended action to Defendants Foster and Michigan's Choice on or around February 24, 2023. This notice is included as **Exhibit A** to this Complaint.

16. Following issuance of the aforementioned notice, the Attorney General and Michigan's Choice entered into an agreement called an Assurance of Voluntary Compliance (Assurance Agreement.) Such agreements are anticipated by § 6 of the MCPA, MCL 445.906. A copy of this Assurance Agreement is included as **Exhibit B** to this Complaint. Through the Assurance agreement, Michigan's Choice agreed that, going forward, it would present consumers with written price quotes before commencing projects or asking consumers to sign contracts. Michigan's Choice also agreed to cease using assignments of benefits in its emergency tree service contracts. And, without admitting it had violated the MCPA, Michigan's Choice agreed it would not violate the MCPA in the future.

17. The Assurance agreement was executed by the parties on March 8, 2023. It took effect that day.

B. The creation of Storm Support

18. Storm Support was created in Wyoming on March 24, 2023. Upon information and belief, Defendant Foster is the owner of Storm Support. Defendant

Foster did not tell the Attorney General's Office of his plans to create Storm Support prior to its creation. Defendant Foster did not inform the Attorney General's Office of the existence of Storm Support after its creation.

19. In order to conduct business in Michigan, Storm Support was required to file a certificate under MCL 450.5002. As of the date this lawsuit was filed, no such certificate has been filed. Nevertheless, Storm Support has conducted business in Michigan. Storm Support has conducted business in Michigan for at least nine months without having the required certificate.

20. Despite only having been in existence since earlier this year, as of the filing date of this lawsuit Storm Support was maintaining a Facebook page suggesting it has been in operation since 2019. As of the filing date of this lawsuit, the Facebook page for Storm Support includes photographs also used by Michigan's Choice on its website. Upon information and belief, Defendant Foster is the person ultimately responsible for the content of both Storm Support's Facebook page and the Michigan's Choice website.

C. Unfair trade practices *redux*

21. Tim ██████████ resides in Lansing, Michigan, with his wife and children. Mid-Michigan experienced an intense storm the night of August 24, 2023, that caused many residents to lose electrical power. This storm caused three tree branches to fall onto Tim's roof, one of which caught onto the power line. Tim and his family were left without electrical power to their home.

22. The next day, Tim found Michigan's Choice while searching for help on his phone. He called Michigan's Choice and spoke to Foster. Foster asked Tim about his homeowner's coverage, and Tim responded that he uses Hannover. Foster then responded that Tim could relax and that he (Foster) would handle everything with Tim's insurance. Upon information and belief, Foster never offered any estimate of the project cost, nor did Foster tell Tim that he (Tim) would be responsible for any costs not covered by insurance.

23. After their conversation, Foster sent Tim a contract electronically. As he was without power, Tim reviewed the contract on his phone. The contract text as it appeared on the phone screen was small and difficult to read. Tim signed the contract.

24. The contract Tim signed contains no quote or estimate for the total project cost. It does contain an assignment of insurance benefits.

25. The next day—August 26, 2023—a crew of three arrived at Tim's home with equipment. The crew moved the three limbs and tree debris from Tim's roof onto his front yard. The crew spent approximately two hours at Tim's home. Tim later used a chainsaw to cut up the limbs, and he removed them with the help of his family.

26. At some point after the work was done, Storm Support (not Michigan's Choice) presented an invoice for the project at Tim's home in the total amount of \$23,718. Tim thought this was incorrect and communicated that to Foster, who directed Tim's attention to a contract provision stating that all services would be

billed at an eight-hour minimum. Upon information and belief, Tim had not expected the invoice to be nearly this high and would not have entered into the contract had Foster disclosed the potential cost before seeking Tim's signature.

27. Tim followed up with his insurance company, and did not want them to pay the invoiced amount because he was concerned that doing so would cause his homeowner's insurance costs to increase.

28. Tim filed a consumer complaint with the Attorney General's Office regarding his experience with Michigan's Choice and Storm Support. This complaint was forwarded to these entities through the Attorney General's usual mediation process. After receiving Tim's complaint from the Attorney General's Consumer Protection Team, Storm Support accepted payment from Tim's insurance company for an amount far less than that which had been invoiced. Storm Support then sent an email to the Attorney General's Office saying the issue was settled, and that Tim was completely satisfied with the resolution. Tim, however, was not satisfied.

29. On Sunday, August 20, 2023, a large oak tree fell onto Lori [REDACTED] home in Grand Rapids, Michigan. The tree had fallen from her neighbor's property.

30. Lori tried calling different tree companies to get help with the fallen tree. One of those companies referred her to David Foster of Storm Support. Lori called Foster and talked with him by telephone. During that conversation, Foster asked Lori to text him photographs of the fallen tree. She did so. Foster told Lori he would work with her insurance company.

31. Foster sent Lori a document to sign electronically. He told Lori the document indicated that her insurance company would be billed directly for the tree service. He indicated that he would not do anything until she signed the document. Foster and Storm Support did not provide Lori a quote or estimate of the total project costs before sending her the contract.

32. Lori was under stress because of the fallen tree. The document Foster sent her to sign was a few pages long. It did not contain a total price or quote for the work to be done. Upon information and belief, Lori received and signed the document electronically in less than two minutes. Thereafter, she did not have access to the document she had signed.

33. Foster came to Lori's home that evening with another person. He trimmed some branches and assessed the project, telling Lori he would return the next day.

34. The next day, Foster returned with a crew of three or four other workers. They arrived around 10:00 a.m. and were gone from Lori's home by 4:00 p.m. The tree removal was completed within this time.

35. Later, Lori learned from her insurance company that Storm Support billed \$39,474.60 for the work done at her home. Lori would not have signed the contract with Storm Support had Foster disclosed this amount would be billed. Lori was left feeling taken advantage of in her time of need, and manifested physical symptoms as a result of the emotional distress caused by this experience.

36. Lori then filed a consumer complaint with the Attorney General's Office against Storm Support. This complaint was forwarded to, and received by, Storm Support. Storm Support then agreed to accept as payment from Lori's insurance company an amount far less than had been invoiced. Foster then responded to the Attorney General's Office stating the matter had been resolved through a settlement with Lori's insurance company.

37. After reaching a resolution with her insurance company, Foster then asked Lori to sign a mutual release and confidentiality agreement. Among its terms, the proposed agreement included a provision stating, "The parties hereto agree not to disclose or communicate to any third party anything about the services rendered, payment made or information regarding this dispute or settlement. The remedy for violating the confidentiality clause will be the payment of \$1,000.00 by the violating party as liquidated damages." A copy of the proposed agreement is included as **Exhibit C** to this Complaint. Since she was not involved in the settlement reached by her insurance company, Lori was uncomfortable even opening the link to the proposed document and instead forwarded it to the Attorney General's Office.

38. Also in August of 2023, a tree fell on the home of Allen [REDACTED] in Cedar Springs, Michigan. A representative from Allen's homeowner's insurance agency called Storm Support on his behalf.

39. Someone from Storm Support came to Allen's home with a document for him to sign on an iPad. The text on the screen was too small for Allen to read, so

he asked what it was. The man responded it gave Storm Support permission to remove the tree and bill Allen's insurance company. The man then scrolled through the document while holding the iPad, telling Allen where he needed to initial and sign.

40. The Storm Support crew then removed the tree from Allen's home, leaving the debris in his front yard. Allen asked about its removal, and they told him they would need to come back to do that.

41. As the crew did not return, Allen eventually cut up the debris with his chainsaw. He and his wife then hauled it away through several trips in their truck.

42. Storm Support billed Allen's insurance company \$26,094, which the insurer refused to pay. Allen's insurance company explained to him that Storm Support might put a lien on his home. Worried about this, Allen filed a consumer complaint with the Attorney General's Office.

43. The Attorney General's Consumer Protection Team forwarded Allen's complaint to Storm Support on October 17, 2023.

44. On the morning of October 19, 2023, Foster visited Allen's home. During this visit he told Allen that no lien would be placed on his home and there had been some kind of miscommunication. He apologized to Allen.

45. Upon information and belief, Defendants invoiced the projects for Tim, Lori, and Allen at amounts grossly in excess of which similar services are generally sold. Defendants' oral representations and contracts are unlawful in character and are designed to assist Defendants in collecting on such invoices notwithstanding

their excessive amounts. Defendants know they are presenting contracts to consumers experiencing stressful circumstances. As these contracts are being viewed on a phone or iPad, the fine print involved creates circumstances under which Defendants know the consumer may not be able to read—much less understand—the contract terms. This is particularly true in situations like Allen’s where the consumer is never actually presented with the contract. And the consumers’ inability to retain or access the agreement following execution creates a probability of ongoing confusion over the legal rights and obligations between the execution and project commencement. Defendants’ failure to allow the consumers to retain the executed contract may also constitute a violation of 15 USC 7001(c)(1)(D).

46. Upon information and belief, other Michigan consumers—most of whom the Attorney General has not yet identified—have had experiences with Defendants subsequent to the Assurance Agreement with Michigan’s Choice similar to those of Tim, Lori, and Allen.

III. Causes of Action

COUNT I – VIOLATION OF MICHIGAN LIMITED LIABILITY ACT (AS TO FOSTER AND STORM SUPPORT)

47. The Attorney General incorporates all above allegations as though more fully set forth here.

48. As a limited liability company formed under the laws of the State of Wyoming, Storm Support was required to have a certificate of authority to conduct

business in Michigan under MCL 450.5002. Storm Support has conducted business in Michigan without such a certificate of authority. It has done so since March 2023. Foster was the person primarily responsible for ensuring such a certificate was obtained.

49. Under MCL 450.5007, a fine may be imposed in an amount up to \$1,000 per month for this ongoing violation. This violation has, so far, persisted for nine months. Further, under MCL 450.5007(7), this Court may enter an injunction prohibiting Storm Support from conducting business in Michigan until it comes into compliance with the Michigan Limited Liability Act.

**COUNT II – VIOLATIONS OF MICHIGAN CONSUMER PROTECTION ACT
(AS TO ALL DEFENDANTS)**

50. The Attorney General incorporates all above allegations as though more fully set forth here.

51. Michigan’s Choice, Storm Support, and Foster have engaged in the following unfair business practices made unlawful under the MCPA:

...

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

...

(r) Representing that a consumer will receive goods or services free or without charge, or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

...

(x) Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

...

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

[MCL 445.903(1)(n), (r), (s), (t), (x), (y), (z), (bb), and (cc).]

These violations are alleged individually, collectively, and alternatively.

52. Defendants misconduct is manifest in multiple ways. Foster's oral representations to consumers are misleading, create a probability of confusion over the payment obligation, and they are inconsistent with the contracts he then presents to them. The Storm Support contract is designed to reinforce the concept

that the insurance company will pay for the tree services, but then contains various unconscionable provisions—many of which put consumers in the position of seeming to waive legal rights without appropriate notice. Such terms include:

- limits to consumers' ability to make legal claims against Storm Support for property damage, even where such damage was foreseeable by Storm Support;
- limits to consumers' ability to bring claims against Storm Support to one year without advising them of the usual statutes of limitations for tort and contract claims;
- setting the jurisdiction and venue for claims brought under the contract to a county in Wyoming;
- various unlawful penalties and the creation of the probability a consumer may be confused into believing they may have to pay as much as a 10% per month interest rate on unpaid balances; and
- a consumer's purported attestation to the quality of the work performed before the project is undertaken through a statement that the "[c]lient acknowledges complete and total satisfaction of service provided."

53. As the contract includes no total project cost, and instead provides a list of potential cost components, Defendants create a probability of confusion over the total project price. Such price is material to the transaction. As a result, there has been no true meeting of the minds in the transactions with Tim, Lori, and Allen as alleged above. By proceeding to present invoices with patently excessive total prices, Defendants are also violating the duty of good faith and fair dealing.

54. Tim, Lori, Allen, and all similarly situated Michigan consumers are entitled to rescission of the contracts entered into with Storm Support.

Alternatively, such consumers are entitled to modification of those contracts to eliminate all unfair or unconscionable terms in accord with MCL 445.910(2).

**COUNT III – BREACH OF CONTRACT
(AS TO MICHIGAN’S CHOICE AND FOSTER)**

55. The Attorney General incorporates all above allegations as though more fully set forth here.

56. The veil of legal protections ordinarily attaching to limited liability companies should be pierced because Foster has used Michigan’s Choice and Storm Support as his alter egos and/or as instrumentalities to carry out the ongoing practices as alleged in this Complaint. Alternatively, Michigan’s Choice used Storm Support as an instrumentality through which it continued practices it had agreed to change through the Assurance Agreement.

57. Michigan’s Choice and Foster breached the Assurance Agreement by proceeding with emergency tree services contracts without giving a quote for a total project price, by using assignments of benefits in tree service contracts, and by continuing to violate the MCPA.

COUNT IV – DECLARATORY JUDGMENT

58. The Attorney General incorporates all above allegations as though more fully set forth here.

59. The document that Foster attempted to have Lori sign after reaching a resolution with her insurance company contained a provision purporting to prevent her from communicating with third parties about her concerns related to Storm Support. Had Lori signed it, she may have believed she would be subject to the

\$1,000 penalty stated in that document had she continued to communicate with the Attorney General's Office regarding her concerns. It is unknown whether Defendants have presented documents with similar text to other consumers, or whether any may have assented to such a provision.

60. Storm Support's contract with Tim also contains boilerplate provisions that serve to discourage consumers from making complaints to the Attorney General's Office or from cooperating with her Consumer Protection Team during the course of this litigation. For example, the contract includes text saying the consumer may be fully obligated for payment of the invoice in the event of a failure to cooperate with Storm Support's efforts: "I understand that if I choose not to assist Storm Support with obtaining full payment from the insurance carrier, this invoice is ultimately my obligation, and I will be required to pay the total amount due within 15 days." Upon information and belief, Storm Support's contracts with other consumers routinely include this text.

61. The application of any contract or release provisions in a way that prevents consumers from providing truthful information or testimony to the Attorney General's Office would be contrary to public policy. Text within Storm Support's standard contract has a chilling effect upon such cooperation. If any consumers have signed release language like that presented to Lori, it certainly would have such a chilling effect on such cooperation.

62. In the context of the present controversy between the Attorney General and Defendants, the Attorney General seeks a declaratory judgment that

Defendants may not invoke any provision in any contract, release, or other agreement to the detriment of any consumer's ability to supply a complaint, documents, testimony or other information to the Attorney General in relation to this litigation.

COUNT V – CIVIL FINES UNDER THE MCPA

63. The Attorney General incorporates all above allegations as though more fully set forth here.

64. Defendants' misconduct as alleged throughout this Complaint was knowing and repeated. They had notice of the potential implications of their misconduct through the prior investigation and resulting Notice of Intended Action. And their actions following receipt of the consumer complaints from Tim, Lori, and Allen further show this knowledge.

IV. Relief Requested

Accordingly, for the reasons stated above, the Attorney General respectfully requests the following relief:

- A. Orders finding that Defendants Foster and Storm Support have violated the Michigan Limited Liability Act by failing to have a certificate of authority for Storm Support to conduct business in Michigan, holding them jointly and severally liable for civil fines of \$9,000 for this violation, and preliminarily and permanently enjoining

them from conducting such business in Michigan until such certificate is secured and such fines are paid.

- B. Orders finding that all Defendants have violated the Michigan Consumer Protection Act and rescinding all emergency tree service contracts entered into between any defendant and Tim, Lori, Allen, and all other similarly situated Michigan consumers. Alternatively, all such contracts should be modified to eliminate all consumer obligations, leaving intact only the assignments of benefits.
- C. Orders preliminarily and permanently enjoining Defendants from enforcing the contracts with Tim, Lori, Allen, and all other similarly situated Michigan consumers.
- D. Enter an order finding Defendants Michigan's Choice and Foster to be in breach of the Assurance Agreement, enjoining them from further breaches, and awarding the Attorney General all costs and attorney fees resulting from pursuit of this action.
- E. An order imposing civil fines upon Defendants, jointly and severally, for knowing and repeated violations of the MCPA in accord with MCL 445.905, as well as costs to the Attorney General as the prevailing party in accord with that statute.
- F. A declaratory judgment that Defendants may not invoke any provision in any contract, release, or other agreement to the detriment of any

consumer's ability to supply a complaint, documents, testimony or other information to the Attorney General in relation to this litigation.

G. Any and all other which relief that justice may require.

Respectfully submitted,



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