

STATE OF MICHIGAN  
IN THE 30<sup>TH</sup> 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.

---

Darrin F. Fowler (P53464)  
Daniel J. Ping (P81482)  
Assistant Attorneys General  
Michigan Department of Attorney General  
Corporate Oversight Division  
P.O. Box 30736  
Lansing, MI 48909  
(517) 335-7632  
FowlerD1@michigan.gov  
PingD@michigan.gov

---

**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is entered into between Plaintiff Dana Nessel, in her capacity as Attorney General of the State of Michigan (Attorney General) and Defendants Michigan's Choice Tree Service, LLC, Storm Support Emergency Tree Removal, LLC, and David Foster. The Attorney General and Defendants shall be collectively referred to in this Agreement as the Parties. It is

the desire of the Parties to enter into this Agreement to resolve all claims and defenses arising from the above-captioned litigation, which shall be referred to in this Agreement as the Lawsuit.

To this end, the Parties hereby agree as follows:

1. The Attorney General served the Lawsuit upon Defendants on January 4, 2024. In the Lawsuit, the Attorney General alleges violations of the Michigan Limited Liability Company Act (MLLCA), the Michigan Consumer Protection Act (MCPA), and breach of contract.
2. The Attorney General sought through the Lawsuit (1) orders finding that Defendants Foster and Storm Support violated the Michigan Limited Liability Company Act and holding them jointly and severally liable for civil fines authorized by statute, as well as an injunction suspending them from operations in Michigan until complying with the MLLCA; (2) orders finding that Defendants violated the MCPA and rescinding all emergency tree contracts entered into between any defendant and certain consumers, as well as all consumers similarly situated; (3) an order finding Defendants Michigan's Choice and Foster to be in breach of a March 8, 2023, contract with the Department of Attorney General, i.e., an Assurance of Voluntary Compliance (AVC); (4) an order imposing civil fines on Defendants for violations of the MCPA, which fines are authorized by that Act; and a declaratory judgment that Defendants may not invoke any provision of any agreement to the detriment of any consumer's ability

to supply information to the Attorney General in relation to this litigation;  
and (5) any other appropriate relief.

3. Through their Answer, Defendants deny some allegations in this lawsuit and admit to others. For purposes of this Agreement, Defendants admit only that Foster and Storm Support violated the MLLCA by operating Storm Support, an out-of-state entity, in Michigan without the certificate of authority required by the MLLCA; and Defendants further admit to violating § 3(1)(n) of the MCPA, MCL 445.903(1)(n), which prohibits the following conduct:

Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
4. The Parties desire, through this Agreement, to resolve and settle the Lawsuit without the costs and burdens associated with further litigation with respect to any remaining or potential claims and defenses that have been, or could be, raised in the Lawsuit by the Parties. There were no inducements or representations leading to the execution of this document, except as stated within the document itself.
5. Defendants agree to incorporate and reaffirm the terms of the March 8, 2023, Assurance of Voluntary Compliance (AVC) into the instant settlement agreement and accompanying consent judgment, and to apply its terms to all Defendants, as well as any future-created entities affiliated with any defendant in any way, in perpetuity.

6. Defendants agree that Storm Support will not operate in Michigan unless or until it has obtained the certificate of authority required by the MLLCA. Storm Support's application for the certificate shall truthfully indicate the date on which it first operated in Michigan. See MCL 450.5002(f).
7. Defendants agree not to assist other companies or entities, regardless of their affiliation with those entities, in any facet of emergency tree services unless written quotes or estimates are provided to the consumer prior to work being contracted and commenced.
8. Defendants agree to be enjoined from including punitive or confusing terms in any service contracts (emergency or non-emergency), such as usurious interest rates for non-payment, or burdensome forum-selection clauses.
9. Defendants agree to issue a monetary payment to the Department of Attorney General in the amount of \$13,500.
10. Defendants agree to be enjoined from engaging in any trade or commerce in Michigan using any additional business entities or aliases without notifying the Department ten days prior to the first transaction, whether or not those entities or aliases perform emergency tree services.
11. Defendants agree to be enjoined from further collection efforts or enforcement of any existing contracts as against any Michigan

consumers for emergency tree services. This does not preclude Defendants from seeking to collect additional payment from a consumer's insurance company in good faith.

12. Within three days of the Effective Date of this Agreement, counsel for the Parties shall add their signatures to the Consent Judgment included as **Attachment A**. Counsel for the Attorney General shall be responsible for filing it with the Court for entry.
13. Nothing shall prevent Defendants from issuing refunds to consumers prior or subsequent to the Effective Date of this Agreement.
14. Regarding the \$13,500 payment noted above, the Attorney General shall consider that payment to comprise satisfaction of the civil fines and/or penalties authorized under the MLLCA and MCPA, although such consideration of satisfaction shall be considered voidable at the Attorney General's option if she discovers probable cause to believe that Defendants have violated this Agreement or the attached Consent Judgment.
15. Defendants shall pay the \$13,500 to the Attorney General in the form of two cashier's checks, money orders, or checks from the Sawyer Law Offices PC IOLTA account, with half due thirty days after entry by the court of the Consent Judgment and the other half due 120 days after entry. These payments shall be mailed to counsel for the Attorney General using the address contained in the above caption. It is

understood the Attorney General will distribute \$250 each to the three consumers identified in ¶¶ 21–44 of the complaint initiating this Lawsuit; the balance will be retained by the Attorney General to offset the expenses associated with the Lawsuit.

16. If any of these payments are late, the Attorney General shall notify counsel for Defendants either by electronic mail at [ksawyer@sawyerlawpc.com](mailto:ksawyer@sawyerlawpc.com) or by certified mail to Attorney Sawyer's address at 418 College Ave NE, Grand Rapids, MI 49503. If Defendants fail to make the payments within 7 days of said notification, they shall pay \$50 as liquidated damages for additional efforts undertaken by the Attorney General to secure payment for a delay of up to twenty-one days. Should a payment be more than twenty-one days late, Defendants agree to compensate the Attorney General for all costs and attorney fees associated with the Attorney General's efforts to secure payment.
16. The Parties hereby fully and finally release and discharge each other, their agents, employees, servants, attorneys, successors, and assigns, from any claims or causes of action (including attorney fees, costs, and expenses of every kind and however denominated) that have been, or could be, asserted as claims, defenses, or counter-claims in the Lawsuit. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers, other divisions of the Attorney General's office, or other state or federal agencies. This release and discharge is voidable at the

Attorney General's option if, subsequent to the effective date of this Agreement, any defendant is found by a court of competent jurisdiction to be in violation of the March 8, 2023, AVC or this settlement agreement and/or consent judgment.

17. This Agreement is binding on the parties and their successors in interest. Each Party has a duty to so inform any such successor in interest.
18. In the event that a court determines that any provision of this Agreement is unenforceable, such provision will be severed from this Agreement and all other provisions will remain valid and enforceable, provided however that if the severance of any such provision materially alters the rights and obligations of the Parties hereunder, the Parties will attempt, through reasonable, good faith negotiations, to agree upon such other amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.
19. This Settlement Agreement may be executed in counterparts and each counterpart shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures on this Settlement Agreement may be communicated by facsimile transmission or by email. Signed facsimile or email copies of this Settlement Agreement are binding upon the parties signing same as though they were originals, and the

Agreement shall be deemed effective upon being signed by counsel for both Parties.

**ACKNOWLEDGED AND AGREED:**



Darrin F. Fowler (P53464)  
Attorney for Plaintiff

Dated: March 8, 202~~3~~<sup>4</sup>



Keary Sawyer (P29416)  
Attorney for Defendants

Dated: March 7, 2023



David Foster on  
behalf of himself, Michigan's  
Choice Tree Service, LLC, and  
Storm Support Emergency Tree  
Removal, LLC

Dated: March 07, 202~~3~~<sup>4</sup>



# **ATTACHMENT A**

STATE OF MICHIGAN  
IN THE 30<sup>TH</sup> 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.

---

Darrin F. Fowler (P53464)  
Daniel J. Ping (P81482)  
Assistant Attorneys General  
Michigan Department of Attorney General  
Corporate Oversight Division  
P.O. Box 30736  
Lansing, MI 48909  
(517) 335-7632  
FowlerD1@michigan.gov  
PingD@michigan.gov

---

**CONSENT JUDGMENT**

At a session of said Court, held on  
\_\_\_\_\_, 2024, in the City of Lansing, Michigan.

Present: HON. WANDA M. STOKES

The Attorney General of the State of Michigan (Attorney General)  
commenced this lawsuit on January 4, 2024. In a five-count complaint, the  
Attorney General alleged that the above-captioned Defendants violated the

---

Michigan Limited Liability Company Act (MLLCA), MCL 450.5002, and various provisions of the Michigan Consumer Protection Act, MCL 445.901 et seq. The complaint also alleged breach of contract.

Defendants filed an Answer to the Attorney General's Complaint on or about January 26, 2024. On January 29, 2024, the Attorney General filed a motion for a preliminary injunction, to which no response has been filed. And, on January 31, 2024, the Attorney General filed a motion for summary disposition, to which no response has been filed. The Attorney General served her initial disclosures on February 9, 2024, and the parties stipulated to delay the deadline for service of Defendants' initial disclosures due to pending settlement. The only order entered by this Court during the course of this litigation was the February 22, 2024, scheduling order.

Defendants now wish to resolve the pending matter rather than pursue continued litigation. Meanwhile, the Attorney General has stated throughout this litigation the dual goals of allowing Defendants to continue operating so long as they can do so in a lawful manner and securing binding assurances that Defendants will permanently cease their unfair and deceptive business practices.

Following discussions between the Attorney General's Office and Defendants and their counsel, this Consent Judgment is being presented because it is deemed by both sides to be the best mechanism for accomplishing these goals.

Defendants acknowledge they have had the opportunity to review this document and receive appropriate legal consultation prior to its entry.

Therefore, upon the consent of the Parties as reflected through the below signatures, IT IS ORDERED AS FOLLOWS:

1. Defendants will pay to the Department of Attorney General the total sum of \$13,500. This shall be accomplished through two (2) equal payments, with half due thirty days after entry by the court of this consent judgment and the other half due 120 days after entry.
2. All payments made under this Consent Judgment shall be accomplished through two cashier's checks, money orders, or checks from the Sawyer Law Offices PC IOLTA account made payable to the State of Michigan delivered or mailed to the attention of Darrin F. Fowler, Assistant Attorney General, 525 W. Ottawa St., P.O. Box 30736, Lansing, MI 48909.
3. If any of these payments are late, the Attorney General shall notify counsel for Defendants either by electronic mail at ksawyer@sawyerlawpc.com or by certified mail to Attorney Sawyer's address at 418 College Ave NE, Grand Rapids, MI 49503. If Defendants fail to make the payments within 7 days of said notification, they shall pay \$50 as liquidated damages for additional efforts undertaken by the Attorney General to secure payment for a delay of up to twenty-one days. Should a payment be more than twenty-one days late, Defendants agree to compensate the Attorney General for all costs and attorney fees associated with the Attorney General's efforts to secure payment.
4. The Attorney General will distribute \$250 each to the three consumers identified in the identified in ¶¶ 21–44 of the Complaint; the balance will be retained by the Attorney General to offset the expenses associated with the Lawsuit.
5. The Assurance of Voluntary Compliance (AVC) dated March 8, 2023, and entered into between the Attorney General, Michigan's Choice, and David Foster shall remain in force such that any party's violation thereof may be deemed a breach of contract separate and distinct from any violation of the Settlement Agreement or Consent Judgment entered in the instant case. Furthermore, all parties, including Storm Support, agree to be bound by the terms of that AVC as between themselves and the Attorney General upon entry of this Consent Judgment.
6. Defendants admit to violating § 3(1)(n) of the MCPA, MCL 445.903(1)(n), which prohibits:

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

7. Defendants, jointly and severally, are permanently enjoined from:

- engaging in any unfair or deceptive business practices in the State of Michigan;
- including punitive or confusing terms in any service contracts (emergency or non-emergency), such as usurious interest rates for non-payment, burdensome forum-selection clauses, or obligations to assist any defendant in receiving payment from a third party;
- engaging in any trade or commerce in Michigan using any additional business entities or aliases without notifying the Department ten days prior to the first transaction;
- undertaking any future tree service work or asking a consumer to sign a contract for such services without first providing the consumer with a written quote that clearly states the total price that will be billed for the project, which quote must warn the consumer, in a font no smaller than what is used in the rest of the quote, that the consumer could be liable for an amount that their insurance company declines to pay;
- deviating from the quoted price provided prior to contracting with a consumer without first doing all of the following: providing a revised quote that describes the unforeseen condition prompting the deviation, providing a revised total project cost, informing the consumer that he or she may seek quotes from other tree services companies before deciding whether to accept or reject the revised quote, and, in the event that a consumer decides to seek other bids, assuring the consumer that Defendants will take whatever steps are necessary to leave the site with the consumer in a situation that is no more perilous than when they began work;
- charging the consumer more for a project than the amount stated in the written or revised quote;
- stating that a consumer will have no out-of-pocket costs, to the extent that any consumer expresses an intention to pay for Defendants' services through insurance proceeds;
- charging any consumer more than ten percent (10%) more than the actual cost Defendants pay for any subcontracted crane service used on the consumer's project;

- placing liens, or threatening to place liens, on the properties of any consumers for whom any work was performed prior to entry of this Consent Judgment;
  - making any request or exerting any pressure on any Michigan consumer to help Defendants in their efforts to gain payment from an insurance company; and
  - representing on their website or in any other contract or document supplied to consumers that any defendant has arborists in its employ unless or until that defendant employs one or more certified arborists.
8. Defendants agree that Storm Support will not operate in Michigan unless or until they have obtained the certificate of authority required by the MLLCA. Storm Support's application for the certificate shall truthfully indicate the date on which it first operated in Michigan. See MCL 450.5002(f).
9. Defendants agree to update their website and marketing materials to reflect their promise to consumers that they will issue written quotes and honor them to the letter, with the exception of hidden conditions warranting an updated written quote.
10. Defendants agree not to seek any additional payment from consumers for emergency tree services provided, in whole or in part, before the date of entry of this Consent Judgment. This does not preclude Defendants from seeking to collect additional payment from a consumer's insurance company in good faith.
11. Defendants agree affirmatively to remove any liens placed on any Michigan consumer's property in connection with emergency tree services that were initiated or in place on the date of entry of this Consent

Judgment.


This is a final order resolving the last pending claim in this lawsuit and closing this case.

Dated: \_\_\_\_\_, 2024

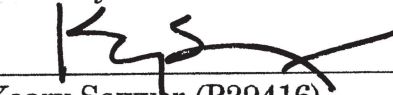
\_\_\_\_\_  
HON. WANDA STOKES  
Ingham County Circuit Court Judge

WE CONSENT TO ENTRY OF THE ABOVE ORDER:


Dated: March 8, 2024

  
\_\_\_\_\_  
Darrin F. Fowler (P53464)  
Daniel J. Ping (P81482)  
Attorneys for Plaintiff

Dated: March 7, 2024

  
\_\_\_\_\_  
Keary Sawyer (P29416)  
Attorney for Defendants

Dated: March 07, 2024

  
\_\_\_\_\_  
David Foster on behalf of himself, Michigan's  
Choice Tree Service, LLC, and Storm  
Support Emergency Tree Removal, LLC