



principals, directors, officers, agents, representatives, salespersons, employees, instructors, independent contractors, affiliates, successors, transferees, assignees, and all persons acting in concert or participation with Respondents, directly or indirectly, through any corporate device, partnership, association, or other business entity within the State of Nebraska

2. Brian Barnhouse is the President of B & B Communications, Inc. and resides at 1301 Lincoln Street, Beatrice, Nebraska.

3. Steve Borgman is the Secretary and Treasurer of B & B Communications, Inc. and resides at 213 West D Street, Wymore, Nebraska.

4. **Relator:** Douglas J. Peterson is the duly elected, qualified, and acting Attorney General of the State of Nebraska. Relator commenced an investigation into the business and trade acts and practices of Respondents in the State of Nebraska based on reasonable cause to believe that Respondents engaged in business and trade acts and practices in violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (hereinafter Consumer Protection Act), and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (hereinafter Uniform Deceptive Trade Practices Act).

5. **Parties:** Relator and Respondents shall be collectively referred to as “the Parties” throughout this Assurance.

**AUTHORITY, VENUE, JURISDICTION, AND CHOICE OF LAW**

6. In the enforcement of the Consumer Protection Act, Relator may accept an assurance of discontinuance of any act or practice deemed in violation of the Consumer Protection Act pursuant to Neb. Rev. Stat. § 59-1610. Furthermore, pursuant to § 87-303.05(2), when the Relator has authority to institute a civil action or other proceeding pursuant to the Uniform Deceptive Trade Practices Act, in lieu thereof, Relator may accept an assurance of discontinuance of any deceptive trade practice or unconscionable act listed in Neb. Rev. Stat. §§ 87-302 or 87-

303.01. An assurance of discontinuance is also known as an assurance of voluntary discontinuance, assurance of compliance, or assurance of voluntary compliance.

7. The Parties hereby agree that venue regarding the interpretation or enforcement of this Assurance is before the District Court of Lancaster County, Nebraska (hereinafter Court) pursuant to the Consumer Protection Act, Neb. Rev. Stat. § 59-1610, and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-303.05; that the Court has subject matter jurisdiction over this matter; that the Parties herein submit to the personal jurisdiction of the Court; that the Court retains jurisdiction regarding the interpretation and enforcement of this Assurance; and that the laws of the State of Nebraska control and apply to the interpretation and enforcement of this Assurance.

#### **STATE OF NEBRASKA ALLEGATIONS**

The State of Nebraska alleges as follows:

8. In September 2011, B & B Communications, Inc. was incorporated for the purpose of engaging in internet sales.

9. After incorporation, Respondents purchased domain names and operated multiple websites including:

- www.2X2SuccessTeam.com,
- www.FinancialFitnessClub.com (formerly Guaranteed50kin30days.com),
- www.FFCBridge.com,
- www.PrivateMillionairesClub.com,
- www.BandBOnlineAds.com (formerly www.OnlineWeathTeam.com), and
- www.bandbsuccessclub.com.

10. Through such websites, Respondents sold memberships at varying prices.

11. Members earned financial rewards recruiting others to purchase memberships.

12. Respondents' business plan depended upon recruiting individuals to purchase

memberships rather than selling products to ultimate-user consumers.

13. Respondents' sales and marketing plans placed negligible emphasis on sales of goods or services.

14. Through their sales and marketing activities, Respondents misrepresented the nature and income potential of the business opportunities they provided.

15. In numerous instances in connection with their advertising, marketing, promotion, offering for sale, or sale of the right to participate in their programs, Respondents represented, directly or indirectly, expressly or by implication, that consumers who participated were likely to earn a profit.

16. The structure of Respondents' business opportunities ensured that most consumers who participated would not earn a profit.

17. Respondents' businesses constituted pyramid promotion schemes, which they established, operated, and promoted in violation of Neb. Rev. Stat. §§ 87-302(5), 87-302(12), 87-302(15), 87-303.01, and 59-1602.

### **RESPONDENTS' DENIALS**

18. Respondents deny that they have violated the Uniform Deceptive Trade Practices Act or the Consumer Protection Act. Respondents specifically deny establishing, operating, and promoting pyramid promotion schemes.

### **RECITALS**

19. IT NOW APPEARS THAT, without admitting to Relator's allegations or any violation of law, for the sake of judicial efficiency and preservation of resources, the Parties are willing to voluntarily enter into this Assurance in order to avoid the costs and uncertainty of litigation.

20. IT FURTHER APPEARS THAT, Relator, acting on behalf of the general welfare

of the public and citizenry of the State of Nebraska, is willing to accept this Assurance in lieu of bringing formal action against Respondents, provided the following provisions contained herein are fully complied with and met by Respondents.

21. THEREFORE, IT IS HEREBY AGREED by Respondents that the following Assurances are made and will be complied herewith as of the date of Court approval of this Assurance.

### ASSURANCES

22. Respondents shall not engage in any unfair, unconscionable, or deceptive act or practice in violation of the Consumer Protection Act, the Uniform Deceptive Trade Practices Act, or any other applicable law within the State of Nebraska.

23. Respondents shall not use, promote the use of, establish, operate, or participate in a pyramid promotional scheme.

24. Respondents shall discontinue any existing business and refrain from establishing any business with the primary purpose of recruitment and/or a compensation scheme which primarily compensates recruitment.

25. Respondents shall not make any misrepresentations and/or false or misleading statements, directly or by implication, which have the tendency or effect of deceiving or misleading consumers, including but not limited to, claiming, suggesting, or implying, that consumers who purchase membership in Respondents' business opportunities are likely to earn a profit. In the future, should Respondents operate any business or entity which offers for sale or sells memberships, pays or promises to pay commissions, and/or compensates or promises to compensate consumers who participate, Respondents shall, in any advertisement, solicitation, promotion, marketing materials, or initial/main page of any website, clearly and conspicuously

disclose the number and percentage of participants who have made a profit through their program, the average and median amount of profit made by members or participating consumers, the refund policy, and limitations on any guarantees made.

### **CONSUMER RESTITUTION**

26. The Parties have compiled and agreed upon a list (hereinafter List) of Nebraska residents who transacted business with Respondents from September 2011 to the date of Court approval of this Assurance and out-of-state residents who transacted business with Respondents from September 2011 to the date of Court approval of this Assurance who filed a complaint with the Relator (hereinafter Qualifying Consumers). This List includes the name of each Qualifying Consumer, the amount each Qualifying Consumer paid to Respondents, the amount Respondents paid to each Qualifying Consumer, and the estimated restitution to be claimed by each Qualifying Consumer. The List was compiled by Relator using information provided by Respondents in response to Relator's Civil Investigative Demand made pursuant to Neb. Rev. Stat. §§ 59-1611 and 87-303.02.

27. Respondents shall pay Relator a sum of eleven-thousand sixty-eight dollars and thirty-two cents (\$11,068.32) to be placed in the State Settlement Trust Fund, held in trust (hereinafter B & B Communications Restitution Monies) and paid as restitution to Qualifying Consumers. Respondents shall pay this amount to Relator within fifteen (15) calendar days of the date of Court approval of this Assurance via certified check.

28. Should restitution claimed pursuant to this paragraph and paragraphs 30 through 31 below exceed eleven-thousand sixty-eight dollars and thirty-two cents (\$11,068.32), Respondents shall pay to Relator additional monies, to be placed in the State Settlement Trust Fund, and held in trust, in amounts sufficient to pay claimed restitution. Should such additional payments become

necessary, Relator shall notify Respondents by certified mail sent to the following addresses:

B & B Communications, Inc.  
2644 W I Street  
Wymore, NE 68466

Brian Barnhouse  
1301 Lincoln Street  
Beatrice, NE 68310

Steve Borgman  
213 West D St.  
Wymore, NE 68466

Respondents shall pay necessary funds via certified check to Relator within fifteen (15) calendar days of notification.

29. Relator shall make diligent efforts to contact each Qualifying Consumer on the List to verify current contact information, validity of claim for restitution, and the amount owed. The Relator shall convey instructions on how Qualifying Consumers may claim restitution. The right of a Qualifying Consumer to receive restitution vests upon the Relator's receipt of a Qualifying Consumer's claim of restitution. Qualifying Consumers must claim restitution by letter postmarked within two hundred and fourteen (214) calendar days from the date of Court approval of this Assurance (Restitution Period).

30. If, within the Restitution Period, a Qualifying Consumer claims restitution in an amount which varies from the amount on the List, the Qualifying Consumer must, within the Restitution Period, provide adequate proof of the claimed restitution to the reasonable satisfaction of both Respondents and Relator. If adequate proof is provided, the requested amount shall be disbursed to the Qualifying Consumer from the B & B Communications Restitution Monies.

31. If, within the Restitution Period, Respondents or Relator become aware of any Nebraska consumer who transacted business with Respondents who is not on the List, the party privy to this information must promptly notify the other party. If no proof of prior remuneration is found, and adequate proof of the transaction is provided to the reasonable satisfaction of both Respondents and Relator, full restitution shall be disbursed to the consumer from the B & B Communications Restitution Monies.

32. If, at the end of the Restitution Period and after Relator's diligent efforts to notify all Qualifying Consumers, there are any remaining B & B Communications Restitution Monies the balance shall transfer to the State Settlement Cash Fund for uses consistent with the terms set forth in paragraph 34 of this Assurance.

### **MONETARY PAYMENT**

33. Respondents shall pay fifteen thousand dollars (\$15,000.00) to Relator within fifteen (15) calendar days of Court approval of this Assurance, with payment to be made via certified check.

34. Payment made pursuant to paragraph 33 shall be placed in the State Settlement Cash Fund. These funds may be used for attorney's fees and other costs of investigation, future consumer protection or privacy enforcement, consumer education, litigation, to defray the costs of the inquiry leading hereto, or for other uses permitted by state law at the sole discretion of the Nebraska Attorney General. The Parties acknowledge that the payment described in this paragraph is not a fine or penalty, or payment in lieu thereof.

35. Should any Respondent in this matter be found to have violated the provisions of this Assurance within four (4) years of the date of Court approval of this Assurance the individual or entity found to be in violation shall pay an additional forty five thousand dollars (\$45,000) to the Relator. This liability shall not extend to any other party or entity which is not found to be in violation of this Assurance, except it shall extend to any principals, owners, directors and/or officers behind any entity found in violation. Such funds shall be placed in the State Settlement Cash Fund. The Parties acknowledge that the payment described in this paragraph is not a fine or penalty, or payment in lieu thereof and that this in no way limits any other action or proceeding that can be made by Relator against Respondents pursuant to law.



## GENERAL PROVISIONS

36. Respondents are jointly and severally liable for payments due pursuant to paragraphs 27, 28, 30, 31 and 33 of this Assurance. If Respondents fail to make any payments due in the amount due and/or at the time due, they will be liable, jointly and severally, to the Relator for: (a) the amount of any outstanding payment; plus (b) interest at the rate of twelve percent (12%) per annum, compounded annually, from the date of non-compliance until the outstanding payment is made in full; plus (c) reasonable costs and attorney fees incurred to collect the payment(s). If a payment made pursuant to this Assurance by one or more Respondents is avoided or recovered in connection with a bankruptcy or other proceeding involving the paying party, all of the remaining Defendants will be jointly and severally liable for repaying the avoided or recovered payment.

37. In no event shall the Relator have any liability to the Respondents, Qualifying Consumers, or any consumer identified pursuant to paragraph 31 arising out of or relating to the distribution of the B & B Communications Restitution Monies which exceeds the total amount of the B & B Communications Restitution Monies and any additional monies paid pursuant to paragraph 30.

38. This Assurance constitutes a complete settlement and release by the Relator of all civil claims and causes of action against Respondents arising out of the conduct alleged in this Assurance that existed as of the date of Court approval of this Assurance and that could have been asserted by the Relator, under the Consumer Protection Act, Uniform Deceptive Trade Practices Act, or any other consumer protection laws that give the Relator the authority to bring action. This Assurance does not affect a consumer's private right of action.

39. Nothing in this Assurance shall be construed so as to limit or bar any other person or entity from pursuing any and all available legal remedies against Respondents; nor is it the intent of the Parties hereto that this Assurance shall create or support a cause of action against

Respondents by non-parties to this Assurance.

40. Respondents understand that this Assurance shall not be construed as an approval of or sanction by the Relator of the Respondents' business practices, nor shall Respondents represent the Assurance as such approval. The Parties further understand and agree that any failure by the Relator to take any action in response to any information submitted pursuant to this Assurance shall not be construed to be an approval of or sanction of any representations, acts, or practices of Respondents, nor shall any inaction by the Relator be considered a waiver by the Relator of any rights under this Assurance or the law.

41. If any portion, provision, or part of this Assurance is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

42. In the event any law, regulation, or order is enacted, adopted or issued by the federal government, the State of Nebraska or any of its agencies, any relevant local government or a court of competent jurisdiction with respect to any issue specifically covered by this Assurance, the requirements of such law, regulation or order, after written notice by Respondents to the Relator, shall replace any provision contained herein so that compliance with such law, regulation, or order shall be deemed compliance with this Assurance.

43. Respondents shall generate, retain, and make readily available to Relator for inspection, upon reasonable notice and without the necessity of a subpoena, civil investigative demand, or other legal process, all material records and documents reasonably necessary to document compliance with this Assurance.

44. Pursuant to Neb. Rev. Stat. § 59-1610 and § 87-303.05(2), proof of failure to comply with the Assurance shall be prima facie evidence of a violation of applicable Nebraska

statutes in any civil action or proceeding hereafter commenced by the Relator against Respondents.

45. This Assurance is made and entered into without trial or finding of fact or conclusions of law by a court. This Assurance does not constitute evidence against or an admission by Respondents of any issues of fact or any violations of law in the past or that Respondents have engaged in any inappropriate activities or other wrongdoing, and shall not be used in a manner inconsistent with these terms.

46. The Parties acknowledge and represent that: (a) each party has read this Assurance in its entirety and fully understands all of its terms and conditions and the ramifications and consequences thereof; (b) each party unconditionally consents to the terms of this Assurance; (c) each party has either consulted with or had ample opportunity to consult with legal counsel of their choosing prior to executing this Assurance; (d) each party has freely and voluntarily signed this Assurance; and (e) the consideration received by each party as described in this Assurance is adequate.

47. The Parties acknowledge and agree that this Assurance contains the entire understanding of the Parties and supersedes and forever terminates all prior and contemporaneous representations, promises, agreements, understandings, and negotiations, whether oral or written, with respect to its subject matter. The Parties further agree that this Assurance may only be amended, modified, or supplemented by a duly executed writing signed by each Party to this Assurance.

48. The Parties agree that they may execute this Assurance in any number of counterparts, each of which shall be deemed an original hereof, but which together shall constitute one and the same instrument and agreement, and that facsimile or electronically-transmitted signatures may be attached to this Assurance and shall be binding on such party as an original

signature.

49. Any notices, statements, or other written documents required by this Assurance shall be provided by first class mail and/or emailed to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the Party changing such address:

A. For the Nebraska Attorney General's Office:

Abigail M. Stempson  
Assistant Attorney General  
Chief, Consumer Protection Division  
Nebraska Attorney General's Office  
2115 State Capitol Building  
Lincoln, NE 68509  
abigail.stempson@nebraska.gov

Ann K. Post  
Assistant Attorney General  
Nebraska Attorney General's Office  
2115 State Capitol Building  
Lincoln, NE 68509  
ann.post@nebraska.gov

B. For B&B Communications:

2644 W I Street  
Wymore, NE 68466

C. For Brian Barnhouse:

1301 Lincoln Street  
Beatrice, NE 68310

D. For Steve Borgman:

213 West D Street  
Wymore, NE 68466

**WHEREFORE**, each undersigned representative of the Relator and Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Assurance and legally bind such Party to its terms. The following signatures are affixed hereto as of the dates written below in agreement hereof.

**JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:**

**FOR RELATOR:**

THE STATE OF NEBRASKA, ex rel.  
DOUGLAS J. PETERSON, Attorney General

By: Douglas J. Peterson, Attorney General, #18146

By: Abigail M. Stempson

Abigail M. Stempson, #23329  
Ann K. Post, #24957  
Assistant Attorneys General  
2115 State Capitol  
Lincoln, NE 68509-8920  
Phone: (402) 471-2683  
Fax: (402) 471-4725  
abigail.stempson@nebraska.gov

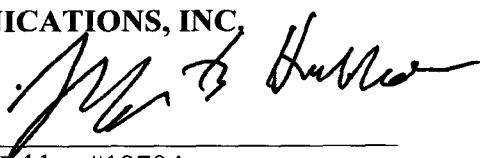
7.18.16  
Date

*Counsel for the State of Nebraska*

**FOR RESONDENTS:**


**B & B COMMUNICATIONS, INC.**

By:

  
\_\_\_\_\_  
Jeffery B. Hubka, #19704  
Hubka & Hubka, Attorneys at Law  
508 Court Street, Suite 101  
Beatrice, NE  
Phone: (402) 223-4073

July 7, 2016  
Date

By:

  
\_\_\_\_\_  
Brian Barnhouse, President

July 7, 2016  
Date

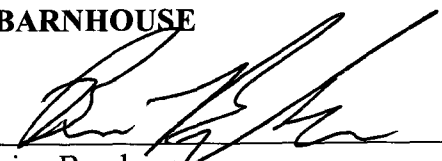
By:

  
\_\_\_\_\_  
Steve Borgman, Secretary & Treasurer

July 7, 2016  
Date

**BRIAN BARNHOUSE**

By:

  
\_\_\_\_\_  
Brian Barnhouse

July 7, 2016  
Date

**STEVE BORGMAN**

By:

  
\_\_\_\_\_  
Steve Borgman

July 7, 2016  
Date