

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

**STATE OF NEBRASKA, ex rel.
DOUGLAS J. PETERSON, ATTORNEY
GENERAL,**

Plaintiff,

v.

CELEBRITY HOMES, INC.,

Defendant.

Case No: CI 20 - _____

AGREEMENT TO ENTRY OF FINAL CONSENT JUDGMENT

AND NOW, Comes Plaintiff, the State of Nebraska, ex rel. Douglas J. Peterson, the Attorney General, by and through the undersigned Assistant Attorney General (hereinafter "Plaintiff"), has filed a Complaint against Celebrity Homes, Inc. (hereinafter "Celebrity" or "Defendant") requesting an injunction and other relief in this matter pursuant to the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (hereinafter "Consumer Protection Act" or "CPA") alleging Defendant committed violations of the CPA by engaging in conduct prohibited by the Consumer Review Fairness Act of 2016, 15 U.S.C. § 45b et seq. (hereinafter "Consumer Review Fairness Act" or "CRFA"). Plaintiff and Defendant have consented to entry by the Court of this Agreement to Entry of Final Consent Judgment (hereinafter "Agreement") without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing. Plaintiff and Defendant agree to entry of a Final Consent Judgment approving this

Agreement to avoid the expenses associated with further investigation or litigation. Defendant agrees to be bound by the terms of this Agreement.

NOW THEREFORE, upon the consent of the Parties hereto, **IT IS HEREBY AGREED AS FOLLOWS:**

PARTIES

1. Plaintiff, Douglas J. Peterson, is the duly elected, qualified, and acting Attorney General of the State of Nebraska. The Attorney General is responsible for enforcement of Nebraska consumer protection laws, including, but not limited to, the Consumer Protection Act.

2. Defendant, Celebrity Homes, Inc., is a Nebraska corporation with its principal place of business at 1809 S. 189th Street, Omaha, NE 68130. At all relevant times, Celebrity has transacted and continues to transact business in the State of Nebraska by selling and constructing custom homes. For the purposes of this Agreement, Defendant also means Celebrity Homes, Inc.'s directors, officers, employees, agents,¹ subsidiaries, parent or controlling entity, and any assigns or successor corporation or business entities.

JURISDICTION & VENUE

3. Pursuant to the Consumer Protection Act, jurisdiction of this Court over the subject matter and over the Defendant for the purpose of entering into and enforcing this Agreement is admitted.

4. Pursuant to the provisions of the Consumer Protection Act, venue as to all matters between the Parties hereto relating to or arising out of this Agreement shall lie exclusively in the District Court of Lancaster County.

¹ The term "agents" is not meant to encompass, and hereby specifically excludes, any buyers' real estate agents.

DEFINITIONS

5. **"Celebrity"** and/or **"Defendant"** means and includes Celebrity Homes, Inc., and all of its directors, officers, employees, agents,² subsidiaries, parent or controlling entities, and any assigns or successor corporation or business entities.

6. **"Covered Communication"** means a written, oral, or Pictorial review, performance assessment, or other similar analysis of goods or services, including conduct related to the goods or services.

7. **"CRFA"** means the Consumer Review Fairness Act of 2016, 15 U.S.C. § 45b et seq.

8. **"Effective Date"** shall mean the date on which this Agreement, duly executed by the Parties, is approved by the Court, pursuant to a Final Consent Judgment of the Court.

9. **"Parties"** shall mean the State of Nebraska and Celebrity Homes, Inc.

10. **"Pictorial"** includes pictures, photographs, video, illustrations, and symbols.

11. **"Review-Limiting Contract Term"** means a standardized contract term that:

- a. prohibits or restricts the ability of a person who is a party to the contract to engage in a Covered Communication;
- b. imposes a penalty or fee against a person who is a party to the contract for engaging in a Covered Communication; or
- c. transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a Covered Communication, with the exception of a non-exclusive license to lawfully use a Covered Communication about Defendant's goods or services.

² The term "agents" is not meant to encompass, and hereby specifically excludes, any buyers' real estate agents.

12. Unless otherwise defined, terms in this Agreement shall be construed consistent with the Consumer Review Fairness Act and Consumer Protection Act.

INJUNCTION

13. Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of the Consumer Protection Act.

14. Defendant shall not engage in any acts or practices in the conduct of any trade or commerce in violation of the Consumer Review Fairness Act.

15. Defendant shall not offer to any prospective customer a contract, or offer to any customer a renewal contract, that includes a Review-Limiting Contract Term.

16. Defendant shall not require that a customer accept a Review-Limiting Contract Term as a condition of Defendant's fulfillment of its obligations under a customer contract that Defendant entered into before the Effective Date.

17. Defendant shall not attempt to enforce or assert the validity of any Review-Limiting Contract Term in any customer contract that Defendant entered into before the Effective Date.

18. Defendant shall, within thirty (30) days after the Effective Date, mail or email to all customers who entered into a contract with Defendant between December 14, 2017 and the Effective Date, and whose contract in its final version included any term which could be argued to be a violation of the Consumer Review Fairness Act a notice as described below, and attached hereto as Exhibit A.

- a. The heading of the notice and the subject line for any email must read "Your Right to Post Honest and Truthful Reviews."
- b. Defendant's name and return address for any mailing must appear on the front of the envelope, the customer's name and address must be printed on

the front of the envelope or be visible through a window in the envelope, and the words “Your Right to Post Honest and Truthful Reviews” must be printed in easily noticed text near the customer’s name and address.

- c. The notice must not include any other materials or message about Defendant, or otherwise concern its goods or services.

19. If Defendant attempts to send the aforementioned notice to any consumer, and that notice is returned as undeliverable, Defendant shall use commercially reasonable efforts to obtain a correct mailing address for the consumer, including the use of any forwarding address provided by the U.S. Postal Service or by contacting the consumer at any phone number or other e-mail address contained in Defendant’s business records.

20. Upon request by Plaintiff, Defendant shall, within ten (10) business days of receiving any such request, provide a report of all consumers who received notice pursuant to Paragraph 18.

21. Plaintiff shall be permitted reasonable access to inspect and copy relevant, non-privileged, non-work product records and documents in the possession, custody, or control of Defendant that directly relate to Defendant's compliance with each provision of this Agreement, including but not limited to copies of any notice delivered pursuant to Paragraph 18.

22. Defendant shall, for one (1) year after the Effective Date, deliver a copy of this Agreement to: (1) all principals, officers, and directors; (2) all employees having managerial responsibilities for drafting, approving, or enforcing customer contracts, or for responding to Covered Communications; and (3) all agents³ who participate in drafting, approving, or enforcing customer contracts, or in responding to Covered Communications. Delivery must occur within

³ The term “agents” is not meant to encompass, and hereby specifically excludes, any buyers’ real estate agents.

ten (10) days after the Effective Date for current personnel. For all others, delivery must occur before they assume their responsibilities.

23. Defendant shall not participate in any activity to form, organize, or reorganize into a separate entity or corporation which engages in acts or practices in whole or in part that are prohibited by this Agreement or for any other purpose that would otherwise circumvent any term of this Agreement. Defendant shall not knowingly cause, permit, or encourage any other persons or entities acting on its behalf to engage in practices prohibited by this Agreement.

24. For two (2) years from the Effective Date, Defendant shall generate and retain all material records and documents reasonably necessary to document compliance with this Agreement.

PAYMENT

25. No later than thirty (30) days after the Effective Date, Defendant shall pay a total amount of \$15,000 to Plaintiff which may be used for attorney's fees and other costs of investigation, future consumer protection 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 monies described in this paragraph is not a fine or penalty, or payment in lieu thereof. The Parties further acknowledge that neither the monies described in this paragraph, nor anything else in this Agreement, shall be interpreted or construed as a finding of illegality. For purposes of clarity, this Agreement contains no finding of illegality and represents a complete and final agreement with respect to all alleged violations arising out of the conduct of Defendant described in the Complaint, including but not limited to any and all alleged violations of the Consumer Protection Act and Consumer Review Fairness Act or any other applicable law.

GENERAL PROVISIONS

26. This Agreement is effective upon the date on which this Agreement, duly executed by the Parties, is approved by the Court, pursuant to a Final Consent Judgment of the Court.

27. Nothing in this Agreement shall be construed to affect any civil cause of action Defendant may have for defamation, libel, or slander, or any similar cause of action.

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

29. No part of this Agreement is intended to create a private cause of action or confer any right to any third party for violation of any federal or state statute except that Plaintiff may file an action to enforce the terms of this Agreement.

30. Nothing in this Agreement shall be construed to limit the authority or ability of Plaintiff to protect the interest of the State or people of Nebraska. Further, nothing contained in this Agreement shall be construed to limit the ability of Plaintiff to enforce the obligations that Defendant has under this Agreement. This Agreement shall not bar Plaintiff or any other governmental entity from enforcing laws, regulations, or rules against Defendant for conduct subsequent to or otherwise not covered by this Agreement.

31. Nothing in this Agreement shall be construed as relieving Defendant of the obligation to comply with any and all federal, state, and local laws, regulations, or rules, nor shall any of the provisions of this Agreement be deemed a waiver or permission to engage in any act or practice prohibited by law, regulation or rule.

32. This Agreement shall not be construed as an approval of or sanction by Plaintiff of Defendant's practices, nor shall Defendant represent the Agreement as such approval or sanction.

The Parties further understand and agree that any failure by Plaintiff to take any action in response to any information submitted pursuant to this Agreement shall not be construed to be an approval of or sanction of any representations, acts, or practices of Defendant, nor shall any inaction by Plaintiff be considered a waiver by Plaintiff of any rights under this Agreement or the law.

33. The headings in this Agreement are used for the purpose of convenience only and are not intended to affect the interpretation or construction of this Agreement.

34. Neither party shall be deemed the drafter of this Agreement and, in construing this Agreement, no provision hereof shall be construed in favor of one party on the ground that such provision was drafted by the other.

35. If any portion, provision, or part of this Agreement 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.

36. The Parties acknowledge and represent that: (a) each Party has read this Agreement 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 Agreement; (c) each Party has either consulted with or had ample opportunity to consult with legal counsel of its choosing prior to executing this Agreement; (d) each Party has freely and voluntarily signed this Agreement; and (e) the consideration received by each Party as described in this Agreement is adequate.

37. This Agreement 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 Agreement may only be amended, modified, or supplemented by a duly executed writing signed by each Party to this Agreement and approved by the Court.

38. This Agreement may be executed by 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 Agreement and shall be binding on such Party as an original signature.

39. Any notices, statements, or other documents required by this Agreement shall be provided by first class mail and 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 Plaintiff:

Michaela Lutz
Assistant Attorney General
Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509-8920
michaela.lutz@nebraska.gov

b. For Defendant:

Brian J. Koenig
KOLEY JESSEN P.C., L.L.O.
1125 S. 103rd St., Suite 800
Omaha, NE 68124
brian.koenig@koleyjessen.com

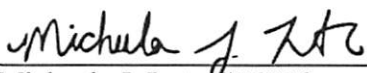
WHEREFORE, each undersigned representative of Plaintiff and Defendant certifies that he or she is fully authorized to enter into this Agreement and legally bind such Party to its terms. The following signatures are affixed hereto as of the dates written below in agreement hereof.

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

FOR PLAINTIFF, STATE OF NEBRASKA:

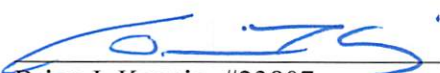
THE STATE OF NEBRASKA, ex rel.
DOUGLAS J. PETERSON, Attorney General

By: Douglas J. Peterson, #18146
Attorney General


By: 
Michaela J. Lutz, #26826
Assistant Attorney General
Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509-8920
(402) 471-1928
michaela.lutz@nebraska.gov
Counsel for the State of Nebraska

7/28/2020
Date

FOR DEFENDANT, CELEBRITY HOMES, INC.:

By: 
Brian J. Koenig, #23807
KOLEY JESSEN P.C., L.L.O.
1125 S. 103rd St., Suite 800
Omaha, NE 68124
(402) 390-9500
brian.koenig@koleyjessen.com
Counsel for Celebrity Homes, Inc.

7/31/2020
Date

By: 
Chad Larsen, Vice President

7-30-20
Date

EXHIBIT A

LETTER NOTICE TEMPLATE

The notice must be in the following form, appearing on Defendant's letterhead and email, with the underlined text completed as directed:

Your Right to Post Honest and Truthful Reviews

Dear [NAME OF CUSTOMER]:

Our records show that you entered into a contract with Celebrity Homes, Inc. I am writing to tell you that the Nebraska Attorney General's Office has alleged that we used contract provisions that violated the Consumer Review Fairness Act (CRFA). The CRFA protects your ability to share your honest and truthful opinions about a business's products, services, or conduct in any forum, including social media. According to the Attorney General's Office, we used a provision in your contract that unlawfully restricted you from sharing honest and truthful information and opinions about your experiences with us.

We are contacting you to tell you that we have agreed to void this contract provision and that we will not enforce the provision against you. You can publish your honest and truthful review about us or our services.

Sincerely,
