

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)
DOUGLAS J. PETERSON, ATTORNEY)
GENERAL,)
) Plaintiff,)
))
v.)
))
UNITED BUSINESS SERVICES, LLC, a)
Florida limited liability company;)
CORPORATIONS FILING SERVICE,)
LLC, a Florida limited liability company;)
JAMES L. BEARD, an individual; and)
SEAN M. SHAUGHNESSY, an individual,)
) Defendants.)
))
))
))

CI 16 - 1681

LANCASTER COUNTY
2016 JUL 26 PM 1 31
CLERK OF THE
DISTRICT COURT

AGREEMENT TO ENTRY OF FINAL CONSENT JUDGMENT

Plaintiff, the State of Nebraska by and through Douglas J. Peterson, the Attorney General, and through Assistant Attorneys General, has filed a Complaint against Defendants United Business Services, LLC, Corporations Filing Service, LLC, James L. Beard, and Sean M. Shaughnessy requesting an injunction and other relief in this matter pursuant to 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") alleging Defendants committed violations of the aforementioned Acts through a postcard mailing campaign and related telephone support.

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WHEREAS, the Plaintiff and Defendants now wish to amicably resolve the issues raised in the Complaint, and **NOW THEREFORE**, upon the consent of the Parties hereto, **IT IS HEREBY AGREED AS FOLLOWS**:

Plaintiff, by its counsel, and Defendants, by their counsel, have consented to the entry by the court of a final consent judgment approving this Agreement to Entry of Final Consent Judgment (hereinafter “Agreement”) without trial or adjudication of any issue of fact or law, and without admission of any wrongdoing or admission of any violations of law, including violations of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act.

PARTIES

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

2. Defendant United Business Services, LLC (hereinafter “UBS”) is a Florida limited liability company with its principal office in Pinellas Park, Florida.

3. Defendant Corporations Filing Service, LLC (hereinafter “CFS”) is a Florida limited liability company with its principal office in Pinellas Park, Florida.

4. Defendant James L. Beard (hereinafter “Beard”) is an individual residing in Pinellas Park, Florida. At all times relevant hereto, Beard has been the sole person authorized to manage UBS.

5. Defendant Sean M. Shaughnessy (hereinafter “Shaughnessy”) is an individual residing in Pinellas Park, Florida. At all times relevant hereto, Shaughnessy has been the sole person authorized to manage CFS.

6. UBS, CFS, Beard, and Shaughnessy shall be collectively referred to as “Defendants” throughout this Agreement.

7. Plaintiff and Defendants shall be collectively referred to as “the Parties” throughout this Agreement.

PLAINTIFF’S ALLEGATIONS

8. Defendants violated the Consumer Protection Act and the Uniform Deceptive Trade Practices Act through both a postcard mailing scheme sent to Nebraska addresses, and related telephone support (hereinafter “postcard campaign”), the purpose of which was to entice the purchase of labor law posters and/or certificates of existence, under the threat of a compliance violation or potential fees or penalties that the Nebraska recipient could incur.

9. Defendants created, prepared, mailed, and sought payment in connection with a postcard campaign through which they designed and mailed postcards to Nebraska business entities. These postcards intentionally appear as though they had originated from an official governmental entity. There is no disclaimer on the postcard to inform a recipient that Defendants are soliciting products and that Defendants have no relation to a governmental entity. Furthermore, these postcards intentionally appear as though they had originated from a local Lincoln, Nebraska address. The postcards instruct the recipients to call a toll-free telephone number in order to avoid potential fees and penalties.

10. Through these postcards and telephone communications, Defendants represented to Nebraska entities, and sought payment in connection with the representations, that the business entities needed to obtain the products Defendants solicited in order to comply with state and federal law and to avoid fees or penalties.

11. Numerous Nebraska business entities which received a postcard contacted the Defendants via the toll-free telephone number. Representatives for these entities have stated that they believed they were contacting a governmental entity or the Better Business Bureau based on the information contained on the postcard.

12. Numerous Nebraska entities purchased the labor law posters or the certificates of existence due to Defendants' misleading postcards and misleading statements made during the telephone communications.

13. In regard to the solicitation of labor law posters, Defendants did not undertake any meaningful review of the labor law posters they sold to ensure the posters complied with either Nebraska law or federal law. Further, Defendants did not research each Nebraska entity which they solicited to discover whether the entity was even required to display such a poster in its place of business or whether the entity would be required to display additional posters due to industry-specific requirements. Therefore, Defendants could not fully guarantee that a business obtaining this poster would cure any potential compliance violations and avoid any penalties.

14. In regard to the solicitation of certificates of existence, a certificate of existence is not an official government sponsored document for entities domiciled in Nebraska. Rather, the Nebraska Secretary of State offers two types of Certificates of Good Standing for purchase. A business entity registered in Nebraska is not required to have a Certificate of Good Standing when conducting business. Thus, there is no compliance violation or potential fees or penalties which a Nebraska business entity could incur for not having a Certificate of Good Standing, or the non-government sponsored certificate of existence.

DEFENDANTS' DENIALS

15. Defendants deny the Plaintiff's allegations and deny that they have violated the Consumer Protection Act or the Uniform Deceptive Trade Practices Act through their postcard campaign.

APPLICATION

16. The provisions of this Agreement apply to Defendants, doing business under their personal or limited liability company names, under any other business name, or in the name of any owners, principals, directors, officers, agents, representatives, salespersons, employees, instructors, independent contractors, affiliates, successors, transferees, assignees, and all persons acting in concert or participation with Defendants, directly or indirectly, through any corporate device, partnership, association, or other business entity, over which the Plaintiff has jurisdiction.

INJUNCTION

17. Defendants shall immediately cease and desist from engaging in any postcard campaign, such as the one described in the Plaintiff's allegations above, or any other similar scheme.

18. Defendants shall immediately cease and desist from engaging in any activity that is misleading, unfair, unconscionable, or deceptive to Nebraska consumers or that effects Nebraska, and shall immediately cease and desist from engaging in activity that is in violation of the Consumer Protection Act, the Uniform Deceptive Trade Practices Act, and other Nebraska consumer protection laws.

CONSUMER RESTITUTION

19. The Parties have compiled a list of Nebraska persons who have transacted business with Defendants through the postcard campaign (hereinafter "List"), which includes the amount

each entity paid to Defendants. Nebraska person means any natural person, corporation, trust, unincorporated association, partnership, limited liability company or other business entity, who is a legal resident of Nebraska or domiciled in Nebraska at the time the transaction occurred.

20. Defendants shall pay Plaintiff two thousand, one hundred eighteen dollars (\$2,118.00) by the date of court approval of this Agreement via certified check, to be placed in the State Settlement Trust Fund, held in trust, and paid as restitution to each Nebraska person on the List.

21. If, by October 31, 2016, either the Defendants or Plaintiff becomes aware that any Nebraska person transacted business with Defendants through the postcard campaign, but who was not on the List and therefore did not receive a full refund, or becomes aware that any Nebraska person on the List did not receive a full refund because the amount the entity paid was inaccurate, the Party privy to this information must promptly notify the other Party. If adequate proof is provided of said transaction to the reasonable satisfaction of both the Defendants and the Plaintiff, Defendants shall pay a full refund to those person(s) within fifteen (15) days of prompt verification of the transaction by both Parties.

PAYMENT

22. Defendants shall pay four thousand dollars (\$4,000.00) to Plaintiff by the date of court approval of this Agreement via certified check.

23. Payment made pursuant to paragraph 22 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.

24. Should any of the Defendants in this matter be found to have violated the provisions of this Agreement within five (5) years of the date of court approval of this Agreement, the individual or entity found to be in violation shall pay an additional fifty thousand dollars (\$50,000.00) to the Plaintiff. 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 Plaintiff against Defendants pursuant to law.

GENERAL PROVISIONS

25. This Agreement constitutes a complete settlement and release by the Plaintiff of all civil claims and causes of action against Defendants arising out of the conduct alleged in this Agreement that existed as of the date of court approval of this Agreement and that could have been asserted by the Plaintiff under the Consumer Protection Act or the Uniform Deceptive Trade Practices Act. This does not affect a consumer's private right of action, or the Plaintiff's right to bring any and all contempt actions, or other actions arising out of violation of this Agreement, should any occur in the future.

26. 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 Defendants; nor is it the intent of the Parties hereto that this Agreement shall create or support a cause of action against Defendants by non-parties to this Agreement.

27. Nothing contained herein shall be construed as relieving Defendants 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. This Agreement is subject to all applicable federal,

state and local laws, regulations and rules.

28. Defendants understand that this Agreement shall not be construed as an approval of or sanction by the Plaintiff of the Defendants' business practices, nor shall the Defendants represent the Agreement as such approval. The Parties further understand and agree that any failure by the 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 the Defendants, nor shall any inaction by the Plaintiff be considered a waiver by the Plaintiff of any rights under this Agreement or the law.

29. 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.

30. 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 Agreement, the requirements of such law, regulation or order, after written notice by Defendants to the Plaintiff, shall replace any provision contained herein so that compliance with such law, regulation or order shall be deemed compliance with this Agreement.

31. Defendants shall generate, retain and make readily available to Plaintiff 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 Agreement.

32. This Agreement is made and entered into without trial, finding of fact or conclusions of law by a court. This Agreement does not constitute evidence against or an admission

by Defendants of any issues of fact or any violations of law in the past or that Defendants have engaged in any inappropriate activities or other wrongdoing, and shall not be used in a manner inconsistent with these terms.

33. 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 their 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.

34. The Parties acknowledge and agree that 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.

35. The Parties agree that they may execute this Agreement 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 Agreement and shall be binding on such party as an original signature.

36. Any notices, statements, or other written documents required by this Agreement 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 Plaintiff:

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

B. For Defendants:

Andrew D. Strotman, Esq.
Cline Williams Wright Johnson & Oldfather, L.L.P.
1900 U.S. Bank Building - 233 South 13th Street
Lincoln, Nebraska 68508
astrotman@clinewilliams.com

WHEREFORE, each undersigned representative of the Plaintiff and Defendants certifies that he or she is fully authorized to enter into the terms and conditions of 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 AND SUBMITTED FOR ENTRY:

FOR PLAINTIFF:

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

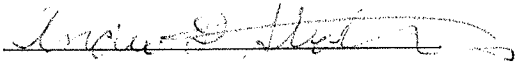
By: Douglas J. Peterson, No. 18146
Attorney General

By: Abigail M. Stempson 7.22.16
Abigail M. Stempson, No. 23329 Date
Assistant Attorney General
Chief, Consumer Protection Division
2115 State Capitol
Lincoln, NE 68590-8920

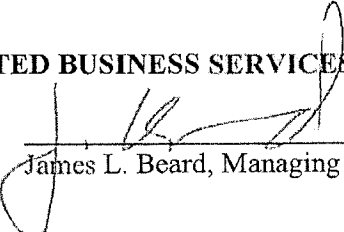
Phone: (402) 471-3833
Email: abigail.stempson@nebraska.gov


Counsel for the State of Nebraska

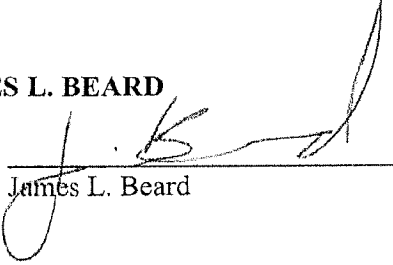
FOR DEFENDANTS:

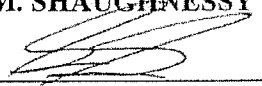
By:  7/22/16
Date

Andrew D. Strotman, Esq.
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Lincoln, Nebraska 68508
Phone: (402) 474-6900
Email: astrotman@clinewilliams.com

UNITED BUSINESS SERVICES, LLC
By:  7/21/16
Date
James L. Beard, Managing Member

CORPORATIONS FILING SERVICE, LLC
By:  7/21/16
Date
Sean M. Shaughnessy, Managing Member

JAMES L. BEARD
By:  7/21/16
Date
James L. Beard

SEAN M. SHAUGHNESSY
By:  7/21/16
Date
Sean M. Shaughnessy