

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel. )  
DOUGLAS J. PETERSON, )  
ATTORNEY GENERAL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RUBY CORP., )  
RUBY LIFE, INC., also doing business as )  
ASHLEYMADISON.COM, and )  
ADL MEDIA INC., )  
 )  
Defendants. )

CI 16- 4398

CLERK OF THE  
DISTRICT COURT

2016 DEC 14 PM 4 09

LANCASTER COUNTY

AGREEMENT TO ENTRY OF FINAL CONSENT JUDGMENT

AND NOW comes the Plaintiff, the State of Nebraska, by and through Douglas J. Peterson, the Attorney General, and the undersigned Assistant Attorneys General (“Plaintiff” or “State”), having filed a Complaint against Defendants ruby Corp. f/k/a Avid Life Media Inc. (“ruby”), ruby Life Inc., also doing business as AshleyMadison.com and f/k/a as Avid Dating Life Inc., (“ruby Life”), and ADL Media Inc. (“ADL Media”) (collectively “Defendants,” and together with the State, the “Parties”), requesting a permanent injunction and other relief in this matter pursuant to the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (“Consumer Protection Act”) and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (“Uniform Deceptive Trade Practices Act”), alleging Defendants committed violations of the aforementioned acts.



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**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, but not limited to, violations of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act.

**I. PARTIES**

1. Plaintiff is Douglas J. Peterson, 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 ruby is a privately-held corporation with its principal place of business at 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8. ruby has acted as a holding company for a number of entities that operate dating websites. ruby transacts or has transacted business in Nebraska and throughout the United States.

3. Defendant ruby Life is a Canadian corporation with its principal place of business at 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8. At all times material to the Complaint and this Agreement, ruby Life has owned and operated the Ashley Madison website. ruby Life transacts or has transacted business in Nebraska.

4. Defendant ADL Media is a Delaware corporation with its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801. At all times material to the Complaint and this Agreement, ADL Media has collected AshleyMadison.com’s United States

revenue from various payment processors. ADL Media transacts or has transacted business in Nebraska and throughout the United States.

## **II. COORDINATION WITH OTHER ACTIONS BY OTHER STATE ATTORNEYS GENERAL**

5. The Parties acknowledge the States<sup>1</sup> of Alaska, Arkansas, Hawaii, Louisiana, Maryland, Mississippi, Nebraska, North Dakota, New York, Oregon, Rhode Island, Tennessee, Vermont, the District of Columbia (the “Multistate”) and the Federal Trade Commission are simultaneously seeking judicial approval of similar Agreements and Orders. The Parties intend to coordinate implementation of the terms of this Agreement with those referenced above.

## **III. DEFINITIONS**

For purposes of this Agreement, the following definitions apply:

6. **The “Effective Date”** for purposes of monetary provisions contained in section VI of this Agreement shall be the last date on which each of the Orders sought by the Multistate and the Federal Trade Commission have been approved and entered. The Effective Date for the balance of the provisions contained in this Agreement shall be the date on which the District Court of Lancaster County, Nebraska approves this Agreement through the Final Consent Judgment.

7. **“Engager profile”** means an employee or agent-generated account that is not an account used by an actual customer.

8. **“Personal information”** means individually identifiable information from or about an individual consumer, including, but not limited to: (1) first and last name; (2) home or other physical address, including street name and name of city or town; (3) email address or other online contact information, such as an instant messaging user identifier or a screen name; (4)

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1. References to “states,” “States,” and “Multistate” in this document include the District of Columbia.

telephone number; (5) date of birth; (6) government-issued identification number, such as a driver's license, military identification, passport, or Social Security number, or other personal identification number; (7) payment card account numbers; (8) photographs of the consumer; and (9) sexual preferences.

9. "Seal" means any trustmark, logo, seal of approval, emblem, shield, or other insignia offered for placement on Defendants' websites and mobile applications.

#### IV. ENJOINED CONDUCT

Pursuant to the authority of the Consumer Protection Act and Uniform Deceptive Trade Practices Act, Defendants are hereby enjoined as follows:

##### A. **PROHIBITION AGAINST MISREPRESENTATIONS**

10. Defendants, and Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Agreement, whether acting directly or indirectly, are permanently restrained and enjoined from misrepresenting, expressly or by implication, to Nebraska users of their online dating sites and mobile applications:

(a) the extent to which Defendants collect, use, or maintain personal information, or protect the privacy, confidentiality, security, or integrity of personal information, including the extent to which consumers may exercise control over the collection, use, or disclosure of personal information;

(b) the extent to which Defendants use or display engager profiles;

(c) whether the profiles that appear on Defendants' dating websites or mobile applications were created by Defendants;

(d) the number of actual users of Defendants' dating websites or mobile applications, or actual women users of their dating websites or mobile applications;

- (e) the terms and conditions for deleting user accounts or profiles;
  - (f) the extent to which Defendants received awards or seals from third parties;
- and
- (g) the extent to which Defendants are members of, adhere to, comply with, are certified by, are endorsed by, or otherwise participate in any privacy or security program sponsored by a third party.

**B. PROHIBITED CONDUCT**

11. Defendants, and Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, whether acting directly or indirectly are permanently restrained and enjoined from engaging in the following conduct with respect to Nebraska consumer users of its online dating sites and mobile applications:

- (a) Displaying any Engager Profile; and
- (b) If a “Full Delete” option or similar service is offered, failing to delete the accounts of any user who purchases that offer, as described in the terms of the “Full Delete” option.

**C. MANDATED DATA SECURITY PROGRAM**

12. Defendants must, no later than the Effective Date, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about U.S. consumers of their online dating websites and mobile applications. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to Defendants’ size and complexity, the nature and scope of Defendants’ activities, and the sensitivity of the personal information

collected from or about consumers, including:

(a) the designation of an employee or employees to coordinate and be responsible for the information security program;

(b) the identification of internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment must include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, such as network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures;

(c) the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;

(d) the development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from Defendants, and requiring service providers, by contract, to implement and maintain appropriate safeguards; and

(e) the evaluation and adjustment of the information security program in light of the results of the testing and monitoring required by Paragraph 12(c), any material changes to Defendants' operations or business arrangements, or any other circumstances that Defendants know or have reason to know may have an impact on the effectiveness of

the information security program.

**D. DATA SECURITY ASSESSMENTS BY A THIRD PARTY**

13. In connection with compliance with the Section of this Agreement titled Mandated Data Security Program, Defendant must obtain initial and biennial assessments (“Assessments”):

(a) The Assessments must be obtained from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. A professional qualified to prepare such Assessments must be: an individual qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); an individual holding Global Information Assurance Certification (GIAC) from the SANS Institute; or a qualified individual or entity approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

(b) Consistent with its obligations to the Federal Trade Commission, the reporting period for the Assessments must cover: (1) the first one hundred eighty (180) days after the Effective Date for the initial Assessment; and (2) each 2-year period thereafter for twenty (20) years after the Effective Date for the biennial Assessments. Each Assessment must:

(1) set forth the specific administrative, technical, and physical safeguards that Defendants have implemented and maintained during the reporting period;

(2) explain how such safeguards are appropriate to Defendants’ size and complexity, the nature and scope of Defendants’ activities, and the sensitivity of the personal information collected from or about consumers;

(3) explain how the safeguards that have been implemented meet or exceed the protections required by the Section of this Agreement titled Mandated Data Security Program; and

(4) certify that the security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

(c) Each Assessment must be completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Defendants must submit the initial Assessment to the State within ten (10) days after the Assessment has been completed. Defendants must retain all subsequent biennial Assessments, at least until the Agreement terminates. Defendants must submit any biennial Assessments to the State within ten (10) days of a request from a representative of the State.

## V. RECORDKEEPING

14. Consistent with its obligations to the Federal Trade Commission, Defendant must create and retain the following records, which the Attorney General has the right to inspect pursuant to paragraph 19:

(a) accounting records showing the revenues from all goods or services sold;

(b) personnel records, showing, for each person providing services relating to the subject matters of the Agreement, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

(c) records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;



(d) all records necessary to demonstrate full compliance with each Section of this Agreement, including all submissions to the Federal Trade Commission; and

(e) a copy of every materially different advertisement or other marketing material.

## **VI. MONETARY JUDGMENT**

15. Defendants shall pay the amount of Eight Million, Seven Hundred, Fifty Thousand USD (\$8,750,000) to the Multistate, Eight Hundred, Twenty-Eight Thousand, Five-Hundred USD (\$828,500) of which shall be divided, as determined by the Multistate, and paid to the States participating in the Multistate as per Paragraph 16, and the remainder, Seven Million, Nine Hundred, Twenty-One Thousand, Five-Hundred USD (\$7,921,500), which shall be suspended as per Paragraphs 17-18.

16. Based on Defendants' inability to pay a higher amount and still continue operating, as demonstrated in information produced to the State of Vermont and the Federal Trade Commission, in partial satisfaction of the amount stated in Paragraph 15, Defendants shall pay to the State of Nebraska Fifty-One Thousand, Three-Hundred Fifty-Five USD and Forty-Eight Cents (\$51,355.48) within seven (7) days of the Effective Date. This payment shall be placed in the State Settlement Cash Fund for such purposes that may include, but are not limited to, defraying the costs of the inquiry leading hereto, attorney's fees and other costs of investigation and litigation, consumer protection enforcement, consumer education or for other uses permitted by Nebraska law, at the sole discretion of the Plaintiff. The Parties acknowledge the payment described herein is not a fine, penalty, or payment in lieu thereof. This sum is part of a total amount of Eight Hundred, Twenty-Eight Thousand, Five-Hundred USD (\$828,500) to be paid to the participating States in the Multistate, and the remainder, Seven Million, Nine Hundred, Twenty-One Thousand, Five-Hundred USD (\$7,921,500) shall be suspended.

17. The State's agreement to the suspension of part of the payment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the State of Vermont and the Federal Trade Commission, dated September 30, 2016, October 17, 2016, and October 19, 2016.

18. The suspended payment of Seven Million, Nine Hundred, Twenty-One Thousand, Five-Hundred USD (\$7,921,500), will be immediately due, plus interest computed from the Effective Date, as per the Rules of Court Procedure of the State of Vermont, if, upon motion by the State or the Federal Trade Commission, a court finds that Defendants failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations. Such payment shall be made to the Attorney General for the State of Vermont, to be distributed amongst the members of the Multistate in a manner to be agreed upon by the Multistate.

## **VII. REPORTING**

19. To determine or secure compliance with this Agreement, on reasonable notice given to Defendants, subject to any lawful privilege:

(a) Duly authorized representatives of the Plaintiff may request electronic copies of any books, ledgers, accounts, correspondence, memoranda, records created or retained pursuant to Paragraph 14, and other documents and records in the possession, custody, or control of Defendants, and the documents and records to be provided relate to the violations described in this Agreement.

(b) Defendants shall submit written reports, under oath if requested, with respect to any matters contained in this Agreement.

## VIII. MISCELLANEOUS PROVISIONS

20. The Parties agree that this Agreement shall apply to Defendants, including all of their subsidiaries, affiliates, agents, representatives, employees, successors, and assigns, in existence as of the Effective Date. The Parties further agree that any subsidiaries, affiliates, agents, representatives, employees, successors, and assigns that Defendants acquire after the Effective Date shall comply with Sections IV.A and IV.B of this Agreement within two (2) months of the acquisition and Sections IV.C and IV.D of this Agreement within six (6) months of the acquisition.

21. This Agreement is for settlement purposes only. No part of this Agreement constitutes or shall be deemed to constitute an admission or concession by Defendants as to any matter, including that any of the Defendants has violated any law or regulation, or to any liability or wrongdoing. The Parties acknowledge that this Agreement was agreed to without any trial or adjudication of any issue of fact or law or finding of wrongdoing or liability of any kind.

22. Upon full payment of the amount due under Paragraph 16, the Plaintiff hereby releases Defendants from all civil claims, actions, causes of action, damages, losses, fines, costs, and penalties related to the allegations of the Complaint in this action, that have been or could have been brought by the Plaintiff against Defendants or any of their respective current or former affiliates, agents, representatives, or employees pursuant to the Nebraska Consumer Protection Act or the Uniform Deceptive Trade Practices Act on or before the Effective Date (the "Released Claims"). Notwithstanding any other term of this Agreement, the following do not comprise Released Claims: private rights of action; criminal claims; claims of environmental or tax liability; claims for property damage; claims alleging violations of State or federal securities laws; claims alleging violations of State or federal antitrust laws; claims alleging violations of State or federal false claims laws; claims brought by any other agency or subdivision of the State; and

claims alleging a breach of this Agreement.

23. It is not the intention of the Parties to allow for the possibility of a double or duplicative recovery by any consumer.

24. The Parties agree that this Agreement does not constitute an approval by the Plaintiff of any of Defendants' past or future practices, and Defendants shall not make any representation to the contrary.

25. The requirements of this Agreement are in addition to, and not in lieu of, any other requirements of state or federal law. Nothing in this Agreement shall be construed as relieving Defendants of the obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall any of the provisions of this Agreement be deemed as permission for Defendants to engage in any acts or practices prohibited by such laws, regulations, or rules.

26. This Agreement shall not create a waiver or limit Defendants' legal rights, remedies, or defenses in any other action by the Plaintiff, except an action to enforce the terms of this Agreement or to demonstrate that Defendants were on notice as to the allegations contained herein.

27. This Agreement shall not waive or limit Defendants' rights to defend themselves, or make argument in, any other matter, claim, or suit, including, but not limited to, any investigation or litigation relating to the subject matter or terms of the Agreement, except with regard to an action by the Plaintiff to enforce the terms of this Agreement.

28. This Agreement shall not waive, release, or otherwise affect any claims, defenses, or position that Defendants may have in connection with any investigations, claims, or other matters the Plaintiff does not release in this Agreement.

29. Defendants shall not participate directly or indirectly in any activity to form or proceed as a separate entity or corporation for the purpose of engaging in acts prohibited in this Agreement or for any other purpose which would otherwise circumvent any part of this Agreement.

30. If any clause, provision or section of this Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

31. The section headings and subheadings contained in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation of this Agreement.

32. In the event that any statute, rule, or regulation pertaining to the subject matter of this Agreement is enacted, promulgated, modified, or interpreted by any federal or state government or agency, or a court of competent jurisdiction holds that such statute, rule, or regulation is in conflict with any provision of the Agreement, and compliance with the Agreement and the subject statute, rule or regulation is impossible, Defendants may comply with such statute, rule or regulation and such action in the affected jurisdiction shall not constitute a violation of this Agreement. Defendants shall provide written notice to the Plaintiff that it is impossible to comply with the Agreement and the subject law and shall explain in detail the basis for claimed impossibility, with specific reference to any applicable statutes, regulations, rules, and court opinions. Such notice shall be provided immediately upon Defendants learning of the potential impossibility and at least thirty (30) days in advance of any act or omission which is not in

compliance with this Agreement. Nothing in this paragraph shall limit the right of the Plaintiff to disagree with Defendants as to the impossibility of compliance and to seek to enforce this Agreement accordingly.

33. All notices under this Agreement shall be provided to the following via email and Overnight Mail:

For ruby, ruby Life, and ADL Media:

ruby Corp., ruby Life Inc., and ADL Media Inc.  
PO Box 67027  
Toronto, ON Canada M4P 1E4  
Attention: James Millership, President  
james.millership@rubylife.com

James Halpert  
Attorney for Defendants ruby Corp., ruby Life Inc., and ADL Media Inc.  
DLA Piper LLP  
500 Eighth Street, N.W.  
Washington, D.C. 20004  
202-799-4441  
jim.halpert@dlapiper.com

For the State of Nebraska:

Daniel Birdsall  
Assistant Attorney General  
Consumer Protection Division  
Nebraska Attorney General's Office  
2115 State Capitol  
Lincoln, NE 68509  
dan.birdsall@nebraska.gov

34. Defendants shall be liable for all court costs.

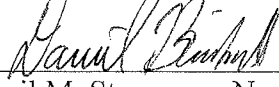
35. This court retains jurisdiction of this action for the purpose of ensuring compliance with this Agreement.

**JOINTLY APPROVED AND SUBMITTED FOR ENTRY:**

**FOR PLAINTIFF:**

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

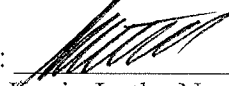
By: Douglas J. Peterson, No. 18146  
Attorney General

By:   
Abigail M. Stempson, No. 23329  
Daniel J. Birdsall, No. 25726  
Assistant Attorneys General  
2115 State Capitol  
Lincoln, NE 68509  
Phone: (402) 471-3833  
abigail.stempson@nebraska.gov  
dan.birdsall@nebraska.gov

Date: 12/14/16

**FOR DEFENDANTS**

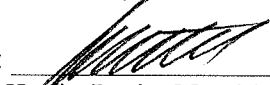
RUBY CORP.

By:  \_\_\_\_\_

Date: \_\_\_\_\_

Kevin Lytle, No. 21038  
Attorney for Defendants ruby Corp., ruby Life Inc., and ADL Media Inc.  
DLA Piper LLP (US)  
2525 East Camelback Road  
Esplanade II, Suite 1000  
Phoenix, Arizona 85016-4232  
(480) 606-5147  
kevin.lytle@dlapiper.com

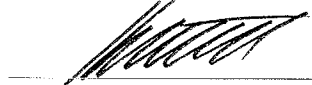
RUBY LIFE, INC.

By:  \_\_\_\_\_

Date: \_\_\_\_\_

Kevin Lytle, No. 21038  
Attorney for Defendants ruby Corp., ruby Life Inc., and ADL Media Inc.  
DLA Piper LLP (US)  
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Esplanade II, Suite 1000  
Phoenix, Arizona 85016-4232  
(480) 606-5147  
kevin.lytle@dlapiper.com

ADL MEDIA INC.

By:  \_\_\_\_\_

Date: \_\_\_\_\_

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