

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

COMPLAINT

LANCASTER COUNTY
2016 MAY 17 AM 11 05
CLERK OF THE
DISTRICT COURT

The State of Nebraska, ex rel. Douglas J. Peterson, Attorney General, by and through the undersigned Assistant Attorney General ("State"), sets forth its causes of action against Defendants.

I. INTRODUCTION

1. This is a consumer protection action brought pursuant to the Nebraska 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").

KUB



001632367D02

2. The State has cause to believe the Defendants have violated and may be continuing to violate the Consumer Protection Act and Uniform Deceptive Trade Practices Act, among other relevant laws. The State also has cause to believe this action is in the public interest because the Defendants have deceived, misled, and caused financial harm to numerous Nebraska persons.

II. PARTIES

3. The Plaintiff in this case is the State of Nebraska, ex rel. Douglas J. Peterson, Attorney General. Pursuant to Neb. Rev. Stat. § 59-1608, the Attorney General may bring an action in the name of the State against any person to restrain and prevent the doing of any act prohibited by the Consumer Protection Act. In addition, pursuant to Neb. Rev. Stat. § 87-303.05 of the Uniform Deceptive Trade Practices Act, the Attorney General may apply for and obtain, in an action in any district court of Nebraska, a temporary restraining order, or injunction, or both, prohibiting a person from engaging in deceptive trade practices or doing any act in furtherance thereof.

4. Defendant United Business Services, LLC ("UBS") is a Florida limited liability company with its principal office in Pinellas Park, Florida.

5. Defendant Corporations Filing Service, LLC ("CFS") is a Florida limited liability company with its principal office in Pinellas Park, Florida.

6. Defendant James L. Beard ("Beard") is an individual believed to be residing in Pinellas Park, Florida. At all times relevant hereto, Beard has been the sole person authorized to manage UBS. At all times material to this Complaint, acting alone or in concert with others, Beard has formulated, directed, controlled, had the authority to

control, or participated in the acts and practices of UBS, including the acts and practices set forth in this Complaint.

7. Defendant Sean M. Shaughnessy ("Shaughnessy") is an individual believed to be residing in Pinellas Park, Florida. At all times relevant hereto, Shaughnessy has been the sole person authorized to manage CFS. At all times material to this Complaint, acting alone or in concert with others, Shaughnessy has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of CFS, including the acts and practices set forth in this Complaint.

8. Neither UBS nor CFS has registered with the Nebraska Secretary of State in order to conduct business within the State of Nebraska.

III. JURISDICTION AND VENUE

9. This court has jurisdiction over this matter pursuant to Neb. Rev. Stat. § 59-1608.01 and § 87-303.05.

10. UBS, CFS, Beard, and Shaughnessy have actively solicited business from Nebraska entities sufficient to establish jurisdiction under Neb. Rev. Stat. §§ 59-1616, 87-304, and 25-536. In an attempt to solicit business, UBS, CFS, Beard, and Shaughnessy mailed postcards to numerous business entities registered within Nebraska, including business entities which maintain a principal place of business within Lancaster County.

11. Venue is proper pursuant to Neb. Rev. Stat. §§ 59-1608.01 and 87-303.05.

IV. FACTUAL ALLEGATIONS

12. On or about December 8, 2015, Shaughnessy conducted a custom search for Nebraska business entities through the Nebraska Secretary of State's website. This

search retrieved approximately 3,000 results which contained the identifying information for newly-formed Nebraska business entities. The cost for the search was \$45.00.

13. Having obtained the information for these newly-formed Nebraska business entities, UBS, CFS, Beard, and Shaughnessy designed and developed a postcard mailing campaign to solicit business.

14. Defendants CFS and Shaughnessy contracted with a Florida-based commercial printing and mailing company to develop the postcards and mail the postcards to Nebraska addresses. CFS and Shaughnessy provided the printing and mailing company a list of addresses of Nebraska business entities.

15. Based on information and belief, the Defendants caused a total of approximately 1,946 postcards to be mailed to Nebraska business entities.

16. The front side of the postcard the Defendants mailed lists a Nebraska business address and instructs the postcard recipient to read the reverse of the card for "important information regarding [the] business". A true and correct copy of the front side of one such postcard, with the identifying information removed, is attached to this Complaint and marked as Exhibit No. 1.

17. The front side of the postcard also states that the mailing is purportedly from the Compliance Division of UBS. UBS lists a mailing address of 129 North 10th Street, Lincoln, Nebraska 68508. Based on information and belief, there has never been a UBS presence at this address in Lincoln, Nebraska or anywhere else in Nebraska.

18. The mailing address UBS lists on the postcard corresponds to a Nebraska-based property management company which has no involvement or ties to any of the Defendants.

19. On the reverse side of the postcard mailing, the recipient is notified that the business may have a “potential compliance violation”. A true and correct copy of the reverse side of one such postcard, with the identifying information removed, is attached to this Complaint and marked as Exhibit No. 2.

20. The reverse side of the postcard mailing contains the business name, an entity number, and a notice date. The recipient is further instructed to call a toll-free telephone number in order to avoid potential fees and penalties.

21. Also appearing on the reverse side of the postcard is a key code, PCNE2537, which the recipient is instructed to reference when calling UBS. All postcards sent to Nebraska businesses appear to contain the same key code.

22. There is no notification on either side of the postcard to inform the recipient that the Defendants have no relation to any Nebraska or other governmental entity.

23. Numerous Nebraska business entities which received this postcard have 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.

24. Upon speaking with a UBS representative, the representatives for Nebraska business entities were informed that they needed to purchase one of two products in order to remain in compliance with the law and avoid substantial penalties: (i) a poster containing various employment and labor laws, notices, and regulations (“Labor Poster”); or (ii) a Certificate of Existence.

Labor Posters

25. Defendants have represented the Labor Poster is needed to comply with various state and federal requirements for businesses to inform employees of their rights in the workplace. Defendants have sold this poster for approximately \$89.00.

26. Based on information and belief, Defendants have not developed these posters themselves. Instead, Defendants have purchased these Labor Posters from a third-party merchant over the Internet at a substantially reduced cost and have then resold the same posters to Nebraskans.

27. Because of this purchasing practice, Defendants have not undertaken any meaningful review of the poster to ensure it complies with either Nebraska law or federal law. Further, Defendants did not engage in research into 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, based on information and belief, Defendants could not fully guarantee that a business obtaining this poster would cure any potential compliance violations and avoid any penalties.

28. The Nebraska Department of Labor offers posters which fully comply with federal labor laws and Nebraska labor laws for no charge and will even ship these posters to requesting parties at no additional charge.

Certificates of Existence

29. When a Nebraska business entity responding to the postcard mailing did not purchase a poster, the Defendants' representatives attempted to sell a Certificate of Existence to the calling party. Based on information and belief, the Defendants have sold these certificates to Nebraska business entities for \$70.00.

30. A Certificate of Existence is not a recognized document in Nebraska. Rather, the Nebraska Secretary of State offers two types of Certificates of Good Standing for purchase. The cost to purchase a paper copy of a Certificate of Good Standing through the Nebraska Secretary of State is \$10.00. The Nebraska Secretary of State also offers an online Certificate of Good Standing for \$6.50 and this form of certificate can be validated over the internet.

31. 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.

32. Based on information and belief, Defendants have placed orders for over 20 Certificates of Good Standing through the Nebraska Secretary of State's website. The Defendants have utilized the Nebraska business entity's information to place the order, paid for the order with a CFS credit card, and then directed that the Certificate of Good Standing be shipped directly to the Nebraska entity.

VIOLATIONS OF THE CONSUMER PROTECTION ACT

33. Under the Consumer Protection Act, Neb. Rev. Stat. § 59-1602 prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

34. At all times relevant to this complaint, UBS has been under the actual control of Beard and CFS has been under the actual control of Shaughnessy. Beard and Shaughnessy exercised their control over UBS and CFS to commit wrongs in contravention of the Consumer Protection Act.

**COUNT I – DESIGNING AND MAILING POSTCARDS WHICH APPEAR TO
ORIGINATE FROM AN OFFICIAL GOVERNMENT ENTITY**
(Unfair or Deceptive Trade Act or Practice)

35. The State re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs above, as though fully set forth herein.

36. 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.

37. 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.

38. The trade and commerce mentioned in this Count directly and indirectly affected the people of the State of Nebraska.

39. Defendants' actions constitute unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of Neb. Rev. Stat. § 59-1602. For each and every postcard Defendants mailed to a Nebraska business entity, Defendants committed a separate violation of this statute.

**COUNT II – DESIGNING AND MAILING POSTCARDS WHICH APPEAR TO
ORIGINATE FROM A NEBRASKA ENTITY**
(Unfair or Deceptive Trade Act or Practice)

40. The State re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs above, as though fully set forth herein.

41. 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 a business located in Lincoln, Nebraska.

42. The trade and commerce mentioned in this Count directly and indirectly affected the people of the State of Nebraska.

43. Defendants' actions constitute unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of Neb. Rev. Stat. § 59-1602. For each and every postcard Defendants mailed to a Nebraska business entity, Defendants committed a separate violation of this statute.

COUNT III – SOLICITING UNNECESSARY PRODUCTS UNDER THREATS OF VIOLATIONS AND PENALTIES
(Unfair or Deceptive Trade Act or Practice)

44. The State re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs above, as though fully set forth herein.

45. Defendants represented to Nebraska residents and sought payment in connection with representations that the business entities needed to obtain the products Defendants solicited in order to comply with state and federal law.

46. The trade and commerce mentioned in this Count directly and indirectly affected the people of the State of Nebraska.

47. Defendants' actions constitute unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of Neb. Rev. Stat. § 59-1602. For each and every postcard Defendants mailed to a Nebraska business entity, Defendants committed a separate violation of this statute.

VIOLATIONS OF THE UNIFORM DECEPTIVE TRADE PRACTICES ACT

48. Section 87-302(a) of the Uniform Deceptive Trade Practices Act specifies a number of practices which, when conducted in the course of business, may constitute a deceptive trade practice, including:

1. [Passing] off goods or services as those of another;
2. [Causing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
3. [Causing] likelihood of confusion or of misunderstanding as to affiliation, connection, association with, or certification by, another;
4. [Using] deceptive representations or designations of geographic origin in connection with goods or services; and
5. [Representing] that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have.

49. Furthermore, Neb. Rev. Stat. § 87-303.01(1) declares that an “unconscionable act or practice by a supplier in connection with a consumer transaction shall be a violation of the Uniform Deceptive Trade Practices Act.”

50. At all times relevant to this complaint, UBS has been under the actual control of Beard and CFS has been under the actual control of Shaughnessy. Beard and Shaughnessy exercised their control over UBS and CFS to commit wrongs in contravention of the Uniform Deceptive Trade Practices Act.

**COUNT IV – DESIGNING AND MAILING POSTCARDS WHICH APPEAR TO
ORIGINATE FROM AN OFFICIAL GOVERNMENT ENTITY**
(Unconscionable Practice)

51. The State re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs above, as though fully set forth herein.

52. Defendants' actions listed in Count I of this complaint also constitute deceptive trade practices in violation of § 87-302(a)(1), (2), (3), and (5) of the Uniform Deceptive Trade Practices Act. For each and every postcard Defendants mailed to a Nebraska business entity, Defendants committed a separate violation of this statute.

**COUNT V – DESIGNING AND MAILING POSTCARDS WHICH APPEAR TO
ORIGINATE FROM A NEBRASKA ENTITY**
(Unconscionable Practice)

53. The State re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs above, as though fully set forth herein.

54. Defendants' actions listed in Count II also constitute deceptive trade practices in violation of § 87-302(a)(4) of the Uniform Deceptive Trade Practices Act. For each and every postcard Defendants mailed to a Nebraska business entity, Defendants committed a separate violation of this statute.

**COUNT VI – SOLICITING UNNECESSARY PRODUCTS UNDER THREATS OF
VIOLATIONS AND PENALTIES**
(Unconscionable Practice)

55. The State re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs above, as though fully set forth herein.

56. Defendants' actions listed in Count III also constitute deceptive trade practices in violation of § 87-302(a)(1), (2), (3), and (5) of the Uniform Deceptive Trade Practices Act. For each and every postcard Defendants mailed to a Nebraska business entity, Defendants committed a separate violation of this statute.

**COUNT VII – DESIGNING AND MAILING POSTCARDS WHICH MISLEAD
NEBRASKA RESIDENTS**
(Unconscionable Practice)

57. The State re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs above, as though fully set forth herein.

58. Defendants' actions listed in Counts I, II, and III of this complaint also constitute unconscionable practices in violation of § 87.303.01(1) of the Uniform Deceptive Trade Practices Act. For each and every postcard Defendants mailed to a Nebraska business entity, Defendants committed a separate violation of this statute.

PRAYER FOR RELIEF

WHEREFORE, the State of Nebraska respectfully requests this Court to:

(A) Pursuant to Neb. Rev. Stat. §§ 59-1608 and 87-303.05, permanently enjoin Defendants UBS, CFS, James L. Beard, and Sean M. Shaughnessy from violating the Consumer Protection Act and the Uniform Deceptive Trade Practices Act;

(B) Pursuant to Neb. Rev. Stat. §§ 59-1608 and 87-303.05 order Defendants to fully reimburse every Nebraska person which paid the Defendants money in response to their deceptive, unfair, and unconscionable postcard mailing;

(C) Order Defendants to pay civil penalties of up to \$2,000.00 for each and every violation of the Consumer Protection Act, pursuant to Neb. Rev. Stat. § 59-1614;

(D) Order Defendants to pay civil penalties of up to \$2,000.00 for each and every violation of the Uniform Deceptive Trade Practices Act, pursuant to Neb. Rev. Stat. § 87-303.11;

(E) Order Defendants to pay all of the State's costs and attorney's fees for the prosecution and investigation of this action, pursuant to the Consumer Protection Act,

Neb. Rev. Stat. § 59-1608, and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-303; and

(F) Grant the State any such other and further relief as the Court deems equitable, just, and proper.

Dated this 17th day of May, 2016.

BY: Douglas J. Peterson, # 18146
Attorney General of Nebraska

BY: Timothy R. Ertz

Timothy R. Ertz, # 25162
Assistant Attorneys General
2115 State Capitol
Lincoln, NE 68509-8920
Phone: (402) 471-1919
timothy.ertz@nebraska.gov

Attorneys for Plaintiff.



COMPLIANCE DIVISION
 129 NORTH 10TH STREET
 LINCOLN, NE 68508

PRESORTED
 FIRST CLASS
 U.S. POSTAGE
 PAID
 MODERN
 MAILING

SEE REVERSE

IMPORTANT INFORMATION REGARDING YOUR BUSINESS!

Physical Business Address:

21 *****AL FOR ADIC GRU n.

.....

NE 68434-2003

.....

RECEIVED

DEC 14 2015

Bloomberg No. 8117
Exhibit 1

!NOTICE OF POTENTIAL COMPLIANCE VIOLATION!

Business Name:

Entity Number:

Notice Date: 12/11/2018

PLEASE CALL IMMEDIATELY

1-844-564-2211

Avoid Potential Fees and Penalties

KEY CODE: PCNE2537

PLEASE REFERENCE THIS KEY CODE WHEN CALLING.

12/11/2018

12/11/2018

Exhibit 2
Eltzberg No. 8117