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 CONSUMER PROTECTION AND ANTITRUST DIVISION
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STATE OF NORTH DAKOTA
 OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
 WAYNE STENEHJEM,
 ATTORNEY GENERAL,

Petitioner,

**CEASE AND DESIST ORDER,
 NOTICE OF CIVIL PENALTY
 AND NOTICE OF RIGHT
 TO REQUEST A HEARING**

-vs-

LIFE MANAGEMENT SERVICES OF
 ORANGE COUNTY,
 LPS of Fla, and
 CLARENCY "HARRY" WAHL, Individually,

Respondents.

CPAT 160026.004

To each of the individuals and entities identified below (hereinafter collectively "Respondents"):

LIFE MANAGEMENT SERVICES OF ORANGE COUNTY
 12001 SCIENCE DR SUITE 125
 ORLANDO FL 32826

LPS OF FLA
 PO Box 720819
 ORLANDO, FL 32872

CLARENCY "HARRY" WAHL
 2574 Sheffield Avenue
 ORLANDO, FL 32806

(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law;" N.D.C.C. ch. 51-18, commonly referred to as the "Home Solicitation Sales Law;" and N.D.C.C. ch. 51-28, commonly referred to as the "Do Not Call Law." It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents' unlawful acts or practices.

2. Respondents, individually and by and through their agents, are doing business under some or all of the names identified above, and have engaged in violations of North Dakota law by engaging in telephone solicitations in violation of the Do Not Call Law, by making false or misleading statements or misrepresentations in telephone solicitations aimed at North Dakota consumers, and by failing to comply with North Dakota's Home Solicitation Sales Law.

3. Life Management Services of Orange County, LLC is a Florida limited liability company with a registered address at 12001 Science Dr., Ste. 125, Orlando, FL 32826. Clarence "Harry" Wahl and Karen Wahl are the managing members of Life Management Services of Orange County, LLC. It is also believed that Clarence "Harry" Wahl and Karen Wahl are the owners of LPS of Fla, PO Box 720819, Orlando, FL 32872.

4. Clarence "Harry" Wahl, Karen Wahl, Life Management Services of Orange County, LLC, and LPS of FLA ("Respondents") are in the business of advertising,

soliciting and selling merchandise, including services to lower interest rates on consumers' credit cards. Respondents, or Respondents' agents on Respondents' behalf, have solicited North Dakota customers through telemarketing.

5. Respondents have made untrue, deceptive and misleading representations to consumers. Respondents have sold merchandise to North Dakota consumers, without providing consumers with the necessary notices of right to cancel, and have charged consumers' credit cards without obtaining an original copy of a sales contract signed by the consumer. Respondents solicited North Dakota subscribers on the Do Not Call list using prerecorded messages.

7. The Attorney General's Office received a consumer complaint from consumers who were properly registered in the Do Not Call list and who received a prerecorded message from Respondents, in violation of N.D.C.C. ch. 51-28, regarding lowering interest rate on their credit cards.

8. Respondents called one consumer, who was properly registered on the Do Not Call list, multiple times over several months with a prerecorded message offering to reduce her credit card interest rates. Respondents said that they could reduce the consumer's credit card interest rates to zero percent (0%). Respondents represented that they needed to bill the consumer three thousand dollars (\$3000.00) in order to reduce the interest rates on her credit cards to zero percent. After supplying her billing information to Respondents, the consumer contacted the North Dakota Attorney General's Office, suspecting that the phone call and conversation was unusual. After speaking with the North Dakota Attorney General's Office, the consumer contacted Respondents. The consumer asked Respondents for their name and address;

Respondents refused to supply their address. Respondents did not provide the necessary notices of the right to cancel, and did not did not reduce the consumer's credit card interest rates.

9. Respondents solicited another consumer by telephone by using a prerecorded message though she was properly registered on the Do Not Call list. Respondents solicited a payment by money order that was sent to their PO Box address. Respondents confirmed receipt of this payment by providing a letter to the consumer, but did not properly provide notices of the right to cancel. The consumer paid a total of one thousand eight hundred and thirty-five dollars (\$1835.00) to Respondents. In exchange for her payments, Respondents represented that they would reduce the interest rates of her credit cards and pay them off. Respondents did not reduce the consumer's credit card interest rates or pay off her credit card balances.

10. Based on the consumer complaint and other information received, it appeared to the Attorney General that Respondents engaged in violations of North Dakota law, and the Attorney General commenced an investigation into the Respondents' business practices. On April 18, 2016, the Attorney General issued a Civil Investigative Demand to Respondents pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. Delivery was made by certified mail on April 22, 2016 and was signed by Clarence "Harry" Wahl at 2574 Sheffield Ave., Orlando, FL 32806.

11. Respondents did not respond to the Civil Investigative Demand. The Attorney General received an unsigned and undated letter from LPS of Fla representing that a refund had been issued to the consumer described in Paragraph 9. LPS of Fla disavowed knowledge of the consumer described in Paragraph 8, though a subpoena

revealed that the telephone number she was supplied was owned by Respondents. Respondents did not provide any of the documents requested or answer any of the questions asked in the Civil Investigative Demand. On May 4, 2016, the Attorney General sent a letter to Respondents requesting compliance with the Civil Investigative Demand. Respondents did not otherwise respond to the letter or the Civil Investigative Demand. Pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for Respondents' failure to respond to the Civil Investigative Demand.

12. It appears to the Attorney General that Respondents, or Respondents' agents on Respondents' behalf, are engaged in in violations of N.D.C.C. ch. 51-28 by making telephone solicitations to telephone lines of subscribers in North Dakota who, for at least 31 days before the date the call is made, have been on the North Dakota or Federal Trade Commission do-not-call list. Further, it appears that Respondents have engaged in the use of prerecorded messages in violation of N.D.C.C. ch. 51-28. Violations of N.D.C.C. ch. 51-28 are violations of N.D.C.C. ch. 51-15.

13. It appears that Respondents have made untrue, deceptive and misleading representations, and/or have made or engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in violation of N.D.C.C. ch. 51-15, the Consumer Fraud Law, during their telephone solicitations to North Dakota subscribers.

14. It further appears to the Attorney General that Respondents are marketing, soliciting and selling merchandise to North Dakota consumers, without providing consumers with the necessary notices of right to cancel, as required by the North Dakota Home Solicitation Sales statute, N.D.C.C. ch. 51-18, and are soliciting or

accepting payments from North Dakota consumers prior to receiving an original copy of a sales contract signed by the consumer, in violation of N.D.C.C. § 51-18-04.2. Violations of N.D.C.C. ch. 51-18 are violations of N.D.C.C. ch. 51-15.

15. Respondents are engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of North Dakota's Consumer Fraud, Home Solicitation Statute, and Do Not Call Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

16. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. See *e.g. Zimprich v. North Dakota Harvestore Sys., Inc.*, 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946) ("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur., 440, this rule is stated, 'It is a conceded general rule that all persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties.'").

17. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D. 1983) quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964) ("... but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of

persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.).") The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). See also *Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

ORDER

Based upon the foregoing information, it appears to the Attorney General that Respondents have engaged in violations of N.D.C.C. chs. 51-28, 51-18, and 51-15 and Respondents have failed or refused to respond to the Civil Investigative Demand as required by N.D.C.C. § 51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and where applicable their officers, directors, owners, agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) soliciting or selling services and/or merchandise as defined in N.D.C.C. § 51-15-01(3), including lowering interest rate services, to North Dakota consumers; 2) soliciting consumers using untrue, deceptive or misleading representations or engaging in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that consumers rely thereon, in violation of N.D.C.C. § 51-15-02; 3) advertising, soliciting, or selling merchandise to North Dakota consumers

without providing the consumer the written and verbal notice of rights to cancel as required by N.D.C.C. ch. 51-18; 4) soliciting or accepting any payment from a North Dakota consumer before Respondents have received an original copy of the sales contract signed by the consumer, in violation of N.D.C.C. § 51-18-04.2; 5) engaging in telephone solicitations to the telephone line of any subscriber in North Dakota who, for at least 31 days before the date the call is made, has been on the North Dakota or Federal Trade Commission do-not-call list; and 6) engaging in the use of prerecorded messages, in violation of N.D.C.C. ch. 51-28. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for any services or merchandise and **CEASE AND DESIST** from taking any payments from North Dakota consumers including, but not limited to, direct debits or withdrawals from North Dakota consumers' bank accounts, cash, checks, or credit card payments for the sale of merchandise as defined in N.D.C.C. § 51-15-01(3).

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

NOTICE OF CIVIL PENALTIES

YOU ARE FURTHER NOTIFIED that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than \$5,000 per violation. Any violation of this

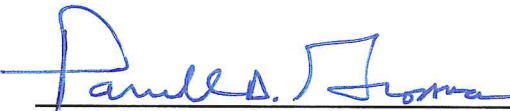
Order that also is a violation of N.D.C.C. ch. 51-18 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-28 may result in additional civil penalties of not more than \$2,000 per violation and additional civil penalties of not more than \$5,000 per violation as a separate violation of N.D.C.C. ch. 51-15. Such penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees, and attorney fees pursuant to N.D.C.C. ch. 51-15 or any other applicable statute. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing at the Respondents' expense.

Dated this 9th day of June, 2016.

STATE OF NORTH DAKOTA
Wayne Stenehjem
Attorney General

BY: 

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