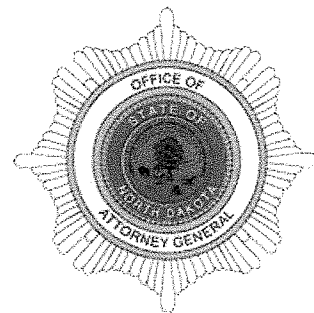


OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
GATEWAY PROFESSIONAL CENTER
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BISMARCK, NORTH DAKOTA 58503-5574



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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-VS-

UNION LABOR GUIDE,
DAKOTA UNION LABOR GUIDE,
SAINT LOUIS UNION LABOR GUIDE, LLC
WISCONSIN UNION LABOR GUIDE, and
ANDREW AUSTIN SHAW SR,
AKA ANDREW SHAW
AKA ANDREW AUSTIN
AKA ANDY AUSTIN

Respondents.

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

CPAT 130300.002

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

UNION LABOR GUIDE
1100 19th Avenue North # 139
Fargo, ND 58102

DAKOTA UNION LABOR GUIDE
15009 Manchester Road
Ballwin, MO 63011

SAINT LOUIS UNION LABOR GUIDE, LLC
15009 Manchester Road
Ballwin, MO 63011

WISCONSIN UNION LABOR GUIDE
1213 North Sherman Avenue #316
Madison, WI 53704

and

ANDREW AUSTIN SHAW
1039 Westport Drive #134
Port Washington, WI 53074

ANDREW AUSTIN SHAW
1326 1st Street #205
Menominee, MI 49858

ANDREW AUSTIN SHAW
1470 Crystal Lake Circle #7
Green Bay, WI 54311

ANDREW AUSTIN SHAW
1213 North Sherman Avenue #316
Madison, WI 53704

wisconsinunionlabor@yahoo.com
andrewaustin2013@yahoo.com
andrewashaw@yahoo.com
unionlaborguidedakotas@yahoo.com

(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, "Unlawful Sales or Advertising Practices." It is necessary and appropriate in the public interest and for the protection of North Dakota residents to restrain Respondents' unlawful acts or practices.

2. Respondents have been the subject of a complaint from a North Dakota business alleging Respondents have engaged in deceptive practices in violations of North Dakota Law. Based on the complaint and information received by the Attorney General, it is believed that Respondents have engaged in a practice that is commonly referred to as an “invoice scam,” and that Respondents have made untrue, deceptive and misleading representations, and have 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. § 51-15-02. It is further believed that Respondents, on numerous occasions, have sent, delivered, or transmitted invoices or statements of account due to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered, in violation of N.D.C.C. § 51-15-02.2. Respondents have misrepresented to North Dakota persons that they owe Respondents payment for merchandise when such merchandise was never ordered, performed or delivered.

3. Andrew Austin Shaw is a Wisconsin resident whose driver’s licenses show an address of 1470 Crystal Lake Circle #7, Green Bay, Wisconsin 54311. Andrew Austin Shaw (“Shaw”) also uses the names Andrew Shaw, Andrew Austin and Andy Austin. Shaw is believed to be residing at various hotels in Wisconsin, and it is uncertain whether Shaw has a permanent place of residence.

4. Shaw and his companies Union Labor Guide, Dakota Union Labor Guide, Saint Louis Union Labor Guide, LLC and Wisconsin Union Labor Guide (“Respondents”) are engaged in the business of mailing unsolicited invoices to persons and entities in North Dakota, and elsewhere, requesting payment for advertising services. The invoices are mailed out in the name of Union Labor Guide, and the address provided on the invoice is a UPS Store in Fargo, North Dakota. The UPS mailbox in Fargo is rented

by Respondents in the name of Dakota Union Labor Guide, which is a Trade Name that Shaw has registered with the North Dakota Secretary of State.

5. The UPS Store in Fargo, North Dakota, forwards the mail received to Respondents upon receiving instructions from Shaw, via telephone, where to forward the mail. Recently, the mail has been forwarded to 1213 North Sherman Avenue #316, Madison, WI 53704. This address is another UPS Store where Respondents have rented a mailbox under the name Wisconsin Union Labor Guide, using the address at that UPS Store.

6. The payments Respondents receive from persons in response to the invoices are deposited in a bank account with JP Morgan Chase. This bank account was opened by Respondents in the name of Saint Louis Union Labor Guide using an address at 1326 1st Street #205, Menominee, MI 49858.

7. Based on the complaint and information received by the Attorney General, it appears that Respondents have engaged in the deceptive practice of mailing what could reasonably be interpreted as a bill or invoice to solicit payment of money for goods and services not ordered or performed. The deceptive mailing has been sent to numerous business and entities in North Dakota in an attempt to deceive recipients into believing they owe money to Respondents. Respondents have requested payment of \$175 for advertisement to be distributed to labor friendly organizations. Several North Dakota businesses and entities have paid Respondents invoices on more than one occasion.

8. According to information received by the Attorney General, Respondents have received at least 32 checks from North Dakota businesses, in response to the false invoices, since the beginning of March of 2013. Each check is in the amount of

\$175, which adds up to a total of \$5,600. The injuries Respondents have caused to North Dakota and its residents is believed to be significantly higher, as information received by the Attorney General indicates that Respondents have engaged in this invoice scam since August 2011, or earlier.

9. Information received indicates that the businesses and entities that receive the invoice have never ordered any goods or services from Respondents, have never communicated with Respondents regarding purchase of advertisement, and do not have any records of ever receiving any services as a result of the payments.

10. Respondents mailings are prohibited by N.D.C.C. § 51-15-02.2 which provides that it is a deceptive practice to “send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.”

11. The mailings sent to North Dakota businesses and entities use the phrase “Invoice payable to,” which clearly indicates that it is an invoice due to be paid, and it is clear that a person could reasonably interpret the mailing as a bill or invoice.

12. Respondents mailings are prohibited by N.D.C.C. § 51-15-02, which provides that a person is prohibited from engaging in any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise. “Merchandise” is defined as any objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services. N.D.C.C. § 51-15-01(3).

13. Based on the complaint and other information received, it appears to the Attorney General 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. § 51-15-02. The deceptive acts or practices include (1) making untrue, deceptive and misleading representations regarding merchandise advertised or sold; (2) making untrue, deceptive and misleading representations regarding outstanding invoices for merchandise, and (3) expressly, impliedly, or by omission of a material fact, misrepresenting their identity, location, the nature of their business, and their alleged outstanding claims against North Dakota persons.

14. On or about August 30, 2013, a North Dakota business received an invoice from Respondents. The invoice is from Union Labor Guide and shows a Fargo address. The invoice requested a payment of \$175 for advertisement. The business reasonably assumed it was a bill for services the business had ordered and that the amount in the invoice was due and owed to Union Labor Guide. While going through the approval process for the invoice, the business's marketing department attempted to contact Union Labor Guide to obtain information regarding the advertisement, including how often the ad was placed and who signed for and authorized the purchase of the advertisement. However, the business was unable to obtain a response from Union Labor Guide. When reviewing its own records, the North Dakota business discovered that three (3) invoices had previously been paid to Union Labor Guide, each in the amount of \$175. The invoices were paid January 11, 2012, June 20, 2012, and March 27, 2013. The North Dakota business has no records or recollection of ordering any merchandise from Respondents, and has no records of authorizing the purchase of the merchandise that was invoiced. The North Dakota business has no records or

knowledge of ever having received any services from Respondents, and has not received any copies of any advertisement generated or published by Respondents.

15. Another North Dakota business also received an invoice from Respondents in late August of 2013. The invoice bears the name Union Labor Guide, with a Fargo address, and requests a payment of \$175 due for advertisement services. The business reasonably assumed it was a bill for services the business had ordered and that the amount in the invoice was due and owed to Union Labor Guide. The business paid the invoice on August 30, 2013. When reviewing its records, the North Dakota business discovered that 4 invoices have been paid to Union Labor Guide, each in the amount of \$ 175. The 3 prior invoices were paid June 9, 2012, November 9, 2012, and March 25, 2013. The North Dakota business has no records or recollection of ordering any merchandise from Respondents, and has no records of authorizing the purchase of the merchandise that was invoiced. The North Dakota business has no knowledge of ever having received any services from Respondents, and has not received any copies of any advertisement generated or published by Respondents.

16. In early September of 2013, another North Dakota business received an invoice from Respondents. The invoice bears the name Union Labor Guide, lists a Fargo address, and requests a payment of \$175 due for advertisement services. The business reasonably assumed it was a bill for services the business had ordered and that the amount in the invoice was due and owed to Union Labor Guide. Therefore, the business paid the invoice on September 5, 2013. When reviewing its records, the North Dakota business discovered that 4 invoices have been paid to Union Labor Guide, each in the amount of \$ 175. The three prior invoices were paid June 26, 2012, November 9, 2012, and March 28, 2013. The North Dakota business has no records or recollection

of ordering any merchandise from Respondents, and has no records of authorizing the purchase of the merchandise that was invoiced. The North Dakota business has no knowledge of ever having received any services from Respondents, and has not received any copies of any advertisement generated or published by Respondents.

17. After reviewing the complaint and information received, the Attorney General believes Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15. Due to the ongoing violations of North Dakota law and the continued risk of injury to North Dakota residents, it is necessary and appropriate in the public interest and for the protection of the state's residents to restrain the Respondents' unlawful acts or practices.

18. The Attorney General further alleges the deceptive solicitations and mailings via the United States Postal Service are in violation of federal law, namely 18 U.S.C. § 1341, "Frauds and swindles."

19. Each of the 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 N.D.C.C. ch. 51-15. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota persons.

20. 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.'").

21. 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. ch. 51-15, **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents and their 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) advertising, soliciting, or selling merchandise to North Dakota persons; 2) advertising, soliciting, or

selling merchandise to North Dakota persons through the use of mailings that could reasonably be interpreted to be a bill, invoice, or a statement of account due in violation of N.D.C.C. § 51-15-02.2; 3) soliciting payment from North Dakota persons for goods that have not yet been ordered or for services that have not yet been ordered or performed; 4) collecting, attempting to collect, or contacting Dakota persons regarding collection of payment for merchandise allegedly ordered, shipped or sold; and 5) using untrue, deceptive or misleading representations or engaging in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in connection with the sale or advertisement of merchandise, in violation of N.D.C.C. § 51-15-02. Respondents also shall immediately **CEASE AND DESIST** from issuing or mailing any invoices or bills to North Dakota persons for the sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), and **CEASE AND DESIST** from taking, collecting, charging, billing or accepting any payment from any North Dakota person, including, but not limited to, cash, check, direct credit, debits or withdrawals from North Dakota person's credit cards, debit cards or bank accounts for any alleged past or future ordered, delivery or sale of merchandise, in the State of North Dakota.

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. 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 its residents.

NOTICE OF RIGHT TO REQUEST HEARING

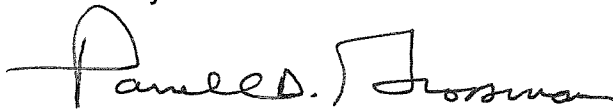
YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

Dated this 14th day of November, 2013.

STATE OF NORTH DAKOTA

Wayne Stenehjem
Attorney General

BY:



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