

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIV. I
CIVIL ACTION NO. 16-CI-530

COMMONWEALTH OF KENTUCKY *ex rel.*
ANDY BESHEAR, ATTORNEY GENERAL

PLAINTIFF

v. ASSURANCE OF VOLUNTARY COMPLIANCE

THE MANDATORY POSTER AGENCY, INC.
d/b/a CORPORATE RECORDS SERVICE

DEFENDANT

*** **

This Assurance of Voluntary Compliance (“AVC”) is entered into between the Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General (the “Attorney General”), and The Mandatory Poster Agency, Inc. d/b/a Corporate Records Service (“The Mandatory Poster Agency”), a Michigan corporation, whose principal place of business is located at 6323 W Saginaw Highway, Suite 3, Lansing, Michigan 48917, each being a Party and collectively, the Parties.

PARTIES AND JURISDICTION

1. Andy Beshear is the Attorney General of the Commonwealth of Kentucky and is responsible for the enforcement and administration of Kentucky law, including the Consumer Protection Act, KRS 367.110 *et seq.*, and is authorized pursuant to the Consumer Protection Act to accept this AVC pursuant to KRS 367.230.

2. The Mandatory Poster Agency, Inc. d/b/a Corporate Records Service is a Michigan corporation whose principal place of business is located at 6323 W Saginaw Highway, Suite 3, Lansing, Michigan 48917.

3. Joseph Fata is a resident of the State of Michigan. He is an Owner and Director of The Mandatory Poster Agency, Inc.

4. The parties consent to the jurisdiction and venue of the Franklin Circuit Court pursuant to KRS 367.230.

ALLEGATIONS

5. Beginning in 2014, the Attorney General initiated an investigation of The Mandatory Poster Agency, specifically the "Annual Minutes" solicitation sent to Kentucky consumers in 2013 and 2014, based in part upon consumer complaints received by the Attorney General.

6. The Annual Minutes solicitation distributed by The Mandatory Poster Agency to Kentucky consumers had the capacity to lead a reasonable consumer to believe, erroneously, that the mailing was sent from a government official and that the \$125 payment referenced in the solicitation was required by law.

a. As a result of the Annual Minutes solicitation, the Kentucky Secretary of State issued a press release warning Kentuckians that the solicitation was not from her office, and that purchase was not required under law.

7. Further, the Annual Minutes solicitation distributed by The Mandatory Poster Agency had the capacity to lead a reasonable consumer to believe, erroneously, that by purchasing the Defendant's product the consumer would be in compliance with certain Kentucky laws, including KRS 271B.16-010, KRS 271B.7-010 and KRS 271B.8-200.

8. KRS 367.170 provides "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

9. KRS 367.230 states:

In the administration of KRS 367.110 to 367.300, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act, or practice deemed to be violative of KRS 367.110 to 367.300 from any person who has engaged or was about to engage in that method, act, or

practice. This assurance shall be in writing and shall be filed with and subject to the approval of the Circuit Court in which the alleged violator resides or has his principal place of business, or the Franklin Circuit Court. An assurance of voluntary compliance shall not be considered an admission of violation for any purpose. It shall be a willful violation of KRS 367.170 if a person who enters into an assurance of voluntary compliance fails to comply. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to KRS 367.190.

10. KRS 367.990(2) provides, in part, that the Attorney General, upon petition to the court, may recover on behalf of the Commonwealth a civil penalty of not more than two thousand dollars (\$2,000.00) per willful violation of KRS 367.170 and not more than ten thousand dollars (\$10,000.00) per willful violation where the consumer is age sixty (60) or older and is substantially more vulnerable than other members of the public.

11. The Attorney General alleges that the above-referenced alleged actions by The Mandatory Poster Agency violated the Consumer Protection Act. The Mandatory Poster Agency denies all allegations stated herein.

ASSURANCES AND AGREEMENTS

12. This AVC is a settlement of a disputed matter. It shall not be considered an admission of a violation for any purpose. The Mandatory Poster Company and the Attorney General agree that no provision of the AVC operates as a penalty, forfeiture, or punishment under any provision of law. Neither the fact that the Parties entered into this AVC nor anything contained in this AVC is or implies an admission that The Mandatory Poster Agency has engaged in any trade practices prohibited by the Consumer Protection Act, KRS 367.110 *et seq.*, or any other federal or state law, administrative rule or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which The Mandatory Poster Agency expressly denies. The Mandatory Poster Agency does not admit any violation of the Consumer Protection Act and does

not admit any wrongdoing that was or could have been alleged by the Attorney General under that law or any other federal or state law. The Mandatory Poster Agency is entering into this AVC solely for the purpose of settlement.

13. The Mandatory Poster Agency, directly or through any corporation, partnership, subsidiary, division, trade name, assumed name, device, affiliate, or other entity, and its officers, employees, agents, successors, and assigns and all persons in active concert or participation, agrees as follows:

- a. The individuals signing this AVC on behalf of The Mandatory Poster Agency state that they are under no disability, have read and knowingly consent and agree to this AVC, and have authority to sign and enter into this AVC on behalf of The Mandatory Poster Agency. The signatories acknowledge that this AVC is binding on all of The Mandatory Poster Agency's officers and employees in their official capacity, successors, parent companies, subsidiaries or assigns.
- b. This AVC applies to The Mandatory Poster Agency and to its future principals, officers and directors, assigns and successors, managerial or supervisory employees, and to any other employee or agent having responsibilities with respect to the subject matter of this AVC. The Mandatory Poster Agency agrees to notify its agents, employees, representatives, successors and assigns of the execution of this AVC and train them regarding the requirements thereof.
- c. This AVC, and all requirements herein, will be in effect and binding upon the Parties for a period of five years after the filing date.
- d. The Mandatory Poster Agency will Clearly and Conspicuously disclose on any solicitations sent to Kentucky consumers, individuals or corporations, after the

signing of this AVC that The Mandatory Poster Agency's products, documents, or materials, as applicable, are sent from its corporate offices at 6323 W. Saginaw Highway, Suite 3, Lansing, Michigan 4817.¹

- i. If The Mandatory Poster Agency intends to relocate its corporate office, The Mandatory Poster Agency shall provide notice to the Attorney General within 30 days of the move. The Mandatory Poster Agency will amend their products and solicitations to reflect their new corporate locations within 30 calendar days of the move.
 - ii. The Mandatory Poster Agency's Labor Law Poster solicitation in its current form shall not be subject to this requirement. A current copy of the Labor Law Poster solicitation will be provided to the Attorney General prior to the signing of this AVC.
- e. The Mandatory Poster Agency shall provide the Attorney General an exact copy of any solicitation intended to be sent to Kentucky consumers, individuals or corporations. The Mandatory Poster Agency's Labor Law Poster solicitation in its current form shall not be subject to the requirements of this section.
- i. Any solicitation provided to the Attorney General under this section shall be accompanied by a representation, in writing, from an active member of the Kentucky Bar (a "Kentucky lawyer") that such Kentucky lawyer was consulted regarding the solicitation, the solicitation's compliance with Kentucky law, including but not limited to the Kentucky Consumer

¹"Clearly and Conspicuously" means a disclosure in size, color, contrast, font, and location that is readily noticeable, readable, and understandable, and is presented in proximity to all information necessary to prevent it from being misleading or deceptive. A statement may not contradict or be inconsistent with any other information with which it is presented.

Protection Act (KRS 367.170 *et seq.*), and its compliance with this Agreement.

- ii. Any such solicitation and attached letter shall be provided to the Attorney General no fewer than thirty business days prior to the public mailing.
 - iii. If the solicitation is intended to be part of a multiple-mailing "Campaign," The Mandatory Poster Agency shall also provide the Attorney General with the proposed mailing dates for the Campaign. Subsequent versions of solicitations in a Campaign do not have to be submitted to the Attorney General under the terms of this section, so long as any changes to the solicitation are non-substantive (i.e., dates are changed). Any substantive changes to a solicitation must be submitted to the Attorney General under the terms of this section, and will not be considered as part of a Campaign for a previously submitted solicitation.
 - iv. The Attorney General's failure to respond to any solicitation submitted to the Attorney General's Office under the terms of this section shall not be relied upon by The Mandatory Poster Agency in any proceeding related to such solicitation.
- f. Any solicitation sent to Kentucky consumers, individuals, or corporations must Clearly and Conspicuously state that the consumer is purchasing a product, and that the purchase of the product is not required under Kentucky law.
- g. Any business names used by The Mandatory Poster Agency on solicitations must be listed as an Assumed Name of The Mandatory Poster Agency with the Kentucky Secretary of State.

- h. Any solicitations sent by The Mandatory Poster Agency must Clearly and Conspicuously list a customer service phone number for consumers to call with any questions about the solicitation.

14. In further consideration for the settlement of this matter, The Mandatory Poster Agency agrees to the following terms:

- a. The Mandatory Poster Agency shall, within twenty (20) days from the date this AVC is entered by Franklin Circuit Court, pay to the Attorney General the sum of **One Hundred Twenty-Five Thousand Dollars [\$125,000]** as partial consideration for the settlement of this matter, \$31,250 of which shall be retained by the Office of the Attorney General pursuant to KRS 48.005 as the reasonable costs of litigation and the administration and monitoring costs of the consumer restitution program, and to assure The Mandatory Poster Agency's compliance with this AVC.

- b. "**Covered Class of Consumers**" is defined as those Kentucky consumers who purchased the "Annual Minutes" binder from The Mandatory Poster Agency d/b/a Corporate Records Service. Within twenty days of the filing of this AVC, The Mandatory Poster Agency shall provide to the Attorney General an electronic and hard copy list of all consumers included within this Covered Class and the Attorney General shall notify consumers in writing of the entry and terms of this AVC, including the restitution available to consumers, using the template attached hereto as Exhibit A (the "Consumer Notice"). In order to be entitled to such restitution, a company in the Covered Class of Consumers shall be required to duly execute a release in the form of the template attached hereto as Exhibit B (the "Release"). The Mandatory Poster Agency has represented, and the Attorney General has expressly relied upon this representation, that it estimates up to 2,191 consumers are included in the defined Class. If a Kentucky consumer

purchased the Annual Minutes binder from The Mandatory Poster Agency, but subsequently received a refund for the product before the filing of this AVC, the consumer will not be considered a member of the defined Class, and shall not be eligible for restitution, provided that The Mandatory Poster Agency provides written documentation of the refund to the Attorney General.

c. The potential restitution amount for the Covered Class of Consumers is **Two Hundred Seventy-Three Thousand, Eight Hundred Seventy-Five Dollars [\$273,875]**. The Mandatory Poster Agency shall provide the Attorney General with a Letter of Credit representing its ability to pay for potential restitution costs within twenty days of the filing of this AVC.

d. The Attorney General will notify The Mandatory Poster Agency, Inc. as soon as practicable beforehand of the date(s) on which the Consumer Notices and Releases will be mailed to the Covered Class of Consumers. The Covered Class of Consumers shall have forty-five days from the date of mailing the Consumer Notice to contact the Attorney General for restitution purposes. If any Consumer Notice is returned as non-deliverable or some other indication that it was not received by the appropriate consumer in the Covered Class of Consumers, the response time for that particular consumer will not be deemed to have begun running.

e. The Attorney General will provide to The Mandatory Poster Agency, Inc. the number of refund requests, the names of the consumers requesting a refund, copies of all executed Releases, and a total of the refund amount claimed by the Covered Class of Consumers (collectively, the "Refund Information") within fifteen days after the expiration of the forty-five day deadline for the Covered Class of Consumers to respond to the Consumer Notice. The Mandatory Poster Agency, Inc. will pay to the Attorney General the total amount of refunds properly claimed by the Covered Class of Consumers within thirty days of receipt of the Refund

Information. Thereafter, the Attorney General will issue appropriate checks to those within the Covered Class of Consumers who properly requested a refund.

15. In the event that that Kentucky Attorney General is required to initiate legal action or incur any costs to compel The Mandatory Poster Agency to abide by the terms of this AVC, The Mandatory Poster Agency shall be liable, upon proof of the violation, to the Kentucky Attorney General for any costs associated with proving the violation, including, but not limited to, a reasonable attorneys' fee.

16. This AVC constitutes a full and complete settlement and release by the Office of the Attorney General, on behalf of the Commonwealth of Kentucky, of any and all claims and causes of action against The Mandatory Poster Agency and its successors, assigns, subsidiaries, predecessors, and all of their respective employees, officers, and managers arising out of or connected to the Covered Conduct which were or could have been asserted by the Attorney General under the Kentucky Consumer Protection Act or its common law authority, up to and including the Effective Date of this AVC, and the Attorney General covenants not to commence any proceeding of any kind with respect to the Covered Conduct hereby released.

17. The acceptance of this AVC by the Attorney General shall not be deemed approval by the Attorney General of any of The Mandatory Poster Agency's business practices. Further, neither The Mandatory Poster Agency nor anyone acting on its behalf shall state or imply that the Attorney General has approved, condoned or sanctioned any portion or aspect of The Mandatory Poster Agency's business operations, including future solicitations.

18. If the Attorney General believes that The Mandatory Poster Agency has violated any obligation under this AVC, the Attorney General shall, prior to initiating any court proceeding, notify The Mandatory Poster Agency in writing of any alleged violation of the AVC and request

that The Mandatory Poster Agency take action to correct the alleged violation. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of Kentucky consumers, The Mandatory Poster Agency shall have twenty (20) business days from the date of receipt of such written notice to respond to the Attorney General in writing by denying that a violation has occurred, or by accepting (without necessarily admitting) the allegation of violation and proposing steps that The Mandatory Poster Agency will take to cure the violation. If The Mandatory Poster Agency fails to respond within twenty (20) business days or denies that a violation has occurred, the Attorney General may seek appropriate legal remedy.

19. By entering into this AVC and paying the amount set forth herein, The Mandatory Poster Agency does not agree to or admit any liability, fault or wrongdoing. This AVC shall not be construed or used as a waiver or limitation of any defense otherwise available to The Mandatory Poster Agency in any action, or The Mandatory Poster Agency's right to defend itself from, or make any arguments in, any private individual, regulatory, government or class claims or suits relating to the subject matter or terms of this AVC. This AVC is made without trial or adjudication or any issue of fact or law or finding of liability of any kind. This AVC shall not create a private cause of action or confer any right upon any third party for violation of any federal or state statute.

20. Nothing in this AVC shall be construed to affect or deprive any right of action that any consumer, person, or entity may have, or any right of action that any local, state, federal or other governmental entity may hold, against The Mandatory Poster Agency except otherwise provided by law.

GENERAL PROVISIONS

21. This AVC is governed by the laws of the Commonwealth of Kentucky, and the Attorney General and The Mandatory Poster Agency agree that this AVC is subject to court approval and the parties hereby agree to seek court approval of this AVC.

22. The Mandatory Poster Agency represents and warrants that it is represented by legal counsel and has been fully advised of its legal rights in this matter.

23. This AVC contains the entire agreement between The Mandatory Poster Agency and the Attorney General and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this AVC which are not fully expressed herein or attached hereto.

24. The titles and headers to each section of this AVC are for convenience purposes only and are not intended by the parties to lend meaning to the actual terms of this AVC.

25. Nothing in this AVC shall limit the Attorney General's right to obtain information, records, or testimony from The Mandatory Poster Agency for the purpose of determining compliance with this AVC. The Mandatory Poster Agency agrees to execute and deliver all documents and instruments which are necessary to carry out the terms of this AVC.

26. If any clause, provision or section of this AVC 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 AVC, and this AVC shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

27. Nothing in this AVC shall be construed as relieving The Mandatory Poster Agency of its obligation to comply with all state and federal laws and regulations, and no term of this AVC

shall be deemed to grant The Mandatory Poster Agency permission to engage in any acts or practices prohibited by such laws and regulations.

28. Any failure by a party to this AVC to insist upon performance by any other party of any of the provisions of this AVC shall not be deemed a waiver of any of the provisions of this AVC, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any provisions of this AVC and the imposition of any applicable sanctions and penalties, including but not limited to, contempt, civil penalties, and payment of costs and attorney fees.

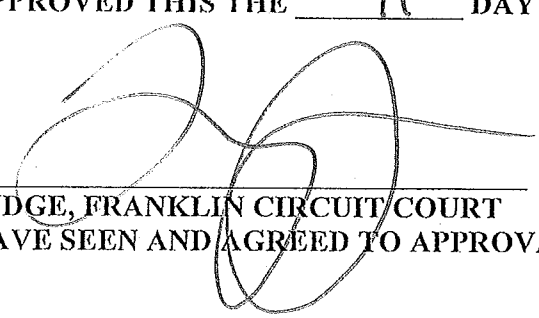
29. Time shall be of the essence with respect to each provision of this AVC that requires action to be taken by a party within a stated time period or upon a specified date.

30. The Mandatory Poster Agency agrees that this AVC does not entitle The Mandatory Poster Agency to seek or to obtain attorney's fees as a prevailing party under any statute, regulation or rule and The Mandatory Poster Agency waives any rights to attorney's fees, costs or monies of any kind that may arise under any such statute, regulation or rule. No costs or discretionary costs shall be taxed to the Petitioner.

31. This AVC shall be binding and effective as of the date of its entry by the Clerk.

32. The Mandatory Poster Agency waives service of process and any notice for the filing, approval, and entry of this AVC.

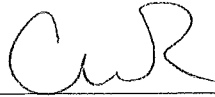
APPROVED THIS THE 11 DAY OF April 2018



JUDGE, FRANKLIN CIRCUIT COURT
HAVE SEEN AND AGREED TO APPROVAL AND ENTRY

ANDY BESHEAR, ATTORNEY GENERAL

By:



Charles W. Rowland
Assistant Attorney General
Office of Consumer Protection

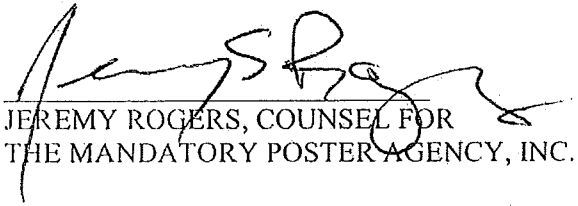
Benjamin Long
Director, Office of Consumer Protection
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601

THE MANDATORY POSTER AGENCY, INC.



JOSEPH PATA, OWNER

THE MANDATORY POSTER AGENCY, INC.



JEREMY ROGERS, COUNSEL FOR
THE MANDATORY POSTER AGENCY, INC.

EXHIBIT A
Consumer Notice

[DATE]

[CONSUMER NAME/ADDRESS]

Re: The Mandatory Poster Agency, Inc. d/b/a Corporate Records Service

Dear Fellow Kentuckian:

You are receiving this letter because records obtained by the Office of the Attorney General indicate that your business purchased an "Annual Minutes" binder in response to a solicitation from The Mandatory Poster Agency, Inc. d/b/a Corporate Records Service. Based on consumer complaints regarding this solicitation, the Attorney General's Office investigated the matter and filed a lawsuit against The Mandatory Poster Agency, Inc. for alleged violations of the Kentucky Consumer Protection Act. The lawsuit has been resolved and I am pleased to report that The Mandatory Poster Agency, Inc. has agreed to take certain steps to address these allegations and offer full refunds to purchasers.

As a purchaser of The Mandatory Poster Agency, Inc.'s "Annual Minutes" binder, your business is eligible to receive a refund for \$125.00, the full purchase price of the binder, **unless** your business has already received a refund from The Mandatory Poster Agency, Inc.

Your business's participation in this settlement is *voluntary*, but requires the business to sign a release of any claim it might otherwise choose to make against The Mandatory Poster Agency regarding this "Annual Minutes" solicitation. **To receive the refund, the enclosed release must be completed on behalf of the business and returned to us in the enclosed, self-addressed, stamped envelope postmarked by _____.** Once we have received your release, your refund will be issued via check.

I hope that we have been able to assist you in the matter. For more information about how my office is looking out for Kentuckians and businesses like yours, please visit ag.ky.gov.

Sincerely,

Andy Beshear
Attorney General

EXHIBIT B

RELEASE

RELEASE

I, _____ (Name), understand that by signing and submitting this Release and accepting the refund in the amount of \$125.00 on behalf of _____ (Company) (the "Company"), that the Company is fully and finally releasing any claim the Company may otherwise have against The Mandatory Poster Agency, Inc., or any of its principals, officers and directors, agents, assigns and successors, managerial or supervisory employees, regarding its "Annual Minutes" binder and the corresponding solicitation, including any claim under the Kentucky Consumer Protection Act.

I also understand that once a refund is given to the Company, the Company has released and waived any private right of action regarding same. I understand that the Company may hire its own attorney to advise it regarding its rights in this matter, including any legal deadlines and that if it intends to pursue private legal action, it should not submit this Release.

I further represent that I am an officer or agent of the Company and that I am duly authorized to execute this Release on behalf of the Company and thereby to bind the Company legally.

Name of Business (Please print)

Your Name and Position with the Company (Please print)

Your Signature

Date

To receive your \$125.00 refund, you must return this Release, signed and dated, to:

**Office of the Attorney General
ATTN: MPA Settlement
1024 Capital Center Drive
Frankfort, KY 40601**

Your release must be POSTMARKED no later than _____, 2018.