

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

**STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS**

Plaintiff,

vs.

CASE NO.

**REGISTERED AGENT DIVISION, LLC and
NICK CONGELTON,**

Defendants.

_____ /

COMPLAINT FOR DAMAGES AND PERMANENT INJUNCTIVE RELIEF

Plaintiff, **STATE OF FLORIDA**, by and through **THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS** (“Attorney General”), pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2007), sues Defendants, **REGISTERED AGENT DIVISION LLC** (“Registered”) and **NICK CONGELTON** (collectively “Defendants”) and alleges:

1. This is an action for injunctive relief and other statutory relief, brought pursuant to Chapter 501, Part II, Florida Statutes, Florida’s Deceptive and Unfair Trade Practices Act.

2. The Plaintiff is an enforcing authority of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, and is authorized to seek injunctive relief and other statutory relief pursuant thereto. As an enforcing authority under Chapter 501, the Plaintiff is not required to post a bond. See § 501.211(3), Fla. Stat.

3. The Attorney General has reviewed this matter and determined that this action is necessary to serve the public interest and protect the public from deceptive and unfair trade practices. See **Exhibit A**.

4. This Court has jurisdiction pursuant to section 501.207, Florida Statutes.

5. The statutory violations and activities alleged herein have occurred in or affected more than one jurisdiction in the State of Florida. At all times material hereto, Defendants have solicited business throughout Florida using solicitations sent through regular U.S. mail.

6. Registered is a for-profit corporation authorized to do business in the State of Florida. It has designated Frank Wilson, 13721 65th Street, Largo, FL 33770, as its registered agent for service of process. Registered's principal address is 13721 65th Street, Largo, FL 33770.

7. Nick Congelton is listed as the manager of Registered in the corporate records filed with the Florida Division of Corporations. His address is also 13721 65th Street, Largo, FL 33770.

8. The Defendants are engaged in representations, acts, and practices which are likely to mislead consumers and which are unethical, unscrupulous and injurious to consumers and constitute deceptive acts or practices in the conduct of trade or commerce in violation of section 501.204(1), Florida Statutes (2007).

9. In order to fraudulently secure monetary payments from Florida businesses, defendants have caused advertisements to be disseminated in

Florida in which the Defendants have made false statements, and deceived and misled those receiving said advertisements. The registration form appears to be an official state document and is designed to trick recipients into believing that failure to fill out the form and return it to Defendants, along with a \$149.00 fee, will constitute a violation of Florida law. Further, the solicitations suggest that if the Florida businesses do not comply the corporate legal status may be revoked and the senior officers could be subject to fines or penalties. These and other assertions in Defendants' solicitations are false, deceptive, unfair and unconscionable.

10. The Defendants' registered agent forms appear to be state documents for filing.

11. On or about August 20, 2007, Defendants began mailing documents soliciting business to Florida corporations. Three of the documents are attached hereto as Plaintiff's Composite **Exhibit B**, hereinafter referred to as "the solicitation." The solicitation begins with a seal containing an eagle and the statement that it is the "official seal of Registered Agent Division," followed by "Registered Agent Division, 3665 East Bay Drive, Box 204-267, Largo, FL 33771.

12. The solicitation begins with the following statement:

It has come to our attention that your company [company name] (secretary of state corporate ID number) currently does not maintain an outside registered agent. Pursuant Florida Statute 48.091; s.1 Every Florida Corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered office in accordance with chapter 607. [sic]

The first deception is the use of the words “outside registered agent.” While this may be true, no Florida law requires an “outside registered agent.” The implication conveyed in the solicitation is that the failure to have an “outside registered agent” is somehow a violation of law. Section 607.0501, Florida Statutes, requires a registered agent, and specifically permits that agent to have its office at the company’s primary location – explicitly not requiring “outside registered agents.” The statute requires that each corporation shall have a registered office “which may be the same as its place of business.”

13. The deception in this solicitation is magnified by the fact that each corporation solicited in **Exhibit B** named a registered agent as a part of its incorporation papers filed this year. Two of the corporations filed with the Division of Corporations just days before the solicitation was received. Defendants had to know that these corporations had valid registered agents, and intentionally misrepresented this fact.

14. Under Florida law, no corporation can be formed unless a registered agent is named. The affidavit of Karon Beyer, Department of State, Division of Corporations, attached as **Exhibit C**, attests to the facts surrounding the Division’s knowledge of Defendants’ actions and her conversation with Defendants informing them of the deceptive statements in their solicitation.

15. On September 13, 2007, after being notified of their deception by Ms. Beyer, Defendants continued the deception with their new solicitation letter (“New Solicitation” copy attached as **Exhibit D**) with only the first sentence being changed as indicated below:

It has come to our attention that your company [company name] (secretary of state corporate ID number) currently does not maintain an outside registered agent **as recommended; Pursuant Florida Statute 48.091; s.1** Every Florida Corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered office in accordance with chapter 607. [sic]

16. If anything, the New Solicitation is as deceptive as the original solicitation, citing a Florida Statute that neither references nor recommends an “outside registered agent.”

17. The second paragraph of the solicitation continues the unfair and deceptive misrepresentations:

The Florida Division of Corporations requires that any business entity that is formed retain and maintain a Registered Agent. Penalties for not maintaining a registered agent generally will cause a jurisdiction to revoke a business’s corporate legal status. Additionally, it may potentially result in penalties or fines on the entity and/or senior managers of the company.

Registered’s claims for this paragraph are wrong under Florida law. Subsection (5) of section 607.0501, provides the consequences for failure to have a registered agent:

(5) A corporation may not maintain any action in a court in this state until the corporation complies with the provisions of this section or s. 607.1507, [the statute applicable to foreign corporations] as applicable, and pays to the Department of State a penalty of \$5 for each day it has failed to so comply or \$500, whichever is less.

There is no mention of revocation, and no mention of personal liability.

18. If a corporation has failed to comply with the above statute, then it can be administratively dissolved pursuant to section 607.1420, a routine administrative matter that occurs most often when organizations fail to pay their annual corporate dues.

19. Although subsection (5) of section 607.0501 does provide serious looking consequences for failure to have a registered agent (it can't bring lawsuits and can be fined up to \$500), under law these serious consequences do not occur because Florida has a provision for reinstatement of an administratively dissolved company which provides explicitly that the reinstatement will be retroactive to the date the corporation was dissolved. Section 607.1422 provides, in pertinent part:

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

In short, if a corporation elects to become reinstated, there are no adverse consequences for its administrative dissolution.

20. The final paragraph of the letter continues the deception:

Please sign the enclosed Registered Agent Assignment document in the highlighted lines and enclose a check payable to "Register Agent Division" in the amount of \$149 to remit Registered Agent Services. Once we receive it we will process immediately to ensure you have no future complications.

Again, the threat is that payment of the \$149 will "ensure no future complications." Since the corporation has not violated the law, this payment does nothing other than enrich the coffers of the Defendants.

21. All actions material to this complaint have occurred between August 20, 2007, and the present, and are not precluded by the time limitations in section 501.207(5), Florida Statutes.

22. The Defendants know or should know that their assertions made about Florida law in their Solicitations were incorrect. The Defendants know or

should know that the statements made regarding personal liability were incorrect and are made to induce businesses to purchase their valueless services.

23. Defendants know or should know that their conduct was deceptive, unfair, misleading and unconscionable. Defendants have willfully used, and are willfully using a method, act or practice declared unlawful under section 501.204, Florida Statutes.

COUNT I

VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES, DECEPTIVE AND UNFAIR ACTS OR PRACTICES

24. The Attorney General adopts, incorporates and realleges paragraphs 1 through 23 and all exhibits attached, as if fully set forth below and further alleges:

25. Beginning at an date unknown to the Attorney General, but at least within four (4) years prior to the filing of this complaint and continuing to the present, Defendants, in the course of trade and commerce, violated Part II, Chapter 501, Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act. Section 501.204 of that Act prohibits Δunfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.@

26. Defendants' solicitation gives the impression that a business must have an "outside registered agent," and that Registered will provide this service for a fee. In truth and in fact, the no such outside agent is required. Defendants

are providing a service not required by law, and of no value, for \$149, by deceiving people into believing it is a legal requirement.

27. Defendants know or should know that their actions described in paragraphs 8 through 23 are in violation of Part II, Chapter 501, Florida's Deceptive and Unfair Trade Practices Act.

COUNT II

VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES DECEPTIVE AND UNFAIR TRADE PRACTICES (DEFENDANT CONGLETON)

28. The Attorney General adopts, incorporates, and realleges herein by reference paragraphs 1 through 23 and all exhibits referred to, as if fully set forth herein, and further alleges:

29. Defendant Congleton, at all times relevant to the complaint herein, directly participated in the conduct alleged herein; or directed or controlled the practices and policies of Renewal complained of herein and had authority to control them; and had actual or constructive knowledge of the acts and practices complained of herein; or exercised a reckless indifference to the truth or falsity of such acts or practices; or had an awareness of a high probability of fraud with an intentional avoidance of the truth.

30. By engaging in the conduct set forth in paragraph 8 through 23, Congleton engaged in representations, acts, practices or omissions which are material and likely to mislead, and in fact did mislead consumers acting reasonably under the circumstances. Thus Defendant Congleton has violated section 501.204(1), Florida Statutes.

31. By undertaking the activities described in Paragraphs 8 through 23, Defendant Congleton has engaged in unconscionable acts or practices in trade or commerce, in violation of section 501.204(1), Florida Statutes.

32. Defendant Congleton knew or should have known that the methods, acts and practices set forth in Paragraphs 8 through 23 were unfair, deceptive, unconscionable or otherwise prohibited by statute.

33. Defendant Congleton has violated section 501.204(1), Florida Statutes.

34. Defendant=s acts and practices alleged herein have and continue to injure and prejudice Florida consumers.

35. Unless Defendant Congleton is permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendant will result in irreparable injury to the public, in violation of section 501, Part II, Florida Statutes.

RELIEF REQUESTED

WHEREFORE, Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, asks for judgment enjoining Defendant Registered Agent Division, LLC, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of the injunction, from engaging in methods, acts or practices which are deceptive or unfair acts and practices. More specifically, Plaintiff asks the court to temporarily enjoin Defendants as follows:

A. Prohibit Defendants from engaging in unfair methods of competition or deceptive or unfair acts or practices as described above, in violation of Chapter 501, Part II, Florida Statutes (2007), including further distribution of the solicitation described above, and further acceptance of money from Florida businesses responding to said solicitation.

B. Enjoin Defendants from transferring or disposing of any moneys received from Florida businesses responding to its solicitations, and enjoin Defendants from destroying, altering, transferring, or disposing of any and all related business records, or removing any such business records from the premises of the Defendants.

C. Require the Defendants to repay all businesses who purchased their services.

D. Grant such other relief as this Honorable Court deems just and proper.

Additionally, Plaintiff asks that this Court for an award of fees and costs as permitted by law. See § 501.2105, Fla. Stat.

Respectfully Submitted,

BILL McCOLLUM
ATTORNEY GENERAL

ERIC B. TILTON
Senior Assistant Attorney General
Florida Bar #0231681
Department of Legal Affairs
PL-01 The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3600