2017-CI-11368
288TH JUDICIAL DISTRICT COURT
STATE OF TEXAS VS EXCITING TRAVEL DESTI
DATE FILED: 06/21/2017

IN RE:	§	**IN THE DISTRICT COURT**
	§	
THE STATE OF TEXAS	§	
	§	
	§	
AND	§	
	§	
	§	**_____ JUDICIAL DISTRICT**
	§	
EXCITING TRAVEL DESTINATIONS, LLC,	§	
RANDY LEE GARDNER, Individually and d/b/a ALAMO GUEST SERVICES,	§	
JOSEPH BRANDON SHIRLEY, Individually and d/b/a ALAMO GUEST SERVICES, and	§	
VACATION INSPIRATIONS, LLC.	§	**BEXAR COUNTY, TEXAS**

DISTRICT COURT BEXAR COUNTY, TX
FILED
LORINA KAY McKINNEY
DISTRICT CLERK
BEXAR COUNTY
JUN 21 2017
JUN 21 AM 10: 53
BY
DEPUTY

ASSURANCE OF VOLUNTARY COMPLIANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE STATE OF TEXAS ("State"), acting by and through its Attorney General, Ken Paxton, and Exciting Travel Destinations, LLC, Randy Lee Gardner, Individually and d/b/a Alamo Guest Services, Joseph Brandon Shirley, Individually and d/b/a Alamo Guest Services, and Vacation Inspirations, LLC ("Respondents"), and respectfully submit the following Assurance of Voluntary Compliance ("AVC") for the Court's approval and filing in accordance with the Deceptive Trade Practices – Consumer Protection Act ("DTPA"), Section 17.58 of the Texas Business & Commerce Code.

RESPONDENTS

1. Exciting Travel Destinations, LLC was a Texas company owned and operated by Randy Lee Gardner and Joseph Brandon Shirley. It was located at 306 N. Presa, San Antonio, Texas 78205 prior to its cessation of business operations in June 2015.

2. Randy Lee Gardner operated Exciting Travel Destinations, LLC, Alamo Guest Services, and Vacation Inspirations, LLC, and resides at 1569 Bryden Lane, Mount Pleasant, South Carolina 29466-9234. Gardner operated Alamo Guest Services from two locations, 304 N. Presa, San Antonio, Texas 78205 and 306 N. Presa, San Antonio, Texas 78205.

3. Joseph Brandon Shirley owned and operated Exciting Travel Destinations, LLC, Alamo Guest Services, and Vacation Inspirations, LLC, and resides at 4802 Stono Links Drive, Hollywood, South Carolina 29449-5973. Shirley registered an assumed name certificate for Alamo Guest Services in Bexar County, Texas, and operated the business from two locations, 304 N. Presa, San Antonio, Texas 78205 and 306 N. Presa, San Antonio, Texas 78205.

4. Vacation Inspirations, LLC is a Georgia company owned and operated by Randy Lee Gardner and Joseph Brandon Shirley and is located at 425 River Street, Savannah, GA 31401-1401.

ACTS OF AGENTS

5. Exciting Travel Destinations, LLC, Gardner, Shirley, Alamo Guest Services, and Vacation Inspirations, LLC, when used in this AVC, shall include each of the named Respondents and their successors, assigns, officers, agents, subcontractors, servants, employees, corporations, representatives, and any other persons in active concert or participation with them, who receive actual notice of this AVC by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device.

NATURE OF ALLEGED VIOLATIONS

6. The State alleges that Respondents engaged in deceptive practices within a trade or commerce in the State of Texas. The State claims that Respondents contacted consumers by phone or through flyers they or their agents distributed on sidewalks to offer them gifts (vacations to

South Padre Island, computer tablets, and $100 dining gift cards) in exchange for attending a presentation about their travel club membership. The flyers stated that consumers were "guaranteed to receive [the gifts]...for just participating," but did not disclose the approximate duration of the presentation, retail value of all gifts, and whether the airfare, lodging, or both, were not included as part of the trip to South Padre Island.

7. Some consumers alleged to the State that that they did not receive the gifts they were guaranteed to receive for attending presentations. Others complained that after they purchased a membership and tried to sign up for vacation promotions, they were told by representatives that those promotions were not available. Consumers also alleged to the State that Respondents represented savings of twenty to sixty percent on travel and vacation packages; however, after consumers independently researched the same travel packages, they believed that the savings promised were misrepresented. Several consumers also reported to the State that when they signed up for services, they thought they were purchasing memberships from "Alamo Travel Services," another local business that is not associated with Respondents. Consumers also alleged to the State that in some instances, when they tried to cancel their membership, Respondents refused their request. Since the filing of complaints by consumers, Respondents provided the State with documentation of refunds that they voluntarily issued to some consumers.

8. The State alleges that Respondents, by engaging in the above-referenced acts, violated the Texas Business & Commerce Code – Sections 17.46 (a), (b)(2), (b)(5), (b)(7), (b)(9), (b)(11), (b)(12), and (b)(24) of the DTPA; and Sections 621.052 and 621.053 of the Contest and Gift Giveaway Act, as follows:

a. Using false, misleading, or deceptive acts or practices to induce consumers into purchasing memberships that do not provide the services as represented;

b. Causing confusion or misunderstanding that they have approval or certification to

offer and provide services in Texas by operating in this state without maintaining the requisite registration status as a foreign entity with the Secretary of State pursuant to § 9.001 of the Texas Business Organizations Code;[1]

c. Representing that the membership services they offer have benefits, discounts, or savings that they do not have;

d. Representing that membership services they offer are of a particular standard, quality, or grade when they are of another;

e. Advertising membership services with intent not to sell them as advertised;

f. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions for the membership services offered;

g. Representing that their membership agreements confer or involve rights, remedies, or obligations which they do not have or involve;

h. Failing to disclose information regarding the membership services they offer when such failure to disclose was intended to induce consumers into entering into an agreement that consumers would not have entered into if the information had been disclosed;

i. Failing to comply with the requisite disclosures relating to gifts offered in exchange for consumers' attendance of sales presentations; and

j. Using the terms "gift" or similar terms in a false, misleading, or deceptive manner in advertisements or sales presentations.

9. The State further alleges that Vacation Inspirations, LLC engaged in unlawful practices in violation of Section 9.001 of the Texas Business Organizations Code (Foreign Entities Act) by failing to maintain Vacation Inspiration, LLC's registration as a foreign entity with the Secretary of State while transacting business in Texas as required by law.[2]

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[1] The State alleges that Vacation Inspirations, LLC, a Georgia company, failed to maintain its registration as a foreign entity with the Texas Secretary of State while transacting business in Texas. Pursuant to Section 9.051 of the Texas Business Organizations Code, the attorney general may seek to enjoin a foreign filing entity or the entity's agent from transacting business in this state if the entity is not registered in this state or the entity's registration is obtained on the basis of a false or misleading representation.

[2] *See* Footnote 1.

10. Respondents deny each and every allegation set forth above. Nothing in this AVC shall be deemed or construed as an admission of any wrongdoing or violation of Texas laws by Respondents.

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TERMS OF COMPLIANCE

11. Respondents agree and voluntarily assure the State that from the date of the signing of this AVC, Respondents, their successors, assigns, officers, agents, subcontractors, servants, employees, corporations, representatives, and any other persons in active concert or participation with them who receive actual notice of this AVC by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, shall comply fully with the following terms:

a. Respondents shall not advertise or offer free gifts including, but not limited to, vacations to South Padre Island, computer tablets, and $100 dining gift cards in exchange for consumers' attendance of presentations about their services and fail to provide such gifts;

b. Respondents shall not fail to conform with the notice requirements of Sections 621.052 and 621.053 of the Texas Business & Commerce Code (Contest and Gift Giveaway Act) including, but not limited to, disclosing the approximate duration of sales presentations, the retail value of all gifts, and whether the airfare, lodging, or both, are not included as part of a trip offered as a gift;[3]

c. Respondents shall not advertise, solicit, or conduct business under "Alamo Travel Services" or any other business name with which they are not affiliated;

d. Respondents shall not offer promotions or other discounts unless they are available to consumers under the terms advertised;

[3] Section 621.052 of the Texas Bus. & Com. Code (Contest and Giveaway Act) states, *inter alia*, that an offeror who notifies a person that the person will receive a gift shall, at the time of the notification, clearly and conspicuously disclose the approximate duration of the sales presentation, the retail value of a gift, and whether airfare, lodging, or both, are not included as part of a gift that is a trip. Section 621.053 of the same code states, *inter alia*, that a person may not use the term "gift" or a similar term in a false, misleading, or deceptive manner; represent that a gift has a sponsor, approval, characteristic, use, benefit, status, affiliation, connection, or identity that the gift does not have; or represent that a gift is of a particular standard, quality, grade, style, or model if the gift is of another. A violation of this chapter is also a deceptive trade practice actionable under the DTPA. Tex. Bus. Org. Code § 621.252.

e. Respondents shall not misrepresent benefits including, but not limited to, the amount of money consumers can save on travel and vacation packages through membership services;

f. Respondents shall not misrepresent cancellation or refund policies to consumers by clearly and conspicuously disclosing to consumers the terms of said policies prior to executing a contract; and

g. Respondents shall not transact business in Texas without being properly registered with the Texas Secretary of State pursuant to § 9.001 of the Texas Business Organizations Code.

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CIVIL PENALTIES, ATTORNEYS' FEES, AND RESTITUTION

12. Respondents agree that they will pay the sum of NINETEEN THOUSAND DOLLARS ($19,000) to the State of Texas for civil penalties, pursuant to Section 17.47(c) of the Texas Business and Commerce Code, to be allocated in accordance with Texas Gov't Code § 402.007(b)(1) to the Supreme Court Judicial Fund or general revenue as appropriate.

13. Respondents further agree that they will pay the sum of THIRTY THOUSAND DOLLARS ($30,000) to the State of Texas for the State's reasonable attorneys' fees and court costs and TWENTY FIVE THOUSAND NINE HUDRED AND NINETY FIVE DOLLARS ($25,995) will be paid as restitution to consumers.

14. Respondents shall distribute TWENTY FIVE THOUSAND NINE HUDRED AND NINETY FIVE DOLLARS ($25,995) in restitution to Qualifying Consumers named in a spreadsheet as previously provided by the State to Respondents, in the amounts identified in the Qualifying Consumers spreadsheet. The distribution will begin immediately upon entry of this AVC and will be completed by August 15, 2017 ("Restitution Period"). Respondents shall provide an accounting report to the Office of the Attorney General 180 days after the entry of this AVC identifying each consumer to whom a restitution payment was issued, the amount of the payment, the check number of the payment, the date the payment was mailed, and the status of the payment.

All restitution funds that remain undistributed 180 days after the beginning of the Restitution Period shall be forwarded to the Texas Comptroller's Office to be held as unclaimed property pursuant to Chapters 72 and 74 of the Texas Property Code. Undistributed restitution funds include all checks that are not endorsed, cashed, or deposited by consumers.

15. In addition to the payment of restitution as described in Paragraph 14 above, Respondents shall make a total payment of FORTY NINE THOUSAND DOLLARS ($49,000; consisting of the above-referenced civil penalties and attorneys' fees and court costs) by certified check or wire transfer, payable to the "Office of the Texas Attorney General," bearing the reference AG# CX3986197625, and if not by wire transfer, delivered/mailed to the Office of the Attorney General, ATTN: Accounting Division, MC-003, P.O. Box 12548, Austin, TX 78711-2548. Respondents shall make consecutive monthly payments of Four Thousand Nine Hundred Dollars ($4,900), starting on September 15, 2017, and ending on June 15, 2018. Respondents may make payment owing on the foregoing monetary obligation prior to its due date without penalty and in which no abstract of judgment will be filed. Payments to the State will be allocated in the following order until each is fully paid: attorneys' fees and court costs followed by civil penalties.

GENERAL PROVISIONS

16. This AVC contains the entire agreement between the State and Respondents as to all matters addressed herein.

17. This AVC shall be deemed effective the day it is approved and filed by the Court. To the extent that the provisions of this AVC conflict with any local, state, or federal law or regulation that now exists, or is later enacted or amended, such law or regulation, and not this AVC, shall apply. For the purpose of this AVC, such conflict exists if conduct prohibited by this

AVC is required by such local, state, or federal law or regulation, or if conduct required by this AVC is prohibited by such local, state, or federal law or regulation.

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18. This AVC is governed by Section 17.58 of the DTPA. The parties agree that, should any clause, provision, or section of this AVC, 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.

19. Respondents agree that they will not participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this AVC or for any other purpose which would otherwise circumvent any part of this AVC or the spirit or purpose of this AVC.

20. This AVC shall not be construed against either party as the drafter, because both the State and Respondents participated in the drafting of this AVC.

21. The State and Respondents acknowledge, as set forth in Tex. Bus. & Com. Code § 17.58(c), that unless this AVC has been rescinded by agreement of the parties or voided by the Court for good cause, the subsequent failure to comply with the terms of this AVC is *prima facie* evidence of a violation of the DTPA in any action by the State of Texas acting by and through the Office of the Attorney General. Respondents do not waive and hereby expressly reserve all defenses to any claim that they have failed to comply with the terms of this AVC. Further, it is agreed and understood that this AVC shall not in any way affect the individual rights of action of any consumer; nor do Respondents waive any defenses thereto. The State's agreement to this AVC does not constitute an approval by the State of any alleged practices of Respondents, and Respondents will not represent that this AVC constitutes approval by the Office of the Attorney

General or the Court of any of Respondents' actions or business activities. Respondents' signatures on this AVC do not constitute an admission of wrongdoing or an admission of a violation of any applicable legal provisions. This AVC is being signed in order to avoid protracted litigation and to resolve all claims and contentions asserted in connection with this proceeding.

EXECUTED effective as of the 21st day of June, 2017.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General of Texas

BRANTLEY STARR
Deputy First Assistant Attorney General

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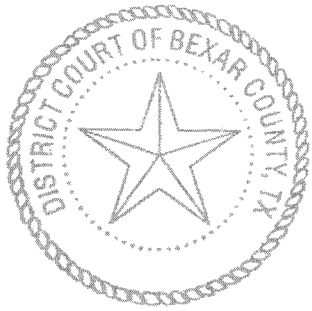
Fax (210) 225-1075
Attorneys for the State of Texas

AGREED AS TO FORM AND SUBSTANCE:

Randy Gardner, Authorized Business Signatory
EXCITING TRAVEL DESTINATIONS, LLC
700 Lavaca Street, Suite 1401
Austin, Texas 78701
Respondent



RANDY LEE GARDNER
1569 Bryden Lane
Mount Pleasant, South Carolina 29466-9234
Respondent, Individually and d/b/a Alamo Guest Services

JOSEPH BRANDON SHIRLEY
4802 Stono Links Drive
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Respondent, Individually and d/b/a Alamo Guest Services

Randy Gardner, Authorized Business Signatory
VACATION INSPIRATIONS, LLC
425 River Street
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Respondent

DAVID N. LEVINE
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Atlanta, Georgia 30339
Telephone: 770-671-8500
Facsimile: 770-988-9844
Attorney for Respondents

CERTIFIED COPY CERTIFICATE STATE OF TEXAS
I. DONNA KAY McKINNEY, BEXAR COUNTY DISTRICT CLERK, CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD AS INDICATED BY THE VOLUME, PAGE AND COURT ON SAID DOCUMENT. WITNESSED MY OFFICIAL HAND AND SEAL OF OFFICE ON THIS:

June 21, 2017

DONNA KAY McKINNEY
BEXAR COUNTY, TEXAS

By: _____
MARISSA Y UGARTE, Deputy District Clerk
(NOT VALID WITHOUT THE CLERKS'S ORIGINAL SIGNATURE.)