

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

IN RE:

January 24, 2013

SHOW CAUSE PROCEEDING AGAINST DAVID
ANDREWS FOR ALLEGED VIOLATIONS OF
TENN. CODE ANN. § 65-4-501 *et seq.*

)
) Tennessee Regulatory Authority
) Consumer Services Division
) F12-00052
)

**ORDER REQUIRING DAVID ANDREWS TO SHOW CAUSE WHY A CEASE AND DESIST
ORDER AND/OR FINE SHOULD NOT BE IMPOSED FOR VIOLATIONS OF TENN. CODE
ANN. § 65-4-501 *et. seq.* TENNESSEE'S DO-NOT-FAX LAW**

This matter is before the Hearing Officer upon the order of the Tennessee Regulatory Authority ("TRA" or "Authority"), to consider the preliminary findings of TRA Investigative Staff presented against David Andrews and, based thereon, determine whether to convene a show cause proceeding requiring David Andrews to appear before the Authority to show cause why the TRA should not issue a cease and desist order and impose civil penalties and sanctions against him for transmitting or causing another to transmit an unsolicited facsimile advertisement to a Tennessee consumer in violation of Tenn. Code Ann. § 65-4-502(a).

JURISDICTION

The Authority is specifically authorized and charged, to ensure that the laws of this state as they relate to the Authority's jurisdiction "are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected."¹ The Authority is empowered to hear this matter and render an order pursuant to the powers delegated by the Tennessee General Assembly including those provided in Tenn. Code Ann. §§ 65-2-106, 65-3-105, 65-4-116, and 65-4-502.

¹ Tenn. Code Ann. § 65-1-113.

RELEVANT FACTS

1. Between December 18, 2008 and April 24, 2012, the Consumer Services Division (“CSD”) received complaints from at least thirty-one (31) Tennesseans.²

2. These thirty-one (31) consumers received at least one hundred thirteen separate (113) facsimiles advertising various vacation packages from an unidentified entity.³ These advertisements all had the same “respond to” number.⁴

3. Investigative staff subpoenaed billing information for the “respond to” numbers provided on the unsolicited faxes, from which it was discovered that David Andrews made payments to telecommunications providers for the “respond to” numbers reflected on the unsolicited faxes.⁵

4. Notices of alleged violations letters have been issued on all complaints to David Andrews.⁶

5. Numerous attempts have been made to contact David Andrews, including USPS mail, fax, and telephone. Certified mail receipts indicate that seven complaints were acknowledged; however, the remaining one-hundred and six (106) complaints are unacknowledged. No response has been received or filed as to any of the one-hundred and thirteen (113) complaints.⁷

ALLEGED VIOLATIONS OF STATE LAW

The following actions, alleged to have been performed by David Andrews, constitute violations of state law:

- A. On at least one hundred thirteen (113) separate occasions David Andrews sent or caused to be sent unsolicited facsimile advertisements to at least thirty-one (31) Tennesseans.

² *Affidavit of Charles Pemberton* at paragraph 7; also Exhibit A to the *Affidavit of Charles Pemberton* (attached as Exhibit 1).

³ *Id.*

⁴ *Id.* at paragraph 6.

⁵ *Id.* at paragraph 7.

⁶ *Id.* at paragraph 8.

⁷ *Id.* at paragraph 9.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

IN RE:)	
)	
SHOW CAUSE PROCEEDING AGAINST DAVID)	Tennessee Regulatory Authority
ANDREWS D/B/A FLYAWAY)	Consumer Services Division
GROUP/CORPORATE TRAVEL DEPARTMENT)	F12-00052
FOR ALLEGED VIOLATIONS OF TENN. CODE)	
ANN. § 65-4-501 <i>et seq.</i>)	

**AFFIDAVIT OF CHARLES F. PEMBERTON IN SUPPORT OF ALLEGATIONS OF
VIOLATIONS OF TENN. CODE ANN. § 65-4-501 *et seq.* PURSUANT TO A PROCEEDING
REQUIRING DAVID ANDREWS D/B/A FLYAWAY GROUP/CORPORATE TRAVEL
DEPARTMENT TO SHOW CAUSE WHY A CEASE AND DESIST ORDER AND/OR FINE
SHOULD NOT BE IMPOSED**

I, Charles F. Pemberton, being first duly sworn upon oath, do hereby state as follows:

1. I have personal knowledge of the facts stated herein.
2. I am employed by the State of Tennessee in the capacity of Do Not Call-Do Not Fax Program Director of the Tennessee Regulatory Authority ("Authority" or "TRA").
3. As Program Director of the Do Not Call-Do Not Fax programs my duties include investigation of complaints from Tennessee consumers alleging violation of the Tennessee Do Not Fax Law, Tenn. Code Ann. § 65-4-501, *et seq.*
4. I am submitting this affidavit in support of allegations of violations of Tenn. Code Ann. § 65-4-501 *et seq.* pursuant to a show cause proceeding in TRA Docket No. 12-00052.
5. On January 14, 2011, Notices of Alleged Violations (NAV) were sent via certified mail to David Andrews at 1881 South Highway 17-92, Longwood, FL 32750. Lisa Mercherson signed for the certified mail.
6. On November 14, 2011, NAVs were sent via certified and standard mail to Mr. David Andrews at: P.O. Box 18173, Casselberry, FL 32718; 795 West State Street, Longwood, FL 32750; and 3804 Lake View Terrace, Casselberry, FL 32718.

7. Between December 18, 2008 and April 24, 2012, the Consumer Services Division ("CSD") received complaints from thirty-one (31) Tennessee consumers. The complaints total one-hundred and thirteen (113) alleged violations of the TENN. CODE ANN. § 65-4-501 *et seq.* The following is a summary of the complaints. A copy of all complaints is attached hereto as Exhibit A.

- JD's British Cars received an unsolicited facsimile advertisement at (615)361-3889 from the Respondent on December 18, 2008, March 5, 2009, April 17, 2009, June 2, 2009, and June 22, 2009. On March 20, 2009, May 28, 2010, and November 10, 2010 the CSD sent an Official Notice of Alleged Violation (hereinafter "NAV") related to the complaints filed by JD's British Cars to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Marc Friedman received an unsolicited facsimile advertisement at (901)759-3471 from the Respondent on December 22, 2008 and January 6, 2009. On January 30, 2009 and March 30, 2009 the CSD sent a NAV related to the complaints filed by Marc Friedman to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Wildwood Gallery received an unsolicited facsimile advertisement at (865)546-1616 from the Respondent on December 30, 2008 and January 28, 2009. On March 13, 2009 and March 30, 2009 the CSD sent a NAV related to the complaints filed by Wildwood Gallery to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Signature Management Certification Services, LLC received an unsolicited facsimile advertisement at (615)232-8302 from the Respondent on January 7, 2009, January 22, 2009, April 8, 2009, April 17, 2009, June 9, 2009, June 19, 2009, and October 14, 2009. On January 30, 2009 and May 28, 2010, the CSD sent a NAV related to the complaints filed by Signature Management Certification Services, LLC to the

Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.

- Plateau Properties, Inc. received an unsolicited facsimile advertisement at (931)707-1787 from the Respondent on January 8, 2009, January 27, 2009, February 3, 2009, June 10, 2009, June 15, 2009, July 21, 2009, October 7, 2009, December 22, 2009, March 30, 2010, January 12, 2011, March 11, 2011, March 22, 2011, May 6, 2011, July 27, 2011, September 20, 2011, February 29, 2012, and April 3, 2012. On January 30, 2009, March 20, 2009, May 28, 2010, November 10, 2011 and April 26, 2009 the CSD sent a NAV related to the complaints filed by Plateau Properties, Inc. to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Phyllis Shruptrine received an unsolicited facsimile advertisement at (423)266-5107 from the Respondent on January 16, 2009 and January 27, 2009. On February 10, 2009 and March 20, 2009 the CSD sent a NAV related to the complaints filed by Phyllis Shruptrine to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Texas Rio Grande Legal Aid, Inc. received an unsolicited facsimile advertisement at (615)366-3349 from the Respondent on January 16, 2009, June 5, 2009, June 17, 2009, July 7, 2009, August 4, 2009, August 19, 2009, September 21, 2009, October 29, 2009, December 7, 2009, January 25, 2010, March 3, 2010, and April 2, 2010. On February 10, 2009, May 28, 2010, April 13, 2010, and May 28, 2010 the CSD sent a NAV related to the complaints filed by Texas Rio Grande Legal Aid, Inc. to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Scott Tobitt Custom Cabinetry, Inc. received an unsolicited facsimile advertisement at (615)860-9718 from the Respondent on February 13, 2009. On November 10, 2011

the CSD sent a NAV related to the complaints filed by Scott Tobitt Custom Cabinetry, Inc. to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.

- The Tennessee Regulatory Authority received an unsolicited facsimile advertisement at (615)532-2933 from the Respondent on April 8, 2009 and April 17, 2009. On May 28, 2010, the CSD sent a NAV related to the complaints filed by the Tennessee Regulatory Authority to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- The Tennessee Regulatory Authority received an unsolicited facsimile advertisement at (615)741-2336 from the Respondent on November 2, 2009 and November 24, 2010. On May 28, 2010 and November 10, 2011 the CSD sent a NAV related to the complaints filed by the Tennessee Regulatory Authority to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Transmission Technologies Corporation received an unsolicited facsimile advertisement at (865)329-5002 from the Respondent on June 2, 2009, July 31, 2009, October 9, 2009, and November 18, 2009. On May 28, 2010, the CSD sent a NAV related to the complaints filed by Transmission Technologies Corporation to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Transmission Technologies Corporation received an unsolicited facsimile advertisement at (865)523-1042 from the Respondent on July 13, 2009. On May 28, 2010 the CSD sent a NAV related to the complaints filed by Transmission Technologies Corporation to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.

- Danny Bullard received an unsolicited facsimile advertisement at (865)882-1855 from the Respondent on June 9, 2009. On May 28, 2010, the CSD sent a NAV related to the complaint filed by Danny Bullard to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Riverbend Maximum Security Institution received an unsolicited facsimile advertisement at (615)350-3372 from the Respondent on June 15, 2009. On May 28, 2010, the CSD sent a NAV related to the complaints filed by Riverbend Maximum Security Institution to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- John Rhudy received an unsolicited facsimile advertisement at (615)399-1479 from the Respondent on June 24, 2009, July 13, 2009, September 4, 2009, September 29, 2009, November 5, 2009, December 14, 2009, February 2, 2010, March 22, 2010, March 11, 2010, May 5, 2011, June 20, 2011, and September 10, 2011. On April 13, 2010, May 28, 2010, and November 10, 2011 the CSD sent a NAV related to the complaints filed by John Rhudy to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- ExtendLife, Inc. received an unsolicited facsimile advertisement at (423)698-5999 from the Respondent on August 21, 2009, October 29, 2009, February 15, 2010, September 15, 2010, October 15, 2010, November 11, 2010, and January 25, 2011. On April 13, 2010, May 28, 2010, and November 10, 2011 the CSD sent a NAV related to the complaints filed by ExtendLife, Inc. to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- CASA of Memphis & Shelby County, Inc. received an unsolicited facsimile advertisement at (901)522-0201 from the Respondent on September 14, 2009. On May 28, 2010 the CSD sent a NAV related to the complaints filed by CASA of

Memphis & Shelby County, Inc. to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.

- James Keeton received an unsolicited facsimile advertisement at (615)859-2128 from the Respondent on September 21, 2009, January 22, 2010, March 3, 2010, April 5, 2010, December 21, 2010, February 11, 2011, April 4, 2011, May 20, 2011, and August 12, 2011. On April 13, 2010, May 28, 2010, and November 10, 2011 the CSD sent a NAV related to the complaints filed by James Keeton to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- James Keeton received an unsolicited facsimile advertisement at (615)881-3077 from the Respondent on January 22, 2010, December 20, 2010, May 19, 2011, and June 16, 2011. On April 13, 2010 and November 10, 2011 the CSD sent a NAV related to the complaints filed by James Keeton to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Physical Therapy Specialists received an unsolicited facsimile advertisement at (865)588-4108 from the Respondent on October 9, 2009 and May 12, 2010. On May 28, 2010, the CSD sent a NAV related to the complaints filed by Physical Therapy Specialists to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Charles Walker received an unsolicited facsimile advertisement at (865)981-1261 from the Respondent on December 9, 2009 and February 16, 2010. On April 13, 2010 and May 28, 2010 the CSD sent a NAV related to the complaints filed by Charles Walker to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Kim Mullins received an unsolicited facsimile advertisement at (865)986-0016 from the Respondent on February 8, 2010. On April 13, 2010 the CSD sent a NAV related

to the complaints filed by Kim Mullins to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.

- Leonard Ethridge received an unsolicited facsimile advertisement at (423)894-2643 from the Respondent on March 29, 2010, December 29, 2010, and February 24, 2011. On April 13, 2010 and November 10, 2011 the CSD sent a NAV related to the complaints filed by Leonard Ethridge to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Eric Stuart received an unsolicited facsimile advertisement at (615)373-3960 from the Respondent on May 11, 2010. On May 28, 2010 the CSD sent a NAV related to the complaint filed by Eric Stuart to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Tim Artist received an unsolicited facsimile advertisement at (615)847-0296 from the Respondent on August 20, 2010. On November 10, 2011 the CSD sent a NAV related to the complaints filed by Tim Artist to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Sumner County Department of Human Services received an unsolicited facsimile advertisement at (615)451-6394 from the Respondent on November 4, 2010. On November 10, 2011 the CSD sent a NAV related to the complaints filed by Sumner County Department of Human Services to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- Wendy Reid received an unsolicited facsimile advertisement at (615)847-0288 from the Respondent on December 7, 2010. On November 10, 2011 the CSD sent a NAV related to the complaints filed by Wendy Reid to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
- The Flower Girls received an unsolicited facsimile advertisement at (615)665-9370 from the Respondent on December 29, 2010. On November 10, 2011 the CSD sent a

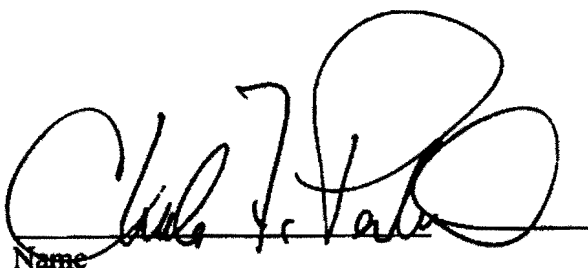
NAV related to the complaints filed by The Flower Girls to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.

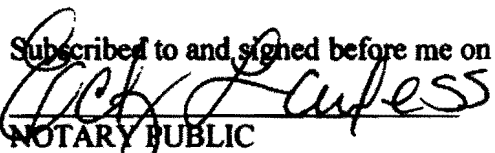
- Janet McIntyre received an unsolicited facsimile advertisement at (615)790-5913 from the Respondent on January 21, 2011. On November 10, 2011 the CSD sent a NAV related to the complaint filed by Janet McIntyre to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
 - Ernest Briggs received an unsolicited facsimile advertisement at (901)382-5230 from the Respondent on November 3, 2011 and November 3, 2011. On November 10, 2011 and April 26, 2012 the CSD sent a NAV related to the complaints filed by Ernest Briggs to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
 - Harold Fry received an unsolicited facsimile advertisement at (901)757-7824 from the Respondent on February 7, 2012. On April 26, 2012 the CSD sent a NAV related to the complaints filed by Harold Fry to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
 - Willow Ridge Garden Center received an unsolicited facsimile advertisement at (865)481-3825 from Respondent on June 26, 2009, July 20, 2009, September 1, 2009 and November 11, 2009. On May 28, 2010 the CSD sent a NAV related to the complaints filed by Willow Ridge Garden Center to the Respondent via certified mail, regular mail, and facsimile. Respondent has not responded to the NAVs in any way.
6. Each of these unsolicited facsimile advertisements had the same “respond to” number 1-877-624-0657. A copy of one of the advertisements is attached as Exhibit 2.
 7. Upon subpoenaing billing information for the “respond to” number provided on the unsolicited faxes, it was discovered that Mr. David Andrews made payments to

telecommunications providers for the "respond to" number reflected on the unsolicited faxes.

8. Notices of alleged violations letters have been issued on all complaints to Mr. David Andrews.
9. Numerous attempts have been made to contact Mr. Andrews, including USPS mail, fax, and telephone. Certified mail receipts indicate that seven complaints were acknowledged; however, the remaining one-hundred and six complaints are unacknowledged. None of the one-hundred and thirteen complaints have been responded to.

FURTHER AFFIANT SAITH NOT.


Name

Subscribed to and signed before me on this 22 day of January, 2013

NOTARY PUBLIC

My Commission Expires: 1/6/2014

(SEAL)

