

ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, *ex rel.* Phillip J. Weiser, Attorney General, and Respondents Sierra Financial Services, Inc., d/b/a Omni Financial Services and Jill Fisher (collectively "Respondents"). This Assurance is entered into pursuant to the Attorney General's powers under section 6-1-110(2), C.R.S. (2018), and is agreed to by the parties in lieu of the Attorney General filing a complaint against Respondents for the conduct described below.

PARTIES

1. Phillip J. Weiser is the duly elected Attorney General for the State of Colorado ("Attorney General") and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act ("CCPA"), §§ 6-1-101, *et seq.*, C.R.S. (2018).

2. Respondent Sierra Financial Services, Inc., d/b/a Omni Financial ("Sierra") is a Colorado corporation with its principal place of business at 380 Interlocken Crescent, Suite 800, Broomfield, Colorado 80021. Sierra engages in the business of providing tax debt resolution services to businesses and individuals (collectively "Clients").

3. Respondent Jill Fisher is a part-owner of Sierra through Financial Holdings, LLC, a Wyoming limited liability company, and currently responsible for company operations.

STATUTORY FRAMEWORK

4. A person engages in deceptive trade practices when, among other things, in the course of that person's business, vocation, or occupation, the person advertises services with the intent not to sell them as advertised; makes false or misleading statements of fact concerning the price of services; employs "bait and switch" advertising; or fails to disclose material information concerning services that was known at the time of an advertisement or sale if the failure to disclose was intended to induce the consumer to enter into a transaction. *See* § 6-1-105(1) (i), (l), (n), and (u), C.R.S. (2018).

5. No commercial telephone seller may conduct business in Colorado without having registered with the Attorney General at least ten days prior to the conduct of such business pursuant to C.R.S. § 6-1-303. Failure to register as a commercial telephone seller is an unlawful telemarketing practice under C.R.S. § 6-

1-304(1)(a). Engaging in unlawful telemarketing practices constitutes a violation of the CCPA. C.R.S. § 6-1-105(cc).

FACTUAL ALLEGATIONS

6. Pursuant to the CCPA, the Attorney General has investigated and/or continues to investigate tax resolution companies operating in Colorado, and the individuals responsible for the control of such companies. Based on information obtained from its investigation of Sierra, the Attorney General has concerns that, from its formation until at least January 2017, Sierra engaged in conduct in violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1), by knowingly making false representations as to the characteristics or benefits of services; advertising services with the intent not to sell them as advertised; making false or misleading statements of fact concerning the price of services; failing to disclose material information concerning services known at the time of an advertisement or sale with the intent to induce consumers to enter into transactions; and in violation of the commercial telephone sales statutes.

7. The inclusion of these factual allegations does not constitute an admission by Respondents of any specific allegation.

8. Sierra is a Colorado corporation formed on May 3, 1995 by Matthew D. Mulligan. Sierra was managed and controlled jointly by Mulligan and Scott H. Priesmeyer, who shared the profits of the company with Mulligan. Mulligan was directly involved in the operation until approximately December 18, 2002, when he relocated to Florida and formed El Dorado Financial, Inc., a Florida corporation also doing business as "Omni Financial." Mulligan continued to be involved in business decisions for Sierra until at least the end of 2013 and continues to receive a share of company profits through the current date.

9. Following Mulligan's relocation to Florida, Sierra was managed and controlled by Priesmeyer under various titles until his departure effective as of February 25, 2015. During this time period, Priesmeyer continued to share the profits of Sierra, as well as the profits of El Dorado Financial, Inc., with Mulligan. Priesmeyer also received employment-related compensation from El Dorado from approximately 2003 until approximately July 31, 2014. Priesmeyer's separation agreement from Sierra provided for payments to Priesmeyer from Sierra that have continued through the current date.

10. From January 1, 2014 through January 31, 2017, Sierra was managed by Scott Kaplan, who held the position of General Manager during Priesmeyer's

control of Sierra, and who was promoted to President and CEO of the company following Priesmeyer's departure.

11. As President and CEO, Scott Kaplan assumed the duties previously performed by Priesmeyer and oversaw the operations of Sierra's Sales Department, which consisted of "openers" who initiated a cold call to the prospective client and "closers" who secured a written agreement with the client. Kaplan also managed and directed Sierra's Client Services Department until his departure in January 2017. Sierra's Client Services Department consisted of associates and their assistants who worked on resolving the clients' tax issues.

12. Jill Fisher joined the Sierra board of directors in January 2014. In connection with the dissolution of marriage between Fisher and Matt Mulligan (effective December 13, 2016), Financial Holdings, LLC, a Wyoming limited liability company, was created to serve as the owner of both Sierra and Eldorado, as well as various other business assets that were accumulated during the course of the marriage. Fisher agreed to undertake responsibility for Sierra at that time and became actively engaged in the day-to-day operations of the company as of January 1, 2017, when Scott Kaplan departed.

13. Until at least January 2017, Sierra operated as follows:

- a. To identify potential clients, the Sales Department scanned public tax filings, looking for liens filed by state and federal taxing authorities. Openers then cold called the taxpayer, offering to help resolve their tax debt. After a brief introductory call with the opener, a Sierra closer briefly discussed the taxpayer's financial condition, suggested a resolution, and quoted a retainer fee for Sierra's services. The closer then executed a Professional Services Agreement ("PSA") with the taxpayer.
- b. The PSA described the resolution services Sierra would provide and the amount of the agreed upon retainer fee. According to Sierra's PSAs, "[t]he retainer fee [was] based upon Sierra's estimate of the time, effort, and complexity, necessary to provide the services agreed upon." The Sales Department then collected payment from the client and turned the client's file over to the Client Services Department.
- c. The Sales Department relied on information from the client during the phone call to determine the time, effort, or complexity



necessary to provide the agreed upon services. At times that information was insufficient to make such a determination. Nonetheless, the Sales Department stated that the quoted fee contained in the PSA was based on the amount of work that would be performed on the client's behalf.

- d. Because Omni's Sales Department relied on the sometimes incomplete information provided by the client, to quote a fee for those services, and collecting payment for those services, the Client Services Department at times found it necessary to expand the scope of work to be done on a client's file. These additional services often cost the consumer more money than the original retainer fee. The additional services, and corresponding additional fees, were not memorialized in an amended PSA or any other form of subsequent agreement with Sierra. The company did not give refunds to clients whose liabilities were resolved with less work than anticipated.

14. The conduct described above has impacted Sierra's clients. Many paid thousands of dollars in additional fees beyond the fees quoted in the PSAs, generating millions of dollars of revenue for Sierra and its executives.

15. Following notification of the Attorney General's investigation, under Jill Fisher's direction, Sierra has fully and voluntarily cooperated with all aspects of the Attorney General's investigation. Further, Sierra has hired new management and implemented a number of business practices to address the Attorney General's concerns.

CONSIDERATION

16. The parties enter into this Assurance as a compromise and settlement of all disputed claims. This Assurance is entered into without adjudication of any issue of fact or law or finding of liability of any kind, and nothing contained in this Assurance shall be construed or deemed an admission by Respondents of any wrongdoing or any violation of state or federal law and/or regulatory scheme. Respondents expressly deny any liability or wrongdoing under the CCPA or otherwise and are entering into this Assurance to avoid further inconvenience and costs of potential litigation.

17. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondents arising out of the conduct investigated by the Attorney General that allegedly occurred



prior to the Effective Date of this Assurance, including but not limited to all claims and/or causes of action for equitable relief, restitution, disgorgement, fines civil penalties, attorneys' fees, and/or costs.

18. This Assurance does not apply to any former owners, members, agents, or officers of Sierra or any person not named as a Respondent herein. The Attorney General preserves her claims against any person not named as a Respondent herein, including former employees and owners of Sierra, and reserves his right to file suit against them.

INJUNCTIVE RELIEF

19. Respondents, as well as any principals, officers, directors, members, agents, employees, representatives, successors, affiliates, contractors, consultants, or any person acting on their behalf, shall comply with all provisions of the CCPA as now constituted or as may be amended in conducting business in the state of Colorado, and all applicable rules and regulations implementing the same.

20. Respondents, including their representatives, agents, employees, successors, assigns, independent contractors, or any other persons acting under, through, or on behalf of Sierra in the performance of tax debt resolution services, directly or indirectly, or through any corporate or other device, shall implement and maintain the following business practices:

- a. Sierra will not enter into a Services Agreement with any Client, nor accept any form of compensation from any Client, unless all terms of that agreement are articulated in writing and the agreement is signed by all parties to the agreement.
- b. All Services Agreements executed between Sierra and a Client shall incorporate any and all representations made by Sierra to the Client prior to the date of execution of the agreement.
- c. Any initial retainer fee charged by Sierra to a client shall be based solely on Sierra's estimate of the time, effort, and complexity necessary to provide immediate representation, analysis of the client's current situation, and the creation of a statement of work. The limited nature of this initial retainer fee shall be clearly communicated to clients, both in verbal communications and in any written communications, including any Professional Services Agreement.



- d. Sierra will not quote any estimate for fees to be charged for Professional Services to potential clients unless it has obtained a client's tax transcript, full financial records, and any other information necessary to fully assess the client's needs.
- e. Sierra shall not use or employ a compensation system in which individual employees and/or contractors providing resolution services for Sierra receive commission or bonus based on meeting individual goals for the amount of additional fees paid by that individual employee and/or contractor's Clients.

21. The business practices set forth in paragraph 20 herein including its subparts shall be subject to monitoring by the Attorney General for a period of 3 years. Sierra shall submit the following items to the Attorney General annually on the anniversary of the Effective date:

- a. Current version of Sierra's Professional Services Agreement;
- b. Current version of Sierra's Statement of Work;
- c. Current version of Sierra's Service Delivery Framework;
- d. Current version of any scripts or training materials used by inside sales representatives or account executives, or any employees performing similar duties with different titles;

Upon a random written request by the Attorney General, Sierra shall record all closer or account executive telephone conversations during and for the one (1) business day set forth in such request and provide those recordings to the Attorney General, provided however, the Attorney General shall not make more than two (2) such requests during each year of the monitoring period. After the 3-year monitoring period expires, Respondents agree to waive personal service of any investigative subpoena issued by the Attorney General seeking the information listed in this paragraph, and agrees to accept service of such a subpoena via certified mail with return receipt requested.

MONETARY RELIEF

22. Respondent Sierra Financial shall pay \$1.5 million to resolve all claims that could be asserted by the Attorney General. Payment of \$1 million shall be deferred so long as Respondents remain in compliance with all provisions of this Assurance.



23. Respondent Sierra Financial shall pay the remaining \$500,000 as follows: \$200,000 to be paid within 10 days of the effective date of this Assurance; \$100,000 to be paid within 1 year of the effective date of this Assurance; \$100,000 to be paid within 2 years of the effective date of this Assurance; and \$100,000 to be paid within 3 years of the effective date of this Assurance.

24. Any payment made under this Assurance shall be held, along with any interest thereon, in trust by the Attorney General to be used for reimbursement of actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement actions, or to support consumer education and public welfare.

ENFORCEMENT

25. The obligations set forth in this Assurance are continuing under this Assurance.

26. If the Attorney General has reason to believe that a breach of this Assurance has occurred, the Attorney General shall give written notice to the Respondents of the specific alleged breach. The Respondents shall have thirty (30) days from the date of receipt of the notice to cure the alleged breach and to provide a response to the Attorney General describing the steps taken to cure the alleged breach. Alternatively, the Respondents shall provide to the Attorney General, within thirty (30) days of receipt of the notice, a response including a statement explaining why the Respondents believe that no breach has occurred and an explanation of the facts and circumstances at issue, or, where applicable, a statement explaining why the alleged breach cannot be reasonably cured. The Attorney General agrees to refrain from filing a civil action under the CCPA in any court of competent jurisdiction until after the expiration of the thirty (30) day cure period.

27. Proof by a preponderance of the evidence of a material violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2018). In the event the Attorney General has a reasonable belief that any Respondent has materially violated any of the obligations of this Assurance after the Effective Date, the Attorney General may file a civil action under the CCPA in any court of competent jurisdiction to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance against that Respondent. All actions brought under this Assurance must be commenced in accordance with § 6-1-115, C.R.S. (2018).

28. In addition to any remedies provided under the CCPA, upon a finding by any Court of competent jurisdiction that a material violation of the obligations in this Assurance by a Respondent has been proven by a preponderance of the evidence, the Attorney General may seek an order converting this Assurance into a permanent injunction against that Respondent as if the Parties had fully litigated all issues contained herein. In such event, such Respondent agrees to waive any and all defenses and counterclaims they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

GENERAL PROVISIONS

29. Scope of Assurance. Unless otherwise provided, this Assurance shall apply to Respondents and their officers, directors, agents, servants, employees, affiliates, subsidiaries, successors, and assigns, together with the other parties described in C.R.C.P. 65(d).

30. Effective Date. The Effective Date of this Assurance shall be the date on which the parties execute the Assurance.

31. Preservation of Law Enforcement Action. Nothing herein precludes the Attorney General from enforcing the provisions of this Assurance or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Respondents not covered by this Assurance or any acts or practices in which Respondents engage after entry of this Assurance.

32. Compliance With and Application of State Law. Nothing herein relieves Respondents of their duty to comply with applicable laws of the state of Colorado nor constitutes authorization by the Attorney General for Respondents to engage in acts and practices prohibited by such laws. This Assurance shall be governed by the laws of the state of Colorado.

33. Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of any of the Respondents' past, present, or future business practices, and Respondents shall not make any representation to the contrary.

34. Preservation of Private Claims. Nothing in this Assurance shall limit, constrain, abridge, abrogate, waive, release, or otherwise prejudice any private rights, causes of action, or remedies of any person against Respondents with respect to the acts and practices covered by this Assurance.

35. No Third-Party Beneficiaries Intended. This Assurance is for the benefit of the parties only and does not create or confer rights or remedies upon any other person, including rights as a third-party beneficiary. This Assurance does not create a private right of action on the part of any person or entity, whether to enforce this Assurance or otherwise, other than the parties hereto.

36. Bankruptcy. In the event of a bankruptcy filing by any Respondent or its individual officers, members, or owners, the contents of this Assurance shall be deemed admitted as true for the purpose of establishing the amount of the Attorney General's claim and the nondischargeability of such claim.

37. Execution in Counterparts. This Assurance may be executed in counterparts, each of which is an original and all of which are one and the same.

38. Cooperation. Respondents, including any person or entity acting on Respondents' behalf or at the direction and control of Respondents, agree to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other person or entity. Included within this cooperation agreement are the obligations to:

- a. Appear for hearings, depositions, or provide testimony in any form, including affidavits;
- b. Accept a subpoena from the Attorney General without the need for formal service of process; and
- c. Produce documents, records, or any other tangible thing in response to a subpoena or other written request issued by the Attorney General.

39. Severability. If any provision of this Assurance is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

40. Amendment. This Assurance may be amended solely by written agreement signed by the Attorney General and Respondents or their authorized representatives.

41. Complete Agreement. This Assurance represents the entire agreement between the parties hereto and a complete merger of prior negotiations and

agreements. No other written or oral terms or agreements exist except for those contained in this Assurance.

42. Attorneys' Fees and Costs. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs in connection with this matter.

43. Public Record. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

44. Voluntary Agreement. Respondents acknowledge that they have had an adequate opportunity to review this Assurance and consult with legal counsel in connection with the negotiation, drafting, and execution of this Agreement. Each party and signatory to this Agreement represents that he, she, or it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

45. Assurance Jointly Drafted. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted jointly by both parties and, in the event of any dispute arising out of this Assurance, shall not be construed against or in favor of any party.

46. Entire Agreement. Respondents agree and represent that they have read and understand this Assurance, accept the legal consequences involved in signing this Assurance, and that there are no other representations, agreements, or understandings between Respondents and the Attorney General that are not stated in writing herein.

47. Notice. All notices required to be sent under this Assurance shall be sent by United States Certified Mail, return receipt requested, to the following addresses:

For the Attorney General:
Jennifer H. Hunt
First Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203

For Respondents:
Jill Fisher
Sierra Financial Services, Inc.
380 Interlocken Crescent, Suite 800
Broomfield, CO 80021



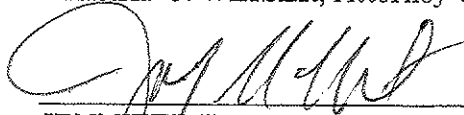
With simultaneous copies to:
Mike Anderson
Sierra Financial Services, Inc.
380 Interlocken Crescent, Suite 800
Broomfield, CO 80021

and

James G. Sawtelle
Sherman & Howard L.L.C.
633 17th Street, Suite 3000
Denver, CO 80202

48. Signatures. Facsimiles of signatures and signatures provided by portable document format (".pdf") shall constitute acceptable, binding signatures for all purposes of this Agreement.

STATE OF COLORADO, *ex rel.*
PHILLIP J. WEISER, Attorney General




JENNIFER H. HUNT,
First Assistant Attorney General
Colorado Department of Law

Dated: Jan. 14, 2019

For the Respondents:

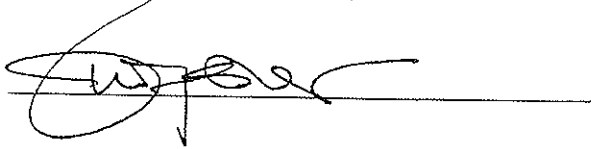
SIERRA FINANCIAL SERVICES, INC.,
d/b/a OMNI FINANCIAL SERVICES



Print Name: Jill Fisher
Title: Chairwoman of the Board of Directors

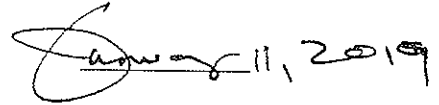
Dated: January 11, 2019

JILL FISHER, individually



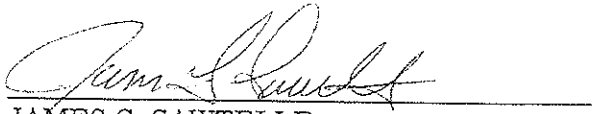
A handwritten signature in black ink, appearing to read 'Jill Fisher', is written over a horizontal line.

Dated:



A handwritten date in black ink, 'January 11, 2019', is written over a horizontal line.

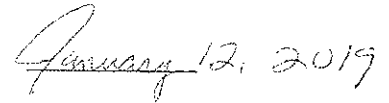
Attorney for Respondents



A handwritten signature in black ink, appearing to read 'James G. Sawtelle', is written over a horizontal line.

JAMES G. SAWTELLE
Sherman & Howard

Dated:



A handwritten date in black ink, 'January 12, 2019', is written over a horizontal line.