

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

UNLIMITED FULFILLMENT SERVICES,  
LLC,

Petitioner,

vs.

Case No. 12-1633

DEPARTMENT OF FINANCIAL  
SERVICES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the  
Division of Administrative Hearings heard this case, as noticed,  
on March 12, 2013, in Ft. Myers, Florida.

APPEARANCES

For Petitioner: Brennan Donnelly, Esquire  
Messer, Caparello, and Self, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308-0572

For Respondent: David J. Busch, Esquire  
Division of Legal Services  
Department of Financial Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUES

A. Has Petitioner, Unlimited Financial Services, LLC  
(Unlimited), conducted the unlicensed business of insurance in  
violation of section 626.112(7), Florida Statutes (2011)?<sup>1/</sup>

B. Has Unlimited engaged in an unfair or deceptive act or practice, false advertising, as prohibited by section 626.9541(1)(b)?

PRELIMINARY STATEMENT

On April 10, 2012, Respondent, Department of Financial Services (Department), issued a Notice of Intent to Issue Cease and Desist Order directed at Unlimited. Unlimited contested the notice and requested a hearing. The Department referred the matter to the Division of Administrative Hearings to conduct the requested hearing. The undersigned set the hearing to begin July 31, 2012. The parties engaged in discovery, and the proceeding was continued four times upon agreed-to motions of the parties and was set to begin on March 12, 2013. On March 1, 2013, the Department issued an Amended Notice of Intent to Issue Cease and Desist Order. The undersigned conducted the hearing as scheduled on March 12, 2013.

The Department presented testimony from Edward Ludden, Lorna Noren, and Phyllis Sukut. Department's Exhibits 1, 5, 6 (pages 45 through 59 only), 12 (deposition of Glenn Daily), and 13 (exhibits to Daily deposition, with references to actions in other states, stricken) were admitted. Objections to Department Exhibits 2, 3, 4, and 8 were sustained.

Unlimited presented testimony from Matthew Dilday and Joseph Cronin (by deposition). Exhibits 1, 2, and 3 (deposition of Lorna Noren) of Unlimited were admitted.

The Transcript was filed on April 16, 2013. The parties were granted two extensions of time for filing proposed recommended orders. The parties timely filed proposed recommended orders, and they have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The Department is a state agency charged with administering chapters 624 and 626, Florida Statutes, governing the business of insurance.

2. Unlimited is not a licensed Florida insurance agency. Matthew Dilday, its owner, is not a licensed Florida insurance agent.

3. In the pre-hearing stipulation, Unlimited described itself as "an advertiser who obtains qualified leads for licensed Florida insurance agents." In its advertising materials directed at insurance agents, Unlimited describes itself as "the Nation's most sought after company for advisors in need of new marketing strategies" and "the Nation's No. 1 Annuity Leads and Preset Appointment Program."

4. Unlimited promotes itself on its website as "No. 1 Annuity Lead Provider." Beneath that heading, Unlimited represents:

When we talk with our annuity and investment lead prospects, our professionally trained call center staff is adamant about confirming that they have investment assets. When you purchase preset investment or annuity appointments from UFS Marketing [Unlimited], you also receive access to our highly recommended training programs that explain to you the best way to convert leads and appointments into sales.

5. Unlimited's materials say:

We provide annuity leads to financial professionals who sell deferred annuities, many who work for insurance companies. We also provide pre-qualified annuity leads programs to independent agents of the insurance companies who collect a commission from the insurance company when they sell an annuity. This commission is usually a a [sic] percentage of the total premium paid by the annuity investor.

6. Unlimited's services facilitate contact between an agent and a potential client in several ways. According to the promotional materials, Unlimited's "Annuity Leads and Preset Appointment Programs are essential to insurance agents and financial advisors."

7. Again, according to the materials, Unlimited sets "thousands of qualified appointments every month for agents nationwide." The program saves agents valuable time in prospecting for qualified prospective customers.

8. Unlimited enters into marketing services agreements with Florida insurance agents and agencies designed to facilitate the marketing of life insurance products to Florida consumers.

9. Unlimited is in the advertising and marketing business and operates a telemarketing call center. Although Mr. Dilday repeatedly testified that Unlimited was simply a "printing company," it is not. It is a direct mail and telemarketing marketing organization focused on developing customer leads for insurance agents.<sup>2/</sup>

10. In 2011, Unlimited entered into a contract with Florida Insurance Agent Andy Heygate titled, "Marketing Services Agreement" (Agreement).

11. The "General Purpose" paragraph of the Agreement states:

This Agreement will establish a business relationship among and between the aforementioned parties whereby UFS Marketing will supply fulfillment services on behalf of the Customer [Agent Heygate]. Marketing materials will be mailed to the general public on behalf of the Customer in accordance with the instructions received from the Customer and calls will be taken from the general public on behalf of the Customer in accordance with the Customer's instructions.

12. The Agreement details marketing services and the parties' responsibilities. Among other things, it provides:

- A. Unlimited will send a mass mailing developed by the customer targeted at individuals who

meet a demographic profile selected by the customer.

- B. The profile for the Agreement targeted homeowners aged 58-75 who had an annual income of over \$30,000 and a home worth \$150,000 or more.
- C. Unlimited will make a telephone bank available to accept responses from consumers following a script developed by the customer to screen the responses to make appointments or develop leads.
- D. Unlimited will make leads available and/or set appointments with consumers resulting from the inquiries generated from the marketing materials.

13. The Agreement defines "Lead" as "a consumer who contacts an UFS Marketing representative in response to the Customer's marketing materials and agrees to be contacted by the Customer."

14. The Agreement defines "Appointment" as "a consumer who contacts UFS Marketing in response to the Customer's marketing materials and schedules an appointment with the Customer for the purpose of discussing the Customer's products or services and is defined by [enumerated criteria]."

15. The criteria include that the consumer has indicated "they are receiving regular statements for an investment or retirement plan," and the consumer has "indicated they will have their statements available at the time of the review."

16. The Agreement requires the agent to pay Unlimited a fee. The "[f]ees are based upon the number of marketing pieces

sent and resources required to take inbound calls, schedule appointments and develop leads on behalf of the [agent]." The fees are for the full range of services provided for in the Agreement, not just printing and mailing the postcards.

17. The marketing materials and mass mailing the Agreement refers to are a postcard, which is an exhibit to the Agreement.

18. The front address side of the postcard in very small print reads:

Privacy Law Notice: This notice is provided in accordance with Federal Privacy Laws. The Policy of this agency is to protect the privacy rights of all consumers who respond to this notice. This agency DOES NOT POSSESS OR DISCLOSE NON-PUBLIC PERSONAL INFORMATION TO THIRD PARTIES IN ANY INSTANCE. If you choose to have an existing policy or contract reviewed by a licensed agent, that agent is also required to adhere to the state and federal consumer and privacy protection laws. Important information: This notice is being sent to you as a possible holder of an in-force annuity contract. This agency does not have a direct affiliation with the insurance carrier through which you are currently contracted. The agency is contracted with agents licensed to conduct insurance business in your state. This notice should be disregarded if you do not currently have an in-force annuity contract.

19. The word "agency" evokes the concept of a government or insurance agency. Unlimited is not an agency. The description of Unlimited as an agency is false.

20. The back side of the postcard in larger print states:

This communication is to inform you that you may have an annuity that has reached the end of its surrender period.

The end of a surrender period is a positive event that means an owner may cash in an annuity or make withdrawals without incurring a surrender charge. A surrender charges is a fee levied by an insurance company on an annuity contract for withdrawals before the end of the time set by the contract (the surrender period).

Please contact the Annuity Department to discuss your options.  
(877) 836-2333

21. The first sentence on the back side of the postcard creates the impression that the sender has some knowledge of the financial circumstances and holdings of the addressee.

22. The statement in the text box is an accurate statement.

23. The overall import of the postcard, including the "Privacy Law Notice," the reference to Unlimited as an "agency," and references to the recipient having an annuity, create the impression that the sender has financial information about the recipient and some formal relationship with the recipient. This is so despite the disclaimers "may have" and "possible holder."

24. It is also so despite the sentence stating the "agency" does not have a "direct" affiliation with the recipient's insurance carrier. Use of "direct" necessarily implies a relationship of some sort.



25. The script is also an exhibit to the Agreement. The script calls for the operator to tell the caller:

[I]f you've held an annuity for some time and you're due for a quick service review. This review will cover important contract features and make sure you are receiving all the benefits you are entitled to. The review will also cover information on how to stop paying taxes on your retirement investments. Have you been getting your statements on a regular basis?

26. The script directs the operator to make sure the statement is a statement for an investment, not for social security. It also directs the operator to ensure that the amount of the last statement exceeded \$20,000.

27. The script calls for the operator to schedule an appointment with the agent and emphasize the importance of bringing the account statement. It does not provide for the recipient bringing the annuity contract, which is the document that would have terms such as the surrender period.

28. After covering the annuity information and appointment conversation, the script goes on to lead the operator through similar questioning about an IRA or 401K and life insurance. The script is attached to this Recommended Order as Exhibit A.

29. The Agreement requires Unlimited to provide the agent with recordings of every call resulting in an appointment or lead.

30. The Agreement also contains several disclaimers. For instance it states: "UFS Marketing shall not participate in any sales activity or other business conducted by the Customer."

31. It also states that "UFS Marketing shall not supervise or monitor the sales activity or other business activities of the Customer."

32. The Agreement provides for the agent/customer to approve both the postcard and the script.

33. The Agreement also includes several assertions by the agent/customer that they are properly qualified and licensed in the states where the appointments will be scheduled.

34. In 2011, Unlimited mailed marketing postcards to Phyllis Sukut and Angie Perez Cabrera in Florida. The postcards were part of Unlimited's fulfillment of its Agreement with Mr. Heygate. Unlimited mailed approximately 240,000 of the postcards to Florida addresses.

35. A copy of the postcard sent to Ms. Sukut pursuant to the Agreement is attached to this Recommended Order as Exhibit B. The postcard is identical to the Agreement's sample, except that it asks her to contact the "Scheduling Department," instead of the "Annuity Department" and includes the statement, "[w]ithdrawals may, however, still be subject to tax consequences."

36. Before mailing the postcards, Unlimited did not know the insurance, investment, or financial circumstances of Ms. Sukut and Ms. Perez Cabrera.

37. The postcard confused Ms. Sukut because it did not come from her insurance company, and she did not understand the references to "agency" and "surrender period."

38. She called the number and spoke to a gentleman who wanted to schedule an appointment to discuss her "expiring" annuity. She declined. The gentleman gave her a number to call and Mr. Heygate's name, if she changed her mind.

39. Ms. Sukut contacted her insurance agent, Ed Ludden, about it. Ms. Perez Cabrera also sent the card that she received to Mr. Ludden.

40. Mr. Ludden forwarded the postcards to Prudential, who held the women's policies. He was concerned that somehow Prudential's confidential information about Ms. Sukut and Ms. Perez Cabera had been compromised. Even an experienced insurance agent like Mr. Ludden received the impression that the sender of the postcard had information about the recipients.

41. Mr. Ludden also contacted the Department and provided the postcards to it.

## CONCLUSIONS OF LAW

42. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2012).

43. The Department brings this action against Unlimited to exercise its cease and desist authority. It maintains that Unlimited has engaged in the unlicensed business of insurance and has engaged in an unfair or deceptive act or practice.

44. Section 626.9581 grants the Department authority to issue an order requiring a person who has engaged in an unfair or deceptive act or practice or the unlawful transaction of insurance to cease and desist.

45. Section 626.9571 establishes the process for exercise of the Department's cease and desist authority. It requires the Department to serve a statement of the charges and notice, as the Department has done. § 626.9571(3), Fla. Stat. (2011). Subsections 626.9571(1) and (2) provide for a hearing conducted in accordance with chapter 120, Florida Statutes (2012).

46. The Department bears the burden of proving the allegations of its Amended Notice of Intent to Issue Cease and Desist Order. See Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996) ("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that

issue. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 [Fla. 1st DCA 1981]."). The parties are in agreement that preponderance of the evidence is the required degree of proof for this administrative proceeding. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., supra; Wensil v. Dep't of Env'tl. Prot., 675 So. 2d 1040 (Fla. 1st DCA 1996); Fitzpatrick v. Miami Beach, 328 So. 2d 578 (Fla. 3rd DCA 1976); Fla. Dep't of HRS v. Career Serv. Comm'n, 289 So. 2d 412 (Fla. 4th DCA 1974).

#### The Business of Insurance

47. Annuities are a type of life insurance. § 624.602(1).

48. Florida law requires a Department license in order to act as, or hold oneself out as, an insurance agent, insurance adjuster, or customer representative. § 626.112(1). No one may "engage in the solicitation of insurance" unless they are licensed to do so by the Department. § 626.112(1)(b). Section 626.112(7)(a) prohibits any entity acting directly or indirectly as an insurance agency unless licensed by the Department.

49. Section 624.10 states: "'Transact' with respect to insurance includes any of the following, in addition to other applicable provisions of this code: (1) Solicitation or inducement. . . ." The Department maintains that Unlimited's lead development activities, including the postcard mailings and

the call center operations, are solicitation of insurance that require a license.

50. The First District Court of Appeal considered a factually similar context in National Federation of Retired Persons v. Department of Insurance, 553 So. 2d 1289 (Fla. 1st DCA 1989). In a declaratory statement proceeding, National asked the Department to review an informational pamphlet it intended to send to members and prospective members. The pamphlet invited recipients to contact National for information about the availability of supplemental Medicare insurance. It stated that it had reviewed policies that pay 100 percent of covered hospital charges, cover pre-existing conditions, and guarantee acceptance. National planned to compile the names of those who inquired into lists to sell insurance companies.

51. National's activity facilitated contact between an agent and a potential client. The Department determined in its declaratory statement that National's activity was solicitation and inducement and, therefore, the transaction of insurance, as defined in section 624.10, required a license. The court, applying basic principles of statutory construction, considered a commonly accepted dictionary definition of "solicit." The court also applied the principle that "[a]n agency is afforded wide discretion in the interpretation of a statute which it administers and such interpretation will not be overturned unless

clearly erroneous." Nat'l Fed'n of Retired Persons v. Dep't of Ins., supra, at 1290. The opinion affirmed the Department's declaratory statement. To reach that result the court necessarily held that the facilitation proposed by National amounted to transacting insurance.

52. That holding governs here. The purpose and effect of Unlimited's program is to facilitate solicitation of insurance by screening potential customers to provide "leads" with specified resources and an existing annuity no longer subject to a surrender charge. Unlimited providing insurance agents a list of names of interested and qualified potential customers cannot be distinguished from National providing a list of interested potential customers. Unlimited makes an argument that actually supports this conclusion. Unlimited argues that the screening its employees perform is no different than the screening an insurance agent's receptionist might perform if a potential customer called. That may be so. But the receptionist would be clearly facilitating solicitation of insurance as Unlimited is. Unlike Unlimited, the receptionist would be working as an agent of, and under the licensed authority of, the insurance agent.

53. The Department proved that the Unlimited program described in the Findings of Fact is the business of insurance and requires licensure by the Department.<sup>3/</sup>

Untrue, Deceptive, or Misleading

54. Part IX of chapter 626 creates the "Unfair Insurance Trade Practices Act."<sup>4/</sup>

55. Section 626.9541(1)(b)2. of the Act prohibits knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in the form of a letter or notice "an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading." The Department charges that Unlimited violated this prohibition.

56. There is no question that Unlimited knowingly disseminated the postcards to the public and disseminated statements to the public through its call center. The determinative question for resolving this charge is whether the statements in the postcard and the representations of call center employees, as documented in their script, were untrue, deceptive, or misleading.

57. The Department has not proven that the statements were untrue. It has, however, proven by a preponderance of the evidence that they were deceptive or misleading.<sup>5/</sup> The facts here are much like those the Department found deceptive in Department of Insurance v. Jaquith, Case No. 99-4363 (Fla. DOAH May 23,



2000; Fla. DOI July 27, 2000), aff'd per curiam, Jaquith v. Department of Insurance Case No. 4D00-2947 (Fla. 4th DCA 2001). In that case the bail bond insurer's advertisement was factually correct in that it asserted the insurer offered "GUARANTEED LOWEST RATES!" while noting "ALLOWED BY LAW" in smaller typeface. The law permitted only one rate. This made the advertisement misleading and deceptive, because it created the inference that the insurer could provide lower rates than others.

58. Unlimited's postcard and call center script are likely to mislead in the following ways: (1) They create the impression that the communication comes from a government or insurance agency and conceal the fact that it comes from a marketing firm. (2) They create the impression that Unlimited has some information about and relation to the targeted consumer. (3) They create the impression that Unlimited is acting in the recipient's interest to review the annuity, when it is acting on behalf of the agent that retained it to develop sales leads.

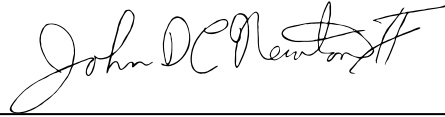
59. Unlimited relies upon a survey conducted by Dr. Joseph Cronin to argue that the postcard is not misleading or deceptive. The survey is not persuasive. The record does not explain how the sample of survey respondents chosen was statistically valid. The selection process was that Dr. Cronin simply sent two students to senior centers in Tallahassee, Florida, to question exercise class participants. Two of the five questions it asked

establish a standard well beyond whether the postcard is misleading or deceptive. Those questions ask if the reader felt "required" to call the number or if the postcard "required" some action. If the survey was given weight, it would buttress the conclusion that the postcard is deceptive. The survey questioned 67 individuals between the ages of 55 and 75. Of that sample, 17.9 percent found the postcard deceptive. Evidence that 15 percent of a survey sample is misled by an advertisement is sufficient to support the determination of likelihood of success on the merits needed to sustain entry of a preliminary injunction. Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co., 290 F.3d 578, 594 (3d Cir. 2002).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services enter a final Cease and Desist Order: (1) finding that Unlimited Fulfillment Services, LLC, has engaged in the unlawful transaction of insurance; (2) finding that Unlimited Fulfillment Services, LLC, has engaged in a misleading or deceptive trade practice; and (3) ordering Unlimited Fulfillment Services, LLC, to cease and desist all written and oral insurance marketing or advertising efforts in Florida by means of direct mail, use of the internet, or telemarketing, unless and until it is properly licensed in the State of Florida.

DONE AND ENTERED this 28th day of June, 2013, in  
Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of June, 2013.

ENDNOTES

<sup>1/</sup> All references to the Florida Statutes are to the 2011 edition unless otherwise noted.

<sup>2/</sup> Mr. Dilday's repeated assertions in testimony that Unlimited is only a printing company undermine his credibility.

<sup>3/</sup> This is so whether the preponderance of evidence or the clear and convincing standard is applied. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983); G.W.B. v. J.S.W. (In Re Baby E.A.W.), 658 So. 2d 961, 967 (Fla. 1995). The Findings of Fact are established under either standard.

<sup>4/</sup> The parties do not question that this Act governs the activities of unlicensed entities, as well as licensed. In light of this agreement and the deference to be given an agency's interpretation of the statutes it administers, Nat'l Fed'n Of Retired Persons v. Dep't of Ins., supra, this interpretation is accepted and applied in this case.

<sup>5/</sup> Florida's Deceptive and Unfair Trade Practices Act contains language similar to section 626.9541(1)(b)2. It prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce . . . ." § 501.204(1), Fla. Stat. Interpretations of similar language in other statutes can be

instructive. Bortell v. White Mts. Ins. Group, Ltd, 2 So. 3d 1041, 1047 (Fla. 4th DCA 2009). Interpreting section 501.204(1), the opinion in Davis v. Powertel, Inc., 776 So. 2d 971, 974 (Fla. 1st DCA 2000), states "a deceptive practice is one that is "likely to mislead" consumers.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

Client says "NO" (If selling Life Appointments jump to Life Script below)

"That's fine Mr. / Mrs. [Customer Last Name]; We'll just stay in touch if we come across something we think will be of interest to you, OK?"

Client says "OK"

SET AS A LEAD

Client says "NO"

Ok, just disregard the notice, should you ever have the need for a financial professional, please give us a call again.

Client says "YES"

This review will cover important contract features and make sure you are receiving all the benefits you are entitled to, as well as important tax law changes that could impact your income.

Do you have a pen and paper handy? I need you to write down some information. "[Agent Name] is the servicing agent that will be conducting your review. He / She is currently scheduling on [Date]. Would you like a Morning or an Afternoon appointment?"

AFTER THE APPOINTMENT IS SET

"Ok Ma'am / Sir, [Agent Name] will come right to your home for your review. He / She will be calling prior to his / her visit to introduce himself / herself. Just be sure you have a recent copy of your statement.

Re-verify the agents name and the date and time of the appointment. Thank you for calling.

APPOINTMENTS FOR LIFE INSURANCE

Do you have any other investments for which you are receiving a statement or have questions about?

Client says "NO"

Do you have any life insurance policies that you have held for 8 years or longer?

Client says "NO"

Ok, just disregard the notice, should you ever have the need for a financial professional, please give us a call again.

SET AS NOT INTERESTED

Client says "YES"

Do you have a pen and paper handy? I need you to write down some information. "[Agent Name] is the servicing agent in your area. He / She will be sitting down with you to make sure your policy is going to pay as expected and not be in danger of lapsing. He / She is currently scheduling on [Date]. Would you like a Morning or an Afternoon appointment?"

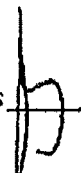
AFTER THE APPOINTMENT IS SET

"Ok Ma'am / Sir, [Agent Name] will come right to your home for your review. He / She will be calling prior to his / her visit to introduce himself / herself. Just be sure you have a recent copy of your statement.

Re-verify the agents name and the date and time of the appointment. Thank you for calling.

EXHIBIT A

Agent Initials



# Agent Acknowledgement

You the customer referred to herein as "You" "Your(s)" or "User" agrees as follows:

Immediately upon receipt of payment of fees, UNLIMITED FULFILLMENT SERVICES LLC will prepare and execute a mass mailing developed by the user targeted towards individuals who meet a demographic profile selected by the user; accept incoming responses from consumers according to an inbound call script developed by the user to screen those incoming responses for the purpose of making appointments or developing leads in accordance with the instructions issued by the user. The use of such materials and services is at the user's own risk. I also understand that a reasonable amount of undeliverable mail is to be expected during such mailing campaigns and that all undelivered mail will be returned to the address provided by the customer.

I warrant that I have not submitted to UNLIMITED FULFILLMENT SERVICES LLC:

- Materials that are unlawful, threatening, abusive, defamatory, obscene or which invade another person's privacy or further the commission or concealment of a crime;
- Materials that are the subject of, or which infringe upon, any patent, trademark, trade name, trade secret, copyright, right of publicity, moral right or other intellectual property right of another person or entity.

I, "User" have reviewed the above material and approve and instruct the use of such materials by UNLIMITED FULFILLMENT SERVICES LLC in performing marketing services on my behalf.

Signature: \_\_\_\_\_

*[Handwritten Signature]*

Date: \_\_\_\_\_

*2/10/11*

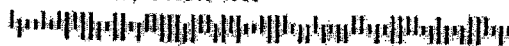
Scheduling Department

Andy Heygate



(Please see notice on reverse side)

T14 P1 \*\* 3088 \*\*\*\*\*AUTO\*\*3-DIGIT 339  
PHYLLIS BUSH  
5264 FAIRFIELD DR  
FORT MYERS, FL 33919-1908



Privacy Law Notice. This notice is provided in accordance with Federal Privacy Laws. The Policy of this agency is to protect the privacy rights of all consumers who respond to this notice. This agency DOES NOT POSSESS OR DISCLOSE NON-PUBLIC PERSONAL INFORMATION TO THIRD PARTIES IN ANY INSTANCE. If you choose to have an existing policy or contract reviewed by a licensed agent, that agent is also required to adhere to the state and federal consumer and privacy protection laws. Important information: This notice is being sent to you as a possible holder of an in-force annuity contract. This agency does not have a direct affiliation with the insurance carrier through which you are currently contracted. The agency is contracted with agents licensed to conduct insurance business in your state. This notice should be disregarded if you do not currently have an in-force annuity contract.

This communication is to inform you that you may have an annuity that has reached the end of its surrender period.

The end of a surrender period is a positive event that means an owner may cash in an annuity or make withdrawals without incurring a surrender charge. A surrender charge is a fee levied by an insurance company on an annuity contract for withdrawals before the end of the time set by the contract (the surrender period). Withdrawals may, however, still be subject to tax consequences.

Please contact our Scheduling Department to discuss your options.

(877) 836-2333

EXHIBIT B

4