

EXP07
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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

In re:
NEXUS SERVICES INC.,
Respondent.

NO. **19-2-22351-1 SEA**
ASSURANCE OF
DISCONTINUANCE
[CLERK'S ACTION REQUIRED]

I. INTRODUCTION

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Craig Rader and Marsha Chien, Assistant Attorneys General, files this Assurance of Discontinuance pursuant to the Consumer Protection Act (CPA), RCW 19.86.100. Nexus Services Inc. is a Georgia corporation, and through its subsidiary, Libre by Nexus, Inc. (collectively "Respondent") helps persons detained in immigration facilities, including Washington residents, by assisting with their release from civil detention, providing certain financial guarantees, and through services and support to ensure their appearance at court hearings and their compliance with the terms of performance bonds. Respondent's services are independent from federal immigration authorities and are not offered in concert with such authorities.

II. DEFINITIONS

2.1 "Co-Signer" means all individuals who guaranteed a Released Consumer's bond and either (1) contacted the Respondent in an attempt to secure the release of a friend or family member detained within the state of Washington or (2) contacted the Respondent from Washington in an attempt to secure the release of a friend or family member detained elsewhere.

2.2 "Past Due Program Fees" means monthly program fees that are due to Respondent for the Program Participant's release from detention for which the payment date has passed. Past Due Program Fees only include fees currently owed to Respondent, not fees previously forgiven or waived.

2.3 "Program Fees" means the recurring monthly charge by Respondent for participation in Respondent's services. Program Fees are distinct from Respondent's set-up fees or maintenance fees.

2.4 "Released Consumer" means all individuals who either (1) were detained in the state of Washington and contacted Respondent for its services, or (2) were detained elsewhere, but reside in the state of Washington, and contacted Respondent for its services.

2.5 "Program Participants" collectively refers to both the Released Consumer and any Co-Signer.

2.6 "Original Contract" shall mean the contract that included a fixed \$420 per month Program Fee that Respondent primarily used for new engagements with Program Participants until January 1, 2018.

2.7 "Revised Contract" shall mean the contract with variable Program Fees based on the amount of the Released Consumer's bond and a fixed payment period that Respondent

1 primarily used for new and existing engagements with Program Participants starting January 1,
2 2018.

3 III. ASSURANCE OF DISCONTINUANCE

4 3.1 On March 22, 2017 the Attorney General issued a Civil Investigative Demand to
5 Respondent pursuant to RCW 19.86.110. Respondent cooperated during the investigation and
6 willingly entered into this Assurance of Discontinuance.

7 3.2 The Attorney General deems that providing a written contract only in English
8 after advertising and communicating with potential Washington consumers in a language other
9 than English constitutes an unfair or deceptive act or practice in trade or commerce that violates
10 the Washington Consumer Protection Act, RCW 19.86.020. According to the Attorney
11 General's investigation, Respondent's Original Contract was only available in written form to
12 Program Participants in English, despite Respondent having advertised and communicated with
13 Program Participants in Spanish.

14 3.3 Without admitting liability, Respondent and its successors and subsidiaries agree
15 to not engage in the practice identified above. Respondent also agrees to fully comply with the
16 Consumer Protection Act (RCW 19.86). Respondent seeks to ensure that all immigrants,
17 including Program Participants who are monolingual Spanish speakers have access to its services
18 and contracts in audio formats in English and Spanish, as well as written contracts in both
19 languages.

20 3.4 To ensure program participants fully understand Respondent's Revised Contract
21 and are not deceived, Respondent further agrees to:

22 a. Provide written translations of Respondent's Revised Contract for
23 services in English and Spanish to Spanish-speaking Program Participants to all Program
24 Participants engaged on or after February 1, 2018;

1 b. Provide oral translations of Respondent's Revised Contract for services,
2 via telephonic interpreters in the Program Participant's primary language if that language is
3 neither English nor Spanish or if the Program Participant represents to Respondent that he/she
4 is illiterate;

5 c. Set forth in its Revised Contract with Program Participants the option to
6 make payments toward their immigration bond amount and to clarify which payments are
7 applied to the bond amount and which payments are not;

8 d. Prior to signing the Revised Contract, define and communicate to
9 Program Participants the maximum time period for which they may be obligated to make
10 monthly program payments for Respondent's services. (*e.g.*, To secure an immigration bond of
11 \$XX,XXX.XX a participant will be required to make up to XX monthly payments of \$XXX.XX
12 dollars unless their bond is cancelled and an I-391 form is issued).

13 e. Transfer all existing Program Participants who were first engaged on the
14 Original Contract to the Revised Contract by October 1, 2019 under the following terms:

15 i. If the existing Program Participant has already paid more Program
16 Fees than what would be required under the Revised Contract, then
17 Respondent will remove any GPS tracking device, will no longer
18 charge the Program Participant any Program Fee, and will reimburse
19 the Program Participant of any excess payment made;

20 ii. If the existing Program Participant is not reachable by October 1,
21 2019, Respondent will grant the Program Participant all the benefits
22 of the Revised Contract, thereby limiting the maximum number of
23 Program Fees the Program Participant owes and in some instances
24 reducing the Program Fees.

1 iii. In no instance shall application of the Revised Contract be applied to
2 the detriment of the Program Participant, such as increasing the
3 Program Fee above \$420 per month.

4 f. Provide the Attorney General's office with a list of all Program
5 Participants who entered into the Original Contract, including their last known addresses and
6 phone number so that the Attorney General's office may inform Program Participants of the
7 results of this Assurance of Discontinuance. Respondent represents that under no circumstances,
8 except those relating to personal safety and the safety of others, does Respondent voluntarily
9 provide information to federal immigration authorities. The Attorney General will take steps to
10 assure that personally identifying information (PII) of all Program Participants will be kept
11 confidential and not voluntarily shared with other agencies, including federal immigration
12 authorities except in such instances where provide this information is required by a court order or
13 State or Federal law.

14 g. Submit a report to the Attorney General within fourteen (14) days of October
15 1, 2019 that all Program Participants have been transferred to the Revised Contract or granted the
16 benefits of the revised contract, as provided under paragraph (e).

17 3.5 Respondent agrees that it will waive and not collect on any Past Due Program
18 Fees due prior to the date of entry of this Assurance of Discontinuance for any Program
19 Participants who initially signed the Original Contract. Respondent shall issue no public
20 statement(s) stating or otherwise inferring that the waiver of Past Due Program Fees under this
21 paragraph was undertaken voluntarily; however, Respondent may communicate to the Program
22 Participants about the waiver of the Past Due Program Fees provided under this Assurance of
23 Discontinuance.

24 3.6 This Assurance of Discontinuance is not, and may not, be considered an
25 admission of a violation by Respondent of any law of the State of Washington for any purpose;
26 however, Respondent acknowledges that proof of failure to comply with this Assurance of

1 Discontinuance shall be *prima facie* evidence of violations of RCW 19.86.020, thereby placing
2 upon the violator the burden of defending against the relief that the Attorney General may seek.

3 IV. RELEASE OF CLAIMS

4 4.1 By its execution of this Assurance of Discontinuance, the State releases Respondent
5 and its subsidiaries, from all civil claims that the Attorney General has or could have brought under
6 the Washington Law Against Discrimination, RCW 49.60.030, and the Consumer Protection Act,
7 RCW 19.86, arising from the investigation that is the subject of this Assurance of Discontinuance,
8 to include any action to recover damages, restitution, fines, or costs. Nothing in this Assurance of
9 Discontinuance shall be construed to create, waive, or limit any private right of action or any action
10 brought by any state agency other than the Attorney General's Office.

11 4.2 In the event that Respondent violates this Assurance of Discontinuance, this release
12 of claims becomes void with regard to Respondent, and nothing shall prevent the State from
13 enforcing RCW 19.86 and seeking permanent injunctive relief and recovery of costs, restitution,
14 and civil penalties against Respondent for any conduct covered by this Assurance of Discontinuance
15 prior to and after its execution by the parties.

16 V. PAYMENT TO STATE

17 5.1 Respondent shall pay the Attorney General of Washington \$158,800.00, as follows:
18 \$58,800.00 no later than September 16, 2019 and \$100,000.00 no later than October 1, 2019. Of
19 this amount, \$58,800.00 is to be used as restitution to Washington Program Participants who fully
20 paid all Program Fees due to Respondent under the Original Contract. In addition, the remaining
21 \$100,000.00 shall be payable to the Attorney General of Washington for recovery of its costs and
22 attorneys' fees in investigating this matter, future monitoring and enforcement of this Assurance
23 of Discontinuance, future enforcement of RCW 19.86, or for any lawful purpose in the discharge
24 of the Attorney General's duties at the sole discretion of the Attorney General. No part of any
25 payment shall be designated as a civil penalty, fine and/or forfeiture. Failure to pay the amounts
26 listed above shall constitute a violation of this Assurance of Discontinuance. After making

1 reasonable efforts to refund the money to any affected consumer, any amount of the \$58,800.00
2 that the State is unable to refund will revert to the State and be added to the any lawful purpose
3 funds. All payments shall be made by valid check, made payable to the "Attorney General - State
4 of Washington," and shall be delivered to the Office of the Attorney General, Attention: Margaret
5 Farmer, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104-3188.

6 VI. ADDITIONAL PROVISIONS

7 6.1 Under no circumstances shall this Assurance of Discontinuance, the name of the
8 State of Washington or the Office of the Attorney General, or any of its employees or
9 representatives be used by Respondent or by its officers, employees, representatives, or agents in
10 conjunction with any business activity of Respondent, except to the extent to refer to the issuance
11 of this Assurance of Discontinuance.

12 6.2 This Assurance of Discontinuance shall be binding on the Respondent and its
13 respective successors, officers, agents, servants, employees, and all other persons acting in
14 concert or participating with Respondent in conducting Respondent's business.

1 6.3 Nothing in this Assurance of Discontinuance shall be construed so as to limit or bar any
2 other person or entity from pursuing available legal claims or remedies against Respondent.

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4 APPROVED on this ____ day of 8/26, 2019.

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7 
8 _____
9 JUDGE/COURT COMMISSIONER

HENRY H. JUDSON

AUG 26 2019

COURT COMMISSIONER

8 Presented by:

9 ROBERT W. FERGUSON
10 Attorney General

11 
12 _____

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18 Agreed to and approved for entry by:

19 DAVIS WRIGHT TREMAINE LLP
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21 
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