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NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE COMMISSIONER  
OF INSURANCE

IN THE MATTER OF  
THE LICENSURE OF  
RANDALL and RICHARDS, INC.  
CA#111827 and #112486

VOLUNTARY SETTLEMENT  
AGREEMENT

NOW COME **Randall and Richards, Inc.**, its officers Randall Scott Frazee, John C. Wieland and Tracy Harding, and the North Carolina Department of Insurance [hereinafter "Department"] and hereby enter into the following Voluntary Settlement Agreement [hereinafter "this Agreement"].

WHEREAS, the Department has the authority and responsibility for the enforcement of the provisions of Article 70 of Chapter 58 of the General Statutes of North Carolina applicable to collection agencies and the collection agency business; and

WHEREAS, Randall and Richards, Inc. is an Arizona corporation with its principal place of business located in Tucson, Arizona. Randall and Richards, Inc. is a commercial debt collector which holds permits to operate as a collection agency in North Carolina; and

WHEREAS, this Agreement does not constitute an admission by Randall and Richards, Inc. of any fact or non-compliance with any state or federal law, rule or regulation. Randall and Richards, Inc. enters into this Agreement for settlement purposes only and denies the Department's allegations. This Agreement is made without any trial or adjudication of any issue of fact or law; and

WHEREAS, in February 2015, the Department received a copy of a January 14, 2015 cease and desist letter which was sent to Randall and Richards, Inc. by the attorney for a construction company located in Mecklenburg County, North Carolina [hereinafter, "the debtor" or "consumer"]. The letter alleged in part that Randall and Richards, Inc. had engaged in unlawful debt collection activity by contacting third parties regarding the debtor. A copy of a December 4, 2014 e-mail from a Senior Collection Specialist for "Anderson, Randall & Richards" to the debtor was enclosed with the cease and desist letter. In the December 4, 2014 e-mail, the Senior Collection Specialist informed the debtor, in part, that she was conducting a "Confidential Financial Investigation" with some of the debtor's "suppliers, vendors, property manager, etc.", and

**WHEREAS**, in response to the Department's written inquiries regarding Randall and Richards, Inc.'s contacts with third parties, Randall and Richards, Inc. provided its communications with the debtor's suppliers. Randall and Richards, Inc. further acknowledged that, in certain instances, as part of its collection process, it uses a vendor management tool which it described as a process in which its collection agents contact other vendors or suppliers of the debtor "as an investigative means to gather information about the debtor's pay practices when conducting business with their suppliers"; and

**WHEREAS**, N.C.G.S. § 58-70-105(1) provides that:

No collection agency shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following: (1) Any communication with any person other than the debtor or his attorney, except:

- a. With the permission of the debtor or his attorney;
- b. To persons employed by the collection agency, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information;
- c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor;
- d. For the sole purpose of locating the debtor, if no indication of indebtedness is made;
- e. Through legal process."

N.C.G.S. § 58-70-105(1)(Emphasis added); and

**WHEREAS**, the term "consumer" is defined under N.C.G.S. § 58-70-90(2) as "an individual, aggregation of individuals, corporation, company, association, or partnership that has incurred a debt or alleged debt"; and

**WHEREAS**, the Department contends that Randall and Richards, Inc.'s use of the "Vendor Tool" which involves contacting debtor's suppliers and vendors violates N.C.G.S. § 58-70-105(1); and

**WHEREAS**, Randall and Richards, Inc. contends that it did not violate N.C.G.S. § 58-70-105(1) by contacting the debtors' suppliers because it contends that: (a) the debtor provided consent to the creditor to contact third parties regarding its creditworthiness and to assess collectability in its credit application with the creditor and (b) the debtor gave its permission to the collection agency to contact third parties when it purportedly provided consent to the creditor to contact third parties; and

**WHEREAS**, the Department disagrees with Randall and Richards, Inc.'s contention that the debtor provided consent to the collection agency to contact third parties, including the debtors' suppliers; and

**WHEREAS**, Randall and Richards, Inc. further informed the Department that it ceased contacting third parties regarding the debtor after receiving the January 14, 2015 cease and desist request letter. Randall and Richards, Inc. further represented to the Department that it voluntarily ceased its practice of contacting third parties regarding North Carolina debtors in April 2015; and

**WHEREAS**, Randall and Richards, Inc. did not use its true name and permit number in the December 4, 2014 e-mail which it sent to the debtor. Randall and Richards, Inc. subsequently confirmed to the Department that it has used its permit number in all letters to North Carolina debtors. However, Randall and Richards, Inc. informed the Department that since it acquired The Andersen Group Worldwide, LLC in 2014, it has been doing business as Andersen, Randall & Richards. Pursuant to N.C.G.S. § 66-68, Randall and Richards, Inc. filed a Certificate of Assumed name with the Wake County Register of Deeds, but did not file a Certificate of Assumed name in each county in which the collection agency conducts business. Randall and Richards contends, however, that it did disclose that it was using an assumed name in its application to the Department for a permit for its Metairie, Louisiana location; and

**WHEREAS**, N.C.G.S. § 58-70-50 provides that: "All collection agencies licensed under this Part to do the business of a collection agency in this State, shall in all correspondence with debtors use stationery or forms which contain the permit number and the true name and address of such collection agency." N.C.G.S. § 58-70-50; and

**WHEREAS**, N.C.G.S. § 58-70-110 provides, in pertinent part, that:

No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following: (1) Communicating with the consumer other than in the name of the person making the communication, the collection agency and the person or business on whose behalf the collection agency is acting or to whom the debt is owed; (2) Failing to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector; . . ."

N.C.G.S. § 58-70-110 (Emphasis added); and

**WHEREAS**, the Department contends that Randall and Richards, Inc. violated N.C.G.S. § 58-70-50 and N.C.G.S. § 58-70-110(1) by failing to use its true name in written correspondence and other communications with North Carolina debtors; and

**WHEREAS**, Randall and Richards, Inc. contends that it substantially complied with the true name requirements of N.C.G.S. § 58-70-50 and N.C.G.S. § 58-70-110(1) because its true name, "Randall & Richards", was expressly referenced with the body of its written correspondence with consumers; and

**WHEREAS**, Randall and Richards, Inc., has revised all of its North Carolina form written communications to reflect its true name, Randall and Richards, Inc. and has taken other corrective measures as necessary to ensure that it is in compliance with N.C.G.S. § 58-70-50 and N.C.G.S. § 58-70-110(1) since April 16, 2015; and

**WHEREAS**, some of Randall and Richards, Inc.'s form collection letters used to collect debts from North Carolina consumers contain representations that the consumer may be liable for collection costs if the past due balance is not paid and the account is then referred to collections; and

**WHEREAS**, the Department contends that such correspondence violates N.C.G.S. § 58-70-110 since N.C.G.S. § 58-70-115(2) prohibits a collection agency from attempting to collect all or any portion of its fees for services rendered, regardless of whether the creditor's contract with the debtor contains a provision authorizing the creditor to recover collection fees from the debtor; and

**WHEREAS**, Randall and Richards, Inc. contends that such correspondence does not violate N.C.G.S. §58-70-110 or N.C.G.S. §58-70-115(2) if the debtor's contract with the creditor authorizes the creditor to recover collection fees from the debtor; and

**WHEREAS**, the Department contends that certain of the form collection letters which Randall and Richards, Inc. uses to collect debts from North Carolina consumers do not contain the disclosures required pursuant to N.C.G.S. § 58-70-110(2); and

**WHEREAS**, in order to address the Department's above referenced concerns, Randall and Richards, Inc. has reviewed and revised its North Carolina form collection letters used for collection of debts in order to ensure that it provides the disclosures required by N.C.G.S. § 58-70-115(2) and to delete representations regarding the consumer's potential liability for collection costs. Said letters have been submitted to the Department for its approval prior to the entry of this Agreement and the Department has reviewed said letters and is satisfied that the letters as submitted comply with the disclosures required by N.C.G.S. §58-70-115(2) and have deleted representations regarding the consumer's potential liability for collection costs; and

**WHEREAS**, the Department has requested that Randall and Richards and its officers enter into this agreement to permanently cease and desist use of the vendor management tool in North Carolina, remediate its communications with debtors to insure compliance with N.C.G.S. §58-70-90 et seq. and to pay a civil penalty in the amount of two thousand dollars (\$2,000.00) in lieu of administrative action against Randall and Richards, Inc.'s collection agency permits; and

**WHEREAS**, in consideration of Randall and Richards, Inc.'s agreement to the terms stated in this Agreement, the Department agrees not to pursue other regulatory action against Randall and Richards, Inc. for the violations alleged herein; and

**WHEREAS**, pursuant to N.C.G.S. § 58-2-70(g), the Commissioner of Insurance and the Department have the express authority to negotiate “a mutually acceptable agreement with any person as to the status of the person’s license or certificate or as to any civil penalty or restitution”; and


**WHEREAS**, the parties to this Agreement have reached a mutually agreeable resolution of this matter as set out in this Agreement.

**NOW THEREFORE**, in consideration of the promises and agreements set out herein, the Department, Randall and Richards, Inc. and its officers hereby agree to the following:

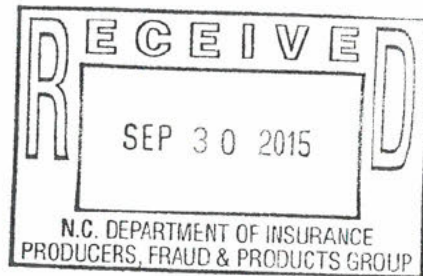
1. Randall and Richards, Inc. shall pay a civil penalty of two thousand dollars (\$2000.00) to the Department. The form of payment shall be via certified check, cashier’s check or money order. The check or money order for the payment shall be payable to the “North Carolina Department of Insurance.” Randall and Richards, Inc. shall remit payment or confirmation of payment by certified mail, return receipt requested, to the Department along with a copy of this signed agreement on or before October 17, 2015 to the Department in care of its counsel, Assistant Attorney General Anne Kirby. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.
2. Randall and Richards, Inc. shall cease and desist its use of the vendor management tool in North Carolina and otherwise comply with all provisions of Article 70 of Chapter 58 of the General Statutes of North Carolina and Title 11 of the North Carolina Administrative Code that are applicable to it.
3. This Agreement shall be binding upon Randall and Richards, Inc., its officers, agents, subsidiaries and subdivisions, as well as its successors, assigns and/or purchasers of all or substantially all of Randall and Richards, Inc.’s assets.
4. This Agreement does not in any way affect the Department’s disciplinary power in any future or follow-up examination of Randall and Richards, Inc. or in any future cases or complaints involving Randall and Richards, Inc. In the event that Randall and Richards, Inc. fails to comply with this Agreement or otherwise fails to comply with the laws and rules applicable to Randall and Richards, Inc., the Department may take any administrative or legal action it is authorized to take.
5. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner of Insurance. Randall and Richards, Inc. understands that N.C.G.S. § 58-70-40(c)(6) provides that a collection agency’s permit may be revoked if a partner or proprietor or officer of the collection agency has violated or refused to comply with an Order of the Commissioner.

6. Randall and Richards, Inc. enters into this Agreement freely and voluntarily and with knowledge of its right to have an administrative hearing on this matter. Randall and Richards, Inc. has consulted with an attorney prior to entering into this Agreement.
7. This Agreement, when finalized will be a public record and will not be treated as confidential. Any and all permits issued by the Department to Randall and Richards, Inc. shall reflect that Regulatory Action has been taken against those permits following the execution of this Agreement. The Department may disclose the contents of this Agreement to third parties upon request or pursuant to any law or policy providing for such disclosure.
8. This Agreement shall become effective when signed by the parties.
9. By signing below, Randall and Richards, Inc. and its officers agree to comply with all of the terms of this Agreement.


**North Carolina Department of Insurance**

By:   
Angela K. Ford  
Senior Deputy Commissioner

Date: October 1, 2015




**Randall and Richards, Inc.**

By:   
Randall S. Frazee  
as President of Randall & Richards, Inc.


Date: 9/22/15

**Randall and Richards, Inc.**

By:   
John C. Wieland  
as Secretary of  
Randall & Richards, Inc.

Date: 9/22/15

**Randall and Richards, Inc.**

By:   
Tracy Harding  
as Controller of Randall & Richards, Inc.

Date: 09.22.2015