



OFFICE OF ATTORNEY GENERAL  
CONSUMER PROTECTION AND ANTITRUST DIVISION  
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STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.  
WAYNE STENEHJEM,  
ATTORNEY GENERAL,

Petitioner,

**CEASE AND DESIST ORDER,  
NOTICE OF CIVIL PENALTY  
AND NOTICE OF RIGHT  
TO REQUEST A HEARING**

-vs-

**UST DEVELOPMENT, INC.**, doing business  
as **UST, U S Telcom, and US Telecom;**  
**UST DRY UTILITIES, INC.;**  
**USTDEVELOPMENT.COM;**  
**US-TELECOM.COM;** and  
**DAVID BELL**, Individually

Respondents.

CPAT 120040.001

.....  
**To the individual and entity identified below (hereinafter "Respondents"):**

**UST Development, Inc.**  
**ustdevelopment.com**  
**us-telecom.com**  
305 N. Sacramento Ave.  
Ontario, CA 91764-4423

and

PO Box 970  
La Verne, CA 91750-0970

800-217-9437  
626-205-1133  
909-390-2700  
800-818-9777

626-256-8901 (fax)  
626-205-1133 (fax)

**UST Dry Utilities, Inc.**  
2001 E. Elm St.  
Ontario, CA 91761-7619

and

1967 S. Mrytle Ave  
Monrovia, CA 91016-4854  
info@ustdryutilities.com

**David Bell**  
305 N. Sacramento Ave.  
Ontario, CA 91764-4423

(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

## **BACKGROUND**

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law." It is necessary and appropriate in the public interest and for the protection of consumers to restrain Respondents' unlawful acts or practices.

2. Respondents are either doing business under some or all of the names identified above or, in the alternative, are engaged with those persons in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of North Dakota's Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the

agreement and the agreement has proximately caused damage to North Dakota consumers.

3. UST Development, Inc., doing business as UST, U S Telecom, and US Telecom, (hereinafter "UST") is a California corporation with its principal place of business at 305 N. Sacramento Ave., Ontario, CA 91764. UST has used the mailing address of PO Box 970, La Verne, CA 91750. UST Dry Utilities, Inc. is a California corporation with its principal place of business at 2001 E. Elm Ct., Ontario, CA 91761. David Bell (hereinafter "Bell") is the President of UST. Respondents are not registered with the North Dakota Secretary of State as a foreign business corporation. Respondents are doing business as and operate the websites named ustdevelopment.com and us-telecom.com.

4. Respondents have made untrue, deceptive and misleading representations, and/or have made or engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in violation of N.D.C.C. ch. 51-15, the Consumer Fraud Law. Respondents have misrepresented to consumers that they owed Respondents payment for goods not yet ordered and for services not yet performed or ordered.

5. The Attorney General has received information alleging that Respondents have engaged in the deceptive practice of mailing what could reasonably be interpreted as a bill or invoice to solicit payment of money for goods and services not yet performed or ordered. The deceptive invoice has been mailed to numerous business and public entities in North Dakota in an attempt to deceive consumers into believing they owe money to Respondents. Respondents have requested payment of \$425.00 for "Telecom Maintenance Agreement." However, the consumers receiving the invoice

have never contracted with Respondents for any goods or services. On February 15, 2012 a representative of the Attorney General's Office attempted to discuss Respondents deceptive mailings with UST's President David Bell, but Mr. Bell was not available. Mr. Bell has not responded to the Attorney General's Office.

6. Respondents mailings are prohibited by N.D.C.C. § 51-15-02.2 which provides that it is a deceptive practice to "send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered." After reviewing the documentation provided by North Dakota consumers, it is obvious that consumers could reasonably interpret the mailings as a bill or invoice.

7. Each of the Respondents are engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of North Dakota's Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

8. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. See *e.g. Zimprich v. North Dakota Harvestore Sys., Inc.*, 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946)("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur., 440, this rule is stated, 'It is a conceded general rule that all

persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties."").

9. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D. 1983)(quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964))("... but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.)"). The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). See also *Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

#### ORDER

**NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents and their agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) advertising, soliciting, or selling merchandise to North Dakota consumers; 2) advertising, soliciting, or selling merchandise to North Dakota consumers through the use of mailings that could reasonably be interpreted to be a bill, invoice, or a statement of account due in violation of N.D.C.C. § 51-15-02.2; 3) soliciting payment

from North Dakota consumers for goods that have not yet been ordered or for services that have not yet been ordered or performed; 4) soliciting using untrue, deceptive or misleading representations to consumers or engaging in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that consumers rely thereon, in violation of N.D.C.C. § 51-15-02; and 5) soliciting or accepting from consumers any advance payments or consumer deposits in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3). Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for the sale of telecommunication services or merchandise, as defined by N.D.C.C. § 51-15-01(3), and **CEASE AND DESIST** from taking, collecting, charging, billing or accepting any payment from any North Dakota consumers, including, but not limited to, cash, check, direct credit, debits or withdrawals from North Dakota consumers' credit cards, debit cards or bank accounts for any past or future sale of merchandise or other services related to the sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), in the State of North Dakota.

**YOU ARE NOTIFIED** that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

#### **NOTICE OF CIVIL PENALTIES**

**YOU ARE FURTHER NOTIFIED** that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may

result in additional civil penalties of not more than \$5,000 per violation. Such penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees, and attorney fees pursuant to N.D.C.C. ch. 51-15 or any other applicable statute. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

### NOTICE OF RIGHT TO REQUEST HEARING

**YOU ARE NOTIFIED** that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

Dated this 17th day of February, 2012.

#### STATE OF NORTH DAKOTA

Wayne Stenehjem  
Attorney General

BY:



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