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To: Legislative Committee on Joint Finance

From: Charlotte Gibson
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Subject: Request for approval of four proposed plans under Wis. Stat. § 165.08

This memorandum seeks your Committee's review of four proposed plans of resolution. We would like to have you consider these plans at your October meeting so that we can expedite the agreed-upon injunctive and financial relief.

1. *State of Wisconsin v. N.C.W.C., Inc. (Dane County Circuit Court, Case No. 2022-CX-7)*

This matter involves allegations that New Jersey-based N.C.W.C., Inc. violated Wisconsin telemarketing laws when marketing extended vehicle service plans (sometimes called extended auto warranties) to Wisconsin consumers. The State's complaint alleges that N.C.W.C. made calls to Wisconsin telephone numbers that were listed on the Do-Not-Call registry. The complaint further alleged that N.C.W.C. is liable for violations of Wisconsin telemarketing laws by its more than 40 third-party agents, none of which was registered with the State to conduct telemarketing, and which placed calls on N.C.W.C.'s behalf, including many calls to numbers on the Do-Not-Call registry.

The State alleges two violations.

First, the State alleges that N.C.W.C. failed to comply with Wis. Stat. § 100.52 and Wis. Admin. Code § ATCP 127.81, which require any person who telemarkets to Wisconsin to first be registered as a telephone solicitor with DATCP. The State's civil complaint alleges that N.C.W.C. made telemarketing calls to Wisconsin residents without being registered as a solicitor. Remedies for these violations include appropriate injunctive relief, *see* Wis. Stat. § 100.20(6), and a civil forfeiture of \$100 per violation. *See* Wis. Stat. § 100.52(10).

Second, the State alleges that N.C.W.C. violated Wis. Stat. § 100.52 and Wis. Admin. Code § ATCP 127.82 by making telemarketing calls to Wisconsin telephone numbers that were on the Do-Not-Call registry. The State further alleges that N.C.W.C. is liable for calls made by its third-party agents to Wisconsin telephone numbers on the Do-Not-Call registry, as well. Remedies for this violation include appropriate injunctive relief, see Wis. Stat. § 100.20(6), and a civil forfeiture of \$100 per violation. See Wis. Stat. § 100.52(10).

The parties have negotiated a consent judgment that includes a permanent injunction. The permanent injunction requires N.C.W.C. to immediately cease all unregistered telemarketing activities to Wisconsin. It further requires N.C.W.C. to take immediate steps to stop its third-party agents from conducting unregistered telemarketing activities to Wisconsin. Those steps include making compliance with Wisconsin telemarketing rules a material condition of all N.C.W.C.'s vendor contracts going forward. The injunction includes a three-year monitoring period with reporting requirements.

The negotiated consent judgment also includes a judgment for civil forfeiture and assessments of \$350,000. N.C.W.C. is required to pay \$200,000 of that amount over five months following entry of the consent judgment. The remaining \$150,000 is conditional and will be stayed for three years. If N.C.W.C. is shown to have violated any provision of the injunction during the three-year period, then the judgment provides that the additional \$150,000 becomes immediately due.

The \$200,000 includes a civil forfeiture of \$131,470.06 under Wis. Stat. § 100.26(6); a penalty surcharge of \$34,182.22 under Wis. Stat. § 757.05; a consumer protection surcharge of \$32,867.52 under Wis. Stat. § 100.261; a jail surcharge of \$1,314.70 under Wis. Stat. § 302.46; a crime laboratories and drug enforcement surcharge of \$26.00 under Wis. Stat. § 165.755; a court fee of \$50.00 under Wis. Stat. § 814.63; a court support services surcharge of \$68.00 under Wis. Stat. § 814.85; and a justice information system surcharge of \$21.50 under Wis. Stat. § 814.86). N.C.W.C. will pay \$11,225.05 to cover DOJ's and DATCP's costs and attorney's fees in accordance with Wis. Stat. §§ 93.20 and 100.263.

2. State of Wisconsin and American Tax Solutions.

This pre-suit matter involves allegations that American Tax Solutions, a business based in California, sent thousands of illegal mailers to individual Wisconsin consumers as part of an effort to sign up consumers for its services, which purport to

assist consumers in resolving outstanding state and federal tax judgments. As a result of these mailers, American Tax signed up more than 40 Wisconsin consumers for its “tax resolution” services.

The State alleges two violations.

First, the State alleges that American Tax violated Wis. Admin. Code §§ ATCP 127.30–127.46¹ by sending mail solicitations to Wisconsin consumers that failed to identify American Tax as the sender; failed to disclose that the seller was offering or promoting the sale of consumer services and/or the nature of the services being promoted; used fictitious names; misrepresented that American Tax was affiliated with, or endorsed by, a government or government agency; misrepresented American Tax’s identity, affiliation, location, and/or characteristics; and misrepresented the nature or purpose of the mail solicitations. The mailers in question, the State alleges, were designed to look like official government notices threatening tax enforcement actions (e.g., wage or benefit garnishment, property seizure) so as to induce consumers to call the listed telephone number which connected to American Tax’s sales representatives. Remedies for these violations include consumer restitution and other appropriate injunctive relief, *see* Wis. Stat. § 100.20(6), and a civil forfeiture of no less than \$100 and no more than \$10,000 for each violation, *see* Wis. Stat. § 100.26(6).

Second, the State alleges that American Tax was operating an Adjustment Service Company, as defined under Wis. Stat. § 218.20, and that American Tax was not properly licensed to engage in such activities in Wisconsin. Possible remedies for this violation include appropriate injunctive relief and rescission of any unlawful actions. *See* Wis. Stat. § 220.04(10).

The parties have negotiated a consent judgment that requires American Tax to pay a total of \$328,950. The monetary judgment consists of \$119,077.43 to provide complete refunds to all of American Tax’s Wisconsin consumers,² in accordance with Wis. Stat. § 100.20(6); \$196,872.57 in forfeitures and assessments (made up of a civil forfeiture of \$129,412.55 under Wis. Stat. § 100.26(6); a penalty surcharge of

¹ Wisconsin Admin. Code ch. ATCP 127 is a general order issued by the Department of Agriculture, Trade and Consumer Protection under Wis. Stat. § 100.20, which prohibits unfair trade practices.

² Prior to finalizing the settlement agreement, American Tax had already paid roughly \$21,550 to refund some Wisconsin consumers.

\$33,647.26 under Wis. Stat. § 757.05; a consumer protection surcharge of \$32,353.13 under Wis. Stat. § 100.261; a jail surcharge of \$1,294.13 under Wis. Stat. § 302.46; a crime laboratories and drug enforcement surcharge of \$26 under Wis. Stat. § 165.755; a court fee of \$50 under Wis. Stat. § 814.63; a court support services surcharge of \$68 under Wis. Stat. § 814.85; a justice information system surcharge of \$21.50 under Wis. Stat. § 814.86); and (3) \$13,000 to cover DOJ's and DATCP's costs and attorney's fees in accordance with Wis. Stat. §§ 93.20 and 100.263. Under the terms of the agreement, American Tax will pay the \$115,127.43 in consumer refunds and the costs and attorney's fees within 30 days of entry of the consent judgment. The forfeiture payments will be spread out over two years and paid in four equal installments.

The consent judgment also includes injunctive relief. The judgment permanently bars American Tax from (1) sending mail solicitations to Wisconsin and (2) offering any services to Wisconsin residents, or accepting payment from Wisconsin residents for such services. Under the judgment, American Tax will provide any services it has already agreed to provide to its existing Wisconsin customers free of charge. As part of the resolution, American Tax will send notice of the consent judgment to all of its Wisconsin customers to inform them of the terms of the agreement and their rights thereunder.

3. State of Wisconsin and US Automotive Protection Services, LLC

This pre-suit matter involves allegations that Missouri-based US Automotive Protection Services, LLC violated Wisconsin direct-mail marketing laws when marketing vehicle service plans (sometimes called extended auto warranties) to Wisconsin consumers. The State alleges that US Auto's mail solicitations failed to identify the name of the principal seller, as required by law. The State also alleges that US Auto's mail solicitations were designed to mislead consumers to think that US Auto was the provider of their existing vehicle warranty or was affiliated with that provider. The State further alleges that US Auto's mail solicitations were designed to create a false sense of urgency, misleading consumers to think that their existing warranty coverage was about to expire or that the sales offer was about to expire.

The state alleges three legal violations.

First, the state alleges that US Auto failed to comply with Wis. Admin. Code ATCP § 127.32, which require all sellers using direct mail solicitations to identify the name

of the seller, which US Auto did not always do. Remedies for these violations include appropriate injunctive relief, see Wis. Stat. § 100.20(6), and a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation. *See* Wis. Stat. § 100.26(6).

Second, the State alleges that US Auto violated Wis. Admin. Code ATCP § 127.44 by making misrepresentations in mail solicitations. Remedies for this violation include appropriate injunctive relief, see Wis. Stat. § 100.20(6), and a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation. *See* Wis. Stat. § 100.26(6).

Third, the State alleges that US Auto violated Wis. Stat. § 100.18(1) by making misrepresentations to its prospective customers. Remedies for this violation include appropriate injunctive relief, Wis. Stat. § 100.18(11)(d), and a civil forfeiture of not less than \$50 nor more than \$200 for each violation. *See* Wis. Stat. § 100.26(4).

The parties have negotiated a consent judgment that includes a permanent injunction prohibiting US Auto from using certain words and phrases that the company previously used to create the misleading and deceptive impressions. It also requires US Auto to fully identify itself in any future mail solicitations.

The consent judgment also includes a judgment for civil forfeiture and mandatory court surcharges and assessments of \$200,000. US Auto is required to pay \$75,000 of that amount over three months following entry of the consent judgment. The remaining \$125,000 will be stayed for three years. If the State shows the Court that US Auto has violated any provision of the injunction during the three-year period, then the judgment provides that the additional \$125,000 becomes immediately due. If there has been no violation of the injunction during the three-year period, then the remainder of the judgment is released.

The \$75,000 includes a civil forfeiture of \$49,208.22 under Wis. Stat. § 100.26(6); a penalty surcharge of \$12,794.14 under Wis. Stat. § 757.05; a consumer protection surcharge of \$12,302.06 under Wis. Stat. § 100.261; a jail surcharge of \$492.08 under Wis. Stat. § 302.46; a crime laboratories and drug enforcement surcharge of \$39.00 under Wis. Stat. § 165.755; a court fee of \$75.00 under Wis. Stat. § 814.63; a court support services surcharge of \$68.00 under Wis. Stat. § 814.85; and a justice information system surcharge of \$21.50 under Wis. Stat. § 814.86. US Auto will also pay \$4,000 to reimburse DOJ's and DATCP's costs and attorney's fees in accordance with Wis. Stat. §§ 93.20 and 100.263.

4. United States of America and State of Wisconsin v. Container Life Cycle Management, LLC

This matter involves allegations that Container Life Cycle Management, LLC (CLCM) violated Wisconsin's air laws at its Oak Creek and St. Francis facilities. Specifically, the State alleges that at the Oak Creek facility, CLCM: (1) emitted particulate matter from the interior and exterior spray booths in excess of its permit limits from March 28, 2017, through August 6, 2017; and (2) failed to maintain complete logs for inspections of the spray booths, as required by its permit, on multiple occasions between January 2016 and September 29, 2017.

The State alleges that at the St. Francis facility, CLCM: (1) failed to use filters in its spray booth that met the control efficiency for particulate matter required by its permit from March 22, 2017, through August 7, 2017; (2) exceeded the opacity limit in its permit and Wis. Admin. Code § NR 431.05 on September 21, 2017; (3) failed to maintain or maintained incomplete logs for inspections of the wet scrubber, as required by its permit, from January 2016 through February 2017; (4) failed to achieve 85 percent control of volatile organic compound emissions from the wash process lines in violation of Wis. Admin. Code § NR 424.03(2)(b) since around March 9, 2015; (5) began construction on a major stationary source without first complying with the requirements in Wis. Admin. Code §§ NR 405.08 through 405.16 in violation of Wis. Admin. Code § NR 405.07(1) around March 2015; and (6) emitted objectionable odors in violation of Wis. Admin. Code § NR 429.03(1) on November 2, 2015, June 5, 2018, and from April 2016 through February 2017.

The State alleges that at the Oak Creek, St. Francis, and Milwaukee facilities, CLCM: (1) stored hazardous waste without a license in violation of Wis. Stat. § 291.25(2)(b) since March 2017; (2) failed to make, or to make accurate, hazardous waste determinations for solid wastes that it generated in violation of Wis. Admin. Code § NR 662.011 on multiple occasions since 2017; and (3) failed to keep hazardous waste determinations in violation of Wis. Admin. Code § NR 662.040(3) (renumbered to Wis. Admin. Code § NR 662.011(6)) in February and March 2017. At the Oak Creek facility, the State alleges that CLCM also treated hazardous waste without a license in violation of Wis. Stat. § 291.25(2)(b) since March 2017.

Wisconsin Stat. ch. 285 governs air pollution. Wisconsin Stat. § 285.60(7) requires a person who obtains an air permit from DNR to comply with all terms and conditions of that permit. The State alleges that CLCM violated terms of its air permits as well as Wis. Admin. Code §§ NR 431.05, 424.03(2)(b), 405.07(1), and 429.03(1). Penalties for violations

of Wis. Stat. ch. 285 and rules or permits issued pursuant to that chapter are specified in Wis. Stat. § 285.87(1).

Wisconsin Stat. ch. 291 governs the generation, treatment, storage, and disposal of hazardous waste. The State alleges that CLCM violated Wis. Stat. § 291.25(2)(b) and Wis. Admin. Code §§ NR 662.011 and 662.040(3) (renumbered to Wis. Admin. Code § NR 662.011(6)). Penalties for violations of Wis. Stat. ch. 291 and rules issued pursuant to that chapter are specified in Wis. Stat. § 291.97(1). Wisconsin Stat. § 291.97(3) authorizes a court to grant the Wisconsin Department of Justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees.

The United States will file a separate complaint with violations that it alleges CLCM committed. The United States, the State of Wisconsin, and CLCM have agreed to an overarching consent decree to resolve the violations alleged by both plaintiffs.

The negotiated consent decree will include a total monetary penalty of \$1.65 million. The United States will receive \$800,000 of the penalty. The State will receive \$850,000. This includes \$544,217.69 in forfeitures pursuant to Wis. Stat. §§ 285.87(1) and 291.97(1), a 26 percent penalty surcharge of \$141,496.60 pursuant to Wis. Stat. § 757.05, a 20 percent environmental surcharge of \$108,843.54 pursuant to Wis. Stat. § 299.93(1)(b), a 1 percent jail surcharge of \$5,442.17 pursuant to Wis. Stat. § 302.46(1), and attorney fees of \$50,000 pursuant to Wis. Stat. § 291.97(3).

CLCM has agreed to comply with a container management plan that specifies how CLCM must review, store, characterize, and dispose of incoming containers that contain hazardous waste. The container management plan will govern CLCM's handling of containers for two years. For the remainder of the consent decree, CLCM must continue reporting to the United States and the State regarding any containers that it receives that are found to contain hazardous waste.

At the St. Francis facility, CLCM has installed a regenerative thermal oxidizer to treat its air emissions. CLCM must install additional capture for volatile organic compound emissions from the wash process lines and then complete testing to verify that the facility is controlling at least 85 percent of the volatile organic compound emissions from these lines.

At the Oak Creek facility, CLCM is required to monitor when the drum reclamation furnace is operating and comply with limits for particulate matter and volatile organic

compound emissions. CLCM is also required to test the furnace to verify compliance with these limits.

CLCM must submit permit applications to the Wisconsin Department of Natural Resources to incorporate requirements in the consent decree into air permits for the St. Francis and Oak Creek facilities.

The consent decree also provides for stipulated penalties if CLCM fails to timely comply with the requirements in the decree.