

1 TERRY GODDARD  
Attorney General  
2 Firm Bar No. 14000

3 MARIO URRUTIA, State Bar No. 021623  
Assistant Attorney General  
4 1275 West Washington Street  
Phoenix, Arizona 85007  
5 Telephone: (602) 542-3702  
FAX: (602) 542-4377  
6 Attorneys for Plaintiff  
Consumer@azag.gov

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF MARICOPA**  
9

10 State of Arizona, *ex rel.* TERRY )  
11 GODDARD, Attorney General, ) No. CV2005-016184  
12 Plaintiff, ) **CONSENT JUDGMENT**  
13 v. )  
14 CONSTRUCTION STAFFING )  
15 SERVICES, LLC, an Arizona corporation; )  
and ROBERT DEFIBAUGH, individually, )  
16 Defendants. )  
17 )  
18 )

19 The State of Arizona having filed a complaint alleging violations of the Arizona  
20 Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, and Defendants, having been duly served  
21 with a copy of the Summons and Complaint; having been fully advised of the right to  
22 trial in this matter and having waived same; having admitted the jurisdiction of the Court  
23 and having admitted that the following findings of fact are true and conclusions of law  
24 are correct; and having consented to the entry of this judgment; the Court makes the  
25 following findings of fact and conclusions of law and enters the following orders.  
26

**FINDINGS OF FACT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1. Plaintiff is the State of Arizona, *ex rel.*, Terry Goddard, the Attorney General, who is authorized pursuant to A.R.S. § 44-1521 *et seq.* to maintain this action.

2. Defendant Construction Staffing Services, L.L.C. (“CSS”) is an Arizona corporation principally located at 8931 N 7th Street, Phoenix, AZ 85020.

4. Defendant Robert Defibaugh resides in Maricopa County, Arizona. Mr. Defibaugh is an officer of CSS, and is named individually and as a representative of CSS.

5. CSS has an office at 917 W. Jefferson Street, Phoenix, Arizona 85007, which is in the downtown Phoenix area. CSS uses a roving shuttle to offer temporary employment to homeless people and others in the vicinity.

6. Generally, these workers are taken to the CSS office as early as three in the morning to wait for a job opening. Other workers arrive separately as well. They are typically notified later in the morning of an opening, with the CSS shuttle providing transportation to and from the work site. CSS subsequently charges the workers a \$5.00 transportation fee that is deducted from their pay.

7. After the work was completed, CSS gave the option of being paid by check or in cash. There was, however, a mandatory check cashing fee of one dollar and the remaining change per paycheck. So, for example, if the worker earned \$42.75 for that day, the deduction would be \$1.75.

8. Additionally, the written agreement between CSS and their employer clients states that “[c]lient Agrees (sic) that it may not hire a CSS employee for the first 90 days of an employee’s assignment to the Client.”

9. The CSS payment deductions violate Arizona's Consumer Fraud Act and Check Cashers Act, while the permanent employment restriction violates Arizona’s Day Labor Service Agency statute.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CONCLUSIONS OF LAW**

10. A.R.S. § 44-1362(D) provides: “[a] check casher operating within the office of a labor pool, or the owner or operator of a labor pool, shall not charge a day laborer for cashing a check that is issued by the labor pool.”

11. Under A.R.S. § 44-1362(E), “Any act or practice in violation of this article is an unlawful act or practice under § 44-1522. The attorney general may investigate and take appropriate action as prescribed in chapter 10, article 7 of this title.”

12. Chapter 10, Article 7 is the Consumer Fraud Act, A.R.S. § 44-1521 et seq. Since the enactment of A.R.S. § 44-1361 et seq., on July 18, 2000 to the present, each time CSS retained a fee from an Arizona employee to receive their pay in cash, CSS violated the Arizona Consumer Fraud Act.

13. Defendant’s acts and practices as set forth in the foregoing findings of facts and in the State’s complaint, constitute deceptive acts and practices, fraud, false pretenses, false promises, misrepresentations and the concealment, suppression or omission of material facts with the intent that others rely thereon, in violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*, and the Check Cashers Act, A.R.S. §44-1361, *et seq.*

14. Defendant’s acts set forth in the foregoing findings of facts were at all times wilful as defined by A.R.S. §44-1531(B).

**ORDER**

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The Defendants are permanently enjoined from engaging in any misrepresentations, deceptive acts, practices, false promises, concealments, suppressions and omissions in the advertisement and sale of merchandise in, into or from Arizona in violation of A.R.S. § 44-1521, et seq.

...

- 1           2.     Defendants are further permanently enjoined from:
- 2                 a.     Charging a fee for cashing employee checks, either directly or
- 3 indirectly;
- 4                 b.     Restricting the right of a day laborer to accept a permanent position
- 5 with a third party employer to whom the day laborer has been referred to for work or
- 6 restrict the right of a third party employer to offer employment to a day laborer.
- 7                 c.     Charging any fee that brings an employee's gross pay below State
- 8 and Federal minimum wage.
- 9           3.     The State is awarded judgment against the Defendants for civil penalties and
- 10 attorney's fees and costs in the sum of \$10,000.00. The total amount is due and payable
- 11 to the State of Arizona, Office of the Attorney General, by cashier's check or money
- 12 order on or before October 21, 2005. The \$10,000.00 shall be deposited into the
- 13 Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01.
- 14           4.     Interest at the statutory rate will accrue on all monies owed pursuant to
- 15 paragraph "3." above and which have not been paid by the dates cited therein.
- 16           5.     Failure to pay any and all sums ordered hereunder as and when due shall
- 17 constitute a default. Upon default, any remaining balance owed and unpaid shall be
- 18 accelerated and shall become immediately due and payable in full, without notice or
- 19 demand. Payment of all accrued interest shall be ordered paid at the time of payment of
- 20 the outstanding balance. Default will be cured only when both the outstanding balance
- 21 and accrued interest are paid in full.
- 22           6.     Nothing in this Consent Judgment shall be construed as approval by the
- 23 Attorney General or by this Court of the Defendant's past, present or future conduct and
- 24 the Defendant is enjoined from, directly or indirectly, representing anything to the
- 25 contrary.

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

7. Jurisdiction is retained by this Court for the purpose of entertaining an application by the State for the enforcement of this Consent Judgment.

8. Pursuant to Rule 54(b) of the Arizona Rules of Civil Procedure, the Court has determined that there is no just cause for delay and it is therefore directed that Judgment as provided herein shall be entered forthwith.

9. The Defendants' failure to abide by these terms will be considered a breach of this Consent Judgment.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

---

JUDGE OF THE SUPERIOR COURT

1 **CONSENT TO JUDGMENT**

2 1. Defendants Construction Staffing Services, LLC, and Robert Defibaugh  
3 hereby acknowledge that they have been served with a copy of the Summons and  
4 Complaint and are aware of their right to a trial in this matter and have waived same.

5 2. Defendants Construction Staffing Services, LLC, and Robert Defibaugh admit  
6 the jurisdiction of the Court and admit the foregoing findings of fact and conclusions of  
7 law and consent to the entry of the foregoing Consent Judgment.

8 3. Defendants Construction Staffing Services, LLC, and Robert Defibaugh state  
9 that they have entered into the Consent Judgment voluntarily and that no promise of any  
10 kind or nature whatsoever was made to them to induce them to enter into the Consent  
11 Judgment.

12 4. Defendants Construction Staffing Services, LLC, and Robert Defibaugh  
13 acknowledge that the State's acceptance of this Consent Judgment is solely for the  
14 purpose of settling this action as against them and does not preclude the State or any  
15 other agency or officer of this State, or subdivision thereof, from instituting other civil or  
16 criminal proceedings as may be appropriate now or in the future.

17 5. Defendant Robert Defibaugh represents that he is an officer and authorized  
18 agent for Construction Staffing Services, LLC, and that, as such, has been authorized by  
19 said Defendant Corporation to enter into this Consent Judgment for and on behalf of the  
20 corporation.

21 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

22  
23  
24 \_\_\_\_\_  
25 ROBERT DEFIBAUGH, as officer  
26 and authorized agent for  
CONSTRUCTION STAFFING  
SERVICES, LLC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

\_\_\_\_\_  
ROBERT DEFIBAUGH,  
individually

APPROVED AS TO FORM AND CONTENT:

By: \_\_\_\_\_  
Mario Urrutia  
Assistant Attorney General

By: \_\_\_\_\_  
A. Jerry Busby  
Attorney for Defendants

908478