

MICHAEL K. JEANES
Clerk of the Superior Court
By Courtney Fisher, Deputy
Date 07/18/2017 Time 16:30:36

Description	Amount
CASE# CV2017-009408 CIVIL NEW COMPLAINT	19.00 W
TOTAL AMOUNT	0.00
Receipt# 26056329	

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
3 (Firm State Bar No. 14000)
4 **MITCHELL W. ALLEE (No. 031815)**
5 Assistant Attorney General
6 **OFFICE OF THE ATTORNEY GENERAL**
7 1275 West Washington Street
8 Phoenix, AZ 85007-2926
9 Telephone: (602) 542-7725
10 Facsimile: (602) 542-4377
11 mitchell.allee@azag.gov
12 *Attorneys for Plaintiff*

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 In the Matter of

No: **CV2017-009408**

16 **BTW CONCERTS.COM, LLC, an Arizona**
17 limited liability company;
18 **BTWCRAISES.COM, LLC, an Arizona**
19 limited liability company; and
20 **ALTERNATIX, INC, an Arizona corporation,**

ASSURANCE OF DISCONTINUANCE

21 **Respondents.**

22 The Attorney General of the State of Arizona ("State") and Respondents, BTW
23 Concerts.com, LLC ("BTW Concerts"), BTWCruises.com, LLC, d/b/a "BTWatSea.com"
24 ("BTW Cruises"), and Alternatix, Inc. ("Alternatix") (collectively the "Respondents") agree to
25 the entry of the following Assurance of Discontinuance ("this Assurance") pursuant to Arizona
26 Revised Statutes ("A.R.S.") § 44-1530, a provision of the Arizona Consumer Fraud Act, A.R.S.
§ 44-1521 *et seq.* (the "ACFA"). Respondents have consented and stipulated to entry of the
Assurance to compromise and settle all consumer complaints submitted to the State regarding
the cancellations of the 2015 "Maxwell + the 7 Seas" charter cruise and the 2015 Arizona Jazz
Festival.

1 **B. Arizona Jazz Festival**

2 9. In June of 2015, Respondents began organizing, promoting, and advertising the
3 2015 *Arizona Jazz Festival*, an annual three day music festival in Arizona scheduled to occur
4 on October 23-25, 2015.

5 10. In July of 2015, Respondents began selling admission tickets to the *Arizona Jazz*
6 *Festival* and accepting purchase payments from consumers ranging from \$50 to \$1125.

7 11. On or about October 15, 2015, Respondents cancelled the *Arizona Jazz Festival*
8 and informed consumers who had previously purchased admission tickets that the event was
9 cancelled.

10 12. Respondents agreed to provide consumers with admission to the *Arizona Jazz*
11 *Festival* in exchange for consumer payments ranging from \$50 to \$1125, but failed to provide
12 admission to the event as agreed and failed to provide refunds to all consumers.

13 **II. AGREEMENT BETWEEN THE PARTIES**

14 NOW, THEREFORE, it is hereby agreed as follows:

15 13. "Respondents" means BTW Concerts.com, LLC, BTWCruises.com, LLC, and
16 Alternatix, Inc.

17 14. "Cancellation Claims" means any and all past and future consumer complaints
18 submitted to the State regarding the cancellation of the *2015 Maxwell + the 7 Seas* and/or the
19 *2015 Arizona Jazz Festival* and failure to refund purchase payments for those events.

20 15. "Effective Date" means the date this Assurance is approved by the Court.

21 16. "Eligible Consumers" means consumers who, in the sole discretion of the
22 Attorney General's Office, demonstrate that they made an unrefunded payment to the
23 Respondents to purchase admission to the *2015 Maxwell + the 7 Seas* and/or the *2015 Arizona*
24 *Jazz Festival*, and who contacted the Attorney General's Office for the purpose of seeking a
25 refund prior to thirty (30) days after the Effective Date of this Assurance.

26 17. Pursuant to A.R.S. § 44-1528, the Respondents are permanently enjoined,

1 restrained, and prohibited from:

2 (a) engaging in any and all deceptive or unfair acts or practices, fraud, false
3 pretense, false promises, misrepresentations, and/or concealment, suppression or
4 omission of material fact in violation of the ACFA as currently written or as amended in
5 the future; and

6 (b) engaging in the organization, promotion, advertisement, and/or sale of
7 admission to any concerts, performances, or events in exchange for compensation.

8 18. Respondents are jointly and severally liable and obligated to pay to the State of
9 Arizona the amount of Thirty-Five Thousand Two Hundred Forty Dollars (\$35,240) in
10 consumer restitution (the "Initial Restitution Award") due fifteen (15) days after the Effective
11 Date of this agreement, with interest thereon at five percent (5%) per annum from the date due
12 until paid. The Initial Restitution Award shall be in the form of separate cashier's checks made
13 payable to the eligible consumers identified in Exhibit A, and shall be delivered to:

14 Ms. Stephanie Paine
15 Office of the Arizona Attorney General
16 Consumer Advocacy and Protection Section
17 1275 W. Washington St.
18 Phoenix, AZ 85007

19 19. In the event that any cashier's check drawn pursuant to ¶ 18 is neither cashed nor
20 deposited by the eligible consumer within ninety (90) days of the effective date of this
21 agreement, Respondents shall immediately cancel the cashier's check and shall pay an amount
22 equal to the cancelled check to the State within fifteen (15) days of the cancellation by
23 delivering a cashier's checks made payable to "The State of Arizona" to the address identified
24 in ¶ 18.

25 20. In the event that any cashier's check drawn pursuant to ¶ 18 is not payable to the
26 recipient because it is lost, stolen, or cancelled, or is returned to the payor at any time for any
reason, the Respondents shall pay the equivalent amount to the State within fifteen (15) days of

1 receiving notice that the check is no longer payable to the identified consumer by delivering a
2 cashier's checks made payable to "The State of Arizona" to the address identified in ¶ 18.

3 21. Additionally, Respondents are jointly and severally liable and obligated to pay to
4 the State of Arizona an additional amount, to be mutually agreed upon by the State and
5 Respondents, for each Cancellation Claim submitted to the Attorney General by an Eligible
6 Consumer within thirty (30) days after the Effective Date of this Assurance (the "Additional
7 Restitution Award"). Respondents shall have the right to require reasonable proof from any
8 Eligible Consumer that the consumer suffered an un-refunded loss from payment(s) the
9 consumer made to Respondents for admission to the 2015 *Maxwell + the 7 Seas* festival or the
10 2015 Arizona Jazz Festival.

11 22. The Additional Restitution Award shall not exceed Forty Thousand Dollars
12 (\$40,000), and shall be due seventy-five (75) days after the Effective Date of this Assurance,
13 with interest thereon accruing at five percent (5%) per annum from the due date until paid. In
14 the event the payments due consumers who qualify for the Additional Restitution Award
15 exceed the maximum amount of the Additional Restitution Award, the maximum amount of the
16 Additional Restitution Award shall be distributed on a pro rata basis.

17 23. In the event that any portion of the Restitution Award or the Additional
18 Restitution Award, or the amounts collected thereon cannot be distributed to Eligible
19 Consumers, such portion shall be deposited by the Attorney General's Office into the
20 Consumer Protection – Consumer Fraud Revolving Fund in accordance with A.R.S. § 44-
21 1531.01 and used for the purposes specified therein.

22 24. The Respondents are jointly and severally liable and obligated to pay to the
23 Attorney General the amount of Five Thousand Dollars (\$5,000) in attorneys' fees and
24 investigative costs (the "Attorneys' Fees Award") pursuant to A.R.S. § 44-1530 within
25 thirty (30) days after the Effective Date this Assurance, with interest thereon at five
26 percent (5%) per annum from the date due until paid. Payment shall be deposited by the

1 Attorney General's Office into the Consumer Protection - Consumer Fraud Revolving Fund in
2 accordance with to A.R.S. § 44-1531.01, and used for the purposes therein.

3 25. The Respondents' payments of the Additional Restitution Award, the Attorney's
4 Fees Award, and any interest thereon shall be in the form of cashier's checks made payable to
5 "The State of Arizona" and delivered to:

6 Ms. Stephanie Paine
7 Office of the Arizona Attorney General
8 Consumer Advocacy and Protection Section
9 1275 W. Washington Street
Phoenix, AZ 85007

10 26. The State acknowledges by its execution hereof that this Assurance constitutes a
11 complete settlement of the allegations and claims against the Respondents concerning the
12 Cancellation Claims, and the State agrees not to institute any civil action against the
13 Respondents or their employees or agents for the violations of the ACFA described herein.

14 27. Notwithstanding the foregoing, the State may institute an action or proceeding to
15 enforce the terms and provisions of this Assurance or to take action based on future conduct by
16 the Respondents. Respondents understand that a willful violation of this Assurance within
17 six (6) years of the filing thereof constitutes prima facie evidence of a violation of A.R.S. § 44-
18 1522, and this court therefore retains jurisdiction over the parties and the subject matter for
19 purposes of enabling enforcement of and determining Respondents' compliance with the
20 Assurance.

21 28. The Respondents agree that the facts set forth in the "Factual Allegations
22 Section" of this Assurance shall be taken as true without further proof in any bankruptcy case
23 initiated by Respondents, including but not limited to any claim by the State related to a
24 nondischargeability complaint in any bankruptcy.

25 29. The parties understand and agree that this Assurance shall not be construed as an
26 approval of or sanction by the Attorney General of Respondents' business or of its past, present

1 or future business practices, and Respondents are prohibited from making any representations
2 to the contrary.

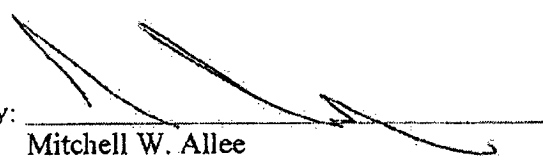
3 30. The Respondents represent that the signer below is competent and fully
4 authorized to act with respect to this matter. The Respondents acknowledge they have been
5 provided the opportunity to review this Assurance with an attorney, understand the implications
6 and obligations imposed by it and have freely and willingly entered into this Assurance.
7 Respondents further agree that this Assurance may be approved by and filed with the Superior
8 Court of the State of Arizona without any further notice or hearing.

9 31. This Assurance represents the entire agreement between the parties, and there are
10 no representations, agreements, arrangements, or understandings, oral or written, between the
11 parties relating to the subject matter of this Assurance of Discontinuance which are not fully
12 expressed herein or attached hereto.

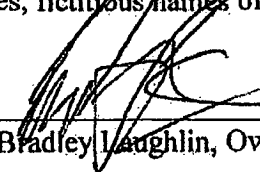
13 32. If any portion of this Assurance is held invalid by operation of law, the remaining
14 terms thereof shall not be affected and shall remain in full force and effect.

15 Dated this 12 day of July, 2017.

16
17 MARK BRNOVICH
ATTORNEY GENERAL

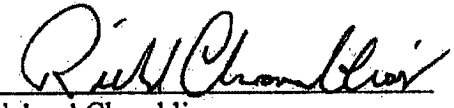
18
19
20 By: 
21 Mitchell W. Allee
22 Assistant Attorney General
23 *Attorneys for State of Arizona*
24
25
26

1 BTW CONCERTS.COM, LLC; BTWCRAISES.COM, LLC;
2 and ALTERNATIX, INC.
3 (including all "doing business as" names, formal corporate
4 names, fictitious names of any kind or any variations of the same)

5 By: 
6 Bradley Laughlin, Owner

7 Date: July 14, 2017

9 APPROVED AS TO FORM AND CONTENT:

10
11 By: 
12 Richard Chambliss
13 Law Offices of Broening, Oberg, Woods & Wilson, P.C.
14 Attorneys for Respondents

15 Date: July 14, 2017

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