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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF PIMA**

10
11 STATE OF ARIZONA, ex rel.
MARK BRNOVICH, Attorney
12 General,

13 Plaintiff,

14 vs.

15 ANTHONY BERNARD,
individually, ANTHONY BERNARD
16 and JANE DOE BERNARD, as a
marital community, and STICKS N
17 STRINGS, INC., an Arizona
Corporation,

18 Defendants.
19

Case No. _____

**COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF**

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21 Plaintiff, State of Arizona, *ex rel.* Mark Brnovich, Attorney General, alleges
22 as follows:

23 1. The State of Arizona brings this action under the Arizona Consumer
24 Fraud Act, Arizona Revised Statutes ("A.R.S.") §§ 44-1521 - 44-1534, to obtain
25 injunctive relief, civil penalties, restitution, investigative and litigation costs and
26 fees, disgorgement of ill-gotten gains, and other relief to, among other things,
27 prevent the Defendants' continued engagement in the unlawful acts and
28 practices alleged herein.

1 **JURISDICTION AND VENUE**

2 2. Venue is proper in Pima County, Arizona.

3 3. The Superior Court has jurisdiction to enter appropriate orders both
4 prior to and following a determination of liability pursuant to the Arizona
5 Consumer Fraud Act.

6 **PARTIES**

7 4. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, who is
8 authorized to bring this action by the Arizona Consumer Fraud Act, A.R.S. § 44-
9 1528.

10 5. Defendant Sticks N Strings, Inc. (“SNS”), is an Arizona corporation
11 located in Pima County, Arizona.

12 6. Defendant Anthony Bernard (“Bernard”) was the president, a
13 director, and a shareholder of Sticks N Strings, Inc. at all times relevant to this
14 Complaint.

15 7. Through SNS, Bernard advertised and conducted business in Pima
16 County, Arizona.

17 8. Jane Doe Bernard is named in the event that Anthony Bernard is
18 married and community property exists against which the State can obtain
19 monetary relief in this matter. When the State learns the true identity of Jane
20 Doe Bernard it will move to amend its Complaint accordingly.

21 9. Whenever reference is made in this Complaint to any act or practice
22 of SNS, such allegation shall be deemed to include the acts or practices of the
23 company and the actions of the company’s principals, owners, employees,
24 independent contractors, agents, and representatives, acting within the scope of
25 their employment or authority.

26 **GENERAL ALLEGATIONS**

27 10. Bernard filed the Articles of Incorporation of SNS on October 10,
28 2007 with the Arizona Corporation Commission.

1 11. During the period of time that SNS has been incorporated in
2 Arizona, the business has operated out of 8796 E. Broadway Blvd., Tucson,
3 Arizona 85710.

4 12. SNS sells musical instruments, musical recording equipment,
5 musical instrument consignment services, and repair services.

6 13. SNS also sold musical instruments and equipment from its website,
7 sticksnstrings.myshopify.com.

8 14. From 2007 to the date of this filing, Bernard has been the president
9 and a director of SNS.

10 15. Since about 2014, Bernard has been the sole director and sole
11 shareholder of SNS.

12 16. From 2007 to the date of this filing, Bernard approved, ratified, and
13 endorsed the corporate conduct of SNS.

14 Bernard, through SNS, Requested and Accepted Consumers' Payments
15 for Merchandise It Never Ordered, Delivered, or Provided a Refund for.

16 17. Since at least November 2010 to at least April 2015, Bernard,
17 through SNS, requested and accepted payments from consumers and, in
18 exchange, promised to order and deliver merchandise that SNS never ordered,
19 delivered to consumers in a reasonable timeframe, or provided a refund for.

20 18. Between April and November 2013, "RG," an Arizona consumer
21 ordered and paid for a number of musical instruments from SNS, including
22 custom and standard-build Martin and Gibson guitars.

23 19. For instance, on or about April 26, 2013, "RG" paid SNS \$7,268.00.

24 20. In exchange for the payment referenced in paragraph 19, Bernard,
25 through SNS, agreed to order a Martin D-41K Purple Martin guitar and deliver it
26 to "RG."

27 21. SNS never ordered the Martin D-41K Purple Martin guitar or
28 delivered it to "RG."

1 22. In total, "RG" made approximately \$25,770.00 in payments and
2 trade-ins to SNS in exchange for which SNS promised to order numerous
3 guitars and deliver them to "RG."

4 23. Despite requesting and accepting the payments referenced in
5 paragraph 22, Bernard, through SNS, has not ordered any guitars or delivered
6 them to "RG."

7 24. Despite not ordering any guitars or delivering them to "RG" in a
8 reasonable timeframe, Bernard, through SNS, has not provided a refund to
9 "RG."

10 25. In or about April 2015, Bernard, through SNS, requested and
11 accepted \$3,600.00 from "RW" and, in exchange, Bernard promised to order a
12 Taylor 914ce guitar and deliver it to "RW."

13 26. Despite requesting and accepting the payment referenced in
14 paragraph 25, Bernard, through SNS, has not ordered the Taylor 914ce guitar or
15 delivered it to "RW."

16 27. Despite not ordering the Taylor 914ce guitar or delivering it to "RW"
17 in a reasonable timeframe, Bernard, through SNS, has not provided a refund to
18 "RW."

19 28. On information and belief, Bernard, through SNS, requested and
20 accepted payments from consumers in addition to "RG" and "RW" and, in
21 exchange, promised to order and deliver merchandise that SNS never ordered,
22 delivered to consumers in a reasonable timeframe, or provided a refund for.

23 Bernard, through SNS, Misrepresented the Condition of Merchandise to a
24 Consumer.

25 29. On or about October 2013, Bernard, through SNS, requested and
26 accepted payment from "RG" in exchange for merchandise for which it
27 misrepresented the condition.

28 30. On or about October 4, 2013, "RG" traded in a Martin HD-28,

1 valued at \$2,025, to SNS.

2 31. On or about October 4, 2013, "RG" traded in a Martin D12-28,
3 valued at \$2,025, to SNS.

4 32. On or about October 4, 2013, "RG" paid SNS \$5,003.00.

5 33. In exchange for the payments and trade-ins referenced in
6 paragraphs 30 to 32, Bernard, through SNS, agreed to deliver guitars to "RG,"
7 including a Martin Brazilian Rosewood guitar.

8 34. Bernard, through SNS, told "RG" the Martin Brazilian Rosewood
9 guitar was in pristine physical condition.

10 35. In or about November 2013, "RG" refused to accept the Martin
11 Brazilian Rosewood guitar because it had numerous scratches and dings, and
12 the guitar had undergone serious repairs.

13 Bernard, through SNS, Told Consumers that It Issued Refunds When It
14 Had Not.

15 36. Since at least April 2011 to at least February 2015, Bernard,
16 through SNS, represented to consumers that it transmitted their refunds, either
17 by mail or electronically, when it had not.

18 37. For instance, on or about January 19, 2011, Bernard, through SNS,
19 requested and accepted \$1,145.54 from consumer "JC" and in exchange
20 promised to order and deliver a drum set to "JC."

21 38. In or about April 2011, SNS had not ordered or delivered the drum
22 set to "JC."

23 39. In or about April 2011, "JC" requested a refund from SNS.

24 40. In or about April 2011, SNS represented to "JC" that it had refunded
25 "JC's" debit card, despite having not done so.

26 41. Despite promising to do so, SNS has not refunded "JC."

27 42. On information and belief, Bernard, through SNS, represented to
28 consumers in addition to "JC" that it transmitted their refunds, either by mail or

1 electronically, when it had not.

2 Bernard, through SNS, Did Not Honor a Consignment Contract It Entered
3 into with a Consumer.

4 43. On or about June 2014, Bernard, through SNS, accepted a Seagull
5 Artist Studio guitar from “RP,” an Arizona consumer, and represented to “RP”
6 that it would sell the guitar on consignment, but failed to pay “RP” in the
7 timeframe promised.

8 44. SNS and “RP’s” consignment contract states that “Consignee will
9 receive agreed upon amount for sold item(s) when the item(s) sell.”

10 45. In or about June 2014, SNS sold the Seagull Artist Studio guitar.

11 46. SNS did not pay “RP” until in or about July 2015.

12 **CLAIM FOR RELIEF**

13 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT**

14 **§§ 44-1521 – 44-1534**

15 47. The State re-alleges all preceding paragraphs as though fully set
16 forth herein.

17 48. Defendants Anthony Bernard and Sticks N Strings, Inc., used
18 deception, deceptive or unfair acts or practices, fraud, false pretense, false
19 promise, misrepresentation, or concealment, suppression or omission of
20 material facts with the intent that others rely upon such concealment,
21 suppression or omission, in connection with the sale of musical instruments and
22 equipment, including selling consumers’ goods on consignment, in violation of
23 the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 - 44-1534 (“CFA”), to wit:

24 a. SNS requested and accepted payments from consumers
25 and, in exchange, promised to order and deliver merchandise
26 that SNS never ordered, delivered to consumers in a
27 reasonable timeframe, or provided a refund for;

28 b. SNS requested and accepted payment from a consumer for

- 1 merchandise it misrepresented the condition of;
- 2 c. SNS represented to consumers that it transmitted their
- 3 refunds, either by mail or electronically, when it had not; and
- 4 d. SNS agreed to sell a consumer's instrument on consignment,
- 5 but failed to pay the consumer in the timeframe stated in the
- 6 consignment contract.

7 49. In all matters alleged in the preceding paragraphs, Defendants

8 Bernard and SNS acted willfully, subjecting themselves to enforcement and

9 penalties as provided in A.R.S. § 44-1531(A).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that the Court:

- 12 1. Prohibit Defendants from violating the Arizona Consumer Fraud
- 13 Act, A.R.S. §§ 44-1521 - 44-1534, pursuant to A.R.S. § 44-1528(A)(1);
- 14 2. Prohibit Defendants from accepting prepayments from consumers
- 15 for products unless the products are immediately available to be shipped to
- 16 consumers within a reasonable time of the placement of the consumer order,
- 17 pursuant to A.R.S. § 44-1528(A)(1);
- 18 3. Prohibit Defendants from representing that products are available
- 19 for delivery to consumers when products are not available, pursuant to A.R.S. §
- 20 44-1528(A)(1);
- 21 4. Order Defendants to refund consumers' advance payments if the
- 22 ordered products are not shipped within a reasonable time due to unexpected
- 23 events that make shipping impossible, e.g., destruction of the item to be shipped
- 24 prior to shipping by fire, flood, or natural disaster, pursuant to A.R.S. § 44-
- 25 1528(A)(1);
- 26 5. Order Defendants to pay, jointly and severally, consumer
- 27 restitution, pursuant to A.R.S. § 44-1528(A)(2);
- 28 6. Order Defendants to pay, jointly and severally, the State of

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Arizona a civil penalty of up to ten thousand dollars (\$10,000) for each willful violation, pursuant to A.R.S. § 44-1531;

7. Order Defendants to pay, jointly and severally, the State of Arizona its investigative and attorneys' costs and fees related to this lawsuit, pursuant to A.R.S. §§ 44-1534;

8. Order disgorgement of all profits, gain, gross receipts, or other benefit obtained by the Defendants as a result of the illegal conduct alleged herein, pursuant to A.R.S. § 44-1528(A)(3); and,

9. Order other and further relief as the Court may deem just and proper.

DATED this _____ of _____, 2015.

MARK BRNOVICH
ATTORNEY GENERAL

By: _____
Stephen J. Emedi
Assistant Attorney General
Attorneys for Plaintiff