

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____)	
FEDERAL TRADE COMMISSION,)	
)	
	Plaintiff,)	Case No. 1:05 CV 0714
)	
	v.)	
)	Judge Gordon J. Quist
SUCCESS EXPRESS, INC., et al.,)	
)	
	Defendants.)	
_____)	

**STIPULATED FINAL ORDER FOR
PERMANENT INJUNCTION AND SETTLEMENT OF
MONETARY CLAIMS AS TO DEFENDANTS
SUCCESS EXPRESS, INC., EXAM RESOURCE CENTER, INC.,
OCCUPATIONAL ADVANCEMENT CENTER, INC.,
AND EMPLOYMENT RESOURCE, LLC**

The Federal Trade Commission (“FTC”) commenced this civil action on October 18, 2005, by filing its Complaint against Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; Employment Resource, LLC, also d/b/a Employment Resources, David James Daniell, a/k/a David James, Wanda J. Taugner, and Kathy L. Stafford (“Defendants”). The Complaint alleges that Defendants engaged in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the advertising, marketing, and sale of employment goods or services.

Plaintiff FTC and Defendants Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; and Employment Resource, LLC, also d/b/a Employment Resources (“Receivership Defendants”) hereby stipulate to the entry of this Final Order for Permanent Injunction and Settlement of Monetary Claims (“Order”).

FINDINGS

By stipulation of the parties, the Court finds as follows:

1. This is an action by the FTC instituted pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Complaint seeks both permanent injunctive relief and consumer redress for Defendants’ alleged deceptive acts or practices in connection with the marketing and sale of employment goods or services programs.
2. The FTC has the authority pursuant to Section 13(b) of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Receivership Defendants.
3. This Court has jurisdiction over the subject matter of this case and has personal jurisdiction over Receivership Defendants. Venue in the Western District of Michigan is proper.
4. The activities of the Receivership Defendants, as alleged in the Complaint, are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
5. Receivership Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party shall bear its own costs and attorneys’ fees. Receivership Defendants also waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.

6. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

7. Entry of this Order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. **“Receivership Defendants”** means Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; and Employment Resource, LLC, also d/b/a Employment Resources.

2. **“Individual Defendants”** means David James Daniell, a/k/a David James, Wanda J. Taugner, and Kathy L. Stafford. Defendant Daniell owns 100% of Occupational Advancement Center, Inc., and Employment Resource, LLC. Defendant Taugner owns 100% of Success Express, Inc. Defendant Stafford owns 100% of Exam Resource Center, Inc.

3. **“Defendants”** means Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; Employment Resource, LLC, also d/b/a Employment Resources, David James Daniell, a/k/a David James, Wanda J. Taugner, and Kathy L. Stafford.

4. ~~**“Employment goods or services”** means any item, product, good or service~~
represented to assist consumers in obtaining employment—including, but not limited to, preparation or other training for any employment examination.

5. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property—including, but not limited to, chattel, goods, instruments, equipment,

fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

6. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

8. **“Person”** means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

9. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

10. **“Receiver or Permanent Receiver”** means Phillip S. Stenger pursuant to the orders of appointment including the Stipulated Preliminary Injunction with Appointment of Permanent Receiver, Asset Freeze and Accounting dated November 28, 2005.

11. **“Record”** means any document, as document is defined in definition 6, above, relating to the business or business practices of any Defendant.

12. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

O R D E R

I. BOND REQUIREMENT

IT IS THEREFORE ORDERED that the Receivership Defendants, whether acting directly or through any person or entity, are permanently restrained and enjoined from marketing or selling employment goods or services, unless they first obtain a performance bond in the principal sum of ONE MILLION DOLLARS (\$1,000,000).

A. The bond required by this Paragraph I shall be conditioned upon compliance with Section 5 of the FTC Act, 15 U.S.C. § 45(a), and with this Order. The bond shall be deemed continuous and remain in full force and effect as long as any Receivership Defendant continues to engage in conduct that requires the posting of the bond, and for at least three years after the Receivership Defendants have ceased to engage in such conduct. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the FTC Act, the provisions of this Order, or to any other violation of law.

B. The performance bond required pursuant to this Paragraph I shall be in the form of an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which the Receivership Defendants do business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Such performance bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any violation of Section 5 of the FTC Act or the provisions of this Order made by Receivership Defendants, their agents, or any persons acting in concert with them; and (2) any consumer so injured.

C. The bond required pursuant to this Paragraph I is in addition to, and not in lieu of, any other bond required by any other federal, state, or local law, or by any other court order not entered in this action.

D. At least ten business days before the commencement of any activity covered by subsection A above, Receivership Defendants shall provide the bond required by this Paragraph I to the Associate Director for Enforcement at the address specified in Paragraph X of this Order.

E. Receivership Defendants shall not disclose the existence of the performance bond required by this Paragraph I to any consumer without also disclosing clearly and prominently, at the same time, the following phrase: "This bond is required by order of the U.S. District Court, in the case *FTC v. Success Express, Inc., et al.*, Case No. 1:05CV0714 (W.D. Mich.), in settlement of allegations of false and misleading representations in the promotion and sale of employment goods or services." The disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100 percent black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure.

F. If, upon motion by the FTC, the Court finds that the Receivership Defendants or any business in which the Individual Defendants engage or participate, has violated Section 5 of the FTC Act or this Order, the FTC may execute against the performance bond required by this Paragraph I. Proceedings instituted under this subsection F are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the FTC may initiate to enforce this Order.

II. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that the Receivership Defendants, and their officers, agents, employees, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any good or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact—including, but not limited to:

1. That Defendants are connected with or endorsed by the United States Postal Service (USPS).
2. That postal positions are currently available in the geographic areas where the Defendants' advertisements appear.
3. That Defendants assist consumers in registering for and obtaining employment with the USPS.
4. That consumers who obtain a score of 90 percent or above on the postal examination are assured a postal job.

III. CONSUMER LISTS

IT IS FURTHER ORDERED that the Receivership Defendants and any person or entity through which they do business, and their successors, assigns, officers, agents, servants, employees, attorneys, and those other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to any of the Defendants, at any time prior to entry of this Order, in connection with the purchase of any employment good or service.

B. Using or benefitting from, for commercial purposes, the name, address, telephone number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to any of the Defendants, at any time prior to entry of this Order, in connection with the purchase of any employment good or service.

C. *Provided, however*, that the Receiver or Receivership Defendants may disclose such identifying information (i) with the express written consent of the person whose information is disclosed, (ii) to a law enforcement agency, or (iii) as required or authorized by any law, regulation, or court order.

IV. MONETARY RELIEF AS TO RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in the amount of Seven Million Dollars (\$7,000,000) in favor of the FTC and against the Receivership Defendants, who are jointly and severally liable with the other Defendants, for the payment of equitable monetary relief – including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund.

B. *Provided, however*, that the judgment described in Paragraph A shall be satisfied upon the timely transfer to the FTC or its designated agent of the following: (1) all assets received into the Receivership Estate, including, but not limited to, proceeds from the sale of Individual Defendant Taugner's property located at 5842 Diane Drive, Indian River, Michigan, 49749 and (2) the balance of all of the accounts identified in the "Receivership Defendants' Reference List" filed with the Court under seal.

C. Any monies collected under this Paragraph are subject to the conditions described in Paragraph VI.

V. RECEIVERSHIP

IT IS FURTHER ORDERED that:

A. The Receivership imposed in the Preliminary Injunction entered in this proceeding shall be continued. The Receiver is authorized to submit interim requests for payment of compensation for the performance of Receivership duties.

B. After entry of this Order, the Receiver shall take all steps necessary to liquidate and dissolve the Receivership Defendants and marshal and liquidate receivership assets. The Receiver will cause the preparation of the final tax returns for the Receivership Defendants as part of the dissolution process and the Individual Defendants shall review and sign the tax returns. The Defendants shall cooperate with the Receiver in identifying and liquidating assets, dissolving the Receivership Defendants and filing the tax returns. The Receivership Defendants have all filed elections to be taxed as S corporations for federal income tax purposes and as a result taxable income and loss associated with the Receivership Defendants flows through to the Individual Defendants who are owners of the Receivership Defendants. The Individual Defendants shall pay all federal, state and local income taxes associated with the Receivership

Defendants according to their ownership percentage of each such Receivership Defendant as required by the Internal Revenue Code. The Receiver shall not be liable or responsible for the payment of federal, state or local income taxes of the Receivership Defendants. The Receiver may retain the services of an accountant and compensate such accountant in connection with tax filings and dissolving the Receivership Defendants.

C. Within thirty (30) days of completion of the requirements of Section B of this Paragraph, the Receiver shall move this Court to order termination of this Receivership. At such time the Receiver shall make a final request for payment of compensation for the performance of Receivership duties.

D. Within five (5) days of receipt of the Court's decision regarding final compensation for the Receiver, the Receiver shall transfer all remaining funds of the Receivership Defendants to the Federal Trade Commission, subject to the conditions set forth in Paragraph VI of this Order. Such payment shall be remitted to the Federal Trade Commission by (1) wire transfer to the account of the Federal Trade Commission, or (2) certified check delivered to the Federal Trade Commission, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114, Reference Information, *FTC v. Success Express, Inc.*, Matter Number X06 0001.

E. Within five (5) days of termination of the Receivership, the Receiver will promptly turn over to the FTC all records containing the customer information described in Paragraph III of this Order. The Receiver shall have no obligation to retain other records of the Receivership Defendants and, at his option, may return all such records to the Individual Defendants who own the respective Receivership Defendants, who shall be obligated to preserve and maintain the records for all purposes required by law.

F. All persons and entities, the Defendants, their partners, employees, agents, present and former attorneys, and representatives, and their respective predecessors, successors, assigns and affiliates, release and discharge the Permanent Receiver and the law firm of Stenger & Stenger, P.C. and their partners, employees, agents, present and former attorneys, representatives, from any and all claims, demands, actions, causes of actions, or suits that now exist or may hereafter accrue, whether known or unknown that relate to this Court Order or to the lawsuit that is the subject of this Court Order.

G. The Receiver and his agents (including retained personnel) are entitled to rely on all outstanding rules of law and Court orders and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or his agents be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or agent for Receiver, nor shall the Receiver or his agents be held liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties. The Receiver and his agents shall be indemnified and held harmless out of the Receivership assets for all costs and expenses, including reasonable attorney fees, incurred as a result of such actions.

VI. USE OF CONSUMER REDRESS AND DISGORGEMENT FUNDS

IT IS FURTHER ORDERED that:

A. Any funds received by the FTC pursuant to Paragraph IV of this Order shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief—including, but not limited to, consumer redress and any attendant expenses for the administration of any redress funds. In the event that direct redress to consumers is wholly or

partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendants shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

B. While the Receivership Defendants do not admit any of the facts alleged in the Complaint other than jurisdictional facts, Receivership Defendants agree that the facts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to collect amounts due pursuant to this Order—including, but not limited to, a non-dischargeability complaint in any bankruptcy proceeding.

C. Receivership Defendants acknowledge and agree that the judgment entered pursuant to Paragraph IV is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

D. Receivership Defendants acknowledge and agree that any money paid pursuant to this Order is irrevocably paid to the FTC for purposes of settlement between the FTC and the Receivership Defendants, and relinquish all rights, title, and interest to such money.

VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that, within five (5) business days after entry of this Order, each of the Receiver Defendants shall submit to the Commission a truthful sworn and notarized statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order as entered.

VIII. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, each of the Receivership Defendants shall deliver a copy of this Order to all principals, officers, directors, and managers. Each Receivership Defendant shall also deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order, prior to them assuming responsibilities. Receivership Defendants shall secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph. The Receivership Defendants shall retain all acknowledgments and make them available to the Commission upon request.

IX. RECORDKEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, if any of the Receivership Defendants engages in the advertising, offering, marketing, promoting or sale of employment related goods or services, that Defendant, and its agents, employees, officers, corporations, successor and assigns, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of employment goods or services sold, revenues generated, and the disbursement of such revenues.

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable.

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business.

D. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests.

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials.

F. Copies of each acknowledgment of receipt of Order required to be obtained pursuant to Paragraph VII of this Order.

X. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order, the Receivership Defendants shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under the Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent or affiliate that engages in the advertising, offering, marketing, promotion or sale of any employment related goods or services; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which the Receivership Defendant learns less than thirty (30) days prior to the date such action is

to take place, the Receivership Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, the Receivership Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to subsection A above.
2. A copy of each acknowledgment of receipt of this Order obtained pursuant to Paragraph VIII.
3. A copy of any bond obtained pursuant to Paragraph I.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the FTC to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington D.C. 20580
Re: *FTC v. Success Express, Inc., et al.*

D. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with each Receivership Defendant's president.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the FTC, Receivership Defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide

entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation.

B. In addition, the FTC is authorized to monitor compliance with this Order by all other lawful means—including, but not limited to, the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to: Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. The Receivership Defendants shall permit representatives of the FTC to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter, for purposes of construction, modification and enforcement of this Order.

IT IS SO ORDERED this 14th day of September, 2006.

/s/Gordon J. Quist

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

STIPULATED AND AGREED TO BY:

DEFENDANTS

SUCCESS EXPRESS, INC.

By: 
PHILLIP S. STENGER, RECEIVER
Stenger & Stenger, P.C.
4095 Embassy Drive, S.E., Suite A
Grand Rapids, Michigan 49546
Phone 616-940-1190
Fax 616-940-1192

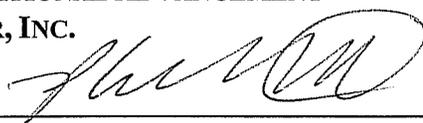
Date: 5/9/06, 2006

EXAM RESOURCE CENTER, INC.

By: 
PHILLIP S. STENGER, RECEIVER

Date: 5/9, 2006

OCCUPATIONAL ADVANCEMENT CENTER, INC.

By: 
PHILLIP S. STENGER, RECEIVER

Date: 5/9, 2006

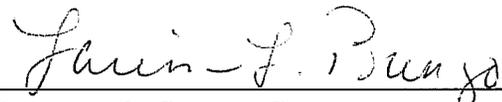
EMPLOYMENT RESOURCE CENTER, LLC

By: 
PHILLIP S. STENGER, RECEIVER

Date: 5/9, 2006

FOR PLAINTIFF

FEDERAL TRADE COMMISSION



LARISSA L. BUNGO, ESQ.
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114
Phone 216-263-3403
Fax 216-263-3426

Date: May 8, 2006

LOCAL COUNSEL FOR PLAINTIFF

JENNIFER L. MCMANUS
Assistant U.S. Attorney
Western District of Michigan
P.O. Box 208
Grand Rapids, Michigan 49501-0208
Phone 616-456-2404
Fax 616-456-2510

Complaint. I read the provisions of the Stipulated Order before signing it. I understand all the provisions of the Stipulated Order.

3. On _____, I received a copy of the Stipulated Order, which had been signed by a United States District Judge and was entered on _____, 2006. A true and correct copy of the Stipulated Order I received is appended to this affidavit. After receiving the entered Stipulated Order I reviewed it and confirmed it was the document I had previously signed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, at _____, _____.

Phillip S. Stenger
Receiver for Corporate Defendants

State of _____, City of _____

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

My Commission Expires: _____