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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

Case No. : 110200353 UB
Dept. No.: APP. II

COMPLAINT

*Arbitration Exemption Claimed
Declaratory and Injunctive Relief Sought*

Plaintiffs,

v.

ROSS MILLER, IN HIS CAPACITY AS
SECRETARY OF STATE FOR THE STATE
OF NEVADA,

Defendant.

Plaintiffs, Incorp Services Inc. and the Nevada Registered Agent Association
(collectively, "Plaintiffs"), by and through their undersigned attorneys of record, Holland &
Hart LLP, state and allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Incorp Services, Inc., is a Nevada corporation.
2. Plaintiff, The Nevada Registered Agent Association, is a Nevada domestic non-profit corporation.

1 9. The terms “person” and “home” are not defined in statute, although, NRS 0.039
2 defines “person” as “...a natural person, any form of business or social organization and any
3 other non-governmental legal entity including, but not limited, to a corporation, partnership,
4 association, trust or unincorporated organization.” NRS 0.010 provides that the definition is
5 intended to apply to the Nevada Revised Statutes as a whole.

6 10. Persons, including corporations, partnerships and associations meeting the
7 requirements of NRS 76.020(2)(c) are not required to obtain a state business license issued by
8 the Secretary of State.

9 11. In contravention of the plain meaning of NRS 76.020(2)(c), Defendant has
10 interpreted the word “person” to mean only a natural person who is a resident of Nevada and
11 “home” to mean a personal residence located only in the State of Nevada. Defendant’s conduct
12 requires persons who do not meet the definition of “business” under the plain language of the
13 statute to obtain business licenses and pay penalties thereby causing them economic harm.

14 12. In the 2011 Legislative Session, Defendant attempted to have enacted his
15 wrongful interpretations of “person” and “home” under NRS 76.020(2)(c), but the Nevada State
16 Legislature did not pass Defendant’s proposed legislation.

17 13. Defendant has since proposed regulations to be enacted under the Nevada
18 Administrative Code that adopt Defendant’s interpretation of NRS 76.020(2)(c), thereby
19 circumventing the Legislative process and plain meaning of the statute and attempting to operate
20 outside the scope of Defendant’s constitutional authority.

21 14. Defendant’s attempt to impose his interpretation of various parts of Chapter 76 of
22 the Nevada Revised Statutes is a violation of the Nevada Administrative Procedures Act. Some
23 or all of Defendant’s conduct is a violation of the United States Constitution and the Constitution
24 of the State of Nevada.

25 15. On or about August 2011, the Secretary of State’s office began conducting a
26 review of business license compliance and requiring entities claiming that they are not a
27 “business” as defined in NRS 76.020 and therefore not required to obtain a state business license
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1 to execute a "Declaration of Eligibility for State Business License Exemption". The Declaration
2 required that it be executed before a Notary Public.

3 16. In performing said review, Defendant began distributing questionnaires
4 ("Questionnaires") to entities on file with the Secretary of State that have claimed they meet the
5 requirements of NRS 76.020(2)(c).

6 17. In said Questionnaires, the entities are given thirty (30) days to answer certain
7 questions, which include the amount of wages paid by the entity to any officer, shareholder,
8 manager or managing member of the entity during the 2010 calendar year and the amount of
9 shareholder distribution to shareholders in the 2010 calendar year.

10 18. The answers required in the Questionnaire do not relate to the stated intent of the
11 Questionnaire, which is business license compliance, are not relevant to whether a person meets
12 the criteria of NRS 76.020(2)(c), and Defendant does not have legislative or constitutional
13 authority to request said information.

14 19. According to the statements in the Questionnaires, the Defendant improperly and
15 unlawfully threatens that failure to respond to the Questionnaires by said deadline may result in
16 action being taken against the entity, including, but not limited to, "suspension or revocation of
17 its charter and its right to conduct business in Nevada or as a Nevada entity."

18 20. Upon information and belief, the Questionnaires were distributed to allow
19 Defendant to compel entities on file with the Secretary of State who reside in and conduct their
20 businesses from their homes outside of Nevada to pay a \$200 fee and potential penalties and to
21 obtain a business license even if pursuant to 76.020(2)(c) an entity is not a business because it is
22 "[a] person who operates a business from his or her home and whose net earnings from that
23 business are not more than 66 2/3 percent of the average annual wage, as computed for the
24 preceding calendar year pursuant to chapter 612 of NRS and rounded to the nearest hundred
25 dollars."

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FIRST CLAIM FOR RELIEF
(Declaratory Relief)

21. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs of the Complaint as though set forth fully herein.

22. A justiciable and ripe controversy exists between Plaintiffs and Defendant as to the validity and enforceability of requiring persons who are not a "business" as defined in NRS 76.020(2)(c) to obtain a state business license.

23. A justiciable and ripe controversy exists between Plaintiff and Defendant as to the propriety of Defendant requesting information from entities on file with the Secretary of State that have not obtained a state business license because they are not a "business" pursuant to NRS 76.020(2)(c) without any legislative or constitutional authority to request said information.

24. Declaratory relief is necessary to declare whether Defendant may require entities to obtain a business license pursuant to NRS 76.020(2)(c) simply because those entities conduct business from a "home" outside Nevada.

25. Declaratory relief is necessary to declare whether Defendant may request information from entities on file with the Secretary of State that have not obtained a business license pursuant to NRS 76.020(2)(c) without any express legislative authority for requesting said information.

26. Plaintiffs have been forced to retain the services of Holland & Hart LLP to address the conduct complained of herein and are therefore entitled to all of their attorneys' fees and costs associated with bringing this action.

SECOND CAUSE OF ACTION
(Injunctive Relief -- Responses to Questionnaires)

27. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs of the Complaint as though set forth fully herein.

28. Defendant has stated that failure to answer the Questionnaire may result in action being taken against an entity "including, but not limited to, suspension or revocation of its charter and its right to conduct business in Nevada or as a Nevada entity."

1 29. Unless injunctive relief is granted which enjoins Defendant from requiring
2 responses to unauthorized questions, Plaintiffs will be irreparably harmed because they will
3 suffer an irreparable loss and their rights will be adversely affected by said unauthorized request
4 of information.

5 30. Plaintiffs have been forced to retain the services of Holland & Hart LLP to address
6 the conduct complained of herein and are therefore entitled to all of their attorneys' fees and
7 costs associated with bringing this action.

8 **THIRD CAUSE OF ACTION**
9 **(Injunctive Relief – Business License Requirement)**

10 31. Plaintiffs reallege and incorporate by reference the allegations set forth in all
11 preceding paragraphs of the Complaint as though set forth fully herein.

12 32. NRS 76.020(2)(c) states that the term “business” does not include a “person who
13 operates a business from his or her home and whose net earnings from that business are not more
14 than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year
15 pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.”

16 33. Defendant is requiring any entity on file with the Secretary of State that “operates
17 a business from his or her home and whose net earnings from that business are not more than 66
18 2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to
19 chapter 612 of NRS and rounded to the nearest hundred dollars” to obtain a business license if
20 said entity is operating from a home not in the State of Nevada.

21 34. Defendant is requiring entities that satisfy NRS 76.020(2)(c) to complete and
22 execute a form entitled “Declaration of Eligibility for State Business License Exemption”. This
23 Declaration improperly and unlawfully requires a representative of the entity to disclose 1.
24 whether or not the business of the entity is conducted solely from a personal residence (“personal
25 residence” is an undefined term in Chapter 76 of the Nevada Revised Statutes nor do these
26 statutes provide any standards for the use by Defendant of this term) in Nevada, 2. whether any
27 part of the personal residence is held open to the general public in furtherance of the business,
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1 and 3. whether or not any other real property is owned, leased, rented or licensed for use in
2 furtherance of the business.

3 35. The Defendant improperly and unlawfully intends to require any entity operating
4 from a home in a state other than the State of Nevada to obtain a state business license.
5 Defendant improperly and unlawfully intends to deny require an entity to obtain a where the
6 business is not conducted from a "personal residence" and/or where the entity has other real
7 property owned, leased, rented or licensed for use in furtherance of the business and/or where
8 any part of the "personal residence" is held open to the general public in furtherance of the
9 business

10 36. Unless injunctive relief is granted which enjoins Defendant from compelling
11 entities that satisfy NRS 76.020(2)(c) to obtain a business license, Plaintiffs will be irreparably
12 harmed because they will suffer an irreparable loss and their rights will be adversely effected by
13 said requirement.

14 37. Plaintiffs have been forced to retain the services of Holland & Hart LLP to address
15 the conduct complained of herein and are therefore entitled to all of their attorneys' fees and
16 costs associated with bringing this action.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

19 1. For declaratory relief determining that Defendant may not demand information,
20 upon threat of revocation of charter, from entities on file with the Secretary of State that are not
21 required to obtain business licenses pursuant to NRS 76.020(2)(c) without any express legislative
22 authority for demanding said information;

23 2. For a temporary restraining order enjoining Defendant from taking action against
24 entities that do not comply with the improper requests made in the Questionnaires and the
25 Declaration of Eligibility for State Business License Exemption.

26 3. For a preliminary injunction enjoining Defendant from taking action against
27 entities that do not comply with the improper requests made in the Questionnaires and the
28 Declaration of Eligibility for State Business License Exemption.

1 4. For a permanent injunction enjoining Defendant from taking action against
2 entities that do not comply with the improper requests made in the Questionnaires and the
3 Declaration of Eligibility for State Business License Exemption.

4 5. For declaratory relief determining that all persons that satisfy the requirements of
5 NRS 76.020(2)(c) are not required to obtain a state business license without regard to the
6 location of their home, whether it is open to the public, or whether they own or lease other real
7 estate;

8 6. For a temporary restraining order enjoining Defendant from compelling entities
9 that satisfy the requirements of NRS 76.020(2)(c) to obtain a business license solely because
10 their homes are outside the State of Nevada, are open to the public, or because they own or lease
11 other real estate;

12 7. For a preliminary injunction enjoining Defendant from compelling entities that
13 satisfy the requirements of NRS 76.020(2)(c) to obtain a business license solely because their
14 homes are outside the State of Nevada, are open to the public, or because they own or lease other
15 real estate;

16 8. For a permanent injunction enjoining Defendant from compelling entities that
17 satisfy the requirements of NRS 76.020(2)(c) to obtain a business license solely because their
18 homes are outside the State of Nevada, are open to the public, or because they own or lease other
19 real estate;

20 9. For a writ of prohibition enjoining Defendants from compelling entities that
21 satisfy the requirements of NRS 76.020(2)(c) to obtain a business license solely because their
22 homes are outside the State of Nevada, are open to the public, or because they own or lease other
23 real estate;

24 10. For special damages;

25 11. For an award of Plaintiffs' reasonable attorneys' fees and costs incurred in
26 prosecuting this matter; and

27 12. For such other and further relief as the Court deems just and proper.

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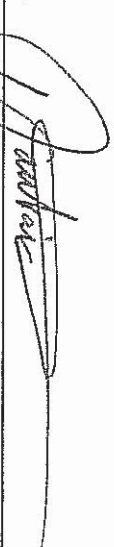
AFFIRMATION
(NRS 239B.030)

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 7th day of November, 2011.

HOLLAND & HART LLP

By



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