

STATE OF NEW YORK  
DEPARTMENT OF STATE

File #12 DNC 0430 - In the Matter of a Proceeding Pursuant to Article 26 of the General Business Law and Regulations promulgated thereunder against NEWSDAY LLC.

**SETTLEMENT AND STIPULATION AGREEMENT**

This Settlement and Stipulation Agreement ("Agreement") is made and entered into this \_\_\_ day of October 2013 by and between Newsday LLC ("Newsday") and the New York State Department of State ("Department"), an executive agency of the State of New York.

**WHEREAS**, Newsday is engaged inter alia in the business of conducting telemarketing within the State of New York; and

**WHEREAS**, the Department is charged with the regulation of the "Do Not Call" law and the enforcement of Article 26 of the General Business Law; and

**WHEREAS**, the Department's Division of Licensing Services Enforcement Unit received a number of complaints stating that Newsday violated the Do Not Call Law; and

**WHEREAS**, the Department's staff conducted an investigation, which investigation resulted in the commencement of the above-captioned administrative proceeding; and

**WHEREAS**, the Department notified Newsday of the complaints, informed Newsday that an investigation was underway and requested any information that Newsday could provide regarding the complaints; and

**WHEREAS**, written responses were received and discussions took place between the Department and Newsday in an attempt to resolve these complaints, which resulted in the resolution of all but three (3) of the complaints at issue over the course of its investigation; and

**WHEREAS**, it was mutually agreed that the remaining three (3) complaints could be best resolved through negotiations and settlement rather than litigation; and

**WHEREAS**, Newsday denies that it violated the Do Not Call law and rules in any manner, maintains that any calls made to individuals on the Registry were the result of excusable error under GBL § 399-z; and

**WHEREAS**, the Department, after reviewing the entire matter, asserts that the alleged violations of the Do Not Call law and rules occurred with respect to these remaining three (3) complaints, and that Newsday is subject to appropriate administrative penalties as a result, but that the facts and circumstances, as well as the affirmative defenses put forth by Newsday, merit substantial consideration as to the level of any administrative penalty to be imposed; and

**WHEREAS**, the Department and Newsday agree that the three (3) remaining complaints are subject to the provisions of this settlement, and that this settlement will encompass and resolve all pending complaints and any complaints received by the Department against Newsday up to and including the date of this settlement; and

**WHEREAS**, Newsday has undertaken substantial efforts to comply with the Do Not Call law and rules, has established and implemented written policies and procedures, has trained personnel in the requirements of the Do Not Call law and applicable regulations, has maintained records demonstrating compliance with the Do Not Call law and regulations, and such reasonable good faith efforts are acknowledged by the Department; and

**WHEREAS**, the Department and Newsday seek to avoid the burden and expense of further proceedings relating to the alleged violations of the Do Not Call law and rules, and believe that a settlement is more likely to serve the public interest, and the interests of the concerned parties, including the complainants on whose behalf the Department is acting, than any other method of resolving the alleged complaints.

**NOW, THEREFORE**, the Department and Newsday stipulate and agree as follows:

1. Newsday denies that it violated the Do Not Call law and rules. This agreement is being entered into by Newsday solely to avoid the burden and expense of further proceedings, and the uncertainty of further litigation. Newsday enters this Agreement as a compromise and settlement of the Department's allegations herein. This Agreement shall not be considered an admission of violation for any purpose.
2. The Department disputes the position of Newsday regarding violations, but accepts the representations made by Newsday that substantial efforts were made to comply with the Do Not Call law and rules, that Newsday has thoroughly reviewed its practices and procedures, and has taken all appropriate and reasonable measures to protect New York consumers from unwanted calls. The Department agrees that no useful purpose will be served by undertaking the burden and expense of further proceedings, and that the risk of further litigation would be undesirable. The Department also agrees that, given the facts and circumstances involved, substantial mitigation of the penalty per alleged violation is entirely appropriate, and is in the public interest.
3. In full and final settlement of any and all alleged violations of the Do Not Call law and rules as described herein, Newsday shall deliver to the Department a cashier's check or money order, payable to the NYS Department of State, in the amount of **Three Thousand and 00/100 (\$3,000.00)** Dollars, by no later than **November 15, 2013**.
4. For reasons described earlier, both the Department and Newsday believe this settlement disposition of the Newsday complaints in question is in the public interest.
5. The Department and Newsday stipulate and agree that this Agreement fully comports with the requirements of the State Administrative Procedure Act (SAPA) § 301(5), and waive any other rights or remedies they may have under GBL § 399-z (6) (a), (b), and (c), and under 21 NYCRR § 4603.4(e).
6. By entering into this Agreement, the Department expressly waives and releases Newsday from all claims or liability arising out of the allegations at issue in

File #12 DNC 0430, and any and all complaints based on telephone calls that were made or allegedly made, or other facts that occurred or allegedly occurred, prior to the date of this Agreement.

7. Newsday shall continue to use its best efforts to continue to comply with the Do Not Call law and rules.

8. The Department agrees that in the event that it issues any Press Release or other public statement concerning the provisions of this Agreement, it will (i) provide a copy thereof to Newsday at least three (3) days prior to issuing such Press Release or other public statement, by transmitting the same to the following email addresses: [kaularo@cablevision.com](mailto:kaularo@cablevision.com) and [wheberer@moritthock.com](mailto:wheberer@moritthock.com).

9. Department and Newsday acknowledge that they are aware of the provisions of 21 NYCRR § 4603.4(i) providing that any facts or evidence received by the Department may be used in any proceeding.

10. The terms and provisions of this Agreement apply solely to and are binding only in the context of this Agreement. None of the terms and provisions of this Agreement, and none of the positions taken herein by any party may be referred to, cited or relied upon by any other party in any fashion as precedent in any other proceeding before the Department or any other agency or before any court of law except in furtherance of the purposes of this Agreement, or except as specifically provided for in paragraph 8 herein.

11. The provisions of this Agreement are not severable. It is understood that this Agreement represents a negotiated resolution of numerous issues by parties with diverse interests. Each provision of this Agreement is in consideration and support of all the other provisions herein.

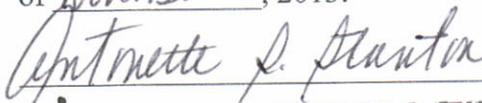
**WHEREFORE**, the Department and Newsday have executed this Agreement as of the date first above written.

**NEWSDAY, LLC**

By:   
Fred Groser  
Publisher

STATE OF NEW YORK )  
COUNTY OF Suffolk ss.:

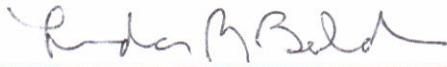
Sworn to before me this 8<sup>th</sup> day  
of November, 2013.



ANTONETTE S. STANTON  
Notary Public, State of New York  
No. 52-4982488  
Qualified in Suffolk County  
Commission Expires 7/25/2017

NOTARY PUBLIC-STATE OF NEW YORK

NEW YORK STATE DEPARTMENT OF STATE

By:   
Linda Baldwin  
General Counsel

Dated:

1/22/14  
Albany, New York