

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL NO.</b>
<b>v.</b>	)	
	)	<b>JUDGE</b>
<b>2010 Chevrolet Camaro 2SS Coupe bearing</b>	)	
<b>VIN #2G1FT1EW0A9145379,</b>	)	
	)	
<b>Defendant.</b>	)	

**VERIFIED COMPLAINT *IN REM***

Comes now the plaintiff, United States of America, by and through its attorneys, Jerry E. Martin, United States Attorney for the Middle District of Tennessee, and Debra Teufel Phillips, Assistant United States Attorney for said district, and brings this complaint and alleges as follows in accordance with Rule G(2) of the Federal Rules of Civil Procedure, Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions:

**NATURE OF THE ACTION**

1. In this *in rem* civil action the United States of America seeks forfeiture of 2010 Chevrolet Camaro 2SS Coupe bearing VIN #2G1FT1EW0A9145379 (hereinafter “Defendant Property”) pursuant to 18 U.S.C. § 981(a)(1)(C), which authorizes forfeiture of any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. §§ 669, 1343 and 1957.

### **THE DEFENDANT IN REM**

2. The Defendant Property was administratively seized on November 3, 2010 pursuant to the execution of a federal search warrant in Middle District of Tennessee in Case No. 10-mj-1113 from 3448 Forest Park Road, Springfield, Tennessee.

3. Direct notice was not provided to potential claimants within sixty (60) days from the date of the seizure as required by 18 U.S.C. § 983(1)(1)(A)(I).

4. Upon discovery that administrative direct notice was not provided to potential claimants within sixty (60) days, the Defendant Property was immediately referred to the United States Attorney's Office for the Middle District of Tennessee for judicial forfeiture pursuant to 18 U.S.C. § 983(a)(1)(F).

5. The Defendant Property is presently in the custody of the United States Marshals Service.

### **JURISDICTION AND VENUE**

6. Plaintiff brings this action *in rem* in its own right to forfeit and condemn the Defendant Property. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a).

7. This Court has *in rem* jurisdiction over the Defendant Property under 28 U.S.C. § 1355(b). Upon the filing of this complaint, the plaintiff requests that the Clerk issue an arrest warrant *in rem* pursuant to Supplemental Rule G(3)(b)(i). The plaintiff will then execute the warrant upon the property pursuant to 28 U.S.C. § 1355(d) and Supplemental Rule G(3)(c).

8. Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1), because the acts or omissions giving rise to the forfeiture occurred in this district, and pursuant to 28 U.S.C. § 1395 because the Defendant Property is located in this district.

#### **BASIS FOR FORFEITURE**

9. The Defendant Property is subject to forfeiture pursuant to 18 U.S.C. § 983(a)(1)(C), because it constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. §§ 669 (theft or embezzlement in connection with health care), 1343 (wire fraud), and 1957 (engaging in monetary transaction in property of a value greater than \$10,000 derived from health care fraud and wire fraud).

10. Pursuant to 21 U.S.C. § 881(h) and 18 U.S.C. § 981(f), all right, title and interest in the Defendant Property vests in the United States at the time of the acts giving rise to the forfeiture.

#### **FACTS**

11. The facts and circumstances supporting the forfeiture of the Defendant Property are contained in the Affidavit of Susan Elizabeth McDavitt, a copy of which is attached hereto as Exhibit 1 and incorporated as though fully set forth herein.

#### **CLAIM FOR RELIEF**

12. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 9 above.

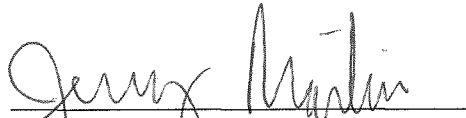
13. The Defendant Property constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. §§ 669, 1343 and 1957.

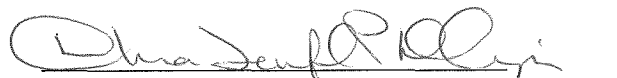
14. As a result of the foregoing, the Defendant Property is liable to forfeiture and forfeitable to the United States in accordance with 18 U.S.C. § 983(a)(1)(C).

**PRAYER FOR RELIEF**

WHEREFORE, the United States of America Prays that the Clerk issue a Warrant for Arrest *In Rem* for the Defendant Property and that the Defendant Property be condemned and forfeited to the United States of America in accordance with the provisions of law; that notice of this action be given to all persons known or thought to have an interest in or right against the Defendant Property; and that the plaintiff be awarded its costs in this action and for such other necessary and equitable relief as this Court deems proper.

Respectfully submitted,

  
JERRY E. MARTIN (BPR 20193)  
United States Attorney for the  
Middle District of Tennessee

  
DEBRA TEUFEL PHILLIPS (BPR 011706)  
Assistant United States Attorney  
110 Ninth Avenue South, Suite A-961  
Nashville, Tennessee 37203-3870  
Telephone: (615) 736-5151  
Attorneys for the United States of America

**VERIFICATION**

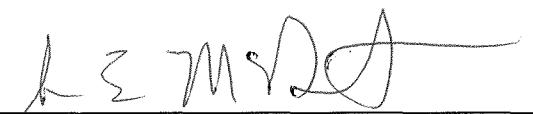
I, Susan Elizabeth McDavitt, Special Agent, Federal Bureau of Investigation, hereby verify and declare under penalty of perjury as provided by 28 U.S.C. § 1746, the following:

That I have read the foregoing Verified Complaint *In Rem* and know the contents thereof, and that the matters contained in the Verified Complaint are true to my own knowledge, except that those matters herein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my knowledge and information and the grounds of my belief are from information gathered by law enforcement officers, as well as my investigation of this case as a Special Agent with the Federal Bureau of Investigation.

I hereby verify and declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this   1   day of February, 2011, at Nashville, Tennessee.

  
\_\_\_\_\_  
Susan Elizabeth McDavitt

## AFFIDAVIT OF SUSAN ELIZABETH MCDAVITT

I, Susan Elizabeth McDavitt, being first duly sworn, state and depose as follows:

### Affiant's Background:

I am a Special Agent of the Federal Bureau of Investigation (FBI) in the Memphis, Tennessee Division, Nashville Resident Agency. I have been a Special Agent since September 1997. I am assigned to the Criminal Division, White Collar Squad and have investigated white collar crimes for ten (10) years. I have received training developed by the FBI specific to financial institution, health care, and corporate fraud. Among the federal crimes I am assigned to investigate include, but are not limited to, violations of 18 U.S.C. § 669 (health care fraud), 18 U.S.C. §1343 (wire fraud) and 18 U.S.C. §§ 1956 & 1957 (money laundering).

I am familiar with the following statutes pertinent to this affidavit:

18 U.S.C. § 669 - "Whoever knowingly and willfully embezzles, steals, or otherwise without authority converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a health care benefit program . . ."

18 U.S.C. § 1343 (wire fraud)- "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice . . ."

18 U.S.C. § 1957 - "Whoever, [in the United States], knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity . . ."

18 U.S.C. § 981(a)(C) provides that [t]he following property is subject to forfeiture to the United States:

...  
Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of . . . any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

18 U.S.C. § 1956(c)(7) provides that the term “specified unlawful activity” means -  
(A) any act or activity constituting an offense listed in section 1961(1)  
of this title . .

...  
(F) any act or activity constituting an offense involving a Federal  
health care offense;

18 U.S.C. § 1961(1) includes wire fraud (18 U.S.C. § 1343) and engaging in  
monetary transactions in property derived from specified unlawful activity (18 U.S.C.  
§ 1957).

18 U.S.C. § 24, in pertinent part, defines “Federal health care offense” to include a  
violation of 18 U.S.C. § 669, and defines “health care benefit program” to include  
“any public or private plan or contract, affecting commerce, under which any medical  
benefit, item, or service is provided to any individual . . .”

**Item sought to be forfeited:**

I present this affidavit in the Verified Complaint *In Rem* seeking forfeiture pursuant to 18  
U.S.C. § 981(a)(1)(C), of a 2010 Chevrolet Camaro 2SS Coupe, VIN 2G1FT1EW0A9145379  
(hereinafter “Defendant Property”) seized by the Federal Bureau of Investigation on November 3,  
2010 from the location of 3448 Forest Park Road, Springfield, Tennessee in the Middle District of  
Tennessee.

I am aware that in an administrative seizure, 18 U.S.C. § 983(a)(1)(A)(I) provides for  
notification to potential claimants within sixty (60) days from the date of seizure. Claimants  
receiving notice then have approximately thirty (30) days to file an administrative claim. 18 U.S.C.  
§ 983(a)(2)(B). Administrative seizure was not provided to potential claimants in this matter,  
however pursuant to 18 U.S.C. § 983(a)(1)(F), judicial civil forfeiture may be commenced.

I am aware that if a claim had been received in the administrative proceeding, the normal  
course of procedure would be to refer the claim to the United States Attorney’s office (USAO) asset

forfeiture unit so that a civil judicial complaint could be filed within ninety days after receipt of the claim by the administrative agency. 18 U.S.C. § 983(a)(3)(A). Therefore, the seizure was referred as if there had been a claim filed on the date of the seizure, and this Complaint is filed within ninety days from the date of the seizure.

**Basis of information:**

The information in this affidavit and the basis for my belief that the Defendant Property is subject to forfeiture was obtained through my personal observations, training and experience, information gathered from documents which were pertinent to this investigation including but not limited to State of Tennessee Motor Vehicle records; auto dealership records; bank records; filings in the *Leslie V. Newman, Commissioner of the Tennessee Department of Commerce and Insurance v. Smart Data Solutions, LLC et al.* Chancery Court of the State of Tennessee Case No. 10-507-III (“Tennessee law suit”); Tennessee Department of Commerce records; South Carolina and North Carolina Department of Insurance; information gathered during interviews of and conversations with other law enforcement officers and civilians, and; written reports and investigations conducted by other law enforcement officers. I have not included every item of information known to me concerning the Defendant Property and the facts surrounding this Affidavit, but only those relevant to a determination that the property is subject to forfeiture.

**Summary**

In brief, Bart S. Posey, (“Posey”), while President of third party administrator Smart Data Solutions, LLC, (“SDS”), executed a scheme to defraud members of American Trade Association, LLC (“ATA”) and embezzled approximately 2.6 million dollars which were intended to purchase health care premiums and which were deposited with SDS substantially in First State Bank account



ending in \*\*\*2841. The premiums were, among other things, intended to purchase health care coverage for members of American Trade Association, LLC ("ATA"). Posey utilized part of the embezzled health care premiums to purchase the Defendant Property.

**Background Facts:**

**SDS**

Posey is the President of SDS. SDS was chartered and registered as a corporation with the Tennessee Secretary of State on November 22, 2005. Posey and his wife had signatory authority on the SDS bank accounts. Documents filed in the Tennessee lawsuit reflect that on March 1, 2008, SDS entered into a contract with ATA for services and benefits. A copy of that contract is attached as Exhibit A to this Affidavit and incorporated herein by reference. According to a June 18, 2010, sworn affidavit of Posey, "SDS's sole business has always been that of a third party administrator which provides services pursuant to its contracts with insurance carriers or groups of insureds."

In early 2010, the Federal Bureau of Investigation began an investigation into SDS, and as a result of that investigation, I learned that SDS marketed its services via the internet, fax blasts, and other means in order to reach out-of-state potential customers. The marketing contained misrepresentations that potential customers and existing customers could purchase through SDS or had purchased through SDS health care coverage services pursuant to SDS's contracts with insurance carriers or groups of insured underwritten by Beema Pakistan and/or Serve America when in fact SDS was not licensed to do so and thus could not provide the claimed services. A large percentage of the clients of SDS were outside the State of Tennessee and many of those clients paid SDS via internet payment processors. Services SDS fraudulently represented would be provided to its clients (persons/entities seeking health insurance) by SDS as a third party administrator included:

- a. SDS identified a health insurance company such as Beema-Pakistan doing business as Serve America Assurance Company ("Serve America") for the clients of SDS.
- b. SDS would collect health insurance premiums from SDS client(s) to purchase health insurance benefits from companies such as Serve America for the clients of SDS.
- c. The premiums collected were to be paid by SDS (as the third party administrator) to the health insurance carrier such as Serve America with the intention that the health insurance carrier would then provide health benefits to the SDS's client.

However, Beema Pakistan is not a licensed insurance company in the United States, and its Serve America division is not licensed to sell insurance in the United States.

In his June 18, 2010 sworn Affidavit, Posey stated the following:

. . . [F]rom the first of January 2008 and for a two-year period thereafter, a total of \$19,234,171.31, was deposited in SDS accounts. Most of these funds were not paid to SDS as fees or other compensation or income. In fact, the vast majority were provided to SDS in its role as administrator and for the purpose of disbursement to various third party vendors.

As a result of SDS's contract with ATA, from August 2009 through February 2010, SDS collected over \$9,600,000 in premiums and dues from ATA members. SDS began making some direct payments for ATA member medical claims. SDS paid approximately \$567,868.79 to Preferred Provider Organizations ("PPOs") and prescription discount insurance carriers on behalf of ATA members. A total \$535,579.18 was paid to Nationwide Administrators from August 2009 to October 2009 to cover claims prior to August 2009. SDS transferred approximately \$4,489,951.80 to a Posey controlled bank account in the name of SDS/Serve America and according

to the SDS Quickbook records \$2,989,703.50 was paid by SDS in claims from August 2009 to March 2010. The amount of unpaid claims from August 2009 to March 2010 is approximately \$7,175,134.90. The SDS Quickbooks also revealed approximately \$888,979.85 was spent to pay Posey expenses to include University of Alabama donations, vehicles, building loan payments, and credit cards. This analysis of the bank records and Quickbooks for SDS reiterates that SDS was not making any payments to a licensed insurance underwriter from August 2009 to March 2010 but continued to encourage the marketing of their insurance plan to ATA members.

***SDS was unlicensed and could not legally accept health care premium payments***

Department of Commerce and Insurance for the State of Tennessee filed documents in the Tennessee lawsuit that reveal that since the date of incorporation on November 22, 2005, SDS has not had a Certificate of Authority or a license in Tennessee to sell insurance. Even so, from approximately 2008 until approximately 2010, SDS took premium payments, i.e., payments intended for payment on health care premiums, from thousands of customers, including ATA, with representation that the payments were buying insurance coverage, when in fact, SDS was not associated with any insurance company who could fund and underwrite claims. SDS forwarded some of these premiums to South Carolina based Serve America, and Serve America paid some claims to SDS' client ATA. The claims were normally of a small nature, i.e., \$25 or \$50. Beema Pakistan representatives advised that while Serve America was registered in South Carolina, they knew of no activity in which it was engaging.

***Health care premium payments were made to SDS***

Financial documents for SDS and Serve America reveal that from the beginning of the SDS/ Serve America relationship in approximately March 2008, payments were made from the payment

processor to SDS and then from SDS to Serve America. When the SDS/Serve America relationship ended in approximately August 2009, the payments to Serve America ended and SDS continued in operation, making some claim payments for ATA member medical claims. Even though SDS did not engage another health insurance carrier, SDS continued to receive premiums from its clients.

**The Posey's control over SDS banking**

Posey and his wife, Angie Posey, had signatory authority on the SDS business First State Bank account ending in \*2841 ("FSB \*2841"). First State Bank custodian of records is located at 221 Harrison Street, Union City, Tennessee. Funds, i.e., payments intended for payment on health care premiums obtained from ATA to be utilized as payments for health care benefits, were primarily deposited in FSB \*2841.

Bank Records for SDS have revealed that during the course of the scheme, Posey and his wife transferred or caused to transfer from SDS accounts approximately \$2.6 million to themselves or for their benefit directly or indirectly all in violation of 18 U.S.C. §§ 669 and 1957. Bank records revealed that funds in excess of \$10,000 were then transferred out of FSB \*2841 and utilized in the purchase of the Defendant Property and not for their intended use of purchasing health care benefits.

Based on this investigation, the facts set forth this affidavit, my experience and training, I believe that Posey knew that the deposits into SDS accounts were premium payments and were to be used to pay claims and/or maintain insurance coverage, and not to purchase the Defendant Property for himself.

On May 20, 2010, Chancellor Lyles entered a Final Order appointing a Receiver for Liquidation of SDS.

*The purchase of the Defendant Property*

A review of Payne Chevrolet records reveal that on or about April 29, 2009, Posey ordered the Defendant Property from Payne Chevrolet, Springfield, Tennessee for a purchase price of \$44,342.66. At the time of the order, Posey provided a \$2,500 down payment to the dealership. The down payment was drawn on First State Bank SDS business account ending in \*2841, check number 6566.

Payne Chevrolet records further reveal that late on the afternoon of October 8, 2009, Posey finalized the purchase of the Defendant Property, signed the retail buyers order and bill of sale to purchase the vehicle for a total price of \$44,342.66. A check drawn on F&M Bank account ending in \*7301 in the name of Bart Posey DBA 41 & Main, check number 2332, in the amount of \$44,342.66, bearing the signature "Bart S. Posey" was provided to Payne Chevrolet for payment of the vehicle. On or about October 9, 2009, a check drawn on First State Bank SDS business account ending in \*2841 in the amount of \$45,000 bearing the signature "Angie Posey" and deposited into F&M Bank account ending in \*7301 for Bart Posey DBA 41 & Main. Bank records reveal that there would have been insufficient funds in the F&M Bank account ending in \*7301 to pay for the Camaro without the October 9, 2009 deposit.

The Defendant Property was registered in Posey's name.

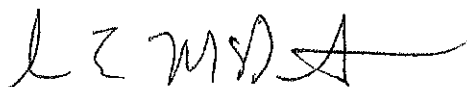
*The Defendant Property is forfeitable*

Based on the foregoing, the facts support a reasonable belief that the Defendant Property is proceeds of a wire fraud in violation of 18 U.S.C. § 1343 using a scheme and artifice to defraud using marketing via the internet and other interstate sources including interstate payment processors to receive payments intended to pay for health care premiums. Further, the facts support a

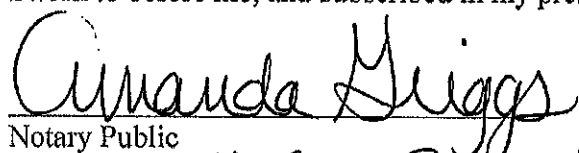
reasonable belief that the Defendant Property was purchased with embezzled health care premium funds and is proceeds of a theft or embezzlement in connection with health care in violation of 18 U.S.C. § 669. Finally, the facts support a reasonable belief that the Defendant Property was purchased through a monetary transaction in criminally derived property (embezzled health care premium funds or wire fraud) of a value greater than \$10,000 in violation of 18 U.S.C. § 1957.

There is a substantial connection between the funds utilized to purchase the Defendant Property and the proceeds from the violations listed above: 18 U.S.C. §§ 1343, 669, and 1957. Therefore the Defendant Property is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C).

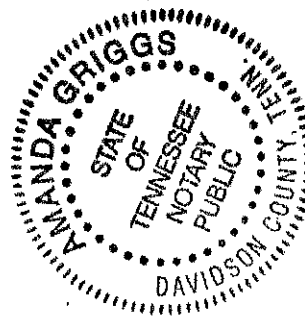
All of the above information is true and correct to the best of my knowledge pursuant to 28 U.S.C. § 1746.

  
Susan Elizabeth McDavitt, Special Agent  
Federal Bureau of Investigation

Sworn to before me, and subscribed in my presence this 1st day of February, 2011.

  
Notary Public

My Comm. Exp. 09/03/2012



## MANAGEMENT AGREEMENT

This agreement is between the American Trade Association Inc., an Indiana Association, hereinafter referred to as (ATA) and Smart Data Solutions, LLC, a Tennessee domiciled corporation, hereinafter referred to as (SDS).

This agreement is entered into on this 1st day of March of 2008.

SDS agrees to manage the day to day operations of the ATA. This is to include developing marketing plans and programs to procure new members for the association as well as hiring marketing organizations and agents to approach potential members and groups. SDS will also be responsible for administration of the new members as they become active association members.

SDS agrees to negotiate contracts on behalf of ATA for services and benefits as well as products that will enhance the daily life of the ATA membership. These benefits will include but are not limited to products and services used daily or at times by the membership. SDS will make its best efforts to find materials and services as well as products that would not typically be available to the general public at the same or lower rates and requiring membership in an association or group such as the ATA to participate at the rates quoted to the Association for its members.

SDS will also make available health benefits, either insured or discount benefits, available to the general membership of the ATA as optional levels of membership. Membership in the ATA would be required for eligibility of these optional plans and programs. They will include but not be limited into such plans as Accident/Medical plans, prescription plans or benefits, life, cancer, dental and vision plans as well as others as they are identified and found worthy of the membership.

SDS in its capacity as manager of the Association shall also be responsible for billing and collecting of monthly dues for all members and the benefits they have chosen. As the billing entities draft or bill the members they will forward the dues received to SDS for distribution to the various vendors and providers offering the association benefits. In addition SDS will fund Association dues directly to the ATA on a monthly basis. SDS will be paid a management fee as negotiated for this service.

SDS will additionally be responsible for procuring a website for the ATA to promote and markets its Association benefits and services as well as the products offered to membership. SDS will be responsible for maintaining and updating the website as needed for new products and services that are introduced to the existing members as well as potential membership. SDS will also be responsible for publishing a quarterly news letter keeping members abreast of changes or new services or benefits as well as general information promoting the benefits of membership.

Through this management agreement Mr. Obed Kirkpatrick, as President of the ATA authorizes and grants to Mr. Bart Posey, President of SDS all rights, obligations and duties as the head of the management group for the ATA. The Board of Directors will approve all new services and products for membership use prior to their being introduced to current and potential members.

SDS and ATA both agree to maintain proper files and contracts on all marketers offering association benefits to members required in their capacities as manager and as the association. In addition both parties agree to conduct their business in accordance with the highest standards of ethical business practice.

It is agreed that this contract will be in full force and effective as of 03-01-2008 and continue in force without interruption for a period of five (5) years from that date. At that time the contract will

roll over in five (5) year increments until either party notifies the other in writing at least 60 days prior to the end of the contract.

However, it is further agreed that either party may terminate this agreement for cause by giving a sixty (60) day notice of termination. It is further agreed that should ATA terminate this agreement for any reason prior to the end of the five (5) year contract period that SDS and its marketers shall have the right to move the active association members, with their authorization, to another association program of the same or like entity, with the same or similar benefits and once the transfer is made ATA would not be entitled to further compensation from the membership or SDS as its manager.

Additionally SDS will bear the cost of production and mailing of a quarterly newsletter to all members who request written news letters that have no access to the Internet website. All new members will receive a complete fulfillment kit from the association giving them a written copy of the benefits and services offered through the association as well as any optional levels of benefits they have chosen as part of their membership. Two cards will also be included in each kit as proof of membership. Each benefit chosen will have material and documentation explaining clearly and fully the benefits. The marketer will be charged a one time \$20 fee paid to the association to help defray these costs.

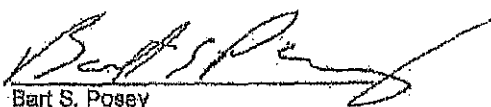
SDS further agrees to provide live customer service operators at its location in Springfield, Tennessee to answer any membership issues and all representatives will be able to go over and answer members questions regarding all services and benefits provided to the members by the Association. This customer service will be provided during normal business hours Monday through Friday from 8:00 AM until 5:00 PM central time. The office will be closed on weekend and federal holidays. A message recording system will be available for after hours or weekend or holiday calls which will be promptly returned on the next business day.

SDS management and the Board of Directors of the Association will meet quarterly either in person or by conference call to conduct a board meeting of the association. An annual meeting of the general membership will be held with a date and time sent to the membership a minimum of 60 days prior to the scheduled time. All members are welcome to attend and vote on any issues presented including directors positions or be asked to provide the board with its proxy vote which would be sent to the authorized Board member no less than 24 hours prior to the scheduled date and time of the meeting.

Any controversy or issues arising out of this Agreement or its interpretation have be settled in Tennessee in accordance with the rules of the American Arbitration Association, and the judgment of any award to either party will be entered in and court having jurisdiction thereof.

Signed and dated this \_\_\_\_\_th \_\_\_\_\_ day of \_\_\_\_\_ March \_\_\_\_\_, 2008

  
\_\_\_\_\_  
Obed Kirkpatrick  
President  
American Trade Association, Inc.

  
\_\_\_\_\_  
Bart S. Posey  
President  
Smart Data Solutions, LLC