



2. Upon information and belief, Defendant is a limited liability company organized and headquartered in Utah, but which does business in all fifty states, including Ohio.

3. This is an action for breach of contract and fraud and the amount in controversy exceeds \$15,000.

4. Jurisdiction and venue are proper in this Court.

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

5. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 4, above, as if fully restated herein.

6. Defendant markets itself as “is the largest, most respected, experienced, and comprehensive lawsuit protection company in America” and purportedly sells “tax strategies,” “asset protection,” and other quasi-legal services to individuals and businesses.

7. On or about September 21, 2018, Plaintiff attended a sales presentation put on by Defendant at a seminar in Chicago, Illinois.

8. During the presentation, Defendant’s representative encouraged those in attendance to complete an application at the seminar and further represented that “customer satisfaction was guaranteed.”

9. After the presentation, induced by the promise of guaranteed satisfaction, Plaintiff hastily completed what was represented as an initial application for Defendant’s services on his way out of the seminar and to the airport.

10. Defendant’s representatives promised someone would contact Plaintiff the next week to “discuss information needed to start the process.”

11. Contrary to Defendant's representations, the application completed by Plaintiff purported to be a final sales contract and not an initial application. A true and accurate copy of the purported contract is attached hereto as ***Exhibit A***.

12. Further, the purported contract did not contain any guarantee of customer satisfaction or refund in the event of termination; rather it stated that all sales were final.

13. Contrary to applicable FTC regulations, the purported contract does not provide for any cooling off period.

14. That day, Defendant charged \$7,800 to Plaintiff's credit card for "Premium+" and "Entity Creation CAP" services, despite not providing *any* services to Plaintiff and its representation that it would contact Plaintiff next week to "start the process."

15. Within a few days of the seminar, Plaintiff decided he did not have need of any services offered by Defendant.

16. On September 25, 2018, Plaintiff spoke with two representatives of Defendant by phone to request cancellation of his application and a refund of any fees charged him.

17. During the second call, Defendant's representative accepted Plaintiff's cancellation of the "Premium+" and "Entity Creation CAP" services, represented that a refund would be issued, but offered a lower cost service instead, specifically a review of his trusts and assets for approximately \$1,500.

18. Plaintiff did not order any additional services but requested that Defendant send an email detailing the proposed services and costs.

19. Defendant never responded and did not issue the promised refund.

20. By letter dated November 20, 2018, Plaintiff again requested that Defendant refund all amounts charged him. A true and accurate copy of the letter is attached hereto as ***Exhibit B***.

21. Subsequently, Plaintiff has contacted Defendant by phone on numerous occasions to confirm his cancellation and demand a refund.

22. Despite Plaintiff's many notices of cancellation, and having provided no services at all to Plaintiff, Defendant has repeatedly charged Plaintiff's credit card \$150 per month.

23. When contacted by Plaintiff's counsel, Defendant refused to confirm that future charges would cease and abruptly hung up the phone.

**COUNT ONE**  
**DECLARATORY JUDGMENT – NO CONTRACT**

24. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 23, above, as if fully restated herein.

25. Defendant provided no consideration as no services were ever rendered to Plaintiff.

26. Defendant agreed to cancel and terminate the purported contract and to refund Plaintiff's money.

27. The purported contract provides no "cooling off" period, as required by FTC regulations.

28. The purported contract's liquidated damages provisions are unenforceable penalties.

29. The purported contract is unconscionable and unenforceable as a matter of law.

30. Plaintiff is therefore entitled to a declaratory judgment that the purported contract is void and unenforceable and ordering restitution of all payments made to Defendant by Plaintiff.

**COUNT TWO**  
**DECLARATORY JUDGMENT – NO ARBITRATION**

31. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 30, above, as if fully restated herein.

32. Because the purported contract is unenforceable, there is no binding agreement to arbitrate.

33. Additionally, Defendant is precluded and estopped from enforcing the arbitration clause by the decision in *Eliasieh v. Legally Mine, LLC*, 2020 WL 1929244 (Apr. 21, 2020).

34. Plaintiff is therefore entitled to a declaratory judgment finding that there is no binding agreement to arbitrate this matter.

**COUNT THREE**  
**BREACH OF CONTRACT**

35. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 34, above, as if fully restated herein.

36. To the extent a valid contract exists between the parties, Defendant materially breached the contract by failing to refund Plaintiff's money after agreeing to do so and by continuing to charge Plaintiff's account despite repeated notices of cancellation.

37. Plaintiff is therefore entitled to damages in an amount to be proven with specificity at trial.

**COUNT FOUR**  
**FRAUD**

38. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 37, above, as if fully restated herein.

39. Defendant falsely represented to Plaintiff that it "guaranteed" customer's satisfaction, despite knowing its contract terms provided that all sales were final and nonrefundable.

40. Defendant falsely represented to Plaintiff that he was completing an initial application at the seminar, despite knowing that the form completed by Plaintiff was a purported sales contract.

41. Defendant falsely represented to Plaintiff that it had cancelled his application and refunded his money, despite intending to continue billing his account.

42. Defendant's false representations were intended to induce, and did induce, Plaintiff to rely upon such representations.

43. Plaintiff justifiably relied on Defendant's false representations by completing the application and forestalling legal action to recover his payments from Plaintiff.

44. Defendant acted with malice and intent to defraud Plaintiff.

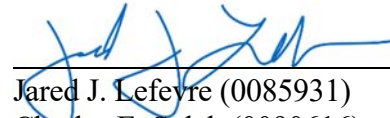
45. Plaintiff is therefore entitled to damages in an amount to be proven with specificity at trial, including punitive damages, reasonable attorney fees, expenses, and costs.

WHEREFORE, plaintiff prays for judgment in his favor and against defendant as follows:

- i. declaring the purported contract void and unenforceable and ordering restitution of all payments made to Defendant by Plaintiff;
- ii. declaring the arbitration clause void and unenforceable;
- iii. damages in an amount exceeding \$25,000 but to proven with specificity at trial;
- iv. punitive damages;
- v. reasonable attorney fees, expenses, and costs;
- vi. such other and further relief as the Court deems just and equitable.

Respectfully submitted,

EASTMAN & SMITH LTD.



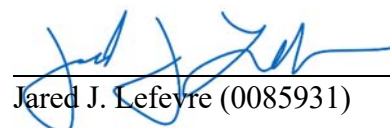
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[cesulek@eastmansmith.com](mailto:cesulek@eastmansmith.com)

Attorneys for Plaintiff

**JURY DEMAND**

Plaintiff hereby demands trial by jury.



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Jared J. Lefevre (0085931)



Tuesday 25  
am 801

**EXHIBIT A**

1337 E. 750 N. Orem, UT 84097

Phone: (855) 361-2686 | Fax: (888) 801-6454

Event/Association Meeting: Boston BioLifeName: (print) Don M. Smucker

Email: [REDACTED]

Address: (billing) 28304 Cedar Park BlvdCity: PerrysburgState/Zip: Ohio 43551

Home Phone: [REDACTED]

Cell Phone: [REDACTED]

Work Phone: [REDACTED]

**PREMIUM+****12 MONTHS OF  
SERVICE:**\$150.<sup>00</sup>/mo.\$1,800.<sup>00</sup> upfront**As a member of Premium+ I will receive:****INITIAL:** • Asset Protection Blueprint • Tax Impact Plan • License Protection Review • Living Trust Review or Planning Session**ANNUAL REVIEWS FOR:** • Asset Protection • Tax Savings • Trust Updates**CONTINUED UPKEEP FOR:** • Entity Renewals (does not include payment of state fees) • Qualified Registered Agent Services • Minutes & Meeting Outlines • Online Software Updates • HIPPA Compliance Protocols**ACCESS TO:** • Monthly Newsletter • Legally Mine Legal Staff • Physical Documents & Legal Binders Created & Delivered • Carepoint Group Purchasing Membership • Advanced Tax Planning Specialists

☒ By checking this box, I am enrolling in Premium+ and agree to be billed \$150.<sup>00</sup> per month (or \$1,800 per annum) for the minimum required twelve months. This term shall be in effect as of the date of this signed agreement. I may discontinue this service, after my initial contracted term, by adhering to the termination procedures found in the "Terms and Conditions" on the reverse side of this agreement.

**ENTITY CREATION CAP****Unlimited Entity Creation**  
Includes Tax Savings Guarantee\$6,000.<sup>00</sup>**By purchasing the Entity Creation CAP I will receive:**

Access to over 100 specially designed legal documents through mylegalstronghold.com. Included with my purchase of the Entity Creation CAP I will also receive complimentary service pertaining to the creation of legal entities, and support for legal documents, within the scope of Legally Mine.



By checking this box, I am purchasing the Legally Mine Entity Creation CAP and agree to pay the amount listed above.

I am authorizing Legally Mine to make monthly automatic payment withdrawals in the amount of \$\_\_\_\_\_/mo. for 11 remaining months.

X \_\_\_\_\_

**TOTAL:**

\$7,800.00

**TOTAL**

collected at event:

\$ 7,800.**METHOD OF PAYMENT**☐ Check#: \_\_\_\_\_ ☐ Process via credit card:

CC#: [REDACTED]

Exp. Date: [REDACTED]

CVV2: [REDACTED]

I hereby authorize Legally Mine to process my selected Premium+ and/or Entity Creation CAP payments in exchange for the products and services listed above. By signing below, I understand that, unless specified in writing, **ALL SALES ARE FINAL**. I understand that all transactions related to this agreement are business-to-business and not consumer transactions, as I am intending to create and operate new business entities. I also acknowledge I have read, understand, and agree to the terms described in the "Consent to Binding Arbitration," and "Terms and Conditions" sections on the reverse side of this Agreement.

Signature: [REDACTED]

Date: 9-21-18☒ Product Packet Received (initial) [REDACTED]

## CONSENT TO BINDING ARBITRATION & TERMS AND CONDITIONS

### CONSENT TO BINDING ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION

By execution of their Agreement (the "Agreement"), purchaser/customer ("Customer") and Legally Mine, ("Company") hereby agree that any and all disputes that arise between them concerning this Agreement or any of the terms of this Agreement, or that concern any aspect of the relationship between Customer and Company, shall be decided exclusively in binding arbitration conducted in the state of Utah by the American Arbitration Association ("AAA"). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Customer and Company further agree that each party will bear his/her/its own costs and attorneys' fees incurred in connection with the AAA arbitration proceeding, and agree that the AAA arbitrator shall have no power or discretion to make any award of costs or attorneys' fees. By agreeing to arbitration, you waive any right or authority for any claims to be arbitrated as a class action.

### TERMS AND CONDITIONS

#### *General Terms*

**Obligation.** Failure to use or failure to take advantage of the product/services offered and outlined in this agreement does not relieve the customer of the obligation to pay any upfront, annual, or monthly contracted payments through the course of the contracted service term. Failure to pay may result in late payment and other applicable fees, including but not limited to collections and/or attorney fees.

**Charge Dispute Penalties.** Should customer not honor this agreement or should customer dispute the contracted charges with the financial institute making the payment(s) on behalf of the customer (i.e. credit card companies, banks, etc.) customer agrees to pay up to three times the original contract amount FOR EACH DISPUTE FILED within thirty days following the date the dispute was made, or contract not honored. Non-compliance with this clause may result in collections, attorney and additional fees, and be reported to appropriate credit agencies.

**Non-Disclosure & Non-Disparagement.** In consideration of the disclosure of Proprietary Information by Company, Customer hereby agrees; a. to hold the Proprietary Information in strict confidence and to take all reasonable precautions to protect such Proprietary Information; and b. not to copy or reverse engineer any such Proprietary Information. The parties agree that neither Customer nor their representatives will disparage, defame, impugn, damage or assail the reputation, or cause or tend to cause the recipient of a communication to question the business condition, integrity, competence, good character, professionalism of the Company through any medium, either orally or in writing, including, but not limited to, electronic mail, television or radio, computer networks or internet bulletin boards, blogs, social media, review sites, or any other form of communication. Disparage as used herein shall mean any communication oral or written, of false information or the communication of information with reckless disregard to its truth or falsity. Customer acknowledges that a breach of any of the terms set forth will cause Company to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery. Company cannot know in advance the impact of breach on Company's reputation or business, nor can it readily ascertain what costs Company will incur as a result. Accordingly, if Customer breaches any of the terms, Customer shall pay Company \$10,000, which represents a fair, reasonable and appropriate estimate thereof. The Parties further stipulate that the agreed upon sum is not a penalty, but rather a reasonable measure of damages, based upon the parties' experience and given the nature of the losses that may result from breach. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. If any part, term or provision of this Agreement is held to be unenforceable neither the validity, nor enforceability of the remainder of this Agreement shall be affected.

**Discontinuation.** Due to the nature of Company's business and its vulnerability of proprietary theft, Customer and Company hereby agree that by execution of this Agreement, this transaction is final, as stated on the front side of this agreement. Account discontinuation or termination requests by email do not qualify. If Customer decides to discontinue the relationship with Company, any property traded in, any payments made by Customer under the contract or sale, and any negotiable instrument executed by Customer will NOT be returned. Call 855-361-2686 during regular office hours (M-F 9am - 5pm MST) for questions regarding this policy.

#### *Product/Service Specific Terms*

1. **Payment, Financing and Late Fees.** Customer agrees to pay, when due, all fees and charges in accordance with this agreement and in accordance with the rules and regulations of Legally Mine and MyLegalStronghold.com. If customer utilizes a payment plan, customer agrees will be charged an additional \$1,200.00 built into the finance total for each year financed. If customer should fail to pay when due, any amounts payable to Legally Mine, then each monthly unpaid balance will be assessed a late fee of \$50 per month until paid for Premium+, and assessed a late fee of \$150 per month until paid for the Entity Creation CAP. Should collection efforts be required, the customer shall be fully responsible for payment of all costs of collection, including reasonable attorney fees.
2. **Premium+ Termination.** After the initial 12 month term of membership for Premium+ has passed, this agreement and payment will automatically be renewed on an annual basis for an additional 12 months. This contract renewal will be subject to the same terms and conditionals contained herein, until a formal request for membership termination is received by Legally Mine prior to this original or any renewal membership terms expiring. Formal requests for membership termination must be submitted through an authorized submission portal (through the Legally Mine website). Termination requests must be received at least fifteen (15) days, but not more than forty-five (45) days, prior to the last day of the initial term or any renewal term.

Premium+ Membership Benefits include:

1. Annual Asset Protection Review
2. Annual Blueprint
3. Annual Tax Impact Plan
4. Continued Online Software Updates
5. Continued Legal Staff Access
6. Continued Access to MyLegalStronghold.com Updates
7. Initial Trust Consultation
8. Continued Entity and Trust Modifications (after creation)
9. Annual Corporate Formalities (minutes, etc.)
10. Entity Renewal Filing ("does not include payment of state fees)
11. Qualifying Registered Agent Fees Covered
12. Monthly Newsletter Access
13. Physical Document & Legal Binders created and delivered
14. Carepoint Group Purchasing Organization membership

TO CONTACT LEGALLY MINE:  
CALL - 855-361-2686  
EMAIL - INFO@LEGALLYMINEUSA.COM

Please have your membership ID# available  
for verification of account access

P+ Member ID#



November 20, 2018

Art McOmber  
1337 E. 750N  
Orem, UT 84097

Dear Mr. McOmber:

You, your wife and I met briefly in Chicago at the Boston Bioscience meeting Sept. 21, 2018. We talked briefly after your presentation and discussed the possibility of using your service for our company. I was rushing to leave the meeting to pick up family at the airport and then leaving for another meeting.

After hastily filling out the attached form your wife informed me that she needed a credit card to be included with the form and that someone would call me the following Tuesday to discuss information needed to start this process.

I had left my wallet in my car and ran to the parking area to retrieve it and give her my card info. I then left the meeting hall.

On Sept 25 I talked to [REDACTED] and indicated to her that I had decided to close/sell our company and was not needing to utilize Legally Mine services and asked if my credit card could be credited the amount paid of \$7800.00. She stated I would need to talk to [REDACTED] concerning that issue. The day [REDACTED] called to discuss my decision to close our company he stated that I should at least consider looking at reviewing my trusts and assets. I asked him to email me what those services would provide and the cost it would entail. He said he thought it would be in the \$1500.00 range. I asked him to email the scope and cost of that service. He said he would do that the next day.

To date I have not received any correspondence from [REDACTED] and wish to cancel and retrieve the funds charged to my account. My account reference number is [REDACTED]

Thank you for your help in this matter.

Don M. Smucker



*P.S.: See all returned materials given  
at original meeting in Chicago.*