BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**TID No.: 16-22**
	)	
YOURPEOPLE, INC., dba	)	
ZENEFITS FTW INSURANCE SERVICES	)	
Respondent.	)	

CONSENT ORDER

The Tennessee Insurance Division of the Department of Commerce and Insurance ("Division") and YourPeople, Inc., dba Zenefits FTW Insurance Services ("Respondent") hereby stipulate and agree to the entry of this Consent Order subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of an order by the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this

Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner for violations of the law addressed specifically in this Consent Order, against the Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondents.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically, Tenn. Code Ann. §§ 56-1-101, 56-1-202, and 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. The Commissioner of the Department of Commerce and Insurance for the State of Tennessee has jurisdiction in this matter.

8. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the people.

9. Respondent has been a licensee of the Division as an insurance agency since December 31, 2013, holding Tennessee non-resident business entity license number 2263365. Respondent's home state is California.

10. Respondent's Tennessee non-resident business entity license is in active status with an expiration date of March 1, 2017.

11. Prior to the reports submitted to the Division by Respondent on or about February 1, 2016 and March 1, 2016, Respondent has not been the subject of any disciplinary action in the State of Tennessee.

FINDINGS OF FACT

12. Respondent is a privately held company which offers a cloud-based software service platform for small business customers that integrates the administration of human resources and employee benefits. Through this service, Respondent provides the sale of and access to insurance products.

13. In providing these insurance products, Respondent employs licensed insurance producers to sell and administer insurance plans for customers choosing to utilize Respondent as their insurance broker.

14. Respondent intended to have all employees responsible for the sale, solicitation, negotiation, and administration of insurance policies, plans, or products for customers to be licensed in each state in which the employee was working.

15. Unfortunately, as a result of Respondent's rapid growth in a short period of time, Respondent failed to ensure all such employees were so licensed. Under prior management, Respondent operated in a manner which Respondent knew or should have known would result in unlicensed individuals selling, soliciting and negotiating plans of insurance in the State of Tennessee prior to or without obtaining insurance producer licensure in Tennessee.

16. On or about March 1, 2016, Respondent reported to the Division a total of sixty-five (65) separate ongoing instances through January 1, 2014 to November 30, 2015 in which Respondent permitted individuals under their employment to engage in transactions that involved the sale, solicitation, negotiation, and administration of insurance in the State of Tennessee who did not properly hold a Tennessee insurance producer license at the time of such transactions.

17. The sixty-five (65) self-reported violations include both identifiable transactions and a number of presumed violations based on a statistical sampling. The self-reported violations are based on a review of four (4) different types of activities engaged in by the company that potentially involved conduct that would require an insurance producer license. These four (4) events include software demonstrations followed by the customer electing to use Respondent as their insurance broker, demonstration only events during which a quote may have been given but Respondent was not elected to be the customer's insurance producer, renewal and new policy events, and property and casualty events.

Of the four above stated activities, the Respondent has estimated, by way of sampling percentages from nationwide activity, that ninety-eight (98) transactions occurred in Tennessee that required the employee involved to have an insurance producer license. Of these ninety-eight (98) transactions occurring from January 1, 2014 to November 30, 2015 it is estimated, and self-reported by Respondent, that sixty-five (65) violations occurred due to either the individual lacking the proper non-resident license, failing to have fully completed the licensing process prior to the transaction, or never having obtained either a resident or non-resident license. In fifty-five (55) of those cases, the producer had a license in his or her resident state but failed to timely secure a non-resident Tennessee license prior to the transaction. Ten (10) of those cases represent more serious violations in which the producer had not acquired a resident producer license.

18. Respondent acknowledges the self-reported violations were a direct result of the Respondent's rapid growth as a company and its failure to put in place compliance measures to ensure that all employees maintained the proper license.

19. Respondent has taken steps to remediate its past violations and has implemented new controls to prevent the recurrence of violations. Respondent retained an independent accounting firm, PricewaterhouseCoopers, to provide an independent report of Respondent's violations. Respondent has obtained non-resident Tennessee insurance producer licenses for all current employees that performed the transactions in question. Respondent implemented new administrative and technical licensing controls to ensure that employees who transact insurance business with customers have appropriate resident and non-resident licenses. Respondent had PricewaterhouseCoopers test the design of its new controls. PricewaterhouseCoopers determined that these controls are adequately designed to address the risk of sales activity being

performed by agents without appropriate producer licensure. Respondent has mandated that all of its producers complete fifty-two (52) hours of continuing education courses offered by the National Association of Health Underwriters ("NAHU"), including twelve (12) hours of ethics training. Respondent also made a series of changes to its top leadership by replacing its CEO and its head of sales, reconstituting its Board of Directors, creating the position of Chief Compliance Officer, and establishing a compliance team with twelve (12) dedicated compliance personnel positions. Respondent has agreed that PricewaterhouseCoopers will test the operations of Respondent's new licensing controls in the third quarter of 2016 and report those results to the Department.

CONCLUSIONS OF LAW

20. Tenn. Code Ann. § 56-6-103 provides that "[a] person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this part."

21. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a)(13) has provided that the Commissioner may place on probation, suspend, revoke, or refuse to issue a license under Title 56, Chapter 6, Part 1, or issue a civil penalty for "knowingly accepting insurance business from an individual who is not licensed[.]"

22. For all violations occurring on or after July 1, 2011, Tenn. Code Ann. § 56-6-112 (2011) states in pertinent part:

> (e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.
>
> (g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this

chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(1) The person cease and desist from engaging in the act or practice giving rise to the violation;

(2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For the purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the person's license.

(h) In determining the amount of penalty to assess under this section, the commissioner shall consider:

(1) Whether the person could reasonably have interpreted such a person's actions to be incompliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation.

23. The Findings of Fact contained herein indicate Respondent accepted insurance business an estimated sixty-five (65) separate occasions in violation of Tenn. Code Ann. § 56-6-112(a)(13).

24. The Division has taken into account all the factors identified in Tenn. Code Ann. Section 56-6-112(h), and in particular the fact that Respondent self-reported its violations and

remediated them. The Division concludes that imposition of the maximum penalty is not warranted in this case. Imposing a maximum penalty without recognition of Respondent's remedial efforts would potentially discourage other licensees from self-reporting and remediation. After weighing these factors, the Division concludes that there are grounds for a Consent Order imposing civil penalties against Respondent in an amount of sixty-two thousand, five hundred dollars ($62,500).

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Act and the Uniform Administrative Procedures Act ("UAPA"), Tenn. Code Ann. §§ 4-5-101 *et. seq.*, and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Order, and agrees that this Order is in the public interest, necessary for the protection of citizens of the State of Tennessee and consistent with the purposes fairly intended by the policy and provisions of the Law.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112 (2011) of the Law, that:

1. Respondent pay a total civil monetary penalty of sixty-two thousand, five hundred dollars ($62,500). Payment shall be made within thirty (30) days of the date this agreement is executed by the Commissioner, and payment shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Attn: Kathleen Dixon, Legal Division
Davy Crockett Tower, 8th Floor
500 James Robertson Parkway
Nashville, Tennessee 37243

2. Respondent, in coordination with PricewaterhouseCoopers, will test the operations of Respondent's new licensing controls in the third quarter of 2016 and report those results to the Department on or before December 31, 2016.

3. It is further **ORDERED** that all persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of the Tenn. Code Ann. § 56-6-112(a)(13), shall **CEASE AND DESIST** from all such activities in violation of the Insurance Law.

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Respondent YourPeople, Inc., dba Zenefits FTW Insurance Services for violations of the Tenn. Code Ann. § 56-6-112(a)(13) alleged by the Insurance Division to have occurred with respect to the transactions involving the above referenced facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, Respondent YourPeople, Inc., dba Zenefits FTW Insurance Services, affirmatively states he has freely agreed to the entry of this Consent Order, that Respondent waives the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the Insurance Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Consent Order, are binding upon them.

ENTERED this 18 day of July, 2016.

Julie Mix McPeak

Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

YourPeople, Inc.,
dba Zenefits FTW Insurance Services
Joshua Stein
Chief Compliance Officer
& VP, Legal

Michael Humphreys
Assistant Commissioner for Insurance
Department of Commerce and Insurance

Respectfully Submitted,

Kathleen Dixon, BPR # 32072
Assistant General Counsel for Insurance
500 James Robertson Parkway
Davy Crockett Tower, 8th Floor
Nashville, TN 37243
(615) 532-6830
kathleen.dixon@tn.gov