

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) : ss
STATE OF SOUTH DAKOTA,)
Plaintiff,)
v.)
WAYFAIR INC.,)
OVERSTOCK.COM., INC,)
AND NEWEGG INC.)
Defendants.)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

32 Civ. 16-92

SETTLEMENT AGREEMENT AND
STIPULATION OF DISMISSAL
PURSUANT TO
SDCL 15-6-41(a)(1)(B)

The State of South Dakota, by and through its legal counsel, Richard M. Williams, Deputy Attorney General, Kirsten E. Jasper, Assistant Attorney General, and George S. Isaacson and Matthew P. Schaefer, legal counsel for Defendants, state as follows:

WHEREAS, the United States Supreme Court issued its decision in *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, 138 S.Ct. 2080 (2018) ("*Wayfair*"), on June 21, 2018, holding:

For these reasons, the Court concludes that the physical presence rule of *Quill* is unsound and incorrect. The Court's decisions in *Quill Corp. v. North Dakota*, 504 U. S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U. S. 753 (1967), should be, and now are, overruled.

Wayfair, 585 U.S. at ___, 138 S.Ct. at 2099.

WHEREAS, based on the decision of the United States Supreme Court, Defendants agree to collect and remit sales tax and follow all applicable procedures and requirements of Senate Bill 106, 91st Session, South Dakota

Legislature, 2016 (SB 106), now codified at SDCL chapter 10-64; and Defendants further specifically agree that collection will begin on January 1, 2019, and continue thereafter in accordance with any valid and applicable law that is consistent with the Supreme Court's decision in *Wayfair*, or any subsequently controlling law, including acts of Congress, that requires any seller of tangible personal property, products transferred electronically, or services for delivery into South Dakota, who does not have a physical presence in the state, to collect and remit sales tax; and

WHEREAS, SDCL 15-6-41(a)(1)(B) provides that an action may be dismissed after the filing of an answer or motion for summary judgment by filing a stipulation of dismissal signed by all parties who have appeared in the action.

NOW, THEREFORE, the State of South Dakota and Defendants agree and stipulate as follows:

1. Pursuant to SDCL 15-6-41 (a)(1)(B), and the above recitals, the State and Defendants jointly stipulate to the voluntary dismissal of this action with prejudice.
2. The State and Defendants are responsible for their own costs and attorney fees, provided, however, that either party may apply for costs or attorney fees, if available under law, related to the enforcement of this Agreement.
3. The State and Defendants agree that this Court will retain jurisdiction to enforce the terms of this Agreement.

Each undersigned representative certifies that he or she is fully authorized to enter and execute the terms and conditions of this Settlement Agreement and Voluntary Dismissal.

FOR THE STATE OF SOUTH DAKOTA:

Dated this 31st day of October, 2018.

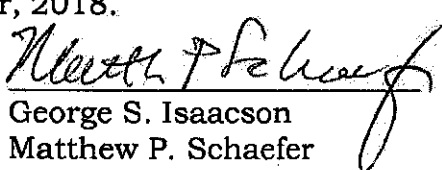
**MARTY J. JACKLEY
ATTORNEY GENERAL**

By: 

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FOR DEFENDANTS:

Dated this 30th day of October, 2018.


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Matthew P. Schaefer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Settlement Agreement and Stipulation of Dismissal Pursuant to SDCL 15-6-41(a)(1)(B), in the above-captioned matter was served electronically through the Odyssey File and Serve System upon Jeff Bratkiewicz, at jeffb@bangsmccullen.com, Kathryn J. Hoskins, at khoskins@bangsmccullen.com and by United States mail, first class, postage prepaid and by electronic mail to: George S. Isaacson, Martin I. Eisentein, Matthew P. Schaefer, Brann & Isaacson, 184 Main Street, Lewiston, Maine 04243-3070, gisaacson@brannlaw.com, mschaefer@brannlaw.com, and meisenstein@brannlaw.com, this 31st day of October 2018.


Richard M. Williams
Deputy Attorney General