

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
C.A. NO.

In the Matter of

PIONEER PRODUCTS, INC.;  
NOBLE INDUSTRIAL SUPPLY CORP.;  
RICHARD L. WEBER; and  
BENNO T. SCHUBERT.

**ASSURANCE OF DISCONTINUANCE PURSUANT TO M.G.L. c. 93A, § 5**

**I. INTRODUCTION**

1. The Commonwealth of Massachusetts, through the Attorney General and the Inspector General; Pioneer Products, Inc.; Noble Industrial Supply Corp.; Richard L. Weber; and Benno T. Schubert (collectively, the “Parties”) voluntarily enter into this Assurance of Discontinuance (“AOD”) pursuant to M.G.L. c. 93A, § 5.

2. Pioneer Products, Inc. (“Pioneer”) is a New York corporation whose office and principal place of business is 167-169 Mineola Boulevard in Mineola, New York, 11501.

3. Richard L. Weber (“Weber”) is a New York resident. Weber is the President and sole shareholder of Pioneer.

4. Noble Industrial Supply Corp. (“Noble”) is a New York corporation whose office and principal place of business is 167-169 Mineola Boulevard in Mineola, New York, 11501.

5. Benno T. Schubert (“Schubert”) is a New York resident. Schubert is the President and sole shareholder of Noble.

6. The Commonwealth conducted an investigation into Pioneer's and Noble's telemarketing sales and shipment of specialty products for fire departments, cleaning supplies and chemical products ("Products") to Massachusetts Political Subdivisions. As a result of the investigation, the Commonwealth alleges that Pioneer, Noble, Weber and Schubert violated M.G.L. c. 93A, § 2, and M.G.L. c. 12, § 5B, by engaging in the conduct described in Section III herein (the "Covered Conduct").

7. The Commonwealth agrees to accept this AOD on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 5, in lieu of litigation.

8. Pioneer, Noble, Weber and Schubert deny the Commonwealth's allegations, make no admission of wrongdoing and deny all liability arising from the Commonwealth's allegations.

## **II. DEFINITIONS**

As used herein:

9. "Commonwealth" means the Attorney General acting in conjunction with the Inspector General pursuant to M.G.L. c. 12A, § 11.

10. "Effective Date" shall mean the date the AOD is filed with the Superior Court for Suffolk County. The AOD shall be filed with the Superior Court as soon as practical in light of the changes to court operations as a result of the COVID-19 (coronavirus) pandemic.

11. "Employee" means workers, managers, supervisors, executives, directors, officers, subcontractors, temporary workers, contract workers and all other persons performing work on behalf of Pioneer, Noble, Weber or Schubert.

12. "Execution of the AOD" shall mean the date that Defendants have executed the AOD.

13. “Political Subdivision” shall have the same meaning as that term is defined in M.G.L. c. 12, § 5A.

### **III. COVERED CONDUCT**

Based upon its investigation, the Commonwealth alleges that Pioneer, Noble, Weber and Schubert violated M.G.L. c. 12, § 5B and M.G.L. c. 93A, § 2 as follows:

14. Between 2010 and 2019, Pioneer and Noble operated across Massachusetts engaging in the business of selling Products to Political Subdivisions and private business.

15. Although Pioneer and Noble presented themselves as different vendors to customers, they share many of the same employees, office space, customer lists and other resources. Pioneer and Noble each sent separate invoices to Political Subdivisions using only its own name, logo and contact information, and the same salespeople contacted Political Subdivisions on behalf of both Pioneer and Noble. Weber and Schubert worked full-time on the joint operations of both companies.

16. Pioneer’s and Noble’s salespeople used pseudonyms when communicating with the Political Subdivisions. From time to time Weber and Schubert communicated directly with the Political Subdivisions under pseudonyms. Weber used the pseudonym “Alan Foster” and Schubert used the pseudonym “Ben Grimm.”

17. Pioneer’s and Noble’s business dealings with a Political Subdivision typically began with a cold sales call from a salesperson calling on behalf of Pioneer or Noble to a department or other affiliated entity of a Political Subdivision.

18. During this initial call, a salesperson, identifying himself as a representative of Pioneer or Noble, persuaded the Political Subdivision to place an order.

19. In general, the Political Subdivision did not sign an agreement with Pioneer or Noble; all business was transacted verbally, and the sole documentation exchanged between Pioneer or Noble and the Political Subdivision consisted of invoices, with few exceptions.

20. At some point after the Political Subdivision received the initial order, a salesperson for Pioneer or Noble called the Political Subdivision to state that the company was prepared to ship the next order of the same Product, even though the Political Subdivision had not yet placed an order.

21. If the Political Subdivision questioned the order or complained or protested, Pioneer's or Noble's salesperson engaged in high-pressure tactics to cause the representative to nevertheless agree to the next order.

22. During these calls, Pioneer's or Noble's salesperson made misleading statements to the Political Subdivision. These statements, some of which are described more fully below, included:

- a. The Political Subdivision had agreed to purchase the Products in an earlier sales call when in fact it had not;
- b. The unit price of previously purchased Products was contingent on the Political Subdivision buying more of the same Product and the Political Subdivision would be subject to retroactive price increases if it did not accept and pay for the subsequent order;
- c. The Political Subdivision needed to purchase additional Products to "complete" or "fulfill" its order; and
- d. The Political Subdivision was otherwise legally obligated to purchase additional Products.

23. Shortly after concluding a sales call, a different Pioneer or Noble employee from what the companies referred to as the “shipping” or “verification” department called the Political Subdivision.

24. That Pioneer or Noble employee confirmed with the Political Subdivision the shipment of the order as discussed on the prior sales call and reviewed the product, price and invoicing terms. In most cases, the Political Subdivision did confirm the order. However, these “verification” calls merely confirmed that the Political Subdivision had agreed to accept and pay for the Products based on Pioneer’s or Noble’s misleading statements and, in some instances, involved a representative for the Political Subdivision who lacked authority to place the order.

25. In some instances, after shipping an order to a Political Subdivision, Pioneer and Noble persuaded the Political Subdivision to purchase additional or different Products to “complete” or “fulfill” an order. However, the Political Subdivision in fact had not agreed to a minimum order size or minimum order value, so there was no order to “complete” or “fulfill.” Pioneer’s and Noble’s statements misled the Political Subdivision and caused it to agree to receive and pay for additional Products that it did not need or want.

26. In some instances, Pioneer and Noble threatened to take legal action or refer a Political Subdivision to a collections agency for orders that the Political Subdivision accepted based upon Pioneer’s and Noble’s misleading statements. All invoices stated that “Attorney fees, court costs and interest will be added to any balance placed for collections.”

27. Pioneer’s and Noble’s invoices stated that a Political Subdivision would be subject to a fifteen (15) percent restocking charge and have to pay return shipping if it wanted to return an unwanted order and that the return required prior authorization from Pioneer or Noble. In addition, all invoices stated that returns needed to be made within thirty (30) days and that no

returns would be accepted “under any circumstances” past the thirty-day deadline. Pioneer’s and Noble’s return policy deterred some Political Subdivisions from returning Products that they did not need or want.

28. Because of Pioneer’s and Noble’s misleading sales practices, the Political Subdivision were invoiced and paid for Products that they neither needed nor wanted.

#### **IV. PAYMENT TO THE COMMONWEALTH**

29. Pioneer, Noble, Weber and Schubert agree to pay eight-hundred-and fifty-thousand dollars (\$850,000.00) by wire(s) to the Commonwealth of Massachusetts (to the attention of the AGO False Claims Division) no later than close of business on June 29, 2020 to be received by the Commonwealth no later than close of business on June 30, 2020, with specific wire instructions to be provided.

#### **V. ASSURANCES**

Pioneer, Noble, Weber and Schubert agree to the following assurances (“Assurances”):

30. Pioneer, Noble, Weber and Schubert, through Pioneer or Noble, or through any other company that Weber or Schubert forms or owns or will own, in whole or in part, directly or indirectly, or any company for which Weber or Schubert is or will be an employee, manager, supervisor, executive, director, officer, subcontractor, temporary worker or otherwise performs work, shall not engage in unfair or deceptive acts. This includes, but is not limited to:

- a. Offering Products for sale without disclosing all terms of the purchase in writing, including, but not limited to, any obligation to purchase additional Products or spend a minimum amount;
- b. Applying retroactive price increases;
- c. Shipping unordered Products;

- d. Threatening legal action or threatening to refer customers to debt collectors without legal basis; and
- e. Making false or deceptive statements to customers regarding obligations to purchase Products or spend minimum amounts.

31. Pioneer, Noble, Weber, and Schubert, through Pioneer or Noble, or any other company that Weber or Schubert forms or owns or will own, in whole or in part, directly or indirectly, or any company for which Weber or Schubert is or will be an employee, manager, supervisor, executive, director, officer, subcontractor, temporary worker or otherwise performs work, shall not engage in any business in Massachusetts for a period of one (1) year from the Effective Date. This includes, but is not limited to, soliciting any potential, current or past customer residing or located in Massachusetts, including, but not limited to, Political Subdivisions, directly or indirectly, for a period of one (1) year from the Effective Date. This includes, but is not limited to, advertising (exclusive of internet advertising that may be accessible in Massachusetts), mass mailings, telephone calls, written communications and electronic communications.

32. Pioneer, Noble, Weber and Schubert, through Pioneer or Noble, or any other company that Weber or Schubert forms or owns or will own, in whole or in part, directly or indirectly, or any company for which Weber or Schubert is or will be an employee, manager, supervisor, executive, director, officer, subcontractor, temporary worker or otherwise performs work, shall not send any invoice or Products (including gifts, gratuities, samples and other items of value), directly or indirectly, to any potential, current or past customer located in Massachusetts for a period of one (1) year from the Effective Date.

33. After a period of one (1) year from the Effective Date, Pioneer, Noble, Weber and Schubert, through Pioneer or Noble, or any other company that Weber or Schubert forms or owns or will own, in whole or in part, directly or indirectly, or any company for which Weber or Schubert is or will be an employee, manager, supervisor, executive, director, officer, subcontractor, temporary worker or otherwise performs work, shall not resume doing business in Massachusetts unless they first notify the Attorney General and the Inspector General that they intend to do business in Massachusetts and identify the name and address of the business, the type of business and their role or job description in the business.

34. Pioneer, Noble, Weber and Schubert, or any other company that Weber or Schubert forms or owns or will own, in whole or in part, directly or indirectly, or any company for which Weber or Schubert is or will be an employee, manager, supervisor, executive, director, officer, subcontractor, temporary worker or otherwise performs work, will implement policies and practices, including:

- a. Disclosing in writing the terms of any contract, agreement or other commitment, written or verbal, including the price and minimum purchase or spending amounts, in all invoices to customers;
- b. Providing Occupational Safety and Health Administration Safety Data Sheets (“SDS”) with all merchandise sent to customers;
- c. Updating Pioneer and Noble websites to include SDS for all merchandise, where applicable;
- d. Training all Employees regarding the terms of this AOD;
- e. Training all Employees regarding unfair and deceptive sales practices; and



- f. Updating personnel manuals or codes of conduct to prohibit unfair or deceptive acts, including the acts listed in Paragraph 30.

35. Each of Pioneer, Noble, Weber and Schubert will confirm in writing to the Commonwealth that it has implemented the policies and practices described in Paragraph 34 within one (1) year of the Effective Date.

## **VI. RELEASE**

36. In consideration of the foregoing and except to enforce the obligations set forth in Sections IV and V herein, the Commonwealth forever discharges and releases Weber and Schubert and Pioneer and Noble together with their predecessors, current and former parent companies, direct and indirect affiliates, divisions and subsidiaries and their current and former employees, agents, representatives, shareholders, officers, directors, managers, successors and assigns, from civil liability to the Commonwealth pursuant to M.G.L. c. 12, § 5B or M.G.L. c. 93A, § 2, arising from the Covered Conduct.

37. Pioneer, Noble, Weber and Schubert forever discharge and release the Commonwealth from civil liability for any claims arising from its investigation of the Covered Conduct.

## **VII. NOTICES AND CHANGE OF ADDRESS**

38. Any notices or communications transmitted between Pioneer, Noble, Weber or Schubert and the Commonwealth pursuant to the AOD shall be provided in writing by first class mail and email to the Commonwealth or Pioneer and Noble or their successors and Weber and Schubert, as follows:

Commonwealth:

William J. Durkin, Esq.  
Lead Counsel  
Civil Recovery Unit  
Office of the Inspector General, Room 1311  
One Ashburton Place  
Boston, MA 02108  
william.durkin@mass.gov

Pioneer, Noble, Weber and Schubert:

Anthony R. Leone, Esq.  
Murtha Cullina LLP  
99 High Street  
Boston, MA 02110  
aleone@murthalaw.com

#### **VIII. MISCELLANEOUS**

39. By signing below, the Parties agree to comply with all terms of the AOD.
40. The AOD may be enforced only by the Parties.
41. The Commonwealth shall provide Pioneer, Noble, Weber and Schubert seven (7) days' notice of any intention to bring an action to enforce an alleged violation of this Agreement.
42. The AOD is not intended to be construed or used as a waiver or any limitation of any defense otherwise available to Pioneer, Noble, Weber or Schubert in any pending or future legal or administrative action or proceeding relating to the Covered Conduct. Nothing in the AOD shall provide any rights to or permit any person or entity not a party hereto to enforce any provision of the AOD.
43. The AOD does not constitute an approval by the Commonwealth of any of Pioneer's and Noble's business acts and practices, and Pioneer, Noble, Weber and Schubert will make no representations to the contrary.

44. The AOD contains the complete agreement between the Parties concerning the Covered Conduct. No promises, representations or warranties other than those set forth in the AOD have been made by any of the Parties. The AOD supersedes all prior communications, discussions or assurances, if any, of the Parties, whether orally or in writing.

45. The AOD may not be changed, altered or modified, except by order of the Court or by written agreement of the Parties.

46. The AOD may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same AOD. The Parties shall be entitled to sign and transmit an electronic signature of the AOD (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. After which, Pioneer, Noble, Weber and Schubert shall send via express mail original, signed copy(ies) to the Commonwealth with specific instructions to be provided.

47. Pioneer, Noble, Weber and Schubert acknowledge that they are represented by legal counsel, including Anthony R. Leone of Murtha Cullina LLP, with whom they have consulted concerning the AOD.

48. The undersigned acknowledge that execution of the AOD is voluntary and authorized.

49. The AOD and its provisions will be effective on the Effective Date, except for those provisions in Paragraph 29 that take effect upon the Execution of the AOD.

Office of the Attorney General

*/s/ Amy Crafts /s/*

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Amy Crafts  
Assistant Attorney General  
Chief, False Claims Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Amy.Crafts@mass.gov

June 29, 2020

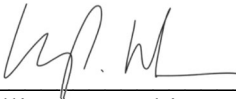
Office of the Inspector General

*Susanne M. O'Neil*

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Susanne O'Neil  
Special Assistant Attorney General  
General Counsel  
Office of the Inspector General  
One Ashburton Place  
Boston, MA 02108  
susanne.m.oneil@mass.gov

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William J. Durkin  
Lead Counsel  
Civil Recovery Unit  
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One Ashburton Place  
Boston, MA 02108  
william.durkin@mass.gov

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Pioneer Products, Inc.

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Richard L. Weber, President  
and in his individual capacity

June 29, 2020

Noble Industrial Supply Corp.

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Benno T. Schubert, President and  
in his individual capacity  
June 29, 2020

Office of the Attorney General

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Amy Crafts  
Assistant Attorney General  
Chief, False Claims Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Amy.Crafts@mass.gov

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Office of the Inspector General

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Susanne O'Neil  
Special Assistant Attorney General  
General Counsel  
Office of the Inspector General  
One Ashburton Place  
Boston, MA 02108  
susanne.m.oneil@mass.gov

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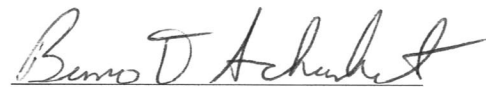
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and in his individual capacity

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Noble Industrial Supply Corp.



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Assistant Attorney General  
Chief, False Claims Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
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General Counsel  
Office of the Inspector General  
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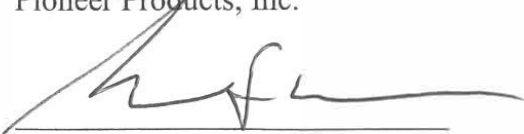
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Office of the Inspector General  
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and in his individual capacity

June 29, 2020

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June \_\_, 2020