STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT , **Plaintiff,** **v.** **AFFINION GROUP, INC., TRILEGIANT CORPORATION, AND WEBLOYALTY.COM, INC.,** **Defendants.**	**CIVIL DIVISION** **No.** 634-10-13 Wncv

2013 OCT 16 P 3:01

AGREED FINAL JUDGMENT
AND PERMANENT INJUNCTION

WHEREAS Plaintiff, the State of Vermont ("Plaintiff" or "State"), having filed its complaint ("State's Complaint") and appearing through William H. Sorrell, Attorney General of the State of Vermont, by Assistant Attorney General Elliot Burg, and defendants Affinion Group, Inc., Trilegiant Corporation and Webloyalty, Inc. ("Defendants"), appearing individually and through their attorneys Manatt, Phelps & Phillips, LLP, by Clayton Friedman, and Davis & Gilbert, by Ronald R. Urbach, Esq., having stipulated that this Agreed Final Judgment and Permanent Injunction (hereafter "Judgment") may be signed by a judge of the Washington Superior Court, and

WHEREAS the parties, having consented to the entry of this Judgment for the purpose of settlement only, without this Judgment constituting evidence against or any admission by any party, and without trial of any issue of fact or law, and nothing contained in this Judgment shall constitute an admission or concession by Defendants, nor shall it be evidence or findings

supporting any of the allegations of fact or law alleged by the Plaintiff, or of any violation of state or federal law, rule or regulation, or any other liability or wrongdoing whatsoever, and neither the Judgment, nor any negotiations, statements or documents related thereto, shall be offered or received in any legal or administrative proceeding or action as an admission, evidence or proof of any violation of liability under or wrongdoing in connection with any law, rule or regulation, except in an action by the Attorney General to enforce the terms of this Judgment, and

WHEREAS the parties acknowledge that, in addition to this Judgment, Defendants have entered into similar judgments with the Attorneys General of the States identified on Exhibit A and those States filing similar judgments are referred to collectively as "Participating States," and

WHEREAS the Court having considered the pleadings and the Stipulation for Entry of Final Judgment and Permanent Injunction executed by the parties and filed herewith, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment may be entered in this matter as follows:

I. JURISDICTION

1. The Court has jurisdiction over the subject-matter of this action and of the parties.

2. Venue is proper in this Court.

3. The State's Complaint states a cause of action against the Defendants under the Vermont Consumer Protection Act, 9 V.S.A. § 2451 et seq., and Vermont's Discount Membership Program law, 9 V.S.A. § 2470aa et seq. ("Consumer Protection Laws").

II. THE PARTIES

4. Defendant Affinion Group, Inc. ("Affinion") is a privately-held corporation and is the parent company of Trilegiant Corporation ("Trilegiant") and Webloyalty.com, Inc.

("Webloyalty").

5. Defendant Trilegiant is a Delaware corporation marketing to consumers in Vermont and headquartered in Stamford, Connecticut. Trilegiant is a wholly-owned subsidiary and operating company of Affinion.

6. Defendant Webloyalty is a Delaware corporation marketing to consumers in Vermont and headquartered in Stamford, Connecticut. Webloyalty is a wholly-owned subsidiary of Affinion.

III. DEFINITIONS

For purposes of this Judgment only, the following definitions apply:

7. **"Account"** means any account to which a charge relating to a Membership Program can be made, including but not limited to, a credit card account, debit card account, checking account, savings account, loan account, mortgage account, telecommunications account, utility account, or other similar account.

8. **"Automatic Renewal"** means a plan or arrangement under which an Account (i) is automatically charged a Membership Charge at the end of a Trial Period and thereafter charged continually for successive membership terms, unless the consumer affirmatively cancels the membership or, in the case of a fixed-membership term with a Trial Period, where the Membership Charge is automatically paid starting at the end of the Trial Period and on an installment basis throughout the term of the membership, or (ii) if there is no Trial Period, is automatically charged a Membership Charge continually for successive membership terms, unless the consumer affirmatively cancels the membership or, in the case of a fixed-membership term with no Trial Period, the Membership Charge is automatically paid on an installment basis throughout the term of the membership.

9. **"Billing Information"** means unique Account information that enables any person to charge a consumer's Account, including (i) encrypted Account information or a unique identifier

related to an Account where Defendants do not receive or possess a key to unencrypt the Account or otherwise obtain the Account number or (ii) any other technological equivalent that enables any person to charge a consumer's Account. Billing Information does not include consumer's name, mailing address, e-mail address, and telephone number, if such information is not used to incur a Membership Charge.

10. **"Clear and Conspicuous"** or **"Clearly and Conspicuously"** means a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration and location, compared to the other information with which it is presented, that it is readily apparent, readable and understandable to the person to whom it is disclosed. An audio statement or disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and understand the entire statement or disclosure, and not be obscured in any manner by, for instance, music or other background noise. A statement may not contradict or be inconsistent with any other information with which it is presented.

11. **"Complaint"** is any written statement by a consumer who has Enrolled in a Membership Program received directly or indirectly by Defendants from a federal, state, or local governmental agency, including but not limited to the Federal Trade Commission or a State Attorney General, or a Better Business Bureau, in which the consumer expresses dissatisfaction in connection with the advertisement, sale, or services of the Membership Program.

12. **"Data Pass "** refers to the transfer of a consumer's Billing Information from a Marketing Partner to Defendants, or from Defendants to a Marketing Partner, for purposes of billing a Membership Charge for a Membership Program, provided that, for purposes of this Judgment, with regard to consumers who enroll in a Membership Program offered by or through a financial institution, as defined in the Gramm-Leach-Bliley Act, 15 USC § 6809, Data Pass does not include the transfer of encrypted Account information or a unique identifier related to an

Account where Defendants do not receive or possess a key to unencrypt the Account or otherwise obtain the Account number.

13. **"Effective Date"** means the 1st of October, 2013.

14. **"Enrollment"** or **"Enroll"** means when a consumer provides the Affirmative Assent required in Paragraph 33 of this Judgment and such enrollment in a Membership Program is processed and accepted by Defendants. The date of Enrollment is the date when the Enrollment is processed and accepted by Defendants, whichever date is the later to occur.

15. **"Fulfillment Materials"** means material provided to consumers after they initially Enroll in a Membership Program that fully describes the complete terms and conditions of a Membership Program, as described herein at Paragraph 52.

16. **"Incentive"** refers to any item, service, product, or good, that is offered to a consumer as an inducement to Enroll in a Membership Program. This term includes, but is not limited to, premiums, gift cards, checks, rebate offers, or anything of value, excluding, however, references to an item, service, product, or good that is part of a Membership Program's benefits.

17. A **"Live Check"** is a negotiable check, money order, draft, or other negotiable instrument, the presentment or negotiation of which (i) automatically enrolls a consumer in a Membership Program and obligates the consumer to pay for the Membership Program and (ii) requires or permits a Marketing Partner to transfer, release, or otherwise disclose its customers' Billing Information to Defendants for purposes of allowing Defendants to charge the customer a Membership Charge.

18. **"Mail"** means to send by United States Postal Service or other physical delivery method including, but not limited to, courier, UPS or Federal Express that includes address forwarding, but excludes electronic mail.

19. **"Marketing Partner"** means any entity with whom Defendants contract for purposes of marketing Membership Programs to customers of that entity. Marketing Partner shall not

include any entity with which Defendants contract for solicitation of (i) media space or time to market its Membership Programs and which entity offers such media space or time to others (e.g., such as direct-to-consumer television, radio and internet solicitation space or time) or (ii) any list rental or similar relationship where no joint marketing between such entity and Defendants occurs.

20. **"Membership Charge"** means any amount charged pursuant to an Automatic Renewal to an Account for membership in a Membership Program.

21. **"Membership Program"** means any program in which a consumer enters into an agreement with Defendants for the provision of benefits, goods or services and for which Defendants charge a Membership Charge. Membership Program excludes insurance policies for which the consumer pays a premium in consideration for insurance coverage under policies regulated by state insurance regulatory agencies.

22. **"Proximate"** or **"Proximity"** means on the same page, not in a footnote, and beneath, beside, or adjacent.

23. **"Resident"** refers to a consumer who resides in Vermont as of the Effective Date, or who resided in Vermont at the time a consumer Enrolled in a Membership Program.

24. **"Trial Offer"** means an offer to a consumer to Enroll in a Membership Program for a Trial Period after which a consumer who does not cancel is automatically charged a Membership Charge.

25. **"Trial Period"** means a finite time period, after a consumer Enrolls in a Membership Program, in which the consumer is not charged a Membership Charge or is only charged a nominal fee. A Trial Period begins when the consumer receives the Fulfillment Materials. Receipt for Mail shall be deemed either five (5) or nine (9) days after Defendants send the consumer Fulfillment Materials either by first class Mail or any other means of Mail, respectively. Receipt for e-mail shall be deemed the day Defendants send the consumer the e-

mail with the Fulfillment Materials.

IV. SCOPE

26. The subject matter of this Judgment covers the practices of Defendants and those Marketing Partners identified by Vermont and the other Participating States, and which are not subject to any pending investigation by Vermont or the Participating States as of the Effective Date of this Judgment, ("Covered Marketing Partners") related to their marketing and sale of Membership Programs by or through Covered Marketing Partners, which the State alleges violates its Consumer Protection Laws as they relate to the following practices and any additional acts or practices covered by this Judgment or as alleged in the State's Complaint ("Subject Matter"):

A. Defendants' and their Covered Marketing Partners' marketing and sales practices relating to the offer for sale and sale of Defendants' Membership Programs, through direct mail solicitations, including the use of live check, and through online offers and sales, including offers via e-mail. Such marketing and sales practices include, but are not limited to, the following: disclosures of material terms in the solicitations; the use of Data Pass in marketing; the use of Incentives, Trial Offers and audio overlays in solicitations; the use of Covered Marketing Partner names and logos; and references to Covered Marketing Partners in solicitations, including representations regarding the relationship between Defendants and Covered Marketing Partners; and the methods of consent obtained from consumers prior to and during Enrollment in Defendants' Membership Programs;

B. Defendants and their Covered Marketing Partners billing practices relating to Defendants' Membership Programs: the use of Data Pass; disclosures regarding billing and Data Pass; the recurring billing of Membership Fees; and the use of Automatic Renewal and negative option marketing and billing;

C. Defendants' communications with consumers who enroll in Defendants' Membership Programs: post-enrollment communications regarding the material terms of the Membership Programs sent to consumers who enrolled via online or direct mail; communications regarding the benefits associated with and change in terms for Defendants' Membership Programs to consumers regardless of the method of enrollment; and notices on third-party billing statements to consumers regardless of the method of enrollment;

D. Defendants' customer service, cancellation, saves and refund practices and procedures; and

E. Defendants' compliance with applicable Buying Club Statutes including, but not limited to, the following practices: disclosures in solicitations; post-enrollment communications with consumers; cancellation and refund processes and procedures; and the establishment of applicable bonds and trusts.

This Judgment resolves the State's claims regarding all matters alleged in the State's Complaint, any matter covered by this Judgment and Subject-Matter, including, but not limited to, payment of (1) as to Defendants and all Marketing Partners, consumer restitution or refunds to all eligible consumers who enrolled in Defendants' Membership Programs prior to the Effective Date, regardless of method of enrollment or Marketing Partner, and (2) as to Defendants and Covered Marketing Partners, attorneys' fees, investigation and litigation costs, consumer protection enforcement funds, consumer education, litigation or local consumer aid, civil penalties, fines and/or forfeiture under the State's Consumer Protection Laws. However, the Subject-Matter and resolution of this Judgment does not include and does not resolve investigations or claims by the State related to (i) other marketing practices or conduct of Defendants not included in the Subject-Matter or alleged in the State's Complaint or Judgment, (ii) the conduct of Covered Marketing Partners that is not specifically related to the marketing, offer for sale, sale, provision

or billing of Defendants' Membership Programs, or (iii) Covered Marketing Partners' actions relating to providers other than Defendants of similar programs.

V. INJUNCTIONS

27. Pursuant to 9 V.S.A. § 2458, Defendants and its agents, directors, officers, and employees, in their capacity as an agent, director, officer, or employee ("Representatives") of Defendants, and by any successor, subsidiary or division and their Representatives through which it acts or hereafter acts, shall comply with the following provisions with respect to (i) direct mail and online marketing of Membership Programs, as set forth in Paragraphs 31 through 54, and 74(D), and (ii) all methods of marketing of Membership Programs, including online, direct mail, point-of-sale and telemarketing, as set forth in Paragraphs 28 through 30, 55 through 73, 74(A) through 74(C), and 75.

LIVE CHECK OR AUTOMATIC ENROLLMENT INCENTIVE SOLICITATIONS

Prohibition on Live Check or Automatic Enrollment Incentives

28. Defendants shall not utilize a Live Check in any solicitation, and shall not accept any new memberships Enrolled by Live Check. Defendants shall not utilize any Incentive, if the act of using such Incentive automatically Enrolls the consumer in a Membership Program. This shall not prohibit Defendants from using Incentives in the marketing of its Membership Programs, if using that Incentive does not automatically Enroll a consumer in a Membership Program.

Marketing Partner Contracts regarding Live Check Solicitations

29. Defendants shall not enter into any contract or arrangement with a Marketing Partner that does not comply with Paragraph 28, nor shall Defendants provide any Live Check solicitations to any consumers in connection with any existing contract or arrangement with a Marketing Partner.

Marketing Partner Contracts regarding Automatic Enrollment Incentives

30. Defendants shall not enter into any contract or arrangement with a Marketing Partner that

does not comply with Paragraph 28, nor shall Defendants provide any solicitations containing Incentives, to any consumer in connection with any existing contract or arrangement with a Marketing Partner, where the act of using such Incentives automatically enrolls a consumer in a Membership Program.

DATA PASS MARKETING IN DIRECT MAIL AND ONLINE SOLICITATIONS

31. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall not engage in Data Pass.

REQUIREMENTS FOR ALL DIRECT MAIL AND ONLINE SOLICITATIONS

Affirmative Assent before Enrolling a Consumer in a Membership Program

32. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall comply with the following requirements before Enrolling a consumer in a Membership Program.

A. On the page where a consumer Enrolls in a Membership Program and in direct Proximity to the space provided for consumers to accept the offer as required in Paragraph 33, Defendants shall Clearly and Conspicuously set forth the following statement, except that substantially similar language may be used (1) in instances where the language does not accurately reflect the terms of the Membership Program solicitation (i.e., no free trial period) or (2) where additional language is required by law:

"Unless I contact [Affinion/Membership Program] to cancel before my Trial Period ends, I authorize [Membership Program/Affinion] to [electronically] charge my [type of account] $[PRICE] automatically every [Membership Term] (or a greater amount, if I am notified), for my purchase of a membership in [Membership Program] until I cancel."

B. Defendants shall Clearly and Conspicuously disclose the following, to the extent

not covered by the disclosure required by Paragraph 32(A):

1. State the name of the Membership Program and contact information for the Membership Program (including, at a minimum, a toll-free telephone number and website), describe the goods or services being offered, disclose that the Membership Program is offered by Defendants, disclose that Defendants, and not the Marketing Partner, own and operate the Membership Program, and, for online solicitations marketed with a Marketing Partner after the consumer has made a purchase or transaction using Billing Information immediately prior to viewing the online solicitation for a Membership Program, disclose that the offer is unrelated to the purchase or transaction using Billing Information just completed;
2. State, if true, that any offer or Incentive is contingent upon Enrollment in the Membership Program;
3. State, if true, that the consumer can cancel his or her membership at any time, without limiting his or her ability to obtain or use any offer or Incentive;
4. State, if true, that a consumer must remain a member of his or her Membership Program as a requirement to obtain or use any offer or Incentive;
5. If there is a Trial Period, state the time period in which a consumer must cancel in order to avoid incurring any Membership Charge; and
6. State that the consumer may cancel his or her membership at any time by contacting Defendants.

33. To Enroll a consumer in a Membership Program via any direct mail or online solicitation pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall

obtain a consumer's affirmative assent in the manner described below ("Affirmative Assent"):

A. For online solicitations:

1. Marketed pursuant to Defendants' agreements or arrangements with a Marketing Partner after the consumer has made a purchase or transaction using Billing Information immediately prior to viewing the online solicitation for the Membership Program, Defendants shall, Proximate to the statement described in Paragraph 32(A):

(a) obtain from the consumer:

(i) the full Account number of the Account to be charged or other Billing Information, and

(ii) the consumer's name and address; and

(b) require the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed; or

2. Marketed in conjunction with a financial institution Marketing Partner pursuant to Defendants' agreements or arrangements where the consumer did not make a purchase or a transaction using Billing Information immediately prior to viewing the online solicitation for a Membership Program solicitation, Defendants shall require the consumer to (1) insert his or her name or e-mail address, in a box set-off from all other text that only contains (i) the disclosure required by Paragraph 32(A) in bold font and (ii) an area to perform the affirmative action of inserting his or her name or e-mail address, and (2) click on a confirmation button or check a box that authorizes the charge to the consumer's Account for Enrollment.

3. Notwithstanding any provision of this Judgment, Defendants shall comply

with the Restore Online Shoppers' Confidence Act ("ROSCA").

B. For direct mail solicitations:

1. Marketed pursuant to Defendants' agreements or arrangements with a Marketing Partner, Defendants shall, Proximate to the disclosure required by Paragraph 32(A):

(a) obtain from the consumer the full Account number of the Account to be charged, or other Billing Information, and

(b) shall require the consumer to perform the affirmative act of placing his or her signature on a line that authorizes the charge to the consumer's Account for Enrollment; or

2. Marketed with a financial institution Marketing Partner pursuant to Defendants' agreements or arrangements where a consumer is not required in the solicitation to provide his or her Billing Information directly to Defendants, Defendants shall require the consumer to provide a signature that indicates the consumer's consent to be charged the amount disclosed, in a box set-off from all other text that only contains (i) the disclosure required by Paragraph 32(A) in bold font and (ii) space for the affirmative action of providing a signature.

34. The disclosures set forth in Paragraph 32 shall be in a form that the consumer can easily copy, print, download, or retain at the time they are made.

35. For consumers who Enroll in a Membership Program via direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall retain proof of Affirmative Assent while the consumer is an active member of the Membership Program and for at least 24 months following cancellation of the membership. Defendants shall maintain the proof in a manner that ensures access to such record reasonably

promptly and, upon written request, Defendants shall make such record available to the State and to consumers disputing their Enrollment.

36. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall not misrepresent the reason why the consumer is being asked to provide his or her Billing Information, contact information, or Affirmative Assent.

37. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall not misrepresent its relationships with its Marketing Partners, including, but not limited to, misrepresenting the entity offering the Membership Program.

38. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall not include a Marketing Partner's name in the title of any Membership Program in a manner that misrepresents the entity offering the Membership Program.

39. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners in which a Marketing Partner's logo, mark, or name appears, Defendants shall Clearly and Conspicuously disclose on the first page and in the main body of the solicitation and, for online solicitations, above the fold of the screen if viewed on a standard 1024x768 resolution monitor if the Marketing Partner's logo, mark or name appears there as well, that it is Defendants, and not the Marketing Partner, that own and operate the Membership Program.

REQUIREMENTS WHEN CONSUMER IS REDIRECTED FROM MARKETING PARTNER WEBSITE

40. In all online solicitations where a Marketing Partner customer has been directed from the Marketing Partner's web page to Defendants' Membership Program solicitation web page after

the completion of a purchase or transaction using Billing Information with a Marketing Partner, Defendants shall:

A. Clearly and Conspicuously disclose, in a separate web page prior to the consumer being directed to the Membership Program page, that the consumer is leaving the website of the Marketing Partner and being re-directed to the Membership Program website. The separate web page shall remain on the consumer's screen for a minimum of three seconds for the first line of disclosure and one second for every additional line; or

B. Defendants shall Clearly and Conspicuously disclose at the very top of the Membership Program's initial or landing web page that the consumer has left the Marketing Partner's website and is now on the Membership Program website.

41. On any web page of an online solicitation pursuant to Defendants' agreements or arrangements with Marketing Partners where there is a "Yes" or similar button that, when clicked, results in the Enrollment of a consumer in a Membership Program, Affinion shall have a Clear and Conspicuous "No Thanks" or similar button directly Proximate to the "Yes" or similar button.

ADDITIONAL REQUIREMENTS FOR ONLINE AND DIRECT MAIL SOLICITATIONS

42. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners where Defendants offer an Incentive to a consumer to Enroll in one of their Membership Programs, Defendants shall Clearly and Conspicuously disclose in the solicitation any material conditions relating to a consumer's ability to claim or qualify for any such Incentive. Such disclosure shall include, as applicable, a Clear and Conspicuous disclosure of whether the Incentive applies to a current or a future purchase.

43. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners that use Trial Offers, Defendants shall not misrepresent the nature of the Trial Offer, including representing that (i) a product or service is offered on a "free", "trial", or "bonus" basis, or (ii) a purchase is "risk free" or "without risk" when such is not the case.

44. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall not misrepresent the reason or purpose for which a consumer is receiving a solicitation or Incentive from Defendants or any of its Marketing Partners; provided, however, that disclosing the mere existence of a relationship between a consumer and the Marketing Partner does not violate this Paragraph.

45. For all online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners where Defendants use audio overlays to reference any Incentive or offer, the overlay shall not be misleading and any statements regarding material terms of the Incentive or offer, or disclosures related thereto, included in the audio overlay shall be made Clearly and Conspicuously, and also shall be Clearly and Conspicuously disclosed visually in the Membership Program solicitation.

46. For all direct mail and online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall not misrepresent that any Membership Program, Incentive, or benefit offered through any solicitation is offered by any entity other than Defendants.

REQUIREMENTS FOR POST-ENROLLMENT MATERIALS FOR DIRECT MAIL AND ONLINE ENROLLEES

47. A consumer who Enrolls via an online or a direct mail Membership Program solicitation marketed with a financial institution Marketing Partner and provides the Affirmative Assent described in Paragraphs 33(A)(2) and 33(B)(2) will be deemed to be a "Non-Account

Enrollment."

Post-Enrollment Notices

48. The following shall apply to all consumers who Enroll beginning 180 days after the Effective Date in a Membership Program via direct mail and/or online solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners:

A. If a consumer Enrolls in a Membership Program via online, Defendants may send communications required by this Judgment via:

1. E-mail, so long as the communications comply with Paragraph 49; or

2. U.S. Mail if, in addition to complying with the requirements of Paragraph 50, Defendants also Clearly and Conspicuously disclose to the consumer prior to Enrollment and Proximate to the area where the consumer provides Affirmative Assent that notices may be sent via U.S. Mail.

B. If a consumer Enrolls in a Membership Program via direct mail, Defendants may send communications required by this Judgment via:

1. U.S. Mail, so long as the communications comply with Paragraph 50; or

2. E-mail if, in addition to complying with the requirements of Paragraph 49, Defendants also (i) obtain an e-mail address from the consumer at the time of Enrollment and (ii) provide a Clear and Conspicuous disclosure proximate to the area where the consumer provides Affirmative Assent notifying the consumer that notices may be sent via e-mail.

C. While Defendants may reserve the right to send notices required under this Judgment to members who Enroll via online and direct mail via either e-mail or U.S. Mail if the requirements of 48(A) or (B), as applicable, are met, Defendants must disclose to members the means (*e.g.*, e-mail or U.S. Mail) by which they will receive the Fulfillment Materials required by Paragraph 52 if Defendants

intend to send the Fulfillment Materials (i) by U.S. Mail to members who Enrolled online or (ii) by e-mail to members who Enrolled via direct mail, subject to the obligations of Paragraph 49(C)(2).

D. Nothing in this Paragraph shall prohibit Affinion from providing consumers a means by which to change delivery preferences post-Enrollment.

Requirements for Electronic Communications

49. The following shall apply to the communications sent by e-mail to consumers who Enroll in Membership Programs pursuant to Defendants' agreements or arrangements with Marketing Partners beginning 180 days after the Effective Date of this Judgment:

A. The sender or "From" line of the e-mail shall contain the name of the Membership Program.

B. The e-mail shall Clearly and Conspicuously:

1. State that the consumer is Enrolled in the Membership Program; and

2. Set forth contact information for the Membership Program (including, at a minimum, a toll-free telephone number and a website address) that a consumer may use to cancel his or her membership.

C. Defendants shall use commercially-reasonable efforts to:

1. Ensure that e-mail is not sent to "junk" or "spam" folders or otherwise filtered; and

2. Track returned or hard-bounced back Fulfillment Material and Billing Notice e-mails indicating that the e-mail address may be invalid. If Defendants receive a returned or hard-bounced back Fulfillment Material or Billing Notice e-mail, Defendants shall comply with the mailing requirements set forth in Paragraph 50.

Requirements for Communications Sent by U.S. Mail

50. The following shall apply to the communications sent by U.S. mail to consumers who Enroll in Membership Programs pursuant to Defendants' agreements or arrangements with Marketing Partners beginning 180 days after the Effective Date of this Judgment:

A. The outside of the envelope or in print visible through a window on the envelope, or if there is no envelope, the front or outside of the mailing, shall Clearly and Conspicuously identify the sender as the Membership Program.

B. If Defendants learn that Fulfillment Materials or Billing Notices are not delivered to a consumer, Defendants shall (i) check the address against the National Change of Address Database ("NCOA"), (ii) contact the consumer via telephone to verify another means for delivery (*e.g.*, alternate address or e-mail) and resend the notice within two to three weeks of receipt of notice of non-delivery, and/or (iii) cancel the membership, unless Defendants' business records indicate that the consumer used or obtained benefits from the Membership Program in the preceding year. If Defendants subsequently learn that the re-mailing of a Fulfillment Material or Billing Notice is not delivered to a consumer, Defendants shall cancel the consumer's membership, unless Defendants' business records indicate that the consumer used or obtained benefits from the Membership Program in the preceding year.

51. **Confirmation Notice.** Defendants shall send a Confirmation Notice to any consumer who enrolls in a Membership Program beginning 180 days after the Effective Date via an online solicitation pursuant to Defendants' agreements or arrangements with Marketing Partners. The Confirmation Notice may be sent either in the form of a separate webpage displayed to the consumer immediately after the consumer provides Affirmative Assent or as a separate e-mail. The heading or subject line of the Confirmation Notice shall state: "Thank You for Your

Membership Purchase" or substantially similar language. The Confirmation Notice shall Clearly and Conspicuously state the following:

A. That the consumer has chosen to join a Membership Program;

B. The name of the Membership Program;

C. The amount of the Membership Charge and the frequency of billing;

D. The terms of the cancellation policy for the Membership Program, and contact information for the Membership Program (including, at a minimum, a toll-free telephone number and a website address) that a consumer may use to cancel his or her membership;

E. If a Trial Offer is included, the time period in which a consumer must cancel in order to avoid being charged for the Membership Charge;

F. The length of the membership term, that the Membership Charge has been or will automatically be charged to the consumer's Account, and that the consumer's membership will be renewed and the Membership Charge will be automatically charged to the consumer's Account for each successive period unless the consumer cancels the membership; and

G. A notice informing the consumer to print and retain a copy of the Confirmation Notice for his or her records.

52. **Fulfillment Materials.** Defendants shall send Fulfillment Materials to any consumer who Enrolls in a Membership Program beginning 180 days after the Effective Date via an online or direct mail solicitation pursuant to Defendants' agreements or arrangements with Marketing Partners.

A. Fulfillment Materials Via E-mail. For a consumer who Enrolls via an online solicitation or who Enrolls via a direct mail solicitation and receives notice that Fulfillment Materials will be delivered via e-mail, Defendants shall send an e-

mail with the Fulfillment Materials no more than 3 business days after the consumer's Enrollment. The Fulfillment Materials shall:

1. State as the subject line: "Materials For Membership You Purchased," or substantially similar words.

2. Include a Clear and Conspicuous statement (i) informing the consumer that he or she has purchased a Membership Program, (ii) setting forth the information required to be included in the Confirmation Notice, as set forth at Paragraph 51(A) through (G), (iii) providing information on how to redeem the Incentive, if applicable, and (iv) providing the consumer's membership number in the Membership Program. The disclosures required by Paragraph 51(A) and (B) and the consumer's membership number shall be displayed above the fold of the screen if viewed on a standard 1024x768 resolution monitor.

B. Fulfillment Materials Via U.S. Mail. For consumers who Enroll via direct mail solicitation, or who Enroll via an online solicitation but receive notice that the Fulfillment Materials will be delivered via U.S. Mail pursuant to Paragraph 48, Defendants shall send Fulfillment Materials by U.S. Mail within 2 to 3 weeks of Enrollment.

1. Defendants shall Clearly and Conspicuously disclose in 14-point bold type on the outside of the envelope or in 14-point bold type visible through a window on the envelope containing the Fulfillment Materials, or if there is not an envelope, on the front or outside of the mailing in 14-point bold type, the following statement or substantially similar words: "Materials For Membership You Purchased."

2. The Fulfillment Materials shall include, on the first page or as a stand-

alone document, a Clear and Conspicuous statement informing the consumer that he or she has purchased a Membership Program, as well as a Clear and Conspicuous statement setting forth the information required to be included in the Confirmation Notice, as set forth at Paragraph 51(A) through (G). In addition, the Fulfillment Materials shall include (i) information describing the Incentive, if applicable, including information on how to redeem the incentive, and (ii) the consumer's membership number in the Membership Program.

53. **Incentive Notice.** Defendants shall send to any Non-Account Enrollment who Enrolls in a Membership Program, beginning 180 days after the Effective Date via an online solicitation where an Incentive was offered with the solicitation, an Incentive Notice that Clearly and Conspicuously describes to the consumer the terms of how the consumer can receive his or her Incentive. Defendants shall send the Incentive Notice via e-mail at least seven (7) business days prior to the expiration of any Trial Period or, if no Trial Period is available, at least seven (7) business days before the consumer incurs a second Membership Charge.

54. **Pre-Bill Notice.** Defendants shall send to any Non-Account Enrollee who Enrolls in a Membership Program beginning 180 days after the Effective Date via an online solicitation with a Trial Offer, at least 14 days before the first billing to a consumer following Enrollment, a Pre-Bill Notice that contains the following Clear and Conspicuous disclosures:

A. The amount the consumer will be charged and the amount of time the consumer has to cancel to avoid being charged any Membership Charge;

B. The length of the membership term, that the Membership Charge will automatically be charged to the consumer's Account, and that the consumer's membership will be renewed and the Membership Charge will be automatically charged to the consumer's Account for each successive period unless the

consumer cancels the membership; and

C. Contact information for the Membership Program (including, at a minimum, a toll-free telephone number and a website address) that a consumer may use to cancel his or her membership.

REQUIREMENTS FOR POST-ENROLLMENT MATERIALS FOR ALL ENROLLEES

55. **Billing Notice.**

A. Frequency of Billing Notice. Beginning 180 days after the Effective Date, Defendants shall send a Billing Notice to the following consumers who are Enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners, regardless of method or date of Enrollment, and in the following manner:

1. For consumers who are billed quarterly or more frequently than quarterly and did not provide their Billing Information directly to Defendants, Defendants shall send a Billing Notice to the consumer no less than 15 days before the 13th monthly billing, and on the same periodic schedule going forward (e.g., once every 12 billings for Accounts billed monthly);
2. For consumers who are billed less frequently than quarterly, Defendants shall send a Billing Notice no less than 15 days before the next subsequent billing, and on the same periodic schedule going forward (e.g., once a year for annually billed Accounts).

This Billing Notice obligation shall continue until the consumer cancels or otherwise terminates his or her membership. For purposes of this Paragraph, consumers who Enrolled via a telemarketing solicitation that complies with the Telemarketing Sales Rule ("TSR") are not covered by this Paragraph, except for those billed less frequently than quarterly.

B. Subject Line or Heading/Title of Billing Notice.

1. Billing Notices Sent by E-Mail. If sent by e-mail, the Billing Notice shall

state as the subject line: "IMPORTANT MEMBERSHIP AND BILLING INFORMATION," "MEMBERSHIP RENEWAL NOTICE," or substantially similar words.

2. Billing Notices Sent by U.S. Mail. If sent by U.S. Mail, the Billing Notice shall have the following Clear and Conspicuous statement or substantially similar words in 14-point bold type on the outside of the envelope or in 14-point type visible through the envelope or, if there is not an envelope, on the front or outside of the mailing, in 14-point bold type: "IMPORTANT MEMBERSHIP AND BILLING INFORMATION," "MEMBERSHIP RENEWAL NOTICE," or substantially similar words.

C. Content of Billing Notice. The Billing Notice shall Clearly and Conspicuously state:

1. That the consumer is a member of Defendants' Membership Program;
2. The name of the Membership Program in which the consumer is enrolled;
3. The amount of the Membership Charge and the frequency of billing;
4. The contact information for the Membership Program (including, at a minimum, a toll-free telephone number and a website address) that a consumer may use to cancel his or her membership;
5. The length of the membership term that the Membership Charge has been or will automatically be charged to the consumer's Account and that the consumer's membership will be renewed and the Membership Charge will be automatically charged to the consumer's Account for each successive period unless the consumer cancels the membership; and
6. The consumer's membership number in the Membership Program.

Change in Terms Notices

56. Beginning 180 days after the Effective Date, Defendants shall send, for all members

enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners, regardless of the method or date of enrollment, a Change in Terms Notice whenever there is a material change in the terms and conditions of any Membership Program, including any increase in the Membership Charge or any change in the frequency of assessing the Membership Charge, such as a change from annual to monthly billing. Defendants shall, prior to instituting such change, send a Change in Terms Notice to effected consumers between 30 and 60 days prior to the effective date of any such change.

A. If sent by e-mail, the Change in Terms Notice shall state as the subject line, of the e-mail: "IMPORTANT CHANGE OF [BILLING] INFORMATION FOR YOUR MEMBERSHIP," "MEMBERSHIP [CHARGE] CHANGE NOTICE," or substantially similar words.

B. If sent by U.S. mail, the Change in Terms Notice shall have the following Clear and Conspicuous statement or substantially similar words in 14-point bold type on the outside of the envelope or in 14-point bold type visible through the envelope or, if there is not an envelope, on the front or outside of the mailing, in 14-point bold type: "IMPORTANT CHANGE OF [BILLING] INFORMATION FOR YOUR MEMBERSHIP," "MEMBERSHIP [CHARGE] CHANGE NOTICE," or substantially similar words.

C. The Change in Terms Notice shall Clearly and Conspicuously state:

1. That the consumer is a member of Defendants' Membership Program;
2. The name of the Membership Program in which the consumer is enrolled;
3. The nature of the change in terms (e.g., the amount of the new Membership Charge, billing frequency, etc.). If there is a change in the Membership Charge, when the new charge goes into effect and the frequency of billing of the new charge and the fact that the charge will

automatically renew; and

4. The contact information for the Membership Program (including, at a minimum, a toll-free telephone number and a website address) that a consumer may use to cancel his or her membership.

Provided however, nothing in this Paragraph shall be interpreted as allowing Defendants to engage in any acts or practices prohibited by state or federal law, regulation, or rule.

57. **Periodic Communications with Members**. Defendants shall send periodic communications ("Periodic Communications") to consumers who enroll beginning 180 days after the Effective Date in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners, regardless of the type of solicitation or method of obtaining affirmative assent, at least twice a calendar year, inclusive of the Billing Notice, if applicable. The Periodic Communications shall set forth, in a Clear and Conspicuous manner, the following information: (i) that the consumer is a member of Defendants' Membership Program; (ii) the name of the Membership Program in which the consumer is enrolled; and (iii) the contact information for the Membership Program (including, at a minimum, a toll-free telephone number and a website address) that a consumer may use to cancel his or her membership. The Periodic Communications shall be required for each Membership Program in which a member is enrolled.

REQUIREMENTS FOR ENVELOPES USED IN MAILINGS REQUIRED BY THIS JUDGMENT

58. For all envelopes used in mailings required by this Judgment, Defendants shall identify the Membership Program as the addressee in all instances on the envelope or outer wrapping containing a mailing, and shall not use the words "Redemption Center" or other substantially similar words.

59. For all envelopes used in mailings required by this Judgment, Defendants shall not use language on its envelopes that expressly or impliedly misrepresents the purpose of the solicitation.

CANCELLATION PROCEDURES

60. Defendants shall permit a consumer who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners to cancel his or her membership at any time, including during or after any Trial Period, with no restrictions placed on his or her right to cancel his or her membership and regardless of the method of enrollment. In order to cancel a membership, Defendants shall only require a consumer to give his or her name and address, e-mail address, or membership number. If Defendants cannot identify the membership based on this information, Defendants shall ask the consumer for the minimum amount of additional information necessary for Defendants to identify the Membership Program account. Defendants shall not require a consumer to provide a membership number in order to cancel his or her membership unless it is necessary to identify the consumer's Membership Program account.

61. Defendants shall accept and promptly process any cancellation request they receive from a consumer who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners no later than five (5) business days from receipt of a written request for cancellation and two (2) business days from receipt of all other requests for cancellation, provided that the request contains sufficient information for Defendants to determine that the purpose of the communication from the consumer was a request to cancel the consumer's membership and that Defendants are able to identify the consumer's membership.

62. On Defendants' corporate websites and on the website of any of their Membership Programs accessed by consumers who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall provide a link on the homepage that directs the consumer to a web page related to Membership Program

customer service and contact information that shall Clearly and Conspicuously disclose all of the following information, which Defendants shall allow consumers to use to cancel their memberships:

A. A toll-free number to contact Defendants;

B. A mailing address to contact Defendants; and

C. An e-mail address to contact Defendants or an online cancellation option.

63. For all consumers who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall not initiate a Membership Charge for a future term after the date a consumer contacts Defendants to cancel and Defendants process the cancellation.

64. For all consumers who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall adequately staff its customer service department, including providing adequate staffing to respond to customer service phone calls during its hours of operation.

65. Defendants shall allow a consumer who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners to cancel his or her membership via telephone. In those instances when live customer service lines are closed, Defendants shall promptly process and cancel the membership when notified of the cancellation, consistent with the requirements of Paragraph 61. If Defendants need additional information to identify and cancel the consumer's membership Defendants shall promptly contact the consumer and obtain the information. Defendants shall treat the Membership Program as canceled as of the date the consumer provides Defendants with the cancellation information required in Paragraph 60 and the cancellation is processed.

66. For all consumers who enrolled beginning 90 days after the Effective Date in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing

Partners, Defendants shall maintain records of cancellations for their Membership Programs, regardless of the method of enrollment, for at least 24 months following the date that the cancellation request was processed and upon written request, shall make such records available to the Attorney General. The cancellation records required by this Paragraph shall include originals, copies or electronic copies of Defendants' internal records of such cancellations. Defendants, upon written request, shall also create an electronically-searchable cancellation database that includes, if known: (1) name, address, e-mail and telephone number of consumer; (2) method of solicitation; (3) Marketing Partner; (4) date of enrollment; (5) date that cancellation request was processed; (6) cancellation method; (7) the total amount of Membership Charges paid by consumer; and (8) the amount, if any, of any refund provided to the consumer. Defendants shall maintain such data so that it includes the information concerning each cancellation for at least 24 months following the date that the cancellation request was processed and shall, upon written request, make such database available to the Attorney General.

Cancellation Saves

67. For all consumers who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners:

A. For purposes of this Judgment, a consumer who enrolled beginning 90 days after the Effective Date in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners who contacts Defendants to cancel, but decides not to cancel his or her membership after being offered an incentive to continue the Membership Program, such as a lower price, is referred to as having his or her membership "saved."

B. Prior to treating a membership as saved, Defendants must Clearly and Conspicuously reaffirm his or her decision to remain enrolled in a Membership Program.

C. Defendants shall notify each consumer who indicates that he or she did not consent to, authorize, or understand that he or she would be assessed a Membership Charge and subsequently consents to be saved (i) the amount the consumer will be billed and frequency of billing, and (ii) information related to accessing the benefits of the Membership Program. Such notification shall take place during the conversation when the consumer consents to be saved.

68. Defendants shall notify each consumer who calls to dispute a Membership Charge or otherwise indicates that he or she did not consent to, authorize, or understand that he or she would be assessed a Membership Charge, of Defendants' cancellation policy. If such consumer elects to cancel his or her membership in the Membership Program, Defendants shall use best efforts to identify the account, honor the cancellation request and provide any and all credits or refunds that are provided for under the cancellation policy for that Membership Program, provided that Defendants are given sufficient information to identify the account being canceled.

NOTICES REQUIRED ON BILLING STATEMENTS

69. Defendants shall, to the extent practical and permitted under the billing practices of any applicable billing entities whose billing statements contain Membership Charges, request the billing entity in writing to:

A. Disclose information on the consumers' billing statements sufficient to identify the name of the Membership Program, a clearly identifiable toll-free telephone number for customer service on each billing statement or invoice, and, if sufficient space, the membership number;

B. If the Membership Charge is billed to a mortgage, loan, utility, or telecommunications account, Clearly and Conspicuously disclose on the consumers' billing statement or invoice that the charge is not related to the services provided;

C. Not use the term "Optional Product" or similar terms to describe Membership Charges on consumers' billing statements without Clearly and Conspicuously disclosing on the first page of the billing statement or invoice that the Optional Product is a Membership Program purchased by the consumer and without providing a toll-free telephone number the consumer may call to cancel the Membership Charge or receive a refund; and

D. Not include solicitations with consumers' billing statements, unless they Clearly and Conspicuously distinguish the solicitation from the billing statement provided that the fact that a solicitation is included in the same envelope as a consumer's billing statement shall not be in and of itself deemed to be a violation of this provision.

E. If Defendants are notified of material changes to the billing practices of any applicable billing entities whose consumers' billing statements contain Membership Charges that would affect the requirements of this Paragraph, Defendants shall notify the State in writing.

CONSUMERS' REQUESTS FOR MEMBERSHIP DOCUMENTS IN HARD COPY

70. Defendants shall not charge a consumer who enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with Marketing Partners a fee if the consumer requests a copy of the consumer's payment authorization (e.g., copy of the Live Check or proof of Affirmative Assent, or other proof that the consumer authorized the Membership Charges) or the terms and conditions of the consumer's membership. Defendants shall provide such copy or

terms within thirty (30) days of the consumer's request; provided, however, if Defendants need more time because they cannot identify the membership based on the information provided by the consumer, Defendants shall ask the consumer for the minimum amount of additional information necessary for Defendants to identify the Membership Program account. Defendants shall then provide such copy or terms to the consumer after receiving sufficient additional information to identify the Membership Program. Defendants shall allow consumers to update their contact information by telephone and/or e-mail.

COMPLIANCE MONITORING

71. Defendants shall implement a program of internal monitoring to ensure compliance with this Judgment. As part of this program, Defendants shall record the following data for consumers who enroll beginning 90 days after the Effective Date in Membership Programs pursuant to Defendants' agreements or arrangements with Marketing Partners, regardless of method of enrollment:

A. *Enrollments*. Except for consumers who enroll via telemarketing, for a period of not less than two (2) years from the date of cancellation, Defendants shall record and retain, if supplied by the consumer at the time of enrollment, the name, address, e-mail address, and phone number of each consumer enrolled into any of Defendants' Membership Programs. In addition, for each of these consumers, Defendants shall record and retain (1) proof of affirmative assent; (2) the fee charged to the consumer; (3) type of solicitation; (4) name of the Membership Program; (5) date of enrollment; (6) method of enrollment; and (7) to the extent identifiable, Marketing Partner. For consumers who enroll via telemarketing, Defendants shall maintain consumer records as required by the TSR.

B. *Complaints*. For every Complaint received by Defendants, whether received directly or forwarded from a third-party including but not limited to a Marketing

Partner, Defendants shall record and retain (1) the complaining consumer's name, address, e-mail address (if available), and phone number (if available); (2) the subject of the Complaint; (3) the Membership Program the consumer is enrolled in; (4) the type of solicitation; (5) the date and method of enrollment; (6) the Marketing Partner, to the extent identifiable; and (7) the resolution of the Complaint. Defendants shall retain this data for a period of three (3) years after the date of the Complaint.

C. *Solicitations*. For every materially-different solicitation used by Defendants or its Marketing Partner to market any Membership Program, Defendants shall retain a representative copy of that solicitation for three (3) years after the last use of that solicitation.

D. *Cancellation Procedures*. For every materially-different script regarding cancellation procedures or written cancellation policies and procedures provided to their customer service representatives, Defendants shall maintain a representative copy of the script, policy or procedure for three (3) years after the last use of that document.

TRAINING REQUIREMENTS

72. Beginning 60 days after the Effective Date of the Judgment, Defendants shall institute, for a period of three years, annual training approved by outside legal counsel for all relevant current and future employees regarding the relevant requirements of this Judgment within the following categories of employees:

A. All business and creative personnel responsible for creating solicitations, post-enrollment materials, and websites;

B. All customer service personnel who interact with consumers; and

C. All business development personnel responsible for creating new Marketing

Partner relationships.

73. Upon written request from any duly authorized representative of the State Attorney General's Office, Defendants shall provide a copy of training materials used during the trainings required by this Judgment and shall certify that these trainings have occurred.

CONTRACT REQUIREMENTS FOR DEFENDANTS' MARKETING PARTNERS

74. Any contract or arrangement that Defendants enter into or re-affirm with a Marketing Partner, at a minimum:

A. Shall direct that Defendants review Membership Program solicitations that are to be sent, presented, or displayed to a Marketing Partner's customers by or on behalf of Defendants;

B. Shall direct the Marketing Partner to provide a consumer who contacts the Marketing Partner with questions regarding a Membership Program or to cancel his or her Membership Program, with a toll-free telephone number that may be used to contact Defendants regarding the Membership Program;

C. Shall direct that Defendants provide all Membership Program solicitations to the Marketing Partner and shall further provide that the Marketing Partner has the opportunity to review and approve the content and form of the solicitations before they are provided to customers of the Marketing Partner; and

D. Shall direct that Defendants provide, on at least a quarterly basis, to Marketing Partners with whom Defendants continue to market at the time of reporting, the number of customers of the Marketing Partner who joined a Membership Program and the number of Complaints received by Defendants regarding the customers of the Marketing Partner who had Enrolled as Non-Account Enrollees beginning 90 days after the Effective Date of the Judgment.

75. Defendants shall not enter into or renew any contract with any Marketing Partner

regarding the marketing of Membership Programs that do not comply with the injunctive provisions of this Judgment.

MISCELLANEOUS INJUNCTIVE PROVISIONS

76. Nothing in this Judgment shall be interpreted as allowing Defendants to engage in any acts or practices prohibited by state or federal law, regulation, or rule.

77. Defendants shall not make any representation in any solicitation or notice to consumers, directly or by implication, that is contrary to any of the statements and disclosures required by this Judgment.

78. Nothing in this Judgment shall be construed as limiting or restricting in any way any right that the State, the Vermont Attorney General, or any other State governmental entity may otherwise have to obtain information, documents, or testimony from Defendants pursuant to state or federal law, regulation, or rule.

79. Upon reasonable prior written notice, any duly authorized representative of the Attorney General of Vermont shall be permitted to inspect and copy such records as may be reasonably necessary to determine whether Defendants are in compliance with this Judgment. Nothing herein shall prohibit Defendants from filing an action in court to limit or set aside any such request to inspect and copy such records beyond those permitted by law. For requests related to Complaints, Defendants shall provide the requesting party an electronically-searchable database.

80. Provisions of this Judgment that specifically permit Defendants to make required statements in "substantially similar" words require Defendants to make such statements in words that have the same substantive meaning and do not materially change any of the terms of the statement.

81. Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part which are prohibited in this Judgment or for any other purpose which would otherwise circumvent any

part of this Judgment.

82. Defendants shall comply with the terms in Paragraphs 28 to 31, 60 to 76, and 78 to 81 no later than 90 days after the Effective Date of the Judgment, unless otherwise noted. Defendants shall comply with the terms in Paragraphs 32 to 59, and 77 no later than 180 days after the Effective Date of the Judgment.

VI. CONSUMER RESTITUTION

83. Defendants shall provide refunds to all "Eligible Notice Consumers," "Eligible Complainants," "Eligible Non-Notice Consumers" and "Additional Eligible Complainants" (each as defined below), in accordance with Paragraphs 84-101 below.

RESTITUTION FOR ONLINE DATA PASS AND LIVE CHECK ENROLLEES

84. "Eligible Notice Consumers" refers to a Resident who (1) enrolled in an Affinion or Trilegiant Membership Program, via online Data Pass between January 15, 2008, and the Effective Date of this Judgment; (2) enrolled in an Affinion or Trilegiant Membership Program via Live Check between January 15, 2008, and the Effective Date of this Judgment; or (3) enrolled in a Webloyalty Membership Program via online Data Pass between September 30, 2008 and the Effective Date, and who:

A. As of the Effective Date has not canceled the Membership Program and received a full refund of his or her Membership Charges; and

B. For consumers who Enrolled in a Webloyalty Membership Program, did not take any of the following actions after the expiration of the Trial Period, if there is one, or after Enrollment, if there is no Trial Period:

1. File a claim for a protection benefit offered by the Membership Program in which the consumer was enrolled;

2. Download a coupon from that Membership Program's website;

3. Make a purchase from or through that Membership Program; or

4. Purchase a gift card from that Membership Program.

85. Within five (5) business days after the Effective Date of this Judgment, Defendants shall place $19,387,162.38 ("Participating States' Fund") in an escrow account for restitution payments to consumers in the Participating States. The Participating States' Fund shall be held in an escrow account by a mutually-agreeable third-party escrow agent ("Escrow Agent") and in accordance with a mutually-agreeable escrow agreement ("Escrow Agreement"). In the amount specified, such funds shall be disbursed by Escrow Agent to Defendants, upon notice to Escrow Agent by representatives of the Attorneys General of the States of California and Texas. The disbursed amount shall only be used for payments pursuant to the requirements of this Judgment and the Escrow Agreement. No payments shall be made pursuant to Paragraphs 84 and 99 until and unless Defendants have received all claims and are able to ascertain refund amounts, as further described in Paragraph 95. Defendants shall not be in violation of this Judgment for a failure of the representatives of the Attorneys General of the States of California and Texas to give notice in a timely manner of a distribution under this Paragraph.

86. Within 30 days after the Effective Date of this Judgment, Defendants shall compile an electronically searchable database of Eligible Notice Consumers. The database shall contain, for each membership for each Eligible Notice Consumer, the following information, each in a separate field (to the extent each is available):

A. Name;

B. Telephone number;

C. Street address;

D. City;

E. State;

F. Zip or postal code;

G. Membership Number;

H. Name of the Membership Program;

I. Name of the Marketing Partner;

J. The date of Enrollment;

K. The amount of the Membership Charge paid by the Eligible Notice Consumer to Defendants; and

L. Total amount of Membership Charges refunded to Eligible Notice Consumers.

A copy of the State's database of Eligible Notice Consumers shall be made available to the State upon request.

Time Period for Mailing Notices

87. Within 30 days after Defendants compile the database described in Paragraph 86, Defendants shall send to all Eligible Notice Consumers a Notice Letter, a copy of which is attached as Exhibit B hereto, and a Claim Form, a copy of which is attached as Exhibit C hereto. The Claim Form shall have the name, address and/or member number pre-populated prior to issuance.

88. Defendants shall send the Notice Letters and Claim Forms to Eligible Notice Consumers by First Class U.S. Mail to Eligible Notice Consumers who Enrolled via direct mail and by e-mail to Eligible Notice Consumers who Enrolled via online. In the case of First Class U.S. Mail, Defendants shall use NCOA to update the mailing address prior to sending the Notice Letters and Claim Forms. Defendants shall use commercially-reasonable efforts to ensure that e-mail is not sent to "junk" or "spam" folders and track returned or hard-bounced back e-mail. If Defendants receive a returned or hard-bounced back e-mail they shall resend the Notice Letter and Claim Form via First Class U.S. Mail, if a physical address is available. The Notice Letter shall state, in the subject line of the e-mail, and, for mailings, in 14-point bold type on the outside of or visible through the envelope: "IMPORTANT SETTLEMENT NOTICE REGARDING

YOUR PAID MEMBERSHIP(S)." The "From" field of the e-mail shall state "Marketing Settlement Restitution Program" and, for mailings, the return address on the envelope shall be the "Marketing Settlement Restitution Program".

89. Upon request, Defendants shall provide to any Eligible Notice Consumer who contacts Defendants any information requested by the consumer pertaining to his or her membership(s) that is reflected on the database specified in Paragraph 86, assuming the Eligible Notice Consumer provides Defendants adequate information to identify the relevant membership(s).

Deadline for Eligible Notice Consumers to Return Claim Forms

90. To be eligible for restitution pursuant to this Judgment, Claim Forms must be (i) properly completed by Eligible Notice Consumers, (ii) postmarked within 90 days of the date Defendants mailed the notice to Eligible Notice Consumers, and (iii) received by Defendants within 105 days of the date Defendants mailed such notice. For purposes of this Judgment, a Claim Form is not properly completed if (i) based upon the information submitted by the consumer, together with Defendant's own records, Defendants are unable to identify the consumer requesting restitution; (ii) the consumer failed to check the required box or checked the box indicating that the consumer knowingly consented to be charged for a Membership Program from Defendants on his or her credit or debit card or other account; (iii) the consumer failed to sign the Claim Form; or (iv) the consumer already received a full refund of charges with respect to the specific Membership Program(s) for which the consumer is seeking restitution.

Claim Form Processing Procedures

91. No later than 15 days after receiving a timely returned Claim Form from an Eligible Notice Consumer, Defendants shall cancel any current memberships of such Eligible Notice Consumer, if the Eligible Notice Consumer provides adequate information to identify the

membership(s).

92. No later than 90 days after the deadline for returning Claim Forms, Defendants shall refund all Membership Charges not previously refunded to the Eligible Notice Consumers who return a properly completed Claim Form except that Defendants are not required to notify Eligible Notice Consumers who checked the box indicating that the consumer knowingly consented to be charged for a membership program from Defendants on his or her credit or debit card or other account.

93. If an Eligible Notice Consumer fails to submit a properly completed Claim Form, Defendants shall, if possible, notify the Eligible Notice Consumer and indicate what still needs to be completed and inform him or her of the date (not less than thirty (30) days after Defendants mail back the incomplete Claim Form) by which the Eligible Notice Consumer must provide the properly completed Claim Form to Defendants in order to be eligible for restitution. If the properly completed Claim Form is returned within such time period, Defendants shall comply with Paragraph 92.

94. If the Claim Form is not approved, Defendants shall notify the Eligible Notice Consumer, within 90 days of the deadline for returning the Claim Form, that the Eligible Notice Consumer is ineligible for restitution and why.

95. In the event that the Participating States Fund is not sufficient to provide full restitution to all consumers eligible to receive restitution pursuant to Paragraphs 84 and 99 of this Judgment, then restitution shall be distributed on a pro rata basis.

96. No later than 270 days after the Effective Date of this Judgment, Defendants shall submit an electronically searchable report to the State that includes, with a breakdown of: (a) the total amount of restitution; (b) the number and identification of consumers provided with restitution; and (c) the number and identification of Claim Forms that were rejected as

ineligible and the reasons they were rejected. With respect to checks that Defendants have sent to Vermont consumers but which are not cashed or deposited, Defendants shall comply with the Vermont unclaimed property laws, 27 V.S.A. §§ 1241–1270. Upon request by the Vermont Attorney General's Office, Defendants shall, after the date that non-cashed checks mailed pursuant to this restitution program are voided, provide a report, of consumers of that State who failed to cash restitution checks.

97. If the total payment due to consumers eligible to receive restitution pursuant to Paragraphs 84 and 99 of this Judgment is less than the total of the Participating States Fund, the Escrow Agent shall send the remaining amount to each Participating State in the amount for each Participating State as directed by and at the sole discretion of the Attorneys General of California and Texas, in accordance with and for the purposes stated in Paragraph 103 and the Escrow Agreement. That sum shall be provided to each Participating State within five (5) business days after the Escrow Agent distributes the amounts due to consumers to Defendants under Paragraphs 84 and 99 and pursuant to the Escrow Agreement. Defendants shall not be in violation of this judgment for a failure of the representatives of the Attorneys General of the States of California and Texas to give notice in a timely manner of a distribution under this Paragraph.

OTHER RESTITUTION PROVISIONS

98. Defendants shall treat all Complaints from consumers who enrolled via online Data Pass or Live Check submitted by consumers to any federal, state or local governmental agency prior to or within 120 days after the Effective Date of this Judgment, and forwarded to Defendants within 130 days of the Effective Date of this Judgment, ("Eligible Complainants"), in the same manner and provide refunds in the same manner and in the same time frames as refunds provided to Eligible Notice Consumers, except that Eligible

Complainants shall not be required to submit a claim form and refunds shall be provided directly by Defendants and not be deducted from the Participating States Fund. Defendants shall also cancel any current memberships of such Eligible Complainants. Defendants may subject Eligible Complainants to the same usage limitations as Eligible Notice Consumers, as provided in Paragraph 84.

99. Defendants shall treat all Complaints from consumers who enrolled via any means other than online Data Pass or Live Check, submitted by consumers to any federal, state or local agency 18 months prior to July 1, 2012, and forwarded to Defendants prior to execution of this Judgment ("Additional Eligible Complainants"), in the same manner and provide refunds in the same manner and in the same time frames as refunds provided to Eligible Notice Consumers, except that Additional Eligible Complainants shall not be required to submit a claim form and refunds shall be provided directly by Defendants and not be deducted from the Participating States Fund. Defendants may subject Additional Eligible Complainants to the same usage limitations as Eligible Notice Consumers, as provided in Paragraph 84.

100. Defendants also shall provide refunds to Residents of Vermont who (i) had previously submitted written complaints directly to Defendants, (ii) had been canceled prior to the Effective Date, (iii) contact Defendants within 120 days after the Effective Date seeking a refund, and had enrolled in an (1) Affinion or Trilegiant Membership Program via online Data Pass between January 15, 2008 and the Effective Date of this Judgment; (2) Affinion or Trilegiant Membership Program via Live Check between January 15, 2008 and the Effective Date of this Judgment; or (3) Webloyalty Membership Program via online Data Pass between September 30, 2008 and the Effective Date of this Judgment ("Eligible Non-Notice Consumers"). Eligible Non-Notice Consumers shall be eligible for a full refund from the

Participating States Fund in the same manner and in the same time frames as refunds provided to Eligible Notice Consumers, except that Eligible Non-Notice Consumers shall not receive notice as required by Paragraph 87, nor shall they be required to submit a Claim Form as required by Paragraph 90.

101. No later than 270 days after the Effective Date of this Judgment, Defendants shall submit an electronically searchable report to the State that includes: (a) the total amount of refunds paid to Eligible Non-Notice Consumers, and (b) the number of Eligible Non-Notice Consumers provided with such refunds.

Costs for Restitution

102. Defendants shall bear all of the costs incurred in complying with the terms of the Judgment, including restitution and refunds as set forth herein, including the costs of any Escrow Agent or third-party administrator that may be hired to administer the restitution and/or refund process required by this Judgment.

VII. PAYMENT TO THE STATE

103. Within seven (7) business days after the Effective Date of this Judgment, Defendants, after receiving wire instructions from the State, shall pay $720,000.00 to the State, as payment for attorneys' fees and investigation and litigation costs, and/or consumer protection enforcement funds, consumer education, litigation or local consumer aid, and other uses permitted by state law, at the discretion of the State's Attorney General. Specifically, the Court awards the State of Vermont judgment in the amount of Seven Hundred and Twenty Thousand Dollars ($720,000.00). No part of this payment shall be designated as a civil penalty, fine and/or forfeiture.

VIII. OTHER PROVISIONS

104. This Judgment supersedes the Judgments and Assurances of Voluntary Compliance

identified in Exhibit D.

105. Defendants understand and acknowledge that pursuant to the provisions of 9 V.S.A. § 2461, any violation of the terms of this Judgment shall be punishable by civil penalties of not more than Ten Thousand Dollars ($10,000.00) for each violation, in addition to any other authorized sanctions.

106. Upon full and final payment of the amount required under Paragraph 103, this Judgment constitutes a complete settlement and release of any and all civil claims, causes of actions, restitution, costs, penalties and disgorgement based on conduct, acts or omissions for conduct alleged in the State's Complaint or that relates to the Subject Matter or terms of this Judgment and the State's Complaint, under the Vermont Consumer Protection Laws (the "Released Claims"), by the Office of the Vermont Attorney General against Defendants and their principals, successors, and assigns and on behalf of each of their respective agents, representatives, directors, officers, employees and by any corporation, subsidiary or division through which they act or hereafter act. Released Claims do not include: (i) claims pursuant to any other statute or regulation (including, without limitation, antitrust laws, environmental laws, tax laws, credit repair/service organization laws, and criminal statutes and codes), (ii) claims occurring after the Effective Date, or (iii) claims under the Vermont Consumer Protection Laws unrelated to the Subject-Matter.

107. The Court retains jurisdiction as the ends of justice may require for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate. Subject to the terms of Paragraph 108 below, this includes Affinion's right to petition the Court to modify the injunctive terms of the Final Judgment, upon giving at least 45 days written notice to the Vermont Attorney General.

108. In the event that any statute, rule or regulation pertaining to the subject matter of this Judgment is modified, enacted, promulgated or interpreted by Vermont, the federal

government or any federal agency in conflict with any provision of this Judgment, or a court of competent jurisdiction holds that a statute, rule or regulation is in conflict with any provision of this Judgment, Defendants may comply with such statute, rule or regulation and such action shall constitute compliance with the counterpart provision of this Judgment. Defendants shall provide advance written notice to the Attorney General of the inconsistent provision of the statute, rule or regulation with which Defendants intend to comply pursuant to this Judgment, and the counterpart provision of this Judgment which is in conflict with the statute, rule or regulation. Nothing in this Paragraph shall prohibit the Attorney General from disagreeing with Defendants as to the existence of any conflict and seeking to enforce this judgment accordingly.

109. Notices to be given under this Judgment are sufficient if given by nationally recognized overnight courier service or certified Mail (return receipt requested), or personal delivery to the named party at the address below:

A. If to Defendants:

General Counsel
Affinion Group
6 High Ridge Park
Stamford CT 06905

and

Clayton S. Friedman
Manatt, Phelps and Phillips
695 Town Center Dr
Fourteenth Floor
Costa Mesa, CA 92626

B. If to the State:

Elliot Burg
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Phone: 802-828-2153
E-mail: eburg@atg.state.vt.us

110. Notice is effective when delivered personally; or three (3) business days after it is sent by certified Mail; or on the business day after it is sent by nationally recognized courier service for next day delivery. Any party may change its notice address by giving notice in accordance with this Paragraph.

111. The acceptance of this Judgment by the Vermont Attorney General shall not be deemed approval by the Vermont Attorney General of any of Defendants' advertising or business practices. Further, neither Defendants nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Vermont Attorney General or any other governmental unit of the State has approved, sanctioned or authorized any practice, act, advertisement or conduct of Defendants.

112. Except as provided herein, no waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Court and then only to the extent specifically set forth in such written waiver, modification or amendment.

113. This Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understanding, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed hereto or attached hereto.

114. This Judgment shall not be construed against the "drafter" because the parties all participated in the drafting of the Judgment.

115. This Judgment shall not be construed or used as a waiver or any limitation of any defense otherwise available to Defendants in any pending or future legal or administrative action or proceeding relating to Defendants' conduct prior to the Effective Date of this Judgment or of Defendants' right to defend themselves from, or make any arguments in, any individual or class claims or suits relating to the existence, subject matter, or terms of this Judgment.

116. Except as otherwise set forth herein, if the State receives a request for documents provided by Defendants relating to the State's investigation of Defendants, negotiations of this Judgment, any reports specified or required herein, or information obtained by the Defendants or Claims Administrator in connection with this Judgment, the State shall comply with applicable public disclosure laws and provide reasonable notice to Defendants consistent with the framework of the State's public disclosure law(s). Defendants have asserted that such documents include confidential or proprietary information and have specifically designated such documents as confidential. To the extent permitted by law, the Attorney General shall notify Defendants of (a) any legally enforceable demand for, or (b) the intention of any Attorney General to disclose to a third party, such information, records, or documents at least thirty (30) business days, or such shorter period as required by state law, in advance of complying with the demand or making such disclosure, in order to allow Defendants the reasonable opportunity to intervene and assert any legal exemptions or privileges they believe to be appropriate.

117. With respect to solicitations, advertising or marketing which has been used prior to the Effective Date of this Judgment, Defendants shall not be liable for their non-compliance so long as they have made reasonable efforts to locate, withdraw, or amend such solicitations, advertising or marketing to comply with the foregoing requirements. Defendants shall not be liable for failing to prevent the republication of pre-existing solicitation, advertising or marketing that does not comply with this Judgment by independent third-parties or parties who are not subject to Defendants' control so long as Defendants make reasonable efforts to prevent such republication, including, but not limited to, exercising any available contractual rights, and, where no contractual relationship exists, requesting in writing that the third party terminate the republication of such solicitation, advertising or marketing.

118. To the extent that any changes in Defendants' business, advertising materials, and/or solicitations to customers, or customer service practices are made to achieve or to facilitate

conformance to the terms of this Judgment, such changes shall not constitute any form of evidence or admission by Defendants, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute or regulation or the common law.

119. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Nothing in this Judgment, including this Paragraph, shall be construed to limit or to restrict Defendants' right to use this Judgment to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

120. If the Attorney General decides to pursue enforcement of this Judgment because the Attorney General has determined that Defendants have failed to comply with any of the terms of this Judgment, and if, in the Attorney General's sole discretion, the failure to comply does not threaten the health or safety of the citizens of the State and/or does not create an emergency requiring immediate action, the Attorney General will notify Defendants in writing of such failure to comply and Defendants shall thereafter have fifteen (15) business days from receipt of such written notice, prior to the Attorney General initiating any enforcement proceeding, to provide a written response to the Attorney General's notice of failure to comply. The response may include:

A. A statement explaining why Defendants believe they are in full compliance with the Judgment;

B. A detailed explanation of how the alleged violation(s) occurred;

C. A statement that the alleged breach has been cured and how; or

D. A statement that the alleged breach cannot be reasonably cured within fifteen (15) business days from receipt of the notice, but

1. Defendants have begun to take corrective action to cure the alleged breach;

2. Defendants are pursuing such corrective action with reasonable and due diligence; and

3. Defendants have provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

Nothing herein shall prevent the Attorney General from agreeing in writing to provide Defendants with additional time beyond the fifteen (15) business day period to respond to the notice.

121. Nothing in this Judgment shall be construed to create, waive or limit any private right of action.

122. Upon entry of this Judgment, all claims alleged in the State's Complaint filed by the Attorney General in the above captioned action, not otherwise addressed by this Judgment are dismissed.

123. Each party shall pay its own court costs.

The Clerk is ordered to enter this Judgment forthwith.

Date: October 14, 2013.

BY THE COURT

Judge

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE STATE OF VERMONT

WILLIAM H. SORRELL
Attorney General

By: _____
Elliot Burg
Assistant Attorney General
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
Phone: 802-828-2153
E-mail: eburg@atg.state.vt.us

FOR AFFINION GROUP, INC., TRILEGIANT CORPORATION, AND WEBLOYALTY, INC.

By: _____

Title: Executive Vice President & Secretary
Affinion Group, Inc.

By: _____
Clayton S. Friedman
Manatt, Phelps & Phillips, LLP
695 Town Center Drive, Floor 14
Costa Mesa, CA 92626
714.338.2704 (telephone)
714.371.2573 (facsimile)
cfriedman@manatt.com

Counsel for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty, Inc.

By: _____
Ronald R. Urbach
Davis & Gilbert, LLP
1740 Broadway
New York, NY 10019
212.468.4824 (telephone)
212.621.0922 (facsimile)
RUrbach@dglaw.com

Counsel for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty, Inc.

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE STATE OF VERMONT

WILLIAM H. SORRELL
Attorney General

By: _____
Elliot Burg
Assistant Attorney General
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
Phone: 802-828-2153
E-mail: eburg@atg.state.vt.us

FOR AFFINION GROUP, INC., TRILEGIANT CORPORATION, AND WEBLOYALTY, INC.

By: _____

Title: _____
Affinion Group, Inc.

By: _____
Clayton S. Friedman
Manatt, Phelps & Phillips, LLP
695 Town Center Drive, Floor 14
Costa Mesa, CA 92626
714.338.2704 (telephone)
714.371.2573 (facsimile)
cfriedman@manatt.com

Counsel for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty, Inc.

By: _____
Ronald R. Urbach
Davis & Gilbert, LLP
1740 Broadway
New York, NY 10019
212.468.4824 (telephone)
212.621.0922 (facsimile)
RUrbach@dglaw.com

Counsel for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty, Inc.

EXHIBIT A

1. Alabama
2. Alaska
3. Arizona
4. Arkansas
5. California
6. Colorado
7. Connecticut
8. Delaware
9. District of Columbia
10. Florida
11. Georgia
12. Idaho
13. Illinois
14. Indiana
15. Iowa
16. Kansas
17. Kentucky
18. Louisiana
19. Maine
20. Maryland
21. Massachusetts
22. Michigan
23. Minnesota
24. Mississippi
25. Missouri
26. Montana
27. Nebraska
28. Nevada
29. New Hampshire
30. New Jersey
31. New Mexico
32. North Carolina
33. North Dakota
34. Ohio
35. Oklahoma
36. Oregon
37. Pennsylvania
38. Rhode Island
39. South Dakota
40. Tennessee
41. Texas
42. Utah
43. Vermont
44. Virginia
45. Washington
46. West Virginia
47. Wisconsin
48. Wyoming

EXHIBIT B

ELIGIBILITY NOTICE

MARKETING SETTLEMENT RESTITUTION PROGRAM
c/o GCG
P O Box 35071
Seattle, WA 98124-3508
1 (866) 297-3088

JANE CLAIMANT
123 4TH AVE
CITY, STATE 01234

Dear JANE CLAIMANT

You are receiving this notice because you may be entitled to a refund in connection with a settlement the Office of the State Attorney General ("OAG") has obtained with Affinion Group, Inc. and its subsidiaries Trilegiant Corporation and Webloyalty.com, Inc (collectively "Settling Parties"), businesses that solicit consumers for various Membership Programs online using a discount, cash-back or other incentive or rebate offer, or via checks sent in the mail. This notice is being sent from GCG, Inc. ("GCG") on behalf of the Settling Parties as administrator pursuant to a settlement agreement.

According to the Settling Parties' records, you are currently enrolled in and being charged on a credit or debit card, bank account or mortgage account for the following Membership Programs:

Great Fun, Complete Home, Privacy Guard.

The Settling Parties' records show that you were enrolled in the Membership Programs listed above via a solicitation offered to customers of a business with which you had previously transacted. That business shared your account information with the Settling Parties.

An investigation conducted by the OAG has revealed that some consumers who allegedly accepted the Membership Program offers did not understand that by doing so they were agreeing to enroll in a Membership Program for which they would be charged periodically if they failed to cancel during a trial period. On [EFFECTIVE DATE], the OAG entered into a settlement with the Settling Parties to resolve the OAG's investigation. Pursuant to this settlement, consumers receiving this notice who did not knowingly enroll in a Membership Program or knowingly authorize billing for the Membership Program **may be eligible for a full refund of all fees paid by them that have not previously been refunded.**

To be eligible for a full refund, you must fill out, sign and postmark the enclosed claim form by [DATE] and send it to GCG at the following address:

MARKETING SETTLEMENT RESTITUTION PROGRAM
c/o GCG
P.O Box 35071
Seattle, WA 98124-3508

Upon receipt of the claim form, your claim will be evaluated, and then you will be contacted by mail as to the disposition of your claim. If your claim is approved, you will be mailed a check.

If you cash, deposit or redeem a refund check sent to you or otherwise avail yourself of a refund in response to this claim form, you will be releasing the Settling Parties from any claims you may have with respect to the specific Membership Program(s) for which you receive a refund or refunds of charges to your account(s).

The OAG believes that the settlement resolving the investigation is in the public interest. However, you are not required to participate in this settlement. We cannot provide you with advice, legal or otherwise, concerning your rights and options in connection with this matter. You may consult a lawyer before making any decisions in this regard.

Please note that your membership is "current" and you are being billed on a periodic basis. If you file a claim, your membership will be cancelled automatically. If you do not file a claim for a refund, you will continue to be periodically billed unless and until you cancel the membership. You can cancel your membership at any time by calling GCG at 1 (866) 297-3088.

If you have specific questions about this notice or the claim form, you can contact the Office of the State Attorney General at 1 (800) 000-0000 or http.//www.stateag.gov/contact-us/

Very truly yours,

GCG

From: Marketing Settlement Restitution Program <MarketingSettlementRestitutionProgram@tgcginc.com>

Sent:

To:

Subject: IMPORTANT SETTLEMENT NOTICE REGARDING YOUR PAID MEMBERSHIP(S)

ELIGIBILITY NOTICE

MARKETING SETTLEMENT RESTITUTION PROGRAM
c/o GCG
P.O Box 35071
Seattle, WA 98124-3508
1 (866) 297-3088

Dear Jane Dough.

You are receiving this notice because you may be entitled to a refund in connection with a settlement the Office of the State Attorney General ("OAG") has obtained with Affinion Group, Inc. and its subsidiaries Trilegiant Corporation and Webloyalty.com, Inc. (collectively "Settling Parties"), businesses that solicit consumers for various Membership Programs online using a discount, cash-back or other incentive or rebate offer, or via checks sent in the mail. This notice is being sent from GCG, Inc. ("GCG") on behalf of the Settling Parties as administrator pursuant to a settlement agreement.

According to the Settling Parties' records, you are currently enrolled in and being charged on a credit or debit card, bank account or mortgage account for the following Membership Programs.

Great Fun, Complete Home, Privacy Guard.

The Settling Parties' records show that you were enrolled in the Membership Programs listed above via a solicitation offered to customers of a business with which you had previously transacted. That business shared your account information with the Settling Parties.

An investigation conducted by the OAG has revealed that some consumers who allegedly accepted the Membership Program offers did not understand that by doing so they were agreeing to enroll in a Membership Program for which they would be charged periodically if they failed to cancel during a trial period. On [EFFECTIVE DATE], the OAG entered into a settlement with the Settling Parties to resolve the OAG's investigation. Pursuant to this settlement, consumers receiving this notice who did not knowingly enroll in a Membership Program or knowingly authorize billing for the Membership Program **may be eligible for a full refund of all fees paid by them that have not previously been refunded.**

To be eligible for a full refund, you must fill out, sign and postmark a claim form by [DATE] and send it to GCG at the following address:

MARKETING SETTLEMENT RESTITUTION PROGRAM
c/o GCG
P O Box 35071
Seattle, WA 98124 3508

MARKETING SETTLEMENT RESTITUTION PROGRAM
c/o GCG
P O Box 35071
Seattle, WA 98124-3508

To access your personalized claim form, click here. Upon receipt of the claim form, your claim will be evaluated, and then you will be contacted by mail as to the disposition of your claim. If your claim is approved, you will be mailed a check.

If you cash, deposit or redeem a refund check sent to you or otherwise avail yourself of a refund in response to a claim form, you will be releasing the Settling Parties from any claims you may have with respect to the specific Membership Program(s) for which you receive a refund or refunds of charges to your account(s).

The OAG believes that the settlement resolving the investigation is in the public interest. However, you are not required to participate in this settlement. We cannot provide you with advice, legal or otherwise, concerning your rights and options in connection with this matter You may consult a lawyer before making any decisions in this regard.

Please note that your membership is "current" and you are being billed on a periodic basis. If you file a claim, your membership will be cancelled automatically. If you do not file a claim for a refund, you will continue to be periodically billed unless and until you cancel the membership. You can cancel your membership at any time by calling GCG at 1 (866) 297-3088.

If you have specific questions about this notice or the claim form, you can contact the Office of the State Attorney General at 800-000-0000 or attorney@attorneygeneral.com.

Very truly yours,

GCG

If you wish to UNSUBSCRIBE from future email messages from the Settlement Administrator with regard to this Settlement, please click on this link.

EXHIBIT C

MUST BE POSTMARKED ON OR BEFORE XXXXX XX, 2013

MARKETING SETTLEMENT RESTITUTION PROGRAM
c/o GCG
P.O. Box 35071
Seattle, WA 98124-3508
Toll-Free: 1 (866) 297-3088

AFN

Control No:
Claim No:

JANE CLAIMANT
123 4TH AVE
CITY. STATE 01234

Claim Form

To be eligible for a refund, you must complete this form and mail it to the address listed above.
All forms must be completed, signed, and postmarked by _____, 2013, to be accepted.

The following is your current contact information (please update if incorrect):

Customer Name: JANE CLAIMANT
Mailing Address: 123 4TH AVENUE
CITY, STATE 01234

Email Address: janeclaimant@hotmail.com
Telephone: 123-456-7890

Member No.	Program Name	Did you knowingly consent to be charged for this Membership Program from the Settling Parties on your credit or debit card or other account?
98765432	Great Fun	☐ Yes ☐ No
1234567	Complete Home	☐ Yes ☐ No
4253647	Reservation Rewards	☐ Yes ☐ No

You are encouraged to check your credit card or debit card account statements for charges for these Membership Programs.

PLEASE READ THE FOLLOWING BEFORE SIGNING. YOU MUST SIGN BELOW AND RETURN THE COMPLETED FORM BY THE ABOVE DATE TO RECEIVE A REFUND.

I understand and agree that by cashing, depositing or redeeming any refund check sent to me in response to this claim form, I am releasing the Settling Parties from any claims I may have with respect to the specific Membership Program(s) for which I receive a refund or refunds of charges to my account(s).

Signature:

Date: / /

Name (print):

EXHIBIT D

States with a Previous Judgment or an Assurance of Voluntary Compliance

1. Alaska
2. Arkansas
3. California
4. Connecticut
5. Illinois
6. Iowa
7. Louisiana
8. Maine
9. Michigan
10. Missouri
11. New Jersey
12. North Carolina
13. Ohio
14. Oregon
15. Pennsylvania
16. Tennessee
17. Vermont
18. Washington
19. West Virginia

2013 SEP 18 P 2:00

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Allesee Orthodontic Appliances, Inc.	)	CIVIL DIVISION
	)	Docket No. 351-9-13 Wncv
	)	

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Allesee Orthodontic Appliances, Inc. ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, Allesee Orthodontic Appliances, Inc., is a prescribed product manufacturer incorporated under the laws of Wisconsin, with its principal place of business located at 13931 Spring Street, Sturtevant, WI 53177.

3. Allesee Orthodontic Appliances, Inc. gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

4. Allesee Orthodontic Appliances, Inc. failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011

(July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Allesee Orthodontic Appliances, Inc. shall comply with the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632.

7. Within 30 days of signing this Assurance of Discontinuance, Allesee Orthodontic Appliances, Inc. shall make payment to the "State of Vermont" in the amount of $1,250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. Allesee Orthodontic Appliances, Inc. agrees that this Assurance of Discontinuance shall be binding on Allesee Orthodontic Appliances, Inc., and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, that it may have against Allesee Orthodontic Appliances, Inc. for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011). **The**

Attorney General does NOT release any claims arising under the Prescribed Products Gift Ban, 18 V.S.A. § 4631a.

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632 that occurs after the date this Assurance of Discontinuance is executed. This Section 11 on Stipulated Penalties shall expire no later than ten years from the effective date of this Assurance of Discontinuance with no further action necessary by the parties. If after expiration of this Section 11 the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, any such failure to report shall be governed by the terms of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632(c).

NOTICE

12. Respondent may be located at:

Gina Marie Nese
Chief Compliance Officer
Dental Equipment and Consumables Legal Department
1717 West Collins Avenue
Orange, CA 92867

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Allesee Orthodontic Appliances, Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Orange, CA, this 4 day of September, 2013.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

VT

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT 2013 MAY 13 A 11:03

In Re: AMERICAN DEBT COUNSELING, INC.) CIVIL DIVISION
) Docket No. 293-5-13 Wncv

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and American Debt Counseling, Inc. ("ADC"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

Background

1. American Debt Counseling, Inc. is a Florida corporation with offices located at 14051 N.W. 14th Street, Sunrise, FL 33323. ADC's services include providing debt management programs and credit counseling to assist clients reduce their debt.
2. ADC began doing business in Vermont in or around January 2010 and has since entered into contracts to provide debt reduction services to seven (7) Vermont consumers. As of April 14, 2013, these clients had paid to ADC a total of $3,863.50 in fees to ADC.
3. The business of ADC falls within the definition of "debt adjustment" under 8 V.S.A. § 2751(2) and is thus subject to licensure under the Vermont Debt Adjusters Act, 8 V.S.A. §§ 2751-2768.
4. At no time relevant to this AOD did ADC possess a Vermont Debt Adjuster license as required by 8 V.S.A. § 2752. In addition, ADC failed to pay the fees or obtain the bond required by 8 V.S.A. §§ 2754 and 2755 in order to obtain a Vermont Debt Adjuster License.

5. The Attorney General asserts that the above-described practice violated the Vermont Consumer Protection Act's prohibition on unfair and deceptive trade practices, 9. V.S.A. § 2453(a).
6. The Attorney General and ADC are willing to accept this AOD pursuant to 9 V.S.A. § 2459.

Assurances and Relief

7. Before engaging in any activity in Vermont, ADC shall comply with all applicable federal and Vermont laws and regulations, including but not limited to the Vermont Debt Adjusters Act, 8 V.S.A. ch. 83, the Vermont Consumer Protection Act, 9 V.S.A. ch. 63, and any regulations promulgated under either statute.
8. In the event that ADC obtains a license to engage in the business of debt adjustment and credit counseling in Vermont in the future, ADC shall: (i) clearly and conspicuously advise clients of the right to cancel without charge, by including in all written contracts, a separate provision stating "RIGHT TO CANCEL" in boldface type of a minimum size of 10 points that describes the client's right to cancel, using substantially similar language as that contained in 8 V.S.A. § 2759a; (ii) provide oral notice of the right to cancel in any telephonic solicitation sale (whether incoming or outbound calls), as required by Vermont Consumer Protection Rule 113.02(c); and (iii) if ADC obtains clients via a website sign-up or registration process, ADC shall post a notice of a right to cancel (using substantially similar language as that contained in 8 V.S.A. § 2759a) before the completion of any website sign-up process.
9. Within thirty (30) days of the filing of this AOD with the Washington Superior Court, ADC shall refund to all of its Vermont clients all unrefunded fees and other charges of

whatever kind paid by each of those clients to ADC. In the event that ADC is unable to make one or more refunds, for example because certain clients cannot be located, the company shall, within eighty (80) days of mailing the refund checks, pay the total amount of those unpaid refunds to the State of Vermont, in a single check, payable to "Vermont State Treasurer," mailed to the Vermont Attorney General's Office, to be treated as unclaimed funds.

10. ADC shall also pay liquidated damages in the amount of $2,000.00 (two thousand dollars) to any Vermont client who was sued by one or more creditors between the consumer's sign-up with ADC and the date of the company's settlement with the creditor. ADC shall pay this amount within thirty (30) days of receipt by the company of documentation of the lawsuit.

11. ADC shall pay actual damages to any Vermont client who was assessed late fees or other penalty charges by one or more creditors between the consumer's sign-up with ADC and the date of the company's settlement with the creditor. ADC shall pay this amount within sixty (60) days of receipt by the company of documentation of the late fees or penalty charges.

12. ADC shall promptly complete, without charge, its credit counseling and debt payment services with all listed creditors of each of its Vermont clients, at the client's option. In the event of a dispute about the adequacy or promptness of ADC's efforts under this paragraph, the parties shall attempt in good faith to resolve the issue themselves. If they are unable to do so, either party may petition the Washington Superior Court in Montpelier, Vermont, for a ruling.

13. To implement the provisions of paragraphs 9 through 12, above, within thirty (30) days of the filing of this AOD with the Washington Superior Court, ADC shall send to each of its Vermont clients, by first class mail, postage prepaid, a letter in substantially the same form as Exhibit 1, enclosing an itemized list of the amounts and dates of all fees paid to the company, and further enclosing any payments required by paragraphs 9-12, above, in the form of a check or checks. If the letter is returned as undeliverable, ADC shall make all reasonable efforts to find a valid mailing address for the consumer in question and shall promptly resend the letter and any accompanying payment required by this AOD to the new address.

14. ADC shall pay to the State of Vermont, in care of the Vermont Attorney General's Office at the address of the undersigned below, the sum of ten thousand dollars ($10,000.00) as a civil penalty, according to the following schedule: four thousand dollars ($4,000) within ten (10) days of signing this AOD; two thousand dollars ($2,000) within thirty (30) days of signing; two thousand dollars ($2,000) within sixty (60) days of signing; and the final two thousand dollars ($2,000) within ninety (90) days of signing.

Other Terms

15. Acceptance of this AOD by the Vermont Attorney General does not constitute approval of any business practices of ADC, nor shall the company or anyone acting on its behalf state or infer otherwise.

16. This AOD shall be binding on ADC, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of ADC shall

promptly take reasonable steps to ensure that copies of this document are provide to all officers, directors, owners, and managers of the company.

17. This AOD resolves all existing claims that the State of Vermont may have against ADC stemming from the conduct described in this document.

18. The Superior Court of the State of Vermont, Washington Unit, shall have Jurisdiction over this AOD and the parties hereto for the purpose of enabling any of the parties hereto to apply to the Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this AOD, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

19. All notice related to this AOD shall be given to ADC at:

    14051 NW 14th Street, Sunrise, Florida, 33323

20. In the event that the Attorney General alleges that ADC has violated any of the terms of this AOD, then the parties agree that paragraph 17 shall be void and the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential violations of law by ADC.

DATED at Montpelier, Vermont this 13th day of May, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____

Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us

DATED at Sunrise, Florida this 5th day of May, 2013.

AMERICAN DEBT COUNSELING, INC.

By: _____
Its Authorized Agent

President
Name and Title of Authorized Agent

APPROVED AS TO FORM:

_____
Justin E. Kolber
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, VT 05609

For the State of Vermont

_____
Matthew Lerner, Esq.
American Debt Counseling, Inc.
14051 NW 14th Street
Sunrise, FL 33323

For American Debt Counseling, Inc.

Exhibit 1

Important Information on Refunds to Consumers

Dear _____:

I am writing to inform you that American Debt Counseling has entered into a legal settlement with the Vermont Attorney General's Office. The Attorney General alleges that American Debt Counseling violated Vermont law by engaging in the business of debt adjustment without a required license.

Under the settlement, we are refunding to you all fees and charges of any kind that you paid to American Debt Counseling, as itemized on the enclosed sheet. If the amount of the enclosed refund appears to be less than the total of what you paid us, please let us know at once by telephone at 1-800-279-1194 or by mail at 14051 NW 14th Street, Sunrise, FL 33323. To receive this benefit, you must cash or deposit the check within 60 days. Thereafter, the money will be available through the unclaimed property division of the Vermont Treasurer's Office.

In addition, if, while you were a client, you were sued by one of the creditors you told us about, we will make an additional payment of $2,000, as required by the settlement. To receive the $2000, you will need to provide us with documentation of the lawsuit (for example, a copy of the complaint) within 30 days. You may send the documentation by fax to 954-656-8113 or by mail to 14051 NW 14th Street, Sunrise, Florida, 33323.

Similarly, if, while you were a client, you incurred late fees or penalty charges from one of the creditors you told us about, we will pay those actual amounts, as required by the settlement. Please provide us with documentation of those charges via the above listed methods (fax, email, or mail) within 30 days.

Under the settlement, American Debt Counseling has also agreed, if you choose, to complete its services under the contract (including making payments to your creditors if you provide us with the money), at no charge to you. If you would like us to do that, please call or email us as directed above as soon as you can; otherwise, we will assume that you do not want us to continue our payment services or debt reduction efforts.

Finally, if you have any questions about the settlement, you may call the Vermont Attorney General's Office at (802) 828-5507.

Sincerely,

[American Debt Counseling or representative]

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2013 NOV -4 A 9:50

In Re: AMERIGAS PROPANE L.P.) CIVIL DIVISION
) Docket No. 683-11-13 Wncv

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and AmeriGas Propane L.P. ("AmeriGas" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

Background

AmeriGas Propane L.P.

1. AmeriGas Propane L.P. is a Delaware limited partnership with offices at 460 N. Gulph Road, King of Prussia, Pennsylvania 19406 and its ultimate parent company is UGI Corporation. AmeriGas's operations include the retail marketing, sale and distribution of propane to residential, commercial, industrial and agricultural customers, serving over 2,000,000 retail customers throughout the United States.
2. In January 2012, AmeriGas acquired the propane operations of Heritage Operating, L.P., and Titan Energy Partners, L.P., which operate under the following names in Vermont: Young's Propane, Blue Flame Gas, Merrill Gas, Liberty Propane, Synergy and Keene Gas.
3. As of May 31, 2012, AmeriGas was providing propane services to approximately 10,924 Vermont consumers.

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Regulatory Framework

4. Pursuant to 9 V.S.A. § 2461b, the Vermont Attorney General's Office has regulation of and rulemaking authority to promote business practices which are uniformly fair to sellers and to protect consumers concerning propane gas. Vermont Consumer Protection Rule 111 ("CP 111" or "Propane Rule") for liquefied petroleum gas ("propane") was amended in 2009, effective on January 1, 2010 ("2010 CP 111"), and amended again in 2011, effective on January 1, 2012 ("2012 CP 111").
5. A violation of CP 111 constitutes an unfair and deceptive trade act and practice in commerce under Vermont's Consumer Protection Act, 9 V.S.A. § 2453(a). 2010 CP 111.01; 2012 CP 111.01.
6. Violations of the Consumer Protection Act are subject to a civil penalty of up to $10,000.00 per violation. 9 V.S.A. § 2458(b)(1).

The Vermont Attorney General's Investigation of AmeriGas

7. From January 1, 2010 through December 15, 2012, 166 Vermont consumers complained to the Attorney General's Office, Consumer Assistance Program ("CAP") regarding AmeriGas. Many complained about problems with fees, and problems disconnecting or terminating their propane service with AmeriGas. AmeriGas responded timely to those complaints, most of which have been resolved within the CAP program.
8. On February 10, 2012, the Attorney General's Office issued a Civil Investigative Demand ("CID") to AmeriGas to investigate consumers' complaints.

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9. Based on the complaints and CID investigation, the Attorney General's Office has identified two areas of AmeriGas's consumer propane service that appear to violate the Vermont Consumer Protection Act and Propane Rule:

   a. Charging meter reading fees without prior disclosure; and

   b. Delays in handling propane service termination: (i) improper delays in removing propane storage tanks; and (ii) improper delays in issuing refund checks for propane gas remaining in the tank.

Meter Read Fee

10. 2010 CP 111.20(a)(2) prohibits the billing or collection of "any charge that is not clearly and conspicuously set forth in a written contract in existence as of [January 1, 2010], or in the absence of such a contract, any charge that has not been disclosed clearly and conspicuously in writing to the consumer at least 60 days prior to the charge...." *See also* 2012 CP 111.03(d) & 111.09(a)(2) (same).

11. 2010 CP 111.19 requires the disclosure of prices and charges. 2012 CP 111.03(d) & 111.09(a)(2) require disclosure of all fees on a Fee Disclosure Form ("FDF").

12. The FDF is a standardized form mandated by CP 111 to provide consumers with advance notice of fees charged by a propane seller, and with the means to compare the fees charged by different sellers. CP 111 provides for an Initial FDF to be used with a potential consumer upon inquiry or when establishing service, and an Existing Customer FDF to provide consumers with at least 60 days notice of new or increased fees. CP 111.03.

13. Between January 1, 2010 and February 23, 2012, AmeriGas collected meter read service fees totaling $67,311 from approximately 847 Vermont customers without

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properly disclosing the fee in a FDF. After disclosing the meter read fee in its FDF, AmeriGas collected an additional $771.67 from 55 customers.

14. AmeriGas discovered the failure to disclose the meter fees in developing responses to the CID. On February 29, 2012, 715 customers received a credit to his/her/its account for the undisclosed meter read fees, for a total of $59,144. AmeriGas is in the process of refunding the remaining 132 customers, for a total of $8,167, as well as the 55 customers totaling $771.67, and shall send these refunds via credit to existing customers and via check to former customers by November 30, 2013.
15. As of May 1, 2013, AmeriGas discontinued charging any meter read fee, and will update its current FDF by January 15, 2014, to reflect that change.

Tank Removal and Refund Practices

16. 2010 CP 111.18(b) requires a propane gas seller at the time of disconnection or termination to, "reimburse to the consumer, within 20 days of the disconnection or termination, the retail price paid for any gas remaining in the tank, or, if the amount of gas remaining in the tank cannot be determined with certainty, reimburse to the consumer 80 percent of the company's best reasonable estimate of said amount less any amounts due from the consumer...." *See also* 9 V.S.A. § 2461b(e)(2)(B) & 2012 CP 111.16(a) (same).
17. 2010 CP 111.18(a) requires gas companies to remove a storage tank within 20 days for an aboveground tank (30 days in the case of an underground tank) or as soon as weather permits when a gas company disconnects or terminates service and the consumer requests the tank removal. *See also* 2012 CP 111.15(a) (same).

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18. As of May 25, 2011, 9 V.S.A. § 2461b(e)(4) requires a propane seller to pay a penalty to consumers of $250 plus $75/day each day thereafter until the refund and penalty are paid in full, for failure to issue a timely refund. As of July 1, 2013, 9 V.S.A. § 2461b(h)(3) requires a propane seller to pay a penalty to consumers of $250 plus $75/day each day thereafter until the tank has been removed and the tank penalty is paid in full, for failure to remove a tank within required timeframes.

19. Since January 1, 2010, CAP has received over 40 complaints regarding delays in AmeriGas's service termination. Consumers specifically complained about: (a) AmeriGas's untimely reimbursement for unused gas after disconnection or termination; and (b) AmeriGas's failure to remove their gas storage tank in a timely manner.

20. Prior to the issuance of the CID, AmeriGas did not systematically keep track of the date or manner that a customer requested termination of service. Subsequent to the issuance of the CID, AmeriGas now keeps a "Vermont Customers Tracking Log" to document the date of a consumer's request for tank removal or service disconnection/termination, and the tank removal and refund process.

21. Prior to October 1, 2011, AmeriGas took up to 15 calendar days to process refund checks once service was disconnected. Since October 1, 2011, refund checks are processed immediately.

22. Based on AmeriGas's own review of its data, AmeriGas confirmed 79 customers experienced delays in removing tanks, and 90 customers experienced delays in issuing refund checks, between January 1, 2010 and June 30, 2013. As noted in ¶ 20, the data provided by AmeriGas did not always track the date(s) of disconnection and

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refund processing. Therefore, not all customer data could be reviewed to determine all possible delays and an extrapolation formula was agreed upon to determine restitution and penalties to be paid to consumers.

The State's Allegations

23. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Rules:

    (a) Imposition of the meter read fee by AmeriGas beginning January 1, 2010, without proper notice violated 2010 CP 111.19 & 111.20(a)(2) and 2012 CP 111.03(d) & 111.09(a)(2);

    (b) Failing to reimburse Vermont consumers for unused gas remaining in the tank following disconnection or termination of service within the required timeframe violated 2010 CP 111.18(b), 9 V.S.A. § 2461b(e)(2)(B), and 2012 CP 111.16(a); and

    (c) Failing to remove storage tanks, without apparent justification, within the required timeframe violated 2010 CP 111.18(a) and 2012 CP 111.15(a).

24. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

Assurances and Relief

In lieu of instituting an action or proceeding against AmeriGas, the Attorney General and AmeriGas are willing to accept this AOD pursuant to 9 V.S.A. § 2459. Agreeing to the terms of this Assurance of Discontinuance for purpose of settlement does not constitute an

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admission by AmeriGas to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

Injunctive Relief

25. AmeriGas shall comply with the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, and CP 111, as they may from time to time be amended.

26. AmeriGas shall continue to record: (a) the dates and manner that a consumer requests termination of service and the specific day, if any, that the consumer requests removal of the tank; (b) the dates that gas tanks were removed or disconnected as defined in CP 111 by AmeriGas; and (c) the dates and amounts of any refund checks or credits that were issued.

27. When terminating service to a consumer using an AmeriGas-owned tank, AmeriGas shall refund the consumer within 20 days of the date when AmeriGas disconnects propane service or is notified by the consumer in writing that AmeriGas's equipment is no longer connected, whichever is earlier:

    a. the amount paid by the consumer for any propane remaining in the storage tank, less any payments due AmeriGas from the consumer; or

    b. refund the amount paid by the consumer for 80 percent of AmeriGas's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer, if the quantity of propane remaining in the storage tank cannot be determined with certainty. AmeriGas shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

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28. When AmeriGas disconnects or terminates service to a consumer, it shall, at the consumer's request, remove any storage tank that it owns from the consumer's premises by the latest of the following dates:

    a. 20 days from the disconnection or termination or 30 days in the case of an underground tank;

    b. 20 days from the consumer's request (or 10 days from the specific date, if any, that the consumer requested), or 30 days in the case of an underground tank; AmeriGas may require that the request must be in writing if the tank was disconnected by someone other than AmeriGas;

    c. in the case of a cash consumer, 20 days from the receipt of payment of tank removal fees allowed under CP 111.09; or

    d. as soon as the weather and access to the tank allow.

Refunds to Customers

29. Within 60 days of signing this AOD, AmeriGas shall pay to each consumer who had a delay in their refund checks after May 25, 2011 (identified in ¶ 22 above), $250 plus $75/day for each day after the first 21 days after termination until the date that the refund check was issued, for a total of $126,061.50 paid to 65 consumers. For consumers who experienced a delay in their refund checks before May 25, 2011 (identified in ¶ 22 above), AmeriGas shall pay $250 to each consumer, for a total of $6,250 paid to 25 customers.

30. Within 60 days of signing this AOD, AmeriGas shall pay to each consumer who had a delay in their tank removals: $500 for any delay up to 30 days; $1,000 for any

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delay up to 60 days; $1,500 for any delay up to 90 days; and $2,000 for any delay greater than 90 days; for a total of $58,500 paid to 79 customers (identified in ¶ 22).

31. Excluding the consumers identified in ¶ 22, the parties have agreed that there are 311 AmeriGas customers who had propane service disconnected between June 30, 2011, and February 10, 2012, and may have experienced a delay in refund checks. The parties have agreed on an average payment to each such consumer based on an extrapolation formula from a sampling of the refund delays in AmeriGas's customer data. Within 60 days of signing this AOD, AmeriGas will pay those consumers $125 each, for a total of $38,875. Consumers who wish to pursue a claim independently may do so by refusing the payment. However, a consumer who accepts the payment by receiving the check and not returning it within 90 days waives the ability to pursue an individual claim of a delayed refund check.

32. Excluding the consumers identified in ¶ 22, the parties have agreed that there are 506 AmeriGas customers who had propane service disconnected between June 30, 2011, and February 10, 2012, and may have experienced a delay in tank removal. The parties have agreed on an average payment based on an extrapolation formula from a sampling of tank removal delays in AmeriGas's customer data. Within 60 days of signing this AOD, AmeriGas will pay those consumers $50 each for a total of $25,300. Consumers who wish to pursue a claim independently may do so by refusing the payment. However, a consumer who accepts the payment by receiving the check and not returning it within 90 days waives the ability to pursue an individual claim of a delayed tank removal.

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33. For any customer who receives a payment per the above (¶¶ 29-32), AmeriGas shall send a letter from the Attorney General (Exhibit A), along with an applicable explanatory letter from AmeriGas (Exhibits B and C) and the consumer's payment, in an envelope provided by the Attorney General's Office.

34. In the event that either a consumer fails to cash or return the payment sent by AmeriGas or AmeriGas is not able to locate consumers to whom any payments are owed under the terms of ¶¶ 29-32 of the AOD after all reasonable efforts to do so have been taken, no later than 180 days after sending the payments, AmeriGas shall mail to the Attorney General's Office:

    a. a single check, payable to "Vermont State Treasurer" in the total dollar amount of all outstanding amounts and all checks that were returned as undeliverable or that went uncashed, to be treated as unclaimed funds, under Vermont's unclaimed property statute, Title 27, Vermont Statutes Annotated, Chapter 14;

    b. a list, in electronic Excel format, of the consumers whose checks were undeliverable or were not cashed (which list shall set out the first and last names of the consumers in distinct fields or columns), and for each such consumer, the last known address and dollar amount due, and

    c. the company's corporate address and federal tax identification number.

35. If any consumer complains to AmeriGas about a delay in tank removals or refund checks between February 10, 2012 to July 1, 2013, AmeriGas shall review the consumer's complaint in good faith within twenty days. In the event the consumer demonstrates that the refund or tank pick-up was untimely, pursuant to Vermont law:

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(a) for a refund delay, AmeriGas shall pay the penalty owed per Vermont law; (b) for a tank delay, AmeriGas shall pay a penalty per the terms of this AOD ¶ 30; and (c) if AmeriGas disputes that any penalty is owed, AmeriGas shall send a written explanation to the consumer as to why it believes no penalty is owed, and shall include a statement that the consumer may contact the Consumer Assistance Program at (802) 656-3183 or consumer@uvm.edu, if the consumer disagrees.

36. For any consumer that AmeriGas determines is owed a refund check between January 1, 2010, and May 24, 2011, AmeriGas shall pay the refund amount owed, plus $250, within 10 days of such determination.

Payment to the State of Vermont

37. Within 60 days of signing this AOD, AmeriGas shall pay to the State of Vermont one hundred thousand dollars ($100,000.00) in civil penalties and costs. Payment shall be made to the "State of Vermont" and shall be sent to the Vermont Attorney General's Office at the following address: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

38. Within 30 days of signing this AOD, AmeriGas shall pay to the Vermont Low Income Home Energy Assistance Program ("LIHEAP") one hundred ninety thousand dollars ($190,000.00). Payment shall be made via the Vermont Department for Children and Families, Economic Services Division, Fuel Assistance, 103 South Main Street, Waterbury, Vermont 05671.

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Reporting

39. AmeriGas shall provide a report to the Attorney General's Office, documenting its handling of service termination from July 1, 2013 through June 30, 2014, including the information described in ¶ 26. If there are delays in terminating service (i.e., beyond the allowable timeframes, including weather and access to the tank), AmeriGas shall document the reason(s) for the delay(s).

40. AmeriGas shall provide a report to the Vermont Attorney General's Office of all consumers who requested payment under ¶ 35 and the outcomes taken, or that no consumer has requested payment.

41. AmeriGas shall submit a copy of any written consumer complaint pertaining to any matter covered by this AOD that the company received on and after the date of this AOD, as well as the company's response.

42. AmeriGas shall submit the reports and documents described in ¶¶ 39-41 on or before December 16, 2013, and three additional submissions thereafter on no less than a quarterly basis (beginning on January 1, 2014) for a period of one year for a total of four submissions covering the period ending June 30, 2014. AmeriGas may submit the reports and documents up to 30 days after the close of its quarter.

Other Terms

43. In the event that the State receives a request for disclosure of any of the information described in this AOD, the State shall promptly provide notice to AmeriGas to permit it to take any steps it may deem necessary to prevent disclosure. If the State

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is required to disclose any information described in this AOD by a government agency or by court order, it shall promptly notify AmeriGas.

44. Neither AmeriGas nor anyone acting on its behalf shall state or infer that the Vermont Attorney General's Office approves any business practices of AmeriGas.

45. This AOD shall be binding on AmeriGas, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of AmeriGas shall promptly take reasonable steps to ensure that copies of this document are provided to all officers, directors, owners and managers of the company, and all of its affiliate companies doing business in Vermont, but only to the extent such officers and managers are responsible for operations in the State of Vermont.

46. This AOD resolves all existing claims the State of Vermont may have against AmeriGas stemming from the conduct described in this document, as of July 1, 2013.

47. Nothing in this AOD waives the right of any consumer to pursue claims stemming from the conduct described in this document; excepting, however, any consumer who accepts payment under ¶¶ 29 or 31 shall waive any claim regarding delayed refund checks, and any consumer who accepts payment under ¶¶ 30 or 32 shall waive any claim regarding delayed tank removals.

48. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling any of the parties hereto to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this AOD, to modify or terminate

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any of its provisions, to enforce compliance, and to punish violations of its provisions.

49. Communications related to this AOD shall be given to AmeriGas at:

    (a) Jean Konowalczyk, (Jean.Konowalczyk@amerigas.com) AmeriGas Propane, L.P., 460 North Gulph Road, King of Prussia, PA 19406;

    (b) Robert M. Langer (rlanger@wiggin.com), Wiggin and Dana LLP, One CityPlace, 185 Asylum Street, Hartford, CT 06103; and

    (c) Joshua R. Diamond, (jrd@diamond-robinson.com), Diamond & Robinson, P.C., P.O. Box 1460, Montpelier, VT 05601-1460.

50. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General listed below.

51. AmeriGas shall notify the Attorney General of any change of AmeriGas's business name or address and of any change in contact information in ¶ 49 within 20 business days.

52. In the event that AmeriGas violates any of the terms of this AOD, the Attorney General may pursue any remedies available under 9 V.S.A. Chapter 63, and the Attorney General shall not have waived any of its rights to assert and prove any violations of law by AmeriGas unrelated to the conduct described in this AOD.

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109 State Street
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[SIGNATURES APPEAR ON NEXT PAGE]

DATED at Montpelier, Vermont this 1st day of ~~October~~ November, 2013.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us

DATED at King of Prussia, PA this 31st day of October, 2013.

AMERIGAS PROPANE, LP
by its general partner, AmeriGas Propane, Inc.

By: _____
Steven A. Samuel, Vice President and General Counsel

APPROVED AS TO FORM:

_____
Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

For the State of Vermont

_____
Robert M. Langer, Esq.
Wiggin and Dana, LLP
One City Place, 34th Floor
185 Asylum Street
Hartford, CT 06103

_____
Joshua R. Diamond
Diamond & Robinson, P.C.
15 East State Street
P.O. Box 1460
Montpelier, VT 05601

For AmeriGas Propane, LP

DATED at Montpelier, Vermont this _____ day of October, 2013.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us

DATED at _____, _____this _____ day of October, 2013.

AMERIGAS PROPANE, LP
by its general partner, AmeriGas Propane, Inc.

By: _____
Steven A. Samuel, Vice President and General Counsel

APPROVED AS TO FORM:

Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

For the State of Vermont

Robert M. Langer, Esq.
Wiggin and Dana, LLP
One City Place, 34th Floor
185 Asylum Street
Hartford, CT 06103

Joshua R. Diamond
Diamond & Robinson, P.C.
18 East State Street
P.O. Box 1460
Montpelier, VT 05601

For AmeriGas Propane, LP

EXHIBIT A

November 2013

Re: AmeriGas Propane, LP settlement

Dear Vermont consumer:

You have been identified as a current or former customer of AmeriGas Propane, LP ("AmeriGas") who, between January 1, 2010, and June 30, 2013, terminated propane service from AmeriGas.

As a result of a settlement with the Attorney General's Office, AmeriGas is providing the enclosed payment and further explanation to address any delays that may have occurred in terminating your propane service. Those delays may have been caused by removing propane storage tanks or issuing refund checks outside the timeframes required by Vermont law.

For more information on the Vermont consumer protection rules or the terms of this settlement, please visit the Attorney General's Office website at www.atg.state.vt.us or call the Consumer Assistance Program at 800-649-2424 or (802) 656-3183.

Sincerely,

William H. Sorrell
Attorney General

Enc.

EXHIBIT B

Date

Name
Address
Town, VT zip

Re: Settlement Agreement

Dear [Name of Consumer]:

Under the terms of a settlement agreement with the Vermont Attorney General's Office, you have been selected to receive $____ because, subsequent to the disconnection of your propane service, a refund for the unused propane may not have been mailed to you within the time frame in accordance with Vermont law.

This check is in **FULL SATISFACTION** of any claim that you may have against AmeriGas arising from the alleged delay in receiving a refund.

IMPORTANT: If you **ACCEPT** the check, you will **WAIVE** whatever rights, if any, that you may possess to pursue an individual claim against AmeriGas resulting from any delay in issuing a refund, including claims brought pursuant to Vermont Consumer Protection Act, 9 V.S.A. § 2461b.

You may decline to accept the check by returning or mailing it to AmeriGas, first class postage, within 90 days of the date of this letter, to the following address:

AmeriGas Propane
c/o Jean S. Konowalczyk
P.O. Box 965
Valley Forge, PA 19482

Sincerely,

_____
[Insert Name and Title of AmeriGas Official]

Enclosure

EXHIBIT C

Date

Name
Address
Town, VT zip

Re: Settlement Agreement

Dear [Name of Consumer]:

Under the terms of a settlement agreement with the Vermont Attorney General's Office, you have been selected to receive $____ because, subsequent to the disconnection of your propane service, your propane tank may not have been removed within the time frame in accordance with Vermont law.

This check is in **FULL SATISFACTION** of any claim that you may have against AmeriGas arising from the alleged delay in removing the tank.

IMPORTANT: If you **ACCEPT** the check, you will **WAIVE** whatever rights, if any, that you may possess to pursue an individual claim against AmeriGas resulting from any delay in removing the tank, including claims brought pursuant to Vermont Consumer Protection Act, 9 V.S.A. § 2461b.

You may decline to accept the check by returning or mailing it to AmeriGas, first class postage, within 90 days of the date of this letter, to the following address:

AmeriGas Propane
c/o Jean S. Konowalczyk
P.O. Box 965
Valley Forge, PA 19482

Sincerely,

_____
[Insert Name and Title of AmeriGas Official]

Enclosure

2013 SEP 18 P 2:04

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Aspen Surgical Products, Inc.

FILED

CIVIL DIVISION
Docket No. 554-9-13 Wncv

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Aspen Surgical Products, Inc. ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent Aspen Surgical Products, Inc. is a prescribed product manufacturer incorporated under the laws of Michigan, with its principal place of business located at 6945 Southbelt Drive SE, Caledonia, MI 49316.

3. Aspen Surgical Products, Inc. gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

4. Aspen Surgical Products, Inc. failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1,

2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Aspen Surgical Products, Inc. shall comply with the Prescribed Product Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632.

7. By May 15, 2013, Aspen Surgical Products, Inc. shall make payment to the "State of Vermont" in the amount of $1,250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. Aspen Surgical Products, Inc. agrees that this Assurance of Discontinuance shall be binding on Aspen Surgical Products, Inc., and their successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, that it may have against Surgical Products, Inc. for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2009 through June 30, 2010) and calendar year 2011 (July 1, 2011 through December 31, 2011). **The Attorney**

General does NOT release any claims arising under the Prescribed Product Gift Ban, 18 V.S.A. § 4631.

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632 that occurs after the date this Assurance of Discontinuance is executed.

NOTICE

12. Respondent may be located at:

Deitzah Raby
Corporate Counsel & Privacy Officer
Hill-Rom Holdings, Inc.
180 N. Stetson Avenue
Suite 4100
Chicago, IL 60601

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Aspen Surgical Products, Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at 1:50pm, this 6th day of May, 2013.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2013 SEP 18 P 2:07

IN RE: Bio-Rad Laboratories, Inc.	)	CIVIL DIVISION FILED
	)	Docket No. 555-9-13 Wncv
	)	

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Bio-Rad Laboratories, Inc. ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, Bio-Rad Laboratories, Inc., is a prescribed product manufacturer incorporated under the laws of Delaware, with its principal place of business located at 1000 Alfred Nobel Drive, Hercules, CA 94547.

3. Bio-Rad Laboratories, Inc. gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010) and fiscal year 2011 (July 1, 2010 through June 30, 2011) ~~and calendar year 2011 (July 1, 2011 through December 31, 2011).~~

4. Bio-Rad Laboratories, Inc. failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010) and fiscal year 2011 (July 1,

2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Bio-Rad Laboratories, Inc. shall comply with the Prescribed Product Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632.

7. By June 15, 2013, Bio-Rad Laboratories, Inc. shall make payment to the "State of Vermont" in the amount of $1,250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July1, 2011 through December 31, 2011).

OTHER TERMS

8. Bio-Rad Laboratories, Inc. agrees that this Assurance of Discontinuance shall be binding on Bio-Rad Laboratories, Inc. and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, that it may have against Bio-Rad Laboratories, Inc. for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011). **The Attorney**

General does NOT release any claims arising under the Prescribed Product Gift Ban, 18 V.S.A. § 4631.

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632 that occurs after the date this Assurance of Discontinuance is executed.

NOTICE

12. Respondent may be located at:

Tom Brida
Associate General Counsel
Bio-Rad Laboratories, Inc.
1000 Alfred Nobel Drive
Hercules, CA 94547

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Bio-Rad Laboratories, Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Hercules, CA, this 6th day of June, 2013.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18 day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
BLVD NETWORK, LLC, COAST TO COAST VOICE, LLC, EMERGENCY ROADSIDE VOICEMAIL, LLC, EMPIRE VOICE SYSTEMS, LLC, FIRST RATE VOICE SERVICES, LLC, METELINE TECH, INC., PBA SERVICES, INC., PERSONAL CONTACT SOLUTIONS, LLC, ROADSIDE PAL, LLC, SELECTED OPTIONS, INC., SELECTED SERVICES, INC., TRIVOICE INTERNATIONAL, LTD., USA VOICE MAIL, INC., VOICEMAIL SOLUTIONS, LLC, and VOX TRAIL, LTD.,	)	**CIVIL DIVISION** **Docket No. 451-6-12 Wncv**
	)	
Defendants	)	

ORDER

Based on Plaintiff State of Vermont's Motion to Compel and Defendants'[1] Request to Seal in the above-captioned matter, both of which came on for hearing before this Court on April 1, 2013, Hon. Robert R. Bent, presiding,

IT IS HEREBY ORDERED:

1. No later than April 30, 2013, each Defendant shall produce to the State the documents requested in the State's Civil Investigative Subpoena, no. 11 (g) (which asked Defendants to identify and produce all documents relating to each Vermont consumer who was charged by Defendants, such as contracts and other agreements, emails and other

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

[1] The parties do not agree to the designation "Defendant(s)" in lieu of "Respondent(s)," but for the purpose of this Order, they have agreed to use the designation "Defendant(s)."

communications to or from the consumer or any other person relating to the consumer, internal emails and other communications relating to the consumer, notes of actions taken, and records of billings and payments), including but not limited to all Vermont customer account records.

2. No later than April 30, 2013, each Defendant shall produce to the State the documents requested in the State's Civil Investigative Subpoena, no. 10 (d) (which asked Defendants to identify and produce all communications to or from daData, Inc., including but not limited to correspondence and emails in native format).

3. No later than April 16, 2013, if the State wishes, the State shall submit to the Court memoranda on the issue of whether (a) no. 11(g) (which asked Defendants to identify and produce all transmittals of Vermont consumers' personal information to Defendants from the source of the information, including from the parties that maintained the websites on which the consumers allegedly signed up for Defendants' services); and/or (b) the documents requested in the State's Civil Investigative Subpoena, no. 14 (which asked Defendants to identify and produce copies of the web pages on which personal data was obtained from Vermont consumers by the party through whose website the data was obtained) are within the scope of production for a Civil Investigative Subpoena. The Defendants shall submit reply memoranda no later than April 23, 2013.

4. Exhibit 2 to the State's Motion to Compel shall be placed under seal and shall remain under seal unless the Court orders otherwise. If the State wishes to brief the issue of whether that document should be unsealed, it shall do so no later than April 16, 2013, and Defendants shall submit their opposition no later than April 23, 2013.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated 4/15/13

Honorable Robert R. Bent
Vermont Superior Court
Washington Unit Civil Division

Office of the ATTORNEY GENERAL
109 State Street
Montpelier, VT 05609

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Carl Zeiss Vision, Inc.	)	CIVIL DIVISION
	)	Docket No. 557-9-13 WnCV
	)	

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Carl Zeiss Vision, Inc., ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, Carl Zeiss Vision, Inc., is a prescribed product manufacturer incorporated under the laws of Delaware, with its principal place of business located at 12121 Scripps Summit Drive, Suite 400, San Diego, CA 92131.

3. Carl Zeiss Vision, Inc. gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July1, 2011 through December 31, 2011).

4. Carl Zeiss Vision, Inc. failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Carl Zeiss Vision, Inc. shall comply with the Prescribed Product Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632.

7. By May 15, 2013, Carl Zeiss Vision, Inc. shall make payment to the "State of Vermont" in the amount of $1,250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. Carl Zeiss Vision, Inc. agrees that this Assurance of Discontinuance shall be binding on Carl Zeiss Vision, Inc., and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, that it may have against Carl Zeiss Vision, Inc. for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011 and calendar year 2011 (July 1, 2011 through December 31, 2011). **The Attorney General does NOT release any claims arising under the Prescribed Product Gift Ban, 18 V.S.A. § 4631.**

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632 that occurs after the date this Assurance of Discontinuance is executed.

NOTICE

12. Respondent may be located at:

Sarah Kalaei, Esq.
CZV Contract Manager
Carl Zeiss Vision, Inc.
12121 Scripps Summit Drive
Suite 400
San Diego, CA 92131

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Carl Zeiss Vision, Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at 9:20 am, this 17th day of May, 2013.

Carl Zeiss Vision, Inc.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

2013 SEP 18 P 2:30

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Celleration, Inc. FILED	)	CIVIL DIVISION
	)	Docket No. 558-9-13 Wncv
	)	

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Celleration, Inc. ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent Celleration, Inc. is a prescribed product manufacturer incorporated under the laws of Delaware, with its principal place of business located at 6321 Bury Drive, Suite 15, Eden Prairie, MN 55346-1739.

3. Celleration, Inc. gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during calendar year 2011 (July 1, 2011 through December 31, 2011).

4. Celleration, Inc. failed to file an annual report with the Attorney General's Office for calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Celleration, Inc. shall comply with the Prescribed Product Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632.

7. By May 15, 2013, Celleration, Inc. shall make payment to the "State of Vermont" in the amount of $250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. Celleration, Inc. agrees that this Assurance of Discontinuance shall be binding on Celleration, Inc. and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, that it may have against Celleration, Inc. for the conduct described in the Background section for calendar year 2011 (July 1, 2011 through December 31, 2011). **The Attorney General does NOT release any claims arising under the Prescribed Product Gift Ban, 18 V.S.A. § 4631.**

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632 that occurs after the date this Assurance of Discontinuance is executed.

NOTICE

12. Respondent may be located at:

Julie Magee
Senior Accountant
Celleration, Inc.
6321 Bury Drive
Suite 15
Eden Prarie, MN 55346-1739

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Celleration, Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at _____, this 16 day of April, 2013.

Chris Geyen
Chief Financial Officer
Celleration

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

2013 SEP 18 P 2:31

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Cochlear Americas Corporation) CIVIL DIVISION
) Docket No. 559-9-13 Wncv
)

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Cochlear Americas Corporation ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, Cochlear Americas Corporation, is a prescribed product manufacturer incorporated under the laws of Delaware, with its principal place of business located at 13059 East Peakview Avenue, Centennial, CO 80111.

3. Cochlear Americas Corporation gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010).

4. Cochlear Americas Corporation failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Cochlear Americas Corporation shall comply with the Prescribed Product Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632.

7. By July 1, 2013, Cochlear Americas Corporation shall make payment to the "State of Vermont" in the amount of $500.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010).

OTHER TERMS

8. Cochlear Americas Corporation agrees that this Assurance of Discontinuance shall be binding on Cochlear Americas Corporation, and their successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, that it may have against Cochlear Americas Corporation for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010.) **The Attorney General does NOT release any claims arising under the Prescribed Product Gift Ban, 18 V.S.A. § 4631a.**

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632 that occurs after the date this Assurance of Discontinuance is executed.

NOTICE

12. Respondent may be located at:

Liza McKelvey
Vice President, General Counsel
Cochlear Americas
13059 E. Peakview Avenue
Centennial, CO 80111

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Cochlear Americas Corporation, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Centennial CO, this 27 day of June, 2013.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

2013 SEP 18 P 2:33 **STATE OF VERMONT**
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Dental Equipment LLC) CIVIL DIVISION
) Docket No. 560-9-13 Wncv
)

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Dental Equipment LLC ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, Dental Equipment LLC, is a prescribed product manufacturer incorporated under the laws of Delaware, with its principal place of business located at 11727 Fruehauf Drive, Charlotte, NC 28273.

3. Dental Equipment LLC gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through January 31, 2011).

4. Dental Equipment LLC failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1,

2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Dental Equipment LLC shall comply with the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632.

7. Within 30 days of signing this Assurance of Discontinuance, Dental Equipment LLC shall make payment to the "State of Vermont" in the amount of $1,250.00.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. Dental Equipment LLC agrees that this Assurance of Discontinuance shall be binding on Dental Equipment LLC, and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, that it may have against Dental Equipment LLC for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), Fiscal Year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011). **The Attorney General**

does NOT release any claims arising under the Prescribed Products Gift Ban, 18 V.S.A. § 4631a.

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632 that occurs after the date this Assurance of Discontinuance is executed. This Section 11 on Stipulated Penalties shall expire no later than ten years from the effective date of this Assurance of Discontinuance with no further action necessary by the parties. If after expiration of this Section 11 the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, any such failure to report shall be governed by the terms of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632(c).

NOTICE

12. Respondent may be located at:

Gina Marie Nese
Chief Compliance Officer
Dental Equipment and Consumables Legal Department
1717 West Collins Avenue, Orange, CA 92867

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Dental Equipment LLC, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at WASHINGTON DC, this 10th day of SEPTEMBER, 2013.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: GOOGLE

) CIVIL DIVISION
) Docket No. 707-11-13 Wncv.
) FILED

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance")[1] is entered into by the Attorneys General of the States of Alabama, Arizona, Arkansas, California, Connecticut[2], Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin, as well as the District of Columbia and Google Inc. (hereinafter "Google"), without trial or adjudication on any issue of fact or law, and without admission of any wrongdoing or violation of law.

I. DEFINITIONS

For the purposes of this Assurance, the following definitions shall apply:

1. "Any" shall be construed as synonymous with "every" and "all" and shall be all-inclusive.

2. "Browser" shall mean a standalone desktop or mobile software application that allows users to enter URLs and navigate to and display web pages.

3. "Cookie" shall mean a string of characters sent in the HTTP Set-Cookie Header by a website or service intended to be sent back by the Browser to the website or service in the Cookie Header.

4. "Covered Conduct" shall mean:

    a. Google's posting of information regarding Apple Inc.'s Safari Browser, stating that "Safari is set by default to block all third-party cookies. If you have not changed those settings, this option effectively accomplishes the same thing as setting the opt-out cookie," or any similar statement to that effect; and

    b. Google's placement of Cookies on Safari Browsers from June 1, 2011 through February 15, 2012.

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[1] This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

[2] For ease of reference purposes, this entire group will be referred to collectively herein as the "Attorneys General" or individually as "Attorney General." Such designations, however, as they pertain to Connecticut, shall refer to the Commissioner of Consumer Protection.

5. "Effective Date" shall mean the date when Google has received counterpart signature pages from each of the Attorneys General.

6. "Google" shall mean Google Inc., a Delaware corporation with its principal office or place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

7. "State" or "States" shall mean the States entering into this Assurance, either in the singular or collectively. The "Executive Committee of the Multistate" or "MSEC" shall refer to a committee of states that was led by Maryland and was also comprised of Connecticut, Florida, Illinois, Ohio, New Jersey, New York, Texas, Vermont and Washington.

II. APPLICATION

8. The provisions of this Assurance shall apply to Google and its successors, assignees, merged or acquired entities, parent or controlling entities, and subsidiaries in which Google has a majority ownership interest.

9. The provisions of this Assurance shall apply to Google in connection with offering and/or providing any products and/or services to the States' consumers.

III. REQUIREMENTS

10. Google shall not employ HTTP Form POST functionality that uses javascript to submit a form without affirmative user action for the purpose of overriding a Browser's Cookie-blocking settings so that it may place an HTTP Cookie on such Browser, without that user's prior consent. Nothing herein shall prevent Google from taking any of the foregoing actions for the purpose of detecting, preventing or otherwise addressing fraud, security or technical issues, or protecting against harm to the rights, property or safety of Google, its users or the public as required or permitted by law. As used herein, "technical issues" shall be defined as matters necessarily incident to the rendition of services requested by a user or to the protection of the rights or property of the provider of that service.

    If an Attorney General determines that Google has not complied with the terms of this provision, and if, at the Attorney General's sole discretion, it determines that the failure to comply does not present an immediate threat to the health or safety of the citizens of the Attorney General's State, the Attorney General shall not bring any action to enforce this provision without first providing Google with fourteen (14) days' written notice in accordance with Paragraph 20 that identifies with particularity the conduct that is alleged to violate this Assurance.

11. Google shall neither misrepresent a material fact, nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, regarding how consumers can use Google's Ads

Settings tool or any other Google product, service or tool to directly manage how Google serves advertisements to their Browsers.

If an Attorney General determines that Google has not complied with the terms of this provision, and if, at the Attorney General's sole discretion, it determines that the failure to comply does not present an immediate threat to the health or safety of the citizens of the Attorney General's State, the Attorney General shall not bring any action to enforce this provision without first providing Google with fourteen (14) days' written notice in accordance with Paragraph 20 that identifies with particularity the conduct that is alleged to violate this Assurance.

Nothing herein shall operate to restrict an Attorney General's ability to enforce its own laws regarding misrepresentation or deceptive trade practices.

12. Google shall, for a period of no less than five (5) years from the Effective Date, provide a separate stand-alone page or pages on the Google.com domain designed to give information to users about Cookies (the "Cookie Page"). The Cookie Page shall be posted no later than ninety (90) days from the Effective Date and its contents shall include, and be designed to inform an ordinary consumer about:

    i. what Cookies are;
    ii. the general purposes for which Google may use Cookies; and
    iii. how users can manage Cookies.

    Google shall maintain a hyperlink to the Cookie Page on the web page that Google uses to set forth its privacy policy. The hyperlink shall be entitled "Cookies," "What You Need To Know About Cookies," or some similar title that contains the word "Cookies," and be designed to inform consumers that the Cookie Page will provide them with the information about Cookies specified in this paragraph. The hyperlink to the Cookie Page shall also be contained on other pages within Google's Help Center that Google identifies as reasonably related. The hyperlink required under this paragraph shall be of a type, size, and location, and contrast highly with the background on which it appears, so that it will be sufficiently noticeable for an ordinary consumer.

13. Google shall maintain systems configured to instruct Safari brand web Browsers to expire any Cookie placed from the doubleclick.net domain by Google through February 15, 2012 if those systems encounter such a Cookie, with the exception of the DoubleClick opt-out Cookie. Such systems shall remain in place until February 15, 2014, at which time all Cookies placed from the doubleclick.net domain by Google on Safari brand web Browsers through February 15, 2012 should have expired by design.

IV. PAYMENT TO THE STATES

14. Google shall pay Seventeen Million Dollars ($17,000,000.00) to be divided and paid by Google directly to each of the Attorneys General in an amount to be designated by and in the sole discretion of the MSEC. Each of the Attorneys General agrees that the MSEC has the authority to designate such amount to be paid by Google to each Attorney General and to provide Google with instructions for the payments to be distributed under this paragraph. Payment shall be made no later than thirty (30) days after the Effective Date and receipt of payment instructions by Google from the MSEC, except where state law requires judicial or other approval of the Assurance, in which case payment shall be made no later than thirty (30) days after notice from an Attorney General that such final approval for the Assurance has been secured.

    Said payment shall be used by the Attorneys General for such purposes that may include, but are not limited to civil penalties, attorneys' fees, and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorneys General.

V. RELEASE

15. A. By execution of this Assurance, the Attorneys General, on behalf of their respective States, release and forever discharge Google and its affiliates, and their respective directors, officers, employees, agents, representatives, successors, predecessors, and assigns ("Released Parties"), from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the States could have asserted against the Released Parties under each State's consumer protection statute or applicable computer abuse statute set forth in Appendix A resulting from the Covered Conduct up to and including the Effective Date, whether known or unknown, foreseen or unforeseen (collectively, the "Released Claims"). Nothing contained in this paragraph shall be construed to limit the ability of an Attorney General to enforce the obligations of this Assurance.

    B. Released Claims do not include any claims based on: (i) any civil or administrative liability that any person and/or entity, including Released Parties, has or may have to any of the States not expressly covered by the release in Paragraph 15.A. above, including, but not limited to any and all claims of State or federal antitrust violations; (ii) any liability under the States' above-cited law(s) which any person and/or entity, including Released Parties, has or may have to any individual consumers; or (iii) any criminal liability that any person and/or entity, including Released Parties, has or may have to the States.

VI. GENERAL PROVISIONS

16. This Assurance is for settlement purposes only, and to the fullest extent permitted by law neither the fact of, nor any provision contained in, this Assurance, nor any action taken hereunder, shall constitute or be construed as any admission of the validity of any claim or any fact alleged in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Released Parties or admission by any Released Parties of the validity or lack thereof of any claim, allegation, or defense asserted in any other action. Google denies any and all liability for the Covered Conduct.

17. This Assurance represents the full and complete terms of the settlement entered by the Parties hereto.

18. All Parties participated in the drafting of this Assurance.

19. This Assurance may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

20. All Notices under this Assurance shall be provided to the following addresses via Electronic and Overnight Mail:

    For the Attorneys General:

    See Appendix B.

    For Google:

    Kent Walker
    Senior Vice President & General Counsel
    1600 Amphitheatre Parkway
    Mountain View, CA 94043
    kentwalker@google.com

    and

    Michael Rubin
    Wilson Sonsini Goodrich & Rosati
    One Market Street, Suite 3400
    San Francisco, CA 94105
    mrubin@wsgr.com.

21. Nothing in this Assurance shall be construed as relieving Google of the obligation to comply with all state and federal laws, regulations or rules applicable to it, nor shall any

of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

22. The Parties understand and agree that this Assurance shall not be construed as an approval of or sanction by the Attorneys General of Google's business practices, nor shall Google represent otherwise. The Parties further understand and agree that any failure by the Attorneys General to take any action in response to any information submitted pursuant to the Assurance shall not be construed as an approval, or sanction, of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

23. This Assurance may be enforced only by the parties hereto. Nothing in this Assurance shall provide any rights or permit any person or entity not a party hereto, including any state or attorney general not a party hereto, to enforce any provision of this Assurance. No person or entity not a signatory hereto is a third party beneficiary of this Assurance. Nothing in this Assurance shall be construed to affect, limit, alter or assist any private right of action that a consumer may hold against Google.

24. Time shall be of the essence with respect to each provision of this Assurance, including, but not limited to, those that require action to be taken by Google within a stated period or upon a specific date.

25. Google shall not participate, directly or indirectly, in any activity, or form a separate entity or corporation, for the purpose of engaging in acts or practices in whole or in part in the States which are prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 8th day of November, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____

Ryan Kriger
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
rkriger@atg.stage.vt.us
(802)828-3170

GOOGLE INC.

Kent Walker

KENT WALKER
Senior Vice President & General Counsel
Google Inc.

Date: 11-13-13

APPENDIX A

State	Consumer Protection Statute/Computer Abuse Statute
Alabama	Alabama Deceptive Trade Practices Act, Ala. Code §§ 8-19-1 through 8-19-15
Arizona	Arizona Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, *et seq.*; Ariz. Rev. Stat. Ann. § 13-2316(A)(6) and (D); Ariz. Rev. Stat. Ann. §§ 44-7301, *et seq.*
Arkansas	Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101 through 115; Arkansas Computer-Related Crimes Act, Ark. Code Ann. § 5-41-106; Consumer Protection Against Computer Spyware Act, Ark. Code Ann. §§ 4-111-101 through 105
California	Cal. Bus & Prof. Code §§ 17200, *et seq.*; Cal. Bus. & Prof. Code §§ 17500; Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502
Connecticut	Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, *et seq.*; Conn. Gen. Stat. § 53-453
D.C.	District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et seq.* (2001)
Florida	Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Fla. Stat., §§ 501.201, *et seq.*; Florida Computer Crimes Act, Fla. Stat., § 815.06(4)
Illinois	Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.*; Computer Tampering, 720 Ill. Comp. Stat. 5/17-51
Indiana	Indiana Deceptive Consumer Sales Act, Ind. Code Ann. §§ 24-5-0.5-1 to 24-5-0.5-12; Ind. Code Ann. §§ 24-4.8-1-1, *et seq.*
Iowa	Iowa Consumer Fraud Act, Iowa Code § 714.16; Iowa Code § 716.6B
Kansas	Kansas Consumer Protection Act, Kan. Stat. Ann. §§ 50-623, *et seq.*
Kentucky	Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*

State	Consumer Protection Statute/Computer Abuse Statute
Maine	The Maine Unfair Trade Practices Act, Me. Rev. Stat. Ann. tit. 5, §§ 205-A, *et seq.* and Maine Deceptive Trade Practices Act, Me. Rev. Stat. Ann. Tit. 10, §§ 1211, *et seq.*; Notice of Risk to Personal Data Act, Me. Rev. Stat. Ann. tit. 10, §§ 1347-A, 1349
Maryland	Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2005 Repl. Vol. and 2011 Supp.)
Massachusetts	Mass. Gen. Law ch. 93A
Michigan	Michigan Consumer Protection Act, Mich. Comp. Laws §§ 445.901, *et seq.*
Minnesota	Minnesota Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43 to 325D.48; Minnesota False Statement in Advertising Act, Minn. Stat. § 325F.67; and Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68 to 325F.69, and 325F.70
Mississippi	Miss. Code Ann. §§ 75-24-1, *et seq.*
Nebraska	Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.* and Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301, *et seq.*
Nevada	Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*; Nev. Rev. Stat. §§ 205.473-.513; Nev. Rev. Stat. §§ 603.010-090
New Jersey	New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.*; Act Concerning Civil Liability for Computer-Related Offenses, N.J. Rev. Stat. §§ 2A:38A-1, *et seq.*
New Mexico	New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1 to-26
New York	N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349 and 350
North Carolina	North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.* N.C. Gen. Stat. §§ 1-539.2A, 14-458

State	Consumer Protection Statute/Computer Abuse Statute
North Dakota	Unlawful Sales or Advertising Practices, N.D. Cent. Code §§ 51-15-01, *et seq.*; N.D. Cent. Code § 12.1-06.1-08(3)
Ohio	Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §§ 1345.01, *et seq.*
Oklahoma	Oklahoma Consumer Protection Act, 15 Supp.2012 §§ 751, *et seq.* (2012); Oklahoma Computer Crimes Act, 21 O.S.2011 §§ 1951, *et seq.*
Oregon	Oregon Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605, *et seq.*
Pennsylvania	Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. §§ 201-1, *et seq.*; Consumer Protection Against Computer Spyware Act, 73 Pa. Stat. Ann. §§ 2330.1, et seq.
Rhode Island	Deceptive Trade Practices Act, R.I. Gen. Laws §§ 6-13.1-1, *et seq.*; R.I. Gen. Laws §§ 11-52-6 and 11-52.2-6
South Carolina	South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*; South Carolina Computer Crime Act, S.C. Code Ann. §§ 16-16-10, *et seq.*
South Dakota	South Dakota Deceptive Trade Practices and Consumer Protection, S.D. Codified Laws §§ 37-24-1 through 37-24-48
Tennessee	Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.*; Tennessee Personal and Commercial Computer Act of 2003, Tenn. Code Ann. §§ 39-14-601, *et seq.*
Texas	Texas Deceptive Trade Practices--Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41, *et seq.*; Consumer Protection Against Computer Spyware Act, Tex. Bus. & Com. Code §§ 324.001, *et seq.*
Vermont	Vermont Consumer Protection Act, Vt. Stat. Ann. tit. 9, §§ 2451, *et seq.*; Vermont Act Relating to Computer Crime, Vt. Stat. Ann. tit. 13, § 4106
Virginia	Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196, *et seq.*; Virginia Computer Crimes Act, Va. Code Ann. § 18.2-152.12

State	Consumer Protection Statute/Computer Abuse Statute
Washington	Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.010, *et seq.*; Wash. Rev. Code Ann. §§ 19.270.010, *et seq.*
Wisconsin	Wis. Stat. §§ 100.18, 100.26(4) and 100.263; Wis. Stat. § 943.70(5)

APPENDIX B

State	Attorney General Contact
Alabama	Noel S. Barnes Consumer Protection Chief nbarnes@ago.state.al.us Kyle Beckman Assistant Attorney General kbeckman@ago.state.al.us Office of the Alabama Attorney General Consumer Protection Section 501 Washington Avenue Montgomery, AL 36130
Arizona	Taren M. Ellis Langford Unit Chief Counsel, Consumer Litigation Unit Taren.Langford@azag.gov Office of the Arizona Attorney General 400 W. Congress, Suite S-315 Tucson, AZ 85701
Arkansas	Peggy Johnson Assistant Attorney General peggy.johnson@arkansasag.gov Sarah Tacker Senior Assistant Attorney General Sarah.tacker@arkasas.gov Consumer Protection Division Arkansas Attorney General's Office 323 Center Street Suite 500 Little Rock AR 72201
California	Adam Miller, CIPP/US Supervising Deputy Attorney General Privacy Enforcement and Protection Unit Office of the California Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102 Adam.Miller@doj.ca.gov

State	Attorney General Contact
Connecticut	Matthew F. Fitzsimmons Chair, Privacy Task Force Assistant Attorney General Office of the Attorney General 110 Sherman Street Hartford CT 06105 Matthew.Fitzsimmons@ct.gov
D.C.	Bennett C. Rushkoff Chief, Public Advocacy Section bennett.rushkoff@dc.gov Grant G. Moy, Jr. Assistant Attorney General grant.moy@dc.gov Office of the Attorney General for the District of Columbia 441 4th Street, NW, Suite 600S Washington, DC 20001
Florida	Patrice Malloy Sr. Assistant Attorney General Office of the Attorney General 110 Southeast 6th Street Ft. Lauderdale, FL 33301 patrice.malloy@myfloridalegal.com
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Indiana	Lyman "Chuck" Taylor, III Section Chief, Consumer Mediation & Identity Theft Office of the Indiana Attorney General 302 W. Washington, IGCS-5th Floor Indianapolis, IN 46204 Ltaylor@atg.in.gov

State	Attorney General Contact
Iowa	Nathan Blake Assistant Attorney General nathan.blake@iowa.gov Office of the Iowa Attorney General 1305 E. Walnut St. Des Moines, IA 50319
Kansas	James Welch Deputy Chief Consumer Protection & Anti Trust Division James.Welch@ksag.org Jackie Williams Assistant Attorney General Jackie.Williams@ksag.org Consumer Protection & Anti Trust Division Kansas Attorney General's Office 120 SW 10th Avenue Topeka, KS 66612-1597
Kentucky	Todd E. Leatherman Executive Director, Office of Consumer Protection todd.leatherman@ag.ky.gov Kevin R. Winstead Assistant Attorney General kevin.winstead@ag.ky.gov Office of the Attorney General Office of Consumer Protection 1024 Capital Center Dr., #200 Frankfort, KY, 40601
Maine	Linda Conti Chief, Consumer Protection Division Maine Office of the Attorney General 6 State House Station Augusta, ME 04333 Linda.Conti@main.gov

State	Attorney General Contact
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State	Attorney General Contact
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Nebraska	Abigail M. Stempson Chief, Consumer Protection Division Assistant Attorney General abigail.stempson@nebraska.gov Greg Walklin Assistant Attorney General greg.walklin@nebraska.gov Office of the Nebraska Attorney General 2115 State Capitol Lincoln, NE 68509
Nevada	Lucas J. Tucker Senior Deputy Attorney General Office of the Attorney General Bureau of Consumer Protection 10791 W. Twain Ave., Suite 100 Las Vegas, Nevada 89135 LTucker@ag.nv.gov
New Jersey	Jah-Juin Ho, Deputy Attorney General New Jersey Office of the Attorney General Division of Law 124 Halsey Street, 5th Fl Newark, New Jersey 07101 jah-juin.ho@dol.lps.state.nj.us

State	Attorney General Contact
New Mexico	Lawrence Otero Assistant Attorney General Office of the Attorney General Consumer Protection Division 408 Galisteo Street Santa Fe, NM 87501 lotero@nmag.gov
New York	Clark P. Russell, Esq. Assistant Attorney General Internet Bureau New York State Office of the Attorney General 120 Broadway, 3rd Floor New York, N.Y. 10271 clark.russell@ag.ny.gov
North Carolina	Kim D'Arruda Assistant Attorney General NC Department of Justice, Attorney General's Office Consumer Protection Division 114 West Edenton Street Raleigh NC, 27603 kdarruda@ncdoj.gov
North Dakota	Parrell D. Grossman, Director Consumer Protection and Antitrust Division Office of Attorney General of North Dakota Gateway Professional Center 1050 E. Interstate Ave., Suite 200 Bismarck, ND 58503-5574 pgrossman@nd.gov
Ohio	Melissa S. Szozda Assistant Attorney General melissa.szozda@ohioattorneygeneral.gov Michael S. Ziegler Assistant Attorney General michael.ziegler@ohioattorneygeneral.gov Office of the Ohio Attorney General Consumer Protection Section 30 East Broad Street, 14th Floor Columbus, Ohio 43215

State	Attorney General Contact
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Oregon	Eva H. Novick Assistant Attorney General Oregon Department of Justice Consumer Protection/Financial Fraud Section 1515 SW 5th Ave., Suite 410 Portland, OR 97201 eva.h.novick@doj.state.or.us
Pennsylvania	John M. Abel Senior Deputy Attorney General Pennsylvania Office of Attorney General Bureau of Consumer Protection 15th Floor, Strawberry Square Harrisburg, PA 17120 jabel@attorneygeneral.gov
Rhode Island	Edmund F. Murray, Jr. Special Assistant Attorney General emurray@riag.ri.gov Rhode Island Department of Attorney General 150 South main Street Providence, RI 02903
South Carolina	Mary Frances Jowers Assistant Attorney general Office of the Attorney General State of South Carolina Civil Division, Consumer Protection & Antitrust Section 1000 Assembly Street Columbia, South Carolina MFJowers@scag.gov

State	Attorney General Contact
South Dakota	Bethanna Feist Chief, Consumer Protection Division Bethanna.Feist@state.sd.us Jody Swanson Director, Consumer Protection Division Jody.Swanson@state.sd.us South Dakota Attorney General's Office 1302 E. Hwy 14, Suite 1 Pierre, SD 57501
Tennessee	Jeff Hill Senior Counsel Office of the Attorney General State of Tennessee Consumer Advocate & Protection Division P.O. Box 20207 Nashville, TN 37202-0207 Jeff.Hill@ag.tn.gov
Texas	Paul Singer Assistant Attorney General paul.singer@texasattorneygeneral.gov Esther Chavez Deputy Chief, Multi-State and Complex Litigation Esther.chavez@texasattorneygeneral.gov Office of the Texas Attorney General Consumer Protection Division PO Box 12548 Austin, Texas 78711

State	Attorney General Contact
Vermont	Wendy Morgan Chief, Public Protection Division WMorgan@atg.state.vt.us Ryan G. Kriger Assistant Attorney General ryan.kriger@atg.state.vt.us Vermont Office of the Attorney General Public Protection Division 109 State Street Montpelier, VT 05609-1001
Virginia	Rich Schweiker Senior Assistant Attorney General rschweiker@oag.state.va.us Gene Fishel Senior Assistant Attorney General sfishel@oag.state.va.us Virginia Attorney General's Office 900 East Main Street Richmond, VA 23219
Washington	Paula Selis Assistant Attorney General Office of the Washington State Attorney General 800 Fifth Ave., Suite 2000 Seattle, Washington 98104 paulas@atg.wa.gov Margaret Farmer Paralegal Office of the Washington State Attorney General 800 Fifth Ave., Suite 2000 Seattle, Washington 98104 margaretf@atg.wa.gov

State	Attorney General Contact
Wisconsin	John S. Greene Assistant Attorney General Unit Director, Consumer Protection & Antitrust Wisconsin Department of Justice 17 W. Main Street Post Office Box 7857 Madison, Wisconsin 53707-7857 greenejs@doj.state.wi.us

2013 SEP 18 P 2:35

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Implant Direct Sybron International LLC	)	CIVIL DIVISION
	)	Docket No. 562-9-13 Wncv
	)	

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Implant Direct Sybron International LLC ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, Implant Direct Sybron International LLC, is a prescribed product manufacturer incorporated under the laws of Nevada, with its principal place of business located at 1717 W. Collins Avenue, Orange, CA 92867.

3. Implant Direct Sybron International LLC gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

4. Implant Direct Sybron International LLC failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal

year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Implant Direct Sybron International LLC shall comply with the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632.

7. Within 30 days of signing this Assurance of Discontinuance, Implant Direct Sybron International LLC shall make payment to the "State of Vermont" in the amount of $1,250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. Implant Direct Sybron International LLC agrees that this Assurance of Discontinuance shall be binding on Implant Direct Sybron International LLC and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, that it may have against Implant Direct Sybron International LLC for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

The Attorney General does NOT release any claims arising under the Prescribed Products Gift Ban, 18 V.S.A. § 4631a.

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632 that occurs after the date this Assurance of Discontinuance is executed. This Section 11 on Stipulated Penalties shall expire no later than ten years from the effective date of this Assurance of Discontinuance with no further action necessary by the parties. If after expiration of this Section 11 the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, any such failure to report shall be governed by the terms of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632(c).

NOTICE

12. Respondent may be located at:

Gina Marie Nese
Chief Compliance Officer
Dental Equipment and Consumables Legal Department
1717 Collins Avenue
Orange, CA 92867

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Implant Direct Sybron International LLC , the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Los Angeles Ca. this 4 day of September, 2013.

Gerald A. Nemirow.
President, Implant Direct LLC.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

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STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: KaVo Dental Technologies LLC	)	CIVIL DIVISION
	)	Docket No. 564-9-13 Wncv
	)	

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and KaVo Dental Technologies LLC ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, KaVo Dental Technologies LLC, is a prescribed product manufacturer incorporated under the laws of Illinois, with its principal place of business located at 340 E. Main Street, Lake Zurich, IL 60047.

3. KaVo Dental Technologies LLC gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

4. KaVo Dental Technologies LLC failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011

(July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. KaVo Dental Technologies LLC shall comply with the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632.

7. Within 30 days of signing this Assurance of Discontinuance, KaVo Dental Technologies LLC shall make payment to the "State of Vermont" in the amount of $1,250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. KaVo Dental Technologies LLC agrees that this Assurance of Discontinuance shall be binding on KaVo Dental Technologies LLC and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, that it may have against KaVo Dental Technologies LLC for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011). **The**

Attorney General does NOT release any claims arising under the Prescribed Products Gift Ban, 18 V.S.A. § 4631a.

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631a, 4632 that occurs after the date this Assurance of Discontinuance is executed. This Section 11 on Stipulated Penalties shall expire no later than ten years from the effective date of this Assurance of Discontinuance with no further action necessary by the parties. If after expiration of this Section 11 the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, any such failure to report shall be governed by the terms of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632(c).

NOTICE

12. Respondent may be located at:

Gina Marie Nese
Chief Compliance Officer
Dental Equipment and Consumables Legal Department
1717 Collins Avenue
Orange, CA 92867

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against KaVo Dental Technologies LLC, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at WASHINGTON DC, this 10TH day of SEPTEMBER, 2013.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

STATE OF VERMONT

SUPERIOR COURT Washington Unit	)	CIVIL DIVISION Docket No. 12-2-13 Wncv
STATE OF VERMONT, Plaintiff, vs. **LENDER PROCESSING SERVICES, INC.**, a Delaware Corporation; **LPS DEFAULT SOLUTIONS, INC.**, a Delaware Corporation, and **DOCX, LLC**, a Georgia Limited Liability Company, Defendants.	)	

CONSENT FINAL JUDGMENT

Plaintiff, State of Vermont, by and through its Office of the Attorney General ("Attorney General"), and Defendants Lender Processing Services, Inc., LPS Default Solutions, Inc., and DocX, LLC (hereinafter collectively referred to as "LPS" or "Defendants"), by and through the undersigned counsel, have requested entry of a Consent Final Judgment. Therefore, upon consideration of the papers filed and consent of the parties hereto, it is hereby ORDERED and ADJUDGED as follows:

I. JURISDICTION

The parties agree that this Court has subject matter jurisdiction over this matter and jurisdiction over the parties and agree to the continuing jurisdiction of this Court over this matter and the parties. The Attorney General filed a Complaint for Injunctive and Other Statutory

Relief (the "Complaint") against LPS pursuant to the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451, *et seq.*

II. GENERAL PROVISIONS

2.1 Agreement

The Attorney General and LPS are represented by counsel and have agreed on a basis for settlement of the matters alleged in the Complaint. The parties agree to entry of this Consent Final Judgment ("Judgment") without the need for trial, discovery in this action, or adjudication of any issue of law or fact. Defendants enter into this Judgment freely and without coercion, and without admitting any violation of the law. Defendants acknowledge that they are able to abide by the provisions of this Judgment. Defendants further acknowledge that a violation of this Judgment may result in additional relief pursuant to the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451, *et seq.*

2.2 Definitions

a. "**Attesting Documents**" shall mean affidavits and similar sworn statements making various assertions relating to a mortgage loan, such as the ownership of the mortgage note and mortgage or deed of trust, the amount of principal and interest due, and the fees and expenses chargeable to the borrower.

b. "**Covered Conduct**" shall mean LPS' practices related to mortgage default servicing, including document creation, preparation, execution, recordation, and notarization practices as they relate to Mortgage Loan Documents as well as LPS' relationships with attorneys representing the Servicers and other third parties through the Effective Date of this Judgment.

c. "**Effective Date**" shall mean the date on which a copy of this Judgment, duly executed by Defendants and by the Signatory Attorney General, is approved by and becomes a Judgment of the Court.

d. "**Federal Banking Agencies**" shall mean the Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, The Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

e. "**Investigating Attorneys General**" shall mean the Attorneys General of the States of Arizona, California, Connecticut, Florida, Illinois, Iowa, Oregon, New Jersey, North Carolina, Pennsylvania, South Carolina, Texas, and Washington.

f. "**LPS**" shall mean Defendants Lender Processing Services, Inc.; LPS Default Solutions, Inc.; and DocX, LLC, including all of their parents, subsidiaries, and divisions.

g. "**Mortgage Loan Documents**" shall mean (i) Attesting Documents; (ii) assignments of mortgages or deeds of trust or notes; (iii) mortgage or deed of trust lien releases and satisfactions; (iv) notices of trustee sale; (v) notices of breach or default; and (vi) other mortgage-related documents that are required for statutory, non-judicial foreclosure or foreclosure-related documents filed with a state court or in connection with a federal bankruptcy proceeding.

h. "**Parties**" shall mean LPS and the Signatory Attorney General.

i. "**Servicer**" shall mean any residential mortgage loan servicing entity to which LPS provides technology and/or other services relating to mortgages in default.

j. "**Signatory Attorney General**" shall mean the Attorney General of Vermont, or his/her authorized designee, who has agreed to this Judgment.

2.3 **Stipulated Facts**

The Investigating Attorneys General conducted investigations regarding certain business practices relating to the Covered Conduct. The Investigating Attorneys General found and the Defendants stipulate to the following facts of the investigation:

a. During a period from at least January 1, 2008, to December 31, 2010, certain Servicers authorized specific persons employed by certain subsidiaries of Lender Processing Services, Inc., to sign Mortgage Loan Documents or assist with the execution of Mortgage Loan Documents on their behalf.

b. Some Mortgage Loan Documents generated and/or executed by certain subsidiaries of Lender Processing Services, Inc., on behalf of Servicers contain defects including, but not limited to, unauthorized signatures, improper notarizations, or attestations of facts not personally known to or verified by the affiant. Some of these Mortgage Loan Documents may contain unauthorized signatures or may contain inaccurate information relating to the identity, location, or legal authority of the signatory, assignee, or beneficiary or to the effective date of the assignment.

c. Certain subsidiaries of Lender Processing Services, Inc., recorded or caused to be recorded Mortgage Loan Documents with these defects in local land records offices or executed or facilitated execution on behalf of the Servicers knowing some of these Mortgage Loan Documents would be filed in state courts or used to comply with statutory, non-judicial foreclosure processes.

d. At some time prior to November 1, 2009, employees and agents of DocX, LLC ("DocX") a wholly owned, indirect subsidiary of Lender Processing Services, Inc., were directed by management of DocX to initiate and implement a program under which some DocX

employees signed Mortgage Loan Documents in the name of other DocX employees, who were or had been at one time authorized to sign on behalf of Servicers. DocX referred to these unauthorized signers as "Surrogate Signers."

e. At the time the Surrogate Signers signed certain Mortgage Loan Documents, they were not authorized by the applicable Servicer to sign their own names or the names of those persons who had purportedly been authorized by the Servicer to sign the Mortgage Loan Documents in question.

f. The Surrogate Signers executed certain Mortgage Loan Documents in the name of other DocX employees without indicating that the documents had been signed by a Surrogate Signer.

g. Notaries public employed by DocX or as agents of DocX completed the notarial statements on the Mortgage Loan Documents that were executed by Surrogate Signers and stated that those documents had been properly acknowledged, signed, and affirmed in their presence by the person whose name appeared on the document when in fact the Surrogate Signer had signed the name of another person or signed outside the presence of the notary, or both.

h. DocX presented and recorded certain Mortgage Loan Documents with local land records offices knowing they had been executed by Surrogate Signers.

i. On or around November 2009, Lender Processing Services, Inc., conducted an internal review of DocX and identified certain Mortgage Loan Documents that contained inaccuracies, unauthorized signatures, notarization defects, or other deficiencies. Lender Processing Services, Inc., has also identified certain other defects and deficiencies in the Mortgage Loan Documents executed by some of its other subsidiaries. Such past practices, when discovered by Lender Processing Services, Inc., management, were discontinued.

j. On April 13, 2011, LPS entered into a Consent Order with Federal Banking Agencies, which order contains similar allegations of deficiencies in Mortgage Loan Document execution practices at certain subsidiaries of LPS and management oversight of these practices. Pursuant to the Consent Order, LPS has agreed to take further remedial action, including, but not limited to, proposing a plan to enhance internal auditing and risk management, adopting a comprehensive compliance program for activities relating to default management services, and retaining an independent consultant to conduct an independent review of LPS' document execution services occurring between January 1, 2008, and December 31, 2010, to determine the existence and extent of the deficiencies and to assess LPS' ability to identify affected Mortgage Loan Documents, to remediate the deficiencies, as appropriate, and to assess whether any financial injury to Servicers or borrowers resulted from the document execution services described herein. To the extent the independent consultant identifies any such financial harm, LPS has agreed to prepare a remediation plan under the Consent Order that will, as appropriate, address reimbursement to those borrowers for any such financial injury.

2.4 **Preservation of Law Enforcement Action**

Nothing herein precludes the Signatory Attorney General from enforcing the provisions of this Judgment, or from pursuing any law enforcement action with respect to the acts or practices of the Defendants not covered by this Judgment or any acts or practices of the Defendants conducted after the entry of this Judgment. The fact that such conduct is not expressly prohibited by the terms of this Judgment shall not be a defense to any such enforcement action.

2.5 **Compliance with State and Federal Law**

Nothing herein relieves Defendants of their duty to comply with applicable laws of the State and all federal or local laws, regulations, ordinances, and codes, nor constitutes authorization by the Signatory Attorney General for the Defendants to engage in acts or practices prohibited by such laws. If, subsequent to the Effective Date of this Judgment, any state, local, or federal law is enacted or regulation promulgated with respect to the Covered Conduct of this Judgment and Defendants intend to comply with the newly enacted legislation or regulation and that compliance may create a conflict with the terms of this Judgment, Defendants shall notify the Signatory Attorney General of this intent. If the Attorney General agrees, the Attorney General shall consent to a modification for the purpose of eliminating the conflict. The Attorney General agrees that consent to modify is appropriate if any conduct prohibited by this Judgment is required by State, local, or federal law or regulation, or if conduct required by this Judgment is prohibited by such State, local, or federal law or regulation. The Attorney General will give each request to modify based on a change in the applicable law reasonable consideration and will respond to the Defendant(s) within 90 days. Nothing herein is intended to preclude Defendants from seeking modification of this Judgment if the Attorney General does not consent to the request of the Defendant(s).

2.6 **Non-Approval of Conduct**

Nothing herein constitutes approval by the Signatory Attorney General of LPS' past or future practices. LPS shall not make any representation to the contrary.

2.7 **Release**

The Signatory Attorney General hereby releases and discharges LPS and each and all current and former officers, shareholders, and employees from civil or administrative claims that

his or her State has or may have had against them under the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451, *et seq.*, including claims for damages, fines, injunctive relief, remedies, sanctions, or penalties resulting from the Covered Conduct on or before the Effective Date (collectively, the "Released Claims").

Nothing herein shall be construed as a waiver or release of any private rights, causes of action, or remedies of any person against the Defendants with respect to the Covered Conduct.

2.8 **Evidentiary Effect of this Judgment**

This Judgment is not and shall not in any event be construed, deemed to be, and/or used as an admission or evidence of the validity of any claim that the Signatory Attorney General has or could assert against LPS, or an admission of any alleged wrongdoing or liability by LPS in any civil, criminal, or administrative court, administrative agency, or other tribunal anywhere in the country. The agreement of LPS to comply with the provisions of this Judgment is not an admission that LPS ever engaged in any activity contrary to any law. Moreover, by entering into this Judgment and agreeing to the terms and conditions provided herein, LPS does not intend to waive and does not waive any defenses, counterclaims, third party claims, privileges or immunities it may have in any other action or proceeding that has been or may be brought against it by any other State, Federal or local governmental agency, or any private litigant or class of litigants, arising from the practices described herein.

2.9 **Titles or headings**

The titles or headings to each section or provision of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of this Judgment.

2.10 **Modification of Terms**

No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, agreed to by both parties, and approved by this Court and then only to the extent specifically set forth in such written waiver, modification, or amendment.

2.11 **Severability of Terms**

If any clause, provision, or section of this Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Judgment, and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

2.12 **Time is of the Essence**

Time is of the essence with respect to each provision of this Judgment that requires action to be taken by LPS within a stated time period or upon a specified date or event.

2.13 **Execution in Counterparts**

This Judgment may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Judgment may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

2.14 **No Acts to Circumvent Terms**

LPS shall not participate directly or indirectly in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited

by this Judgment or for any other purpose that would otherwise circumvent any part of this Judgment.

2.15 **More Favorable Terms.**

In the event that LPS voluntarily enters into an agreement with the Attorney General of any state that is not participating in this Judgment ("non-participating Attorney General") to resolve potential claims relating to the Covered Conduct in this Judgment on terms that are different than those contained in this Judgment, exclusive of LPS' payment to a non-participating Attorney General of reasonable costs and attorneys' fees incurred by the non-participating Attorney General in civil litigation or criminal investigation that is active and pending as of November 29, 2012, then LPS shall provide a copy of such agreement to each Signatory Attorney General for review. If, after review, the Signatory Attorney General determines those alternative terms are materially more favorable than those contained in this Judgment, then LPS will join the Signatory Attorney General in petitioning the Court to amend this Judgment to reflect any such terms in place of terms herein, without waiving its rights to a judicial determination as to materiality.

III. PERMANENT INJUNCTIVE RELIEF AND COMPLIANCE

3.1 LPS, and any person acting under the actual direction or control of LPS, are hereby permanently restrained and enjoined from engaging in acts and practices prohibited by federal, state, or local law. Further, LPS, and any person acting under the actual direction or control of LPS, are hereby permanently restrained and enjoined from engaging in the following acts and practices and shall comply with the following conduct requirements:

Document Execution

a. LPS shall not engage in, or authorize its employees to engage in, Surrogate Signing, as described in Section 2.3 herein.

b. LPS shall not execute any Attesting Document unless the affiant or signatory has personal knowledge of the accuracy and completeness of the assertions in the Attesting Document.

c. LPS shall ensure that any Mortgage Loan Document that is executed by LPS on behalf of a Servicer is executed pursuant to proper and verifiable authority to sign on behalf of the Servicer and that assertions contained in the Mortgage Loan Document are supported by competent and reliable evidence.

d. Any Mortgage Loan Document executed by LPS on behalf of a Servicer shall accurately identify the name of the signatory, the date on which the document is signed, and the authority upon which the signatory is executing the Mortgage Loan Document. If applicable or permissible, each Mortgage Loan Document shall include the name and address of the entity for which the signatory works.

e. LPS shall ensure that the affiant or signatory to any Attesting or Mortgage Loan Document shall sign by hand signature, except for permitted electronic filings.

f. LPS shall not notarize or cause to be notarized any Attesting or Mortgage Loan Document that is signed or attested to outside the presence of the notary.

g. If LPS provides any notary services or oversees the notarization of any Mortgage Loan Document, LPS shall ensure that the notary procedures comply with all applicable laws governing notarizations, including, but not limited to, ensuring that notaries verify the identity and signature of the putative signatory. If LPS provides notary services or oversees the

notarization of any Mortgage Loan Document, LPS shall ensure that notaries maintain notary logs that identify such Mortgage Loan Documents.

Law Firms

h. LPS shall not improperly interfere with the attorney-client relationship between attorneys and Servicers.

i. LPS shall not incentivize or promote attorney speed or volume to the detriment of accuracy.

j. If LPS provides technology or other services that assist law firms or their agents in handling issues relating to processing a foreclosure, bankruptcy, or other legal action, LPS will ensure that its technology and services do not impede, compromise, or otherwise interfere with the activities of a law firm providing legal services to its client.

k. LPS will ensure that foreclosure and bankruptcy counsel and foreclosure trustees to whom LPS provides services have an appropriate Servicer contact so they may communicate directly with the Servicer.

l. LPS shall not inhibit or otherwise discourage attorneys and Servicers from direct communication with each other.

m. LPS shall not negotiate any retainer agreements between the Servicer and its attorney(s) and LPS shall not be a party to such retainer agreements.

n. For those attorneys who are using LPS' technology services to access information from Servicers, LPS shall take no action to prevent legal counsel from having appropriate access to information from the Servicer's books and records to perform their duties in compliance with applicable laws.

Incentives

o. LPS shall not pay volume-based or other incentives to employees or other agents for the purpose of encouraging undue haste or lack of due diligence to the detriment of accuracy.

Third-Party Provider Oversight

p. LPS shall adopt policies and processes to oversee and manage agents, independent contractors, entities and third parties (including subsidiaries and affiliates) retained by LPS that provide foreclosure, bankruptcy or mortgage-servicing activities relating to default servicing (including loss mitigation) (collectively, such activities are "Servicing Activities" and such providers are "Third-Party Providers"), including the following:

(i). LPS shall perform appropriate due diligence of Third-Party Providers' qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability.

(ii). LPS shall ensure that all agreements, engagement letters, or oversight policies with Third-Party Providers comply with LPS' applicable policies and procedures (which will incorporate any applicable aspects of this Judgment) and applicable state and federal laws and rules.

(iii). LPS shall ensure that agreements, contracts or policies provide for adequate oversight, including measures to enforce Third-Party Provider contractual obligations, and to ensure timely action with respect to Third-Party Provider performance failures.

q. LPS shall conduct periodic reviews of Third-Party Providers. These reviews shall include the following:

(i). A review of the fees and costs assessed by the Third-Party Provider to ensure that such fees and costs are within the allowable fees authorized by the Servicers;

(ii). A review of the Third-Party Provider's processes to provide for compliance with LPS' policies and procedures concerning Servicing Activities;

(iii). A requirement in its agreements and contracts to require that the Third-Party Provider disclose to LPS any imposition of sanctions or professional disciplinary action taken against them for misconduct related to performance of Servicing Activities.

Fees

r. LPS shall require that all fees charged by Third-Party Providers for default, foreclosure, and bankruptcy-related services performed shall be within the allowable fees authorized by Servicers.

s. LPS shall be prohibited from collecting any unearned fee, or giving or accepting unlawful referral fees in relation to Third-Party Providers' default- or foreclosure-related services.

t. Other than reasonable fees charged by LPS to the Servicers for its oversight of Third-Party Providers, LPS shall not impose additional mark-ups or other fees on Third-Party Providers' default- or foreclosure-related services.

u. LPS' invoices to the Servicers shall label each fee or charge clearly and accurately to denote the specific product or service for which each fee or charge is attributed.

Escalation of Consumer Complaints

v. LPS shall provide to consumers, and ensure that its Third-Party Providers provide to consumers, reasonable notice of dedicated toll-free telephone numbers established and maintained by LPS that consumers can call concerning any issues related to document execution and field services activities (property inspection, preservation, maintenance, and winterization) LPS performs for Servicers. LPS shall have adequate and competent staff to answer and respond to consumer inquiries promptly, and LPS shall establish a process for dispute escalation and direct contact with a Servicer at a number designated by such Servicer, and methods for tracking the resolution or escalation of complaints.

3.2 **Compliance with Attorneys General Agreements with Servicers and Other Applicable Laws**

a. LPS shall be familiar with the settlement terms between the State Attorneys General and any Servicers, including those agreements and judgments already in force, such as the consent judgments entered by United States District Judge Rosemary Collyer of the United States District Court for the District of Columbia in case number 1:12-cv-00361-RMC, *United States et al. v. Bank of America et al*, ("hereinafter referred to as the "National Servicing Settlement") and, upon notification by an Attorney General, any agreements reached or judgments entered subsequent to the entry of this Judgment that affect LPS' acts or practices relating to the Covered Conduct of this Judgment.

b. LPS shall ensure that any services provided by LPS are consistent with the terms, conditions, and standards imposed by those agreements and judgments as well as with any applicable state or federal law.

c. LPS will commit appropriate resources to develop technology solutions which will support the National Servicing Settlement standards and guidelines. LPS will make these technology solutions available to its clients, including, without limitation, the following:

- Protections for Military Personnel under the Service members Civil Relief Act (SCRA);
- Document Integrity Solution that enables Servicers to ensure the accuracy and personal knowledge requirement for the execution of certain Mortgage Related Documents;
- Development of a technology process to avoid dual-tracking by enabling a Servicer to define certain steps or critical events to halt a foreclosure process during a loan modification program;
- Processes to enable Servicers to provide a single point of contact; and
- Enhanced loss mitigation processes.

For a two-year period from the Effective Date of this Judgment, LPS will provide a process for the Signatory Attorney General to audit LPS with respect to the development, functionality and implementation timelines for such technology solutions relating to the National Servicing Settlement. This audit process is in addition to and does not limit LPS' obligations under Section 3.2(e) herein.

d. LPS agrees to retain documents and other information reasonably sufficient to establish compliance with the provisions of this Judgment; however, nothing in this Judgment requires LPS to retain any specific document or other information for longer than five (5) years.

e. For a period of five (5) years from the Effective Date, upon a request from the Signatory Attorney General, LPS agrees to provide to the Signatory Attorney General's Office

reasonable access to all non-privileged LPS documents and other information without the need for a subpoena or other compulsory process. The term "non-privileged" means any LPS document or other information not protected by the attorney-client or attorney work product privileges as defined by applicable state law. The term "reasonable access" reflects an understanding by LPS and the Signatory Attorney General's Office that LPS has a legal obligation to protect the privacy of personal identifying information of borrowers and to protect the trade secrets of LPS from public disclosure. LPS and the Signatory Attorneys General agree to work cooperatively to ensure compliance with these legal obligations. In the event that LPS concludes that specific information requested is not covered by this provision and cannot be disclosed without a subpoena or other compulsory process, it will notify the Signatory Attorney General within ten (10) days that a subpoena for the information will be required.

This provision is intended to supplement and does not supplant or in any way restrict the Signatory Attorney General's subpoena power and investigative authority under state law.

Subject to the provisions above regarding non-privileged documents and other information, and legal obligations to protect the privacy of personal identifying information and trade secrets from public disclosure, LPS agrees to cooperate with any Signatory Attorney General in its investigation of non-parties related to Covered Conduct.

f. LPS shall ensure that if it is appointed to act as a trustee or successor trustee, LPS will meet all applicable state requirements to act as a trustee or successor trustee.

g. LPS shall appoint its Chief Compliance Officer Sheryl L. Newman, or another designee, to act as liaison to the Signatory Attorneys General to receive and respond to inquiries relating to this Judgment.

IV. REMEDIATION TO HOMEOWNERS

4.1 LPS agrees to identify Mortgage Loan Documents executed by LPS between January 1, 2008, and December 31, 2010, that may require remediation and to remediate those documents when LPS has the legal authority to do so and when reasonably necessary to assist any person or borrower or when required by state or local laws. If Mortgage Loan Documents executed by LPS prior to January 1, 2008, require remediation for compliance with applicable laws or when remediation of Mortgage Loan Documents executed by LPS prior to January 1, 2008, is reasonably necessary to assist any person or borrower, LPS shall remediate those documents when LPS has the legal authority to do so. Notwithstanding LPS' obligations pursuant to this paragraph, its obligations under Section 3.1(v) of this Judgment to address consumer inquiries with respect to document execution are not limited to documents executed between January 1, 2008 and December 31, 2010. For twelve quarters immediately following entry of this judgment, LPS shall provide each Signatory Attorney General with quarterly reports detailing its efforts to fulfill its obligations under this paragraph.

V. MONETARY RELIEF

5.1 LPS shall pay a total of $371,000 as settlement payment to the Signatory Attorney General, within 10 (ten) days of the entry of this Judgment, and in accordance with the amounts of payments to each Signatory Attorney General set forth in the attached Exhibit A. This payment shall be used by the Signatory Attorney General for attorney's fees and other costs of investigation and litigation, placed in or applied to the consumer protection enforcement fund, used to defray costs of the inquiry leading to this Judgment, or used for any other purposes permitted by state law, at the sole discretion of the Signatory Attorney General. If any independent review or report by the Federal Banking Agencies determines that a greater number

of documents might be affected than what was previously disclosed by Defendants, Defendants agree to notify the Signatory Attorney General within thirty (30) days and increase the payment to the State in accordance with the methodology used to calculate the State payment described in Exhibit A.

5.2 LPS shall pay to the Investigating Attorneys General a total of $7 million in additional attorney's fees and costs to be divided and paid by LPS to each Investigating Attorney General as designated by, and in the sole discretion of, the Investigating Attorneys General.

5.3 Satisfaction of the monetary obligations in this Section V shall not relieve any other obligations under other provisions of this Judgment.

VI. RIGHT TO REOPEN

6.1 If, upon motion of the Signatory Attorney General and after hearing by the Court, the Court finds that LPS failed to pay any amount pursuant to the terms provided by Section V or, subject to the provisions of Section VII of this Judgment, that LPS failed to comply with the provisions in Section II, III, or IV, the Court may enter judgment against LPS in favor of the Signatory Attorney General, in an amount to be determined by the Court, subject to statutory maximum penalties, which shall become immediately due and payable as civil penalties or, upon motion of the Attorney General, as any element of relief available pursuant to the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451, *et seq.*, less any amount previously paid. Should this Judgment be modified as to the monetary liability of Defendant, in all other respects, this Judgment shall remain in full force and effect, unless otherwise ordered by the Court.

6.2 Proceedings to reopen this case instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be available by law, including any other proceedings that the Signatory Attorney General may initiate to enforce this Judgment.

VII. COMPLIANCE ENFORCEMENT

7.1 The Signatory Attorney General may assert any claim that LPS has violated this Judgment in a separate civil action to enforce compliance with this Judgment or may seek any other relief afforded by law, provided that the Signatory Attorney General gives LPS written notice of the alleged violation and affords LPS thirty (30) days from receipt of the notice to respond to and remedy the violation, or any other period as agreed to by the Signatory Attorney General and LPS. However, the Attorney General is not required to provide notice in advance of taking any enforcement action within his or her authority that the Attorney General believes is necessary to protect the health or safety of the public.

VIII. NOTICES

8.1 All notices under this Judgment shall be sent by overnight U.S. mail to the addresses below:

For the Plaintiff:

Justin Kolber
Assistant Attorney General
Vermont Attorney General's Office
Environmental and Public Protection Divisions
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us

For the Defendants:

Todd C. Johnson, Executive Vice President and General Counsel
Lender Processing Services, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

IX. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over this matter for all purposes.

ORDERED AND ADJUDGED *at _____, this _____ day of _____, 2013.*

_____
Judge

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

For Plaintiff, State of Vermont

By:_____
Justin Kolber
Assistant Attorney General
Vermont Attorney General's Office
Environmental and Public Protection Divisions
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us

Date: 2-4-13

For Defendant **LENDER PROCESSING SERVICES, INC.**:

By: _____
Todd C. Johnson
Executive Vice President and General Counsel

Date: 1-29-13

For Defendant **LPS DEFAULT SOLUTIONS, INC.**:

By: _____
Todd C. Johnson
Executive Vice President and General Counsel

Date: 1-29-13

For Defendant **DOCX, LLC**:

By: _____
Todd C. Johnson
Executive Vice President and General Counsel

Date: 1-29-13

With copies to:

Melanie Ann Hines
BERGER SINGERMAN LLP
125 South Gadsden Street
Suite 300
Tallahassee, FL 32301
Telephone: (850) 561-3010
Facsimile: (850) 561-3013

Counsel to Lender Processing Services, Inc.,
LPS Default Solutions, Inc., and DocX, LLC

Bernard Nash
Christopher J. Allen
DICKSTEIN SHAPIRO LLP
1825 Eye Street, N.W.
Washington, DC 20006-5403
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Counsel to Lender Processing Services, Inc.,
LPS Default Solutions, Inc., and DocX, LLC

Exhibit A:

STATE	PAYMENT
Alabama	$1,039,780
Alaska	$79,786
Arizona	$3,288,621
Arkansas	$692,496
California	$35,592,284
Connecticut	$1,404,186
District of Columbia	$232,505
Florida	$7,659,176
Georgia	$4,137,490
Hawaii	$401,030
Idaho	$890,995
Illinois	$3,364,326
Indiana	$1,652,280
Iowa	$603,400
Kansas	$581,665
Kentucky	$948,906
Louisiana	$395,801
Maine	$515,725
Maryland	$2,993,130
Massachusetts	$1,539,580
Minnesota	$3,073,140
Mississippi	$507,115
Montana	$410,865
Nebraska	$820,190
New Hampshire	$457,961
New Jersey	$2,904,356
New Mexico	$671,531
New York	$1,883,826
North Carolina	$3,743,306
North Dakota	$219,961
Ohio	$2,544,990
Oklahoma	$930,020
Oregon	$2,513,875
Pennsylvania	$2,890,741
Rhode Island	$447,965
South Carolina	$1,830,640
South Dakota	$344,750
Tennessee	$2,335,746
Texas	$5,755,050
Utah	$1,390,326
Vermont	$371,000
Virginia	$3,558,821
Washington	$4,062,940
West Virginia	$203,595
Wisconsin	$1,505,315
Wyoming	$232,491
TOTAL	**$113,623,678**

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Magellan Diagnostics, Inc.

CIVIL DIVISION
Docket No. 566-9-13 Wncv

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Magellan Diagnostics, Inc. ("Respondent") hereby agree to this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. The Prescribed Products Disclosure Law, 18 V.S.A. § 4632, requires prescribed product manufacturers to file periodic reports with the Attorney General's Office detailing certain information about the allowable expenditures and permitted gifts the manufacturer gives to Vermont health care providers and other recipients covered under the law.

2. Respondent, Magellan Diagnostics, Inc., is a prescribed product manufacturer incorporated under the laws of Delaware, with its principal place of business located at 101 Billerica Avenue, Bldg. 4, North Billerica, MA 01862.

3. Magellan Diagnostics, Inc. gave allowable expenditures and/or permitted gifts to Vermont health care providers and/or other recipients covered under the Prescribed Products Disclosure Law, 18 V.S.A. § 4632, during fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

4. Magellan Diagnostics, Inc. failed to file annual reports with the Attorney General's Office for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1,

2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

5. The above conduct constitutes a violation of the Prescribed Products Disclosure Law, 18 V.S.A. § 4632.

INJUNCTIVE RELIEF

6. Magellan Diagnostics, Inc. shall comply with the Prescribed Product Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632.

7. By May 15, 2013, Magellan Diagnostics, Inc. shall make payment to the "State of Vermont" in the amount of $1,250.00, and send to: Kate Whelley McCabe, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609, in full payment of the registration fees owed under 18 V.S.A. § 4632 for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011).

OTHER TERMS

8. Magellan Diagnostics, Inc. agrees that this Assurance of Discontinuance shall be binding on Magellan Diagnostics, Inc. and its successors and assigns.

9. The Attorney General hereby releases and discharges any and all claims arising under the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, that it may have against Magellan Diagnostics, Inc. for the conduct described in the Background section for fiscal year 2010 (July 1, 2009 through June 30, 2010), fiscal year 2011 (July 1, 2010 through June 30, 2011) and calendar year 2011 (July 1, 2011 through December 31, 2011). **The Attorney**

General does NOT release any claims arising under the Prescribed Product Gift Ban, 18 V.S.A. § 4631.

10. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

STIPULATED PENALTIES

11. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of this Assurance of Discontinuance by having violated the Prescribed Product Disclosure Law, 18 V.S.A. § 4632, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be $10,000. For purposes of this Section, the term "each act" shall mean each violation of the Prescribed Products Gift Ban and Disclosure Law, 18 V.S.A. §§ 4631, 4632 that occurs after the date this Assurance of Discontinuance is executed.

NOTICE

12. Respondent may be located at:

Amy Winslow, President
Magellan Diagnostics, Inc.
101 Billerica Avenue, Bldg. 4
North Billerica, MA 01862

13. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Magellan Diagnostics, Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at N. Billerica, MA, this 8 day of May, 2013.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 18th day of September, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Kate Whelley McCabe
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
kwhelleymccabe@atg.state.vt.us
802.828.5621

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT, Plaintiff v. MYINFOGUARD, LLC, NATIONWIDE ASSIST, LLC, SOLO COMMUNICATIONS, LLC, TOTAL PROTECTION PLUS, LLC, UNITED COMMUNICATIONS LINK, LLC, VOICEXPRESS, INC., CONTACT MESSAGE SYSTEMS, LLC, NATIONS 1ST COMMUNICATIONS, LLC, NEW LINK NETWORK, LLC and NATIONS VOICE PLUS, LLC, BETTY STEWART, ROBERT POITRAS, DENNIS KALLIVOKAS, NICHOLAS DELCORSO, NEIL WILLIAMS, LUIS A. RUELAS, SCOTT A. LUCAS, BRYAN GLAUS, VINCENT DELCORSO, JOSEPH MARINUCCI, NICHOLAS KALLIVOKAS, DADATA, INC., and ENHANCED SERVICES BILLING, INC., Defendants	)	FILED OCT 14 2013 VERMONT SUPERIOR COURT WASHINGTON CIVIL CM CIVIL DIVISION Docket No. 320-4-12 Wncv
STATE OF VERMONT, Plaintiff v. BLVD NETWORK, LLC, COAST TO COAST VOICE, LLC, EMERGENCY ROADSIDE VOICEMAIL, LLC, EMPIRE VOICE SYSTEMS, LLC, FIRST RATE VOICE SERVICES, LLC, METELINE TECH, INC., PBA SERVICES, INC., PERSONAL CONTACT SOLUTIONS, LLC, ROADSIDE PAL, LLC, SELECTED OPTIONS, INC., SELECTED SERVICES, INC., TRIVOICE INTERNATIONAL, LTD., USA VOICE MAIL, INC., VOICEMAIL SOLUTIONS, LLC, and VOX TRAIL, LTD., Defendants	)	CIVIL DIVISION Docket No. 451-6-12 Wncv

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STIPULATION AND CONSENT ORDER

WHEREAS, as evidenced by their signatures below, Plaintiff State of Vermont ("the State"), through its Attorney General, and Defendants MyInfoGuard, LLC, Nationwide Assist, LLC, Solo Communications, LLC, Total Protection Plus, LLC, United Communications Link, LLC, VoiceXpress, Inc., Contact Message Systems, LLC, Nations 1st Communications, LLC, New Link Network, LLC, Nations Voice Plus, LLC, daData, Inc., Enhanced Services Billing, Inc., Betty Stewart, Robert Poitras, Dennis Kallivokas, Nicholas DelCorso, Neil Williams, Luis A. Ruelas, Scott A. Lucas, Bryan Glaus, Vincent DelCorso, Joseph Marinucci, Nicholas Kallivokas, BLVD Network, LLC, Coast to Coast Voice, LLC, Emergency Roadside Voicemail, LLC, Empire Voice Systems, LLC, First Rate Voice Services, LLC, Meteline Tech, Inc., PBA Services, Inc., Personal Contact Solutions, LLC, Roadside Pal, LLC, Selected Options, Inc., Selected Services, Inc., Trivoice International, Ltd., USA Voice Mail, Inc., Voicemail Solutions, LLC, and Vox Trail, Ltd. (collectively "Defendants") have agreed to the entry of this Stipulation and Consent Order;

WHEREAS the parties have waived any requirement that the Court make findings of fact or conclusions of law;

WHEREAS all parties have consulted with legal counsel in connection with this Stipulation and Consent Order;

WHEREAS Defendants MyInfoGuard, LLC, Nationwide Assist, LLC, Solo Communications, LLC, Total Protection Plus, LLC, United Communications Link, LLC, VoiceXpress, Inc., Contact Message Systems, LLC, Nations 1st Communications, LLC, New Link Network, LLC, Nations Voice Plus, LLC, daData, Inc., Enhanced Services Billing, Inc., Betty Stewart, Robert Poitras, Dennis Kallivokas, Nicholas DelCorso, Neil Williams, Luis A.

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Ruelas, Scott A. Lucas, Bryan Glaus, Vincent DelCorso, Joseph Marinucci, and Nicholas Kallivokas filed an Answer in Docket No. 320-4-12 Wncv in which they expressly denied those allegations, but do not deny the jurisdictional facts;

WHEREAS BLVD Network, LLC, Coast to Coast Voice, LLC, Emergency Roadside Voicemail, LLC, Empire Voice Systems, LLC, First Rate Voice Services, LLC, Meteline Tech, Inc., PBA Services, Inc., Personal Contact Solutions, LLC, Roadside Pal, LLC, Selected Options, Inc., Selected Services, Inc., Trivoice International, Ltd., USA Voice Mail, Inc., Voicemail Solutions, LLC, and Vox Trail, Ltd., are Defendants in Docket No. 320-4-12 but have not been named by the State as defendants in a lawsuit on the merits of any conduct under the Vermont Consumer Protection Act ("CPA"); if substantially similar assertions were made by the State against them, they would likewise expressly deny such allegations in an Answer filed with the Court;

WHEREAS all parties agree that the terms of this Stipulation and Consent Order are just; and

WHEREAS the Court approves the terms of the parties' agreement and adopts them as its own determination of their respective rights and obligations;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. *Definitions.*

a. "Completed" means (i) in the case of a payment by check, that the check has been issued to an Eligible Consumer and either cashed or deposited, and has cleared; and (ii) in the case of a credit, that a credit has been issued by the Eligible Consumer's telephone company to the Eligible Consumer's telephone account.

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b. "Electronic File" means an electronic Excel spreadsheet, with each type of data (such as first name, last name, street address, city, state, ZIP code, telephone number, specific dollar amounts, and names of the Service Provider Defendants that charged the consumer's telephone bill) set out in separate fields.

c. "Eligible Consumers" means all individuals and businesses that were charged on their area code 802 landline telephone bills for goods or services offered by any Defendant or its agent, excluding any charges processed by Defendant Enhanced Services Billing, Inc. ("ESBI") on behalf of any of its customers other than the Service Provider Defendants.

d. "Service Provider Defendants" are all Defendants that are business entities other than ESBI.

e. "The State," for purposes of any communication or provision of information or documents by Defendants or their representatives, means the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, c/o Elliot Burg, Assistant Attorney General.

2. *Effect of Stipulation and Order.* Defendants do not admit and expressly deny any violation of Vermont law. The provisions of this Stipulation and Consent Order are not and shall not be a presumption, concession or admission by Defendants or a finding or determination by the Court of any violation of law or wrongdoing. Nothing in this Stipulation and Consent Order may be used or admitted as evidence or as an admission in any other adverse proceeding or action relating to any Defendant.

3. *Injunctive relief.* Defendants shall prospectively comply strictly with all provisions of Vermont law, including but not limited to provisions of the CPA, relating to

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the placement of third-party charges on local telephone bills associated with telephone numbers in area code 802.

4. *Payment by Defendants.*

a. No later than October 24, 2013, Defendants shall collectively pay the following sums into an escrow account ("Counsel's Escrow Account") in a federally-insured bank, c/o Andrew B. Lustigman, Olshan, Grundman, Frome, Wolosky, LLP, Park Avenue Tower, 65 East 55th Street, New York, New York 10022 ("Counsel"), as escrow agent: (i) the total of all outstanding consumer payments set forth in section 6(a), less any Completed credits and refunds, said payment by Defendants to be made for the express purpose of paying refunds to Eligible Consumers as described in paragraph 6, below (collectively or individually the "Consumer Payment"); and, in addition, (ii) the sum of seven hundred twenty-five thousand dollars ($725,000.00), to be paid to the State in the manner provided and for the reasons described in paragraph 7, below ("State Payment"), said payment being reimbursement to the State and in furtherance of the remedial purposes, functions and interests of the State of Vermont. For the purpose of calculating the amount of the payment required by subpart (i) of this subparagraph (a), the credits provided by one or more Service Provider Defendants to FairPoint Communications starting in March 2013 that were applied to the accounts of FairPoint customers *other than* Eligible Consumers (totaling approximately $14,950) shall not be counted as Completed credits.

b. No later than October 25, 2013, Counsel shall provide the State with documentation that identifies the bank, account number and dollar amount deposited into Counsel's Escrow Account.

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c. Defendants' liability for the payments under this paragraph shall be joint and several, except that ESBI's joint and several liability is limited to monetary relief associated with Eligible Consumer transactions processed through ESBI.

5. *Settlement Administrator.*

a. No later than seven (7) days after the Court approves this Stipulation and Consent Order, Defendants shall designate an independent Settlement Administrator to distribute the Consumer Payment as required by paragraph 6, below, who is acceptable to the State, which acceptance by the State shall not be unreasonably withheld.

b. No later than ten (10) days after the State accepts the Settlement Administrator, Defendants shall (i) retain the Settlement Administrator as their agent to implement the requirements of paragraph 6, below; and (ii) provide to the Settlement Administrator an Electronic File that, for each Eligible Consumer, contains the Eligible Consumer's name, last-known address, telephone number, the amount of the Consumer Payment that has been Completed for each Eligible Consumer, the amount of the Consumer Payment that is owed to the Eligible Consumer, and the name of each Service Provider Defendant that charged the Eligible Consumer's telephone bill. Within the same time period, Counsel shall transfer the Consumer Payment into an escrow account in a federally-insured bank maintained by the Settlement Administrator as escrow agent.

c. No later than five (5) days after depositing the Consumer Payment into its escrow account, the Settlement Administrator shall provide the State with documentation that identifies the bank, account number and the dollar amount of that deposit.

d. No later than thirty-five (35) days after the Court approves this Stipulation and Consent Order, the State shall provide to the Settlement Administrator

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envelopes with the return address of the Vermont Attorney General's Office, for use in connection with the mailings described in paragraph 6(a), below.

e. Defendants shall be responsible for paying all costs and expenses associated with the work of the Settlement Administrator as described herein.

f. In the event that an issue arises with respect to the Settlement Administrator, or the Eligible Consumer Payment process described in paragraph 6, below, the parties shall work together in good faith to try to resolve the issue before asking the Court to intervene.

6. *Eligible Consumer Payment process.*

a. No later than thirty (30) days after receipt of the Consumer Payment, the Settlement Administrator shall send to each Eligible Consumer, by first-class mail, postage prepaid, in an envelope bearing the return address of the Vermont Attorney General, a check in the amount of monies paid by the Eligible Consumer as the result of charges on the Eligible Consumer's telephone bill in connection with services offered or rendered by any Service Provider Defendant or its agent less the amount of any Completed refunds and credits, to the Eligible Consumer's last known address, accompanied by a letter in substantially the same form as Exhibit 1 hereto, with the name of the appropriate Service Provider Defendant inserted therein. Each check shall state on its face words to the effect that the check is void unless cashed or deposited within sixty (60) days. Defendants shall ensure that all Eligible Consumers serviced by ESBI receive a refund by check rather than a credit.

b. No later than ten (10) days after completion of the mailing described in subparagraph 6(a), above, the Settlement Administrator shall provide to the State an

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Electronic File containing the names and addresses of the Eligible Consumers to whom letters and payments were sent under subparagraph 6(a), above, and for each Eligible Consumer, the last-known address, the telephone number, the date and amount of each payment, and the Service Provider Defendant(s) that charged the Eligible Consumer's telephone bill.

c. No later than eighty (80) days after the mailing described in subparagraph 6(a), above, the Settlement Administrator shall provide to the State a check, payable to "Vermont State Treasurer," in the total dollar amount of all checks described in subparagraphs 6(a), above, that were returned as undeliverable or that went uncashed as of the date of said payment to the State, to be treated as unclaimed funds, along with an Electronic File containing the names of the Eligible Consumers whose checks were returned or were not cashed, and for each Eligible Consumer, the last known address, the telephone number, the dollar amount of Consumer Payments that were Completed as of the date of said payment to the State, and the dollar amount of Consumer Payment that was not Completed as of said date.

7. *Payment to State.* No later than twenty (20) business days after the Court approves this Stipulation and Consent Order, Counsel shall pay to the State the State Payment, consisting of the sum of seven hundred twenty-five thousand dollars ($725,000.00), all of which is paid in furtherance of the remedial purposes of the applicable laws and of which one hundred eighty-five thousand dollars ($185,000.00) shall be separately designated as reimbursement of the State's reasonable attorneys' fees and costs incurred in the litigation.

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8. *Binding effect.* This Stipulation and Consent Order shall be binding on Defendants and their respective successors and assigns.

9. *Releases.* Subject to paragraph 10, below:

a. The State of Vermont hereby releases and discharges any and all claims, including claims for investigative costs, attorneys' fees and litigation costs, that it has or may have had against Defendants and any of their respective affiliates, officers, directors, members, managers, parent corporations, subsidiary corporations, agents, employees and attorneys, stemming from charges to Eligible Consumers' telephone bills through or on behalf of any of the corporate Defendants prior to the date of this Stipulation and Consent Order; and

b. Those Defendants who are Plaintiffs-Appellants in the cases of *MyInfoGuard, LLC v. Sorrell*, Nos. 2:12-cv-74 (D. Vt.) and 12-4798 (2d Cir.) (collectively, the "Federal Actions"), and any of their respective affiliates, officers, directors, members, managers, parent corporations, subsidiary corporations, agents, employees and attorneys, hereby release and discharge any and all claims that they have or may have had against the Defendants-Appellees in the Federal Actions or against any other agency or employee of the State of Vermont based on conduct of the type described in the Complaint in the Federal Actions occurring prior to the date of this Stipulation and Consent Order. The Defendants-Appellees in the Federal Actions hereby release and discharge any and all claims, including claims for attorneys' fees and litigation costs, that they have or may have against those Defendants who are Plaintiffs-Appellants in the Federal Actions and any of their respective affiliates, officers, directors, members, managers, parent corporations, subsidiary

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corporations, agents, employees and attorneys, in connection with or related in any way to the filing and prosecution of the Federal Actions.

10. *Dismissals.* The above-entitled two state court actions are hereby dismissed without prejudice; once the requirements of paragraphs 4, 6 and 7, above, have been met, the parties shall promptly file a joint dismissal with prejudice in each of those two actions pursuant to V.R.C.P. 41(a)(1), which the State shall prepare. In addition, no later than October 15, 2013, the parties in *MyInfoGuard, LLC v. Sorrell*, Nos. 2:12-cv-74 (D. Vt.) and 12-4798 (2d Cir.), shall file joint stipulations continuing the action and once the dismissals with prejudice of the two state court actions have been filed, the parties shall file a joint stipulation of dismissal with prejudice in the Federal Actions, which Defendants-Appellants shall prepare pursuant to F.R.C.P. 41(a) and F.R.A.P. 42(b), respectively. All such stipulations for dismissal shall recite that all parties shall bear their own costs and fees except as otherwise provided in this Stipulation and Consent Order.

11. *Continuing jurisdiction.* This Court retains continuing jurisdiction for the sole and limited purpose of enabling any of the parties to this Stipulation and Consent Order to apply to the Court only for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations herewith.

12. *Execution in counterparts.* This Stipulation and Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

Dated this 14th day of October, 2013.

Superior Judge

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STIPULATION

The undersigned parties stipulate and agree to the foregoing Consent Order.

Dated at Leigh, Lancashire, UK, this 9 day of October, 2013.

Authorized Agent of MyInfoGuard, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Nationwide Assist, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Solo Communications, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Total Protection Plus, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of United Communications Link, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STIPULATION

The undersigned parties stipulate and agree to the foregoing Consent Order.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of MyInfoGuard, LLC

Dated at _____, this 10th day of October, 2013.

_____
Authorized Agent of Nationwide Assist, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Solo Communications, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Total Protection Plus, LLC

Dated at 10/9 _____, this 9th day of October, 2013.

_____
Authorized Agent of United Communications Link, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STIPULATION

The undersigned parties stipulate and agree to the foregoing Consent Order.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of MyInfoGuard, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Nationwide Assist, LLC

Dated at Largo Florida, this 9 day of October, 2013.

_____
Authorized Agent of Solo Communications, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Total Protection Plus, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of United Communications Link, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STIPULATION

The undersigned parties stipulate and agree to the foregoing Consent Order.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of MyInfoGuard, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Nationwide Assist, LLC

Dated at 3:30pm this 10th day of October, 2013.

_____
Authorized Agent of Solo Communications, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Total Protection Plus, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of United Communications Link, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STIPULATION

The undersigned parties stipulate and agree to the foregoing Consent Order.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of MyInfoGuard, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Nationwide Assist, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Solo Communications, LLC

Dated at Largo, FL, this 9th day of October, 2013.

_____
Authorized Agent of Total Protection Plus, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of United Communications Link, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of VoiceXpress, Inc.

Dated at TREASURE ISLAND, FL, this 8TH day of October, 2013.

Vincent Nadeau
Authorized Agent of Contact Message Systems, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Nations 1st Communications, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of New Link Network, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Nations Voice Plus, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of daData, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this 10 day of October, 2013.

_____
Authorized Agent of VoiceXpress, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Contact Message Systems, LLC

Dated at _____, this 10th day of October, 2013.

_____
Authorized Agent of Nations 1st Communications, LLC

Dated at _____, this 10 day of October, 2013.

_____
Authorized Agent of New Link Network, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Nations Voice Plus, LLC

Dated at _____, this 10 day of October, 2013.

_____
Authorized Agent of daData, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of VoiceXpress, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Contact Message Systems, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Nations 1st Communications, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of New Link Network, LLC

Dated at _____, this 10th day of October, 2013.

_____
Authorized Agent of Nations Voice Plus, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of daData, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at San Antonio, TX, this 8th day of October, 2013.

Authorized Agent of ~~Enhanced~~ Services Billing, Inc.

Dated at _____, this _____ day of October, 2013.

Betty Stewart

Dated at _____, this _____ day of October, 2013.

Robert Poitras

Dated at _____, this _____ day of October, 2013.

Dennis Kallivokas

Dated at _____, this _____ day of October, 2013.

Nicholas DelCorso

Dated at _____, this _____ day of October, 2013.

Neil Williams

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Enhanced Services Billing, Inc.

Dated at Leigh, Lancashire UK, this 9 day of October, 2013.

Betty Stewart
Betty Stewart

Dated at _____, this _____ day of October, 2013.

_____
Robert Poitras

Dated at _____, this _____ day of October, 2013.

_____
Dennis Kallivokas

Dated at _____, this _____ day of October, 2013.

_____
Nicholas DelCorso

Dated at _____, this _____ day of October, 2013.

_____
Neil Williams

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Enhanced Services Billing, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Betty Stewart

Dated at Samuel Road, this 8 day of October, 2013.

_____
Robert Poitras

Dated at _____, this _____ day of October, 2013.

_____
Dennis Kallivokas

Dated at _____, this _____ day of October, 2013.

_____
Nicholas DelCorso

Dated at _____, this _____ day of October, 2013.

_____
Neil Williams

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Enhanced Services Billing, Inc.

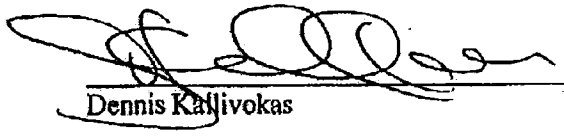
Dated at _____, this _____ day of October, 2013.

_____
Betty Stewart

Dated at _____, this _____ day of October, 2013.

_____
Robert Poitras

Dated at _____, this 10th day of October, 2013.



_____
Dennis Kalivokas

Dated at _____, this _____ day of October, 2013.

_____
Nicholas DelCorso

Dated at _____, this _____ day of October, 2013.

_____
Neil Williams

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Enhanced Services Billing, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Betty Stewart

Dated at _____, this _____ day of October, 2013.

_____
Robert Poitras

Dated at _____, this _____ day of October, 2013.

_____
Dennis Kallivokas

Dated at Largo Florida, this 9 day of October, 2013.

_____
Nicholas DelCorso

Dated at _____, this _____ day of October, 2013.

_____
Neil Williams

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

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Authorized Agent of Enhanced Services Billing, Inc.

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_____
Betty Stewart

Dated at _____, this _____ day of October, 2013.

_____
Robert Poitras

Dated at _____, this _____ day of October, 2013.

_____
Dennis Kallivokas

Dated at _____, this _____ day of October, 2013.

_____
Nicholas DelCorso

Dated at Largo, FL, this 9th day of October, 2013.

_____
Neil Williams

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this 9th day of October, 2013.

Luis A. Ruelas

Dated at _____, this _____ day of October, 2013.

Scott A. Lucas

Dated at _____, this _____ day of October, 2013.

Bryan Glaus

Dated at _____, this _____ day of October, 2013.

Vincent DelCorso

Dated at _____, this _____ day of October, 2013.

Joseph Marinucci

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this 10th day of October, 2013.

Nicholas Kallivokas

Dated at _____, this _____ day of October, 2013.

_____
Luis A. Ruelas

Dated at Alachua, FL, this 10th day of October, 2013.

_____
Scott A. Lucas

Dated at _____, this _____ day of October, 2013.

_____
Bryan Glaus

Dated at _____, this _____ day of October, 2013.

_____
Vincent DelCorso

Dated at _____, this _____ day of October, 2013.

_____
Joseph Marinucci

Dated at _____, this _____ day of October, 2013.

_____
Nicholas Kallivokas

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this_____ day of October, 2013.

_____
Luis A. Ruelas

Dated at _____, this _____ day of October, 2013.

_____
Scott A. Lucas

Dated at _____, this 10th day of October, 2013.

_____
Bryan Glaus

Dated at _____, this _____ day of October, 2013.

_____
Vincent DelCorso

Dated at _____, this 10th day of October, 2013.

_____
Joseph Marinucci

Dated at _____, this _____ day of October, 2013.

_____
Nicholas Kallivokas

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Luis A. Ruelas

Dated at _____, this _____ day of October, 2013.

_____
Scott A. Lucas

Dated at _____, this _____ day of October, 2013.

_____
Bryan Glaus

Dated at TREASURE ISLAND FL, this 8TH day of October, 2013.

Vincent Del Corso
Vincent DelCorso

Dated at _____, this _____ day of October, 2013.

_____
Joseph Marinucci

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Nicholas Kallivokas

Dated at October, this 10 day of October, 2013.

Authorized Agent of PBA Services, Inc.

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Personal Contact Solutions, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Roadside Pal, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Selected Options, Inc.

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Selected Services, Inc.

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Trivoice International, Ltd.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of PBA Services, Inc.

Dated at LARGO, FL, this 8th day of October, 2013.

_____
Authorized Agent of Personal Contact Solutions, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Roadside Pal, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Selected Options, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Selected Services, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Trivoice International, Ltd.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of PBA Services, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Personal Contact Solutions, LLC

Dated at _____, this 10th day of October, 2013.

_____
Authorized Agent of Roadside Pal, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Selected Options, Inc.

Dated at _____, this 10th day of October, 2013.

_____
Authorized Agent of Selected Services, Inc.

Dated at _____, this 10 day of October, 2013.

_____
Authorized Agent of Trivoice International, Ltd.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of PBA Services, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Personal Contact Solutions, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Roadside Pal, LLC

Dated at Alachua, FL, this 10th day of October, 2013.


Authorized Agent of Selected Options, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Selected Services, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Trivoice International, Ltd.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at Rochester NY, this 11th day of October, 2013.

Authorized Agent of BLVD Network, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Coast to Coast Voice, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Emergency Roadside Voicemail, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Empire Voice Systems, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of First Rate Voice Services, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Meteline Tech, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of BLVD Network, LLC

Dated at _____, this 9th day of October, 2013.

_____
Authorized Agent of Coast to Coast Voice, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Emergency Roadside Voicemail, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Empire Voice Systems, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of First Rate Voice Services, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Meteline Tech, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of BLVD Network, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Coast to Coast Voice, LLC

Dated at _____, this 10th day of October, 2013.

_____
Authorized Agent of Emergency Roadside Voicemail, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Empire Voice Systems, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of First Rate Voice Services, LLC

Dated at _____, this 10 day of October, 2013.

_____
Authorized Agent of Meteline Tech, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of BLVD Network, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Coast to Coast Voice, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Emergency Roadside Voicemail, LLC

Dated at 330 pm, this 10th day of October, 2013.

_____
Authorized Agent of Empire Voice Systems, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of First Rate Voice Services, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Meteline Tech, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of USA Voice Mail, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Voicemail Solutions, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Vox Trail, Ltd.

Dated at Montpelier, Vermont this 8th day of October, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at Alachua, FL, this 10th day of October, 2013.

Authorized Agent of USA Voice Mail, Inc.

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Voicemail Solutions, LLC

Dated at _____, this _____ day of October, 2013.

Authorized Agent of Vox Trail, Ltd.

Dated at Montpelier, Vermont this 8th day of October, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of USA Voice Mail, Inc.

Dated at _____, this 8th day of October, 2013.

_____
Authorized Agent of Voicemail Solutions, LLC

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Vox Trail, Ltd.

Dated at Montpelier, Vermont this 8th day of October, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Assistant Attorney General

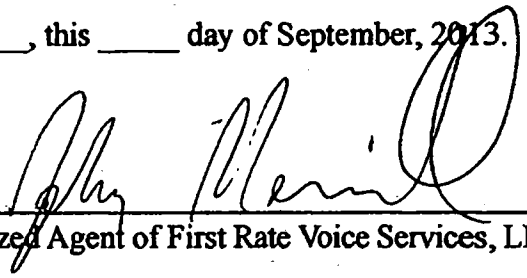
Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Authorized Agent of Emergency Roadside Voicemail, LLC

Dated at _____, this _____ day of September, 2013.

Authorized Agent of Empire Voice Systems, LLC

Dated at _____, this _____ day of September, 2013.



Authorized Agent of First Rate Voice Services, LLC

Dated at _____, this _____ day of September, 2013.

Authorized Agent of Meteline Tech, Inc.

Dated at _____, this _____ day of September, 2013.

Authorized Agent of PBA Services, Inc.

Dated at _____, this _____ day of September, 2013.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of USA Voice Mail, Inc.

Dated at _____, this _____ day of October, 2013.

_____
Authorized Agent of Voicemail Solutions, LLC

Dated at Pearl River, NY, this 11th day of October, 2013.

_____
Authorized Agent of Vox Trail, Ltd.

Dated at Montpelier, Vermont this 8th day of October, 2013.

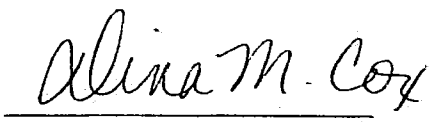
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

APPROVED AS TO FORM:



Dina M. Cox, Esq.
Lewis Wagner, LLP
501 Indiana Avenue, Suite 200
Indianapolis, Indiana 46202
For Defendant Enhanced Services Billing, Inc.

Gary F. Karnedy, Esq.
Primmer Piper Eggleston & Cramer, PC
150 South Champlain Street
Burlington, Vermont 05402
For Defendant Enhanced Services Billing, Inc.

Karen McAndrew, Esq.
Dinse, Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT 05402-0988
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC

Richard W. Epstein, Esq.
Greenspoon Marder, P.A.
200 East Broward Boulevard, Suite 1500
Fort Lauderdale, FL 33301
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

APPROVED AS TO FORM:

Dina M. Cox, Esq.
Lewis Wagner, LLP
501 Indiana Avenue, Suite 200
Indianapolis, Indiana 46202
For Defendant Enhanced Services Billing, Inc.

Gary F. Karnedy, Esq.
Primmer Piper Eggleston & Cramer, PC
150 South Champlain Street
Burlington, Vermont 05402
For Defendant Enhanced Services Billing, Inc.

Karen McAndrew, Esq.
Dinse, Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT 05402-0988
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC

Richard W. Epstein, Esq.
Greenspoon Marder, P.A.
200 East Broward Boulevard, Suite 1500
Fort Lauderdale, FL 33301
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
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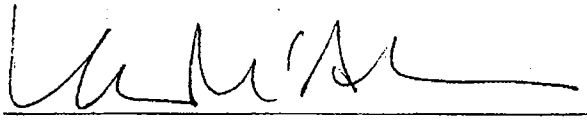

Karen McAndrew, Esq.
Dinse, Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT 05402-0988
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC

Richard W. Epstein, Esq.
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200 East Broward Boulevard, Suite 1500
Fort Lauderdale, FL 33301
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

APPROVED AS TO FORM:

_____

Dina M. Cox, Esq.
Lewis Wagner, LLP
501 Indiana Avenue, Suite 200
Indianapolis, Indiana 46202
For Defendant Enhanced Services Billing, Inc.

_____

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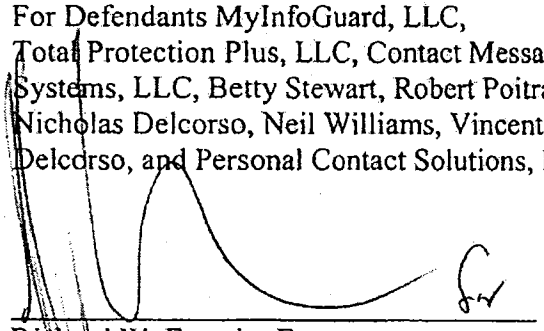
150 South Champlain Street
Burlington, Vermont 05402
For Defendant Enhanced Services Billing, Inc.

_____

Karen McAndrew, Esq.
Dinse, Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT 05402-0988
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC



Richard W. Epstein, Esq.
Greenspoon Marder, P.A.
200 East Broward Boulevard, Suite 1500
Fort Lauderdale, FL 33301
For Defendants MyInfoGuard, LLC, Total Protection Plus, LLC, Contact Message Systems, LLC, Betty Stewart, Robert Poitras, Nicholas Delcorso, Neil Williams, Vincent Delcorso, and Personal Contact Solutions, LLC

Office of the
ATTORNEY
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109 State Street
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05609

Allen M. Gardner, Esq.
Latham & Watkins, LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304
For Defendants First Rate Voice
Services, LLC, and Voicemail Solutions, LLC

Andrew B. Lustigman, Esq.
Olshan, Grundman, Frome, Wolosky, LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022
For all other Defendants

Michael B. Rosenberg, Esq.
Burak, Anderson & Melloni, PLC
30 Main Street, Suite 210
Burlington, Vermont 05402
For all other Defendants

Elliot Burg
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
For the State of Vermont

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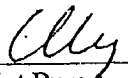

Elliot Burg
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
For the State of Vermont

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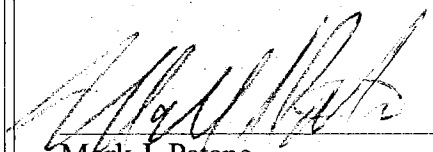

Mark J. Patane
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
For Governor Peter Shumlin and Attorney General
William H. Sorrell in their official capacities, and
Elliot M. Burg in his individual capacity, in
MyInfoGuard, LLC v. Sorrell, Nos. 2:12-cv-74 (D. Vt.)
and 12-4798 (2d Cir.)

**Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609**

Exhibit 1 (Letter to Consumers)

Dear [Name of Consumer]:

Under a settlement with the Vermont Attorney General's Office, we are enclosing a check to reimburse you for charges by our company, [*insert name of company*], that appeared on your local telephone bill. You must cash or deposit this check within 60 days. Thereafter, any money to which you may be entitled under this settlement will be available only through the unclaimed property division of the Vermont Treasurer's Office.

If you have any questions about the settlement, you may contact the Attorney General's Consumer Assistance Program at 1-800-649-2424.

Sincerely,

[*insert name of company*]

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2013 FEB 22 P 1:19

In re JOHN BUCCI and JEREMIE ARROBAS)

CIVIL DIVISION
Docket No F 117-2-13 Wncv

ASSURANCE OF DISCONTINUANCE

1. 4392167 Canada, Inc., was a Canadian corporation with offices at 5255 West Henri Bourassa, Suite 306, Ville St. Laurent, Quebec H4R 2M6, Canada, also known as "Online Services," "Direct USA Online," and "Business Database" (referred to herein as "Online Services").

2. Online Services sold online advertising services to over 700 businesses in the United States for between $500 and $900 each between January 2008 and July 2011.

3. Online Services is no longer in business.

4. John Bucci, residing at 18757 Venne, Pierrefonds, Quebec H9K 1K7, Canada, was President, shareholder and director of Online Services.

5. Jeremie Arrobas, residing at 3155 Ave Lacombe, Montreal, Quebec H3T 1L6, Canada, was Vice-President, Secretary, shareholder and director of Online Services.

6. John Bucci and Jeremie Arrobas were responsible for the conduct of Online Services described in this Assurance of Discontinuance.

7. *Use of a Vermont address.* Online Services used a Vermont address—"395 Caswell Avenue, Derby Line, VT 05830"—to describe its location.

8. Said Vermont address appeared on the company's invoice, as well as on reminders to customers with past-due accounts.

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9. Neither of those documents mentioned the company's Canadian address.

10. Use of a Vermont address by an out-of-state company is governed by the Attorney General's Consumer Protection Rule (CP) 120.07, http://www.atg.state.vt.us/assets/files/CP%20120.pdf, promulgated under the Vermont Consumer Protection Act ("CPA"), which provides, in pertinent part,

> CP 120.07 Company Location
>
> (a) No person shall use a Vermont address in any representation to describe the location of the seller, solicitor, producer, distributor or other person associated with a good or service unless the company is based in Vermont, except that the label on an item regulated by the U.S. Food and Drug Administration (FDA) need only conform to applicable FDA address requirements.

11. Under CP 120.01(a), the term "based in Vermont" means that a company discharges substantial functions in Vermont; and "substantial functions" do not include, without more, such activities as the original development of the goods or services, mail handling or banking, or the presence of sales, distribution or similar staff.

12. The Attorney General alleges that Online Services violated CP 120.07.

13. *Right to cancel.* Online Services solicited businesses over the telephone to purchase its services.

14. Online Services did not disclose to its potential customers, either in writing or orally, any right to cancel the purchase of its services.

15. Under the Vermont Consumer Protection Act, "home solicitation sales" are subject to a three-business-day right to cancel, 9 V.S.A. § 2451a(d).

16. A "home solicitation sale" includes a transaction "solicited or consummated by a seller wholly or in part by telephone with a consumer at the residence or place of business or employment of the consumer."

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17. The Vermont Attorney General's Consumer Protection Rule (CP) 113, http://www.atg.state.vt.us/assets/files/CP%20113.pdf, requires two specified written disclosures and an oral disclosure of the right to cancel.

18. The first of these required disclosures is a short-form statement in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used, stating,

> **You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date you receive both this contract or receipt and the complete notice of cancellation explaining this right as required by Vermont law, which should be attached.**

19. The second required disclosure consists of five paragraphs of text describing the rights and obligations of the buyer and seller under the right to cancel, to be attached to the contract or receipt and easily detachable.

20. Under Rule 113, the receipt or contract containing these disclosures must be sent to the consumer before initiating payment by the consumer.

21. Under Rule 113, the right to cancel must also be disclosed orally prior to the buyer's receipt of the written notices.

22. Under Rule 113, until the seller has complied with these notice requirements, the buyer may cancel the home solicitation sale by notifying the seller in any manner of his intention to cancel.

23. The Attorney General alleges that Online Services violated the right-to-cancel disclosure requirements of the CPA and Rule 113.

24. *Authorization to be billed.* On the telemarketing recordings produced by Online Services to the Attorney General's Office, the company's telemarketers verified the

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prospective customers' mailing and physical addresses, and then made a statement such as, "The invoice for $169.00 usually gets sent a few weeks later."

25. At no point did the callers ask the prospective customers either whether they were authorized to make the purchase, or whether they actually agreed to the purchase.

26. According to a through-the-mail survey by the Attorney General's Office to a sample of Online Services' customers selected at random, only 23 (33.8%) of the 68 respondents said they had agreed to pay Online Services.

27. In the same survey, only 4 (5.9%) of the respondents stated that they needed a website for their business.

28. In addition, most of the respondents who said that they had agreed to the purchase also stated, in follow-up interviews, that most of those businesses responded as they did because Online Services had either insisted to them that there was an agreement—even though they did not believe that was the case—had made repeated phone calls, or had threatened collection action.

29. The Attorney General alleges that Online Services billed businesses, and collected money from those businesses, without their authorization.

30. *General.* The Attorney General further alleges that John Bucci and Jeremie Arrobas were legally liable for the conduct of Online Services.

31. John Bucci and Jeremie Arrobas have not admitted any violation of Vermont law.

32. The Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

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INJUNCTIVE RELIEF

33. John Bucci and Jeremie Arrobas are permanently restrained and enjoined from engaging, directly or through any third party, in telemarketing to or from any location. For the purposes of this paragraph, the term "telemarketing" means any plan, program, campaign, or other business activity that is conducted to induce consumers (including businesses) to purchase goods or services in whole or in part by means of a telephone sales presentation.

34. John Bucci and Jeremie Arrobas are permanently restrained and enjoined from violating, directly or through any third party, any provision of the CPA or any rule issued by the Vermont Attorney General under the CPA.

PAYMENTS TO THE STATE

35. Within ten (10) days of signing this Assurance of Discontinuance, John Bucci and Jeremie Arrobas shall pay a total of $20,000.00 (twenty thousand dollars) to the State of Vermont, in care of the Vermont Attorney General's Office, as civil penalties and costs in this matter, for which payment they shall each be jointly and severally liable.

36. No later than June 1 of each calendar year beginning in 2014 and ending in 2016, John Bucci and Jeremie Arrobas shall each submit to the Vermont Attorney General's Office accurate copies of their income tax returns for each of the calendar years 2013 through 2015, respectively, along with sworn and accurate statements of their then-current assets and liabilities.

37. In the event that an income tax return or statement of assets and liabilities required by paragraph 37, above, shows that either John Bucci or Jeremie Arrobas has pre-tax income exceeding $100,000.00 (one hundred thousand dollars), and/or net assets

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exceeding $150,000.00 (one hundred fifty thousand dollars), said individual (or both, as the case may be) shall, no later than February 1 of that year, pay to the State of Vermont, in care of the Attorney General's Office, as civil penalties and costs in this matter an amount equal to 15 (fifteen) percent of any pre-tax income exceeding $100,000.00 (one hundred thousand dollars), *plus* an amount equal to 15 (fifteen) percent of any net assets exceeding $150,000.00 (one hundred fifty thousand dollars), *provided that* once that individual has paid a total of $90,000.00 (ninety thousand dollars) pursuant to this paragraph, he shall have no further liability or further obligation to report under this paragraph.

IN CALCULATING PRETAX INCOME, ONE ADJUSTMENT SHALL BE ALLOWED. THE INDIVIDUAL SHALL BE ALLOWED TO DEDUCT FROM PRETAX INCOME WITHDRAWALS FROM THAT INDIVIDUAL'S REGISTERED RETIREMENT SAVINGS PLAN, TO THE EXTENT IT IS DEMONSTRATED THAT SUCH WITHDRAWALS WERE USED TO MAKE PAYMENTS UNDER THIS ASSURANCE OF DISCONTINUANCE OR TO PAY OTHER EXISTING DEBT"

OTHER PROVISIONS

38. All dollar amounts referred to in this Consent Decree shall be in United States currency. If an amount, such as income reflected in a tax return or assets reflected in a statement of assets and liabilities, appears in Canadian dollars, it shall be converted to U.S. dollars at the exchange rate in effect as of the date the document in question was created.

39. This Assurance of Discontinuance resolves the claims of the State of Vermont as described herein. So long as John Bucci and Jeremie Arrobas comply fully with the terms of the Assurance of Discontinuance, the State shall not take any legal action against the compliant party or parties based on the facts, transactions or events described herein.

40. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

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ATTORNEY
GENERAL
09 State Street
Montpelier, VT
05609

Dated 1/30/13

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: _____
Elliot Burg
Assistant Attorney General

Dated Feb 13, 2013

JOHN BUCCI

_____

Dated 2/13/13

JEREMIE ARROBAS

_____

APPROVED AS TO FORM:

_____
Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont

_____
Richard Cassidy, Esq.
Hoff Curtis
100 Main Street
P.O. Box 1124
Burlington, VT 05401
For John Bucci and Jeremie Arrobas

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09 State Street
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STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

In re PATENT & TRADEMARK AGENCY, LLC	)	**CIVIL DIVISION**
	)	**Docket No.** 490-8-13wncv

ASSURANCE OF DISCONTINUANCE

1. Patent & Trademark Agency, LLC ("PTA") is a New York limited liability corporation with offices at 477 Madison Avenue, 6th Floor, New York, New York 10022.

2. The owner of PTA is Armens Oganesjans.

3. PTA offers to renew businesses' trademarks.

4. In 2012, PTA sent letters to a number of businesses in the State of Vermont, identified from a publicly available database, to offer them trademark renewal services.

5. An example of PTA's trademark renewal "Reminder" mailing appears as Exhibit 1 to this Assurance of Discontinuance.

6. PTA charged $985 for a five-year renewal for one trademark "class" or type, and $385 for each additional class; and $1750 for a ten-year renewal for one trademark class, and $875 for each additional class.

7. By comparison, the listed cost of filing both a "§ 8" and a "§ 15" affidavit for trademark renewal at the United States Patent and Trademark Office (USPTO) is $200 ($100 for each filing), although the USPTO does not calendar deadlines and prepare the renewal documents on behalf of its customers.

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8. In a letter dated August 30, 2012, from Raymond T. Chen of the USPTO to PTA, the USPTO took issue with PTA's mailings, and particularly with the "design elements [that] together have a tendency to confuse recipients into thinking [PTA] is a U.S. Government entity."

9. The letter from USPTO went on to identify these elements as including:

- The use of the term "Patent" in PTA's name even though it appears from its website that it offer[ed] no patent services, indicating that use of that word is used solely to exacerbate confusion;
- inclusion of several official elements of the recipient's government filings with the PTO, including the trademark, application serial number, international class, filing date, and registration number, if issued;
- lack of any of the earmarks of a commercial entity solicitation, such as a distinctive company name, and other trademarks, slogans, tag lines, logos, or pleasing graphics;
- densely-spaced, small fonts, and sections defined by rectangular lines;
- the lack of any prominent disclaimer that this is a private solicitation, that this solicitation is not government-sanctioned or government-required; and
- the use of unexplained code letters "T" and "F".

10. The USPTO also alleged that PTA's website (www.patenttrademarkagency.org) magnified the likelihood of confusion by using a layout, color scheme, and fonts similar to the layout, color scheme, and fonts used by the USPTO at its website.

11. PTA subsequently changed a number of these design elements in response to the USPTO's concerns, although apparently not yet to the agency's satisfaction.

12. The changes to PTA's mailings also postdated PTA's dealings with its Vermont customers.

13. The Vermont Attorney General alleges that the above-described "design elements" of PTA's mailings to Vermont businesses were deceptive within the meaning of the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a).

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14. PTA denies any liability and denies that it violated Vermont law, the laws of any other state, federal law, or U.S. Patent and Trademark Office regulations.

15. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under 9 V.S.A. § 2459.

INJUNCTIVE RELIEF

16. PTA shall comply strictly with all provisions of Vermont law, including but not limited to the Consumer Protection Act's prohibition on unfair and deceptive acts and practices in commerce.

PAYMENTS TO CONSUMERS

17. Within ten (10) days of signing this Assurance of Discontinuance, PTA shall send, by first class mail, postage prepaid, a check to each person (including any business) in the State of Vermont that paid any money to PTA, in the amount of all such monies paid, along with a letter in the form of Exhibit 2.

18. Within twenty (20) days of signing this Assurance of Discontinuance, PTA shall send by first class mail, postage prepaid, to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, c/o Assistant Attorney General Elliot Burg, a list, attested to under oath, of all the payments made under paragraph 17, above, including the name and address of the payee, the amount of the payment, and the date the payment was mailed.

19. If any check is returned to PTA as undeliverable, PTA shall send, by first class mail, postage prepaid, within ten (10) days of receiving the return mailing, a check in the same amount, with the payee's name and last-known address, to the Vermont Attorney

Office of the
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GENERAL
109 State Street
Montpelier, VT
05609

General's Office, 109 State Street, Montpelier, Vermont 05609, c/o Assistant Attorney General Elliot Burg, to be deposited in the State of Vermont's unclaimed funds account.

PAYMENT TO THE STATE

20. Within twenty (20) days of signing this Assurance of Discontinuance, PTA shall send, by first class mail, postage prepaid, to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, c/o Assistant Attorney General Elliot Burg, payment in the form of a bank or cashier's check in the amount of $10,000.00 (ten thousand dollars) as civil penalties and costs in this matter.

OTHER PROVISIONS

21. This Assurance of Discontinuance does not constitute an admission or evidence of liability by PTA, its owner, or any of its employees.

22. This Assurance of Discontinuance represents a full and final settlement of any and all claims by the State of Vermont or any of its subdivisions or agencies that relate to the subject matter of this Assurance of Discontinuance.

23. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 6/25/13

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: _____
Elliot Burg
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated _____

PATENT & TRADEMARK AGENCY, LLC

By: _____
Its Authorized Agent

APPROVED AS TO FORM:

_____
Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont

_____
Steven J. Mitby, Esq.
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C.
1221 McKinney, Suite 3460
Houston, Texas 77010
For Patent & Trademark Agency, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated 7/29/13

PATENT & TRADEMARK AGENCY, LLC

By: _____
Its Authorized Agent

APPROVED AS TO FORM:

_____
Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont

_____
Steven J. Mitby, Esq.
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C.
1221 McKinney, Suite 3460
Houston, Texas 77010
For Patent & Trademark Agency, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Exhibit 1

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Patent & Trademark Agency LLC
477 Madison Avenue
6th Floor, New York City
New York 10022
United States

Reminder

www.patenttrademarkagency.org

Correspondence address:
World Learning Inc.
Kipling Road P.O. 676
Brattleboro, VT05302
United States

Date:
2012-04-17

T

4535 7602

Trademark name	Registration Number:	Number of classes
SIT	2683314	1

Your trademark is about to expire. Expiration date:2013-02-04

Your trademark registration is valid for ten (10) years and may subsequently be renewed for ten years at a time.
Sign and return this document in order to renew your trademark.

Type of Mark:	SERVICE MARK
Register:	PRINCIPAL
Expiry date:	2013-02-04
Filing date:	2002-04-08
Date in Location:	2008-08-08
Registration date:	2003-02-04
Classes	041
Serial number:	76392225
Mark Drawing Code:	(1) TYPED DRAWING

SIT

World Learning Inc.
Kipling Road P.O. 676
Brattleboro, VT05302
United States

Please return this document with your signature and/or company stamp in the appropriate space below if you would like to renew your trademark. Your trademark will be renewed for the period of another ten (10) years. The renewal fee is 1750 USD for one class and 875 USD for each additional class for the whole period of ten (10) years. You will receive an invoice from us after we have received this signed document from you. By signing this document you automatically and irrevocably comply with the terms and conditions stated on the back of this document. By signing this document you also empower Patent & Trademark Agency LLC to renew the trademark stated above on your behalf. Patent & Trademark Agency LLC reminds companies when their trademarks are due for renewal. Note that trademarks may be lost if they are failed to be renewed in time. This renewal is optional and only acts as a reminder. We would like to inform you that we are not USPTO and this is not a bill. You can also contact your representative in order to assist you with the renewal process. If you have any questions regarding your renewal process contact us via e-mail info@patenttrademarkagency.org or telephone +1 212 252 2147 or fax +1 646 381 2026.

Date: 6/12/2012

Name, Last name: Lisa Rae

Signature:

SIGN AND RETURN IN THE ENCLOSED ENVELOPE

Exhibit 2

Dear _____:

Patent & Trademark Agency, LLC ("PTA") has recently entered into a legal settlement with the Vermont Attorney General's Office based on concerns that our solicitation letters violated the Vermont Consumer Protection Act. As a result of that settlement, I am enclosing a refund check in the same dollar amount as you paid to PTA. You may cash or deposit this check without any obligation.

Please be advised that PTA has not renewed your trademark, and so you should look into what needs to be done to protect your trademark(s). Because of this legal settlement, PTA is not responsible for any deadlines or obligations that you need to follow in order to maintain your trademark(s).

If you have any questions, you may contact the Attorney General's Office at (802) 828-5507.

Sincerely,

Patent & Trademark Agency, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE
March 27, 2013

CONTACT: Elliot Burg
Assistant Attorney General
(802) 828-5507

"GRANT DEED" SELLER SETTLES WITH VERMONT ATTORNEY GENERAL OVER DECEPTIVE MAILINGS

The Vermont Attorney General's Office has reached a settlement with Brian Pascal of Valencia, California, the CEO of BWPRS, Inc., who sent deceptive mailings to Vermont homeowners offering to provide them with copies of their property deeds. Pascal will refund in full the Vermonters who sent him money and pay a civil penalty of $7,500, and is permanently barred from doing business in or into Vermont.

The mailings, sent out under the names "Record Retrieval Department" and "National Processing Center," stated falsely that Record Retrieval Department was located in Vermont; misrepresented themselves as invoices when they were really just solicitations; and claimed that a non-existent "State Record Regulation Department" had recommended that the homeowners obtain a copy of their "Grant Deed."

Vermont Attorney General William H. Sorrell noted that his Office has received complaints of unauthorized billings from consumers and businesses filed against a number of different out-of-state companies. "To bill people for purchases they did not agree to violates Vermont law, and wrongdoers will find that to be very expensive for them." Attorney General Sorrell added that he was particularly concerned that a company in this case misrepresented itself as a Vermont firm.

Pascal mailed over 1,300 mailings to Vermont homeowners, asking them to pay him between $83.00 and $122.00 to obtain for them a "grant deed" to their home. He charged 29 people a total of about $2,500 for this service. Among other things, his mailings:

- Bore the return address "112 S. Main Street, Department 296, Stowe, VT 05672," when Pascal and his businesses were actually located in California.

- Contained boldface elements that suggested that they were actually bills or invoices, such as "Due Date," "Amount Due," "FINAL NOTICE," and "SERVICE FEE" (for payments received after a specified date). These phrases could reasonably have led consumers to believe that payments were due and owing, which was not true.

- Set out the following question and answer: "Why do we believe you need a copy of your current Grant Deed and Property Profile? … State Record Regulation Department recommends that all United States homeowners obtain a copy of their current Grant Deed." However, there is no "State Record Regulation Department," nor any such recommendation.

Based on this conduct, the Attorney General alleged that Brian Pascal had violated the Vermont Consumer Protection Act.

For more information on the settlement, call the Attorney General's Office at (802) 828-5507.

STATE OF VERMONT

VERMONT SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. S1087-05 CnC

STATE OF VERMONT

v.

R. J. REYNOLDS TOBACCO CO.

FINAL JUDGMENT AND PERMANENT INJUNCTION

I. Judgment is hereby entered in favor of the Plaintiff State of Vermont, and against the Defendant R. J. Reynolds Tobacco Co., in the amount of **$8,328,000**, which the Defendant shall pay to the State as a civil penalty pursuant to 9 V.S.A. § 2458(b)(1), and as a sanction for contempt of this court's 1998 Consent Decree (Dkt. #s S744-97 CnC; S816-98 CnC), and violation of the Master Settlement Agreement referenced therein.

II. A permanent injunction is hereby entered in favor of the State of Vermont and against Defendant R. J. Reynolds Tobacco Co., pursuant to 9 V.S.A. § 2458(a), (b), and to address and remedy Defendant's violation of the Master Settlement Agreement and the 1998 Consent Decree previously entered by this court, as follows:

Defendant R. J. Reynolds Tobacco Co. is hereby permanently enjoined, and prohibited from

(A) marketing, distributing, selling, promoting or advertising – within the state of Vermont or in any manner which would reasonably be expected to reach consumers or potential customers in the state of Vermont – any non-traditional cigarette, or "potentially reduced exposure product" ("PREP"), which contains actual tobacco as a constituent component or ingredient in any amount, whether the tobacco is burned, heated or otherwise subjected to any process intended to release the tobacco's own constituent elements (including, but not limited to nicotine (or any chemical variant(s) thereof));

(B) through the use of, together with, or accompanied by any marketing claims, or advertising or promotional statements which suggest, state or allow any inference by a reasonable existing cigarette smoker, that the purchase and use of the PREP or non-traditional cigarette will lessen, or reduce the purchaser's medical risk, or chances of developing (or contracting) cancer, chronic bronchitis, or emphysema, unless

(C) Reynolds can cite to (1) at least one long-term epidemiological study of existing smokers using the same (or an essentially similar) PREP and/or non-traditional cigarette, published in an accredited scientific or medical journal of general circulation, which clearly and unequivocally supports the claim(s) or statement(s) made under sub-part (B) above; or (2) multiple studies of existing smokers using the same (or an essentially similar) PREP and/or non-traditional cigarette, each published in an accredited scientific or medical journal of general circulation, which studies document a statistically and medically significant decrease in the presence, or incidence of validated biomarkers for the development of cancer, chronic bronchitis, or emphysema as a result of the use of the PREP and/or non-traditional cigarette, where (i) the existing smokers' use of the PREP and/or non-traditional cigarette in each study accurately and substantially replicates the smokers' regular patterns of smoking and in particular the smokers' regular level of nicotine intake, and (ii) the "validated biomarkers" are recognized and accepted as such for the development of cancer, chronic bronchitis, or emphysema by a broad community of scientists and medical experts familiar with tobacco-related diseases.

III. Any application by the State of Vermont for an award of attorney's fees and/or other investigative or litigation costs and expenses, under 9 V.S.A. § 2458(b)(3) or as may be allowed under the Master Settlement Agreement and the 1998 Consent Decree previously entered by this court, shall be served, and filed as required by VRCP 54(d)(2), or within such further time and under such circumstances as the court shall direct, by stipulation of the parties or otherwise.

IV. Except as provided in Part III above, this action is concluded.

IT IS SO ORDERED, at Burlington, Vermont, this 3rd day of June, 2013.

Dennis R. Pearson, Superior Judge

STATE OF VERMONT

VERMONT SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. S1087-05 CnC

STATE OF VERMONT

v.

R. J. REYNOLDS TOBACCO CO.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
RE: CIVIL PENALTY AND INJUNCTIVE RELIEF

It has been more than 4 years since the court completed the evidentiary hearings in this case to determine the liability of Defendant R. J. Reynolds Tobacco Co. ("RJRT" or "Reynolds") under the Vermont Consumer Fraud Act ("CFA") – and the 1998 Master Settlement Agreement ("MSA") and related Consent Decree between the State of Vermont and Reynolds (and other national tobacco companies), *see State v. Philip Morris, Inc., et al.*, Dkt. #s S744-97 CnC; S816-98 CnC (entered December 14, 1998) – with regard to Defendant's advertising and marketing, initially commencing more than 10 years ago, of its non-traditional Eclipse cigarette.

More than 3 years have passed since the court issued its liability decision (with findings of fact and conclusions of law) concluding that Reynolds had indeed violated the Vermont CFA, MSA, and Consent Decree in at least three significant respects. *See State of Vermont v. R. J. Reynolds Tobacco Co.*, Dkt. # S1087-05 CnC (March 10, 2010) (available at http://www.vermontjudiciary.org/20062010%20TCdecisioncvl/2010-3-10-1.pdf).[1] The parties then engaged in extensive, and extended settlement discussions over any civil penalties to be assessed under the CFA and/or for violation of the MSA and Consent Decree, and the State's considerable claim for recovery of its attorney's fees and other litigation expenses. There were also additional discovery issues which then had to be decided by the court on both fronts.

The parties were unable to resolve the remainder of the case, and eventually they were ready to proceed to this "Phase II" wherein the court would determine the civil penalties to be assessed against Reynolds, as well as the scope of any injunctive relief to be awarded to the State and imposed on Reynolds with respect to future marketing and advertising. To that end, the parties filed their respective legal memoranda on the State's claims for civil penalties and injunctive relief, and finally the court held its hearing on those issues on March 4, 2013. The parties stipulated to admission of various additional documentary exhibits, but no further testimony or other evidence was

[1] That liability decision should be viewed in light of the court's subsequent decision (filed December 2010) on Reynolds' motion to modify or alter certain findings of fact. Findings # 37, 54, 92 and 106, and the attendant footnotes, were slightly revised as stated in the December 2010 order, but those revisions did not change the court's ultimate conclusions as to Defendant's liability under the CFA and Consent Decree.

presented by either party. Lead counsel for both the State and for Reynolds then closed with impressive, and quite helpful argument in support of their respective positions on the nature, scope and extent of any civil penalties and injunctive relief to be awarded.

I. Additional Findings of Fact Re: Civil Penalty and Injunction

1. Although the court will not repeat here all of the findings and/or conclusions from the previous liability decision which are pertinent to the determination of the remedies to be granted to the State, several do bear re-emphasis:

> 193. The public portion of the Eclipse website repeated the advertising slogan that "The best choice for smokers worried about their health is to quit – the next best choice is to switch to Eclipse." At one time, a version of the Eclipse website also repeated the phrase "Eclipse – A better way to smoke," which was also found in some printed ads and other marketing materials.[2] The marketing executive(s) who testified for RJRT in this action denied that they were making any claims that Eclipse was a "safer" cigarette,[3] but these statements essentially carried that essential message, and were understood by consumers to make that point . . . .
>
> 194. The generally available Eclipse website (from 2003 through 2007) also included the following statements:
>
> > [E]xtensive scientific studies show that, compared to other cigarettes [Eclipse]
> >
> > ✓ May present less risk of cancer associated with smoking
> >
> > Because Eclipse primarily heats rather than burns tobacco, its smoke chemistry is fundamentally different, and the toxicity of its smoke is dramatically reduced compared to other cigarettes.
>
> For example, studies* with smokers who switched to Eclipse from their usual brand showed that Eclipse produced:

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[2] [Previously footnote 137] The "better way to smoke" statement was perhaps most prominent in the Eclipse "on-sert" which came with each Eclipse pack, between the cellophane wrapper and the rest of the packaging. It is stipulated that these "on-serts" were included with Eclipse packs sold in Vermont. The "on-sert" repeated the basic health claim set forth many times above:

> **SCIENTIFIC STUDIES SHOW THAT, COMPARED TO OTHER CIGARETTES, ECLIPSE**
>
> • May present less risk of cancer, chronic bronchitis, and possibly emphysema

[3] [Previously footnote 138] Reynolds did not claim that Eclipse is a "safe" cigarette, and all of its ads and other marketing materials were always careful to include such a disclaimer. The State does not contend otherwise.

- ✓ 17-57% less lung inflammation (after two months in smokers of two packs or more per day)
- ✓ 70% lower smoking-related mutagenicity (DNA changes)**

*These studies did not include smokers of cigarettes with less than 4 mg "tar" by FTC Method.

**As measured in an *in vitro* laboratory test that can be used to detect chemical mutagens that potentially result from smoking.

These website statements, and advertising claims were available to Vermont consumers, and were in fact made to, and received by at least some Vermont consumers, given the purchase of at least 30 cartons of Eclipse off the website.

* * * *

208. From 2000 through 2007, nationwide sales of the Eclipse cigarette totaled approximately 1.2 million cartons (in excess of 240 million Eclipse cigarettes), for gross revenue amounts of around $34 million to Reynolds (about 14 cents per cigarette, or $2.83 a pack). During that same period (2000 through 2007), the total sales of Eclipse in Vermont were approximately 410 cartons, or about $12,000 in gross sales. Active sales of Eclipse in Vermont, through normal sales and distribution channels, apparently ceased as of early 2008 (this point is somewhat unclear), but there were sales in Vermont, and solicitation of sales in Vermont using the challenged marketing statements and affirmative health benefit claims prior to, and at the time the complaint herein was filed in July 2005, and continuing for at least 2+ years thereafter.

209. From 2000 (when Reynolds first began making the affirmative health benefit claims for Eclipse) through 2004 (when the "Scott ad" was withdrawn), Reynolds spent at least $16.656 million nationwide for print and other Eclipse advertising, signage, and promotional and marketing efforts.

2. Based on its findings and other analysis of the evidence presented during the plenary trial on liability, and the court's understanding of the applicable and controlling law, the court concluded – *see* Conclusions of Law, Parts (A)(3)(i-iii), at pgs. 100-102 – that three (3) significant, and substantial statements in the marketing and advertising materials employed by Reynolds for its Eclipse cigarette violated Vermont law under the CFA, and the proscriptions set forth as well in the MSA and Consent Decree:

(i) Turning first to one of the key statements made on the Eclipse website from 2003 through 2007, which site was accessible to Vermonters, and actually used or accessed by at least a few State residents (given the purchase of some 30 cartons of Eclipse off the website), there can be little dispute that an express "establishment claim" was made: "extensive studies show that, compared to other cigarettes, [Eclipse] [m]ay present less risk of cancer associated with cancer." The consumer perception studies conducted by Reynolds itself prior to

making any affirmative health benefit claims; the consumer surveys conducted by the State's experts for this litigation; and RJRT's concession here, all establish that the overall impression, and essential meaning derived by consumers from that type of statement would be that, in fact, switching to Eclipse would reduce any given smoker's chance of developing cancer. However, not only did Reynolds not have the "extensive studies" it expressly touted to back up that statement,[4] it actually had no such studies at all, because the clear consensus of the entire medical and scientific community familiar with tobacco-related diseases, is that any such statement making a quantitative risk comparison between different cigarettes would require, and can only be based on long-term data of comparative human disease incidence derived from human epidemiological studies. That website statement concerning Eclipse was thus material, misleading and deceptive as a matter of law, and the State of Vermont is entitled to judgment in its favor against Defendant Reynolds, under 9 V.S.A. § 2453(a).

(ii) The other statement on the Eclipse website principally challenged by the State, was that "studies with smokers who switched to Eclipse . . . showed that Eclipse produced ... 70% lower smoking-related mutagenicity (DNA changes)." In context, and together with the large visual graph next to this statement, this representation is perhaps closer on the continuum to an implied rather than express "establishment claim." But the essential message implied, from the text and surrounding circumstances alone, and then reasonably understood by the typical consumer (i.e., smoker), is that mutagenicity in human DNA would be reduced by 70%.

However, Reynolds had (and still has) no medical or scientific studies to prove that particular assertion. Moreover, even though the statement was twice footnoted, RJRT did not use either opportunity to explain to consumers that its evidence related only to salmonella bacteria mutagenicity, not humans; that the tests referred to were, at best, preliminary "screening" assessments which should primarily be used only to isolate, and identify smoke compounds for further intensive study; and that the tests it did have, and referred to here, meant that its more general statement above (i.e., "less risk of cancer") did not apply at all to any smokers whose usual brand was an "ultra-light" cigarette with less than 4 mg

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4 [Previously footnote 149] To be sure, Reynolds did have "extensive" preliminary studies, well over several million dollars worth, which consistently tended to demonstrate reduced exposure to many harmful tobacco smoke constituents, and some reductions in some of the harmful toxicological effects (e.g., indicia of lung inflammation) which are thought to be associated with, or possibly even precursors to tobacco-related diseases. To that extent, then, those studies generally met one of the subsidiary standards under [the] law, i.e., that any such tests or studies be "conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." *National Urological Group,* [citation *infra*] at *13. But, as the court has found, the many tests and studies on Eclipse done by Reynolds (and its outside researchers), no matter how valid and accurate they might otherwise be, are ultimately not the kind of "extensive studies" which are needed to claim they actually "show that ... [Eclipse] present[s] less risk of cancer."

of "tar."[5] This second website statement concerning Eclipse was also material, misleading and deceptive as a matter of law, and the State of Vermont is entitled to judgment in its favor against Defendant Reynolds, under 9 V.S.A. § 2453(a).

(iii) Turning now to the principal advertising statement challenged here, in the so-called "Scott" print ad, *see* above – Eclipse is "[a] cigarette that may present less risk of cancer, chronic bronchitis, and possibly emphysema" – the extrinsic evidence presented by the State, and Reynolds' concession, indisputably establish the actual message communicated to, and reasonably understood by the intended, or targeted consumer (i.e., a current smoker of any brand of conventional tobacco-burning cigarette): any smoker switching to Eclipse, including any current "light" or even "ultra-light" smoker, will in fact (not "may" or "might" or "could") experience a lesser chance, or statistical incidence of developing one (or all) of those tobacco-related diseases. Reynolds knew that consumers would understand that message, and deliberately made the "Scott ad" statement with the intent that smokers would understand, and believe there was an affirmative health benefit from smoking Eclipse, i.e., that switching to Eclipse would improve their chances of not developing cancer, chronic bronchitis, or possibly emphysema.

This is an implied establishment claim, because its "scientific aura" clearly implies that it is established, or supported by scientific or medical studies. As such, Reynolds must have had in hand the necessary scientific and medical evidence which would convince the applicable medical and scientific community that the claim was in fact true, and that it was in fact supported by that data, and those studies deemed sufficient by the relevant community of experts. The State has proven by a clear preponderance of the record evidence here, that only long-term epidemiological studies will support any such statement, or claim as to any quantitative, and comparative reduction in human disease incidence related to smoking cigarettes, and Reynolds concedes it has no such evidence, or data, or studies. This principal advertising statement in the "Scott ads" concerning Eclipse was thus material, misleading and deceptive as a matter of law, and the State of Vermont is entitled to judgment in its favor against Defendant Reynolds, under 9 V.S.A. § 2453(a).

3. As noted in the March 2010 liability decision, Reynolds eventually stipulated at trial that at least some magazines or other publications, containing the so-called "Scott ad" (or some other non-material variant thereof) with the principal offending marketing statement set forth immediately above, were sent to and actually received in Vermont. The primary dispute now is over how many of those magazines or publications – not the actual quantity or number of individual magazines, but whether at least one exemplar of

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[5] [previously footnote 150] Reynolds did accurately disclose the literal truth, and the 4 mg "tar" limitation in the study, in footnote *. But that disclosure would have no meaning to the average reasonable consumer, who would more likely than not understand those mutagenicity tests, even with the stated limitation, to nonetheless be part of the "extensive studies" cited for the overall "less risk of cancer" statement earlier in the website page .

each edition of a magazine or publication containing a Reynolds' ad for Eclipse – were sent into this state and thus more likely than not "received by" and capable of being seen by Vermont consumers.[6] The other means by which the offending marketing statements concerning Eclipse were made to Vermont consumers are not, however, generally challenged at this stage.

4. It is not disputed, indeed it is stipulated by Reynolds that the Eclipse website was accessible by, and available to Vermont consumers from July 2003 through the end of 2007, approximately 4 and ½ years, or 1642 days. Approximately ½ of that period occurred after the State had filed this action in late 2005.

5. As discussed previously, every pack of Eclipse cigarettes contained a printed "on-sert"[7] which contained most of the pertinent marketing language previously discussed, from both the Eclipse website and/or the "Scott ad" (or some iteration thereof), including the following: "SCIENTIFIC STUDIES SHOW THAT, COMPARED TO OTHER CIGARETTES, ECLIPSE: May present less risk of cancer, chronic bronchitis, and possibly emphysema". *See* VT Exhibit 1075 (Bates # 53410-4818). It is not disputed, indeed it is stipulated by Reynolds that 410 cartons of the Eclipse cigarette, each with 10 packs of the cigarettes, were sold in Vermont. Thus, a total of 4100 offending on-serts were sent into Vermont by RJRT and were available within the state to Vermont consumers.

6. Reynolds also marketed the Eclipse cigarette with, and through various types of direct mailings to potential buyers, utilizing leads, or mailing lists developed through multiple sources. *Cf.* Findings of Fact, ¶ 191 & fn. 136. These direct mailings often contained discount coupons for Eclipse, and promotional materials which made, *inter alia*, the following statement: "Discover the Eclipse Difference. May present less risk of cancer, chronic bronchitis and possibly emphysema." *See* VT Exhibit 3034 (Bates # 52500-0167); VT Exhibits 518, 520. It is not disputed, indeed it is now stipulated by Reynolds that 1028 pieces of these types of direct mail marketing for Eclipse were sent into Vermont, to potential Vermont consumers. There were 102 such direct mailings (in March and June 2006) after the State had already commenced this action asserting that the Eclipse marketing statements were in violation of the MSA and Consent Decree and the Vermont CFA, and 354 mailings in April and 2 in November 2005 after the National Association of Attorneys General had first served notice on Reynolds, in late March 2005, *see infra* ¶ 12, that it had 10 days to "cease and desist" its offending marketing statements concerning the Eclipse cigarette.

7. Even apart from the dispute over magazine and/or newspaper mailings into Vermont with Eclipse ads, these first three types of marketing for and promotion of

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[6] RJRT has previously challenged this phraseology of "received by" in its motion to alter the court's liability findings. Again, "receipt" is used here in a generic sense in that the materials were in and around and available within the state, and not to connote actual comprehension of or reliance by any particular, or discrete Vermont consumer, which is simply unknowable at this point.

[7] Apparently, it is an "on-sert" because it was literally placed on the outside of the paper container with the cigarettes, but inside of and under the cellophane wrapper that enclosed the package.

Eclipse which were clearly made to, and/or available to Vermont consumers – i.e., the website, the direct mailings, and the package on-serts – would total 6770 separate instances in which the deceptive and scientifically unsubstantiated statements concerning Eclipse were made or available to Vermont consumers, and thus entered Vermont. Taking just the direct mailings and Eclipse on-serts, where there is no real dispute in either instance as to the number of separate offending statements directly made to consumers in Vermont, there would be a total of 5128 violations.

8. The State has identified 22 different exemplars of nationally published and distributed magazines or newspapers (i.e., *USA Today* or the "Parade" newspaper magazine insert) which contained the "Scott ad" (or other similar variations thereof), and were used by Reynolds during, and as part of its national marketing and promotion campaign for the Eclipse cigarette which RJRT "rolled out" beginning in 2003. *Cf.* Findings of Fact, ¶ 190 & fn. 134. Of those 22 examples, it is not disputed, indeed it is stipulated by Reynolds that at least 6 of those magazine editions were received within Vermont.[8] Of the remaining 16 editions, or issues of these identified exemplars – they are not the entire universe of national publications used by Reynolds for the Eclipse campaign, *see infra*, but simply representative – Reynolds does not dispute that "Scott ads" (or other similar promotional materials) were scheduled to be included in these publications. Rather, RJRT contends that the State has failed to prove that a version or edition of the subject publication, with the offending statement(s) concerning Eclipse, was actually sent into, available, or received within this state.

9. As part of its national marketing campaign for Eclipse, Reynolds intended, and sought to take advantage of lower costs by inserting ads for Eclipse in so-called "regional editions" of national publications, where otherwise unused space might be available at a discount because there were fewer regional advertisers in, say, the southeastern edition of *Popular Mechanics* for that particular week compared to the northeastern edition of the same magazine. Accordingly, even though the national marketing plan did reference generally the additional 16 publications cited by the State, and Reynolds has previously identified these exemplars as exactly that – i.e., examples of the national ads utilized to promote Eclipse, and the publications they appeared in – those facts alone do not establish, by a preponderance of the record evidence, that a version or edition of the subject publication, with the offending ad(s) and statement(s) concerning Eclipse, was actually sent into, available, or received within this state. *See also* ¶s 14 – 18 *infra*.

10. The remaining 16 print media exemplars which Reynolds disputes, and which the State contends should be "presumed" to have entered Vermont as part of the national publication and distribution of these magazines or newspapers, are as follows: *Better Homes & Gardens* (Sept. 2003); *Newsweek* (Dec. 29, 2003); *Parade* (Sept. 7, 2003); *People* (June 14, 2004); *Popular Mechanics* (Aug. 2003 & Nov. 2004); *The Sporting News* (Dec. 29, 2003; July 12, 2004; Aug. 23, 2004; Sept. 6, 2004); *USA*

[8] The 6 agreed-on print exemplars are two issues of *Time* magazine (*see* VT Exhibit 2097), from late December 2003 and May 2004, and four issues of *Popular Science*, in August 2003, and February, May and July of 2004. All six of these exemplars were found in the microfiche records at the Bailey-Howe Library at UVM.

Today Weekend insert (Apr. 30, 2004; July 3, 2003; Oct. 31, 2003); and *USA Today* (Sept. 9, 2003; Dec. 29, 2003; Dec. 30, 2003).[9]

11. Neither party actually presented any detailed evidence, one way or the other, on this issue of the so-called "regional editions" of these various magazines or nationally-published newspapers. *Cf.* Depo. of David Iauco (June 21, 2006), pgs. 253-54 (explaining general concept). Again, RJRT stands on its assertion that it is the State's burden of proof to establish the Eclipse ads and other marketing messages which actually did reach Vermont, in the form of the exemplars cited by the State. The State counters that it has established a "presumption" or reliable inference it was more likely than not that these 16 exemplars also entered Vermont, and that Reynolds, with its superior knowledge about its own marketing plans and how those efforts were in fact carried out, is in the best evidentiary position to rebut that inference and prove that the cited exemplars did not reach Vermont (i.e., because of so-called regional differences, or for some other reason).[10]

12. Even if the additional 16 national magazines or newspaper editions did not actually reach Vermont with the offending Eclipse marketing statements – and of course this court's choice of remedies, both civil penalties and injunctive relief, is limited solely to addressing public harm and those violations which have occurred within this state, affecting Vermont consumers – it is still useful to consider in some secondary respects the nationwide scope of the marketing plan utilized by Reynolds for Eclipse, and the nationwide implications of this action. Prior to the State of Vermont commencing this action under the Vermont CFA and its version of the nationwide MSA and this court's resulting Consent Decree, the National Association of Attorneys General ("NAAG") sent to Reynolds a letter and "Notice of Intent to Initiate Enforcement Proceedings" (dated March 28, 2005) under the MSA and each state's consent decree, as well as each state's respective consumer fraud statutes, specifically contesting the various health claims made by RJRT concerning Eclipse. *See* VT Exhibit 3035. The 3/28/05 letter was signed by the Attorneys General of 40 of the 50 states.

13. Only one state, Vermont, actually followed through on the intention to institute such enforcement proceedings. The Attorney General of Vermont, William

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[9] Reynolds concedes that these issues of *USA Today* were generally likely to be found in Vermont, e.g., for free at the front desk of the Hilton Hotel (or was it then still the Radisson?) in Burlington. Reynolds still disputes, however, that these copies of *USA Today* necessarily contained the "Scott ad" (or something like it) because of the so-called "regional editions".

[10] During the hiatus between the court's March 2010 liability decision and the March 2013 remedies hearing, the State attempted to convince the court to allow discovery to be re-opened to explore in detail these specific marketing issues. The court declined, for the various reasons stated, but primarily because it simply did not appear to be worth the time, expense and effort – after extensive evidentiary proceedings on liability had long since been concluded – to prove at best what amounts to 16 additional violations of the CFA and/or Consent Decree and MSA, *see infra*. Also, the State had been on notice, since taking the deposition of Reynolds' then chief marketing officer (David Iauco) in June 2006, that RJRT's advertising agency was likely to have such detailed records and information. *Id.*, pgs. 255-56. Moreover, the State was clearly a party to the March 2005 warning letter from the NAAG, and thus the State was aware at that point, or certainly should have been, that if it was going to file suit, it was high time to begin scouring the state for representative samples of offending Eclipse ads.

Sorrell, Esq., was the president of the NAAG at the time. However, numerous other state attorneys general, and/or their deputies or staff, were involved in preparing for and then assisting in the prosecution of this action – as can be seen from the extensive motion and discovery practice in this case concerning the up-coming "Phase III" litigation over the State's request for attorney's fees and expenses, where one of the principally contested issues is the recoverability of attorney's fees for those other states' attorneys essentially acting as 2nd (or 3rd or 4th) chair at depositions, etc. In opposing, for example, the State's requested discovery into the legal fees and expenses incurred by Reynolds itself in defending this action, RJRT has repeatedly urged that such comparisons were irrelevant, because it was compelled to defend, and litigate this action "to the hilt" because of the potential precedent and national implications, and possible business-related repercussions to Reynolds itself on a nationwide scale, even from an adverse Vermont-only judgment.

14. As discussed previously, Reynolds consciously, and deliberately chose to use the offending statements concerning Eclipse as part of its "national roll-out" of its non-traditional cigarette, in order to promote the cigarette and attempt to increase sales of the Eclipse, which until that point had at best been lackluster and did not meet the company's hopes and expectations. As later explained (at deposition in 2006) by Mr. Iauco, then in charge of the Eclipse marketing:

> Q. Then what changed, if anything, either in terms of the distribution, media, or messages about Eclipse between spring 2001 and late spring/early summer 2003 when you began the national rollout?
> A. We attempted several different approaches over that period of time to try to improve Eclipse's sales performance, you know, some retail pushes. We tried some different promotional activity. None of it seemed to really boost the brand and – change its trajectory in the market. So we were at a point of, more or less, saying, okay, this is – this represents pretty much what we can expect from this brand, so, you know, where do we go from here?
> Q. And when was that threshold reached?
> A. Early part of 2003.
>
> * * *
>
> Q. . . . [W]hat happened next?
> A. We decided that – obviously, we had the decision to make of whether or not to pull Eclipse from the market or leave it out there. And we had tried so many things and it – it really wasn't responding. So what we decided to do was that we wanted to try a plan where we could make it viable from a business standpoint, accepting its very low sales but make it, more or less, a break even or maybe slightly profitable.
>
> So we devised a – a plan to do just that on a national basis where we would run highly-efficient national media to attempt to draw smokers to a Web site where – where they would be – be provided with all the relevant information about Eclipse, including where to buy it; that we would attempt to concentrate our distribution in a few retail outlets that were conveniently located to smokers, the majority of smokers, and also easy to remember where to find it; and that –

and we take the brand national and make it available national that way, in the hopes that, again, we could generate enough business.

And, you know, our projections indicated that if we could get a sufficient number of smokers that way it wouldn't really take a whole lot to make it break even over a period of time and it would allow us to keep the brand, which we felt – I think there was – there was a lot of interest in maintaining the brand in the market, maintaining it – its availability and without losing a – continuing to lose a ton of money on it. And I – you know, was pretty – a novel plan, to say the least. It was very unusual.

* * *

Q. . . .[D]id you have in mind at the time what that number of smokers was sort of the – the break-even threshold?
A. What I recall was that we would need over a period of time approximately 50, 55,000 smokers, something like that . . . .

As noted previously, and repeatedly in the court's March 2010 liability decision and findings, an integral part of this "novel" and "very unusual" marketing plan for Eclipse was to feature prominently, and aggressively promote the perceived health benefits to existing smokers of switching to this non-traditional cigarette.

15. Accordingly, the 2003 and 2004 "Eclipse Final Media Plan"[11] both describe the following goals or "Objectives":

- Generate awareness of Eclipse among Adult 25-49 Low Tar/Ultra Low Tar Smokers
- Secondary target is Full Price Light Smokers 35+
- Encourage targeted smokers to visit the Eclipse website

The ad placements and selection of chosen media would be "based on the following criteria" which included "Editorial compatibility with the Eclipse proposition".

16. The 2003 Eclipse Media Plan, which was generally followed for the 2004 plan as well, described its ad placement strategy as follows:

Core publications & Incremental Buy (64% of Budget)
- Core Publications:
- High Composition/High Coverage of Smoker Target
- Mass circulation titles

[11] Both the 2003 and 2004 Eclipse Media Plans are fronted with an "Important Notice" stating that the California Superior Court on June 6, 2002 had found that RJRT had violated Section III(a) of the MSA by "target[ing] Youth . . . in the advertising, promotion or marketing of Tobacco Products," and had entered an injunction which had caused Reynolds to adopt fairly extensive 7-point "guidelines" which affected "all approved plans for advertising in national consumer magazines." It is unknown whether that particular California violation, and resulting injunction were affirmed on appeal. Nonetheless, Reynolds seems to have recognized early on in dealing with cases against it under the MSA that enforcement actions in a single state could, and would have national repercussions (at least if the tail (e.g., California) is big enough to wag the entire dog).

- National insertions scheduled
- Incremental Buy
- Due to time-frame of the buy, only weeklies and newspapers could be utilized
- 6 weeklies; all national except for some regional editions of Newsweek

Remnant publications: (36% of Budget)
- Mass and selective lifestyle titles

16. The "Core Titles" to be used for placement of Eclipse ads were defined as the "Sunday Magazines, *Parade* and *USA Weekend*"; and these "selective lifestyle titles" – "Men's Interest, *Playboy*, *Popular Mechanics*, *Popular Science*" and "Women's Interest, *Better Homes & Gardens*". The "National Insertions" were defined to include "Sunday Supplements" and "*USA Today*". The actual amount(s) budgeted for this "Core Title" advertising is not detailed in the documents submitted to the court.

17. For 2003, the recommendation for the "Incremental Spending" ad placements was projected as follows:

Dailies	
USA Today	$300.3
Weeklies	
Newsweek	$176.2
People	$121.1
In Touch	$23.8
Sporting News	$17.9
Time	$76.5
TV Guide	$83.4
Total Weeklies	499.0
Total Spending	$799.2[12]

The "Remnant Titles" to be utilized would include such publications as *This Old House*, *Budget Travel*, *Vanity Fair*, *Family Circle*, *Ladies Home Journal*, *Sports illustrated*, *Car & Driver*, *Bon Appetit*, and *Guns & Ammo*. The actual amount(s) budgeted for the "Remnant" advertising is also not detailed in the documents submitted to the court.

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[12] Although not detailed in the documents themselves, or specifically explained at the March 2013 remedies hearing, it appears that these figures are expressed in $1000's. This would seem to be consistent with Reynolds' overall marketing and promotional expenditures on Eclipse, at $16.656 million just through 2004. *See* ¶ 1 above (repeating original Finding ¶ 209). Of course, as already found by the court, RJRT continued to market and sell Eclipse nationwide, and in Vermont, through at least 2007 – well after the filing of this action, and the Attorney Generals' warning letter in March 2005 – all the while attempting *inter alia* to "encourage targeted smokers to visit the Eclipse website" where offending health claims were still being made, even if the "Scott ad" itself had been discontinued by the end of 2004.

18. Accordingly, although certainly Reynolds did utilize a marketing strategy for Eclipse to take advantage of lower ad rates for "remnant" space and in "regional" versions of some publications, it is fairly evident that the overall plan itself devoted 2/3 of the ad budget to "core publications" with no obvious distinction for so-called "regional editions." The "incremental spending" budget alone, at almost $800,000 for just 2003, appears to have been defined as last-minute ad buys, in weekly or daily publications, but still with nationwide reach. Thus, one could certainly justify the conclusion it was more likely than not that the 16 issues of the disputed magazines cited by the State, *see* ¶ 10 above – i.e., national publications such as *Better Homes & Gardens, The Sporting News, Popular Mechanics*, and *USA Today* – did in fact reach Vermont and the offending Eclipse ads therein were published to Vermont consumers generally.

19. However, the court still ultimately finds that the State has not actually proven that those 16 other cited magazines with a "Scott ad" (or variant) reached consumers in this state, and therefore the court will not include those additional 16 publications as exemplar violations of the CFA and/or MSA and Consent Decree. In total, the State has therefore proven there were **6776 separate instances of Reynolds making unsubstantiated, and deceptive health marketing claims and statements about Eclipse** which reached, or were available to Vermont consumers, through 2007 – i.e., on the website (1642 days), the direct mailings (1028 pieces), the package on-serts (4100), and 6 national magazine or newspaper exemplars admittedly received in Vermont.

20. Defendant R. J. Reynolds Tobacco Co. is a wholly-owned subsidiary of its parent holding company Reynolds American Inc. ("RAI"). RJRT is the second-largest U.S. tobacco company; another subsidiary of RAI, American Snuff Co. LLC, is the nation's second-largest manufacturer of smokeless tobacco products. RJRT's market share of the U.S. cigarette industry in 2012 was 26.5%. RAI had total "Net Sales" (i.e., total net revenue) of $8.304 billion and $8.541 billion in 2012 and 2011, respectively. "For the full year 2012, RJR Tobacco's adjusted operating income was $2.3 billion, down 2.2 percent from" 2011 (emphasis added). RAI's net income for 2012 (reported according to GAAP) was $1.272 billion, down 9.5% from the prior year.[13] These "declines were again driven by losses on [RJRT's] non-focus brands which receive little or no promotional support," which indicates the importance of marketing and promotion in the "competitive . . . cigarette category" where total U.S. cigarette shipments are declining year to year, i.e., "2.3% in 2012, to 286.5 billion cigarettes, 3.5% in 2011 and 3.8% in 2010."

21. "RAI's strategy is focused on transforming tobacco in anticipation of shifts in consumer preference to deliver sustainable earnings growth, strong cash flow and enhanced long-term shareholder value. This transformation strategy includes growing the core cigarette and moist-snuff businesses, focusing on innovation, including smoke-free tobacco, and exploring nicotine replacement treatments and other opportunities for

[13] This net income figure for the parent, or holding company RAI is after the payment into a reserve fund of Reynolds' expected share of the annual payment to the states under the MSA, *see* ¶ 25 & fn. 14, *infra*.

adult consumers while maintaining efficient and effective operations. RAI's strategy encourages the migration of adult smokers to smoke-free tobacco products, which we believe aligns consumer preferences for new alternatives to traditional tobacco products in view of societal pressures to reduce public smoking. RAI's operating companies facilitate this migration through innovation, including the development of *Camel* Snus, tobacco extract products, heat-not-burn cigarettes, tobacco vapor products and nicotine replacement therapy technologies." *See* RAI Form 10-K (filed 2/12/13 with the Securities & Exchange Commission, for period ending 12/31/12), pgs. 2-3. These "new milestones in innovation" and "transforming the tobacco industry" include development and promotion, and "significant investments to support expansion" of, for example, RJRT's "Vuse e-cigarette."

22. For the last 3 years, 2010-2012, RAI incurred total advertising, promotional and marketing expenses of $72 million, $65 million, and $72 million, respectively ($69.66 million average). For the last 3 years, 2010-2012, RAI incurred research and development costs of $62 million, $69 million, and $71 million, respectively ($67.33 million average).

23. RAI's 2012 Form 10-K has a Note 13 to its consolidated financial statements, which is 47 pages long and discusses in general, and in some specific instances in more detail, most if not all of the tobacco-related litigation that RAI (mostly RJRT) is involved in or which could potentially have a "material adverse effect" on its financial position. For example, in just the state of Florida alone, there are pending cases against RJRT – in whole or in part; RJRT may share liability with other tobacco companies, from 5% to 90% – with jury verdicts and/or court judgments, all in various stages on appeal or in post-judgment proceedings, in which a total of $125.8 million has already been awarded just in punitive damages alone. *See* Form 10-K, Note 13, pgs. 98-100. Notwithstanding these cases and other reported litigation, including this action, *see id.* pgs. 128-129, "[n]o liabilities for pending smoking and health litigation have been recorded in RAI's consolidated balance sheet as of December 31, 2012," *id.* pg. 92, because Reynolds believes it "is not probable" that the company will in fact ultimately suffer any material adverse impact to its overall financial position on account of any such litigation. In other words, involvement in extensive, and multiple litigation, in which possible judgments or awards in the range of several millions of dollars may be entered against RJRT in any individual case, now appears to be simply an inherent part of Reynolds' business model, and is treated as an unavoidable cost of doing business in the tobacco industry.

24. Reynolds has been involved for years in arbitrating claims made by all of the participating tobacco companies in the MSA, as to "adjustments" which should be made to the participating companies' scheduled payments to the various states under the MSA due to cigarette sales by smaller, independent tobacco companies who were not signatories to the MSA, i.e., non-participating manufacturers ("NPMs"). For each of 2011 and 2011, "RJR Tobacco's approximate share of disputed NPM Adjustment[s]" is $469 million each year, a total of $938 million for those 2 years alone. *See* Form 10-K, *id.*, pg. 132. This indicates the size, and scope to Reynolds of just one aspect of disputed payments, for just 2 years, under the MSA.

25. The total of scheduled payments to the settling states under the MSA for 2012, and thereafter is $8.004 billion dollars annually – subject, of course, to "adjustment for changes in sales volume, inflation and other factors" as described in the MSA; each tobacco company's actual payment is then further "allocated among [them] on the basis of relative market share" which was 26.5% for RJRT in 2012. *Id.*, pg. 123. Vermont's share of the total to be paid each year, which does not adjust, is 0.4111851%, *see* Exhibit A to MSA. Accordingly, prior to any adjustments in the overall total to be paid out each year in accordance with the MSA, under this formula Vermont could apparently expect an annual payment from all of the settling tobacco companies of approximately $32,911,255.[14]

II. Conclusions of Law

(A) Counting the Number of CFA Violations

Reduced to its essence, Reynolds contends the court should recognize only a single violation of the Vermont Consumer Fraud Act, and of the MSA and Consent Decree, because its years-long marketing and sales campaign for the Eclipse cigarette was in its view a single uninterrupted effort to promote the offending "less risk" health claims concerning Eclipse. RJRT bolsters that contention by pointing to the meager sales of Eclipse in Vermont (i.e., only 410 cartons with approximately $12,000 in gross revenue), especially compared to the rest of the United States, inasmuch as Vermont consumers were not a major, or special focus of attention (unlike, for example, consumers in Texas or California, *see* "Eclipse 2003/2004Final Marketing Plan"). Adopting Reynolds' approach would make it liable for a maximum of up to $10,000 in civil monetary penalties, the maximum penalty allowable for any single violation. *See* 9 V.S.A. §§ 2458(b)(1), 2461(a).

The State, conversely, argues that each and every instance in which Reynolds made the offending health claims regarding Eclipse available within the state, so that Vermont consumers would have had access to or were potentially exposed to those statements the court has found to be deceptive and scientifically unsupported, should be counted as a separate violation of the CFA and MSA/Consent Decree, and subject to an award of civil penalties of up to $10,000 in each instance. And, to be clear, the State in this case is not seeking any "consumer restitution" or recovery of other actual harm suffered by discretely identifiable consumers, *cf.* 9 V.S.A. § 2458(b)(2). Rather, the purpose of any civil penalties to be awarded here is to penalize Reynolds for its own intentional marketing efforts directed at Vermont consumers – i.e., primarily existing Vermont smokers – which efforts included extensive promotion of the deceptive "less risk" health claims for Eclipse, regardless of the ultimate success (or not) of those marketing and advertising efforts.[15]

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[14] Although RAI has not booked any potential liability from any particular tobacco litigation case, it has set aside, and carries approximately $2.5 billion in cash each year earmarked to make its share of these payments to the states under the MSA. *See* 2012 Form 10-K, pg. 68 of consolidated balance sheet.

[15] For this reason, the court believes *Anderson v. Johnson & BCK Realty*,2011 VT 17, 189 Vt. 603, is inapplicable here. In that case, the Vermont Supreme Court concluded that a showing of some actual

It seems to be fairly well established, and broadly accepted, that each instance that a deceptive marketing or promotional statement is made, or included in a separately identifiable advertisement in a given issue or edition of a publication, constitutes a separate violation. *See, e.g., May Dept. Stores Co. v. State,* 863 P.2d 967, 974-76 (Colo. 1993); *Commonwealth v. Fall River Motor Sales, Inc.,* 565 N.E.2d 1205, 1213 (Mass. 1991); *State v. Menard, Inc.,* 358 N.W.2d 813, 815 (Wisc. Ct. of Appeals 1984). At least with regard to print media – e.g., magazines and newspapers – that approach is pretty much beyond dispute, under both FTC and state consumer protection law. *Cf., e.g., United States v. Reader's Digest Assn.,* 662 F.2d 955, 959-60, 966-67 ("adopting [Reader Digest's] position that one bulk mailing – no matter how large – comprises only one violation would eviscerate any punitive or deterrent effect of FTC [civil] penalty proceedings").[16]

RJRT does not mount much more than a feeble challenge to the general rule. Instead, Reynolds focuses mostly on its argument that only 6 particular instances of print media use in Vermont of the deceptive Eclipse health claims have been actually proven by the State. As noted above, the court ultimately agrees, even though one could certainly infer circumstantially, given the broad "Final Eclipse Media Plan[s]" for both 2003 and 2004 and the extensive nature of the Eclipse marketing efforts, that the other 16 print exemplars cited by the State probably did arrive within this state as well.

Determining the number of violations committed by RJRT through the Eclipse website is more difficult. This type of "counting" issue appears to have gotten less attention from the courts, even though – as this case demonstrates – the use of internet websites for marketing purposes has been in use for at least 10 years, and has clearly accelerated rapidly in more recent times with dedicated commercial Facebook pages, etc. Without much guidance or obvious precedent, the court concludes that each day's separate availability of the Eclipse website to Vermont consumers is the most logically persuasive approach. A counting rule that recognized the initial creation, and continued existence of a website with deceptive marketing statements as a single violation would be clearly unreasonable and ineffective, and essentially gut the public protection and enforcement policies behind all state consumer fraud laws. *Cf., e.g., Reader's Digest, supra.* But there is no structural underpinning for any particular "bright line" counting

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harm and injury was necessary for an individual consumer to be awarded relief under the CFA, even just attorney's fees under 9 V.S.A. § 2461(b), where a jury had determined there had been a violation in the making of a false or deceptive statement. *Id.*,¶s 9, 12-13. Here, the State itself has sued RJRT on public protection grounds, seeking civil penalties and prospective injunctive relief. The concept of actual harm to individual consumers does not apply in such situations, because the case has "accomplished some broader 'public purpose,'" *see id.* ¶ 11 (cit. omitted).

[16] This concept, that the deterrent effect of consumer fraud sanctions should be "[something] more than an acceptable cost of [the] violation," *id.* (cit. omitted), was also endorsed almost 40 years ago by the 2nd Circuit Court of Appeals in a case involving another tobacco company now part of RJRT. *See Brown & Williamson Tobacco Corp. v. Engman,* 527 F.2d 1115, 1120 (2d Cir. 1975), *cert. denied,* 426 U.S. 911 (1976).

rule beyond that; recognizing that "every day's a new day"[17] in which the deceptive statements can be and are being made to consumers seems to balance the practical means by which consumers utilize such electronic media, and the various economic and marketing incentives (and disincentives) to the perpetrator making the offending promotional statements.

The counting rule for direct mailings also appears to be pretty much beyond dispute: each mailing constitutes a separate violation. *See, e.g., United States v. National Financial Services, Inc.*, 98 F.3d 131, 141 (4th Cir. 1996) (each collection letter was a violation supporting civil penalties under FTC Act); *Commonwealth v. Amcan Enterprises, Inc.*, 712 N.E.2d 1205, 1211 (Mass. Ct. of Appeals 1999). Finally, with regard to the Eclipse package on-serts, there is again no apparent precedent or case-law directly on point, but each such package on-sert was clearly a separate instance of Reynolds intentionally making the deceptive "less risk" health claims in Vermont – either repeatedly to the same consumer(s) in order to constantly reinforce the message, or possibly to other existing Vermont smokers and/or potential consumers (if, for example, the on-sert got passed along, either with an Eclipse cigarette pack, or by itself (e.g., as a recommendation, or just FYI from one smoker to another)).[18]

Accordingly, for all of the reasons stated, the court concludes, and reaffirms that **Reynolds has through 2007 violated the Vermont CFA, and the MSA/Consent Decree, on 6776 separate instances by deliberately making unsubstantiated, and deceptive health marketing claims and statements about Eclipse** which reached, or were available to Vermont consumers,– i.e., on the website (1642 days), the direct mailings (1028 pieces), the package on-serts (4100), and 6 national magazine or newspaper exemplars admittedly received in Vermont.

(B) Assessment of Civil Penalty Amount

As noted, pursuant to the Vermont CFA the court is authorized to assess a civil penalty of up to $10,000 for each violation. *See* 9 V.S.A. § 2458(b)(1). The MSA and Consent Decree, however, themselves contain no preset monetary limits, or guidelines, leaving it to the court to ascertain and impose a necessary, appropriate and reasonable sanction for any violation thereof. The court concludes that analysis under the latter should essentially track the determination of civil penalties under the former, *cf.* 9 V.S.A. § 2461(a), and that at least here, there is no compelling need to impose separate

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[17] *Cf.* "(I Love You) More Today Than Yesterday," *The Spiral Starecase* (Pat Upton) (1969), at https://www.youtube.com/watch?v=YuqHlv1YPe0 .

[18] There is no logical reason, given the overriding public protection policy rationale of these consumer protection statutes, why this latter type of clearly-anticipated (if not hoped-for) consumer conduct should insulate Reynolds from its intentional introduction of deceptive marketing statements into the consumer marketplace. For example, placement of ads in more popular magazines or other publications most likely carries a higher premium precisely because the probability of consumer sharing is higher, meaning "more eyeballs" on the same ad, for an effectively lower *per capita* cost. *Cf. also People ex rel. Lockyer v. R. J. Reynolds Tobacco Co.*, 37 Cal.4th 707, 124 P.3d 408 (2005), *discussed infra* (California statute expressly defined sale or distribution of each pack of cigarettes as a separate violation).

and additional sanctions for violating the MSA and Consent Decree, which sanctions might arguably be deemed duplicative and introduce a whole host of additional legal (if not constitutional) complications.[19] Imposition of civil penalties under the CFA should be legally sufficient to address simultaneously the enforcement and deterrence issues presented by Reynolds' violations of the MSA and Consent Decree. *Cf., e.g., Commonwealth v. Amcan Enterprises, supra,* 712 N.E.2d at 1211. Thus **the outer statutory limit, and absolute maximum for assessment of civil penalties and/or contempt sanctions against RJRT in this case is $67,760,000.**[20]

The parties do not quarrel much about the over-arching framework which is arguably applicable to the assessment of civil penalties under a statutory regime like the Vermont CFA; there is general agreement that a 5-factor analysis should be considered by the court. *See, e.g., Reader's Digest Assn., supra,* 662 F.2d at 967. The dispute, of course, is over the weight to be given each of the factors, and to what degree Reynolds' conduct here supports an adverse inference against it under each of the criteria. The five factors are:

> (1) the good or bad faith of the defendant[ ]; (2) the injury to the public; (3) the defendant's ability to pay; (4) the desire to eliminate benefits derived by a violation; and (5) the necessity of vindicating the authority of the [State].

Id. See also, e.g., Commonwealth v. Amcan Enterprises, supra, 712 N.E.2d at 1211; *Commonwealth v. Fall River Motor Sales, supra,* 565 N.E.2d at 1211. Further, "these factors are neither exclusive nor binding . . ." *Id.*

Much of the difference in opinion centers on what the court should now make of its earlier findings, and statements as to the "good faith," or at least absence of "bad faith," on Reynolds' part in developing, and then promoting the Eclipse cigarette. Perhaps it is only a matter of semantics, but the case law, logic, and common sense all seem to point towards the "good faith" factor in the *Reader's Digest* analysis being something of a term of art, whereas the court's prior findings are all principally related to its decision to eliminate the issue of punitive/exemplary damages from this remedy phase of the case. The "good faith" vs. "bad faith" issue in the *Reader's Digest* context appears primarily to involve whether the deceptive marketing violations were

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[19] This concern is another reason – apart from the court's factual determination that Reynolds and its many agents and employees did not act maliciously or with any "bad intent" to actually harm existing smokers in promoting the Eclipse cigarette – why the court took the issue of punitive and/or exemplary damages off the table as part of the March 2010 liability decision. While the court then found the approach of another federal trial court in a different deceptive marketing case to have some resonance as to why punitive sanctions would not issue against RJRT, *see FTC v. Lane Labs-USA, Inc.*, 2009 WL 2496532 (D.N.J.), that decision was not controlling. Thus the State's recent advice that the District Court's disinclination in that case to find contempt was reversed, *see* 624 F.3d 575 (3rd Cir. 2010), and the court then dutifully did find Lane-labs to be in contempt, see 2011 WL 5828518 (D.N.J.), does not cause this court to change its own judgment about removing additional contempt sanctions from this case.

[20] If limited just to those violations occurring through the package on-serts and direct mailings into Vermont, as to which there is no significant numerical dispute, the maximum limit for statutory civil penalties would be $51,280,000.

committed intentionally and deliberately, or by mistake or inadvertence, and especially whether (a) the deceptive statements are express, non-ambiguous claims, and (b) the violations occurred after the Defendant was already on notice as to the allegedly deceptive nature of the offending advertising statements. This "good faith" question is more correctly deemed an objective, rather than subjective inquiry. *Cf., e.g., Sears, Roebuck & Co. v. FTC,* 676 F.2d 385 (9th Cir. 1982):

> Here the claim is clear, direct, unqualified, and explicit. The more clear and direct the statement, the more likely it is to bring about the intended result, and the larger the number of consumers to be misled. The violation . . . is far more serious in every respect . . . .
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> [These] advertisements were no accident or "isolated instance." . . . Rather, they were part of an advertising strategy, with attendant slogans, adopted without regard to [the lack of epidemiological studies to support the unqualified "less risk" health claims made for Eclipse]. . . . A selling strategy based on this purchasing fact, e.g., the making of false and unsubstantiated . . . claims . . . would be effective for a considerable period of time, with great benefit to the merchant . . . .

Id., 676 F.2d at 394 (cit. omitted).[21] And, with regard to assessment of simultaneous contempt sanctions, the violations of the Consent Decree and MSA must also have been "willful," but not necessarily malicious or with "bad intent."

The court must also be careful in allowing the State to "bootstrap" its way into a larger penalty just because the State (or any governmental entity with enforcement capability) accuses the advertiser, before suit is brought, of violating the law. Such notices are clearly unilateral and attempt to put the enforcement agency's best spin on its own position, when there may well be substantial issues of fact or law on which the respondent might legitimately rely in defense or at least explanation – although ultimately not successfully, as here. Nonetheless, an official warning shot across the bow is deemed to carry some weight in determining the subsequent "good faith" (or lack thereof) of the advertiser in then proceeding to make the challenged marketing claims. *See, e.g., Reader's Digest, supra,* 662 F.2d at 967 (absence of "good faith" where "the Digest nonetheless proceeded to complete its promotional campaign" after the FTC had explicitly warned it that the marketing devices were deceptive and probably unlawful); *cf., e.g., People ex rel. Lockyer v. R. J. Reynolds Tobacco Co.,* 37 Cal.4th 707, 727, 729, 124 P.3d 408, 420, 421 (2005)(contrary inference where letters from Attorney General

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[21] To be sure, these comments from *Sears Roebuck* appear in the decision with regard to whether a broad "multi-product" injunction should have been imposed by the FTC, and "the deliberateness and seriousness of the present violation" was one of two factors typically considered as part of that inquiry. *Id.,* 676 F.2d at 392: *see discussion infra.* However, to this court the basic concept under consideration – the objective "good faith" of RJRT in making these deceptive statements concerning Eclipse – is essentially the same.

arguably suggested RJRT would not be in violation of state law, and Reynolds immediately ceased challenged conduct when AG filed suit).[22]

Here the Attorneys General of 40 out of 50 states, acting through the NAAG, told Reynolds in March 2005 in no uncertain terms that its use of the "less risk" health claims for Eclipse without adequate scientific studies to support those statements was a violation of the MSA and each state's consent decree, as well as the consumer fraud laws of many (if not most) of those states. Reynolds persisted, however, and continued to market and sell Eclipse with the challenged statements, since found by this court to be deceptive, for another 2 years. Finally, the explicit provisions of the MSA and resulting Consent Decree(s) which prohibited Reynolds from making any misleading or deceptive marketing claims concerning any tobacco product, were another source of advance notice that it needed to tread very carefully in this area.

As the court discussed at length in the March 2010 liability decision, Reynolds did try to proceed carefully before launching its "less risk" promotional campaign for Eclipse, by engaging in several years of preliminary scientific and medical testing and/or studies, all of which "pointed in the same direction" that a reduced-exposure tobacco product like Eclipse **might** also reduce the ultimate risk of smokers actually incurring smoking-related diseases. The consensus of its own Scientific Advisory Board was essentially the same: only a qualified claim of potential "less risk" consequences could be supported by the then-current state of the scientific and medical evidence, and credible epidemiological studies would have to be performed to support any unqualified, or express "less risk" claims. But at the highest levels of company management, Reynolds already knew that its marketing statements about Eclipse were not "qualified," and that consumers (i.e., existing smokers) understood those claims to be direct, and express statements that smoking Eclipse would in fact lower their risk of developing one of the cited tobacco-related diseases.

Reynolds then acted deliberately and intentionally to pursue an extensive, expensive, multi-pronged, several-year marketing campaign for Eclipse which featured those "less risk" health claims front and center. Thus, although Reynolds did not proceed in "bad faith" or with malice or ill will or "bad intent,"[23] given the totality of all

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[22] Reynolds obviously seeks comfort in *Lockyer v. RJRT,* where a civil fine of $14,826,200, for giving away free cigarettes (108,155 packs to 14,834 people) in violation of California law, was vacated and sent back to the trial court for further penalty assessment proceedings. The case is in many ways inapposite; the trial court (and court of appeals which had affirmed) thought the words of the statute, and the express formula for calculating the fines, were mandatory, without room for the exercise of any discretion by the trial court. Thus there was no employment of any analysis to determine an appropriate and necessary penalty amount, as here, using (for example) the 5-factor *Reader's Digest* approach. *Id.*, 37 Cal.4th at 727, 124 P.3d at 420. That latter test, of course, does contain "good faith" as one of the criteria, but the weight to be given to each consideration is not prescribed. It is unclear what happened to that California civil penalty against Reynolds, on remand.

[23] Again, none of the of the scientific or medical studies conducted by Reynolds ultimately suggested, let alone proved that smokers would be at any increased risk, or would suffer any different or discrete harm, from smoking Eclipse instead of a traditional cigarette, or even adopting Eclipse as their "regular brand." In the most literal and superficial sense, there is no proof that the Eclipse health claims were in fact false.

the attendant circumstances the court must conclude Reynolds also did not, when viewed objectively, act in "good faith" as that term appears to be used in the *Reader's Digest* 5-factor analysis. *Cf., e.g., People ex rel. Lockyer v. R. J. Reynolds Tobacco Co.*, 37 Cal.4th 707, 729, 124 P.3d 408, 422 (2005)(civil statutory fine imposed for "willful" violation "required only an intentional act, not knowledge of the act's illegality, and . . . ignorance of illegality was not a defense").

Turning to the second factor, the "injury to the public," the actual economic impact in Vermont was minimal, i.e., around $12,000 in additional net revenue to RJRT from selling 410 cartons of Eclipse in this state. *Cf., e.g., Commonwealth v. Amcan, supra,* 712 N.E.2d at 1211-12 ($1.47 million in revenue linked to deceptive advertising scheme; civil penalty affirmed at $733,000, or 49.86% of ill-gotten gains, vs. maximum penalty exposure under Mass. statute of $11,725,000, or 6.25%); *Commonwealth v. Fall River Motor Sales, supra,* 565 N.E.2d at 1212 ($126,396 in additional revenue attributed to 3 deceptive ads in the Boston Globe; civil penalty of $20,000 affirmed, at 15.8% of revenue, 66.66% of maximum penalty).[24] As discussed elsewhere, there was no proven injury, or additional harm to existing smokers who might have chosen to either try, or switch to Eclipse, and the State abandoned its claims that the Eclipse marketing campaign might have had broader public impacts by allegedly delaying "reduce or quit" efforts by existing smokers, or even potentially inducing non-smokers to begin the habit.

Nonetheless, as repeatedly emphasized by the State, there was larger, and more diffuse "injury to the public" beyond that inherent in any deceptive marketing blitz. Cigarettes are an inherently dangerous product, which result in avoidable disease and unnecessarily premature deaths even when used "correctly" and for their intended purpose. Their marketing is subject to extensive, and pervasive safety and health regulation, especially in the realm of non-adult smoking. The deliberate and intentional use of these types of unsupported "less risk" health claims to sell cigarettes is especially pernicious, and has repercussions for the public at large well beyond the immediate commercial gain (or, as here, the lack thereof).

The third and fourth factors under *Reader's Digest* appear to be related, in the sense that both ultimately focus the court's attention on the need for effective deterrence, and to set a civil penalty amount that removes the incentive for further violations by eliminating the positive gain (financial, or otherwise) to be derived from the respondent's deceptive marketing efforts. It is of course related also to the "actual injury" component just discussed, if that can be determined in a given case (although as noted "public injury" is broader than just the immediate economic consequences). But "eliminate[ing] the benefits derived by [the] violation," *id.*, 662 F.2d at 967, in this particular case arguably takes on a special meaning apart from how much revenue the actual sales of Eclipse might have generated. Here, as the above-quoted deposition testimony from David Iaucco aptly demonstrates, and as the court described at some length in the liability decision, Reynolds embarked on its Eclipse marketing strategy in

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[24] The Massachusetts Supreme Judicial Court strongly emphasized the need for deterrence in these deceptive marketing cases, and thus the need to impose a penalty which ignored the perpetrator's claim it was just a single promotional scheme that should be punished only once. *Id.* at 1213, *citing Reader's Digest, supra.*

large part to justify, and possibly even cover (or at least break even on) the expense and effort of developing a potentially reduced exposure product (or "PREP"), which in turn required overcoming consumer resistance and/or unfamiliarity, which in turn appeared to be possible only by making the dramatic "less risk" health claims. And, developing a successful alternative to the traditional tobacco-burning cigarette was then, and clearly remains a paramount goal for Reynolds, if not a matter of ultimate company survival. *Cf.* ¶ 21, *supra*. In this sense, the developmental and marketing costs for Eclipse – the former was never established at the liability trial, or more recently during the remedy phase – are the real "benefits derived by [the] violation" and which the court should look to address in assessing a necessary, and adequate civil penalty amount.

Finally, the need to vindicate the "enforcement" authority, and public protection role of the State is the last factor to be considered. The outer contours of the civil penalty amount imposed by the court must obviously be limited to what Vermont law allows, and be premised primarily on the unlawful impact of the deceptive marketing on Vermont consumers. But the reality, and larger context of this suit, and extensive multi-year marketing program for Eclipse cannot be wholly ignored. The Eclipse "roll-out" beginning in 2003 was intentionally nationwide, and the extensive marketing strategy developed, and implemented by Reynolds had nationwide scope and national impacts. It is fair to assume that, for whatever reason(s), 39 of the 40 other state Attorneys General who signed the March 2005 warning letter allowed Vermont to bring, and pursue this single "test case" over Eclipse and the "less risk" health claims made by Reynolds. This would not be the first time that Reynolds itself has recognized that enforcement litigation in a single state can have spill-over consequences that effectively limit its business options and methods nationwide. *See* ¶ 15 and fn. 11 *supra*.

The outer limit, and maximum amount here of the civil penalty the court may assess against Reynolds, under 9 V.S.A. § 2458(b)(1), is $67.76 million. Within that outer boundary, the court then has some freedom – i.e., judicial discretion, *see Reader's Digest, supra,* 662 F.2d at 967; *Commonwealth v. Amcan, supra,* 712 N.E.2d at 1211 – to fashion a civil penalty response which is arguably tailored to and addresses the reality of the conduct actually engaged in by Reynolds. The court is mostly concerned with, and primarily considers some approach which will substantially remove or reduce the benefits which Reynolds accrued by pursuing the extensive Eclipse development and marketing campaign with the unsupported "less risk" health claims; the amount of any civil penalty which will actually create any such deterrence, as well as nominal punitive effect on an entity the size of Reynolds, must indeed be substantial itself. Secondarily, the court is also concerned with vindicating the public protection and enforcement prerogatives of the State, under both the Vermont CFA and the MSA and Consent Decree; even though nominally limited to Reynolds' violations in Vermont, to address those violations and this State's role in any meaningful way again requires a substantial monetary response that cannot be numerically limited just by the relatively small number of Vermont consumers or the net revenue generated here.

Finally, RJRT's lack of objective "good faith," as discussed above – and its concurrent lack of "bad intent" as well as its co-occurring affirmative reasons for selling Eclipse in the manner it deliberately chose – play only a very small part in the court's

ultimate assessment of the appropriate amount of the civil penalty. Likewise, the court places little emphasis on Reynolds' prior "wrongdoing" and the fact that it has been involved for many years in numerous other enforcement and civil penalty cases against it (and the other national tobacco companies), the most important of which is the federal RICO action which has finally culminated in an extensive injunction and remedial order against Reynolds (and the others), *see infra*. Finally, the fact the court ultimately found "only three" of the challenged Eclipse claims to be deceptive is of little solace to Reynolds; the three "less risk" statements found to be misleading and unsupported by the necessary medical evidence were the core of the extensive Eclipse marketing campaign.

The court declines to fashion a civil penalty using some arbitrary "per violation" number. Instead, the court will ground the penalty amount in the real world of what Reynolds actually did in its efforts to promote and market Eclipse deliberately using deceptive "less risk" health claims. It spent $16.656 million on advertising and other marketing and promotional expenses for Eclipse, just through 2004 when it stopped using the "Scott ad" (although it continued with other uses of the same or similar "less risk" health statements, and did not stop selling Eclipse until 2007). Recouping 50% of that amount, in effect forcing Reynolds to take a charge-back of $8.328 million against its own marketing expense for Eclipse, is a rational response that is directly related to the deceptive conduct Reynolds engaged in. That amount recognizes some rough equivalency for the "mixed-motive" nature of RJRT's actions, and is certainly well less than what might arguably be appropriate – e.g., one could persuasively argue that dollars spent in 2000-2004 should be adjusted upward for inflation and the value of that same amount of money today, and one could also argue that RJRT's known marketing costs from 2000-2004 do not reflect the total amount spent on selling Eclipse for the entire period, from inception through 2007. **The civil penalty to be assessed against R. J. Reynolds Tobacco Co., pursuant to 9 V.S.A. § 2458(b)(1), shall be $8,328,000.**

The court has few illusions that even this amount, at $8.328 million, will likely have any real deterrent effect on Reynolds, although that is the court's principal rationale. Given the reality of the huge numbers Reynolds must deal with day-to-day, and year-to-year in connection with all tobacco-related litigation, enforcement, and regulatory matters – e.g., setting aside roughly $2.5 billion every year for its share of the MSA payments to the states; or the $938 million in disputed adjustments for 2011 and 2012 alone vis-à-vis non-participating tobacco manufacturers; or RJRT's share of the $125.8 million just in punitive damages already assessed (and under review or on appeal) in Florida tobacco-related cases alone – the $8.328 million civil penalty imposed here will likely be pocket change, and not really large enough by itself to influence Reynolds' future behavior from a strictly monetary standpoint.[25] This penalty amount is a fraction (maybe 12-15%) of the average amounts RAI now spends on either research and development, or advertising and marketing, for all of its tobacco products.

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[25] Reynolds argues that what it has spent on its own attorney's fees and litigation expense – an amount it steadfastly refuses to disclose – and what it will likely have to pay to the State for its attorney's fees and costs, should be taken into consideration as well. The amount of the latter is premature; the contention itself is legally irrelevant. *Cf., e.g., Commonwealth v. Fall River Motor Sales, supra,* 565 N.E.2d at 1214.

However, to impose any lesser amount would have even less impact or effect, and would be an abdication of the court's responsibility to fashion a meaningful penalty response that is consistent with the actual facts of the case, and directly addresses the deceptive marketing conduct that Reynolds actually engaged in. The court does remain hopeful that this civil penalty amount, in connection with the court's March 2010 liability findings and analysis, are together substantial, serious, and significant enough to influence RJRT's conduct going forward when it inevitably attempts to develop, and market the next generation of allegedly reduced-risk tobacco products.

(C) Reynolds' Constitutional Claims

Having determined that $8.328 million is the appropriate, and minimally necessary civil penalty to assess against Reynolds, the court must next consider RJRT's arguments that such an amount is disproportionate, even to the extent of being unconstitutional under the Due Process clause and/or 8th Amendment (i.e., "excessive fines" clause) to the United States constitution, and any equivalent limitations under the Vermont constitution stated in Chap. II, § 39, *see State v. Venman,* 151 Vt. 561, 572-74 (1989); *State v. Bacon,* 167 Vt. 88, 96-98 (1997). The sanction to be imposed is 12.3% of the maximum civil penalty that might have been theoretically assessed against Reynolds under the CFA statute; as noted, it is essentially 50% of the actual dollars RJRT spent on marketing Eclipse just from 2000-2004, unadjusted for the inflationary value of the same amount of money today, or for the total of all marketing expenses incurred for Eclipse through 2007 (when all sales finally ended). The $8.328 million civil penalty is 0.362% of Reynold's adjusted operating income ($2.3 billion) for 2012, and 0.655% of the parent holding company's (RAI's) net income of $1.272 billion in 2012.

The court's admittedly discretionary assessment of statutory damages and/or civil penalty amounts, which are cabined by the Legislature's own determination of both the allowable range and the upper maximum, are generally thought not to present the same constitutional issues raised by jury assessments of punitive damages. By definition, advance notice of the violator's maximum monetary exposure is provided by the statute itself, and any arguable "disparity between 'actual harm' and an award of statutory damages" is immaterial because such awards "are designed precisely for instances where actual harm is difficult or impossible to calculate," *see Capitol Records v. Thomas-Rasset,* F.3d (8th Cir. 2012), and imposing some punitive as well as deterrent effect is the very purpose of the statutory civil penalty. *See also, e.g., Sony BMG Music Entertainment v. Tennebaum,* 660 F.2d 487, 513 (1st Cir. 2011); *Verizon California, Inc. v. Onlinenic, Inc.,* 2009 WL 2706393, at 7-8 (N.D. Cal. 2009); *United States ex re. Tyson v. Amerigroup Illinois, Inc.,* 488 F.Supp.2d 719, 748 (N.D. Ill. 2007); *People ex rel. Lockyer v. Fremont Life Ins. Co.,* 104 Cal.App.4th 508, 521-22 (2002).

With respect to the "proportionality" argument, *see Venman, supra; cf. Lockyer v. R. J. Reynolds, supra,* 37 Cal.4th at 728-730, 124 P.3d at 421-423,[26] Reynold's

[26] *Lockyer v. R. J. Reynolds* states that any imposition of a civil penalty pursuant to statute is subject to constitutional limitations, both state and federal, barring "excessive fines" and as a possible "due process" violation. *Id.* "It makes no difference whether the court examine[s] the issue as an excessive fine or a

contention that the civil penalty in this case is somehow limited by the civil penalties imposed in other Vermont cases (often, if not primarily by consent decree, rather than after plenary trial, as here), or by the treble damages limitation when a consumer pursues a private cause of action, *see* 9 V.S.A. § 2461(b), or by the criminal fine limitation of $1000 in a superficially analogous statute criminalizing "false advertising," *see* 13 V.S.A. § 2005, is not persuasive. If the Vermont Legislature had intended to limit the range of allowable civil penalties under 9 V.S.A. § 2458(b)(1) to only $1000, instead of $10,000, it could have explicitly said so.

Further, no actual evidence has been presented to support Reynold's general contention that a civil penalty range of $0 - $10,000 per violation is somehow "grossly disproportionate" to the gravity of, and public harm caused by each such instance of deceptive marketing. *See Bacon, supra,* 167 Vt. at 96 & fn. 7 ("the overriding consideration in proportionality claims is the comparison of the [violation] committed and the [penalty] imposed . . . only where this threshold comparison 'leads to an inference of gross disproportionality' should a court engage" in any further comparative analysis). This court refuses to speculate why the Legislature may have chosen to leave the crime of "false advertising," originally enacted in 1947 , or possibly even 1931 – well before more modern, and current approaches to false advertising regulation have shifted to these types of civil consumer fraud enforcement actions – as a misdemeanor subject to a maximum fine of $1000.

The "proportionality" principle in this context is typically said to include consideration of four criteria in order to determine whether a given fine, or statutory civil penalty is reasonable and therefore constitutionally valid: "(1) the Defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the Defendant's ability to pay." *Lockyer v. R. J. Reynolds, supra,* 37 Cal.4th at 728, 124 P.3d at 421, *citing United States v. Bajakajian,* 524 U.S. 321, 337-38, 118 S.Ct. 2028 (1998). But this is essentially the same test, with essentially the same factors, which the court has already applied under *Reader's Digest* in determining the minimally necessary, and appropriate penalty to assess against Reynolds. There is no apparent reason why the court must duplicate that effort, and repeat it all over again.

Other arguments advanced by RJRT to ward off a substantial civil penalty are also not persuasive. The remedies available to a defrauded consumer under § 2461(b) serve a much different purpose than the overriding public protection goals which underlie the deterrent and enforcement penalties allowed to the State under § 2458(b) of the CFA, which in any event provides for recoupment of individual consumer restitution in addition to the maximum penalty of $10,000 per violation. Finally, comparisons to what other CFA violators have been required to pay as a civil penalty are

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violation of due process"; the "proportionality" test, *see infra,* is the applicable lens through which to examine each. *Id.*

unhelpful, given the small sample size in Vermont,[27] *cf. Bacon, supra,* 167 Vt. at 98, and the general conclusion that such comparisons are legally immaterial.[28]

Where Reynolds has committed multiple violations which were intentional, deliberate and substantially deceptive; in a commercial and marketing arena where public protection and concerns about misleading health claims are already paramount; and the civil penalty amount assessed by the court is still nonetheless significantly reduced from the maximum allowable and less than 1% of the company's operating and/or net income, the sanction assessed is proportionate to the actual conduct and an amount necessary to get Reynolds' attention for deterrence purposes. *Cf., e.g., State v. Venman, supra,* 151 Vt. at 573-74 (cit. omitted) (maximum penalty significantly enhanced due to multiple number of offenses); *Korangy v. FDA,* 498 F.3d 272, 278 (4th Cir. 2007); *Lockyer v. R. J. Reynolds, supra,* 37 Cal.4th at 730, 124 P.3d at 422 ("lack of good faith . . . support[s] imposition of a large fine" where advertiser "failed to cease its unlawful conduct when notified" and/or "continued to sell" with "deceptive" marketing claims)(cits. omitted). There is no apparent reason which compels the court to reduce the civil penalty of $8.328 million.

(D) Permanent Injunctive Relief

The State also seeks broad injunctive relief against Reynolds to address its violations of the CFA, MSA and Consent Decree, and to prohibit RJRT from engaging in any future conduct of a similar nature with respect to not only Eclipse and other "potentially reduced-exposure products" ("PREPs"), but also all tobacco and tobacco-related products generally. However, the parties (and the court) agree that the jurisdictional limits of any such injunction must confine its scope, and application to Reynolds' conduct within the state of Vermont. Injunctive relief is clearly authorized under the CFA, *see* 9 V.S.A. § 2458(a), (b), and the express terms of both the MSA and Consent Decree anticipate the issuance of restraining and/or enforcement orders to address any proven violations. *See* MSA, § VII(c)(3); Consent Decree, ¶ VI(A).

Reynolds' first argument against issuance of any injunctive relief is that the need for any restraining and/or enforcement orders has gone away because it is no longer selling Eclipse, or any other tobacco PREPs – indeed, it stopped selling Eclipse in 2007

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[27] Reynolds points, for example, to the Final Order in *State v. CSA-Credit Solutions of America, LLC,* Dkt. # 484-7-10 Wncv (March 21,2012), in which the court imposed a civil penalty of "only" $2.07 million under 9 V.S.A. § 2458(b)(1), in addition to consumer restitution and reimbursement for investigation and litigation costs ($91,059.50). There is little context, however, to evaluate the size of the civil penalty in that case against the details of the CFA violation(s) actually found to have been committed. Other than the fact that $2.07 million is less than the $8.328 million penalty to be imposed here, it is difficult to understand how *CSA-Credit Solutions* supports any "proportionality rule" which is helpful here.

[28] *See Bacon, supra,* 167 Vt. at 96 & fn. 7. *See also, e.g., United States v. Emerson,* 107 F.3d 77, 81 & fn. 9 (1st Cir. 1997): "[T]he proportionality concern in an excessive fines case is generally considered to be a question of whether the fine imposed is disproportionate to the [violation] committed, not whether a given fine is disproportionate to other fines imposed on other defendants. Although review of penalties in similar cases may be instructive in evaluating the range of penalties appropriate for a given [violation], . . . it [is] of limited assistance in judging whether a given fine exceeds constitutional bounds."

– and is not making any similar health-related comparative marketing claims in any of its current advertising or promotional campaigns for any of its products. The short answer here is that "the fact that illegal conduct has ceased does not foreclose injunctive relief" where there is the ability to commit the same or similar infractions in the future, absent a permanent restraining order. *See FTC v. National Urological Group,* 645 F.Supp.2d 1167, 1209 (N.D. Ga. 2008), *aff'd,* 356 Fed.Appx. 358 (11th Cir. 2009), *reh'g en banc denied,* 401 Fed.Appx. 522, *cert. denied,* 131 S.Ct. 505 (2010) (cits. omitted); *cf. All Cycle, Inc. v. Chittenden Solid Waste District,* 164 Vt. 428, 432-33 (1995) ("voluntary cessation of . . . illegal conduct does not moot a case")(cit. omitted). *See also, e.g., FTC v. Accusearch, Inc.,* 570 F.3d 1187, 1202 (10th Cir. 2009) (injunction warranted where defendant continues to conduct same general business and has "capacity" to engage in similar acts or practices in the future). Where the necessary prerequisites are established – i.e., numerous, and serious instances of deceptive marketing, and the ability to engage in the same or similar conduct going forward – then the respondent bears the "heavy burden of showing there is no reasonable expectation that [the] wrong will be repeated." *All Cycle, supra,* 164 Vt. at 433; *see also, e.g., FTC v. Direct Marketing Concepts, Inc.,* 648 F.Supp.2d 202, 212 (D. Mass. 2009).

In determining whether there is a "cognizable danger of future violations," the court may look to such indicators as the nature of the violations already committed, whether the Defendant's business gives it the ability (if not some incentive) to commit future violations, and the possible harm to consumers if the same deceptive marketing practices are committed again. *See National Urological Group, supra,* 645 F.Supp.2d at 1209 (cit. omitted). The court's remarks on these points in *National Urological Group,* where a broad permanent injunction against future violations was entered by the court, are instructive:

> The evidence clearly demonstrates that the corporate [D]efendant['s] . . . violations . . . were numerous and grave. [Respondent] did not engage in a harmless advertising scheme with an isolated incidence of deception; instead, their advertising scheme was chock-full of false, misleading, and unsubstantiated information. This deceptive propaganda was not simply distributed through magazine advertisements and other general circulation media that could be easily "tuned out" by consumers; rather it was also sent directly to pre-determined lists of individuals who were especially vulnerable to such targeted advertisement[s]. In short, the [Defendant] dispensed deception to those with the greatest need to believe it . . .

i.e., existing smokers with a nicotine habit presumably craving some way to lessen their risk of contracting cancer or other debilitating diseases because they are unable to quit. *Id.,* 645 F.Supp.2d at 1209. The court again emphasized that the respondent's "current business endeavors" and essential business model "could serve as a platform for continuing violations" and further deceptive statements of a similar nature. *Id.,* at 1209-1210. Finally, the court emphasized that, beyond any financial injury to consumers (or

gain by the defendant), "[m]ore concerning is the physical harm that these types of deceptive claims could foreseeably inflict on consumer's health." *Id.*, at 1210.[29]

Second, Reynolds argues that the prior Consent Decree in this case, and the broad 18-page injunction order against it arising out of the federal government's anti-racketeering ("RICO") lawsuit brought against all of the tobacco companies – *see United States v. Phillip Morris USA, Inc., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006)(initial liability findings and remedial order), *aff'd in part & rev'd in part,* 566 F.3d 1095 (D.C. Cir. 2009)(liability upheld; injunction remanded), *cert. denied,* 130 S.Ct. 3501 (2010); *United States v. Phillip Morris USA, Inc., et al.*, 787 F.Supp.2d 68 (D.D.C. 2011)(revised injunction order, effective through September 1, 2021), *aff'd,* 626 F.3d 832 (D.C. Cir. 2012), *see* fn. 35 *infra* – makes any injunction order from this court unnecessary and duplicative. The short answer to the first point is that the MSA, and the existing Consent Decree(s) obviously did not have the full deterrent effect against deceptive marketing that was expected. *See id.*, 566 F.3d at 1134 (the D.C. Circuit endorsed the trial court's finding that "despite the MSA [the tobacco companies] still fraudulently . . . marketed 'low tar' cigarettes as a healthier alternative to quitting").

Next, while there may be some overlap in the practical effect on Reynolds' business operations going forward because of multiple injunctions, that is the inevitable result of Reynolds having violated the laws of multiple jurisdictions, and having been found in violation of this court's own 1998 order and Consent Decree, with each entity then having independent enforcement authority which needs to be properly recognized. In any event, the injunction this court will enter as a result of this case will arguably be more narrow, and hopefully more focused than the broad injunctive relief finally granted by the federal court in the civil RICO case,[30] and thus not identical or superfluous. *Cf., e.g., National Urological Group, supra,* 645 F.Supp.2d at 1210. However, to that extent the court does take into consideration the other injunction order(s) to which RJRT is now subject, in fashioning the appropriate, and minimally necessary injunctive relief to be awarded here.

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[29] Again, the court acknowledges that the State abandoned any effort to prove that existing smokers were actually deterred from quitting, or reducing the number of cigarettes smoked, because of Reynold's deceptive Eclipse marketing. However, in considering the need for injunctive relief against repeating the same sort of marketing efforts, commonly understood patterns of human behavior, indeed essential human nature, need not be ignored entirely, especially where it is undisputed that smoking is not only psychologically but physiologically addictive; commonly accepted that addicts will utilize any available means, and any handy rationalization, to continue their habit; and previously discussed in this case that Eclipse smokers were likely to change their smoking patterns, and likely to exceed the laboratory measurements of smoke intoxicants obtained by Reynolds, in order to maintain their needed levels of nicotine intake. *Cf. id.*, at 1210 (it is "easy to imagine that a consumer, relying upon false and unsubstantiated advertising about . . . safety, efficacy, and ability to conquer health threatening circumstances, could forego a much needed medical" alternative).

[30] The "Final Judgment and Remedial Order" entered in the federal RICO case, along with the negative proscriptions on conduct which might be expected, *see infra* fn. 35, also includes numerous and substantial affirmative obligations which Reynolds, along with all of the other tobacco companies, must carry out over the next decade. *See United States v. Phillip Morris USA, Inc., et al., supra;* Exhibit RJR-2004. This court's order will not impose any affirmative, or pro-active obligations on RJRT.

Third, the advent of regulatory authority given to the FDA to address these types of tobacco product development, manufacturing, and marketing issues[31] does not pre-empt this court from exercising its own enforcement authority as granted by 9 V.S.A. § 2458(a), (b), and as a sanction for Reynolds' violation of this court's prior Consent Decree. *See* "Family Smoking Prevention and Tobacco Control Act," Pub. L. No. 111-31, 123 U.S. Stat. 1776 (June 22, 2009), *codified at* 21 U.S.C. § 387 *et seq.* Congress expressly provided that "[n]othing" in the Tobacco Control Act "shall be construed to . . . affect any action pending in [any] Federal, State, or tribal court." *Id.*, § 4(a), 123 U.S. Stat. at 1782. If, at some future time the FDA promulgates and begins to actually implement and enforce regulations regarding the development, production and sale of tobacco PREPs[32] – presumably after extensive consideration of even more in-depth, and more recent scientific evidence than that reviewed by this court, by multiple experts certainly more capable and cognizant than this court of the myriad health and medical issues presented – which materially conflict with the injunction to be issued here, there should be no doubt the court will consider at that point any necessary revisions to reflect, and recognize the FDA's superior regulatory authority.

The case law generally supports the State's contention that an "all products," or "fencing in" injunction would be entirely permissible given the nature of the substantial violations deliberately committed by Reynolds, and the transferability of such marketing techniques to any other tobacco and/or tobacco-related products which it presently manufactures and sells, or might choose to develop and sell in the future. *See, e.g., Sears, Roebuck & Co. v. FTC, supra,* 676 F.2d at 394 ("A selling strategy based on . . . the making of false and unsubstantiated . . . claims . . . could be readily transferred to the marketing of other [products] in the [same] category");[33] *Kraft, Inc. v. FTC,* 970 F.2d 311, 326-27 (7th Cir. 1992); *cf. United States v. Phillip Morris USA, Inc., et al., supra,* 787 F.Supp.2d at 74 (broad federal injunction involving all cigarette products, *see* fn. 35 *infra*).[34]

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[31] The 2009 Tobacco Control Act provides in pertinent part that sale of any "modified risk tobacco product" is prohibited unless the FDA concludes the product "will significantly reduce[ ] harm and risk of tobacco-related disease to individual tobacco users" and "benefit the health of the population as a whole . . . ." *Id., codified at* 21 U.S.C. § 387k(g)(1).

[32] The FDA's consideration of its general scientific and medical approach to these issues – i.e., the tobacco industry's development of tobacco PREPs and what "less risk" claims, if any, can be validly made in marketing those products – as well as the promulgation of its own regulations, have all been substantially delayed by the industry's (including Reynolds) various challenges to all, or parts of the 2009 Tobacco Control Act. *See, e.g., Discount Tobacco City & Lottery, Inc. v. United States,* 678 F.Supp.2d 512 (W.D. Ky. 2009), *aff'd in part & rev'd in part,* 674 F.3d 509 (6th Cir. 2012), *cert. denied sub nom. American Snuff Co. et al. v. United States,* _ U.S. _ , _ S.Ct. _ (No. 12-521)(Apr. 22, 2013).

[33] The Ninth Circuit also stated: "Extensive and substantial violations justifying a multi-product order may include a nationwide, long-term, multi-million dollar false advertising campaign relating to a single widely used, high-cost product . . . ." *Id.*, 676 F.2d at 394 (cit. omitted).

[34] In the RICO case the U.S. District Court stated, in justifying the need for an extensive "fencing in" injunction: "[A]s long as [the tobacco companies] are in the business of selling and marketing tobacco

Certainly Reynolds has made it clear, in its most recent filings with and statements to the Securities & Exchange Commission, *see* ¶ 21 *supra,* that the further development and marketing of tobacco PREPs in some form is key to the company's long-term commercial interests. Given that intense, and continuing interest in this area by Reynolds, it would be remiss of this court not to issue some sort of injunctive relief to the State, as yet another means to deter RJRT from engaging in the same types of deceptive marketing techniques as has already occurred with the Eclipse cigarette. However, the court is constrained by the reality that Vermont is a small state with limited resources, both judicial and otherwise, and it would be inefficient, and arguably presumptuous, for this court to claim on-going jurisdiction (and the necessary monitoring and enforcement authority) over the marketing of all tobacco products created or sold by Reynolds, when both the FDA and the United States Department of Justice now have the tools, and the superior resources and expertise, to fulfill that role.[35]

Accordingly, the court will enter the following permanent injunction against Defendant R. J. Reynolds Tobacco Co.:[36]

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products, they will have countless 'opportunities' and temptations to take similar unlawful actions in order to maximize their revenues, just as they have done for the past five decades." *Id.*

[35] In particular, the Final Judgment and Remedial Order of the federal court in the RICO case imposes the following injunction against Reynolds (and the other tobacco company defendants):

> 3. All Defendants . . . are permanently enjoined from making, or causing to be made in any way, any material false, misleading or deceptive statement or representation . . . that misrepresents or suppresses information concerning cigarettes. Such material statements include, but a re not limited to, any matter that (a) involves health, safety, or other areas with which a reasonable consumer or potential consumer of cigarettes would be concerned; (b) a reasonable consumer or potential consumer would attach importance to in determining whether to purchase or smoke cigarettes; or (c) the Defendant . . . making the representation knows or has reason to know that its recipient regards or is likely to regard as important in determining whether to purchase cigarettes or to smoke cigarettes, even if a reasonable person would not so regard it.
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> 4. All Defendants . . . are permanently enjoined from conveying any express or implied health message or health descriptor for any cigarette brand either in the brand name or on any packaging, advertising or other promotional, informational or other material. Forbidden health descriptors include the words "low tar," "light," "ultra-light," "mild," "natural," and any other words which reasonably could be expected to result in a consumer believing that smoking the cigarette brand using that descriptor may result in a lower risk of disease or be less hazardous to health than smoking other brands of cigarettes. Defendants are also prohibited from representing directly, indirectly, or by implication, in advertising, promotional, informational, or other material, public statements or by any other means, that low-tar, light, ultra-light, mild, natural, or low-nicotine cigarettes may result in a lower risk of disease or are less hazardous to health than other brands of cigarettes.

See United States v. Phillip Morris USA, Inc., et al., supra; Exhibit RJR-2004.

[36] The court certainly understands that the development and marketing of so-called "smokeless tobacco" products – i.e., snus, or snuff – is the next big frontier, and marketing opportunity for RJRT and all of its competitors, at least in the United States. *See, e.g.,* ¶s 20-21 *supra.* Nonetheless, the court stands by its decision, for all of the jurisprudential reasons already cited, to issue the minimally necessary injunctive relief which corresponds only to the specific conduct, and the discrete corporate entity, which were

Defendant R. J. Reynolds Tobacco Co. is hereby permanently enjoined, and prohibited from

(A) marketing, distributing, selling, promoting or advertising – within the state of Vermont or in any manner which would reasonably be expected to reach consumers or potential customers in the state of Vermont – any non-traditional cigarette, or "potentially reduced exposure product" ("PREP"), which contains actual tobacco as a constituent component or ingredient in any amount, whether the tobacco is burned, heated or otherwise subjected to any process intended to release the tobacco's own constituent elements (including, but not limited to nicotine (or any chemical variant(s) thereof));

(B) through the use of, together with, or accompanied by any marketing claims, or advertising or promotional statements which suggest, state or allow any inference by a reasonable existing cigarette smoker, that the purchase and use of the PREP or non-traditional cigarette will lessen, or reduce the purchaser's medical risk, or chances of developing (or contracting) cancer, chronic bronchitis, or emphysema, unless

(C) Reynolds can cite to (1) at least one long-term epidemiological study of existing smokers using the same (or an essentially similar) PREP and/or non-traditional cigarette, published in an accredited scientific or medical journal of general circulation, which clearly and unequivocally supports the claim(s) or statement(s) made under sub-part (B) above; or (2) multiple studies of existing smokers using the same (or an essentially similar) PREP and/or non-traditional cigarette, each published in an accredited scientific or medical journal of general circulation, which studies document a statistically and medically significant decrease in the presence, or incidence of validated biomarkers for the development of cancer, chronic bronchitis, or emphysema as a result of the use of the PREP and/or non-traditional cigarette, where (i) the existing smokers' use of the PREP and/or non-traditional cigarette in each study accurately and substantially replicates the smokers' regular patterns of smoking and in particular the smokers' regular level of nicotine intake, and (ii) the "validated biomarkers" are recognized and accepted as such for the development of cancer, chronic bronchitis, or emphysema by a broad community of scientists and medical experts familiar with tobacco-related diseases.

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actually put on trial in this case, and found to be in violation of the CFA, and the MSA and Consent Decree.

III. **FINAL ORDER**

A final judgment shall be entered in favor of the State of Vermont, adjudging Defendant R. J. Reynolds Tobacco Co. to be liable to the State under 9 V.S.A. § 2458(b)(1), and as a sanction for violation of the Master Settlement Agreement and the 1998 Consent Decree previously entered by this court, requiring the payment of a civil penalty to the State in the total amount of $8.328 million.

A permanent injunction shall be entered in favor of the State of Vermont and against Defendant R. J. Reynolds Tobacco Co., pursuant to 9 V.S.A. § 2458(a), (b), and to address and remedy Defendant's violation of the Master Settlement Agreement and the 1998 Consent Decree previously entered by this court, as set forth immediately above.

Any application by the State of Vermont for an award of attorney's fees and/or other investigative or litigation costs and expenses, under 9 V.S.A. § 2458(b)(3) or as may be allowed under the Master Settlement Agreement and the 1998 Consent Decree previously entered by this court, shall be served, and filed as required by VRCP 54(d)(2), or within such further time and under such circumstances as the court shall direct, by stipulation of the parties or otherwise.

IT IS SO ORDERED, at Burlington, Vermont, this 3rd day of June, 2013.

Dennis R. Pearson, Superior Judge

VBL VITT BRANNEN LOFTUS

December 11, 2013

VIA EMAIL ONLY

Robert J. Shaughnessy, Esq.
WILLIAMS & CONNOLLY LLP
725 12th Street, N.W.
Washington, D.C. 20005

Re: *State of Vermont v. R.J. Reynolds Tobacco Co.*
Docket No. S1087-05 CnC

Dear Bob:

The purpose of this letter is to confirm that a settlement was reached on Friday, December 6, 2013 in connection with the action entitled *State of Vermont v. R.J. Reynolds Tobacco Co.*, Docket No. S1087-05 CnC ("the Chittenden Civil Division Action"), and to memorialize the terms of the settlement. It is our understanding that the parties have agreed as follows:

1. On or before Friday, December 13, 2013, R.J. Reynolds Tobacco Company ("Reynolds") will pay to the State of Vermont ("the State"), by wire transfer to the State's designated bank account or accounts, the sum of $14,000,000.00 (Fourteen Million Dollars and No Cents) ("the settlement funds");

2. Timely payment of the settlement funds shall fully resolve any and all monetary claims that the State has asserted or might have asserted in the Chittenden Civil Division Action, including but not limited to any and all claims for civil penalties, prejudgment interest, post-judgment interest, and attorneys' fees, expenses and costs, and including the award of civil penalties set forth in Paragraph I of the Amended Final Judgment and Permanent Injunction issued August 8, 2013;

3. Within 24 hours after the wire transfer of the settlement funds in full has been confirmed, the State shall withdraw, with prejudice, the State's Motion for Attorneys' Fees, Expenses and Costs by written letter to the Clerk of the Chittenden Civil Division and provide a copy of the letter to Reynolds' counsel; provided that if the expiration of the 24 hours falls on the weekend, then the 24-hour period shall commence to run on the Monday morning following the weekend;

4. Within 7 days after the wire transfer of the settlement funds in full has been confirmed, the State and Reynolds shall file a joint stipulation providing for the withdrawal of Reynolds' pending appeal and the State's pending cross-appeal in the Vermont Supreme Court (Supreme Court Docket No. 2013-360), with the parties to bear their own respective costs;

VITT BRANNEN & LOFTUS, PLC | BARNEY L. BRANNEN bbrannen@vbllawyers.com | www.vbllawyers.com
8 Beaver Meadow Road, PO Box 1229, Norwich, VT 05055 | 802-649-5700 Fax 802-649-1692
PO Box 349, Hanover, NH 03755 | 603-640-6173

5. Within 7 days after the wire transfer of the settlement funds in full has been confirmed, the State and Reynolds, by and through their respective counsel, shall execute the Stipulation of the Parties Regarding Partial Satisfaction of Judgment which is attached hereto as Exhibit 1 and upon receipt of the fully executed Stipulation, the State shall cause said Stipulation to be filed in the Chittenden Civil Division Action; and

6. Nothing in this settlement agreement shall be construed as altering or impairing Paragraph II of the Amended Final Judgment and Permanent Injunction issued August 8, 2013, consisting of the Court's permanent injunction, which shall remain in full force and effect, or altering or impairing any of the Court's underlying decisions and rulings on the merits in the Chittenden Civil Division Action.

7. This is the entire agreement between the parties.

* * *

Please indicate Reynolds' agreement to these terms by counter-signing and dating this letter agreement below and returning it to me.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Barney L. Brannen
Special Assistant Attorney General

The above terms are hereby accepted and agreed upon.

R.J. REYNOLDS TOBACCO CO.

By: Robert J. Shaughnessy
Robert J. Shaughnessy, its attorney

cc: Mark J. Di Stefano, Assistant Attorney General
Robert B. Hemley, Esq.

EXHIBIT 1

STATE OF VERMONT

VERMONT SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. S1087-05 CnC

STATE OF VERMONT,)
)
Plaintiff,)
)
v.)
)
R.J. REYNOLDS TOBACCO COMPANY,)
)
Defendant.)

STIPULATION OF THE PARTIES REGARDING PARTIAL SATISFACTION OF JUDGMENT

Plaintiff State of Vermont and Defendant R.J. Reynolds Tobacco Company (collectively "the Parties"), by and through their undersigned counsel, hereby stipulate and agree as follows:

1. On or about August 8, 2013, the Court entered final judgment in this action, entitled "Amended Final Judgment and Permanent Injunction" ("the Court's judgment");

2. Pursuant to a separate settlement agreement entered into by the Parties on or about December 11, 2013, Defendant has fully satisfied all monetary obligations set forth in Paragraph I of the Court's judgment, including but not limited to any and all claims for civil penalties, monetary sanctions, pre-judgment interest and post-judgment interest thereon;

3. Nothing in this Stipulation shall be construed as indicating or suggesting satisfaction of or as altering or impairing in any way the provisions of Paragraph II of the Court's judgment, consisting of the Court's permanent injunction, which permanent injunction shall remain in full force and effect. Nor shall anything in this Stipulation be construed as altering or impairing any of the Court's underlying decisions and rulings on the merits in this action.

Dated: _____, 2013

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____

Barney L. Brannen
Special Assistant Attorney General
Vitt Brannen & Loftus, PLC
8 Beaver Meadow Road
Norwich, VT 05055-1229
(802) 649-5700

Mark J. Di Stefano
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3186

Dated: _____, 2013

R. J. REYNOLDS TOBACCO COMPANY

By: _____

Robert B. Hemley
Matthew B. Byrne
Gravel & Shea
76 St. Paul Street, 7th Floor
P.O. Box 369
Burlington, VT 05402-0369
(802) 658-0220

Richard M. Cooper
Robert J. Shaughnessy
Williams & Connolly, LLP
725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5000

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

In re TRADEMARK MONITORING SERVICES, INC.	)	**CIVIL DIVISION**
	)	**Docket No. _____**

ASSURANCE OF DISCONTINUANCE

1. Trademark Monitoring Services, Inc. ("TMS") is a California corporation with offices located at 355 South Grand Avenue, Room 2450, Los Angeles, California 90071.

2. The Chief Executive Officer of TMS is Artem Basan.

3. According to the company, TMS offers services to businesses such as monitoring trademarks and service mark registrations and searching for similar trademarks.

4. The cost of these services ranges from $485 per year for "Basic Federal Database Monitoring" to $1,285 per year for "Comprehensive U.S. & International Trademark Monitoring."

5. TMS has represented that it obtains authorization to bill customers for its services through express responses to direct mail and email solicitations. (Exhibit 1 is an example of one of TMS' through-the-mail solicitations; Exhibit 2 is an example of one of TMS' follow-up invoices.)

6. However, TMS has not provided the State of Vermont with copies of any such response-authorizations despite a request that it do so.

7. TMS has represented that it sent direct mail solicitations to 18 Vermont businesses (see Exhibit 1 for an example), resulting in initial payments by three of those businesses, two which stopped payment on their checks to TMS, and in no payments by the other 15.

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Montpelier, VT
05609

8. The Vermont Attorney General alleges that TMS' method of doing business involved two types of violation of the Vermont Consumer Protection Act ("CPA"), 9 V.S.A. § 2453(a).

9. First, TMS' mailings to Vermont contained a number of elements that individually and together constituted a representation that recipients of the mailings owed money to TMS. These elements included the following:

- **"PROCESSING FEE ... DUE NOW"**
- **"PAST DUE NOTICE"**
- **"BALANCE DUE"**
- **"Final Date for Payment"**
- **"YOU MUST PAY THE FULL AMOUNT DUE BY [DATE] TO AVOID ADDITIONAL PENALTIES AND LATE FEES"**
- "We previously sent you a notice to pay the balance due. This amount remains unpaid. It is important that you pay the balance due in full today. If you do not pay the balance due, we may impose collection fees ..."

10. In fact, TMS has produced no evidence that any Vermont business agreed to purchase its services or authorized any billing.

11. Second, TMS' mailings did not contain the disclaimer required by the United States Postal Service ("USPS") for through-the-mail solicitations that could reasonably be considered a bill, invoice or statement of account due, *see* 52 Fed. Reg. 6144-01 (Mar. 2, 1987). That rule states,

> Solicitations in the Guise of Bills, Invoices, or Statements of Account (39 U.S.C. 3001(d); 39 U.S.C. 3005).
>
> Any otherwise mailable matter which reasonably could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an order, is nonmailable unless it conforms to[a] through [f] below. A nonconforming solicitation constitutes prima facie evidence of violation of 39 U.S.C. 3005. However, compliance with this section will not avoid violation of Section 3005 if any portion of the solicitation or any accompanying information misrepresents a material fact to the addressee. For example, misleading the addressee as to the identity of the sender of the solicitation or as to the nature or extent of the goods or services offered may constitute a violation of section 3005.

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a. The solicitation must bear on its face the disclaimer prescribed by 39 U.S.C. 3001(d)(2)(A) or, alternatively, the notice: THIS IS NOT A BILL. THIS IS A SOLICITATION, YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER. The statutory disclaimer or the alternative notice must be displayed in conspicuous boldface capital letters of a color prominently contrasting (see [e] below) with the background against which it appears, including all other print on the face of the solicitation, and that are at least as large, bold and conspicuous as any other print on the face of the solicitation but not smaller than 30-point type.

b. The notice or disclaimer required by this section must be displayed conspicuously apart from other print on the page immediately below each portion of the solicitation which reasonably could be construed to specify a monetary amount due and payable by the recipient. It must not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces, modifies, qualifies, or explains the prescribed text, such as "Legal notice required by law." [...]

c. The notice or disclaimer must not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

d. If a solicitation consists of more than one page or if any page is designed to be separated into portions (e.g., by tearing along a perforated line), the notice or disclaimer required by this section must be displayed in its entirety on the face of each page or portion of a page that might reasonably be considered a bill, invoice, or statement of account due as required by paragraphs [a] and [b], supra.

e. For purposes of this section, the phrase "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, which does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions, and which is not at least as vivid as any other color on the face of the solicitation. For the purposes of this section the term "color" includes black.

12. While TMS' mailings did contain the proper USPS disclaimer *text* ("THIS IS NOT A BILL," etc.), the disclaimer in the mailing of which Exhibit 1 is an example did not appear in 30-point type, nor in conspicuous boldface type, nor set apart from other print on the page, nor immediately below the statement of the amount of money to be paid. It was also obscured by its small size and its placement in a dense block of type.

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109 State Street
Montpelier, VT
05609

03

13. As for Exhibit 2, mailings that took that form contained no disclaimer at all.

14. The Vermont Attorney General alleges that the foregoing mailings violated the CPA's prohibition on unfair and deceptive acts and practices in commerce.

INJUNCTIVE RELIEF

15. TMS shall comply strictly with the Vermont Consumer Protection Act and regulations enacted thereunder, and with the USPS' rule on solicitations in the guise of invoices.

PAYMENTS TO CONSUMERS

16. Within ten (10) days of signing this Assurance of Discontinuance, TMS shall send by first-class mail, postage prepaid, a check to each person in the State of Vermont who paid any money to TMS in the amount of all such monies paid, along with a letter in the form of Exhibit 3.

17. Within twenty (20) days of signing this Assurance of Discontinuance, TMS shall send by first-class mail, postage prepaid, to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, c/o Assistant Attorney General Elliot Burg, a list, attested to under oath, of all the payments made under paragraph 16, above, including the name and address of the payee, the amount of the payment, and the date the payment was mailed.

18. If any check is returned to TMS as undeliverable, the company shall send by first class mail, postage prepaid, within ten (10) days of receiving the return, a check in the same amount, with the payee's name and last-known address, to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, c/o Assistant Attorney General Elliot Burg, to be deposited in the State of Vermont's unclaimed funds account.

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109 State Street
Montpelier, VT
05609

PAYMENT TO THE STATE

19. Within twenty (20) days of signing this Assurance of Discontinuance, TMS shall send, by first-class mail, postage prepaid, to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, c/o Assistant Attorney General Elliot Burg, payment in the form of an attorney's check, or a bank or cashier's check in the amount of $10,000.00 (ten thousand dollars) as civil penalties and costs in this matter.

OTHER PROVISIONS

20. This Assurance of Discontinuance resolves all claims that the State of Vermont may have against TMS based on the facts or issues described herein.

21. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

22. TMS denies that it has violated any Vermont or federal law or regulation, and nothing herein constitutes an admission of any such violation.

Dated 7/16/15

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: _____
Elliot Burg
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated 04/29/2013

TRADEMARK MONITORING SERVICES, INC.

A. Bagan
Authorized Representative

APPROVED AS TO FORM:

Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont

Charles Rosenberg, Esq.
Law Offices of Charles Rosenberg
11500 West Olympic Boulevard
Suite 400
Los Angeles, CA 90064
For Trademark Monitoring Services, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Exhibit 1

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

TRADEMARK REGISTRATION & MONITORING OFFICE
355 South Grand Ave., Room 2450
Los Angeles CA 90071-9500

IMPORTANT NOTIFICATION REGARDING
YOUR FEDERAL TRADEMARK →

«Owner»
«MA1» «MA2»
«MACity» «MaState» «MaZip»

TRADEMARK
«Mark»
SERIAL NUMBER
«SereialNumber»

Intellectual Property Rights Recordation Alert

U.S. Customs & Border Protection (CBP), a bureau of the Department of Homeland Security, maintains a trademark recordation system for marks registered at the United States Patent and Trademark Office. Parties who register their marks on the Principal Register may record these marks with CBP, to assist CPB in its efforts to prevent the importation of goods that infringe registered marks. The recordation database includes information regarding all recorded marks, including images of these marks. CBP officers monitor imports to prevent the importation of goods bearing infringing marks and can access the recordation database at each of the 317 ports of entry. **Holders of registered trademarks and copyrights concerned about imports or exports of infringing goods should record their trademarks and copyrights with U.S. Customs and Border Protection (CBP).**

Trademark Owner Information (Please correct out-of-date information. Use enclosed envelope)	
Owner:	«Owner»
Serial Number:	«SereialNumber»
Reg. Number:	«Regnumber»
Filing Date:	«Fildate»
Primary Code:	«PrimeCode»
Intern Code:	«InterCode»

Upon receipt of this form and your payment **Trademark Registration & Monitoring Office** will: 1) Record your **U.S. Trademark Registration** with the **U.S. Customs & Border Protection (CBP) $195 Our Service Fee + $190 Government Fees** 2) Send you notice(s) when the blocking of infringing goods occurs. 3) Monitor your trademark using Trademark Registration & Monitoring Office's proprietary search engine and notify you regarding possible third party trademark infringement(s). **(Enforcing your intellectual property rights and protecting a trademark from confusingly similar names is essential and the sole responsibility of the owner and not the USPTO (United States Patent and Trademark Office).** Trademark Registration & Monitoring Office is an intellectual property registration, enforcement and monitoring service to help you protect your intellectual property rights and your Trademark from possible third party trademark infringement(s).

39 USC 3001(d)(2)(A): "THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER. THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT.

Processing Fee: $385

Reference No: **TRMO-8720982**

Return the below part with your payment ↓

DETACH AND MAIL THIS STUB WITH YOUR PAYMENT
DO NOT STAPLE, TAPE OR CLIP PAYMENT STUB OR CHECK

TRADEMARK	SERIAL NUMNER
«Mark»	«SereialNumber»

PROCESSING FEE → DUE NOW

INCLUDE YOUR PAYMENT WITH YOUR PAYMENT STUB	$385.00
INDICATE AMOUNT ENCLOSED	

MAKE CHECKS PAYABLE TO:

Trademark Registration & Monitoring Office
355 South Grand Ave Room 2450
Los Angeles CA 90071-9500

«Owner»
«MA1» «MA2»
«MACity» «MaState» «MaZip»

Please write the Serial NO on the lower left corner of your check or money order. EXH 1

Exhibit 2

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

TRADEMARK REGISTRATION & MONITORING OFFICE
355 South Grand Ave., Room 2450
Los Angeles CA 90071-9500

7261-US-7

IMPORTANT NOTIFICATION REGARDING YOUR FEDERAL TRADEMARK

«Owner»
«MA1» «MA2»
«MACity» «MaState» «MaZip»

Trademark Owner Information (Please correct out-of-date information. Use enclosed envelope)	
Owner:	«Owner»
Serial Number:	«SereialNumber»
Reg. Number:	«Regnumber»
Filing Date:	«Fildate»
Primary Code:	«PrimeCode»
Intern Code:	«InterCode»

PAST DUE NOTICE

TRADEMARK
«Mark»

Balance Due: $485
Final Date for Payment
10/29/2012

YOU MUST PAY THE FULL AMOUNT DUE BY 10/29/2012 TO AVOID ADDITIONAL PENALTIES AND LATE FEES

We previously sent you a notice to pay the balance due. This amount remains unpaid. It is important that you pay the balance due in full today. If you do not pay the balance due, we may impose collection fees, discontinue your monitoring service, deactivate your username and password and discontinue sending you notices regarding possible third party trademark infringement(s) and reminder notices of the filing deadlines under 15 U.S.C. §§1058, 1141k and 15 U.S.C. §1059.

To ensure proper credit to your account, please write your trademark serial number on the front of your payment, and return it with the lower portion of this notice.

If you write to us, please include the name, address, and daytime telephone number of an authorized person whom we may contact if we need additional information regarding the trademark.
If we do not receive payment in full within 15 days of the date of this notice, your trademark monitoring service will be suspended or cancelled.

Reference No: TRMO-9017365

Keep this part for your records ↑
Return the below part with your payment ↓

DETACH AND MAIL THIS STUB WITH YOUR PAYMENT
DO NOT STAPLE, TAPE OR CLIP PAYMENT STUB OR CHECK

SERIAL NUMBER	INVOICE NUMBER	DUE DATE	LATE AFTER
«SereialNumber»	«InvoiceNum»	10-29-12	10-30-12

BALANCE DUE →

IF NOT RECEIVED OR POSTMARKED BY 10/29/12
REMIT AMOUNT OF $510.00

DUE ON OR BEFORE OCT. 29, 2012	$485.00
AFTER OCT. 29, 2012	$510.00

MAKE CHECKS PAYABLE TO:

Trademark Registration & Monitoring Office
355 South Grand Ave Room 2450
Los Angeles CA 90071-9500

«Owner»
«MA1» «MA2»
«MACity» «MaState» «MaZip»

Please write the SERIAL NO on the lower left corner of your check or money order. Exh. 2

USER AGREEMENT FOR TRADEMARK REGISTRATION & MONITORING OFFICE's SERVICES

YOUR PAYMENT TO TRADEMARK REGISTRATION & MONITORING OFFICE OF ANY FEES FOR ITS SERVICES IS YOUR CONSENT TO AND ACCEPTANCE OF THE TERMS OF THIS USER AGREEMENT.

1. INTRODUCTION: Trademark Registration & Monitoring Office is a private, non- governmental business providing intellectual property monitoring and registration services to corporations large and small, as well as to private Individuals. We provide trademark registration, enforcement, monitoring service to help you protect your intellectual property rights and your Trademark from possible third party trademark infringement(s).We are not a law firm. We do not provide legal advice. TRADEMARK REGISTRATION & MONITORING OFFICE SERVICE IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. ACCEPTANCE OF TERMS & CONDITIONS: By submitting your payment you accept these Terms & Conditions concerning Trademark Registration & Monitoring Office's services. You further authorize Trademark Registration & Monitoring Office to charge the minimum charges for your requested service annually.

3. Copyright: All information provided by Trademark Registration & Monitoring Office is the exclusive property of Trademark Registration & Monitoring Office, Under no circumstances may you replicate any information from the subscriber or non-subscriber area, changed or unchanged.

4. WARRANTIES / LIMITATION OF LIABILITY: Trademark Registration & Monitoring Office utilizes databases and information provided by third party governmental and private entities. While reasonable steps are taken to assure that the information provided by Trademark Registration & Monitoring Office is accurate and complete, you agree that Trademark Registration & Monitoring Office shall have NO LIABILITY, beyond the fees paid by you for the service, for any damages suffered by you, including, but not limited to damages suffered by reason of mistakes, omissions, loss of data, delays in operation or transmission, non-deliveries, deletion of files or e-mail, errors, defects, computer viruses, or service interruptions of any kind, or any failure of performance, communications failure, theft, destruction or unauthorized access to Trademark Registration & Monitoring Office 's records, programs, information or services. Under no circumstances will Trademark Registration & Monitoring Office or any of its affiliated companies be liable for failing to identify and alert you of trademarks that are similar to your own trademark or service mark. You expressly agree that Trademark Registration & Monitoring Office, its affiliates and sponsors are neither responsible nor liable for any direct, indirect, incidental, consequential, special, exemplary, punitive, or other damages arising out of or relating in any way to the Trademark Registration & Monitoring Office service, its web site or to information received from the Trademark Registration & Monitoring Office or from any emails or other communications originating from Trademark Registration & Monitoring Office. You agree that Trademark Registration & Monitoring Office's liability is limited to the fees paid by you for Trademark Registration & Monitoring Office's services.

5. RIGHTS IN SERVICE CONTENT AND THE SERVICE: All content provided by Trademark Registration & Monitoring Office are protected by copyright, trademark and other applicable intellectual property and proprietary rights laws and is owned and controlled by Trademark Registration & Monitoring Office Inc.

6. INDEMNIFICATION: To the maximum extent permitted by applicable law, you will defend, indemnify and hold Trademark Registration & Monitoring Office (and any of its affiliates, officers, directors, managers, employees and agents) harmless from and against all claims, liabilities and expenses, including attorney fees, legal fees and costs, arising out of your use of any information provided to you by Trademark Registration & Monitoring Office or your breach of any provision of this User Agreement. Trademark Registration & Monitoring Office may change the terms of this User Agreement at any time by notifying you of the change either electronically or in writing.

6. DISCLAIMERS: Trademark Registration & Monitoring Office and its trademark registration and monitoring service is neither a legal requirement, nor a mandatory service. THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENT AGENCY AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT.

7. LAW GOVERNING PERFORMANCE AND DISPUTES: This Agreement, the parties' performance under it and any disputes arising under it shall be governed exclusively by the laws of the United States of America and the State of California. You expressly consent to the exclusive forum, jurisdiction and venue of the Courts located in the City, State and County of Los Angeles, in any and all actions, disputes, or controversies relating to this Service Agreement or arising as a result of your use of any of the information or services provided by Trademark Registration & Monitoring Office.

Exhibit 3

Dear _____:

Trademark Monitoring Services, Inc. ("TMS") has recently entered into a legal settlement with the Vermont Attorney General's Office based on concerns that the mailings we sent to your state violated the Vermont Consumer Protection Act. As a result of that settlement, I am enclosing a refund check in the same dollar amount as you paid to TMS. You may cash or deposit this check without any obligation.

If you have any questions, you may contact the Attorney General's Office at (802) 828-5507.

Sincerely,

Trademark Monitoring Services, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609