

VT SUPERIOR COURT  
WASHINGTON UNIT  
**STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT**

2014 NOV 21 P 4:14

IN RE: ACTIVE NETWORK, INC.

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CIVIL DIVISION

Docket No. 702-11-14wncv

**ASSURANCE OF DISCONTINUANCE**

Vermont Attorney General William H. Sorrell (“the Attorney General”) and Active Network, LLC, as successor in interest to The ACTIVE Network, Inc. (“Respondent”) hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**REGULATORY FRAMEWORK**

1. Vermont’s Consumer Protection Act prohibits “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453.

**BACKGROUND**

2. Respondent is a Delaware limited liability company, with its principal place of business located at 717 N. Harwood St, Dallas, TX 75201. Respondent runs an online platform for individuals to search and register online for races, team sports, and recreational activities. Respondent runs a membership program, ActiveAdvantage, that allows participants to access savings and discounts on sports gear, airfare, lodging, transportation, and online event registration fees.

3. One way that individuals became members of ActiveAdvantage was through a free-trial offer presented during an online registration/reservation. After an individual submitted payment for certain online registrations/reservations through Respondent’s registration platform, but before the individual received the confirmation/receipt for the registration/reservation in certain instances, an offer for a free 30-day trial membership appeared. The offer included a section for “Membership billing” information which was

- populated with the individual's name, address, credit card number, and email address. The individual accepted the trial offer by verifying the email address and clicking "Accept."
4. After accepting or declining the trial offer, the individual was provided with the order receipt for the registration/reservation. In certain circumstances, this page did not reference an ActiveAdvantage membership.
  5. Once the 30-day trial period expired, the individual's credit card was charged either \$59.95 or \$64.95 (depending on the time of sign-up), unless the consumer canceled.
  6. Once an individual was enrolled in the ActiveAdvantage program, the credit card information provided at the time of registration/reservation was charged annually for the recurring membership fees, unless the consumer canceled.
  7. Between January 1, 2011, and October 10, 2013, 2,662 Vermont consumers were charged an amount totaling \$220,124.30 for 3,614 annual ActiveAdvantage memberships.
  8. During this same time, Respondent issued refunds totaling \$56,703.29 to 898 of these Vermont consumers.
  9. During this time, of the 2,662 Vermont consumers who were members of ActiveAdvantage, 172, or 6.5%, of the Vermont consumers are known to have utilized the benefits associated with the ActiveAdvantage membership.
  10. In a survey, conducted by the Attorney General, of individuals who were charged for ActiveAdvantage memberships, a majority of individuals who responded did not recall signing up for an ActiveAdvantage membership.
  11. The Attorney General alleges that the process by which Respondent registered individuals for ActiveAdvantage, as described above, constitutes an unfair and deceptive act and practice under 9 V.S.A. § 2453.

12. Respondent admits the truth of all facts set forth in paragraphs 2 through 9.
13. Respondent does not admit to violating the law of Vermont or any other jurisdiction.

#### **INJUNCTIVE RELIEF**

14. Respondent will use registration methods for discount membership programs that clearly distinguish such programs from the registration for events or the purchase of other goods or services. Further, in connection with discount membership program offers, Respondent shall provide clear and conspicuous disclosure of all material terms and conditions of such offers, and shall obtain express affirmative consent from consumers for enrollment in the discount membership program before enrolling them in such program.

#### **RESTITUTION**

15. Respondent shall establish a mechanism by which Vermont consumers can request a refund of certain amounts (the "Settlement Claims Process"). For purposes of this section, the following definitions shall apply:

- a. "Vermont Consumer" shall mean any individual charged by Respondent for an ActiveAdvantage membership while residing in Vermont prior to the date of this AOD.
- b. "Eligible Consumer" shall mean any Vermont Consumer unless such consumer has (a) been fully refunded all amounts charged by Respondent for any ActiveAdvantage memberships; or (b) utilized the benefits of his or her ActiveAdvantage membership.
- c. "Eligible Refund" shall mean any amounts paid by an Eligible Consumer to Respondent for an ActiveAdvantage membership and not previously refunded by Respondent.

16. Respondent shall appoint an employee to administer the Settlement Claims Process.
17. Within 10 days of filing this AOD, Respondent shall deliver to the Office of the Attorney General (“Attorney General”) a list of all Vermont Consumers, including, if available, the Vermont Consumer’s name, last-known address and telephone number, if collected by Respondent during the enrollment process, e-mail address, dates and amounts of all payments, dates and amounts of any refunds, available information regarding post-enrollment usage of the ActiveAdvantage membership, and Eligible Refund amount.
18. Respondent shall provide any additional available information concerning a Vermont Consumer upon written request by the Attorney General within 10 business days provided that information requested is reasonably related to the implementation of this AOD.
19. Within 30 days of filing this AOD, Respondent shall contact every Eligible Consumer by e-mail (using an e-mail format provided by the Attorney General) to provide notice of this AOD and the Eligible Consumer’s rights (“Notice of Settlement”). The Notice of Settlement shall be in the form attached hereto as “Exhibit A.”
20. Respondent shall accept and process all claims of Eligible Consumers, taking appropriate measures to minimize fraud and promote accuracy, and provide a refund to the credit card on file in the amount of the Eligible Refund, and if the refund is unable to be applied to the credit card on file, provide a check to the Eligible Consumer upon acceptance of an Eligible Consumer’s claim as set forth below.
21. For each Eligible Consumer that has not submitted a claim within 30 days following the notice specified in paragraph 19, Respondent shall again contact such Eligible Consumer by email with a copy of the Notice of Settlement to notify the Eligible Consumer of his or her right to a refund under the AOD.

22. An Eligible Consumer's claim to Respondent shall be deemed timely submitted if it is received by Respondent by e-mail no more than 90 days after the date the Notice of Settlement was e-mailed to Eligible Consumers.

23. Within 30 days of receiving a claim from an Eligible Consumer deemed valid by Respondent, Respondent shall refund the amount of the Eligible Refund to the credit card on file for the Eligible Consumer, provided however, if Respondent's efforts to refund the Eligible Refund to the credit card on file are not successful, Respondent shall mail a check to the Eligible Consumer for the Eligible Refund.

24. The Attorney General and the applicable Eligible Consumer shall be notified by e-mail of any claim deemed invalid by Respondent. Notwithstanding the time limitations set forth in paragraph 22, either the Attorney General or the applicable Eligible Consumer has 30 days from the date the notice invalidity is e-mailed to dispute the determination of invalidity.

25. All funds distributed by Respondent in connection with the Settlement Claims Process shall be by refund to the Eligible Consumers' credit card on file, provided however, if Respondent's efforts to refund the Eligible Refund to the credit card on file are not successful, such payment shall be by check that is identified on its face as valid for 90 days. Respondent shall advise, by email, each Eligible Consumer to whom such a check was issued but has remained un-cashed for more than 90 days. The Eligible Consumer may, if he/she contacts Respondent within 30 days thereafter, have such un-cashed checks re-issued, and such re-issued checks will be valid for 30 days from their issue date.

26. For Eligible Refunds made by check because the credit card on file was unable to receive the Eligible Refund, Respondent shall make all reasonable efforts to locate each

Eligible Consumer who submitted a claim but whose Eligible Refund payment was returned. Such reasonable efforts shall include, but not be limited to, the use of commercially-available databases and public records. If contact information for the Eligible Consumer is identified, Respondent shall re-issue the check to the Eligible Consumer.

27. Forty-five days after the issuance of the first Notice of Settlement, and again 90 days after the issuance of the first Notice of Settlement, Respondent shall provide to the Attorney General a report that provides the following information: (a) number of claims received; (b) number of claims paid; (c) the name of each claimant paid; (d) total amount paid; (e) number of invalid claims received; and (f) for each claim deemed invalid, the name of the claimant and the basis for this decision.

28. Respondent shall pay any and all costs associated with creating, maintaining, and administering the Settlement Claims Process, including without limitation, the administrative expenses incurred in connection with providing notice and processing submitted claims. In no event shall the Attorney General or the State of Vermont be liable for any costs associated with the creating, maintain, and administering the Settlement Fund.

#### **PAYMENTS TO VERMONT**

29. Respondent shall pay the State of Vermont's costs of investigation, including, but not limited to, attorneys' fees, in the amount of twenty-five thousand dollars (\$25,000) within ten days of both Parties signing this AOD. Respondent shall make payment to the "State of Vermont" and send payment to: Naomi Sheffield, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

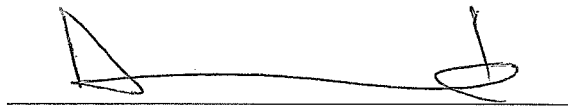
## OTHER TERMS

30. Respondent agrees that this Assurance of Discontinuance shall be binding on Respondent, and its successors and assigns.
31. The Attorney General hereby releases and discharges any and all claims arising under the Consumer Protection Act, 9 V.S.A. §§ 2451-2480, that it may have against Respondent in connection with the marketing and administration of ActiveAdvantage prior to the date of this AOD. The Attorney General similarly releases Respondent's subsidiaries, affiliates and licensees, past and present, and their past and present representatives, successors, administrators, employees, shareholders, managers, officers, directors, board of directors, attorneys, agents, servants and assignees.
32. 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 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 AOD.
33. The parties acknowledge and agree that Respondent is entering into this AOD solely for the purpose of settlement and agree that it does not constitute an admission by Respondent of the violation of any law, rule, or regulation. No part of this AOD constitutes, shall constitute, or shall be used as evidence of any violation of any federal or state statute or regulation or the common law except in an action brought to enforce the terms of this AOD. Entry of this AOD by Respondent does not constitute a waiver of any claims or defenses Respondent may have in any proceeding that has been or may have been brought against it by any third party arising from or related to matters which are or may have been the subject of this AOD.

**SIGNATURE**

In lieu of instituting an action or proceeding against Respondent, 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 Dallas, TX, this 17 day of November, 2014.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

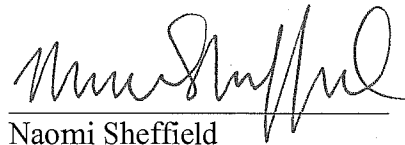
ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 20 day of November 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read 'Naomi Sheffield', positioned above a solid horizontal line.

Naomi Sheffield  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
nsheffield@atg.state.vt.us  
802-828-6906



From: ACTIVE Network, LLC

Subject: Active Advantage Membership Refund Eligibility – Vermont Attorney General Settlement

**If you reply to this email you will receive at least \$59.95 as a refund of the amount you paid for an Active Advantage membership.**

To receive a refund, reply to this email no later than [MONTH, DAY 2015] with the following information: First Name, Last Name, Mailing Address

You have been identified as a consumer who paid for an Active Advantage membership. We are writing to advise you that The ACTIVE Network, Inc. (“Active”) has reached a voluntary settlement with the Attorney General of the State of Vermont arising out of an investigation by the Attorney General into the registration of Vermont residents in the Active Advantage program. Active has agreed to refund certain Vermont consumers, including you, who enrolled in that program.

The amount of your refund is the total amount you paid for an Active Advantage membership that Active has not previously refunded.

To receive a refund, you will be required to release Active, as well as their principals, directors, officers, shareholders, managers, employees, predecessors, affiliates, successors or assignees, as well as any others who worked with or is or was associated with any of the foregoing, from any and all grievances, suits, causes of action, attorneys’ fees, costs, and any claims of any nature whatsoever relating to or arising out of the conduct that was the subject of the Attorney General’s investigation. This release is limited to all matters related to your Active Advantage membership.

IF YOU DO NOT REPLY TO THIS EMAIL BY [MONTH DAY, 2015], YOU WILL **NOT** RECEIVE A REFUND UNDER THIS SETTLEMENT.

If you have any questions:

Contact Active at:

**Active Network, LLC**  
**E-mail: [insert address]**  
**Tel.: XXX XXX XXXX**

Contact the Vermont Attorney General’s Office at:

**E-mail: [consumer@uvm.edu](mailto:consumer@uvm.edu)**  
**Tel.: (800) 649-2424 or (802) 656-3183**

***RE ELECTRONIC BOOKS ANTITRUST LITIGATION, Case No. 11-md-02293***  
**and**  
***Texas, et al. v. Penguin Group, et. al, Case No. 12-cv-03394***

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL  
OF APPLE SETTLEMENT AGREEMENT**

# **EXHIBIT A**

## **APPLE SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT BY AND AMONG APPLE INC.,  
PLAINTIFF STATES AND CLASS PLAINTIFFS**

This Settlement Agreement is made and entered into on July 10, 2014, by and among Plaintiff States, by and through their respective Attorneys General (“Plaintiff States”), Class Plaintiffs, on behalf of themselves and in their respective capacities as representatives of the Settlement Class, and Apple Inc. (“Apple”), by and through its undersigned counsel, (collectively “Parties”).

WHEREAS, a subset of Plaintiff States filed a complaint against Apple and others in the United States District Court for the Western District of Texas on April 11, 2012, which action was transferred to the United States District Court for the Southern District of New York (“the District Court”) on April 30, 2012 as *Texas, et al. v. Penguin Group (USA) Inc., et al.*, No. 12-cv-03394 (DLC) (“Plaintiff States Action”); and the complaint was twice amended, with the current complaint (“Second Amended Complaint”) being filed on May 21, 2012 by all Plaintiff States in their sovereign capacity and as *parens patriae*, on behalf of natural persons in a Plaintiff State at the time of eligible E-book purchase(s);

WHEREAS, the United States Department of Justice (“DOJ”) filed a complaint against Apple and others in the District Court on April 11, 2012 as *United States v. Apple Inc., et al.*, No. 12-cv-2826 (the “DOJ Action”);

WHEREAS, Class Plaintiffs filed a First Amended Consolidated Class Action Complaint on behalf of themselves and as representatives of Eligible Consumers in non-Plaintiff State jurisdictions against Apple and others on October 11, 2013 in the District Court as *In re Electronic Books Antitrust Litigation*, No. 11-md-02293 (DLC) (“Class Action”);

**WHEREAS, both Plaintiff States and Class Plaintiffs have alleged an unlawful agreement to fix, maintain or stabilize prices of E-books in violation of federal and state antitrust laws, and sought, among other relief, damages, injunctive relief, and costs of investigation and litigation and Plaintiff States have additionally sought civil penalties;**

**WHEREAS, a bench trial was held before the District Court on claims for injunctive relief in the Plaintiff States Action and all claims in the DOJ Action from June 3 until June 20, 2013;**

**WHEREAS, the District Court issued an Opinion and Order on July 10, 2013 on DOJ's and Plaintiff States' claims for injunctive relief, finding that "Apple conspired to restrain trade in violation of Section 1 of the Sherman Act and relevant state statutes to the extent those laws are congruent with Section 1";**

**WHEREAS, Apple appealed the District Court's Opinion and Order of July 10, 2013 in the DOJ and Plaintiff States Actions to the United States Court of Appeals for the Second Circuit ("Second Circuit"). These appeals have been consolidated in *United States v. Apple Inc., et al.*, No.13-3741 (collectively the "Liability Appeal");**

**WHEREAS, Apple also appealed the appointment of an External Compliance Monitor and that appeal is pending in the Second Circuit as *State of Texas, et al. v. Apple Inc.*, No. 14-61 ("Monitor Appeal");**

**WHEREAS, the District Court granted Class Plaintiffs' Motion for Class Certification on March 28, 2014, certifying a class consisting of Eligible Consumers in non-Plaintiff State jurisdictions who purchased E-books between April 1, 2010 and May 21, 2012, published by Named Publishers ("Class Certification Order");**

**WHEREAS, Apple has agreed to class action treatment of claims by the Settlement Class solely for the purpose of effecting the compromise and settlement of those claims on a class basis as set forth herein and does not consent to certification of Settlement Class for any purpose other than to effectuate the settlement of the Class Action;**

**WHEREAS, a jury trial was scheduled with the District Court to begin on August 25, 2014 to resolve all claims against Apple in the Class Action and the outstanding claims against Apple for monetary relief in the Plaintiff States Action;**

**WHEREAS, Apple has denied and continues to deny: (1) each and all of the claims and allegations of wrongdoing made in the Class Action and the Plaintiff States Action, and maintains furthermore that it has meritorious defenses, (2) all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Class Action and Plaintiff States Action, and (3) the allegations that consumers were harmed by any conduct by Apple alleged in the Class and Plaintiff States Actions or otherwise;**

**WHEREAS, this Settlement Agreement does not constitute any admission by Apple of any violation of law or of any issue of fact or law, other than that the jurisdictional facts as alleged in the complaints in the Class and Plaintiff States Actions (collectively "Complaints") are true; and**

**WHEREAS, Plaintiff States, Class Plaintiffs and Apple have determined it to be in their best interests to resolve this dispute and enter into this Settlement Agreement;**

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:**

## I. DEFINITIONS

As used herein:

A. “Apple” means Apple Inc., a California corporation with its principal place of business in Cupertino, California, its successors and assigns, and its subsidiaries, and divisions.

B. “Claims” means all claims, counterclaims, set-offs, demands, actions, rights, liabilities, costs, debts, expenses, attorneys’ fees, and causes of action of any type, whether or not accrued in whole or in part, including, without limitation, past, present, and future claims arising under federal or state antitrust, unfair competition or consumer protections laws, or state common or equitable law, and that were asserted or that could have been asserted, known or unknown, against Apple, and/or its officers, directors, employees and attorneys, arising from any of the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth or alleged in Plaintiffs’ Complaints. Notwithstanding the foregoing, “Claims” does not include Plaintiff States’ claims for injunctive relief against Apple currently under appeal in the Liability Appeal.

C. “Claims Administrator” means Rust Consulting, Inc.

D. “Class Plaintiffs” means Anthony Petru, Thomas Friedman, and Shane S. Davis.

E. “Counsel for Settlement Class” means Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC.

F. “Distribution Plan” means the plan or method of allocation of the Apple Consumer Compensation Account among Eligible Consumers who have not filed valid and timely requests for exclusion from this Settlement Agreement with the District Court. The Distribution Plan will be submitted to the District Court separately from the Settlement Agreement and is not part of this Settlement Agreement.

G. “Effective Date” means the date when all of the following conditions have been satisfied, unless one or more of such conditions is modified in a writing signed by the Parties: (1) this Settlement Agreement has been executed; (2) the District Court has entered a Preliminary Approval Order; (3) the Notice Plan has been approved and effectuated; (4) the period within which Eligible Consumers must exercise their rights to be excluded from *parens patriae* or class representation has expired; (5) the Final Liability Decision has been rendered; (6) the District Court has given final approval of the settlement embodied herein; (7) the Final Approval Order has been entered by the District Court; and (8) the Final Approval Order is Final.

H. “Eligible Consumers” mean natural persons who have purchased E-books published by Named Publishers during the period from April 1, 2010 until May 21, 2012;

I. “Escrow Agent” means Fifth Third Bank. Plaintiffs may appoint a different Escrow Agent subject to any pending contracts and upon reasonable notice to Apple.

J. “E-book” means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books. For purposes of this Settlement Agreement, the term E-book does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or “app” sold through an “app store” rather than through an E-book store (*e.g.*, through Apple Inc.’s “App Store” rather than through its “iBookstore” or “iTunes”) and not designed to be executed or read by or through a dedicated E-book reading device; (3) a media file containing an electronically formatted book for which most of the value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book; or (4) the electronically formatted version of a book marketed solely for use in connection with academic coursework.

**K. “Final” as to the Final Approval Order means: (1) the District Court has entered a Final Approval Order and (2) the time for appeal or to seek permission to appeal from the District Court’s Final Approval Order has expired or, if appealed, the Final Approval Order has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.**

**L. “Final Approval Order” means the order to be entered by the District Court in the Class Action and the Plaintiff States Action which gives final approval of this Settlement Agreement. It is intended by the Parties that the Final Approval Order will include the following provisions: (1) an affirmance by the District Court that the Notice Plan was completed; (2) a determination by the District Court that the Settlement Agreement is approved finally as fair, reasonable and adequate pursuant to the requirements of Rule 23 of the Federal Rules of Civil Procedure, 15 U.S.C. § 15c, and due process; and, if Apple is to make payments pursuant to Paragraphs III.A or III.B, below, (3) a directive that the monies in the Apple Consumer Compensation Account are to be disbursed pursuant to a Court-approved Distribution Plan; (4) a directive that monies in the States’ Compensation Account are to be paid to Liaison Counsel for disbursement to Plaintiff States for use pursuant to Paragraph V.B, below; and (5) that an award of attorneys’ fees and expenses should be made to Counsel for Settlement Class pursuant to Paragraphs III.A.3 or III.B.3, below.**

**M. “Final Liability Decision” means a final decision by the Second Circuit on the merits of the Liability Finding and, if a petition for writ of certiorari is filed by any Party on the merits of the Liability Finding, (a) a final decision by the Supreme Court of the United States denying the certiorari petition or (b) if the Supreme Court grants the certiorari petition, a final decision by the United States Supreme Court on the merits of the Liability Finding. If the**



time for filing a certiorari petition passes and no party has filed a petition and the Second Circuit's mandate has issued, then the Second Circuit's final decision on the merits on the Liability Finding shall be deemed the "Final Liability Decision."

N. "Including" means including, but not limited to.

O. "Liability Appeal" means the appeal by Apple that is pending in the Second Circuit consolidated under *United States, et al. v Apple Inc.*, No. 13-3741 (L).

P. "Liability Finding" means the holding of the Opinion and Order issued by the District Court on July 10, 2013 that Apple violated Section 1 of the Sherman Act (15 U.S.C. §1).

Q. "Liaison Counsel for Plaintiff States" mean the designated representatives for the Attorneys General of the States of Texas, Connecticut, and Ohio.

R. "Named Publishers" means Hachette Book Group, Inc. and Hachette Livre SA, ("Hachette"), HarperCollins Publishers LLC ("HarperCollins"), Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc. ("Simon & Schuster"), Holtzbrinck Publishers, LLC, d/b/a Macmillan ("Macmillan"), and Penguin Group (USA), Inc. ("Penguin").

S. "Notice Period" means the period during which notice shall be disseminated to Eligible Consumers. The Notice Period shall be forty-five (45) days or such other time period set by the District Court.

T. "Notice Plan" means the plan specifying the manner and content of the program whereby Eligible Consumers are notified of this Settlement Agreement and informed of their rights to object to or exclude themselves from the settlement. The Notice Plan shall specify the manner in which Eligible Consumers are to be notified of this settlement, and shall consist, at a minimum, of direct notice to each Eligible Consumer whose e-mail address can be voluntarily obtained by Plaintiffs from E-book retailers.

U. **“Plaintiffs”** means collectively Plaintiff States and Class Plaintiffs.

V. **“Plaintiff States”** means the following States, Commonwealths and Territories of the United States, by and through their Attorneys General, in their sovereign capacity and as *parens patriae* on behalf of Eligible Consumers in such Plaintiff States: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

W. **“Preliminary Approval Order”** means an order to be entered by the District Court which the parties intend will include the following provisions: (1) preliminary approval of this Settlement Agreement as fair, reasonable and adequate and in the best interests of Eligible Consumers; (2) conditional certification of the Settlement Class for settlement purposes; and (3) a schedule for the dissemination of consumer notice or approval for deferral thereof.

X. **“Prior Settlements”** means (1) the Settlement Agreements between Attorneys Generals of 55 jurisdictions and Hachette, Simon & Schuster, and HarperCollins which were approved by the District Court on February 8, 2013 in the related case, *Texas, et al. v. Hachette Book Group, Inc. et al*, No.12 cv 6625; (2) the Settlement Agreements between Attorneys General for 33 jurisdictions, Settlement Class and Macmillan and Penguin which were approved by the District Court on December 9, 2013, in both the Plaintiff States Action and the Class Action; and (3) the Settlement Agreement between Settlement Class for Minnesota residents and Hachette, Simon & Schuster, and HarperCollins which was also approved by the District Court on December 9, 2013, in the Class Action.

Y. “Purchase” means an Eligible Consumer’s acquisition of one or more E-books as a result of a Sale.

Z. “Released Claims” means all Claims as described in Section IX.

AA. “Sale” means delivery of access to an Eligible Consumer of one or more E-books (purchased alone, or in combination with other goods or services) in exchange for payment.

BB. “Settlement Accounts” mean the Apple Consumer Compensation Account and the States’ Compensation Account as described in Section IV. The Settlement Accounts shall be administered by Fifth Third Bank, as Escrow Agent, pursuant to Paragraph VII.A, below.

CC. “Settlement Administration Account” means that account described in Sections VI. and VII., below.

DD. “Settlement Administration Costs” means costs to be paid from the Settlement Administration Account for all actual, customary and reasonable costs and fees incurred in the administration of this Settlement Agreement, which includes costs and fees incurred for the purpose of (1) compiling necessary Eligible Consumer information and providing direct notice as well as such notice by publication or paid media as may be needed to effectuate adequate notice, (2) completing administrative tasks, (3) processing and paying claims, including distributing credits and/or checks to Eligible Consumers, and (4) securing court approval of the Settlement Agreement, such as expert affidavits. Such Settlement Administration Costs expressly include those fees or costs payable to the Escrow Agent and Claims Administrator appointed by Plaintiffs pursuant to Section VII, below. Settlement Administration Costs will not include any fees or costs payable to any Plaintiffs’ attorneys.

EE. “Settlement Class” means the class of Eligible Consumers certified by the District Court in the Class Certification Order (*see* Case No. 11-md-2293, Dkt. 585 at 19).

**FF. “Written Direction” means a written notification directed to the Escrow Agent and/or Claims Administrator directing disbursements from the Settlement Accounts or the Settlement Administration Account and signed by at least two Liaison Counsel for Plaintiff States and counsel for Apple. Liaison Counsel for Plaintiff States will forward a copy of any Written Direction to Counsel for the Settlement Class contemporaneously with such notification being sent to the Escrow Agent and/or Claims Administrator.**

## **II. STIPULATIONS**

**A. Counsel for the Parties stipulate and agree that a bona fide justiciable dispute remains as to the findings and conclusions on liability and injunctive relief in the District Court’s July 10, 2013 Opinion and Order. Except as expressly set forth herein, Apple and Plaintiff States retain all procedural and substantive rights to continue litigating the Liability Appeal in the Second Circuit and/or the United States Supreme Court.**

**B. Counsel for the Parties stipulate and agree that the litigation and/or resolution of the Monitor Appeal will have no bearing on the Parties’ obligations pursuant to this Settlement Agreement.**

**C. Counsel for the Parties stipulate and agree that the negotiations leading to this Settlement Agreement were conducted in good faith and at arm’s length by experienced attorneys who were well-informed concerning the pending issues of the litigation.**

**D. Counsel for the Parties stipulate and agree that, after both the Effective Date has occurred and Apple has paid the monies required pursuant to this Settlement Agreement, the litigation initiated by the Complaints and the Released Claims shall be finally and fully compromised, settled and released, upon and subject to the terms and conditions of this Settlement Agreement.**

### **III. SETTLEMENT PAYMENTS**

**A. In the event the Final Liability Decision affirms the Liability Finding, Apple agrees to pay and shall pay the following amounts:**

- 1. The total sum of \$400 million for Eligible Consumer compensation;**
- 2. The total sum of \$20 million to Plaintiff States for their attorneys' fees, costs related to the investigation, litigation and appeal of the present matter, and for release of state enforcement claims; and**
- 3. The total sum of \$30 million to Counsel for the Settlement Class for their attorneys' fees, and costs related to the investigation, litigation and appeal of the present matter. ("Fee and Expense Award"). Counsel for the Settlement Class agree not to seek a Fee and Expense Award in excess of this amount.**

**B. In the event the Final Liability Decision vacates and remands, or reverses and remands with instructions, for reconsideration, or for retrial of the Liability Finding, Apple agrees to pay and shall pay the following amounts:**

- 1. The total sum of \$50 million for Eligible Consumer compensation;**
- 2. The total sum of \$10 million to Plaintiff States for their attorneys' fees, costs related to the investigation, litigation and appeal of the present matter, and for release of state enforcement claims; and**
- 3. The total sum of \$10 million to Counsel for the Settlement Class for their attorneys' fees, and costs related to the investigation, litigation and appeal of the present matter (the "Fee and Expense Award"). Counsel for the Settlement Class agree not to seek a Fee and Expense Award in excess of this amount.**

C. Paragraph III.B shall not apply in the event of a remand to the District Court on administrative or non-substantive grounds that do not, or could not, affect the Liability Finding.

D. In the event the Final Liability Decision reverses the Liability Finding, Apple will pay nothing pursuant to this Settlement Agreement, except for Settlement Administration Costs as noted in Section VI, below, and Plaintiffs will move to dismiss their Claims with prejudice.

#### **IV. SETTLEMENT ACCOUNTS**

A. Apple shall pay any Eligible Consumer compensation required under either Paragraph III.A.1 or B.1, above, to the Plaintiffs, c/o Fifth Third Bank, Escrow Agent, within thirty (30) days of the Effective Date of the Settlement Agreement. The Escrow Agent shall establish the Apple Consumer Compensation Account from such monies. These monies, plus any accrued interest, shall be used to fund the Eligible Consumer distribution as described in Paragraph V.A, below. The Escrow Agent shall only distribute funds in the Apple Consumer Compensation Account pursuant to a court-approved Distribution Plan.

B. Any payments made by Apple for Eligible Consumer compensation pursuant to III.A.1, above, do not constitute, nor shall they be treated as, payments in lieu of fines, penalties, punitive recoveries or forfeitures. Any payments made by Apple for Eligible Consumer compensation pursuant to III.B.1, above, do not constitute, nor shall they be treated as, payments in lieu of treble damages, fines, penalties, punitive recoveries or forfeitures.

C. Apple shall make any payment required under either Paragraph III.A.2 or B.2, above, to Plaintiff States, c/o Fifth Third Bank, Escrow Agent, within thirty (30) days of the Effective Date of the Settlement Agreement. The Escrow Agent shall establish the States' Compensation Account from such monies. These monies, plus any accrued interest, shall be

apportioned among Plaintiff States in a manner to be determined solely by Plaintiff States and will be used for the purposes set forth in Paragraph V.B, below.

D. Apple shall pay Counsel for the Settlement Class any payment required under either Paragraph III.A.3 or B.3, above, and as awarded by the District Court, to an account designated by Counsel for the Settlement Class within thirty (30) days after the Effective Date of the Settlement Agreement.

## V. SETTLEMENT DISBURSEMENTS

A. Distribution to Consumers: All funds in the Apple Consumer Compensation Account, if any, shall be distributed, according to a Court-approved Distribution Plan, for the benefit of Eligible Consumers who have not filed valid and timely requests for exclusion from this settlement with the District Court. Parties agree that the funds in this Account on or after the Effective Date of the Settlement Agreement may be transferred to an escrow account which will combine all consumer monies from this settlement and any remaining consumer compensation funds from Prior Settlements for the purpose of consumer distribution.

1. The Distribution Plan shall be submitted to the District Court for approval within thirty (30) days of the Final Liability Decision being issued or as the District Court orders otherwise. Plaintiffs shall provide Apple a reasonable opportunity to review and comment on the proposed Distribution Plan before its submission to the District Court. The Distribution Plans used in the Prior Settlements will be the template for the Apple Settlement Distribution Plan, but may be revised as needed to maximize direct consumer distribution or efficiency of distribution. The Distribution Plan will provide that, to the extent practicable, all credits provided to Eligible Consumers may be used for the purchase of any product or service sold by the crediting retailer.

2. Any funds not initially distributed will be distributed pursuant to subsequent consumer distributions, if feasible or, if approved by the District Court, will be distributed *cy pres* to one or more charitable organizations whose purposes relate to reading, literacy or access by the public to electronic books. Plaintiffs will propose specific *cy pres* recipients to the District Court prior to the time for objections or requests for exclusion from class members.

3. Funds remaining due to uncashed checks or unused or inactivated credits will similarly be used for additional consumer distributions to the fullest extent possible. To the extent state law prohibits any portion of such distributions, Plaintiffs will submit proposed plans for alternative distributions for court approval.

4. The Parties agree and understand that any proposed Distribution Plan is to be considered by the District Court separately from the District Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in the Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to terminate or cancel the Settlement Agreement or affect the finality of the Final Approval Order, or any other orders entered pursuant to the Settlement Agreement.

B. Distribution of Compensation to Plaintiff States: The States' Compensation Account shall be apportioned among Plaintiff States at their sole discretion. Such apportionments shall then be used collectively or individually by Plaintiff States' Attorneys General for one or more of the following purposes:

1. Reimbursement for Plaintiff States' consultation or expert fees, including reimbursement of any grants paid to Plaintiff States in connection with the National Association



of Attorneys General Milk Fund Account (“Fund”) for consultant and expert fees expended from the Fund;

2. Reimbursement of attorneys’ fees, and investigation, litigation and settlement administration cost expenses incurred by any Plaintiff State;
3. Payment for any ongoing litigation and/or appeals involving the E-books market;
4. Antitrust or consumer protection enforcement by the Attorney General of such State;
5. Deposit into a state antitrust or consumer protection account, (e.g., revolving account, trust account), for use in accordance with the state laws governing that account;
6. Deposit into a fund exclusively dedicated to assisting state Attorneys General to defray the cost of experts, economists, and consultants, and/or document management, in multistate antitrust investigations and litigations; or
7. As otherwise required or provided by the applicable state law enacted as of the Effective Date of this Settlement Agreement.<sup>1</sup>

## **VI. SETTLEMENT ADMINISTRATION ACCOUNT**

A. Apple will also pay for Settlement Administration Costs in accordance with this Section and Section VII, below. The Escrow Agent shall establish the Settlement Administration Account from the monies received from Apple under this Section. These monies, plus any accrued interest, shall be used to pay the Settlement Administration Costs pursuant to the terms

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<sup>1</sup> With respect to the State of Colorado, its apportionment shall be used first for reimbursement of Colorado’s actual costs and attorneys’ fees, and second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement efforts.

of this Settlement Agreement. The Escrow Agent shall pay such Settlement Administration Costs only as provided by an order of the District Court, or pursuant to Written Direction.

**B. Payments for the Settlement Administration Account will be made as follows:**

**1. An initial deposit of \$2 million shall be paid by Apple to the Plaintiffs c/o Fifth Third Bank, Escrow Agent, within ten (10) business days after the execution of this Settlement Agreement by counsel for Liaison States, Settlement Class and Apple.**

**2. Upon notice by counsel for the Plaintiffs that additional funds are necessary to pay Settlement Administration Costs, Apple shall make a supplemental deposit of such additional reasonable amount into the Settlement Cost Account within ten (10) business days after such notice.**

**3. After counsel for the Liaison States and Settlement Class have confirmed in writing that all incurred, committed or anticipated Settlement Administration Costs have been paid or accounted for, the Escrow Agent shall refund to Apple all unused funds in the Settlement Administration Account, if any, within twenty (20) business days after such confirmation.**

**C. If Apple wishes to challenge any Settlement Administration Costs as being unreasonable or not customary, it shall first notify Counsel for Plaintiffs and, if such challenge is not resolved within 10 (ten) business days of notice, Apple may file an application with the District Court and any such challenged Settlement Administration Costs will not be due and payable unless and until the District Court rules upon the application.**

**D. If Apple pays nothing, pursuant to Paragraph III.D, above, or if this Settlement Agreement is not approved or fails to become effective, all monies paid by Apple into the Settlement Accounts or the Settlement Administration Account, including any interest accrued thereon, shall be refunded to Apple, reduced by the amount of costs and expenses incurred or**

committed for Settlement Administration Costs as of the Effective Date of the Settlement Agreement, the date of disapproval, or the date of failure to become effective. In the case of disapproval by the District Court, refund shall occur within five (5) business days of the Final Approval Order becoming Final. In all other cases, refund shall occur within five (5) business days after the occurrence of the event triggering the right to a refund.

## **VII. SETTLEMENT ADMINISTRATION**

A. The Escrow Agent for the Settlement Accounts and the Settlement Administration Account shall be Fifth Third Bank.

1. Other than maintaining an account to meet short-term obligations, the Escrow Agent shall invest the funds in the Settlement Accounts in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies, to obtain the highest available return on investment, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Escrow Agent shall bear all risks related to the investment of the escrow funds.

2. The Escrow Agent shall not disburse the funds of the Settlement Accounts or the Settlement Administration Account except by an order of the District Court or pursuant to Written Direction.

3. All funds held by the Escrow Agent shall be deemed to be *in custodia legis* of the District Court, and shall remain subject to the jurisdiction of the District Court, until the funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the District Court.

B. In addition to the Escrow Agent, Counsel for Plaintiffs have employed Rust Consulting, Inc., as the Claims Administrator, to facilitate the provision of notice and to

distribute and/or administer the distribution of the funds in the Apple Consumer Compensation Account in accordance with the terms of this Settlement Agreement. Upon approval of Plaintiffs' counsel (which approval shall not be unreasonably withheld), Apple may communicate directly with the Claims Administrator as necessary to facilitate the provision of notice to Apple Customers and to distribute and/or administer the distribution of the funds in the Apple Consumer Compensation Account to Apple Customers in accordance with the terms of this Settlement Agreement and an approved Distribution Plan.

**C. Tax Treatment of Settlement Accounts:**

1. Parties and Escrow Agent agree to treat the Settlement Accounts as being, at all times, a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1(a). In addition, the Escrow Agent and, as required, Parties shall jointly and timely make such reasonable elections that are requested by Apple or that are necessary or advisable to carry out the provisions of this Section, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)(ii)), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and thereafter to cause the appropriate filing to occur.

2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Accounts (including without limitation the returns described in Treas. Reg. § 1.468B-2(k) and (l)). Such returns (as well as the election

described in Paragraph C.1 above, shall be consistent with this Section VII.C, and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Accounts shall be paid out of the Settlement Accounts.

3. All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Accounts, including any taxes that may be imposed upon Apple with respect to any income earned by the Settlement Accounts for any period during which the Settlement Accounts do not qualify as a “qualified settlement fund” for federal, state, or local income tax purposes (“Taxes”) shall be paid out of the Settlement Accounts and in all events Apple and its insurers shall have no liability or responsibility for such Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority in respect of such Taxes. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement Agreement and shall be timely paid by the Escrow Agent out of the Settlement Accounts without prior order from the District Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Plaintiff States any funds necessary to pay such amounts including the establishment for adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)); Apple and its insurers are not responsible and shall have no liability therefor or for any reporting requirements that may relate thereto. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section VII.C. For purposes of this Section, references to the Settlement Accounts shall include the Settlement Accounts and any earnings thereon. In no event will any Taxes be treated as

Settlement Administration Costs, and no Taxes will be paid out of the Settlement Administration Account.

**D. Effect of Bankruptcy:**

1. Apple warrants that, as of the date of this Settlement Agreement, it is not insolvent, nor will its payment to the Settlement Accounts and/or the Settlement Administration Account render it insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code.

2. If a case is commenced with respect to Apple under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the payment of the principal amount of the Settlement Accounts and/or the Settlement Administration Account and any accrued interest, or any portion thereof, by or on behalf of Apple, to be a preference, voidable transfer, fraudulent transfer or similar transaction, and if pursuant to an order of a court of competent jurisdiction monies paid by Apple pursuant to this Settlement Agreement are either not delivered or are returned to Apple or the trustee, receiver, or conservator appointed by a court in any bankruptcy proceeding with respect to Apple, any releases given to Apple pursuant to this Settlement Agreement shall be null and void.

**VIII. REQUESTS FOR APPROVAL, NOTICE AND SETTLEMENT HEARING**

A. Unless otherwise agreed to by Plaintiffs and Apple and approved by the District Court, Plaintiffs shall file a Motion seeking a Preliminary Approval Order with the District Court by July 16, 2014. At least seven (7) days prior to filing their Motion for entry of a Preliminary Approval Order, Plaintiffs shall provide a copy of such motion (including all exhibits and attachments to such motion) to Apple for review and comment.

**B. Plaintiffs shall disseminate Notice of the Settlement Agreement to potentially affected Eligible Consumers in the manner and within the time directed by the District Court. The Parties contemplate a Notice Period of forty-five (45) days, unless another time period is set by the District Court.**

**C. Within thirty (30) days following the conclusion of the Notice Period or as otherwise directed by the District Court, Plaintiffs shall file with the District Court a Motion for a Final Approval Order. At least seven (7) days prior to filing their Motion for a Final Approval Order, Plaintiffs shall provide a copy of such motion (including all exhibits and attachments to such motion) to Apple for review and comment.**

#### **IX. RELEASED CLAIMS**

**A. In consideration of the monetary provisions contained in this Settlement Agreement, and after both the Effective Date has occurred and Apple has paid the monies required pursuant to this Settlement Agreement, then each Plaintiff State will be deemed to have, fully, finally, and forever released Apple, its successors and assigns, and their officers, directors, employees, and attorneys (collectively "Releasees") from all Claims that were asserted or could have been asserted by or on behalf of any Eligible Consumer in a Plaintiff State, at the time of his or her E-book purchase(s), who did not timely and validly exclude themselves from this settlement.**

**B. In further consideration of the monetary provisions contained in this Settlement Agreement, and after both the Effective Date has occurred and Apple has paid all monies required pursuant to this Settlement Agreement, then all Settlement Class members who have not timely and validly excluded themselves from this settlement will be deemed to have fully,**

finally, and forever released the Releasees from all Claims that were asserted or could have been asserted by any such Settlement Class member.

C. In further consideration of the monetary provisions contained in this Settlement Agreement, and after both the Effective Date has occurred and Apple has paid all monies required pursuant to this Settlement Agreement, then each Plaintiff State will be deemed to have released the Releasees from all Claims that were asserted or could have been asserted by each Plaintiff State's Attorney General in his or her sovereign capacity as chief law enforcement officer of his or her respective state.

D. In further consideration of the monetary provisions contained in this Settlement Agreement, and after both the Effective Date has occurred and Apple has paid all monies required pursuant to this Settlement Agreement, then each Plaintiff State's Attorney General covenants and agrees, to the fullest extent permitted by law, that he or she shall not hereafter seek to establish liability of Claims or assert Claims, in whole or in part, on behalf of the Attorney General or any other person or entity or class thereof, against the Releasees.

E. In further consideration of the monetary provisions contained in this Settlement Agreement, the Final Approval Order shall be deemed *res judicata* as to any such released Claim.

F. Plaintiffs and Apple expressly agree that they do not intend this Settlement Agreement nor any documents executed or submitted pursuant to this Settlement Agreement to be construed as a release or otherwise affect any rights Plaintiffs have or may have against any other entity whatsoever. The Final Approval Order shall include a provision that this Settlement Agreement and anything done pursuant thereto shall not constitute a release except as to Releasees. Plaintiffs and Eligible Consumers reserve their rights as aforesaid.



**G. The payments made by Apple to the Settlement Accounts, to the Settlement Class Counsel, to Plaintiff States, and to the Settlement Administration Account (including the additional payments contemplated pursuant to Paragraph VI.B.2, above) shall be the total amount to be paid by Apple under this Settlement Agreement or in connection with Released Claims. In no event will the payments made by Apple exceed the amount specified in (1) Paragraphs III.A, III.B, or III.D, as applicable, and (2) Paragraph VI.B.1, excluding any additional payments required pursuant to Paragraph VI.B.**

**H. To the fullest extent permitted by law, the Parties each expressly waive any right or benefit available to them under Section 1542 of the California Civil Code, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor," and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to Section 1542 of the California Civil Code.**

#### **X. AGREEMENT VOIDABLE**

**A. If this Settlement Agreement is not approved, or fails to become effective, the Settlement Agreement will be null and void.**

**B. If, during the Notice Period, Eligible Consumers who otherwise would be represented by Plaintiffs have filed with the Court valid and timely requests for exclusion from this settlement, counsel for Plaintiffs shall promptly provide Apple with notice of all the requests for exclusion. Apple has the option to void this Settlement Agreement if the percentage of the total Named Publishers' E-book sales volume for the period from April 1, 2010 to May 21, 2012**

represented by Eligible Consumers requesting exclusion from this settlement exceeds 10%. Apple must exercise its option to void this Settlement Agreement, as set forth in this Paragraph, no later than ten (10) business days after receiving the information about the Consumers requesting exclusion from this settlement.

C. In the event the Settlement is void pursuant to Paragraph X.A or B, above, Plaintiffs shall retain full rights to assert any and all causes of action against Apple, including the right to amend the Complaints to include additional allegations, claims, causes of action and requests for relief and Apple shall retain any and all defenses thereto.

## **XI. COOPERATION AND IMPLEMENTATION**

A. The Parties, and their respective counsel, agree to cooperate fully to implement the terms and conditions of this Settlement Agreement.

B. If a Plaintiff determines that Apple is not in compliance with the terms of the Settlement Agreement, it shall give Apple written notice of such non-compliance and Apple shall have fifteen (15) business days to respond in writing. If the Plaintiff is not satisfied with Apple's response, it shall notify Apple in writing and Apple shall have fifteen (15) business days to cure such non-compliance. If, after such time, the Plaintiff shall determine that Apple is still not in compliance, such Plaintiff may seek the civil remedies available to it under the terms of the Final Approval Order.

C. This Settlement Agreement shall not be used or construed by any person as an admission of liability by Apple to any party or person, or be deemed evidence of any violation of any statute or law or admission of any liability or wrongdoing by Apple or of the truth of any of the claims or allegations contained in the Complaints.

## **XII. BENEFIT AND BINDING EFFECT**

A. The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of the Parties and their successors. The Parties expressly disclaim any intention to create rights under this Settlement Agreement which may be enforced by any other person under any circumstances whatsoever.

B. After both the Effective Date has occurred and Apple has paid all monies required pursuant to this Settlement Agreement, all remaining interest or right of Apple in or to the funds in the Settlement Accounts shall be absolutely and forever extinguished.

## **XIII. MISCELLANEOUS**

A. Apple may file the Settlement Agreement and/or the Final Approval Order in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment, bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

B. Liaison Counsel for Plaintiff States are expressly authorized by Plaintiff States to take all appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

C. Each counsel or other person executing the Settlement Agreement on behalf of any party hereto warrants that such person has full authority to do so.

D. This Settlement Agreement contains the entire agreement and understanding of the Parties. There are no additional promises or terms of the Settlement Agreement other than those contained herein. This Settlement Agreement shall not be modified except in writing

signed by counsel for Liaison States, Settlement Class and Apple or by their authorized representatives.

E. All dates and time periods in this Settlement Agreement shall be calculated pursuant to the Federal Rules of Civil Procedure. All such dates and time periods may be modified if mutually agreed upon, in writing, signed by counsel for Liaison States, Settlement Class, and Apple or by their authorized representatives.

F. The Settlement Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

G. The captions contained in this Settlement Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Settlement Agreement or the intent of any provision hereof.

H. The Settlement Agreement may be executed in one or more counterparts. Scanned signatures, digital signatures or signatures received by facsimile shall be treated the same as originals for the Settlement Agreement and any written, agreed modification thereof. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the District Court.

I. The terms of the Settlement Agreement shall control in the event there are any conflicting terms in any related document.

J. The Settlement Agreement and any related documents shall be subject to, governed by and construed, interpreted and enforced pursuant to the internal laws of the State of New York.

K. The District Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement and all Parties hereby submit to the

exclusive jurisdiction of the District Court for purposes of implementing and enforcing the Settlement Agreement.

L. Any and all notices, requests, consents, directives, or communications by any party intended for any other party shall be in writing and shall, unless expressly provided otherwise herein, be given personally, by express courier, or by postage prepaid mail, or by facsimile or electronic transmission followed by postage prepaid mail, and shall be addressed as follows:

**For Plaintiff States:**

**Office of the Attorney General of Texas  
Chief, Antitrust Section  
300 W. 15<sup>th</sup> St., 7<sup>th</sup> Floor  
Austin, TX 78701**

**Office of the Attorney General of Connecticut  
Chief, Antitrust Department  
55 Elm Street  
PO Box 120  
Hartford, CT 06141-0120**

**Office of the Attorney General of Ohio  
Chief, Antitrust Section  
150 E. Gay St., 23<sup>rd</sup> Floor  
Columbus, OH 43215-3428**

**For Settlement Class:**

**Jeff D. Friedman  
Hagens Berman Sobol Shapiro LLP  
715 Hearst Avenue, Suite 202  
Berkeley, California 94710**

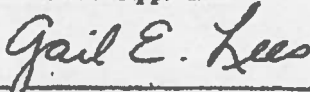
**For Apple:**

**Gail E. Lees  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, California 90071**

**Any one of the Parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner herein above provided, ten (10) calendar days before the change is effective.**

Agreed to by:

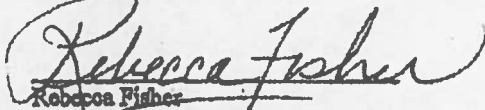
**Counsel for Apple Inc.**



Gail E. Lees  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, California 900071

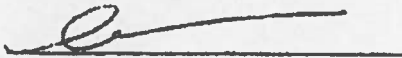
**Counsel for Liaison States**

State of Texas  
Greg Abbott  
Attorney General



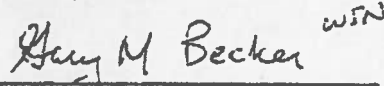
Rebecca Fisher  
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**Counsel for the Settlement Class**



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State of Connecticut  
George Jepsen  
Attorney General

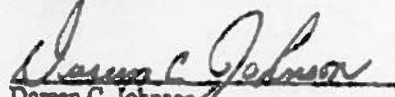


Gary M. Becker  
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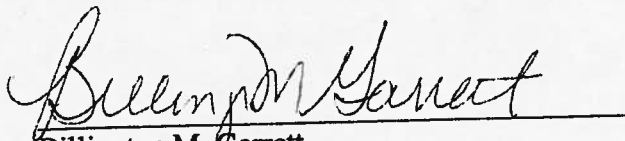
State of Ohio  
Mike DeWine  
Attorney General



Doreen C. Johnson  
Assistant Chief, Antitrust Section  
Office of the Attorney General of Ohio  
150 East Gay Street, 23<sup>rd</sup> Floor  
Columbus, Ohio 43215

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF ALABAMA  
LUTHER STRANGE  
ATTORNEY GENERAL**

A handwritten signature in cursive script, reading "Billington M. Garrett", written over a horizontal line.

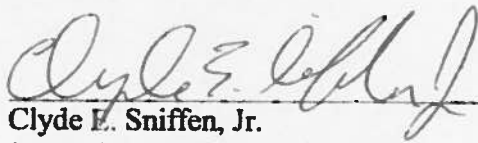
**Billington M. Garrett  
Assistant Attorney General  
State of Alabama  
501 Washington Avenue  
Montgomery, AL 36130  
(334) 242-7555**

**ATTORNEY FOR THE STATE OF ALABAMA**



**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF ALASKA  
MICHAEL C. GERAGHTY  
ATTORNEY GENERAL**



\_\_\_\_\_  
Clyde E. Sniffen, Jr.  
Sr. Assistant Attorney General  
Alaska Department of Law  
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**ATTORNEY FOR THE STATE OF ALASKA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF ARIZONA  
THOMAS C. HORNE  
ATTORNEY GENERAL**

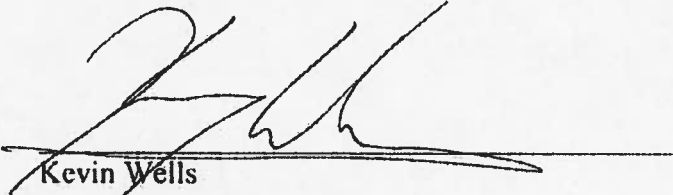


Nancy M. Bonnell  
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Susan V. Myers  
Assistant Attorney General  
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**ATTORNEY FOR THE STATE OF ARIZONA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF ARKANSAS**  
DUSTIN McDANIEL  
ATTORNEY GENERAL

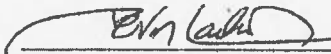
A handwritten signature in black ink, appearing to read 'Kevin Wells', is written over a horizontal line.

Kevin Wells  
Assistant Attorney General  
Consumer Protection Division  
Arkansas Attorney General's Office  
323 Center Street, Suite 500  
Little Rock, AR 72201  
(501) 682-8063

**ATTORNEY FOR THE STATE OF ARKANSAS**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF COLORADO  
JOHN W. SUTHERS  
ATTORNEY GENERAL**



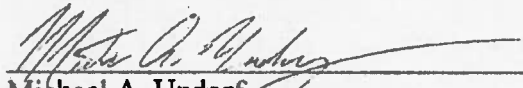
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Devin Laiho  
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(720) 508-6219

**ATTORNEY FOR THE STATE OF COLORADO**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF DELAWARE**  
**JOSEPH R. BIDEN, III**  
**ATTORNEY GENERAL**



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**Michael A. Undorf**  
**Deputy Attorney General**  
**Carvel State Office Building**  
**820 N. French Street, 5<sup>th</sup> Floor**  
**Wilmington, DE 19801**  
**(302) 577-8924**

**ATTORNEY FOR THE STATE OF DELAWARE**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**DISTRICT OF COLUMBIA  
IRVIN B. NATHAN  
ATTORNEY GENERAL**

**ELLEN S. EFROS  
DEPUTY ATTORNEY GENERAL, PUBLIC INTEREST DIVISION**

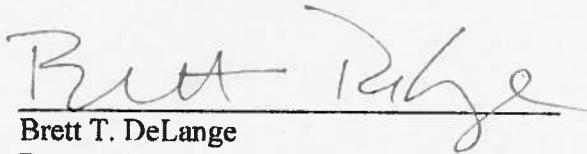


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**ATTORNEYS FOR THE DISTRICT OF COLUMBIA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF IDAHO**  
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**STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL**

*Chadwick O. Brooker*

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**STATE OF INDIANA  
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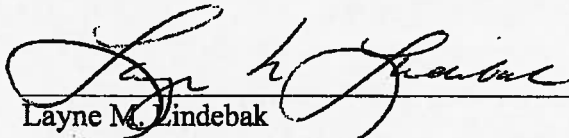
A handwritten signature in black ink, appearing to read "Jeremy R. Comeau", is written over a horizontal line.

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A handwritten signature in black ink, appearing to read "Layne M. Lindebak", is written over a horizontal line.

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**ATTORNEY FOR THE STATE OF IOWA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF KANSAS  
DEREK SCHMIDT  
ATTORNEY GENERAL**



---

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**ATTORNEY FOR THE STATE OF KANSAS**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF LOUISIANA  
JAMES D. "BUDDY" CALDWELL  
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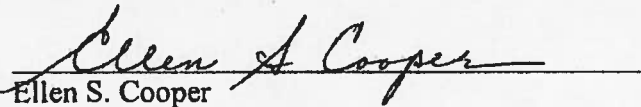
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**ATTORNEY FOR THE STATE OF LOUISIANA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF MARYLAND  
DOUGLAS F. GANSLER  
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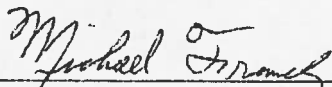


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**ATTORNEY FOR THE STATE OF MARYLAND**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**COMMONWEALTH OF MASSACHUSETTS  
MARTHA COAKLEY  
ATTORNEY GENERAL**



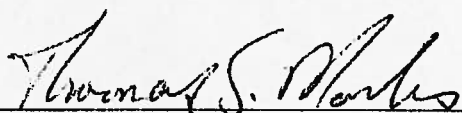
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**ATTORNEY FOR THE COMMONWEALTH OF MASSACHUSETTS**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF MICHIGAN  
BILL SCHUETTE  
ATTORNEY GENERAL**

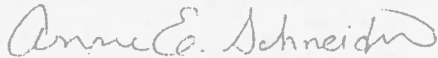
A handwritten signature in black ink, reading "Thomas S. Marks", is written over a horizontal line.

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**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF MISSOURI  
CHRIS KOSTER  
ATTORNEY GENERAL**



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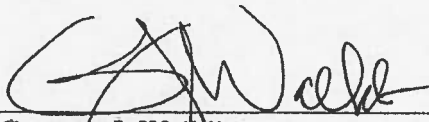
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**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF NEBRASKA  
JON BRUNING  
ATTORNEY GENERAL**



---

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**ATTORNEY FOR THE STATE OF NEBRASKA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF NEW MEXICO**  
**GARY K. KING**  
**ATTORNEY GENERAL**



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Nicholas M. Sydow  
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**ATTORNEY FOR THE STATE OF NEW MEXICO**

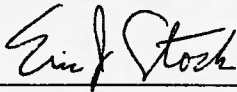
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**Apple Settlement Agreement**

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**APPLE INC. E-BOOK SETTLEMENT**

**STATE OF NEW YORK  
ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL**



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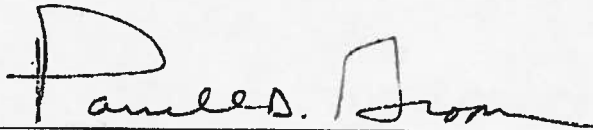
Eric J. Stock  
Bureau Chief  
Robert L. Hubbard  
Linda J. Gargiulo  
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**ATTORNEYS FOR THE STATE OF NEW YORK**

**Apple Settlement Agreement**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF NORTH DAKOTA  
WAYNE STENEHJEM  
ATTORNEY GENERAL**

A handwritten signature in black ink, appearing to read "Parrell D. Grossman". The signature is written in a cursive style with a large initial "P" and "G".

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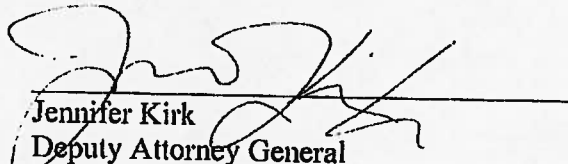
**E-BOOKS SETTLEMENT WITH APPLE INC.**

**COMMONWEALTH OF PENNSYLVANIA**

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ATTORNEY GENERAL

**JAMES DONAHUE, III**  
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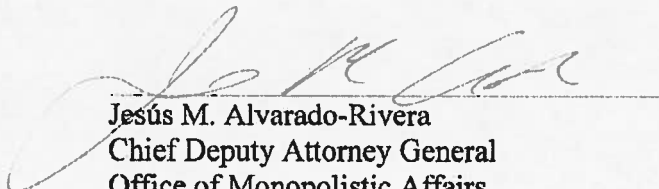
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**ATTORNEYS FOR THE COMMONWEALTH OF PENNSYLVANIA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**COMMONWEALTH OF PUERTO RICO  
HON. CESAR MIRANDA RODRIGUEZ  
ATTORNEY GENERAL**

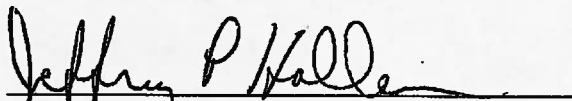


\_\_\_\_\_  
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**ATTORNEY GENERAL**




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**ATTORNEY FOR THE STATE OF SOUTH DAKOTA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF TENNESSEE**  
**ROBERT E. COOPER, JR.**  
**ATTORNEY GENERAL & REPORTER**



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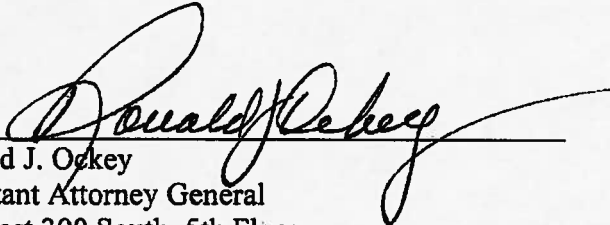
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**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF UTAH  
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**STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL**



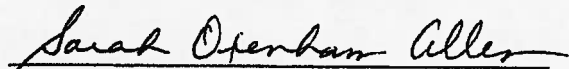
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**COMMONWEALTH OF VIRGINIA  
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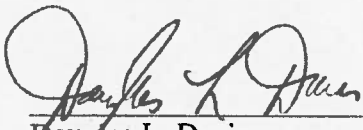


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**ATTORNEYS FOR THE COMMONWEALTH OF VIRGINIA**

**E-BOOKS SETTLEMENT WITH APPLE INC.**

**STATE OF WEST VIRGINIA  
PATRICK MORRISFY  
ATTORNEY GENERAL**



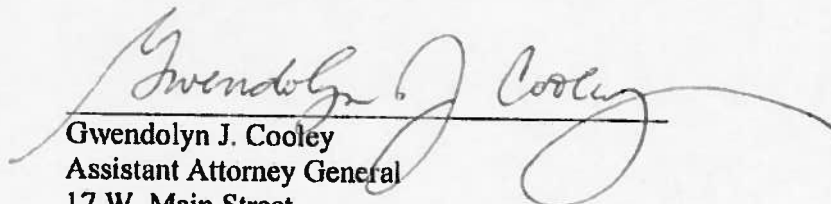
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**ATTORNEYS FOR THE STATE OF WEST VIRGINIA**

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**STATE OF WISCONSIN  
J.B. VAN HOLLEN  
ATTORNEY GENERAL**

  
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**ATTORNEYS FOR THE STATE OF WISCONSIN**

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 OCT -8 A 10:28

IN RE: THIRD-PARTY  
CHARGES ON MOBILE  
TELEPHONE BILLS

)  
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CIVIL DIVISION  
Docket No. 6052-16-FD Winer

**ASSURANCE OF VOLUNTARY COMPLIANCE**

Vermont Attorney General William H. Sorrell (“the Attorney General”) and AT&T Mobility LLC, acting on behalf of itself and its FCC licensed wireless operating affiliates, successors, and assigns (“Carrier”) hereby agree to this Assurance of Voluntary Compliance (“Assurance”)<sup>1</sup> pursuant to 9 V.S.A. § 2459.

**I. BACKGROUND**

1. The Attorneys General are responsible for enforcing their respective unfair and deceptive acts and practices laws and other consumer protection laws in their respective states and commonwealths.
2. Carrier is a Delaware limited liability company located at 1025 Lenox Park Boulevard, Atlanta, Georgia. Carrier is a leading provider of mobile telephone services.
3. The Attorneys General allege that the practice of placing charges on Consumers’ mobile telephone bills that have not been authorized by the Consumer, known as “cramming,” is a major national problem.
4. The Attorneys General allege that Consumers who have been “crammed” often complain about charges, typically \$9.99 per month, for “premium” text message subscription services such as horoscopes, trivia, and sports scores that they have never heard of or requested.
5. The Attorneys General allege that cramming occurs when Carrier places charges on Consumers’ mobile telephone bills for Third-Party Products without Consumers’ knowledge and/or authorization.

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GENERAL  
109 State Street  
Montpelier, VT  
05609

<sup>1</sup> This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

6. The Attorneys General allege that many Consumers are unaware that their mobile telephones can be used to make payments for Third-Party Products, and that Consumers often pay Unauthorized Third-Party Charges without the knowledge that the charges have been placed on their mobile telephone bills.
7. Carrier believes that it has fully and voluntarily cooperated with the Attorneys General in their inquiries regarding the placement of unauthorized Third-Party Charges on mobile telephone bills. Although Carrier denies any liability based upon the allegations above, in order to resolve this dispute, Carrier has agreed to the terms of this Assurance.

## II. DEFINITIONS

8. The following definitions shall apply for purposes of this Assurance:
  - a. "Attorneys General"<sup>2</sup> means the Attorneys General, or their designees, of the Participating States.
  - b. "Bill" means a Consumer's mobile telephone bill or prepaid mobile account, as applicable.
  - c. "Block" means a restriction placed on a Consumer's account that prevents one or more lines from being used to purchase Third-Party Products and from being billed for Third-Party Charges on a Consumer's Bill.
  - d. A statement is "Clear and Conspicuous" if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, understandable, and capable of being heard. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:
    - i. An audio disclosure must be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it;

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GENERAL  
109 State Street  
Montpelier, VT  
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<sup>2</sup> The Georgia Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to enforce Georgia's Fair Business Practices Act of 1975 ("FBPA"). The Utah Division of Consumer Protection is statutorily authorized to enforce all statutes listed in Utah Code 13-2-6, including the Utah Consumer Sales Practices Act, Utah Code 13-11-1, *et seq.* Hawaii is represented by its Office of Consumer Protection, an agency that is not part of the state Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii.

- ii. A text message, television, or internet disclosure must be of a type size, location, and shade and remain on the screen for a duration sufficient for a consumer to read and comprehend it based on the medium being used; and
- iii. Disclosures in a print advertisement or promotional material, including, but without limitation, a point of sale display or brochure materials directed to consumers, must appear in a type size, contrast, and location sufficient for a consumer to read and comprehend them.
- e. “Commercial PSMS” means the use of PSMS to bill for Products.
- f. “Consumer” means a current or former customer, subscriber or purchaser of Products for which Third-Party Charges are placed on the Consumer’s Bill from Carrier, whether that person is responsible for paying the Bill or has a device that is billed to a shared account, and is a resident of one of the Participating States. “Consumer” does not include any business entity or any state, federal, local, or other governmental entity, if (1) the business entity or government, and not the employees or individuals working for or with that business entity or government, is solely liable to the Carrier for payment of all charges billed on that account, and (2) the ability to process Third-Party Charges through that account is not available unless the business entity or government affirmatively requests that certain or all mobile devices be provided the ability to authorize placement of such Third-Party Charges.
- g. “Effective Date” means the date that the Stipulated Order for Permanent Injunction and Monetary Judgment in the case captioned *Federal Trade Commission v. AT&T Mobility LLC* is entered by the District Court for the Northern District of Georgia. Provided, however, this agreement is binding upon execution.
- h. “Express Informed Consent” means an affirmative act or statement giving unambiguous assent to be charged for the purchase of a Third-Party Product that is made by a Consumer after receiving a Clear and Conspicuous disclosure of material facts.
- i. “Participating States” means the following states and commonwealths: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, as well as the District of Columbia.



- j. “Premium Short Messaging Service” or “PSMS” means a service that distributes paid content to a Consumer using the Short Message Service (“SMS”) and Multimedia Messaging Service (“MMS”) communication protocols via messages that are routed using a Short Code, resulting in a Third-Party Charge.
- k. “Product” means content and/or services that can be used on a mobile device for which charges are placed on the Consumer’s Bill by the Carrier. “Product” excludes contributions to charities, candidates for public office, political action committees, campaign committees, campaigns involving a ballot measure, or other similar contributions. “Product” also excludes co-branded, co-marketed (where Carrier markets via national media the content and/or services with both the Carrier’s brand and a Third Party’s brand) or white label products branded by Carrier, where (i) content and/or services are sold by Carrier or jointly and cooperatively by Carrier and another entity; (ii) the content and/or services are placed on the subscriber’s Bill as a Carrier charge; and (iii) the Carrier is responsible for accepting complaints, processing refunds, and other communications with the consumer regarding the charge.
- l. “Short Code” means a common code leased from the CTIA Common Short Code Administration that is comprised of a set of numbers, usually four (4) to six (6) digits, which text messages can be sent to and received from using a mobile telephone.
- m. “Third Party” means an entity or entities, other than Carrier, that provides a Product to Consumers for which billing is made through Carrier’s Bills.
- n. “Third-Party Charge” means a charge for a Third-Party Product placed on a Consumer’s Bill.
- o. “Third-Party Product” means a Product provided by a Third Party.
- p. “Unauthorized Third-Party Charge” means a Third-Party Charge placed on a Consumer’s Bill without the Consumer’s Express Informed Consent.

### **III. APPLICATION**

- 9. The provisions of this Assurance shall apply to Carrier and its officers, employees, agents, successors, assignees, merged or acquired entities, wholly owned subsidiaries, and all other persons or entities acting in concert or participation with any of them, who receive actual notice of this Assurance, regarding Carrier’s placement of Third-Party Charges in the Participating States.

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
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#### IV. ASSURANCE TERMS

10. Commercial PSMS: Carrier will not make available to Consumers the option to purchase Products through Commercial PSMS or bill charges for Commercial PSMS.
11. Authorization of Third-Party Charges: Carrier shall begin developing and implementing a system, which shall be fully implemented by Carrier no later than February 1, 2015, to obtain Express Informed Consent before a Consumer is billed for any Third-Party Charge. The Consumer's Express Informed Consent may be provided to Carrier or to another person or entity obligated to Carrier to obtain such consent. The Carrier or other person or entity shall retain sufficient information to allow such consent to be verified. If Express Informed Consent is not directly collected by Carrier, Carrier shall implement reasonable policies and practices<sup>3</sup> to confirm Express Informed Consent will be appropriately collected and documented by the person or entity obligated to do so, and shall monitor and enforce those policies and practices to confirm Express Informed Consent is appropriately collected, require remedial action (which may include, for example, suspension, proactive credits, or retraining), or cease billing for such charges. While the system described by this Paragraph is being developed and implemented, Carrier shall take reasonable steps to obtain Express Informed Consent before a Consumer is billed for any Third-Party Charge.
12. Purchase Confirmation for Third-Party Charges: Carrier shall implement a system whereby the Consumer (and, for multiline accounts, the primary or principal account holder or owner (collectively "primary account holder"), if designated) will be sent a purchase confirmation separate from the Bill of every Third-Party Charge that will appear on his or her Bill. Any such purchase confirmation shall be sent within a reasonable period of time following the time a Third-Party Product is purchased or renewed and identify the Block options that Carrier makes available to Consumers and/or provide access to such information. For multiline accounts, Carrier may provide the primary account holder the option to elect not to receive such purchase confirmations.
13. Information on Blocking: No later than September 30, 2014, to the extent Carrier permits Third-Party Charges on Consumers' Bills, Carrier shall provide a Clear and Conspicuous disclosure about Third-Party Charges and Block options in informational material provided at or near the time of subscribing to or activating service, and which is provided in a context separate from the actual subscriber agreement document. Such disclosure shall include or provide access to a description of Third-Party Charges, how Third-Party Charges appear on Bills, and options available to Consumers to Block Third-Party Charges. Consumers shall not

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<sup>3</sup> For purposes of this Paragraph, for charges incurred through operating system storefronts, such reasonable policies and practices may, for example, consist of Carrier or its agents making a statistically valid random sample of purchases to demonstrate whether the storefront is collecting Express Informed Consent consistent with this agreement.

incur any data or text charges for receiving or accessing the information discussed in this Paragraph.

14. Billing Information and Format: No later than February 1, 2015:

- a. Except for pre-paid mobile accounts, all Third-Party Charges shall be presented in a dedicated section of the Consumer's Bill (or in a dedicated section for each mobile line on the account, if the Bill sets forth charges by each line) and shall be set forth in such a manner as to distinguish the Third-Party Charges contained therein from Carrier's service, usage and other charges. This section of the Consumer's Bill shall contain a heading that clearly and conspicuously identifies that the charges are for Third-Party Products; and
- b. The Third-Party Charge billing section required by this Paragraph shall include a clear and conspicuous disclosure of a Consumer's ability to block Third-Party Charges, including contact and/or access information that Consumers may use to initiate such blocking. If the Carrier includes a Third-Party Charge billing section for each mobile line on the account, the Carrier shall have the option to include the disclosure of a Consumer's ability to block Third-Party Charges in only the first Third-Party Charge billing section that appears on the Bill, rather than in all Third-Party Charge billing sections.

15. Consumer Contacts: When a Consumer contacts Carrier with regard to a Third-Party Charge or a Block, Carrier shall:

- a. provide the Consumer with access to a customer service representative who has access to the Consumer's account information for at least the prior twelve (12) months;
- b. beginning no later than thirty (30) days after the Effective Date, for any Consumer who claims he or she did not authorize a Third-Party Charge incurred after the Effective Date, either (1) provide the Consumer a full refund or credit of any and all disputed Third-Party Charges not previously credited or refunded to the Consumer, or (2) deny a refund if:
  - i. Carrier has information demonstrating that the Consumer provided Express Informed Consent to the Third-Party Charge, offers to provide such information to the Consumer, and, upon request, provides such information to the Consumer; or
  - ii. the disputed Third-Party Charge (either a single charge or a recurring charge) was initially incurred more than six (6) years prior to when the Consumer contacts Carrier and Carrier is in compliance with Paragraph 12 with respect to the charge.

- c. if the Consumer claims that he or she did not authorize a Third-Party Charge, and the Consumer is a current customer of Carrier, offer the Consumer the opportunity to Block future Third-Party Charges;
  - d. beginning no later than thirty (30) days after the Effective Date, not require the Consumer to first contact the Third Party in order to receive a refund/credit of any claimed Unauthorized Third-Party Charge, although this subparagraph does not prohibit asking the Consumer if he or she has contacted the Third Party and/or if the Consumer has already received a credit or refund from the Third Party for some or all of the claimed Unauthorized Third-Party Charge;
  - e. beginning no later than thirty (30) days after the Effective Date, in the event a customer disputes a Third-Party Charge as unauthorized, until such time as the provisions of Paragraph 15.b.2.i or ii are satisfied, not:
    - i. require the Consumer to pay the disputed Third-Party Charge, including any related late charge or penalty;
    - ii. send the disputed Third-Party Charge to collection;
    - iii. make any adverse credit report based on non-payment of the disputed Third-Party Charge; and
    - iv. suspend, cancel, or take any action that may adversely affect the Consumer's mobile telephone service or functionality for any reason related to non-payment of any disputed Third-Party Charge.
16. Training: Carrier shall, for at least six (6) years from the Effective Date, conduct a training program with its customer service representatives, at least annually, to administer the requirements of this Assurance. To the extent that Carrier no longer permits Third-Party Charges on Consumers' Bills, Carrier will conduct one training program within three months of such cessation and will have no further obligation to conduct training programs under this Paragraph so long as Carrier does not permit Third-Party Charges on Consumers' Bills.
17. Record Keeping: No later than February 1, 2015, Carrier shall:
- a. implement a process to track (1) all Consumer claims that a Third-Party Charge was unauthorized for which Carrier demonstrated that purchaser provided Express Informed Consent; (2) refunds/credits provided due to Carrier's inability to provide proof of Express Informed Consent in response to such a claim by a Consumer; and (3) any other information necessary to prepare the Quarterly Reports described in Paragraph 19; and
  - b. implement systems that allow it to maintain the information described in this Paragraph. Each record created pursuant to this Paragraph shall be maintained for a period of six (6) years from the date of its creation.

Carrier's obligation to maintain records for six years from the date of their creation shall continue after Carrier's obligation to provide the Quarterly Reports described in Paragraph 19 expires.

18. Cooperation with Attorney General: Carrier shall, for at least six (6) years from the Effective Date, designate a contact to whom the Attorney General may provide information regarding any concerns about Unauthorized Third-Party Charges, and from whom the Attorney General may request information and assistance in investigations. Such information and assistance shall include information regarding the identity of Third Parties placing Third-Party Charges on Carrier's Bill, revenue from such Third-Party Charges, refunds provided relating to the Third-Party Charges, any audits conducted of the Third Party (to the extent not protected by attorney-client privilege or attorney work product), and any applications or other information provided by the Third Party, to the extent that Carrier has access to such information. Carrier shall provide such information within a reasonable period and shall cooperate in good faith with such requests, including investigating any reports of Unauthorized Third-Party Charges the Carrier receives from the Attorney General.
  
19. Information Sharing with Attorneys General:
  - a. Carrier shall, for at least six (6) years from April 1, 2015, provide a report to the Office of the Vermont Attorney General every three (3) months ("Quarterly Reports") documenting its compliance with the requirements of Paragraph 15. Without limiting Carrier's obligations under Paragraph 15, the quarterly reports shall include the following:
    - i. the total number of Consumer claims for unauthorized Third-Party Charges for which Carrier has demonstrated that the purchasers provided Express Informed Consent;
    - ii. all refunds/credits provided, in dollars, due to Carrier's inability to provide proof of Express Informed Consent in response to such a claim by Consumers;
    - iii. for the claims and refunds/credits identified under subparagraphs i and ii, above, the Third-Party Product, the Third Party, and the entity responsible for ensuring Express Informed Consent from the Consumer if different than Carrier; and
    - iv. a description of any remedial action taken by Carrier against Third Parties for Unauthorized Third-Party Charges, including, but not limited to, any actions taken to limit or terminate a Third Party's ability to place Third-Party Charges on a Consumer's Bill. The description of any remedial action provided under this subparagraph shall include: (a) the name and contact information of such Third Party, (b) a description of the Product in connection with which the remedial action that was taken, (c) an indication

of whether the Product was suspended or terminated (and if the Product was suspended, Carrier shall include the date or conditions for reinstatement), and (d) the reason for the remedial action.

- b. Information in Quarterly Reports shall be presented on a national basis and provided electronically in a format to be agreed to by the parties. Quarterly Reports shall be provided within thirty (30) days of the end of each calendar quarter.
- c. The Attorney General recognizes that Carrier asserts that the Quarterly Reports contain confidential commercial and financial information from Carrier that is proprietary and sensitive. The Attorney General recognizes that Carrier asserts that such information is customarily regarded as confidential in the wireless industry and by Carrier, and is likely to cause substantial harm to the competitive position of Carrier if publicly disclosed. In recognition of Carrier's assertions regarding the proprietary nature and sensitivity of Quarterly Reports, the Office of the Vermont Attorney General shall not disclose Quarterly Reports to any person. If any Reports are subject to an access request under the Vermont Public Records Act, the Vermont Attorney General shall notify Carrier in writing within a reasonable time of the Vermont Attorney General anticipating releasing the Reports under such a request.

#### V. MONETARY PAYMENT

- 20. Carrier shall pay a total of Twenty Million Dollars (\$20,000,000.00) to the Participating States. For purposes of this Assurance, Carrier shall pay \$1,161,893.19 to Vermont. In no event will the amount paid by Carrier to the Participating States exceed the total amount of \$20 million. Payment shall be made no later than thirty (30) days after the Effective Date. Said payment shall be used by the Vermont Attorney General for 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, any 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 Vermont Attorney General.
- 21. The Participating States and Carrier recognize that, in addition to the payment provided under Paragraph 20:
  - a. Carrier has agreed to pay Five Million Dollars (\$5,000,000.00) to the Federal Communication Commission ("FCC") to resolve the concurrent FCC investigation regarding Unauthorized Third-Party Charges; and
  - b. Carrier has agreed to contribute Eighty Million Dollars (\$80,000,000.00) to a consumer redress program administered by the Federal Trade Commission

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("FTC") in consultation with the Attorneys General and the FCC, to resolve the concurrent FTC investigation regarding Unauthorized Third-Party Charges. To the extent the FTC transfers any residual amounts to the Participating States following the completion of the redress program, the Participating States shall use such money in the manner and for the purposes identified in Paragraph 20 above.

## VI. RELEASE

22. Effective upon full payment of the amounts due under Paragraphs 20 and 21, the Attorney General releases and discharges Carrier and its officers, employees, agents, successors, assignees, affiliates, merged or acquired entities, parent or controlling entities, and subsidiaries from any and all claims, suits, demands, damages, restitution, penalties, fines, actions, and other causes of action that the Attorney General could have brought under 9 V.S.A. § 2459, both known and unknown, arising directly or indirectly out of or related to billing, charging, disclosures, policies, practices, actions or omissions related to PSMS or Unauthorized Third-Party Charges that were incurred prior to the Effective Date. In the case of affiliates, acquired entities, or subsidiaries, this release only covers conduct occurring during the time such entities are or were affiliates or subsidiaries of Carrier. Nothing contained in this Paragraph shall be construed to limit the ability of the Attorney General to enforce the obligations that Carrier and its officers, agents, servants and employees acting on its behalf, have under this Assurance.
23. Nothing in this Assurance shall be construed to create, waive, or limit any private right of action.
24. Notwithstanding any term of this Assurance, any and all of the following forms of liability are specifically reserved and excluded from the release in Paragraph 22 as to any entity or person, including Carrier:
  - a. Any criminal liability that any person or entity, including Carrier, has or may have to Vermont.
  - b. Any civil or administrative liability that any person or entity, including Carrier, has or may have to Vermont under any statute, regulation or rule not expressly covered by the release in Paragraph 22 above, including but not limited to, any and all of the following claims:
    - i. state or federal antitrust violations;
    - ii. state or federal securities violations; and
    - iii. state or federal tax claims.

## VII. GENERAL PROVISIONS

25. The parties understand and agree that this is a compromise settlement of disputed issues and that the consideration for this Assurance shall not be deemed or construed as: (a) an admission of the truth or falsity of any claims or allegations heretofore made or any potential claims; (b) an admission by Carrier that it has violated or breached any law, statute, regulation, term, provision, covenant or obligation of any agreement; or (c) an acknowledgement or admission by any of the parties of any duty, obligation, fault or liability whatsoever to any other party or to any third party. This Assurance does not constitute a finding of law or fact, or any evidence supporting any such finding, by any court or agency that Carrier has engaged in any act or practice declared unlawful by any laws, rules, or regulations of any state. Carrier denies any liability or violation of law and enters into this Assurance without any admission of liability. It is the intent of the parties that this Assurance shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Assurance.
26. Unless otherwise specifically provided, all actions required pursuant to this Assurance shall commence as of the Effective Date. For entities that Carrier has acquired since September 2013, and in the event that Carrier acquires any new entity, Carrier shall take immediate steps to cease billing charges for all Commercial PSMS. With respect to such entities, Carrier shall provide the Consumer with access to a customer service representative who shall have access to the Consumer's account information related to Third-Party Charges for at least the prior twelve (12) months. If such information is not available, Carrier shall have twelve (12) months to come into compliance with Paragraph 15(a) with respect to such entities and, while coming into compliance respond to the Consumer's inquiry within ten (10) days using any available information. As to all other requirements contained in this Assurance, Carrier shall have a reasonable period of time, which in no event shall exceed six (6) months, in which to bring said entity into compliance with this Assurance and during that period, Carrier shall take reasonable steps to obtain Express Informed Consent before a Consumer is billed for any Third-Party Charge.
27. Nothing in this Assurance limits Carrier's right, at its sole discretion, to provide refunds or credits to Consumers in addition to what is required in this Assurance.
28. Carrier understands that the Attorney General may file and seek court approval of this Assurance. Should such an approval be obtained, the court shall retain jurisdiction over this Assurance for the purpose of enabling the parties to apply to the 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. Neither party will object on the basis of jurisdiction to enforcement of this Assurance under this provision.
29. As consideration for the relief agreed to herein, if the Attorney General of a Participating State determines that Carrier has failed to comply with any of the terms of this Assurance, 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 Participating State and/or does not create an emergency requiring immediate action, the Attorney General will notify Carrier in writing of such failure to comply and Carrier shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination. The response shall include an affidavit containing, at a minimum, either: (a) A statement explaining why Carrier believes it is in full compliance with the Assurance; or (b) A detailed explanation of how the alleged violation(s) occurred; and (i) A statement that the alleged breach has been addressed and how; or (ii) A statement that the alleged breach cannot be reasonably addressed within ten (10) business days from receipt of the notice, but (1) Carrier has begun to take corrective action to address the alleged breach; (2) Carrier is pursuing such corrective action with reasonable and due diligence; and (3) Carrier has provided the Attorney General with a detailed and reasonable time table for addressing the alleged violation(s).

30. Nothing herein shall prevent the Attorney General from agreeing in writing to provide Carrier with additional time beyond the ten (10) business day period to respond to the notice provided under Paragraph 29.
31. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this Paragraph shall be construed to limit the authority of the Attorney General to protect the interests of the Participating State or the people of the Participating State.
32. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard to fairness.
33. Carrier shall designate one or more employees to act as the primary contact for the Attorney General for purposes of assisting the Attorney General in investigations. Carrier shall provide the Attorney General with the name(s), address(es), telephone number(s), facsimile number(s) and electronic mail address(es) of each such employee.
34. This Assurance is intended to supplement, and does not supplant or in any way restrict, the Attorney General's subpoena power and/or investigative authority pursuant to applicable law.
35. This Assurance does not supplant or in any way restrict the Attorney General's powers to investigate the prevalence of Unauthorized Third-Party Charges or the extent to which this Assurance has affected the prevalence of Unauthorized Third-Party Charges in its jurisdiction.
36. This Assurance does not supplant or in any way restrict Carrier's legal rights and ability to demand formal legal process to protect its Consumers' privacy rights

and/or to protect Carrier from potential liability for disclosing or sharing such information without legal process.

37. The only persons with rights under this Assurance are the parties to the Assurance, namely Carrier and the Attorney General. No third party is entitled to claim rights under this Assurance and no provision of this Assurance is enforceable by any person or entity not a party to the Assurance. The agreement in this Assurance has no third-party beneficiaries.
38. This Assurance represents the full and complete terms of the settlement entered by the parties hereto.
39. All parties participated in the drafting of this Assurance.
40. 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.
41. All Notices under this Assurance shall be provided to the following address via First Class or Electronic Mail:

**For the Attorney General:**

Kate Whelley McCabe  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-5621

kate.whelleymccabe@state.vt.us

**For Carrier:**

Mark S. Collins  
Senior Vice President  
AT&T Mobility Services LLC  
1055 Lenox Park Blvd NE  
Office D245  
Atlanta, GA 30319

*with a copy to:*

Office of the Senior Vice President  
and Assistant General Counsel  
AT&T Mobility LLC  
1025 Lenox Park Blvd NE  
Room A634  
Atlanta, GA 30319

42. Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance.
43. If any clause, provision or paragraph of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision, or paragraph of this Assurance and this

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Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, provision, or paragraph had not been contained herein.

44. Nothing in this Assurance shall be construed as relieving Carrier of the obligation to comply with all local, state and federal laws, regulations or rules, 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.
45. The parties understand that this Assurance shall not be construed as an approval of or sanction by the Attorney General of Carrier's business practices, nor shall Carrier represent the decree as such an approval or sanction. The parties further understand that any failure by the Attorney 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.
46. Carrier 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 Vermont that are prohibited by this Assurance or for any other purpose that would otherwise circumvent any term of this Assurance. Carrier shall not cause, knowingly permit, or encourage any other persons or entities acting on its behalf, to engage in practices from which Carrier is prohibited by this Assurance.
47. If the Attorney General determines that Carrier made any material misrepresentation or omission relevant to the resolution of this investigation, the Attorney General retains the right to seek modification of this Assurance.
48. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, such that Carrier cannot comply with both the statute or regulation and any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Vermont of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this Paragraph, and of the counterpart provision of this Assurance that is in conflict with the statute or regulation.
49. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by a Participating State, such that the statute or regulation is in conflict with any provision of this Assurance, and such that Carrier cannot comply with both the statute or regulation and the provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to both the Attorney General of Vermont and the Attorney General of the Participating State, of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this Paragraph, and of the counterpart provision of this Assurance that is in conflict with the statute or regulation.

50. To seek a modification of this Assurance for any reason other than that provided for in Paragraphs 48 or 49 of this Assurance, Carrier shall send a written request for modification to the addressee listed in Paragraph 41. The Participating States shall give such petition reasonable consideration. Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.
51. To the extent that any of the provisions contained herein permit implementation beyond the Effective Date, the parties have agreed to the delayed implementation of such provisions based on Carrier's representation that it is currently unable to meet the requirements of such provisions and that it needs the additional specified time to develop the necessary technical capabilities to come into compliance with the requirements of such provisions. Carrier agrees to make good faith and reasonable efforts to come into compliance with any such provisions prior to the implementation dates set by such provisions.
52. Carrier shall pay all court costs associated with the filing of this Assurance.


\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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

DATED at Montpelier, Vermont this 4<sup>th</sup> day of September, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
Kate Whelley McCabe  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-5621  
kate.whelleyMcCabe@state.vt.us

DATED at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2014.

MARK S. COLLINS  
Senior Vice President  
AT&T Mobility Services LLC  
1055 Lenox Park Blvd NE  
Office D245  
Atlanta, GA 30319

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

DATED at Montpelier, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: \_\_\_\_\_

Kate Whelley McCabe  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-5621  
kate.whelleyMcCabe@state.vt.us

DATED at Atlanta, Ga this 6 day of October, 2014.



MARK S. COLLINS  
Senior Vice President  
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STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2014 MAR -7 P 1:11

) CIVIL DIVISION  
) Docket No. 146-3-14 Wncw

FILED

In Re: Bourne's of Morrisville, Inc.

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Bourne's of Morrisville, Inc. ("Bourne's" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

**Background**

***Bourne's of Morrisville, Inc.***

1. Bourne's of Morrisville, Inc. is a corporation with offices at 72 Lower Main Street, Morrisville, Vermont 05661.
2. Bourne's operations include retail marketing, sale, and distribution of propane to residential, commercial, and industrial customers in Vermont. As of February 2014, Bourne's provided propane service to approximately 7,000 customers.

***Regulatory Framework***

3. 9 V.S.A. § 2453(a) prohibits "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce."
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 liquefied petroleum gas ("propane"). Since 1986, Vermont Consumer Protection Rule 111 ("CP 111" or "Propane Rule") has

governed the business practices of propane service providers in Vermont and is enforced by the Office of the Attorney General. The Rule was amended in 2009, effective on January 1, 2010, and amended again in 2011, effective on January 1, 2012 (reference to “CP 111” or the “Propane Rule” refers to the most recent version as amended).

5. Some of the relevant provisions of CP 111 to promote fair business practices and protect consumers include: requiring the clear disclosure of the price of propane and terms of service. CP 111.03 & 111.09.
6. 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). CP 111.01.
7. 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). Each day that a violation continues is a separate violation.

***Bourne’s Propane Practices***

8. On January 7, 2014, a Vermont consumer complained to the Attorney General’s Consumer Assistance Protection (“CAP”) regarding Bourne’s. The consumer complained about being billed a higher price per-gallon on delivery after being charged a lower “pre-authorized” price using Bourne’s online system for ordering propane.
9. In responding to that complaint, Bourne’s described its propane practices for consumers who order propane via Bourne’s online system, including those summarized in ¶¶ 10-14.
10. Beginning on June 1, 2009, Bourne’s allowed will-call consumers to create an account and order propane through a “web portal”. A “will-call consumer” is a customer who must affirmatively request propane for each delivery (as opposed to a customer that



receives propane according to automatic scheduled deliveries, typically based on usage and a negotiated propane purchase agreement).

11. Will-call consumers periodically receive e-mail reminders to place a propane fuel order using the web portal. The web portal displays a price-per-gallon for that day and allows consumers to enter the quantity of fuel they wish to purchase.
12. When ordering propane via the web portal, will-call consumers who pay with a credit or debit card are charged a “pre-authorized” amount, which constitutes the quantity of propane ordered at that day’s price-per-gallon listed on the web portal. After completing the web portal transaction, a consumer receives a “Fuel Order Confirmation and Receipt.” The receipt states, among others, that: “The charge price for this delivery is \$X.XX per gallon. This is the price that will appear on your ticket.”
13. However, upon delivery of the propane, consumers are billed for the propane based on the price-per-gallon on the day of delivery. This means that the will-call consumers who “pre-purchased” propane using the web portal were actually billed for a different amount than the “pre-authorized” amount stated on their Fuel Order Confirmation and Receipt. Sometimes the amount was lower; other times the amount was higher. But at no time was there a clear disclosure (either on the “Fuel Order Confirmation and Receipt” or otherwise) that the price-per-gallon would change.
14. Bourne’s has identified 91 will-call consumers who since June 1, 2009, were charged a “pre-authorized” price, but later billed for a higher amount, without advanced disclosure of the change.

15. In response to the Attorney General's investigation of the above, Bourne's provided prompt and compliant responses, and immediately changed its practice to charge will-call consumers only the price that was "pre-authorized" in the web portal.
16. Bourne's admits the truth of the facts described in ¶¶ 1-2; 8-15.

***The State's Allegations***

17. The Vermont Attorney General's Office alleges that charging consumers a "pre-authorized" price in the web portal and then charging a higher price for propane on delivery, without advanced disclosure, violates the Vermont Consumer Protection Act and Propane Rule.
18. 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 litigation, the Attorney General and Bourne's are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter. Agreeing to the terms of this Assurance of Discontinuance for purpose of settlement does not constitute an admission by Bourne's to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

19. Bourne's 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.
20. Bourne's shall immediately charge all will-call consumers who pre-pay for propane via Bourne's web portal (or any online or telephone order) the "pre-authorized" price. For consumers who do not pre-pay, Bourne's shall clearly disclose the fact that the price

displayed on the web portal is “subject to change,” and that “the price the customer will be billed will be based on the price-per-gallon on the actual day of delivery.”

21. Bourne’s shall immediately revise the terms and disclosures displayed in its web portal as necessary to comply with the preceding paragraph, and Bourne’s shall submit its proposed disclosures to the Attorney General’s Office for approval.
22. Bourne’s shall update any additional terms of service as necessary, within 30 days of this AOD to comply with the terms of this AOD.
23. Bourne’s shall immediately pay all 91 consumers identified in ¶ 14 the difference between the delivery and the “pre-authorized” price, totaling \$1,009.90 as restitution. At Bourne’s election, the payments may be made by a credit to the consumer’s account for future propane, by check, or by reducing any outstanding balance.

#### **Other Terms**

24. Neither Bourne’s nor anyone acting on its behalf shall state or infer that the Vermont Attorney General’s Office approves any practices of Bourne’s.
25. This AOD shall be binding on Bourne’s, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Bourne’s 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.
26. This AOD resolves all existing claims the State of Vermont may have against Bourne’s stemming from the conduct described in this document, as of February 14, 2014.

27. 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 any of its provisions, to enforce compliance, and to punish violations of its provisions.
28. Communications related to this AOD shall be given to Bourne's at:
- a. Eileen Lampman (Eileen@Bournes.net) 72 Lower Main Street, Morrisville, Vermont 05661.
  - b. James Mahoney, Esq. (jmahoney@polowlaw.com), 125 Main Street, P.O. Box 130, Hyde Park, Vermont 05655.
29. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General.
30. Bourne's shall notify the Attorney General of any change of Bourne's business name or address and of any change in contact information in ¶ 28 within 20 business days.

**Violations and Stipulated Penalties**

31. In the event that Bourne's 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 Bourne's unrelated to the conduct described in this AOD.
32. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Bourne's to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be \$5,000. For purposes of this paragraph 32, the term "each act" shall mean: charging a

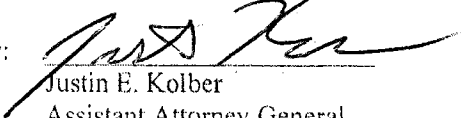
higher price-per-gallon than an advertised or stated price, without disclosing that the price-per-gallon billed will change.

DATED at Montpelier, Vermont this 7<sup>th</sup> day of March, 2014.

**STATE OF VERMONT**

WILLIAM H. SORRELL  
ATTORNEY GENERAL

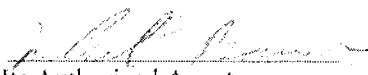
By:

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

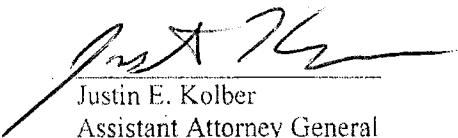
DATED at Morrisville, VT this 4<sup>th</sup> day of March, 2014.

**Bourne's of Morrisville, Inc.**

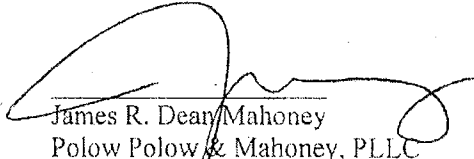
By:

  
Its Authorized Agent  
Michael Bourne  
Name and Title of Authorized Agent

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

  
James R. Deary Mahoney  
Polow Polow & Mahoney, PLLC  
125 Main Street  
PO Box 130  
Hyde Park, VT 05655

For Bourne's of Morrisville, Inc.

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

IN RE BUCK'S FURNITURE  
and SANDRA BUCK HOWARD

)  
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CIVIL DIVISION

Docket No.

662-11-14 Wick

FILED

2014 NOV -5 P 2:16

VERMONT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General"); Sandra Buck Howard, the Vice President, Secretary, and co-owner of Buck's Furniture; and Buck's Furniture (together, "Respondents") hereby agree to this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

**PARTIES AND JURISDICTION**

1. Respondent Buck's Furniture is a business entity incorporated under the laws of Vermont, with its principal place of business located at 4155 Vermont Route 15, Wolcott, Vermont 05680. Buck's Furniture has been open and in the business of selling furniture and mattresses manufactured by national brands since 1957.
2. Respondent Sandra Buck Howard is the Vice President, Secretary, and co-owner of Buck's Furniture.
3. The Vermont Attorney General is authorized to enforce the provisions of the Consumer Protection Act, 9 V.S.A. chapter 63.

**REGULATORY FRAMEWORK**

4. Vermont's Consumer Protection Act prohibits "unfair or deceptive acts or practices in commerce." 9 V.S.A. § 2453(a).

5. Under 9 V.S.A. § 2453(d), the violation of a rule or regulation of the Office of Attorney General is prima facie proof of the commission of an unfair or deceptive act in commerce.
6. The Attorney General's Consumer Protection ("CP") Rules prohibit:
  - a. Misrepresentations that lead a reasonable consumer to be switched from goods originally advertised to different goods, CP Rule 103.01(a);
  - b. Promising prompt delivery unless the sellers have taken action to ensure prompt delivery, CP Rule 105.01(a);
  - c. Accepting money at the time of sale from the customer unless delivery can be made within six weeks, with limited exceptions, CP Rule 105.01(d);
  - d. Deceptive pricing, including reference pricing, whereby the amount listed as the former or tagged price is not the actual price at which the good was offered for sale for a reasonably substantially period of time, CP Rule 110.02(a);
  - e. Continuing a distress sale (e.g., going out of business sale) more than 45 days, with limited exceptions, CP Rule 114.03(c); and
  - f. Advertising a distress sale without disclosing specific information, CP Rule 114.04.
7. The Attorney General is authorized to pursue enforcement under 9 V.S.A. § 2458 for violations of the Consumer Protection Act and to seek relief, including injunctive relief, civil penalties of up to \$10,000 for each violation, and reimbursement of costs for the reasonable value of the State's services and its expenses in investigating and prosecuting an action.

#### **FACTS AND ALLEGED VIOLATIONS OF LAW**

8. The Attorney General's Consumer Assistance Program has received at least 68 customer complaints regarding Respondents' business practices since January 1, 2008.

9. At least four customers complained of ordering new items, but, upon delivery receiving the floor model, which was materially different than the goods ordered.

10. At least three customers complained of receiving mattresses and furniture that were different than what they ordered, including complaints that customers received the wrong type, brand, and fabric.

11. Numerous customers complained of delayed deliveries. Many customers paid Respondents in full at the time of purchase. While Respondents' receipts stated "No promised delivery date implied or expressed on non-stock goods," it was Respondents' practice to tell customers that non-stock furniture would generally arrive within thirty to ninety days. Due to its failure to make payments on time, since 2011 Respondent Buck's Furniture's accounts with multiple manufacturers were placed on a credit hold or cash on delivery status requiring payment for an order prior to production and shipment. Over twenty individuals complained of delayed deliveries in excess of ninety days from the time of order, with one complaint of a delivery being delayed as long as 211 days. Additionally, Respondents provided refunds based on delayed delivery complaints to twenty-five customers who did not file complaints with the Consumer Assistance Program.

12. Respondents routinely advertised on local television and radio stations, as well as with printed mailers to Vermont residents. For the 140 weeks from 2011 through September of 2013, Respondents only had 21 weeks in which they did not utilize television or radio spots or printed mailers to advertise a storewide sale. Thus, during this 140-week period, Respondents ran storewide sales for a period of at least 119 weeks. These storewide sales were often reference-priced, meaning that the sale indicated a discount off of the tagged



price of the product on the sales floor. There were insufficient records produced by Respondents to establish the length of time goods were sold at the tagged price.

13. Respondents began a distress sale, their final "Going Out of Business" sale, on January 26, 2014 ("the Sale"), having hired DM Reid Associates, Ltd. to conduct the Sale.

Respondents did not discontinue the Sale by March 13, 2014, 45 days from the beginning date of the Sale, and Respondents failed to disclose to the public in all of its advertisements or other promotional materials that the Sale continued for more than 45 days. Additionally, Respondents failed to include the name and business address of DM Reid Associates, Ltd. in all of its advertisements for the Sale.

14. Respondents admit the truth of all facts set forth in paragraphs 8-13 above.

15. Based on the facts set forth in paragraphs 8-13, the Attorney General alleges that Respondents committed multiple violations of CP Rules 103, 105, 110, and 114.

16. The Attorney General alleges that the above conduct constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

#### **ASSURANCES AND RELIEF**

17. The parties have consented to the entry of this Assurance of Discontinuance for the purpose of settlement, and it does not constitute an admission by Respondents to the violation of any law, rule or regulation.

#### **INJUNCTIVE RELIEF**

18. Respondents agree that they are going out of business and will not resume any business operations in the field of any retail furniture sales under the name Buck's Furniture or a new business name if the ownership, management, and/or control of the business remains with Respondent Sandy Howard for a period of one year from the execution of this AOD.

19. The individual Respondent agrees to provide notice to the Attorney General's Office not less than thirty days prior to acquiring an ownership interest in or management of any retail furniture business engaged in commerce in Vermont, including the sale of antiques, which notice shall include the name of the furniture business, the address of the retail store, the URL of any website, the role that Respondent will have in the business, the start date of Respondent's involvement, and a description of the business

20. Respondents agree to comply with the provisions of the Vermont Consumer Protection Act, 9 V.S.A. chapter 63, including without limitation all Consumer Protection Rules.

#### **RESTITUTION**

21. The parties have exchanged a list of customers who have complained to either Respondents or the Consumer Assistance Program between May 1, 2008, and the date of this AOD, with each customer's name and, if available, last known address, and telephone number.

22. Within 60 days of the signing of this AOD, Respondents shall write checks equal to \$100 to each customer on the list referenced in paragraph 21 for a total restitution amount of nine thousand dollars (\$9,000). Respondents shall clearly indicate on the front of the checks that they are void after 60 days.

23. Respondents will deliver the checks set forth in paragraph 22 to the Attorney General at Office of the Vermont Attorney General, Attn: Consumer Protection Unit, 109 State Street, Montpelier, Vermont 05609, within 65 days of the signing of this AOD. The Attorney General shall mail the checks to each of the customers on the list referenced in paragraph 21.

24. In the event that any check sent pursuant to paragraph 23 is not cashed within 60 days after Respondents send the payments to the Attorney General, Respondents shall mail to the Attorney General's Office:

- a. A single check, payable to "Vermont State Treasurer" in the total dollar amount of all checks that were not cashed, to be treated as unclaimed funds, under Vermont's unclaimed property statute, 27 V.S.A, chapter 14;
- b. The list referenced in paragraph 21 shall be updated to indicate which customers had checks that were not cashed.

#### **PENALTIES**

25. Respondents shall pay civil penalties of eleven thousand dollars (\$11,000) within 60 days of both Parties signing this AOD. Respondents shall make payment to the "State of Vermont" and send payment to: Office of the Vermont Attorney General, Attn: Consumer Protection Unit, 109 State Street, Montpelier, Vermont 05609.

#### **OTHER TERMS**

26. Respondents agree that this Assurance of Discontinuance shall be binding on Respondents and their successors and assigns.

27. Respondent Sandy Howard agrees that she will take all steps necessary to assure that the restitution and penalties set forth in paragraphs 22 and 25 are non-dischargeable if she files for bankruptcy pursuant to either 11 U.S.C. chapter 7 or 13 prior to, or within 90 days of, payment of the amounts set forth in those paragraphs.

28. The parties agree to work in good faith to amend the terms of this AOD as necessary to carryout its purpose if such terms are affected in any way by any bankruptcy proceedings filed by Respondents.

29. The Attorney General hereby agrees that interest will not accrue on the amounts set forth in paragraphs 22 and 25 until sixty days following the closure of the later of any bankruptcy proceeding pursuant to 11 U.S.C. chapters 7 &/or 13, provided such proceeding is begun within one year of the execution of this AOD.<sup>1</sup>

30. The Attorney General hereby releases and discharges any and all claims arising under the Consumer Protection Act, 9 V.S.A. chapter 63, that it may have against Respondents for the conduct described specifically and generally in the Facts and Alleged Violations of Law section between the dates of January 1, 2008, through the date of this AOD.

31. 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 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.

#### NOTICE

32. Ms. Howard may be located at: PO Box 1144, 79 Church Street, Hardwick, Vermont 05843; Shhardwick@aol.com.

33. Until all payments are made pursuant to paragraphs 21-25, Ms. Howard shall notify the Attorney General of any change of business name or business or personal address within 20 business days of the change.

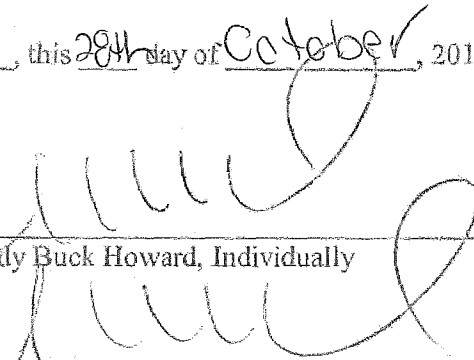
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<sup>1</sup> .The parties recognize and understand that Respondent may be seeking Bankruptcy protection by filing a Chapter 7 and then following up with a Chapter 13. This paragraph contemplates a sequential filing may occur, and a reasonable period (not to exceed 60 days) between the filings will not trigger any interest obligations as well.

**SIGNATURE**

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

DATED at Hardwick, this 28<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
Sandy Buck Howard, Individually

\_\_\_\_\_  
Sandy Buck Howard, As a duly authorized agent for Buck's Furniture

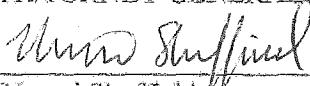
ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 30<sup>th</sup> day of October, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:

  
\_\_\_\_\_  
Naomi Sheffield  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
naomi.sheffield@state.vt.us  
802-828-6906

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 JUL -3 P 2:53

In Re: Cash Cure, LLC

) CIVIL DIVISION  
) Docket No. 416-7-14W/FCK F-1

**ASSURANCE OF DISCONTINUANCE**

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

**Background**

***Cash Cure***

1. Cash Cure, LLC d/b/a/ CashCure.com is a Delaware limited liability company with its primary place of business at 405 N. King Street, Suite 505, Wilmington, DE 19801. From December 2010 through August 2013, Respondent engaged in the business of making short-term, small dollar consumer loans.

***Regulatory Framework***

2. Pursuant to 9 V.S.A. § 2481w, it is an unfair and deceptive act and practice in commerce for a lender to solicit or make consumer loans unless the lender is in compliance with all provisions of 8 V.S.A. Chapter 73.
3. Chapter 73 of Title 8 requires all lenders to obtain a state license from the Department of Financial Regulation. 8 V.S.A. § 2201.
4. Any loan made in knowing and willful violation of the requirement that an entity engaged in the business of making loans of money or credit without first obtaining a

license shall be void and the lender shall have no right to collect or receive any principal, interest, or charges. 8 V.S.A. § 2215(d)(1).

5. A lender which makes a loan made without a license, but without a finding of knowing and willful violation of the requirement of a license, shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal. 8 V.S.A. § 2215(d)(1).
6. Chapter 4 of Title 9 limits the amount of interest and other consideration a lender may charge to between 12-24% per annum, depending on the type of loan. See 9 V.S.A. § 41a, 8 V.S.A. § 2233.
7. A lender that charges interest plus other consideration in excess of the allowable rates forfeits the right to collect any interest or charges whatsoever, and is entitled to collect only half the principal. See 9 V.S.A. § 50(b).
8. 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). Each day that a violation continues is a separate violation.

*Respondent's Consumer Loan Practices*

9. Cash Cure owns and operated the website [www.cashcure.com](http://www.cashcure.com), by which it previously marketed loans to consumers in various states, including to consumers in Vermont.
10. In order to fund and ensure repayment of its loans, Cash Cure obtained access to Vermont consumers' bank accounts. Loans were electronically funded by crediting a borrower's account. Respondent then electronically debited that same account, often using a third-party payment processor in order to collect on the loan.

11. Cash Cure has offered loans to Vermont consumers in amounts that range from \$200 - \$800. The annual percentage rate of Respondent's loans exceeded the interest rates allowed by Vermont law, and typically exceeded 300% per annum.
12. Since March 2012, Cash Cure has funded at least 94 loans to Vermont consumers, for a total of \$59,000 in principal funded. In connection with these loans, Cash Cure has collected \$77,578.41 in interest and \$360 in fees from Vermont consumers.
13. As of August 12, 2013, Cash Cure ceased lending to Vermont consumers.
14. Cash Cure admits the truth of the facts described in ¶¶ 1; 9-14.

***The State's Allegations***

15. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Vermont law:
  - a. The making of loans to Vermont consumers without a state license under Title 8, Chapter 73 violated 9 V.S.A. § 2481w(b); and
  - b. The charging of interest and other compensation in excess of Vermont's legal rates violated 9 V.S.A. § 41a.
16. 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 litigation, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter, and the parties agree as follows:

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



*Injunctive Relief*

17. Prior to doing any business in Vermont involving a loan as defined in Vermont law, Cash Cure shall comply with the following sections of the Vermont Statutes Annotated: Title 8, Chapter 73 (Licensed Lenders statutes); Title 9, Chapter 4 (Interest statutes); and Title 9, Chapter 63 (Consumer Protection statutes).
18. Cash Cure shall immediately cease advertising, offering, funding, or collecting upon any loan to Vermont consumers, unless and until Respondent has obtained the proper state license under Title 8, Chapter 73, and has complied with all other lending requirements. In furtherance of this provision, Cash Cure shall not purchase advertising for loans in Vermont, including television and internet ads, unless Cash Cure complies with §§ 17-18.
19. Cash Cure shall cancel all current, delinquent, defaulted, charged-off, or outstanding lending transactions which it entered into with Vermont consumers, and shall not undertake any efforts to collect on these transactions. Cash Cure shall not contract with any third-party debt collectors regarding these transactions, nor sell, or transfer, any obligations arguably due based upon these transactions. Cash Cure shall not make any negative reports to any credit bureau, check clearinghouse, or other related service with respect to these transactions. If any negative reports to any such credit bureau or related service with respect to a Vermont consumer have been made, Respondent, or the responsible party for Cash Cure, shall, within thirty (30) days of the entry of this AOD, request that those negative references be removed.
20. If any consumer complains to the Attorney General or to Cash Cure about a loan transaction entered into with Respondent, Cash Cure shall review the complaint

within ten days of receipt, and take actions consistent with this AOD, including cancelling any outstanding loan, removing any negative credit reporting, and refunding all interest and fees. If Cash Cure disputes any complaint, Respondent shall send a written explanation to the consumer, and shall include a statement that the consumer may contact the Consumer Assistance Program at (802) 656-3183 or [consumer@uvm.edu](mailto:consumer@uvm.edu), if the consumer disagrees.

*Payments to Consumers*

21. Within 30 days of signing this AOD, Cash Cure shall repay all interest and fees that it collected from Vermont consumers, for a total of \$77,938.41 paid to 94 consumers. Cash Cure shall send a letter from the Attorney General (Exhibit A), and the consumer's payment, in an envelope provided by the Attorney General's Office. Each consumer check shall have a deposit deadline of 90 days from the date of issuance.
22. Within 35 days of signing this AOD, Cash Cure shall send to the Attorney General's Office a list (in electronic Excel spreadsheet) of all consumers to whom payments were made, including the consumer name (which list shall set out the first and last names of the consumers in distinct fields or columns), contact information, and the amount paid.
23. In the event that Cash Cure is not able to locate consumers to whom any payments are owed after all reasonable efforts to do so have been taken and no later than 120 days after signing this AOD, Respondent 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 17, Chapter 14;

- b. A list, in electronic Excel format, of the consumers whose checks were returned 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.

***Payment to the State of Vermont***

- 24. Within 30 days of signing this AOD, Cash Cure shall pay to the State of Vermont \$15,000 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.

**Other Terms**

- 25. The parties have consented to the entry of this AOD for the purpose of settlement only and agree that it does not constitute an admission of the violation of any law, rule, or regulation.
- 26. Nothing in this AOD shall be construed to limit Cash Cure's ability or right to assert any legal, factual, or equitable defenses, including jurisdictional defenses, in any pending or future proceeding of any kind, except with respect to enforcement of this AOD by the Attorney General.

27. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.
28. This AOD and all terms therein shall be binding on Cash Cure, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. All current and future officers and directors of Cash Cure further agree to be personally bound by ¶¶ 17-18 of this AOD in both their official and individual capacity, and shall not undertake any role, personally or with any other company or entity (past, present, or future), in making loans in Vermont unless they comply with ¶¶ 17-18 of this AOD.
29. The undersigned authorized agent of Cash Cure 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.
30. This AOD resolves all existing claims the State of Vermont may have against Cash Cure stemming from the conduct described in this document.
31. 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 the terms of this AOD shall waive any such claim against Cash Cure.
32. 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 any of its provisions, to enforce compliance, and to punish violations of its provisions.

33. All notice related to this AOD shall be given to Cash Cure at:

901 N. Market Street Drive, Suite 1109, Wilmington, DE 19801

With a copy to:

Christine Schiltz, Parkowski, Guerke & Swayze, P.A., 800 King Street, Suite 203, Wilmington, DE 19801

34. Cash Cure shall notify the Attorney General of any change of business name or address within 20 business days.

#### **Violations and Stipulated Penalties**

35. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Cash Cure to be in violation of this AOD, 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 paragraph, the term "each act" shall mean: (a) each instance of soliciting, making, or collecting a loan in Vermont without a state license; and (b) each instance of charging an interest rate above the legal rates allowed by 9 V.S.A. § 41a.

36. In the event that the Attorney General alleges that Respondent has violated any of the terms of this AOD, then the parties agree that the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential

violations of law by Respondent, and that the Attorney General shall not have waived any of its rights to assert and prove any violations of law by Respondent.

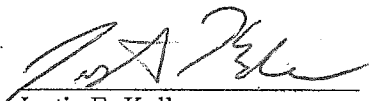
\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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

DATED at Montpelier, Vermont this 3<sup>rd</sup> day of July, 2014.

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

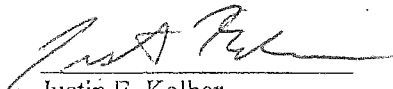
DATED at Wilmington, DE this 1st day of July, 2014.

CASH CURE, LLC

By:   
Its Authorized Agent

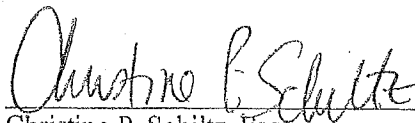
Brian Watt member  
Name and Title of Authorized Agent

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



Christine P. Schiltz, Esq.  
Parkowski, Guerke, & Swayze, P.A.  
800 King Street, Suite 203  
Wilmington, DE 19801

For Cash Cure, LLC

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

**Exhibit A**

July 2014

**Re: Cash Cure, LLC settlement**

Dear Vermont consumer:

You have been identified as a consumer who took out a loan from Cash Cure, LLC between 2010 and 2013. As a result of a settlement with the Attorney General's Office, Cash Cure is providing the enclosed payment to refund all interest and fees that you paid in connection with your loan.

If you accept this payment, you will waive whatever rights, if any, that you may possess to pursue an individual claim against Cash Cure in connection with your loan. You may decline to accept the check by returning or mailing it to Cash Cure, first class postage, within 90 days of the date of this letter, to the following address:

Cash Cure, LLC  
901 N. Market Street Drive, Suite 1109  
Wilmington, DE 19801

For more information on Vermont consumer protection law or the terms of this settlement, please visit the Attorney General's Office website at [www.atg.state.vt.us](http://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

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

Enc.





STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 DEC -3 P 3:20

In Re: A-1 Premium Budget, Inc. )

)

CIVIL DIVISION

Docket No. 731-15-14WJCV

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and A-1 Premium Budget, Inc., d/b/a Cash in a Wink ("A-1 Premium Budget" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

**Background**

***A-1 Premium Budget***

1. A-1 Premium Budget, Inc., d/b/a Cash in a Wink is a Delaware limited liability company with offices located at 3422 Old Capitol Trail Suite 1109, Wilmington, DE 19808 and 8304 Wornall Road, Kansas City, MO 64114-5810. Since 2011, Respondent has engaged in the business of making short-term, small dollar consumer loans.

***Regulatory Framework***

2. Pursuant to 9 V.S.A. § 2481w, it is an unfair and deceptive act and practice in commerce for a lender to solicit or make consumer loans unless the lender is in compliance with all provisions of 8 V.S.A. Chapter 73.
3. Chapter 73 of Title 8 requires all lenders to obtain a state license from the Department of Financial Regulation. 8 V.S.A. § 2201.

4. Any loan made in knowing and willful violation of the requirement that an entity engaged in the business of making loans of money or credit without first obtaining a license shall be void and the lender shall have no right to collect or receive any principal, interest, or charges. 8 V.S.A. § 2215(d)(1).
5. A lender which makes a loan made without a license, but without a finding of knowing and willful violation of the requirement of a license, shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal. 8 V.S.A. § 2215(d)(1).
6. Chapter 4 of Title 9 limits the amount of interest and other consideration a lender may charge to between 12-24% per annum, depending on the type of loan. *See* 9 V.S.A. § 41a, 8 V.S.A. § 2233.
7. A lender that charges interest plus other consideration in excess of the allowable rates forfeits the right to collect any interest or charges whatsoever, and is entitled to collect only half the principal. *See* 9 V.S.A. § 50(b).
8. 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). Each day that a violation continues is a separate violation.

***Respondent's Consumer Loan Practices***

9. A-1 Premium Budget owns and operates the website [www.cashinawink.com](http://www.cashinawink.com), by which it previously marketed loans to consumers in various states, including to consumers in Vermont.
10. In order to fund and ensure repayment of its loans, Respondent obtained access to Vermont consumers' bank accounts. Loans were electronically funded by crediting

a borrower's account. Respondent then electronically debited that same account, often using a third-party payment processor in order to collect on the loan.

11. A-1 Premium Budget has offered loans to Vermont consumers in amounts that range from \$300-\$600. The annual percentage rate of Respondent's loans exceeded the interest rates allowed by Vermont law, and typically exceeded 300% per annum.
12. Since January 2011, Respondent has funded 16 loans to twelve Vermont consumers, for a total of \$7,070 in principal funded. In connection with these loans, Respondent has collected \$6,641 in interest and fees from those consumers.
13. As of January 2012, Respondent ceased lending to Vermont consumers.
14. Respondent admits the truth of the facts described in ¶¶ 1; 9-14.

***The State's Allegations***

15. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Vermont law:
  - a. The making of loans to Vermont consumers without a state license under Title 8, Chapter 73 violated 9 V.S.A. § 2481w(b); and
  - b. The charging of interest and other compensation in excess of Vermont's legal rates violated 9 V.S.A. § 41a.
16. 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 litigation, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter, and the parties agree as follows:

*Injunctive Relief*

17. Prior to doing any business in Vermont involving a loan as defined in Vermont law, Respondent shall comply with the following sections of the Vermont Statutes Annotated: Title 8, Chapter 73 (Licensed Lenders statutes); Title 9, Chapter 4 (Interest statutes); and Title 9, Chapter 63 (Consumer Protection statutes).
18. A-1 Premium Budget shall immediately cease advertising, offering, funding, or collecting upon any loan to Vermont consumers, unless and until Respondent has obtained the proper state license under Title 8, Chapter 73, and has complied with all other lending requirements. In furtherance of this provision, A-1 Premium Budget shall not purchase advertising for loans in Vermont, including television and internet ads, unless A-1 Premium Budget complies with ¶¶ 17-18.
19. A-1 Premium Budget shall cancel all current, delinquent, defaulted, charged-off, or outstanding lending transactions which it entered into with Vermont consumers, and shall not undertake any efforts to collect on these transactions. A-1 Premium Budget shall not contract with any third-party debt collectors regarding these transactions, nor sell, or transfer, any obligations arguably due based upon these transactions. A-1 Premium Budget shall not make any negative reports to any credit bureau, check clearinghouse, or other related service with respect to these transactions. If any negative reports to any such credit bureau or related service with respect to a Vermont consumer have been made, Respondent, or the responsible party for A-1 Premium Budget, shall, within thirty (30) days of the entry of this AOD, request that those negative references be removed.

20. If any consumer complains to the Attorney General or to A-1 Premium Budget about a loan transaction entered into with Respondent, A-1 Premium Budget shall review the complaint within ten days of receipt, and take actions consistent with this AOD, including cancelling any outstanding loan, removing any negative credit reporting, and refunding all interest and fees. If A-1 Premium Budget disputes any complaint, Respondent shall send a written explanation to the consumer, and shall include a statement that the consumer may contact the Consumer Assistance Program at (802) 656-3183 or [consumer@uvm.edu](mailto:consumer@uvm.edu), if the consumer disagrees.

***Payments to Consumers***

21. Within 30 days of signing this AOD, A-1 Premium Budget shall repay all interest and fees that it collected from Vermont consumers, for a total of \$6,641 paid to 12 consumers. Respondent shall send a letter from the Attorney General (Exhibit A), and the consumer's payment, in an envelope provided by the Attorney General's Office. Each consumer check shall have a deposit deadline of 90 days from the date of issuance.
22. Within 35 days of signing this AOD, A-1 Premium Budget shall send to the Attorney General's Office a list (in electronic Excel spreadsheet) of all consumers to whom payments were made, including the consumer name (which list shall set out the first and last names of the consumers in distinct fields or columns), contact information, and the amount paid.
23. In the event that A-1 Premium Budget is not able to locate consumers to whom any payments are owed after all reasonable efforts to do so have been taken and no later

than 120 days after signing this AOD, Respondent 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 17, Chapter 14;
- b. A list, in electronic Excel format, of the consumers whose checks were returned 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.

***Payment to the State of Vermont***

24. Within 10 days of signing this AOD, A-1 Premium Budget shall pay to the State of Vermont \$10,000 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.

**Other Terms**

25. The parties have consented to the entry of this AOD for the purpose of settlement only and agree that it does not constitute an admission of the violation of any law, rule, or regulation.
26. Nothing in this AOD shall be construed to limit A-1 Premium Budget's ability or right to assert any legal, factual, or equitable defenses, including jurisdictional

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defenses, in any pending or future proceeding of any kind, except with respect to enforcement of this AOD by the Attorney General.

27. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.
28. This AOD and all terms therein shall be binding on A-1 Premium Budget, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. All current and future officers and directors of A-1 Premium Budget further agree to be personally bound by ¶¶ 17-18 of this AOD in both their official and individual capacity, and shall not undertake any role, personally or with any other company or entity (past, present, or future), in making loans in Vermont unless they comply with ¶¶ 17-18 of this AOD.
29. The undersigned authorized agent of A-1 Premium Budget 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.
30. This AOD resolves all existing claims the State of Vermont may have against A-1 Premium Budget stemming from the conduct described in this document.
31. 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 the terms of this AOD shall waive any such claim against A-1 Premium Budget.



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

33. All notice related to this AOD shall be given to A-1 Premium Budget at:

Christine Schiltz, Parkowski, Guerke & Swayze, P.A., 800 King Street, Suite 203, Wilmington, DE 19801

34. A-1 Premium Budget shall notify the Attorney General of any change of business name or address within 20 business days.

#### **Violations and Stipulated Penalties**

35. If the Superior Court of the State of Vermont, Washington Unit enters an order finding A-1 Premium Budget to be in violation of this AOD, 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 paragraph, the term "each act" shall mean: (a) each instance of soliciting, making, or collecting a loan in Vermont without a state license; and (b) each instance of charging an interest rate above the legal rates allowed by 9 V.S.A. § 41a.

36. In the event that the Attorney General alleges that Respondent has violated any of the terms of this AOD, then the parties agree that the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential

violations of law by Respondent, and that the Attorney General shall not have waived any of its rights to assert and prove any violations of law by Respondent.

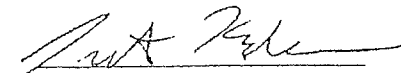
\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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GENERAL  
109 State Street  
Montpelier, VT  
05609

DATED at Montpelier, Vermont this 2<sup>nd</sup> day of December, 2014.

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  
Justin.kolber@state.vt.us

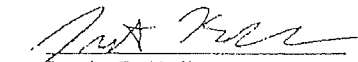
DATED at Kansas City MO this 3<sup>rd</sup> day of December, 2014.

A-1 PREMIUM BUDGET, INC.

By:   
Its Authorized Agent

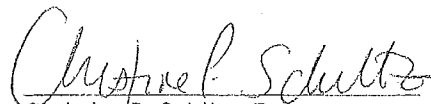
PAUL SILVERMAN, PRESIDENT  
Name and Title of Authorized Agent

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



Christine P. Schiltz, Esq.  
Parkowski, Guerke, & Swayze, P.A.  
800 King Street, Suite 203  
Wilmington, DE 19801

For A-1 Premium Budget, Inc.

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109 State Street  
Montpelier, VT  
05609

**Exhibit A**

December 2014

**Re: A-1 Premium Budget, Inc. settlement**

Dear Vermont consumer:

You have been identified as a consumer who took out a loan from A-1 Premium Budget, Inc. (also known as "Cash in a Wink") between 2011 and 2012. As a result of a settlement with the Attorney General's Office, A-1 Premium Budget is providing the enclosed payment to refund all interest and fees that you paid in connection with your loan.

If you accept this payment, you will waive whatever rights, if any, that you may possess to pursue an individual claim against A-1 Premium Budget in connection with your loan. You may decline to accept the check by returning or mailing it to A-1 Premium Budget, first class postage, within 90 days of the date of this letter, to the following address:

A-1 Premium Budget, Inc.  
3422 Old Capitol Trail Suite 1109  
Wilmington, DE 19808

For more information on Vermont consumer protection law or the terms of this settlement, please visit the Attorney General's Office website at [www.ago.vermont.gov](http://www.ago.vermont.gov) or call the Consumer Assistance Program at 800-649-2424 or (802) 656-3183.

Sincerely,

William H. Sorrell  
Attorney General

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

Enc.

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 APR 18 P 2:23

In Re: Western Sky Financial, LLC )  
CashCall, Inc. )  
WS Funding, LLC )  
Delbert Services Corporation )  
Martin A. Webb )  
J Paul Reddam )

CIVIL DIVISION

Docket No. 241-4-14 wncv

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell (the "Attorney General"), and Western Sky Financial, LLC, CashCall, Inc., WS Funding, LLC, Delbert Services Corporation, Martin A. Webb, and J Paul Reddam (collectively "Respondents"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459

**Background**

***Respondents***

- 1 Western Sky Financial, LLC ("Western Sky") is a South Dakota limited liability company with its primary place of business at 612 E Street, Timber Lake, SD 57656, on the Cheyenne River Indian Reservation (the "Reservation").
2. CashCall, Inc. ("CashCall") is a California corporation with its primary place of business at 1 City Boulevard West, Orange, CA 92868.
- 3 WS Funding, LLC ("WS Funding") is a Delaware limited liability company and a wholly-owned subsidiary of CashCall.
4. Delbert Services Corporation ("Delbert") is a Nevada corporation with its primary place of business at 7125 Pollock Drive, Las Vegas, NV 89119.

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- 5 At all times relevant herein, Martin A. Webb was, directly or indirectly, the sole member of Western Sky
6. J Paul Reddam is the chief executive officer, president, and sole owner of CashCall, the president and owner of WS Funding; and the director and owner of Delbert.
- 7 From April 14, 2010 through April 10, 2013, operating from the Reservation, Western Sky made loans to residents of Vermont who applied over the phone and the internet. Pursuant to a contractual arrangement between Western Sky and WS Funding, WS Funding purchased the loans made by Western Sky to residents of Vermont. CashCall serviced those loans. Some of these loans were subsequently serviced by Delbert. These loans carried rates which were greater than the rates set forth in 9 V.S.A. § 41a.

***Regulatory Framework***

8. Pursuant to 9 V.S.A. § 2481w (effective May 18, 2012), it is an unfair and deceptive act and practice in commerce for a lender to solicit or make consumer loans in Vermont unless the lender is in compliance with all provisions of Title 8, Chapter 73.
- 9 Chapter 73 of Title 8 requires all lenders to obtain a state license from the Vermont Department of Financial Regulation. 8 V.S.A. § 2201
10. 8 V.S.A. § 2215(d)(1) specifies that any loan made in knowing and willful violation of the requirement that an entity engaged in the business of making loans of money or credit without first obtaining a license shall be void and the lender shall have no right to collect or receive any principal, interest, or charges.

11. 8 V.S.A. § 2215(d)(1) also states that a lender that makes a loan without a license, but without a finding of knowing and willful violation of the requirement of a license, shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal. Chapter 73 of Title 8 also requires that all loans made in Vermont comply with the interest rate limits contained in Title 9, Chapter 4. 8 V.S.A. § 2233(b).
12. Chapter 4 of Title 9 limits the amount of interest and other consideration a lender may charge to between 12-24% per annum, depending on the type of loan. 9 V.S.A. § 41a.
13. Pursuant to 9 V.S.A. § 50(b); *see also* 8 V.S.A. § 2233(a), a lender that knowingly and willfully charges interest plus other consideration in excess of the rates permitted under 9 V.S.A. § 41a forfeits the right to collect any interest or charges whatsoever, and is entitled to collect only half the principal.
14. Pursuant to 9 V.S.A. § 2453(c), the Vermont Attorney General promulgated Consumer Protection (“CP”) Rule 104 covering debt collection practices. Under CP 104.05(c), it is an unfair and deceptive act to collect, or attempt to collect, any interest, fees, or charges that are not legally chargeable under state law.
15. 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).

***Respondents’ Consumer Loan Practices***

16. Western Sky owns and operated the website [www.westernsky.com](http://www.westernsky.com), through which it previously marketed loans to borrowers in various states, including to

borrowers residing in Vermont. Western Sky is not, and never has been, licensed to lend money in Vermont.

17. Western Sky is owned by Mr. Webb, a member of the Cheyenne River Sioux Indian Tribe, and operates on the Cheyenne River Indian Reservation. Western Sky is not operated or owned by a tribe or tribal entity.
18. As of April 10, 2013, Western Sky ceased offering or making loans to borrowers who reside in Vermont. As of September 3, 2013, Western Sky no longer engages in consumer lending nationwide, and has ceased funding new loans.
19. As described above in ¶ 7, from April 14, 2010 through April 10, 2013, operating from the Reservation, Western Sky made loans to borrowers residing in Vermont who applied over the phone and the internet. Pursuant to a contractual arrangement between Western Sky and WS Funding, WS Funding purchased the loans made by Western Sky to residents of Vermont. CashCall serviced those loans. Some of these loans were subsequently serviced by Delbert.
20. In order to fund and ensure repayment of the loans, Respondents obtained authority from Vermont borrowers to access their bank accounts. Loans were electronically funded by crediting a borrower's account. In some cases, CashCall or Delbert electronically debited that same account, often using third-party payment processors in order to collect on the loan.
21. Respondents have made loans to Vermont borrowers in individual loan amounts that range from \$700 to \$10,000, at annual interest rates between 89-169%. Most of the loans were under \$5,000, at interest rates in excess of 115%.



22. Since 2010, Respondents have funded loans to borrowers who were residing in Vermont at the time that they obtained the loan.

23. Respondents admit the truth of the facts contained in ¶¶ 1-7; 16-22.

***The State's Allegations***

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

- a. The solicitation and making of loans to Vermont consumers without a state license under Title 8, Chapter 73 violated 9 V.S.A. §§ 2453, 2481w(b);
- b. The charging of interest and other compensation in excess of Vermont's legal rates violated 9 V.S.A. § 41a; and
- c. The collection of interest and fees in excess of Vermont's legal rates violated CP 104.05(c).

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

26. Respondents do not admit liability for these allegations, and at all times Respondents believed in good faith that they were in full compliance with applicable law.

**Assurances and Relief**

In lieu of instituting an action or litigation, the Attorney General and Respondents are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a resolution of this matter, and the parties agree as follows:

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GENERAL  
109 State Street  
Montpelier, VT  
05609

***Injunctive Relief***

27. Upon entry of this AOD, prior to doing any business in Vermont involving a loan as defined in Vermont law, Respondents shall comply with the following sections of the Vermont Statutes Annotated: Title 8, Chapter 73 (Licensed Lenders statutes); Title 9, Chapter 4 (Interest statutes); Title 9, Chapter 63 (Consumer Protection statutes); and Titles 11 & 11A, Chapter 15 (Corporate and Business Registration statutes).
28. Within fifteen (15) days of the entry of this AOD, Respondents shall cancel all current, delinquent, defaulted, charged-off, or outstanding loans owned by Respondents as of the entry of this AOD that they entered into with Vermont Borrowers (defined below), such that all amounts owed shall be reduced to zero dollars (\$0.00), and Respondents shall not undertake any efforts to collect on these loans. Respondents shall not contract with any third-party debt collectors regarding these transactions, nor sell, or transfer, any obligations arguably due based upon these transactions.
29. Upon entry of this AOD, Respondents shall cease offering, funding, or collecting upon any loan to Vermont borrowers, unless and until Respondents have obtained the proper state license under Title 8, Chapter 73, and have complied with all other state lending, business registration, and consumer protection requirements.
30. Within fifteen (15) days of the entry of this AOD, Respondents shall notify any credit bureau or credit agency, check clearinghouse, or other related service that maintains a record of the Vermont Borrower loans, that all loan information

reported by Respondents relating to loans made by Western Sky should be removed from the Vermont Borrower's credit history.

***Payments to Vermont Borrowers – Settlement Fund***

31. Respondents shall establish a settlement fund to provide payments to eligible Vermont Borrowers (as defined below). For purposes of this section, the following definitions shall apply:

a. "Borrower Refund Amount" shall mean the amount that a Vermont Borrower is eligible to receive from the Vermont Settlement Fund. Only Vermont Borrowers are eligible to receive a refund. Borrower Refund Amount shall be calculated for a Covered Loan as follows:

1. For each Covered Loan, determine a monthly payment schedule, and the total amount due using that schedule, of the loan using the same Loan Proceeds and same duration, but with an Effective Interest Rate of 18% (the "Legal Loan").

For example, a \$500 loan originally offered at an interest rate of 16.9% would have 12 monthly payments of \$150.72 each. That same loan with an Effective Interest Rate of 18% would have 12 monthly payments of \$49.17 each; over 12 months a total of \$590 would be paid.

2. Next, determine the Borrower's Total Payments.
3. Then apply the Borrower's Total Payments to the Legal Loan payment schedule and determine whether the debt has been fully paid using the Legal Loan.

For example, a borrower that made the \$150.72 monthly payments, instead of the \$49.17 payments, would have paid off the Legal Loan after only 4 months. The borrower would have repaid \$530.67 in total.

4. The Borrower Refund Amount is equal to the difference between the total of the Borrower's Total Payments, and the lesser of the repayment amount calculated above in ¶ 31(a)(3) and the repayment amount calculated above in ¶ 31(a)(1).

For example, a borrower that had paid \$1,000 in principal and interest would receive a refund of  $\$1,000 - \$530.67 = \$469.33$ .

\$530.67 would be the amount used instead of \$590 because it is the lesser of the two calculations.

- b. "Borrower's Total Payments" shall mean all payments, excluding monies paid for NSF fees or late fees, by a borrower to Respondents concerning a Covered Loan.
- c. "Covered Loan" shall mean a loan made by Western Sky to a Vermont Borrower.
- d. "Effective Interest Rate" shall mean, for a Covered Loan, the total of all payments of interest, divided by the term of the loan in years, divided by the Loan Proceeds.
- e. "Loan Proceeds" shall mean the sum of money provided to a borrower. Loan Proceeds shall not include any other fees or charges assessed, such as an origination fee or prepaid finance charge.
- f. "Vermont Borrower" shall mean any individual who entered into a loan with Western Sky while residing in Vermont.
- g. "Vermont Settlement Fund" or "Settlement Fund" shall mean the settlement monies paid into irrevocable trust by Respondents, held and administered by a third party for the benefit of the Vermont Borrowers.
- h. "Refund Eligible Borrower" shall mean any Vermont Borrower who entered into a loan with Respondents while residing in Vermont and has a Borrower Refund Amount greater than \$0.

32. Refund Eligible Borrowers shall receive refunds upon application to the Vermont Settlement Fund, subject to approval, as described in ¶¶ 42-44 below.

33. Dahl Administration (the "Fund Administrator") shall maintain and administer the Vermont Settlement Fund. The Settlement Fund shall be funded by a series of payments made by the Respondents, as set forth below. The Respondents shall have no right, title, or interest in or power, privilege or incident of ownership in regard to the Settlement Fund and shall have no right to alter, amend, revoke or terminate the Settlement Fund.

34. The Fund Administrator shall not be authorized to pay or distribute any money from the Settlement Fund unless specifically authorized by this AOD.

35. Respondents shall make payment into the Vermont Settlement Fund on a weekly basis in an amount sufficient to pay the total amount of those claims deemed eligible for payment by the Fund Administrator in the previous week.
36. Respondents shall be jointly and severally liable for all payments under this AOD, and that in the event that a payment previously made by one or more Respondents is avoided or recovered in connection with a bankruptcy proceeding or otherwise, each and every Respondent shall be jointly and severally liable for repaying any avoided or recovered payments.
37. Within 14 days of entry of this AOD, Respondents shall deliver to the Attorney General and the Fund Administrator a list of all Vermont Borrowers with Covered Loans including, for each borrower, the borrower's name, last-known address, telephone number (if available), e-mail address (if available); the date of the loan, the Loan Proceeds, and all principal and interest payments made; and the status of the loan (i.e., charged-off, paid off, or outstanding). Respondents shall provide any additional information concerning a Vermont Borrower upon written request by the Attorney General within 10 business days provided that information requested is reasonably related to the implementation of this AOD.
38. Within 14 days of entry of this AOD, Respondents shall deliver to the Attorney General a list of all Vermont Borrowers whose loans were sold to a third party and the date each such loan was sold.
39. Within 30 days of entry of this AOD, Respondents shall provide the Fund Administrator and the Attorney General with the proposed Borrower Refund

Amount information for each Refund Eligible Borrower. The parties agree to work in good faith to resolve any disagreements concerning the Borrower Refund Amount information.

40. Within 75 days of entry of this AOD, the Fund Administrator shall attempt to contact every Vermont Borrower by mail (using an envelope provided by the Attorney General), with follow-up by email and/or phone in the Fund Administrator's discretion, to provide notice of this AOD and the borrowers' rights ("Notice of Settlement").
41. The Fund Administrator shall maintain a website with the terms and conditions of this AOD (including a copy of this AOD) and the process by which a borrower may file a claim for a refund to be paid using monies from the Vermont Settlement Fund. The website shall also, with appropriate measures to minimize fraud and promote accuracy to be determined by the Fund Administrator, enable Refund Eligible Borrowers to file a claim for a refund with the Fund Administrator.
42. The Fund Administrator shall accept and process all claims of Refund Eligible Borrowers, taking appropriate measures (as determined in the Fund Administrator's discretion) to minimize fraud and promote accuracy, and provide a check in the amount of the Borrower Refund Amount upon the borrower's application to the Fund Administrator pursuant to the process set forth below.
43. A borrower's application to the Fund Administrator for a refund shall be deemed timely submitted if it is received by the Fund Administrator with a postmark

dated no more than 60 days after the date the Notice of Settlement was mailed to borrowers.

44. Within 60 days of receiving an application from a Refund Eligible Borrower deemed complete and valid by the Fund Administrator in its reasonable discretion, the Fund Administrator shall mail a check to the borrower for the Borrower Refund Amount. For each application the Fund Administrator deems not complete, the Fund Administrator shall notify the borrower that the application has been deemed deficient and the basis for this decision, and provide the borrower with forty-five (45) days to cure the deficiency.
45. All funds distributed by the Fund Administrator shall be by check that is valid for 60 days. The Fund Administrator shall advise, by mail, each eligible borrower to whom such checks were issued that such check has remained uncashed for more than 60 days. The borrowers may, if they contact the Fund Administrator within 30 days thereafter, have such uncashed checks re-issued, such re-issued checks to be valid for 30 days from their issue date. The Fund Administrator shall make all reasonable efforts to locate each Refund Eligible Borrower who did not submit a claim within 30 days of the Fund Administrator's attempt to contact the borrower, or who submitted a claim but whose refund payment was returned. Such reasonable efforts shall include, but not be limited to, the use of commercially-available databases and public records. If contact information for the borrower is identified, the Fund Administrator shall provide Notice of Settlement or, if a refund payment was previously returned, the refund payment.

46. Notwithstanding any other provision of this AOD, any un-cashed refund payments or unclaimed Borrower Refund Amounts shall not be subject to Vermont's unclaimed property laws and, if applicable, shall be returned to Respondents.
47. Every 15 days, the Fund Administrator shall provide to the Attorney General and Respondents a bi-monthly report that provides the following information:
- (a) number of claims received;
  - (b) number of claims paid;
  - (c) total amount paid;
  - (d) number of deficient claims received;
  - (e) number of deficient claimants notified of their deficiency;
  - (f) number of cured deficiencies;
  - (g) number of ineligible claims made;
  - (h) the Vermont loan IDs of the borrowers whose claims were deemed deficient or ineligible; and
  - (i) for each claim deemed deficient or ineligible, the basis for this decision.
48. Respondents shall pay all costs associated with creating, maintaining, and administering the Settlement Fund, including without limitation, the administrative expenses incurred in connection with providing notice and processing submitted claims. In no event shall the Attorney General or the State of Vermont be liable for any costs associated with the creating, maintain, and administering the Settlement Fund.

*Payment to the State of Vermont*

49. Within 15 days of filing this AOD, Respondents shall pay to the State of Vermont \$20,000 in civil penalties.
50. Within 15 days of filing this AOD, Respondents shall reimburse to the State of Vermont \$30,000 in costs.



51. Payment of the preceding \$50,000, pursuant to ¶¶ 49-50, shall be made by a single check to the “State of Vermont” and shall be sent to the 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.

**Other Terms**

52. Respondents shall, upon request by the Attorney General, provide all documentation and information necessary for the Attorney General to confirm compliance with this AOD.

53. To the extent not already provided under this AOD, Respondents shall, upon request by the Fund Administrator, provide all documentation and information necessary for the Fund Administrator to perform all the duties provided in this AOD.

54. The Fund Administrator shall, upon request by the Attorney General, provide all documentation and information necessary for the Attorney General to confirm compliance with this AOD.

55. Should one or more of the Respondents enter into any subsequent agreement with any other state Attorney General, or other state or federal enforcement or regulatory authority (an “Authority”) regarding Western Sky loan borrowers in any other state (a “Subsequent Settlement Agreement”) that has benefits and terms more favorable to the Authority than those in this AOD, then this AOD shall be deemed to be modified to provide the Attorney General with those more favorable benefits and terms if and only if: (a) at the time of the Subsequent

Settlement Agreement, the total number of Western Sky loans with borrowers that are resident in that state, or in a state covered by the Subsequent Settlement Agreement, equals or exceeds four thousand (4,000); and (b) the Subsequent Settlement Agreement precedes either a (a) final court judgment, or (b) partial court judgment on the liability of any Respondent, where that partial court judgment covers the issues of usury or licensed lending (including but not limited to the applicability of a jurisdiction's usury or licensed lending laws to any Respondent). Benefits or terms of a Subsequent Settlement Agreement that shall be deemed more favorable shall include, but not be limited to, (1) a penalty or civil fine (as a percentage of the total loan proceeds extended in the state) that is greater than the penalties due under this AOD (calculated as a percentage of Vermont's total loan proceeds extended); and (2) a payment or payments that would result in refunds to borrowers of interest paid that, under that state's law, is not usurious interest. Any additional funds that become available to refund to Vermont Borrowers as a result of this provision prior to the Fund Administrator's distribution of refunds pursuant to this AOD shall be included within the refunds provided by the Fund Administrator. Should additional funds become available for refunds to Vermont Borrowers as a result of this provision subsequent to the 75-day notice period described in ¶ 40 of this AOD, Respondents shall pay to the Attorney General at the conclusion of the claims process an amount equal to the total amount of additional refunds that would be due to those Vermont Borrowers that were provided refunds by the Fund Administrator. Respondents shall notify the Attorney General of the existence

of such more favorable benefits and terms within ten (10) days of the execution of such Subsequent Settlement Agreement and the Attorney General shall have the right to receive the more favorable benefits and terms immediately.

56. Acceptance of this AOD by the Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondents not required by this AOD, and Respondents shall make no representation to the contrary.

57. This AOD and all terms therein shall be binding on Respondents, all of their affiliate companies doing business in Vermont, their officers, directors, owners, managers, successors and assigns.

58. The undersigned authorized agents of Respondents 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.

59. Upon entry of this AOD, the State of Vermont hereby releases and discharges Respondents, or anyone acting on their behalf, including but not limited to the principals, directors, officers, shareholders, employees, successors or assignees of Respondents, and agents in active concert or participation with any of the Respondents who are involved in the conduct of business that is the subject of this AOD; and to any corporation, company, business entity, or other entity or device through which Respondents may now act or conduct business that is the subject of the AOD from any and all grievances, suits, causes of action, and any claims of any nature whatsoever relating to or arising out of the conduct alleged

by the Attorney General in this AOD and/or relating to the solicitation, making, servicing and collection of the Western Sky loans occurring prior to the issuance of this AOD, whether arising in contract, tort, statute, or any other theory of action, whether arising in law or equity, whether known or unknown, choate or inchoate, matured or unmatured, contingent or fixed, liquidated or unliquidated, accrued or unaccrued, asserted or unasserted, based upon any fact, whether known or unknown.

60. In the event that the Attorney General alleges that any one of the Respondents has violated any of the terms of this AOD, then the parties agree that the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential violations of law by Respondents, and that the Attorney General shall not have waived any of its rights to assert and prove any violations of law by Respondents. In the event that this AOD is voided or otherwise set aside, Respondents retain all jurisdictional and other defenses, including lack of subject matter or personal jurisdiction.
61. Nothing in this AOD waives the right of any consumer to pursue claims stemming from the conduct described in this document; excepting, however, any Vermont Borrower who applies for and receives payment under the terms of this AOD shall be required to release and discharge Respondents, or anyone acting on their behalf, including but not limited to the principals, directors, officers, shareholders, employees, successors or assignees of Respondents, and agents in active concert or participation with any of the foregoing who are involved in the conduct of business that is the subject of this AOD; and to any corporation,

company, business entity, or other entity or device through which Respondents may now act or conduct business that is the subject of this AOD relating to or arising and/or relating to the solicitation, making, servicing and collection of the Western Sky loans out of the conduct alleged by the Attorney General in this AOD and occurring prior to the issuance of this Consent Order, whether arising in contract, tort, statute, or any other theory of action, whether arising in law or equity, whether known or unknown, choate or inchoate, matured or unmatured, contingent or fixed, liquidated or unliquidated, accrued or unaccrued, asserted or unasserted, based upon any fact, whether known or unknown.

62. 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 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 any of its provisions, to enforce compliance, and to punish violations of its provisions. The Respondents consent to jurisdiction only for the purposes of the enforcement of this AOD.

63. Nothing contained in this AOD shall be construed as an admission by Respondents of any liability, wrongdoing, or legal or factual issue, and this AOD may not be used as evidence of liability.

64. All notice related to this AOD shall be given to:

- a. **Respondents** at: Katya Jestin, Jenner & Block LLP, 919 Third Avenue, New York, NY 10021, [kjestin@jenner.com](mailto:kjestin@jenner.com).
- b. **The Attorney General** at: Justin Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street Montpelier, VT 05609, [jkolber@atg.state.vt.us](mailto:jkolber@atg.state.vt.us).

65. For a period of two years beginning from the date of this AOD, Respondents shall notify the Attorney General of any change of business name or address within 20 business days.

\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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

DATED at Montpelier, Vermont this 18<sup>th</sup> day of April, 2014.

STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL

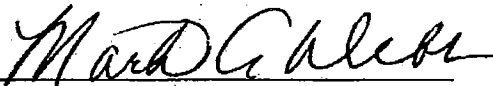
By: 

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 this 17<sup>th</sup> day of April, 2014.

**WESTERN SKY FINANCIAL, LLC**


**DELBERT SERVICES CORP.**

By:   
Martin A. Webb, Managing Member

By: \_\_\_\_\_  
J. Paul Reddam, Director

**MARTIN A. WEBB**

**J. PAUL REDDAM**

By:   
Martin A. Webb

By: \_\_\_\_\_  
J. Paul Reddam

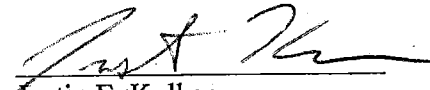
**CASHCALL, INC.  
WS FUNDING, LLC**

By: \_\_\_\_\_  
J. Paul Reddam, President

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

DATED at Montpelier, Vermont this 18<sup>th</sup> day of April, 2014.

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 this \_\_\_\_ day of April, 2014.

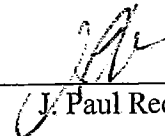
**WESTERN SKY FINANCIAL, LLC**

By: \_\_\_\_\_  
Martin A. Webb, Managing Member

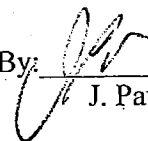
**MARTIN A. WEBB**

By: \_\_\_\_\_  
Martin A. Webb

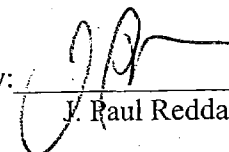
**DELBERT SERVICES CORP.**

By:   
J. Paul Reddam, Director

**J. PAUL REDDAM**

By:   
J. Paul Reddam

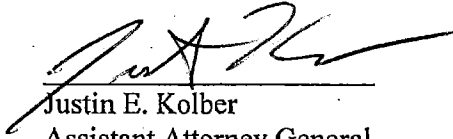
**CASHCALL, INC.  
WS FUNDING, LLC**

By:   
J. Paul Reddam, President

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

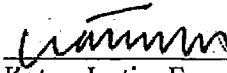


APPROVED AS TO FORM:



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

For the State of Vermont



Katya Jestin, Esq.  
Jenner Block LLP  
919 Third Avenue,  
New York, NY 10021

For Respondents

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



Vermont Superior Court  
Washington Civil Division  
65 State Street  
Montpelier, Vermont 05602  
www.VermontJudiciary.org - Civil 828-2091, Small Claims 828-5551

ENTRY REGARDING MOTION

2014 MAY 22 10:48

State of Vermont vs. Nestor

702-11-13 Wncv

FILED

Title:

Motion to Enter Consent Decree and Dismiss With,

No. 2

Filed on: May 20, 2014

Filed By: Kriger, Ryan G., Attorney for:  
Plaintiff State of Vermont

Response: NONE

Granted Compliance by \_\_\_\_\_

Denied

Scheduled for hearing on: \_\_\_\_\_ at \_\_\_\_\_; Time Allotted \_\_\_\_\_

Other

However, given the date, the court  
changed May 1 to June 1  
in paragraph 16.

John A. Fox  
Judge

5/22/14  
Date

=====  
Date copies sent to: 5/22/14

Clerk's Initials [Signature]

Copies sent to:  
Attorney Ryan G. Kriger for Plaintiff State of Vermont  
Defendant Charles Nestor DBA Expos and Shows/Made in Vermont USA

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2014 MAY 22 P 3:49

STATE OF VERMONT,  
Plaintiff

v.

CHARLES NESTOR, DBA  
EXPOS AND SHOWS /  
MADE IN VERMONT USA  
Defendant

)  
)  
)  
)  
)  
)

CIVIL DIVISION  
Docket No. 702-11-13 Wncv

**CONSENT DECREE, FINAL ORDER AND JUDGMENT**

To resolve the allegations in the Complaint filed in the above-captioned matter, the parties, the State of Vermont and Defendant Charles Nestor d/b/a Expos and Shows / Made in Vermont USA ("Defendant"), stipulate and agree to the following:

**BACKGROUND**

The State of Vermont alleges and Defendant admits the following:

1. Between April and August 2011, Defendant Nestor, under the names Expos and Shows and Made in Vermont USA, solicited payments from Vermont consumer businesses to participate as exhibitors, vendors, sponsors, and advertisers (collectively, "Participants") in a "Made in Vermont Festival," scheduled to take place September 10-11, 2011, at Waterfront Park in Burlington, Vermont (the "Festival"); and a Guide to Made in Vermont Products & Services, an online PDF publication and companion piece to the Made in Vermont Festival (the "Guide").
2. Defendant collected \$23,258.50 (twenty-three thousand, two hundred and fifty-eight dollars and fifty cents) from forty-eight (48) Vermont businesses seeking to be Participants. These businesses paid Nestor amounts ranging from \$50 (fifty

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

dollars) to \$4,985 (four thousand, nine hundred and eighty-five dollars). Defendant collected payments from Participants as late as August 5, 2011.

3. Participants were not warned of the possibility that the Festival would not take place.

4. On or about August 22, 2011, Defendant sent a letter to the Participants announcing that the Festival would be postponed, and that Participants would receive booth-space in a future festival, sponsorship of a future festival, and/or advertising in the Guide.

5. The Festival was not held on September 10-11, 2011, a rescheduled date was never announced; and the Guide was never published.

6. Defendant asserts that the failure to hold the festival or publish the guide was due to insolvency as of August 22, 2011.

7. Marketing materials for the Festival included the use of brand logos of well known local businesses that Defendant did not have permission to use.

8. Based on the facts above, the Attorney General alleges that Defendant has violated of the Consumer Protection Act.

### REMEDY

Defendant is enjoined and restrained as follows:

9. Defendant will not produce or attempt to produce or promote any trade shows or festivals in the state of Vermont, nor will he attempt to collect advertising for any guide in the state of Vermont for five years, and thereafter must:

a. first post a bond of \$20,000 (twenty thousand dollars) and deliver the bond to the Office of the Attorney General;

b. hold the initial \$20,000 (twenty thousand dollars) in receipts in an escrow account until the conclusion of the event or publication of the guide, and report the location and account number of the escrow account to the Office of the Attorney General; and

c. in the event the event or guide does not take place, any participant in the event or guide will receive their pro rata share of amounts paid from the proceeds of the bond and escrow account.

10. Defendant has conducted an accounting and reported to the Attorney General's Office all moneys collected from exhibitors, vendors, and sponsors related to the Festival and the Guide.

11. Should Defendant plan to produce or promote a trade show, Defendant shall notify the Office of the Attorney General of his intent at least six months prior to the planned date of the trade show, or within thirty days of any acts taken to produce the trade show (*i.e.* reserving facilities, hiring employees, placing ads in media, contacting prospective participants), whichever is sooner.

12. Defendant shall notify the Office of the Attorney General of any new change in his address, telephone number or email address for the next 5 years, and thereafter whenever he takes any action to produce or promote a trade show in the State of Vermont.

13. Within ten (10) days of signing this Assurance of Discontinuance, Defendant shall pay a total of \$10,000.00 (ten thousand dollars) to the State of Vermont, in care of the Vermont Attorney General's Office, as civil penalties and costs in this matter.

14. Defendant shall provide restitution of 100% of all monies collected from exhibitors, vendors, and sponsors related to the Festival or the Guide.

15. Based on Defendant's demonstrated inability to pay the penalty listed in paragraph 13 or the restitution listed in paragraph 14, and upon review of the financial information Defendant provided to the Office of the Attorney General, Defendant is not required to pay the penalty required to by paragraph 13 or the restitution required to by paragraph 14 at this time, provided that, if it is determined that the financial information provided to the Office of the Attorney General is inaccurate in any material respect, the Attorney General may seek to impose an appropriate penalty in addition to payment of restitution.

16. No later than ~~May~~ <sup>June</sup> 1, 2014, Defendant shall submit to the Vermont Attorney General's Office a sworn and accurate statement of his income for the calendar year 2013 and then-current assets and liabilities. Defendant shall submit to the Vermont Attorney General's office an accurate copy of his income tax return for the calendar year 2013 within 14 (fourteen) days of filing the return.

17. No later than May 1 of each calendar year beginning in 2015 and ending in 2019, Defendant shall submit to the Vermont Attorney General's Office accurate copies of his income tax returns for each of the calendar years 2014 through 2018, respectively, along with sworn and accurate statements of his then-current assets and liabilities.

18. In the event that an income tax return or statement of assets and liabilities required by paragraphs 16-17, above, shows that Defendant has pre-tax income exceeding \$50,000.00 (fifty thousand dollars), and/or net assets exceeding

\$80,000.00 (eighty thousand dollars), Defendant shall, no later than June 1 of that year, pay to the State of Vermont, in care of the Attorney General's Office, an amount equal to 20 (twenty) percent of any pre-tax income exceeding \$50,000.00 (fifty thousand dollars), plus an amount equal to 20 (twenty) percent of any net assets exceeding \$80,000.00 (eighty thousand dollars), provided that once that individual has paid a total of \$33,258.50 (thirty-three thousand, two hundred and fifty-eight dollars and fifty cents) pursuant to this paragraph, he shall have no further liability or further obligation to report under this paragraph.

19. Any pre-tax income or net assets described in paragraph 18, shall exclude the income and assets Defendant's spouse or partner. The income and assets of Defendant's spouse or partner shall not be subject to this Final Judgment. Any attempt by Defendant to contravene this Final Judgment by placing income or assets under the control of any spouse or partner shall be considered a violation of this Final Judgment.

20. Defendant shall comply strictly with all provisions of Vermont law, including but not limited to the Consumer Protection Act.

#### **FURTHER ELEMENTS OF JUDGMENT**

21. This Court has jurisdiction of the subject matter over this action and the Defendant. Jurisdiction is retained by this Court over this Final Judgment and the parties for the purpose of enabling any of the parties to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this Revised Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.



22. The Court finds Defendant to have been in violation of the Consumer Protection Act, 9 V.S.A. § 2435

23 This Final Judgment shall be binding on Charles Nestor, Expos and Shows, Made in Vermont USA, and their successors and assigns. The State of Vermont hereby releases and discharges any and all claims that it may have against Charles Nestor, Expos and Shows, Made in Vermont USA, and their parents, subsidiaries, affiliates, officers and directors, based on conduct or activities arising under or in connection with this Final Judgment.

24 This Final Judgment shall expire on the tenth anniversary of the date of its entry

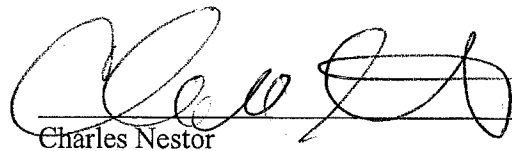
25 Entry of this Final Judgment is in the public interest because it will protect Vermont consumers in the event Defendant attempts to organize any future events, and will make whole the Vermont consumers that have been harmed by Defendant's actions to the extent practicable.

#### STIPULATION

Defendant Charles Nestor acknowledges receipt of and voluntarily agrees to the terms of this Consent Decree and waives any formal service requirements of the Consent Decree, Order and Final Judgment.

DATED at St. Johnsbury 12:30, Vermont this 30 day of April, 2014.


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

  
Charles Nestor

ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 2<sup>nd</sup> day of May, 2014.

STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL

by: \_\_\_\_\_

Ryan Kriger  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
Tel. (802) 828-3170  
rkriger@atg.state.vt.us

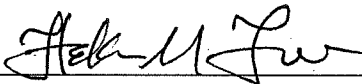
Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

**DECREE, ORDER AND FINAL JUDGMENT**

This Consent Decree is accepted and entered as a Decree, Order and Final Judgment of this Court in the matter of: State of Vermont v. Charles Nestor d/b/a Expos and Shows / Made in Vermont USA, Docket No. 702-11-13 Wncv.

SO ORDERED.

DATED at Montpelier, Vermont this 22<sup>nd</sup> day of May, 2014.

  
\_\_\_\_\_  
Washington Superior Court Judge

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

**STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT**

STATE OF VERMONT,	)	
Plaintiff	)	
	)	
v	)	CIVIL DIVISION
	)	Docket No 702-11-13 Wncv
CHARLES NESTOR, DBA	)	
EXPOS AND SHOWS /	)	
MADE IN VERMONT USA	)	
Defendant	)	

**CONSENT DECREE, FINAL ORDER AND JUDGMENT**

To resolve the allegations in the Complaint filed in the above-captioned matter, the parties, the State of Vermont and Defendant Charles Nestor d/b/a Expos and Shows / Made in Vermont USA (“Defendant”), stipulate and agree to the following.

**BACKGROUND**

The State of Vermont alleges and Defendant admits the following:

1. Between April and August 2011, Defendant Nestor, under the names Expos and Shows and Made in Vermont USA, solicited payments from Vermont consumer businesses to participate as exhibitors, vendors, sponsors, and advertisers (collectively, “Participants”) in a “Made in Vermont Festival,” scheduled to take place September 10-11, 2011, at Waterfront Park in Burlington, Vermont (the “Festival”); and a Guide to Made in Vermont Products & Services, an online PDF publication and companion piece to the Made in Vermont Festival (the “Guide”).
2. Defendant collected \$23,258.50 (twenty-three thousand, two hundred and fifty-eight dollars and fifty cents) from forty-eight (48) Vermont businesses seeking to be Participants. These businesses paid Nestor amounts ranging from \$50 (fifty

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

dollars) to \$4,985 (four thousand, nine hundred and eighty-five dollars). Defendant collected payments from Participants as late as August 5, 2011

3 Participants were not warned of the possibility that the Festival would not take place.

4 On or about August 22, 2011, Defendant sent a letter to the Participants announcing that the Festival would be postponed, and that Participants would receive booth-space in a future festival, sponsorship of a future festival, and/or advertising in the Guide.

5 The Festival was not held on September 10-11, 2011, a rescheduled date was never announced, and the Guide was never published.

6. Defendant asserts that the failure to hold the festival or publish the guide was due to insolvency as of August 22, 2011

7 Marketing materials for the Festival included the use of brand logos of well known local businesses that Defendant did not have permission to use.

8. Based on the facts above, the Attorney General alleges that Defendant has violated of the Consumer Protection Act.

### **REMEDY**

Defendant is enjoined and restrained as follows:

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a. first post a bond of \$20,000 (twenty thousand dollars) and deliver the bond to the Office of the Attorney General,

b hold the initial \$20,000 (twenty thousand dollars) in receipts in an escrow account until the conclusion of the event or publication of the guide, and report the location and account number of the escrow account to the Office of the Attorney General, and

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12. Defendant shall notify the Office of the Attorney General of any new change in his address, telephone number or email address for the next 5 years, and thereafter whenever he takes any action to produce or promote a trade show in the State of Vermont.

13 Within ten (10) days of signing this Assurance of Discontinuance, Defendant shall pay a total of \$10,000.00 (ten thousand dollars) to the State of Vermont, in care of the Vermont Attorney General's Office, as civil penalties and costs in this matter

14 Defendant shall provide restitution of 100% of all monies collected from exhibitors, vendors, and sponsors related to the Festival or the Guide.

15 Based on Defendant's demonstrated inability to pay the penalty listed in paragraph 13 or the restitution listed in paragraph 14, and upon review of the financial information Defendant provided to the Office of the Attorney General, Defendant is not required to pay the penalty required to by paragraph 13 or the restitution required to by paragraph 14 at this time, provided that, if it is determined that the financial information provided to the Office of the Attorney General is inaccurate in any material respect, the Attorney General may seek to impose an appropriate penalty in addition to payment of restitution.

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17 No later than May 1 of each calendar year beginning in 2015 and ending in 2019, Defendant shall submit to the Vermont Attorney General's Office accurate copies of his income tax returns for each of the calendar years 2014 through 2018, respectively, along with sworn and accurate statements of his then-current assets and liabilities.

18 In the event that an income tax return or statement of assets and liabilities required by paragraphs 16-17, above, shows that Defendant has pre-tax income exceeding \$50,000 00 (fifty thousand dollars), and/or net assets exceeding

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19 Any pre-tax income or net assets described in paragraph 18, shall exclude the income and assets Defendant's spouse or partner. The income and assets of Defendant's spouse or partner shall not be subject to this Final Judgment. Any attempt by Defendant to contravene this Final Judgment by placing income or assets under the control of any spouse or partner shall be considered a violation of this Final Judgment.

20 Defendant shall comply strictly with all provisions of Vermont law, including but not limited to the Consumer Protection Act.

#### **FURTHER ELEMENTS OF JUDGMENT**

21 This Court has jurisdiction of the subject matter over this action and the Defendant. Jurisdiction is retained by this Court over this Final Judgment and the parties for the purpose of enabling any of the parties to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this Revised Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.



22. The Court finds Defendant to have been in violation of the Consumer Protection Act, 9 V.S.A. § 2435

23 This Final Judgment shall be binding on Charles Nestor, Expos and Shows, Made in Vermont USA, and their successors and assigns. The State of Vermont hereby releases and discharges any and all claims that it may have against Charles Nestor, Expos and Shows, Made in Vermont USA, and their parents, subsidiaries, affiliates, officers and directors, based on conduct or activities arising under or in connection with this Final Judgment.

24 This Final Judgment shall expire on the tenth anniversary of the date of its entry

25 Entry of this Final Judgment is in the public interest because it will protect Vermont consumers in the event Defendant attempts to organize any future events, and will make whole the Vermont consumers that have been harmed by Defendant's actions to the extent practicable.

**STIPULATION**

Defendant Charles Nestor acknowledges receipt of and voluntarily agrees to the terms of this Consent Decree and waives any formal service requirements of the Consent Decree, Order and Final Judgment.

DATED at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2014.

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

\_\_\_\_\_  
Charles Nestor

ACCEPTED on behalf of the State of Vermont

DATED at Montpelier, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2014

STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL

by \_\_\_\_\_

Ryan Kriger  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
Tel. (802) 828-3170  
rkriger@atg.state.vt.us

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

**DECREE, ORDER AND FINAL JUDGMENT**

This Consent Decree is accepted and entered as a Decree, Order and Final Judgment of this Court in the matter of: State of Vermont v Charles Nestor d/b/a Expos and Shows / Made in Vermont USA, Docket No 702-11-13 Wnev

SO ORDERED

DATED at Montpelier, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

---

Washington Superior Court Judge

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

VT SUPERIOR COURT  
WASHINGTON UNIT

**STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT**

2014 FEB 19 P 3:13

In Re: Cota & Cota Inc.

)  
)

CIVIL DIVISION

Docket No. 94-2-14 Wncw

**ASSURANCE OF DISCONTINUANCE**

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

**Background**

***Cota & Cota, Inc.***

1. Cota & Cota, Inc. is a Vermont corporation with offices at 4 Green Street, Bellows Falls, Vermont 05101. Cota & Cota's operations include retail marketing, sale, and distribution of propane to residential, commercial, industrial, and agricultural customers in Vermont.

***Regulatory Framework***

2. 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 liquefied petroleum gas ("propane"). Since 1986, Vermont Consumer Protection Rule 111 ("CP 111" or "Propane Rule") has governed the business practices of propane service providers in Vermont and is enforced by the Office of the Attorney General. The Rule was amended in 2009, effective on January 1, 2010, and amended again in 2011, effective on January 1, 2012 (reference to "CP 111" or the "Propane Rule" refers to the most recent version as amended).

3. Some of the relevant provisions of CP 111 to promote fair business practices and protect consumers include: cash sales when the consumer has a delinquency (see CP 111.04 & 111.06, described below in ¶¶ 4-6); collection of security deposits for consumers who purchase on credit (see CP 111.05, described below in ¶ 7); standardized disclosure of fees for new and existing customers (see CP 111.03 & 111.09, described below in ¶ 8); and a one-year time limit for assessing termination fees (see CP 111.09, described below in ¶ 9).
4. CP 111.04(c) states that “except as provided in CP 111.06(a)(2), a seller that changes a consumer’s credit status from credit terms to cash-on-delivery shall not make continued propane service contingent upon immediate payment in full of any remaining balance due for propane delivered under the previous credit terms, but may require payments toward the balance under the 75-25 rule.”
5. The “75-25” rule is a method of allocating funds received from a consumer who is: 1) a cash-on-delivery consumer; 2) has a delinquency; and 3) makes a cash payment for propane to be delivered. A seller may deliver no less propane that can be purchased with 75% of the cash payment and may apply no more than 25% of the cash payment toward the delinquency. *See* CP 111.02(a).
6. CP 111.06(a) states that “a seller shall deliver propane to a consumer in its geographic service area, according to the seller’s standard contractual terms, if the consumer is ready, willing, and able to make, in a manner determined by the seller, payment in advance or at the time of delivery.”

7. CP 111.05(a) states that “[a] seller may require a security deposit only if the seller extends credit to the consumer.” In such cases, the security deposit may not exceed two-twelfths (2/12) of the consumer’s estimated annual bill, *see* CP 111.05(b).
8. CP 111.03 & 111.09(a)(2) require disclosure of all fees on a Fee Disclosure Form (“FDF”), including the amount and duration of all fees. 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. *See* CP 111.03.
9. CP 111.09(f)(5) states that a seller shall not “collect from a consumer [who] has received propane service from the seller for less than 12 months, a fee related to termination of service that exceeds the price of labor and materials disclosed on a Fee Disclosure Form or in a contract.”
10. 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). CP 111.01.
11. 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).
12. Propane is covered by Vermont’s Unsolicited Goods or Services statute, 9 V.S.A. § 4401, which defines “unsolicited goods” as “any personal property or services delivered, rendered, or caused to be delivered or rendered by a seller to a recipient that are not requested by the recipient, whether or not the recipient and the seller have an existing business relationship.” 9 V.S.A. § 4401(c)(3). Thus, a delivery of propane without the

consumer's consent falls under the provisions of this statute, whereby the consumer may:

“(1) refuse the unsolicited goods; or (2) deem the unsolicited goods to be a gift and dispose of them in any manner without obligation to the seller.” 9 V.S.A. § 4401(a).

13. If the propane seller notifies the non-business consumer within 20 days, or before the consumer has used or disposed of the propane, whichever is sooner, then:

- a. “The seller shall provide, within 20 days of the notification of error, for the pick-up or return shipment of any remaining portion of the unsolicited goods at the seller's expense and risk, during which time the recipient shall take reasonable care of the remaining unsolicited goods. The recipient need not tender the remaining goods at any place other than the place of delivery or the location of the remaining goods at the time of the notification of error and shall have no further obligation to accommodate the seller's schedule for pick-up or return shipment or otherwise to facilitate the recovery of the item beyond the requirements of this section. If the recipient refuses to relinquish any remaining portion of the unsolicited goods to the seller, or agrees to relinquish the remaining unsolicited goods to the seller and fails to do so, the recipient shall be liable for the cost of the unsolicited goods not relinquished to the seller.” 9 V.S.A. § 4401(b)(1).

#### ***Cota & Cota's Propane Practices***

14. On November 25, 2013, a Vermont consumer complained to the Attorney General's Consumer Assistance Protection (“CAP”) regarding Cota & Cota. The consumer complained about: not receiving propane unless her account was paid in full; being required to maintain a credit on her account in the amount of \$350 at all times; and unauthorized automatic deliveries.
15. In investigating this complaint, Cota & Cota provided copies of its current FDF and Service Policy Brochure, describing the company's propane practices, including those summarized in ¶¶ 16-20 below.
16. Cota & Cota demands full payment from cash-on-delivery customers with an outstanding balance before providing future propane deliveries.

17. Cota & Cota requires all customers to be a credit customer, or to maintain a "\$350 credit ahead" status. As stated in Cota & Cota's Service Policy Brochure, customers must maintain a \$350 credit on their account to prevent a lapse in delivery. As of February 2014, Cota & Cota has identified 70 customers on "credit ahead" status.
18. Cota & Cota's Service Policy Brochure requires all customers who possess a company tank to have at least one delivery per year at the company's discretion.
19. Cota & Cota's Service Policy Brochure lists a disconnection fee at a minimum of two (2) hours labor for a customer with a company-owned tank who terminates service in less than one calendar year.
20. Cota & Cota's FDF, dated January 1, 2014, does not list any amounts or duration of fees. All fees are listed as "variable – see Service Policy Brochure." The FDF also lists both an "Equipment Removal Charge" and "Early Service Termination Fee."
21. Cota & Cota admits the truth of all facts described in ¶¶ 1 and 14-20.

***The State's Allegations***

22. The Vermont Attorney General's Office alleges that the following behavior (as also described in ¶¶ 16-20 above) constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453 in violation of Vermont law, the Vermont Consumer Protection Act, and Propane Rule:
  - a. Failing to follow CP 111 regarding credit customers and cash-on-delivery sales (including by requiring full payment of an outstanding balance for a cash delivery customer that had previous deliveries within 8 months, and requiring all customers to maintain a \$350 "credit" on their account);



- b. Failing to follow CP 111 by requiring delivery (and payment) of propane at least once a year at Cota & Cota's discretion;
- c. Failing to follow CP 111 regarding fee disclosure (including by not listing fee amounts and duration, and listing a flat fee of 2 hours labor for early termination);  
and
- d. Making unwanted deliveries to a consumer without the consumer's consent violated the Unsolicited Merchandise statute.

#### Assurances and Relief

In lieu of instituting litigation, the Attorney General and Cota & Cota 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 admission by Cota & Cota to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

- 23. Cota & Cota Inc. 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.
- 24. Starting immediately, Cota & Cota shall not demand full payment from a consumer with an outstanding balance except as allowed in CP 111.04, 111.06, and in such instances, Cota & Cota shall follow the "75-25" rule under CP 111.02(a).
- 25. Cota & Cota shall immediately discontinue requiring all consumers to maintain a \$350 credit on their account and will update its Service Policy Brochure to reflect that change. Within 20 days of signing this AOD, Cota & Cota shall send a letter to the 70 current customers explaining the change in status, and offering the consumer the option to have

the \$350 credit applied to the next delivery, or refunded to them in a check – Cota & Cota may work with each consumer to decide which option shall apply.

- a. Should Cota & Cota decide to require consumers to maintain a security deposit, the company shall do so in accordance with CP 111.05.

26. Cota & Cota shall discontinue requiring all consumers who possess a company tank to have at least one delivery per year at Cota & Cota's discretion and will update its Service Policy Brochure within 30 days of this AOD to reflect that change.

- a. Cota & Cota may offer a minimum delivery once per year at the consumer's discretion.

27. Cota & Cota shall update its FDF, and Service Policy Brochure as necessary, within 90 days of signing this AOD to comply with CP 111 (including by removing the \$350 "credit ahead" status, listing all relevant fees, their amounts and duration; charging a single termination fee limited to the actual cost of labor and materials for removing a tank; disclosing the initial FDF to any new customer; and providing an updated, existing FDF 60 days in advance of any increased fee), and shall immediately provide a copy of the updated documents to the Attorney General's Office.

28. Cota & Cota shall pay to consumer Marianne Oakes \$2,250 as an offer of restitution (though consumer Oakes has the option to deny any payment and pursue her own claim). The payment may be made by check and/or by cancelling any outstanding balance and offering a credit for future propane.

29. Cota & Cota shall keep a copy of all service brochures and FDFs (both initial and existing FDFs) for six years from the date of this AOD, and provide a copy to the Attorney General's Office on a yearly basis on or before January 1, beginning January 1,

2015. Cota & Cota shall also provide a copy of its updated FDF and Service Policy Brochure as described in ¶ 26 above, to the Attorney General's Office within 90 days of signing this AOD.

**Other Terms**

30. Neither Cota & Cota nor anyone acting on its behalf shall state or infer that the Vermont Attorney General's Office approves any practices of Cota & Cota.
31. This AOD shall be binding on Cota & Cota, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Cota & Cota 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.
32. This AOD resolves all existing claims the State of Vermont may have against Cota & Cota stemming from the conduct described in this document, as of the date signed below.
33. 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 any of its provisions, to enforce compliance, and to punish violations of its provisions.
34. Communications related to this AOD shall be given to Cota & Cota at:
  - a. Chris Cota, (chris.cota@cotaoil.com) Cota & Cota Inc., 4 Green Street, Bellows Falls, Vermont 05101;

b. George Nostrand, Esq., Suite 300, Centennial Arcade, Bellows Falls, Vermont  
05101-0535

35. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General listed below.
36. Cota & Cota shall notify the Attorney General of any change of Cota & Cota's business name or address and of any change in contact information in ¶ 30 within 20 business days.

**Violations and Stipulated Penalties**

37. In the event that Cota & Cota 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 Cota & Cota unrelated to the conduct described in this AOD.
38. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Cota & Cota to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be \$5,000. For purposes of this paragraph 34, the term "each act" shall mean: (i) demanding full payment of an outstanding balance from a cash-on-delivery consumer unless there has been no payment from the consumer or delivery from the company in the previous 8 months; (ii) requiring a \$350 "credit ahead" from a consumer; (iii) charging an early termination fee that exceeds the price of labor and materials; and (iv) charging a fee that was not disclosed in an FDF or per the terms of CP 111.03 & 111.09.

DATED at Montpelier, Vermont this 18<sup>th</sup> day of February, 2014.

**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

DATED at BELLOWS FALLS, VT this 18<sup>th</sup> day of February, 2014.

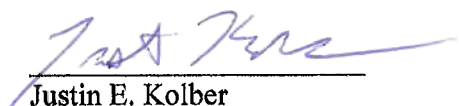
**COTA & COTA, INC.**

By: 

Its Authorized Agent

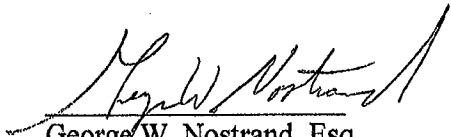
CHRIS A COTA, VP.  
Name and Title of Authorized Agent

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



George W. Nostrand, Esq.  
Salmon & Nostrand  
Suite 300  
Centennial Arcade  
Bellows Falls, VT 05101

For Cota & Cota, Inc.

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT

In Re: Cota & Cota Inc., Chris Cota

) 2014 CIVIL DIVISION 00

) Docket No. 205-4-14 wncv

ASSURANCE OF DISCONTINUANCE

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

Background

*Cota & Cota, Inc.*

- 1 Cota & Cota, Inc. is a Vermont corporation with offices at 4 Green Street, Bellows Falls, Vermont 05101. Cota & Cota's operations include retail marketing, sale, and distribution of propane to residential, commercial, industrial, and agricultural customers in Vermont.

*Regulatory Framework*

- 2 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 liquefied petroleum gas ("propane"). Since 1986, Vermont Consumer Protection Rule 111 ("CP 111" or "Propane Rule") has governed the business practices of propane service providers in Vermont and is enforced by the Office of the Attorney General. The Rule was amended in 2009, effective on January 1,

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ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

2010, and amended again in 2011, effective on January 1, 2012 (reference to “CP 111” or the “Propane Rule” refers to the most recent version as amended).

- 3 CP 111 governs the circumstances of when a propane provider may disconnect, or refuse to provide, propane service to a consumer. CP 111.11(a) states “ [a] seller shall only disconnect propane service without the consent of the consumer if: 1) there is a delinquency for charges for propane or fees for leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read, 2) the entire delinquency is not more than two years old, 3) the consumer or occupant uses propane as a primary source of heat and the amount of the delinquency which is less than two years old is not less than \$60.00 and is not fewer than 60 days past due, and 4) the consumer has been given an opportunity to enter into a reasonable Delinquency Payment Agreement to pay the delinquency ”
4. 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) CP 111 01
- 5 The Consumer Protection Act also protects consumers against retaliation. 9 V.S.A § 2453b states “[n]o person shall retaliate against, coerce, intimidate, threaten, or interfere with any other person who: 1) has opposed any act or practice of the person which is collusive or in restraint of trade; 2) has lodged a complaint or has testified, assisted, or participated in any manner with the attorney general or a state’s attorney in an investigation of acts or practices which are collusive or in restraint of trade; 3) is known by the person to be about

to lodge a complaint or testify, assist, or participate, in any manner in an investigation of acts or practices which are collusive or in restraint of trade, or 4) is believed by the person to have acted as described in subsection (1), (2), or (3) of this subsection.”

- 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)

***Cota & Cota's Propane Practices***

- 7 On November 25, 2013, Marianne Oakes, a Vermont consumer, complained to the Attorney General's Office, Consumer Assistance Program (“CAP”) regarding Cota & Cota's propane practices.
- 8 On February 18, 2014, Cota & Cota entered into an Assurance of Discontinuance with the Attorney General's Office (“February 18, 2014 AOD”) regarding modifications of the company's propane practices to comply with CP 111 and Vermont's Consumer Protection Act.
- 9 On the same day, February 18, 2014, Cota & Cota sent a letter to Marianne Oakes, stating that Cota & Cota was “transferring ownership of the propane tank at [her] location” to Ms. Oakes, and Cota & Cota had “suspended her delivery [and] account status.” The letter and bill of sale for the tank was signed by “Chris Cota, VP” for Cota & Cota, Inc.
- 10 On February 18, 2014, Chris Cota sent a similar letter and bill of sale transferring ownership of another propane tank to Ms Oakes' landlord, John Aufmuth. In that letter, Cota & Cota stated that transferring the tank was “a consequence of a directive by the Vermont Attorney General's Office ” The



letter also stated that “we no longer provide propane” and “will not be available to service the appliances in your house.”

11 After receiving the letter, Mr Aufmuth called Cota & Cota and spoke with Chris Cota. In that phone conversation, Chris Cota made clear that he decided to stop providing propane service to Mr Aufmuth and to Ms Oakes because of Ms. Oakes, her complaint to the Attorney General’s Office, and the resulting February 18, 2014 AOD. Chris Cota further indicated that if Ms Oakes were no longer a tenant at the property, Cota & Cota would resume propane service at that location.

12 Neither the Attorney General’s Office nor the February 18, 2014 AOD required Cota & Cota to transfer ownership of propane tanks, or suspend or otherwise cancel, or refuse to provide, propane service, as described in ¶¶ 9-11.

13 Cota & Cota admits the truth of the facts described above in ¶¶ 1, 8-12.

***The State’s Allegations***

14 The Vermont Attorney General’s Office alleges that the following behavior (as described in ¶¶ 8-12 above) violates the Vermont Consumer Protection Act and Propane Rule

- a. Failing to follow CP 111 regarding disconnection of service;
- b. Retaliating against a consumer for filing a complaint with the Attorney General’s Office; and
- c. Informing a consumer that a certain action is a consequence of a directive by the Vermont Attorney General’s Office when it was not.

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

**Assurances and Relief**

In lieu of instituting litigation, the Attorney General and Cota & Cota are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter

Accordingly, the parties agree as follows.

16 Cota & Cota Inc. 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.

17. Starting immediately, Chris Cota shall not have any authority over decisions related to Cota & Cota providing or disconnecting propane service to Vermont consumers.

18 Cota & Cota agrees to take the following actions with regard to the following consumers:

- a. For John Aufmuth, Cota & Cota shall pay to Mr Aufmuth (i) the amount of any fees necessary to establish new propane service (such as any initial leak and/or pressure tests if he keeps the tank, or the first year's tank rental fee if he returns the tank); payment shall be made by check and within 10 days of Mr Aufmuth providing confirmation to Cota & Cota of the applicable fees; and (ii) payment by Company check in the amount of \$1,250 as restitution, which shall be paid within 10 days of the execution of this AOD

b. For Marianna Oakes, Cota & Cota shall pay to Ms. Oakes. (i) the amount of any fees necessary to establish new propane service (such as any initial leak and/or pressure tests if she keeps the tank, or the first year's tank rental fee if she returns the tank), payment shall be made by check and within 10 days of Ms. Oakes providing confirmation to Cota & Cota of the applicable fees; and (ii) payment by Company check in the amount of \$1,250 as restitution, which shall be paid within 10 days of the execution of this AOD

19 Within 10 days of the execution of this AOD, Cota & Cota shall pay the State of Vermont \$5,000 in civil penalties.

**Other Terms**

20 Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any of the practices or procedures of Cota & Cota not required by this AOD, and Cota & Cota shall make no representation to the contrary

21 This AOD shall be binding on Chris Cota, and Cota & Cota, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Cota & Cota 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.

22. This AOD resolves all existing claims the State of Vermont may have against Cota & Cota stemming from the conduct described in this document, as of the date signed below
23. 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 any of its provisions, to enforce compliance, and to punish violations of its provisions.
24. Communications related to this AOD shall be given to Cota & Cota at
- a. Casey Cota, ( ) Cota & Cota Inc , 4 Green Street, Bellows Falls, Vermont 05101,
  - b. George W Nostrand, Esq. (nostrand@sover.net), Suite 300, Centennial Arcade, Bellows Falls, Vermont 05101-0535
25. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General listed below.
26. Cota & Cota shall notify the Attorney General of any change of Cota & Cota's business name or address and of any change in contact information in ¶ 24 within 20 business days.
27. In the event that Cota & Cota 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 Cota & Cota unrelated to the conduct described  
in this AOD

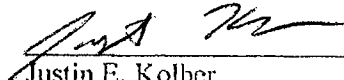
\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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

DATED at Montpelier, Vermont this 4<sup>th</sup> day of April, 2014.

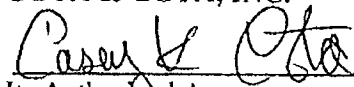
**STATE OF VERMONT**

**WILLIAM H. SORRELL  
ATTORNEY GENERAL**

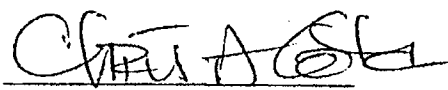
By   
Justin E. Kolber  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609

DATED at Bellows Falls, Vermont, this 4<sup>th</sup> day of April, 2014.

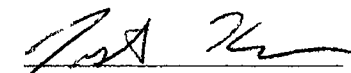
**COTA & COTA, INC.**

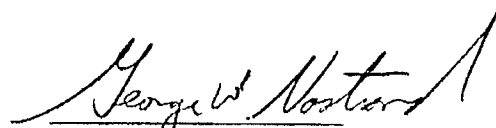
By   
Its Authorized Agent  
  
Casey Cota, President

**CHRIS COTA**

By:   
Chris Cota

APPROVED AS TO FORM:

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

  
George W. Nostrand, Esq.  
Salmon & Nostrand  
Suite 300  
Centennial Arcade  
Bellows Falls, VT 05101

For the State of Vermont

For Cota & Cota, Inc.

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

VERMONT SUPERIOR COURT

ORDER  
2014 DEC 30 P 3:41  
DW

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

DW  
2014 DEC 30 P 1:54  
proposed

STATE OF VERMONT, )  
Plaintiff )  
 )  
v. )  
 )  
DOLLAR TREE STORES, INC., )  
Defendant )

CIVIL DIVISION  
Docket No. 420-7-14 Wncv

STIPULATION AND CONSENT ORDER

WHEREAS, as evidenced by their signatures below, Plaintiff State of Vermont (“the State”), through its Attorney General, and Defendant Dollar Tree Stores, Inc. (“Dollar Tree”) 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 the State filed a Consumer Protection Complaint in this matter setting out certain allegations, and Dollar Tree filed an Answer in which it expressly denied the allegations but did not deny this Court’s jurisdiction over it;

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;

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. For the purpose of this Stipulation and Consent Order, the following terms are defined:

a. "Assurance of Discontinuance" means the Assurance of Discontinuance filed with this Court on February 8, 2010, under the Vermont Consumer Protection Act, 9 V.S.A. § 2459, and entitled *In re Dollar Tree Stores, Inc.*

b. "Children's product" means a consumer product designed or intended primarily for children 12 years of age or younger.

c. "Contain[s]" or "containing" lead or cadmium means containing, or having a surface coating containing, the stated amount by weight of lead, cadmium, or lead or cadmium compound in any component part of a product.

d. "Jewelry" means any item, regardless of how it is described in its labeling, marketing or advertising, and regardless of the age of the intended users, that is a necklace, bracelet, ring, earring, brooch, ornamental pin, or anklet principally designed and intended as an ornament to be worn on the human body, regardless of the material from which it is made (*e.g.*, plastic, ceramic, glass, etc.), *provided that* "jewelry" does not include the following: (i) any item that must be assembled or reconfigured by the consumer before it is worn (*e.g.*, without limitation, a set of plastic interlocking stars that, when assembled, form a bracelet); (ii) any item that is or contains food, candy or cosmetic (such as lip gloss); and (iii) lanyards and glow sticks.

e. "Offer or sell in or into the State of Vermont" means to distribute, offer or sell to a business or consumer in the State of Vermont through any medium, including, but not limited to, in a store or over the Internet.

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GENERAL  
109 State Street  
Montpelier, VT  
05609



2. In the course of doing business in or into the State of Vermont, Dollar Tree shall comply with all applicable federal and Vermont statutes and regulations relating to product safety, including, but not limited to, laws limiting the amount of lead and/or cadmium permitted in children's and other consumer products.

3. In keeping with the preceding paragraph, Dollar Tree shall comply with the federal Consumer Product Safety Improvement Act of 2008, Public Law 110-314, the Vermont Lead in Consumer Products Act, 9 V.S.A. chapter 63, subchapter 1C, and any regulations enacted thereunder.

4. Notwithstanding the preceding two paragraphs, and unless and until the requirements of federal and/or Vermont law are more stringent than the following requirements (in which case Dollar Tree shall comply with such more stringent federal and/or Vermont requirements), Dollar Tree shall not offer or sell in or into the State of Vermont at any of its Dollar Tree branded store locations:

a. Any jewelry, as defined above, *provided that* the inadvertent offer or sale in Vermont of a *de minimis* quantity of jewelry shall not violate this Stipulation and Consent Order as long as said jewelry complies with all governmental and ASTM standards for the presence of a toxic substance;

b. Any children's product, where any component of the product contains more than one hundred (100) parts per million of lead or three hundred (300) parts per million of cadmium; or

c. Any children's product, where any component of the product has paint or another surface coating containing more than ninety (90) parts per million of lead or seventy-five (75) parts per million of cadmium.

5. Within ten (10) days of the entry of this Stipulation and Consent Order, Dollar Tree, shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of \$42,500.00 (forty-two thousand five hundred dollars).

6. If the Attorney General decides to pursue enforcement of this Stipulation and Consent Order because he believes that Dollar Tree has failed to comply with paragraph 4, above, the Attorney General shall, unless he or she has evidence that Dollar Tree has offered for sale or has sold jewelry that violates an existing governmental or ASTM standard for the presence of a toxic substance in such a product, notify Dollar Tree in writing of said noncompliance, and Dollar Tree shall thereafter have 30 (thirty) business days from receipt of the written notice to provide a written response to the Attorney General before the Attorney General initiates any enforcement action.

7. This Stipulation and Consent Order shall be binding on Dollar Tree and its successors and assigns.

8. The terms of this Stipulation and Consent Order replace the terms of the Assurance of Discontinuance, which Assurance of Discontinuance shall no longer have any independent force or effect.


9. This action is dismissed with prejudice, except that the Court retains jurisdiction over any action to enforce compliance with its terms.

Dated 12/2/17

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

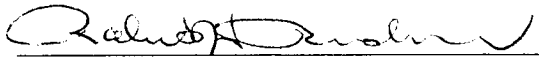
STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:   
Elliot Burg  
Special Assistant Attorney General

Dated 12/17/2014


DOLLAR TREE STORES, INC.

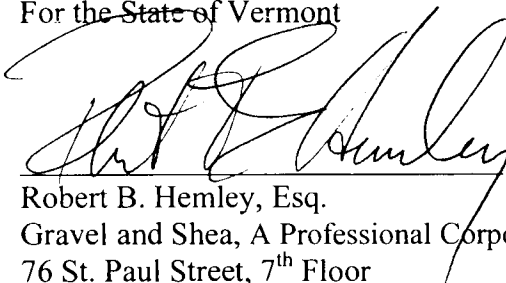
by:   
Authorized Agent

Robert H. Rudman  
Name of Authorized Agent

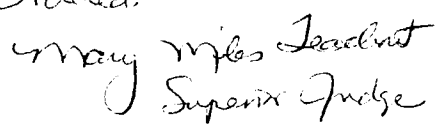
CMO  
Title of Authorized Agent

APPROVED AS TO FORM:

  
Elliot Burg  
Special Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
(802) 828-2153  
For the State of Vermont

  
Robert B. Hemley, Esq.  
Gravel and Shea, A Professional Corporation  
76 St. Paul Street, 7<sup>th</sup> Floor  
P. O. Box 369  
Burlington, VT 05402-0369  
(802) 658-0220  
For Dollar Tree Stores, Inc.

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

So Ordered.  
  
Superior Judge  
December 30, 2014

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 JUL 31 P 1:22



FILED  
CIVIL DIVISION  
Docket No. 315-5-14 WNCV

STATE OF VERMONT, )  
Plaintiff )  
 )  
v. )  
 )  
PAT GIGLIO and )  
ENHANCED SERVICES BILLING, INC., )  
Defendants )

STIPULATION AND CONSENT ORDER

WHEREAS, as evidenced by their signatures below, Plaintiff State of Vermont (“the State”), through its Attorney General, and Defendant Enhanced Services Billing, Inc. (“ESBI”) 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 ESBI would have filed an Answer in this matter in which it expressly denied the allegations in the State’s Consumer Protection Complaint and First Amended Consumer Protection Complaint, but would not have denied the State’s jurisdiction over it;

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;

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. *Definitions.*

a. "CPA" means the Vermont Consumer Protection Act, 9 V.S.A. chapter 63, and any regulations enacted thereunder.

b. "Eligible Consumers" means all individuals and businesses that were charged on their area code 802 landline telephone bills at any point in the past for goods or services offered by Localbizusa, Inc., where the charges were processed by ESBI.

c. For the purpose of communications from ESBI, "the State" shall be the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, in care of Senior Assistant Attorney General Elliot Burg.

2. *Effect of Stipulation and Order.* ESBI does not admit and expressly denies 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 ESBI, 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 ESBI.

3. *Injunctive relief.* ESBI shall comply strictly with all provisions of Vermont law, including but not limited to provisions of the CPA, with respect to the placement of third-party charges on local telephone bills associated with telephone numbers in area code 802.

4. *Refunds to Eligible Consumers.*

a. No later than September 1, 2014, ESBI shall send to each Eligible Consumer, by first-class mail, postage prepaid, in an envelope with a return address of the Vermont Attorney General, a refund check in the amount of all amounts processed by ESBI

and charged on the consumer's area code 802 landline telephone bill, less any amounts already refunded and for which ESBI has express documentation. The total of these refunds is estimated to be around \$75,700.

b. For the purpose of the mailings described in subparagraph 4(a), above, ESBI shall exercise due diligence in determining the current address of each Eligible Consumer. In the event that ESBI has the name of an individual (for example, a contact person), but not the name of the business itself, for an Eligible Consumer, ESBI shall exercise due diligence in determining the name of the business and shall use that name in the mailing.

c. ESBI shall enclose with the check a letter in substantially the same form as Exhibit 1 hereto.

d. Each check shall state on its face words to the effect that the check is void unless cashed or deposited within sixty (60) days.

e. No later than ten (10) days after completion of the mailing described in subparagraph 4(a), above, ESBI shall provide to the State an electronic Excel file containing the names (including the business names) of the Eligible Consumers to whom letters and checks were sent, and for each Eligible Consumer, the address, telephone number, and amount of the check.

f. No later than ninety (90) days after completion of the mailing described in subparagraph 4(a), above, ESBI shall provide to the State a check payable to "Vermont State Treasurer," in the total dollar amount of all checks described in said subparagraph that were returned as undeliverable or that went undeposited and uncashed as of the date of said payment to the State, to be treated as unclaimed property under state law. ESBI shall also

provide to the State an electronic Excel file containing the names (including the business names) of the Eligible Consumers whose checks were returned or went undeposited and uncashed, and for each such Eligible Consumer, the address, telephone number, and dollar amount of the check.

5. *Payment to the State.* No later than August 15, 2014, ESBI shall pay to the State the sum of one hundred twenty-five thousand dollars (\$125,000.00). In addition, no later than ninety (90) days after completion of the mailing described in subparagraph 4(a), above, ESBI shall pay to the State the additional sum, if any, by which the total of refunds under subparagraph 4(a), above, is less than seventy-five thousand dollars (\$75,000.00).

6. *Binding effect.* This Stipulation and Consent Order shall be binding on ESBI and its successors and assigns.

7. *Release.* In consideration for the discharge of ESBI's obligations under this Stipulation and Consent Order, the State of Vermont hereby releases and discharges any and all claims that it may have against ESBI stemming from charges to Vermont consumers' landline telephone bills through or on behalf of any third-party seller of goods or services.

8. *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 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, or for the punishment of violations herewith.

9. *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.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Superior Judge

**STIPULATION**

The undersigned parties stipulate and agree to the foregoing Consent Order.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of July, 2014.

\_\_\_\_\_  
Authorized Agent of Enhanced Services  
Billing, Inc.

Dated at Montpelier, Vermont this 15<sup>th</sup> day of July, 2014.

STATE OF VERMONT

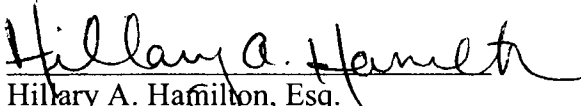
WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: \_\_\_\_\_

  
Elliot Burg  
Senior Assistant Attorney General

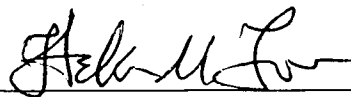
APPROVED AS TO FORM:

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

  
Hillary A. Hamilton, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
300 South Grand Avenue, Suite 3400  
Los Angeles, CA 90071  
For Defendant Enhanced Services Billing, Inc.



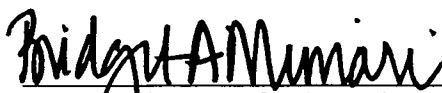
Dated this 30<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Superior Judge

STIPULATION

The undersigned parties stipulate and agree to the foregoing Consent Order.

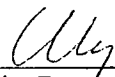
Dated at San Antonio, Texas, this 24<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Authorized Agent of Enhanced Services  
Billing, Inc.

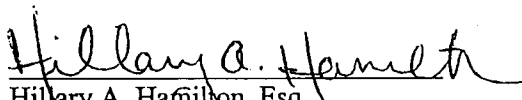
Dated at Montpelier, Vermont this 15<sup>th</sup> day of July, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
\_\_\_\_\_  
Elliot Burg  
Senior Assistant Attorney General

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Hillary A. Hamilton, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
300 South Grand Avenue, Suite 3400  
Los Angeles, CA 90071  
For Defendant Enhanced Services Billing, Inc.

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

*Elliot*

---

Elliot Burg  
Senior Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, Vermont 05609  
For the State of Vermont

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

**Exhibit 1**

**(Letter to Eligible Consumers)**

Dear [Name of Eligible Consumer]:

Under a settlement with the Vermont Attorney General's Office, we are enclosing a check to reimburse you for charges by Localbizusa, a seller of website and other online services that our company processed on your local telephone bill sometime during the period 2004-2009.

**You must cash or deposit this check within 60 days.** After that, 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,

Enhanced Services Billing, Inc.

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

STATE OF VERMONT  
SUPERIOR COURT

STATE OF VERMONT

Plaintiff,

vs.

GLAXOSMITHKLINE LLC,

Defendant.

CIVIL DIVISION

Docket No. 338-6-14 W/m cv

CONSENT JUDGMENT

Plaintiff, the State of Vermont, has filed a Complaint for a permanent injunction and other relief in this matter pursuant to 9 V.S.A. §§ 2451- 2461 alleging that Defendant GlaxoSmithKline LLC (hereinafter “GlaxoSmithKline”) committed violations of the aforementioned Act. Plaintiff, by its counsel, and GlaxoSmithKline, by its counsel, have agreed to the entry of this Consent Judgment (“Consent Judgment”) by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

**IT IS HEREBY ORDERED THAT:**

**I. DEFINITIONS**

The following definitions shall be used in construing this Consent Judgment:

1. “Applicable Clinical Trials” shall mean those clinical trials required by the FDA

Amendments Act of 2007 (Public Law No. 110-85).

2. "Attorneys General" shall mean the Attorneys General of the Multistate Working Group.

3. "Clinically Relevant Information" shall mean information that reasonably prudent clinicians would consider relevant when making prescribing decisions regarding a GSK Product.

4. "Clinical Response" shall mean a non-Promotional (as "Promotional" is defined in paragraph 21 below), scientific communication to address Unsolicited Requests for medical information.

5. "Covered Conduct" shall mean GSK's Promotional practices, dissemination of information, and remuneration to HCPs regarding the prescription drugs Advair®, Paxil®, and Wellbutrin® in the United States.

6. "Effective Date" shall mean the date on which a copy of this Consent Judgment, duly executed by GSK and by the signatory Attorney General, is approved by, and becomes a Judgment of the Court.

7. "GlaxoSmithKline LLC," "GlaxoSmithKline," or "GSK" shall mean GlaxoSmithKline LLC, including all of its predecessors, subsidiaries, successors, and assigns.

8. "GSK Law Department" shall mean personnel of the GSK Law Department or its designee providing legal advice to GSK.

9. "GSK Marketing" shall mean GSK personnel responsible for marketing GSK Products.

10. "GSK Medical Affairs" shall mean the organization within GSK consisting of highly trained experts with specialized scientific and medical knowledge, usually with an advanced scientific degree (e.g., an MD, PhD, or PharmD), whose role is limited to the provision of specialized, medical or scientific information, scientific analysis and/or scientific information to Health Care Professionals (as defined in paragraph 14 below), but excludes anyone performing

sales, marketing, Promotional ride alongs, or other primarily commercial roles.

11. “GSK Product” or “GSK Products” shall mean: (1) Advair®; (2) Paxil®; (3) Wellbutrin®; (4) any pharmaceutical or biological product approved by the Food and Drug Administration for the treatment of major depressive disorder; (5) any selective serotonin reuptake inhibitor (SSRI); and (6) any norepinephrine dopamine reuptake inhibitor (NDRI), that GSK Promotes or for which it directs Promotion.

12. “GSK Sales” shall mean the GSK sales force responsible for selling GSK Products.

13. “GSK Scientifically Trained Personnel” shall mean GSK personnel who are highly trained experts with specialized scientific and medical knowledge, usually with an advanced scientific degree (e.g., an MD, PhD, or PharmD), whose roles involve the provision of specialized, medical or scientific information, scientific analysis and/or scientific information to HCPs but excludes anyone performing sales, marketing, Promotional ride alongs, or other primarily commercial roles.

14. “Health Care Professional” or “HCP” shall mean any physician or other health care practitioner who is licensed to provide health care services or to prescribe pharmaceutical products.

15. “Meta-analyses” shall mean formal analyses combining evidence from independent studies using appropriate statistical methods, but shall not include any such analyses conducted in connection with the preparation or submission of an Investigational New Drug Application (IND), New Drug Application (NDA), Supplemental New Drug Application (sNDA), Abbreviated New Drug Application, (ANDA), nor shall it include any such analyses conducted in connection with any other regulatory report required under the Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.* (FDCA), or by the U.S. Food and Drug Administration (FDA) or other

regulatory body, to the extent the content or submission of which is treated as non-public or confidential by the relevant agency.

16. “Multistate Executive Committee” shall mean the Attorneys General and their staff representing Arizona, Florida, Illinois, Maryland, Oregon, Pennsylvania, Tennessee, and Texas.

17. “Multistate Working Group” shall mean the Attorneys General and their staff representing Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia<sup>1</sup>, Hawaii<sup>2</sup>, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah<sup>3</sup>, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

18. “Off-Label” shall mean a non-FDA approved use.

19. “Parties” shall mean the Vermont Attorney General and GSK.

20. “Promotional,” “Promoting,” or “Promote” shall mean representations about a GSK Product intended to influence sales of that product, including attempts to influence prescribing practices and utilization of a GSK Product, that would be deemed Promotional labeling or

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<sup>1</sup> With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. § 10-1-395, is statutorily authorized to undertake consumer protection functions for the State of Georgia. References to the “States,” “Parties,” or “Attorneys General,” with respect to Georgia, include the Administrator of the Fair Business Practices Act.

<sup>2</sup> Hawaii is being represented on this matter by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. For simplicity, the entire group will be referred to as the “Attorneys General,” and such designation, as it includes Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection.

<sup>3</sup> The Utah Attorney General's Office represents the Utah Division of Consumer Protection (Division), the state agency charged with enforcement of the Consumer Sales Practices Act, in this action, but is not a party itself. As to Utah, the definition of "Attorneys General" means the Utah Attorney General as counsel to the Division.

advertising under the FDCA or any regulation promulgated thereunder, or by the FDA, under the most current draft or final standard promulgated by the FDA or the most current draft or final FDA Guidance for Industry.

21. "Promotional Materials" shall mean any item used to Promote any GSK Product.
22. "Relevant State Consumer Protection Statutes" shall mean the consumer protection laws under which the Attorneys General have conducted the investigation.<sup>4</sup>
23. "Reprints Containing Off-Label Information" shall mean articles or reprints from a Scientific or Medical Journal, as defined in 21 C.F.R. § 99.3(j), or Reference Publication, as defined in 21 C.F.R. § 99.3(i), describing an Off-Label use of a GSK Product.
24. "Unsolicited Request" shall mean a request for information regarding a GSK Product communicated to an agent of GSK that has not been prompted by GSK.

## II. FINDINGS

1. This Court has jurisdiction over the subject matter of this lawsuit and over the Parties.
2. The terms of this Consent Judgment shall be governed by the laws of the State of Vermont.
3. Entry of this Consent Judgment is in the public interest and reflects a negotiated agreement among the Parties.
4. GlaxoSmithKline, at all times relevant hereto, engaged in trade and commerce affecting consumers, within the meaning of 9 V.S.A. §§ 2451a and 2453 in the State of Vermont, including, but not limited to, Washington County.
5. The Attorneys General conducted an investigation regarding the Covered Conduct. The

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<sup>4</sup> In Vermont, the relevant state consumer protection statutes are 9 V.S.A. §§ 2451- 2461.



Parties have agreed to resolve the concerns related to the Covered Conduct under the Relevant State Consumer Protection Laws by entering into this Consent Judgment. This Consent Judgment reflects a negotiated agreement entered into by the Parties as their own free and voluntary act, and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Consent Judgment. GSK is entering into this Consent Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing. Through this Consent Judgment, GSK does not admit any violation of law, and does not admit any wrongdoing that was or could have been alleged by any of the signatory Attorneys General before the date of the Consent Judgment. No part of this Consent Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by GSK. This Consent Judgment does not constitute an admission by GSK that the Covered Conduct violated or could violate the Relevant State Consumer Protection Laws. It is the intent of the Parties that this Consent Judgment shall not be admissible or binding in any other matter, including, but not limited to, any investigation or litigation, other than in connection with the enforcement of this Consent Judgment. No part of this Consent Judgment shall create a private cause of action or convert any right to any third party for violation of any federal or state statute or law, except that an Attorney General may file an action to enforce the terms of this Consent Judgment. Nothing contained herein prevents or prohibits the use of this Consent Judgment for purposes of enforcement by the Vermont Attorney General.

6. This Consent Judgment does not create a waiver or limit GSK's legal rights, remedies, or defenses in any other action by the Vermont Attorney General, and does not waive or limit

GSK's right to defend itself from, or make arguments in, any other matter, claim, or suit, including, but not limited to, any investigation or litigation relating to the existence, subject matter, or terms of this Consent Judgment. Nothing in this Consent Judgment shall waive, release, or otherwise affect any claims, defenses, or other positions GSK may assert in connection with any investigations, claims, or other matters the Attorneys General are not releasing hereunder. Notwithstanding the foregoing, the Vermont Attorney General may file an action to enforce the terms of this Consent Judgment.

7. This Consent Judgment does not constitute an approval by the Attorneys General of GSK's business practices, and GSK shall make no representation or claim to the contrary.

8. This Consent Judgment sets forth the entire agreement between the Parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel, with respect to the Covered Conduct.

9. This Court retains jurisdiction of this Consent Judgment and the Parties hereto for the purpose of enforcing and modifying this Consent Judgment and for the purpose of granting such additional relief as may be necessary and appropriate.

10. This Consent Judgment may be executed in counterparts, each of which shall be deemed to constitute an original counterpart hereof, and all of which shall together constitute one and the same Consent Judgment. One or more counterparts of this Consent Judgment may be delivered by facsimile or electronic transmission with the intent that it, or they, shall constitute an original counterpart hereof.

11. This Consent Judgment relates solely to GSK's business in the United States.

12. This Consent Judgment (or any portion thereof) shall in no way be construed to prohibit GSK from making representations with respect to any GSK Product that are permitted under

Federal law or labeling for the drug under the most current draft or final standard promulgated by the FDA or the most current draft or final FDA Guidance for Industry, or permitted or required under any IND, NDA, sNDA, or ANDA approved by the FDA, so long as the representation, taken in its entirety, is not false, misleading or deceptive.

13. Nothing in this Judgment shall require GSK to:

- a) take any action that is prohibited by the FDCA or any regulation promulgated thereunder, or by the FDA; or
- b) fail to take any action that is required by the FDCA or any regulation promulgated thereunder, or by the FDA;

or shall preclude GSK from providing health care economic information to a formulary committee or similar entity or its members in the course of the committee or entity carrying out its responsibilities for the selection of drugs for managed care or other similar organizations pursuant to the standards of Section 114 of the Food and Drug Administration Modernization Act of 1997 (FDAMA), if the information directly relates to an approved indication of a GSK Product, and if based on competent and reliable scientific evidence.

### **III. COMPLIANCE PROVISIONS**

#### **Promotional Activities**

- A. GSK shall not make, or cause to be made, any written or oral claim that is false, misleading, or deceptive about any GSK Product.
- B. GSK shall not represent that any GSK Product has any sponsorship, approval, characteristics, ingredients, uses, benefits, quantities, or qualities that it does not have.
- C. GSK's policies and procedures shall address compensation (including through salaries, bonuses, or other means) for GSK Sales and GSK Marketing. These policies and procedures

shall: (1) be designed to ensure that financial incentives do not inappropriately motivate GSK Sales or GSK Marketing to engage in improper sales Promotion, sales and marketing of GSK Products; and (2) include mechanisms, where appropriate, to exclude from incentive compensation sales that may indicate Off-Label Promotion of GSK Products. GSK shall make reasonable efforts in good faith to seek contractual language with any third-party contractor of prescriber-facing sales personnel requiring that any such personnel contracted to Promote GSK Products will not be compensated based on territory/individual level sales goals. GSK represents that, prior to the Effective Date, it implemented a program in the United States to eliminate incentive compensation based on territory/individual level sales goals for prescriber-facing sales personnel (e.g., sales representatives) and their direct managers (Patient First Program). The Patient First Program is described in more detail in Attachment A. GSK shall continue its Patient First Program or a substantially equivalent program through March 1, 2019.

Paragraphs D through F below shall be effective for a period of eight years from the Effective Date.

D. GSK shall not make in a Promotional context a representation or suggestion, not approved or permitted for use in the labeling or under the FDCA, that a GSK Product is better, more effective, useful in a broader range of conditions or patients, safer, has fewer or less incidence of, or less serious side effects or contraindications than has been demonstrated by substantial evidence, or substantial clinical experience (as described in paragraphs (e)(4)(ii)(b) and (c) of 21 C.F.R. § 202.1), whether or not such representations are made by comparison with other drugs or treatments, and whether or not such a representation or suggestion is made directly or through use of published or unpublished literature, quotations, or other references.

E. GSK shall not Promote any GSK Product by use of Promotional Materials that:

1. contain a drug comparison that represents or suggests that a drug is safer or more effective than another drug in some particular when it has not been demonstrated to be safer or more effective in such particular by substantial evidence or substantial clinical experience;
2. contain a representation or suggestion that a drug is safer than it has been demonstrated to be by substantial evidence or substantial clinical experience, by selective presentation of information from published articles or other references that report no side effects or minimal side effects with the drug or otherwise selects information from any source in a way that makes a drug appear to be safer than has been demonstrated;
3. present information from a study in a way that implies that the study represents larger or more general experience with the drug than it actually does; or
4. use statistics on numbers of patients or counts of favorable results or side effects, derived from pooling data from various insignificant or dissimilar studies in a way that suggests either that such statistics are valid if they are not or that they are derived from large or significant studies supporting favorable conclusions when such is not the case.

F. When presenting information about a clinical study regarding GSK Products in any Promotional Materials, GSK shall not do any of the following for information that may be material to an HCP prescribing decision:

1. present favorable information or conclusions from a study that is inadequate in design, scope, or conduct to furnish significant support for such information or conclusions;

2. use the concept of statistical significance to support a claim that has not been demonstrated to have clinical significance or validity, or fails to reveal the range of variations around the quoted average results; or
3. use statistical analyses and techniques on a retrospective basis to discover and cite findings not soundly supported by the study, or to suggest scientific validity and rigor for data from studies the design or protocol of which are not amenable to formal statistical evaluations.

### **Clinical Research**

This subsection shall be effective for eight years from the Effective Date of this Judgment.

G. GSK shall report research in an accurate, objective, and balanced manner as follows and as required by applicable law. To the extent permitted by the National Library of Medicine and as required by the FDA Amendments Act of 2007 (Public Law No. 110-85), GSK shall register GSK-sponsored Applicable Clinical Trials beginning after the Effective Date with the applicable registry and submit results of GSK-sponsored Applicable Clinical Trials completed after the Effective Date to the registry and results data bank as required by the FDA Amendments Act and any accompanying regulations that may be promulgated pursuant to that Act.

H. When submitting a manuscript on the results of a clinical study regarding any GSK Product for publication, GSK shall:

1. adhere to the ICMJE Uniform Requirements for Manuscripts Submitted to Biomedical Journals: Writing and Editing for Biomedical Publications, including authorship criteria, unless the applicable journal or congress to which the publication is submitted has more stringent requirements, in which case the

journal or congress criteria for authorship will be followed;

2. acknowledge GSK's role as a funding source of the study which is the subject of the manuscript; and
3. disclose any change to the plan for the statistical analysis for that clinical study if such change is inconsistent with GSK's standard operating procedure for Development, Review and Approval of Reporting and Analysis Plans. GSK's standard operating procedure for Development, Review and Approval of Reporting and Analysis Plans shall include requirements that such plans shall be consistent with the study protocol and shall be finalized before the date of final database release or interim database release (for an unblinded interim analysis).

I. For any GSK Product, GSK shall also post on GSK's clinical study registry any observational studies or Meta-analyses conducted by GSK that are designed to inform the effective, safe, and/or appropriate use of any GSK Product.

### **Product Sampling**

This subsection shall be effective for five years from the Effective Date of this Judgment.

J. GSK shall not provide samples of GSK Products to those HCPs who are not expected to prescribe the sampled GSK Products for an approved use, but who would be expected to prescribe the sampled product for an Off-Label use.

K. If an HCP who would not be expected to prescribe the GSK Product for an approved use, but who would be expected to prescribe the product for an unapproved use, requests samples of that GSK Product, GSK personnel shall refer the HCP to GSK Medical Affairs where the practitioner can speak directly with a GSK Medical Affairs representative who will provide answers to the HCP's questions about the GSK Product and GSK may provide him/her with

samples only if appropriate (i.e., if the HCP requests the samples for an FDA approved (“on-label”) use).

### **Reprints**

This subsection shall be effective for five years from the Effective Date of this Judgment.

L. GSK shall not disseminate information describing any Off-Label use of a GSK Product, unless such information and materials are consistent with applicable FDA regulations and FDA Guidances for Industry.

M. Reprints Containing Off-Label Information regarding a GSK Product:

1. shall be accompanied by the FDA-approved labeling for the product, or a clearly and conspicuously described hyperlink that will provide the reader with such information;
2. shall contain a disclosure that is prominently displayed, which would include the first page or as a cover page where practicable, indicating that the article discusses Off-Label information; and
3. shall not be referred to or used in a Promotional manner.

N. GSK shall not disseminate any Reprint Containing Off-Label Information that relates to studies submitted to the FDA that were reviewed and specifically rejected by the FDA.

O. Nothing in this Judgment shall preclude GSK from revising its policies and practices regarding the dissemination of Reprints Containing Off-Label Information to be consistent with applicable FDA regulations and FDA Guidances for Industry that are revised or newly issued after the Effective Date of this Judgment.

### **Clinical Responses**

This subsection shall be effective for five years from the Effective Date of this Judgment.



P. GSK, through GSK Scientifically Trained Personnel, shall have ultimate responsibility for developing and approving all Clinical Responses regarding a GSK Product, including any that may describe Off-Label information. Additional approvals may be provided by the GSK Law Department. GSK shall not distribute any such materials unless:

1. Clinically Relevant Information is included in these materials to provide scientific balance;
2. data in these materials are presented in an unbiased, non-Promotional manner; and
3. these materials are clearly and conspicuously distinguishable from sales aids and other Promotional Materials.

Nothing in this subsection shall prohibit GSK Scientifically Trained Personnel from disseminating materials that are permitted to be distributed under Federal law.

Q. GSK Sales and GSK Marketing personnel shall not develop the medical content of Clinical Responses regarding a GSK Product.

R. Clinical Responses regarding a GSK Product may be disseminated only by GSK Scientifically Trained Personnel to HCPs, and GSK Sales and GSK Marketing personnel shall not disseminate these materials to HCPs except in circumstances implicating public health and safety issues. In such circumstances, GSK Sales and GSK Marketing personnel may disseminate a Clinical Response directly to HCPs when expressly authorized by the Health Care Compliance Officer, the Vice President of Medical/Scientific Affairs responsible for the GSK Product(s) included in the Clinical Response(s), and counsel from the GSK Law Department.

#### **Responses to Unsolicited Requests for Off-Label Information**

This subsection shall be effective for five years from the Effective Date of this Judgment.

S. In responding to an Unsolicited Request for Off-Label information regarding a GSK

Product, including any request for a specific article related to Off-Label uses, GSK shall:

1. advise the requestor that the request concerns an Off-Label use; and
2. inform the requestor of the drug's FDA-approved indication(s), provide labeling information and, where relevant to the Unsolicited Request, provide dosage information.

T. If GSK elects to respond to an Unsolicited Request for Off-Label information regarding a GSK Product, GSK Scientifically Trained Personnel shall provide specific, accurate, objective, and scientifically-balanced responses. Any such response shall not Promote a GSK Product for any Off-Label use(s).

U. Any written response to an Unsolicited Request for Off-Label information regarding a GSK Product shall include:

1. an existing Clinical Response prepared in accordance with Section III.P-R;
2. a Clinical Response prepared in response to the request in accordance with Section III.P-R; or
3. a report containing the results of a reasonable literature search using terms from the request.

V. Only GSK Scientifically Trained Personnel may respond in writing to an Unsolicited Request for Off-Label information regarding a GSK Product.

W. GSK Sales and GSK Marketing personnel may respond orally to an Unsolicited Request for Off-Label information regarding a GSK Product only by offering to request on behalf of the requester that a Clinical Response prepared in accordance with Section III.P-R or other information set forth above in this sub-section be sent in follow-up or by offering to put the requester in touch with GSK Medical Affairs. GSK Non-Scientifically Trained Personnel shall

not characterize, describe, identify, name, or offer any opinions about or summarize any such Off-Label information.

### **Grants**

This subsection shall be effective for five years from the Effective Date of this Judgment.

X. GSK shall disclose information about medical education grants, including continuing medical education (“CME”) grants, regarding a GSK Product as required by applicable law, including the Vermont Prescribed Products Gift Ban and Disclosures Law, 18 V.S.A. §§ 4631a, 4632, and 4633.

Y. GSK Medical Affairs shall manage all requests for funding related to medical education grants relating to a GSK Product. Approval decisions shall be made by GSK Medical Affairs, and shall be kept separate from the GSK Sales and GSK Marketing organizations.

Z. GSK shall not use medical education grants or any other type of grant to Promote a GSK Product. This provision includes, but is not limited to, the following prohibitions:

1. GSK Sales and GSK Marketing personnel shall not initiate, coordinate or implement grant applications on behalf of any customer or HCP;
2. GSK Sales and GSK Marketing personnel shall not be involved in selecting grantees or medical education speakers; and
3. GSK shall not measure or attempt to track in any way the impact of grants or speaking fees on participating HCPs’ subsequent prescribing habits, practices or patterns.

AA. GSK shall not condition funding of a medical education program grant request relating to a GSK Product upon the requester’s selection or rejection of particular speakers.

BB. GSK shall not suggest, control, or attempt to influence the specific topic, title, content,

speakers or audience for CMEs relating to a GSK Product, consistent with Accreditation Council for Continuing Medical Education (ACCME) guidelines.

CC. GSK Sales and GSK Marketing personnel shall not approve grant requests regarding a GSK Product, nor attempt to influence the awarding of grants to any customers or HCPs for their prescribing habits, practices, or patterns.

DD. GSK shall contractually require each medical education provider to clearly and conspicuously disclose to attendees of a medical education program regarding any GSK Product(s) GSK's financial support of the medical education program and any financial relationship with faculty and speakers at such medical education program.

EE. After initial delivery of a CME program regarding a GSK Product, GSK shall not knowingly fund the same program, nor shall it provide additional funding for re-distribution of the same program, if the program's speakers are Promoting a GSK Product for Off-Label use in that program.

#### **IV. DISBURSEMENT OF PAYMENTS: PAYMENT TO THE STATES**

Within 30 days of the Effective Date of this Consent Judgment, GSK shall pay \$105 million to be divided and paid by GSK directly to each Attorney General of the Multistate Working Group in an amount designated by and in the sole discretion of the Multistate Executive Committee.<sup>5</sup> Said payment shall be used by the Attorneys General for attorneys' fees and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection enforcement fund, consumer education or litigation or local consumer aid or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law,

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<sup>5</sup> The State of Vermont's share is \$1,149,359.84.

and in Vermont, pursuant to the Constitution of the State of Vermont, Ch.II § 27, and 32 V.S.A. § 462. The Parties acknowledge that the payment described herein is not a fine or penalty, or payment in lieu thereof.

**V. REPRESENTATIONS AND WARRANTIES**

A. GlaxoSmithKline acknowledges that it is a proper party to this Consent Judgment. GlaxoSmithKline further warrants and represents that the individual signing this Consent Judgment on behalf of GlaxoSmithKline is doing so in his or her official capacity and is fully authorized by GlaxoSmithKline to enter into this Consent Judgment and to legally bind GlaxoSmithKline to all of the terms and conditions of the Consent Judgment.

B. The Attorney General warrants and represents that he is signing this Consent Judgment in his official capacity, and that he is fully authorized by his State to enter into this Judgment, including, but not limited to, the authority to grant the release contained in Section VI of this Consent Judgment, and to legally bind his State to all of the terms and conditions of this Consent Judgment.

**VI. RELEASE**

A. By execution of this Consent Judgment, the State of Vermont releases and forever discharges GSK and all of its past and present, assigns, directors, divisions, employees, officers, parents, predecessors, shareholders, subsidiaries, successors, and transferees (collectively, the “Released Parties”), from the following: all civil claims, causes of action, parens patriae claims, damages, restitution, fines, costs, attorneys’ fees, remedies and/or penalties that were or could have been asserted against the Released Parties by the Attorney General under the 9 V.S.A. §§ 2451-2461, or any amendments thereto, or by common law claims concerning unfair, deceptive, or fraudulent trade practices resulting from the Covered Conduct, up to and including the

Effective Date of this Consent Judgment (collectively, the “Released Claims”).

B. Notwithstanding any term of this Consent Judgment, specifically reserved and excluded from the Released Claims as to any entity or person, including Released Parties, are any and all of the following:

1. Any criminal liability that any person or entity, including Released Parties, has or may have to the State of Vermont;
2. Any civil or administrative liability that any person or entity, including Released Parties, has or may have to the State of Vermont, under any statute, regulation, or rule not expressly covered by the release in Section VI.A including, but not limited to, any and all of the following claims:
  - a. State or federal antitrust violations;
  - b. Medicaid violations, including, but not limited to, federal Medicaid drug rebate statute violations, Medicaid fraud or abuse, and/or kickback violations related to Vermont’s Medicaid program;
  - c. Claims involving “best price,” “average wholesale price,” or “wholesale acquisition cost;”
  - d. State false claims violations; and
  - e. Claims to enforce the terms and conditions of this Consent Judgment.
3. Actions of state program payors of the State of Vermont arising from the Covered Conduct, except for the release of civil penalties under the Relevant State Consumer Protection Laws.
4. Any claims individual consumers have or may have under the State of Vermont’s consumer protection laws against any person or entity, including Released Parties.

## **VII. CONFLICTS**

If, subsequent to the Effective Date of this Consent Judgment, the federal government or any state, or any federal or state agency, enacts or promulgates legislation or regulations with respect to matters governed by this Consent Judgment that creates a conflict with any provision of the Consent Judgment and GSK intends to comply with the newly enacted legislation or regulation, GSK shall notify the Attorneys General (or the Attorney General of the affected State) of the same. If the Attorney General agrees, he shall consent to a modification of such provision of the Consent Judgment to the extent necessary to eliminate such conflict. If the Attorney General disagrees and the Parties are not able to resolve the disagreement, GSK shall seek a modification from an appropriate court of any provision of this Consent Judgment that presents a conflict with any such federal or state law or regulation. Changes in federal or state laws or regulations, with respect to the matters governed by this Consent Judgment, shall not be deemed to create a conflict with a provision of this Consent Judgment unless GSK cannot reasonably comply with both such law or regulation and the applicable provision of this Consent Judgment.

## **VIII. DISPUTE RESOLUTION**

A. For the purposes of resolving disputes with respect to compliance with this Consent Judgment, should any of the signatory Attorneys General believe that GSK has violated a provision of this Consent Judgment subsequent to the Effective Date, then such Attorney General shall notify GSK in writing of the specific objection, identify with particularity the provisions of this Consent Judgment that the practice appears to violate, and give GSK 30 days to respond to the notification.

B. Upon receipt of written notice from any of the Attorneys General, GSK shall provide a good faith written response to the Attorney General notification, containing either a statement explaining why GSK believes it is in compliance with the Consent Judgment or a detailed explanation of how the alleged violation occurred and statement explaining how and when GSK intends to remedy the alleged violation.

C. Except as set forth in Sections VIII.E and F below, the Attorney General may not take any action during the 30 day response period. Nothing shall prevent the Attorney General from agreeing in writing to provide GSK with additional time beyond the 30 days to respond to the notice.

D. The Attorney General may not take any action during which a modification request is pending before a court pursuant to Section VII, except as provided for in Sections VIII.E and F below.

E. Nothing in this Consent Judgment shall be interpreted to limit the State's Civil Investigative Demand (CID) or investigative subpoena authority.

F. The Attorney General may assert any claim that GSK has violated this Consent Judgment in a separate civil action to enforce compliance with this Consent Judgment, or may seek any other relief afforded by law, but only after providing GSK an opportunity to respond to the notification as described above and to remedy the alleged violation within the 30 day response period as described above, or within any other period agreed to by GSK and the Attorney General; provided, however, that the Attorney General may take any action if the Attorney General believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.



## **IX. COMPLIANCE WITH ALL LAWS**

Except as expressly provided in this Consent Judgment, nothing in this Consent Judgment shall be construed as:

1. relieving GSK of its obligation to comply with all applicable state laws, regulations, or rules, or granting permission to engage in any acts or practices prohibited by any law, regulation, or rule; or
2. limiting or expanding in any way any right any state represented by the Multistate Working Group may otherwise have to enforce applicable state law or obtain information, documents, or testimony from GSK pursuant to any applicable state law, regulation, or rule, or any right GSK may otherwise have to oppose any subpoena, civil investigative demand, motion, or other procedure issued, served, filed, or otherwise employed by the State pursuant to any such state law, regulation, or rule.

## **X. GENERAL PROVISIONS**

- A. Nothing in this Consent Judgment is intended to modify any prior settlement agreements between Vermont and GlaxoSmithKline LLC formerly known as SmithKline Beecham Corporation, d/b/a GlaxoSmithKline, and SB Pharmco Puerto Rico, Inc.
- B. Nothing will prevent the Attorney General from agreeing in writing to provide GSK with additional time to perform any act required by the Consent Judgment. The Attorney General shall not unreasonably withhold his consent to the request for additional time.
- C. To the extent that any provision of this Consent Judgment obligates GSK to change any policy(ies) or procedure(s) and to the extent not already accomplished, GSK shall implement the policy(ies) or procedure(s) as soon as reasonably practicable, but no later than 120 days after the

Effective Date.

D. All notices under this Consent Judgment shall be sent by overnight United States mail.

The documents shall be sent to the following addresses:

For GlaxoSmithKline LLC:

Matthew J. O'Connor  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401

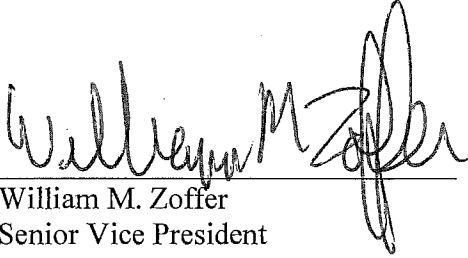
For State of Vermont:

Jill S. Abrams  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, Vermont 05609

APPROVED:

FOR DEFENDANT GLAXOSMITHKLINE LLC

By:



William M. Zoffer  
Senior Vice President  
GlaxoSmithKline LLC

27 May 2014

Date

APPROVED:

FOR DEFENDANT GLAXOSMITHKLINE LLC

By:  \_\_\_\_\_  
for Ritchie E. Berger

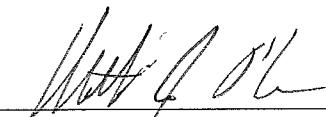
Vermont Bar No. 187  
Dinse, Knapp & McAndrew, P.C.  
P.O. Box 988  
Burlington, VT 05402-0988  
Local Counsel for GlaxoSmithKline LLC

5/20/14  
Date \_\_\_\_\_

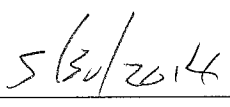
APPROVED:

FOR DEFENDANT GLAXOSMITHKLINE LLC

By:

  
\_\_\_\_\_


Geoffrey E. Hobart  
Matthew J. O'Connor  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401

  
\_\_\_\_\_

Date

APPROVED:

PLAINTIFF, STATE OF VERMONT

By:   
Jill S. Abrams  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, Vermont 05609

June 3, 2014  
Date

APPROVED BY THE COURT: \_\_\_\_\_ JUDGE

Date Entered: \_\_\_\_\_

## ATTACHMENT A

### Employee and Executive Incentive Compensation Policies and Practices

Pursuant to its existing Patient First Program, GSK agrees that it will not provide financial reward (through compensation, including incentive compensation or otherwise) or discipline (through tangible employment action) its prescribing-customer-facing field sales professionals (pharmaceutical sales representatives) or their direct managers based upon the volume of sales of GSK Products within a given employee's own territory or the manager's district. The Patient First Program includes evaluations for sales representatives based on business acumen, customer engagement, and scientific knowledge about GSK's Products. GSK shall continue its Patient First Program, or a substantially equivalent program through March 1, 2019. GSK commits to maintaining through at least March 1, 2019, absent agreement otherwise with the Multistate Executive Committee, the restrictions on such tangible employment decisions set forth in its Use of Territory/Individual Sales Data policy.

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 MAR 24 P 2:56

In Re: Government Employees Credit Center, Inc. )

CIVIL DIVISION

Docket No. 173-3-14wncv  
FILED

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Government Employees Credit Center, Inc. ("GECC" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

**Background**

***GECC***

1. Government Employees Credit Center, Inc. d/b/a/ Bexar is a Pennsylvania corporation with its primary place of business at 300 Creek View Road, Suite 204, Newark, DE 19711. From 2010 through August 2013, Respondent engaged in the business of making short term small dollar consumer loans.

***Regulatory Framework***

2. Pursuant to 9 V.S.A. § 2481w, it is an unfair and deceptive act and practice in commerce for a lender to solicit or make consumer loans unless the lender is in compliance with all provisions of 8 V.S.A. Chapter 73.
3. Chapter 73 of Title 8 requires all lenders to obtain a state license from the Department of Financial Regulation. *See* 8 V.S.A. § 2201.
4. Any loan made in knowing and willful violation of the requirement that an entity engaged in the business of making loans of money or credit without first obtaining a



license shall be void and the lender shall have no right to collect or receive any principal, interest, or charges. 8 V.S.A. § 2215(d)(1).

5. A lender which makes a loan made without a license, but without a finding of knowing and willful violation of the requirement of a license, shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal. 8 V.S.A. § 2215(d)(1).
6. Chapter 4 of Title 9 limits the amount of interest and other consideration a lender may charge to between 12-24% per annum, depending on the type of loan. *See* 9 V.S.A. § 41a, 8 V.S.A. § 2233.
7. A lender that charges interest plus other consideration in excess of the allowable rates forfeits the right to collect any interest or charges whatsoever, and is entitled to collect only half the principal. *See* 9 V.S.A. § 50(b).
8. 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). Each day that a violation continues is a separate violation.

***Respondent's Consumer Loan Practices***

9. GECC owns and operated the website [www.delawarecashdirectexpress.com](http://www.delawarecashdirectexpress.com), by which it previously marketed loans to consumers in various states, including to consumers in Vermont.
10. In order to fund and ensure repayment of its loans, GECC obtained access to Vermont consumers' bank accounts with the consumers' consent. Loans were electronically funded by crediting a borrower's account. Respondent then

electronically debited that same account, often using a third-party payment processor in order to collect on the loan.

11. GECC has offered loans to Vermont consumers in amounts that range from \$200-\$1,000. The annual percentage rate of Respondent's loans exceeded the interest rates allowed by Vermont law, and typically exceeded 300% per annum.
12. Since 2010, GECC has funded 384 loans to Vermont consumers, for a total of \$197,000.00 in principal funded.
13. To date, Respondent has collected a total of \$366,571.74 from Vermont consumers (representing \$229,635.34 in interest and fees collected).
14. As of August 7, 2013, GECC no longer engages in consumer lending nationwide, and as of December 31, 2013, has ceased all operations, including its consumer loan business.

***The State's Allegations***

15. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Vermont law:
  - a. The making of loans to Vermont consumers without a state license under Title 8, Chapter 73 violated 9 V.S.A. § 2481w(b); and
  - b. The charging of interest and other compensation in excess of Vermont's legal rates violated 9 V.S.A. § 41a.
16. 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 litigation, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459, and the parties agree as follows:

#### *Injunctive Relief*

17. Prior to doing any business in Vermont involving a loan as defined in Vermont law, GECC shall comply with the following sections of the Vermont Statutes Annotated: Title 8, Chapter 73 (Licensed Lenders statutes); Title 9, Chapter 4 (Interest statutes); and Title 9, Chapter 63 (Consumer Protection statutes).
18. GECC shall cease offering, funding, or collecting upon any loan to Vermont consumers, unless and until Respondent has obtained the proper state license under Title 8, Chapter 73, and has complied with all other lending requirements.
19. GECC shall cancel all current, delinquent, defaulted, charged-off, or outstanding lending transactions which it entered into with Vermont consumers, and shall not undertake any efforts to collect on these transactions. GECC shall not contract with any third-party debt collectors regarding these transactions, nor sell, or transfer, any obligations arguably due based upon these transactions. GECC shall not make any negative reports to any credit bureau, check clearinghouse, or other related service with respect to these transactions. If any negative reports to any such credit bureau or related service with respect to a Vermont consumer have been made, the responsible party for GECC shall, within thirty (30) days of the entry of this AOD, request that those negative references be removed.
20. If any consumer complains to the Attorney General or to GECC about a loan transaction entered into with Respondent, GECC shall review the complaint within

ten days of receipt, and take actions consistent with this AOD, including cancelling any outstanding loan, removing any negative credit reporting, and refunding all interest and fees. If GECC disputes any complaint, Respondent shall send a written explanation to the consumer, 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.

***Payments to Consumers***

21. Within 30 days of signing this AOD, GECC shall repay all interest and fees that it collected from Vermont consumers, for a total of \$229,635.34 paid to 211 consumers. GECC shall send a letter from the Attorney General (Exhibit A), and the consumer's payment, in an envelope provided by the Attorney General's Office. Each consumer check shall have a deposit deadline of 90 days from the date of issuance.
22. Within 35 days of signing this AOD, GECC shall send to the Attorney General's Office a list (in electronic Excel spreadsheet) of all consumers to whom payments were made, including the consumer name (which list shall set out the first and last names of the consumers in distinct fields or columns), contact information, and the amount paid.
23. In the event that GECC is not able to locate consumers to whom any payments are owed after all reasonable efforts to do so have been taken and no later than 120 days after signing this AOD, Respondent 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 17, Chapter 14;

- b. A list, in electronic Excel format, of the consumers whose checks were returned 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.

***Payment to the State of Vermont***

24. Within 30 days of signing this AOD, GECC shall pay to the State of Vermont \$15,000 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.

**Other Terms**

- 25. The parties have consented to the entry of this AOD for the purpose of settlement only and agree that it does not constitute an admission of the violation of any law, rule, or regulation.
- 26. Nothing in this AOD shall be construed to limit GECC's ability or right to assert any legal, factual, or equitable defenses, including jurisdictional defenses, in any pending or future proceeding of any kind, except with respect to enforcement of this AOD by the Attorney General.

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

27. Acceptance of this AOD by the Attorney General is expressly conditioned upon the truthfulness and accuracy of the representations made by GECC and its counsel during the investigation and settlement.
28. Neither GECC nor anyone acting on its behalf shall state or infer that the Vermont Attorney General's Office approves any business practices of Respondent.
29. This AOD and all terms therein shall be binding on GECC, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. All current and future officers and directors of GECC further agree to be personally bound by ¶¶ 17-18 of this AOD in both their official and individual capacity, and shall not undertake any role, personally or with any other company or entity (past, present, or future), in making loans in Vermont unless they comply with ¶¶ 17-18 of this AOD.
30. The undersigned authorized agent of GECC 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.
31. This AOD resolves all existing claims the State of Vermont may have against GECC stemming from the conduct described in this document.
32. 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 ¶ 21 shall waive any such claim against GECC.
33. 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 any of its provisions, to enforce compliance, and to punish violations of its provisions.

34. All notice related to this AOD shall be given to GECC at:

P.O. Box 2180, Wilmington, DE 19805-0780

With a copy to:

Duane Morris, LLP, attn.: Gary Lipkin, Esq., 222 Delaware Avenue, Suite 1600,  
Wilmington, DE 19801.

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

#### **Violations and Stipulated Penalties**

36. If the Superior Court of the State of Vermont, Washington Unit enters an order finding GECC to be in violation of this AOD, 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 paragraph, the term "each act" shall mean: (a) each instance of soliciting, making, or collecting a loan in Vermont without a state license; and (b) each instance of charging an interest rate above the legal rates allowed by 9 V.S.A. § 41a.

37. In the event that the Attorney General alleges that Respondent has violated any of the terms of this AOD, then the parties agree that the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential

violations of law by Respondent, and that the Attorney General shall not have waived any of its rights to assert and prove any violations of law by Respondent.

\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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

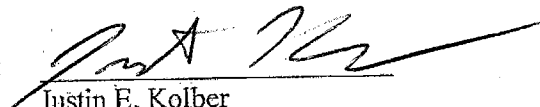


DATED at Montpelier, Vermont this 24<sup>th</sup> day of March, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:

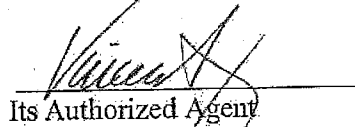


Justin E. Kolber  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-5620  
jkolber@atg.state.vt.us

DATED at Wilmington, DE this 20<sup>th</sup> day of March, 2014.

Government Employees Credit Center, Inc.

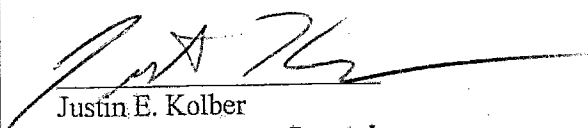
By:



Its Authorized Agent

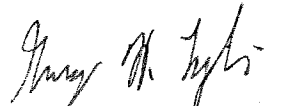
Vincent Ney, PRESIDENT  
Name and Title of Authorized Agent

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



Gary Lipkin, Esq.  
Duane Morris LLP  
222 Delaware Avenue,  
Suite 1600  
Wilmington, DE 19801-1659

For Government Employees Credit  
Center, Inc.

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

**EXHIBIT A**

April 2014

**Re: Government Employees Credit Center, Inc. settlement**

Dear Vermont consumer:

You have been identified as a consumer who took out a loan from Government Employees Credit Center, Inc. d/b/a Cash Direct Express ("GECC") between 2010 and 2013. As a result of a settlement with the Attorney General's Office, GECC is providing the enclosed payment to refund all interest and fees that you paid in connection with your loan.

If you accept this payment, you will waive whatever rights, if any, that you may possess to pursue an individual claim against GECC in connection with your loan. You may decline to accept the check by returning or mailing it to GECC, first class postage, within 90 days of the date of this letter, to the following address:

GECC  
P.O. Box 2180  
Wilmington, DE 19805-0780

For more information on Vermont consumer protection law or the terms of this settlement, please visit the Attorney General's Office website at [www.atg.state.vt.us](http://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.

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2014 OCT 30 A 8:58

In re GREEN TREE SERVICING LLC )

CIVIL DIVISION

Docket No. 642-10-14Wncv

ASSURANCE OF DISCONTINUANCE

INTRODUCTION

1. Green Tree Servicing LLC ("Green Tree") is a Delaware limited liability corporation with offices located at 1100 Landmark Towers, 345 St. Peter Street, Saint Paul, Minnesota 55102.

2. Green Tree services residential mortgage loans, including residential mortgage loans to consumers in the State of Vermont.

3. In connection with servicing residential mortgage loans in the State of Vermont, Green Tree engages in debt collection covered by the Vermont Attorney General's Consumer Protection Rule (CP) 104 (Debt Collection), <http://www.atg.state.vt.us/assets/files/CP%20104.pdf>, and, for certain residential mortgage loans, establishes and maintains escrow accounts and takes responsibility for paying borrowers' local property taxes out of escrow funds provided by the borrowers.

4. *After-hours debt collection calls.* The Vermont Attorney General's Consumer Protection Rule (CP) 104.02(d) prohibits as an unfair practice under the Vermont Consumer Protection Act ("CPA") "[c]ausing a telephone to ring or engag[ing] in telephone conversation ... at times known to be times other than normal waking hours."

5. The federal Fair Debt Collection Practices Act (FDCPA), violation of which is also an unfair practice under the CPA, prohibits debt collectors from communicating with a consumer in connection with the collection of any debt—

at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location[.]

15 U.S.C. § 1692c(a)(1).

6. Since January 1, 2011, for the purposes of attempting to collect on a debt, Green Tree placed (a) 11 total calls to 8 Vermont consumers after 9:00 p.m., Vermont time, (b) 11 calls to Vermont consumers after 9:00 p.m., Vermont time, although no contact was made with the consumers or any third parties, and (c) 5 calls to Vermont consumers before 9:00 p.m., Vermont time, that did not end until after 9:00 p.m.

7. *Debt collection contacts.* CP 104.02(e) prohibits “[t]he placement of calls to any person, contrary to his instructions, at his place of employment.”

8. Green Tree contacted one Vermont consumer twice at her place of work after she asked that she not be contacted there. In addition, Green Tree spoke with others at the same consumer's place of work or left messages there seven more times. Although Green Tree maintains policies and procedures that prohibit representatives from placing calls to customers at their place of employment after customers have requested no calls at their place of employment, a Green Tree representative inadvertently failed to flag the subject account to indicate that the customer had requested no calls to her place of employment.

9. CP 104.03(c) prohibits “[t]he disclosure, publication, or communication of any information relating to a consumer debt to any person other than [certain designated persons].”

10. In connection with another Vermont consumer’s account, Green Tree representatives contacted one or more third parties in such a way as to indicate that there was a debt owed. Green Tree maintains policies and procedures that prohibit Green Tree representatives from indicating that there was a debt owed when placing calls to third parties for the purpose of obtaining location information relating to a customer.

11. *Late payment of property taxes.* The CPA, 9 V.S.A. § 2453(a), prohibits unfair practices in commerce.

12. The late payment of escrowed property taxes, particularly in small communities where the reputational harm associated with being behind in one’s taxes can be significant, is an unfair practice in commerce.

13. Title 12 U.S.C. § 2605(g) mandates timely payment of taxes for any federally-related mortgage loan requiring borrower to escrow taxes, violation of which is also an unfair practice in commerce.

14. Green Tree paid property taxes more than 30 days after the tax due date on the accounts of 48 Vermont consumers on a total of 52 occasions, including a number of payments made more than 100 days late.

15. In 22 of those cases, Green Tree alleges that the late payments were the responsibility of a prior servicer, and in 11 of those cases, Green Tree alleges that the delay was the result of an error by Green Tree’s third party tax vendor. In addition, Green Tree alleges that on all 52 occasions Green Tree ultimately corrected the error and had the taxes

paid and that none of the identified customers paid any late fees or penalties. Finally, Green Tree alleges that it has adjusted its policies and procedures to better ensure that taxes are paid timely on loans that are service transferred to Green Tree.

16. *General.* The Attorney General alleges that Green Tree violated the CPA in connection with the debt collection and tax payments described above.

17. Green Tree denies that it violated the CPA or any other Vermont or federal law. Nothing herein shall constitute or be construed as an admission by Green Tree that it violated Vermont or federal law.

18. Green Tree maintains that it has in place existing policies and procedures (including employee training and auditing) and technological systems to comply with Vermont laws relating to collection practices (including disclosing information relating to a consumer debt to an unauthorized third party, and engaging in telephone communications with consumers before 8:00 a.m. and after 9:00 p.m. Vermont local time) and payment of property taxes on loans with escrow accounts timely and accurately. In addition, Green Tree has made certain enhancements to its existing policies and procedures and technological systems as a result of the Attorney General's allegations in this matter.

19. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under 9 V.S.A. § 2459.

#### **INJUNCTIVE RELIEF**

20. Green Tree shall comply strictly with all provisions of Vermont law, including but not limited to the CPA's prohibition on unfair and deceptive acts and practices in commerce.

21. Green Tree shall take all steps, and adopt or continue to maintain all such policies, procedures and technological systems, as are necessary to ensure (a) compliance with Vermont and federal laws and regulations pertaining to collection practices (including but not limited to placing debt collection calls or engaging in telephone communications with consumers before 8:00 a.m. or after 9:00 p.m. Vermont time, making calls to consumers' place of employment against their request, and disclosing information relating to a consumer debt to an unauthorized third party), and (b) payment of property taxes on loans with escrow accounts in a timely and accurate manner.

#### **PAYMENTS TO CONSUMERS**

22. No later than November 1, 2014, Green Tree shall provide to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, valid checks payable to each of 63 consumers listed, for reasons of privacy, in a separate agreement between the parties, along with the last-known address and telephone number of each consumer. These payments shall be in the following amounts:

a. For each of the 8 Vermont consumers who were reached by Green Tree for debt collection purposes after 9:00 p.m., Vermont time, \$500.00 (five hundred dollars);

b. For each of the 5 Vermont consumers who were contacted by Green Tree for debt collection purposes before 9:00 p.m., Vermont time, but whose calls continued past 9:00 p.m., \$250.00 (two hundred fifty dollars);

c. For each of the 2 Vermont consumers in connection with whose accounts Green Tree made telephone calls to their work place after being instructed by the consumer not to do so, or made telephone calls to third parties, \$1,000.00 (one thousand dollars); and

d. For each of the 48 Vermont consumers whose property taxes Green Tree paid more than 30 (thirty) days after the tax due date, \$1,000.00 (one thousand dollars).

23. The total of all of the checks described in paragraph 22, above, is \$55,250.00 (fifty-five thousand two hundred fifty dollars).

24. The Vermont Attorney General's Office shall promptly mail the checks to the appropriate consumers.

25. As a condition of receiving a payment under paragraph 22, above, eligible consumers are required to release Green Tree from any further liability arising out of the facts described in this Assurance of Discontinuance, using language, size and placement on the checks that has been approved by the Vermont Attorney General. In the event that any of the checks mailed out under paragraph 24, above, is returned as undeliverable to the Attorney General's Office, the Attorney General's Office shall promptly forward that returned check to Green Tree.

26. No later than February 1, 2015, Green Tree shall pay to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, by check payable to "Vermont State Treasurer," the total dollar amount of all checks described in paragraph 22, above, that were returned as undeliverable as well as all checks that went undeposited and uncashed as of said date, to be treated as unclaimed property under state law. By the same date, Green Tree shall also provide to the State an electronic Excel file containing the names of the consumers whose checks were returned or went undeposited or uncashed, and for each such consumer, the address, telephone number, and dollar amount of the check.



**PAYMENT TO THE STATE**

27. Within thirty (30) days of signing this Assurance of Discontinuance, Green Tree shall pay to the State of Vermont the amount of \$176,750.00 (one hundred seventy-six thousand seven hundred fifty dollars) as payment to the State of Vermont in this matter. This payment may be made by check payable to the State of Vermont and provided to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, or in such other manner as the parties may agree.

**OTHER PROVISIONS**

28. This Assurance of Discontinuance represents a full and final settlement of all claims by the State of Vermont that relate to the subject matter of this Assurance of Discontinuance.

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

30. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 10/29/14

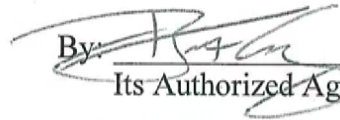
STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL


By: Elliot Burg  
Elliot Burg  
Special Assistant Attorney General

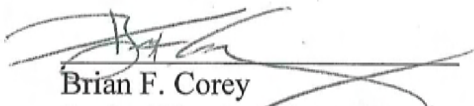
Dated October 28, 2014

GREEN TREE SERVICING LLC

By:  Sr VP & General Counsel  
Its Authorized Agent

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Elliot Burg  
Special Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
For the State of Vermont

  
\_\_\_\_\_  
Brian F. Corey  
Senior Vice President, Secretary, and General Counsel  
Green Tree Servicing LLC  
1100 Landmark Towers  
345 St. Peter Street  
Saint Paul, Minnesota 55102  
For Green Tree Servicing LLC

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 OCT 13 A 10:17

IN RE: INTEGRAL RESOURCES )  
 ) CIVIL DIVISION  
 ) Docket No. 606-10-14 Wncv  
 ) FILED

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell (“the Attorney General”) and Integral Resources (“Respondent”) hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**REGULATORY FRAMEWORK**

1. Vermont’s Consumer Protection Act prohibits “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453.
2. Vermont’s Charitable Solicitations law requires paid fundraisers to disclose their role as a paid fundraiser and prohibits a paid fundraiser from “misrepresent[ing], directly or indirectly, his or her relationship to a charitable organization.” 9 V.S.A. §§ 2475(a), (e).
3. Vermont’s Consumer Protection Rule 119, regulating charitable solicitations, lists as a prohibited practice the misrepresentation of “[t]he identity or affiliation of the solicitor or paid fundraiser[.]” CP 119.08(a)(1).
4. Vermont’s Charitable Solicitations law requires a paid fundraiser to disclose, “[t]he nature, location, dates, parties, and outcome of any litigation or investigation concerning the fundraiser’s solicitation activity in any jurisdiction occurring within six years prior to the commencement of the fundraising campaign in this state” as part of its notice of solicitation. 9 V.S.A. § 2473(a)(3). Vermont’s Consumer Protection Rule 119.04(a)(10) incorporates this requirement.

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109 State Street  
Montpelier, VT  
05609

5. Vermont's Charitable Solicitations law requires a paid fundraiser to report "[a]ny material change in any information contained in a notice of solicitation" to the Vermont Attorney General "not more than seven days after the change occurs." 9 V.S.A. § 2473(d).

#### DEFINITIONS

6. For the purposes of this AOD, the terms "charitable organization," "contribution," "fundraising campaign," "paid fundraiser," and "solicitation" are defined in the same manner as they are defined in 9 V.S.A. § 2471.

#### BACKGROUND

7. Respondent Integral Resources is a for-profit corporation incorporated under the laws of Massachusetts, with its principal place of business located at 1972 Massachusetts Avenue, Cambridge, Massachusetts, 02134. Integral Resources conducts business throughout the State of Vermont as a paid fundraiser for various charitable organizations.

8. From at least 2007 to the present, Integral Resources has solicited contributions by telephone from Vermont residents on behalf of various charitable organizations, including American Council of the Blind and League of Conservation Voters.

9. In compliance with 9 V.S.A. § 2475(e)(1), Integral Resources' scripts instruct callers to state at the beginning of each call into Vermont that the caller is a paid solicitor calling from Integral Resources, a professional fundraiser, calling on behalf of the charitable organization.

10. In compliance with 9 V.S.A. § 2475(e)(2) and CP Rule 119.07, Integral Resources' scripts further instruct callers to state during each call into Vermont that "to find out how much of your contribution goes to the [charitable organization] and how much to the paid

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05609

fundraiser, call the Vermont Attorney General's Office at 1-800-649-2424, or log on to the Attorney General's website."

11. Integral Resources' scripts for calls made into Vermont on behalf of American Council of the Blind also include the following statements:

- a. "[I]t is because of the support and generosity of people like you that we are able to provide essential services . . . ."
- b. "Because we receive no federal funding, it is because of the support of individuals such as you that has helped us offer so many important services . . . ."
- c. "Knowing the good that we do, can I count on your renewed support today . . . ."

12. Integral Resources' scripts for calls made into Vermont on behalf of League of Conservation Voters include statements such as:

- a. "Here at LCV, we are determined to make sure that happens."
- b. "We can make a difference, but we need your renewed support."

13. For the purposes of this AOD, Integral Resources admits that its employees followed these scripts when making solicitations into Vermont.

14. Integral Resources learned that it was the subject of an investigation by the Ohio Attorney General no later than June 18, 2013, when the State of Ohio filed a Complaint and a Motion for a Temporary Restraining Order and Preliminary Injunction against Integral Resources in the Court of Common Pleas, Franklin County, Ohio.

15. Integral Resources did not notify the Vermont Attorney General's Office within seven (7) days of the commencement of litigation in Ohio.

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Montpelier, VT  
05609

16. Since October 2013, Integral Resources has voluntarily ceased all solicitations into Vermont until this matter is resolved.

17. Integral Resources admits the truth of all facts set forth in the Background section.

18. The Attorney General alleges that some of the above conduct demonstrates violations of 9 V.S.A. §§ 2473(a)(3) and 2475(a) and Consumer Protection Rule 119.04(a)(10) and 119.08(b), and further alleges that any such violation would constitute unfair and deceptive acts and practices under 9 V.S.A. § 2453, but Integral Resources disputes all allegations of violations of Vermont law as contained in this paragraph.

## AGREEMENT

### Future Compliance

19. It is hereby AGREED that Integral Resources:
- a. shall comply with all provisions of the Vermont Consumer Protection Act, including but not limited to provisions in 9 V.S.A. chapter 63, subchapters 1 and 2, Consumer Protection Rule 119, and all other applicable Vermont laws;
  - b. shall not use the first personal plural pronouns “we” and “us” in its telephone solicitation scripts or “here” such as referenced in paragraphs 11 and 12 of this AOD for any and all calls made into the State of Vermont;
  - c. shall report at the start of each campaign all litigation and governmental investigations<sup>1</sup> (including settlement agreements), concerning Integral

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GENERAL  
109 State Street  
Montpelier, VT  
05609

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<sup>1</sup> For purposes of this AOD, an informal or unenforceable request for information does not constitute an investigation, regardless of the form in which the request is made.

Resources' solicitation activity occurring within six years prior to the commencement of the fundraising campaign as required by 9 V.S.A. § 2473(a)(3) and Consumer Protection Rule 119.04(a)(10);

- d. shall report any material changes to all notices of solicitation for all ongoing solicitation campaigns as required by 9 V.S.A. § 2473(d), and Integral Resources agrees to notify the Attorney General whenever Integral Resources is the subject of new litigation or governmental investigation involving Integral Resources' solicitation activity or when there is an outcome (including settlement agreements) to any ongoing litigation or investigation.

20. It is hereby AGREED that all of the parties have compromised and settled all potential claims regarding alleged violations of 9 V.S.A. §§ 2473(a)(3), 2473(d), and 2475(a) up to the effective date of this AOD. The parties further acknowledge and agree that this is a negotiated settlement of disputed claims and no admissions of wrongdoing have been made.

**Monetary Relief**

21. As part of this negotiated settlement, it is hereby AGREED that Integral Resources shall pay twenty-three thousand dollars (\$23,000) in two installments, as described below.

22. Of the amount described in paragraph 21,

- a. Within ten (10) days of both parties signing this AOD, Integral Resources shall pay eighteen thousand dollars (\$18,000) in lieu of a civil penalty to the Vermont Community Foundation, located at 3 Court Street, Middlebury,

Office of the  
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GENERAL  
109 State Street  
Montpelier, VT  
05609

Vermont, 05753, or to another private organization qualifying as a section 501(c)(3) public charity under the Internal Revenue Code selected by the Vermont Attorney General, to be distributed, in that organization's reasonable discretion, to charitable organizations operating in Vermont involved in environmental conservation or advocacy on behalf of people living with disabilities. A copy of the check and transmittal letter shall be sent to the Assistant Attorney General identified in subparagraph (b), below.

- b. Within forty (40) days of both parties signing this AOD, Integral Resources shall pay the remaining five thousand dollars (\$5,000) to the State of Vermont for the State's fees and costs of investigation in connection with this matter. Payment shall be made either by wire transfer or in the form of a bank or cashier's check delivered to Assistant Attorney General Todd Daloz, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

#### OTHER TERMS

23. Integral Resources agrees that the terms of this AOD shall be binding on Integral Resources and its successors and assigns.

24. The Attorney General hereby releases and discharges any and all potential or actual claims arising under the Consumer Protection Act, 9 V.S.A. chapter 63, subchapters 1 and 2, and Consumer Protection Rule 119 that it may have against Integral Resources for the type of conduct described in the Background section up to and including the effective date of this AOD.

25. 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 the

Office of the  
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GENERAL  
109 State Street  
Montpelier, VT  
05609



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 AOD.

#### STIPULATED PENALTIES

26. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Integral Resources to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court are as follows:

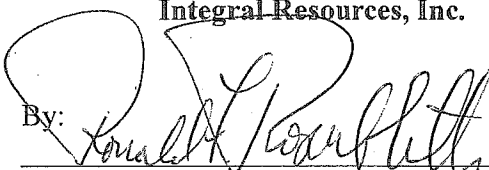
- a. For use of a script that violates paragraph 19(b) of this AOD during a telephone solicitation, regardless of the number of individual solicitations made using said script, the penalty shall be \$8000 for each script;
- b. For failure to report in any notice of solicitation the existence of a government investigation, litigation, or the outcome of an investigation or litigation (including settlement) occurring within six years prior to the commencement of the fundraising campaign in this state, the penalty shall be at the Court's discretion;
- c. For failure to update any notice of solicitation with any material changes to the campaign, and failure to report the existence of a government investigation, litigation, or the outcome of an investigation or litigation (including settlement) that commences or occurs after the start of the campaign but before the campaign ends, the penalty shall be at the Court's discretion.

**SIGNATURE**

In lieu of instituting an action or proceeding against Integral Resources, the Office of the Attorney General, pursuant to 9 V.S.A. §§ 2459 and 2479, accepts this AOD. By signing below, Integral Resources voluntarily agrees with and submits to the terms of this AOD.

DATED at Washington, DC, this 30<sup>th</sup> day of September, 2014.

**Integral Resources, Inc.**

By:   
\_\_\_\_\_  
Its Authorized Agent

By: RONALD F. ROSENBLITH CEO  
Name and Title of Authorized Agent

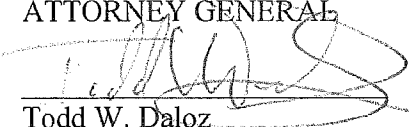
ACCEPTED on behalf of the Vermont Attorney General:

DATED at Montpelier, Vermont, this 8<sup>th</sup> day of October, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:

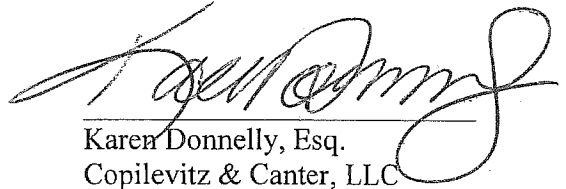
  
\_\_\_\_\_  
Todd W. Daloz  
Elizabeth Hall  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
todd.daloz@state.vt.us  
elizabeth.hall@state.vt.us  
(802) 828-5507

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

APPROVED AS TO FORM:



Todd W. Daloz  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, Vermont 05609  
todd.daloz@state.vt.us  
(802) 828-5507



Karen Donnelly, Esq.  
Copilevitz & Canter, LLC  
310 W. 20th Street, Suite 300  
Kansas City, MO 64108  
kdonnelly@cckc-law.com  
(816) 472-9000

Office of the  
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Montpelier, VT  
05609

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 OCT -11 P 3:07

In Re: Intercept Corporation

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Civil Division

Docket No. 591-10-14Wnav

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Intercept Corporation (“Intercept” or “Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**Background**

***Respondent***

1. Respondent Intercept Corporation is a North Dakota company with offices located at 1700 42<sup>nd</sup> Street South, Fargo, ND 58103
2. Prior to August 2013, Respondent processed electronic payments in connection with consumer loans made by lenders, some of whom did not hold a state lending license in the state of Vermont.

***Regulatory Framework***

3. The Vermont Consumer Protection Act (“the Act”) authorizes the Attorney General to take actions to restrain unfair and deceptive acts in commerce. 9 V.S.A. §§ 2453 & 2458.

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

4. On May 18, 2012, the Vermont Legislature added section 2481w to the Act (the unlicensed lender law), to address unlicensed loan transactions.  
9 V.S.A. § 2481w.
5. Under section 2481w(b), it is an unfair and deceptive act in commerce for any lender to solicit or make loans in Vermont unless the lender is in compliance with all statutory requirements under Vermont's lending and banking laws contained in Title 8, chapter 73 of the Vermont Statutes Annotated.
6. Under section 2481w(c), it is an unfair and deceptive act in commerce for a processor to process checks or debits, or to transfer any electronic funds in connection with a loan, unless the lender is in compliance with all requirements under Title 8, chapter 73.
7. Chapter 73 of Title 8 requires all lenders to obtain a state license from the Vermont Department of Financial Regulation. 8 V.S.A. § 2201.
8. Lenders who are not licensed under 8 V.S.A. § 2201 are hereinafter referred to as "unlicensed lenders."
9. Chapter 73 of Title 8 also requires that all loans made in Vermont comply with the interest rate limits contained in Title 9, chapter 4. 8 V.S.A. § 2233(b).
10. Chapter 4 of Title 9 caps the interest any person may charge on loans at between 12-24% per annum, depending on the type of loan. 9 V.S.A. § 41a.

***Respondent's Payment Processing Practices***

11. Respondent is a provider of software systems to process electronic financial transactions using the Automated Clearing House ("ACH") Network. The ACH Network is a system that allows electronic transfer of funds for participating financial institutions.
12. During 2012-2013, Respondent engaged in processing electronic transfers from various financial institutions employing routing numbers associated with Vermont, totaling over \$680,000 in net transfers from individual bank accounts.
13. The total amounts processed were collected on behalf of at least 26 separate lenders (the amounts vary for each lender) in connection with high-interest, small-dollar consumer loans made via the internet.
14. The Attorney General's Office determined that none of the lenders were licensed to make loans in Vermont.
15. As of August 2013, Intercept ceased processing electronic payments in connection with online consumer loans in Vermont.
16. Intercept admits the truth of the facts described in ¶¶ 1-2; 11-13; 15.

***The State's Allegations***

17. The Vermont Attorney General's Office alleges the Respondent processed electronic transfers from Vermont consumers' bank accounts on behalf of unlicensed lenders and said processing violated the Vermont Consumer Protection Act, 9 V.S.A. §§ 2453(a) and 2481w(c).

18. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices in commerce under 9 V.S.A. § 2453.
19. Intercept denies that it violated Vermont law.
20. The parties agree that this AOD is entered into for settlement only and does not constitute an admission of the violation of any law, rule, or regulation by Respondent.

**Assurances and Relief**

21. In exchange for dismissing the lawsuit filed by the Vermont Attorney General in Vermont Superior Court, Washington Unit (*State of Vermont v. Intercept*, Docket No. 246-4-14 Wncv), and in lieu of instituting any further action or litigation, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter, and the parties agree as follows:
  22. To the extent not already done, Respondent shall immediately cease processing any electronic transfers from Vermont financial accounts on behalf of any unlicensed lender.
  23. Prior to doing any future business in Vermont, Respondent shall comply with all applicable state law requirements, including without limitation, the following sections of the Vermont Statutes Annotated: Title 9, Chapter 63 (Consumer Protection statutes).

***Payments to Consumers***

24. The parties have agreed on a list of lenders (see Ex. A) whose borrowers shall be entitled to a payment.

25. Intercept shall make restitution of exactly \$75,000.
26. Intercept shall make restitution by crediting each eligible consumer's bank account as agreed between the parties; in issuing the credit(s) Intercept shall use its best efforts to include a notation or other indication listing the lender's name in any applicable transaction note. Within 10 business days of filing this AOD, Intercept shall provide the Attorney General's Office with a list of the proposed payments, including the lender's name, bank name, bank account number, and the proposed amount to be credited. Within 10 days of receiving the list, the parties shall agree on the exact payments to be made to each borrower ("the consumer restitution amount"). Upon agreeing on the list, Intercept shall pay the consumer restitution amount totaling \$75,000.
27. If any of the payments made by Intercept pursuant to ¶ 26 cannot be completed (i.e., the credit is returned, or undeliverable), then Intercept shall use its best efforts to identify the consumer's name and address, and mail a check for the amount to be repaid, along with an explanatory letter from the Attorney General that is agreed to by the parties, in an envelope to be provided by the Attorney General's Office. The Vermont Attorney General understands that Intercept's records do not include consumers' name and address, and agrees that Intercept will attempt to identify this information – to the extent possible – by reviewing the ACH files submitted by its lenders for processing, and contacting lenders to ask for consumer contact information (names and addresses).



28. Any returned checks made pursuant to ¶ 27 shall be treated as unclaimed property, pursuant to Vermont's unclaimed property statute.
29. If applicable, within 120 days after sending any checks pursuant to ¶ 27, Intercept shall mail to the Attorney General's Office:
  - (a) A single check, payable to "Vermont State Treasurer" in the total dollar amount of all checks that were returned as undeliverable or that otherwise went uncashed because the consumer could not be located all be treated as unclaimed funds, under Vermont's unclaimed property statute, Title 17, Vermont Statutes Annotated, Chapter 14;
  - (b) A list, in electronic Excel format, of the consumers whose checks were returned or were not cashed (which list shall set out the first and last names, if known, of the consumers in distinct fields or columns), and for each such consumer, the last known address, if known, and consumer restitution amount; and
  - (c) The company's corporate address and federal tax identification number.

*Payment to the State of Vermont*

30. Within 10 business days of filing this AOD, Respondent shall pay to the State of Vermont \$10,000. Payment shall be made by check 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.

### Other Terms

31. Respondent shall, upon request by the Attorney General, provide all documentation and information necessary for the Attorney General to confirm compliance with, and assist in implementation of, this AOD.
32. The parties agree that this AOD is based, in part, upon certain understandings between the parties to resolve the Attorney General's efforts relating to unlicensed lending in Vermont and third-party payment processing thereof. To that end, Intercept agrees to respond to reasonable requests by the Attorney General's Office that are consistent with those understandings and to assist the Attorney General's efforts regarding unlicensed lending in Vermont.
33. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.
34. This AOD and all terms therein shall be binding on Respondent, all of their affiliate companies doing business in Vermont, their officers, directors, owners, managers, successors and assigns.
35. The undersigned authorized agent(s) of Respondent shall promptly take reasonable steps to ensure that copies of this document are provided to all relevant officers, directors, owners and managers of the company, and all of its affiliate companies doing business in Vermont.

36. This AOD constitutes a complete settlement and general release by the Attorney General of all claims, causes of action, damages, restitution, fines, costs, attorneys' fees, penalties and other remedies, monetary or otherwise, that the Vermont Attorney General could have asserted or obtained under any applicable law, state or federal, including but not limited to the Vermont Consumer Protection Act and Vermont common law, relating to or arising from the conduct that is the subject of this AOD against Respondent.
37. The Superior Court of the State of Vermont, Washington Unit, shall have Jurisdiction over this AOD and the parties hereto for the limited purpose of enabling any of the parties 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 any of its provisions, to enforce compliance, and to punish violations of its provisions. Respondent does not otherwise waive any defense it may have to the jurisdiction of Vermont state courts.
38. All notice related to this AOD shall be given to:
- (a) **Respondent** at: Richard J. Zack, Pepper Hamilton LLP, 3000 Two Logan Square, Eighteenth and Arch Streets, Philadelphia, PA 19103-2799.
  - (b) **The Attorney General** at: Justin Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street Montpelier, VT 05609, [justin.kolber@state.vt.us](mailto:justin.kolber@state.vt.us).

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GENERAL  
109 State Street  
Montpelier, VT  
05609


39. For a period of two years beginning from the date of this AOD, Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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

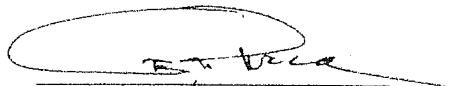
DATED at Montpelier, Vermont this 25<sup>th</sup> day of September, 2014.

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

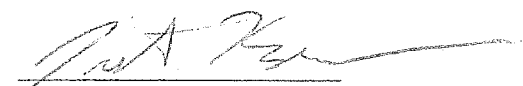
DATED this 12<sup>th</sup> day of September, 2014

INTERCEPT CORPORATION

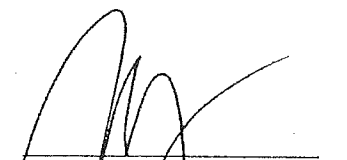
By:   
Its Authorized Agent

  
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

  
Richard J. Zack, Esq.  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103

For Respondent

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

Exhibit A

**List of Lenders**

1	Red Cedar Services, Inc.
2	MNE Services, Inc.
3	SFS, Inc.
4	Tribal Lending Enterprises
5	Sequoia Tribal Enterprises
6	Makes Cents, Inc.
7	Tribal Ventures Management Group A
8	Tribal Ventures Management Group C
9	DMA Financial Corp.
10	The Cash Line, LLC
11	Platinum Finance DBA 2GOCash
12	Platinum Finance Co, LLC
13	Payment Direct, Inc.
14	Nationwide FNL, Inc.
15	SSK, LLC
16	Northway Financial Corp., Ltd.
17	Northway-Pixycash
18	Northway-Cashtaxi
19	24/7Greenstreet.com
20	National Payday Advance, LLC
21	Fresh Start Finance, Inc.
22	Cashtree, LLC
23	Cash in Advance of Florida, Inc.
24	National Title Loans, Inc.
25	Americash Advance, LLC
26	Cash on Wheels, LLC

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GENERAL  
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Montpelier, VT  
05609

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT

2014 MAR 28 P 4:03

In Re: IRVING ENERGY ) CIVIL DIVISION  
) Docket No. \_\_\_\_\_

ASSURANCE OF DISCONTINUANCE

FILED

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Highlands Fuel Delivery, LLC (“Irving” or “Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459

Background

*Irving Energy*

- 1 Highlands Fuel Delivery, LLC d/b/a/ Irving Energy Distribution and Marketing, d/b/a Irving Energy, is a Maine limited liability company whose headquarters are located at 190 Commerce Way, Portsmouth, NH 03801 Irving’s operations include the retail marketing, sale and distribution of heating oil, propane and diesel to homes and businesses in Maine, Vermont, and New Hampshire.
2. Irving is one of the largest propane suppliers in Vermont.

*Regulatory Framework*

- 3 Pursuant to 9 V.S.A. § 2461b, the Vermont Attorney General’s Office has enforcement 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 for liquefied petroleum (“propane”) was amended in 2009, effective on January 1, 2010 (“2010 CP 111”), and amended again in 2011, effective on January 1, 2012 (“CP 111”).

4. CP 111 16(a) requires a propane gas seller at the time of disconnection or termination to, “refund the consumer, within 20 days of the date when the seller disconnects propane service or is notified in writing that the seller’s equipment is no longer connected, whichever is earlier: (1) the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer; or (2) the amount paid by the consumer for 80 percent of the seller’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. The seller 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.” *See also* 9 V.S.A. § 2461b(e)(2)(A)-(B) and 2010 CP 111.18(b).
5. Beginning May 25, 2011, 9 V.S.A. § 2461b(e)(4) required a propane seller to pay a penalty to consumers of \$250 on the first day after the refund was due plus \$75 per day for each day thereafter until the refund and penalty were mailed or delivered, for failure to issue a timely refund. *See also* CP 111 16(c)(1). As of July 1, 2013, 9 V.S.A. § 2461b(e)(4)(B) limits the total penalty to be paid to consumers under that provision to not more than ten times the amount of the refund. Prior to May 25, 2011, there was no statutorily prescribed consumer penalty amount for refund delays.
6. CP 111 15(a) requires a propane seller to remove any storage tank that it owns at the consumer’s request within 20 days for an aboveground tank (30 days in the



case of an underground tank) or as soon as weather and access to the tank allow, provided, however, that the customer's request must be in writing if the tank was disconnected by someone other than the seller *See also* 2010 CP 111 18(a). As of July 1, 2013, 9 V.S.A. § 2461b(h)(1) requires a propane seller to remove a storage tank within 20 days (30 days in the case of an underground tank) of the earliest of the following dates: (A) the consumer's request for service termination; (B) the seller's disconnection of propane service; or (C) written notification from the consumer that service has been disconnected. If a consumer schedules a specific pick-up date, as of July 1, 2013, 9 V.S.A. § 2461b(h)(2) requires the seller to remove the tank within 10 days of the specific date (or the period of subsection (h)(1), whichever is later).

7. As of July 1, 2013, 9 V.S.A. § 2461b(h)(3) requires a propane seller to pay a penalty to consumers of \$250 on the first day after the tank should have been removed plus \$75 per day for each day thereafter until the penalty is mailed or delivered, provided, however that the total penalty to be paid to consumers under (h)(3)(b) cannot exceed \$2,000, for failure to remove a tank in accordance with the timeframes. Prior to July 1, 2013, there was no statutorily prescribed consumer penalty amount for tank removal delays.
8. 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), as provided by CP 111.01

9. Violations of the Consumer Protection Act are subject to a civil penalty of up to \$10,000.00 per violation of the Consumer Protection Act. 9 V.S.A. § 2458(b)(1).
10. Jurisdiction over this AOD and venue is pursuant to 9 V.S.A. §§ 2458-59 and applicable law.

***Facts***

- 11 Since January 1, 2010, thirteen (13) Vermont consumers have complained to the Attorney General's Office, Consumer Assistance Program ("CAP") regarding delays in service termination (tank removal and refund checks). Irving has responded to those complaints, most of which have been resolved through the CAP process.
12. Between January 1, 2010 and October 10, 2012, Irving identified 79 Vermont consumers who did not receive a refund check within the timeframes prescribed in ¶ 4.
- 13 Between January 1, 2010 and October 10, 2012, Irving identified 118 Vermont consumers who terminated service with Irving and had tanks on their premises that were not removed within the timeframes prescribed in ¶ 6.

***The State's Allegations***

14. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Rules.
  - a. The failure to reimburse Vermont consumers for unused gas remaining in the tank following disconnection or termination of service within the

required timeframe is a violation of CP 111 16(a), 9 V.S.A. § 2461b(e)(2), and 2010 CP 111 18(b); and

- b. The failure to remove storage tanks, without apparent justification, within the required timeframe is a violation of CP 111 15(a) and 2010 CP 111 18(a).

15 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 with litigation, the Attorney General and Irving are willing to accept this AOD pursuant to 9 V.S.A. § 2459. Agreeing to the terms of this AOD for purposes of settlement does not constitute an admission by Irving to a violation of any law, rule, or regulation. Accordingly, upon execution of the AOD, the parties agree as follows:

#### *Injunctive Relief*

16 Irving shall comply with this AOD and all applicable Vermont laws and regulations, including but not limited to the Vermont Consumer Protection Act, 9 V.S.A., Chapter 63, and CP 111, as the same may from time to time be amended.

17 Within 20 days of the date when Irving disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, Irving shall refund to the consumer (by cash, check, or the same method or manner used by the consumer to make payments, per CP 111 16(b)).

- a. The amount paid by the consumer for any propane remaining in the storage tank, less any payments due Irving from the consumer; or
- b. Refund the amount paid by the consumer for 80 percent of Irving'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 Irving 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.
- c. Refunds shall not be provided in the form of a credit to a customer's existing account with Irving unless specifically requested or agreed to by the customer.

18. Irving shall remove propane storage tanks within 20 days of the date on which the consumer requests disconnection or the date on which Irving receives a written notice from the consumer that the tank has been disconnected. For an underground tank the removal time period will be 30 days. If weather or other conditions not caused by Irving do not allow for tank removal within the prescribed time period, tank removal will occur as soon as weather and access to the tank allow; provided however, that Irving shall not claim the need for special equipment or extra manpower as a basis for a delay, unless weather or access conditions require such special equipment or manpower. If a consumer

schedules a specific tank pick-up date, Irving shall remove the tank within 10 days of the specific date (or within any other period allowed by law).

- 19 For a period of one year from and after the date of this AOD, Irving shall document its compliance with CP 111 by recording the dates and manner that:
  - (a) a consumer requests termination of service; (b) the consumer's propane tanks are disconnected or removed (if known); and (c) the consumer's refund is issued.
20. Irving shall prepare reports to the Attorney General's Office, documenting its handling of all service terminations since the date of this AOD, including but not limited to, the dates and manner that: (a) the consumer requested service termination; (b) gas tanks were disconnected or removed, whichever is earlier; and (c) refunds were issued. If there are delays in terminating service (i.e., beyond the allowable timeframes), Irving shall document the reason(s) for the delay(s). Such reports and documentation shall be prepared every 90 days after execution of this AOD for one year, for a total of four reports. Irving may submit the reports up to 30 days after the end of each 90-day reporting period.

*Payments to Consumers*

- 21 Within 60 days of signing this AOD, Irving shall pay to each of the 56 consumers identified in ¶ 12 who received a refund check after May 25, 2011, \$250 plus \$75 per day for each day after the first 21 days after termination until the date that the refund check was issued, with the per-day penalty amounts generally being limited to the greater of 10 times the refund amount or \$2,250, for a total of \$78,188.80 paid to these consumers; and to each of the 23

consumers identified in ¶ 12 who received a refund check before May 25, 2011, Irving shall pay \$250 each, for a total of \$5,750 paid to these consumers.

22. Within 60 days of signing this AOD, Irving shall pay to each of the 118 consumers identified in ¶ 13 whose propane tank was removed after the prescribed removal period. \$500 for any removal period up to 30 days; \$1,000 for any removal period up to 60 days; \$1,500 for any removal period up to 90 days; and \$2,000 for any removal period greater than 90 days; for a total of \$82,000 paid to these consumers.
23. For any of the 197 consumers who receive a payment pursuant to this AOD, Irving shall send a letter from the Attorney General (Exhibit A), along with the applicable explanatory letter from Irving (Exhibit B and/or C) and the consumer's payment, in an envelope provided by the Attorney General's Office.
24. Within 60 days of signing this AOD, Irving shall send to the Attorney General's Office a list (in electronic Excel spreadsheet) of all consumers to whom consumer restitution payments were mailed, including, for each consumer, contact information, the amount paid, and an indication of which explanatory letter was sent.
25. In the event that Irving is not able to locate consumers to whom any payments are owed and no later than 120 days after signing this AOD, Irving shall mail to the Attorney General's Office:
  - a. A single check, payable to "Vermont State Treasurer" in the total dollar amount of all checks that were returned as undeliverable or that otherwise went uncashed because the consumer could not be located, all

to be treated as unclaimed funds, under Vermont's unclaimed property statute, Title 17, Vermont Statutes Annotated, Chapter 14,

- b. A list, in electronic Excel format, of the consumers whose checks were returned 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 consumer restitution amount; and
- c. The company's corporate address and federal tax identification number

26. Subject to any applicable limitations period, Irving agrees to consider claims presented by any Vermont consumer not among the 197 identified consumers who believes he or she experienced an impermissible delay in tank removal or refund check processing between January 1, 2010 and October 10, 2012. For these consumers, Irving shall review each complaint within 20 days. In the event the consumer demonstrates that the refund or tank pick-up was untimely under Vermont law (a) for a refund delay, Irving shall pay the penalty per the terms of this AOD; (b) for a tank delay, Irving shall pay a penalty per the terms of this AOD; and (c) if Irving disputes that any penalty is owed, Irving 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](mailto:consumer@uvm.edu), if the consumer disagrees.

*Payment to the State of Vermont*

27 Within 60 days of signing this AOD, Irving shall pay to the State of Vermont \$100,000 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

28. Within 60 days of signing this AOD, Irving shall pay to the Vermont Low Income Home Energy Assistance Program (“LIHEAP”) \$160,000. Payment shall be made via the Vermont Department for Children and Families, Economic Services Division, Fuel Assistance, 103 South Main Street, Waterbury, Vermont 05671. A copy of the cover letter for this payment shall be sent to the Attorney General’s Office.

***Reporting***

29. Irving shall submit the reports described in ¶ 20 above.
30. Irving shall submit a copy of any written consumer complaint that it receives on or after the date of this AOD that pertains to any matter in this AOD as well as the company’s response for a period of one year from the date of this AOD. Such written consumer complaints shall be submitted to the undersigned Assistant Attorney General within 20 days of receipt.

**Other Terms**

31. This AOD shall be binding on Irving and its successors and assigns. Irving shall promptly take reasonable steps to ensure that copies of this document are provided to its officers and directors.
32. Acceptance of this AOD by the Vermont Attorney General’s Office shall not be deemed approval by the Attorney General of any of the practices or procedures



of Irving not required by this AOD, and Irving shall make no representation to the contrary

33. This AOD resolves all existing claims that the State of Vermont may have against Irving stemming from the conduct described in this document as of October 10, 2012, provided, however, that nothing herein waives the Attorney General's right to assert and prove any violations of law unrelated to the conduct described in this AOD.

34 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 a check provided pursuant to this AOD and does not return it to Irving within 90 days shall waive any claim regarding delayed refund checks and tank removals.

35 Any notice related to this AOD shall be given to Irving at:

- a. Irving Energy Distribution and Marketing, Attn. U.S Legal Affairs, 190 Commerce Way, Portsmouth, New Hampshire 03801, and
- b. Mark P Snow, Perkins Thompson, P.O. Box 426, Portland, ME 04112-0426; and
- c. Such other address as Irving may from time to time designate.

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

37 In the event that the Attorney General believes that Irving has violated any terms of this AOD, the Attorney General may pursue any remedies available under 9 V.S.A. Chapter 63

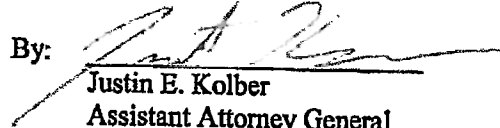
38. In the event that the Attorney General's Office receives a request for disclosure of any of the information described or referenced in this AOD, the Attorney General and/or State of Vermont shall promptly notify Irving to permit it to take any steps it may deem necessary to prevent disclosure. If the Attorney General or State of Vermont is required to disclose any information described in this AOD to any third party, it shall promptly notify Irving.

\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

DATED at Montpelier, Vermont this 20<sup>th</sup> day of March, 2014

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 Portsmouth NH, this 28 day of March, 2014.

IRVING ENERGY

By:   
Its Authorized Agent


Gregory B. Poitras, Secretary  
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

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

For the State of Vermont

  
John A. Hobson  
Perkins Thompson  
One Canal Plaza  
PO Box 426  
Portland, ME 04112

For Irving Energy

EXHIBIT A

[DATE]

Re: Irving Energy settlement

Dear Vermont consumer:

You have been identified as a current or former customer of Irving Energy (“Irving”) who, between January 1, 2010, and October 10, 2012, terminated propane service from Irving.

As a result of a settlement with the Attorney General’s Office, Irving 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](http://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.

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

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 Irving 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 Irving 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 Irving, first class postage, within 90 days of the date of this letter, to the following address:

Irving Energy Distribution and Marketing  
Attn: U.S. Legal Affairs  
190 Commerce Way  
Portsmouth, NH 03801

Sincerely,

\_\_\_\_\_  
[Insert Name and Title of Irving Official]

Enclosure

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

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 Irving 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 Irving 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 Irving, first class postage, within 90 days of the date of this letter, to the following address:

Irving Energy Distribution and Marketing  
Attn: U.S. Legal Affairs  
190 Commerce Way  
Portsmouth, NH 03801

Sincerely,

\_\_\_\_\_  
[Insert Name and Title of Irving Official]

Enclosure

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

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT

2014 MAR 28 P 4:03

In Re: IRVING ENERGY ) CIVIL DIVISION  
) Docket No. \_\_\_\_\_

ASSURANCE OF DISCONTINUANCE

FILED

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Highlands Fuel Delivery, LLC (“Irving” or “Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459

Background

*Irving Energy*

- 1 Highlands Fuel Delivery, LLC d/b/a/ Irving Energy Distribution and Marketing, d/b/a Irving Energy, is a Maine limited liability company whose headquarters are located at 190 Commerce Way, Portsmouth, NH 03801 Irving’s operations include the retail marketing, sale and distribution of heating oil, propane and diesel to homes and businesses in Maine, Vermont, and New Hampshire.
2. Irving is one of the largest propane suppliers in Vermont.

*Regulatory Framework*

- 3 Pursuant to 9 V.S.A. § 2461b, the Vermont Attorney General’s Office has enforcement 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 for liquefied petroleum (“propane”) was amended in 2009, effective on January 1, 2010 (“2010 CP 111”), and amended again in 2011, effective on January 1, 2012 (“CP 111”).

4. CP 111 16(a) requires a propane gas seller at the time of disconnection or termination to, “refund the consumer, within 20 days of the date when the seller disconnects propane service or is notified in writing that the seller’s equipment is no longer connected, whichever is earlier: (1) the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer; or (2) the amount paid by the consumer for 80 percent of the seller’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. The seller 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.” *See also* 9 V.S.A. § 2461b(e)(2)(A)-(B) and 2010 CP 111.18(b).
5. Beginning May 25, 2011, 9 V.S.A. § 2461b(e)(4) required a propane seller to pay a penalty to consumers of \$250 on the first day after the refund was due plus \$75 per day for each day thereafter until the refund and penalty were mailed or delivered, for failure to issue a timely refund. *See also* CP 111 16(c)(1). As of July 1, 2013, 9 V.S.A. § 2461b(e)(4)(B) limits the total penalty to be paid to consumers under that provision to not more than ten times the amount of the refund. Prior to May 25, 2011, there was no statutorily prescribed consumer penalty amount for refund delays.
6. CP 111 15(a) requires a propane seller to remove any storage tank that it owns at the consumer’s request within 20 days for an aboveground tank (30 days in the



case of an underground tank) or as soon as weather and access to the tank allow, provided, however, that the customer's request must be in writing if the tank was disconnected by someone other than the seller *See also* 2010 CP 111 18(a). As of July 1, 2013, 9 V.S.A. § 2461b(h)(1) requires a propane seller to remove a storage tank within 20 days (30 days in the case of an underground tank) of the earliest of the following dates: (A) the consumer's request for service termination; (B) the seller's disconnection of propane service; or (C) written notification from the consumer that service has been disconnected. If a consumer schedules a specific pick-up date, as of July 1, 2013, 9 V.S.A. § 2461b(h)(2) requires the seller to remove the tank within 10 days of the specific date (or the period of subsection (h)(1), whichever is later).

7. As of July 1, 2013, 9 V.S.A. § 2461b(h)(3) requires a propane seller to pay a penalty to consumers of \$250 on the first day after the tank should have been removed plus \$75 per day for each day thereafter until the penalty is mailed or delivered, provided, however that the total penalty to be paid to consumers under (h)(3)(b) cannot exceed \$2,000, for failure to remove a tank in accordance with the timeframes. Prior to July 1, 2013, there was no statutorily prescribed consumer penalty amount for tank removal delays.
8. 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), as provided by CP 111.01

9. Violations of the Consumer Protection Act are subject to a civil penalty of up to \$10,000.00 per violation of the Consumer Protection Act. 9 V.S.A. § 2458(b)(1).
10. Jurisdiction over this AOD and venue is pursuant to 9 V.S.A. §§ 2458-59 and applicable law.

***Facts***

- 11 Since January 1, 2010, thirteen (13) Vermont consumers have complained to the Attorney General's Office, Consumer Assistance Program ("CAP") regarding delays in service termination (tank removal and refund checks). Irving has responded to those complaints, most of which have been resolved through the CAP process.
12. Between January 1, 2010 and October 10, 2012, Irving identified 79 Vermont consumers who did not receive a refund check within the timeframes prescribed in ¶ 4.
- 13 Between January 1, 2010 and October 10, 2012, Irving identified 118 Vermont consumers who terminated service with Irving and had tanks on their premises that were not removed within the timeframes prescribed in ¶ 6.

***The State's Allegations***

14. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Rules.
  - a. The failure to reimburse Vermont consumers for unused gas remaining in the tank following disconnection or termination of service within the

required timeframe is a violation of CP 111 16(a), 9 V.S.A. § 2461b(e)(2), and 2010 CP 111 18(b); and

- b. The failure to remove storage tanks, without apparent justification, within the required timeframe is a violation of CP 111 15(a) and 2010 CP 111 18(a).

15 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 with litigation, the Attorney General and Irving are willing to accept this AOD pursuant to 9 V.S.A. § 2459. Agreeing to the terms of this AOD for purposes of settlement does not constitute an admission by Irving to a violation of any law, rule, or regulation. Accordingly, upon execution of the AOD, the parties agree as follows:

#### ***Injunctive Relief***

16 Irving shall comply with this AOD and all applicable Vermont laws and regulations, including but not limited to the Vermont Consumer Protection Act, 9 V.S.A., Chapter 63, and CP 111, as the same may from time to time be amended.

17 Within 20 days of the date when Irving disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, Irving shall refund to the consumer (by cash, check, or the same method or manner used by the consumer to make payments, per CP 111 16(b)).

- a. The amount paid by the consumer for any propane remaining in the storage tank, less any payments due Irving from the consumer; or
- b. Refund the amount paid by the consumer for 80 percent of Irving'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 Irving 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.
- c. Refunds shall not be provided in the form of a credit to a customer's existing account with Irving unless specifically requested or agreed to by the customer.

18. Irving shall remove propane storage tanks within 20 days of the date on which the consumer requests disconnection or the date on which Irving receives a written notice from the consumer that the tank has been disconnected. For an underground tank the removal time period will be 30 days. If weather or other conditions not caused by Irving do not allow for tank removal within the prescribed time period, tank removal will occur as soon as weather and access to the tank allow; provided however, that Irving shall not claim the need for special equipment or extra manpower as a basis for a delay, unless weather or access conditions require such special equipment or manpower. If a consumer

schedules a specific tank pick-up date, Irving shall remove the tank within 10 days of the specific date (or within any other period allowed by law).

- 19 For a period of one year from and after the date of this AOD, Irving shall document its compliance with CP 111 by recording the dates and manner that:
- (a) a consumer requests termination of service;
  - (b) the consumer's propane tanks are disconnected or removed (if known); and
  - (c) the consumer's refund is issued.
20. Irving shall prepare reports to the Attorney General's Office, documenting its handling of all service terminations since the date of this AOD, including but not limited to, the dates and manner that: (a) the consumer requested service termination; (b) gas tanks were disconnected or removed, whichever is earlier; and (c) refunds were issued. If there are delays in terminating service (i.e., beyond the allowable timeframes), Irving shall document the reason(s) for the delay(s). Such reports and documentation shall be prepared every 90 days after execution of this AOD for one year, for a total of four reports. Irving may submit the reports up to 30 days after the end of each 90-day reporting period.

*Payments to Consumers*

- 21 Within 60 days of signing this AOD, Irving shall pay to each of the 56 consumers identified in ¶ 12 who received a refund check after May 25, 2011, \$250 plus \$75 per day for each day after the first 21 days after termination until the date that the refund check was issued, with the per-day penalty amounts generally being limited to the greater of 10 times the refund amount or \$2,250, for a total of \$78,188.80 paid to these consumers; and to each of the 23

consumers identified in ¶ 12 who received a refund check before May 25, 2011, Irving shall pay \$250 each, for a total of \$5,750 paid to these consumers.

22. Within 60 days of signing this AOD, Irving shall pay to each of the 118 consumers identified in ¶ 13 whose propane tank was removed after the prescribed removal period. \$500 for any removal period up to 30 days; \$1,000 for any removal period up to 60 days; \$1,500 for any removal period up to 90 days; and \$2,000 for any removal period greater than 90 days; for a total of \$82,000 paid to these consumers.
23. For any of the 197 consumers who receive a payment pursuant to this AOD, Irving shall send a letter from the Attorney General (Exhibit A), along with the applicable explanatory letter from Irving (Exhibit B and/or C) and the consumer's payment, in an envelope provided by the Attorney General's Office.
24. Within 60 days of signing this AOD, Irving shall send to the Attorney General's Office a list (in electronic Excel spreadsheet) of all consumers to whom consumer restitution payments were mailed, including, for each consumer, contact information, the amount paid, and an indication of which explanatory letter was sent.
25. In the event that Irving is not able to locate consumers to whom any payments are owed and no later than 120 days after signing this AOD, Irving shall mail to the Attorney General's Office:
  - a. A single check, payable to "Vermont State Treasurer" in the total dollar amount of all checks that were returned as undeliverable or that otherwise went uncashed because the consumer could not be located, all

to be treated as unclaimed funds, under Vermont's unclaimed property statute, Title 17, Vermont Statutes Annotated, Chapter 14,

- b. A list, in electronic Excel format, of the consumers whose checks were returned 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 consumer restitution amount; and
- c. The company's corporate address and federal tax identification number

26. Subject to any applicable limitations period, Irving agrees to consider claims presented by any Vermont consumer not among the 197 identified consumers who believes he or she experienced an impermissible delay in tank removal or refund check processing between January 1, 2010 and October 10, 2012. For these consumers, Irving shall review each complaint within 20 days. In the event the consumer demonstrates that the refund or tank pick-up was untimely under Vermont law (a) for a refund delay, Irving shall pay the penalty per the terms of this AOD; (b) for a tank delay, Irving shall pay a penalty per the terms of this AOD; and (c) if Irving disputes that any penalty is owed, Irving 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](mailto:consumer@uvm.edu), if the consumer disagrees.

*Payment to the State of Vermont*

27 Within 60 days of signing this AOD, Irving shall pay to the State of Vermont \$100,000 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

28. Within 60 days of signing this AOD, Irving shall pay to the Vermont Low Income Home Energy Assistance Program (“LIHEAP”) \$160,000. Payment shall be made via the Vermont Department for Children and Families, Economic Services Division, Fuel Assistance, 103 South Main Street, Waterbury, Vermont 05671. A copy of the cover letter for this payment shall be sent to the Attorney General’s Office.

***Reporting***

29. Irving shall submit the reports described in ¶ 20 above.
30. Irving shall submit a copy of any written consumer complaint that it receives on or after the date of this AOD that pertains to any matter in this AOD as well as the company’s response for a period of one year from the date of this AOD. Such written consumer complaints shall be submitted to the undersigned Assistant Attorney General within 20 days of receipt.

**Other Terms**

31. This AOD shall be binding on Irving and its successors and assigns. Irving shall promptly take reasonable steps to ensure that copies of this document are provided to its officers and directors.
32. Acceptance of this AOD by the Vermont Attorney General’s Office shall not be deemed approval by the Attorney General of any of the practices or procedures



of Irving not required by this AOD, and Irving shall make no representation to the contrary

33. This AOD resolves all existing claims that the State of Vermont may have against Irving stemming from the conduct described in this document as of October 10, 2012, provided, however, that nothing herein waives the Attorney General's right to assert and prove any violations of law unrelated to the conduct described in this AOD.

34 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 a check provided pursuant to this AOD and does not return it to Irving within 90 days shall waive any claim regarding delayed refund checks and tank removals.

35 Any notice related to this AOD shall be given to Irving at:

- a. Irving Energy Distribution and Marketing, Attn. U.S Legal Affairs, 190 Commerce Way, Portsmouth, New Hampshire 03801, and
- b. Mark P Snow, Perkins Thompson, P.O. Box 426, Portland, ME 04112-0426; and
- c. Such other address as Irving may from time to time designate.

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

37 In the event that the Attorney General believes that Irving has violated any terms of this AOD, the Attorney General may pursue any remedies available under 9 V.S.A. Chapter 63

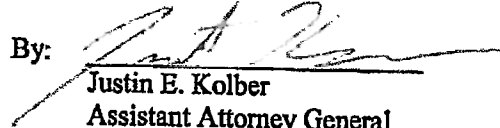
38. In the event that the Attorney General's Office receives a request for disclosure of any of the information described or referenced in this AOD, the Attorney General and/or State of Vermont shall promptly notify Irving to permit it to take any steps it may deem necessary to prevent disclosure. If the Attorney General or State of Vermont is required to disclose any information described in this AOD to any third party, it shall promptly notify Irving.

\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

DATED at Montpelier, Vermont this 20<sup>th</sup> day of March, 2014

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 Portsmouth NH, this 28 day of March, 2014.

IRVING ENERGY


By:   
Its Authorized Agent

Gregory B. Pitras, Secretary  
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

  
John A. Hobson  
Perkins Thompson  
One Canal Plaza  
PO Box 426  
Portland, ME 04112

For Irving Energy

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
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05609