

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

In re LEAD CONCEPTS, INC. )

CIVIL DIVISION

Docket No. 612-10-14 Wncw

FILED

ASSURANCE OF DISCONTINUANCE

1. Lead Concepts, Inc. ("Lead Concepts") is a Texas corporation with offices located at 1060 E. Northwest Highway, Grapevine, Texas 76051-3703.

2. Among other things, Lead Concepts generates business leads for insurance agents by sending direct mailings to consumers that request them to return a responsive postcard containing their name and age, spouse's name and age, and other information, which is then furnished to the agents to use in contacting the consumers to offer to sell them insurance policies.

3. During the years 2010-13, Lead Concepts sent thousands of such mailings to Vermont consumers, many of them elderly, for the purpose of generating leads for several Vermont insurance agents.

4. Many of these mailings implied that the sender was simply offering to provide information or a brochure to the recipient, free of charge.

5. Examples of such wording include the following:

- "IMPORTANT ELDER LAW INFORMATION ...For FREE information regarding this important elder law, return this postage paid card today."
- "SENIOR BENEFITS UPDATE ... To see if you qualify, mail this postage paid card. You will not be charged for this information!"
- "FOR AN EXPERT REVIEW OF YOUR MEDIGAP BENEFITS—RETURN THIS CARD!"

- “NEW FEDERAL BUDGET LEGISLATION ... To get the answers and information you need, fill in and mail this postage paid card today.”
- “**MEDICARE SUPPLEMENT COVERAGE UPDATE** ... For information on these changes and how they will AFFECT YOU, complete and return this postage paid card today.”
- “**MEDICARE OPEN ENROLLMENT QUALIFICATION REQUEST CARD** ... Take advantage of this free review of your healthcare benefits and information about Medicare programs for little or no premium cost.”
- “**INFORMATION UPDATE** ... For details and information [on maximizing Social Security benefits], return the above postage-paid card.”
- “**MEDICARE SUPPLEMENT UPDATE** ... Send in this card to see if you qualify for premium savings from \$200-\$500 per year or more.”
- “**2011 MEDICARE HEALTH PLAN UPDATE** ... Return this free card to find out if you currently receive all the benefits you are entitled to. There is no obligation and all the information is FREE!”

6. The purpose of the mailings was to persuade consumers to send information—including the consumer’s age and spouse’s name and age—to be used by Lead Concepts’ clients, the insurance agents, to develop customer leads to market their products.

7. Although some of these mailings expressly disclosed their true commercial purpose, 42,000 mailings to Vermont consumers did not disclose that purpose.

8. Lead Concepts estimates that one percent of the recipients of these mailings, or about 420 Vermonters, responded by returning a postcard with their information.

9. The Vermont Attorney General alleges that the failure to disclose the material fact that responses to commercial communications will be followed up by a salesperson’s contact is an unfair trade practice under the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), based on longstanding precedent to that effect from the Federal Trade Commission.

10. Lead Concepts denies that it violated any Vermont or federal law or unfair trade practice standard.

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109 State Street  
Montpelier, VT  
05609

11. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under 9 V.S.A. § 2459.

**INJUNCTIVE RELIEF**

12. Lead Concepts shall comply strictly with all provisions of Vermont and federal law, including the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451 *et seq.*

13. Among other things, Lead Concepts shall not contact any Vermont consumer, by mail or other means, for the purpose, in whole or in part, of generating business leads without clearly and conspicuously disclosing the fact that if the consumer responds to the contact, he or she may be solicited to purchase a described product or service (for example, “An agent may contact you to sell insurance products.”).

**PAYMENT TO THE STATE**

14. No later than December 1, 2014, Lead Concepts shall pay to the State of Vermont the sum of \$85,000.00 (eighty-five thousand dollars), in care of the Vermont Attorney General’s Office, 109 State Street, Montpelier, Vermont 05609, and an additional \$5,000.00 (five thousand dollars) to Vermont Adult Protective Services, in care of John Bouthilette, APS Program Chief, 103 South Main Street – Ladd Hall, Waterbury, Vermont 05671-2306, the latter for the purpose of underwriting the cost of training and maintaining a network of anti-fraud advocates for senior citizens in Vermont.

**OTHER PROVISIONS**

15. This Assurance of Discontinuance represents a full and final settlement of any and all claims against Lead Concepts, including any claims of derivative liability against its owners, principals, employees, or agents, by the State of Vermont and any of its subdivisions or agencies that relate to the subject matter of this Assurance of

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ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

Discontinuance, provided that such claims of derivative liability shall not be considered settled as applied to the payment obligation set out in paragraph 14, above, until such time as said payment is made in full, at which time they shall be considered fully and finally settled.


16. 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.

17. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 10/14/14

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
Elliot Burg  
Senior Assistant Attorney General

Dated \_\_\_\_\_

LEAD CONCEPTS, INC.

By: \_\_\_\_\_  
Its Authorized Agent

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

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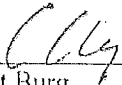
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Dated 10/14/14

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
Elliot Burg  
Senior Assistant Attorney General

Dated 10/15/14

LEAD CONCEPTS, INC.

By:   
Its Authorized Agent

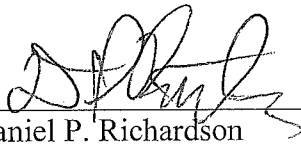
Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609



APPROVED AS TO FORM:



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



\_\_\_\_\_  
Daniel P. Richardson  
Tarrant, Gillies & Richardson  
44 East State Street  
P.O. Box 1440  
Montpelier, Vermont 05601-1440  
For Lead Concepts, Inc.

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

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\_\_\_\_\_  
CONSUMER FINANCIAL PROTECTION )  
BUREAU, )  
1700 G Street, NW )  
Washington, DC 20552 )

13-cv-2025 (RMC)

)  
THE STATE OF ALABAMA, )  
Alabama Attorney General's Office )  
501 Washington Avenue )  
Montgomery, AL 36130 )

)  
THE STATE OF ALASKA, )  
Alaska Attorney General's Office )  
1031 W. 4<sup>th</sup> Avenue, Ste. 200 )  
Anchorage, AK 99501 )

)  
THE STATE OF ARIZONA, )  
Arizona Attorney General's Office )  
1275 W. Washington )  
Phoenix, AZ 85007 )

)  
THE STATE OF ARKANSAS, )  
Office of the Attorney General )  
323 Center Street, Suite 200 )  
Little Rock, AK 72201 )

)  
THE STATE OF CALIFORNIA, )  
California Attorney General's Office )  
455 Golden Gate Avenue, Ste. 11000 )  
San Francisco, CA 94102-7007 )

)  
THE STATE OF COLORADO, )  
Colorado Attorney General's Office )  
Ralph L. Carr Colorado Judicial Center )  
1300 Broadway, 7th Floor )  
Denver, CO 80203 )

)  
THE STATE OF CONNECTICUT, )  
Office of the Connecticut Attorney General )  
55 Elm Street, P.O. Box 120 )  
Hartford, CT 06141-0120 )

THE STATE OF DELAWARE, )  
Delaware Attorney General's Office )  
820 N. French Street )  
Wilmington, DE 19801 )

THE STATE OF FLORIDA, )  
Department of Legal Affairs )  
Office of the Attorney General )  
3507 E. Frontage Road, Suite 325 )  
Tampa, FL 33607 )

THE STATE OF GEORGIA, )  
Georgia Department of Law )  
40 Capitol Square, S.W. )  
Atlanta, GA 30334 )

THE STATE OF HAWAII, )  
Department of the Attorney General )  
425 Queen Street )  
Honolulu, HI 96813 )

THE STATE OF IDAHO, )  
Office of the Idaho Attorney General )  
700 W. Jefferson St. )  
P.O. Box 83720 )  
Boise, ID 83720-0010 )

THE STATE OF ILLINOIS, )  
Office of the Illinois Attorney General )  
500 South Second Street )  
Springfield, IL 62706 )

THE STATE OF INDIANA, )  
Indiana Office of the Attorney General )  
302 West Washington St., IGCS 5th Fl. )  
Indianapolis, IN 46204 )

THE STATE OF IOWA, )  
Iowa Attorney General's Office )  
1305 E. Walnut St. )  
Des Moines, IA 50319 )

THE STATE OF KANSAS, )  
Office of the Kansas Attorney General )  
120 SW 10th Avenue, 2nd Floor )  
Topeka, KS 66612 )

)  
THE COMMONWEALTH )  
OF KENTUCKY, )  
Office of the Attorney General of Kentucky )  
State Capitol, Suite 118 )  
700 Capital Avenue )  
Frankfort, KY 40601-3449 )  
)  
THE STATE OF LOUISIANA, )  
Louisiana Attorney General's Office )  
1885 N. Third Street )  
Baton Rouge, LA 70802 )  
)  
THE STATE OF MAINE, )  
Maine Attorney General's Office )  
Burton Cross Office Building, 6th Floor )  
111 Sewall Street )  
Augusta, ME 04330 )  
)  
THE STATE OF MARYLAND, )  
Office of the Attorney General of Maryland )  
200 Saint Paul Place )  
Baltimore, MD 21202 )  
)  
THE COMMONWEALTH )  
OF MASSACHUSETTS, )  
Massachusetts Attorney General's Office )  
One Ashburton Place )  
Boston, MA 02108 )  
)  
THE STATE OF MICHIGAN, )  
Michigan Department of Attorney General )  
525 W. Ottawa Street )  
PO Box 30755 )  
Lansing, MI 48909 )  
)  
THE STATE OF MINNESOTA, )  
Minnesota Attorney General's Office )  
445 Minnesota Street, Suite 1200 )  
St. Paul, MN 55101-2130 )  
)  
THE STATE OF MISSISSIPPI, )  
Mississippi Attorney General's Office )  
Post Office Box 22947 )  
Jackson, MS 39225-2947 )  
)

THE STATE OF MISSOURI, )  
Missouri Attorney General's Office )  
PO Box 899 )  
Jefferson City, MO 65102 )

THE STATE OF MONTANA, )  
Montana Department of Justice )  
215 N. Sanders )  
Helena MT 59624 )

THE STATE OF NEBRASKA, )  
Office of the Attorney General )  
2115 State Capitol )  
Lincoln, NE 68509-8920 )

THE STATE OF NEVADA, )  
Nevada Office of the Attorney General )  
100 North Carson Street )  
Carson City, NV 89701 )

THE STATE OF NEW HAMPSHIRE, )  
New Hampshire Department of Justice )  
33 Capitol Street )  
Concord, NH 03301 )

THE STATE OF NEW JERSEY, )  
New Jersey Attorney General's Office )  
124 Halsey Street – 5th Floor )  
P.O. Box 45029 )  
Newark, NJ 07101 )

THE STATE OF NEW MEXICO, )  
Office of the New Mexico Attorney General )  
PO Drawer 1508 )  
Santa Fe, NM 87504-1508 )

THE STATE OF NEW YORK, )  
Office of the New York State )  
Attorney General )  
120 Broadway )  
New York, NY 10271 )

THE STATE OF NORTH CAROLINA, )  
North Carolina Department of Justice )  
P.O. Box 629 )  
Raleigh, NC 27602 )

THE STATE OF NORTH DAKOTA, )  
Office of the Attorney General )  
Gateway Professional Center )  
1050 E Interstate Ave, Ste. 200 )  
Bismarck, ND 58503-5574 )

THE STATE OF OHIO, )  
Ohio Attorney General's Office )  
30 E. Broad St., 15th Floor )  
Columbus, OH 43215 )

THE STATE OF OREGON, )  
Oregon Department of Justice )  
1515 SW 5th Avenue, Ste. 410 )  
Portland, OR 97201 )

THE COMMONWEALTH )  
OF PENNSYLVANIA, )  
Office of the Attorney General )  
16th Floor, Strawberry Square )  
Harrisburg, PA 17120 )

THE STATE OF RHODE ISLAND, )  
Rhode Island Department )  
of Attorney General )  
150 South Main Street )  
Providence, RI 02903 )

THE STATE OF SOUTH CAROLINA, )  
South Carolina Attorney General's Office )  
1000 Assembly Street, Room 519 )  
Columbia, SC 29201 )

THE STATE OF SOUTH DAKOTA, )  
South Dakota Attorney General's Office )  
1302 E. Highway 14, Suite 1 )  
Pierre, SD 57501 )

THE STATE OF TENNESSEE, )  
Office of the Tennessee Attorney General )  
425 Fifth Avenue North )  
Nashville, TN 37243-3400 )

THE STATE OF TEXAS, )  
Texas Attorney General's Office )  
401 E. Franklin Avenue, Suite 530 )  
El Paso, TX 79901 )

THE STATE OF UTAH, )  
Division of Consumer Protection )  
Utah Attorney General's Office )  
350 North State Street, #230 )  
Salt Lake City, UT 84114-2320 )

THE STATE OF VERMONT, )  
Office of the Attorney General )  
109 State Street )  
Montpelier, VT 05609 )

THE COMMONWEALTH OF VIRGINIA, )  
Office of the Virginia Attorney General )  
900 East Main Street )  
Richmond, VA 23219 )

THE STATE OF WASHINGTON, )  
Washington State Attorney General's Office )  
1250 Pacific Avenue, Suite 105 )  
PO Box 2317 )  
Tacoma, WA 98402-4411 )

THE STATE OF WEST VIRGINIA, )  
West Virginia Attorney General's Office )  
State Capitol, Room 26E )  
Charleston, WV 25305-0220 )

THE STATE OF WISCONSIN, )  
Wisconsin Department of Justice )  
Post Office Box 7857 )  
Madison, WI 53707-7857 )

THE STATE OF WYOMING, and )  
Wyoming Attorney General's Office )  
123 State Capitol Bldg. )  
Cheyenne, WY 82002 )

THE DISTRICT OF COLUMBIA, )  
Office of the Attorney General )  
441 Fourth Street, N.W. )  
Washington, DC 20001 )

Plaintiffs, )  
 )  
 )  
 )  
 )  
 v. )  
 )  
 OCWEN FINANCIAL CORPORATION, )  
 )  
 and OCWEN LOAN SERVICING, LLC, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**CONSENT JUDGMENT**

WHEREAS, Plaintiffs, the Consumer Financial Protection Bureau (the “CFPB” or “Bureau”), and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia (collectively, “Plaintiff States”) filed their complaint on December 19, 2013, alleging that Ocwen Financial Corporation and Ocwen Loan Servicing, LLC (collectively, “Defendant” or “Ocwen”) violated, among other laws, the Unfair and Deceptive Acts and Practices laws of the Plaintiff States and the Consumer Financial Protection Act of 2010.

WHEREAS, the parties have agreed to resolve their claims without the need for litigation;



WHEREAS, Defendant has consented to entry of this Consent Judgment without trial or adjudication of any issue of fact or law and to waive any appeal if the Consent Judgment is entered as submitted by the parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of this Court;

WHEREAS, the intention of the Consumer Financial Protection Bureau and the States in effecting this settlement is to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant;

WHEREAS, the State Mortgage Regulators are entering into a Settlement Agreement and Consent Order with Ocwen to resolve the findings identified in the course of multi-state and concurrent independent examinations of Ocwen, as well as examinations of Litton Loan Servicing, LP and Homeward Residential, Inc., which were subsequently acquired by Ocwen.

AND WHEREAS, Defendant has agreed to waive service of the complaint and summons and hereby acknowledges the same;

NOW THEREFORE, without trial or adjudication of issue of fact or law, without this Consent Judgment constituting evidence against Defendant, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

#### **I. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, and under 12 U.S.C. § 5565, and over Defendant. The

Complaint states a claim upon which relief may be granted against Defendant. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) and 12 U.S.C. § 5564(f).

## II. APPLICABILITY

2. Defendant's obligations as set forth in this Consent Judgment and the attached Exhibits shall apply equally and fully to Defendant regardless of whether Defendant is servicing residential mortgages as a servicer or subservicer.

## III. SERVICING STANDARDS

3. Defendant shall comply with the Servicing Standards, attached hereto as Exhibit A, in accordance with their terms and Section A of Exhibit D, attached hereto.

## IV. FINANCIAL TERMS

4. *Payments to Foreclosed Borrowers and Administration Costs.* Ocwen shall pay or cause to be paid the sum of \$127.3 million (the "Borrower Payment Amount") into an interest bearing escrow account established for this purpose by the State members of the Monitoring Committee within 10 days of receiving notice from the State members of the Monitoring Committee that the account is established. The State members of the Monitoring Committee and the Administrator appointed under Exhibit B will use the funds in this account to provide cash payments to borrowers whose homes were sold in a foreclosure sale between and including January 1, 2009, and December 31, 2012, and who otherwise meet criteria set forth by the Monitoring Committee, and to pay the reasonable costs and expenses of the Administrator, including taxes and fees for tax counsel, if any. Ocwen shall also pay or cause to be paid any additional amounts necessary to pay claims, if any, of borrowers whose data is provided to the Administrator by Ocwen after Defendant warrants that the data is complete and accurate pursuant

to Paragraph 3 of Exhibit B. The Borrower Payment Amount shall be administered in accordance with the terms set forth in Exhibit B.

5. *Consumer Relief.* Defendant shall provide \$2 billion of relief to consumers who meet the eligibility criteria in the forms and amounts described in Exhibit C, to remediate harms allegedly caused by the alleged unlawful conduct of Defendant. Defendant shall receive credit towards such obligation as described in Exhibit C.

#### **V. ENFORCEMENT**

6. The Servicing Standards and Consumer Relief Requirements, attached as Exhibits A and C, are incorporated herein as the judgment of this Court and shall be enforced in accordance with the authorities provided in the Enforcement Terms, attached hereto as Exhibit D.

7. The Parties agree that Joseph A. Smith, Jr. shall be the Monitor and shall have the authorities and perform the duties described in the Enforcement Terms.

8. Within fifteen (15) days of the Effective Date of this Consent Judgment, the Plaintiffs shall designate an Administration and Monitoring Committee (the "Monitoring Committee") as described in the Enforcement Terms. The Monitoring Committee shall serve as the representative of the Plaintiffs in the administration of all aspects of this Consent Judgment and the monitoring of compliance with it by the Defendant.

#### **VI. RELEASES**

9. The CFPB and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims and remedies as provided in the CFPB Release, attached hereto as Exhibit E. CFPB and Defendant have also agreed that certain claims and remedies are

not released, as provided in Paragraph C of Exhibit E. The releases contained in Exhibit E shall become effective upon payment of the Borrower Payment Amount by Defendant.

10. The Plaintiff States and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims and remedies as provided in the State Release, attached hereto as Exhibit F. The Plaintiff States and Defendant have also agreed that certain claims and remedies are not released, as provided in Section IV of Exhibit F. The releases contained in Exhibit F shall become effective upon payment of the Borrower Payment Amount by Defendant.

#### **VII. OTHER TERMS**

11. The Consumer Financial Protection Bureau and any State Party may withdraw from the Consent Judgment and declare it null and void with respect to that party if Ocwen fails to make any payment required under this Consent Judgment and such non-payment is not cured within thirty (30) days of written notice by the party, except that the Released Parties, as defined in Exhibits E and F, other than Ocwen, are released upon the payment of the Borrower Payment Amount, at which time this nullification provision is only operative against Ocwen.

12. This Court retains jurisdiction for the duration of this Consent Judgment to enforce its terms. The parties may jointly seek to modify the terms of this Consent Judgment, subject to the approval of this Court. This Consent Judgment may be modified only by order of this Court.

13. In addition to the provisions of paragraph 12, and in accordance with the terms set forth in Exhibit D, any Plaintiff State may also bring an action to enforce the terms of this Consent Judgment in the enforcing Plaintiff's state court. Ocwen agrees to submit to the jurisdiction of any such state court for purposes of a Plaintiff State's enforcement action.

14. The Effective Date of this Consent Judgment shall be the date on which the Consent Judgment has been entered by the Court and has become final and non-appealable. An order entering the Consent Judgment shall be deemed final and non-appealable for this purpose if there is no party with a right to appeal the order on the day it is entered.

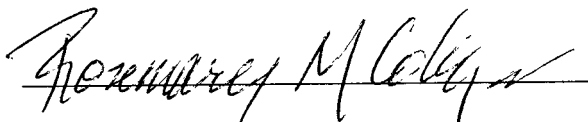
15. This Consent Judgment shall remain in full force and effect for three years from the date it is entered ("the Term"), at which time Defendant's obligations under the Consent Judgment shall expire, except that pursuant to Exhibit D, Defendant shall submit a final Quarterly Report for the last quarter or portion thereof falling within the Term and cooperate with the Monitor's review of said report, which shall conclude no later than six months after the end of the Term. Defendant shall have no further obligations under this Consent Judgment six months after the expiration of the Term, but the Court shall retain jurisdiction for purposes of enforcing or remedying any outstanding violations that are identified in the final Monitor Report and that have occurred but not been cured during the Term. The expiration of this Consent Judgment shall not affect any Releases.

16. Each party to this litigation will bear its own costs and attorneys' fees.

17. Nothing in this Consent Judgment shall relieve Defendant of its obligation to comply with applicable state and federal law.

18. The sum and substance of the parties' agreement and of this Consent Judgment are reflected herein and in the Exhibits attached hereto. In the event of a conflict between the terms of the Exhibits and paragraphs 1-17 of this summary document, the terms of the Exhibits shall govern.

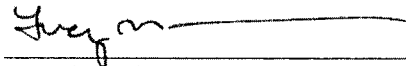
SO ORDERED this 26 day of February, 2014

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

UNITED STATES DISTRICT JUDGE

Date: 12/19/13

For the Consumer Financial Protection Bureau



Lucy Morris  
Deputy Enforcement Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552  
lucy.morris@cfpb.gov  
202-435-7154

Date 12/10/13

For the State of Alabama:



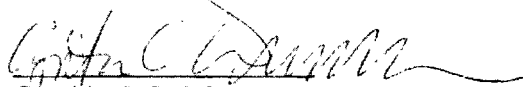
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Noel S. Barnes  
Assistant Attorney General  
501 Washington Avenue  
PO Box 300152  
Montgomery, Alabama 36130  
[nbarnes@ago.state.al.us](mailto:nbarnes@ago.state.al.us)  
(334) 353-9196



Date 12/12/13

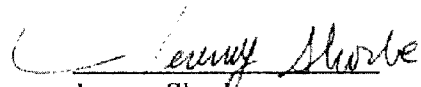
For the State of Alaska:



Cynthia C. Drinkwater  
Sr. Assistant Attorney General  
Alaska Department of Law  
1031 W. 4<sup>th</sup> Avenue, Ste. 200  
Anchorage, AK 99501  
[Cynthia.Drinkwater@alaska.gov](mailto:Cynthia.Drinkwater@alaska.gov)  
(907) 269-5200

Date 12/12/13

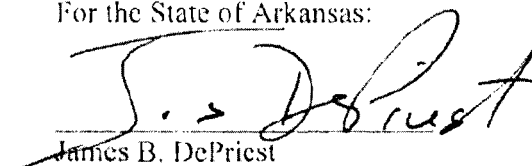
For the State of Arizona:

A handwritten signature in black ink, appearing to read "Jeremy Shorbe", written over a horizontal line.

Jeremy Shorbe  
Assistant Attorney General  
400 W. Congress Street, Suite S315  
Tucson, Arizona 85701  
Jeremy.Shorbe@azag.gov  
(520) 628-6504

Date 12/12/13

For the State of Arkansas:

A handwritten signature in black ink, appearing to read "J. B. DePriest", written over a horizontal line.

James B. DePriest

Deputy Attorney General

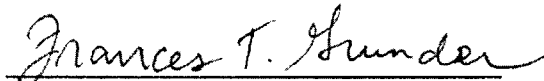
323 Center Street, Suite 500

[jim.depriest@arkansasag.gov](mailto:jim.depriest@arkansasag.gov)

(501)682-5028

Date: December 12, 2013

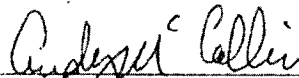
For the State of California:

A handwritten signature in cursive script that reads "Frances T. Grunder". The signature is written in black ink and is positioned above a horizontal line.

Frances T. Grunder  
Senior Assistant Attorney General  
Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102  
Frances.Grunder@doj.ca.gov  
415-703-5500

Date: December 13, 2013

For the State of Colorado, *ex rel.*  
John W. Suthers, Attorney General:




---

Andy McCallin  
First Assistant Attorney General  
Consumer Protection Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway – 7<sup>th</sup> Floor  
Denver, Colorado 80203  
Andrew.McCallin@State.CO.US  
(720) 508-6215

Date: December 12, 2013

For the State of Connecticut:

A handwritten signature in black ink, appearing to read "Joseph J. Chambers", is written over a horizontal line.

Joseph J. Chambers  
Assistant Attorney General  
P.O. Box 120  
55 Elm Street  
Hartford, CT 06141-0120  
(860) 808-5270  
joseph.chambers@ct.gov

Date: 12/13/13

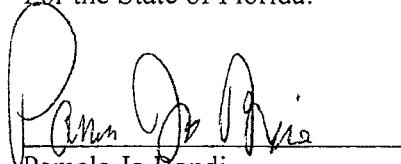
For the State of Delaware:

A handwritten signature in black ink, appearing to read "Matt Lintner", written over a horizontal line.

Matthew F. Lintner  
Director, Fraud and Consumer Protection Div.  
820 N. French Street, 5<sup>th</sup> Floor  
Wilmington, DE 19801  
Matthew.Lintner@state.de.us  
(302) 577-8935

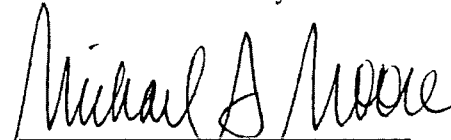
December 16<sup>th</sup>, 2013.

For the State of Florida:

Handwritten signature of Pamela Jo Bondi in black ink, written over a horizontal line.

Pamela Jo Bondi  
Attorney General  
The Capitol PL-01  
Tallahassee, FL 32399-1050  
Tel: 850-245-0140  
Fax: 850-413-0632

Office of the Attorney General

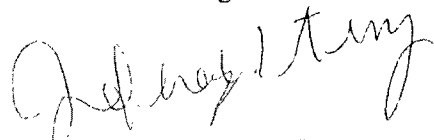
Handwritten signature of Michael G. Moore in black ink, written over a horizontal line.

Victoria A. Butler  
Assistant Attorney General  
Bureau Chief  
Michael G. Moore  
Senior Assistant Attorney General  
Tampa, Consumer Protection Division  
Office of the Attorney General, Pam Bondi  
3507 E. Frontage Road, Suite 325  
Tampa, FL 33607  
Tel: 813-287-7950  
Fax: 813-281-5515



Date December 16, 2013

For the State of Georgia:




---

Jeffrey W. Stump  
Senior Assistant Attorney General  
Georgia Department of Law  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
jstump@law.ga.gov  
(404) 656-3337

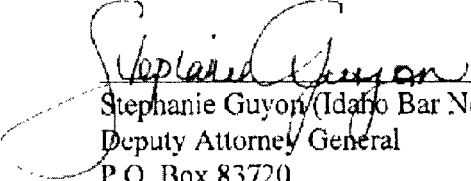
Date 12/11/13

For the State of Hawaii:

  
Deborah Day Emerson  
Supervising Deputy Attorney General  
425 Queen Street, Honolulu HI 96813  
Deborah.D.Emerson@Hawaii.Gov  
(808) 586-1180

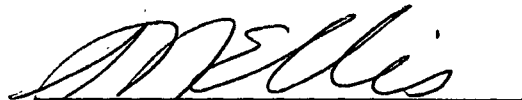
Date 12-10-13

For the State of Idaho

  
Stephanie Guyon (Idaho Bar No. 5989)  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[stephanie.guyon@ag.idaho.gov](mailto:stephanie.guyon@ag.idaho.gov)  
(208) 334-4135

Date 12/10/13

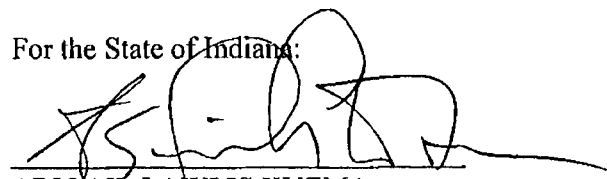
For the State of Illinois:

A handwritten signature in cursive script, appearing to read "S. N. Ellis", written over a horizontal line.

Susan N. Ellis  
Bureau Chief, Consumer Fraud  
Office of the Illinois Attorney General  
100 West Randolph Street  
Chicago, IL 60601  
sellis@atg.state.il.us  
312-814-3000

Date 12-11-13

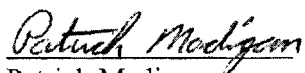
For the State of Indiana:

A handwritten signature in black ink, appearing to read 'Abigail Lawlis Kuzma', written over a horizontal line.

ABIGAIL LAWLIS KUZMA  
Director and Chief Counsel  
Consumer Protection Division  
Indiana Office of the Attorney General  
302 West Washington St., IGCS 5<sup>th</sup> Fl.  
Abigail.Kuzma@atg.in.gov  
Tel: 317-234-6843

Date: 12/17/13

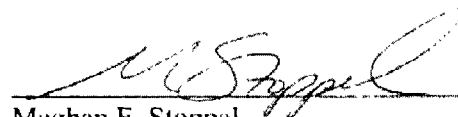
For the State of Iowa:



Patrick Madigan  
Assistant Attorney General  
Iowa Attorney General's Office  
1305 East Walnut Street  
Des Moines, IA 50319  
Patrick.Madigan@Iowa.gov  
(515) 281-5926

Date 12/13/13

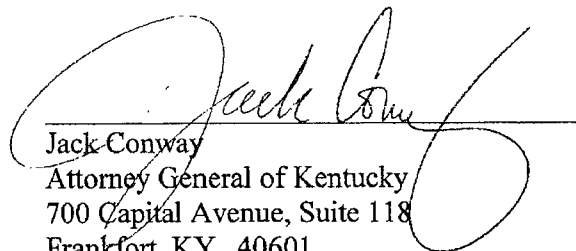
For the State of Kansas:



Meghan E. Stoppel  
Assistant Attorney General  
Office of the Kansas Attorney General  
120 SW 10<sup>th</sup> Avenue, 2nd Floor  
Topeka, Kansas 66612  
Meghan.Stoppel@ksag.org  
(785) 296-3751

Date 12-10-2013

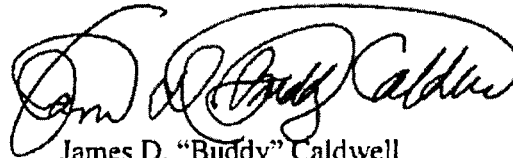
**For the Commonwealth of Kentucky:**

  
\_\_\_\_\_  
Jack Conway  
Attorney General of Kentucky  
700 Capital Avenue, Suite 118  
Frankfort, KY 40601  
susan.britton@ag.ky.gov  
502-696-5643



Date: December 12, 2013

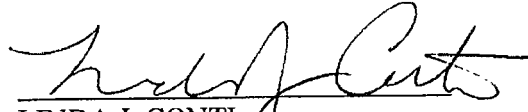
For the State of Louisiana:

A handwritten signature in black ink, appearing to read "James D. 'Buddy' Caldwell". The signature is stylized with large, flowing loops and is positioned above the printed name and contact information.

James D. "Buddy" Caldwell  
Louisiana Attorney General  
Post Office Box 94005  
Baton Rouge, Louisiana 70804-9005  
E-mail: [Caldwellb@ag.state.la.us](mailto:Caldwellb@ag.state.la.us)  
Phone Number: 225-326-6705

Date 12/12/13


For the State of Maine

A handwritten signature in cursive script, appearing to read "Linda J. Conti", written over a horizontal line.

LINDA J. CONTI  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
Linda.conti@maine.gov  
(207) 626-8591

Date December 13, 2013

For the State of Maryland:

  
\_\_\_\_\_  
Lucy A. Cardwell  
Assistant Attorney General  
Consumer Protection Division  
Office of the Maryland Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  
lcardwell@oag.state.md.us  
410-576-6337

Date December 17, 2013

For the Commonwealth of Massachusetts:



---

Glenn S. Kaplan  
Assistant Attorney General  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
[Glenn.Kaplan@state.ma.us](mailto:Glenn.Kaplan@state.ma.us)  
617-963-2453  
D.C. Bar No. 429052

Date 12-13-13

For the State of Michigan:

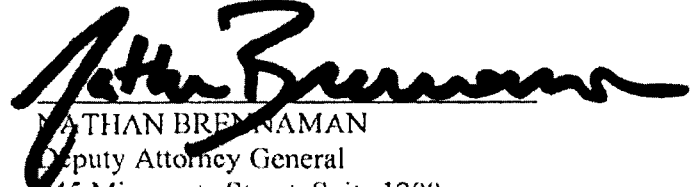


D.J. Pascoe  
D.J. Pascoe  
Assistant Attorney General  
Corporate Oversight Division  
P.O. Box 30755  
Lansing, MI 48909  
pascoed1@michigan.gov  
(517) 373-1160

Date: December 13, 2013

For the State of Minnesota:

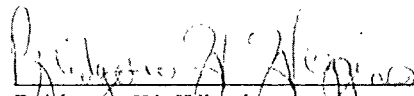
LORI SWANSON  
Attorney General  
State of Minnesota

A handwritten signature in black ink, appearing to read "Nathan Brenneman", is written over a horizontal line. The signature is fluid and cursive.

NATHAN BRENNAMAN  
Deputy Attorney General  
445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101-2130  
nate.brenneman@ag.state.mn.us  
(651) 757-1415 (Voice)

Date: December 12, 2013

For the State of Mississippi:

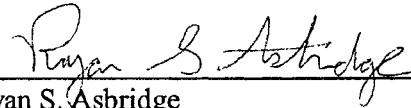


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Bridgette W. Wiggins  
Special Assistant Attorney General  
Consumer Protection Division  
Post Office Box 22947  
Jackson, MS 39225  
bwill@ago.state.ms.us  
(601) 359-4279

Date 12/10/2013

For the State of Missouri:



---

Ryan S. Asbridge  
Assistant Attorney General  
P.O. Box 899, Jefferson City, MO 65102  
ryan.asbridge@ago.mo.gov  
573-751-7677



Date: December 12, 2013

For the State of Montana:

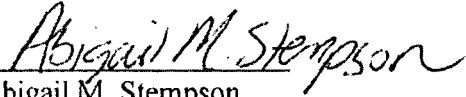


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Chuck Munson  
Assistant Attorney General  
215 N. Sanders  
P.O. Box 201401  
Helena, MT 59620  
cmunson@mt.gov  
(406) 444-2026

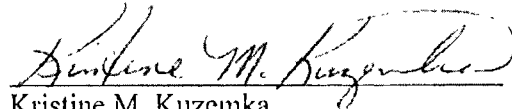
Date December 13, 2013

For the State of Nebraska:

  
Abigail M. Stempson  
Assistant Attorney General  
Chief, Consumer Protection Division  
2115 State Capitol  
Lincoln, NE 68509-8920  
abigail.stempson@nebraska.gov  
(402) 471-2683

Date 12/13/13

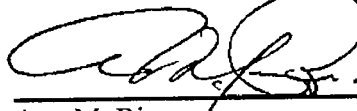
For the State of Nevada:

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

Kristine M. Kuzemka  
Senior Deputy Attorney General  
555 E. Washington Avenue, Suite 3900  
kkuzemka@ag.nv.gov  
(702) 486-3420

Date Dec. 12, 2013

For the State of New Hampshire:



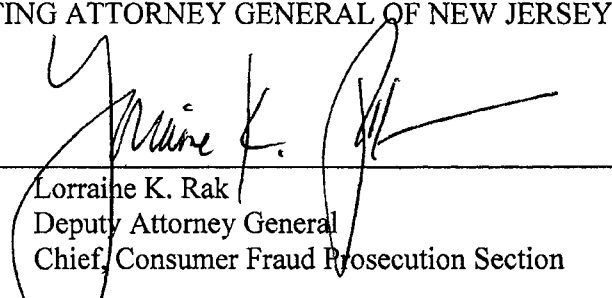
---

Ann M. Rice  
Deputy Attorney General  
33 Capitol Street, Concord, NH 03301  
Ann.Rice@doj.nh.gov  
603-271-1238

Date: December 12, 2013

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

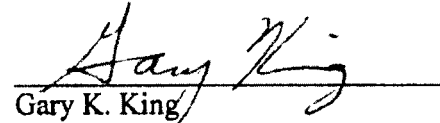
By: \_\_\_\_\_

  
Lorraine K. Rak  
Deputy Attorney General  
Chief, Consumer Fraud Prosecution Section

124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
[Lorraine.Rak@dol.lps.state.nj.us](mailto:Lorraine.Rak@dol.lps.state.nj.us)  
(973) 877-1280

Date 12/13/13

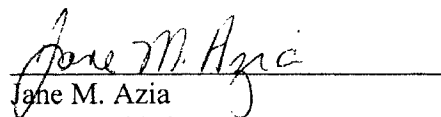
For the State of New Mexico

A handwritten signature in cursive script, appearing to read "Gary King", is written over a horizontal line.

Gary K. King  
Attorney General  
408 Galisteo Street  
Santa Fe, NM 87501  
Gking@nmag.gov  
(505) 827-5843

December 10, 2013

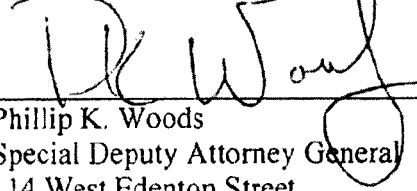
For the State of New York

A handwritten signature in cursive script, appearing to read "Jane M. Azia", is written over a horizontal line.

Jane M. Azia  
Bureau Chief  
Bureau of Consumer Frauds & Protection  
Office of the New York State Attorney  
General  
120 Broadway  
New York, NY 10271  
[Jane.azia@ag.ny.gov](mailto:Jane.azia@ag.ny.gov)  
(212) 416-8727

December 11, 2013

For the State of North Carolina:

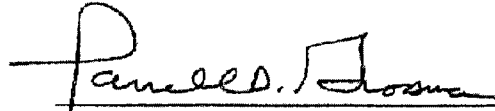
A handwritten signature in black ink, appearing to read "P. Woods", written over a horizontal line.

Phillip K. Woods  
Special Deputy Attorney General  
114 West Edenton Street  
Raleigh, NC 27602-0629  
Email: pwoods@ncdoj.gov  
Telephone: (919) 716-6052



Date December 10, 2013

For the State of North Dakota

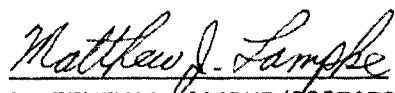


Parrell D. Grossman (NDBI #04684)  
Assistant Attorney General  
Director, Consumer Protection & Antitrust  
Division  
Office of Attorney General  
Gateway Professional Center  
1050 East Interstate Ave. Ste. 200  
Bismarck, ND 58503-5574  
[pgrossman@nd.gov](mailto:pgrossman@nd.gov)  
(701)328-5570

Date: December 11, 2013

For the State of Ohio

MIKE DeWINE  
The Attorney General of Ohio



MATTHEW J. LAMPKE (0067973)  
Mortgage Foreclosure Counsel  
30 East Broad Street, 15th Floor  
Columbus, Ohio 43215  
(614) 466-8569 - Telephone  
(866) 403-3979 - Facsimile  
Matthew.Lampke@OhioAttorneyGeneral.gov

Trial Counsel for Ohio

Date 12/12/2013

For the State of Oregon:

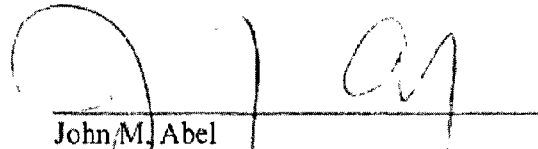


---

Simon C. Whang,  
Assistant Attorney General  
Financial Fraud/Consumer Protection Sectn.  
Oregon Department of Justice  
1515 SW Fifth Ave Ste 410  
Portland, OR 97201  
simon.c.whang@doj.state.or.us  
971-673-1880

Date 10 13 13


For the Commonwealth of Pennsylvania  
KATHLEEN G. KANE, Attorney General:

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

John M. Abel  
Senior Deputy Attorney General  
Pennsylvania Office of Attorney General  
Bureau of Consumer Protection  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
jabel@attorneygeneral.gov  
Tel: 717-783-1439  
Fax: 717-705-3795

December 13, 2013

For the State of Rhode Island:



Edmund F. Murray, Jr.

Special Assistant Attorney General

Rhode Island Department of Attorney General

150 South Main Street

Providence, Rhode Island 02903

(401) 274-4400 ext. 2401

emurray@riag.ri.gov

Date 12/13/13

For the State of South Carolina:



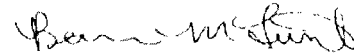
---

C. Havird Jones, Jr.  
Assistant Deputy Attorney General  
PO Box 11549  
Columbia, SC, 29211  
SJones@scag.gov  
803-734-3654

Date: December 10, 2013

On Behalf of the State of South Dakota:

MARTY J. JACKLEY  
ATTORNEY GENERAL

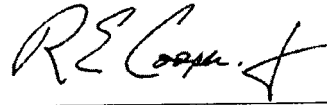


---

Bethanna M. Feist  
South Dakota Attorney General's Office  
1302 E. Highway 14, Suite 1  
Pierre, SD 57501-8501  
Telephone: (605) 773-3215  
Facsimile: (605) 773-4106  
Email: [Bethanna.Feist@state.sd.us](mailto:Bethanna.Feist@state.sd.us)

Date: 2/13/13

For the State of Tennessee:

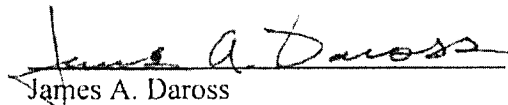
A handwritten signature in black ink, appearing to read "R E Cooper, Jr.", written over a horizontal line.

Robert E. Cooper, Jr.  
Attorney General and Reporter  
Office of the Tennessee Attorney General  
425 Fifth Avenue North  
Nashville, Tennessee 37243-3400  
bob.cooper@ag.tn.gov  
(615) 741-3491  
DC Bar No. 393721 (inactive)



Date December 13, 2013

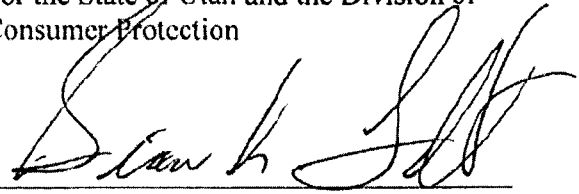
For the State of Texas:

A handwritten signature in black ink, appearing to read "James A. Daross", is written over a horizontal line.

James A. Daross  
Regional Managing Attorney  
Consumer Protection Division  
Office of the Attorney General of Texas  
401 E. Franklin Ave., Suite 530  
El Paso, Texas 79901  
[james.daross@texasattorneygeneral.gov](mailto:james.daross@texasattorneygeneral.gov)  
915-834-5801 (Direct)  
915-834-5800 (Main)  
915-542-1546 (FAX)  
Texas Bar No. 05391500

Date December 16, 2013


For the State of Utah and the Division of  
Consumer Protection

A handwritten signature in black ink, appearing to read "Brian L. Tarbet", written over a horizontal line.

Brian L. Tarbet  
Utah Attorney General (Acting)  
350 North State Street, Suite 230  
Salt Lake City, Utah 84114  
[btarbet@utah.gov](mailto:btarbet@utah.gov)  
(801) 538-1191

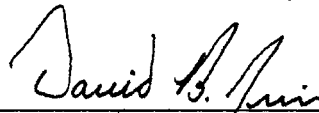
Date 12/12/13

For the State of Vermont:

  
\_\_\_\_\_  
Elliot Burg  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
eburg@atg.state.vt.us  
(802) 828-2153

Date December 12, 2013

For the COMMONWEALTH of VIRGINIA,  
*EX REL.* KENNETH T. CUCCINELLI, II,  
ATTORNEY GENERAL:

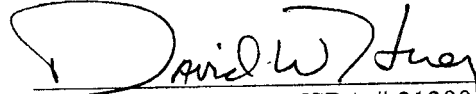


---

DAVID B. IRVIN (VSB #23927)  
Senior Assistant Attorney General  
MARK S. KUBIAK (VSB #73119)  
Assistant Attorney General  
Office of Virginia Attorney General  
900 East Main Street  
Richmond, Virginia 23219  
Telephone: 804-786-4047

Date 12/10/2013

STATE OF WASHINGTON  
ROBERT W. FERGUSON  
ATTORNEY GENERAL

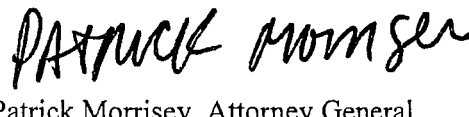


DAVID W. HUEY, WSBA # 31380

Senior Counsel  
1250 Pacific Avenue, Suite 105  
PO Box 2317  
Tacoma, WA 98401-2317  
DavidH3@atg.wa.gov  
(253)593-5057

Date 12/13/2013

For the State of West Virginia

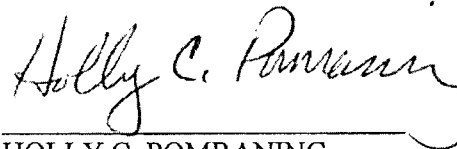
A handwritten signature in black ink that reads "PATRICK MORRISSEY". The signature is written in a cursive style with some capital letters.

Patrick Morrissey, Attorney General  
State Capitol Bldg. 1, Room 26-E  
Charleston, WV 25305-0220  
Patrick.J.Morrissey@wvago.gov  
304-558-2021

Date 12-11-13

For the State of Wisconsin:

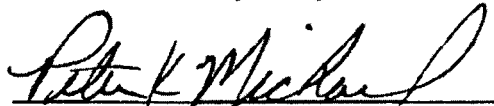
J.B. VAN HOLLEN  
Attorney General

A handwritten signature in cursive script that reads "Holly C. Pomraning". The signature is written in black ink and is positioned above a horizontal line.

HOLLY C. POMRANING  
Assistant Attorney General  
Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
Email: pomraninghc@doj.state.wi.us  
Tel: 608-266-5410

Date 12/10/13

For the State of Wyoming:

A handwritten signature in cursive script, reading "Peter K. Michael", written over a horizontal line.

Peter K. Michael

Attorney General

123 Capitol Building

Cheyenne, WY 82002

Peter.michael@wyo.gov

(307) 777-7841

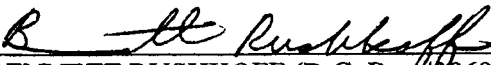



Dated: December 11, 2013

Respectfully submitted,

IRVIN B. NATHAN  
Attorney General for the District of Columbia

ELLEN A. EFROS  
Deputy Attorney General  
Public Interest Division

  
BENNETT RUSHKOFF (D.C. Bar #986925)  
Chief, Public Advocacy Section

  
GARY M. TAN (D.C. Bar # 987796)  
Assistant Attorney General  
Office of the Attorney General  
441 4<sup>th</sup> Street, N.W., Suite 600 South  
Washington, DC 20001  
Telephone: (202) 727-6241  
Email: Gary.Tan@dc.gov

Attorneys for the District of Columbia

Date 12-16-13

Ocwen Financial Corporation and Ocwen  
Loan Servicing, LLC

By: 

Timothy M. Hayes  
Executive Vice President and General  
Counsel  
2002 Summit Blvd Fl 6  
Atlanta, Ga 30319-1560

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2011 SEP -8 A 10:22

In re MERCHANT PROCESSING )  
SOLUTIONS, LLC, d/b/a )  
PAYMENT SYSTEMS and )  
PAYMENT SYSTEMS CORP. )  
AGENCY, LLC )

FILED  
CIVIL DIVISION  
Docket No. \_\_\_\_\_

ASSURANCE OF DISCONTINUANCE

INTRODUCTION

1. Merchant Processing Solutions, LLC, d/b/a Payment Systems and Payment Systems Corp. ("Payment Systems"), is a California limited liability corporation with offices located at 515 South Flower Street, Suite 1200, Los Angeles, California 90071.

2. Payment Systems made telephone calls to some of its prospective business-clients in Vermont to schedule in-person sales presentations of credit and debit card processing services and related leases of processing equipment.

3. Sales representatives of Payment Systems visited the prospective businesses, made face-to-face sales presentations and negotiated merchant processing agreements and equipment leases at the business locations.

4. Businesses that entered into processing agreements and equipment leases were subject to a number of possible fees for leased equipment and payment processing, including fees for documentation, monthly statement, use of wireless connections, inactivity, security standards compliance and federal regulatory reporting.

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GENERAL  
109 State Street  
Montpelier, VT  
05609

5. Under the written terms of merchant processing agreements negotiated by Payment Systems and signed by its clients, the Vermont businesses have paid a 2.79 percent surcharge of the amount of each credit card charge, above the normal 1.00 percent rate, where the transaction is “non-qualified”—for example, when rewards-type credit cards are used.

6. In addition, the merchant processing agreements and equipment leases include accelerated payment provisions or early termination fees.

7. Since 2010, Payment Systems has negotiated merchant processing agreements and related equipment leases with 20 Vermont businesses (three of them with two separate locations each).

8. According to Payment Systems, since 2010, these businesses together have paid, under their merchant processing agreements at least \$114,670.90 more than the total of the 1 percent basic processing fee for credit cards.

9. A Payment Systems telemarketing script that may have been used to set up at least some of the sales appointments with Vermont businesses contained a number of statements concerning the advantages of obtaining credit card processing and equipment through Payment Systems, including statements to the effect that:

a. The businesses would save money (\$500, or as much as 35 percent) on their processing fees;

b. The businesses would receive processing rates similar to companies like Home Depot, Wal-Mart, and Starbucks;

c. Payment Systems’ clients included well-known companies like Pizza Hut, Shell, Home Depot; and

d. "For today only," businesses could have their processing, set-up, and application fees waived.

10. In fact:

a. The claimed savings hinged in large part on whether the businesses accepted or declined "non-qualified" credit card transactions;

b. The large corporations referred to as Payment Systems' clients were clients of First Data Merchant Services Corporation, whose services Payment Systems sold as an independent sales organization; and

c. The fee waivers offered "[f]or today only" were always applied.

11. The Vermont Consumer Protection Act ("CPA") requires any person who makes an "offer for sale or lease, of goods or services ... personally solicited or consummated" at the prospective customer's place of business, or "solicited or consummated in whole or in part by telephone," 9 V.S.A. §§ 2451a(d) and 2451a(d)(7), to disclose and provide a three-business-day right to cancel, orally, and when any contract is signed, in writing in a prescribed manner. 9 V.S.A. § 2454 and Vermont Consumer Protection Rule (CP) 113, <http://www.atg.state.vt.us/assets/files/CP%20113.pdf>.

12. Payment Systems did not disclose a right to cancel in its initial calls to Vermont businesses or in its merchant processing agreements.

13. Vermont law requires telephone solicitors to register with the Vermont Secretary of State; failure to register is a violation of the CPA, 9 V.S.A. §§ 2464b, 2464a(c).

14. For purposes of this registration requirement, a telephone solicitation is a "solicitation by telephone of a customer for the purpose of encouraging the customer ... to purchase, lease or otherwise agree to pay consideration for ... goods or services." 9 V.S.A. § 2464a(a)(6)(A).

15. Payment Systems did not register with the Vermont Secretary of State.

16. Vermont Consumer Protection Rule (CP) 109.02 provides:

It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a) for any person to represent that any other person is a "winner" or has been "selected" or is otherwise being included in a select group for receipt of a prize or an opportunity or that a person is entering a "contest," "sweepstakes," "drawing," or other competitive enterprise from which a winner or select group of winners will receive a prize or opportunity when, in fact, the enterprise is a promotional scheme designed to make contact with prospective customers and all or a substantial number of those "entering" receive the same "prize" or "opportunity."

<http://www.atg.state.vt.us/assets/files/CP%20109.pdf> (italics added).

17. The Vermont Attorney General alleges that Payment Systems violated the CPA, 9 V.S.A. § 2453(a), by using deceptive representations in its telemarketing of Vermont businesses, failing to provide proper notice of the three-day right to cancel, failing to register as a telephone solicitor with the Secretary of State, and representing that Vermont businesses had been specially selected to have fees waived when in fact the representation was promotional in nature and all of those contacted received the same waiver.

18. The estimated financial exposure to Payment Systems related to equipment lease terminations is approximately \$135,000.

19. Payment Systems denies any liability and denies that it violated Vermont law.

20. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under 9 V.S.A. § 2459.

### INJUNCTIVE RELIEF

21. Payment Systems 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 and its requirements relating to the three-day right to cancel, and CP 109.02's prohibition on representations of special selection.

22. Payment Systems shall not make any savings claims to Vermont consumers (including businesses) unless those are calculated with reference to the fees to be charged for all credit cards, and not just "qualified" credit cards.

23. In communications with Vermont businesses, Payment Systems shall not refer to other companies as its clients unless those companies actually have a direct client relationship with Payment Systems.

24. Payment Systems shall also register with the Vermont Secretary of State before making telephone calls of a commercial nature to any person in the State of Vermont.

### PAYMENTS TO VERMONT BUSINESSES

25. No later than October 1, 2014, Payment Systems shall deliver via overnight delivery, valid checks payable to each business in the State of Vermont that paid any money to Payment Systems, such check to be in the amount of all monies paid by the business in excess of the total of (a) all processing fees in excess of 1 (one) percent on credit card charges to date, and (b) the contracted-for basic monthly equipment lease fees through the last month in which the business used the equipment or paid the fee. Each such check shall include the amount of any termination fees paid by the business, if any, under a merchant processing agreement or equipment lease.

26. Within 10 (ten) days of delivering such checks, Payment Systems shall provide the Vermont Attorney General with proof of delivery for each business, as well as the amount of the check provided.

27. The total of all of the checks described in paragraph 25, above, is estimated to be at least \$114,670.90. If the amount is lower than that, then the payment to the State of Vermont under paragraph 30, below, shall be increased by the difference between that amount and the actual amount paid.

28. Payment Systems may require the provision of a reasonable release of claims as a precondition to the payment under paragraph 25, above, provided that the release form has been approved in advance by the Vermont Attorney General's Office. Negotiation of a provided check by a business may serve as execution of the release.

29. Payment Systems shall provide a cover letter from it to each business which shall accompany each check. The form of such letter shall be substantially similar to the form of letter attached hereto as Exhibit 1.

30. No later than January 2, 2015, Payment Systems shall pay to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, by bank or cashier's check payable to the Vermont State Treasurer, or by electronic money transfer to a State-designated account, in the total dollar amount of all checks described in paragraph 25, above, that were returned as undeliverable as of said date, to be treated as unclaimed property under state law. Payment Systems shall also provide to the State an electronic Excel file containing the names of the businesses whose checks were returned or went undeposited and uncashed, and for each such business, the address, telephone number, and dollar amount of the check. Payment Systems shall also stop payment on all checks



described in paragraph 25, above, that were returned as undeliverable or that went undeposited and uncashed as of said date.

31. Until November 1, 2014, any Vermont business that has entered into a merchant processing agreement and/or equipment lease with, or through negotiation with, Payment Systems (including leases with Global Leasing Company and leases subsequently sold to a third party) shall be entitled to renegotiate or terminate said agreement and lease without any termination fee or other penalty by so notifying Payment Systems in writing, by letter to Payment Systems, Legal Department, 515 South Flower Street, Suite 1200, Los Angeles, California 90071, or by email to Legal@paymentsystemscorp.com. Payment Systems shall take all necessary steps to ensure this renegotiation or termination right, and shall hold the renegotiating or terminating Vermont business harmless from any claim by a third party arising from or relating to a termination of a merchant processing agreement and/or equipment lease with, or through negotiation with, Payment Systems, and shall reimburse the cost to the Vermont business of defending against such a claim. In the event that the State of Vermont takes legal action to protect a Vermont business from such a claim by a third party, Payment Systems shall cooperate with the State in that enforcement effort.

32. In addition to the reimbursement provided for in paragraph 25, above, no later than December 1, 2014, Payment Systems shall reimburse any Vermont business that has entered into a merchant processing agreement and/or equipment lease with, or through negotiation with, Payment Systems and which, on or before November 1, 2014, terminates or renegotiates such agreement or lease, an amount equal to the total paid by the business in the month of October 2014 that exceeded: (a) processing fees of 1 (one) percent for all credit and non-PIN debit (including AMEX and Discover) card charges, and 0 (zero)

percent for all PIN debit card charges, and (b) the basic monthly equipment fee provided for in the lease. Payment Systems shall take all steps necessary to ensure that no action is taken by any third party to collect any amount in excess of said charges and fees for the month of October 2014. Effective November 2, 2014, Payment Systems may charge, on a going-forward basis, any Vermont business that has not terminated or renegotiated, prior to that date, its merchant processing agreement and/or equipment lease all fees provided for in the non-terminated agreement/equipment lease.

#### **PAYMENT TO THE STATE**

33. Payment Systems shall pay to the State of Vermont the sum of \$100,000.00 (one hundred thousand dollars) by bank or cashier's checks sent to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, or by electronic money transfers to a State-designated account, in ten equal installments of \$10,000.00 (ten thousand dollars) each no later than the 15<sup>th</sup> day of each successive month starting September 15, 2014, and ending June 15, 2015. Payment Systems shall further provide to the Vermont Attorney General's Office a letter of credit sufficient to secure these payments in full and in a form acceptable to that Office no later than September 15, 2014.

#### **OTHER PROVISIONS**

34. This Assurance of Discontinuance represents a full and final settlement of any and all claims by the State of Vermont or any of its subdivisions or agencies that relate to the subject matter of this Assurance of Discontinuance.

35. This Assurance of Discontinuance 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.

36. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 9/9/14

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

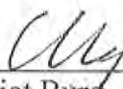
By:   
Elliot Burg  
Assistant Attorney General

Dated \_\_\_\_\_

MERCHANT PROCESSING SOLUTIONS, LLC,  
d/b/a PAYMENT SYSTEMS and PAYMENT  
SYSTEMS CORP.

By: \_\_\_\_\_  
Its Authorized Agent

APPROVED AS TO FORM:

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

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

\_\_\_\_\_  
Michael A. Thurman, Esq.  
Thurman Legal  
1055 E. Colorado Blvd., 5th Floor  
Pasadena, CA 91106  
For Merchant Processing Solutions, LLC,  
d/b/a Payment Systems and Payment Systems Corp.

36. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 7/2/13

STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: [Signature]  
Elliot Burg  
Assistant Attorney General

Dated 9/4/14

MERCHANT PROCESSING SOLUTIONS, LLC,  
d/b/a PAYMENT SYSTEMS and PAYMENT  
SYSTEMS CORP.

By: [Signature]  
Its Authorized Agent

APPROVED AS TO FORM:

[Signature]  
Elliot Burg  
Senior Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
For the State of Vermont

Office of the  
ATTORNEY  
GENERAL,  
State Street  
Montpelier, VT  
05602

[Signature]  
Michael A. Thurman, Esq.  
Thurman Legal  
1055 E. Colorado Blvd., 5th Floor  
Pasadena, CA 91106  
For Merchant Processing Solutions, LLC,  
d/b/a Payment Systems and Payment Systems Corp.

Exhibit 1

IMPORTANT INFORMATION ABOUT YOUR MERCHANT PROCESSING ACCOUNT. PLEASE READ CAREFULLY AND COMPLETELY.

Dear \_\_\_\_\_:

It is with our apologies that we write to you.

Recently, we were contacted by the Vermont Attorney General's office about complaints that some of our Vermont customers made regarding our company. Based on these complaints, the Vermont Attorney General's office conducted an investigation with our cooperation. As a result of this investigation, we have entered into an Assurance of Discontinuance with the Vermont Attorney General, the purpose of which is to ensure that our Vermont customers have a complete understanding of their agreements and fees related to processing and equipment leases, and to compensate you for any possible past misunderstandings.

*Check:* As part of the agreement, we are enclosing a check in the amount of \_\_\_\_\_, to reimburse you for the total of (1) any amounts you paid for credit card processing above 1%, and (2) any equipment lease fees you paid in excess of the amount of your regular monthly lease charge (including any lease termination fees). **This check will expire and be cancelled if you do not negotiate it by January 1, 2015.**

*Release:* By cashing this check, you are releasing Payment Systems and its employees, officers, directors, owners, shareholders, members, agents, representatives, successors and assigns from all claims, known and unknown, that you have or had arising from or relating to the processing and equipment lease agreements that you have with or acquired through Payment Systems, as well any marketing or sales presentations that preceded such agreements.

*Termination or Modification of Agreements:* Under our agreement with the Vermont Attorney General, you have the right to terminate your processing and equipment lease agreements without penalty by simply informing us in writing **no later than November 1, 2014**, that you wish to terminate. You can do this by writing to Payment Systems, Legal Department, 515 S. Flower St., Suite 1200, Los Angeles, CA 90071, or by emailing us at [Legal@paymentsystemscorp.com](mailto:Legal@paymentsystemscorp.com).

Alternatively, as a valued customer, and based on our desire to maintain your business, we would like to offer you a modified processing and equipment lease agreement. We are offering you a 50% reduction on your monthly equipment lease payment for the remainder of your lease term and a reduction on your downgrade surcharge for *non-qualified credit and debit card transactions* from 2.79% to 0.79%. Non-qualified credit cards include primarily rewards-type cards.

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*Note that this downgrade surcharge is charged on top of the ordinary 1.0% applicable to all credit card and signature-based debit card transactions (your rate for PIN-based debit card transactions would remain at 0%).*

By November 1, 2014, please let us know whether you intend to terminate your processing and/or lease agreement or if you want to maintain our relationship under the terms of the modified agreements we have enclosed. If you decide to terminate your lease agreement, you must immediately return the leased equipment, as required by the terms of the lease agreement. Please know that if you take no action on or before November 1, 2014, the terms of the existing processing agreement and equipment lease will remain in full force and effect.

*Inquiries:* Should you have any questions about any of this, please feel free to contact us at Payment Systems, c/o Legal Department, 515 South Flower Street, Suite 1200, Los Angeles, California 90071, or by email to [Legal@paymentsystemscorp.com](mailto:Legal@paymentsystemscorp.com), or you may contact the Vermont Attorney General's Office, c/o Elliot Burg, at (802) 828-5507.

Thank you for your prompt attention to this matter.

Sincerely.

**STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT**

|                               |   |                  |
|-------------------------------|---|------------------|
| IN RE. REKNEW ENERGY SYSTEMS, | ) | CIVIL DIVISION   |
| INC. and BRETT TOFEL          | ) | Docket No. _____ |
|                               | ) |                  |

**ASSURANCE OF DISCONTINUANCE**

Vermont Attorney General William H. Sorrell (“the Attorney General,”) ReKnew Energy Systems, Inc., and Brett Tofel (“Respondents”) 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 ReKnew Energy Systems, Inc. (“ReKnew”) was, at all relevant times, a Vermont corporation with its principal place of business located at 8 Christian Street, White River Junction, Vermont 05001 ReKnew was a Vermont-based solar energy company that worked with Vermont, New Hampshire, and Massachusetts customers to provide custom-designed solar electric and hot water systems (“systems”) since 2006

3 Respondent Brett Tofel was, at all relevant times, the founder, president, treasurer, and sole director of ReKnew He was ReKnew’s registered agent, and his address is 94 Downer Forest Road, South Strafford, Vermont 05070

4 ReKnew’s website, [www.reknewenergy.com](http://www.reknewenergy.com), which was active in April of 2013 but is no longer available, described its business and capabilities.

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With a renewable energy system, you can lower your energy bills or even achieve energy independence. ReKnew can design and install reliable systems to provide for all, or part, of your home's electricity needs through solar photovoltaics. We can help you provide for your home's hot water needs through solar thermal

ReKnew employs skilled engineers, electricians, plumbers and others trained in industry-accredited courses. We provide energy systems that will last the better part of a lifetime.

The website also stated under "History" that ReKnew was "one of the region's leading design and installation companies for solar electricity and hot water," and that:

In 2008 the company launched a commercial installation division. That year they did their first commercial installation at the Marion Cross Elementary School in Norwich, VT. That was followed by several other school installations over the years, including the largest installation on any Vermont school at Camel's Hump Middle School. ReKnew has built many landmark projects in the region, including the largest solar hot water installations in Vermont (2010) and New Hampshire (2011), and Vermont's first Feed-in-tariff non-profit project.

ReKnew has since moved headquarters to White River Junction, Vermont. As of today, they have completed over 200 residential installations. ReKnew Energy employs 15 people, in various capacities, and is expecting to continue its 6th year of growth. ReKnew has completed over 1,000,000 Watts of installed commercial project capacity (visit [www.ReKnewCommercial.com](http://www.ReKnewCommercial.com)).

5 Each residential system cost approximately \$15,000-\$25,000. Typically, Respondents and a potential customer discussed the design of the system and agreed upon the price. They then entered into a contract, including a payment schedule whereby the total project cost was divided into thirds. The customer paid Respondents one-third of the price when the parties signed the contract, at which time Respondents ordered the materials to build the system. The second payment was due once construction had begun, and the final payment was due when the project was complete.

6 The Attorney General's Consumer Assistance Program ("CAP") received five complaints from James Pascoe, Lawrence Houston, Kevin Brochu, Doyle Davis, and Joseph



Stacey about Respondents' failure to order materials, to perform work toward the construction of systems pursuant to their contracts, and to return their deposits.

7 James Pascoe signed a contract with Respondents in January of 2012. He paid his first deposit at that time.

8 Respondents promised to install Mr Pascoe's solar panels as soon as possible.

9 By May 31, 2012, Mr Pascoe had paid over \$12,000.00 without hearing back from Respondents about the scheduling or installation of his system.

10 Respondents completed installation on June 28, 2012, approximately five months after the parties signed the contract.

11 Lawrence Houston signed a contract with Respondents in April of 2012 for the installation of solar panels on his house and paid \$10,917 00 over two installments.

12 On May 22, 2012, Respondents promised installation would begin in early June of 2012.

13 Approximately four months passed from the time Mr Houston made his initial payment and the time of installation.

14 Kevin Brochu contracted with Respondents for a solar hot water system and paid a deposit of \$7,600.00 in March of 2012.

15 Mr Brochu made repeated demands for Respondents to return his deposit after they failed to begin installation.

16 In June of 2012, Respondents promised to return Mr Brochu's deposit.

17 During March of 2013, Respondents informed Mr Brochu that they had sold some of the business's trucks and would be filing for bankruptcy

18. As of March 26, 2013, Respondents had returned approximately \$2,250.00 of Mr Brochu's \$7,600.00 deposit.

19 On April 25, 2013, Mr Brochu and Mr Tofel signed a promissory note (Attachment A), whereby Mr Tofel agreed to repay Mr Brochu \$5,408 by making minimum monthly payments of \$230, with interest of \$50 accruing every six months.

20 Mr Tofel made one payment of \$230 to Mr Brochu shortly after the parties signed the promissory note, and another payment at the end of July of 2013, for total payments of \$460 pursuant to the promissory note.

21 Mr Tofel currently owes Mr Brochu \$4,948, not including interest.

22 On August 20, 2013, Mr Tofel emailed Mr Brochu to inform him that he was in the process of filing for Chapter 7 bankruptcy, that Mr Brochu would receive notice as a creditor, and that Mr Tofel had hired an attorney for the bankruptcy proceeding.

23 Approximately 23 months have passed since Respondents accepted Mr. Brochu's deposit.

24 Doyle Davis signed a contract with Respondents on May 11, 2012, and paid Respondents \$7,887.00 as the first of three equal installments.

25 Mr Davis made repeated demands for Respondents to return his deposit.

26 On June 21, 2012, Mr Tofel made promises to return Mr Davis's deposit.

27 On November 20, 2012, Mr Tofel admitted to Mr Davis that ReKnew was "headed towards dissolution."

28 Respondents repaid Mr Davis's deposit on April 11, 2013, approximately 11 months after signing the contract.

29 Joseph Stacey signed a contract with ReKnew in May of 2012 for a solar panel system and paid two-thirds of the contract price by August of 2012, for a total deposit of \$14,762.00.

30 Mr Stacey and Respondents agreed that the system would be installed within six weeks after he paid the second installment of the contract price.

31 Respondents fulfilled the contract with Mr Stacey at the end of February of 2013, approximately six months Respondents promised to complete the installation.

32 Respondents assert that all residential jobs were either completed or the deposits were returned to those customers, except for Mr Brochu, to whom Respondents still owe money

33 Respondents admit the truth of all facts set forth in the Background section.

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

#### **INJUNCTIVE RELIEF**

35 Mr Tofel, for a period of ten (10) years from the date of this Assurance of Discontinuance, shall notify the Vermont Attorney General if he obtains any ownership or managerial interest in a business that engages in activities similar to those described in Paragraphs 2 and 4, the notification shall include the name, telephone number, website, and address of the business, as well as Mr Tofel's residential address, email address, and telephone number

36 Respondents, for a period of ten (10) years from the date of this Assurance of Discontinuance, shall provide the following information regarding each future customer for whom they provide any custom-designed solar electric and hot water systems installations or

other home improvement work or services involving the advance collection of money name, address, email address, phone number, and a copy of each customer's contract.

37 Respondents, for a period of seven (7) years from the date of this Assurance of Discontinuance, are hereby required to obtain a performance bond in an amount covering the outstanding contract with each future customer before engaging or participating in any custom-designed solar electric and hot water systems installations or other home improvement work or services involving the advance collection of money The performance bond shall not be released except upon approval from the Attorney General's Office.

38. Respondents shall comply with all applicable provisions of Vermont law, including, but not limited to, the Vermont Consumer Protection Act, 9 V.S.A. chapter 63, in connection with all solicitations and agreements to perform home improvement work, including installation of custom-designed solar electric and hot water systems.

#### OTHER TERMS

39 Respondents agree that this Assurance of Discontinuance shall be binding on Respondents and their successors and assigns as long as Mr Tofel is involved in the business in any way

40 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 in the Background section between the dates of January 1, 2011, and April 25, 2013

41 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.

#### **STIPULATED PENALTIES**

42. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance, 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

#### **NOTICE**

43 Respondent Brett Tofel may be located at 94 Downer Forest Road, South Strafford, Vermont 05070, and by cell phone at (802) 371-7183

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

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109 State Street  
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05609

**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 10:40AM, this 20th day of March, 2014.



\_\_\_\_\_  
Brett Tofel, Individually



\_\_\_\_\_  
Brett Tofel, As a duly authorized agent  
of ReKnew Energy Systems, Inc.

ACCEPTED on behalf of the Attorney General.

DATED at Montpelier, Vermont this 24<sup>th</sup> day of March, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By Elizabeth J Hall  
Elizabeth J Hall

Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
ehall@atg.state.vt.us  
802-828-3189

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

ATTACHMENT A

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

**PROMISSORY NOTE**

Date: April 9, 2013

Amount: \$5,408

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged (payments by Brochu of \$3,624 and \$4,034, less, repayments of \$1,500 and \$750), I, Brett Tofel ("Payor") for myself individually promise to pay to Kevin Brochu ("Payee"), at 76 Slate Barn Dr Williston, VT 05495, or at such other place as Payee may designate, the sum of \$5,408. In any given month, a minimum of \$ 230 shall be paid in payments of no more than one payment per month in the amount of no less than \$ 230 per payment. There is no penalty for making additional payments. Interest of \$50 shall accrue every 6 months, interest shall be repaid by Payee if debt is paid in full in 1 year or less. Payor shall, if possible, endeavor to pay this note, in full, sooner than would be reached by the monthly payment amounts.

This debt shall not be assigned.

If the payor fails to make payments as provided, then payee shall provide written notice to Payor who shall have ten (10) days from the date of such notice to cure the default.

Payments hereunder shall continue until the total principal amount is paid.

The obligation to pay money hereunder shall be secured by this promissory note.

This promissory note is payable in lawful money of the United States of America. Payee will endeavor to pay by ACH if such payment method is not unreasonably expensive.

(Payor)

[Signature] 4/25/2013

(Payee)

[Signature] 4/20/2013



STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 SEP - 8 A 10: 22

SEI/AARON'S, INC. )

CIVIL DIVISION

Docket No. \_\_\_\_\_

ASSURANCE OF DISCONTINUANCE

INTRODUCTION

1. SEI/Aaron's, Inc., is a Georgia corporation with offices located at 3108 Piedmont Road, Suite 202, Atlanta, Georgia 30305.
2. SEI/Aaron's is a franchise of Aaron's, Inc., a national leasing company.
3. SEI/Aaron's operates five Aaron's stores in Vermont—located in Barre, Brattleboro, Burlington, Rutland, and St. Albans—which offer residential furniture, home appliances, and consumer electronics, including laptop computers.
4. Between approximately October 2010 and February 2012, SEI/Aaron's installed a software program called P.C. Rental Agent, purchased from Designerware, on many of the laptop computers that it leased to Vermont consumers.
5. During that same time period, SEI/Aaron's asked Designerware to activate, remotely, Detective Mode on a number of these laptop computers, which could log key strokes and generate screen captures of websites visited on the computer.
6. The main purpose of Detective Mode was to allow SEI/Aaron's to recover laptop computers that were reported lost or stolen.
7. SEI/Aaron's arranged to have Detective Mode activated on at least three consumers' laptop computers in connection with which it cannot document that the activation resulted from a reported loss or theft of the device, but payments were overdue.

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05609

8. The Attorney General alleges that SEI/Aaron's also used Detective Mode as an aid to collecting overdue payments on laptop computers.

9. The Attorney General alleges that the use of a software program like Detective Mode to facilitate debt collection is an unfair trade practice under the Vermont Consumer Protection Act ("CPA"), 9 V.S.A. § 2453(a).

10. SEI/Aaron's denies that it violated Vermont law but wishes to enter into this Assurance of Discontinuance in settlement of the Attorney General's allegations.

11. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under the CPA, 9 V.S.A. § 2459.

#### **INJUNCTIVE RELIEF**

12. SEI/Aaron's shall comply strictly with all provisions of Vermont law, including the CPA and regulations enacted thereunder.

13. Specifically, SEI/Aaron's shall not use, in response to delinquent payments or in connection with debt collection, any software that tracks, captures, monitors or records keystrokes, email, screen shots, websites visited, or any other activity on a computer that is provided to a consumer on any rental, lease, or other basis.

#### **PAYMENTS TO VERMONT CONSUMERS**

14. Within twenty (20) days of signing this Assurance of Discontinuance, SEI/Aaron's shall send, by first-class mail, postage prepaid, in an envelope with a return address of the Vermont Attorney General, a check in the amount of \$2,000.00 (two thousand dollars), along with a letter in the form of Exhibit 1, to each of the three Vermont consumers whom the parties hereto have identified in a separate document (for reasons of privacy), on whose SEI/Aaron's laptop computers Detective Mode was activated for a reason other than in response to a report that the computer had been lost or stolen.

15. No later than ten (10) days after completion of the mailing described in paragraph 14, above, SEI/Aaron's shall provide to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, a list containing the name, address and telephone number of each of the consumers to whom letters and checks were sent.

16. No later than ninety (90) days after completion of the mailing described in paragraph 14, above, SEI/Aaron's shall provide to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, a check payable to "Vermont State Treasurer" in the total dollar amount of all checks described in said paragraph 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. SEI/Aaron's shall also provide to the Vermont Attorney General's Office a list of the consumers whose checks were returned or went undeposited and uncashed.

#### PAYMENT TO THE STATE

17. Within twenty (20) days of signing this Assurance of Discontinuance, SEI/Aaron's shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, the sum of \$45,000.00 (forty-five thousand dollars) as civil penalties and costs in this matter.

#### OTHER PROVISIONS


18. This Assurance of Discontinuance represents a full and final settlement of any and all claims by the State of Vermont that relate to the subject matter of this Assurance of Discontinuance.

19. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 8/19/19

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL


by:   
Elliot Burg  
Assistant Attorney General


Dated 8/26/19

SEI/AARON'S, INC.

By:   
Its Authorized Agent

APPROVED AS TO FORM:

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

  
William P. Eiselstein, Esq.  
Miller & Martin PLLC  
1180 West Peachtree Street, NW, Suite 2100  
Atlanta, GA 30309  
For SEI/Aaron's, Inc.

Office of the  
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GENERAL  
109 State Street  
Montpelier, VT  
05609

Exhibit 1

Dear \_\_\_\_\_:

SEI/Aaron's recently entered into a legal settlement with the Vermont Attorney General's Office based on the Attorney General's allegation that we activated software on the computer you leased from us that could monitor your activity on that computer. As a result of the settlement, I am enclosing a check in the amount of \$2,000.00 to compensate you for any infringement of your right to privacy that may have occurred. You may cash or deposit this check without any obligation.

You should ask for advice from the Internal Revenue Service or a tax professional as to whether this amount is taxable income to you.

If you have any questions, you may contact the Attorney General's Office at (802) 828-5507.

Sincerely,

SEI/Aaron's

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



STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

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2014 JUL -9 A 9:50

IN RE: SHELBURNE COUNTRY STORE )  
WEBSITE ) CIVIL DIVISION  
) Docket No. 425-7-14670 CV  
)

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell (“the Attorney General”) and  
Mayfield, Inc. d/b/a Shelburne Country Store (“Respondent” or “Shelburne Country Store”)  
hereby agree to this Assurance of Discontinuance (“Assurance”) pursuant to 9 V.S.A.  
§ 2459.

**BACKGROUND**

1. Respondent Mayfield, Inc. d/b/a Shelburne Country Store is a corporation  
incorporated under the laws of Vermont, with its principal place of business in Shelburne,  
Vermont. Shelburne Country Store is both a retail outlet and a website that sells gifts,  
housewares, and edibles, among other items.

2. On or about November 13, 2013, the Shelburne Country Store website suffered a  
data security breach (“the breach”) in which the coding of the website was compromised and  
credit card information was diverted to unknown individuals. Shelburne Country Store’s  
retail outlet was not affected by the security breach.

3. On January 9, 2014, Respondent was informed of the breach by a non-law  
enforcement third-party who had discovered the breach during an unrelated investigation.

4. Within two days of receiving this information, Respondent repaired the breach on  
January 11, 2014.

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5. Between November 13, 2013 and January 11, 2014, the Shelburne Country Store website processed 770 credit card payments made by 721 individual customers (“affected consumers”).

6. On March 18, 2014, the Vermont Attorney General’s Office became aware of the breach and contacted the Shelburne Country Store.

7. Prior to being contacted by the Vermont Attorney General’s Office (the “Office”), Shelburne Country store made no efforts to notify affected consumers of the data breach, to notify the Vermont Attorney General of the data breach, or to notify any law enforcement agency.

8. After being contacted by the Office, Shelburne Country Store (“SCS”) sent notice to affected consumers on March 19, 2014. In such notice, SCS voluntarily offered each consumer a complimentary one year subscription to All-Clear ID, an Identity Protection Service.

9. The Vermont Attorney General alleges that, absent its intervention, Respondent did not plan to notify anyone of the data breach.

10. Failure to provide Preliminary Notice to the Attorney General of a Security Breach for more than 14 days is a violation of the Security Breach Notification Act. 9 V.S.A. § 2435(b)(3)(A)(i).

11. Failure to notify consumers of a security breach in the most expedient time possible and without unreasonable delay, but not later than 45 days after discovery or notification of the breach, is a violation of the Security Breach Notification Act. 9 V.S.A. § 2435(b)(1).

12. Although Shelburne Country Store did have password protection, its data was encrypted and it did not store credit card data. Because it did not have systems in place to



monitor unauthorized access to its website code, the code was modified and PII was diverted. After being contacted by the Office, it moved to a Hosted Platform which claims to be PCI compliant and to block access to the website code to prevent future intrusions.

## **INJUNCTIVE RELIEF**

### **Definitions**

13. "Applicable Vermont Law" shall mean Chapter 62 and Chapter 63, Sub-Chapter 1, of Title 9 of the Vermont Statutes Annotated as those chapters may from time to time be amended.

14. "Consumer" shall mean any person who has purchased merchandise from Shelburne Country Store and whose Personally Identifiable Information has been obtained and/or collected by Shelburne Country Store.

15. "Effective Date" shall mean the date on which Shelburne Country Store receives a copy of this Assurance duly executed in full by Shelburne Country Store and the Vermont Attorney General.

16. "Personally Identifiable Information" shall have the same meaning as defined in 9 V.S.A. §2430(5).

17. "Transaction" shall mean an instance in which a Consumer has purchased merchandise using a credit or debit card from Shelburne Country Store.

### **Information Security Program**

18. By no later than one hundred and twenty (120) days after the Effective Date of this Assurance, Respondent shall implement and maintain a comprehensive Information Security Program designed to maintain the security, confidentiality, and integrity, of Personally

Identifiable Information. An information Security Program that complies with either of the following standards will be considered to satisfy this requirement:

- a. the Payment Card Industry Data Security Standards (“PCI DSS”), as it shall from time to time be amended, *available at* [https://www.pcisecuritystandards.org/documents/PCI\\_DSS\\_v3.pdf](https://www.pcisecuritystandards.org/documents/PCI_DSS_v3.pdf); and
- b. the data security standards set forth in the Commonwealth of Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth, 201 CMR 17.02-04 (“Massachusetts Standards”), and any amendments thereto, *available at* <http://www.mass.gov/ocabr/docs/idtheft/201cmr1700reg.pdf>.

19. Respondent has complied with this section by moving its website to BigCommerce as a Hosting platform. BigCommerce represents that it hosts websites on Type II certified servers which are PCI compliant and has its network independently audited every three months for PCI compliance. BigCommerce further represents that individuals (including the respondent) will not have access to the website code.

20. Respondent shall have the continuing responsibility to implement and maintain a comprehensive Information Security Program that is reasonably designed to protect the security, confidentiality, and integrity of Personally Identifiable Information, as set forth therein.

#### **Legal Compliance Program**

21. Within one hundred and twenty (120) days of the Effective Date of this Assurance, Respondent shall engage in a full audit of its policies and procedures to ensure that it is complying with Applicable Vermont Law.

22. Respondent shall implement policies and procedures to ensure continued compliance with Applicable Vermont Law, including but not limited to procedures for notifying the Attorney General and Consumers in the event of a future security breach.

23. Respondent shall report any future potential security breach to the Attorney General in the most expedient time possible and in compliance with Vermont's Data Breach Notification Act.

24. This Legal Compliance Program shall include training as appropriate of all officers, managers, and employees of Shelburne Country Store of their roles and responsibilities in ensuring that Shelburne Country Store complies with this Assurance and Applicable Vermont Law.

25. All officers and managers of Shelburne Country Store shall be provided with a copy of this Assurance of Discontinuance and be required to read it as part of the Legal Compliance Program.

26. Respondent shall comply with all provisions of Applicable Vermont Law pertaining to data security.

#### **PENALTY**

27. Respondent shall pay a civil penalty of three thousand dollars (\$3,000) within ten days of the Effective Date of this Assurance. Respondent shall make payment to the "State of Vermont" and send payment to: Ryan Kriger, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

#### **ACCESS TO RECORDS**

28. To determine or secure compliance with this Assurance of Discontinuance, on reasonable notice given to Respondent, subject to any lawful privilege:

a. Duly authorized representatives of the Attorney General shall be permitted access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records relating to the subject matter of this Assurance in the possession, custody, or control of Respondent, which may have counsel present.

b. If requested, Respondent shall submit written reports, under oath if requested, with respect to any matters contained in this Assurance.

### **OTHER TERMS**

29. Shelburne Country Store agrees that this Assurance of Discontinuance shall be binding on Shelburne Country Store, its principals and officers.

30. The Attorney General hereby releases and discharges any and all claims relating to the activities described in this Assurance of Discontinuance.

31. The Superior Court of the State of Vermont, Washington Unit, shall have Jurisdiction over this Assurance and the parties hereto for the purpose of enabling 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 Assurance of Discontinuance, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

32. A future data security breach of Shelburne Country Store shall not, alone, be evidence that Respondent violated this Assurance of Discontinuance.

### **STIPULATED PENALTIES**

33. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of this Assurance of Discontinuance as it relates to the

Security Breach Notice Act, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance shall be \$5,000. For purposes of this Section VIII, the term "each act" shall mean: each violation of 9 V.S.A. §§ 2435, 2451-2480, or each day past any appropriate deadline in this Assurance or in the Security Breach Notice Act during which Shelburne Country Store fails to notify the Attorney General and Consumers of a breach.

#### NOTICE

34. Respondent may be located at:

29 Falls Rd, Shelburne, VT 05482

35. Respondent shall notify the Attorney General of any change of business name or address within 30 business days.

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

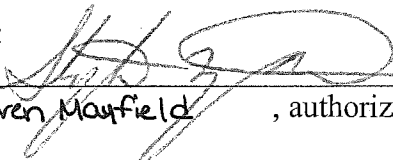
**SIGNATURE**

In lieu of instituting an action or proceeding against Shelburne Country Store, 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 Burlington, VT, this 2<sup>nd</sup> day of July, 2014.

Shelburne Country Store

By:

  
\_\_\_\_\_  
Steven Mayfield, authorized agent

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

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 8<sup>th</sup> day of July, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:



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

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

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2014 DEC -4 A 11:34

In re: SIRIUS XM RADIO INC. )

CIVIL DIVISION

Docket No. 732-12-14 Wncv

FILED

ASSURANCE OF DISCONTINUANCE

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IN THE MATTER OF:

SIRIUS XM RADIO INC.

Respondent.

: DOCKET NUMBER:  
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VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

732-12-14Wncv

2014 DEC -4 A 11: 34

FILED

**ASSURANCE OF DISCONTINUANCE**

This Assurance of Discontinuance ("Assurance") is entered into between the State of Vermont, acting through Vermont Attorney General William H. Sorrell ("State"), and Sirius XM Radio Inc., alleging that Sirius XM Radio Inc. has violated the Consumer Protection Act, 9 V.S.A §§ 2451-2466 (the "Act"). The State and SIRIUS XM have agreed to execute this Assurance for the purposes of settlement only.

**I. BACKGROUND**

The Vermont Attorney General, acting on behalf of the State of Vermont, has the authority to enforce the Act.

Sirius XM Radio Inc. is a Delaware corporation that is headquartered at 1221 Avenue of the Americas, New York, NY 10020. As used in this Assurance, "SIRIUS XM" shall have the meaning ascribed to it in the Definitions Section (Article II of this Assurance).

Including the Vermont Attorney General, the Attorneys General<sup>1</sup> of the states identified in Exhibit A and the District of Columbia (collectively the "Participating States"), conducted an investigation, pursuant to the Participating States' respective state or local Consumer Statutes,

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<sup>1</sup> The State of Georgia is represented in this matter by the Georgia Governor's Office of Consumer Protection, an agency that is not part of the Georgia Attorney General's Office but is authorized to enforce Georgia's Fair Business Practices Act ("FBPA"). For simplicity, the term "Attorneys General" shall include the Administrator of the FBPA.

rules, and regulations as set forth on Exhibit A – 1, into the acts and practices of SIRIUS XM relating to its Services, as defined below.

The Assurance is entered into without adjudication on the merits of the assertions in the Assurance.

#### **A. STATE'S POSITION**

Based upon the Participating States' investigation and review of Consumer complaints initiated in July of 2010, the Vermont Attorney General alleges that SIRIUS XM has engaged in the following misleading, unfair, and deceptive acts or practices in violation of the applicable Consumer Statutes (collectively the "State's Allegations"), set forth on Exhibit A - 1 :

1. Automatically renewed Consumers' Services without their consent or their knowledge of SIRIUS XM's automatic renewal policy;
2. Automatically charged Consumers' debit or credit cards, deducted funds from their bank accounts, or billed Consumers for the automatic renewal of Consumers' Services without the Consumers' consent or their knowledge of SIRIUS XM's automatic renewal policy;
3. Failed to honor cancellations or made it difficult for Consumers to cancel their Services;
4. Failed to provide timely refunds or refused to refund payments made by Consumers for automatic renewals done without their consent or their knowledge of the automatic renewal policy; and
5. Misrepresented that Consumers' Services would be cancelled, would not be renewed, or would be refunded.

The Participating States do not agree with the statements or positions set forth in SIRIUS XM's Position (Article I, Section B of this Assurance).

## **B. SIRIUS XM'S POSITION**

SIRIUS XM believes it has cooperated with the Participating States' investigation and denies each of the allegations asserted herein. SIRIUS XM believes that it has disclosed to Consumers the material terms and conditions of its subscription plans, including the fact that subscription plans automatically renew at the then current rates and that it properly obtains Consumers' consent to the automatic renewal of their subscription plans at the time of purchase. Moreover, SIRIUS XM contends that it strives to provide and ensure the highest level of service to its subscribers, which includes promptly responding to any issues they may have regarding the automatic renewal of their subscription plans, incorrect billing or charges, cancellations or refunds. SIRIUS XM does not admit that it has violated the Consumer Statutes and enters into this settlement for purposes of resolution of the matter only.

## **II. DEFINITIONS**

1. "Advertisement" means any written, oral or electronic statement, illustration or depiction that is designed to induce the purchase of goods or Services, whether the statement appears in or on a brochure, newspaper, magazine, free standing insert, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, program length commercial or infomercial, or any other medium. This definition applies to other forms of the word "Advertisement," including, but not limited to, "Advertise" and "Advertising."
2. "Clear and Conspicuous" and "Clearly and Conspicuously" mean that the required disclosure is in a size, color, contrast, location, duration, and audibility that makes it readily noticeable, readable, and understandable. A Clear and Conspicuous disclosure may not be contradicted by or be inconsistent with any other information with which it is presented. If any statement


modifies, explains, or clarifies other information with which it is presented, it must be presented close to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. Further, the following applies:

- A. For print Advertisements, the disclosures shall be in a type size and location sufficiently noticeable for a Consumer to read and comprehend it, and in print that contrasts with the background against which it appears;
- B. For disclosures disseminated orally, the disclosures shall be delivered in a volume and cadence sufficient for the Consumer to comprehend; and
- C. For disclosures made through an electronic medium (such as television, video, radio, and interactive media, such as the Internet, online services, and software) in which both audio and visual means of communication are utilized for any portion of the message, the disclosure shall be presented in either the audio or visual portions of the communication, as is appropriate under the circumstances. Any audio disclosure shall be delivered in a volume and cadence sufficient for a Consumer to comprehend. Any visual disclosure shall be of a size and shade and appear on the screen for a duration that is sufficient for a Consumer to read and comprehend.

- 3. "Complaint Resolution Program" shall mean the resolution program agreed upon by SIRIUS XM and the Participating States, set forth in Article VI of this Assurance.
- 4. "Consumer" means the same as defined in the State's Consumer Statute identified on Exhibit A - 1 of this Assurance. However, in the event that the State's Consumer Statute identified herein does not define the term "Consumer", then it shall have the same meaning as the term "Person" as defined in the State's Consumer Statute, or other identifying individual, as defined by the State's Consumer Statute.

5. "Consumer Statutes" mean the statutes, rules, and regulations cited on Exhibit A - 1 of this Assurance.
6. "Consumer Complaint" means a written letter or electronic communication that: (a) SIRIUS XM receives directly from a Consumer at the location on the SIRIUS XM website that SIRIUS XM will create and designate for unresolved complaints; or SIRIUS XM's senior executives receive directly from a Consumer; or SIRIUS XM receives from a local, state or federal consumer protection agency or entity; or SIRIUS XM or the State receives from an accredited Better Business Bureau (including an oral complaint that has been transcribed by a local, state or federal consumer protection agency or entity and forwarded to SIRIUS XM), or an unresolved telephonic complaint received by a SIRIUS XM officer holding the title of executive vice president or above that is reduced to writing in the ordinary course of business; and (b) describes a specified problem or dissatisfaction that can be identified by SIRIUS XM about a matter that is the subject of this Assurance; and (c) requests SIRIUS XM take action or otherwise provide a remedy. A Consumer Complaint shall not include any inquiry, feedback, or general concern or grievance on general matters. In addition, Consumer Complaints shall not include anything submitted directly or indirectly to SIRIUS XM to any general email address, via chat, comment, or statement posted on social media platforms, including platforms supported by SIRIUS XM.
7. "Customer Service Representative" means any person employed or engaged by SIRIUS XM as part of its Customer Care Operations, or similarly named department(s), who has the primary responsibility to interact with Consumers, to make specific representations to Consumers, to engage Consumers in sales, promotions, or offers, to communicate information about pricing

and Services, to enter Consumers into transactions (including contracts), or to address complaints or inquiries by Consumers.

8. "Direct Proximity" means that a term is disclosed immediately beneath, beside, or adjacent to an offer or term.
9. "Effective Date" means one hundred and forty (140) days after the Execution Date.
10. "Eligible Complaint" shall mean a Consumer Complaint: (a) from a Consumer residing in the State or who resided in the State at the time of their SIRIUS XM subscription concerning conduct from July 28, 2008 to the Execution Date, or received by SIRIUS XM or the State from a Consumer between July 28, 2008 and one hundred and fifty (150) days after the Execution Date; (b) involving issues addressed by this Assurance; (c) alleging an Identifiable Loss; and (d) that has not been previously resolved. Eligible Complaints shall not include Better Business Bureau Complaints unless the complaint was filed in writing (or transcribed into writing by the Better Business Bureau) with the Better Business Bureau by a Consumer from the State, or from those who resided in the State at the time of their SIRIUS XM subscription, between July 28, 2008 and the Execution Date and between the Execution Date and one hundred and fifty (150) days after the Execution Date ("Better Business Bureau Complaint").
11. "Execution Date" means 12/4/14 
12. "Executive Committee" shall mean authorized representatives of the Attorneys General of the States of Arizona, Connecticut, Ohio, Tennessee, Vermont and Washington D.C., who led the Participating States in the multistate investigation into SIRIUS XM.
13. "Free Trial/Promotional Subscription Plan" means a SIRIUS XM subscription plan for personal use, other than a Self-pay Subscription Plan, which allows a Consumer to subscribe to SIRIUS XM Services without the Consumer incurring a financial obligation to SIRIUS XM. The term

“Free Trial/Promotional Subscription Plan” shall not include any service credit(s) posted to the Consumer’s account, or the receipt of SIRIUS XM Services or extension of a Self-pay Subscription Plan at no charge to the Consumer as a result of the non-refundable customer service credit(s). A non-refundable customer service credit means a credit that SIRIUS XM provided to a subscriber as an accommodation for customer service purposes or other similar adjustments.

14. “Identifiable Loss” shall mean any identifiable deprivation, detriment or injury arising from any conduct addressed by this Assurance, even when the precise amount of the loss is not known. Identifiable Loss does not include consequential damages, pain and suffering damages, compensation for lost time or wages, or similar damages.
15. “Parties” means the State and SIRIUS XM.
16. “Point of Sale” means any location or transaction where a Self-pay Subscription Plan of SIRIUS XM is sold to Consumers, and in which the Consumer will incur a financial obligation to SIRIUS XM for the Self-pay Subscription Plan.
17. “Save” means the process, or the result of a process, utilized by SIRIUS XM for the purpose of retaining a Consumer who contacts SIRIUS XM to cancel or not renew a Self-pay Subscription Plan. This definition applies to other forms of the word “Save,” including, but not limited to, “Saves,” “Saved,” and “Saving.”
18. “Self-pay Subscription Plan” means any subscription plan for personal use where: (a) the Consumer incurs a financial obligation to SIRIUS XM; or (b) another individual Consumer incurs a financial obligation to SIRIUS XM on behalf of a specific Consumer (e.g., for a family member).

19. "Services" means the satellite and internet radio services that SIRIUS XM provides to Consumers. Services allow Consumers to listen to SIRIUS XM's broadcasts of music, sports, news, talk, entertainment, traffic, and weather information.
20. "SIRIUS XM" means and includes Sirius XM Radio Inc., its predecessor companies, successor companies, majority owned subsidiaries, divisions, employees, officers, directors, managers, assigns, and agents (e.g. Customer Service Representatives). SIRIUS XM does not include stockholders of SIRIUS XM or distributors of SIRIUS XM.
21. Capitalized terms used in this Assurance but not defined in this Definitions section shall have the meaning ascribed to them in the applicable section of this Assurance.

### **III. NON-ADMISSION**

22. Except as otherwise expressly provided herein, nothing contained in this Assurance shall constitute an admission or concession by SIRIUS XM, nor evidence or findings supporting any of the allegations of fact or law raised by the Participating States or asserted in this Assurance, or of any violation or applicability of any state or federal law, rule or regulation, or any other liability or wrongdoing whatsoever. Neither this Assurance, nor any negotiations, statements or documents related thereto shall be offered or received in any legal or administrative process, proceeding or action as an admission, evidence, proof of, or to establish any violation of, liability under, wrongdoing in connection with, or applicability of any statute, rule or regulation, except as expressly allowed by state law.

### **IV. APPLICATION**

23. Except as otherwise expressly provided in Article V, Section A, the provisions of this Assurance shall be limited to SIRIUS XM Self-pay Subscription Plans for personal use and shall not extend to any fleet subscription accounts with SIRIUS XM or individuals or entities receiving a Service



for the purpose of using such Service in a business establishment or any other place of public accommodation.

**V. COMPLIANCE PROVISIONS**

**A. FREE-TRIAL/PROMOTIONAL SUBSCRIPTION PLANS**

24. If SIRIUS XM offers a Free Trial/Promotional Subscription Plan that automatically renews at the end of its subscription term, SIRIUS XM shall, as set forth herein, Clearly and Conspicuously disclose this fact and comply with the Advertising Disclosures, Point of Sale Disclosures, Automatic Renewal and Saves and Cancellation requirements contained in Article V, Section B through E, of this Assurance.

**B. DISCLOSURES IN ADVERTISING**

25. In Advertising, SIRIUS XM shall Clearly and Conspicuously disclose and shall not misrepresent, expressly or by implication, any material term, condition, or obligation of SIRIUS XM's subscription plans.

26. To the extent that the State has an applicable state or local statute, rule, or regulation governing the use of the word "free," in Advertising, SIRIUS XM shall comply with such applicable statute, rule, or regulation.

27. SIRIUS XM shall, when Advertising Services in conjunction with a Self-pay Subscription Plan, Clearly and Conspicuously disclose all material terms, conditions, and obligations, including, but not limited to, if applicable, that:

- A. The Self-pay Subscription Plan will automatically renew at the end of the term for a new specified term, if applicable, at the rate applicable at the time of the renewal.
- B. The Consumer must contact SIRIUS XM by phone to cancel.

C. SIRIUS XM may elect to charge or deduct funds from the credit or debit card or financial account provided by the Consumer, or bill the Consumer for payment of the automatic renewal of the Self-pay Subscription Plan.

If an Advertisement contains a single offer that is repeated more than once or multiple offers that contain the same material limitations, then each required disclosure under this Paragraph shall Clearly and Conspicuously identify that it applies to all such offers.

In connection with any Internet, mobile, or any other electronic form of Advertisement, if third party mandatory policies, requirements, rules, or other restrictions would make the disclosure requirements of this Assurance impossible due to such third party mandatory policies, requirements, rules, or other restrictions on the parameters, format, size, and/or technical specifications, including, but not limited to, restrictions on the maximum number of characters, lines of text or graphics, or pixels, and/or file size, then such disclosures required by this Paragraph 27 shall not be construed to apply to the specific Advertisement. However, in instances where an Advertisement is of such limited space that the disclosures required by this Assurance cannot reasonably be Clearly and Conspicuously made in the Advertisement, but such disclosure would not otherwise be impossible, then such disclosure requirements including, specifically, the disclosure requirements specified in Paragraph 27, shall not be construed to apply to that specific type of disclosure or Advertisement; provided that the initial advertisement is not misleading or deceptive and all disclosures will be made prior to the Point of Sale in a manner that is not misleading or deceptive in compliance with applicable law. In any Advertisements covered by this Paragraph, the Advertisement shall also include a toll-free phone number, web site, click-through, link, pop-up or other method for the Consumer to access Clear and Conspicuous disclosures of the applicable terms and conditions.

### C. DISCLOSURES AT POINT OF SALE

28. At the Point of Sale, SIRIUS XM shall Clearly and Conspicuously disclose to the prospective Consumer the following information, if applicable to the Self-pay Subscription Plan:

- A. Initial billing frequency;
- B. Total charges for the initial billing interval, represented as either a total price or an itemization;
- C. Length of the initial term of the Self-pay Subscription Plan;
- D. The month, if available, or a statement describing when the Self-pay Subscription Plan will automatically renew;
- E. The applicable billing interval when the Self-pay Subscription Plan will automatically be charged or billed, if any (absent express modification by the Consumer or reduction of billing interval by SIRIUS XM);
- F. The Consumer may call to cancel at any time using the toll-free number provided;
- G. Any cancellation or early termination fee;
- H. The fact that the Consumer will automatically be charged or billed at the then current rate according to the chosen billing plan; and
- I. As applicable, if not already provided, the fact that SIRIUS XM will provide the Consumer with the customer agreement, if the sale of the Self-pay Subscription Plan is to a new Consumer, or that the Consumer can access the customer agreement through an internet website address provided by SIRIUS XM.

29. If, at the Point of Sale, SIRIUS XM is unable to obtain the Consumer's express acceptance of the applicable terms disclosed, then SIRIUS XM shall not activate the Self-pay Subscription Plan and shall not impose any fee by whatever name.

- A. If the Point of Sale is via telephone, the Customer Service Representative or the telephone system shall inform the Consumer that SIRIUS XM will record the call. After informing the Consumer that SIRIUS XM will record the call, SIRIUS XM or SIRIUS XM's agent shall record the telephone call, wherein the Customer Service Representative Clearly and Conspicuously discloses to the Consumer all of the information listed in Paragraph 28 and obtains the Consumer's express acceptance to these terms; provided that the act of recording the telephone conversation is not prohibited by applicable statutes, rules, and regulations. Nothing herein shall be construed to prevent or prohibit SIRIUS XM from responding to questions, concerns, or objections, if the Consumer does not immediately expressly accept the terms disclosed.
- B. If the Point of Sale is online, SIRIUS XM shall Clearly and Conspicuously disclose to the Consumer all of the terms listed in Paragraph 28 on the internet website. The disclosure(s) of the terms listed in Paragraph 28 shall be in Direct Proximity or immediately prior to a submit button, a "check box" or a "pop-up" that the Consumer must click or select as the Consumer's express acceptance of the terms disclosed. The button, check box or pop-up shall be Clearly and Conspicuously marked that by clicking the button, check box or pop-up, the Consumer confirms the purchase of Services under the Self-pay Subscription Plan. If a check box or pop-up is used, it shall not contain a pre-checked box as a default setting. If the Consumer does not click or select the button or the check box or closes out of the pop-up window, the Consumer shall not be able to proceed further and SIRIUS XM shall not activate the Self-pay Subscription Plan.
- C. If the Point of Sale is done by any other method, SIRIUS XM shall ensure that Consumers have been provided Clear and Conspicuous disclosures of all of the terms listed in

Paragraph 28 and the Consumer's express acceptance of all of the terms disclosed has been obtained prior to activating the Self-pay Subscription Plan.

30. At the Point of Sale, SIRIUS XM shall Clearly and Conspicuously inform the Consumer that, within five (5) business days following completion of the sale, SIRIUS XM shall send a notice to Consumers that provide an email address that confirms the purchase or activation of the selected Self-pay Subscription Plan ("Confirmation Notice"). In the case of remit forms sent to SIRIUS XM by the Consumer, the completion of the sale shall be deemed to occur on the date SIRIUS XM receives and completes the processing of the remit form. The email shall indicate in the "from" line, SIRIUS XM, and the subject line shall be titled "CONFIRMATION OF YOUR RECENT SIRIUS XM TRANSACTION," or similar language. This title shall be placed on the top portion of the body of the Confirmation Notice. SIRIUS XM will send the Confirmation Notice electronically to the Consumer to the email address provided by the Consumer, unless the Consumer objects to receiving the Confirmation Notice via email and requests a mailed copy, then SIRIUS XM will send the Confirmation Notice via postal mail in lieu of email. In the case of a Consumer purchasing or activating a Self-pay Subscription Plan via the internet, and in lieu of the Confirmation Notice, the Consumer shall be presented, at the conclusion of such transaction, a printable confirmation containing the information required by this Paragraph ("Printable Confirmation"). The Confirmation Notice or Printable Confirmation shall Clearly and Conspicuously include the following information, at a minimum, in the body of the Confirmation Notice or Printable Confirmation, if applicable to the selected Self-pay Subscription Plan:

- A. Account number, which may be abbreviated in accordance with applicable laws;
- B. Name and type or description of the Self-pay Subscription Plan;

- C. The fact that the Self-pay Subscription Plan has been purchased;
- D. Self-pay Subscription Plan start date;
- E. Total subscription charges, or itemization per billing statement or period, for the initial term of the Self-pay Subscription Plan;
- F. Length of the Self-pay Subscription Plan, and the date and month when the Self-pay Subscription Plan will automatically renew, if applicable;
- G. The applicable billing interval during which the Self-pay Subscription Plan will automatically be charged or billed, if any (absent express modification by the Consumer or reduction of billing interval by SIRIUS XM);
- H. If applicable, the fact that the Service under the Self-pay Subscription Plan will automatically renew and that in order to cancel the Self-pay Subscription Plan the Consumer must call SIRIUS XM prior to renewal at the toll-free telephone number provided;
- I. Any cancellation or early termination fee;
- J. The fact that the Consumer will automatically be charged or billed at the then current rate according to the chosen billing plan; and
- K. The fact that SIRIUS XM will provide the customer agreement to Consumers who are first time subscribers to the Service under the Self-pay Subscription Plan and have not previously been provided with the customer agreement, or that any Consumer can access the customer agreement through an internet website address provided by SIRIUS XM or by calling SIRIUS XM's customer service number and requesting that a copy of the customer agreement be sent to them.

The information set forth in the Confirmation Notice or Printable Confirmation shall be subject to SIRIUS XM's policies and procedures governing privacy, personally identifiable information, and the disclosure of customer information; provided, however, the SIRIUS XM policies and procedures governing privacy, personally identifiable information, and the disclosure of customer information shall not be used to circumvent the requirements of this Assurance and shall not be contrary to applicable law.

31. The Confirmation Notice or Printable Confirmation shall be a stand-alone document and shall not contain any Advertisements, unless such Advertisements are on stand-alone documents, clearly separated inserts, or, if part of the letter, web page or email, in a separate section or area that does not distract from or obstruct the Clear and Conspicuous message of the Confirmation Notice or Printable Confirmation.

#### **D. AUTOMATIC RENEWAL OF SELF-PAY SUBSCRIPTION PLANS**

32. To the extent that the State has an applicable state or local statute, rule, or regulation governing the automatic renewal of Self-pay Subscription Plans, SIRIUS XM shall comply with such statute, rule, or regulation.
33. For Consumers with a Self-pay Subscription Plan with a term longer than six (6) months, SIRIUS XM shall provide Clear and Conspicuous advance notice to Consumers regarding the upcoming automatic renewal of the Consumer's Services ("Automatic Renewal Notice"). The Automatic Renewal Notice may be provided by SIRIUS XM via email or postal mail. The email shall indicate in the "from" line, SIRIUS XM, and the subject line shall be titled "NOTICE OF AUTOMATIC RENEWAL OF YOUR SIRIUS XM SERVICE" or similar language. This title shall be placed on the top portion of the body of the Automatic Renewal Notice. If the Consumer did not provide an email address to SIRIUS XM, then SIRIUS XM will send the Automatic Renewal

Notice via postal mail in lieu of email. If the notice is sent by postal mail, the mailing envelope shall be labeled "Important Information" or a label of similar language. The Automatic Renewal Notice shall Clearly and Conspicuously include the following information, at a minimum, in the body of the Automatic Renewal Notice, if applicable to the Self-pay Subscription Plan:

- A. Consumer's name, if sent by postal mail;
- B. Name and type or description of the Self-pay Subscription Plan;
- C. Billing frequency;
- D. Total subscription charges, or itemization per billing statement or period, for the next billing period, which shall exclude taxes, governmental fees and other mandatory charges, but include a statement that there will be taxes, governmental fees, and other mandatory charges;
- E. Length of the Self-pay Subscription Plan and the date of the month when the Self-pay Subscription Plan will automatically renew, if applicable;
- F. The applicable billing interval during which the Self-pay Subscription Plan will automatically be charged or billed, if any (absent express modification by the Consumer or reduction of billing interval by SIRIUS XM);
- G. The fact that the Service under the Self-pay Subscription Plan will automatically renew and that in order to cancel the Self-pay Subscription Plan the Consumer must call SIRIUS XM prior to renewal at the toll-free telephone number provided;
- H. The information necessary on how to contact SIRIUS XM to cancel the Self-pay Subscription Plan;
- I. The fact that a cancellation or early termination fee may apply, if applicable, and the amount or method of calculation, if known;



- J. The fact that when the Self-pay Subscription Plan automatically renews, the Consumer will automatically be charged or billed at the then current rate according to the chosen billing plan; and
- K. The fact that the Consumer can access the customer agreement through an Internet website address or link provided by SIRIUS XM or by calling SIRIUS XM's customer service number and requesting that a copy of the customer agreement be sent to them.

The information set forth in the Automatic Renewal Notice shall be subject to SIRIUS XM's policies and procedures governing privacy, personally identifiable information, and the disclosure of customer information; provided, however, the SIRIUS XM policies and procedures governing privacy, personally identifiable information, and the disclosure of customer information shall not be used to circumvent the requirements of this Assurance and shall not be contrary to applicable law.

- 34. SIRIUS XM shall send the Automatic Renewal Notice, as required by the provisions of Paragraph 33, to the Consumer at least ten (10) days, but not more than sixty (60) days, before the date when the Self-pay Subscription Plan will automatically be charged or billed, or as otherwise required by applicable law.
- 35. The Automatic Renewal Notice shall be a stand-alone document and shall be sent by electronic or by postal mail and shall not contain any Advertisements, unless such Advertisements are on stand-alone documents or clearly separated inserts; provided that Advertisements shall be permitted on the back or reverse side of any Automatic Renewal Notice so long as the back or reverse side does not contain any of the information required by Paragraph 33 and the Advertisement does not distract from or obstruct the Clear and Conspicuous message of the Automatic Renewal Notice.

## **E. CANCELLATION OF SELF-PAY SUBSCRIPTION PLANS**

36. SIRIUS XM shall process a Consumer's request to cancel Services under a Self-pay Subscription Plan by telephone toll free ("Cancellation Call"). SIRIUS XM shall ensure that Customer Service Representatives are available to process Cancellation Calls during standard Customer Care (or similar department) business hours, excluding holidays. During times outside of the hours of availability, SIRIUS XM shall provide a Clear and Conspicuous telephone notification of the hours of availability. SIRIUS XM shall adequately staff its customer service function, including providing adequate staffing to respond to Consumers who call to cancel their Self-pay Subscription Plan, and ensure that if the projected hold time is for longer than approximately three minutes that Consumers are immediately informed of how long the anticipated wait may be and offered the opportunity to leave a phone number to receive a return phone call. The above requirements shall not apply during abnormal disruptions, unforeseen technological or systems glitches or outages, inadvertent human error, or when there are operational limitations due to acts of nature (such as hurricane, flooding, earthquake, volcanic eruption, etc.) or other acts beyond SIRIUS XM's control, including, but not limited to, civil unrest, acts of war, riots, strikes, and similar acts. SIRIUS XM may, at its discretion, give Consumers who are affected by these disruptions an extension of time to cancel. SIRIUS XM shall be reasonable in granting Consumers extensions of time to cancel when SIRIUS XM has its own notice of such events or if Consumers state that they were affected by such disruptions. Further:

- A. As part of the quality assurance program required by Paragraph 43, SIRIUS XM shall monitor, at a minimum, a statistically significant random sampling of Cancellation Calls to ensure compliance with the Save requirements specified in subparagraphs B-F of this Paragraph;

- B. SIRIUS XM shall not engage in harassing or abusive Save attempts and a Customer Service Representative shall promptly and without delay, move on to the next Save attempt or cancellation, depending on the circumstances, when a Consumer declines a rebuttal offer;
- C. If, during a Cancellation Call, a Consumer declines a Save attempt or rebuttal offer and requests that SIRIUS XM not call the Consumer in the future, SIRIUS XM shall note the Consumer's request internally and proceed with processing the Cancellation Call without delay;
- D. If the Customer Service Representative's Save attempts are unsuccessful, the Customer Service Representative shall proceed without unreasonable delay with processing the Cancellation Call; however, the time required to process the Consumer's request and service the account, including but not limited to the time spent answering the Consumer's questions, reviewing the cancellation options available to the Consumer, processing the cancellation, or adding required comments or notes to the account records, shall not constitute unreasonable delay. The Customer Service Representative shall Clearly and Conspicuously disclose to the Consumer the cancellation options available, including the earliest date by when the Consumer may cancel in accordance with his or her customer agreement; the material consequences of the option selected by the Consumer, including, but not limited to, the effective cancellation date; the cancellation fee amount, if any; the method of refund or credit, if applicable; and the date or approximate time frame when the Consumer will receive the refund or credit, if applicable. After the processing of the Consumer's cancellation request has been completed, the Customer Service Representative shall provide to the Consumer over

the telephone a unique cancellation confirmation number, and confirm the amount that will be refunded or credited, if applicable. The Customer Service Representative shall also explain to the Consumer that within five (5) business days SIRIUS XM will send the Consumer an email confirmation of the cancellation, and that if the Consumer's email address is not on file with SIRIUS XM that the Consumer should write down the unique cancellation confirmation number;

- E. SIRIUS XM shall honor the effective cancellation date and shall provide any refund or credit owed (excluding non-refundable customer service credits), as applicable, in a manner that complies with Paragraph 49 of this Assurance and is consistent with any representations made to the Consumer; and
- F. If SIRIUS XM's Save attempt is successful and the Consumer agrees to continue Services in an existing or new Self-pay Subscription Plan, which has billing and automatic renewal terms that differ from the Consumer's existing Self-pay Subscription Plan, SIRIUS XM shall provide the Consumer with a Confirmation Notice in compliance with Paragraph 30 of this Assurance and disclose any other material change in term(s) in compliance with Article V, Section D of this Assurance, as applicable. If the Save provides the Consumer with a Free Trial/Promotional Subscription Plan that automatically renews at the end of its subscription term, SIRIUS XM shall, as applicable, comply with Paragraph 24 of this Assurance.

37. SIRIUS XM shall Clearly and Conspicuously disclose to Consumers how to cancel their Self-pay Subscription Plan. This disclosure shall be made both on SIRIUS XM's internet website and in the customer agreement.

38. Within five (5) business days following completion of the Cancellation Call, SIRIUS XM shall send a notice to Consumers who provide an email address that confirms the cancellation of the Self-pay Subscription Plan ("Cancellation Notice"). The email shall indicate in the "from" line, SIRIUS XM, and the subject line shall be titled "NOTICE OF CANCELLATION OF YOUR SIRIUS XM SERVICE," or similar language. This title shall be placed on the top portion of the body of the Cancellation Notice. The Cancellation Notice shall Clearly and Conspicuously include the following information in the body of the Cancellation Notice, unless the required information is provided in a separate notice:

- A. Account number, which may be abbreviated in accordance with applicable laws;
- B. The fact that the Self-pay Subscription Plan has been cancelled;
- C. The unique cancellation number;
- D. Effective cancellation date;
- E. Cancellation or early termination fee, if any;
- F. Refund amount and method of refund, if any;
- G. If applicable, the date or approximate time frame when the Consumer will receive the refund, in a manner that complies with Paragraph 49 of this Assurance;
- H. The Cancellation Notice shall be a stand-alone electronic document and shall not contain any Advertisements, unless such materials are on stand-alone electronic documents, or, if part of the communication, web page or email, in a separate section or area that does not distract from or obstruct the Clear and Conspicuous message of the Cancellation Notice; and
- I. The Cancellation Notice may be sent with the final invoice, provided the Cancellation Notice complies with the requirements of this Paragraph.

The information set forth in the Cancellation Notice shall be subject to SIRIUS XM's policies and procedures governing privacy, personally identifiable information, and the disclosure of customer information; provided, however, the SIRIUS XM policies and procedures governing privacy, personally identifiable information, and the disclosure of customer information shall not be used to circumvent the requirements of this Assurance and shall not be contrary to applicable law.

39. If a Consumer attempts to cancel his or her Self-pay Subscription Plan by contacting SIRIUS XM using the consumer complaint form on SIRIUS XM's website, or at the postal or email address for customer care that is provided on SIRIUS XM's website or in the customer agreement, then SIRIUS XM shall attempt to contact the Consumer within five (5) business days to provide the Consumer with instructions for toll-free telephone cancellation. Should SIRIUS XM accept cancellations by any means other than telephone, SIRIUS XM shall provide a Cancellation Notice in accordance with Paragraph 38 of this Assurance.

40. SIRIUS XM shall not continue to charge a Consumer's debit or credit card, deduct funds from a Consumer's bank account, or bill a Consumer for a Self-pay Subscription Plan cancelled by the Consumer, after the effective cancellation date of that cancelled Self-pay Subscription Plan; provided that bills or invoices that are in process or have already been processed, and any charges or deduction of funds that cannot, under reasonable business procedures, be unscheduled within five (5) days of the effective cancellation date shall not be considered a violation of this provision. Notwithstanding the foregoing, in no event shall a payment for a Self-pay Subscription Plan cancelled by the Consumer be processed after five (5) days following the Consumer's cancellation of that Self-pay Subscription Plan; provided, however, this provision shall not apply to payment(s) for Services rendered prior to the Consumer's

cancellation of the Self-pay Subscription Plan. For a Self-pay Subscription Plan that is cancelled by the Consumer, SIRIUS XM shall refund any charge, deduction, or payment, which has not been otherwise refunded, credited, cancelled, reversed or charged back, that is made or accepted for Services provided by SIRIUS XM after the effective cancellation date of the cancelled Self-pay Subscription Plan, in a manner that complies with Paragraph 49 of this Assurance and is consistent with any representations made to the Consumer.

#### **F. POLICIES AND PROCEDURES**

41. SIRIUS XM shall adopt and implement policies and procedures that:

- A. Ensure compliance with this Assurance; and
- B. Prohibit incentive compensation to any Customer Service Representative acting on behalf of SIRIUS XM that is solely contingent upon their obtaining a minimum number, percentage, or quota of Saves.

42. SIRIUS XM shall, or shall cause its agents, to record all Cancellation Calls; provided that the act of recording the telephone conversation is not prohibited by applicable statutes, rules, and regulations. Nothing herein shall be construed to prevent or prohibit SIRIUS XM from responding to questions, concerns, or objections from the Consumer during the Cancellation Call. For any recorded telephone communications that result in a Consumer continuing to be charged or billed by SIRIUS XM, SIRIUS XM shall save the recordings for a minimum of thirty (30) months and, upon the written request of the State, shall provide the recordings to the State if it is able to identify the recording based on the information provided by the State, within sixty (60) days unless SIRIUS XM requests an extension of additional time, in such case, the State agrees to provide good faith extensions as needed.

43. SIRIUS XM shall implement and maintain a quality assurance program to ensure that calls received from Consumers are handled in accordance with the requirements of this Assurance, including but not limited to complying with the provisions of this Assurance governing sales, automatic renewal, Save attempts and cancellation of Self-pay Subscription Plans, as applicable.
44. SIRIUS XM shall ensure that all Customer Service Representatives who communicate with Consumers about the Services of SIRIUS XM are trained to act in compliance with this Assurance.
45. To the extent necessary, SIRIUS XM shall ensure that all current and future training materials and scripts are modified to comply with this Assurance.

#### **G. COMPLAINT HANDLING**

46. SIRIUS XM shall maintain all Consumer Complaints and SIRIUS XM's responses to those Consumer Complaints for a period of at least thirty (30) months from the date of final response of the Consumer Complaint. The Consumer Complaint file shall include the Consumer Complaint and all of the items listed in Paragraph 48 that are maintained in the ordinary course of business. SIRIUS XM shall maintain Consumer Complaint files in a manner and format that allows SIRIUS XM to comply with the requirement to produce Consumer Complaints in a timely manner and in accordance with this Assurance. The Consumer Complaint file of a Consumer residing in the State shall be provided to that State, upon written request, within sixty (60) days, unless SIRIUS XM requests an extension of additional time, in such case, the State agrees to provide good faith extensions as needed.
47. Within thirty (30) days of the Execution Date, SIRIUS XM shall appoint a person or persons, or an entity, to act as a direct contact for the State for the resolution of Consumer Complaints.



SIRIUS XM shall provide the State with the name(s), title(s), address(es), telephone number(s), facsimile number(s) and electronic mail address(es) of the person(s) or entity(ies), within thirty (30) days of the appointment of such person(s) or entity(ies).

48. Upon written request by the State, following the Execution Date, SIRIUS XM shall provide its response to each Consumer Complaint relating to conduct occurring after the Execution Date, which shall include:

- A. The date SIRIUS XM received such Consumer Complaint;
- B. A description or copy of such Consumer Complaint; and
- C. The final resolution of such Consumer Complaint.

Upon further written request by the State, SIRIUS XM shall provide copies of any additional underlying correspondence documentation, or background information, including call recordings, related to the Consumer Complaint, and SIRIUS XM's written response or compliance with the Consumer Resolution Program in this Assurance. SIRIUS XM reserves the right to object to any requests under this Paragraph as set forth in Paragraph 116.

49. Whenever SIRIUS XM agrees to refund to a Consumer any amount of money, SIRIUS XM shall process the refund promptly, but not later than forty five (45) days from the date of agreeing to do so. SIRIUS XM shall provide the Consumer with an estimate of approximately how long it may take to receive the refund.

## **VI. COMPLAINT RESOLUTION AND RESTITUTION**

### **A. TIME FRAME**

50. Time Period for filing an Eligible Complaint:

- A. There will be an open period of one hundred and fifty (150) days after the Execution Date for a Consumer Complaint to be filed by a complaining Consumer.

B. The State will have an additional thirty (30) days thereafter to submit Consumer Complaints to SIRIUS XM for consideration under the Complaint Resolution Program. The State agrees to provide SIRIUS XM's counsel, pursuant to Paragraph 102, with notice if more time is needed and SIRIUS XM agrees to provide a good faith extension as needed.

C. Any timely filed Consumer Complaint previously received and processed by SIRIUS XM prior to the Execution Date shall be reconsidered as part of the Complaint Resolution Program if it is "resubmitted" by the complaining Consumer or the State, in either case claiming it remains unresolved. An Eligible Complaint does not include any new complaint from a Consumer Complaint entity that is not initially submitted through the Complaint Resolution Program. The State shall review information available in the complaint file regarding the Consumer Complaint to determine if it is unresolved prior to resubmission. The State may also resubmit a Consumer Complaint if the State is unable to determine from the complaint information in its possession whether it is resolved. SIRIUS XM reserves the right to return the Consumer Complaints for further review if SIRIUS XM believes the complaints processed for resubmission by the State include complaints previously resolved. In such instances, SIRIUS XM shall provide information and/or documentation regarding why it believes each particular Consumer Complaint has been resolved in order to assist the State in determining the next appropriate step.

51. Upon receipt of a Consumer Complaint, SIRIUS XM shall send the submitting Consumer both a letter, and a form requesting additional information (the "Form"), copies of which are attached as Exhibits B and C, respectively. Consumers shall have ninety (90) days from receipt of the

letter and Form to submit the completed Form to SIRIUS XM. The Form shall provide Consumers with a mailing address, fax number and/or other method for submitting it to SIRIUS XM. SIRIUS XM may accept Forms after the timeframe in appropriate extraordinary circumstances (e.g. military deployment, hospitalization, etc.), at its own discretion.

52. Upon receipt of the Form from a Consumer, SIRIUS XM shall determine within ninety (90) days if the Consumer Complaint is an Eligible Complaint.

A. If SIRIUS XM determines in good faith that the Consumer Complaint does not constitute an Eligible Complaint and the Identifiable Loss set forth on the Form exceeds \$50.00, then SIRIUS XM shall advise the Consumer of the ineligibility through a letter, a copy of which is attached as Exhibit D, within fifteen (15) days of SIRIUS XM's determination.

The Consumer shall have the right to resubmit a Consumer Complaint determined to be ineligible to the Facilitator, with a request for re-review and a detailed explanation of why the Consumer believes the submitted Consumer Complaint is an Eligible Complaint.

B. If SIRIUS XM determines that the Consumer Complaint does not constitute an Eligible Complaint and the Identifiable Loss is \$50.00 or less, then the Consumer Complaint shall be listed on the Complaint Eligibility Determination Report. SIRIUS XM shall send Consumers a letter, a copy of which is attached as Exhibit E, within fifteen (15) days of determining that the Consumer Complaint is not an Eligible Complaint.

53. Upon receipt of the Complaint Eligibility Determination Report, the State may request in writing that SIRIUS XM reconsider a determination regarding the denial of a Consumer Complaint, classification of a Consumer Complaint or whether or not the amount of Identifiable Loss is below \$50.00. If a dispute remains, either the State or SIRIUS XM may file a request for review with the Facilitator to determine if a submitted Consumer Complaint is an Eligible

Complaint or if the amount of the Identifiable Loss exceeds \$50.00. Challenges to SIRIUS XM's determination of ineligibility or the amount of the Identifiable Loss shall be decided by the Facilitator as soon as practicable.

#### **B. CONSUMER RESOLUTION PROGRAM**

54. SIRIUS XM shall have a reasonable time, not to exceed an additional one hundred and thirty days (130) days, after receiving a Form that is determined to be an Eligible Complaint, to attempt to resolve the Eligible Complaint with the Consumer; provided, however, if the number of Forms exceed 2,125, the one hundred and thirty (130) day period for resolving Eligible Complaints shall be extended by an additional sixty (60) days for every 1,240 Forms received beyond the initial 2,125 Forms. If SIRIUS XM is contacted by a Consumer inquiring about the status of his/her Form, SIRIUS XM will explain the process to the Consumer and invite the Consumer to check back with SIRIUS XM on the status at a later date.
55. If SIRIUS XM and the Consumer resolve the Consumer Complaint, SIRIUS XM shall provide the accepted relief within thirty (30) days of the Consumer's acceptance of the offer. The Consumer shall not be asked or be required to sign a release in order to accept the offer.
56. If the Consumer completes the Form and the Identifiable Loss relief or amount sought can be determined from SIRIUS XM's records and SIRIUS XM agrees with the request, then SIRIUS XM is not required to contact the Consumer and may instead send a letter, attached as Exhibits F1 and F2, to the Consumer agreeing with the Consumer's requested relief. Any such relief shall be processed by SIRIUS XM within thirty (30) days after sending the Consumer the letter. The Consumer shall not be asked or be required to sign a release in order to accept the offer.
57. If SIRIUS XM and the Consumer are unable to reach a resolution then SIRIUS XM shall: (i) if the Eligible Complaint involves a request for an Identifiable Loss of \$100.00 or less, SIRIUS XM shall

include the Consumer Complaint on the Complaint Eligibility Determination Report, with a brief description of the nature of the complaint and mediation history and send the Consumer a letter, a copy of which is attached as Exhibit G, or (ii) if the Eligible Complaint involves an Identifiable Loss in excess of \$100.00, SIRIUS XM shall forward the Eligible Complaint and the Form to the Facilitator and send the letter, attached as Exhibit H, to the Consumer.

58. Upon receipt of the Complaint Eligibility Determination Report, the State may request in writing that SIRIUS XM reconsider a determination regarding the denial of a Consumer Complaint. If a dispute remains, either the State or SIRIUS XM may file a request for review with the Facilitator to determine what, if any, relief the Consumer is entitled to. Challenges to SIRIUS XM's determination shall be decided by the Facilitator as soon as practicable.

59. Any Consumer's acceptance of relief from SIRIUS XM under this Assurance shall not restrict a private right of action other than to entitle SIRIUS XM to assert a set-off.

### **C. FACILITATOR REQUEST FOR RECONSIDERATION PROGRAM**

60. If SIRIUS XM and the Consumer cannot resolve an Eligible Complaint, and the Identifiable Loss being sought is in excess of \$100.00, then the Consumer shall be notified that his/her Form will be submitted to the Facilitator for resolution. SIRIUS XM shall send the Consumer a letter attached as Exhibit H notifying the Consumer of the fact that the Consumer's Form has been sent to the Facilitator and providing the Consumer the information set forth in Paragraphs 62(A) and 62(B).

61. During the pendency of the review by the Facilitator, SIRIUS XM may continue to communicate with the Consumer and attempt to resolve the Eligible Complaint with the Consumer. If the Consumer accepts an offer from SIRIUS XM, then SIRIUS XM shall provide the agreed upon resolution within thirty (30) days of the Consumer's written acceptance of the offer.

Consumers shall be informed that they are not required to accept SIRIUS XM's offer and may elect to proceed to have their Forms reviewed by the Facilitator. Consumers shall not be asked or required to sign a release to accept the offer. The letters to be used in this process are attached as Exhibits I1 and I2.

62. The Facilitator shall be required to review the terms of this Assurance and the applicable records relating to any unresolved Eligible Complaint, including:

- A. The Consumer record provided by SIRIUS XM to the Facilitator and the Consumer; and
- B. The Form and any other information provided by the Consumer. SIRIUS XM may also submit additional information to the Facilitator as long as it has been provided to the Consumer previously or is provided to the Consumer simultaneously.

63. The Facilitator shall review unresolved Eligible Complaints via telephonic review upon request by SIRIUS XM, the Consumer, the State, or the Facilitator. The Consumer shall be advised of his or her option to request a telephonic review when notified that his or her unresolved Eligible Complaint is being submitted to the Facilitator.

64. The Facilitator shall determine whether the Consumer is eligible for a refund payment or related relief (such as account write-off or cancellation of contract) with respect to Identifiable Losses, based on the above and the nature of the Consumer's unresolved Eligible Complaint under the terms of this Assurance and applicable law.

65. If additional information is deemed necessary by the Facilitator, he/she will request it from SIRIUS XM and the Consumer.

66. The Facilitator process will be handled in a consumer-friendly manner.

67. The Facilitator may only award monetary relief consistent with the Identifiable Losses suffered by the Consumer.

68. If the Facilitator determines that a Consumer is eligible for relief, the Facilitator shall send a letter to SIRIUS XM and the Consumer within thirty (30) days of reaching that determination. SIRIUS XM shall have thirty (30) days from the receipt of the Facilitator's decision to provide the Consumer with any required payment or other relief. Payment provided under this paragraph shall include a reference to this Assurance and Complaint Resolution Program.
69. If the Facilitator determines that a Consumer is not eligible for relief, the Facilitator shall send a letter to SIRIUS XM and the Consumer within thirty (30) days explaining his/her determination.
70. The State may elect to receive copies of the determinations and applicable letters from the Facilitator. The Facilitator shall provide the information to the State, if requested.
71. While the review of the Eligible Complaint is pending with the Facilitator, SIRIUS XM shall cease all collection activities on that Consumer, including instructing third parties to cease any applicable collection activities, relating to the subject matter of the Eligible Complaint.

#### **D. FACILITATOR**

72. SIRIUS XM shall select the Facilitator, subject to approval by the Executive Committee. The Facilitator shall enter into a contractual relationship with SIRIUS XM consistent with the terms of this Assurance. The Facilitator shall have experience with consumer protection law or a demonstrated ability to mediate solutions so that determinations are completed in a correct and timely manner. The Facilitator can be removed after six (6) months, or sooner if exigent circumstances exist as determined by a majority of the Attorneys General from the Executive Committee, for Cause, by either SIRIUS XM or a majority vote of the Attorneys General from the Executive Committee states. For the purpose of this Paragraph, Cause shall mean: (a) a breach by the Facilitator of the terms of this Assurance, including the failure of the Facilitator to comply with the terms and limitations of this Assurance; (b) any act of dishonesty,

misappropriation, embezzlement, intentional fraud or similar conduct by the Facilitator; (c) any intentional act of bias or prejudice in favor or against either SIRIUS XM or Consumers by the Facilitator; or (d) conduct by the Facilitator that demonstrates unfitness to serve in any administrative capacity. Cause shall not include disagreements with the decisions of the Facilitator pursuant to this Assurance, unless there is a clear pattern in the Facilitator's decisions that demonstrates or shows that the Facilitator has not been acting as a neutral third party in rendering decisions.

73. The Facilitator shall meet with the Executive Committee and SIRIUS XM at an agreed to location prior to commencement of the Complaint Resolution Program to confer and consider suggestions for the Program's processes and procedures.

74. Upon request by SIRIUS XM or the State, the Facilitator shall meet with SIRIUS XM and the State, or confer by telephone, regarding the Complaint Resolution Program process. If such conversations result in a proposed change to the agreed upon procedures, any such change shall require written approval from the Executive Committee and SIRIUS XM.

75. All reasonable fees and out-of-pocket expenses of the Facilitator shall be paid by SIRIUS XM. No costs relating to the Facilitator shall be borne by the Participating States.

76. If for some reason the Facilitator is unable to act as the Facilitator or is unable to complete his/her duties, any subsequent Facilitator shall be selected by SIRIUS XM, subject to approval by the Executive Committee.

#### **E. REPORTING ON THE RESOLUTION PROGRAM**

77. On or before each January 1 and July 1, starting on July 1, 2015 and ending when the Resolution Program is completed, SIRIUS XM shall provide a state-specific Complaint Eligibility



Determination Report and a separate state-specific report on the Facilitator's Review of the Eligible Complaints received from Consumers to the State.

78. The Complaint Eligibility Determination Report shall set forth the following information: (a) a brief description of the nature of each Consumer Complaint received by SIRIUS XM; (b) the name and address and other contact information in SIRIUS XM's possession of each Consumer who filed a Form; (c) the alleged amount of the Identifiable Loss, if any; (d) whether the Consumer Complaint was determined by SIRIUS XM to be an Eligible Complaint and, if not an explanation of ineligibility; (e) as applicable, the resolution, including the amount paid, if any, by SIRIUS XM; and (f) a list of Consumers with an Eligible Complaint who could not be located by SIRIUS XM.

79. The Facilitator's Report shall set forth the following information: (i) the name and address and other contact information in SIRIUS XM's possession of each Consumer who filed an Eligible Complaint for consideration; (ii) the status of the Eligible Complaint; (iii) if applicable, the resolution of the Eligible Complaint if the process is complete, or, if applicable, the determination of the Facilitator, including the resolution; and (iv) the total amount paid to Consumers in the State during the reporting period.

#### **F. MISCELLANEOUS**

80. All Consumer checks issued shall be:

- A. Negotiable for at least 180 days from the date of issuance; and
- B. Mailed by United States First-Class Mail marked "address correction requested."

81. Un-cashed Consumer checks shall be treated in accordance with applicable State unclaimed property/escheat laws or paid to any other fund designated by State law. SIRIUS XM shall also

provide to the Attorney General a copy of any report given to the State unclaimed property entity at the time it is provided by SIRIUS XM to the State unclaimed property entity.

82. SIRIUS XM agrees in good faith not to unreasonably refuse to handle any Consumer Complaints that were timely received by the State but were not forwarded to SIRIUS XM in conformity with this Assurance due to mistake, or other good faith reason, if received prior to completion of the Complaint Resolution Program.

83. SIRIUS XM represents and warrants that it has never in the past reported any Consumer to a credit reporting agency for failure to pay an outstanding account balance. For the avoidance of doubt, for one (1) year from the Execution Date, SIRIUS XM shall not report any Consumer to a credit reporting agency for failure to pay an outstanding account balance. Within forty-five (45) days of the resolution of an Eligible Complaint, SIRIUS XM shall cease and withdraw all collection efforts applicable to the complaining Consumer that relates to the subject matter of the Eligible Complaint.

#### **VII. PAYMENT TO THE STATE**

84. Subject to the terms and conditions of this Paragraph, SIRIUS XM shall pay Three Million Eight Hundred Thousand dollars (\$3,800,000), to be divided and paid by its counsel Manatt Phelps & Phillips LLP ("Manatt"), directly to each Attorney General participating in this settlement as identified on Exhibit A. Such payment shall be due and payable by SIRIUS XM to Manatt, for prompt distribution by Manatt to each Attorney General participating in this settlement, thirty (30) days following the first business day after the later of: (a) the execution and delivery of this Assurance, or an agreement substantially identical to this Assurance, by SIRIUS XM and the appropriate governmental agencies of each of the States listed on Exhibit A; and (b) receipt by Manatt from each applicable Attorney General of a written notice that final judicial or other

approval of an executed copy of this Assurance, or an agreement substantially identical to this Assurance, in each State in which such approval is required has been secured. Such amount shall be divided and paid by Manatt directly to each of the Attorneys General in an amount to be designated by and in the sole discretion of the Executive Committee. Each of the Attorneys General agrees that the Executive Committee has the sole authority to designate such amount to be paid to each Attorney General and that SIRIUS XM shall have fulfilled its obligations under this Paragraph upon such payment to Manatt. At the sole discretion of the Attorney General of Vermont, the payment to the Attorney General of Vermont shall be used for reimbursement of attorneys' fees and/or investigative costs; used for future public protection purposes; placed in or applied to the consumer protection enforcement fund, consumer education, litigation, or local consumer aid fund or revolving fund, or similar fund by whatever name; or used for other consumer protection purposes permitted by state or local statutes, rules, or regulations. In no event shall any portion of this payment be characterized as a fine, civil penalty or forfeiture by SIRIUS XM to any Participating State.

#### **VIII. GENERAL PROVISIONS**

85. To the extent that SIRIUS XM makes changes to its Advertising or business acts, practices, policies, procedures, or materials to achieve or to facilitate conformance with this Assurance, the changes shall not be taken as or construed to be an admission by SIRIUS XM of any kind, and shall not constitute or be used as evidence, of the State's Allegations of facts, SIRIUS XM's violation of any law, rule or regulation, or liability or wrongdoing, including an admission by SIRIUS XM that any of its Advertising or business acts, practices, policies, procedures, or materials are or have been in violation of the State's Consumer Statutes, except to the extent required expressly by state law.

86. Nothing in this Assurance shall be construed to affect, restrict, limit, waive, alter, or create any private right of action that a Consumer may hold against SIRIUS XM, unless explicitly set forth in state law.
87. This Assurance is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. The settlement negotiations resulting in this Assurance have been undertaken by the Parties in good faith and for settlement purposes only.
88. Neither this Assurance nor any evidence of any settlement negotiations or settlement communications resulting in this Assurance shall be offered or received in evidence in any action or proceeding for any purpose other than the enforcement of this Assurance, related actions or enforcement proceedings, or in a private right of action if expressly allowed under the State's Consumer Statute.
89. Neither this Assurance nor anything herein shall be construed or used as a waiver, limitation, or bar on any defense otherwise available to SIRIUS XM, or on SIRIUS XM's right to defend itself from or make arguments in any pending or future legal or administrative action, proceeding, state or federal claim or suit, including without limitation, private individual or class action claims or suits, relating to SIRIUS XM's conduct prior to the execution of this Assurance, or to the existence, subject matter, or terms and conditions of this Assurance, except to the extent required by law.
90. In the event that any statute, rule or regulation pertaining to the subject matter of this Assurance is enacted, promulgated, modified, or interpreted by a federal or state court, or any federal or state government, or any federal or state agency, or a court of competent jurisdiction holds that such statute, rule or regulation is in conflict with any provision of this

Assurance, SIRIUS XM may comply with such statute, rule or regulation and such action shall not per se constitute a violation of this Assurance.

91. By agreeing to this Assurance, SIRIUS XM reaffirms and attests to the material truthfulness and accuracy of all of the information provided by SIRIUS XM to the Participating States prior to entry of this Assurance. The Participating States' agreement to this Assurance is expressly premised upon the material truthfulness and accuracy of the information provided by SIRIUS XM to the Participating States throughout the course of the investigation of this matter, which information was relied upon by the Participating States in negotiating and agreeing to the terms and conditions of this Assurance.
92. If the Participating States find that SIRIUS XM failed to disclose material information, or made any other material misrepresentation or omission relevant to the resolution of the Participating States' investigation, the Participating States retain the right, at the State's election, to file a motion to seek modification of this Assurance upon proper written notice to SIRIUS XM. The State must first give notice to SIRIUS XM of its proposed modification to give SIRIUS XM an opportunity to discuss the modification with the State before any court proceedings may be instituted. Nothing however shall prevent SIRIUS XM from opposing the State's motion if the Parties cannot reach an agreement.
93. To seek modification of this Assurance, SIRIUS XM shall send a written request for modification with a detailed written explanation of the reason for the request to the Ohio Attorney General with simultaneous copies to each Participating State. The Participating States will review such request on a timely basis and within ninety (90) days of the request, and shall provide a written response.

- A. Upon reasonable written request by SIRIUS XM, the Participating States shall meet with SIRIUS XM by phone to discuss a specific written modification request prior to the Participating States' consideration of the request. Further, the Participating States agree to respond to SIRIUS XM, and provide such response within ninety (90) days of receiving SIRIUS XM'S request.
- B. No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the Parties, and then only to the extent set forth in such written waiver, modification or amendment. To the extent that state law requires a waiver, modification or amendment of this Assurance to be approved and entered by the Court, the State and SIRIUS XM agree to use their best efforts to obtain Court approval.
- C. The State shall not take any action to enforce the terms of the particular provision for which a modification is being requested, other than for prior violations of said terms, with respect to such waiver, modification, or amendment while the Parties are seeking Court approval of the same, if required. In the event that Court approval and entry of a waiver, modification or amendment of this Assurance is required under state law and the Court does not approve such waiver, modification or amendment, said waiver, modification or amendment shall be null and void; provided, however, nothing herein shall be construed to prohibit or otherwise restrict either Party's right to seek reconsideration or review of, or to appeal a decision not to approve such waiver, modification or amendment. Nothing in this Paragraph shall limit the State from pursuing any action against SIRIUS XM for failure to comply with this Assurance, nor shall it release liability for any violations prior to or during the waiver, modification, or amendment period.

94. Nothing in this Assurance shall be construed to require, prevent or prohibit the Parties from agreeing to extend any time period set forth herein, including but not limited to any notice requirement specified herein.
95. SIRIUS XM represents that it has fully read this Assurance and understands the legal consequences involved in signing this Assurance.
96. SIRIUS XM represents and warrants that it is represented by legal counsel; it has been fully advised of its legal rights in this matter; and the corporate signatory signing below is fully authorized to act on behalf of SIRIUS XM.
97. SIRIUS XM shall provide a copy of this Assurance or a complete and accurate summary of the material terms and conditions of this Assurance to its senior executive officers who have managerial responsibility over the subject matter of this Assurance. SIRIUS XM shall not be required to advise any other person or entity regarding the terms of this Assurance.
98. SIRIUS XM shall comply with the terms and conditions of this Assurance as of the Effective Date, unless indicated otherwise in this Assurance or agreed to in writing by SIRIUS XM and the Executive Committee.
99. SIRIUS XM shall not participate, directly or indirectly, in any activity, or form a separate corporation or entity for the purpose of engaging in acts or practices in whole or in part within the State, that are prohibited by this Assurance or for any other purpose that would otherwise circumvent any part of this Assurance.
100. Acceptance of this Assurance by the State shall not be deemed approval by the State of any of the acts or practices of SIRIUS XM, as described in this Assurance. Further, neither SIRIUS XM nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the

State, or any other governmental unit, has approved, sanctioned, or authorized any of SIRIUS XM's acts or practices.

101. This Assurance contains the entire agreement between the Parties. In the event that any term, provision, or section of this Assurance, is determined to be illegal or unenforceable, that determination shall have no effect on the remaining terms, provisions, and sections of this Assurance which shall continue in full force and effect.

102. Any notices required to be sent to the State or SIRIUS XM by this Assurance shall be sent by United States Certified Mail, Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. Notice may also be delivered by facsimile, provided that the same is promptly followed with delivery by Certified Mail or other nationally recognized courier service, as set forth above. The documents shall be sent to the following addresses:

For the State of Vermont:  
Ryan Kriger  
Assistant Attorney General  
Vermont Office of the Attorney General  
109 State St.  
Montpelier, VT 05602

For SIRIUS XM:  
Patrick L. Donnelly  
Executive Vice President and  
General Counsel  
Sirius XM Radio Inc.  
1221 Avenue of the Americas  
New York, New York 10020

and

and

For the Executive Committee:  
Teresa Heffernan  
Assistant Attorney General  
Office of the Ohio Attorney General  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215

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

103. If the State receives a request for documents provided by SIRIUS XM relating to this Assurance or the negotiations resulting in this Assurance, or for any documents, materials, reports or information specified by or required herein, the State shall comply with applicable



public disclosure laws and provide reasonable notice to SIRIUS XM consistent with the framework of the State's public disclosure law(s). SIRIUS XM has asserted that such documents include confidential or proprietary information as defined by law and has, or will, specifically designate in good faith such documents as confidential.

104. Within thirty (30) days of the Execution Date, SIRIUS XM shall provide each third party who offers, Advertises, and/or sells Services with a copy or notice and description of this Assurance.

105. If SIRIUS XM discovers, that any third party described in Paragraph 104 is violating this Assurance, SIRIUS XM shall send notice to the third party requesting that it cease and desist from the violation(s). SIRIUS XM shall conduct an investigation of a third party upon written notice by the State that the third party is violating an applicable provision of this Assurance. SIRIUS XM shall advise the State of the results of its investigation.

106. SIRIUS XM shall maintain policies and procedures, and exercise any contractual right it may have, and take appropriate action, to require third-parties to use its Advertising and marketing materials in a manner consistent with the requirements of this Assurance. Appropriate action shall be determined by the nature and circumstances of the violation, including but not limited to the pattern and/or severity of the conduct and may include one or more of the following remedies:

- A. Training or re-educating the third party on the terms of its agreement with SIRIUS XM, including SIRIUS XM's standard policies, the terms of this Assurance and the consequences of the third party's failure to comply with the terms of this Assurance in the future;
- B. Withholding payments or compensation;
- C. Imposing monetary fines;

- D. Placing the third party on probation or other appropriate and reasonable discipline under the circumstances;
- E. Suspending the right to Advertise for a period of time; and
- F. Termination.

107. As of the Effective Date, with respect to Advertising or marketing that solely and exclusively relates to the subject matter of this Assurance, if SIRIUS XM complies with this Assurance, SIRIUS XM shall not be liable under this Assurance for its non-compliance with the terms and conditions of this Assurance, so long as SIRIUS XM can demonstrate that it has made reasonable efforts to remove or amend such Advertising or marketing within its control to comply with the requirements of the Assurance. SIRIUS XM shall not be liable under this Assurance for failing to prevent the re-publication of pre-existing Advertising or marketing that does not comply with this Assurance by independent third-parties or parties who are not subject to SIRIUS XM's control, so long as SIRIUS XM has complied with Paragraphs 25 through 27 of this Assurance, and otherwise makes reasonable efforts to prevent such re-publication, including but not limited to, exercising any available contractual rights, and where no contractual relationship exists, requesting in writing that the third party terminate the re-publication of such advertising or marketing. The burden is on SIRIUS XM to establish that any such Advertising or marketing solely and exclusively relates to the subject matter of this Assurance and to demonstrate its reasonable efforts to remove or amend such Advertising or marketing.

108. SIRIUS XM shall exercise any rights available to it under a contract or by any other agreement with a third party to require the third party to comply with the terms and conditions of this Assurance, if applicable.

109. SIRIUS XM shall not be liable for conduct of third parties not operating on behalf of SIRIUS XM or otherwise controlled by SIRIUS XM that violates the terms of this Assurance.
110. The titles and headers in each section of this Assurance are used for convenience purposes only and are not intended to lend meaning to the actual terms and conditions of this Assurance.
111. This Assurance shall not be construed against the “drafter” because all Parties participated in the drafting of this Assurance.
112. This Assurance may be executed in counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts may be delivered by facsimile or electronic transmission, or a copy thereof, with the intent that it or they shall constitute an original counterpart hereof.
113. Nothing in this Assurance shall be construed as relieving SIRIUS XM of its obligation to comply with all applicable state and federal laws, regulations or rules.
114. This Assurance may only be enforced by the Parties hereto.

**IX. RELEASE**

115. By execution of this Assurance and following a full and complete payment to the Participating States, the Attorney General of the State of Vermont releases and forever discharges, to the fullest extent of the law, SIRIUS XM from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the Vermont Attorney General could have asserted against SIRIUS XM prior to the Execution Date under the Act based on the allegations contained in the State’s Position in this Assurance or addressed by the terms of this Assurance, but limited to the extent of the Application of the Assurance as set forth in Paragraph 23 (collectively the “Released Claims”). Released Claims do not include claims

pursuant to any other statute or regulation (including, without limitation, Do Not Call laws, rules, and regulations or telemarketing laws, regulations, rules, or statutes, including those under the Consumer Statutes set forth on Exhibit A - 1, state or federal antitrust laws, state or federal securities law, environmental laws, tax laws, and criminal statutes and codes), nor do they include actions or proceedings brought pursuant to State consumer protection laws or statutes alleging violations that are not alleged by the State's Position in this Assurance or addressed by the terms of this Assurance, but limited to the extent of the Application of the Assurance as set forth in Paragraph 23.

**X. MONITORING FOR COMPLIANCE**

116. For a period of six (6) years from the Effective Date, upon written request by the State, SIRIUS XM shall provide copies of SIRIUS XM's business records or documents pertaining to or demonstrating compliance with the terms of this Assurance within forty-five (45) days of the State's written request. SIRIUS XM shall make any requested information available at the Office of the Attorney General of the State or at another location within the State if agreed upon by the State and SIRIUS XM. During the forty-five (45) day period, SIRIUS XM shall have the right to object to the scope or reasonableness of the request by the Attorney(s) General. This provision shall not limit the State's right to obtain documents, records, testimony or other information pursuant to other provisions of this Assurance or any State statute, rule, or regulation.

117. For three (3) years from the Execution Date, under the terms of this Assurance, the State has the right to test shop SIRIUS XM for the purpose of confirming compliance with this Assurance. The test shoppers are not required to disclose that they are representatives of the Participating States when making contact with SIRIUS XM. Further, SIRIUS XM is on notice that the Participating States may unilaterally choose to record any or all aspects of its solicitations

or visits with SIRIUS XM in audio and/or video form without notice to SIRIUS XM. Each Participating State may request, once per year, for SIRIUS XM to void any reasonable number of sales that are commenced by test shoppers, cancel any agreements tied to those sales, and return any such monies paid by test shoppers upon notification that there was test shopping conducted by the Participating States.

118. As consideration for the relief agreed to herein, if the State determines that SIRIUS XM has failed to comply with any of the terms and conditions of this Assurance, and if the State determines, in its sole discretion, that the failure to comply does not threaten the health or safety of the citizens of the State or does not create an emergency requiring immediate action, the State shall notify SIRIUS XM in writing of its failure to comply. SIRIUS XM shall then have fifteen (15) business days after receipt of the written notice to provide a written response to the State. The response shall be signed by one of SIRIUS XM's senior executive officers and contain, at a minimum, one of the following:

- A. A statement explaining why SIRIUS XM believes it is in compliance with the Assurance;
- B. A statement explaining how the alleged breach occurred, and how it will be or has been corrected; or
- C. A statement explaining that the alleged breach cannot be reasonably corrected within fifteen (15) business days from receipt of the notice but that:
  - i. SIRIUS XM has begun to take action to correct the alleged breach (with an explanation of the corrective action it is taking);
  - ii. SIRIUS XM is pursuing corrective action with reasonable and due diligence; and
  - iii. SIRIUS XM has provided the State with a detailed and reasonable time frame for correcting the alleged breach.

Upon request by SIRIUS XM, a representative of the Attorney General of the State shall meet with SIRIUS XM at SIRIUS XM's expense to discuss the alleged failure to comply or SIRIUS XM's response thereto. In considering whether a violation occurred, the Attorney General of the State agrees to take into consideration any information presented by SIRIUS XM, including the then-current Advertising industry guidelines, practices and customs, reasonable consumer Advertising expectations, and technological requirements and parameters for any Advertisement subject to the requirements of this Assurance. The State will consider the information presented by SIRIUS XM, but is not bound to accept or agree with this information. Unless prohibited by State law, no corrective action by SIRIUS XM shall prohibit any legal action that the State may pursue based on SIRIUS XM's failure to comply with this Assurance nor shall it release liability for any violations prior to the notice or during the time of consideration by the State.

**XI. PAYMENT OF COURT COSTS**

119. Upon written request by the Participating States, SIRIUS XM shall pay all court costs incurred in connection with the execution of this Assurance, if any, up to a maximum amount of \$250.00 per State. Any reasonable delay in paying such costs shall not be punishable by contempt.

**XII. STATE SPECIFIC PROVISIONS**

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

**APPROVED AND AGREED TO:**

**STATE OF VERMONT**

**WILLIAM H. SORRELL  
ATTORNEY GENERAL**

by:

  
\_\_\_\_\_

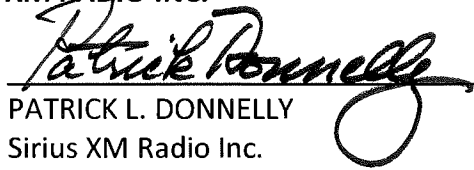
Ryan Kriger  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
(802) 828-3170  
ryan.kriger@state.vt.us

Date:

11/17/2014  
\_\_\_\_\_

SIRIUS XM RADIO INC.

By:

  
PATRICK L. DONNELLY

Sirius XM Radio Inc.  
1221 Avenue of the Americas  
New York, New York 10020

*Executive Vice President and General Counsel*

Date:



By:

  
CLAYTON S. FRIEDMAN  
MICHAEL YAGHI

Manatt, Phelps & Phillips  
695 Town Center Drive, Floor 14  
Costa Mesa, CA 92626  
714.338.2704 (telephone)  
714.371.2573 (facsimile)  
cfriedman@manatt.com  
myaghi@manatt.com

*Counsel for Sirius XM Radio Inc.*



## EXHIBIT A

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

43. Virginia
44. Washington
45. West Virginia
46. Wisconsin

## EXHIBIT A-1

1. Alabama Deceptive Trade Practices Act, Alabama Code Section 8-19-1, et seq.
2. Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 et seq.
3. Arizona Consumer Fraud Act, A.R.S. §§ 44-1521, et seq.
4. Arkansas Code Ann. 4-88-101 et seq.
5. Colorado Consumer Protection Act, Colorado Revised Statutes § 6-1-101, et seq.
6. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b, et seq.
7. Delaware Code Ann. Tit. 6, §§ 2511 to 2536.
8. District of Columbia D.C. Code § 28-3901 et seq. (2001).
9. Georgia Fair Business Practices Act of 1975, O.C.G.A. § 10-1-390 et seq.
10. Idaho Consumer Protection Act, Idaho Code Section 48-601 et seq.
11. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, et seq. and 601/1, et seq.
12. Indiana Deceptive Consumer Sales Act, Indiana Code 24-5-0.5-1 et seq.
13. Iowa Consumer Fraud Act, Iowa Code § 714.16.
14. Kansas Consumer Protection Act, K.S.A. 50-623 et seq.
15. Kentucky Consumer Protection Act, K.R.S. 367.110 et seq.
16. Louisiana Unfair Trade Practices and Consumer Protection Law, La. R.S. 51:1401, et seq.
17. Maine Unfair Trade Practices Act, 5 M.R.S. §§207 and 209.
18. Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2013 Repl. Vol.).
19. Massachusetts M.G.L. c. 93A, Section 1 et seq.
20. Michigan Consumer Protection Act is MCL 445.901, et seq.
21. Minnesota Consumer Fraud Act, Minn. Stat. §§ 325F.68 and 325F.69, Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.43-.48, and Minnesota False Statement in Advertising Act, Minn. Stat. § 325F.67.
22. Mississippi Consumer Protection Act, § 75-24-1 through § 75-24-27 (1972, as amended).
23. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, et seq.
24. Montana Unfair Trade Practices and Consumer Protection Act (MUTCPA), Mont. Code Ann. § 30-14-101 et seq.
25. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq., and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq.
26. Nevada Deceptive Trade Practices Act, NRS 598.0903 et seq.
27. New Hampshire Rev. Stat. Ann. 358-A.
28. New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.
29. New Mexico Unfair Practices Act, NMSA § 57-12-1 et seq. (1967), NMSA § 57-15-1, et seq., and N. M. Admin. Code 12.2.11.
30. North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. 75-1.1 et seq.
31. N.D.C.C. §§ 51-12-08 et seq. and 51-15-01 et seq.
32. Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq.
33. Oklahoma Consumer Protection Act, 15 O.S. §§ 751 *et seq.* ("OCPA")
34. Oregon Unlawful Trade Practices Act, ORS §§ 646.605 et seq. and 646A.295.
35. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq.

36. Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, et seq.
37. South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq.
38. South Dakota Deceptive Trade Practices Act, SDCL Chs. 37-24-6 (as amended by 2014 South Dakota Laws SB 23 on March 14, 2014)(Effective July 1, 2014), 37-24-23 (as amended by 2014 South Dakota Laws SB 23 on March 14, 2014)(Effective July 1, 2014), and 37-24-26 (as amended by 2014 South Dakota Laws SB 23 on March 14, 2014)(Effective July 1, 2014).
39. Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 et seq.
40. Tex. Bus. & Com. Code Ann. § 17.41 et seq.
41. Utah Consumer Sales Practices Act, Utah Code Ann. § 13-11-1 et seq.
42. Vermont Consumer Fraud Act, 9 V.S.A. §§ 2451-2466.
43. Virginia Consumer Protection Act, Va. Code §§ 59.1-196 through 59.1-207.
44. Revised Code of Washington RCW 19.86.020.
45. West Virginia Consumer Credit and Protection Act, W.Va. Code §§ 46A-1-101 et seq.
46. Wisconsin Stat. §§ 100.18, 100.195 and 100.20.

**EXHIBIT B**  
**(Instructions for Submitting Complaint Form to SiriusXM)**

**STATE ATTORNEYS GENERAL - SIRIUS XM**  
**CONSUMER RESOLUTION PROGRAM**

[DATE]

Consumer Name  
Address  
City, State, Zip

Dear Consumer:

Pursuant to our [DATE] settlement with your State's Attorney General, we have received your complaint dated [DATE]. Under the terms of the settlement, and to assist SiriusXM in resolving the concerns raised by your complaint, you must complete and sign the enclosed Form, and mail or fax it to SiriusXM at the following address or fax number:

SiriusXM  
[Insert street address or P.O. Box]  
[Insert City, State and Zip Code]  
[Insert Fax Number]

Your Form must be postmarked within ninety (90) days of the receipt of this letter to be eligible to participate in this program. In addition to completing and signing the enclosed Form, you should also include any documents that you believe support your request. To the extent that you have it, include any previous Better Business Bureau, Federal Trade Commission, state consumer complaint handling entity, or Attorney General complaint-related documents. You may feel free to cross-out any personal information such as social security numbers or credit card account numbers. If your Form is not postmarked within ninety (90) days of the receipt of this letter, or is found to be ineligible, it will be rejected.

If you have any questions about the Consumer Resolution Program or the enclosed Form, please include them on a separate piece of paper and send them to the address or fax number listed above along with your completed Form. SiriusXM may contact you regarding your questions.

**PLEASE RETAIN A COPY OF YOUR COMPLAINT, COMPLETED FORM AND ANY ATTACHMENTS OR DOCUMENTS YOU SEND TO US.**

Sincerely,

SiriusXM

Enclosure

**EXHIBIT C**

**STATE ATTORNEYS GENERAL - SiriusXM  
CONSUMER RESOLUTION FORM**

Print or Type

To the extent possible, please provide all requested information and answer each question. If you do not have the information requested or know the answer, please write unknown or leave the line blank.

**YOUR CONTACT INFORMATION**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

SiriusXM will not contact you for marketing purposes solely as a result of completing this Form.

**ACCOUNT INFORMATION\* (for all radios involved in your complaint)**

\*if you have information about more than three radios, attach additional pages as necessary

Account #(s): \_\_\_\_\_

Account #(s): \_\_\_\_\_

Account #(s): \_\_\_\_\_

1. Radio ID/ESN                      Activation Date                      Cancellation Date:

\_\_\_\_\_

Did you start your SiriusXM service with a free trial? (yes/no) \_\_\_\_\_

Did you purchase SiriusXM service after the free trial period? (yes/no) \_\_\_\_\_

How did you activate service? (check one)

Phone \_\_\_\_\_                      Mail \_\_\_\_\_                      Online \_\_\_\_\_

Did you attempt to cancel your SiriusXM service? (yes/no) \_\_\_\_\_

If yes, were you successful in cancelling your service? (yes/no) \_\_\_\_\_

Do you currently have an active subscription with SiriusXM? (yes/no) \_\_\_\_\_

Explain any reasons or issues that caused you to cancel your service on this radio?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Radio ID/ESN                  Activation Date                  Cancellation Date:

\_\_\_\_\_

Did you start your SiriusXM service with a free trial? (yes/no) \_\_\_\_\_

Did you purchase SiriusXM service after the free trial period? (yes/no) \_\_\_\_\_

How did you activate service? (check one)

Phone \_\_\_\_\_                  Mail \_\_\_\_\_                  Online \_\_\_\_\_

Did you attempt to cancel your SiriusXM service? (yes/no) \_\_\_\_\_

If yes, were you successful in cancelling your service? (yes/no) \_\_\_\_\_

Do you currently have an active subscription with SiriusXM? (yes/no) \_\_\_\_\_

Explain any reasons or issues that caused you to cancel your service on this radio?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Radio ID/ESN                  Activation Date                  Cancellation Date:

\_\_\_\_\_

Did you start your SiriusXM service with a free trial? (yes/no) \_\_\_\_\_

Did you purchase SiriusXM service after the free trial period? (yes/no) \_\_\_\_\_

How did you activate service? (check one)

Phone \_\_\_\_\_                  Mail \_\_\_\_\_                  Online \_\_\_\_\_

Did you attempt to cancel your SiriusXM service? (yes/no) \_\_\_\_\_

If yes, were you successful in cancelling your service? (yes/no) \_\_\_\_\_

Do you currently have an active subscription with SiriusXM? (yes/no) \_\_\_\_\_

Explain any reasons or issues that caused you to cancel your service on this radio?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Use additional pages to describe additional accounts, if necessary.

**OTHER ACCOUNT INFORMATION (not related to this complaint)**

Account #(s): \_\_\_\_\_

Account #(s): \_\_\_\_\_

|                 |                 |                    |
|-----------------|-----------------|--------------------|
| 1. Radio ID/ESN | Activation Date | Cancellation Date: |
| _____           | _____           | _____              |

|                 |                 |                    |
|-----------------|-----------------|--------------------|
| 2. Radio ID/ESN | Activation Date | Cancellation Date: |
| _____           | _____           | _____              |

**ORIGINAL COMPLAINT DETAILS**

Is this complaint one that you filed with SiriusXM previously or the Better Business Bureau, the Federal Trade Commission, a state or local consumer complaint handling entity, or your Attorney General? (yes/no) \_\_\_\_\_

If so, what date (month and year) did you file this complaint originally? \_\_\_\_\_

Did you receive a satisfactory resolution to your complaint? (yes/no) \_\_\_\_\_



## UNRESOLVED COMPLAINT DETAILS

Explain why you think your complaint is unresolved or not fully resolved.

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Use additional pages if necessary.

I request the following relief (please be very specific by explaining in detail the amount you believe you are owed; the credit you may be requesting be placed on your account or refund you are requesting; or any other relief you believe you are justified in asking for related to your complaint against SiriusXM):

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Use additional pages if necessary.

Provide a detailed explanation of why you believe you are entitled to the relief requested above: \_\_\_\_\_

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Use additional pages if necessary.

In addition to my original complaint and records, I have attached additional documents in support of my request (Include copies only as original documents will not be returned):

Yes

No

**CERTIFICATION**

**By signing and dating this form, I attest that all information provided by me in this Form (and attachments, if applicable) is true to the best of my knowledge and belief. I have read and understood the Instructions and Complaint Form.**

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Print name: \_\_\_\_\_

**PLEASE RETAIN A COPY OF THIS FORM AND ANY ATTACHMENTS YOU SEND TO SIRIUSXM.**

**EXHIBIT D**  
**(Identifiable Loss Exceeds \$50)**

STATE ATTORNEYS GENERAL – SIRIUS XM  
CONSUMER RESOLUTION PROGRAM

[DATE]

Consumer Name  
Address  
City, State, Zip

After reviewing your complaint and the Form you submitted to SiriusXM under the State Attorneys General - SiriusXM Consumer Resolution Program, SiriusXM has determined that your complaint is not eligible under the Program because \_\_\_\_\_. You may appeal this decision by submitting the complaint for re-review to a neutral third-party Facilitator who will determine if you qualify as eligible under the Program. In order to request a re-review, you must submit the original Form by mail or fax to the Facilitator at the following address by no later than [DATE]:

SiriusXM FACILITATOR  
[Insert street address or P.O. Box]  
[Insert City, State and Zip Code]  
[Insert Fax Number]

In addition to re-submitting the Form, you should also include any documents that you believe support your position that you are eligible for relief under the Program. Please note that if your Form is not received by the Facilitator in a timely manner, or is found to be ineligible, it will be rejected by the Facilitator.

If you have any questions about the Program, please include them on a separate piece of paper and send them to the address or fax number listed above along with the Form.

Please keep a copy of all materials you submit to the Facilitator for your records.

Sincerely,

SiriusXM

**EXHIBIT E**  
**(Identifiable Loss \$50 or Less)**

**STATE ATTORNEYS GENERAL - SIRIUS XM**  
**CONSUMER RESOLUTION PROGRAM**

[DATE]

Customer Name  
Address  
City, State, Zip

Re: Your Sirius XM Complaint and Form

Dear [Customer]:

SiriusXM has reviewed your consumer complaint and the Form you submitted under the State Attorneys General - SiriusXM Consumer Resolution Program. After reviewing your complaint and Form you submitted to SiriusXM, SiriusXM determined that you are not eligible for relief under the Program because \_\_\_\_\_.

A copy of this letter or a summary of the status of your complaint and Form has also been provided to your State Attorney General. Thank you again for bringing your concerns to our attention.

Sincerely,

SiriusXM

**EXHIBIT F1**  
**(If SIRIUS XM Agrees with the Relief Requested –**  
**No Phone Interaction)**

**STATE ATTORNEYS GENERAL - SIRIUS XM**  
**CONSUMER RESOLUTION PROGRAM**

[DATE]

Customer Name  
Address  
City, State, Zip

Re: SiriusXM Resolution of your Eligible Complaint

Dear [Customer]:

After reviewing your consumer Form, SiriusXM is pleased to inform you that you are eligible under the Attorneys General - SiriusXM Consumer Resolution Program. The relief you requested in your complaint and Form has been provided. Specifically, SiriusXM agrees to resolve your concern(s) as follows:

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SiriusXM believes this resolves your concerns as requested. However, if SiriusXM has missed something, please call us at [insert TFN] with any questions. You should make a note of the date and who you spoke with regarding whatever SiriusXM missed, if anything.

Thank you again for bringing your concerns to our attention.

Sincerely,

SiriusXM

**EXHIBIT F2**  
**(If SiriusXM Agrees with the Relief Requested –**  
**Via Phone Interaction)**

STATE ATTORNEYS GENERAL – SIRIUS XM  
CONSUMER RESOLUTION PROGRAM

[DATE]

Customer Name  
Address  
City, State, Zip

Re: SiriusXM's Resolution of your Eligible Complaint

Dear [Customer]:

It was a pleasure speaking with you recently regarding your request in the State Attorneys General – SiriusXM Consumer Resolution Program. I am happy that SiriusXM was able to resolve the issues you raised about your SiriusXM service to your satisfaction as follows:

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I believe this reflects the discussion on the phone, but if SiriusXM has missed something, please call us at [insert TFN] to discuss. You should make a note of the date, time and who you spoke with regarding the matters not addressed, if any.

Thank you again for bringing your concerns to our attention.

Sincerely,

SiriusXM

**EXHIBIT G**  
**(Identifiable Loss \$100 or Less)**

**STATE ATTORNEYS GENERAL - SIRIUS XM**  
**CONSUMER RESOLUTION PROGRAM**

[DATE]

Customer Name  
Address  
City, State, Zip

Re: SiriusXM Proposed Resolution of your Eligible Complaint

Dear [Customer]:

It was a pleasure speaking with you regarding your request in the State Attorneys General - SiriusXM Consumer Resolution Program and I am sorry that SiriusXM was unable to come to an agreement to resolve the issues you raised about your SiriusXM service. In an attempt to resolve your concern, SiriusXM would like to extend the following new and final offer:

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SiriusXM believes this new and final offer is fair and reasonable, and hopes that you will give it careful consideration. If you would like to resolve the issues raised in your complaint and Form on these terms, call us at [insert TFN]. SiriusXM will not implement the terms of this offer unless we hear from you.

A copy of this letter or a summary of the status of your complaint has also been provided to your State Attorney General. Thank you again for bringing your issue to our attention.

Sincerely,

SiriusXM

**EXHIBIT H**  
**(Identifiable Loss Exceeds \$100)**

**STATE ATTORNEYS GENERAL - SIRIUS XM**  
**CONSUMER RESOLUTION PROGRAM**

[DATE]  
Customer Name  
Address  
City, State, Zip

Re: Proposed SiriusXM Resolution of your Eligible Complaint

Dear [Customer]:

It was a pleasure speaking with you regarding your request in the State Attorneys General - SiriusXM Consumer Resolution Program. As discussed, SiriusXM has reviewed your complaint and we're sorry that we were unable to come to an agreement regarding the issues you raised about your SiriusXM service.

Under the terms of the Agreement between your state Attorney General and SiriusXM, your complaint and Form will be submitted to the independent Facilitator for review and a decision.

Enclosed is a copy of the consumer record that SiriusXM will provide to the Facilitator as well as any additional information not previously provided to you that SiriusXM will submit to the Facilitator. If you wish to request a telephonic review with the Facilitator, please contact [X] at [insert TFN]. Make a note for your records of the date and time of your call and the individual you speak with regarding your request.

While your complaint is pending with the Facilitator, SiriusXM may contact you to discuss whether it is possible to resolve your complaint before it is reviewed by the Facilitator. You have the choice to have this discussion or advise SiriusXM that your preference is to



proceed with the hearing. You are also not required to speak with SiriusXM during this period of time.

Sincerely,

SiriusXM

Enclosure

**EXHIBIT 11 – No Phone Interaction**

**STATE ATTORNEYS GENERAL - SIRIUS XM  
CONSUMER RESOLUTION PROGRAM**

[DATE]

Customer Name  
Address  
City, State, Zip

Re: Proposed SiriusXM Resolution of Your Complaint  
Pending Facilitator Review

Dear [Customer]:

While your complaint is pending review by the Facilitator in the State Attorneys General - SiriusXM Consumer Resolution Program, SiriusXM has reviewed it again and would like to extend the following new offer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

SiriusXM believes this offer is fair and reasonable, and we hope that you will give it careful consideration. If you would like to resolve your complaint on these terms, or discuss further, please call us at [insert TFN]. SiriusXM will not implement the terms of this new offer unless and until we hear from you.

Since your complaint is pending with the Facilitator, you do not have to accept this offer and may elect to proceed with your right have your matter reviewed by the Facilitator.

Thank you again for bringing your issue to our attention.

Sincerely,

SiriusXM

**EXHIBIT I2 - Phone Interaction**

**STATE ATTORNEYS GENERAL - SIRIUS XM  
CONSUMER RESOLUTION PROGRAM**

[DATE]

Customer Name  
Address  
City, State, Zip

Re: Proposed SiriusXM Resolution of Your Complaint  
Pending Facilitator Review

Dear [Customer]:

SiriusXM is pleased that we spoke with you recently regarding your request in the State Attorneys General - SiriusXM Consumer Resolution Program. While your Complaint was pending review by the Facilitator, I am happy that SiriusXM was able to resolve the issues you raised about your SiriusXM service as follows:

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I believe the above reflects the agreement we reached on the phone. In light of this agreement, your request will no longer be reviewed by the Facilitator. If this letter does not reflect our agreement, please call us at [insert TFN].

Sincerely,

SiriusXM

VT SUPERIOR COURT  
WASHINGTON UNIT  
STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT 9

In re STONEBRIDGE BENEFIT )  
SERVICES, INC., and )  
J.C. PENNEY CORPORATION, INC. )

CIVIL DIVISION  
Docket No. 908-11-14 Wncv

FILED

ASSURANCE OF DISCONTINUANCE

BACKGROUND

Parties

1. Stonebridge Benefit Services, Inc. (“Stonebridge”) is a Delaware corporation with offices located at 2700 W. Plano Parkway, Plano, Texas 75075.

2. Stonebridge sells discount membership programs in Vermont through which consumers are entitled to discounts on the purchase of automobile, travel, home, entertainment, and other goods and services.

3. Stonebridge has marketed discount membership programs in Vermont by direct mail, telephone, and online—including through online and post-transaction referrals from the retailer J.C. Penney Corporation, Inc.—under such names as Back Porch, Everyday Bargains, Fun Family, LeisurePlus, MotorPlus, Perfect Home, Savings Solutions, and Savings2Go.

4. J.C. Penney Corporation, Inc. (“Penney”) is a Delaware corporation with offices located at 6501 Legacy Drive, Plano, Texas 75024.

5. Penney is one of the nation’s largest apparel and home furnishing retailers.

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

6. Stonebridge has had an agreement with Penney under which consumers, using their Penney credit card, could enroll in a Stonebridge discount membership program by providing Stonebridge with consent to enroll in the program and consent to bill their Penney credit card account. Stonebridge would then provide confirmation of the consumer's consent to enroll to Penney, which would then provide to Stonebridge consumers' account information for billing purposes.

*Statutory Framework*

7. Effective May 8, 2012, Vermont law addressed the sale of discount membership programs through its Discount Membership Program Act ("DMPA"), which is part of the Vermont Consumer Protection Act ("CPA") and is codified at 9 V.S.A. §§ 2470aa-2470hh.

8. The DMPA requires that sellers:

a. Clearly and conspicuously disclose all material terms of the transaction before billing consumers, including the amount, or a good faith estimate, of the typical discount on each category of goods and services; the rights to cancel and to terminate the program, and a toll-free telephone number and e-mail address that can be used to cancel the membership; the maximum length of membership; and the fact that periodic notices of the program billings will be mailed or emailed to the consumer (9 V.S.A. § 2470cc(a)(1));

b. Obtain from the consumer whose credit or debit card, bank, or other account will be charged the consumer's billing information and the consumer's name and address and a means to contact the consumer (9 V.S.A. § 2470cc(a)(2));

c. Send out notices to consumers every three months from the date of initial enrollment. The notice must include a description of the program, the name of the program and the name and address of the seller, the cost of the program, the rights to cancel and to

terminate the program, a toll-free telephone number and e-mail address that can be used to cancel the membership, and the maximum length of membership (9 V.S.A. § 2470dd(a)); and

d. Refrain from selling a discount membership program lasting longer than 18 months (9 V.S.A. § 2470ff).

*Marketing and Sales Practices*

9. In selling discount membership programs to Vermont consumers, Stonebridge:

a. Did disclose to Vermont consumers, prior to billing, a url through which the consumer could send an email to the company to cancel the membership, but did not disclose an email address;

b. Disclosed discounts on goods and services prior to billing in several ways, including stating the specific dollar amount of rebates or a specific percentage discount, or, in other cases, an "up to" percentage or percentage-range discount.

c. Did not disclose to Vermont consumers, prior to billing, the fact that periodic notices would be mailed or emailed to the consumer;

d. Did not disclose to Vermont consumers, prior to billing, that the discount membership program would not last longer than 18 months;

e. Did not obtain billing information directly from Penney consumers who enrolled in a benefit program using a Penney credit card;

f. Did not send notices to Vermont consumers every three months after enrollment; and

g. Did not limit monthly memberships to 18 months.

*Settlement*

10. The Attorney General alleges that based on the foregoing, including the absence of typical-discount disclosures on at least some categories of goods and services, Stonebridge and Penney violated the DMPA and hence the CPA, 9 V.S.A. § 2453(a).

11. Stonebridge and Penney deny that Stonebridge failed to provide typical-discount disclosures on at least some categories of goods and services and deny that they violated any Vermont law.

12. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under 9 V.S.A. § 2459.

**INJUNCTIVE RELIEF**

13. Stonebridge and Penney shall comply strictly with all provisions of Vermont law, including but not limited to the DMPA and the CPA.

14. Stonebridge shall not request and Penney shall not provide credit card account information to sellers of discount membership programs in Vermont

**PAYMENTS TO VERMONT CONSUMERS**

15. No later than December 12, 2014, Stonebridge shall send, by first class mail, postage prepaid, to all consumers with a Vermont address from whom Stonebridge received any payment in connection with a discount membership program on or after May 8, 2012, and for whom there is no documentation that the consumer actually used the program to procure a discount on goods or services, a check in the total amount of all such payments, along with a letter in substantially the same form as Exhibit 1 hereto. Stonebridge shall send these mailings to the consumers' last-known mailing address.

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

16. No later than December 19, 2014, Stonebridge shall provide the Vermont Attorney General's Office with a spreadsheet containing the name and address of all of the consumers to whom mailings are sent under paragraph 15, above.

17. The total of all of the checks described in paragraph 15, above, is expected to be approximately \$227,651.

18. No later than January 20, 2015, Stonebridge shall provide the Vermont Attorney General's Office with a bank or cashier's check payable to the Vermont State Treasurer, or by electronic money transfer to a State-designated account, in the total dollar amount of all of the checks described in paragraph 15, above, that were returned as undeliverable or that went undeposited and uncashed as of that date, to be treated as unclaimed property under Vermont law. On the same date, Stonebridge shall also provide to the Vermont Attorney General's Office an electronic Excel file containing the names of the consumers whose checks were returned or went undeposited and uncashed, and for each such consumer, the first and last names in separate fields; the last known Vermont address to which the check was mailed; the last known Vermont telephone number of the consumer; whether the check was returned or went undeposited/uncashed; and the dollar amount of the check.

19. No later than February 1, 2015, Stonebridge shall send, by first class mail, postage prepaid, to all consumers with a Vermont address from whom Stonebridge received any payment in connection with a discount membership program prior to May 8, 2012, and from whom or on whose behalf Stonebridge has, prior to January 2, 2015, received a written complaint to the effect that the consumer was billed by Stonebridge without the consumer's authorization, a check in the total amount of all such payments minus any amount already



refunded to that individual pursuant to paragraph 15 above, along with a letter in substantially the same form as Exhibit 2 hereto, *provided that* Stonebridge may rebut any such complaint and thus decline to make the payment if it produces to the Attorney General's Office sufficient evidence proving that such authorization was in fact given or that the consumer utilized the program. Stonebridge shall send the mailings required by this paragraph to the consumers' last-known Vermont mailing address.

20. On the same date, Stonebridge shall provide the Vermont Attorney General's Office with a spreadsheet containing the names and addresses of all of the consumers to whom mailings were sent under paragraph 19, above.

21. In the event of a dispute between the Vermont Attorney General's Office and Stonebridge over whether a consumer used a discount membership program under paragraph 19, above, or over whether Stonebridge has adequately rebutted a complaint of lack of authorization for billing under paragraph 19, above, the parties shall make all reasonable efforts to resolve the dispute. Should those efforts be unsuccessful, the Attorney General's Office or Stonebridge may petition the Washington County Superior Court to resolve the dispute.

#### **PAYMENT TO THE STATE**

22. No later than November 26, 2014, Stonebridge shall pay to the State of Vermont the sum of \$175,000.00 (one hundred seventy-five thousand dollars) as a payment to the State in care of the Vermont Attorney General's Office.

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

**OTHER PROVISIONS**

23. All documents and payments required to be sent to the Vermont Attorney General's Office shall be sent to that Office at 109 State Street, Montpelier, Vermont 05609, in care of Special Assistant Attorney General Elliot Burg.

24. This Assurance of Discontinuance represents a full and final settlement of any and all claims against Stonebridge and Penney by the State of Vermont and any of its subdivisions or agencies that relate to the subject matter of this Assurance of Discontinuance.


25. 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.

26. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 11/17/14

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
Elliot Burg  
Special Assistant Attorney General

Dated \_\_\_\_\_

STONEBRIDGE BENEFIT SERVICES, INC.

By: \_\_\_\_\_  
Its Authorized agent


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

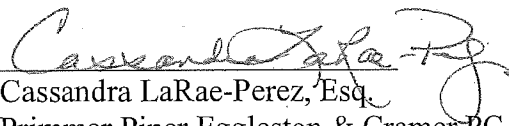
Dated \_\_\_\_\_

J.C. PENNEY CORPORATION, INC.

By: \_\_\_\_\_  
Its Authorized Agent

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Elliot Burg  
Special Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, Vermont 05609  
For the State of Vermont

  
\_\_\_\_\_  
Cassandra LaRae-Perez, Esq.  
Primmer Piper Eggleston & Cramer PC  
100 East State Street  
P.O. Box 1309  
Montpelier, Vermont 05601  
For Stonebridge Benefit Services, Inc.

\_\_\_\_\_  
Catherine Kays, Esq.  
Senior Counsel  
J.C. Penney Company, Inc.  
6501 Legacy Drive, M.S. 1105  
Plano, Texas 75024  
For J.C. Penney Company, Inc.

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

OTHER PROVISIONS

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26. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 11/17/17

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: Elliot Burg  
Elliot Burg  
Special Assistant Attorney General

Dated 11/21/14


STONEBRIDGE BENEFIT SERVICES, INC.

By: Emilia Zylkowsk  
Its Authorized agent

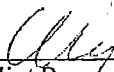
Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

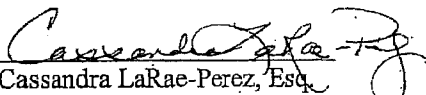
Dated 11/19/2014

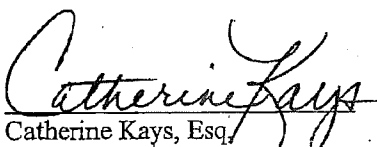
J.C. PENNEY CORPORATION, INC.

By:   
Its Authorized Agent

APPROVED AS TO FORM:

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

  
Cassandra LaRae-Perez, Esq.  
Primmer Piper Eggleston & Cramer PC  
100 East State Street  
P.O. Box 1309  
Montpelier, Vermont 05601  
For Stonebridge Benefit Services, Inc.

  
Catherine Kays, Esq.  
Senior Counsel  
J.C. Penney Company, Inc.  
6501 Legacy Drive, M.S. 1105  
Plano, Texas 75024  
For J.C. Penney Company, Inc.

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

**Exhibit 1**

**(Letter to Eligible Consumers, Post-May 7, 2014)**

Dear [Name of Eligible Consumer]:

Under a consumer protection settlement with the Vermont Attorney General's Office, we are enclosing a check to reimburse you for payments that you made on or after May 8, 2012, in connection with a discount membership program in which you were enrolled. If you are a current member in any Stonebridge Benefit Services membership program, no further fees will be billed to you, but your membership will remain active and available to you through December 31, 2014. After December 31, 2014, your membership will terminate and will not be renewed.

**You must cash or deposit this check within 30 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,

Stonebridge Benefits Services, Inc.

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

**Exhibit 2**

**(Letter to Eligible Consumers, Pre-May 8, 2012)**

Dear [Name of Eligible Consumer]:

Under a consumer protection settlement with the Vermont Attorney General's Office, we are enclosing a check to reimburse you for payments that you made before May 8, 2012, less any refund paid to you by a prior check for any payments you made after May 8, 2012, in connection with a discount membership program in which you were enrolled.

**You must cash or deposit this check within 30 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,

Stonebridge Benefits Services, Inc.

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,  
*et al.*,  
555 4th Street, NW  
Washington, D.C. 20530

Plaintiffs,

v.

SUNTRUST MORTGAGE, INC.  
901 Semmes Ave  
Richmond, Virginia 23224

Defendant.

Civil Action No. 14-1028 (RMC)

**CONSENT JUDGMENT**

WHEREAS, Plaintiffs, the United States of America, the Consumer Financial Protection Bureau (the CFPB or Bureau) and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia filed their complaint on June 17, 2014, alleging that SunTrust Mortgage, Inc. (“Defendant”) either itself or through its affiliates or subsidiaries violated, among other laws, the Unfair and Deceptive Acts



and Practices laws of the Plaintiff States, the Consumer Financial Protection Act of 2010, the False Claims Act, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

WHEREAS, the parties have agreed to resolve their claims without the need for litigation;

WHEREAS, Defendant, by its attorneys, has consented to entry of this Consent Judgment without trial or adjudication of any issue of fact or law and to waive any appeal if the Consent Judgment is entered as submitted by the parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit any allegations other than those facts of the Complaint deemed necessary to the jurisdiction of this Court and the facts set forth in Attachment A to Exhibit J;

WHEREAS, the intention of the United States, the Bureau, and the States in effecting this settlement is to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant, either itself or through its affiliates or subsidiaries;

AND WHEREAS, Defendant has agreed to waive service of the complaint and summons and hereby acknowledges the same;

NOW THEREFORE, without trial or adjudication of issues of fact or law, without this Consent Judgment constituting evidence against Defendant except as otherwise noted, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

## I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a), and 1367, 12 U.S.C. § 5565(a)(1), and under 31 U.S.C. § 3732(a) and (b), and over Defendant. The Complaint states a claim upon which relief may be granted against Defendant. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) and 31 U.S.C. § 3732(a).

## II. SERVICING STANDARDS

2. Defendant shall comply with the Servicing Standards, attached hereto as Exhibit A, in accordance with their terms and Section A of Exhibit E, attached hereto.

## III. FINANCIAL TERMS

3. *Payment Settlement Amounts.* Defendant shall pay or cause to be paid into an interest bearing escrow account to be established for this purpose the sum of fifty million dollars (\$50,000,000), which shall be known as the “Direct Payment Settlement Amount” as specified in Exhibit F, and which shall be distributed in the manner and for the purposes specified in Exhibit B. Defendant shall further pay to the United States Department of Justice the sum of four hundred and eighteen million dollars (\$418,000,000), which shall be known as the “Exhibit J Settlement Amount” as specified in Exhibit J, plus simple interest on the Settlement Amount at a rate of 2.375% per annum accruing from March 5, 2014 through March 15, 2014, for a total of \$418,271,986, as described in Exhibit J. Defendant’s payment of the Direct Payment Settlement Amount shall be made by electronic funds transfer within ten days of receiving notice that the escrow account referenced in this Paragraph 3 is established or within ten days of the Effective Date of this Consent Judgment, whichever is later. Defendant’s payment of the Exhibit J

Settlement Amount shall be made by electronic funds transfer, pursuant to written instructions to be provided by the United States Department of Justice, within ten days of receiving the written instructions from the United States Department of Justice. After Defendant has made the required payments, Defendant shall no longer have any property right, title, interest or other legal claim in any funds held in escrow. The interest bearing escrow account established by this Paragraph 3 is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended. The Monitoring Committee established in Paragraph 8 shall, in its sole discretion, appoint an escrow agent ("Escrow Agent") who shall hold and distribute funds as provided herein. All costs and expenses of the Escrow Agent, including taxes, if any, shall be paid from the funds under its control, including any interest earned on the funds.

4. *Payments to Foreclosed Borrowers.* In accordance with written instructions from the State members of the Monitoring Committee, for the purposes set forth in Exhibit C, the Escrow Agent shall transfer from the escrow account to the Administrator appointed under Exhibit C forty million dollars (\$40,000,000) (the "Borrower Payment Amount") to enable the Administrator to provide cash payments to borrowers whose homes were finally sold or taken in foreclosure by Defendant between and including January 1, 2008 and December 31, 2013; who submit claims allegedly arising from the Covered Conduct (as that term is defined in Exhibit G hereto); and who otherwise meet criteria set forth by the State members of the Monitoring Committee; and to pay the reasonable costs and expenses of a Settlement Administrator, including taxes and fees for tax counsel, if any. Defendant shall also pay or cause to be paid any additional amounts necessary to pay claims, if any, of borrowers whose data is provided to the Settlement Administrator by Defendant after Defendant warrants that the data is complete and

accurate pursuant to Paragraph 3 of Exhibit C. The Borrower Payment Amount and any other funds provided to the Administrator for these purposes shall be administered in accordance with the terms set forth in Exhibit C.

5. *Consumer Relief.* Defendant itself and through its affiliates and subsidiaries, shall provide five hundred million dollars (\$500,000,000) of relief to consumers who meet the eligibility criteria in the forms and amounts described in Paragraphs 1-9 of Exhibit D, as amended by Exhibit I, to remediate harms allegedly caused by the alleged unlawful conduct of Defendant. Defendant shall receive credit towards such obligation as described in Exhibit D as amended by Exhibit I.

#### **IV. ENFORCEMENT**

6. The Servicing Standards and Consumer Relief Requirements, attached as Exhibits A and D, are incorporated herein as the judgment of this Court and shall be enforced in accordance with the authorities provided in the Enforcement Terms, attached hereto as Exhibit E.

7. The Parties agree that Joseph A. Smith, Jr. shall be the Monitor and shall have the authorities and perform the duties described in the Enforcement Terms, attached hereto as Exhibit E.

8. The Parties agree that the Monitoring Committee established pursuant to certain Consent Judgments entered in *United States, et al. v. Bank of America Corp., et al.*, No. 12-civ-00361-RMC (April 4, 2012) (Docket Nos. 10-14) and referenced specifically in paragraph 8 of those Consent Judgments, shall be designated as the committee responsible for performing the role of the Administration and Monitoring Committee, as described in the Enforcement Terms. References to the "Monitoring Committee" in this Consent Judgment and related documents shall be understood to refer to the same Monitoring Committee as that established in the *Bank of*

*America Corp.* case referenced in the preceding sentence, with the addition of a CFPB Member, and the Monitoring Committee shall serve as the representative of the participating state and federal agencies in the administration of all aspects of this Consent Judgment and the monitoring of compliance with it by the Defendant.

## V. RELEASES

9. The United States, the Bureau, and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the Federal Release, attached hereto as Exhibit F and in the Origination Release, attached hereto as Exhibit J. The United States, the Bureau, and Defendant have also agreed that certain claims and remedies are not released, as provided in Paragraph 11 of Exhibit F and as provided in paragraph 3 of Exhibit J. The releases contained in Exhibit F and Exhibit J shall become effective on the dates and pursuant to the terms provided in those documents.

10. The Department of Housing and Urban Development and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the Administrative Release, attached hereto as Exhibit K. The release contained in Exhibit K shall become effective on the date and pursuant to the terms provided in that document.

11. The State Parties and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims and remedies, as provided in the State Release, attached hereto as Exhibit G. The State Parties and Defendant have also agreed that certain claims and remedies are not released, as provided in Part IV of Exhibit G. The releases contained in Exhibit G shall become effective upon payment of the Direct Payment Settlement Amount by Defendant.

## VII. OTHER TERMS

12. In the event that the Defendant (a) does not complete certain consumer relief activities as set forth in Exhibit D, as amended by Exhibit I (“Consumer Relief Requirements”), and (b) does not make the Consumer Relief Payments (as that term is defined in Exhibit F (Federal Release)) and fails to cure such non-payment within thirty days of written notice by the party, the United States, the Bureau, and any State Party may withdraw from the Consent Judgment and declare it null and void with respect to the withdrawing party. Nothing in this paragraph shall be interpreted to affect the releases in Exhibit J, or the release of civil and administrative claims, remedies, and penalties based on Covered Origination Conduct in Exhibit K.

13. This Court retains jurisdiction for the duration of this Consent Judgment to enforce its terms. The parties may jointly seek to modify the terms of this Consent Judgment, subject to the approval of this Court. This Consent Judgment may be modified only by order of this Court.

14. The Effective Date of this Consent Judgment shall be the date on which the Consent Judgment has been entered by the Court and has become final and non-appealable. An order entering the Consent Judgment shall be deemed final and non-appealable for this purpose if there is no party with a right to appeal the order on the day it is entered.

15. This Consent Judgment shall remain in full force and effect for three and one-half years from the date it is entered (“the Term”), at which time the Defendant’s obligations under the Consent Judgment shall expire, except that, pursuant to Exhibit E, Defendant shall submit a final Quarterly Report for the last quarter or portion thereof falling within the Term and cooperate with the Monitor's review of said report, which shall be concluded no later than six

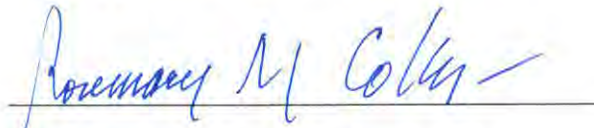
months after the end of the Term. The duration of the Servicer's obligations under the Servicing Standards set forth in Exhibit A shall be reduced to a period of three years from the date of the entry of the Consent Judgment, if at the end of the third year, the Monitor's two servicing standard compliance reports immediately prior to that date reflect that the Servicer had no Potential Violations during those reporting periods, or any Corrective Action Plans that the Monitor had not yet certified as completed. Defendant shall have no further obligations under this Consent Judgment six months after the expiration of the Term, but the Court shall retain jurisdiction for purposes of enforcing or remedying any outstanding violations that are identified in the final Monitor Report and that have occurred but not been cured during the Term.

16. Except as otherwise agreed in Exhibit B, each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

17. Nothing in this Consent Judgment shall relieve Defendant of their obligation to comply with applicable state and federal law.

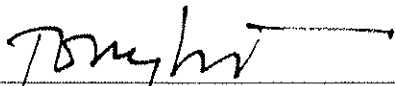
18. The sum and substance of the parties' agreement and of this Consent Judgment are reflected herein and in the Exhibits attached hereto. In the event of a conflict between the terms of the Exhibits and paragraphs 1-18 of this summary document, the terms of the Exhibits shall govern.

SO ORDERED this 30 day of September, 2014



UNITED STATES DISTRICT JUDGE

For the United States:

A handwritten signature in black ink, appearing to read "Tony West", with a horizontal line extending to the right from the end of the signature.

TONY WEST

Associate Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530  
Tel.: 202-514-9500  
Fax: 202-514-0238



For the Department of Housing and Urban Development:

A handwritten signature in cursive script that reads "Damon Y. Smith". The signature is written in black ink and is positioned above a horizontal line.

DAMON Y. SMITH

Acting General Counsel

U.S. Department of Housing and Urban Development

451 7<sup>th</sup> Street, S.W.

Washington, DC 20410

Tel.: 202-402-5099


Fax: 202-708-3389

For the Consumer Financial Protection Bureau:

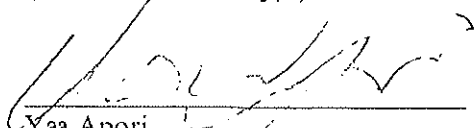


.....  
LUCY E. MORRIS  
Deputy Enforcement Director  
CARA PETERSEN  
Assistant Litigation Deputy  
RACHEL RODMAN  
Enforcement Attorney  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552  
Tel.: 202-435-7964

For the Executive Office for U.S. Trustees

  
\_\_\_\_\_  
RAMONA D. ELLIOTT  
General Counsel  
441 G St., N.W., Suite 6150  
Washington, D.C. 20530  
Tel.: 202-307-1399  
Fax: 202-307-2397

For the Federal Trade Commission  
(as to Exhibit F only):



Yaa Apori

Attorney

Federal Trade Commission

600 Pennsylvania Ave., NW


CC-10232

Washington, DC 20058

Tel: 202-326-3796

Fax: 202-326-3768

For the Department of the Treasury:

  
JOHN H. STURC

Chief Counsel

Office of Financial Stability


U.S. Department of the Treasury

1500 Pennsylvania Avenue, N.W.

Washington, D.C. 20020

Tel: 202-622-5451

For the State of Alaska:



---

CYNTHIA C. DRINKWATER

Assistant Attorney General

Alaska Attorney General's Office

1031 W. 4<sup>th</sup> Avenue, Ste. 200

Anchorage, AK 99501

Tel.: 907-269-5200

Fax: 907-264-8554

For the State of Alabama:



---

NOEL S. BARNES  
Assistant Attorney General  
Office of the Alabama Attorney General  
501 Washington Avenue  
Montgomery, AL 36130  
Tel.: 334-242-7335  
Fax: 334-242-2433

For the State of Arkansas:

A handwritten signature in black ink, appearing to read "J. B. Depriest", written over a horizontal line.

JAMES B. DEPRIEST

Ark. Bar No. 80038

Deputy Attorney General

Office of the Attorney General

323 Center Street, Suite 200

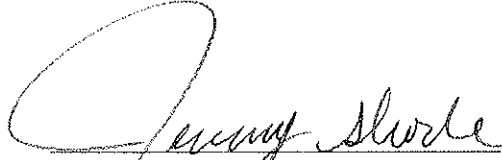
Little Rock, Arkansas 72201

Tel.: 501-682-5028

Fax: 501-682-8118



For the State of Arizona:

A handwritten signature in cursive script, appearing to read "Jeremy Shorbe", written over a horizontal line.

THOMAS C. HORNE

Arizona Attorney General

by Jeremy T. Shorbe

Assistant Attorney General

400 W. Congress Street, Suite S315

Tucson, AZ 85701

Tel.: 520-628-6504

Fax: 520-628-6532

For the State of California:

KAMALA D. HARRIS  
Attorney General

A handwritten signature in cursive script, appearing to read "Tina Charoenpong", written over a horizontal line.

TINA CHAROENPONG  
Deputy Attorney General  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Tel.: 213-897-2000  
Fax: 213-897-4951

For the State of Colorado, *ex. rel.*

JOHN W. SUTHERS, Attorney General:

A handwritten signature in black ink, appearing to read "Jennifer Miner Dethmers". The signature is written in a cursive style with a large initial "J".

JENNIFER MINER DETHMERS

Assistant Attorney General

Consumer Protection Section

Colorado Attorney General's Office

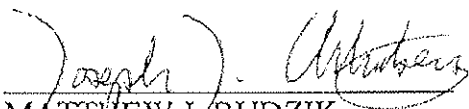
1300 Broadway, 7<sup>th</sup> Floor

Denver, Colorado 80203

Tel.: 720-508-6228

Fax: 720-508-6040

For the State of Connecticut:

A handwritten signature in cursive script, appearing to read "Joseph J. Chambers", is written over a horizontal line.

MATTHEW J. BUDZIK

JOSEPH J. CHAMBERS

Assistant Attorneys General

Office of the Connecticut Attorney General

55 Elm Street, P.O. Box 120

Hartford, CT 06141-0120

Tel: 860-808-5270

Fax: 860-808-5385

For the District of Columbia:

IRVIN B. NATHAN  
Attorney General for the District of Columbia

ELLEN A. EFROS  
Deputy Attorney General  
Public Interest Division



BENNETT RUSHKOFF (D.C. Bar #386925)

Chief, Public Advocacy Section

GARY TAN (D.C. Bar #987796)

Assistant Attorney General

Office of the Attorney General

441 Fourth Street, N.W., Suite 600 South

Washington, DC 20001

Tel: 202-727-5173

Email: [bennett.rushkoff@dc.gov](mailto:bennett.rushkoff@dc.gov); [gary.tan@dc.gov](mailto:gary.tan@dc.gov)

For the State of Delaware:


A handwritten signature in black ink, appearing to read "Matt Lintner", is written over a horizontal line.

MATTHEW LINTNER  
Director, Fraud Division  
Delaware Department of Justice  
820 N. French Street, 5<sup>th</sup> Floor  
Wilmington, DE 19801  
Tel.: 302-577-8935  
Fax: 302-577-6499

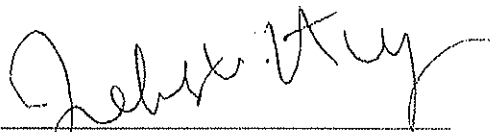
For the State of Florida:

PAMELA JO BONDI  
Attorney General

PATRICIA A. CONNERS  
Associate Deputy Attorney General

  
VICTORIA A. BUTLER  
Assistant Attorney General  
Bureau Chief, Consumer Protection Division  
3507 E. Frontage Road  
Suite 325  
Tampa, FL 33607  
Tel: 813-287-7950  
Fax: 813-281-5515

For the State of Georgia:

A handwritten signature in black ink, appearing to read "Jeffrey W. Stump", written over a horizontal line.

JEFFREY W. STUMP

Assistant Attorney General

Georgia Department of Law

40 Capitol Square, S.W.

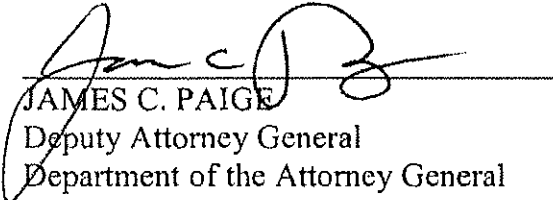
Atlanta, Georgia 30334

Tel.: 404-656-3337

Fax: 404-656-0677



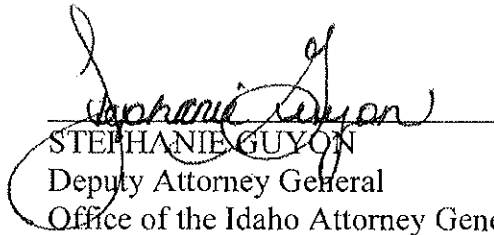
For the State of Hawaii:



JAMES C. PAIGE  
Deputy Attorney General  
Department of the Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813  
Tel: 808-586-1180  
Fax: 808-586-1205


For the State of Idaho

LAWRENCE G. WASDEN, Attorney General:

  
STEPHANIE GUYON  
Deputy Attorney General  
Office of the Idaho Attorney General  
954 W. Jefferson St., 2<sup>nd</sup> Fl.  
P.O. Box 83720  
Boise, ID 83720-0010  
Tel.: 208-334-2424  
Fax: 208-334-4151

For the State of Illinois:

LISA MADIGAN  
Attorney General



---

DEBORAH HAGAN  
Chief, Consumer Protection Division  
SUSAN ELLIS  
Chief, Consumer Fraud Bureau  
ANDREW DOUGHERTY  
Assistant Attorney General  
Illinois Attorney General's Office  
100 W. Randolph, 12<sup>th</sup> Floor  
Chicago, IL, 60601  
Tel.: 312-814-4982  
Fax: 312-814-2593

For the State of Indiana:

A handwritten signature in black ink, appearing to read 'Abigail Lawlis Kuzma', is written over a horizontal line.

ABIGAIL LAWLIS KUZMA  
Director and Chief Counsel  
Consumer Protection Division  
Indiana Office of Attorney General  
302 West Washington St., IGCS 5<sup>th</sup> Fl.  
Indianapolis, Indiana 46204  
Tel.: 317-234-6843  
Fax: 317-233-4393

For the State of Iowa:

*Patrick Madigan*

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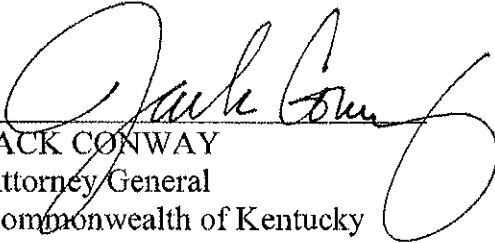
PATRICK MADIGAN  
Assistant Attorney General  
Iowa Attorney General's Office  
1305 East Walnut St.  
Des Moines, IA 50319  
Patrick.Madigan@Iowa.gov  
Tel: 515-281-5926  
Fax: 515- 281-6771

For the State of Kansas:

A handwritten signature in black ink, appearing to read 'MEGHAN E. STOPPEL', written over a horizontal line.

MEGHAN E. STOPPEL  
Assistant Attorney General  
Office of the Kansas Attorney General  
120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, KS 66612  
Tel.: 785-296-3751  
Fax: 785-291-3699

For the Commonwealth of Kentucky:



JACK CONWAY  
Attorney General  
Commonwealth of Kentucky  
State Capitol, Suite 118  
700 Capital Avenue  
Frankfort, Kentucky 40601-3449  
Tel.: 502-696-5300  
Fax: 502-564-2894

For the State of Louisiana:



A handwritten signature in black ink, appearing to read "James D. Caldwell", written over a horizontal line.

JAMES D. "BUDDY" CALDWELL

Attorney General

1885 N. Third Street

Baton Rouge, Louisiana 70804

Tel.: 225-326-6705



For The Commonwealth Of  
Massachusetts:

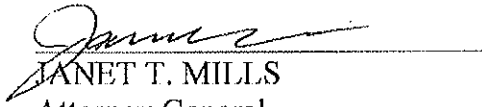
MARTHA COAKLEY  
Attorney General



---

LISA R. DYEN  
Mass. BBO #676264  
*Assistant Attorney General*  
Public Protection and Advocacy Bureau  
Consumer Protection Division  
One Ashburton Place  
Boston, MA 02108  
Tel: 617-727-2200

For the State of Maine:



---

JANET T. MILLS

Attorney General

Burton Cross Office Building, 6<sup>th</sup> Floor

111 Sewall Street

6 State House Station

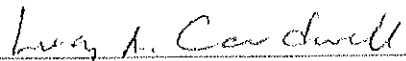
Augusta, Maine 04330

Tel.: 207-626-8800

Fax: 207-624-7730

For the State of Maryland:

DOUGLAS F. GANSLER  
Attorney General



LUCY A. CARDWELL  
Assistant Attorney General  
Office of the Attorney General  
of Maryland  
200 Saint Paul Place  
Baltimore, MD 21202  
Tel: 410-576-6337  
Fax: 410-576-6566

For the State of Minnesota:

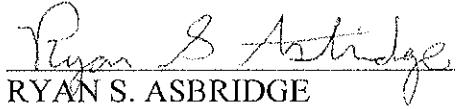
LORI SWANSON  
Attorney General, State of Minnesota

A handwritten signature in black ink, appearing to read "Nathan Brennaman", written over a horizontal line.

NATHAN BRENNAMAN  
Deputy Attorney General  
Minnesota Attorney General's Office  
445 Minnesota Street, Suite 1200  
St. Paul, MN 55101-2130  
Tel.: 651-757-1415  
Fax: 651-296-7438

For the State of Missouri:

CHRIS KOSTER  
Attorney General



RYAN S. ASBRIDGE  
Missouri Bar No. 61440  
Assistant Attorney General  
Consumer Protection Division  
PO Box 899  
Jefferson City, MO 65102  
Tel.: 573-751-7677  
Fax: 573-751-2041

For the State of Mississippi:

JIM HOOD, ATTORNEY GENERAL

BY: Bridgette W. Wiggins  
Bridgette W. Wiggins, MSB No. 9676  
Special Assistant Attorneys General  
Post Office Box 22947  
Jackson, MS 39225  
Telephone: 601-359-4279  
Facsimile: 601-359-4231

For the State of Montana:

A handwritten signature in cursive script that reads "CHUCK MUNSON". The signature is written in dark ink and is positioned above a horizontal line.

TIMOTHY C. FOX

Attorney General

CHUCK MUNSON

Assistant Attorney General

Montana Department of Justice

215 N. Sanders

Helena MT 59624

Tel.: 406-444-2026

Fax: 406-444-3549

For the Attorney General of North Carolina:

ROY COOPER  
Attorney General

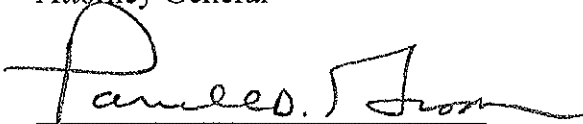
A handwritten signature in black ink, appearing to read 'P. Woods', written over a horizontal line.

PHILLIP K. WOODS  
Special Deputy Attorney General  
N.C. Department of Justice  
P. O. Box 629  
Raleigh, NC 27602  
Tel.: 919-716-6000  
Fax: 919-716-6050  
Email: [pwoods@ncdoj.gov](mailto:pwoods@ncdoj.gov)



For the State of North Dakota

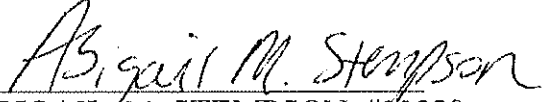
WAYNE STENEHJEM  
Attorney General

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 a long horizontal stroke at the end.

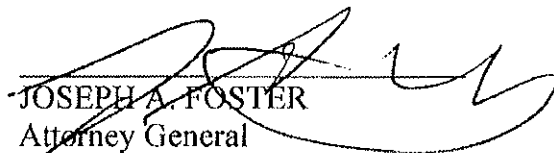
PARRELL D. GROSSMAN  
(ID No. 04684)  
Assistant Attorney General  
Director, Consumer Protection and  
Antitrust Division  
Office of Attorney General  
Gateway Professional Center  
1050 E Interstate Ave, Ste. 200  
Bismarck, ND 58503-5574  
Tel: 701-328-5570  
Fax: 701-328-5568

For the State of Nebraska:

JON BRUNING  
Attorney General

  
ABIGAIL M. STEMPSON, #23329  
Assistant Attorney General  
Office of the Attorney General  
2115 State Capitol  
Lincoln, NE 68509-8920  
Tel.: 402-471-2811  
Fax: 402-471-4725

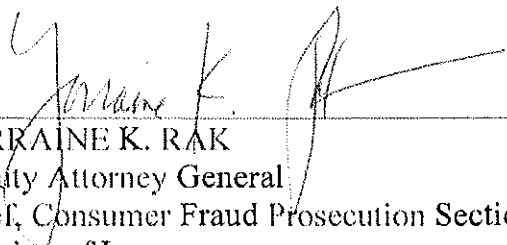
For the State of New Hampshire:

A handwritten signature in black ink, appearing to read "Joseph A. Foster", is written over a horizontal line. The signature is fluid and cursive.

~~JOSEPH A. FOSTER~~  
Attorney General  
N.H. Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301  
Tel.: 603-271-3658  
Fax: 603-271-2110

For the State of New Jersey:


JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY



---

LORRAINE K. RAK  
Deputy Attorney General  
Chief, Consumer Fraud Prosecution Section  
Division of Law  
124 Halsey Street – 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Tel.: 973-877-1280  
Fax: 973-648-4887

For the State of New Mexico:

A handwritten signature in black ink, appearing to read "Gary King", is written over a horizontal line.

GARY K. KING, Attorney General  
KAREN J. MEYERS, Assistant Attorney General  
Office of New Mexico Attorney General  
PO Drawer 1508  
Santa Fe, NM 87504-1508  
Tel: 505-222-9100  
Fax: 505-222-9033

For the State of New York:



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JANE M. AZIA

Bureau Chief

Bureau of Consumer Frauds & Protection

Office of the New York State Attorney General

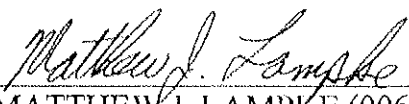
120 Broadway

New York, NY 10271

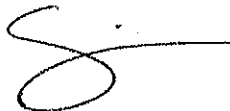
Tel.: 212-416-8727

Fax: 212-416-8787

For the Ohio Attorney General  
MIKE DEWINE

  
MATTHEW J. LAMPKE (0067973)  
Mortgage Foreclosure Counsel  
Ohio Attorney General  
30 E. Broad St., 15<sup>th</sup> Floor  
Columbus, OH 43215  
Tel.: 614-466-8569  
Fax: 866-403-3979

For the State of Oregon,  
Attorney General  
ELLEN F. ROSENBLUM:

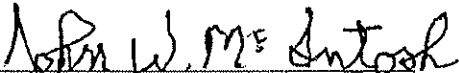
A handwritten signature in black ink, appearing to read 'S. Whiang', with a long horizontal stroke extending to the right.

---

SIMON WHIANG  
Assistant Attorney General  
Oregon Department of Justice  
Financial Fraud/Consumer Protection  
1515 SW 5<sup>th</sup> Avenue, Ste. 410  
Portland, OR 97201  
Tel.: 971-673-1880  
Fax: 971-673-1902



For the State of South Carolina:

  
ALAN WILSON

Attorney General

JOHN W. MCINTOSH

Chief Deputy Attorney General

C. HAVIRD JONES, JR.

Senior Assistant Deputy Attorney General

JARED Q. LIBET

Assistant Deputy Attorney General

South Carolina Attorney General's Office

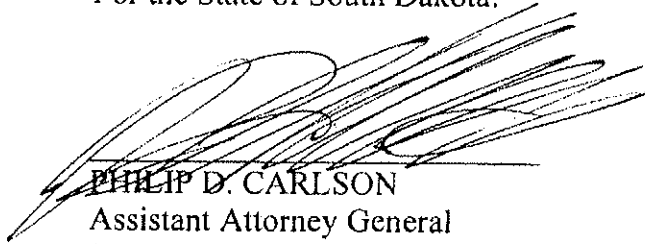
1000 Assembly Street, Room 519

Columbia, SC 29201

Tel.: 803-734-3970

Fax: 803-734-3677

For the State of South Dakota:

A large, stylized handwritten signature in black ink, appearing to read 'Philip D. Carlson', is written over the printed name.

PHILIP D. CARLSON

Assistant Attorney General  
South Dakota Attorney General's Office  
Consumer Protection Division  
1302 E. Highway 14, Suite 1  
Pierre, SD 57501  
Tel.: 605-773-3215  
Fax: 605-773-4106

For the State of Tennessee:

A handwritten signature in black ink, appearing to read "RE Cooper, Jr.", written in a cursive style.

ROBERT E. COOPER, JR.  
Attorney General and Reporter  
Office of the Tennessee Attorney General  
425 Fifth Avenue North  
Nashville, TN 37243-3400  
Tel.: 615-741-3491  
Fax: 615-741-2009

For the State of Texas:

A handwritten signature in cursive script that reads "James A. Daross". The signature is written in black ink and is positioned above a horizontal line.

JAMES A. DAROSS

State Bar No. 05391500

Assistant Attorney General

Consumer Protection Division

401 E. Franklin Avenue, Suite 530

El Paso, Texas 79901

Tel.: 915- 834-5800

Fax: 915-542-1546

For the State of Utah:

A handwritten signature in black ink, appearing to read "S. Reyes", written over a horizontal line.

SEAN D. REYES

Utah Attorney General

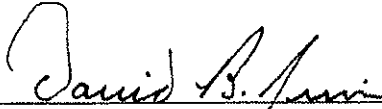
350 North State Street, #230

Salt Lake City, UT 84114-2320

Tel.: 801-538-1191

Fax: 801-538-1121

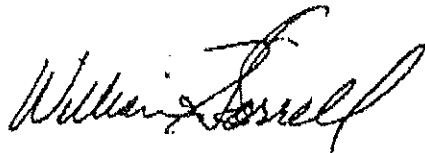
For The Commonwealth of Virginia,  
*ex rel.* MARK R. HERRING,  
Attorney General:



---

DAVID B. IRVIN (VSB #23927)  
Senior Assistant Attorney General  
MARK S. KUBIAK (VSB #73119)  
Assistant Attorney General  
Office of Virginia Attorney General  
900 East Main Street  
Richmond, Virginia 23219  
Tel.: 804-786-4047  
Fax: 804-786-0122

For the State of Vermont:

A handwritten signature in black ink, appearing to read "William H. Sorrell". The signature is written in a cursive style with a large, prominent initial "W".

---

WILLIAM H. SORRELL

Attorney General

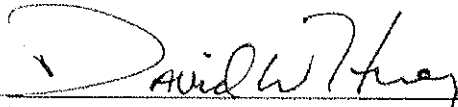
109 State Street

Montpelier VT 05609-1001

(802) 828-3171

For the State of Washington:

ROBERT W. FERGUSON  
Attorney General

A handwritten signature in cursive script, appearing to read "David W. Huey", is written over a horizontal line.

DAVID W. HUEY, WSBA No. 31380

Senior Counsel

Consumer Protection Division

Office of the Attorney General

1250 Pacific Avenue, Suite 105

PO Box 2317

Tacoma, WA 98402-4411

Tel: (253) 593-5243



For the State of Wisconsin:

J.B. VAN HOLLEN  
Attorney General

A handwritten signature in cursive script, reading "Holly C. Pomraning". The signature is written in black ink and is positioned above a horizontal line.

---

HOLLY C. POMRANING  
Assistant Attorney General  
Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
Tel: 608-266-5410  
Fax: 608-267-8906

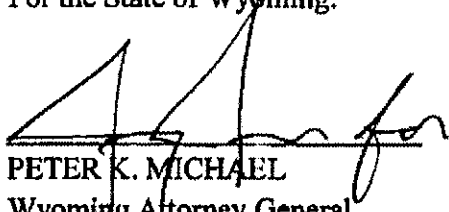
For the State of West Virginia:

A handwritten signature in black ink that reads "PATRICK MORRISEY". The signature is written in a cursive, slightly slanted style.

---

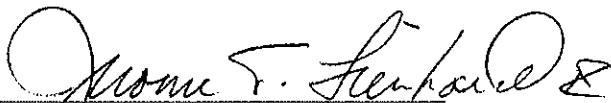
PATRICK MORRISEY  
Attorney General  
State Capitol, Room 26E  
Charleston, WV 25305-0220  
Tel.: 304-558-2021  
Fax: 304-558-0140

For the State of Wyoming:

A handwritten signature in black ink, appearing to read "Peter K. Michael", is written over a horizontal line. The signature is stylized and cursive.

**PETER K. MICHAEL**  
Wyoming Attorney General  
Wyoming Attorney General's Office  
123 State Capitol Bldg  
200 W. 24<sup>th</sup> Street  
Cheyenne, WY 82002  
Tel.: 307-777-7847  
Fax: 307-777-3435

For SunTrust Mortgage, Inc.:

A handwritten signature in black ink, reading "Jerome T. Lienhard, II". The signature is written in a cursive style with a large initial "J" and a stylized "L".

Jerome T. Lienhard, II  
President and CEO  
SunTrust Mortgage, Inc.

June 17, 2014

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 FEB 25 P 12:48

In Re: Sure Advance, LLC

) CIVIL DIVISION

) Docket No. 102-2-146 Wncv

FILED

**ASSURANCE OF DISCONTINUANCE**

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

**Background**

***Sure Advance***

1. Sure Advance, LLC d/b/a/ SureAdvance.com is a Delaware limited liability company with its primary place of business at 750 Shipyard Drive, Suite 213, Wilmington, DE 19801. From 2010 through August 2013, Respondent engaged in the business of making high interest 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. Sure Advance owns and operated the website [www.sureadvance.com](http://www.sureadvance.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, Sure Advance 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. Sure Advance 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, Sure Advance has funded 296 loans to Vermont consumers, for a total of \$143,950 in principal funded.
13. To date, Respondent has collected a total of \$288,182.86 from Vermont consumers (representing \$144,232.86 in interest and fees collected).
14. As of August 7, 2013, Sure Advance 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.

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

**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, Sure Advance 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. Sure Advance 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. Sure Advance 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. Sure Advance shall not contract with any third-party debt collectors regarding these transactions, nor sell, or transfer, any obligations arguably due based upon these transactions. Sure Advance 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 Sure Advance 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 Sure Advance about a loan transaction entered into with Respondent, Sure Advance 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 Sure Advance 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, Sure Advance shall repay all interest and fees that it collected from Vermont consumers, for a total of \$144,232.86 paid to 296 consumers. Sure Advance 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, Sure Advance 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 Sure Advance 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, Sure Advance 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 Sure Advance'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. Neither Sure Advance nor anyone acting on its behalf shall state or infer that the Vermont Attorney General's Office approves any business practices of Respondent.
28. This AOD and all terms therein shall be binding on Sure Advance, 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 Sure Advance 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 Sure Advance 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 Sure Advance 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 ¶ 21 shall waive any such claim against Sure Advance.
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 Sure Advance at:

750 Shipyard Drive, Suite 213, Wilmington, DE 19801

With a copy to:

Duane Morris, LLP, attn.: Gary Lipkin, Esq., 222 Delaware Avenue, Suite 1600,  
Wilmington, DE 19801.

34. Sure Advance 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 Sure Advance 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 \*\*\*

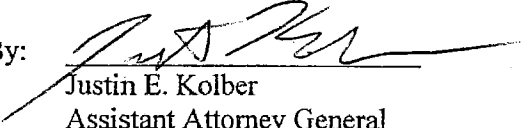
Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

DATED at Montpelier, Vermont this 25<sup>th</sup> day of February, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

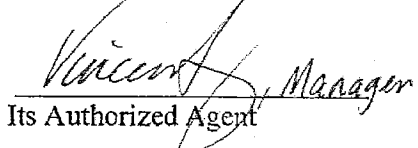
By:

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

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

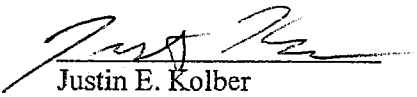
SURE ADVANCE, LLC

By:

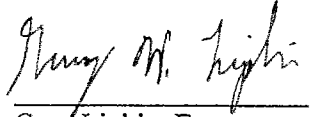
  
Its Authorized Agent

Vincent K. Ney, Manager  
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 Sure Advance, LLC

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

**EXHIBIT A**

March 2014

**Re: Sure Advance, LLC settlement**

Dear Vermont consumer:

You have been identified as a consumer who took out a loan from Sure Advance, LLC between 2010 and 2013. As a result of a settlement with the Attorney General's Office, Sure Advance 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 Sure Advance in connection with your loan. You may decline to accept the check by returning or mailing it to Sure Advance, first class postage, within 90 days of the date of this letter, to the following address:

Sure Advance, LLC  
750 Shipyard Drive, Suite 213  
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

Enc.

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 OCT 18 AM 51

In re: TD BANK, N.A.

)

CIVIL DIVISION

Docket No. 615-10-14 Wncv

FILED

ASSURANCE OF DISCONTINUANCE



THE MATTER OF TD BANK, N.A.

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\*  
\*  
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**ASSURANCE OF VOLUNTARY COMPLIANCE**

This Assurance of Voluntary Compliance<sup>1</sup> is entered into by the Attorneys General of Connecticut<sup>2</sup>, Florida, Maine, Maryland, North Carolina, New Jersey, New York, Pennsylvania, and Vermont (hereinafter collectively referred to as the “Attorneys General”) and T.D. Bank, N.A. (the “Bank” and together with the Attorneys General, the “Parties”) after an investigation into the policies, procedures, and practices of the Bank following an incident in which a locked bag containing two Backup Tapes, of which contained Personal Information, went missing from Bank premises in March 2012 (“Covered Conduct”).

WHEREAS, the Attorneys General’s investigation pertained to allegations that the Bank violated state law, including the consumer protection and personal information safeguards statutes listed on Attachment A;

WHEREAS, the Bank has continued in good faith to assist the Attorneys General in their investigation and has conferred with the Attorneys General regarding the concerns of the Attorneys General;

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

<sup>2</sup> For ease of reference purposes, this entire group will be referred to collectively herein as the “Attorneys General” or individually as “Attorney General.” Such designations, however, as they pertain to Connecticut, shall refer to the Commissioner of Consumer Protection.

WHEREAS, the parties wish to resolve all legal claims in lieu of the Attorneys General commencing actions pursuant to the consumer protection and personal information safeguards statutes listed on Attachment A.

NOW THEREFORE, without admitting wrongdoing or liability to any violation of law, all of which the Bank expressly denies, the Bank has voluntarily and knowingly entered into this Assurance of Voluntary Compliance (“Assurance”) in order to avoid the time and expense of litigation and to resolve all matters between the Parties. The Attorneys General agree to accept this Assurance on the terms and conditions contained herein, pursuant to their respective state laws, in lieu of commencing an enforcement action. This Assurance resolves all existing claims the Attorneys General may have against the Bank pursuant to the consumer protection and personal information safeguards statutes listed on Attachment A resulting from the Covered Conduct.

NOW THEREFORE, the Parties agree and stipulate as follows.

## **I. DEFINITIONS**

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

1. “Backup Tape” shall mean a magnetic tape data storage device that is designed to be portable and to store large volumes of digital information such as copies of computer servers and network applications.
2. “Breach of security” shall have the same meaning as that term is defined in the breach notification and personal information safeguards laws cited in Attachment B.
3. “Effective Date” shall mean the date on which this Assurance is duly executed by the Parties.

4. "Personal Information" shall have the same meaning as that term is defined in the breach of security and personal information safeguards statutes listed in Attachment B.

5. "Transportation Service Provider" shall mean a third party service provider that the Bank retains to ship, transport, and/or store backup tape(s) on which Personal Information is or may be stored.

## II. ASSURANCES

Pursuant to the consumer protection laws listed in Attachment A, unless otherwise specifically noted in this Section II, the Bank agrees as follows:

1. The Bank shall comply with the consumer protection and personal information safeguards statutes listed on Attachment A.

2. The Bank shall in the future: (a) timely notify residents of each Attorney General's state of any breach of security involving a breach of or the unauthorized access to or acquisition of Personal Information occurring after the Effective Date of this Agreement in accordance with each state's breach notification law listed in Attachment B; and (b) timely notify each Attorney General's Office of any future breach of security involving a breach of or the unauthorized access to or acquisition of Personal Information occurring after the Effective Date of this Agreement to the extent required by the respective breach notification laws listed in Attachment B.

3. The Bank shall maintain, and to the extent already in place shall continue to maintain, reasonable security policies and procedures designed to protect Personal Information.

4. The Bank shall not transfer or otherwise transport off of the Bank's business premises any Backup Tapes created on or after the Effective Date and which contain Personal Information of consumers unless computerized data on such Backup Tapes has been secured by

encryption and all protocols established by the Bank for the transport of personal information are fully complied with. For any Backup Tapes in existence prior to the Effective Date that are not secured by encryption, the Bank shall only transfer or otherwise transport such tapes off of the Bank's business premises via armored transport vehicle.

5. The Bank shall, at least bi-annually, review its existing internal policies and procedures regarding the collection, storage, transfer and transportation of Personal Information, and, where the review results in a determination by the Bank that it is necessary, promptly amend such policies and procedures to protect more adequately the privacy and confidentiality of Personal Information.

6. Such policies and procedures shall, at a minimum, provide for the following:

- a. Designation of an employee or employees to coordinate and supervise the Bank's program designed to protect the privacy and security of Personal Information;
- b. Annual employee training to, at a minimum:
  - i. inform employees who are responsible for creating or handling Backup Tapes about the importance of consumer privacy and their duty to help maintain it; and
  - ii. inform employees who are responsible for creating or handling Backup Tapes of the procedure for reporting to a supervisor any potential unauthorized disclosure of or access to Personal Information.

- c. Implementation of reasonable steps to select and retain Transportation Service Providers that are capable of protecting the privacy of Personal Information;
- d. Security policies for employees relating to the storage, access, and transfer/transportation of Backup Tapes outside of the Bank-owned or leased business premises designed to account for and secure all Backup Tapes containing Personal Information before, during and following transfer/transport of such Backup Tapes;
- e. Regular assessments of the effectiveness of the Bank's internal controls and procedures related to Backup Tapes containing Personal Information and the implementation of updates to such controls based on those assessments; and
- f. Continued development and maintenance of policies and procedures for responding to events involving unauthorized acquisition, access, use or disclosure of Personal Information.

### **III. PAYMENT TO THE STATES**

Within thirty (30) days of the Effective Date, the Bank shall pay Eight Hundred Fifty Thousand Dollars (\$850,000.00) to the Attorneys General. The money is to be allocated among the Attorneys General as determined solely by the Attorneys General. Said payment shall be used by the Attorneys General for such purposes that may include, but are not limited to attorneys' fees, and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used

to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorneys General.

#### IV. GENERAL PROVISIONS

1. Time shall be of the essence with regards to the Bank's obligations hereunder.
2. Any failure of the Attorneys General to exercise any of their rights under this Assurance shall not constitute a waiver of their rights hereunder.
3. The Bank hereby states that Al Raymond, U.S. Chief Privacy Officer, is authorized to enter into and execute this Assurance by and on behalf of the Bank.
4. This Assurance shall bind the Bank hereto and its agents, employees, successors, and assigns.
5. The Bank further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance.
6. Except as expressly provided in this Assurance, nothing in this Assurance shall be construed as relieving the Bank of its obligation to comply with all state and federal laws, regulations or rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation or rule. Consent to this Assurance does not constitute an approval by the Attorneys General of any of the Bank's business past, present or future acts and practices.
7. The Bank shall use reasonable efforts to notify its board of directors of the existence of this Assurance and of the obligations, duties, and responsibilities imposed on the Bank by this Assurance at the next regular board meeting at which the board is scheduled to receive an update on privacy and information security.
8. Assurance sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties, and supersedes all prior and contemporaneous agreements,

understandings, inducements or conditions, expressed or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

9. If any portion of this Assurance is held invalid by operation of law, the remaining terms of this Assurance shall not be affected and shall remain in full force and effect.

10. Nothing in this Assurance shall be construed to waive, limit, or expand any claim of sovereign immunity the Attorneys General may have in any action or proceeding.

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

WHEREFORE, the following signatures are affixed hereto:

TD BANK, N.A.

By: Albert M. Raymond

Albert M. Raymond  
U.S. Chief Privacy Officer  
2059 Springdale Road  
Cherry Hill, NJ 08003

Dated: October 3, 2014




ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 7th day of October, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: 

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

**ATTACHMENT A**

| <b>State</b>   | <b>Consumer Protection Statute; Personal Information Safeguards</b>   |
|----------------|---|
| Connecticut    | Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, <i>et seq.</i> ; Safeguarding of Personal Information, Conn. Gen. Stat. § 42-471   |
| Florida        | Florida Deceptive and Unfair Trade Practices Act, Part II, Chapter 501, Fla. Stat. Ann §§ 501.201 <i>et seq.</i>  |
| Maine          | Maine Unfair Trade Practices Act, 5 M.R.S. sections 207 and 209.  |
| Maryland       | Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2013 Repl. Vol.); Maryland Personal Information Act, Md. Code Ann., Com. Law §§ 14-3501 through 14-3508 (2013 Repl. Vol.) |
| New Jersey     | New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, <i>et seq.</i>  |
| New York       | N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349 and 350  |
| North Carolina | North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, <i>et seq.</i>  |
| Pennsylvania   | Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, <i>et seq.</i> ; Pennsylvania's Breach of Personal Information Notification Act, 73 P.S. § 2301, <i>et seq.</i>           |
| Vermont        | Vermont Consumer Protection Act, 9 V.S.A. §§ 2451-2461  |

**ATTACHMENT B**

| <b>State</b>   | <b>Breach Notification Statute</b>   |
|----------------|--|
| Connecticut    | Breach of Security re Computerized Data Containing Personal Information, Conn. Gen. Stat. § 36a-701b               |
| Florida        | Florida Information Protection Act, Fla. Stat. § 501.171   |
| Maine          | Maine “Notice of Risk to Personal Data” Act 10 M.R.S. section 1347 through 1349                                    |
| Maryland       | Maryland Personal Information Protection Act, Md. Code Ann., Com. Law §§ 14-3501 through 14-3508 (2013 Repl. Vol.) |
| New Jersey     | Disclosure of Breach of Security of Computerized Records, N.J. Stat. Ann. § 56:8-163                               |
| New York       | N.Y. Gen. Bus. Law § 899-aa  |
| North Carolina | North Carolina Identity Theft Protection Act, Protection from security breaches, N.C. Gen. Stat. § 75-65           |
| Pennsylvania   | Pennsylvania’s Breach of Personal Information Notification Act, 73 P.S. § 2301, <i>et seq.</i>                     |
| Vermont        | Vermont Security Breach Notice Act, 9 V.S.A. §§ 2430-35  |

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT  
Y  
2014 DEC 19 A 9:04

IN RE: THIRD-PARTY ) CIVIL DIVISION  
CHARGES ON MOBILE ) Docket No. 775-12-14 Wncv  
TELEPHONE BILLS; )  
T-MOBILE USA, Inc. )

**ASSURANCE OF VOLUNTARY COMPLIANCE**

Vermont Attorney General William H. Sorrell ("the Attorney General") and T-Mobile USA, Inc. ("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.
2. Carrier is a Delaware corporation located at 12920 SE 38<sup>th</sup> Street, Bellevue, Washington 98006. 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 Consumers, known as "cramming," is a major national problem.
4. The Attorneys General allege that Consumers who have been "crammed" often complain about charges, typically about \$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.
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.

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

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. "Account Holder" means any individual or entity who is or was responsible for paying all charges associated with all lines on that individual's or entity's mobile phone account with Carrier.
  - b. "Attorneys General"<sup>2</sup> means the Attorneys General, or their designees, of the Participating States.
  - c. "Bill" means a Consumer's mobile telephone bill or prepaid mobile account, as applicable.
  - d. "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 the Consumer's Bill.
  - e. 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/or capable of being heard. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement materially 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;
    - ii. a television or Internet disclosure must be of a type size, location, and shade, and remain on the screen for a duration sufficient for a

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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.

Consumer to read and comprehend it based on the medium being used; and

- iii. a disclosure 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 it.
- f. "Commercial PSMS" means the use of PSMS to bill for Products.
- g. "Consumer" means a current or former subscriber or purchaser of Products for which Third-Party Charges are or were placed on the Consumer's Bill, whether that person is the individual 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 entity, and not the employees or individuals working for or with that business entity or government entity, is solely liable to 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 entity affirmatively requests that certain or all mobile devices be provided the ability to authorize placement of such Third-Party Charges.
- h. "Effective Date" means the date that the Stipulated Order for Permanent Injunction and Monetary Judgment in the case captioned *Federal Trade Commission v. T-Mobile USA, Inc.*, (Case No. 2:14-cv-00967-JLR) ("FTC Stipulated Order") is entered by the District Court for the Western District of Washington. Provided, however, this agreement is binding upon execution.
- i. "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.
- j. "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.
- k. "Premium Short Messaging Service," or "PSMS," means a service that distributes paid content to a Consumer using the Short Message Service and

Multimedia Messaging Service communication protocols via messages that are routed using a Short Code, resulting in a Third-Party Charge.

- l. "Product" means content and/or services that can be used on a mobile device for which charges are placed on the Consumer's Bill. "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 and white label products where content and services are sold jointly and cooperatively by Carrier and another entity, where the content and/or services are placed on the Consumer's Bill as a Carrier charge, and Carrier is responsible for accepting complaints, processing refunds, and other communications with the Consumer regarding the charge. "Product" also excludes handset insurance, extended warranty offerings, and collect-calling services.
- m. "Short Code" means a common code leased from the CTIA Common Short Code Administration that is composed of a set of numbers, usually 4 to 6 digits, to and from which text messages can be sent and received using a mobile telephone.
- n. "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.
- o. "Third-Party Charge" means a charge for the purchase of a Third-Party Product placed on a Consumer's Bill.
- p. "Third-Party Product" means a Product provided by a Third Party.
- q. "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 Carrier's placement of Third-Party Charges in the Participating States.

### **IV. ASSURANCE TERMS**

- 10. Commercial PSMS: Carrier shall not make available to Consumers the option to purchase Products through Commercial PSMS and shall not 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 March 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. 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 shall 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 and documented, and where Express Informed Consent has not been appropriately collected and documented, shall require remedial action (which may include, for example, suspension, proactive credits, or retraining) or cease placing such charges on Consumers' Bills. 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: Beginning no later than April 1, 2015, Carrier shall implement a system whereby the Consumer (and, for multiline accounts, the Account Holder, if designated) will be sent a purchase confirmation separate from the Bill of every Third-Party Charge, including recurring charges, that will appear on his or her Bill. Any such purchase confirmation shall be sent within a reasonable time following the purchase of a Third-Party Product or the recurrence of a Third-Party Charge, and shall identify Blocking options that Carrier makes available to Consumers and/or provide access to such information. For multiline accounts, Carrier may provide the Account Holder the option to elect not to receive such purchase confirmations for purchases made on other lines.
13. Information on Blocking: Beginning no later than April 1, 2015, Carrier shall provide a Clear and Conspicuous disclosure about Third-Party Charges and Blocking options in informational material provided at or near the time of subscribing to service to the extent Third-Party Charges are offered and available with the 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 incur any data or text charges for receiving or accessing the information discussed in this Paragraph.
14. Billing Information and Format: Beginning no later than April 1, 2015:

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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 Assurance.



- 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.
  - b. The Third-Party Charge billing section required by this Paragraph 14 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 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 incurred after the Effective Date, or a Block, Carrier shall:
- a. provide the Consumer with access to a customer service representative who shall have 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 that 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 last disputed Third-Party Charge for the particular Product at issue (either a single charge or a recurring charge) was incurred more than three (3) months prior to when the Consumer contacted 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. if the Consumer is not satisfied with the relief obtained under the process contained in subparagraph (b) of this Paragraph 15:
    - i. offer the Consumer the opportunity to receive a full refund if the Consumer submits his or her request in writing via U.S. Mail, email, or web-based form affirming that he or she did not authorize such charge, and provide such refund, unless Carrier can demonstrate fraud or misrepresentation in connection with the claim.
    - ii. this subparagraph (d) shall expire four (4) years from the Effective Date.
  - e. 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 has already received a credit or refund from the Third Party for some or all of the claimed Unauthorized Third-Party Charge; and
  - f. beginning no later than April 1, 2015, in the event a Consumer disputes a Third-Party Charge as Unauthorized, until such time as the provisions of subparagraph 15.b.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/or
    - 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 the disputed Third-Party Charge. The remedies in this subparagraph 15(f) are inapplicable to Consumer complaints involving dissatisfaction with purchases where the Consumer does not dispute that Consumer authorized the purchase.
16. Training: For six (6) years after the Effective Date, Carrier shall 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 shall conduct one training program within three (3) months of such cessation and shall 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. Cooperation with Attorney General: Carrier shall 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. The information and assistance shall include information regarding the identity of Third Parties placing charges on Carrier's Bill, revenue from such Third Parties, refunds provided relating to such Third Parties, any audits conducted of such Third Parties (to the extent not protected by attorney-client privilege or attorney work product), and any applications or other information provided by Third Parties, to the extent that Carrier has access to such information. Consistent with Carrier's legal obligations to safeguard the confidential or proprietary information of Consumers and Third Parties, 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 Carrier receives from the Attorney General.
  
18. Information Maintained by Carrier: Beginning no later than April 1, 2015, Carrier shall implement systems that allow it to maintain and report the refund/credit information created pursuant to subparagraphs 15(b) and (d). Carrier shall maintain such records for at least four (4) years from the date of their creation. Carrier's obligation to maintain records for four (4) years from the date of their creation shall continue after Carrier's obligation to provide the Quarterly Reports described in Paragraph 19 expires.
  
19. Information Sharing with Attorneys General:
  - a. From April 1, 2015, Carrier shall, for at least four (4) years, 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 purchaser provided Express Informed Consent or for which Carrier has demonstrated that the claim was untimely under subparagraph 15(b)(ii);
    - 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. all other refunds/credits provided, in dollars;
    - iv. for the claims and refunds/credits identified under subparagraphs 19(a)(i), (ii), and (iii), 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

- v. 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 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.

#### **V. MONETARY PAYMENT**

- 20. Carrier shall pay Eighteen Million Dollars (\$18,000,000.00) to the Participating States. For purposes of this Assurance, Carrier shall pay \$1,045,703.87 to Vermont. 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, 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. Within one hundred and twenty (120) days of the conclusion of the Consumer redress period described in Section V of the FTC Stipulated Order resolving the concurrent FTC investigation regarding Unauthorized Third-Party Charges, Carrier shall provide the Attorneys General with a list containing the following information for each of the Participating States: (a) the number of claims submitted to the Consumer redress program by Consumers residing in the Participating State; (b) number of claims submitted to the Consumer redress program by Consumers residing in the Participating State for which Carrier made payment; and (c) the total amount paid to Consumers residing in the Participating State pursuant to the Consumer redress program.
- 22. The Participating States and Carrier recognize that, in addition to the payment provided under Paragraph 20, Carrier has agreed to pay Four Million, Five-

Hundred Thousand Dollars (\$4,500,000.00) to the Federal Communications Commission ("FCC") to resolve the concurrent FCC investigation regarding Unauthorized Third-Party Charges.

23. The Participating States and Carrier recognize that Carrier has agreed to the Consumer redress program contained in Section V of the FTC Stipulated Order, which sets forth a detailed process for Consumer redress. This Assurance does not alter, amend, replace, or expand the Consumer redress program set forth in Section V of the FTC Stipulated Order.
24. As more fully set forth in the FTC Stipulated Order, Carrier shall make payments, credits, and debt forgiveness to the Participating States, FTC, FCC, and Consumers in an aggregate amount of no less than Ninety Million Dollars (\$90,000,000.00).

#### **VI. RELEASE**

25. Effective upon full payment of the amount due under Paragraph 20, 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.
26. Nothing in this Assurance shall be construed to create, waive, or limit any private right of action.
27. 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 25 as to any entity or person, including Carrier:
  - a. any criminal liability that any person or entity, including Carrier, has or may have to the State of Vermont;
  - b. any civil or administrative liability that any person or entity, including Carrier, has or may have to the State of Vermont under any statute, regulation, or rule not expressly covered by the release in Paragraph 25 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**

28. 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 in any action or proceeding, except an action to enforce this Assurance.
29. Unless otherwise specifically provided, all actions required pursuant to this Assurance shall commence as of the Effective Date. 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.
30. 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.
31. Nothing in any provision of this Assurance shall be read or construed to require Carrier (a) to share customer proprietary network information ("CPNI") with any person not legally entitled to receive CPNI; (b) to share customer information in such a way that it would violate any applicable law or privacy policy; or (c) to grant more than one full refund for any single Unauthorized Third-Party Charge. Carrier shall not amend its privacy policy to excuse its compliance with the

reporting, tracking, or other provisions of this Assurance related to the sharing of customer information unless required by law.

32. 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 Paragraph.
33. 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 timetable for addressing the alleged breach.
34. 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 33.
35. 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 a 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.

36. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard to fairness.
37. 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. The contact employee(s) designated by Carrier pursuant to this Paragraph shall be capable of receiving and processing subpoenas, statutory investigative demands, or other legal process requesting information pertaining to the placement of Third-Party Charges on Consumers' Bills. 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.
38. 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.
39. 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 his/her jurisdiction.
40. 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.
41. The only persons with rights under this Assurance are the parties to the Assurance, namely Carrier and the Attorney General. No third party (including third parties that meet the definition in 8(n)) 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.
42. This Assurance represents the full and complete terms of the settlement entered into by the parties hereto.
43. All parties participated in the drafting of this Assurance.
44. 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.
45. All notices under this Assurance shall be provided to the following address via first-class or electronic mail:



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 the Vermont Attorney General

David A. Miller  
General Counsel  
T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006

For Carrier

46. 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.
47. 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 Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, provision, or paragraph had not been contained herein.
48. 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.
49. 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.
50. 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.

51. 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.
52. 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 conflicts with the statute or regulation.
53. 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 in the Participating State, 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.
54. To seek a modification of this Assurance for any reason other than that provided for in Paragraphs 52 or 53 of this Assurance, Carrier shall send a written request for modification to the Attorney General of Vermont on behalf of the Participating States. The Participating States shall give such petition reasonable consideration and shall respond to Carrier within thirty (30) days of receiving such request. At the conclusion of this thirty (30) day period, Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.
55. 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 to the extent commercially practicable.

56. Carrier shall pay all court costs associated with the filing of this Assurance, should the Attorney General be required to file and seek court approval of this Assurance.

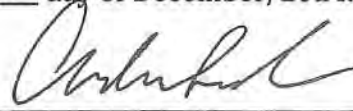
DATED at Montpelier, Vermont this 18<sup>th</sup> day of December, 2014.

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 Seattle, Washington this 17<sup>th</sup> day of December, 2014.

By:   
Laura J. Buckland/Andrew Sacks  
Vice President, Legal Affairs

STATE OF VERMONT  
SUPERIOR COURT,  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT

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In Re: T\$\$, LLC

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Civil Division

Docket No. 249-4-14 Wncw

FILED

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and T\$\$, LLC (commonly referred to as “T-Money” and hereafter “T\$\$” or “Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459

**Background**

***Respondent***

- 1 Respondent T\$\$, LLC is a California limited liability company with offices located at 2200 Sunrise Blvd, Suite 220, Gold River, CA 95670.
2. Respondent processes 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 over 30 financial institutions in Vermont, totaling over \$900,000 in debits transferred from individual bank accounts.
- 13 The total amounts processed were collected on behalf of at least 40 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 T\$\$ admits the truth of the facts described in ¶¶ 1-2; 11-13.

***The State's Allegations***

16. 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).
- 17 The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices in commerce under 9 V.S.A. § 2453
18. Respondent denies that it violated Vermont law

- 19 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**

20. 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:
- 21 To the extent not already done, Respondent shall immediately cease processing any electronic transfers from Vermont financial accounts on behalf of any unlicensed lender.
22. 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***

23. The parties have agreed on an initial list of 25 lenders who collected more than the amounts credited to borrowers, approximating \$90,000 in debits. T\$\$ shall make restitution of exactly \$90,000 by crediting each eligible consumer's bank account as agreed between the parties, in issuing the credit(s) T\$\$ 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, T\$\$ 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, T\$\$ shall pay the consumer restitution amount (totaling approximately \$90,000 but not to exceed \$90,000) as described in this paragraph.

24. If any of the payments made by T\$\$ pursuant to paragraph 23 cannot be completed (i.e., the credit is returned, or undeliverable), then as agreed between the parties, T\$\$ 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. At T\$\$'s cost and election, T\$\$ or the Attorney General's Office may use a third party to administer the mailed refunds, or such other means as agreed by the parties. The parties agree to work in good faith to resolve any administrative or other issues regarding implementation of this paragraph.

25. Beginning 90 days after filing this AOD, Respondent shall pay an additional \$60,000 into a client trust or escrow account as consumer restitution in three quarterly payments of \$20,000 each. The parties have agreed on a secondary list of four (4) unlicensed lenders for which additional restitution may be required up to \$60,000. The Attorney General's Office will notify T\$\$ of the amounts of restitution owed



under this provision, and once notified, T\$\$ shall provide the same lists and make the payments pursuant to the same terms as ¶¶ 23-24 above.

26. If the total amount of restitution for borrowers of either the first or second group of lenders does not add up to \$150,000, then the remaining amounts shall be paid to the State of Vermont, per ¶ 30 below
27. Any returned checks made pursuant to ¶¶ 24-25 shall be treated as unclaimed property, pursuant to Vermont's unclaimed property statute.
28. If applicable, within 120 days after sending any checks pursuant to ¶ 24, and then again within 120 days after sending any checks pursuant to ¶ 25, T\$\$ 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***

- 29 Within 10 business days of filing this AOD, Respondent shall pay to the State of Vermont \$10,000 in addition to the Consumer Restitution Amount specified above in ¶¶ 23 and 25
30. Any remaining amounts not paid as consumer restitution pursuant to ¶ 26 shall be paid to the State of Vermont.
- 31 The payments required by ¶¶ 29-30, 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**

32. 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
- 33 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, T\$\$ 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.

34. 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
35. 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.
36. 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.
37. 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, and penalties that the Vermont Attorney General could have asserted under the Vermont Consumer Protection Act or common law claims concerning unfair, deceptive or fraudulent acts or practices which resulted from the conduct that is the subject of this AOD against Respondent.
38. 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.

39 All notice related to this AOD shall be given to

(a) **Respondent** at: Clayton S Friedman, Manatt, Phelps & Phillips, LLP, Park Tower, 695 Town Center Drive, 14th Floor, Costa Mesa, CA 92626, cfriedman@manatt.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.

40 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.

41 This AOD may only be enforced by the parties.

42 Neither this AOD nor anything herein shall be construed or used as a waiver, limitation or bar on any defense otherwise available to Respondent or on Respondent's right to defend itself from or make any arguments in any pending or future legal or administrative action, proceeding, or state or federal claim or suit, including without limitation, private individual or class action claims or suits, relating to Respondent's conduct prior to the execution of this AOD, or to the existence, subject matter or terms and conditions of this AOD.

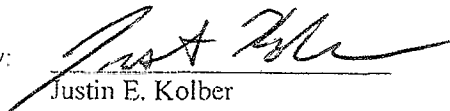
43 If any document created pursuant to this AOD contains confidential information as required by Vermont law, then such information shall be

treated as confidential and shall not be disclosed to any third party unless otherwise compelled by law. To the extent any party is compelled to make such a disclosure, the compelled party shall notify the other party in writing of its intent to make a disclosure, and provide the other party a reasonably sufficient opportunity to challenge the compelled disclosure in a court of law or other applicable tribunal.

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


DATED at Montpelier, Vermont this 22<sup>nd</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 21 day of April, 2014

TSS, LLC

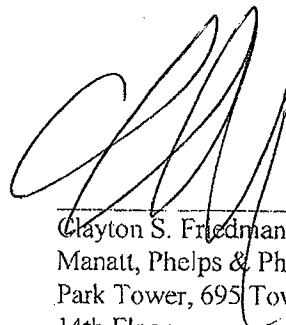
By:   
Its Authorized Agent

SHERI FORREST-MATTHEWS  
Name and Title of Authorized Agent CO-OWNER

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

  
Clayton S. Friedman, Esq.  
Manatt, Phelps & Phillips, LLP  
Park Tower, 695 Town Center Drive  
14th Floor  
Costa Mesa, CA 92626

For Respondent

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

Exhibit A

**List of Unlicensed Lenders**

|    |                            |
|----|----------------------------|
| 1  | ABCWAGES.COM               |
| 2  | APOLLO MARKETING, LLC      |
| 3  | BLUE STAR RESULTS INC.     |
| 4  | CANYON CREEK MANAGEMENT    |
| 5  | CASH CURE LLC              |
| 6  | CASH CALL INC              |
| 7  | CASH WEB                   |
| 8  | DELBERT                    |
| 9  | DEPDL, INC.                |
| 10 | EXTRAFUNDS.COM             |
| 11 | GOLDLINE FUNDING GROUP LLC |
| 12 | INSTANT HOLDINGS, LLC.     |
| 13 | INTEGRA FINANCIAL SERVICES |
| 14 | JUPITER FINANCIAL, INC.    |
| 15 | JUPITER FUNDING GROUP, LLC |
| 16 | LLS AMERICA, LLC           |
| 17 | MAMBO CASH                 |
| 18 | MARS FUNDING, INC          |
| 19 | MERCURY RED, INC.          |
| 20 | NATIVE WEST ELECTRONICS    |
| 21 | NORTHCREST VENTURES, INC.  |
| 22 | PACIFIC TRADING, INC.      |
| 23 | PAYADVANCE.COM             |
| 24 | PBT LOAN SERVICES LLC      |
| 25 | SIGMA SOLUTIONS, LLC       |
| 26 | SPEEDEE CASH               |
| 27 | SPEKTRUM ONLINE, LLC       |
| 28 | VALLEY FINANCIAL, INC.     |
| 29 | ZARVAD III LTDA            |

Office of the  
Attorney  
General  
State Street  
Montpelier, VT  
05609

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2014 JAN -9 P 4:15

STATE OF VERMONT, )  
Plaintiff )  
 )  
v. )  
 )  
VERMINTS, INC., and )  
GARY J. RINKUS, )  
Defendants )

FILED  
CIVIL DIVISION  
Docket No. 658-9-12 Wncv

**STIPULATION AND CONSENT ORDER**

WHEREAS, as evidenced by their signatures below, Plaintiff State of Vermont ("the State"), through its Attorney General, and Defendants VerMints, Inc., and Gary Rinkus ("Defendants") have agreed to the entry of this Stipulation and Consent Order;

WHEREAS the parties have waived any requirement that the Court make findings of fact or conclusions of law;

WHEREAS all parties have consulted with legal counsel in connection with this Stipulation and Consent Order;

WHEREAS all parties agree that the terms of this Stipulation and Consent Order are just; and

WHEREAS the Court approves the terms of the parties' agreement and adopts them as its own determination of their respective rights and obligations;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:



*Injunctive relief*

1. Defendants shall comply strictly with the Vermont Attorney General's Consumer Protection Rule (CP) 120, currently accessible online at <http://www.atg.state.vt.us/assets/files/CP%20120.pdf>.

2. Effective January 15, 2014, Defendants shall not sell in or into any states in the northeast United States any of their products that are produced outside of Vermont, *unless* there appears on the front panel of the product packaging a sticker or graphic in the same form, size, and prominence as the "Produced in Canada" disclosure shown in Exhibit 1 hereto.

3. For the purpose of paragraph 2, above:

a. "States in the northeast United States" means (i) the states of Vermont, New Hampshire, Maine, Massachusetts, Rhode Island, Connecticut, and New Jersey, and (ii) the states of New York and Pennsylvania, *except* for those parts of western New York and western Pennsylvania serviced by VerMints' UNFI distributor in York, Pennsylvania.

b. "Product packaging" means, in the case of mints sold in metal tins, the metal tin itself.

4. As long as the disclosure obligation set out in paragraph 2 is fully complied with, that obligation shall expire on July 15, 2015. If the disclosure obligation is not fully complied with, then that obligation shall continue in force until either the parties jointly submit to the Court an amendment to this Stipulation and Consent Order or the Court orders a new expiration date, whichever occurs first.



***Monetary relief***

5. *Cy pres.* No later than January 15, 2014, Defendants shall pay the sum of \$35,000.00 (thirty-five thousand dollars) to the Vermont Food Bank for the purpose of addressing the food needs of Vermonters. Within 5 (five) days of making this payment, Defendants shall send to the Vermont Attorney General's Office, c/o Assistant Attorney General Elliot Burg, 109 State Street, Montpelier, Vermont 05609, documentation of said payment to the Vermont Food Bank.

6. *Payment to the State.* No later than January 15, 2014, Defendants shall pay the sum of \$30,000.00 (thirty thousand dollars) to the State of Vermont, by sending said payment to the Vermont Attorney General's Office, c/o Assistant Attorney General Elliot Burg, 109 State Street, Montpelier, Vermont 05609.

7. *Joint and several liability.* Defendants VerMints, Inc., and Gary Rinkus shall be jointly and severally liable for the payments described in paragraphs 5 and 6, above.

***Other Provisions***

8. *Final resolution.* This Stipulation and Consent Order resolves all existing claims the State of Vermont may have against Defendants stemming from the facts and claims described in the Consumer Protection Complaint in this matter.


9. *Binding effect.* This Stipulation and Consent Order shall be binding on Defendants and their respective successors and assigns.

10. *Continuing jurisdiction.* This Court retains continuing jurisdiction for the purpose of enabling any of the parties to this Stipulation and Consent Order to apply to the Court for such further orders or relief as may be necessary or appropriate for the

modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations herewith.

11. *Execution in counterparts.* This Stipulation and Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

Dated this 9<sup>th</sup> day of January, 2014.

  
\_\_\_\_\_  
Superior Judge  
Helen M. Toor

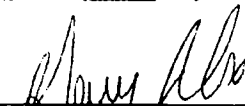
**STIPULATION**

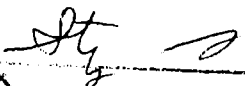
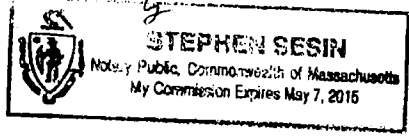
The undersigned parties stipulate and agree to the foregoing Consent Order.

Dated at December, this 23 day of December, 2013.

 President  
\_\_\_\_\_  
Authorized Agent of VerMints, Inc.

Dated at December, this 23 day of December, 2013.

  
\_\_\_\_\_  
Gary Rinkus

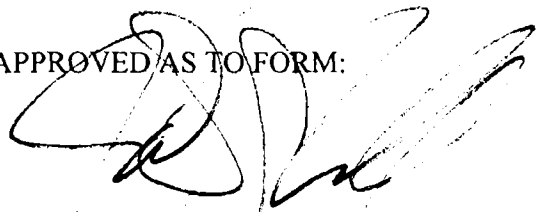
  


Dated at Montpelier, Vermont this 3<sup>rd</sup> day of ~~December~~, <sup>JANUARY, 2014</sup> 2013.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: Elliot Burg  
Elliot Burg  
Assistant Attorney General

APPROVED AS TO FORM:  


John F. Campbell, Esq.  
1996 Main Street  
P.O. Box 1229  
Quechee, Vermont 05059  
For Defendants

✓

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



# VerMints<sup>®</sup>



VERMINTS  
ORGANIC  
Coffee  
PASTILLES

USDA  
ORGANIC

Cafe Express

NET WT 1.41 OZ. Produced in Canada  
at a certified organic facility

# VerMints<sup>®</sup>



VERMINTS  
ORGANIC  
MINTS  
ABSOLUTELY FRESH TASTE

USDA  
ORGANIC

Ginger Mint

NET WT 1.41 OZ. Produced in Canada  
at a certified organic facility

Produced  
in Canada  
at a certified organic facility

at a certified organic facility

# VerMints<sup>®</sup>



VERMINTS  
ORGANIC  
PASTILLES

USDA  
ORGANIC

Chai

NET WT 1.41 OZ. Produced in Canada  
at a certified organic facility

# VerMints<sup>®</sup>



VERMINTS  
ORGANIC  
MINTS  
ABSOLUTELY FRESH TASTE

USDA  
ORGANIC

Winter Mint

NET WT 1.41 OZ. Produced in Canada  
at a certified organic facility



VERMINTS  
ORGANIC  
MINTS  
ABSOLUTELY FRESH TASTE

USDA  
ORGANIC

CinnaMint

Produced in Canada  
at a certified organic facility

# VerMints<sup>®</sup>



VERMINTS  
ORGANIC  
MINTS  
ABSOLUTELY FRESH TASTE

USDA  
ORGANIC

Pepper Mint

NET WT 1.41 OZ. Produced in Canada  
at a certified organic facility

Exhibit 1