

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2015 MAY 21 P 12:34

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

IN RE: EMBASSY SUITES SAN FRANCISCO )  
AIRPORT – SOUTH SAN FRANCISCO, 250 )  
GATEWAY BOULEVARD, SOUTH SAN )  
SAN FRANCISCO, CA, 94080 )

CIVIL DIVISION

Docket No. 327-5-15 Whov.

**ASSURANCE OF DISCONTINUANCE**

Vermont Attorney General William H. Sorrell, on behalf of the State of Vermont, (the “Attorney General”) and Embassy Suites Management LLC, as manager of the Embassy Suites San Francisco Airport – South San Francisco, located at 250 Gateway Boulevard, South San Francisco, California, 94080 (“Respondent”), hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**BACKGROUND**

1. Embassy Suites Management LLC, a Delaware limited liability company, manages the Embassy Suites San Francisco Airport – South San Francisco, located at 250 Gateway Boulevard, South San Francisco, California 94080 (the “Hotel”).
2. In July 2013, the Hotel received telephone notifications from seventeen customers, who reported unauthorized charges on the credit cards they previously had used at the Hotel.
3. On October 8, 2013, employees of the Hotel discovered and removed two devices, commonly called “keyloggers,” on two front desk workstations. Keyloggers generally have the technical ability to record or log the keys struck on a keyboard. Malicious individuals may use keyloggers to steal credit card information.

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GENERAL  
109 State Street  
Montpelier, VT  
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4. Respondent alleges that: (a) it conducted numerous investigations to determine how credit cards used at the Hotel might have been compromised; and (b) the investigations were inconclusive.

5. The Respondent notified the Vermont Office of the Attorney General on February 5, 2014.

6. Failure to notify the Attorney General of a Security breach “within 14 business days, consistent with the legitimate needs of the law enforcement agency as provided in this subdivision (3) and subdivision (4) of this subsection, of the data collector’s discovery of the security breach or when the data collector provides notice to consumers pursuant to this section, whichever is sooner,” is a violation of Vermont’s Security Breach Notice Act. 9 V.S.A. § 2435(b)(3)(B)(i).

7. Consumers whose data may have been compromised were notified on February 7, 2014.

8. 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 the discovery or notification, consistent with the legitimate needs of the law enforcement agency, as provided in subdivisions (3) and (4) of this subsection, or with any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system,” is a violation of Vermont’s Security Breach Notice Act. 9 V.S.A. § 2435(b)(1).

9. The Attorney General alleges that upon discovering the vulnerability, San Francisco Embassy Suites failed to act in the most expedient time possible to determine the source of the breach and that the delay was not reasonable.

10. Respondent does not admit that it has violated Vermont law, and nothing herein shall be deemed an admission or waiver of any right of Respondent, and Respondent agrees to be subject to the jurisdiction of this Court solely for the purposes of this AOD. The parties have agreed to resolve the allegations through this AOD.

### INJUNCTIVE RELIEF

#### Definitions

11. "Consumer" shall have the same meaning as defined in 9 V.S.A. § 2430(2).
12. "Personally Identifiable Information" shall have the same meaning as defined in 9 V.S.A. § 2430(5).
13. "Security breach" shall have the same meaning as defined in 9 V.S.A. § 2430(8)(A).
14. "Effective Date" shall mean the date on which the Respondent receives a copy of this Assurance duly executed in full by the Respondent and the Vermont Attorney General.

#### Legal Compliance

15. Upon discovery or notification of a Security breach (defined in 9 V.S.A. § 2430(8)(A)) at the Hotel, the Respondent shall:
  - a. notify the Vermont Office of the Attorney General "within 14 business days, consistent with the legitimate needs of the law enforcement agency as provided in this subdivision (3) and subdivision (4) of this subsection, of the data collector's discovery of the security breach or when the data collector provides notice to consumers pursuant to this section, whichever is sooner" in keeping with the requirements of 9 V.S.A. § 2435(b)(3)(B)(i);
  - b. notify Consumers "in the most expedient time possible and without unreasonable delay, but not later than 45 days after the discovery or

notification, consistent with the legitimate needs of the law enforcement agency, as provided in subdivisions (3) and (4) of this subsection, or with any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system” in keeping with the requirements of 9 V.S.A. § 2435(b)(1); and

- c. if the Respondent determines that misuse of the personal information is not reasonably possible, “provide notice of its determination that misuse of the personal information is not reasonably possible and a detailed explanation for said determination to the Vermont Attorney General” in keeping with the requirements of 9 V.S.A. § 2435(d)(1).

16. Respondent shall implement policies and procedures at the Hotel to enable continued compliance with the Security Breach Notice Act, including but not limited to procedures to comply with notification requirements in the event of a future Security breach at the Hotel.

17. Respondent’s managers and front desk employees at the Hotel shall be provided with a memorandum summarizing and explaining the content of this AOD.

#### **OTHER TERMS**

18. The Respondent agrees that this AOD shall be binding on it with regard to its management of the Hotel for five years.

19. This AOD shall not be binding on assignees.

20. The Attorney General hereby waives, releases and discharges any and all claims relating to the matter described in this AOD as to Respondent.

21. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto solely 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.

22. A future data Security breach at the Hotel shall not, alone, be evidence that Respondent violated this AOD.

#### **STIPULATED PENALTIES**

23. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of any provision of paragraphs 15 to 17 of this AOD, then the parties agree that penalties to be assessed by the Court for each act in violation of this AOD shall be \$5,000. For purposes of this section, the term "each act" shall mean: each violation of 9 V.S.A. §§ 2435(b)(1), (b)(3)(B)(i).

#### **NOTICE**

24. Respondent may be located at:

Embassy Suites Management LLC  
2711 Centerville Road  
Suite 400  
Wilmington, Delaware 19808  
Attention: Owen Wilcox, Assistant Secretary

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

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109 State Street  
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**SIGNATURE**

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

DATED at Melean, Virginia, this 19<sup>th</sup> day of May, 2015.

Embassy Suites Management LLC, as manager of  
Embassy Suites San Francisco Airport – South San  
Francisco

By:   
Owen Wilcox, Assistant Secretary, on behalf of  
Respondent

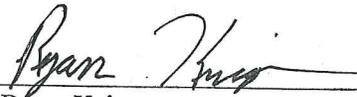
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ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 21<sup>st</sup> day of MAY, 2015.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
\_\_\_\_\_  
Ryan Kriger

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