

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

In the Matter of the

Assurance No. 14-015

**Investigation by Eric T. Schneiderman,
Attorney General of the State of New York, of
MPHJ Technology Investments, LLC**

ASSURANCE OF DISCONTINUANCE

In June 2013, the Office of the Attorney General of the State of New York ("the OAG") commenced an investigation, pursuant to Section 63(12) of the New York State Executive Law, of potentially deceptive statements and other conduct by MPHJ Technology Investments, LLC ("MPHJ") relating to MPHJ's patent licensing program in which it targeted New York businesses as potential infringers of its patents. As part of its investigation, the OAG, among other things, reviewed complaints by New York businesses, issued a subpoena duces tecum to MPHJ, and reviewed MPHJ's production in response to the subpoena.

This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and MPHJ (collectively, "the parties").

THE ATTORNEY GENERAL'S FINDINGS

1. MPHJ (together with its subsidiaries and controlled affiliates, "the Company") is what is sometimes called a "patent assertion entity." As such, the Company acquires patents, offers patent licenses to businesses that it believes have been and are infringing those patents, and may bring patent litigation against those businesses that decline to enter into a license agreement.

2. In 2012, the Company acquired patents with U.S. Patent Numbers 7,986,426, 7,477,410, 6,771,381, and 6,185,590, and patent application 13/182,857, which was later issued as Patent Number 8,488,173 (“the Patents”), for one dollar.

3. The Company created one hundred subsidiaries with names purportedly created to signify their licensing responsibilities, such as AbsMea, AccNum, AdzPro, AllLed, AllOrd, AppVal, ArdSan, ArdTec, BarMas, BavLin, BetNam, BosTra, BriPol, BruSed, BunVic, CalLad, CalNeb, CapMat, CelSta, ChaPac, CleOrv, DayMas, DelLog, DesNot, DolVol, DreOcc, DriSud, DucPla, ElaMon, EleLand, EliPut, EntNil, EquiVas, EstSto, EtaTri, FanPar, FasLan, FenObe, FloVis, FolNer, FraMor, FreSta, GamSta, GanOrb, GanPan, GenTro, GimVea, GosNel, GraMet, GreLea, HanMea, HarNol, HasVen, HeaPle, HorSan, HunLos, HurTom, IbiVen, InaNur, InkSen, InnLost, IntPar, IntTen, IsaMai, JabTre, JamVor, JitNom, JonMor, JudPur, JunSpe, and JusLem (“the Subsidiaries”).

4. The Company granted each of the Subsidiaries a license to assert and enforce the Patents against a different group of businesses.

5. Between September 2012 and May 2013, the Subsidiaries directly sent letters to over one thousand New York businesses. In these letters (the “First-Round Letters”), the Subsidiaries purported to describe the Patents, stated that each recipient “likely” infringed the Patents, inquired as to whether the recipient actually engaged in purportedly infringing activity, and offered to enter negotiations for a license to the Patents. The First Round Letters conveyed the impression to each of the thousand-plus New York recipients that the Company had conducted a meaningful review of the facts and circumstances of the recipient’s business and concluded that the recipient very likely infringed the Patents.

6. In over five hundred of the First-Round Letters, the Subsidiary that sent the letter stated that it “ha[s] had a positive response from the business community to [its] licensing program,” that “most businesses, upon being informed that they are infringing someone’s patent rights, are interested in . . . taking a license promptly,” and that “[m]any companies have responded to this licensing program in such a manner.”

7. In fact, at the time those First-Round Letters were sent, no business had yet entered into a license agreement with respect to the Patents with the Company. When the Patents’ previous owner conducted a similar licensing program, a substantial majority of businesses did not respond to the first letters sent by that previous owner and were never contacted again. Only a handful of the businesses targeted by the Patents’ previous owner ultimately agreed to reach a settlement and/or enter into a license to the Patents.

8. In the time since the Company sent the First-Round Letters, only one of the New York businesses targeted by the Company agreed to enter into a license agreement with respect to the Patents.

9. In over two hundred fifty of the First-Round Letters, the Subsidiary that sent the letter stated that because “[m]any companies” had entered into license agreements with respect to the Patents, the Subsidiary that sent the letter had been able to “determine that a fair price for a license negotiated in good faith and without the need for court action is a payment of \$1200 per employee.”

10. In fact, as noted, at the time those First-Round Letters were sent, no businesses had yet paid any money to the Company for a license to the Patents. In the Patents’ previous owner’s licensing program, as noted, most recipients did not respond to the first letters sent by that previous owner and were never contacted again. For the small number of the Patents’

previous owner's targets that did enter into license agreements, the average price paid as a result of such an agreement was significantly less than \$1200 per employee.

11. Between October 2012 and May 2013, the Subsidiaries followed the First-Round Letters with over seven hundred letters sent through the Company's counsel, the law firm Farney Daniels, P.C. (the "Second-Round Letters").

12. The Company's counsel began each Second-Round Letter by stating, "We are writing on behalf of our client, [Subsidiary]. Several weeks ago, they wrote you a letter regarding their licensing program with respect to certain U.S. patents."

13. However, several recipients of the Second-Round Letters claimed that they had not received a previous letter from the Subsidiary. The Company then provided those recipients with copies of the First-Round Letters it claims to have sent.

14. In each Second-Round Letter, the Company's counsel stated that, having not received a response to the first inquiry, its Subsidiary client "assume[d]" that the recipient infringed the Patents, described Farney Daniels, and urged the recipient to retain patent counsel.

15. Each of the seven-hundred-plus Second-Round Letters was printed on Farney Daniels letterhead and signed by a Farney Daniels attorney.

16. The fact that the Second Round Letters were signed by outside attorneys conveyed the impression to each of the seven-hundred-plus recipients that an outside attorney had conducted a meaningful review of the facts and circumstances of that business' alleged infringement.

17. Between December 2012 and May 2013, the Subsidiaries sent, via Farney Daniels, an additional three-hundred-plus letters to New York businesses (the "Third-Round Letters"). In each Third-Round Letter, the Company's counsel briefly restated the content of the

First- and Second-Round Letters, and then raised the possibility of bringing a lawsuit against the recipient alleging that the recipient had infringed the patents.

18. In each Third-Round Letter, the Company's counsel stated:

This is the third letter you have received on this topic. . . . As you have not contacted us to explain that you do not have an infringing system, we reasonably can only assume the system you are using is covered by the patents. In that case, you do need a license.

Accordingly, if we do not hear from you within two weeks from the date of this letter, our client will be forced to file a Complaint against you for patent infringement in Federal District Court As stated in both the first and second letters you received, our client has no interest in seeking a license from someone who does not infringe. To reiterate this point one last time, if your company does not use a system covered by the patents, we urge you to contact us to confirm non-infringement so that we may discontinue our correspondence with you and avoid the unnecessary expense associated with a lawsuit.

In the far more likely scenario that you do need a license, we are prepared to work with you to reach an agreement on reasonable terms, but we must hear from you within two weeks of the date of this letter. Given that litigation will ensue otherwise, we again encourage you to retain competent patent counsel to assist you in this matter.

(emphasis removed).

19. Each Third-Round Letter attached a draft complaint alleging that the recipient had infringed two of the Patents, based in part on the Company's assumption that the recipient's lack of response to the Company's two previous inquiries indicated that the recipient could be assumed to be infringing the Patents.

20. Most businesses that received a Third Round Letter did not respond to it. Nonetheless, the Company has not, to this day, filed a single patent infringement lawsuit against a New York business.

21. In each Third-Round Letter, the Company's counsel stated that it was "the third letter [the recipient has] received on this topic."

22. However, several recipients of Third-Round Letters claimed that they had not received previous letters from the Subsidiary. The Company then provided those recipients with copies of the First- and Second-Round Letters it claims to have sent.

23. Like the Second-Round Letters, each of the three-hundred-plus Third-Round Letters was printed on Farney Daniels letterhead and signed by a Farney Daniels attorney.

24. The OAG believes that each of the First-, Second-, and Third-Round letters was sent to a New York Person with the intent that the recipient rely on the affirmative statements therein in New York and that, if the New York Person decided to enter into a license agreement with respect to the patents, the New York Person do so by sending money to the Company from an account in New York.

25. In May 2013, the Vermont Attorney General filed a lawsuit against MPHJ, alleging that statements in its letters constituted deceptive and unfair practices in violation of Vermont state law, and litigation in that suit is ongoing in the U.S. District Court for the District of Vermont. In June and July 2013, the Subsidiaries sent, either directly or through Farney Daniels, yet another letter (the "Fourth-Round Letter") to most of the New York businesses to which they had previously sent letters. Each Fourth-Round Letter notified the recipient that Canon USA had negotiated a covenant not to sue on behalf of its customers for infringement of the Patents to the extent that the allegedly infringing activity involves Canon products, and further that the Company's licensing program was suspended while the Company reviewed petitions filed in late May 2013 with the United States Patent and Trademark Office for review

of two of the Patents. The Fourth-Round Letters stated that the recipients may consider the matter closed, "unless and until you hear from us in writing."

26. Over five hundred of the First-Round Letters did not explicitly identify MPHJ as the owner of the Patents. The Company also sent over three hundred Second-Round Letters and over two hundred Third-Round Letters to the same recipients as the aforementioned five-hundred-plus First-Round Letters; none of the Letters to these recipients explicitly identified MPHJ as the owner of the Patents.

27. The OAG believes that the number of different, cryptic names of the Subsidiaries made it more difficult for targeted businesses to find information about the Company and the Company's licensing program. MPHJ had recorded the Patents' assignments to MPHJ with the United States Patent and Trademark Office (USPTO) which provides publicly available records of the assignees who submit assignments for recordation, but the OAG notes that many of the New York businesses targeted by MPHJ's patent licensing program may have been unaware of that fact and, moreover, the recordation of patent assignments in the USPTO is not mandatory.

28. Several of the targeted businesses received duplicate letters from either the same or different Subsidiaries, due to clerical or other errors by the Company. For example, Subsidiary BriPol sent two First-Round Letters and two Second-Round Letters to New York business Edsim Leather Company. As a further example, Subsidiaries GosNel and FolNer both sent First- and Second-Round letters to New York business Digital Pulp, Inc.

29. The Company required its targets to sign non-disclosure agreements before providing them with certain relevant information about the Patents, such as claim charts and file histories for the Patents. The OAG is concerned that this tactic prevented targeted businesses from obtaining information from one another regarding the accusations of infringement.

30. The OAG believes that the Company's practices described above constitute repeated deceptive acts in violation of Section 63(12) of the Executive Law. The OAG believes the Company's use of the foregoing tactics to have been especially harmful to the New York economy because the Company's tactics (1) were targeted at small and medium businesses that in many cases lacked the resources to fully assess the Company's allegations of infringement, especially in light of what the OAG believes was inadequate and misleading information; (2) involved businesses that did not manufacture or develop the products or systems that were the basis of the infringement and were therefore poorly positioned to assess the merits of the Company's assertions of infringement; and (3) were targeted concurrently at hundreds of New York-based small businesses with what the OAG believes was inadequate concern for the accuracy of the statements within, how recipients would interpret the Letters and, in particular, the likelihood that each recipient of the letters actually infringed the Patents.

PROSPECTIVE RELIEF

WHEREAS, the Company neither admits nor denies the OAG's Findings 1-30 above, and relies on its public statements regarding its licensing program;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to Section 63(15) of the Executive Law and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and reasonable, but by agreeing to the standards imposed herein, the Company does not concede that its prior conduct failed to meet those standards;

WHEREAS, this Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission by the Company of liability or jurisdiction, nor an admission by the Company to any fact finding herein;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

1. In consideration of the making and execution of this Assurance, and within 10 business days thereafter, the Company agrees that it will provide a written notice to the New York Person that entered into a license agreement with respect to the Patents from the Company as a result of its receipt of the Letters referenced in this Assurance, including a copy of this Assurance and informing the licensee that pursuant to this Assurance it has the right to void its license agreement with the Company, and in return receive a full refund of all license payments made, provided the New York Person provides written notice to the Company of its election to cancel the license agreement within 21 days of its receipt of the notice. In the event that such licensee requests rescission of the license agreement, the Company shall make such refund within ten business days of the licensee's election.

2. The Company further confirms that it had previously concluded that it would not assert, and that it will not assert, the Patents against New York Persons to which the Company previously sent one of the Letters referenced in this Assurance, where such New York Persons are individuals or businesses which had been understood by the Company to have fewer than 50 employees.

3. All correspondence related to this Assurance must reference Assurance # 14-015.

4. Following the date of execution of this Assurance, the Company agrees to comply with the following guidelines.

Scope of Relief

5. As used below, the term “Assert” or “Assertion” shall mean:

a. To communicate to a New York Person about that person’s actual or potential infringement of a patent and shall include any offer or demand for a license to a patent as well as threat to file a lawsuit alleging infringement of a patent,

b. As part of a bulk communication, which for the purposes of this Assurance shall be defined as a communication that is reasonably concurrent with similar communications to at least nine additional New York Persons.

6. As used below, the term “New York Person” means any natural person who resides in New York, or any small or medium business or Entity that is incorporated, or has a place of business in the State of New York (where activities at such New York location are a basis for the patent Assertion). The following Entities shall be excluded from this definition:

a. A business or Entity that, based on reasonably commercially available information, has 1,000 employees or more; and

b. A business or Entity that, in the context in which the Company has Asserted a patent against it, originates or manufactures Assertedly infringing products or services for commercial sale.

7. The OAG intends that the definitions in Paragraphs 5 and 6 exclude from the prohibitions of this Assurance:

a. An infringement allegation against a large business, which is more likely than a small- or medium-size business to be in a position to assess the reasonableness and accuracy of the allegations of infringement and other statements in the letters sent by the Company, potentially with the aid of patent counsel;

b. Specific, individual, infringement disputes that are more carefully targeted at a specific alleged infringer, in contrast to the bulk communications identified in this investigation; and

c. An infringement allegation against a party that originates or manufactures the allegedly infringing products or services, and offers them for commercial sale (as opposed, for example, to a party that is merely a user of a commercially available product manufactured by another company).

Additional Definitions

8. The following definitions shall apply below:

a. “Assign” shall include sale or any other transfer of ownership of a patent;

b. “Fraudulent” shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions that could mislead the ignorant, the unthinking, or the credulous;

c. “Entity” means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar body;

d. “Identity,” as applied to any Entity, means the provision in writing of such Entity’s legal name, any d/b/a, former, or other names, any parent, jurisdiction of organization/incorporation, and an address, e-mail address, and telephone number thereof;

e. “Identity,” as applied to any natural person, means the provision in writing of the natural person’s name.

Guidelines for Future Patent Assertion Conduct

Good faith basis for asserting patents after conducting reasonable diligence

9. The Company shall not Assert any patent against a New York Person unless:
 - a. The Company has a good faith basis for Asserting the patent, after:
 1. The Company has made reasonable efforts to evaluate the scope of the Asserted patent in a manner consistent with the law on patent claim construction applicable at the time;
 2. If the Assertion accuses the New York Person of infringing the patent, the Company has made reasonable efforts to identify and evaluate a specific accused product, system, or method that the New York Person makes, uses, offers to sell, or sells that the Company believes in good faith actually infringes the Asserted patent; and
 3. If the Assertion merely inquires as to whether the New York Person infringes the patent, the Company has made reasonable efforts to identify and review reasonably available facts about the New York Person and/or any products that such Person makes, sells (or offers to sell), or uses that are relevant to whether there is a reasonable likelihood that the New York Person infringes the Asserted patent.
 - b. In the alternative, the Company will not be considered in violation of this Paragraph if:
 1. It is objectively reasonable to believe that the patent is valid; and

2. It is objectively reasonable to believe that the New York Person infringes it or, in the case of a mere inquiry, that the New York Person likely infringes the Asserted patent.

10. When Asserting any patent against a New York Person, the Company shall not communicate through its legal counsel unless that counsel has a good faith basis for Asserting the patent after the legal counsel has made reasonable efforts to perform the requirements of Paragraph 9.

Material information necessary for an accused infringer to evaluate a claim

11. The Company shall not:

a. Assert any patent against a New York Person without describing with reasonable specificity its basis for believing that the New York Person actually engages in activity that infringes (or may infringe) the Asserted patent;

b. Assert any patent against a New York Person if such patent has been held invalid in a final judicial decision for which all appeals have been exhausted;

c. Assert a patent against a New York Person without:

i. Disclosing information sufficient to identify any pending or completed litigation in which a court found the Asserted patent to be invalid or non-infringed in a context relevant to the Assertion of the patent against the New York Person, and

ii. Disclosing the existence of findings by the USPTO related to the Asserted patent that raise questions regarding the validity of the Asserted patent, including but not limited to preliminary findings during inter partes review and reexamination proceedings;

d. Assert a patent that is subject to a terminal disclaimer that has terminated or will terminate before the end of the proposed license period against a New York Person without disclosing the disclaimer; or

e. If the Company has identified a product, system, or method that the New York Person makes, uses, offers to sell, or sells that the Company believes actually infringes the Asserted patent, refuse to provide a claim chart or equivalent document that sets forth the basis of the Company's belief that the allegedly infringing product or activity satisfies the elements of the Asserted claims, upon the request of any New York Person against which the Company has Asserted any patent.

Material information necessary to evaluate a reasonable royalty rate

12. Where the Company Asserts any patent against a New York Person and proposes a license fee, the Company shall not provide supposed reasons or justifications for a proposed license fee for the patent without setting forth in reasonable detail the factual support for those reasons or justifications.

Transparency of ownership of and financial interest in the patents

13. When Asserting any patent against a New York Person, the Company shall not:

a. Assert a patent through a licensing agent or other Person where the Company remains the real party in interest, without expressly disclosing to the New York Person the nature of the Company's relationship with such agent or other Person;

b. Assert a patent in which another person or Entity has a financial interest of five percent or more without disclosing to the New York Person the Identity of such other person or Entity and the fact that such other person or Entity has a significant financial interest in the patent (unless such other person is a natural person and the Company and

its counsel are unaware of any independent relationship between that other person and the New York Person that could reasonably be considered material to the infringement allegation and/or proposed licensing agreement);

c. Represent that it has granted a license for the Asserted patent to any third party or imply that a third party has a right to Assert the Asserted patent, where such representation is inconsistent with the rights actually granted; or

d. Require the New York Person to enter into a non-disclosure agreement ("NDA") that would restrict communications between the New York Person and any other Person against whom the Company has Asserted the patent, except to the extent the NDA relates to maintaining the confidentiality of actual negotiations for a license to the Asserted patent, and in such case only to the extent reasonably necessary to protect the Company's proprietary business information, trade secrets, or attorney work product.

Additional safeguards against deceptive patent assertion conduct

14. When Asserting any patent against a New York Person, the Company shall not:

a. Represent that it has sent previous communications Asserting the patent against the New York Person unless it includes copies of the previous communications or has documentation verifying that the Company actually sent such previous communications; or

b. Make any other Fraudulent statement.

Material information necessary to evaluate the value of a proposed license

15. The Company shall not enter into a license agreement with a New York Person for an Asserted patent without first:

a. If the license is not to every patent the Company owns that it believes the New York Person may also infringe, disclosing to the New York Person that the Company owns other patents that it believes the New York Person might infringe;

b. If the Company has information suggesting that a parent, subsidiary, or affiliate of the licensor may subsequently make an offer or demand for a license to a patent, file a lawsuit alleging infringement of a patent, or threaten to do so to the New York Person for conduct related to the subject matter of the license agreement, disclosing to the New York Person the Identity of each parent, subsidiary, or affiliate that the Company believes may subsequently do so; and

c. If the Company has entered into a licensing agreement or covenant not to sue with the originator or manufacturer of the allegedly infringing product or service sold or used by the New York Person or, to the Company's knowledge or belief, the originator or manufacturer of the allegedly infringing product or service sold or used by the New York Person has agreed to indemnify Persons that sell or use its product or service, disclosing to the New York Person such information.

Miscellaneous

16. The Company shall not Assign any patent without:

a. Requiring that the Assignee agree to the terms of this Assurance, other than the obligations described in Paragraph 1, as though the Assignee were the Company; and

b. Providing the Assignee with a copy of this Assurance.

17. Upon request by the OAG, the Company shall, for any patent that it has Assigned to a third party, provide the Identity of the Assignee of the patent.

18. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Company and its counsel during this investigation. To the extent that any material representations by the Company are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

19. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Company in agreeing to this Assurance.

20. MPHJ has provided OAG with sample letters that it may use in Asserting the Patents in New York in the future, annexed hereto at Exhibit A. OAG agrees that the attached letters substantially comply with Paragraphs 12, 13(a), 13(c), and 14(a) of the guidelines above if sent by the Company or by counsel on its behalf.

21. The Company represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The Company shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this Paragraph affects the Company's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party, including any position taken by the Company in such litigation or other legal proceeding as to whether state law is applicable and/or whether jurisdiction is lacking.

22. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

23. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

24. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

25. To the extent not already provided under this Assurance, the Company shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

26. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Company to:

Bryan Farney, Esq.
Farney Daniels, P.C.
Counsel for the Company
800 S. Austin, Suite 200
Georgetown, Texas 78626

If to the OAG, to:

Zachary W. Biesanz, Esq.
Antitrust Bureau
New York State Office of the Attorney General
120 Broadway
New York, NY 10271

27. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and the Company shall make no representation to the contrary.

28. Pursuant to Section 63(15) of the Executive Law, evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

29. Upon a finding by a court that the Company has violated provisions of this Assurance, the Company shall pay up to \$5,000 for each violation, at the OAG's discretion, as well as the OAG's costs for investigation and litigation.

30. If a court of competent jurisdiction determines that the Company has breached this Assurance, the Company shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

31. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Section 63(15) of the Executive Law, in lieu of commencing a statutory proceeding against the Company and/or its agents or counsel in connection with MPHJ's licensing program. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

32. Nothing contained herein shall be construed as to deprive any person of any private right under the law nor to deprive the Company of any defense, claim, or counterclaim in any action involving the assertion of any private right by any person, where OAG is not a party to such action.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on January 13, 2014.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: Eric J. Stock
Eric J. Stock, Chief, Antitrust Bureau
Zachary W. Biesanz, Assistant Attorney General

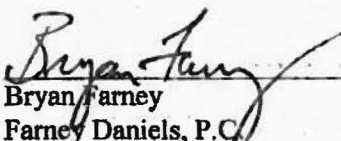
By: _____
Bryan Farney
Farney Daniels, P.C.
Counsel for the Company
800 S. Austin, Suite 200
Georgetown, Texas 78626

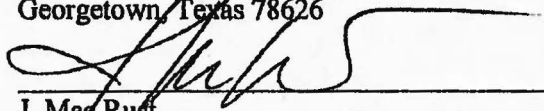
By: _____
J. Mac Rust
On behalf of himself and the Company

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on January __, 2014.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: _____
Eric J. Stock, Chief, Antitrust Bureau
Zachary W. Biesanz, Assistant Attorney General

By:  _____
Bryan Farney
Farney Daniels, P.C.
Counsel for the Company
800 S. Austin, Suite 200
Georgetown, Texas 78626

By:  _____
J. Mac Rust
On behalf of himself and the Company