VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

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STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

In re GREEN TREE SERVICING LLC) **CIVIL DIVISION**
Docket No. 642-10-14 Wncv

ASSURANCE OF DISCONTINUANCE

INTRODUCTION

1. Green Tree Servicing LLC ("Green Tree") is a Delaware limited liability corporation with offices located at 1100 Landmark Towers, 345 St. Peter Street, Saint Paul, Minnesota 55102.

2. Green Tree services residential mortgage loans, including residential mortgage loans to consumers in the State of Vermont.

3. In connection with servicing residential mortgage loans in the State of Vermont, Green Tree engages in debt collection covered by the Vermont Attorney General's Consumer Protection Rule (CP) 104 (Debt Collection), http://www.atg.state.vt.us/assets/files/CP%20104.pdf, and, for certain residential mortgage loans, establishes and maintains escrow accounts and takes responsibility for paying borrowers' local property taxes out of escrow funds provided by the borrowers.

4. *After-hours debt collection calls.* The Vermont Attorney General's Consumer Protection Rule (CP) 104.02(d) prohibits as an unfair practice under the Vermont Consumer Protection Act ("CPA") "[c]ausing a telephone to ring or engag[ing] in telephone conversation … at times known to be times other than normal waking hours."

5. The federal Fair Debt Collection Practices Act (FDCPA), violation of which is also an unfair practice under the CPA, prohibits debt collectors from communicating with a consumer in connection with the collection of any debt—

> at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location[.]

15 U.S.C. § 1692c(a)(1).

6. Since January 1, 2011, for the purposes of attempting to collect on a debt, Green Tree placed (a) 11 total calls to 8 Vermont consumers after 9:00 p.m., Vermont time, (b) 11 calls to Vermont consumers after 9:00 p.m., Vermont time, although no contact was made with the consumers or any third parties, and (c) 5 calls to Vermont consumers before 9:00 p.m., Vermont time, that did not end until after 9:00 p.m.

7. *Debt collection contacts.* CP 104.02(e) prohibits "[t]he placement of calls to any person, contrary to his instructions, at his place of employment."

8. Green Tree contacted one Vermont consumer twice at her place of work after she asked that she not be contacted there. In addition, Green Tree spoke with others at the same consumer's place of work or left messages there seven more times. Although Green Tree maintains policies and procedures that prohibit representatives from placing calls to customers at their place of employment after customers have requested no calls at their place of employment, a Green Tree representative inadvertently failed to flag the subject account to indicate that the customer had requested no calls to her place of employment.

9. CP 104.03(c) prohibits "[t]he disclosure, publication, or communication of any information relating to a consumer debt to any person other than [certain designated persons]."

10. In connection with another Vermont consumer's account, Green Tree representatives contacted one or more third parties in such a way as to indicate that there was a debt owed. Green Tree maintains policies and procedures that prohibit Green Tree representatives from indicating that there was a debt owed when placing calls to third parties for the purpose of obtaining location information relating to a customer.

11. *Late payment of property taxes.* The CPA, 9 V.S.A. § 2453(a), prohibits unfair practices in commerce.

12. The late payment of escrowed property taxes, particularly in small communities where the reputational harm associated with being behind in one's taxes can be significant, is an unfair practice in commerce.

13. Title 12 U.S.C. § 2605(g) mandates timely payment of taxes for any federally-related mortgage loan requiring borrower to escrow taxes, violation of which is also an unfair practice in commerce.

14. Green Tree paid property taxes more than 30 days after the tax due date on the accounts of 48 Vermont consumers on a total of 52 occasions, including a number of payments made more than 100 days late.

15. In 22 of those cases, Green Tree alleges that the late payments were the responsibility of a prior servicer, and in 11 of those cases, Green Tree alleges that the delay was the result of an error by Green Tree's third party tax vendor. In addition, Green Tree alleges that on all 52 occasions Green Tree ultimately corrected the error and had the taxes

paid and that none of the identified customers paid any late fees or penalties. Finally, Green Tree alleges that it has adjusted its policies and procedures to better ensure that taxes are paid timely on loans that are service transferred to Green Tree.

16. *General.* The Attorney General alleges that Green Tree violated the CPA in connection with the debt collection and tax payments described above.

17. Green Tree denies that it violated the CPA or any other Vermont or federal law. Nothing herein shall constitute or be construed as an admission by Green Tree that it violated Vermont or federal law.

18. Green Tree maintains that it has in place existing policies and procedures (including employee training and auditing) and technological systems to comply with Vermont laws relating to collection practices (including disclosing information relating to a consumer debt to an unauthorized third party, and engaging in telephone communications with consumers before 8:00 a.m. and after 9:00 p.m. Vermont local time) and payment of property taxes on loans with escrow accounts timely and accurately. In addition, Green Tree has made certain enhancements to its existing policies and procedures and technological systems as a result of the Attorney General's allegations in this matter.

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

INJUNCTIVE RELIEF

20. Green Tree shall comply strictly with all provisions of Vermont law, including but not limited to the CPA's prohibition on unfair and deceptive acts and practices in commerce.

21. Green Tree shall take all steps, and adopt or continue to maintain all such policies, procedures and technological systems, as are necessary to ensure (a) compliance with Vermont and federal laws and regulations pertaining to collection practices (including but not limited to placing debt collection calls or engaging in telephone communications with consumers before 8:00 a.m. or after 9:00 p.m. Vermont time, making calls to consumers' place of employment against their request, and disclosing information relating to a consumer debt to an unauthorized third party), and (b) payment of property taxes on loans with escrow accounts in a timely and accurate manner.

PAYMENTS TO CONSUMERS

22. No later than November 1, 2014, Green Tree shall provide to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, valid checks payable to each of 63 consumers listed, for reasons of privacy, in a separate agreement between the parties, along with the last-known address and telephone number of each consumer. These payments shall be in the following amounts:

a. For each of the 8 Vermont consumers who were reached by Green Tree for debt collection purposes after 9:00 p.m., Vermont time, $500.00 (five hundred dollars);

b. For each of the 5 Vermont consumers who were contacted by Green Tree for debt collection purposes before 9:00 p.m., Vermont time, but whose calls continued past 9:00 p.m., $250.00 (two hundred fifty dollars);

c. For each of the 2 Vermont consumers in connection with whose accounts Green Tree made telephone calls to their work place after being instructed by the consumer not to do so, or made telephone calls to third parties, $1,000.00 (one thousand dollars); and

d. For each of the 48 Vermont consumers whose property taxes Green Tree paid more than 30 (thirty) days after the tax due date, $1,000.00 (one thousand dollars).

23. The total of all of the checks described in paragraph 22, above, is $55,250.00 (fifty-five thousand two hundred fifty dollars).

24. The Vermont Attorney General's Office shall promptly mail the checks to the appropriate consumers.

25. As a condition of receiving a payment under paragraph 22, above, eligible consumers are required to release Green Tree from any further liability arising out of the facts described in this Assurance of Discontinuance, using language, size and placement on the checks that has been approved by the Vermont Attorney General. In the event that any of the checks mailed out under paragraph 24, above, is returned as undeliverable to the Attorney General's Office, the Attorney General's Office shall promptly forward that returned check to Green Tree.

26. No later than February 1, 2015, Green Tree shall pay to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, by check payable to "Vermont State Treasurer," the total dollar amount of all checks described in paragraph 22, above, that were returned as undeliverable as well as all checks that went undeposited and uncashed as of said date, to be treated as unclaimed property under state law. By the same date, Green Tree shall also provide to the State an electronic Excel file containing the names of the consumers whose checks were returned or went undeposited or uncashed, and for each such consumer, the address, telephone number, and dollar amount of the check.

PAYMENT TO THE STATE

27. Within thirty (30) days of signing this Assurance of Discontinuance, Green Tree shall pay to the State of Vermont the amount of $176,750.00 (one hundred seventy-six thousand seven hundred fifty dollars) as payment to the State of Vermont in this matter. This payment may be made by check payable to the State of Vermont and provided to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, or in such other manner as the parties may agree.

OTHER PROVISIONS

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

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

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

Dated 10/29/14

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Special Assistant Attorney General

Dated October 28, 2014

GREEN TREE SERVICING LLC

By: _____, Sr VP & General Counsel
Its Authorized Agent

APPROVED AS TO FORM:

_____
Elliot Burg
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For the State of Vermont

_____
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