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

In re STONEBRIDGE BENEFIT SERVICES, INC., and J.C. PENNEY CORPORATION, INC.	)))	**CIVIL DIVISION** **Docket No.** 708-11-14 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.

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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

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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.

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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.

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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

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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.

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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 11/17/17

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Special Assistant Attorney General

Dated _____

STONEBRIDGE BENEFIT SERVICES, INC.

By: _____
Its Authorized agent

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GENERAL
109 State Street
Montpelier, VT
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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.

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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.

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Dated 11/17/14

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Special Assistant Attorney General

Dated 11/21/14

STONEBRIDGE BENEFIT SERVICES, INC.

By: _____
Its Authorized agent

Office of the
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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.

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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.

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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.

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