

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VERMONT  
COURT

2012 APR 19 P 4:18

STATE OF VERMONT, )  
Plaintiff )  
 )  
v. )  
 )  
MYINFOGUARD, LCC, NATIONWIDE )  
ASSIST, LLC, SOLO COMMUNICATIONS, )  
LLC, TOTAL PROTECTION PLUS, LLC, )  
UNITED COMMUNICATIONS LINK, LLC, )  
VOICEXPRESS, INC., CONTACT )  
MESSAGE SYSTEMS, LLC, NATIONS 1ST )  
COMMUNICATIONS, LLC, NEW LINK )  
NETWORK, LLC and NATIONS VOICE )  
PLUS, LLC, BETTY STEWART, ROBERT )  
POITRAS, DENNIS KALLIVOKAS, GEORGE )  
LUTICH, NICHOLAS DELCORSO, NEIL )  
WILLIAMS, LUIS A. RUELAS, CHARLES R. )  
DARST, SCOTT A. LUCAS, BRYAN GLAUS, )  
VINCENT DELCORSO, JOSEPH )  
MARINUCCI, NICHOLAS KALLIVOKAS, )  
DADATA, INC., ENHANCED SERVICES )  
BILLING, INC., and ILD CORP., )  
Defendants )

CIVIL DIVISION  
Docket No. 320-4-126ncv

CONSUMER FRAUD COMPLAINT

I. Introduction

1. The Vermont Attorney General brings this suit under the Vermont Consumer Fraud Act in response to consumer fraud violations by Defendants, including sellers of voice mail, web-based email, and other services; their principals who, on information and belief, were directly involved in the conduct alleged in this Complaint; and companies and principals that facilitated the conduct alleged herein. Defendants have violated the Consumer Fraud Act by

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
5609

(1) engaging in “cramming,” or charging Vermont consumers on their local telephone bills without their consent; (2) failing to provide a complete, through-the-mail notification to consumers of impending charges on their local telephone bill; and (3) in the case of certain companies, engaging in deceptive marketing, failing to provide statutory notice of the three-day right to cancel a telephonic sale, and violating duly-promulgated consumer fraud rules. At issue in this case is a total of over \$625,000 charged to the telephone bills of more than 8,000 Vermont consumers. The Attorney General seeks injunctive relief, restitution and other compensation to consumers, civil penalties, fees and costs, and other appropriate relief.

## **II. Parties, Jurisdiction and Related Matters**

### **A. Defendant Sellers**

2. Defendant MyInfoGuard, LLC (“MyInfoGuard”) is a Florida limited liability corporation with offices located at 11515 66th Street North, Largo, Florida 33773. At all times relevant to this Complaint, Defendant MyInfoGuard offered and sold voicemail services to Vermont consumers.

3. Defendant Nationwide Assist, LLC (“Nationwide Assist”) is a New York limited liability corporation with offices located at 40 Drewry Lane, Tappan, New York 10983. At all times relevant to this Complaint, Defendant Nationwide Assist offered and sold voicemail services and electronic fax and technical support to Vermont consumers.

4. Defendant Solo Communications, LLC (“Solo Communications”) is a Florida limited liability corporation with offices located at 14001 63rd Way North, Clearwater, Florida 33760. At all times relevant to this Complaint, Defendant Solo Communications offered and sold voicemail services to Vermont consumers.

5. Defendant Total Protection Plus, LLC (“Total Protection Plus”) is a Florida limited liability corporation with offices located at 11515 66th Street North, Largo, Florida 33773. At all times relevant to this Complaint, Defendant Total Protection Plus offered and sold voicemail services and identity theft protection memberships to Vermont consumers.

6. Defendant United Communications Link, LLC (“United Communications”) is a New York limited liability corporation with offices located at 119 Rockland Center, Box 338, Nanuet, New York 10954. At all times relevant to this Complaint, Defendant United Communications offered and sold voicemail services to Vermont consumers.

7. Defendant VoiceXpress, Inc. (“VoiceXpress”) is a Florida corporation with offices located at 2519 McMullen Booth Road, Suite 510-530, Clearwater, Florida 33761. At all times relevant to this Complaint, Defendant VoiceXpress offered and sold voicemail services to Vermont consumers.

8. Defendant Contact Message Systems, LLC (“Contact Message Systems”) is a Delaware limited liability corporation with offices located at 850 119th Ave., Treasure Island, Florida 33706. At all times relevant to this Complaint, Defendant Contact Message Systems offered and sold voicemail services, electronic fax and technical support, legal services and tax advice and preparation services to Vermont consumers.

9. Defendant Nations 1st Communications, LLC (“Nations 1st”) is a New York limited liability corporation with offices located at 119 Rockland Center, #334, Nanuet, New York 10954. At all times relevant to this Complaint, Defendant Nations 1st offered and sold voicemail services and electronic fax and technical support to Vermont consumers.

10. Defendant New Link Network, LLC (“New Link”) is a Florida limited liability corporation with offices located at 2519 McMullen Booth Road, Suite 510-530, Clearwater, Florida 33761. At all times relevant to this Complaint, Defendant New Link offered and sold voicemail services and electronic fax and technical support to Vermont consumers.

11. Defendant Nations Voice Plus, LLC (“Nations Voice”) is a New York limited liability corporation with offices located at 119 Rockland Center, #370, Nanuet, New York 10954. At all times relevant to this Complaint, Defendant Nations Voice offered and sold voicemail services to Vermont consumers.

12. In this Complaint, Defendants MyInfoGuard, Nationwide Assist, Solo Communications, Total Protection Plus, United Communications, VoiceXpress, Contact Message Systems, Nations 1st, New Link, and Nations Voice are referred to collectively as “Defendant sellers.” (Some sources also refer to such companies as “third-party vendors.”)

### **B. Individual Defendants**

13. Defendant Betty Stewart is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, she was a managing member of Defendant MyInfoGuard. She shared responsibility for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, she is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant MyInfoGuard.

14. Defendant Robert Poitras is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was a managing member of Defendants MyInfoGuard and of Total Protection Plus. He shared responsibility for determining the overall business plan of those companies, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendants MyInfoGuard and Total Protection Plus.

15. Defendant Dennis Kallivokas is, on information and belief, a resident of the state of New York. At times relevant to this Complaint, he was owner and managing member of Defendant Nationwide Assist. He was responsible for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant Nationwide Assist.

16. Defendant George Lutich is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was an owner and managing member of Defendant Solo Communications. He shared responsibility for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that

company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant Solo Communications.

17. Defendant Nicholas DelCorso is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was owner of Defendant Solo Communications. In connection with Defendant Solo Communications, he shared responsibility for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant Solo Communications.

18. Defendant Neil Williams is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was a managing member of Defendant Total Protection Plus. He shared responsibility for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant Total Protection Plus.

19. Defendant Luis A. Ruelas is, on information and belief, a resident of the state of New York. At times relevant to this Complaint, he was the owner and managing member of Defendant United Communications. He was responsible for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant United Communications.

20. Defendant Charles R. Darst is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was president of Defendant VoiceXpress and president of Defendant New Link. He shared or had sole responsibility for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to those companies, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendants VoiceXpress and New Link.

21. Defendant Scott A. Lucas is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was the secretary/treasurer of Defendant VoiceXpress. He shared responsibility for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company, and, on information and

belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant VoiceXpress.

22. Defendant Bryan Glaus is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was the CFO of Defendant VoiceXpress. He shared responsibility for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant VoiceXpress.

23. Defendant Vincent DelCorso is, on information and belief, a resident of the state of Florida. At times relevant to this Complaint, he was president and managing member of Defendant Contact Message Systems. In connection with Defendant Contact Message Systems, he was responsible for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and overseeing financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant Contact Message Systems.



24. Defendant Joseph Marinucci is, on information and belief, a resident of the state of New York. At times relevant to this Complaint, he was the owner and manager of Defendant Nations 1st. He was responsible for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant Nations 1st.

25. Defendant Nicholas Kallivokas is, on information and belief, a resident of New York. At times relevant to this Complaint, he was the owner and manager of Defendant Nations Voice. He was responsible for determining the overall business plan, deciding what services to offer and how to market them, determining that compliance with legal requirements were met, and all financial matters relative to that company, and, on information and belief, was engaged in, aware of, or condoned the conduct described in this Complaint and had authority to control, and knowledge of, said conduct. As such, he is also liable, under governing law, for the violations of law described in this Complaint in connection with Defendant Nations Voice.

26. In this Complaint, Defendants Betty Stewart, Robert Poitras, Dennis Kallivokas, George Lutich, Nicholas DelCorso, Neil Williams, Luis A. Ruelas, Charles R. Darst, Scott A. Lucas, Bryan Glaus, Vincent DelCorso, Joseph Marinucci, and Nicholas Kallivokas are referred to collectively as "individual Defendants."

### **C. Other Defendants**

27. Defendant daData, Inc. ("daData") is a Florida corporation with offices located at 3519 Palm Harbor Blvd., Palm Harbor, Florida 34683. Defendant daData owns 50 percent of Defendants MyInfoGuard, Total Protection Plus and New Link; is the registrant for the websites of Defendants MyInfoGuard, Nationwide Assist, Solo Communications, Total Protection Plus, United Communications, VoiceXpress, Nations Voice and New Link; and, on information and belief, has otherwise facilitated the charging of Vermont consumers on their telephone bills for the benefit of Defendant sellers. In addition, Defendants Darst, Marinucci and Lucas, referred to above, have served, respectively, as president, vice-president and secretary of Defendant daData.

28. Defendant ILD Corp. ("ILD") is a Delaware corporation with offices located at 5000 Sawgrass Village Circle, Suite 30, Ponte Vedra Beach, Florida 32082-5017. ILD is a "billing aggregator" that arranges for charges to be placed on consumers' local telephone bills on behalf of third-party merchants.

29. Defendant Enhanced Services Billing, Inc. ("ESBI") is a Delaware corporation with an address of P.O. Box 29206, San Antonio, Texas 78229. ESBI is a "billing aggregator" that arranges for charges to be placed on consumers' local telephone bills on behalf of third-party merchants.

30. In this Complaint, Defendants ILD and ESBI are referred to as "Defendant aggregators."

### **D. Jurisdiction and Related Matters**

31. The claims described in this Consumer Fraud Complaint stem from a series of charges placed on Vermont consumers' local telephone bills by Defendants ILD and ESBI, for

the benefit of Defendant sellers, using substantially similar marketing practices that were facilitated through services provided by Defendant daData, and involve common questions of law and fact.

32. The Vermont Attorney General is authorized under the Vermont Consumer Fraud Act, 9 V.S.A. § 2458(b), to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices in commerce.

33. This Court has personal jurisdiction over Defendants and is the proper venue for this action, based on the marketing and sale of services by Defendant sellers, and Defendant aggregators' placement of charges on local telephone bills, throughout Vermont, including in Washington County.

34. This action follows investigations of—including the issuance of civil investigative subpoenas to—each of the Defendant sellers, and to Defendants daData, ILD and ESBI pursuant to the Vermont Consumer Fraud Act, 9 V.S.A. § 2460(a).

35. This action is in the public interest.

### **III. Statutory Framework**

#### **A. Unauthorized Charges as an Unfair and Deceptive Practice**

36. The Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a), prohibits unfair and deceptive acts and practices in commerce.

37. Charging consumers for goods or services without the consumers' consent is an unfair and deceptive practice in commerce.

## **B. Certain Marketing Practices**

38. Deceptive marketing, including the omission of material facts, violates the Vermont Consumer Fraud Act's prohibition on unfair and deceptive acts and practices in commerce, 9 V.S.A. § 2453.

39. The Consumer Fraud Act also provides that consumers have a three-day right to cancel a telephonic sale, with some limited exceptions, and that the seller must provide oral notice of that right, as well as a "short-form" and "long-form" notice. 9 V.S.A. §§ 2451a(d) (defining "home solicitation sale") and 2454 and Vermont Consumer Fraud Rule (CF) 113, available at <http://www.atg.state.vt.us/assets/files/CF%20113.pdf>.

40. Vermont Consumer Fraud Rule (CF) 109.02, available at <http://www.atg.state.vt.us/assets/files/CF%2010.pdf>, deems it an unfair and deceptive trade act and practice in commerce "to represent that any other person ... has been 'selected' or is otherwise being included in a select group for receipt of ... an 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 ... 'opportunity.'"

## **C. Special Notification for Third-Party Charges on Telephone Bills**

41. Between its enactment in the year 2000 and May 27, 2011, Title 9 V.S.A. § 2466 required a company that intended to charge a consumer on the consumer's local telephone bill to send the consumer, by first-class mail, a notification that he would be charged in that manner. That statutory section provided, in pertinent part:

§ 2466. Goods and services appearing on telephone bill

(a) No seller shall bill a consumer for goods or services that will appear as a charge on the person's local telephone bill without the consumer's express authorization.

(b) No later than the tenth business day after a seller has entered into a contract or other agreement with a consumer to sell or lease or otherwise provide for consideration goods or services that will appear as a charge on the consumer's local telephone bill, the seller shall send, or cause to be sent, to the consumer, by first-class mail, postage prepaid, a notice of the contract or agreement.

(c) The notice shall clearly and conspicuously disclose:

- (1) The nature of the goods or services to be provided;
- (2) The cost of the goods or services;
- (3) Information on how the consumer may cancel the contract or agreement;
- (4) The consumer assistance address and telephone number specified by the attorney general;
- (5) That the charges for the goods or services may appear on the consumer's local telephone bill[.]

...

(f) No person shall arrange on behalf of a seller of goods or services, directly or through an intermediary, with a local exchange carrier, to bill a consumer for goods or services unless the seller complies with this section. This prohibition applies, but is not limited, to persons who aggregate consumer billings for a seller and to persons who serve as a clearinghouse for aggregated billings.

(g) Failure to comply with this section is an unfair and deceptive act and practice in commerce under this chapter.

42. The purpose of the statutory notice was to ensure that consumers were aware that they would be charged on their local telephone bill for a non-telephone service, and to provide them with contact information at the Attorney General's Office (the Consumer Assistance Program) to use in the event of a question or dispute about the charges.

43. This statutory notice provision was enacted to address widespread concerns about the practice of "cramming"—the charging of consumers on their local telephone bills without their authorization.

44. The Consumer Fraud Act is a remedial statute that is to be interpreted liberally to achieve its purpose of protecting consumers, and whose requirements are to be strictly construed to that end.

45. Under 9 V.S.A. § 2466(f), billing aggregators were strictly liable for the notice violations described above. That subsection provided, “No person shall arrange on behalf of a seller of goods or services, directly or through an intermediary, with a local exchange carrier, to bill a consumer for goods or services unless the seller complies with this section. This prohibition applies, but is not limited, to persons who aggregate consumer billings for a seller and to persons who serve as a clearinghouse for aggregated billings.”

46. Effective May 27, 2011, 9 V.S.A. § 2466 was amended to prohibit outright all but a limited set of third-party charges to Vermont local telephone bills. *See* <http://www.leg.state.vt.us/docs/2012/bills/Passed/H-287.pdf> (pages 105-106).

#### **IV. Facts**

##### **A. MyInfoGuard**

47. Defendant MyInfoGuard is a third-party seller of freestanding (non-telephone company) voice mail services.

48. At all times relevant to this lawsuit, Defendant MyInfoGuard marketed its services on the Internet.

49. Defendant MyInfoGuard’s typical charge for voice mail services was \$12.95 per month.

50. During at least the period of September 2005 through April 2010, Defendant MyInfoGuard charged over 1,100 Vermont consumers a total of more than \$72,000 for its services that appeared on local telephone bills in Vermont’s area code 802.

51. These charges were placed on local telephone bills with the assistance of ESBI.

52. In a survey by the Attorney General's Office of consumers who were charged for Defendant MyInfoGuard's services, 36 of 38 respondents said that they had no recollection of having agreed to be charged for those services.

53. Among the respondents' comments to the Attorney General's survey were these:

- "I never ask[ed] for any service from them."
- "I never authorized any service."
- "I was charged without my authorization. This was a scam!" [Emphasis in original.]
- "I noticed the charge on my bill and called to find out what it was for! I didn't want the service..."
- "We were not notified of the service, didn't know what the service was for, just happened to have noticed it on our bill."

54. Defendant MyInfoGuard charged Vermont consumers for services without the consumers' authorization.

55. As an inducement for consumers to sign up for its services, Defendant MyInfoGuard offered \$250 of "FREE" gas, as well as insurance-type and other products.

56. However, Defendant MyInfoGuard omitted from its website material information on these benefits and how consumers could access them.

57. Defendant MyInfoGuard claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

## B. Nationwide Assist

58. Defendant Nationwide Assist is a third-party seller of freestanding (non-telephone company) voice mail services and electronic fax and technical support services.

59. At all times relevant to this lawsuit, Defendant Nationwide Assist marketed its services on the Internet.

60. Defendant Nationwide Assist's typical charge for voice mail services was \$12.95 per month, and \$14.95 or \$19.95 per month for other services.

61. During at least the period of November 2005 through April 2010, Defendant Nationwide Assist charged over 990 Vermont consumers a total of more than \$68,000 for its services that appeared on local telephone bills in Vermont's area code 802.

62. These charges were placed on local telephone bills with the assistance of ESBI.

63. In a survey by the Attorney General's Office of consumers who were charged for Defendant Nationwide Assist's services, 32 of 34 respondents said that they had no recollection of having agreed to be charged for those services.

64. Among the respondents' comments to the Attorney General's survey were these:

- "I did not authorize it." [Emphasis in original.]
- "I have no idea how this was put on my phone."
- "I only noticed the charge in March, called and asked for refund. Never knew that I had been paying."
- "Not sure what the service was for."
- "I didn't agree, I don't even remember being notified."

65. Defendant Nationwide Assist charged Vermont consumers for services without the consumers' authorization.



66. As an inducement for consumers to sign up for its services, Defendant Nationwide Assist offered \$250 of "FREE" gas, as well as insurance-type and other products.

67. However, Defendant Nationwide Assist omitted from its website material information on these benefits and how consumers could access them.

68. Defendant Nationwide Assist claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

### **C. Solo Communications**

69. Defendant Solo Communications is a third-party seller of freestanding (non-telephone company) voice mail services.

70. At all times relevant to this lawsuit, Defendant Solo Communications marketed its services on the Internet.

71. Defendant Solo Communications' typical charge for voice mail services was \$12.95 per month.

72. During at least the period of October 2005 through May 2010, Defendant Solo Communications charged over 900 Vermont consumers a total of more than \$63,000 for its services that appeared on local telephone bills in Vermont's area code 802.

73. These charges were placed on local telephone bills with the assistance of ESBI.

74. In a survey by the Attorney General's Office of consumers who were charged for Defendant Solo Communications' services, 29 of 30 respondents said that they had no recollection of having agreed to be charged for those services.

75. Among the respondents' comments to the Attorney General's survey were these:

- "Did not want it. Did not sign up for this."
- "I never asked for the service."
- "Did not know what Solo Communications was. Did not want it."
- "Did not ask for service, never used it, don't know how we were signed up for it."
- "I didn't request service."

76. Defendant Solo Communications charged Vermont consumers for services without the consumers' authorization.

77. As an inducement for consumers to sign up for its services, Defendant Solo Communications offered \$250 of "FREE" gas, as well as insurance-type and other products.

78. However, Defendant Solo Communications omitted from its website material information on these benefits and how consumers could access them.

79. Defendant Solo Communications claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

#### **D. Total Protection Plus**

80. Defendant Total Protection Plus is a third-party seller of freestanding (non-telephone company) voice mail services and identity theft protection memberships.

81. At all times relevant to this lawsuit, Defendant Total Protection Plus marketed its services on the Internet.

82. Defendant Total Protection Plus' typical charge for voice mail services was \$12.95, \$14.95 or \$19.95 per month.

83. During at least the period of May 2005 through April 2010, Defendant Total Protection Plus charged over 1,100 Vermont consumers a total of more than \$71,000 for its services that appeared on local telephone bills in Vermont's area code 802.

84. These charges were placed on local telephone bills with the assistance of ESBI.

85. In a survey by the Attorney General's Office of consumers who were charged for Defendant Total Protection Plus' services, 26 of 27 respondents said that they had no recollection of having agreed to be charged for those services.

86. Among the respondents' comments to the Attorney General's survey were these:

- "We did not sign up for it and even when billed we did not receive voice mail service."
- "I never used voice mail on my phone."
- "I would not have signed up for any online free coupons or card. I do not use a voicemail system."
- "...I have an answering machine."
- "We have an answering machine."

87. Defendant Total Protection Plus charged Vermont consumers for services without the consumers' authorization.

88. As an inducement for consumers to sign up for its services, Defendant Total Protection Plus offered \$250 of "FREE" gas, as well as insurance-type and other products.

89. However, Defendant Total Protection Plus omitted from its website material information on these benefits and how consumers could access them.

90. Defendant Total Protection Plus claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

#### **E. United Communications**

91. Defendant United Communications is a third-party seller of freestanding (non-telephone company) voice mail services.

92. At all times relevant to this lawsuit, Defendant United Communications marketed its services on the Internet.

93. Defendant United Communications' typical charge for voice mail services was \$12.95 per month.

94. Starting at least as early as April 2006, Defendant United Communications charged over 650 Vermont consumers a total of more than \$46,000 for its services that appeared on local telephone bills in Vermont's area code 802.

95. These charges were placed on local telephone bills with the assistance of ESBI.

96. In a survey by the Attorney General's Office of consumers who were charged for Defendant United Communications' services, 27 of 37 respondents said that they had no recollection of having agreed to be charged for those services.

97. Among the respondents' comments to the Attorney General's survey were these:

- "I never ask[ed] for the service."
- "I did not order the United Communications Link."
- "I do not recall agreeing or setting up any voice mail."
- "I did not ask for this service."

- “I never ordered any voicemail...I always use my regular phone message receiver.”

98. Defendant United Communications charged Vermont consumers for services without the consumers’ authorization.

99. As an inducement for consumers to sign up for its services, Defendant United Communications offered \$250 of “FREE” gas, as well as insurance-type and other products.

100. However, Defendant United Communications omitted from its website material information on these benefits and how consumers could access them.

101. Defendant United Communications claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General’s Consumer Assistance Program.

#### **F. VoiceXpress**

102. Defendant VoiceXpress is a third-party seller of freestanding (non-telephone company) voice mail services.

103. At all times relevant to this lawsuit, Defendant VoiceXpress marketed its services on the Internet.

104. Defendant VoiceXpress’ typical charge for voice mail services was \$12.95 per month.

105. During at least the period of March 2003 through May 2010, Defendant VoiceXpress charged over 1,300 Vermont consumers a total of more than \$83,000 for its services that appeared on local telephone bills in Vermont’s area code 802.

106. These charges were placed on local telephone bills with the assistance of ESBI.

107. In a survey by the Attorney General's Office of consumers who were charged for Defendant VoiceXpress' services, 31 of 33 respondents said that they had no recollection of having agreed to be charged for those services.

108. Among the respondents' comments to the Attorney General's survey were these:

- "[N]ever ordered it"
- "I never agreed to voice mail service - yet was charged for this service."
- "I did not want this service and I did not ask for this service."
- "I did not ask for any service like this."
- "[N]othing I wanted, would use, or care to have."

109. Defendant VoiceXpress charged Vermont consumers for services without the consumers' authorization.

110. As an inducement for consumers to sign up for its services, Defendant VoiceXpress offered "FREE" debit MasterCard and a "FREE\* CRUISE," the latter offer accompanied by a small-print statement at the bottom of the webpage, "Surcharges do apply."

111. However, the debit card offer required consumers either to pay a monthly maintenance fee, pay a shipping and handling fee, provide funds to "load" the card, or pay a one-time "submission fee" of \$159.95; and the cruise offer omitted material information on the amount of the applicable surcharges.

112. Defendant VoiceXpress claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

### G. Contact Message Systems

113. Defendant Contact Message Systems is a third-party seller of freestanding (non-telephone company) voice mail services, electronic fax and technical support services, legal services, tax advice and tax preparation services.

114. At all times relevant to this lawsuit, Defendant Contact Message Systems marketed its services on the Internet as well as through direct telemarketing.

115. Defendant Contact Message Systems' typical charge for voice mail services was \$12.95 or \$14.95 per month, and \$49.95 for electronic fax and technical support, and legal and tax services.

116. During at least the period of April 2007 to November 2009, Defendant Contact Message Systems charged over 470 Vermont consumers a total of more than \$93,000 for its services that appeared on local telephone bills in Vermont's area code 802.

117. These charges were placed on local telephone bills with the assistance of ILD.

118. In a survey by the Attorney General's Office of consumers who were charged for Defendant Contact Message System services, 21 of 21 respondents said that they had no recollection of having agreed to be charged for those services.

119. Among the respondents' comments to the Attorney General's survey were these:

- "Didn't understand what they were talking about, they talked too fast. It sounded like they were confirming my address and #."
- "I didn't agree to be billed for voicemail."
- "Did not know what the service was - noticed charge of \$49.95 on bill and questioned it... I always assume my phone company provides this service."
- "We did not order voicemail and were not aware of the charge."
- "Not sure what this company actually does."

120. Defendant Contact Message Systems charged Vermont consumers for services without the consumers' authorization.

121. The telemarketing script used by Defendant Contact Message Systems to solicit new customers told consumers that they were "*preferred* telephone customers," when the enterprise was actually a promotional scheme designed to make contact with prospective customers and all or a substantial number of the "preferred" consumers received the same "opportunity." (Emphasis added.)

122. Defendant Contact Message Systems claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, with regard to the voice mail services, the company did not send any notification to consumers by mail, first-class, nor, for any of its services, did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

#### **H. Nations 1st**

123. Defendant Nations 1st is a third-party seller of freestanding (non-telephone company) voice mail services, electronic fax and technical support services.

124. At all times relevant to this lawsuit, Defendant Nations 1st marketed its services on the Internet.

125. Defendant Nations 1st's typical charge was \$12.95 per month for voice mail services, and \$14.95 per month for electronic fax and technical support services.

126. During at least the period of July 2006 to October 2010, Defendant Nations 1st charged over 420 Vermont consumers a total of more than \$28,000 for its services that appeared on local telephone bills in Vermont's area code 802.



127. These charges were placed on local telephone bills with the assistance of ILD.

128. In a survey by the Attorney General's Office of consumers who were charged for Defendant Nations 1st's services, 14 of 14 respondents said that they had no recollection of having agreed to be charged for those services.

129. Among the respondents' comments to the Attorney General's survey were these:

- "We have an answering machine and told them we didn't need voicemail also."
- "We would never have agreed to 'voicemail' service due to already having it on phone's answering machine."
- "I never ordered this service."

130. Defendant Nations 1st charged Vermont consumers for services without the consumers' authorization.

131. Defendant Nations 1st claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

#### I. New Link

132. Defendant New Link is a third-party seller of freestanding (non-telephone company) voice mail services, electronic fax and technical support services.

133. At all times relevant to this lawsuit, Defendant New Link marketed its services on the Internet, as well as through telemarketing.

134. Defendant New Link's typical charge for \$12.95 or \$14.95 per month for voice mail services and \$49.95 for electronic fax and technical support services.

135. During at least the period July 2005 to March 2011, Defendant New Link charged over 590 Vermont consumers a total of more than \$61,000 for its services that appeared on local telephone bills in Vermont's area code 802.

136. These charges were placed on local telephone bills with the assistance of ILD.

137. In a survey by the Attorney General's Office of consumers who were charged for Defendant New Link's services, 16 of 17 respondents said that they had no recollection of having agreed to be charged for those services.

138. Among the respondents' comments to the Attorney General's survey were these:

- "I don't recall ever agreeing to this service in the first place."
- "...I have an answering machine and do not use voicemail."
- "Never asked for this service and didn't want it!"
- "Have an answering machine already."
- "We do not use voicemail at our garage."

139. Defendant New Link charged Vermont consumers for services without the consumers' authorization.

140. The telemarketing script used by Defendant New Link to solicit new customers told consumers that they were "*preferred* telephone customers" when the enterprise was actually a promotional scheme designed to make contact with prospective customers and all or a substantial number of the "preferred" consumers received the same "opportunity." (Emphasis added.)

141. The telemarketing script used by Defendant New Link to solicit new customers also did not notify consumers that they had a three-day right to cancel their telephonic transaction, nor does it appear that the company provided to consumers the specific written disclosure required by Vermont law.

142. Defendant New Link claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General's Consumer Assistance Program.

#### **J. Nations Voice**

143. Defendant Nations Voice is a third-party seller of freestanding (non-telephone company) voice mail services.

144. At all times relevant to this lawsuit, Defendant Nations Voice marketed its services on the Internet.

145. Defendant Nations Voice's typical charge for voice mail services was \$12.95 or \$14.95 per month.

146. During at least the period June 2006 to March 2011, Defendant Nations Voice charged over 440 Vermont consumers a total of more than \$35,000 for its services that appeared on local telephone bills in Vermont's area code 802.

147. These charges were placed on local telephone bills with the assistance of ILD.

148. In a survey by the Attorney General's Office of consumers who were charged for Defendant Nations Voice's services, 28 of 28 respondents said that they had no recollection of having agreed to be charged for those services.

149. Among the respondents' comments to the Attorney General's survey were these:

- "I live alone so no one else could have authorized this."
- "Didn't need voicemail and didn't use it."
- "Unaware I was being charged for voicemail. I've always had an answering machine."

- “I was not asked about the service. They took it upon themselves to charge me.”
- “I have no recollection of ever agreeing to any service and no written documentation.”

150. Defendant Nations Voice charged Vermont consumers for services without the consumers’ authorization.

151. Defendant Nations Voice claims to have provided to Vermont consumers who were to be charged for its services on their local telephone bills email notifications of the charges. However, the company did not send any notification to consumers by mail, first-class, nor did it provide to consumers, as required by statute, the address and telephone number of the Attorney General’s Consumer Assistance Program.

#### **K. daData**

152. According to a report of the United State Senate Committee on Commerce, Science, and Transportation’s Office of Oversight and Investigations Majority Staff entitled *Unauthorized Charges on Telephone Bills* (July 12, 2011), available at [http://commerce.senate.gov/public/?a=Files.Serve&File\\_id=3295866e-d4ba-4297-bd26-571665f40756](http://commerce.senate.gov/public/?a=Files.Serve&File_id=3295866e-d4ba-4297-bd26-571665f40756) (“Senate Report”), there are many third-party vendors that are related to Defendant daData, and these vendors are “nothing more than ‘front companies’ for larger ‘hub companies.’” *Id.* 25.

153. The Senate Report also states that daData

acknowledged to the [Senate] Committee that it shared common ownership with at least eight third-party vendors. For approximately 40 other third-party vendors, daData first informed the Committee that it provided “support services ... including marketing, quality control, customer service, billing regulatory, and accounting services.” daData referred to its clients as “a diverse group of businesses that offer technically-driven products and services directly to consumers and businesses.”

After further questioning from Committee staff, daData acknowledged that it actually controlled the technology for most of the services that its “clients” allegedly offered. For example, approximately 25 of daData’s “clients” offered an electronic facsimile service to telephone customers. daData first explained that these “clients provide customers with a personal electronic fax number and the ability to send and receive faxes on a computer without any specialized equipment.” daData later admitted that it controlled the electronic fax service that these third-party vendors offered. Committee staff also confirmed that daData was listed as the “registrant” for these third-party vendors’ websites. A review of these websites shows that they are remarkably similar. ...

It appears daData controls every aspect of third-party billing for most of its “clients,” from hiring the lead generators that collect telephone numbers, to providing refunds for “customers” who complain about unauthorized charges on their telephone bills. daData and many of its “clients” appear to be a common enterprise. [Senate Report at 23, footnotes omitted.]

154. The Senate Report specifically noted that among the vendors with which daData admittedly shared common ownership were Defendants MyInfoGuard, New Link, Total Protection Plus and VoiceXpress. *Id.* n. 23.

155. In addition, the Senate Report identified a number of websites for “daData-related” sellers of electronic fax service, including Defendants VoiceXpress, Solo Communications, and Nations 1st Communication. *Id.* App. D.

156. Moreover, the Senate Report stated that daData had provided the Senate Committee with a list of addresses for no fewer than 48 different third-party vendors, some with presidents who “acknowledged that they played no role in the day-to-day operations of the companies.” *Id.* 25.

#### L. ESBI

157. As the billing aggregator for Defendants MyInfoGuard, Nationwide Assist, Solo Communications, Total Protection Plus, United Communications, and VoiceXpress, ESBI served as the “gatekeeper” for those companies’ charges to consumers’ telephone bills, had

reason to know what kinds of notices the companies were and were not sending to Vermont consumers, and benefited financially from the companies' charges.

#### **M. ILD**

158. As the billing aggregator for Defendants Contact Message Systems, Nations 1st, New Link, and Nations Voice, ILD served as the "gatekeeper" for those companies' charges to consumers' telephone bills, had reason to know what kinds of notices the companies were and were not sending to Vermont consumers, and benefited financially from the companies' charges.

#### **V. First Count: Unfair and Deceptive Billing**

159. The imposition of unauthorized charges on Vermont consumers by Defendant sellers and their principals, and the facilitation of such charges by Defendants daData, ESBI and ILD, was an unfair and deceptive trade practice in commerce in violation of the Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a).

#### **VI. Second Count: Other Unfair and Deceptive Trade Practices**

160. Defendant sellers and their principals, with facilitation by Defendant daData, engaged in other unfair and deceptive trade practice in commerce in violation of the Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a), including:

a. The omission of material facts relating to offers made to induce consumers to purchase services from Defendants.

b. Violation of Vermont Consumer Fraud Rule (CF) 109.02, by representing that consumers were "preferred" when the enterprise was a promotional scheme designed to make contact with prospective customers and all or a substantial number of the "preferred" consumers received the same "opportunity."

c. Violation of the Vermont Consumer Fraud Act's requirements with respect to the provision of oral and written notice of the three-day right to cancel a telephonic transaction, 9 V.S.A. § 2454 and Vermont Consumer Fraud Rule (CF) 113.

**VII. Third Count: Failure to Comply with 9 V.S.A. § 2466 Notification**

161. The failure of Defendant sellers and their principals to comply strictly with the consumer notification requirements of 9 V.S.A. § 2466 violated the Vermont Consumer Fraud Act.

162. Defendants ESBI and ILD were also statutorily liable for such failure.

WHEREFORE Plaintiff State of Vermont requests judgment in its favor and the following relief:

1. A permanent injunction prohibiting Defendants from engaging in any business activity in, into or from Vermont that violates the Vermont law.
2. Full restitution to all Vermont consumers who paid money to Defendants through charges on their local telephone bills, and, to the extent that any such consumer cannot be found, payment of the restitution amount to the Vermont Treasurer to be treated as unclaimed funds.
3. Civil penalties of up to \$10,000.00 for each violation of the Consumer Fraud Act.
4. The award of investigative and litigation costs and fees to the State of Vermont.
5. Such other relief as the Court deems appropriate.

Dated: 4/19/12

STATE OF VERMONT

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