

IN THE COURT OF COMMON PLEAS FOR ALLEGHENY COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
ACTING BY ATTORNEY GENERAL JOSH
SHAPIRO,

Petitioner,

v.

THE TERMINIX INTERNATIONAL
COMPANY, L.P.

Respondent.

CIVIL ACTION

Case No. _____

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

Filed on Behalf of Plaintiff:

COMMONWEALTH OF
PENNSYLVANIA, OFFICE
OF ATTORNEY GENERAL

Counsel of Record for this Party:

Jill Ambrose
Deputy Attorney General
PA Attorney I.D. No. 323549

Office of Attorney General
Bureau of Consumer Protection
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
Telephone: 412-565-3050
jambrose@attorneygeneral.gov

**IN THE COURT OF COMMON PLEAS FOR ALLEGHENY COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	CIVIL ACTION
OFFICE OF ATTORNEY GENERAL,	:	
ACTING BY ATTORNEY GENERAL JOSH	:	
SHAPIRO,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. _____
	:	
THE TERMINIX INTERNATIONAL	:	
COMPANY, L.P.	:	
	:	
Respondent.	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, through the Bureau of Consumer Protection (hereinafter "Commonwealth" or "Petitioner"), which has caused an investigation to be made into the business practices of The Terminix International Company, L.P. (hereinafter "Respondent") pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter "Consumer Protection Law"), and states the following:

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, through the Bureau of Consumer Protection, with offices located at 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222; and, 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent is a limited partnership registered in the State of Delaware;

WHEREAS, Respondent is registered as a domestic limited partnership with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations:

Corporations Section with a business address of 860 Ridge Lake Boulevard, Memphis, Tennessee, 38120.

BACKGROUND

WHEREAS, Respondent has engaged in trade or commerce within the Commonwealth by advertising, marketing, offering to sell, selling, and/or providing pest control and home improvement services to Pennsylvania consumers;

WHEREAS, Respondent contracted with Pennsylvania consumers in some cases as a result of, or in connection with, a contact with the consumers at their residences for pest control and home improvement services with a sales price of twenty-five dollars (\$25) or more;

WHEREAS, the Petitioner alleges that, while contracting with certain Pennsylvania consumers, Respondent did not comply with certain requirements of Section 201-7 of the Consumer Protection Law, including the requirements to provide all Pennsylvania consumers with a fully completed copy of the contract at the time of the contract or sale and the requirement to provide all Pennsylvania consumers with the statutory Notice of Cancellation form, or, if when providing such contract and disclosures electronically to certain Pennsylvania consumers, failing to obtain affirmative consent from consumers pursuant to the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, *et seq.* (hereinafter "E-Sign Act") and the Pennsylvania Electronic Transactions Act, 73 P.S. § 2260.101 *et seq.* (hereinafter "PETA") before providing such contract and information electronically;

WHEREAS, the Petitioner alleges that Respondent executed closed-end credit agreements with certain Pennsylvania consumers who financed the aforementioned pest control and home improvement services sold by Respondent;

WHEREAS, the Petitioner alleges that when executing closed-end credit agreements with certain Pennsylvania consumers, Respondent did not comply with certain disclosure requirements of the Truth In Lending Act / Regulation Z, 12 C.F.R. § 1026, *et seq.* (hereinafter “Regulation Z”) and Section 6323(a) of the Goods and Services Installment Sales Act, 12 Pa.C.S.A. § 6323(a) (hereinafter “GSISA”)—namely, the requirement to make certain disclosures to consumers and/or provide consumers with copies of their closed-end credit agreements prior to or at the time of executing the closed-end credit agreement, or, that when Respondent executed such closed-end credit agreements with certain Pennsylvania consumers in electronic form, Respondent did not obtain affirmative consent from consumers pursuant to E-Sign Act and PETA requirements;

WHEREAS, the Petitioner alleges that Respondent collected finance charges from certain Pennsylvania consumers who were not provided with copies of their closed-end credit agreements in accordance with Regulation Z, GSISA, E-Sign Act and PETA requirements;

WHEREAS, based upon Petitioner’s investigation, Petitioner alleges that Respondent has engaged in conduct which violates the Consumer Protection Law by:

1. Failing to provide certain Pennsylvania consumers with a completed copy of their contracts at the time of the sale or contract of goods or services having a sale price of twenty-five dollars (\$25) or more sold or contracted to be sold to consumers, as a result of, or in connection with, contact with the consumers at their residences, in violation of Section 201-7(b)(1) of the Consumer Protection Law, 73 P.S. § 201-7(b)(1), including in instances where, when providing such contract and disclosures electronically to certain Pennsylvania consumers, the Respondent

failed to obtain affirmative consent to receive records electronically in accordance with E-Sign Act and PETA requirements;

2. Failing to provide certain Pennsylvania consumers with the required statutory notifications of their right of rescission under Section 201-7 of the Consumer Protection Law, 73 P.S. § 201-7, including in instances where, when providing such notifications electronically to certain Pennsylvania consumers, the Respondent failed to obtain affirmative consent to receive records electronically in accordance with E-Sign Act and PETA requirements;
3. Failing to provide certain Pennsylvania consumers with copies of their closed-end credit agreements at the time of execution, in violation of Section 6323(a) of GSISA, 12 Pa.C.S.A. § 6323(a), including in instances where, when providing such copies electronically to certain Pennsylvania consumers, the Respondent failed to obtain affirmative consent to receive records electronically in accordance with E-Sign Act and PETA requirements;
4. Collecting finance charges from certain Pennsylvania consumers who were not provided with copies of their closed-end credit agreements at the time of execution, in violation of Section 6323(b) of GSISA, 12 Pa.C.S.A. § 6323(b); and
5. Failing to disclose certain terms and conditions of closed-end credit transactions to all Pennsylvania consumers, in violation of Regulation Z, 12 C.F.R. § 1026.18, including in instances where, when providing such disclosures electronically to certain Pennsylvania consumers, the Respondent failed to obtain affirmative consent to receive records electronically in accordance with E-Sign Act and PETA requirements;

WHEREAS, Respondent agrees to cease and desist from these alleged violations of the Consumer Protection Law, GSISA, Regulation Z, the E-Sign Act, and PETA and desires to comply with the laws of the Commonwealth of Pennsylvania; and

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Petitioner pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings provided under Section 201-4. *See* 73 P.S. §§ 201-4 and 201-5. Pursuant to Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance shall not be considered an admission of violation for any purpose. *See* 73 P.S. § 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its successors, assigns, officers, partners, agents, representatives (including but not limited to sales representatives), employees, and all other persons acting on its behalf, jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

I. The above recitals are incorporated herein as though fully set forth.

II. Injunctive and Affirmative Relief

A. Respondent shall comply with all provisions of the Consumer Protection Law, GSISA, Regulation Z and any amendments thereto; and is permanently enjoined from any violation thereof.

B. When contracting for goods or services having a sale price of twenty-five dollars (\$25) or more as a result of, or in connection with, a contact with or call on a consumer at the consumer's residence, Respondent shall provide Pennsylvania consumers with a fully completed

copy of Respondent's contract and an attached notice of cancellation at the time of the sale or contract.

C. When executing closed-end credit agreements with Pennsylvania consumers, Respondent shall provide a legible and complete copy of the closed-end credit agreement that includes all disclosures required by Subpart C of Regulation Z before consummation of the transaction.

D. If Respondent seeks to fulfill the requirements of Paragraphs II(B) and II(C) by providing the required information to the consumer electronically, Respondent shall do so only in accordance with the requirements of the E-Sign Act and PETA, including but not limited to the requirement to obtain the affirmative consent of the consumer to the use of an electronic record to provide the information to the consumer.

E. Respondent shall honor all requests from consumers to cancel contracts as permitted by Section 201-7 of the Consumer Protection Law and/or the terms of Respondent's contracts, including but not limited to by discontinuing service for such consumers, and shall not continue to provide services after receiving a request to cancel and/or bill for such services.

F. Respondent shall not collect or attempt to collect finance charges invoiced to any Pennsylvania consumer from whom Respondent did not collect an email address and with respect to whom Respondent has no record of providing the consumer with a paper copy of the closed-end credit agreement.

III. Monetary Relief – Respondent shall be responsible for and agrees to pay the Commonwealth a payment of EIGHTY-ONE THOUSAND FOUR HUNDRED AND FORTY-ONE and 98/100 Dollars (\$81,441.98) (hereinafter "Required Payment") as outlined below. Respondent shall also pay additional restitution (hereinafter "Additional Restitution") to certain

consumers who submit complaints to Respondent or to the Commonwealth within sixty (60) days of the filing of this Assurance as outlined below.

A. **Required Payment** – The Required Payment to the Commonwealth shall be allocated and paid as follows:

1. **Restitution**, pursuant to Section 201-4.1 of the Consumer Protection Law, in the amount of EIGHTEEN THOUSAND NINE HUNDRED AND FORTY-ONE and 98/100 Dollars (\$18,941.98) to be paid to the Commonwealth for the benefit of certain Pennsylvania consumers from whom Respondent collected finance charges despite Respondent's failure to provide the consumers with copies of their closed-end credit agreements. The amount, timing, and manner of distribution to these consumers shall be in the sole discretion of the Commonwealth.
2. **Civil Penalties** in the amount of THIRTY-FIVE THOUSAND and 00/100 Dollars (\$35,000.00) to be distributed to the Commonwealth of Pennsylvania, Department of Treasury.
3. **Costs** in the amount of TWENTY-SEVEN THOUSAND FIVE HUNDRED and 00/100 Dollars (\$27,500.00), which shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to reimburse the costs incurred in pursuing this enforcement action, and which shall be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

4. **Payment Terms** – Upon execution of this Assurance of Voluntary Compliance, Respondent shall submit the Payment to the Commonwealth by certified check, cashier’s check, or money order, and made payable to the “Commonwealth of Pennsylvania, Office of Attorney General,” and forwarded to the Bureau of Consumer Protection, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

B. **Additional Restitution** – Respondent acknowledges that there may be additional consumers who have been harmed by the conduct alleged herein who have not submitted complaints with the Bureau of Consumer Protection, and who have not already received restitution from Respondent; and, Respondent agrees to pay restitution in addition to that set forth in Paragraph III(A)(1) above as follows:

1. Respondent shall also pay Additional Restitution, consistent with Section 201-4.1 of the Consumer Protection Law, 73 P.S. § 201.4-1, to any eligible Pennsylvania consumer who submits a timely and valid complaint to the Commonwealth within sixty (60) days of the filing of this Assurance of Voluntary Compliance, and:
 - a. Who submits a complaint that asserts that he or she was harmed due to the conduct of Respondent as alleged herein in that consumer did not receive a copy of the documents or disclosures referenced above and either of the following occurred prior to the Effective Date of this Assurance of Voluntary Compliance: (1) he or she paid finance charges to Respondent or (2) he or she paid

services charges as the result of Respondent's failure to honor the consumer's request to cancel his or her contract.

- b. Whose claim is validated by the Commonwealth by confirming that Respondent did not collect an email address from the consumer and that the consumer has not already received restitution from Respondent in the form of a refund of payment for the finance charges or services charges paid for by the consumer as the result of Respondent's failure to honor the consumer's request to cancel his or her contract prior to the Effective Date of this Assurance of Voluntary Compliance.

2. Any Additional Restitution request that is postmarked by the sixtieth (60th) day after the Effective Date of this Assurance of Voluntary Compliance, as defined herein below, shall be deemed timely.
3. Respondent agrees to provide Additional Restitution to eligible consumers validated as set forth above in Paragraph III(B)(1) for any finance charges paid for by the consumer (and not already refunded by Respondent) and/or services paid for by the consumer (and not already refunded by Respondent) as the result of Respondent's failure to honor the consumer's request to cancel his or contract prior to the Effective Date of this Assurance of Voluntary Compliance.
4. The Commonwealth will provide Respondent with copies of all claims or complaints received.

5. Respondent agrees to fully cooperate with the Commonwealth and shall supply the Commonwealth with any and all information and documents requested by the Commonwealth that are within Respondent's control, within twenty (20) days of the request, with regard to any consumers who submit complaints within the aforementioned sixty (60) day period.
6. Respondent may supply the Commonwealth with any written response it wishes to make to the specific consumer complaints received.
7. The determination of whether a consumer shall receive Additional Restitution hereunder, the amount of any such restitution to be paid to such consumer, and the timing and manner of payments, shall be within the sole discretion of the Commonwealth based on the criteria set forth above in Paragraphs III(B)(1) through III(B)(3).
8. The Commonwealth will provide Respondent with a list of validated claims submitted by consumers who are entitled to Additional Restitution, after which Respondent agrees to pay the amounts of Additional Restitution to the Commonwealth within ten (10) days of the Commonwealth submitting the list of validated complaints to the Respondent.

IV. Miscellaneous Terms

- A. The Court of Common Pleas of Allegheny County, Pennsylvania shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing this Assurance of Voluntary Compliance.
- B. Time shall be of the essence with regards to Respondent's obligations hereunder.

C. Nothing in this Assurance of Voluntary Compliance shall be construed to waive or limit any right of action by any individual, person or entity, or by any local, state, federal or other governmental entity.

D. Augusto Titarelli, as Vice President of Operations for Respondent The Terminix International Company, L.P., hereby states that he is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf; and, further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance.

E. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with, or subsequent to the Effective Date.

F. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

G. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

H. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or

implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

I. Respondent understands and agrees that if any false statement in or related to this Assurance of Voluntary Compliance was made on its behalf, such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

J. Respondent agrees by the signing of this Assurance of Voluntary Compliance that it shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court of Common Pleas of Allegheny County, or any court of competent jurisdiction, to seek the penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

K. The "Effective Date" of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

L. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and the Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

M. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve their practices, or any future practices that Respondent may adopt or consider adopting.

(SIGNATURES ON FOLLOWING PAGES)

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

FOR THE PETITIONER:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: 8/29/19

By: 

Jill Ambrose
Deputy Attorney General
PA Attorney I.D. No. 323549
Bureau of Consumer Protection
1251 Waterfront Place, Mezzanine Level
Pittsburgh, PA, 15222
Telephone: 412-565-3050
Facsimile: 412-880-0196

[REMAINDER OF PAGE INTENTIONALLY BLANK]

FOR THE RESPONDENT:

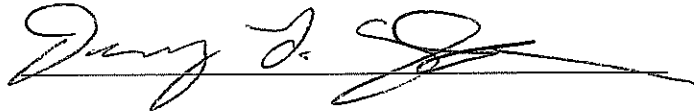
THE TERMINIX INTERNATIONAL COMPANY, L.P.

Date: 8/26/2019



Augusto Titarelli
Vice President of Operations

Date: 8/12/2019



Alys Z. Hutnik
Donnelly L. McDowell
Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007

Attorneys for Respondent

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN THE COURT OF COMMON PLEAS FOR ALLEGHENY COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
ACTING BY ATTORNEY GENERAL JOSH
SHAPIRO,

Petitioner,

v.

THE TERMINIX INTERNATIONAL
COMPANY, L.P.

Respondent.

CIVIL ACTION

Case No. _____

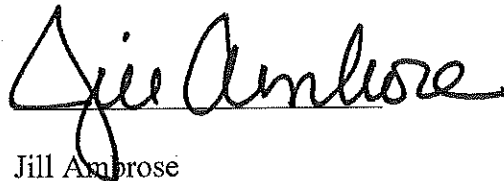
CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date:

9/11/19

By:



Jill Ambrose

Deputy Attorney General

PA Attorney I.D. No. 323549

Bureau of Consumer Protection

1251 Waterfront Place, Mezzanine Level

Pittsburgh, PA 15222

Telephone: 412-565-3050

jambrose@attorneygeneral.gov

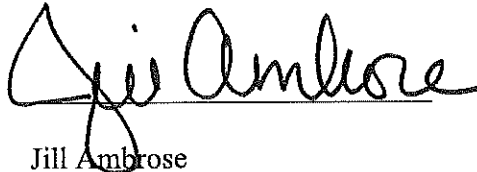
IN THE COURT OF COMMON PLEAS FOR ALLEGHENY COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	CIVIL ACTION
OFFICE OF ATTORNEY GENERAL,	:	
ACTING BY ATTORNEY GENERAL JOSH	:	
SHAPIRO,	:	EQUITY
	:	
Petitioner,	:	
	:	
v.	:	Case No. _____
	:	
THE TERMINIX INTERNATIONAL	:	
COMPANY, L.P.,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I, Jill Ambrose, hereby certify that a true and correct copy of the foregoing Assurance of Voluntary Compliance was served by U.S. First Class Mail on September 11, 2019 upon the below:

Alysa Z. Hutnik
Donnelly L. McDowell
Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007



Jill Ambrose
Deputy Attorney General
Office of Attorney General
Bureau of Consumer Protection
1251 Waterfront Place, Mezzanine Level
Pittsburgh, Pennsylvania 15222
(412) 565-3050