

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

COMMONWEALTH OF VIRGINIA,)
 EX REL. MARK R. HERRING,)
 ATTORNEY GENERAL,)
)
 Plaintiff,)
)
 v.)
)
 TRIO ALARM, LLC,)
 a Wisconsin limited liability company,)
)
 Defendant.)

CIVIL ACTION NO. CL1501978F-15

ORDER APPROVING AND ADOPTING ASSURANCE OF VOLUNTARY COMPLIANCE

Upon review of the Complaint and the Assurance of Voluntary Compliance (the "Assurance") entered into between Plaintiff Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General and Defendant Trio Alarm, LLC, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance is hereby approved and adopted as an Order of this Court; and
2. The Clerk of this Court shall mail a certified copy of this Order to Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 900 East Main Street, Richmond, Virginia 23219, and to Stephen A. Dunnigan, Esquire, Dunnigan & Messier, 11101 Warwick Blvd., Suite A, Newport News, Virginia 23601.

7-6-15
AG
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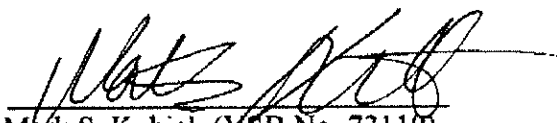
Enter: JUL 01 2015

~~TIMOTHY S. FISHER~~
JUDGE

Judge, Circuit Court for the City of Newport News

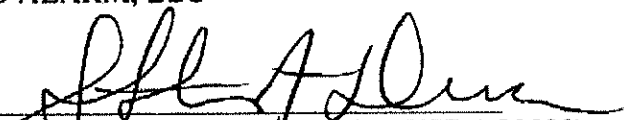
WE ASK FOR THIS:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Tyler T. Henry (VSB No. 87621)
Public Service Fellow
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

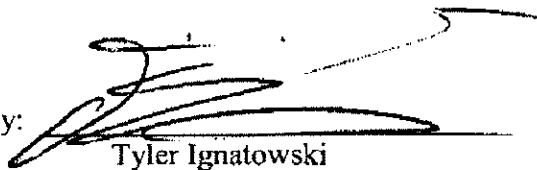
TRIO ALARM, LLC

By: 
Stephen A. Dunnigan, Esquire (VSB # 23889)
Dunnigan & Messier
11101 Warwick Blvd., Suite A
Newport News, Virginia 23601
Phone: (757) 595-7777

Counsel for Trio Alarm, LLC

TRIO ALARM, LLC

By:

A handwritten signature in black ink, appearing to read 'Tyler Ignatowski', written over a horizontal line.

Tyler Ignatowski

Its:

CEO

Title

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
))
Plaintiff,)
))
v.)
))
TRIO ALARM, LLC,)
a Wisconsin limited liability company,)
))
Defendant.)
_____)

CIVIL ACTION NO. CLLS01978F-5

ASSURANCE OF VOLUNTARY COMPLIANCE

I. PARTIES

1.0 This Assurance of Voluntary Compliance (“Assurance”) is entered into by the Commonwealth of Virginia, by, through and at the relation of its Attorney General, Mark R. Herring (the “Attorney General” or the “Commonwealth”), and Trio Alarm, LLC (“Trio Alarm” or the “Defendant”).

1.1 Trio Alarm is a Wisconsin limited liability company headquartered in Vesper, Wisconsin. Trio Alarm operates as a seller of home security alarm systems and monitoring agreements to consumers in Virginia, among other locations.

1.2 Trio Alarm does not contest that it has advertised to and served Virginia consumers. Trio Alarm consents to and waives all objections to this Court’s jurisdiction for all matters relating to this Assurance’s entry, execution, monitoring and enforcement. Trio Alarm further waives all



objections it may have to venue in this Court for all matters relating to this Assurance's entry, execution, monitoring and enforcement.

II. COMMONWEALTH'S POSITION

2.0 The statements contained in this Section II represent the position of the Attorney General.

2.1 The Commonwealth alleges that Trio Alarm was at all relevant times mentioned herein, a "supplier" of "goods" or "services," and engaged in "consumer transactions," as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, by advertising, offering and providing home security alarm systems and monitoring agreements to consumers residing in Virginia.

2.2 During the period from at least December 12, 2010 to the present (the "Relevant Period"), Trio Alarm offered to sell, and sold, home security alarm system equipment, long-term home security alarm monitoring contracts, and other goods and services to Virginia consumers.

2.3 The Commonwealth alleges that, during the Relevant Period, the Defendant engaged in the following acts and practices, which are prohibited practices under the VCPA:

a. The Defendant misrepresented its goods or services as those of another, when the Defendant represented to consumers that it was affiliated with consumers' present home security alarm companies, when it was not, in violation of Virginia Code § 59.1-200(A)(1);

b. The Defendant misrepresented the affiliation, connection, or the association of the supplier, or of the goods or services, with another, when the Defendant represented to consumers that it was affiliated with consumers' present home security alarm companies, when it was not, in violation of Virginia Code § 59.1-200(A)(3);

c. The Defendant misrepresented that goods or services have certain qualities, characteristics, ingredients, uses or benefits, when it represented to consumers that their existing

contracts with their third-party home security alarm companies could be terminated with a simple letter to the company, when that was not the case, and when it represented to consumers that they could move their service to a new home free of charge, when that was not always the case, or that they could cancel their contract in the event of a move, when that was not always the case, in violation of Virginia Code § 59.1-200(A)(5);

d. The Defendant advertised goods or services with the intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised, when it falsely offered “free” upgrades to consumers’ existing home security systems, and when it required consumers to enter into long-term home security alarm monitoring agreements with a new alarm company to receive the “upgraded” equipment, in violation of Virginia Code § 59.1-200(A)(8); and

e. The Defendant used any other deception, fraud, false pretense, false promise, or misrepresentation in connection with consumer transactions, when it engaged in all above-described activity, in violation of Virginia Code § 59.1-200(A)(14).

2.4 The Commonwealth alleges that the Defendant violated the Virginia “bait and switch” statute by offering “free” upgrades to consumers’ home security alarm systems, when it in fact required consumers to enter into long-term contracts for home security alarm monitoring services with a new alarm company to receive the “upgraded” equipment, in violation of Virginia Code § 18.2-217(a).

III. DEFENDANT’S POSITION

3.0 The statements contained in this Section III represent the position of Trio Alarm.

3.1 Trio Alarm does not contest the allegations contained in Sections 2.1 through 2.4 of this Assurance of Voluntary Compliance.

3.2 Trio Alarm denies that it has engaged in any acts and practices that violate any Virginia

law, including, but not limited to, the VCPA and the “bait and switch” statute.

IV. GENERAL PROVISIONS

4.0 This Assurance does not constitute an admission by Trio Alarm for any purpose of any fact or of a violation of any state or federal law, rule or regulation. Trio Alarm enters into this Assurance without admitting any wrongdoing and for settlement purposes only. This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law. Trio Alarm enters into this Assurance for the purpose of arriving at a complete, full settlement of any disagreement as to the matters addressed in this Assurance and preceding its execution, which may exist between Trio Alarm and the Attorney General, thereby avoiding unnecessary delay and expense.

4.1 This Assurance shall be governed by the laws of the Commonwealth of Virginia.

4.2 This Assurance does not constitute an approval by the Attorney General of any of Trio Alarm’s services or practices and Trio Alarm shall not make any representation to the contrary.

4.3 Nothing in this Assurance shall be construed as a waiver of whatever, if any, private rights of action any affected person may have relating to the conduct at issue.

4.4 Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

4.5 Nothing in this Assurance shall be construed to authorize or require any action by Trio Alarm in violation of applicable federal, state or other laws.

4.6 Trio Alarm agrees that this Assurance constitutes a legally enforceable obligation of Trio Alarm in accordance with its terms.

4.7 The Commonwealth shall not institute any civil proceeding or take any civil action against Trio Alarm, its members, managers, employees or agents under the VCPA or the “bait and switch” statute for any conduct that occurred prior to the date this Assurance is signed by all

parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service or practice addressed in this Assurance. The Parties agree that if Trio Alarm, or its agents, members or managers, provided any materially false information to the Commonwealth during any settlement negotiations between the Parties, this release shall be null and void.

4.8 This Assurance applies to Trio Alarm, together with its members, managers, employees, assigns and agents who are engaged in any aspect of the Defendant's sales activities.

4.9 This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all the parties hereto.

4.10 The parties agree that this Assurance shall be null and void if the Defendant files for bankruptcy within ninety (90) days of the Effective Date.

V. ASSURANCES

5.0 Trio Alarm voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 Trio Alarm agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be violations of the VCPA and the Virginia "bait and switch" statute in Section II of this Assurance, and Trio Alarm agrees that engaging in such acts or similar acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later determined, a violation of the Order by which this Assurance is approved and adopted by this Court.

5.2 Trio Alarm agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the VCPA and the Virginia "bait and switch" statute, as they now exist, or as amended in the future.

5.3 Trio Alarm agrees to make available and to disclose the provisions of this Assurance to its employees, agents and representatives within five (5) days of the Effective Date.

5.4 Trio Alarm shall institute supervisory compliance procedures that are reasonably designed to ensure compliance with this Assurance, including, without limitation, a) the training of relevant employees, b) revisions to and/or development of appropriate training materials and internal procedures, and c) the utilization of a post-sale compliance and satisfaction survey. The Defendant will provide the Commonwealth the opportunity to review and revise the post-sale compliance and satisfaction survey before sending it to its customers.

5.5 Trio Alarm agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, limited liability company, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

5.6 Trio Alarm agrees that it shall not represent that the Attorney General approves of or endorses Defendant's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION/CONSUMER RELIEF

6.0 "Relief-Eligible Consumers" means all consumers who were residents of Virginia at the time they purchased home security system equipment from, and/or entered into a long-term home security monitoring agreement with, the Defendant during the Relevant Period, and who filed complaints with the Virginia Attorney General's Office, the Virginia Department of

Criminal Justice Services, or other government-law-enforcement agency, the Better Business Bureau, or a private business including the Defendant, alleging violations of the VCPA or the Virginia "bait and switch" statute on the part of the Defendant.

6.1 "Restitution-Eligible Consumers" refers to all Relief-Eligible Consumers who suffered monetary harm as a result of the Defendant's alleged violations of the VCPA or the Virginia "bait and switch" statute.

6.2 "Monetary harm" refers to financial loss suffered by Restitution-Eligible Consumers, and paid to the Defendant, as a result of the Defendant's alleged violations of the VCPA and the Virginia "bait and switch" statute, including, but not limited to, double charges suffered by such Restitution-Eligible Consumers as a result of their being contractually obligated simultaneously to multiple home security alarm companies, and contractual buyouts paid by such consumers to the Defendant.

6.3 With respect to all Relief-Eligible Consumers, the Defendant agrees to terminate their contracts, and automatically convert them to month-to-month subscriptions. The Defendant further agrees to notify all Relief-Eligible Consumers that their accounts have been converted to month-to-month subscriptions, and that such Relief-Eligible Consumers are free to terminate their subscriptions with Trio Alarm at any time without further obligation. The form and substance of such notice shall be approved in advance by the Virginia Attorney General's Office.

6.4 The Commonwealth, as trustee for affected Restitution-Eligible Consumers, shall recover from the Defendant, the sum of Eight Thousand Two Hundred Fourteen Dollars and Sixty-Eight Cents (\$8,214.68) as restitution for all Restitution-Eligible Consumers who filed complaints by the Effective Date. A spreadsheet identifying all presently-known Restitution-Eligible Consumers, and the amount of restitution they are deemed owed pending receipt of a signed claim form and release, is attached as Exhibit A.

6.5 The Commonwealth will take responsibility for providing restitution to Restitution-Eligible Consumers. In this regard, the Virginia Attorney General's Office will mail claim forms to all Restitution-Eligible Consumers explaining this settlement, and stating that consumers are entitled to restitution in the amounts determined at the discretion of the Virginia Attorney General's Office. The claim forms shall include a release in favor of the Defendant to be signed by consumers and returned to the Virginia Attorney General's Office. The Virginia Attorney General's Office agrees to provide all original releases to the Defendant upon the conclusion of the restitution program. The parties shall agree on the form and substance of the release.

6.6 Consistent with Virginia Code § 59.1-205, the Defendant agrees to provide restitution to any additional Restitution-Eligible Consumers whose complaints are received by the Defendant or the Virginia Attorney General's Office within One Hundred Eighty (180) days of the Effective Date. To the extent the restitution dollars referenced in Paragraph 6.4 above do not satisfy the amounts claimed by all Restitution-Eligible Consumers, the Defendant agrees to provide the Virginia Attorney General's Office with additional restitution dollars to satisfy such claims, in accordance with the following terms:

a. The Virginia Attorney General's Office shall provide to the Defendant copies of consumer complaints against the Defendant that are received by the Virginia Attorney General's Office within One Hundred Eighty (180) days after the Effective Date, along with a spreadsheet list of consumer restitution amounts the Virginia Attorney General's Office maintains is owed to each consumer.

b. To the extent the Defendant objects to additional restitution amounts demanded by the Virginia Attorney General's Office pursuant to Paragraph 6.6(a), the Defendant shall, within fourteen (14) calendar days, respond in writing to the Virginia Attorney General's Office, laying out specific, good-faith, grounds for the objection. Failure of the Defendant to do so shall

constitute a waiver of any objection. In the event of a dispute, the parties agree to negotiate such restitution amounts in good faith.

c. For the period ending One Hundred Eighty (180) days after the Effective Date, the Defendant agrees to forward all complaints received from Virginia residents to the Virginia Attorney General's Office within five (5) calendar days of receipt.

6.7 The Virginia Attorney General's Office will make reasonable efforts to locate Restitution-Eligible Consumers whose claim/release forms or refund checks are returned as undeliverable. If the Virginia Attorney General's Office is not successful in locating any consumer whose refund check is returned as undeliverable, such amounts will be forwarded to the Unclaimed Property Division of the Department of the Treasury pursuant to, and for the purposes set forth in, §§ 55-210.9 and 55-210.12 of the Uniform Disposition of Unclaimed Property Act, Virginia Code §§ 55-210.1 to 55-210.30.

6.8 The parties agree that any residual of the restitution dollars referenced in Paragraph 6.4 left unclaimed after the Virginia Attorney General's Office completes distribution of restitution to affected consumers may be deposited to the Virginia Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund and treated as an additional award of attorneys' fees pursuant to Virginia Code § 59.1-206(C).

6.9 With respect to all Relief-Eligible Consumers, the Defendant agrees to cease any and all collection efforts against such consumers. If any debt owed has been turned over by the Defendant to a debt collector, the Defendant agrees to provide notice to the debt collector requiring the debt collector to cease all further collection efforts. The Defendant shall provide notice to debt collectors within thirty (30) days of the Effective Date.

6.10 To the extent that the Defendant has provided any negative information, knowingly or unknowingly, directly or indirectly, to any credit reporting agency concerning any of the Relief-

Eligible Consumers, the Defendant agrees to contact the credit reporting agency to request removal of the adverse information.

6.11 The Defendant agrees not to knowingly destroy any records, whether maintained in electronic or hard copy form, relating to any Relief-Eligible Consumer.

VII. CIVIL PENALTIES/ATTORNEYS' FEES

7.0 The Commonwealth shall recover from the Defendant, and the Defendant agrees to pay the Commonwealth, the sum of Six Thousand Two Hundred Fifty Dollars (\$6,250), pursuant to § 59.1-206(A) of the VCPA, as a civil penalty for alleged violations of the VCPA. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

7.1 The Commonwealth shall recover from the Defendant, and the Defendant agrees to pay the Commonwealth, the sum of Six Thousand Two Hundred Fifty Dollars (\$6,250), pursuant to § 59.1-206(C) of the VCPA, for reimbursement of the Commonwealth's reasonable expenses, costs, and attorneys' fees in investigating and preparing this action. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

VIII. PAYMENT/DEFAULT

8.0 The Defendant agrees to make payment of the total Twenty Thousand Seven Hundred Fourteen Dollars and Sixty-Eight Cents (\$20,714.68) referenced in Paragraphs 6.4, 7.0, and 7.1 above in the following manner:

a. Simultaneously with the execution of this Assurance, the Defendant agrees to deliver to the Commonwealth a certified or cashier's check, in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00), made payable to "Treasurer of Virginia," and remitted to: Mark

S. Kubiak, Assistant Attorney General, Consumer Protection Section, 900 East Main Street, Richmond, Virginia 23219.

b. Within sixty (60) days of the Effective Date, the Defendant agrees to deliver to the Commonwealth a certified or cashier's check, in the amount of Four Thousand One Hundred Seven Dollars and Thirty-Four Cents (\$4,107.34), made payable to "Treasurer of Virginia," and remitted to: Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 900 East Main Street, Richmond, Virginia 23219.

c. Within ninety (90) days of the Effective Date, the Defendant agrees to deliver to the Commonwealth a certified or cashier's check, in the amount of Four Thousand One Hundred Seven Dollars and Thirty-Four Cents (\$4,107.34), made payable to "Treasurer of Virginia," and remitted to: Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 900 East Main Street, Richmond, Virginia 23219.

8.1 To secure the payment obligations set forth in Paragraphs 8.0(b) and (c), the Defendant agrees to execute two separate consent orders, each granting the Commonwealth judgment against the Defendant in the amounts set forth in those respective subparagraphs. In the event the Defendant defaults on any payment obligation set forth in Paragraphs 8.0(b) and (c), the Commonwealth is authorized to execute and file with the Court for entry the consent order corresponding with the defaulted payment. As the Defendant timely makes payments required by Paragraphs 8.0(b) and (c), the Commonwealth agrees to return to the Defendant or destroy the consent order corresponding with the timely-made payment.

8.2 In the event the Defendant defaults on any payment obligation set forth in Paragraph 8.0(b) or (c), the Defendant agrees to surrender all applicable private security services licenses it has obtained from the Virginia Department of Criminal Justice Services, and discontinue

operating in Virginia as a private security services business, as that term is defined in Virginia Code § 9.1-138.

8.3 In the event the Defendant defaults on any payment obligation set forth in Paragraph 8.0(b) or (c), the Commonwealth shall be authorized to make available all funds received first for restitution. In the event received funds do not satisfy all restitution claims made by the Restitution-Eligible Consumers identified on the spreadsheet attached as Exhibit A, and any additional Restitution-Eligible Consumers who file complaints in accordance with the process described in Paragraph 6.6, the Commonwealth is authorized to distribute restitution to Restitution-Eligible Consumers in pro rata shares. Any residual monies referenced in this Paragraph left unclaimed after the Virginia Attorney General completes distribution of restitution to affected consumers may be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund and applied to the amount owed for civil penalties and attorneys' fees pursuant to Paragraphs 7.0 and 7.1.

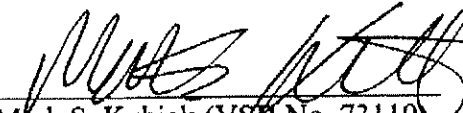
IX. SIGNATURES

9.0 Each undersigned individual represents that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

Signed this 23 day of JUNE, 2015.

FOR THE PLAINTIFF:


COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Tyler T. Henry (VSB No. 87621)
Public Service Fellow
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

FOR THE DEFENDANT:

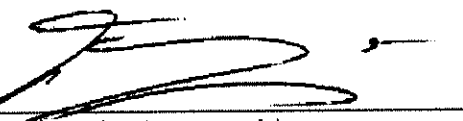
TRIO ALARM, LLC

By: 
Stephen A. Dunnigan, Esquire (VSB # 23889)
Dunnigan & Messier
11101 Warwick Blvd., Suite A
Newport News, Virginia 23601
Phone: (757) 595-7777

Counsel for Trio Alarm, LLC

FOR THE DEFENDANT:

TRIO ALARM, LLC

By: 
Tyler Ignatowski

Its: CEO
Title

Exhibit A

Complainant	Pecuniary Damage Total
Anderson, Brian	\$349.93
Boone, David	\$1,068.80
Buessing, Noelle	\$159.96
Burch, Josephine	\$69.00
Butterfield, Therese	\$79.98
Cooper, Clarine	\$1,335.93
Early, Charles	\$199.95
McManaway, Mary	\$163.47
Orndoff, Grover	\$1,049.99
Ramsay, Carolyn	\$835.98
Robinson, Patricia	\$549.89
Sebrell, Ruby	\$134.97
Sonak, Wilbert	\$1,398.98
Sutliff, Joe Ann	\$79.98
Sweet, Donald	\$149.97
Tingler, Molly	\$79.98
Von Fecht, Kent	\$193.97
Walker, Mary	\$103.98
Warren, Peter	\$40.99
Williams, LaDonna	\$168.98
Total	\$8,214.68