

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil  
(Consumer Protection)State of Minnesota by its Attorney General,  
Lori Swanson,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

ASSURANCE OF DISCONTINUANCE

MPHJ Technology Investments, LLC, and  
 its affiliates, AbsMea, LLC, AccNum, LLC,  
 AdzPro, LLC, AllLed, LLC, AllOrd, LLC,  
 AppVal, LLC, ArdSan, LLC, ArdTec, LLC,  
 BarMas, LLC, BetNam, LLC, BilOh, LLC,  
 BriPol, LLC, BruSed, LLC, BunVic, LLC,  
 CallLad, LLC, CalNeb, LLC, CapMat, LLC,  
 CelSta, LLC, ChaPac, LLC, CraVar, LLC,  
 DayMas, LLC, DesNot, LLC, DolVol, LLC,  
 DraTom, LLC, DriSud, LLC, DucPla, LLC,  
 ElaMon, LLC, EleLand, LLC, EleOde, LLC,  
 EliPut, LLC, EntNil, LLC, EquiVas, LLC,  
 EstSto, LLC, FanPar, LLC, FasLan, LLC,  
 FinTas, LLC, FloVis, LLC, FolNer, LLC,  
 FraMor, LLC, FreSta, LLC, GamSta, LLC,  
 GanPan, LLC, GenTro, LLC, GimVea, LLC,  
 GosNel, LLC, GraMet, LLC, GreLea, LLC,  
 HanMea, LLC, HarNol, LLC, HasVen, LLC,  
 HeaPle, LLC, HorSan, LLC, HunLos, LLC,  
 InaNur, LLC, IndOrp, LLC, InnLost, LLC,  
 IntPar, LLC, IsaMai, Lac, LLC, JabTre, LLC,  
 JanOrt, LLC, JitNam, LLC, JonMor, LLC,  
 JudPur, LLC, JusLem, LLC,

Defendants.

WHEREAS, MPHJ Technology Investments, LLC (hereinafter referred to as "MPHJ")  
 purports to own certain U.S. patents and asserts that it has authority to license those patents to  
 persons or entities in Minnesota. MPHJ's subsidiaries include, but are not necessarily limited to,

AbsMea, LLC, AccNum, LLC, AdzPro, LLC, AllLed, LLC, Allord, LLC, AppVal, LLC, ArdSan, LLC, ArdTec, LLC, BarMas, LLC, BetNam, LLC, BilOlt, LLC, BriPol, LLC, BruSed, LLC, VunVic, LLC, CalLad, LLC, CalNeb, LLC, CapMat, LLC, CelSta, LLC, ChaPac, LLC, CraVar, LLC, DayMas, LLC, DesNot, LLC, DolVol, LLC, DraTom, LLC, DriSud, LLC, DucPla, LLC, ElaMon, LLC, EleLand, LLC, EleOde, LLC, EliPut, LLC, EntNil, LLC, EquiVas, LLC, EstStol, LLC, FanPar, LLC, FasLan, LLC, FinTas, LLC, FloVis, LLC, FolNer, LLC, FraMor, LLC, FreSta, LLC, GamSta, LLC, GanPan, LLC, GenTro, LLC, GimVea, LLC, GosNel, LLC, GraMet, LLC, GreLea, LLC, HanMea, LLC, HarNol, LLC, HasVen, LLC, HeaPic, LLC, HorSan, LLC, HunLos, LLC, InaNur, LLC, IndOrp, LLC, InnLost, LLC, IntPar, LLC, IsaMai, LLC, JabTre, LLC, JanOrt, LLC, JitNam, LLC, JonMor, LLC, JudPur, LLC, JusLem, LLC (“MPHJ Subsidiaries”);

#### I. INJUNCTIVE RELIEF

WHEREAS, MPHJ Subsidiaries and their counsel sent letters to Minnesota businesses that alleged probable infringement of MPHJ’s patents;

WHEREAS, these letters demanded that the recipient purchase a license or verify that it did not infringe MPHJ’s alleged patents;

WHEREAS, several Minnesota businesses that received letters from MPHJ and/or its counsel filed complaints with the Minnesota Attorney General’s Office complaining that MPHJ’s Subsidiaries demanded payment of money for alleged infringement of MPHJ’s patents by using standard office equipment to scan documents to an employee’s e-mail address;

WHEREAS, the Attorney General filed and served a Civil Investigative Demand (“CID”) against MPHJ on May 30, 2013;

WHEREAS, MPHJ acknowledges that MPHJ Subsidiaries sent letters to Minnesota residents concerning allegations of patent infringement but asserts that those entities had a right to do so under the patent laws of the United States, and asserts that the sending of those letters is insufficient to submit either MPHJ or the MPHJ Subsidiaries to personal jurisdiction in Minnesota;

WHEREAS, MPHJ is willing, on behalf of itself and the MPHJ Subsidiaries, to enter into this Assurance of Discontinuance to resolve the Attorney General's investigation under State Consumer Protection Laws;

NOW, THEREFORE, MPHJ on behalf of itself and the MPHJ Subsidiaries, and the Attorney General hereby agree to entry of an order with the following terms and conditions:

1. MPHJ, including the MPHJ Subsidiaries and any future assignees, shall not, directly or indirectly through their directors, officers, employees, agents, or any other person or entity, send correspondence, including but not limited to letters, emails, or other written correspondence, or make phone calls to, or otherwise communicate with, any person or entity at a Minnesota address, seeking the payment of licensing fees or other fees or payments in connection with the alleged or potential infringement of intellectual property, including patents, asserting or inquiring into the alleged or potential infringement of intellectual property, including patents, or threatening or suggesting litigation in connection with the alleged or potential infringement of intellectual property, including patents, except as may be provided in Paragraph 3 below. MPHJ, including the MPHJ Subsidiaries, shall further not initiate any action or lawsuit for alleged patent infringement against any Minnesota person or entity to which MPHJ or any MPHJ Subsidiary, directly or through their agents or attorneys, previously sent any patent notice or inquiry letter.

2. MPHJ, including the MPHJ Subsidiaries, and its affiliates, directors and officers, shall fulfill the terms of this Assurance of Discontinuance, and its successors shall also be bound by this Assurance of Discontinuance as if they had signed this Assurance of Discontinuance, so as to accomplish the full relief contemplated by this Assurance of Discontinuance. MPHJ, including the MPHJ Subsidiaries and affiliates, shall not effect any change in its or their form of doing business, organizational identity, organizational structure, affiliations, ownership, or management composition as a method or means of attempting to avoid the requirements of this Assurance of Discontinuance. MPHJ, including its affiliates, shall not assign any patent or patent rights to any person or entity that does not agree to be bound by this Assurance of Discontinuance.

3. Notwithstanding Paragraph 1, MPHJ may send patent licensing or inquiry letters to Minnesota persons or entities if it first: 1) gives the Attorney General at least 60 days advance notice of such intent, and 2) obtains the written consent of the Attorney General to resume such activities in Minnesota, which consent shall not be withheld without valid basis in fact or law.

## II. STAYED CIVIL PENALTY

4. MPHJ, including the MPHJ Subsidiaries and affiliates, represents and warrants that it has not received money from any Minnesota resident or entity for a patent license or an alleged infringement of a patent or patent rights. If, contrary to this representation and warranty, the State discovers Minnesota residents or Minnesota entities did pay MPHJ money for a patent license or for an alleged infringement of a patent or patent rights, then as penalty for violation of this Paragraph 4, MPHJ shall pay the State a civil penalty of \$50,000 and refund all such money paid by Minnesota residents and entities. The Court shall decide whether a civil penalty shall be imposed under this paragraph, upon a motion by the Attorney General, and after an evidentiary

hearing, if the Court deems such hearing necessary. The release in paragraph 6 does not prevent the Attorney General from moving for, or collecting, the civil penalty described in this paragraph. The penalty prescribed in this Paragraph does not represent agreement or consent by MPHJ as to the appropriate size of any penalty that might be related to any purported violation of Minnesota state law related to the letters sent by the MPHJ Subsidiaries, if there is any such violation, and is instead an agreed-upon penalty applicable solely in the event that MPHJ's representation in the first sentence of this Paragraph 4 were later proven to be untruthful.

## II. GENERAL TERMS

5. Nothing in this Assurance of Discontinuance shall relieve MPHJ or the MPHJ Subsidiaries of their obligation to comply with all applicable Minnesota and federal laws and regulations.

6. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the Office of the Attorney General, by execution of this Assurance of Discontinuance, hereby fully and completely releases MPHJ, and the MPHJ Subsidiaries and affiliates, including all of its past and present employees, officers, directors and agents, including its attorneys, of any and all claims of the Attorney General connected with or arising out of the allegations in the Attorney General's CID, up to and including the date of this Assurance of Discontinuance. The Attorney General through this Assurance of Discontinuance does not settle, release, or resolve any claim against MPHJ or any other person or entity involving any private causes of action, claims, and remedies including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

7. This Assurance of Discontinuance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

8. The person signing this Assurance of Discontinuance for MPHJ and the MPHJ Subsidiaries warrants that the Manager(s) of MPHJ and the MPHJ Subsidiaries has authorized the person to execute this Assurance of Discontinuance, that MPHJ and the MPHJ Subsidiaries has been fully advised by their counsel before entering into the Assurance of Discontinuance, and that he or she executes this Assurance of Discontinuance in an official capacity that binds MPHJ, the MPHJ Subsidiaries, including their affiliates.

9. This Assurance of Discontinuance constitutes the full and complete terms of the agreement entered into by MPHJ and the MPHJ Subsidiaries and the Attorney General.

10. The Court shall retain jurisdiction of this matter for purposes of enforcing the Assurance of Discontinuance.

11. Service of notices required by this Settlement Agreement shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

James A. Van Buskirk  
Assistant Attorney General  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1200  
St. Paul, MN 55101

MPHJ Technology Investments, LLC  
c/o Mac Rust  
1220 North Market Street  
Suite 806  
Wilmington, DE 19801

12. The failure of a party to exercise any rights under this Assurance of Discontinuance shall not be deemed to be a waiver of any right or any future rights.

13. This Assurance of Discontinuance, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

14. Nothing in this Assurance of Discontinuance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

15. Each of the parties is represented by counsel, participated in the drafting of this Assurance of Discontinuance, and agrees that the Assurance of Discontinuance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

16. Each party shall perform such further acts and execute and deliver such further documents any may reasonably be necessary to carry out this Assurance of Discontinuance.

17. MPHJ stipulates that the State may file this Assurance of Discontinuance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the order below without further proceedings.

Dated: 8/16/13

MPHJ Technology Investments, LLC

By: [Signature]

J. Mac Rust its Manager/Member

Dated: 8/16/13

MPHJ Subsidiaries Identified in the Caption

By: [Signature]

J. Mac Rust <sup>their</sup> vs Manager

Dated: 8/16/13

LORI SWANSON  
Attorney General  
State of Minnesota

[Signature]  
JAMES A. VAN BUSKIRK

Assistant Attorney General  
Atty. Reg. No. 0392513

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St. Paul, MN 55101-2130  
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ATTORNEYS FOR STATE OF MINNESOTA

**ORDER**

Based upon the foregoing Assurance of Discontinuance, it is SO ORDERED.

Dated: August 20, 2013 LMarek  
THE HONORABLE Lezlie O. Marek  
JUDGE OF DISTRICT COURT

LET JUDGMENT BE ENTERED ACCORDINGLY.