

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

IN THE MATTER OF AVANT, LLC,  
AVANT II, LLC, and  
AVANT OF MASSACHUSETTS, LLC

RECEIVED  
AUG 10 2021  
SUPERIOR COURT-CIVIL  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

ASSURANCE OF DISCONTINUANCE PURSUANT TO G.L. c. 93A, §§ 2 and 5

The Commonwealth of Massachusetts, by and through its Attorney General Maura Healey, (the “Attorney General”) and Avant, Inc., Avant II, LLC, and Avant of Massachusetts, LLC, and any subsidiaries thereof that are engaged in trade or commerce in Massachusetts (collectively “Avant” or “the Company”) hereby agree to this Assurance of Discontinuance (“Assurance”) pursuant to Massachusetts General Laws chapter 93A, §§ 2 and 5.

**I. INTRODUCTION**

1. The Attorney General is responsible for enforcing the Consumer Protection Act, G. L. c. 93A, which prohibits unfair and deceptive acts and practices in the conduct of any trade or commerce, and is also responsible for enforcing the Attorney General’s Debt Collection Regulations, which are issued pursuant to G. L. c. 93A, § 2(c), and all other Consumer protection laws and regulations in Massachusetts.
2. Avant, LLC. is a Delaware limited liability company with its principal place of business as 222 N. LaSalle Street, Suite 1600, Chicago, Illinois 60601.
3. Avant II, LLC, is a Delaware limited liability company with its principal place of business as 222 N. LaSalle Street, Suite 1600, Chicago, Illinois 60601.

4. Avant of Massachusetts, LLC, is a Delaware limited liability company with its principal place of business at 222 N. LaSalle Street, Suite 1600, Chicago, Illinois 60601.

5. The Attorney General has conducted an investigation into certain of Avant's debt collection practices pursuant to her authority under G.L. c. 93A, § 6.

6. As a result of this investigation, the Attorney General alleges that Avant engaged in unfair and deceptive acts and practices in connection with the collection of Debts pursuant to G.L. c. 93A, § 2, 940 C.M.R. 7.00 *et seq.*, and G.L. c. 93, § 49.

7. Avant has fully and voluntarily cooperated with the Attorney General in her inquiries relating to the above referenced investigation, including by providing documentary material. Avant represents that it independently corrected the Covered Conduct (defined below) prior to the Effective Date.

8. In lieu of litigation, Avant agrees to voluntarily enter this Assurance with the Attorney General on the terms and conditions contained herein, pursuant to G.L. c. 93A, § 5.

## II. DEFINITIONS

The following definitions shall apply to this Assurance:

9. "Charge-off" means the treatment of a receivable balance by a Creditor as a loss or expense because payment is unlikely.

10. "Covered Conduct" means those acts, omissions or practices alleged in Paragraphs 16 - 21.

11. "Creditor" means "creditor" as defined in 940 C.M.R. 7.03: "any person and his or her agents, servants, employees, or attorneys engaged in collecting a Debt owed or alleged to be owed to him or her by a Debtor and shall also include a buyer of delinquent Debt who hires a third party or an attorney to collect such Debt."

12. “Debt” means “Debt” as defined in 940 C.M.R. 7.03: “money or its equivalent which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the Debtor, under a single account as a result of a purchase, lease, or loan of goods, services, or real or personal property, for personal, family or household purposes or as a result of a loan of money which is obtained for personal, family or household purposes whether or not the obligation has been reduced to judgment.”

13. “Debtor” means “Debtor” as defined in 940 C.M.R. 7.03: “a natural person, or his or her guardian, administrator or executor, present or residing in Massachusetts who is allegedly liable for a Debt.

14. “Effective Date” means the date in which the Assurance is filed in a Massachusetts Court.

### **III. THE COMMONWEALTH’S ALLEGATIONS**

15. The Attorney General makes the following allegations, which Avant neither admits nor denies.

#### **A. Disclosure of a Debtor’s Rights to Seek Validation of a Debt**

16. Avant regularly communicated with Debtors in writing in an attempt to collect alleged Debts.

17. Prior to August, 2018, Avant did not disclose in its initial communication or within five days thereafter that the Debtor was entitled to receive from Avant certain documents verifying the Debt, including any agreement which bears the signature of the Debtor, and an accounting of the date and amount of payments, credits, balances, and charges on the Debt. Avant thereby violated 940 C.M.R. 7.08.

#### **B. Excessive Telephone Calls to Debtors**

18. Avant initiated telephone calls to a Debtor's residence, cellular telephone, or other telephone number provided by the Debtor as his or her personal telephone number to collect a Debt.

19. Avant previously maintained a collection call policy that limited Avant's collection calls to Massachusetts consumers to two calls per calendar week.

20. As a result of its collection policy, which limited collection calls to Massachusetts consumers to two calls per calendar week as opposed to two calls per rolling seven-day period, Avant regularly initiated more than two telephone calls to a Debtor's residence, cellular telephone, or other personal telephone in a seven-day period in violation of 940 C.M.R. 7.04(1)(f).

#### IV. ASSURANCES

21. Notwithstanding that Avant makes no admission of any violation herein, Avant makes the following assurances:

##### A. Monetary Payment

22. Within ten (10) calendar days of the Effective Date of this Assurance, Avant shall pay a total of \$1,600,000 to the Commonwealth.

23. Nothing in this Assurance shall be construed to characterize this payment, or any portion thereof, as a penalty, fine, or forfeiture. At her sole discretion, and so long as permitted by law, the Attorney General shall distribute this payment, in any amount, allocation, or apportionment:

- a. For payments to or for Debtors, including use by the Attorney General in the facilitation of the relief under this Assurance; and/or
- b. To the General Fund of the Commonwealth of Massachusetts; and/or

- c. To the Local Consumer Aid Fund established pursuant to M.G.L. c. 12, § 11G; and/or
- d. For programs or initiatives designed to address the negative effects of unfair or deceptive practices related to Debt collection.

24. Unless otherwise directed by the Attorney General, this payment shall be made by wire transfer or certified check, made payable to the "Commonwealth of Massachusetts," and shall be delivered to Brendan Jarboe, Assistant Attorney General, Consumer Protection Division, Office of the Massachusetts Attorney General, One Ashburton Place, 18th Floor, Boston, MA 02108.

**B. Validation of Debts**

25. Avant shall provide to the Debtor or an attorney for the Debtor in Avant's initial communication or within five business days after the initial communication with the Debtor the disclosure required by 940 C.M.R. 7.08(1). Such disclosure shall include a list of the materials provided in 940 C.M.R. 7.08(2)(a)-(d).

26. Avant shall provide the materials required by 940 C.M.R. 7.08(2), including but not limited to the credit agreement signed by the Debtor at the time the account was opened, all billing statements provided to the Debtor from the date of default to Charge-off, and an accounting of all amounts claimed to be due pursuant to 940 C.M.R. 7.08(2)(b), to all Debtors who notify Avant in writing within 30 days of the initial communication that the Debt, or any portion thereof, is disputed.

27. If, at any time during the time period set forth at 940 C.M.R. 7.08 for disputing the validity of a Debt, the Debtor informs Avant that he/she disputes the Debt in writing, Avant

shall cease Collection of the Debt, or that portion thereof that is disputed, until such time as

Avant has:

- a. obtained and reviewed all materials required pursuant to 940 C.M.R. 7.08(2); and
- b. responded to the Debtor's dispute by providing the Debtor free of charge with copies of the materials documentation required by 940 C.M.R. 7.08(2).

28. Avant shall maintain records sufficient to identify all accounts for which a Debtor timely requested validation, Avant's response, and the documents provided to the Debtor. Avant shall review samples of these records on an annual basis to evaluate compliance with this section (Section IV.B. "Validation of Debts").

### **C. Debt Collection Calls**

29. Avant shall not initiate any communication with a Debtor via telephone in excess of the limits prescribed by 940 C.M.R. 7.04(f). Specifically:

- a. Avant shall not initiate a communication with a Debtor via telephone more than two times in any seven-day period to a Debtor's residence, cellular telephone, or other telephone number provided by the Debtor as his or her personal telephone number; and
- b. Avant shall not initiate a communication with a Debtor via telephone more than two times in any 30-day period to a number other than at the Debtor's residence, cellular telephone or other telephone number as his or her personal telephone number.

30. For the purposes of this Assurance, “initiate a communication with a Debtor via telephone” shall mean all attempts to contact a Debtor via telephone in which Avant or an agent of Avant:

- a. Causes the Debtor’s telephone to ring;
- b. Connects to a Debtor’s voicemail or other recorded message;
- c. Leaves a voicemail message for a Debtor or has the opportunity to leave a voicemail message for the Debtor; or
- d. Speaks with the Debtor via telephone.

31. Avant shall require its agents to follow the requirements for Debt collection calls prescribed by Paragraphs 29 – 30 and shall take measures to ensure that its agents remain in compliance with the terms of this Assurance and relevant Massachusetts law.

32. Avant shall not be deemed to have initiated a communication with a Debtor if the communication by Avant is in response to a request made by the Debtor for said communication.

33. Avant shall implement and maintain an automated quality control system that prevents Avant and its agents from placing outgoing Debt collection calls in excess of the limit as defined by 940 C.M.R. 7.04(f) and detailed in Paragraphs 29 – 30 except where a Debtor has expressly consented to receiving additional calls.

34. Avant shall retain a record of all written notices, written reports, or written complaints it receives from Massachusetts Debtors or from Avant employees complaining of conduct or communications that results in a violation of the terms of this Assurance, including any written notices, written reports, and written complaints of calls in excess of the call limits set forth in the Assurance.

35. Avant shall, on an annual basis, conduct a review of a random sample of its telephone call records and telephone call records of its agents to ensure that its call practices are in compliance with the terms of this Assurance.

#### **D. Implementation**

36. The Avant shall implement the procedures described in Sections IV. B-C above within sixty (60) days of the Effective Date of this Assurance.

### **V. COMPLIANCE AND REPORTING**

37. In order to provide the Attorney General additional assurance that these commitments by the Avant will be adhered to, Avant will provide to the Attorney General on the first and second anniversaries of this Agreement a written certification that it has complied in all material respects with the terms set forth in this Agreement. Upon request, Avant shall provide to the Attorney General documents and records necessary to support such written certification.

### **VI. RELEASE**

38. The Attorney General fully and finally releases Avant from any and all claims that were or could have been asserted by the Attorney General prior to the Effective Date that arise out of the Covered Conduct, including but not limited to, claims that arise out of the covered conduct that could be asserted by the Attorney General for violations of G.L. c. 93A, § 2, G.L. c. 93, § 49, and 940 C.M.R. 7.00 *et seq.* This release shall not bind any other private or governmental entity, nor release Avant from liability for any other conduct.

### **VII. NOTICE**

39. Any notice or other information required to be provided to the parties under the terms of this Assurance shall be sent by first class mail and by email addressed to the following:



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| <p>Office of the Attorney General<br/> Consumer Protection Division<br/> Attn: Brendan Jarboe<br/> One Ashburton Place, 18<sup>th</sup> Floor<br/> Boston, MA 02108</p> <p>With email copies to:<br/><br/> Brendan.Jarboe@mass.gov</p> | <p>Avant<br/> Attn: General Counsel<br/> 222 N. LaSalle Street, Ste. 1600<br/> Chicago, IL 60601</p> <p>With copies to:</p> <p>John C. Redding<br/> Alston &amp; Bird LLP<br/> 101 S. Tryon Street, Ste. 4000<br/> Charlotte, NC 28280<br/> John.Redding@Alston.com</p> <p>Valerie Hletko<br/> Kaplan, Hecker &amp; Fink<br/> 350 Fifth Avenue, Ste. 7110<br/> New York, NY 10118<br/> vhletko@kaplanhecker.com</p> |
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**VIII. GENERAL TERMS**

40. The obligations set forth in Sections IV-V shall remain in effect for a period of Three (3) years from the Effective Date of this Assurance, unless Avant and the Attorney General mutually agree otherwise, or unless federal law or Massachusetts law requires Avant to make an exception or make disclosures that are inconsistent with the disclosure requirements therein.

41. This Assurance shall be binding on Avant’s successors, subsidiaries, and all other person who have authority to control or who, in fact, control and direct Avant’s business in the Commonwealth of Massachusetts.

42. The Assurance shall be effective upon the Effective Date.

43. This Assurance shall be governed by and interpreted in accordance with laws of the Commonwealth of Massachusetts, and the Superior Court in Suffolk County shall retain jurisdiction over this Assurance.

44. This Assurance does not resolve, settle, or otherwise affect any actual or potential claims by parties other than those alleged herein by the Attorney General.

45. Nothing in this Assurance shall relieve Avant of its obligation to comply with applicable federal and state laws, rules, and regulations.

46. Avant waives all rights to appeal or otherwise challenge or contest the validity of this Assurance.

47. The provisions of this Assurance are severable. Should any provision(s) be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Assurance shall remain in full force and effect.

48. This Assurance can be amended or supplemented only by a written document signed by all parties or court order. Amendments or supplements may be executed in separate counterparts, with signatures conveyed by mail, facsimile, email, or other electronic means.

49. This Assurance constitutes the entire agreement between the Attorney General and Avant and supersedes any prior communication, agreement, or understanding, whether written or oral, concerning the subject matter of this Assurance.

50. Avant and its signatories have consulted with counsel in their decision to enter into this assurance.

51. Signatories for Avant represent and warrant that they have the full legal power, capacity, and authority to bind Avant.

52. By signing below, Avant agrees to comply with all of the terms of this Assurance.

On behalf of Avant, LLC;  
Avant II, LLC;  
Avant of Massachusetts, LLC; and  
any subsidiaries thereof that are engaged in  
business in Massachusetts

The Commonwealth of Massachusetts  
Attorney General Maura Healey

**Roxy Bargo**

Roxy Bargo,  
General Counsel  
222 N. LaSalle Street, Suite 1600  
Chicago, IL 60601

Dated: 7/28/2021



Brendan Jarboe  
Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Dated: 8-10-21

Signature:   
Roxy Bargo (Jul 28, 2021 13:34 CDT)

Email: roxy.bargo@avant.com