

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILLION AUTO, INC.,
BILLION SC, INC.,
BILLION NSC, INC.,
BILLION COMMUNITY, INC.,
BILLION CC, INC.,
BILLION H, INC.,
BILLION K, INC.,
BILLION FT DES MOINES, INC.,
BILLION DES MOINES MOTORS, INC.,
BILLION HAWKEYE, INC.,
BILLIONS EMPIRE MOTORS, INC.,
BILLION FT, INC.,
BILLION G, INC.,
BILLION T, INC.,
BILLION C, INC.,
BILLION DELLS AUTO, INC.,
BILLION MOTORS, INC.,
BILLION SOUTHTOWN, INC.,
BILLION WEST, INC.,
BILLION MONTANA MOTORS, INC., and
NICHOLS MEDIA, INC., corporations,

Defendants.

Case No. _____

**[proposed] STIPULATED ORDER FOR
PERMANENT INJUNCTION AND CIVIL PENALTY JUDGMENT**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or the “Commission”), has commenced this action by filing a Complaint for civil penalties and injunctive and other relief,

pursuant to Sections 5(I) and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(I) and 56(a), as amended; the Truth In Lending Act (“TILA”), 15 U.S.C. §§ 1601-1667, as amended; and its implementing Regulation Z, 12 C.F.R. § 226, as amended; the Consumer Leasing Act (“CLA”), 15 U.S.C. §§ 1667-1667f, as amended; and its implementing Regulation M, 12 C.F.R. § 213, as amended. Defendants, as defined below, have waived service of the summons and the Complaint. The parties, represented by the counsel identified below, have agreed to this settlement of the action without adjudication of any issue of fact or law.

THEREFORE, it is ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. Venue is proper as to all parties in this District.
3. In its Complaint, Plaintiff charges that Defendants violated the FTC Decision and Order in FTC Docket No. C-4356 (“FTC Order”), a copy of which is attached hereto as Exhibit A and made part of this Order.
4. Defendants other than Defendant-Respondent admit that they received actual notice of the FTC Order and that, in connection with advertising motor vehicles, they have operated in active concert and participation with Defendant-Respondent.
5. Defendants waive any claim that they may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorneys’ fees.
6. Plaintiff and Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. Defendants means Defendant-Respondent; Billion SC, Inc.; Billion NSC, Inc.; Billion Community, Inc.; Billion CC, Inc.; Billion H, Inc.; Billion K, Inc.; Billion FT Des Moines, Inc.; Billion Des Moines Motors, Inc.; Billion Hawkeye, Inc.; Billions Empire Motors, Inc.; Billion FT, Inc.; Billion G, Inc.; Billion T, Inc.; Billion C, Inc.; Billion Dells Auto, Inc.; Billion Motors, Inc.; Billion Southtown, Inc.; Billion West, Inc.; Billion Montana Motors, Inc.; and Nichols Media, Inc.; and their successors and assigns; and any of them individually, collectively, or in any combination.
2. Defendant-Respondent means Billion Auto, Inc.

I. CIVIL PENALTY JUDGMENT

IT IS HEREBY ORDERED that

- A. Judgment in the amount of THREE HUNDRED SIXTY THOUSAND DOLLARS (\$360,000.00) is hereby entered in favor of Plaintiff against Defendants, jointly and severally, as a civil penalty pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l).
- B. Defendants are ordered to pay to Plaintiff, by making payment to the Treasurer of the United States, THREE HUNDRED SIXTY THOUSAND DOLLARS (\$360,000.00), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to Plaintiff. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of Plaintiff.

- C. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- D. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Plaintiff or Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

II. PROHIBITION AGAINST VIOLATING FTC ORDER

IT IS FURTHER ORDERED that Defendants, and their officers, agents, representatives, employees, and attorneys, and all persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby permanently enjoined from violating, directly or through any corporation, subsidiary, division, or other device, any provision of the FTC Order, a copy of which is attached hereto as Exhibit A and made part of this Order.

III. ACKNOWLEDGMENTS OF ORDER AND EXHIBIT A

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order and Exhibit A:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order, including Exhibit A, sworn under penalty of perjury.
- B. For 20 years after entry of this Order, each Defendant must deliver a copy of this Order, including Exhibit A, to: (1) all principals, officers, directors, and dealership managers; (2) all employees, agents, and representatives who

participate in conduct related to the subject matter of this Order, including advertising, financing, leasing, and sales; and (3) any business entity resulting from any change in structure as set forth in the Part titled Compliance Reporting. For current personnel, delivery must occur within 7 days of entry of this Order. To all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, including Exhibit A, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order, including Exhibit A.

IV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

- A. One hundred eighty (180) days after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each acknowledgment of this Order, including Exhibit

- A, obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 20 years following entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in: (a) any designated point of contact or (b) the structure of such Defendant or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order, including advertising, financing, leasing, and sales.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal

Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The subject line must begin: United States v. Billion Auto, Inc., et al., No.

[insert FTC X number].

V. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of this Order, and retain each such record for 5 years. Specifically, Defendants must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss. Revenues from consumer credit transactions shall be set forth separately from revenues from consumer lease transactions, and both of the foregoing shall be set forth separately from all other revenues;
- B. Personnel records showing, for each person providing services related to the subject matter of this Order, including advertising, financing, leasing, and sales, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Complaints and refund requests, related to the subject matter of this Order, including advertising, financing, leasing, and sales, whether received directly or indirectly, such as through a third party, and any response;
- D. Agreements to purchase, installation and upgrade records, maintenance records, and operating manuals for all dealer management software and all other systems used for finance and lease department operations;

- E. Records sufficient to identify all (1) internal personnel and external persons and entities involved in advertisement creation, review, and publication, (2) lenders of consumer credit doing business with each Defendant, and (3) lessors of consumer leases doing business with each Defendant;
- F. Each advertisement and other promotional material containing any representation covered by this Order;
- G. All materials that were relied upon in disseminating any representation referenced in Part V(F) above;
- H. All tests, reports, studies, surveys, demonstrations, or other evidence in any Defendant's possession or control that contradict, qualify, or call into question any representation referenced in Part V(F) above, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- I. All other records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery,

without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Each Defendant must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this _____ day of _____, 201____.

UNITED STATES DISTRICT JUDGE
United States District Court

STIPULATED AND AGREED TO:

**FOR THE PLAINTIFF
UNITED STATES OF AMERICA:**

STUART F. DELERY
Assistant Attorney General

JONATHAN F. OLIN
Deputy Assistant Attorney General


MICHAEL S. BLUME
Director

United States Attorney

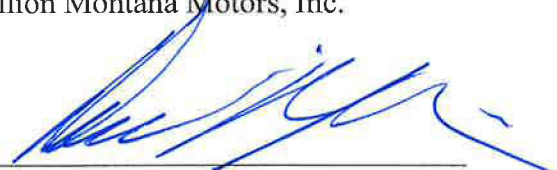
Assistant United States Attorney

Trial Attorney
Consumer Protection Branch
Department of Justice, Civil Division
P.O. Box 386
Washington, DC 20044
(202) 307-
(202) 514-8742 (fax) _____

FOR THE DEALERSHIP DEFENDANTS:



DAVID H. BILLION, an officer, on behalf of Billion Auto, Inc.; Billion SC, Inc.; Billion NSC, Inc.; Billion Community, Inc.; Billion CC, Inc.; Billion H, Inc.; Billion K, Inc.; Billion FT Des Moines, Inc.; Billion Des Moines Motors, Inc.; Billion Hawkeye, Inc.; Billions Empire Motors, Inc.; Billion FT, Inc.; Billion G, Inc.; Billion T, Inc.; Billion C, Inc.; Billion Dells Auto, Inc.; Billion Motors, Inc.; Billion Southtown, Inc.; Billion West, Inc.; and Billion Montana Motors, Inc.



DAVID R. BILLION, an officer, on behalf of Billion Auto, Inc.; Billion SC, Inc.; Billion NSC, Inc.; Billion Community, Inc.; Billion CC, Inc.; Billion H, Inc.; Billion K, Inc.; Billion FT Des Moines, Inc.; Billion Des Moines Motors, Inc.; Billion Hawkeye, Inc.; Billions Empire Motors, Inc.; Billion FT, Inc.; Billion G, Inc.; Billion T, Inc.; Billion C, Inc.; Billion Dells Auto, Inc.; Billion Motors, Inc.; Billion Southtown, Inc.; Billion West, Inc.; and Billion Montana Motors, Inc.

STIPULATED AND AGREED TO:

FOR THE COMMISSION:

JAMES A. KOHM
Associate Director for Enforcement
DOUGLAS V. WOLFE
Assistant Director for Enforcement



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FOR THE DEALERSHIP DEFENDANTS:


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Inc.; Billion CC, Inc.; Billion H, Inc.; Billion K,
Inc.; Billion FT Des Moines, Inc.; Billion Des
Moines Motors, Inc.; Billion Hawkeye, Inc.;
Billions Empire Motors, Inc.; Billion FT, Inc.;
Billion G, Inc.; Billion T, Inc.; Billion C,
Inc.; Billion Dells Auto, Inc.; Billion Motors,
Inc.; Billion Southtown, Inc.; Billion West, Inc.;
and Billion Montana Motors, Inc.



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STIPULATED AND AGREED TO:

FOR NICHOLS MEDIA, INC.:



MICHAEL NICHOLS, Vice President



James E. McMahon

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Counsel for Nichols Media, Inc.

Exhibit A

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of

**BILLION AUTO, INC.,
a corporation.**

DOCKET NO. C-4356

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Respondent named in the caption hereof, and Respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violation of the Federal Trade Commission Act (“FTC Act”), the Truth in Lending Act (“TILA”), and the Consumer Leasing Act (“CLA”); and

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the FTC Act, the TILA, and the CLA, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Billion Auto, Inc., is a South Dakota corporation with its principal office or place of business at 3401 West 41st Street, Sioux Falls, South Dakota, 57106.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For the purposes of this order, the following definitions shall apply:

1. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
2. “Clearly and conspicuously” shall mean as follows:
 - a. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.
 - b. In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration and in a location sufficient for an ordinary consumer to read and comprehend it.
 - c. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - d. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
 - e. In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or promotion.
3. “Consumer credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes.
4. “Consumer lease” shall have the same meaning as that term is defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.

5. "Material" shall mean likely to affect a person's choice of, or conduct regarding, goods or services.
6. "Motor vehicle" shall mean
 - a. any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;
 - b. recreational boats and marine equipment;
 - c. motorcycles;
 - d. motor homes, recreational vehicle trailers, and slide-in campers; and
 - e. other vehicles that are titled and sold through dealers.

I.

IT IS HEREBY ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, the purchase, financing, or leasing of automobiles, in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. Misrepresent that when a consumer trades in a used motor vehicle ("trade-in vehicle") in order to purchase another motor vehicle ("newly purchased vehicle"), Respondent will pay any remaining loan balance on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan; or
- B. Misrepresent any material fact regarding the cost and terms of financing or leasing any newly purchased vehicle.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any extension of consumer credit, in or affecting commerce, shall not in any manner, expressly or by implication:

- A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:
 1. The amount or percentage of the down payment;
 2. The terms of repayment; and

3. The annual percentage rate, using the term “annual percentage rate” or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term.
- C. Fail to comply in any respect with Regulation Z, 12 C.F.R. § 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any consumer lease, in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously the following terms:
1. That the transaction advertised is a lease;
 2. The total amount due at lease signing or delivery;
 3. Whether or not a security deposit is required;
 4. The number, amounts, and timing of scheduled payments; and
 5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle; or
- B. Fail to comply in any respect with Regulation M, 12 C.F.R. § 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.

IV.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, 20580. The subject line must begin: FTC v. Billion Auto.

VII.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VIII.

This order will terminate on May 1, 2032, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint;
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: May 1, 2012