**PUBLIC**

**X200041**

**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**
**OFFICE OF ADMINISTRATIVE LAW JUDGES**

| | |
|---|---|
| **In the Matter of**<br><br>**TRAFFIC JAM EVENTS, LLC, a limited liability company, and**<br><br>**DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.** | **DOCKET NO. 9395** |

**COMPLAINT COUNSEL'S MOTION FOR SANCTIONS AGAINST RESPONDENTS**

Because of Respondents' continued, willful disregard of this Court's orders, Complaint Counsel respectfully requests that the Court strike Respondents' answer and enter a default judgment pursuant to Rule 3.38(b). The Court already has warned that default could be imposed,[1] and the sanctions to date have not had the intended effect of "encourag[ing] discovery" and "promot[ing] the production of relevant evidence." June 29 Order, at 5 (quoting *In re R.J. Reynolds Tobacco Co.*, 1998 FTC LEXIS 88, at *5 (Oct. 28, 1988)). Respondents' continued contumacious conduct has run out the clock on discovery and denied Complaint Counsel access to evidence in Respondents' control that directly relates to the merits. The record compels finding Respondents' refusals to fully and completely respond to discovery to be willful and in bad faith, prejudicial to Complaint Counsel, and that any lesser sanctions than default have been and will be inadequate.

[1] "Failure to comply may result in an order to show cause why sanctions should not be imposed against Respondents, up to and including default." June 29 Order, at 7.

## BACKGROUND

Complaint Counsel is before the Court for the ***fourth time*** seeking relief for Respondents' discovery and order violations. Complaint Counsel first filed a motion to compel on September 10, 2020, which the Court granted in part on October 28. After Respondents refused to comply with the Court's October 28 order, Complaint Counsel filed another motion to compel on December 7 that the Court granted on December 16. The December 16 Order directed Respondents to produce certain documents in response to Complaint Counsel's first request for production of documents and to provide complete, responsive answers to Complaint Counsel's first set of interrogatories. Following Respondents' refusal to comply with the December 16 Order, Complaint Counsel filed a third motion for sanctions on June 9, which the Court granted in part on June 29.

Although the Court found that "Respondents' completion of discovery had been long-delayed," the Court declined to find, "at this stage," that "Respondents delay were willful or intended to obstruct." June 29 Order at 6. The Court therefore ordered that "Respondents shall act promptly and cooperate fully and diligently in completing their discovery obligations" and that "[n]o later than July 13, 2021, Respondents shall submit a sworn statement verifying that Respondents have completed their obligations to provide discovery in compliance with the December 16 Order.

Unfortunately, the status of discovery remains the same today as the Court found in its June 29 order (and not much different than last fall): "the required document production has not been completed" and "Respondents' purported answers to interrogatories. . . lack[] any meaningful detail. . . ."[2] Besides blowing off their discovery obligations, Respondents have not

[2] The Court found that "Respondents had a duty to supplement their prior disclosures to provide updated contact information for TJE's now-former employees, which duty, at present, Respondents have not fulfilled."

submitted a sworn statement as required by the Court. Respondents instead assert that they have or will give access to data and records central to the issues presented by the complaint – but have yet to take any real steps to do so. *See* Widor Dec. ¶ 6, Exh. A.

Complaint Counsel has been diligently seeking discovery from Respondents since last September. In the fall, Respondents flouted their discovery obligations for three months while represented by counsel. As the Court found in its December 16 Order, "the record demonstrates that the parties negotiated a number of limitations intended to address TJE's burden objections, yet actual production in accordance with those negotiations has not occurred." *See* December 16 Order at 3. Respondents then represented that they were ready to produce material by the deadline imposed by the December 16 Order right before the case was removed from adjudication. Widor Dec. ¶ 3. When the case was returned this spring, Respondents provided no compelling reason why this supposedly prepared material was no longer ready to be produced. *Id.* ¶ 4. Even with counsel now back for nearly two months, Respondents remain noncompliant with the Court's June 29 Order. *Id.* ¶¶ 5-6, 8, and Exh. A.

This pattern of conduct reflects a calculated decision to thwart discovery; not a lack of resources or familiarity with litigation. *See*, *e.g.*, Widor Dec. ¶ 9, Exh. C (text messages involving Respondent discussing strategy). Respondents have a long history of using (and abusing) the court system and repeatedly have resorted to the judicial system to sue their customers and former employees. *See*, *e.g.*, *Traffic Jam Events, LLC v. Lilley*, Case 2:21-cv-122 (E.D. La. filed Jan. 20, 2021); *Traffic Jam Events, LLC v. Gibbes 601, LLC*, Case 2:17-cv-

Respondents never updated their Initial Disclosures and refused providing contact information until two days before the close of discovery. *See* Widor Dec. Exh. A. Given the lack of time remaining, Respondents have successfully thwarted Complaint Counsel's ability to practically conduct all the previously noticed depositions before the trial date. Complaint Counsel has again noticed the deposition of Justin Brophy for next Tuesday pursuant to the Court's June 15 Order. Respondents have refused to acknowledge their availability for the deposition, and Mr. Brophy has refused to respond to Complaint Counsel's communications.

12233(E.D. La. removed Nov. 10, 2017); *Procaccino v. Jeansonne et al*., Case 2:17-cv-4748 (E.D. La. filed May 5, 2017); *Traffic Jam Events, LLC v. White and Sons, LLC*, Civil Action No. 5:13-cv-288-WHB-RHW (S.D. Miss. June 20, 2014). Respondents also have been admonished for abusive litigation tactics in these cases. *See* Widor Dec. ¶ 10, Exh. D (Order, *Procaccino v. Jeansonne et al*., Civl Action No. 17-478 (awarding sanctions after finding defendants Jeansonne, Traffic Jam Events, and other affiliated defendants engaged in "misconduct in obstructing the settlement and multiplying proceedings" that amounted to "vexatious litigation conduct")); *see also* Exh. E (threats by Jeansonne directed at dealerships).

By flouting their discovery obligations and forcing Complaint Counsel to engage in wasteful motions practice, Respondents have deprived Complaint Counsel of vital discovery and unnecessarily multiplied the proceedings in this case. Complaint Counsel has been severely prejudiced by being denied the ability to develop and prosecute this case, and this Court similarly will be deprived of important evidence to decide the matter on the merits.

## LEGAL STANDARD

Commission Rule 3.38(b) grants the Court authority to impose discovery sanctions. The rule specifies six sanctions, including ruling "that a decision of the proceeding be rendered against the party." Rule 3.38(b)(6). The rule also permits the Court to take "such action. . . as is just." Sanctions may be imposed where the failure to comply is "unjustified and the sanction imposed 'is reasonable in light of the material withheld and the purposes of Rule 3.38(b).' " *In re ITT Corp.*, 104 F.T.C. 280 (July 25, 1984). The explanation for a party's failure to comply with a discovery order "is crucial in determining whether to invoke the sanctions." *In re LabMD, Inc.*, 2014 FTC Lexis 42, *9 (Mar. 10, 2014).

## ARGUMENT

### I. Respondents Failed to Comply with the Court's Order Requiring Production of Documents to Complaint Counsel's RFPs

Notwithstanding the Court's June 29 Order and the accompanying warning about potential default, Respondents have not "completed their obligations to provide discovery in compliance with the December 16 Order" or submitted a sworn statement. June 29 Order at 7. Respondents have not even come close to producing the multiple categories of documents listed in this Court's December 16 Order. December 16 Order at 4-5. Instead, Respondents assert that they have satisfied their obligations by providing the name of a vendor Respondents have used to store some electronic records – even though they have provided no description of the records or made arrangements to produce them for inspection. Widor Decl. ¶ 8. In doing so, Respondents have failed to make even minimal, good faith efforts to produce or make records available. Even when a party elects to produce records as they are kept in the ordinary course of business, it may not simply point to a mass of materials, but must organize or describe the responsive material in sufficient detail to allow the requesting party to obtain, with reasonable effort, the documents responsive to the requests for production. *Henderson v. Holiday CVS, L.L.C.*, No. 09-80909-CIV, 2010 WL 11505168, at *3 (S.D. Fla. Aug. 11, 2010) (summarizing cases)

Respondents have no valid justification for failing to comply with the Court's order. Feigning ignorance as to how to make responsive materials available while protecting privileged information is not compelling. Respondents' counsel has been in practice as a litigator since 1997.[3] Respondents' deliberate disregard for the Court's order is underscored by their failure to provide any declaration to demonstrate that they have diligently taken steps to produce *any* of the categories of records enumerated in the December 16 Order. Respondents have willfully

[3] *See* https://www.joneswalker.com/en/professionals/l-etienne-balart.html.

violated the Court's June 29 order despite the sanction the Court imposed, and the threat of additional sanctions.

II. Respondents Have Failed to Provide Complete and Full Responses to Complaint Counsel's ROGs

In the December 16 Order, the Court ordered "that Respondent Traffic Jam Events shall provide complete and responsive answers to Complaint Counsel's First Set of Interrogatories." On July 13, however, Respondents provided Complaint Counsel with yet another set of wholly deficient cut and paste answers and objections. *See* Widor Dec. Exh. B.

In violation of the Court's orders and Rule 3.35, the responses are incomplete and lacking detail. Respondent Traffic Jam asserts untimely boilerplate objections to each interrogatory "as vague, ambiguous and confusing." which were already waived given that the Court, in the December 16 Order, had directed it to provide complete and responsive answers. Respondent Traffic Jam Events further made the frivolous objection that "the term 'Describe in Detail' refers to a time period that is not defined in any of the Interrogatories even though Instruction No. 1 specifically indicates that the time period covers January 1, 2015 to the present. Respondents' objections reflect an obvious, bad faith attempt to avoid responding.

Respondent Traffic Jam Events provides virtually no substantive response, vaguely referring to Jeansonne's deposition and other supposed documents. Respondents' reference to Jeansonne's deposition simply highlights the manner in which Respondents' failure to properly respond has prejudiced Complaint Counsel. Respondent Jeansonne's recollection at deposition is not a substitute for Respondent Traffic Jam Events responding to interrogatories based on its organizational knowledge and records. Moreover, by failing to produce documents, Respondents prevented Complaint Counsel from confronting Jeansonne with records at the deposition to challenge his purported lack of knowledge or recollection.

Furthermore, although Rule 3.35(d) provides the option to produce records, Respondents are still required to specify where the information may be found. *Cf. O'Connor v. Boeing N. Am., Inc.*, 185 F.R.D. 272, 277 (C.D.Cal.1999) (under Fed. R. Civ. Rule 33(d), "a responding party has the duty to specify, by category and location, the records from which answers to interrogatories can be derived."). Respondent's generic referrals to previous disclosures violates the Court's order to provide complete and responsive answers. *See DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 680-81 (D. Kan. 2004) (stating that a plaintiff "may not merely refer Defendants to other pleadings or its disclosures hoping that Defendants will be able to glean the requested information from them").

For all these reasons, the interrogatory responses are woefully deficient and in violation of the Court's June 29 Order.

## III. Default Judgment Is Warranted to Address Respondents' Willful Discovery Misconduct

Complaint Counsel has been severely prejudiced by Respondents' willful discovery abuse, and the sanctions to date demonstrate that default judgment is warranted. As a result of Respondents' inordinate and inexcusable delays, Complaint Counsel's ability to go to trial has been impaired and the Court will be deprived of evidence to reach a rightful decision. The prejudice inquiry "looks to whether the [spoiling party's] actions impaired [the non-spoiling party's] ability to go to trial or threatened to interfere with the rightful decision of the case." *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1988) (citing cases); *Anheuser-Busch, Inc. v. Natural Beverage Distribs.,* 69 F.3d 337, 354 (9th Cir. 1995) (finding prejudice when a party's refusal to provide certain documents "forced Anheuser to rely on incomplete and spotty evidence" at trial). First, a party's discovery violations may present a "pattern of deception and discovery abuse [that makes] it impossible. . . to conduct another trial with any reasonable

assurance that the truth would be available." *Anheuser-Busch, Inc.,* 69 F.3d at 352. Second, a party's repeated failure to comply with orders compelling production may threaten the rightful resolution by preventing the other party from preparing for a fast-approaching trial date. *Id.*

Deposition testimony and third-party subpoena responses suggest that important information has been lost because of Respondents. Widor Dec. ¶ 12. For example, Respondents used DealerApps as their call center to collect consumer lead information from their ads, which would be available to Respondents and their customers. In response to a third-party subpoena, the company represented to Complaint Counsel that consumer data was not preserved and that DealerApps was never notified about any preservation obligations to do so by Respondents. *Id*.

As for the availability of a lesser sanction, the Court has tried lesser sanctions, but they have failed to compel Respondents' compliance. Precluding Respondents from introducing evidence assumes Complaint Counsel has obtained adequate evidence through the discovery process to proceed with its case-in-chief. And, precluding Respondents from objecting to the use of secondary evidence is only effective if such secondary evidence exists. As discussed above however, Respondents have effectively prevented Complaint Counsel from obtaining such evidence and, in fact, contributed to its spoliation. *See Leon v. IDX Sys. Corp.*, 464 F.3d 951, 960 (9th Cir. 2006) (finding "less drastic sanctions are not useful" because a ruling excluding evidence would be "futile," and fashioning a jury instruction that creates a presumption in favor of IDX "would leave Defendants equally helpless to rebut any material that Plaintiff might use to overcome the presumption.").

Respondents' prolonged course of discovery abuse warrants a default judgment. *In re Auto. Breakthrough Sciences,* 1996 FTC LEXIS 763 at *11-*12 (1996) ("[d]efendants' repeated failure to comply with discovery, to obey court orders regarding the same, and to appear for their

depositions clearly constitute contumacious conduct which seriously hampered [plaintiff's] trial preparation."); *In re Rustevader Corp.,* 1996 FTC LEXIS 369, *4 (1996) (granting default judgment where respondent failed to respond to discovery requests). The record shows that Respondents are likely to continue to abuse the administrative process and that no other remedy is adequate to address the prejudice already suffered by Complaint Counsel and this Court.

## CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that the Court grant this motion and imposes sanctions under Rule 3.38.

Respectfully submitted,

July 21, 2021

By: */s/ Thomas J. Widor*

Thomas J. Widor
Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Mailstop CC-10232
Washington, DC 20506

## CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2021, I caused the foregoing document to be served via the FTC's E-filing system and electronic mail to:

April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

L. Etienne Balart
Taylor Wimberly
Jones Walker LLP
201 St. Charles Ave
New Orleans, LA 70170-5100
ebalart@joneswalker.com
twimberly@joneswalker.com

Counsel for Respondents

I further certify that on July 21, 2021, I caused the foregoing document to be served via electronic mail to:

David Jeansonne
david@trafficjamevents.com

July 21, 2021

By: */s/ Thomas J. Widor*
Thomas J. Widor
Federal Trade Commission
Bureau of Consumer Protection

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**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**
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| **In the Matter of**<br><br>**TRAFFIC JAM EVENTS, LLC, a limited liability company, and**<br><br>**DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.** | **DOCKET NO. 9395** |

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR SANCTIONS AGAINST RESPONDENTS**

Upon consideration of Complaint Counsel's Motion:

IT IS HEREBY ORDERED that Complaint Counsel's Motion is GRANTED.

IT IS FURTHER ORDERED that Respondents' Answer and Affirmative Defenses dated August 26, 2020 is hereby STRICKEN.

IT IS FURTHER ORDERED that Respondents are in default, and a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding may be entered against Respondents as parties in default under Rule 3.12(c).

ORDERED:

_____
D. Michael Chappell
Chief Administrative Law Judge

Date:

**PUBLIC**

**X200041**

**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**
**OFFICE OF ADMINISTRATIVE LAW JUDGES**

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| **In the Matter of**<br><br>**TRAFFIC JAM EVENTS, LLC, a limited liability company, and**<br><br>**DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.** | **DOCKET NO. 9395** |

## DECLARATION OF THOMAS J. WIDOR

1. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could and would testify competently under oath to such facts. This declaration is submitted in support of Complaint Counsel's Motion for Sanctions Against Respondents ("Sanctions Motion").
2. I am an attorney at the Federal Trade Commission and Complaint Counsel in this proceeding.
3. Complaint Counsel initially issued their first set of Requests for Production in September 2020. Following the December 16 Order, Respondents represented that they were ready to comply with the Court's order. The parties agreed to defer production of the material for the Commission to consider a proposed consent order.
4. When the matter was returned to adjudication in May 2021, Respondents refused to meet and confer on a rolling production and indicated that they could not comply with all the requests. Respondents ultimately produced very limited materials by May 12, such as advertisements and related materials, necessitating Complaint Counsel's June motion for sanctions.

5. Respondents notified Complaint Counsel that they were represented by Counsel on May 24.
6. Complaint Counsel has not received any documents responsive to their first set of Requests for Production since the Court's June 29 Order. Respondents continue to claim they have or will give access to relevant material but have not provided any meaningful information or taken any other real steps to do so. Exhibit A is a true and correct copy of an e-mail chain between Complaint Counsel and Respondents regarding their lack of compliance.
7. On July 13, Respondents provided a deficient set of interrogatory responses. Exhibit B is a true and correct copy of the responses.
8. Since last November, FTC litigation support has been ready and available to collect and process Respondents' materials, including as recently as the Court's July deadline. Respondents have failed to provide basic details that would allow our litigation support personnel or a third-party vendor to plan for an inspection or otherwise access information. Besides providing the name of the supposed vendor as Mindset, which cannot even be found with a Google search, Respondents have provided no description of the records or made arrangements to produce them for inspection.
9. Exhibit C is a true and correct copy of text messages involving Respondent Jeansonne that were produced by former employee William Lilley in response to a third-party subpoena served by Complaint Counsel and that discuss Respondents' litigation strategy.
10. Exhibit D is a true and correct copy of the Court order awarding attorney's fees and sanctioning Respondents for "vexatious litigation conduct" in *Procaccino v. Jeansonne*, Civil Action No. 17-478 (E.D. La. Dec. 29, 2017).
11. Exhibit E is a true and correct copy of an exhibit in support of Defendant's memorandum brief in support of summary judgment, which was granted by the Court and dismissed Traffic

Jam Events lawsuit in *Traffic Jam Events, LLC v. White and Sons, LLC*, Civil Action No. 5:13-cv-288-WHB-RHW (S.D. Miss. June 20, 2014). The exhibit includes an email from Respondent Jeansonne threatening the dealership's business and suggesting Respondent Jeansonne had previously put other dealers out of business.

12. Complaint Counsel served a subpoena on DealerApps, Inc., which provided a consumer call center for Respondents' advertising, including the phone numbers and websites listed on Respondents websites. DealerApps indicated that consumers may have called in believing they had won a specific prize and that such consumers would have been logged in the database available to Respondents. DealerApps indicated that they no longer maintained consumer call-in information based on their document retention policies and were never informed by Respondents to preserve such information or suspend their document destruction practices.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed June 9, 2021

By: */s/ Thomas J. Widor*

Thomas J. Widor
Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Mailstop CC-10232
Washington, DC 20506

# EXHIBIT A

**From:** Balart, Etienne
**To:** Tankersley, Michael
**Cc:** Wimberly, Taylor; Widor, Thomas; Brickman, Jennifer; David Jeansonne; Shahrasbi, Sanya
**Subject:** RE: Traffic Jam Events-- June 29 Order and Former Employee Addresses
**Date:** Wednesday, July 14, 2021 10:01:28 AM

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Michael,

Although this information is in documents subpoenaed already, the last known addresses of former Traffic Jam employees are as follows:

Chad Bullock Redacted Confidential Personal Information

Jim Whelan Redacted Confidential Personal Information

Mariela Everst Redacted Confidential Personal Information

Justin Brohpy Redacted Confidential Personal Information

I would appreciate a response on the addresses of the Commissioners so that I may petition the ALJ for subpoenas to be issued for their appearance at the evidentiary hearing.

Etienne

**L. Etienne Balart** | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

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**From:** Tankersley, Michael <MTANKERSLEY@ftc.gov>
**Sent:** Monday, July 12, 2021 4:12 PM
**To:** Balart, Etienne <ebalart@joneswalker.com>
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
**Subject:** [EXTERNAL] RE: Traffic Jam Events-- June 29 Order and Former Employee Addresses

Etienne:

With regard to your statements regarding Complaint Counsels' response to discovery, Complaint Counsel has already produced any relevant, non-privileged documents responsive to Respondents' discovery requests. However, neither Respondents' requests nor the Commissions' Rules mandate that Complaint Counsel produce "all information in the form of documents etc that it intends to prove its case." Discovery is ongoing and Complaint Counsel will continue to produce relevant, non-privileged documents responsive to Respondents Requests that are in Complaint Counsels' possession, custody, or control, and required to be

disclosed under Commission Rules. In particular, following our telephone call on Friday, we have confirmed that the consumer complaints were produced as part of Complaint Counsels' productions to Respondents. *See* Attached (Sept. 4, 2020 transmittal message listing Secure File Downloads). Your accusations that Respondents have improperly withheld materials have no foundation.

With respect to Respondents' obligation to produce documents, I will reiterate that the Mindset email server has never been made available to us, nor have we had the opportunity to start "the ESI collection process." Moreover, the document production that Respondents owe us is not limited to emails – as the document requests and the Court's orders make clear. Respondents are obligated to produce the materials and identify the materials for which they claim privilege, and may not withhold the production because Respondents have chosen not to review their own materials. Respondents have had ample time to identify any privileged materials in advance of the Court's July 13 deadline for compliance. Once again, please provide us with details regarding the material Respondents have collected for production including what (if any) documents are not digital, the format and volume of the digital files, and the means by which Respondents will produce them.

In addition to the document production and interrogatory responses, Respondents also owe us supplemental initial disclosures -- including the last known addresses for former employees. Your position that Respondents demand that we provide the Commissioners' addresses as a precondition for Respondents to comply with this obligation is improper and unfounded. Your plan is inconsistent with the Rule requiring prior authorization to examine the Commissioners.

Finally, the Commission's decision to seek injunctive relief against Respondents last year is not under review in this proceeding and our former paralegal's recollection of the investigation is protected. If you, nonetheless, notice her deposition, we are authorized to accept the subpoena but will oppose the deposition as improper.

Michael Tankersley
Federal Trade Commission
Bureau of Consumer Protection
(202) 631-7091

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**From:** Balart, Etienne <ebalart@joneswalker.com>
**Sent:** Monday, July 12, 2021 10:57 AM
**To:** Tankersley, Michael <MTANKERSLEY@ftc.gov>
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
**Subject:** RE: Traffic Jam Events-- June 29 Order and Former Employee Addresses

Michael,

We will get you full and complete Interrogatory responses, so you can dot that "i." I also confirm that by Tuesday, Complaint Counsel will produce, as responsive to our prior discovery requests, all information in the form of documents etc that it intends to prove its case. As we discussed, to date, Complaint Counsel has hidden behind a barrage of asserted privileges (deliberative process/law enforcement/work product etc) to not produce a single contemporaneous document that it had in its possession prior to the filing of the Complaint on Aug. 7 (other than what the Florida AG's office provided you). As I explained during our lengthy call, all Respondents are asking for is candor from Complaint Counsel as to how they intend to try this case. It is either (a) we don't need any consumer complaints and decided to do it ourselves as a political favor; or (b) we have hundreds of consumers who complained and that's why the acts are so deceptive. As you well know, this "administrative" record matters, and if it is path (a) that you intend to pursue, that is your prerogative, but we are entitled to know that.

As far as documents, I have to say that it appears that Mr. Widor is backtracking on his earlier agreement to access the ESI that Mr. Jeansonne identified, and that you intent to do the same. To state the obvious, right now Mr. Jeansonne has no employees and the business is shut down. We have identified for you the ESI in the form of the Mindset email server that is hosted by a third party. We are under no obligation to access and produce that material to you; rather, the Rules specifically contemplate that we can make the ESI available for your review and inspection (16 CFR 3.37(a)). I don't understand why you have cited to the Rules on a Motion to Compel, given that to respond to that motion we have offered you access to everything. You, or at least your co-counsel, has previously identified the email accounts you wish to access, and back on June 8th, so now more than 30 days have elapsed with nothing more than changing the terms by Complaint Counsel. You could have started the ESI collection process (which, pursuant to 3.37(a) we are not obliged to pay for) back then, if that is what you truly wanted to do.

So let me provide clarity: Respondents have identified, and previously disclosed to Complaint Counsel all email communications of the personnel identified by Complaint Counsel as responsive to the categories of documents ordered to be produced in the MTC. While we would typically agree to a defined set of keywords to identify responsive information, given the breadth of your requests, and the lack of employees at Traffic Jam, Respondents have decided to simply give you access to all ESI maintained on the server for the last six (6) years. That *may* include privileged information, so the only condition we have placed on this is that once the ESI is obtained, we be allowed a brief period of time to conduct a privilege review, which Complaint Counsel has refused. Alternatively, if you agree to exclude "Etienne", "Jones Walker", "joneswalker.com" or "attorney" from your search of the ESI, we can handle it that way.

As far as the Commissioners go, and last knowns, I need the addresses to prepare subpoenas for testimony at trial, so please send that to me and I will provide you with the last knowns. With respect to the paralegal, I was told earlier that I would have to coordinate her deposition, which is why I was provided a phone number that simply rings out. If you would like to produce her this week, let me know a time and date. I intend to ask her the simple questions of what *factual*

information the FTC possessed to include in the Complaint, and the *source* of that *factual* information. Although I may be dense, I don't see how either of those lines of inquiry could possibly by "privileged," especially if the answer is "only the stuff that the Florida AG sent over to us" plus everything that Tom had me try to dig up between the time we filed in EDLA (July 16) and the PI hearing. Of course, we would not ask for anything that Tom directed her to do, but are certainly entitled to know if she interviewed any consumers (which you indicated is discoverable in our call Friday) and/or obtained any documents.

Etienne

**L. Etienne Balart** | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

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**From:** Tankersley, Michael <MTANKERSLEY@ftc.gov>
**Sent:** Friday, July 9, 2021 4:22 PM
**To:** Balart, Etienne <ebalart@joneswalker.com>
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
**Subject:** [EXTERNAL] Traffic Jam Events-- June 29 Order and Former Employee Addresses

Etienne,

To reiterate the discussion from our telephone call earlier, we have yet to receive proper responses to any of the Interrogatories covered by the Court's June 29 Order. The responses should answer each interrogatory separately and be signed under oath. 16 CFR § 3.35(a)(2).

With respect to the documents, we have not been provided with access to Respondents' ESI or responsive hard-copy material. Mr. Jeansonne provided the name of a vendor (Mindset) but no access. Respondents are responsible for identifying responsive materials and asserting privilege for withheld material. 16 C.F.R. § 3.38A. A partial list of the categories of documents the Court has ordered to be produced is set forth at pages 4-5 of the Court's December 16, 2020 order. We also would note that production is not limited to e-mail and should encompass any other sources where Respondents stored responsive material, such as material stored in Dropbox, the ACT database, text messages, and Mr. Jeansonne's yahoo account. Again, please provide us with details regarding the material Respondents have collected for production including what (if any) documents are not digital, the format and volume of the digital files, and the means by which Respondents will produce them.

We again request the addresses for the former Traffic Jam Events employees. The Court ordered Respondents to provide amended disclosures in October, and the Court's most recent

order confirmed that Respondents have not fulfilled their duty to supplement their prior disclosures to provide updated contact information for TJE's former employees. Your request that we provide the addresses of Commissioners in exchange is not appropriate and certainly not a condition of the Court's order. Depositions of the Commissioners are governed by Rule 3.36; Respondents cannot satisfy the standard set forth in the Rule and have not even filed an application for such discovery.

With regard to our former paralegal, you can contact us if you intend to notice her deposition. As I stated earlier, we ask that you identify what testimony you seek through such a deposition that would be within the scope of discovery and not protected by the work product doctrine or applicable privileges. She will not be a witness for the Commission in this proceeding.

Michael Tankersley
Federal Trade Commission
Bureau of Consumer Protection
(202) 631-7091

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**From:** Balart, Etienne <ebalart@joneswalker.com>
**Sent:** Friday, July 9, 2021 9:46 AM
**To:** Tankersley, Michael <MTANKERSLEY@ftc.gov>
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
**Subject:** RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Michael –

Let's discuss in more detail during our call. As for designation of ESI, I disagree. We had multiple conferences and emails with Mr. Widor and Ms. Shahrasbi concerning what ESI existed – as you could likely imagine, it is email located on a server that we identified. Once that data is accumulated, we have the right to identify privileged information and designate it as such. So what I am asking for is a protocol of how your ESI vendor proposes to access the materials, how they propose to accumulate the material, and how, once it is accumulated, we are allowed a chance to review for privilege. What program/platform do they propose using to store the information (we use relativity, so I would prefer that, to speed things along), and, most importantly, what procedures are in place to make sure that Complaint Counsel does not have access to the information until after the review. These are details only Complaint Counsel can provide. For your reference, Mr. Widor sent the contours of a proposed protocol in the attached, but this needs to be updated to reflect the actual recovery of data. Respondents do not plan on sharing any of these costs, and we do not think there is any authority for such.

On the interrogatories, what specific interrogatories (that were not also already addressed in the deposition) does Complaint Counsel think are unanswered/outstanding?

I too have not been provided with addresses for the FTC former employees. I find it strange that the FTC does not have the wherewithal to locate the address of US citizens (even a private practitioner like myself can do that), but if you agree to produce Ms. Broadwell's last known address, as well as the addresses of the Commissioners as previously requested of Ms. Shahrasbi, then we will reciprocate.

Etienne

**L. Etienne Balart** | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

---

**From:** Tankersley, Michael <MTANKERSLEY@ftc.gov>
**Sent:** Thursday, July 8, 2021 5:00 PM
**To:** Balart, Etienne <ebalart@joneswalker.com>
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
**Subject:** [EXTERNAL] RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Etienne,

We have not been provided with the addresses for the former employees. David indicated during this deposition that he believed he had addresses, not just telephone numbers.

With regard to compliance with the discovery order, we have not received interrogatory responses. Nor have we received a description of documents Respondents are ready to produce. Respondents are responsible for identifying materials for which they claim privilege and which materials are responsive. ESI must be produced in native form or reasonably usable form that does not eliminate information or functionality. 16 C.F.R. § 3.37(c)(ii). Inadvertent disclosures are governed by Rule 3.31(g).

Please provide us with details regarding the material Respondents have collected for production including what (if any) documents are not digital, the format and volume of the digital files, and the means by which Respondents will produce them.

Michael Tankersley
Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Ave., NW CC-10232
Washington, DC 20580
(202) 631-7091

**From:** Balart, Etienne <ebalart@joneswalker.com>
**Sent:** Wednesday, July 7, 2021 3:27 PM
**To:** Tankersley, Michael <MTANKERSLEY@ftc.gov>
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Broadwell, Eleni <ebroadwell@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
**Subject:** RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Michael – we can attend to this after the deposition tomorrow. Please note that in his deposition, David gave last known numbers for all of those employees. I don't have the transcript in front of me, but let me know if I am wrong in that regard.

And to bring you up to speed, Tom had agreed to the production of the ESI and any paper files stored at Traffic jam to be collected by the FTC. I had asked Tom for a proposed protocol on who, when and how this was going to happen, as well as a proposal on how we could ensure privileged material is not accessed by the FTC. I never received a response other than the motion for sanctions. We can talk in more detail tomorrow, but I have been waiting on the proposed protocol to satisfy the FTC's discovery interests.

Etienne

**L. Etienne Balart** | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

**From:** Tankersley, Michael <MTANKERSLEY@ftc.gov>
**Sent:** Wednesday, July 7, 2021 10:13 AM
**To:** Balart, Etienne <ebalart@joneswalker.com>
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Broadwell, Eleni <ebroadwell@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>
**Subject:** [EXTERNAL] RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Etienne:

We have not received the last known addresses for former employees. In particular, Mr. Jeansonne indicated he had current address information for Justin Brophy, Chad Bullock, Jim Whelan, and Mariela Everst. These addresses have not been provided to us.

I am available to confer this afternoon regarding production of the material covered by the Court's July 29 order. Let me know when you are available. We would like to know when we can expect production of these materials and avoid last-minute disputes over the production. We are awaiting:

- Complete and responsive answers to Complaint Counsel's First Set of Interrogatories
- Material responsive to Complaint Counsel's Requests for Production of Documents, including,

without limitation:

1. each unique Advertisement and Promotional Material:
2. invoices;
3. work orders;
4. documents sufficient to show the relationship between Respondent TJE and Platinum Plus Printing, including any agreements;
5. documents sufficient to show the relationship between Respondent TJE and the telephone numbers and websites listed on Respondents' Advertising;
6. data files showing mailing information relating to Respondents' Advertising;
7. sales logs and any other materials tracking leads or consumer responses to Respondents' Advertising through a customer relationship management database or otherwise;
8. email, text messages, and any other communications to, from, or copying

- David J. Jeansonne II,
- Justin Brophy,
- Chad Bullock,
- Jim Whelan,
- William Lilley, and
- Mariela Everst

relating to Respondents' Advertising;

9. business plans, proposals, financial analyses, market or sales strategies, sales projections, sales pitches or prospectuses, or return on investment analyses relating to Respondents' Advertising
10. all complaints relating to Respondents' Advertising;
11. all documents relating to the FTC or compliance with consumer protection laws;
12. all documents relating to the Florida, Kansas, and Indiana investigations and lawsuits; and
13. documents sufficient to show all persons having any responsibilities for or on Respondents' behalf for any Advertising.

For all of these categories we have received either no production or a limited production that does not cover the relevant period.

With regard to Emilie Saunders, as you know, she was a paralegal specialist and is no longer with the Commission. The facts covered by her declaration are not contested. She will not be a witness for the Commission in this proceeding. Her knowledge of the Traffic Jam investigation is covered by work product protection. If you intend to notice her deposition, we ask that you identify what testimony within the scope of discovery she would be able to give that is not protected by the work product doctrine or applicable privileges.

Michael Tankersley
Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Ave., NW
CC-10232
Washington, DC 20580

(202) 326-2991

-----Original Message-----
From: Balart, Etienne <ebalart@joneswalker.com>
Sent: Tuesday, July 6, 2021 9:34 PM
To: Shahrasbi, Sanya <sshahrasbi@ftc.gov>
Cc: Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Tankersley, Michael <MTANKERSLEY@ftc.gov>; Broadwell, Eleni <ebroadwell@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>
Subject: RE: [EXTERNAL] Traffic Jam Events-- Subpoenas Ad Testificandum

Sanya --

I never heard back from you, Tom or Michael concerning a call to discuss production of ESI and any outstanding information that you do not have. I believe you have all last known contact information of all former THE employees. We still do not have the address for Emilie Saunders per my prior request.

Please send me the email address of Will Lilley's counsel, as there are documents I intend to send to them prior to the deposition.

Etienne

L. Etienne Balart | Partner
Jones Walker LLP
D: 504.582.8584 | M: 504.756.2192
ebalart@joneswalker.com

# EXHIBIT B

**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**
**OFFICE OF ADMINISTRATIVE LAW JUDGES**

| | |
|---|---|
| **In the Matter of**<br><br>**TRAFFIC JAM EVENTS, LLC, a limited liability company**<br><br>**and**<br><br>**DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.** | **DOCKET NO. 9395** |

## RESPONDENT'S ANSWERS TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES

Respondent, Traffic Jam Events, LLC's ("TJE"), files its responses to Complaint Counsel, Federal Trade Commissions' ("FTC") Interrogatories and states:

**INTERROGATORY NO. 1:**

**Describe in Detail** the relationship between **You** and **Individual Respondent**, including his positions, titles, roles, and responsibilities for or on **Your** behalf.

**ANSWER TO INTERROGATORY NO. 1:**

***Respondent objects to this Interrogatory as vague, ambiguous and confusing. Moreover, the term "Describe in Detail" refers to a time period that is not defined in any of the Interrogatories, rendering the request subject to multiple interpretations. Subject to these objections, Respondents state that Individual Respondent is the sole owner of Traffic Jam Events LLC and holds the title of President. Individual Respondent's duties and responsibilities, as that phrase is understood by Respondent, are as more fully described in the deposition of David Jeansonne.***

**INTERROGATORY NO. 2:**

**Describe in Detail** the relationship between **You** and **Platinum Plus Printing**, and **Identify** each of **Your** officers, managers, employees, or agents who are also officers, managers, employees, or agents of **Platinum Plus Printing**.

**ANSWER TO INTERROGATORY NO. 2:**

***Respondent objects to this Interrogatory as vague, ambiguous and confusing. Moreover, the term "Describe in Detail" refers to a time period that is not defined in any of the Interrogatories, rendering the request subject to multiple interpretations. Subject to these objections, Respondents state that Platinum Plus Printing is used to provide printing and related services, and that the remaining portion of this question has been more fully described in the deposition of David Jeansonne.***

**INTERROGATORY NO. 3:**

**Identify** and **Describe in Detail** the role of each third party or agent used by **You** relating to each product or service, including any **Advertisement** and **Promotional Material**, that **You** offer.

**ANSWER TO INTERROGATORY NO. 3:**

***Respondent objects to this Interrogatory as vague, ambiguous and confusing. Moreover, the term "Describe in Detail" refers to a time period that is not defined in any of the Interrogatories, rendering the request subject to multiple interpretations. Subject to these objections, Respondents state that the Advertisement and Promotional Material is created by agents and third parties as identified in Mr. Jeansonne's deposition, including the persons listed in Respondent's Initial Disclosures.***

**INTERROGATORY NO. 4:**

**Identify** all customers, and, for each customer, **Describe in Detail** the specific products and services provided by **You** and the time period, by date, during which **You** provided each specific product or service.

**ANSWER TO INTERROGATORY NO. 4:**

***Respondent objects to this Interrogatory as vague, ambiguous and confusing. Moreover, the term "Describe in Detail" refers to a time period that is not defined in any of the Interrogatories, rendering the request subject to multiple interpretations. Moreover, given the Complaint filed by the FTC, the FTC has defined Traffic Jam's "customers" as the general public who received advertisements, which is denied. Subject to these objections, Respondents have previously produced listings of all advertisements generated by Traffic Jam for a one year period, in which the "customers" of Traffic Jam are identified. Moreover, as of today, Respondent has zero customers.***

**INTERROGATORY NO. 5:**

For each **Advertisement** and **Promotional Material** involving any prize or giveaway, **Describe in Detail** the manner or method for selecting winners for each prize, including whether the winners are preselected and any pre-requisites or conditions for winning.

**ANSWER TO INTERROGATORY NO. 5:**

***Respondent objects to this Interrogatory as vague, ambiguous and confusing. Moreover, the term "Describe in Detail" refers to a time period that is not defined in any of the Interrogatories, rendering the request subject to multiple interpretations. Moreover, it is impossible for Respondent to give an intelligible response without reference to specific***

***materials, as each mailer or advertisement may give a different manner or method for selecting winners.***

**INTERROGATORY NO. 6:**

**Identify** each **Person** to whom each **Advertisement** and **Promotional Material** involving any prize or giveaway was disseminated, including the prize each **Person** was selected to win, if any, and whether the **Person** claimed the prize.

**ANSWER TO INTERROGATORY NO. 6:**

***Respondent objects to this Interrogatory as vague, ambiguous and confusing and irrelevant, Moreover, the term "Describe in Detail" refers to a time period that is not defined in any of the Interrogatories, rendering the request subject to multiple interpretations. Moreover, it is impossible for Respondent to give an intelligible response without reference to specific materials, as each mailer or advertisement may give a different manner or method for selecting winners. Moreover, since in all instances every person who received a mailer or promotional material "won" a prize, as testified to by William Lilley, Respondent would have go through thousands of documents to assemble a response. Subject to these objections, Respondent refers to the mailing lists which Complaint Counsel possesses.***

July 13, 2021

Respectfully submitted,

*/s/ L. Etienne Balart*

L. ETIENNE BALART (La. #24951)
TAYLOR K. WIMBERLY (La. #38942)
Jones Walker LLP
201 St. Charles Avenue – 48th Floor
New Orleans, LA 70170
Telephone: (504) 582-8584
Facsimile: (504) 589-8584
Email: ebalart@joneswalker.com
twimberly@joneswalker.com
***Counsel for Respondents, Traffic Jam Events, LLC and David J. Jeansonne II***

## CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2021, I caused the foregoing document to be served via electronic mail to:

April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Thomas J. Widor
Sanya Shahrasbi
Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Mailstop CC-10232
Washington, DC 20506
twidor@ftc.gov
sshahrasbi@ftc.gov

*Complainant Counsel*

July 13, 2021

*/s/ L. Etienne Balart*
L. ETIENNE BALART

**PUBLIC**

**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**
**OFFICE OF ADMINISTRATIVE LAW JUDGES**

| | |
|---|---|
| **In the Matter of**<br><br>**TRAFFIC JAM EVENTS, LLC, a limited liability company**<br><br>**and**<br><br>**DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.** | **DOCKET NO. 9395** |

**DECLARATION OF DAVID J. JEANSONNE, II UNDER 28 USC § 1746**

1. My name is David J. Jeansonne, II. I am over the age of 21, and I am competent and capable of making this Declaration. I have personal knowledge of the facts and statements contained herein, and each of them is true and correct to the best of my knowledge, information, and belief.

2. I am the President of Traffic Jam Events, LLC.

3. I offer this Declaration on behalf of Traffic Jam Events, LLC, and as an individual.

4. I have reviewed Respondents' Answers to Complaint Counsel's First Set of Interrogatories dated October 26, 2020, and hereby verify that they are true and correct to the best of my knowledge and belief.

5. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of July, 2021.

**DAVID J. JEANSONNE, II**

# EXHIBIT C

To: David Jeansonne, Chad Bullock, Jim Whelan

do it), I then sent back my email you read yesterday.
Etienne then sent his email to the judge withdrawing and asking for a departure conference with me present as I can't pay but he needs to hear my plea as I am trying to settle but they won't.

DJ

Jim Whelan

JW Gotcha

David Jeansonne

Then today Weasel Tom sends that late this afternoon....
but he still has NOT filed before the court the motion.
This means..... so far, he's moving his wheel!!

Meaning, he's scared if he files that motion the judge will get pissed at him for being unreasonable which plays into our strategy.
See....

DJ

Jim Whelan

JW Yep

To: David Jeansonne, Chad Bullock, Jim Whelan

David Jeansonne

Check y'all email. Hold on the headlights are getting closer and it's the Fucking Government in the other car!!

DJ

I'm not turning my wheel. I just hope Tom Widor does.

Jim Whelan

JW

I was just reading it, i really dont understand all that legal jargon

David Jeansonne

Lol me either but I'm getting better....
So Sanya threatened me yesterday that if I don't respond that they were filing a motion to compel with the judge (which asks him to MAKE me

# EXHIBIT D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

| | |
|---|---|
| KYMBERLY M. PROCACCINO | CIVIL ACTION |
| v. | NO. 17-4748 |
| DAVID J. JEANSONNE, II, ET AL. | SECTION "F" |

ORDER AND REASONS

Before the Court is the plaintiff's motion for attorney's fees. For the reasons that follow, the motion is GRANTED.

**Background**

This lawsuit, which arose from the alleged breach of a severance agreement confected after the end of an office romance led to the plaintiff's termination of employment, was settled by the parties. The only issue remaining is whether the plaintiff may recover attorney's fees incurred during the time in which the defendants refused to abide by the settlement agreement.

This factual summary assumes familiarity with the Court's Order and Reasons dated July 12, 2017, which is hereby incorporated by reference. The Court restates the more salient facts bearing on Ms. Procaccino's request for attorney's fees. David Jeansonne II owns or co-owns various limited liability companies, including

Traffic Jam Events, LLC (TJE). Before May 2012, Kymberly Procaccino was employed by TJE. Ms. Procaccino was also romantically involved with Mr. Jeansonne. When their romantic relationship ended, Mr. Jeansonne terminated Ms. Procaccino's employment.

On May 16, 2012, Ms. Procaccino agreed to release any claims respecting her termination of employment and, in exchange, Mr. Jeansonne and his affiliated companies agreed to pay Ms. Procaccino a total of $120,000, payable in monthly installments of $10,000.[1] The first $10,000 installment payment was timely made, but no other installment payments followed. According to Ms. Procaccino, Mr. Jeansonne refused additional payment due to his personal ill feelings.

On May 5, 2017, Ms. Procaccino sued Mr. Jeansonne along with Traffic Jam Events, LLC (TJE), Platinum Plus Printing, LLC (PPP), and DTJ Properties, LLC (DTJ) in this Court, invoking the Court's diversity jurisdiction. Ms. Procaccino alleged that the defendants' refusal to pay the remaining 11 installment payments

[1] The severance agreement calls for application of Louisiana law. Among its other terms is a confidentiality provision in which Ms. Procaccino agrees not to disclose certain confidential information as well as a provision calling for the breaching party's reimbursement of reasonable attorney's fees and costs to the non-breaching party.

pursuant to the severance agreement constitutes breach of contract. She sought to recover the $110,000 owed under the severance agreement; all reasonable attorney's fees and costs she incurs in enforcing the severance agreement; damages for losses due to the defendants' bad faith refusal to perform their obligation; and damages for nonpecuniary loss pursuant to Louisiana Civil Code article 1998.

Shortly after this lawsuit was filed and defendants were served, on May 15, 2017, defense counsel, Stephen Kepper called plaintiff's counsel, Jacob Weixler, to attempt to settle the case and to obtain the plaintiff's consent to seal her complaint.[2] Mr. Weixler told Mr. Kepper that she agreed to seal the complaint without waiving any challenge to the merits of Mr. Jeansonne's confidentiality arguments. Mr. Kepper stated that he was given an order from his client to file an answer and counterclaims to Ms. Procaccino's complaint, or settle the case, by the end of the day (May 15). Mr. Kepper stated that his client authorized him to settle all claims between the parties for $130,000. Ms. Procaccino rejected the offer.

[2] The facts concerning settlement negotiations are summarized from the sworn declarations of Mr. Jeansonne, as well as counsel for plaintiff, Jacob Weixler, counsel for defendants, Stephen Kepper, and Thomas McEachin, who is a named partner at the firm where Mr. Weixler is an associate attorney.

To counter, Mr. Weixler proposed a settlement that would only resolve Ms. Procaccino's claim under the severance agreement for $130,000, but Mr. Kepper insisted that the defendants were only interested in a global settlement that would settle all claims that may exist between the parties; he stated that he would not engage in discussions limited to settling only the claim underlying this lawsuit. In particular, Mr. Kepper represented that his clients also wished to discuss resolution of a real estate dispute between Ms. Procaccino and Mr. Jeansonne as a part of any settlement of the severance agreement lawsuit.[3] Nevertheless, Mr. Kepper agreed to discuss the counteroffer with his client. Mr. Kepper did so and then left Mr. Weixler a voicemail message; when Mr. Weixler returned his call, Mr. Kepper stated that the defendants were only interested in settling all claims that may exist among the parties. Mr. Kepper then said "I have my clients' authority to settle for $180,000." He said that he was "surprised" that Mr. Jeansonne gave him this authority given "who he is" and the aggressive approach he has taken toward Ms. Procaccino and

[3] According to the parties' submissions, Ms. Procaccino and Mr. Jeansonne were co-owners of property in Jefferson Parish, Louisiana. That property was sold and the $340,000 in proceeds was placed into an escrow account until the parties could resolve Ms. Procaccino's claim to an equal share of the proceeds, which Mr. Jeansonne disputes. Mr. Kepper indicated to Mr. Weixler that Mr. Jeansonne disputed the value of her property claim more than he disputed the value of her severance agreement claim.

this litigation. Mr. Kepper stated that Mr. Jeansonne had offered the $180,000 in the hopes that he could put the litigation behind him before filing an answer and counterclaims later in the day. Mr. Weixler advised Mr. Kepper that his client was unlikely to accept this offer given that Ms. Procaccino estimates that her severance and real estate claims are worth approximately $300,000.

But Ms. Procaccino did indeed accept the offer. With Ms. Procaccino's blessing, Mr. Weixler called Mr. Kepper to advise him that Ms. Procaccino, who wished to put her entanglement with defendants behind her, had accepted the defendants' offer to settle. Expressing relief that that matter was concluded, Mr. Kepper asked that Mr. Weixler send him an email confirming Ms. Procaccino's acceptance and specifying the terms to which the parties had agreed, for the express purpose of binding the parties in writing, and so that Mr. Kepper was no longer obliged to file his client's answer and counterclaims by the end of the day.[4] Mr. Kepper said that he would reply to Mr. Weixler's email to document his clients' acceptance of the settlement terms.

On that same day that Mr. Kepper first initiated settlement discussions, Mr. Weixler emailed him at 3:23 p.m., confirming in

[4] According to Mr. Weixler, "[a]t no time did Mr. Kepper state that he needed Mr. Jeansonne's further approval to settle the matter for $180,000."

writing Ms. Procaccino's acceptance of the settlement offer and detailing the terms discussed by telephone with Mr. Kepper. About 20 minutes later, Mr. Kepper called Mr. Weixler to ask if Ms. Procaccino would consent to two additional terms: to seal the complaint in this matter and to keep certain information confidential. Mr. Weixler told Mr. Kepper that his client agreed with the additional terms. Mr. Kepper said that he would confirm the settlement agreement by replying to Mr. Weixler's prior email and memorialize the additional terms to which the parties had just agreed. Mr. Kepper asked that Mr. Weixler reply to his forthcoming email to say that Ms. Procaccino had no objections to including the two terms just agreed upon; Mr. Weixler agreed that he would confirm in writing that his client did not object.

Shortly after the phone conversation, Mr. Kepper emailed Mr. Weixler, stating that the defendants accepted the settlement agreement and referencing the additional terms agreed upon by telephone. As promised, Mr. Weixler replied to the email stating "No objection" to inclusion of the additional terms.

On the morning of May 16, 2017, Mr. Jeansonne reneged; he informed his attorney that the defendants no longer wanted to settle on the agreed-upon terms. Mr. Kepper says that he immediately called Mr. Weixler to inform him that the defendants

had declined to settle on the terms negotiated, but Ms. Weixler says that he did not receive a call from Mr. Kepper on May 16, 2017. Rather, according to Mr. Weixler, on the evening of May 16, Greg Latham, who is Mr. Kepper's co-counsel, called Thomas McEachin, who is a named partner at the firm where Mr. Weixler is an associate attorney, and who is also a longtime friend of Mr. Latham. Mr. Latham told Mr. McEachin that Mr. Kepper had authority from his client to settle the matter on the agreed-upon terms, but that Mr. Jeansonne had changed his mind. Mr. Latham said that Mr. Kepper had spent most of the day attempting to convince Mr. Jeansonne to honor the agreement and that Mr. Latham had unsuccessfully tried to do the same. Mr. McEachin then called Mr. Weixler and told him about the call with Mr. Latham.

At 9:58 a.m. on May 17, 2017, Mr. Weixler called Mr. Kepper to inquire as to why Mr. Jeansonne could back out of a confirmed, written agreement. Mr. Kepper remarked that Mr. Jeansonne "went to bed on Monday night" with a settlement agreement, and "woke up on Tuesday morning and decided" there was no deal. According to Mr. Weixler, Mr. Kepper "never said that he did not have Mr. Jeansonne's authority to settle the claims."

That evening at 5:28 p.m., Mr. Weixler emailed Mr. Kepper, stating that Ms. Procaccino planned to move to enforce the

settlement agreement. Mr. Kepper replied by arguing that Mr. Jeansonne was not bound because the parties had not signed a final settlement contract. Mr. Kepper attached a courtesy copy of the defendants' answer and counterclaims; the defendants' motion for leave to file their answer and counterclaims under seal was contested and therefore set for hearing.

> In his sworn declaration, Mr. Kepper stated:
>
> Because Mr. Jeansonne had given me only general authority to negotiate a settlement but not to enter into any final settlement agreement on behalf of all [d]efendants, I was careful to point out in my email to Mr. Weixler that "Obviously, all of these terms are subject to approval of a final settlement agreement." I never had express authority from Mr. Jeansonne to enter into any settlement agreement on behalf of the [d]efendants."

Mr. Jeansonne submits a declaration in which he states that he "gave Mr. Kepper general authority to negotiate a settlement on behalf of the [d]efendants, [but that he] **never** gave Mr. Kepper authority to enter into a binding settlement agreement on behalf of the [d]efendants." (emphasis in original). Mr. Jeansonne says that he "made it clear to Mr. Kepper that any settlement agreement would first have to be reduced to writing and submitted to [him] for [his] final review, approval, and signature." After Mr. Kepper informed him of the terms that had been negotiated and that counsel for plaintiff was preparing a final written agreement, Mr.

Jeansonne says he "consider[ed] the negotiated terms overnight" but "before receiving any written settlement agreement," Mr. Jeansonne says he called his attorney to inform him that the defendants did not wish to settle on the terms that had been negotiated.

The plaintiff moved to enforce the settlement agreement and the defendants moved to dismiss the plaintiff's breach of contract lawsuit as time-barred. On July 12, 2017, the Court denied the defendants' motion to dismiss and deferred ruling on the plaintiff's motion to enforce settlement agreement pending a limited evidentiary hearing. Two weeks later, the defendants moved to withdraw their opposition to the motion to enforce the settlement agreement and requested that the Court cancel the evidentiary hearing. The Court granted the defendants' motion to withdraw their opposition, cancelled the evidentiary hearing, and granted the motion to enforce the settlement agreement, but stayed its order until the Court issues its ruling on the plaintiff's motion for attorney's fees. The plaintiff now moves for attorney's fees.

I.

Ms. Procaccino seeks to recover the attorney's fees she incurred as a result of the defendants' initial refusal to abide

by the parties' May 15, 2017 settlement agreement. She says that the defendants' refusal constitutes bad faith insofar as the defendants (i) lacked evidence that that settlement agreement was unenforceable, (ii) misled the Court, and (iii) falsely claimed that their counsel was not authorized to settle, despite all evidence to the contrary. Only after the Court invited Mr. Jeansonne and his counsel to testify in support of their claim that defense counsel did not have Mr. Jeansonne's express authority to settle pursuant to the terms memorialized in the reciprocal emails did the defendants move to withdraw their opposition to the plaintiff's motion to enforce the settlement agreement. The defendants counter that they had a good faith foundation for their legal argument concerning express authority, and that the plaintiff offers little support justifying a grant of attorney's fees under the circumstances. The defendants submit that, once they realized that the Court disagreed with the defendants' analysis, they "almost immediately took steps to minimize the need for any further litigation." The defendants urge the Court not to penalize them for advocating their position in good faith.

*A.*

Ms. Procaccino invokes this Court's inherent power to sanction a party for advancing claims in bad faith. As the United States Supreme Court has observed:

> Federal courts possess certain "inherent powers," not conferred by rule or statute, "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Link v. Wabash R. Co., 370 U.S. 626, 630-631, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). That authority includes "the ability to fashion an appropriate sanction for conduct which abuses the judicial process." Chambers v. NASCO, Inc., 501 U.S. 32, 44-45, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). And one permissible sanction is an "assessment of attorney's fees"—an order, like the one [requested] here, instructing a party that has acted in bad faith to reimburse legal fees and costs incurred by the other side. Id., at 45, 111 S.Ct. 2123.

Goodyear Tire & Rubber Co. v. Haeger, 137 S.Ct. 1178, 1186 (2017). A court's inherent power to impose attorney's fees as a sanction is limited "to cases in which a litigant has engaged in bad-faith conduct or willful disobedience of a court's orders." Chambers v. NASCO, Inc., 501 U.S. 32, 47 (1991)(explaining that a court has inherent power to award attorney's fees to sanction the willful disobedience of a court order and to sanction a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons). Compensatory, rather than punitive, in nature, such a sanction sensibly must be "'calibrate[d] to [the] damages caused by' the

bad-faith acts on which it is based." Haeger, 137 S.Ct. at 1186 (citation omitted). Thus, "[t]he complaining party...may recover "'only the portion of his fees that he would not have paid but for' the misconduct." Id. at 1187 (citations omitted).

The only issue is whether the defendants' conduct amounts to bad faith. The Court finds that the defendants inexplicably reneged on a binding settlement agreement and then unnecessarily multiplied proceedings by opposing enforcement of the settlement agreement with no factual predicate in support of their opposition.[5] Only after the Court indicated that it could only resolve the defendants' defense to settlement enforcement after evaluating Mr. Jeansonne's credibility during a hearing did the defendants withdraw their opposition to the plaintiff's motion to enforce settlement agreement.[6] The appropriate sanction is to compensate the plaintiff for the attorney's fees she was forced to incur as a result of the defendants' misconduct in obstructing the settlement and multiplying proceedings. The Court was unable to probe Mr. Jeansonne's credibility as to his defense that he did not give his attorney express authority to settle the case on the

[5] The defendants insisted that the Court must hear their motion to dismiss before or along with the plaintiff's motion to enforce the settlement agreement; the defendants also sought leave to file their answer and counterclaims under seal.

[6] It is clear that the defendants did not want their defense probed in open court.

terms his attorney proposed. Nevertheless, the Court finds that the record demonstrates that the defendants advanced their no-express-authority defense to the settlement agreement solely to harass or annoy the plaintiff, without any credible basis in fact. Indeed, notably, there is nothing in the record to indicate that Mr. Jeansonne acted in good faith when he refused to abide by the settlement agreement, an agreement he now admits is enforceable and binding. All of the evidence in the record amply supported a finding that the parties had settled their differences and that Mr. Jeansonne changed his mind, opting to aggressively pursue motion practice instead of honoring the settlement agreement (and all the while attempting to settle for less than the terms contained in the May 17 agreement). Unable to convince Mr. Jeansonne to honor the agreement, it appears that his attorneys were forced to attempt to explain the defendants' refusal by suggesting (in conclusory fashion and contrary to all other facts in the record) that Mr. Jeansonne had ordered counsel to settle the case on terms he proposed, but that he had not technically provided his "express authority" to be bound by those terms. When all facts and inferences therefrom undermine a position or strategy, which is nevertheless pursued, this is precisely the sort of defense that constitutes vexatious litigation conduct. Under the circumstances of this case and given the facts of record,

the Court finds that the defendants acted vexatiously and in bad faith in refusing to honor the settlement agreement and unnecessarily multiplied proceedings by forcing the plaintiff to continue to litigate a dispute that had been resolved by moving to enforce the settlement agreement as well as filing papers to oppose motions filed by the defendants.[7] The plaintiff has demonstrated that sanctions in the form of attorney's fees, those which would not have been incurred but for the defendants' bad faith conduct, are warranted.

"Pursuant to its inherent power, a court may assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Seals v. Herzing Inc.-New Orleans, 482 Fed.Appx. 893, 897 (5th Cir. 2012)(citing Chambers v. NASCO, Inc., 501 U.S. 32, 55 (1991))(internal quotations omitted). In Seals, the per curiam panel noted: "we have held that a party's refusal to abide by the [arbitration] award 'without justification' qualifies as vexatious behavior that can support the award of attorneys' fees by a federal court." Id. (citations omitted).[8] Here, Mr. Jeansonne's refusal to abide by the

[7] Not to mention forcing the Court to expend considerable resources on a case that had already settled.

[8] In Seals, this Court held that a party who refuses to honor an enforceable settlement agreement may be ordered to compensate his opponent for the additional fees that party has been forced to incur. Seals v. Herzing, Inc., No. 10-2848, 2012 WL 85280, at *4

settlement agreement without justification and to unnecessarily multiply proceedings compels the same result. In opposing the plaintiff's motion to enforce the settlement agreement, a motion that was supported by ample evidence, the defendants did not attempt to explain the evidence submitted, but simply concluded that Mr. Jeansonne had not technically given express authority to settle, despite the evidence in the record contradicting this "defense." Unfortunately, the defendants' unsupported litigation strategy (pursuing a defense that was withdrawn once the Court ordered an evidentiary hearing during which Mr. Jeansonne's credibility would be examined), which apparently was motivated by a desire to multiply proceedings or harass the plaintiff, cost Ms. Procaccino tens of thousands of dollars in attorney's fees. Advancing a colorless defense to settlement enforcement for oppressive reasons (to pursue unsubstantiated claims and defenses all the while accusing your ex-girlfriend, the plaintiff, of extortion) constitutes bad faith that is grounds for an award of attorney's fees as a sanction.[9]

---

(E.D. La. Jan. 11, 2012), aff'd, 482 Fed.Appx. 893 (5th Cir. 2012). The defendants attempt to distinguish Seals on the ground that the plaintiff in Seals "did not dispute any of the terms of the settlement agreement." But the defendants (continue to) fail to identify any terms of the settlement agreement here that they genuinely disputed.

[9] That Mr. Jeansonne's litigation strategy was driven by emotion or ill-feelings toward his ex-girlfriend, the plaintiff, is

*B.*

Mindful of the compensatory nature of an attorney's fee award as a sanction, the Court turns to consider whether the plaintiff's fee submission is calibrated to the damages caused by the defendants' bad faith litigation strategy in reneging on a settlement agreement and advancing a frivolous defense to its enforcement. Notably, the defendants offer no argument bearing on the quantum of the fee award requested by the plaintiff.

The Court has carefully scrutinized the plaintiff's submission on attorney's fees. Given that there is no dispute to be resolved concerning the quantum of the attorney's fees sanction award, the Court accepts the attorney's fees evidence, including the unrefuted affidavit of Judy Barrasso, bearing on the reasonableness of the fees. Not only are the fees requested

---

apparent on the record. According to the record made by the plaintiff in support of the motion to enforce the settlement agreement, from the moment Mr. Jeansonne became aware of the lawsuit, he gave his attorney an ultimatum to settle the case or file an answer and counterclaims that same day. Yet, even after the case had settled that day, Mr. Jeansonne decided to force the plaintiff to seek court enforcement of the settlement while he filed papers advancing his defense of the settled case and countersuing. That Mr. Jeansonne relented and finally agreed to adhere to the settlement agreement once the Court scheduled a hearing during which Mr. Jeansonne would be called to testify concerning the circumstances surrounding his purported failure to expressly authorize his attorney to settle the case does not, as the defendants argue, suggest good faith. Nor does this belated acquiescence imbue his prior conduct with good faith.

reasonable in quantum, but counsel for plaintiff has set forth the legal fees reflecting the date, time, and nature of the services performed; all of which concern services performed after and due to the defendants' refusal to abide by the settlement agreement. The fees requested are those incurred since May 15, 2017, when the parties agreed to settle the matter. After the defendants reneged, counsel for plaintiff was required to draft and file a motion to enforce settlement agreement, as well as draft and file an opposition to the defendants' motion to dismiss. Notably in the sworn declaration submitted by plaintiff's counsel in support of its attorney's fee award, counsel states:

> The Fee Schedule does not reflect all attorney's fees incurred by Ms. Procaccino from my firm, or even all fees incurred from May 15th to the present. Instead, the Fee Schedule includes only the legal fees from May 15th to the present that are directly attributable to the Defendants' decision to oppose the enforcement of their own agreement. For instance, the Fee Schedule entries relate to the preparation and filing of the Motion to Enforce the Settlement Agreement, the opposition to the Defendants' Motion to Dismiss, the instant Motion for Attorney's Fees, as well as filings related to such motions.

The defendants do not challenge this submission. The Court finds that the plaintiff's fee submission is reasonable and includes only those fees and costs attributable to the defendants' refusal to honor the settlement agreement.

Accordingly, for the foregoing reasons, the plaintiff's motion for attorney's fees is hereby GRANTED, and the defendants, jointly and in solido, are hereby ordered to compensate the plaintiff those attorney's fees, totaling $34,586.00, set forth in the Schedule of Legal Fees Incurred, which were incurred as a result of the defendants' bad faith refusal to honor the May 15, 2017 settlement agreement.

New Orleans, Louisiana, December 23rd, 2017

MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE

# EXHIBIT E

**PUBLIC**

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December 12, 2012

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1450 Poydras Street, Suite 2200
New Orleans, La 70112

Jason Hartman
Coface North America, Inc.
2400 Veterans Blvd., Suite 300
Kenner, Louisiana 70062

Re: Traffic Jam Events, LLC and Keith White Form

Sent via e-mail jasonhartman@coface-trm.com and Regular Mail

Dear Gentleman,

Please be advised that I represent Keith White Ford Lincoln. I previously was forwarded a letter dated October 26, 2012 from Gary C. Fuchs, I believe an attorney representing Traffic Jam Events, LLC and David Jeansonne. I responded to that letter on November 1, 2012, advising Mr. Fuchs that I represented the dealership and to direct all future communication to this office. As stated in that correspondence, there is no binding contract at all. My client is not interested in paying funds to either David Jeannsonne, nor to Traffic Jams, Events. Let me also add a quote my earlier letter to Mr. Fuchs, which states in part . . . .

> In an e-mail sent on October 23, 2012 to Keith White, David, whether individually or on behalf of Traffic Jam, adds the following:
>
> > P.S. Not to mention that we own over 4,000 names and numbers of people in your market. I own these names and can deliver any message to these customers as long as I do not slander. I have been this route with 3 other dealers and they have all lost. Closest to you would be Wesley Goodson in Jasper. The dealer was forced to shut down his store.

A copy of that communication is enclosed. Obviously, threatening my client's business relationship with 4000 people in the community, including an insinuation that he/it could force the dealership to close, would be actionable in and of itself. Clearly, our clients I would respectfully suggest simply need to move on to other business opportunities. If you feel otherwise, please advise.

Your client still has the opportunity to drop this, or as he put it recently to Keith White, to "not get mad at his own money." I would suggest that he explore other business ventures. However, if he, or either of the two law firms representing him or Coface North America wish to sue my client, that is its prerogative. It will be defended if necessary and my client will consider any other appropriate remedies which may be available to it. None-the-less, please direct all communication or correspondence to this office.

Best regards.

Very truly yours,

Michael L. Prewitt

MLP/hrs
Cc: Mr. Keith White
Mr. Gary G. Fuchs gary@hamarlaw.com

**From:** david@trafficjamevents.com [mailto:david@trafficjamevents.com]
**Sent:** Tuesday, October 23, 2012 10:03 AM
**To:** Keith White
**Subject:** Keith White

Keith,

Attached is the agreement you signed 8/4/2012. Please refer to Section 4A. Per your instruction we did not sign up the dealer in Brookhaven out of respect for your wishes and our relationship. To move forward, one of two options: either we will take a $20,000 buyout or we must move forward with the sale per the contract, and your inventory will be viewed as always. We must move forward with one of these options today.

As for the $70,000 per offense per employee clause: I will let you buy out the entire team for a $45,000 one-time fee. And I will release all rights. Otherwise, I will have people spot-checking your store and all offsite locations in the surrounding areas until your next sale. Upon anyone from the previous teams working for you, we will then have a private investigator come in with video and uncover their identity. This matter will be taken up in a Jefferson Parrish court. Keith, in closing I hope that you take this email in the severity in which it was sent. I expect to hear from you by the end of the day on your intentions or I will move forward.

P.S.- Not to mention that we own over 4,000 names and numbers of people in your market. I own these names and can deliver any message to these customers as long as I do not slander. I have been this route with 3 other dealers and they have all lost. Closest to you would be Wesley Goodson in Jasper. The dealer was forced to shut down his store.

**David Jeansonne**
**President**
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