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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina Khan, Chair**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

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

COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION

Pursuant to Section 3.24 of the Commission's Rules of Practice, Complaint Counsel move for summary decision in this matter. Based on the pleadings and evidence in the case, as described in Complaint Counsel's Statement of Material Facts as to Which There Is No Genuine Issue For Trial ("SMF"), summary decision is appropriate as to violations of Sections 5(a) of the Federal Trade Commission Act and the Truth in Lending Act ("TILA") and Regulation Z, 12 C.F.R. § 226.24(d) as alleged in the Complaint. The arguments supporting Complaint Counsel's motion are set forth in the accompanying Memorandum in Support of Complaint Counsel's Motion for Summary Decision.

Respectfully submitted,

August 14, 2021

By: */s/ Thomas J. Widor*

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MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION

I. INTRODUCTION

Respondents David Jeansonne and his company Traffic Jam Events, LLC's direct mail advertising business has depended on deception to draw consumers to automotive sales nationwide. For years, Respondents have peddled misleading advertisements that have deceived consumers into thinking they have won valuable prizes and consistently have failed to disclose legally required information in connection with auto financing offers. When those schemes were not enough to drive in consumers during the COVID-19 pandemic, Respondents seized on the promise of government relief and disseminated mailers with the false claim that consumers were receiving COVID-19 stimulus relief. The record in this matter—including the advertising, contemporaneous correspondence, deposition testimony, and other corroborating evidence—leaves no room for genuine dispute that Respondents have violated the FTC Act and the Truth in

Lending Act and Regulation Z, 12 C.F.R. § 226.24(d) ("TILA"), and that Jeansonne, as the admitted owner, president, and day-to-day manager of the business, is personally liable for those violations. Respondents' law violations are particularly egregious given Respondents' readiness to use a pandemic to lure people to sales events under false pretenses and their ongoing indifference to law enforcement, including the current FTC action, which repeatedly have sought to stop their deceptive advertising practices. The Commission should grant Complaint Counsel's motion for summary decision and enter an appropriate cease and desist order.

II. FACTUAL BACKGROUND

The FTC's Complaint alleges three counts arising from Respondents' deceptive advertising: two violations of the FTC Act and one violation of TILA. Respondents admit that Traffic Jam Events "create[s] advertising, offer[s] direct mail marketing services, and staff[s] tent sales events to automotive dealerships" and that Respondent Jeansonne is the owner, managing member and president of the company. SMF ¶¶ 4-6; Answer ¶¶ 2, 3.

Count I alleges deceptive advertising regarding government relief and government affiliation. During the pandemic in March 2020, Respondents launched an advertising campaign to dealerships and had mailers mailed to consumers in at least Florida and Alabama purporting to be from the government and providing COVID-19 stimulus relief. SMF ¶¶ 9, 12-13.

Count II alleges that Respondents deceptively advertised that consumers had won a specific prize that could be collected by visiting a particular auto dealership. Respondents solicited dealerships and disseminated these deceptive advertisements nationwide, resulting in law enforcement actions in Indiana and Kansas, lawsuits, and consumer complaints. *See generally* SMF ¶¶ 45-54, 58-65. Respondents have continued to promote and disseminate these advertisements in different states, undeterred by the prior state enforcement actions or the current FTC action. SMF ¶¶ 55-57.

Count III alleges that Respondents violated the FTC Act by failing to make disclosures required under the Truth in Lending Act ("TILA") and Regulation Z, 12 C.F.R. § 226.24(d). Complaint ¶¶ 14-23. Although Respondents' advertisements routinely have promoted offers for closed-end credit to finance the purchase of featured vehicles, Respondents consistently have failed to disclose loan terms adequately. SMF ¶¶ 32-36.

III. PROCEDURAL POSTURE

The Commission issued its Complaint on August 7, 2021. On August 27, 2021, Respondents filed an answer and affirmative defense. Chief Administrative Law Judge D. Michael Chappell held a scheduling conference on September 3, 2020 and issued a Scheduling Order. Complaint Counsel withdrew the matter from adjudication on December 28, 2020 to consider a proposed consent agreement.

The matter returned to adjudication on May 3, 2021. On June 11, 2021, Complaint Counsel filed a Motion to Extend the Discovery Deadlines. On June 29, 2021, Judge Chappell granted in part Complaint Counsel's motion for sanctions because of Respondents' refusals to cooperate with their discovery obligations, prohibiting Respondents from introducing or relying upon any improperly withheld or undisclosed materials, and precluding them from objecting to the introduction and use of secondary evidence by Complaint Counsel that shows any withheld evidence. Because of Respondents' continued noncompliance, Judge Chappell further issued an order on August 9, 2021 permitting an adverse inference to be drawn against Respondents based on their discovery failures.[1] The evidentiary hearing is scheduled to begin on September 14, 2021.

[1] Judge Chappell also has granted motions to certify to the Commission requests for court enforcement of subpoenas issued to Platinum Plus Printing ("PPP") and separately to Justin Brophy. The Commission sought court enforcement of the PPP subpoena, and the federal

IV. SUMMARY DECISION

Commission Rule of Practice 3.24(a)(1) states that "[a]ny party may move… for a summary decision in the party's favor" so long as it provides "a separate and concise statement of the material facts" contending "there is no genuine issue for trial." 16 C.F.R. § 3.24(a)(1). The provisions of Rule 3.24 are "'virtually identical to the provisions of Fed. R. Civ. P. 56, governing summary judgment in the federal courts,'" *In re LabMD, Inc.*, 2014 FTC LEXIS 126, *6-7 (2014) (citations omitted), under which a party moving for summary decision must show that "there is no genuine dispute as to any material fact," and that it is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The "party seeking summary judgment always bears the initial responsibility of . . . identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party meets this initial responsibility, the burden then shifts to the nonmoving party to establish "'specific facts showing that there is a genuine issue for trial.'" *In re N.C. State Bd. of Dental Examiners*, 151 F.T.C. 607, 611 (2011). In opposing summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of his or her pleading." 16 C.F.R. § 3.24(a)(3). An adverse inference can be relevant and make the case stronger for summary judgment. *SEC v. Jacoby*, 2021 U.S. Dist. LEXIS 20262, at *23 (D. Md. Feb. 2, 2021); *Abadie v. Target Corp.*, 2020 U.S. Dist. LEXIS 243536, at *6 (E.D. La. Dec. 29, 2020). Should the Commission determine "that there is no genuine issue as to any material fact regarding liability or relief, it shall issue a final decision and order." 16 C.F.R. § 3.24(a)(2).

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district court ordered compliance by August 16, 2021. The request for court enforcement of the Brophy subpoena is pending before the Commission.

V. THE COMMISSION HAS JURISDICTION OVER RESPONDENTS

Respondents are subject to the Commission's jurisdiction because their advertising has been in and affects interstate commerce. SMF ¶ 1. The Commission's jurisdiction under the FTC Act is coextensive with Congress' authority to regulate interstate commerce. *In re North Carolina Bd. of Dental Examiners,* 152 F.T.C. 75, 156 (initial decision), 152 F.T.C. 640, 694 (2011) (Commission opinion). It plainly extends to Respondents, who had offices in both Louisiana and Florida and hired printing services in at least three other states, providing them with mailing lists. *See* SMF ¶¶ 3, 7-8; PX2 (Jeansonne Dep. at 17:24-25, 21:13-18, 49:10-17, 51:3-18, 194:19-195:17); PX3 (Lilley Dep. at 101:4-18); PX4 (Request for Admission (RFA) No. 7, Amended Response). Moreover, Respondent Traffic Jam Events, through its website, e-mail blasts, and sales persons, solicited out-of-state automotive dealerships nationwide and generated direct mail marketing in multiple states. SMF ¶ 6; PX4 (RFA Nos. 5, 6); PX2 at 38:8-39:12, 40:21-41:19; PX3 at 16:17-21, 94:8-95:14. The Commission has long recognized that such activities are subject to the FTC Act. *See In re Surrey Sleep Prod. Inc.,* 73 F.T.C. 523, 553 (1968) (sending advertisements to dealers in various states is sufficient to establish FTC jurisdiction).

The Commission also has authority to compel Respondents to comply with TILA's advertising requirements. SMF ¶ 2; 15 U.S.C. § 1607(c). When enforcing TILA, the Commission has all the powers available under the FTC Act "irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests" under the FTC Act. *Id*.

TILA also holds Respondents responsible for violations of TILA's advertising requirements. TILA's general requirements for written advertisements (15 U.S.C. §§ 1661-1664) are not limited to creditors, and TILA only recognizes one category of actors as exempt

from these requirements: owners and personnel of "any medium in which an advertisement appears or through which it is disseminated." 15 U.S.C. § 1665. The official commentary for TILA's implementing regulations explains that, except for those covered by this exemption for media owners and personnel, "[a]ll persons must comply with the advertising provisions in §§ 226.16 and 226.24, not just those that meet the definition of creditor in § 226.2(a)(17)," 12 C.F.R. Part 226 Supp. I § 226.2(a)(2) ¶ 2, *Persons covered*.[2]

VI. RESPONDENTS' HAVE VIOLATED SECTION 5 OF THE FTC ACT

A. Legal Standard

Section 5 of the FTC Act declares unlawful "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. §45(a)(1). When evaluating whether a representation is deceptive, the Commission examines whether there was a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, and whether those representations are material. FTC Policy Statement on Deception, appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984) ("Deception Statement"); *In re POM Wonderful LLC*, 2013 FTC LEXIS 6, *17-19 (FTC Jan. 10, 2013).

The Commission's approach to ad interpretation is well established: the Commission "will deem an advertisement to convey a claim if consumers, acting reasonably under the circumstances, would interpret the advertisement to contain that message." *In re POM Wonderful LLC*, 2013 FTC LEXIS 6, *20 (F.T.C. Jan. 10, 2013) (citing *In re Thompson Med. Co.*, 104 F.T.C. 648, 788 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986)). The primary evidence of the representations that an advertisement conveys to reasonable consumers is the advertisement

[2] The legislative history confirms that TILA's advertising requirements apply to entities that advertise on behalf of creditors. H. Rep. 1040, 90th Cong., 1st Sess. at 17, 28 (1967) ("the advertising requirements apply to the creditor or his agent who causes the advertisement to be published, and not to those who own or distribute the medium in which it appears").

itself. Deception Statement, 103 F.T.C. at 176; *see also Novartis Corp.*, 127 F.T.C. at 680; *In re Stouffer Foods Corp.*, 118 F.T.C. 746, 798 (1994); *In re Kraft, Inc.*, 114 F.T.C. at 121. In determining what claims may reasonably be attributed to an advertisement, the Commission examines the entire advertisement and assesses the overall "net impression" it conveys. Deception Statement, 103 F.T.C. at 178; *In re POM Wonderful LLC*, 2013 FTC LEXIS at *21. Extrinsic evidence that an advertisement conveys a particular claim is not required when, as here, the claim is conspicuous and self-evident. *In re Thompson Med. Co.*, 104 F.T.C. at 788-89 (1984). The Commission and courts routinely have resolved this issue at the summary decision stage. *See*, *e.g.*, *In re Cal. Naturel, Inc.*, 2016 FTC LEXIS 236, *6 (F.T.C. Dec. 5, 2016); *In re Jerk, LLC*, 2015 FTC LEXIS 64 (Mar. 13, 2015); *In re Auto. Breakthrough Scis. Inc.*, 1996 FTC LEXIS 255 (May 22, 1996) .

Consumers acting reasonably under the circumstances are not required to search for hidden information that contradicts what an advertisement prominently conveys. *In re Cal. Naturel, Inc.*, 2016 FTC LEXIS 236 at *15. This is particularly true where a respondent made the claim expressly. *Id.*; *Stefanchik*, 2007 WL 1058579, at *5 ("Reasonable consumers are not required to doubt the veracity of express representations"). Accordingly, "[d]isclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression. Anything less is only likely to cause confusion by creating contradictory double meanings." *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989).

Lastly, a representation, omission, or practice "is material" if it 'involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.'" *Cyberspace.com*, 453 F.3d at 1201 (quoting *In re Cliffdale Associates, Inc.*, 103

F.T.C. 110, 165 (1984)). Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material. Deception Statement, 103 F.T.C. at 182.

B. Respondents Deceptively Touted Fake COVID-19 Stimulus Relief in Violation of the FTC Act.

Respondents' COVID-19 mailers, disseminated around the passage of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020) (SMF ¶¶ 9, 12),[3] deceptively claimed that:

(i) the mailers provided official COVID-19 stimulus information,

(ii) consumers were receiving COVID-19 stimulus relief, including stimulus checks, and

(iii) the mailers were associated with, or approved by, the government.

All three representations were conveyed, were likely to mislead, and were material in violation of Section 5 of the FTC Act.

The advertisements themselves leave no genuine doubt that Respondents made the claims listed above.[4] SMF ¶ 12. The Commission can readily see the following on the face of the envelopes and mail inserts:

- A "TIME-SENSITIVE" envelope claiming "IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENT ENCLOSED," along with a barcode and notice number;

[3] SMF ¶¶ 12-13 (noting distribution to 35,000 consumers in Florida and over 18,000 consumers in Alabama).

[4] In addition to the mailers cited in the Complaint, the evidence shows Respondents prepared COVID-19 stimulus mailers using similar envelopes for other dealerships. SMF ¶ 14 (citing PX31; PX32-33; PX34; PX35; PX36; PX37; PX38; PX39-40).

- inside the envelope, an official-looking letter from the "COVID-19 Economic Automotive Stimulus Program" with a prominent header stating "URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM RELIEF FUNDS AVAILABLE."
- The letter is imprinted with a watermark depicting the Great Seal of the United States, includes a barcode and notice number, and twice references "COVID-19 STIMULUS (INDIVIDUAL)," informing recipients that they "must claim these stimulus incentives at your designated temporary 10-day site," repeatedly referencing the location as "relief headquarters," "your designated temporary 10-day site," and "designated local headquarters;" and
- a purported check in a specific dollar amount, from the "Stimulus Relief Program" bearing the memo notation, "Covid-19 Auto Stimulus," with an "Authorized Signature" and a space for the consumer to endorse on the back.

Id.

Based on a facial analysis, considering the language and the use of the Great Seal, the overall net impression of the envelope, letter, and check is that Respondents are providing COVID-19 information and stimulus relief and are affiliated with the government. *In re ECM BioFilms, Inc.*, 159 F.T.C. 276, 318 (F.T.C. Jan. 28, 2015) (using a facial analysis of the "language and images of ECM's 'biodegreadable' logo" to create a misleading overall net impression about the products biodegradability).

These mailers were likely to mislead consumers because they were false. Respondents' mailings were not providing official COVID-19 stimulus information or stimulus relief and are not approved by or otherwise associated with the government. *See* CARES Act, 134 Stat. 281;

PX1 (Decl. of Eleni Broadwell, ¶ 18). Respondents do not genuinely contest this point. *See* PX4 (RFA No. 26: "the U.S. Government did not authorize, approve nor supervise the Florida Stimulus Mailer automotive sale"). Although proof of actual deception is not necessary for the claim, numerous consumers complained about the deceptive nature of the advertisements, which also received media coverage warning people to be on the alert for fake checks. SMF ⁋⁋ 60, 62, 64; PX1, Att. JG (FTC complaint from consumer who "received a letter in the mail that he thought was his stimulus check. . . ." but "when he opened the letter it was From Crystler [sic] Dodge and Jeep Ram. Consumer is upset it was not a stimulus check"); PX1, Att. JF (FTC complaint from consumer reporting deceptive "stimulus relief program located at 5925 sw 20th in bushnell Fl 33513 offering a $3,344.68 loan for auto relief")]; PX1, Att. JH (news report regarding "Brooksville man sounds alarm on fake COVID-19 relief check in mail").

Respondents' deceptive mailers were especially outrageous because they targeted people in anticipation of stimulus relief, including people in potential financial distress. *See e.g.,* PX1, Att. JG (complaint received by the FTC from a consumer upset that the mailing was not a stimulus check). Indeed, Respondents' mailers sought to take advantage of that anticipation with promises of relief. *See* PX5. In Jeansonne's own words: "People are somewhat running from COVID-19. . . . but everyone is [running] to Stimulus Relief Funds." SMF ⁋ 43; PX6. Although proof of Respondents' intent is not necessary to the deception claim, it reinforces the conclusion that the mailers were misleading. In addition to knowingly seeking to capitalize on peoples' expectations for stimulus relief, Respondent Jeansonne and his former employees have all described the mailer as official-looking, as it was designed to be. SMF ⁋ 15; PX2 at 19:13-14 ("To make it look official, make it look important"); PX3 at 47:2-4 ("It does look like, you

know, it's official documents coming in the mail, absolutely."); *see also* SMF ⁋ 16; PX7 (e-mail blast promoting a COVID-19 Stimulus mailer "on an official letter format").

Finally, the claims are material, not only because they are express, but also because the promise of COVID-19 stimulus relief was likely to affect a consumer's decision to visit a site. Moreover, the availability of monetary assistance is very important to consumers. *See FTC v. Dayton Family Prods.*, 2016 WL 1047353, at * (D. Nev. Mar. 16, 2016) (finding "representations about the payouts and their sources were 'material' because they were both expressly made and concerned the very nature of the benefits consumers expected to receive"); *FTC v. EDebitPay, LLC*, 695 F.3d 938, 944 (9th Cir. 2012) (finding that representations about the nature of the benefit were material).

C. Respondents' Deceptive Prize Advertisements Violate Section 5

For years, Respondents have designed and disseminated deceptive advertisements misrepresenting that recipients have won specific prizes, including substantial monetary amounts such as "$2,500 INSTANT CASH." SMF ⁋ 17; SMF ¶ 30. These representations were material to consumers and were likely to mislead consumers acting reasonably in the circumstances.

As with Respondents' COVID-19 advertisements, the deceptive nature of the prize advertisements is perfectly suited for summary decision. *In re Cal. Naturel, Inc.*, 162 F.T.C. 1066 (2016); *In re Auto. Breakthrough Scis. Inc.*, 1996 FTC Lexis 255 (May 22, 1996). A facial review of the prize advertisements clearly shows advertisements representing to recipients that they had won a specific prize that could be claimed at specified dealerships or locations. Respondents' prize advertisements typically have featured a game requiring recipients to match one or more game pieces, such as a combination box, pull tab, or scratch off, with a number or symbol corresponding to specific prizes. SMF ⁋ 31; Compl Exh. C; PX1, Att. BJ-CH; PX8; PX9; PX10. The mailers have represented that matching the code revealed by the recipient

determines whether the recipient has won a prize: "If your digital electronic combination box matches the official winning code and one of the codes below, you are a guaranteed winner with a possible $15,000 INSTANT CASH. . . ." *See*, *e.g.*, Answer, Exh. C. Because the three specified codes on mailers sent to consumers – the one behind the pull tab or scratch off, the "official winning code," and a code above one of the valuable prizes – all match,[5] the the mailer represents to the recipient that she has won a valuable prize (in this case, $2,500). In fact, consumers receiving these mailers had not won the specific prize.

Whereas the mailer conveys to the consumer that his or her number is the one in the combination box or behind the pull tab or scratch off, in fact, a unique number hidden within the ad must match a different set of numbers on a prize board *at the dealership*. PX3 at 59:15-18 ("Winning number would be the actual customer's number that they would come and match up to a big prize board that was sent to the dealership to see what they won."). This unique number is difficult to find because it is printed, if at all, in fine print in inconspicuous locations. Respondent Jeansonne when asked if the ad stated that the prize board number was the number consumers had to match was unable to point to any language in the ad and instead immediately gravitated to connecting the prominent combination code and official winning code numbers of 74937 with the matching number associated with the $2,500 prize: "It says right here, If your digital electronic combination box matches the official winning code and one of the codes below, you're a guaranteed winner with a possible $15,000 instant cash. So you look at it, you have 74937. You have 74937; and then when you go in -- I see where you're going, that it's above the 2,500." SMF ¶ 25; PX2 at 163:24-164:11. Jeansonne was asked if there was any disclaimer on

[5] Unbeknownst to consumers, each recipient receives the very same advertisement with identical game pieces and identical numbers. PX11; PX12.

the page, and he admitted "no, I don't see that." PX2 at 165:1-4. A former sales manager for Respondents also had trouble locating the actual prize number or disclaimer and gave up. *See* SMF ¶ 26; PX3 at 72:17-73:4 ("Q: Do you see that number on this mailer? / A: Yes, down here. It's not in here. . . .").[6]

In addition to the express statements conveying that consumers have won a valuable prize because their codes matched, other design elements and quotes in the advertisements create the net impression that consumers have won specific prizes. For example, the advertisements included various arrows directing recipients from the game pieces to the numbers or symbols associated with the prize panel. The mailers encouraged supposed winners to call or visit a telephone number or website listed on the advertisement. SMF ¶ 28. Consumers who call or go online are congratulated and told they are indeed a winner and need to visit the dealership to claim their prize. SMF ¶ 29; PX14 ("Wow!!! My computer just verified that your code is a winner! To claim your prize, you must bring your invitation to Test Demo Dealership as shown on your invitation, during the sale dates and hours where your code will be verified and prize awarded."); *see also* PX15 (screenshot of website).

Respondents' fine print disclaimers in the advertisements have failed to correct the overall impression conveyed by the advertisements that recipients were winners of specific prizes. *FTC v. Grant Connect, LLC.,* 827 F. Supp. 2d 1199, 1214 (D. Nev. 2011) (disclosures in fine print may not overcome an advertisement's deceptive net impression). Hidden from the consumer, often on the opposite side of the mailer, in fine print are the actual odds of winning the specified prize. Answer, Exh. C ("*If the winning number on your invitation matches the

[6] Recipients instead are offered a low-value "smartwatch" or pair of earbuds, costing a few dollars—far less than the thousand dollar winning prizes the advertisements represent. *See*, *e.g.*, SMF ¶ 27; PX44.

prize board at the dealership, you have won one (1) of the following prizes: #1 $15,000 Instant Cash 1:52,000 #2 $2,500 Instant Cash 1:52,000 #3 $800 Amazon Gift Card 1:52,000 #4 All-New Wireless Earpods Pro w/Charging Case 51,996:52,000 #5 $250 Walmart Gift Card 1:52,000."). Given the prominent claims made by the advertisements described above that consumers have won a specific prize, consumers acting reasonably under the circumstances were not required to go searching for this hidden information. *In re Cal. Naturel, Inc.*, 2016 FTC LEXIS 236, *15. Further, even if consumers read the buried disclosure, the text failed to reveal that consumers did not win the prize associated with the winning prize number or symbol displayed more prominently on the front of the mailer. The disclaimer adds an entirely new condition but does not clarify that the prize board numbers are entirely different from the numbers above the prize panel on the ad.

As part of a sales event from May 28 through June 3, 2020, Respondents disseminated a promotion that lists an "OFFICIALWINNING CODE" of 74937. SMF ¶ 18; Answer, Exh. C; Complaint Exh. C. The mailer then invites consumers to "PULL THE TAB" to see whether the code in their "Combination Box" is the same code, which here, is also 74937. The promotion represents, "If your digital electronic combination box matches the official winning code and one of the codes below, you are a guaranteed winner with a possible $15,000 instant cash at this tent event in Madison!" SMF ¶ 19. Immediately below this statement is a prize panel with the above referenced "codes" corresponding to specific prizes, including 74937 matching with $2,500 INSTANT CASH. SMF ¶¶ 20-22. Consumers would reasonably understand that if the Official Winning code and the Combination Box match and, in turn, match one of the codes above the prizes, they had won the prize below the statement. In this case, both the Official Winning code

and Combination Box numbers were 74937, matching the 74937 number above the $2,500 INSTANT CASH.

Respondents have continued to use the same deceptive prize advertisements notwithstanding three previous law enforcement actions dating to 2008. For example, Kansas alleged that Respondent Traffic Jam Events designed and sent 100,000 prize mailers in 2008 "impl[ying] to recipients they had the 'winning number' for the grand prize giveaway when, in fact, they did not." PX1, Att. LX (KS Compl. ¶ 10). But, "various mouse print disclaimers on the inside of TJE's [Traffic Jam Event's] flier contradicted such representations." *Id.* ¶ 12.

After the Kansas action, Respondents continued to promote these deceptive advertisements and faced another law enforcement action in Indiana. One of the challenged advertisements was alleged to promote an auto sales event in May 2015 entitled "$10,000 Giveaway Event." PX1, Att. LZ (IN Compl. ¶¶ 117-119, Exh. K). Like the ad described above, recipients were instructed to match their "Combination Box" number to the official winning code, which, in turn, matched the number above the prize listing for an iPad Air 2. *Id.* (IN Compl. ¶¶ 120-123, Exh. K). Every recipient received the same ad with the same combination box code number that matched the official winning code, but, in reality, the number had no bearing on what prize a recipient won. *Id.*

Respondents have continued promoting these types of deceptive advertisements after the issuance of this Complaint. One variation for an October 27-31, 2020 event used a "Match & Win" mailer entitled "$20,000 Instant Cash Giveaway." PX8. Recipients were instructed to "PULL THE TABS TO SEE IF YOU'VE WON" and that "IF YOU HAVE A ROW OF MATCHING SYMBOLS, YOU ARE A GUARANTEED WINNER!*" *Id.* Further below, the mailer depicted the official prizes and corresponding prize combinations of three cherries, three

777s, three diamonds, three limes, and three bar symbols. *Id.* The pull tabs showed matchings 777s, which corresponded to the 777s next to the $2,500 INSTANT CASH. *Id.* Respondents' former employee described the "Match to Win" advertisements as "aggressive prize panels" because the symbols were positioned close to the prizes and a row of matching symbols would match one of the prizes. SMF ¶ 32; PX3 at 78:1-11. The former employee explained that the aggressive prize panel phrase refers to advertisements where "you get customers that, you know, sometimes perceive that they won a certain prize because of, you know, the way the prize is and the numbers are laid out. SMF ¶ 32; PX3 at 70:23-71:1.

In November 2020, Respondents designed and disseminated yet another variation of their deceptive prize advertisements with a scratch-and-win mailer titled the "$10,000 Pre-Loaded Instant Money Card Giveaway." PX9 (RegalKia11-18RedCC11-9x12). Behind the scratch off was the number 74937, which corresponded with the winning number 74937 and matched the $2,500 INSTANT CASH prize. *Id.*

Another prize mailer designed and offered by Respondents is the license plate mailer where recipients are told to scratch off four boxes and told "IF YOU REVEAL 4 MATCHING AMOUNTS, YOU ARE A GUARANTEED WINNER OF ONE OF THESE PRIZES." PX10. Four prizes are depicted below this statement, including $5,000 INSTANT CASH, a SAMSUNG 65" TV, earpods, and a $250 TARGET gift card. The boxes to the right of those prizes have pre-printed matching amounts of $5,000, which the consumer would first see after removing a tab or scratching them. Traffic Jam Events' former sales manager Lilley explained that he considered these aggressive because "it says if you have four of the same symbols that match, you could be the winner of $5,000" and "because all the symbols say $5,000 on it." PX3 at 90:15-25. Just like with Respondents' other deceptive prize advertisements, the matching symbols are meaningless;

the actual winning number for each individual consumer is hidden underneath the bar code or elsewhere on the ad with fine print claiming that the hidden number must match the prize board at the dealership). *Id.* at 91:1-10.

While proof of actual deception is not necessary to show a violation of the FTC Act, such proof is highly probative that the ad is likely to mislead. *See Cliffdale Assocs.*, 103 F.T.C. at 105. Indeed, consumers complained that they were deceived into believing they had won specific prizes. *See* SMF ⁋⁋ 58-66. Former employee Lilley stated that Respondents would receive complaints from dealers about misled consumers. SMF ⁋ 66 ("Yeah, unfortunately, you know, you would have people from time to time that, you know, complained off the mailers"). One consumer complained on Reddit about a prize mailer similar to the one described above, attaching photos of the mailer and stating he was "scammed to come into the Landers McLarty dealership in Fayetteville, TN with a promotion saying that I had won $1,500 instant cash." PX1, Att. LK. He explained that he even went to the website, which "verified that I was, in fact, a winner and then proceeded to set me up with an appointment to claim my prize." *Id.* Another consumer filed a complaint with the FTC in May 2019 concerning a "Deal or No Deal" mailer designed by Respondents that led him to believe "that I had won a prize of $5,000 Instant Cash" because the Combination Code and Peel2Win numbers of 42387 matched the 42387 number corresponding to that prize. PX1, Att. LU (New Wave Auto Park Pinellas Complaint); *see also* PX1, Att. JI (WA BBB Curbside complaint). Respondents' repeated use of these deceptive advertisements for a dealership in Abilene, Texas led the Better Business Bureau to issue a fraud alert because of the volume of consumer complaints from November 2015, many of which consisted of "complaints from consumers expressing disappointment in the "prize" provided by Kia of Abilene and questions from the public asking if they had won." PX16.

Lastly, these prize ad claims are material to consumers. First, they are express, and thus presumed to be material. Deception Statement, 103 F.T.C. at 182. Moreover, misrepresentations that mislead consumers into believing that a product or service is being given away have long been considered unlawful. *Standard Education Society*, 302 U.S. at 113-17; *Kalwajtys*, 237 F.2d at 656; *American Music Guild*, 68 F.T.C. at 32. Here, Respondents routinely have misrepresented the nature of the prize consumers expect to receive. *FTC v. Wilcox*, 926 F.Supp. 1091, 1100; ("It is beyond dispute that the defendants fostered the impression upon reasonable consumers that by forwarding a small fee they would receive sums of cash or awards and prizes valued in excess of the fee. These representations were material in that they induced consumers to send money to the defendants."); *FTC v. Dayton Family Prods.,* 2016 U.S. Dist. LEXIS 33861. The promise of a specific prize, such as $2,500 INSTANT CASH, clearly affects a consumer's decision on whether to visit the dealership or tent sale event.[7]

VII. RESPONDENTS' ADVERTISING VIOLATED TILA

Respondents have created advertisements to aid, promote, or assist close-end credit transactions that violate TILA by failing to disclose required loan terms properly. SMF ⁋ 33; PX4, RFA No. 31, Amended Response. Section 144 of TILA, 15 U.S.C. § 1664, and its implementing regulation, Section 1026.24 of Regulation Z, 12 C.F.R. § 1026.24, require advertisements for closed-end credit to disclose certain terms when "triggering terms" appear in the ad.[8] Specifically, if an ad contains an amount or percentage of a down payment, the amount

[7] That consumers received a less valuable prize is irrelevant to the fact that consumers did not receive the promised prize. *See FTC v. Dayton Family Prods.,* 2016 U.S. Dist. LEXIS 33861 (fact that consumers received booklets on a chance to enter the sweepstakes and in some instances money orders for less than $2 did not change the misleading nature of the representations).

[8] The advertisements at issue here were for "closed-end credit" because for auto loans creditors do not make additional credit available as consumers repay outstanding balances. 12 C.F.R. §§ 1026.2(a)(10), (20).

or number of installment payments, the amount of any finance charge, or the period of repayment, then the ad must also state additional terms such as the terms of repayment and the annual percentage rate ("APR"), using that term. 15 U.S.C. § 1664(d); 12 C.F.R. § 1026.24(d). Moreover, the disclosures mandated by TILA must be set forth "clearly and conspicuously." 12 C.F.R. § 1026.24(b).

Whether the disclosures are "conspicuous" is a question of law. *Burghy v. Dayton Racquet Club, Inc.*, 695 F. Supp. 2d 689, 696 (S.D. Ohio 2010) (collecting cases). An objective standard is used to evaluate TILA violations. *Harris v. Schonbrun,* 773 F.3d 1180, 1184 (11th Cir. 2014). Under TILA, "conspicuous" means "'obvious to the eye'" or "'plainly visible.'" *Applebaum v. Nissan Motor Acceptance Corp.*, 226 F.3d 214, 220 (3rd Cir. 2000) (interpreting analogous "clear and conspicuous" requirement in Consumer Leasing Act); *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169, 1177 (9th Cir. 2019) (conspicuous per TILA means "readily noticeable to the consumer."); *Cole v. U.S. Capital,* 389 F.3d 719, 730 (7th Cir. 2004) (interpreting TILA and UCC § 1–201(10) and defining conspicuous as "so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it."). Disclosures in tiny print, condensed text, or in difficult to find locations are not conspicuous under TILA. *See Barrer v. Chase Bank USA, N.A.*, 566 F.3d 883, 891-92 (9th Cir. 2009) (TILA disclosure buried in dense fine print five pages after related disclosure was not clear and conspicuous as a matter of law); *accord Tucker v. New Rogers Pontiac, Inc.*, No. 03 C 862, 2003 WL 22078297, at *5 (N.D. Ill. Sept. 9, 2003) (disclosures that appear in barely legible, smallest-sized font on the document are not conspicuous).

A facial examination of Respondents' advertisements shows that Respondents routinely have violated TILA's disclosure requirements by prominently stating a monthly payment

adjacent to the image of a vehicle while inconspicuously disclosing the number of monthly payments and/or the APR in small print in another part of the ad. PX1, Atts. X,Y,Z. In doing so, Respondent Traffic Jam Events created ads that contained statements that describe monthly payment amounts for credit offers. SMF ⁋ 32; PX4, RFA (2d Set) No. 37. For example, the ad for the Madison Event contains images of three automobiles adjacent to specified monthly payment amount. SMF ¶ 23; Complaint Exh. C; Answer Exh. C. The APR and number of payments do not appear with these terms, but are buried in a separate section at the bottom, right corner of the ad, interspersed with other disclaimers in miniscule type. *Id.* ("72 months at 2.9% APR with approved credit"). Respondents' ad designs regularly follow this pattern: payment amounts appear prominently in colorful type, while other credit terms appear, if at all, in a different part of the ad, in obscure, small type. *See*, *e.g.*, PX1, Atts. IQ-I Z (six vehicles displayed with monthly payment amounts, but none of the other terms listed in § 1026.24(b)); PX4, RFA (2d Set) Nos. 55, 56 and Att. 3 (Chevrolet Malibu advertised for "ONLY $299/mo.," but small footer on the next page lists additional terms: $1,500 down plus tax, title and license; "84 months at 3.9% APR with approved credit."). In numerous instances, the required disclosures do not even appear on the same page as the trigger terms. SMF ⁋ 34; *see also* PX4, RFA (4th Set) Nos. 117, 119, 121,123, Atts. 30-33. Multiple advertisements also advertise an interest rate of 0% APR or similar low rate in prominent type, but contain miniscule type disclosing that the APR for the specific monthly payments adjacent to vehicles depicted is substantially higher. SMF ⁋ 35; *see also* PX4, RFA (2d Set) Nos. 53, 54, 57 and Atts. 2 & 4. In some instances, the advertisements do not include the required disclosures *at all*. SMF ⁋ 37; *see FTC v. Tate's Auto Ctr. of Winslow Incorporation*, No. CV-18-08176-PCT-DJH, 2021 WL 410857, at *6 (D. Ariz. Feb. 5, 2021).

Respondents thus violate Section 144 of TILA and Section 1026.24(d) of Regulation Z, as alleged in Count III of the Complaint. Because a TILA violation is also a violation of the FTC Act in an action brought by the Commission, *see* 15 U.S.C. § 1607(c), the Commission should further find that Respondents' failure to disclose statutorily-mandated information in connection with credit advertising constitutes an unfair or deceptive practice under Section 5 of the FTC Act.

VIII. RESPONDENT JEANSONNE IS INDIVIDUALLY LIABLE

Respondent Jeansonne is individually liable for the conduct alleged in the Complaint. Under the FTC Act, an individual is liable for a business entity's deceptive acts or practices if the individual either had the authority to control or participated directly in the acts or practices at issue. *In re POM Wonderful*, 2013 FTC LEXIS at *163-64. Although only one of those factors is required, the uncontroverted evidence here establishes that Jeansonne had both the authority to control the acts and practices at issue and participated in the challenged conduct.

As Traffic Jam Events' owner, managing member, and President, SMF ¶ 4; Answer ¶ 2, there is no genuine dispute that Jeansonne had the authority to control the acts and practices at issue in the Complaint. SMF ¶ 37. An individual's status as a corporate officer gives rise to a presumption of liability to control a small closely held corporation. *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973). Participation or control of the company further "can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).

Respondents admit that Jeansonne is the sole owner, only managing member, and president of Traffic Jam Events, a limited liability company. Answer ¶ 2; *see also* PX17 (Hr'g Tr. Mot. TRO 10:11-17). ("President and Owner"). Jeansonne confirmed that he was actively

involved in overseeing all departments by "dipping [his] foot in sales, mail pieces, operations, adequate procedures." SMF ¶ 38; *see also* PX2 at 20-21. Specifically, Jeansonne testified that he decided to pay upfront for the development and dissemination of the COVID-19 stimulus relief advertisements. PX17 at 44:13-14. Jeansonne exercised control over Traffic Jam's finances and hiring and firing decisions. SMF ¶¶ 39-40; PX2; PX18; *FTC v. Direct Mktg. Concepts*, Inc., 569 F. Supp. 2d 285, 311 (D. Mass. 2008) (financing the production of an ad is evidence of control). Further, Jeansonne exercised authority over Traffic Jam Events by settling state law enforcement actions involving his prize mailers. SMF ¶ 42; PX2; PX17 at 44:1-10.

Second, although Jeansonne's sole ownership and status as the only member of Traffic Jam Events suffices to hold him individually liable, the undisputed evidence also demonstrates that Jeansonne actively participated in Traffic Jam Events' deceptive and unlawful advertising by fronting payments for the advertisements, contributing to the development of the content of the advertisements, and making decisions about which advertisements to promote.

The protocol was for advertisements to go past Jeansonne's e-mail first, SMF ¶ 41; PX3 at 107:17-108:3 & 115:2-3, and, indeed, the evidence is replete with examples showing his involvement. *See Stefanchik*, 559 F.3d at *1, 7 (finding that defendant participated directly when he reviewed and edited the direct mail pieces and telemarketing scripts at issue and decided which products to sell). Jeansonne provided input on the design of the advertisements. *See*, *e.g.*, SMF ¶ 41; PX2 at 116:14-117:13 ("me and Justin create how it falls, where it goes, etc."). The evidence also shows he was involved in communications with the printers and dealers concerning the type of glue-on pieces to use, the timing of the mail drops, and other issues relating to the advertisements. SMF ¶¶ 45-6; PX19-PX23.

The evidence also shows his participation with the COVID-19 mailers. SMF ¶ 41; PX2 at 116:14-117:13. Jeansonne admitted that the COVID-19 stimulus mailers were his "brainchild." SMF ¶ 43; PX17 at 50:3-4; *see also FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 637 (7th Cir. 2005) (there was "no question" defendant who masterminded the scheme had authority to control). When Respondents were creating samples of various COVID mailers, the printer sent the samples for his review. SMF ¶ 9; PX24. The evidence also shows his involvement in designing the ad. SMF ¶¶ 10-11 & 41-4; PX25 (Brophy email discussing incorporating news clipping provided by Jeansonne). Jeansonne also discussed the mailers with dealers. SMF ¶¶ 44; PX26. In touting the mailer, Jeansonne explained, "People are somewhat running from COVID-19…. but everyone is run I g [sic] for an [sic] to Stimulus Relief Funds." SMF ¶ 44; PX6. Jeansonne also directed the type of advertisements and their content. SMF ¶¶ 10-11; PX26 (Kastrenakes email on March 27, 2020 ("If we are going to start watering down the pieces it won't work."); PX27 (Lilley text—"We will split the mail with half our regular piece and the other half with a covid-19 relief offer."). Jeansonne also was directly involved in the numerous state law enforcement actions regarding Traffic Jam Events prize mailers, further evidencing his knowledge that these advertisements were considered deceptive. SMF ¶¶ 45, 46-53; PX 2 at 180:6-7 & 19-21 ("So I admitted to give them 25,000 in one case and 15,000 in another case. . . .I paid Indiana. I paid Kansas. When Florida came, I should have paid.").

IX. RESPONDENTS' AFFIRMATIVE DEFENSES LACK MERIT

Respondents' Answer pleads eleven affirmative defenses, which generally amount to (a) failure to state a claim arguments mislabeled as defenses, (b) mootness, (c) jurisdictional challenges to the Commission's authority, (d) extinguishment, (e) asserting dealers alone are liable, and (f) due process. All of these purported defenses lack merit and do not preclude the Commission from deciding Complaint Counsel's Summary Decision motion.

A. Failure to State a Claim Defenses Are Not Cognizable Defenses.

With their First, Second, and Eleventh Affirmative Defenses, Respondents assert that the FTC's Complaint fails to state a claim against Traffic Jam Events (First), fails to state a claim against Jeansonne (Second), and that there is no alleged interstate commerce (Eleventh). All of these purported defenses are predicated on failure to plead or prove essential elements of the claims, which is, by definition, not a cognizable affirmative defense. *FTC v. North America Mkt'g and Assoc., LLC*, 2012 WL 5034967, *2 (D. Ariz. Oct. 18, 2012) (striking failure to state a claim defense). Moreover, Respondents' assertions that critical elements are absent lack merit. The complaint alleges, and the undisputed facts discussed above establish, that Respondents violated the FTC Act and TILA while engaged in advertising in or affecting commerce.

B. Mootness Is Not Viable Because Part Three Proceedings Do Not Require Ongoing Conduct.

Respondents' mootness claim (Third) is without merit because Respondents may resume their unlawful practices. The Commission has authority to enter an order after illegal conduct has ceased, and a respondent asserting that the proceeding is moot must show "there is no reasonable expectation that the conduct could recur." *In re S.C. State Bd. of Dentistry, No. 9311*, 2004 WL 1814165, at *18 (F.T.C. June 28, 2004); *accord In re McWane, Inc.*, 2013 WL 2100132, at *348 (F.T.C. May 9, 2013). "It was established long ago that voluntary cessation of illegal activities, even if accomplished before the Commission issues a complaint, is not a defense." *In re The Coca-Cola Co.*, 117 F.T.C. 795, 917, 1994 WL 16011006, * 82 (1994). Far from showing that this action is moot, the evidence shows Traffic Jam continued to disseminate deceptive advertisements in other states after agreeing to cease activity in states where it was sued,, and Respondents continued to generate advertisements that violated the FTC Act and

TILA after the commencement of this case, *See supra* at 23-24. Any purported pause in Respondents' business does not prevent them from resuming their illegal practices.

C. Respondents' Challenges to the Commission's Authority Lack Merit.

Respondents' fourth, fifth, eighth, and tenth affirmative defenses seek to challenge the Commission's authority to commence this administrative action, respectively claiming that "the issuance of the Administrative Complaint and the contemplated relief are not in the public interest" (Fourth), the Commission's institution of the complaint is arbitrary and capricious (Fifth), that the Commission failed to make requisite findings in issuing the Complaint (Eighth), and that the Commission lacks subject-matter jurisdiction (Tenth). These defenses are meritless. The Commission's determinations in issuing the complaint are not reviewable absent extraordinary circumstances. *In re American Aluminum Corp.,* 84 F.T.C. 21, 51 (1974). "[T]he issue to be litigated is not the adequacy of the Commission's pre-complaint information or the diligence of its study of the material in question but whether the alleged violation has in fact occurred." *In re Exxon Corp.*, 83 F.T.C. 1759, 1760 (1964). Accordingly, the Commission has routinely rejected affirmative defenses such as Respondents' Fourth, Fifth, Eighth,[9] and Tenth Defenses. *In re Basic Research*, 2004 FTC LEXIS 273, at *32-34 (F.T.C. Aug. 20, 2004) (striking the affirmative defense that the Commission's issuance of the Complaint was not in the public interest and the "arbitrary and capricious" defense because it was invalid insofar as the issuance of a complaint is not final agency action and therefore unreviewable until after the conclusion of administrative adjudication); *In re Synchronal Corp.*, 1992 FTC LEXIS 61, at *5 (F.T.C. Mar. 5, 1992) (striking the affirmative defense that the investigation was not in the public

[9] Respondents' Eighth defense is little more than a failure to state a claim argument, claiming "[t]he Complaint is completely devoid of any specific findings by the Commission relating to the purportedly deceptive nature of the mailers, or any facts specific to Traffic Jam Events, LLC or Mr. Jeansonne."

interest and was the result of selective prosecution as irrelevant). Further, the Commission clearly has jurisdiction pursuant to act against deceptive practices under Section 5(a) of the FTC Act. *See*, *e.g.*, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 384-85 (1965); *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1152 (9th Cir. 2010); *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 966 (D.C. Cir. 1985).

D. The Florida Settlement Does Not Bar This Action.

As their sixth affirmative defense, Respondents assert that the Florida Attorney General's settlement with a car dealer for the Florida COVID-19 stimulus mailer extinguishes the FTC's claims against Respondents. Such a defense requires identity between both the parties and the claims in the prior action. *See Satsky v. Paramount Commc'ns, Inc.*, 7 F.3d 1464, 1467 (10th Cir. 1993). Identity of parties is not present because neither the FTC nor Respondents were parties to the Florida settlement; and Respondents do not allege the parties here are in privity with those parties. Moreover, the claims are not identical; the Florida settlement did not address sweepstakes mailers or TILA violations, and Florida's claim concerning the COVID-19 stimulus mailers was based on state– not federal law. *See* Answer, Exhibit E (Assurance of Voluntary Compliance, citing Floridalaw). A separate state action does not bar the FTC from exercising its authority. *See FTC v. DirecTV, Inc.*, 2015 WL 9268119, at *4-5 (N.D. Cal. Dec. 21, 2015) (prior 50-state attorney generals settlement under analogous state statutes did not preclude FTC suit).

E. Respondents Are Responsible for the Advertisements They Created.

Respondents' seventh affirmative defense that "[t]he dealerships for whom the advertisements were created are responsible for any alleged harm to consumers" does not state a valid defense to liability. As the evidence above shows, Respondents designed the mailers, including the ideas for prize incentives and stimulus offers, sold them to scores of dealers, and generated and disseminated advertisements with the same unlawful features all over the country.

See supra at 18-24 & 27-28. Section 5(a) authorizes the Commission to halt Respondents, even if others are also participating in the deceptive scheme. *See FTC v. LeadClick Media, LLC*, 838 F.3d 158, 168-170 (2d Cir. 2016) (holding participation *or* control may be basis for liability under Section 5(a), and an entity may be liable even if it was not solely responsible for a deceptive scheme). Respondent are responsible for their substantial role in generating these deceptive advertisements. *See In re Bozell Worldwide, Inc.*, 127 F.T.C. 1, 1 (1999) (holding advertising agency of a large company liable for violation of the FTC Act).

F. Respondents Have Received Notice and the Opportunity to Defend.

Respondents' ninth affirmative defense asserts that holding Respondents liable would violate due process because (i) they "lack notice as to what constitutes unfair or deceptive trade practices because the statute is impermissibly vague" and (ii) "the FTC acted in violation of its own procedures regarding prior notice."

Respondents' assertion that the statute is so "impermissibly vague" that it violates due process is frivolous. The claims against Respondents involve deception under Section 5 and violation of disclosure obligations enumerated in TILA. The term "deceptive acts or practices" is not unconstitutionally vague and has an established meaning reinforced by decades of precedent. *See CFPB v. Gordon*, 819 F.3d 1179, 1193 n.7 (9th Cir. 2016); *FTC v. Johnson*, 96 F. Supp. 3d 1110, 1142 (D. Nev. 2015); *FTC v. Lucaslaw Ctr. "Incorporated",* 2010 WL 11506885, at *4 (C.D. Cal. June 3, 2010) (The FTC Act "is not impermissibly vague.").

Respondents' assertion that the Commission unconstitutionally failed to give Respondents' prior notice is equally baseless. Respondents identify no Commission procedure that requires notice prior to service of the complaint in this proceeding, and multiple prior enforcement actions demonstrate that Respondents had ample warning that their practices were

deceptive. Moreover, due process is satisfied by providing notice and an opportunity to be heard prior to deprivation of a protected interest. *Dusenbery v. United States,* 534 U.S. 161, 167 (2002). Here, Respondents have been given notice and the opportunity to appear and defend themselves in advance of any Commission order restraining their activities.

X. COMPLAINT COUNSEL'S PROPOSED ORDER PROVIDES APPROPRIATE RELIEF

The Commission's proposed order, which follows the notice of contemplated relief attached to the Complaint, is appropriate considering the deliberateness of Respondents' violations, their persistence notwithstanding numerous law enforcement actions, and the ease with which this deceptive conduct can be transferred to other schemes. The Commission has wide discretion in its choice of a remedy in addressing unlawful practices. *See*, *e.g.*, *Jacob Seigel Co. v. FTC*, 327 U.S. 608, 611 (1946). Additionally, the proposed order should apply to Jeansonne because he participated in and had authority to control the deceptive practices and thus is individually liable for violating the FTC Act.

A cease and desist order is appropriate if the Commission determines that the order is sufficiently clear and reasonably related to the unlawful practices at issue. *In re POM Wonderful LLC*, 2013 FTC LEXIS at *153 (*citing Colgate-Palmolive Co.*, 380 U.S. at 392, 394-95). When determining whether an order is reasonably related to the unlawful practices, the Commission considers three factors: "(1) the seriousness and deliberateness of the violation; (2) the ease with which the violative claim may be transferred to other products; and (3) whether the Respondent has a history of prior violations." *Stouffer Foods Corp.*, 118 F.T.C. at 811; *see also POM Wonderful LLC*, 2013 FTC LEXIS at *153. "The reasonable relationship analysis operates on a sliding scale—any one factor's importance varies depending on the extent to which the others are found." *Telebrands Corp. v. FTC*, 457 F.3d 354, 358 (4th Cir. 2006). Furthermore, the

Commission may issue an order that contains fencing-in provisions, which are "provisions that are broader than the conduct that is declared unlawful." *In re POM Wonderful LLC*, 2013 FTC LEXIS at *156-57. In accord with that fencing-in discretion, the Commission need not restrict the order to a "narrow lane" of Respondents' past actions. *Id.* Indeed, fencing-in relief can even restrict legal conduct in order to help prevent future violations. *In re 1-800 Contacts, Inc.*, 2018 FTC LEXIS 184, at *75-*76 & n. 23 (Nov. 7, 2018) (citing cases).

The proposed order's provisions are appropriate injunctive and fencing-in relief because they are clear and reasonably related to the unlawful practices at issue. Part I addresses the conduct alleged in Counts I and II of the Complaint and would prohibit Respondents from businesses that involve advertising, marketing, promoting, distributing, offering for sale or lease, or selling or leasing motor vehicles. Part II provides additional fencing-in relief that would prohibits misrepresentations of any material fact about the price, sale, financing, or leasing of any product or service or the nature, value, or amount of any incentive.

Part III addresses the TILA violations alleged in Count III and would require Respondents to state expressly or by implication 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, clearly and conspicuously terms such as the amount or percentage of the down payments; the terms of repayment; and the annual percentage rate; or the rate of financial charge without stating the rate as an "annual percentage rate" or the abbreviation "APR." It also would require Respondents to comply with other provisions of Regulation Z and the TILA.

First, the seriousness and deliberateness of the violations warrants the imposition of the foregoing conduct provisions in the proposed order. Respondents deliberately used claims of COVID-19 stimulus relief to lure people to dealerships at a time when people were being told to

stay home to avoid contracting a deadly disease. *See supra at* 17-18. Respondents specifically sought to capitalize on the early rush to obtain relief. *Id.* Respondents developed numerous other COVID-19-related ad campaigns that they promoted to customers around the country. SMF ⁋⁋ 12-16.

Further, Respondents' COVID advertising and deceptive prize advertising persisted despite multiple law enforcement actions against them and repeated complaints and legal actions involving their advertising. *See supra* at 24; *see generally* SMF ⁋⁋ 45, 46-53; PX1 ⁋⁋ 24-32, Atts. LV-MA. Rather than correct their advertising and comply with the law, Respondents continued the same type of deceptive advertising in other states, and even Respondents designed and promoted a new type of deceptive mailer promising COVID-19 stimulus relief. Indeed, Respondent Jeansonne testified he made no changes to Traffic Jam Events' mailers because of state actions, instead deflecting responsibility to the dealers. PX2 at 181:25-182:7, 184:11-185:23, 186:16-24. Respondents continued to push the same aggressive prize mailers. Respondents' conduct clearly demonstrates their awareness of the claim and the deliberateness with which they pursued deceiving consumers. *See ECM BioFilms*, 2015 WL 6384951, at *65 ("awareness of concern" and a "calculated choice" of revised marketing that conveyed "essentially the same" claims suggests deliberateness of conduct); *see also Stouffer Foods*, 118 F.T.C. at 813-14 (awareness of inappropriateness of claim and that wording was "a delicate matter" suggests deliberateness of conduct that supports fencing-in).

Second, there is no question that Respondents could readily make similar claims using other marketing products and services. *See FTC v. Colgate-Palmolive*, 380 U.S. 374, 394-95 (1965); *Sears, Roebuck & Co. v. FTC*, 676 F.2d 385, 392, 394-95 (9th Cir. 1982); *POM Wonderful*, 2013 FTC LEXIS 6, 2013 WL 268926, at *64. In particular, Respondents can easily

make the same claims for any product or service in virtually every other media type, including digital, tv, radio, or billboard.

Finally, the proposed conduct provisions are further justified here because Respondents have shown a "ready willingness to flout the law," *see Sears, Roebuck*, 676 F.2d at 392, engaging in continued deceptive and unlawful advertising notwithstanding numerous prior law enforcement actions. Throughout that time and through the course of these proceedings, Respondents have steadfastly refused to take responsibility for their actions, blaming instead the dealers and supposed rogue employees acting under their direction. SMF ¶ 57; PX2 at 185:2-3 ("[We] implement[ed] at the bottom of his email that it's up to you, Mr. Dealer. We're not responsible."); *Id.* 187:10-13 ("Will Lilly went into management after that, and that's when he got a little reckless. And we just -- I don't know. I don't have a good answer."). Respondents' excuses are not credible or legally valid. Respondents Traffic Jam Events and Jeansonne himself deliberately continued to design and promote deceptive advertisements to mislead consumers and induce them to visit auto dealerships. Thus, fencing-in relief is not only appropriate but essential in this case.

Parts IV through IX contain reporting and compliance provisions common to many Commission orders. *See*, *e.g.*, *In re POM Wonderful LLC*, 2013 FTC LEXIS 5 (Jan. 10, 2013) (order containing standard reporting and compliance provisions); *In re Daniel Chapter One*, 149 F.T.C. 1574 (2010) (same). Notably, to account for the nature of the business, Part VII includes an additional category of order acknowledgements, requiring Respondents to provide copies of the order to its customers such as auto dealers.

CONCLUSION

For the reasons stated above, Respondents' practices, as alleged in the Complaint, constitute deceptive and unlawful acts or practices, and the making of false advertisements, in or

affecting commerce, in violation of the FTC Act and TILA. Complaint Counsel respectfully requests that the Commission enter Complaint Counsel's Proposed Order.

Respectfully submitted,

August 14, 2021

By: */s/ Thomas J. Widor*

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2021, I caused the foregoing document to be served via the FTC's E-filing system and electronic mail to:

April Tabor
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Federal Trade Commission
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The Honorable Michael Chappell
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I further certify that on August 14, 2021, I caused the foregoing document to be served via electronic mail to:

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August 14, 2021

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

PUBLIC

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina Khan, Chair**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of **TRAFFIC JAM EVENTS, LLC, a limited liability company, and** **DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.**	**[PROPOSED] ORDER** **DOCKET NO. C-9395**

DECISION

The Federal Trade Commission ("Commission") issued a complaint challenging certain acts and practices of the Respondents named in the caption. The Commission's Bureau of Consumer Protection ("BCP") filed the Complaint, which charged the Respondents with violations of Section 5 of the Federal Trade Commission Act, Section 144 of the Truth in Lending Act ("TILA") and Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d).

For the reasons stated in the accompanying opinion of the Commission, the Commission has determined that (i) Respondents' advertising was deceptive and (ii) their advertisements for credit did not comply with TILA and Regulation Z, and that both unlawful practices constitute deceptive or unfair trade practices that violate Section 5 of the Federal Trade Commission Act ("FTC Act"). Specifically, the Commission has made the following determinations:

- It is an unfair or deceptive trade practice under Section 5 of the FTC Act, in connection with advertising, marketing, promotion, or offering for sale or lease, or selling or leasing, to misrepresent, directly or indirectly, expressly or by implication, that consumers are receiving financial assistance or relief from the government, or that the person offering a product or service is associated or affiliated with, or endorsed, sponosored, or approved by, the government.

- It is an unfair or deceptive trade practice under Section 5 of the FTC Act, in connection with advertising, marketing, promotion, or offering for sale or lease, or

selling or leasing, to misrepresent, directly or indirectly, expressly or by implication, that consumers have won a prize, sweepstakes, lottery, or giveaway.

A. It is an unfair or deceptive trade practice under Section 5 of the FTC, in connection with any advertisement for any extension of consumer credit other than an open end credit plan, to state, directly or indirectly, expressly or by implication, the amount or percentage of any down payment (in a credit sale), 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:

   i. The amount or percentage of the down payment (in a credit sale);

   ii. The terms of repayment; and

   iii. The annual percentage rate, using that term or the abbreviation "APR," and, if the rate may be increased after consummation, that fact.

Accordingly, the Commission issues the following Order, including provisions I-III directing Respondents to cease and desist such acts and practices:

ORDER

Definitions

For purposes of this Order, the following definitions apply:

A. "Clearly and conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

   1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.

   2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

   3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

B. "Close proximity" means that the disclosure is very near the triggering representation. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.

C. "Respondents" means the Corporate Respondent and the Individual Respondent, individually, collectively, or in any combination.

1. "Corporate Respondent" means Traffic Jam Events, LLC, a limited liability company, and its successors and assigns.

2. "Individual Respondent" means David J. Jeansonne II.

Provisions

I.

IT IS ORDERED that Respondents, whether acting directly or through an intermediary, must not participate in any business which involves, in whole or in part, advertising, marketing, promoting, distributing, offering for sale or lease, or selling or leasing motor vehicles.

II.

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, or offering for sale or lease, or selling or leasing, must not misrepresent, or assist others in misrepresenting, expressly or by implication, any material fact, including the following:

A. Financial assistance or relief from the government;

B. Any prize, sweepstakes, lottery, or giveaway;

C. Any affiliation, association with, endorsement, sponsorship, or approval by the government; and

D. The nature, value, or amount of any incentive and all material restrictions, limitations, or conditions applicable to the purchase, receipt, or use of any product or service.

III.

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any advertisement for any extension of consumer credit, shall not:

A. State, expressly or by implication:

1. 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:

i. The amount or percentage of the down payment;

ii. The terms of repayment; and

iii. 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

2. A rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term; or

B. Fail to comply with Regulation Z, 12 C.F.R. Part 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667, a copy of which is attached (TILA).

IV. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. Each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, and each Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; (3) all customers of Corporate Respondent; and (4) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

V. Compliance Reports and Notices

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

A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:

1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent'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 Respondent (which Individual Respondent must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

B. Each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

   1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly 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.

   2. Additionally, Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.

C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent 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: In re *Traffic Jam Events, LLC*, FTC File No. X200041.

VI. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 20 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Corporate Respondent and Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all products or services sold, the costs

incurred in generating those revenues, and resulting net profit or loss;

B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. copies of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. a copy of each unique advertisement or other marketing material making a representation subject to this Order;

E. for 5 years from the date received, copies of all subpoenas and other communications with law enforcement, if such communication relate to Respondents' compliance with this Order;

F. for 5 years from the date created or received, all records, whether prepared by or on behalf of Respondents, that demonstrate non-compliance OR tend to show any lack of compliance by Respondents with this Order; and

G. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VII. Compliance Monitoring

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

A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.

C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, 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.

VIII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any Provision in this Order that terminates in less than 20 years;

B. This Order's application to any Respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the 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 Provision 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.

April J. Tabor
Acting Secretary

SEAL:
ISSUED:

PUBLIC

X200041

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina Khan, Chair**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

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

COMPLAINT COUNSEL'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE FOR TRIAL

Pursuant to Section 3.24 of the Commission's Rules of Practice, and in support of Complaint Counsel's Motion for Summary Decision, Complaint Counsel submits this statement of material facts as to which there is no genuine issue for trial.

I. THE PARTIES

1. The FTC is an independent agency of the United States Government created by the FTC Act. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

2. Pursuant to 15 U.S.C. § 1607(c), the FTC enforces Section 144 of the TILA and Section 226.24(d) of Regulation Z.

3. Respondent Traffic Jam Events, LLC is a Louisiana limited liability company with its principal place of business at 2232 Idaho Avenue, Kenner, LA 70062. Answer at 12 ¶ 1.

Traffic Jam Events also has maintained an office in Tampa, FL. PX2 (Jeansonne Dep. 17:24-25, 21:13-18).

4. Respondent Jeansonne is the owner, managing member, and president of Traffic Jam Events. Answer at 12 ¶ 2.

II. RESPONDENTS' BUSINESS PRACTICES

5. Respondents create advertising, offer direct mail marketing services, and staff tent sales events to automotive dealerships. Answer at 12 ¶ 3.

6. Respondents have solicited dealerships around the country. Respondents' sales staff calls dealerships in different states to obtain new business. PX2 at 40:9-15; PX3 (Lilley Depo. at 14:17-23). Respondents have used e-mail blasts to promote their products and services to dealerships nationwide. PX2 at 78-79; PX7. Similarly, Respondent Traffic Jam Events' website has touted that Traffic Jam Events offers "industry-leading direct-response mail and staffed-event campaigns for dealerships across the U.S.A." PX4 (Request for Admission No. 5, Amended Response).

7. Respondents' mailers have been disseminated to consumers throughout the United States. PX28; PX29. Since at least July 2015, in the course of generating mailers to promote automotive sales events, Respondent Traffic Jam Events has employed the services of printers located in California and Florida. PX4 (Request for Admission No. 7, Amended Response)

8. Respondents provided the mailing lists to the printers and specified how to address mail. *See. e.g.*, PX13.

A. DIRECT MAIL COVID-19 STIMULUS RELIEF ADVERTISEMENTS

9. In March 2020, Respondents designed a direct mail advertising campaign based on COVID-19 government relief. PX24; PX6; PX4 (Request for Admission No. 9, Amended

Response (Traffic Jam responsible for generating advertisements including Exhibit A to Answer, Florida Stimulus Mailer)). Following months of debate, the Coronavirus Aid, Relief, and Economic Security Act was signed into law on March 27, 2020 to provide financial assistance to individuals, families, and businesses. *See* Pub. L. No. 116-136, 134 Stat. 281 (2020).

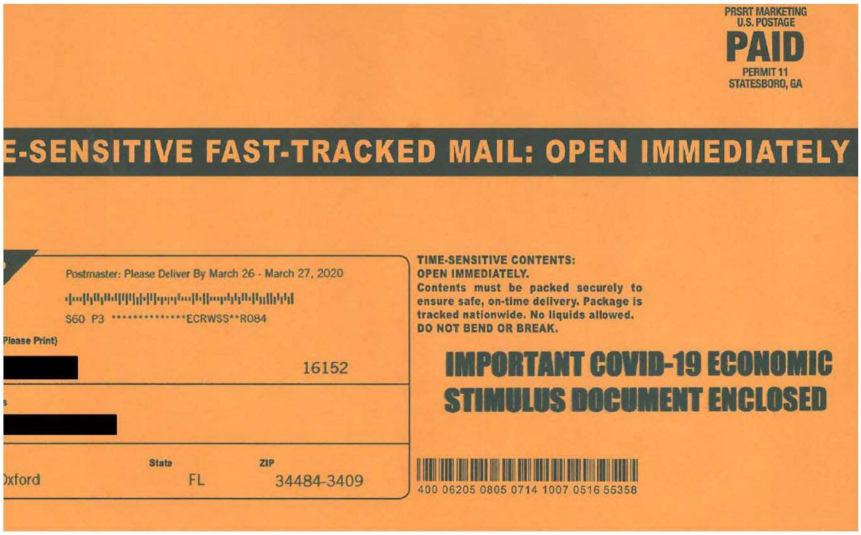
10. Respondent Jeansonne acknowledged the new COVID-19 stimulus relief mailers were his "brainchild." PX17 (Temporary Restraining Order transcript at 50:3-4, *FTC v. Traffic Jam Events, LLC, et al.*, Civil Action No. 20-1740 (E.D. La. June 25, 2020) ("Q: So whose brainchild was the mailer?" / A: "Mine. I'll take that. Mine.")); PX2 at 117:9-13 ("Now, I did the creation."). Jeansonne also made decisions about the use of the mailing for some of the tent sales. PX27 (texting employees and dealers and stating "We will split the mail with half our regular piece and the other half with a covid-19 relief offer.").

11. Respondent Jeansonne also discussed the design of the COVID-19 stimulus relief mailers with dealers, telling one dealer "If we are going to start watering down the pieces it won't work." PX26. A few days later, Respondents sent an e-mail blast to dealerships nationwide promoting a direct mail advertisement to consumers that would tout a COVID-19 stimulus relief mailer "on an official letter format." PX7.

12. Using Traffic Jam Events' US bulk mailing permit, a COVID-19 stimulus relief mailer was distributed to approximately 35,000 consumers. PX4 (Request for Admissions, No. 17, Amended Response); PX45-47. This mailer promoted a dealership, New Wave Auto Sales also known as, MK Automotive, in Bushnell, Florida. PX4 (Request for Admissions, Nos. 15, 16, Amended Response).

> a) The mailers were sent in manila envelopes that state in bold font on both sides: "TIME-SENSITIVE FAST-TRACKED MAIL: OPEN IMMEDIATELY." One side also states "Official Documents Enclosed" "Do not tamper or mutilate." The other side of the envelope states "IMPORTANT COVID-19 ECONOMIC

STIMULUS DOCUMENT ENCLOSED." The envelope also contains barcodes on the front and back.



b) The enclosed notice states at the top in bold: "URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM REFLIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS."

c) The notice header also includes a barcode with a notice number that claims to relate to "COVID-19 STIMULUS (INDIVIDUAL)" and a watermark depicting the Great Seal of the United States.

d) A highlighted box on the notice touts specific relief similar to the CARES Act relief, including thousands in relief funds and payment deferrals. The notice repeatedly describes the location as "relief headquarters," "your designated temporary 10-day site," and "designated local headquarters."

At the specified relief headquarters, the following incentives may be available to ALL residents of Bushnell, FL:

- **0% A.P.R. financing for 60 months.** A variety of vehicles (cars, trucks, SUVs, etc.) will have 0% A.P.R. financing available with little to no money down. (1)
- **All payments will be deferred for 120 days.** Do not make a car payment for 120 days/4 months. (2)
- **Receive a $100 Walmart Gift Card with every vehicle purchase.** Extra funds to be used for any other needs you may have during this time. (3)
- **Thousands in Relief Funds with this notice.** Receive additional discounts on your vehicle purchase – check the enclosed documentation for your funds.

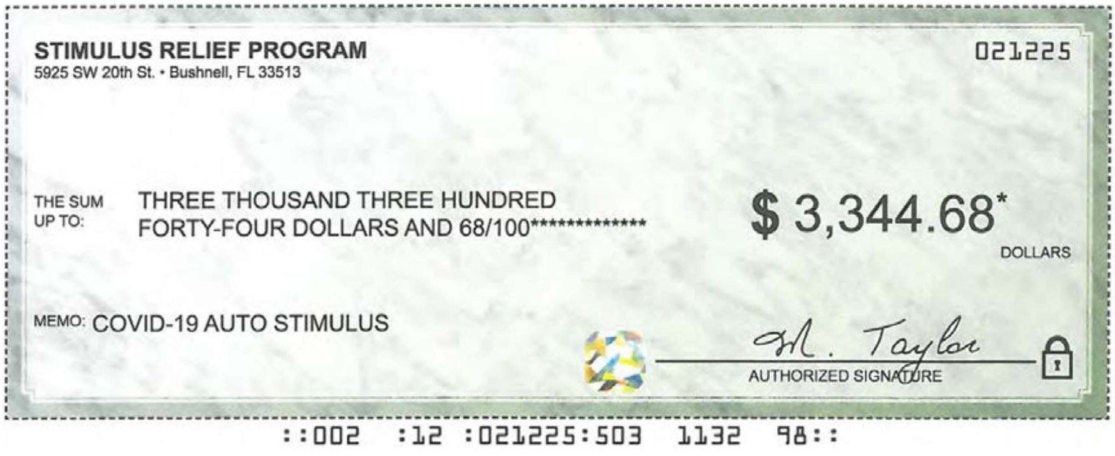
e) The notice represents that consumers "must claim these stimulus incentives at your designated temporary 10-day site: 5925 SW 20th St., Bushnell, FL 33513.

f) The notice also includes a list of "Mandatory qualifications to receive Stimulus Relief Funds."

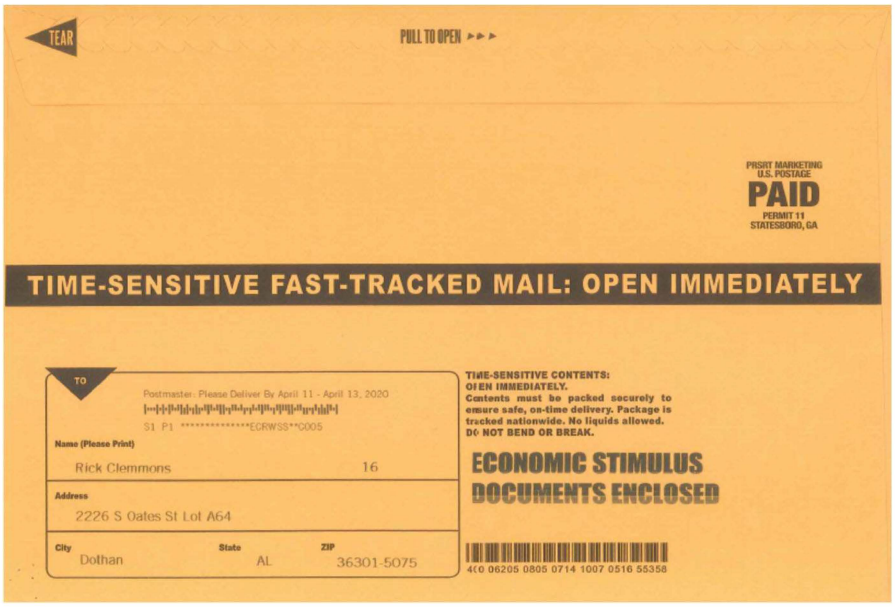
Mandatory qualifications to receive Stimulus Relief Funds:

1) Must be permanent U.S. resident.
2) Must have valid driver's license.
3) Annual Income cannot exceed $91,300.00.

g) The mailer also includes a mock check issued by "Stimulus Relief Program." The check's memo field states "COVID-19 AUTO STIMULUS" and includes an "AUTHORIZED SIGNATURE" with a watermark of a lock; the back of the check includes the statement "ORIGINAL DOCUMENT" and a space to endorse on the back with the instruction "DO NOT WRITE, STAMP OR SIGN BELOW THE LINE. RESERVED FOR FINANCIAL BANK USE."



13. Beginning on or around March 25, 2020, Traffic Jam Events disseminated or caused to be disseminated another COVID-19 mailer, to 18,103 consumers in Alabama. PX30. The mailer was used for a sales event for the dealership, Dothan Chrysler Dodge Jeep Ram Fiat in Dothan, Alabama. The mailers were sent in manila envelopes that state in bold font on both sides: "TIME-SENSITIVE FAST-TRACKED MAIL: OPEN IMMEDIATELY." One side of the envelope states "ECONOMIC STIMULUS DOCUMENTS ENCLOSED."



14. Respondents also prepared COVID-19 stimulus mailers using similar envelopes for other dealerships. *See* PX31-PX40.

15. Respondent Jeansonne has described the mailer as official looking. PX2 at 19:13-

14 "To make it look official, make it look important"). Respondents' former employee, William Lilley, also described the mailer as official. PX3 at 47:2-4 ("It does look like, you know, it's official documents coming in the mail, absolutely."); *id.* at 44:21-22 ("it's like an official stamp for the United States.").

16. Respondent Traffic Jam Events sent an e-mail blast to dealers promoting one COVID-19 stimulus relief mailer as "on an official letter format." PX7 (e-mail blast promoting a COVID-19 stimulus relief mailer).

B. DIRECT MAIL PRIZE ADVERTISEMENTS

17. Respondents have also generated and disseminated or have caused to be disseminated direct mail advertisements representing that recipients have won specific prizes. PX4 (Request for Admission Nos. 9, 11, Amended (Traffic Jam responsible for generating advertisements including Exhibit C to Answer, Madison Tent Event Prize Notification Mailer)); PX4 (Requests for Admission (4th Set.) Nos. 53, 54, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 97, 99, 101, 103, 105, 107, 109, 111, 113, 115); PX4 (Requests for Admission (5th Set), Nos. 126-130, Attachments 35-37).[1]

18. Traffic Jam Events created and disseminated an advertisement for Landers McLarty Toyota, which was mailed to consumers in May 2020 for a tent sales event in Madison, AL. PX4 (Request for Admission Nos. 9, 11, 27, 28); Amended Response; Answer Exh. C.

[1] Complaint Counsel's Requests for Admission (5th Set), Nos. 126-235 are admitted because Respondents did not respond within 10 days of service. 16 C.F.R. § 3.32(b).

19. The promotion represents, "If your digital electronic combination box matches the official winning code and one of the codes below, you are a guaranteed winner with a possible $15,000 INSTANT CASH. . . ." Answer Exh. C.

20. The advertisement lists an "OFFICIAL WINNING CODE" of 74937. Below the OFFICIAL WINNING CODE is a Combination Box code. The "OFFICIAL WINNING CODE" and Combination Box code match.

21. An arrow points rightward from the "Official winning code match here" to a selection of prizes. Following that arrow, to the right of the "OFFICIAL WINNING CODE" and Combination Box code is a prize panel featuring five prizes with codes above each one:

22. The $2,500 INSTANT CASH prize lists the number 74937 and matches both the "OFFICIAL WINNING CODE" and Combination Box code.

23. The reverse side of the advertisements includes fine print in the bottom right corner.

24. The disclaimer states "If the winning number on your invitation matches the prize board at the dealership, you have won one (1) of the following prizes: #1 $15,000 Instant Cash 1:52,000 #2 $2,500 Instant Cash 1: 52,000 #3 $800 Amazon Gift Card 1:52,000 #4 All-New Wireless Earpods Pro w/Charging Case 51,996:52,000 #5 $250 Walmart Gift Card 1:52,000."

25. Respondent Jeansonne was asked if this ad stated that the prize board number was the number consumers had to match and responded by saying "It says right here, If your digital electronic combination box matches the official winning code and one of the codes below, you're a guaranteed winner with a possible $15,000 instant cash. So you look at it, you have 74937. You have 74937; and then when you go in -- I see where you're going, that it's above the 2,500." Jeansonne was asked if there was any disclaimer on the page, stating, "no, I don't see that." PX2 at 165:1-4.

26. Former employee William Lilley also had trouble locating the number the consumer had to match to the prize board. *See* PX3 at 72:17-73:4 ("Q: Do you see that number on this mailer? / A: Yes, down here. It's not in here. . . .").

27. The cost for a smart watch or earpod depicted in Respondents' prize advertisements is around $6.00. *See*, *e.g.*, PX44.

28. The mailer lists a telephone number and website that consumers can call to verify their prize and schedule a time to come to the dealership. Above that information is the consumer's first name, followed by "your combinations above must match to win!" Answer Exh. C.

29. Consumers who call or go online are congratulated and told they are indeed a winner and need to visit the dealership to claim their prize. PX14 ("Wow!!! My computer just verified that your code is a winner! To claim your prize, you must bring your invitation to Test Demo Dealership as shown on your invitation, during the sale dates and hours where your code will be verified and prize awarded."); PX15 (screenshot of website).

30. Respondents have disseminated numerous advertisements using this same format, with similar designs for prize promotions and financing offers. *See* PX1 (Dec. of Eleni Broadwell ⁋⁋ 9-12 and Atts. D-JE); PX1, Att. LZ (IN Compl. ⁋⁋ 117-119, Exh. K); PX8; PX9; PX10; PX4 (Requests for Admission No. 53, Amended, Attachment 2 (Combination Box Mailer); No. 107, Attachment 25 (pull-tab mailer); No. 109, Attachment 26 (scratch-off mailer); PX4 (Requests for Admission (5th Set), Nos. 126-130, Attachments 35-37 (Combination Box and Prize Board)).

31. Former employee Lilley has described many of these advertisements as "aggressive" prize panels. PX3 at 78:1-11. He explained that he term refers to advertisements where "you get customers that, you know, sometimes perceive that they won a certain prize because of, you know, the way the prize is and the numbers are laid out. *Id.* at 70:23-71:1.

C. ADVERTISEMENTS PROMOTING CLOSED-CREDIT OFFERS

32. Respondent Traffic Jam Events, at the request of dealers, creates advertisements to aid, promote, or assist close-end credit transactions subject to the TILA and 15 U.S.C. § 1664 as amended. Requests for Admission No. 31, Amended Response. In doing so, Respondent Traffic Jam Events created advertisements that contained statements that describe monthly payment amounts for credit offers. PX4 (Requests for Admission No. 37); *see, e.g.*, *supra* ¶ 23.

33. As in advertisement depicted above in paragraphs ¶¶ 18-23, however, these advertisements do not disclose the number of monthly payments and/or the APR in proximity to the monthly payment amount. If this information is disclosed at all, it appears in small print in another part of the ad. *See*, *e.g.*, Answer, Exh. C (a separate section at the bottom, right corner of the ad, interspersed with other disclaimers in miniscule type, states: "72 months at 2.9% APR with approved credit"). Respondents' ad designs regularly follow this pattern: monthly payment amounts appear prominently in colorful type, while other credit terms such APR and number of monthly payments appear, if at all, in a different part of the ad, in obscure, small type. *See*, *e.g.*, PX1 at Atts. D-BI, CI-JE); PX4 (Requests for Admissions (2d Set) No. 53, Attachment 2; No. 57, Attachment 4).

34. In some instances, the monthly payment amount appears prominently on the first page and the number of payments and APR appear on a separate page, buried at the bottom, in minute type. PX4 (Requests for Admissions (2d Set) Request 55, Attachment 3).

35. In some advertisements, financing with 0% APR or a low APR appears in colorful, prominent type, in close proximity to images of vehicles and monthly payment amounts – but the fine print states that the APR for the vehicles pictured in the ad is substantially higher. *See, e.g.,* PX4 (Request for Admission No. 78, Attachment 11 (0.9% conspicuous; 6.5% in fine print); No. 80, Attachment 12 (0% conspicuous; 4.99% in fine print)).

36. In some instances, the advertisements state a monthly payment amount but do not disclose down payment or the number of monthly payments. PX4 (Requests for Admissions (4th Set) No. 105, Attachment 24 (prominently stating "0% APR Financing" with "$187 PER MONTH" and "$197 PER MONTH" but no additional terms in normal text or small print)).

D. RESPONDENT JEANSONNE'S ROLE AT TRAFFIC JAM EVENTS AND INVOLVEMENT WITH RESPECT TO THE CHALLENGED ADVERTISEMENTS

37. As the owner and President of Traffic Jams, Jeansonne has general authority over the affairs of the company. PX4 (RFA Response 3); PX2 at 21:3-5 ("there's many things as a business owner you have to do when you're running a, you know, 14- or 15- year business.")

38. Jeansonne oversaw all of Corporate Respondents departments, "dipping [his] foot in sales, mail pieces, operations, adequate procedures." PX2 at 20-21.

39. Jeansonne made Traffic Jams Events' hiring and firing decisions. *See* PX18 (Jeansonne informing printer that he has decided to terminate Marie Pratt's employment).

40. Jeansonne managed Corporate Respondents' finances. Jeansonne controlled the sale of TJE mailing pieces, setting payment amounts and approving payment methods. PX41. Jeansonne intervened in and resolved payment issues with third parties. PX42; PX43 (stating "…if my people don't pay you as agreed I will make it happen instantly.").

41. Jeansonne also made decisions about the content of the advertising, including the COVID-19 stimulus relief advertisements. PX2 at 116:14-117:13 ("Now, I did the creation. I can't put that on him [dealer]. Me and my guys, you know, me and Justin create how it falls, where it goes, etc."); PX17 at 44:13-14; PX18-21. It was protocol for the direct mail advertisements to "always" go past Jeansonne's e-mail first. PX3 at 107:17-108:3; 115: 2-3)); PX26.

42. Jeansonne settled law enforcement actions against Traffic Jam Events brought by

state law enforcement relating to its prize mailers. PX17 at 44:1-10.

43. The COVID-19 stimulus relief mailers were Jeansonne's "brainchild". *Id.* at 50:3-4) ("Q: So whose brainchild was the mailer?" / A: "Mine. I'll take that. Mine."). Jeansonne explained to a dealer "the catch phrase right now s [sic] Stimulus Relief Funds. People are somewhat running from COVID-19…. but everyone is running to Stimulus Relief Funds." PX6. Jeansonne participated in the design and review of the COVID-19 stimulus relief mailers. PX17 at 46:19-47:1 ("We needed to motivate people to come out because times were tough."); PX24. Jeansonne provided input on one mailer, stating "I would like (Especially on the Pulltab piece) to see a little more emphasis on the obvious, there has been a lot of stimulus money allocated to the automotive industry to allow YOU the public to buy a vehicle at never before seen prices!! Do not hesitate to be at this site." PX25. Jeansonne's employee responded to him saying, "updated pieces with more Stimulus verbiage," noting "[o]n the pull tab piece I added a lot more Stimulus relief stuff and included all the verbiage you sent over in the newspaper clipping on the back." *Id.*

44. Jeansonne also provided input on the design of prize advertisements. PX19-PX20. Jeansonne discussed with the printers and dealers the type of the glue-on pieces to use and the timing of the mail drops. PX21. Jeansonne also tracked the response rates to mailers. PX22- PX23.

E. PRIOR LAW ENFORCEMENT ACTIONS AGAINST RESPONDENTS

45. Respondents have been subject to state law enforcement actions for deceptive advertising. PX1 ¶¶ 25-31.

KANSAS (PRIZE PROMOTIONS AND CREDIT DISCLOSURES)

46. In 2010, Respondent Traffic Jam Events, LLC, entered into a consent order with the State of Kansas to resolve allegations that it had violated Kansas Consumer Protection Act

when it designed and sent promotional fliers for automotive events that implied that recipients had the "winning number" for the grand prize giveaway when, in fact, they did not. PX1, Att. LX.

47. The 2010 Kansas action also included allegations that credit terms were not properly disclosed because key terms were in "mouse print." PX1, Att. LX at 5.

48. The consent order required Respondent Traffic Jams to pay $25,000 in penalties and permanently enjoined Respondent from committing the acts or practices described in the complaint. *Id.* at 7-9.

49. In 2013, Respondent Traffic Jam Events entered into another consent order with the State of Kansas, this time to resolve allegations that it violated the Kansas 2010 order by (1) sending out prize mailers that did not comply with the prize notification act in violation of K.S.A. 50-692 and 50-627; (2) employing sales personnel who were not licensed by the Kansas Department of Revenue as required by K.S.A. 8-2404, and (3) representing it had a sponsorship or approval that it did not in violation of K.S.A. 50-626(b)(1)(B). PX1, Att. LY at 3 and 16. The 2013 consent judgment with Kansas required Respondent to pay $20,000 and "permanently enjoined [Respondent] from entering into any consumer transactions" originating within the state. *Id*. at 4.

INDIANA (PRIZE PROMOTIONS)

50. On June 1, 2018, the Attorney General of Indiana filed an action for injunction, restitution, civil penalties, and costs against Traffic Jam Events, LLC for violation of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 et seq., and the Indiana Promotional Gifts and Contests Act, Ind. Code § 24-8-1 et seq. PX1, Att. LZ.

51. The Complaint alleges that Traffic Jam Events contracted with numerous Indiana motor vehicle dealers to run sales promotions and would send mailings to thousands of Indiana

consumers misrepresenting that the recipients had won a specific prize. *Id.*

52. On February 7, 2019, Respondent Traffic Jam Events entered into a consent order with the State of Indiana to resolve the allegations. Answer, Exh. G; PX1, Att. MA. The consent order prohibits deceptive prize promotions and was signed by Respondent Jeansonne. *Id.*

FLORIDA (COVID-19 STIMULUS RELIEF)

53. On April 23, 2020, the Florida Attorney General's Office filed a complaint and a motion for temporary injunction against Respondents regarding the advertisement described in Paragraph 9. PX1, Att. LV. On April 27, 2020, the Office of the Attorney General filed an amended complaint. PX1, Att. LW.

54. The Amended Complaint alleges that Defendants "have engaged and continue to engage in deceptive, unconscionable and unfair practices by knowingly making false, deceptive, and misleading misrepresentations including (i) stating that they were mailing consumers important COVID-19 stimulus-related information; (ii) stating that consumers would have access to COVID-19 Stimulus funds for the purchase of a vehicle; (iii) stating that the Tent Sale conducted in Bushnell, Florida from March 27 through April 5, 2020 was a COVID-19 Stimulus "temporary 10-day relief site"; (iv) claiming that they or any car dealership with which they worked was working with and/or affiliated with the "COVID-19 Economic Automotive Stimulus Program"; (v) mailing consumers a document purporting to be a check issued by the "Stimulus Relief Program" and related to the "COVID-19 Auto Stimulus"; and (vi) using language and images to mislead consumers by suggesting a relationship between the government and Defendants and/or any car dealership with which they work." *Id.*

RESPONDENTS' RESPONSES TO LAW ENFORCEMENT ACTIONS

55. Respondent Jeansonne did not change any of the company's practices or

advertising in other states because of the two Kansas consent orders. PX2 at181:25-182:7, 184-185).

56. Likewise, Respondent Jeansonne said he made no changes to Traffic Jam Events' mailers because of Indiana's law enforcement action. *Id.* at 186:16-24.

57. Notwithstanding those law enforcement actions, Respondents continue to state they have no legal responsibility for their advertisements. PX2 at 185:2-3 ("[We] implement[ed] at the bottom of his email that it's up to you, Mr. Dealer. We're not responsible."); *see also Id.* 187:10-13 (blaming employees and saying "Will Lilly went into management after that, and that's when he got a little reckless. And we just -- I don't know. I don't have a good answer.").

F. CONSUMER AND DEALERSHIP COMPLAINTS

58. Consumers have complained because of Respondents' advertisements.

59. Consumers have complained that they believed they had won specific prizes. One consumer complained on Reddit about the Landers McLarty flier described above, attaching photos of the mailer and stating he was "scammed to come into the Landers McLarty dealership in Fayetteville, TN with a promotion saying that I had won $1,500 instant cash." PX1, Att. LK. He explained that he even went to the website, which "verified that I was, in fact, a winner and then proceeded to set me up with an appointment to claim my prize." *Id.* Another consumer filed a lawsuit because she was led to believe she won $2,500 INSTANT CASH after receiving a "$25,000 INSTANT CASH GIVEAWAY" mailer similar to the mailers described above. *Id.*, Att. LU.

60. Consumers have also complained to law enforcement agencies. Consumers have filed Sentinel complaints relating to at least two of Defendants' partner dealerships and the purported COVID-19 stimulus relief they offered in early 2020. PX1, Att. JF and Att. JG. And consumers filed at least 17 Sentinel consumer complaints relating to some of Defendants' partner

dealerships and the prize advertisements they disseminated. PX1, Atts. JK-KA.

61. Another consumer filed a complaint with the FTC in May 2019 concerning a "Deal or No Deal" mailer designed by Respondents that led him to believe "that I had won a prize of $5,000 Instant Cash" because the Combination Code and Peel2Win numbers of 42387 matched the 42387 number corresponding to that prize. PX1, Att. JJ; *see also* PX1, Att. JI.

62. The FTC received a complaint from a consumer who "received a letter in the mail that he thought was his stimulus check. . . ." but "when he opened the letter it was From Crystler [sic] Dodge and Jeep Ram. Consumer is upset it was not a stimulus check." PX 1, Att. JG. Another consumer filed a complaint with the FTC reporting deceptive "stimulus relief program located at 5925 sw 20th in bushnell Fl 33513 offering a $3,344.68 loan for auto relief." PX1, Att. JF.

63. The Better Business Bureau issued a fraud alert for Kia of Abilene because of the volume of consumer complaints dating back to at least November 2015, many of which consisted of "complaints from consumers expressing disappointment in the "prize" provided by Kia of Abilene and questions from the public asking if they had won." PX16.

64. The COVID-19 stimulus relief mailers also received media coverage warning people to be on the alert for fake checks. PX1, Att. JH (WFLA news report, "Brooksville man sounds alarm on fake COVID-19 relief check in mail").

65. Consumers have also complained about Respondents' COVID-19 and prize promotions on social media sites such as Facebook, Google, and Yelp. PX1, Atts. KB-LJ, LL-LT.

66. Former employee Lilley also indicated Respondents would receive complaints from dealers about consumers who came in based on advertisements that led them to believe

they had won a prize. PX3 at 71:15-72:3; *see also id.* at 73:6-11 ("Yeah, unfortunately, you know, you would have people from time to time that, you know, complained off the mailers."). Lilley explained they "would have tried to make it okay in the client's eyes. . . whether we did a free mailer for them or, you know, maybe gave the customer what they, you know, perceived that they won just to try to make the customer happy." *Id.* at 71:24-72:3.