

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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. 9395

**ANSWER AND DEFENSE OF RESPONDENTS TRAFFIC JAM EVENTS, LLC, AND
DAVID J. JEANSONNE II**

Pursuant to Rule 3.12 of the Federal Trade Commission’s (“FTC” or “Commission”) Rules of Practice for Adjudicative Proceedings, Respondents Traffic Jam Events, LLC, and David J. Jeansonne II (collectively, “Respondents”) by and through their attorneys, admit, deny, and aver as follows with respect to the Administrative Complaint (“Complaint”) filed by the Commission:

INTRODUCTORY STATEMENT

Traffic Jam Events, LLC has been in the advertising business since 2007. Mr. Jeansonne, the President of Traffic Jam has been in the advertising business for many years. Specifically, Traffic Jam Events, LLC is in the business of creating mailers on behalf of automotive dealerships to promote automotive sales. This case involves what the FTC seeks to categorize as two types of mailers: an alleged “COVID-19 stimulus mailer” and a prize notification mailer. However, the FTC’s efforts to group the mailers referenced in paragraphs 9 and 10 as “substantially similar” COVID related mailers is grossly misleading at best.

The first mailer addressed in paragraph 9 of the Complaint included certain materials referencing a stimulus relief promotion (the “Florida Mailer”). The Florida Mailer was sent to

residents in Florida in March 2020 on behalf of New Wave Auto Sales promoting an automotive sales event in Bushnell, Florida from March 27, 2020 to April 5, 2020. *See* Exhibit “A.” A completely different mailer was sent to residents in Alabama in early April 2020 on behalf of FCA Fiat Chrysler advertising an automotive sales promotion in Dothan, Alabama (the “Alabama Stimulus Mailer”). *See* Exhibit “B;” *see* also Complaint at ¶ 10. With respect to the Florida Mailer and the Alabama Stimulus Mailer, the Complaint attempts to hold Respondents liable for mailing advertisements purporting to provide “COVID-19 stimulus relief” to consumers, allegedly in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”). *See* Complaint at ¶¶ 15-16. Additionally, the Complaint alleges that Respondents failed to follow the Truth-in-Lending Act (“TILA”) and associated Regulation Z requirements. *Id.* at ¶¶ 14, 20-23. Despite the FTC’s attempt to conflate the Florida Mailer with the Alabama Stimulus Mailer and its blatantly false characterization of these mailers, the Florida Mailer and the Alabama Stimulus Mailer are entirely distinct and certainly cannot be collectively referred to as “COVID-19 Stimulus” mailers. Indeed, the Alabama Stimulus Mailer does not even reference COVID-19. Nor does it contain any language that could deceive the reasonable consumer, acting reasonably in the circumstances. Contrary to the FTC’s allegation, the Alabama Stimulus Mailer *specifically and clearly identifies the mailer as part of a private automotive economic stimulus program*. The FTC appears to think that the federal government has a monopoly on the words “economic stimulus.”

Notably, the exhibits referenced in FTC’s Complaint which reveal the true nature of the mailers selectively and inaccurately described in paragraphs 9 and 10 of the Complaint were not included with the copy of the Complaint served on Respondents and also are not included with the Complaint posted on the FTC’s website. Moreover, to the extent that similar tactics were employed in the presentation of this matter to the Commission in connection with its vote to institute the

instant administrative proceeding, the procedures and processes under which this action were initiated were arbitrary, capricious and otherwise in violation of the law and the FTC's own Policy Statement on Deception.

The second category of mailer (the "Prize Notification Mailer") outlined details about a contest involving potential prizes. The Prize Notification Mailer was sent to residents in Alabama in May 2020 on behalf of Landers McLarty Nissan promoting an automotive sales event in Madison, Alabama from May 28 to June 3, 2020. *See* Exhibit "C." With respect to the Prize Notification Mailer, the FTC alleges that Respondents mailed deceptive prize notifications to consumers, purporting to lure individuals to an automotive sales event by disseminating advertisements and promotional materials claiming that recipients have won prizes. Complaint at ¶ 12.

The instant administrative action arises as a direct result of the FTC's after the fact collaboration with the Florida Attorney General's office following a state lawsuit¹ relating to the Florida Mailer, a consent decree involving another party,² as well as the FTC's failed attempt to pursue claims regarding the Florida Mailer in federal court. *See Federal Trade Commission v. Traffic Jam Events, LLC et al.*, CV No. 2:20-CV-1740-WBV-DMD (Ed. La. 2020) (the "EDLA Litigation") (denying the FTC's Motion for a Temporary Restraining Order, and voluntarily

¹ *See Office of the Attorney General, et al. v. Traffic Jam Events, LLC et al.*, Case No. 20-CA-3536 (Fla. Cir. Ct., 13th Judicial Cir., Hillsborough Cty. 2020) (the "Florida Litigation"). Respondents incorporate by reference the entire docket in connection with the Florida Litigation, which is publically available, as if physically attached hereto.

² *See* Exhibit "D."

dismissed by the FTC prior to the Court’s ruling on Respondents’ Motion to Dismiss the case in its entirety).³ It is procedurally flawed, retaliatory in nature, and arbitrary and capricious.

While Respondents admittedly engaged in the practice of sending the Florida Mailer to Florida residents, there is no evidence of consumer harm, nor, more importantly, evidence of any deception. The FTC has taken zero steps to ascertain whether a single consumer was deceived, misled or harmed. To the contrary, the FTC seems to have blindly relied upon the mischaracterizations supplied by the Florida AG’s office, and a highly selective interpretation of the Alabama Stimulus Mailer that fails to consider the entire context of the advertisement. At the time the Florida Attorney General filed the state action against Respondents, that office had not received a single complaint from an actual consumer to support the action or to suggest that any consumer was misled by the mailer. Rather, the invocation of the Florida lawsuit was only pursued because a local news outlet ran a story describing the Florida Mailer as containing a “fake” stimulus check.⁴ The news station then contacted the Florida Attorney General office to inquire what the Florida Attorney General intended to do about these “fake” checks, notwithstanding that the checks were clearly non-negotiable, noted as “VOID,” and were clearly part of an advertisement. Only then did the Florida Attorney General’s office begin its investigation, clearly motivated by scoring political points for prosecuting “Coronavirus scams.”

³ Respondents incorporate by reference the entire docket in connection with the EDLA Litigation, which is publically available, as if physically attached hereto.

⁴ At the time Respondents mailed these purportedly “fake” stimulus checks, however, Congress had not yet passed any stimulus relief. Therefore, it was preposterous to believe that any consumer, much less the reasonable consumer, was likely to be misled by the COVID Mailers. Moreover, the relief that ultimately was passed had nothing to do with the automotive industry, and certainly not the vehicles prominently featured in the COVID Mailer (*e.g.*, Mercedes and Nissan).

Rather than contacting Respondents to address any of these allegations, the Florida Attorney General obtained incomplete information from Michael Kasternakes and New Wave Auto Sales,⁵ who had hired Respondents to run the advertisements. On the day of filing the Lawsuit, the Florida Attorney General's office issued a "Press Release" that, among other things, claimed that "Ashley Moody's Consumer Protection Division today filed a legal complaint and motion for temporary injunction against an advertising company, operating in Tampa, for mailing used car promotions disguised as COVID-19 stimulus checks." *See* Exhibit "D." The Press Release further claimed that "[i]n response to consumer complaints related to the COVID-19 mail piece, the Consumer Protection Division opened an investigation against Traffic Jam Events and Jeansonne." This statement was not true, as no investigation was ever opened as a result of any consumer complaint.

Moreover, contrary to the assertions in the Press Release, the Mailer resulted in no deception as the tent sale was a complete dud. The Florida Mailer generated little response, and out of a total of 35,000 mailers, not a single Florida consumer appeared at the tent sale looking for COVID-19 Stimulus Relief. Further, despite months of investigation following the filing of the Florida Litigation, the Florida Attorney General (and the FTC) have been unable to unearth a single consumer who was either misled, deceived or harmed. Additionally, as was apparent from the Florida Mailer, the event in question was a one-time event for a sale that *had already occurred*. Accordingly, the fact that the Florida Attorney General sought a temporary restraining order and injunctive relief and described the actions as ongoing and future threats to Florida consumers was

⁵ Unsurprisingly, Kastrenakes and New Wave provided untruthful declarations to the FTC after entering into an Assurance of Voluntary Compliance with the Florida Attorney General, expressly pledging their cooperation. *See* Exhibit "E" at 7. They falsely stated that they did not assist in the development of the COVID Mailer and repudiated its content once they were made aware of it.

without any basis in fact, and could only have been done to enhance the perceived “threat” of the Respondent’ actions and elevate the lawsuit for purposes of the Press Release and/or to gather news attention.

Knowing that the claims lacked merit (i.e., its claims did not warrant any preliminary injunctive relief⁶ and were not in violation of any Florida law), the Florida Attorney General’s office apparently contacted the FTC in an effort to create a “federal case” against Respondents and bolster its claim. Presumably, because this occurred during the period of time when the parties were discussing a resolution of the complaint, the Florida Attorney General’s office was using this contact to leverage its failed demand that Respondents agree to a financial penalty. As a result of information provided by the Florida Attorney General’s office, the FTC instituted the EDLA Litigation regarding the Florida Mailer.

In doing so, the Commission failed to follow the proper procedural channels. The Commission made a calculated decision to forgo its typical practice of providing notice to Respondents’ of their allegedly deceptive conduct. It filed suit in federal court, despite the fact that the Commission could not show that Respondents were currently violating the law or were about to violate the law, as required by Section 13(b) of the FTC Act. Because the Commission could not show any need for immediate relief, the federal court dismissed its claims and refused any injunctive relief. And, while Respondents’ motion to dismiss was pending in the EDLA Litigation (after it had been fully briefed), the FTC moved to voluntarily dismiss the EDLA Litigation.

Apparently frustrated by this defeat, the Commission purportedly then voted to institute the instant administrative action, consisting of new, additional claims (i.e., claims relating to the

⁶ Indeed, to date, despite its Petition, the Florida Attorney General’s office has not pursued the temporary restraining order or preliminary injunction.

Alabama Stimulus Mailer, TILA and Regulation Z, and the Prize Notification Mailer, none of which were raised in the EDLA Litigation), in an attempt to seek penalties from Respondents. Respondents are not aware of any complaints from consumers regarding the Alabama Stimulus Mailers or the Prize Notification Mailers. Nor have the Respondents received any notices or warnings of allegedly deceptive or misleading acts or practices prior to the initiation of this FTC action.

The Complaint does not specifically allege any other conduct purportedly in violation of the law other than the Florida Mailer, the Alabama Stimulus Mailer, and the Prize Notification Mailer in early to mid-2020. The Complaint merely includes *select* portions of the mailers and conclusory claims that such mailers are in violation of the law. The Complaint is completely devoid of any specific findings by the Commission relating to the purportedly deceptive nature of the mailers, and any facts specific to Traffic Jam Events, LLC or Mr. Jeansonne. The Complaint does not set forth any of the factual bases or support required by the FTC's own Policy Statement on Deception. In short, the Complaint contains nothing more than conclusory statements of the law.

Counts I and II

Contrary to the Complaint, the Florida Mailer, the Alabama Stimulus Mailer, and the Prize Notification Mailer are neither “deceptive” nor “unfair.” *See* 15 U.S.C. § 45. “Deceptive” practices are defined in the Commission’s Policy Statement on Deception as involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. An act or practice is “unfair” if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C. §45(n). Further, the act or practice must be material.

A key part of the FTC’s deceptive practices analysis is what is known as the “reasonable consumer.” In order for a statement or omission to be deceptive, the interpretation of the advertiser’s message must be one that would be made by a reasonable consumer. In determining what a reasonable interpretation of an advertisement is, the Commission assesses the entire advertisement. *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995) (affirming the dismissal because although the mailer in large type stated that plaintiff won the sweepstakes, the small type stated that he would win if only if he returned the winning prize number). This assessment is to be based on common sense and good judgment. *See In re Bristol-Myers Co.*, 1983 FTC LEXIS 64 (1983), *aff’d*, 738 F.2d 554 (2d Cir. 1984), *cert. denied*, 469 U.S. 1189 (1985); *cf. FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 385 (1965) (“pragmatic judgment”). Moreover, a representation is not deceptive merely because it is unreasonably misunderstood by an insignificant number of persons to whom the representation is addressed. *See Heinz W. Kirchner*, 63 F.T.C. 1282, 1290 (1963), *aff’d*, 337 F.2d 751 (9th Cir. 1964).

Similarly, the FTC’s unfair practices analysis entails a three-step test. As codified in 1994, in order for a practice to be deemed unfair, the injury it causes must be (1) substantial, (2) without offsetting benefits, and (3) one that consumers cannot reasonably avoid. *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354 (11th Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989). Each step involves a detailed, fact-specific analysis that must be carefully considered by the Commission.

Here, it is simply not plausible that reasonable consumers would be deceived by the Florida Mailer. The Complaint outlines the allegedly deceptive nature of the Florida Mailer and fixates on a watermark that purportedly resembles the Great Seal of the United States. Yet, no reasonable consumer would believe that Respondents were affiliated with the federal government’s economic stimulus program after viewing the advertisement in its entirety. Indeed, despite the Complaint’s

references to the CARES Act, the Florida Mailer does not reference the government or the CARES Act, the CARES Act had not even been enacted at the time of the advertisement, and the CARES Act as ultimately enacted has nothing to do with the automotive industry. *See* H.R. 748, CARES Act, Public Law 116-136.

Likewise, the Complaint's attempts to characterize the simulated check as deceptive do not pass muster. First, the FTC fails to consider that the alleged "check" contains patently obvious indicators that it is not a real check. The "check" is not drawn on any financial institution (real or fake). The "check" contains no payee and does not contain any routing numbers or other indicia of a real check. Any reasonable consumer knows that real checks contain these items. In line with the Commission's continuous attempts to distort the gravity of Respondents' allegedly deceptive conduct by including only certain portions of the Florida Mailer in the Complaint, the Commission fails to include the check's non-negotiable nature, expressly written on the back of the check:⁷



Void where prohibited, certificate has no cash value, non-negotiable certificate. This is not a check. Only valid if presented upon registration. Amount good toward select pre-owned vehicles. Cannot be used in conjunction with any other offers. Expires April 5th, 2020.

⁷ The FTC likewise excludes the portions of the Florida Mailer that specifically address vehicles (i.e., further support that they are clearly advertisements), and as discussed above, the FTC completely neglects to attach the referenced exhibits (i.e., actual copies of the advertisements that are the subject of the Complaint).

See Exhibit “A.” This disclaimer is consistent with 39 U.S.C. § 3001(j)(C)(3) which requires that a facsimile check contain “a statement on the check itself that such check is not a negotiable instrument and has no cash value.” At bottom, the Florida COVID Mailer is not deceptive. Taken as a whole, this Florida COVID Mailer is very clearly an advertisement for an automotive tent sale, and the reasonable consumer would not be deceived that it is offering government assistance associated with the

Nor does the Florida COVID Mailer constitute an unfair advertisement practice. The Complaint fails to identify any evidence whatsoever of a purportedly substantial harm that cannot be reasonably avoided. Respondents, moreover, have already rectified the alleged past unfair advertising practices, and there is no evidence that Respondents pose a recidivist threat. Because the Complaint’s definitions of “deceptive” and “unfair” marketing practices do not comport with the facts of the case, the FTC has no valid FTC Act action against Respondents with respect to the Florida COVID Mailer.

It is even more absurd to allege that the Alabama Stimulus Mailer violates the FTC Act. Nowhere on envelope or the advertisement is there a reference to the government or to COVID-19. The mailer did not even contain a non-negotiable check. It was essentially a double-sided flyer that depicted various automobiles with specific details concerning the promotional program. Although the Alabama Stimulus Mailer includes language of an “automotive stimulus,” this language is not exclusive to the Federal Government. Indeed, Merriam-Webster’s defines the word “stimulus” as “something that rouses or incites to activity.”⁸ That is precisely the thrust of the advertisement – to incite automotive sales, and it was offering “stimulus” or incentives to do so.

⁸ Available at <https://www.merriam-webster.com/dictionary/stimulus> (last accessed August 26, 2020)

Therefore, it is improper to conclude that the Alabama Stimulus Mailer deceived reasonable consumers in any way.

Finally, it is simply not plausible to contend that Respondents' Prize Notifications Mailer violates the FTC Act. First, a reasonable consumer would not be deceived by Respondents' Prize Notification Mailer. The mailer clearly identifies the terms of the competition, expressly providing that a contestant is only a winner if "[t]he winning number on [the] invitation matches the prize board *at the dealership*," and including the 1/52,000 odds of winning. *See* Exhibit "C" (emphasis added). And, there is large capitalized font at the top of the flyer referencing the Combination Box "AT THE TENT EVENT IN MADISON FOR A LIMITED TIME ONLY." *Id.*

Likewise, the Prize Notification Mailer does not constitute an "unfair" trade practice as the Complaint fails to provide any evidence that would satisfy the three prongs of the unfairness analysis. Therefore, Count II – Deceptive Representations Regarding Prize Winnings – fails as a matter of law.

Count III

In addition to FTC Act violations, the Complaint includes purported violations of the advertising disclosure requirements of 15 U.S.C. § 1664 and the corresponding Regulation Z at 12 C.F.R. § 226.24. According to the Complaint, the Florida COVID Mailer and the Alabama Stimulus Mailer did not clearly and conspicuously reflect the amount or percent of the down payments, the terms of repayment and the annual percentage rates. Contrary to these assertions, both mailers clearly and conspicuously outline the down payment requirements for several different vehicles provided as examples of the types of deals available at the various tent sales. Moreover, the Florida COVID Mailer states that all payments will be deferred for 120 days and that purchasers will have "0% A.P.R. financing for 60 months." Likewise, the Alabama Stimulus Mailer provides that "[f]irst payments will be deferred for 3 full months" and that a variety of

vehicles have “0% A.P.R. financing for 84 months.” As such, Respondents satisfy the minimum TILA and Regulation Z requirements.

ANSWER

1. Respondents admit the allegations in Paragraph 1 of the Complaint.
2. Respondents admit that Mr. Jeansonne is the owner, managing member, and president of Traffic Jam Events, LLC. The remaining allegations in Paragraph 2 of the Complaint are denied. In further response, Respondents aver that Respondents generated the advertisements on behalf of and at the request of and for the benefit of automotive dealerships that are not parties to the instant action.
3. Respondents admit the allegations in Paragraph 3 of the Complaint.
4. The allegations of Paragraph 4 of the Complaint do not require a response. To the extent a response is deemed necessary, Respondents deny the allegations in Paragraph 4 in their entirety. In further response, Respondents aver that the Florida COVID Mailer was mailed within Florida and the corresponding sale occurred in Florida, and the Alabama Stimulus Mailer and the Price Notification Mailer were mailed within Alabama and the respective corresponding sales occurred in Alabama. There was no interstate commerce implicated, and therefore the FTC lacks jurisdiction over these matters.
5. Respondents categorically deny the allegations in Paragraph 5 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement.
6. Respondents deny the allegations in Paragraph 6 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement.

7. The allegations of Paragraph 7 of the Complaint do not require a response; however, to the extent that a response is deemed necessary, Respondents deny the allegations in Paragraph 7 of the Complaint. In further response, Respondents incorporate the foregoing Introductory Statement and expressly deny any suggestion that any of Traffic Jam Events, LLC's advertisements referenced the CARES Act.

8. The allegations of Paragraph 8 of the Complaint do not require a response; however, to the extent that a response is deemed necessary, Respondents deny the allegations in Paragraph 8 of the Complaint. In further response, Respondents incorporate the foregoing Introductory Statement and expressly deny any suggestion that any of Traffic Jam Events, LLC's advertisements referenced the CARES Act.

9. Respondents deny the allegations in Paragraph 9 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement and aver that the Florida COVID Mailer (Exhibit "A" hereto) is the best proof of its contents.

10. Respondents deny the allegations in Paragraph 10 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement and aver that the Alabama Stimulus Mailer (Exhibit "B" hereto) is the best proof of its contents.

11. Respondents deny the allegations in Paragraph 11 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement and expressly note that there is no "Exhibit E" included with the FTC's Complaint. Respondents further aver that there is no allegation that the allegedly proposed advertisements

referenced in Paragraph were disseminated to consumers. As such, there is no cause of action related to the allegations contained in Paragraph 11.

12. Respondents deny the allegations in Paragraph 12 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement and aver that the Prize Notification Mailer (Exhibit “C” hereto) is the best proof of its contents.

13. Respondents admit that the Florida Attorney General has instituted an action against Respondents, and Respondents incorporate the foregoing Introductory Statement which addresses the Florida Litigation. That litigation is pending. Respondents also admit that the states of Indiana and Kansas previously brought actions against Traffic Jam Events, LLC (among others unrelated to Traffic Jam Events, LLC) and that Traffic Jam Events entered into consent agreements. The remainder of the allegations of Paragraph 13 of the Complaint are denied. In further response, Respondents aver that the referenced actions and consent agreements are the best evidence of their terms and contents, and the consent agreements entered into with the states of Indiana and Kansas are attached hereto as Exhibits “F” *in globo*⁹ and “G.” Notably, such consent agreements expressly disclaim any liability on behalf of Traffic Jam Events, LLC and do not constitute an admission of liability. *See* Exhibit “F” at 2010 Consent Judgment ¶ 8 and 2013 Consent Judgment ¶ 17 and Exhibit “G” at ¶ 3.

⁹ Exhibit “F” includes two separate consent judgments – *State of Kansas v. Traffic Jam Events, LLC*, Case No. 10-C-1278 (Ks. Dist. Ct., Shawnee Cty) (“2010 Consent Judgment”) and *State of Kansas v. Traffic Jam Events, LLC*, Case No. 12-CV-8191 (Ks. Dist. Ct., Johnson Cty) (“2013 Consent Judgment”).

14. Respondents categorically deny the allegations in Paragraph 14 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement.

15. Respondents categorically deny the allegations in Paragraph 15 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement and aver that the Florida Mailer and the Alabama Stimulus Mailer are the best evidence of their contents.

16. Respondents deny the allegations in Paragraph 16 of the Complaint, and demand strict proof thereof.

17. Respondents categorically deny the allegations in Paragraph 17 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement and aver that the Prize Notification Mailer is the best evidence of its contents.

18. Respondents deny the allegations in Paragraph 18 of the Complaint, and demand strict proof thereof.

19. Respondents deny the allegations in Paragraph 19 of the Complaint, and demand strict proof thereof.

20. The allegations in Paragraph 20 of the Complaint do not require a response; however, the extent that a response is deemed necessary, Respondents deny the allegations in Paragraph 20 of the Complaint, and demand strict proof thereof.

21. Respondents deny the allegations in Paragraph 21 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory

Statement and aver that the Florida COVID Mailer and the Alabama Stimulus Mailer are the best evidence of their contents.

22. Respondents deny the allegations in Paragraph 21 of the Complaint, and demand strict proof thereof. In further response, Respondents incorporate the foregoing Introductory Statement and aver that the Florida COVID Mailer and the Alabama Stimulus Mailer are the best evidence of their contents.

23. Respondents deny the allegations in Paragraph 23 of the Complaint, and demand strict proof thereof.

24. The remaining Paragraphs of the Complaint including the Notice provisions and Wherefore paragraph do not require a response; however, to the extent a response is deemed necessary, Respondents deny all such allegations and requests for relief.

AFFIRMATIVE DEFENSES

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim for Relief)**

The Commission’s Complaint fails to state a claim upon which relief may be granted. By way of example and not limitation, the Commission fails to allege that Respondents have engaged in practices covered by the Act. The Complaint fails as matter of law because Commission cannot establish that the complained of acts were or are likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment, nor that any complained of act or practice was material. Additionally, the Commission cannot establish that any of the mailers violated TILA or Regulation Z.

**SECOND AFFIRMATIVE DEFENSE
(Jeansonne)**

The Commission has not stated a claim against Mr. Jeansonne in his individual capacity.

THIRD AFFIRMATIVE DEFENSE
(Mootness)

The allegations of the Complaint are moot as Respondents discontinued the purportedly unfair and deceptive practice long before the institution of the current proceeding.

FOURTH AFFIRMATIVE DEFENSE
(Public Interest)

The Complaint fails to comply with Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), because the issuance of the Administrative Complaint and the contemplated relief are not in the public interest.

FIFTH AFFIRMATIVE DEFENSE
(Arbitrary and Capricious)

The FTC's actions in violating its established practice and procedures for the institution of this Complaint amounts to arbitrary and capricious conduct. This includes, but is not limited to collaboration with the Florida Attorney General on selective facts, the failure to give notice or any warning, the failure to give a cease and desist notice, the retaliatory nature of this action following a voluntary dismissal of the federal court action, and a failure to determine whether a single consumer was or could have been deceived. The "evidence" cited in this Complaint was generated solely on the basis of incomplete information provided to the FTC by another government agency and the FTC's attempts to support its action in the Eastern District of Louisiana.

SIXTH AFFIRMATIVE DEFENSE
(Extinguishment)

The defense of extinguishment applies because the Florida Attorney General has already imposed a penalty on, and received payment from the dealer responsible for the complained of Florida COVID Mailer. As such, any purportedly harmed consumer should be compensated.

**SEVENTH AFFIRMATIVE DEFENSE
(Third Party Liability)**

The dealerships for whom the advertisements were created are responsible for any alleged harm to consumers.

**EIGHTH AFFIRMATIVE DEFENSE
(Failure to Make Requisite Findings)**

The Commission failed to make the requisite findings in connection with the institution of the instant administrative action and Complaint. The 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. The allegations are nothing more than statements of the law.

**NINTH AFFIRMATIVE DEFENSE
(Due Process)**

The Administrative Complaint is a violation of Respondents' due process rights. Respondents lack notice as to what constitutes unfair or deceptive trade practices because the statute is impermissibly vague and the FTC acted in violation of its own procedures regarding prior notice.

**TENTH AFFIRMATIVE DEFENSE
(Jurisdiction)**

The Commission lacks jurisdiction to decide the matters that are the subject of this Complaint.

**ELEVENTH AFFIRMATIVE DEFENSE
(No Interstate Commerce)**

The Complaint violates the principles of Federalism. The allegedly deceptive mailers do not violate either the Florida regulations or the Alabama regulations on deceptive trade practices. Fla. Stat. Ann. § 501.201 *et seq.*; Ala. Code § 8-19-1 *et seq.* Because these mailers were sent to

consumers within those states, there is no interstate commerce. Therefore, there is no cause of action on behalf of the FTC.

Respondents expressly reserve the right to amend and/or supplement these affirmative defenses as discovery progresses.

WHEREFORE, Respondents respectfully request that the Commission (i) dismiss the Complaint in its entirety with prejudice, (ii) award Respondents their costs of suit, including attorneys' fees, and (iii) award such other and further relief as the Commission may deem proper.

Dated: August 26, 2020.

Respectfully Submitted,

/s/ L. Etienne Balart

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**Counsel for Respondents, Traffic Jam Events,
LLC and David J. Jeanson II**

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 2020, I caused a true and correct copy of the foregoing Answer and Affirmative Defenses to the Complaint to be filed through the Federal Trade Commission's E-filing platform. I have emailed a courtesy copy of such filing to ElectronicFilings@FTC.gov, and I have served the following parties via email:

Pablo Zylberglait
Staff Attorney
Office of the Secretary
600 Pennsylvania Avenue NW
Washington DC 20580

/s/ L. Etienne Balart

TEAR

PULL TO OPEN

PRSR Marketing
U.S. POSTAGE
PAID
PERMIT 11
STATESBORO, GA

TIME-SENSITIVE FAST-TRACKED MAIL: OPEN IMMEDIATELY

TO

Name (Please Print)

LAURA SMITH

Address

456 APPLE STREET

City

ANYTOWN

State

US

ZIP

54321

**TIME-SENSITIVE CONTENTS:
OPEN IMMEDIATELY.**

Contents must be packed securely to ensure safe, on-time delivery. Package is tracked nationwide. No liquids allowed. DO NOT BEND OR BREAK.

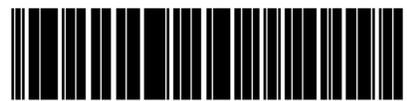
**IMPORTANT COVID-19 ECONOMIC
STIMULUS DOCUMENTS ENCLOSED**



400 06205 0805 0714 1007 0516 55358

URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM
FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 8/27/2020 | OSCAR NO. 599255 | Page 22 of 73 | PUBLIC
RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS

**Eligible Dates:
March 27th thru
April 5th, 2020**



COVID-19 STIMULUS (INDIVIDUAL)
NOTICE NO. FB02-021225-096781

DATE: 03/25/20
NOTICE NO: FB02-021225-096781
ACCOUNT TYPE: COVID-19 STIMULUS (INDIVIDUAL)
DESCRIPTION: URGENT NOTICE - READ IMMEDIATELY

Dear Florida residents,

A special COVID-19 Economic Automotive Stimulus Program with relief funds and other incentives will be held at 5925 SW 20th St., Bushnell, FL 33513, across the street from **Walmart** 🌟, March 27th thru April 5th, 2020. This program has been established to help local residents purchase automobiles with 120 days until first payment during these challenging times with special discounts, credit and finance opportunities to drastically reduce your out-of-pocket costs.

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.

You must claim these stimulus incentives at your designated temporary 10-day site: 5925 SW 20th St., Bushnell, FL 33513, across the street from **Walmart** 🌟. Bring this notice to collect all of these program benefits toward your vehicle purchase.

Please bring this notice to your designated local headquarters:

**5925 SW 20th St.
Bushnell, FL 33513
Across the street from Walmart** 🌟!

MAP OF TEMPORARY 10-DAY RELIEF SITE:

Eligible dates: March 27th thru April 5th, 2020
Monday–Saturday:
9:00am until all attendees have been assisted.
Sunday:
11:00am until all attendees have been assisted.

Look for the set-up tents and speak to an event representative upon your arrival.



URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM
FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 8/27/2020 | OSCAR NO. 599255 | Page 23 of 73 | PUBLIC
RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS

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.

This COVID-19 Economic Automotive Stimulus Program will include hundreds of quality, clean cars, trucks, vans and SUVs from participating dealerships in the area. Bring this notice to the relief temporary 10-day site at 5925 SW 20th St., Bushnell, FL 33513, across the street from **Walmart** and choose any of the available vehicles. Here are a couple examples of the more popular vehicles in-stock - with hundreds more available:

Mercedes-Benz M-Class
\$0 down \$116 per mo.⁽⁴⁾

Nissan Versa
\$0 down \$133 per mo.⁽⁵⁾

- **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.

Stimulus Temporary 10-Day Relief Site:
5925 SW 20th St. • Bushnell, FL 33513
Across the street from Walmart!

MAP OF TEMPORARY 10-DAY RELIEF SITE:



Eligible dates: March 27th thru April 5th, 2020

Monday–Saturday:

9:00am until all attendees have been assisted.

Sunday:

11:00am until all attendees have been assisted.

Look for the set-up tents and speak to an event representative upon your arrival.

DATE: 03/25/20
NOTICE NO: FB02-021225-096781
ACCOUNT TYPE: COVID-19 STIMULUS (INDIVIDUAL)

(1) 0% APR available on select models for up to 60 months financing subject to lender's approval with approved credit. (2) No payments for 120 days subject to lender's approval with approved credit. Interest accrues from date of purchase. (3) Receive one (1) \$100 gift card to Walmart with any vehicle purchase during the event dates. (4) \$0 down, plus tax, title and license/\$116 per month example: 2009 Mercedes-Benz M-Class stk#TRA26442 sale price \$7,399 72 months at 3.9% APR with approved credit. (5) \$0 down, plus tax, title and license/\$133 per month example: 2018 Nissan Versa stk#MAR09694 sale price \$8,489 72 months at 3.9% APR with approved credit. New Wave Auto Sales employees and associates, mail house, associated sponsors or agencies, and their family members and members of same household are ineligible. Addressee must redeem original mail piece in person by close of business on April 5th, 2020. Vehicles are subject to prior sale. Void where prohibited by law. All offers end April 5th, 2020.

STIMULUS RELIEF PROGRAM

5925 SW 20th St. • Bushnell, FL 33513

021225

THE SUM UP TO: THREE THOUSAND THREE HUNDRED FORTY-FOUR DOLLARS AND 68/100*****

\$ 3,344.68*

DOLLARS

MEMO: COVID-19 AUTO STIMULUS



M. Taylor
AUTHORIZED SIGNATURE



::002 :12 :021225:503 1132 98::

STIMULUS RELIEF PROGRAM

021225

Date	Type	Reference	Original Amt.	Balance Due	Payment
03/25/20	Stimulus Fund	BUSHN-021225	3,344.68	0.00	3,344.68

STIMULUS RELIEF PROGRAM

week ending 04/05/2020

3,344.68

FOR RECIPIENT'S RECORDS

021225

ENDORSE HERE

Four horizontal lines for endorsement.

DO NOT WRITE, STAMP OR SIGN BELOW THE LINE
RESERVED FOR FINANCIAL BANK USE

ORIGINAL DOCUMENT



Void where prohibited, certificate has no cash value, non-negotiable certificate. This is not a check. Only valid if presented upon registration. Amount good toward select pre-owned vehicles. Cannot be used in conjunction with any other offers. Expires April 5th, 2020.



URGENT: FCA FIAT CHRYSLER AUTOMOTIVE ECONOMIC STIMULUS PROGRAM
ALL PAYMENTS DEFERRED FOR 3 FULL MONTHS FROM THE DATE OF PURCHASE

NOTICE NO: FB02-021225-096781
 ACCOUNT TYPE: AUTOMOTIVE STIMULUS (INDIVIDUAL)
 DESCRIPTION: URGENT NOTICE - READ IMMEDIATELY

Dear Alabama Residents,

FCA Fiat Chrysler is proud to support our local families via a special Automotive Economic Stimulus Program. **During these challenging times, you can trade in your current vehicle, get supplier/employee pricing PLUS all applicable rebates, and not make a payment for 3 full months (possibly even longer.)**

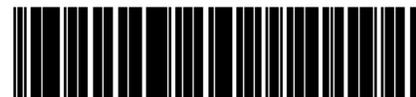
Effective immediately, FCA Fiat Chrysler will provide the following incentives to ALL Alabama residents:

- **0% A.P.R. financing for 84 months.** A variety of new Chrysler, Dodge, Jeep, Ram and Fiat vehicles (cars, trucks, SUVs, etc.) now have 0% A.P.R. financing available. ⁽¹⁾
- **First payments will be deferred for 3 full months!** Do not make your first car payment for 90 days. ⁽²⁾
- **Credit applications will be accepted – regardless of tier.** From top to bottom, all levels of credit may be approved for new Chrysler, Dodge, Jeep, Ram or Fiat vehicle purchases. ⁽³⁾
- **All customers will receive employee pricing.** Your base cost on any new Chrysler, Dodge, Jeep, Ram or Fiat vehicle will be at employee pricing, and you could also receive more rebates to further reduce your vehicle price. ⁽⁴⁾

You must claim these stimulus incentives at your designated local dealership: Dothan Chrysler Dodge Jeep Ram Fiat in Dothan, AL. Call (334) 794-0606 to reserve an appointment and collect all of these program benefits toward your new Chrysler, Dodge, Jeep, Ram or Fiat vehicle purchase. FCA Fiat Chrysler stands with our community, no matter the cost.

Please bring this notice to your designated local dealership:

Dothan Chrysler Dodge Jeep Ram Fiat
4074 Ross Clark Circle NW
Dothan, AL 36303
(334) 794-0606



AUTOMOTIVE STIMULUS (INDIVIDUAL)
NOTICE NO. FB02-021225-096781

Additional offers and incentives are listed on the other side of this notice. Please call (334) 794-0606 with any questions or to reserve your appointment.



URGENT: FCA FIAT CHRYSLER AUTOMOTIVE ECONOMIC STIMULUS PROGRAM
ALL PAYMENTS DEFERRED FOR 90 DAYS FROM THE DATE OF PURCHASE



New 2020 Fiat 500 Pop
Starting at \$209 per mo. ⁽⁵⁾



New 2020 Jeep Renegade
Starting at \$232 per mo. ⁽⁶⁾



New 2020 Dodge Grand Caravan
Starting at \$260 per mo. ⁽⁷⁾



New 2020 Chrysler 300
Starting at \$272 per mo. ⁽⁸⁾



New 2020 Dodge Challenger
Starting at \$277 per mo. ⁽⁹⁾



New 2020 Ram 1500 Big Horn
Starting at \$375 per mo. ⁽¹⁰⁾

Bring this notice to your designated local dealership: Dothan Chrysler Dodge Jeep Ram Fiat
4074 Ross Clark Circle NW • Dothan, AL 36303 • (334) 794-0606

(1) 0% APR financing available for 84 months on select new Chrysler, Dodge, Jeep, Ram and Fiat models with approved credit thru Chrysler Capital-subject to lender's approval. (2) No payments for 90 days subject to lender's approval-with approved credit. (3) See dealer for complete terms and conditions regarding credit acceptance program. (4) See dealer for specific terms regarding employee pricing incentives. (5) \$209 per month plus tax, title and license example: New 2019 Fiat 500 Pop sale price \$20,525 \$4,105 down 84 months at 1.9% APR with approved credit. (6) \$232 per month plus tax, title and license example: New 2020 Jeep Renegade sale price \$22,715 \$4,543 down 84 months at 1.9% APR with approved credit. (7) \$260 per month plus tax, title and license example: New 2020 Dodge Grand Caravan sale price \$25,475 \$5,095 down 84 months at 1.9% APR with approved credit. (8) \$272 per month plus tax, title and license example: New 2020 Chrysler 300 sale price \$26,715 \$5,343 down 84 months at 1.9% APR with approved credit. (9) \$277 per month plus tax, title and license example: New 2020 Dodge Challenger sale price \$27,130 \$5,426 down 84 months at 1.9% APR with approved credit. (10) \$375 per month plus tax, title and license example: New 2020 Ram 1500 Big Horn sale price \$36,765 \$7,353 down 84 months at 1.9% APR with approved credit. Valid only at Dothan Chrysler Dodge Jeep Ram Fiat. Dothan Chrysler Dodge Jeep Ram Fiat employees and associates, mail house, associated sponsors or agencies, and their family members and members of same household are ineligible. Addressee must redeem original mail piece in person by close of business on April 18th, 2020. All photos are for illustration purposes only. Vehicles are subject to prior sale. Void where prohibited by law. All offers end April 18th, 2020.



\$15,000 INSTANT CASH GIVEAWAYS



PRSR STD
U S POSTAGE
PAID
TRAFFIC JAM

FEATURING Combination Box™

AT THE TENT EVENT IN MADISON FOR A LIMITED TIME ONLY!

OFFICIAL WINNING CODE

**MATCH
HERE**

74937



YOU ARE A CERTIFIED FINALIST IN THIS GIVEAWAY EVENT!
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!*



33698

74937

90155

04620

60258



**\$15,000
INSTANT CASH**



**\$2,500
INSTANT CASH**



**\$800
AMAZON
GIFT CARD**



**ALL-NEW
WIRELESS EARPODS PRO
W/CHARGING CASE**



**\$250
WALMART
GIFT CARD**

INSIDE YOUR SECURED Combination Box™ ARE YOUR 5 DIGITS THAT COULD
BE THE WINNING COMBINATION TO THE \$15,000 INSTANT CASH! IF YOUR NUMBERS DO NOT
MATCH, YOU ARE STILL ELIGIBLE FOR THE INCREDIBLE OFFERS DURING THIS EVENT!

**PULL
THE TAB**



PULL TAB
TO
ACTIVATE

IF YOUR Combination Box™ MATCHES THE OFFICIAL WINNING CODE AND ONE OF THE CODES ABOVE, CALL OR LOG ON
AND SCHEDULE YOUR APPOINTMENT AT THIS TENT EVENT IN MADISON TO FIND OUT WHAT PRIZE YOU HAVE WON! PLEASE REDEEM
DURING EVENT HOURS. NO PURCHASE NECESSARY. ANY TAMPERING WITH NUMBERS WILL MAKE THIS DOCUMENT NULL AND VOID.

DIGITAL COMBINATION BOX
IS ONLY GOOD FOR
A LIMITED TIME ONCE
ACTIVATED

5483 W. Waters Ave. #1204
Tampa, FL 33634

ALL OTHER CODES - SORRY, YOU ARE NOT A WINNER.

1.) <FIRSTNAME>, YOUR COMBINATIONS ABOVE MUST MATCH TO WIN!

2.) **CALL 888-488-8843 NOW!**

OR LOG ON TO MyPrizeStatus.com

3.) YOUR PIN IS: <CONFCODE>

4.) BRING THIS INVITATION TO THE TENT EVENT IN MADISON TO CLAIM YOUR PRIZE

MAY 28TH THRU JUNE 3RD ONLY!

<FIRSTNAME LASTNAME> ZIP <ZIP> WINNING NUMBER <PRIZEBOARD NUMBER>

IMMEDIATE VEHICLE DISCOUNT DISPATCH PROGRAM

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY FILED 8/7/2020 | DSR# AF NO 500155 Page 29 of 73 PUBLIC

LIMIT TWO (2) VEHICLES PER HOUSEHOLD - WHILE SUPPLIES LAST!

**CONGRATULATIONS TO JAKEB MCGINNIS,
THE LATEST GRAND PRIZE WINNER!**



PAYMENTS FOR JUST ON SALE!

\$0 DOWN \$151/MO.⁽¹⁾

TO DRIVE AWAY IN THIS NISSAN SENTRA RIGHT NOW!



MORE PAYMENTS FOR ONLY ON SALE!

\$0 DOWN \$187/MO.⁽²⁾

GOING ON NOW, TO TAKE HOME THIS KIA SOUL!



EXCLUSIVE SAVINGS! ON SALE!

\$0 DOWN \$190/MO.⁽³⁾

TO BRING HOME THIS NISSAN VERSA AT THIS EVENT!



MANDATORY QUALIFICATIONS TO USE AUTOMOTIVE RELIEF VOUCHER BELOW:
1) MUST BE PERMANENT U.S. RESIDENT. 2) MUST HAVE VALID DRIVER'S LICENSE. 3) ANNUAL INCOME CANNOT EXCEED \$91,300.00.

IF YOUR NUMBERS MATCH, YOU ARE GUARANTEED AT LEAST ONE (1) OF THESE CERTIFIED PRIZES:

1.  **\$15,000 INSTANT CASH**
2.  **\$2,500 INSTANT CASH**
3.  **\$800 AMAZON GIFT CARD**
4.  **ALL-NEW WIRELESS EARPODS PRO W/CHARGING CASE**
5.  **\$250 WALMART GIFT CARD**



EXCLUSIVE TENT EVENT HEADQUARTERS IN MADISON, AL!
8760 MADISON BLVD. • MADISON, AL 35758
EVENT HOURS: MONDAY-SATURDAY: 9AM-8PM
SUNDAY: CLOSED TO RESTOCK

SPECIALIZED FINANCING OPPORTUNITIES ALSO AVAILABLE:

0% APR INSTANTLY!⁽⁴⁾ **NO PAYMENTS UP TO 6 MONTHS FOR A LIMITED TIME ONLY!⁽⁵⁾**

 **15% OVER KBB VALUE FOR ALL TRADE-INS!⁽⁶⁾**

(1) \$0 down, plus tax, title and license/\$151 per month example: 2016 Nissan Sentra stk#GY242202 sale price \$9,995 72 months at 2.9% APR with approved credit. (2) 0 down, plus tax, title and license/\$187 per month example: 2018 Kia Soul stk#P7594191 sale price \$11,995 72 months at 2.9% APR with approved credit. (3) 0 down, plus tax, title and license/\$190 per month example: 2018 Nissan Versa stk#12434 sale price \$12,495 72 months at 2.9% APR with approved credit. (4) No payments for up to 6 months subject to lender's approval with approved credit. Interest accrues from date of purchase. (5) 0% APR available on select new Nissan models for up to 84 months financing thru NMAC with approved credit-subject to lender's approval. (6) Must be presented upon registration. Valid on select pre-owned vehicles model year 2014 or newer and priced \$15,000 or higher. Cannot combine any offers. *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. All taxes are the responsibility of the prize winner(s). Contest begins May 26th, 2020 and ends June 6th, 2020. No purchase necessary. Purchase does not increase chance of winning. Contest open to legal US residents age 18 or older with a valid driver's license who received an original mail piece via US mail. Excludes Florida residents. Participants agree to all contest rules. See dealer for complete contest rules. Landers McLarty Nissan employees and associates, mail house, associated sponsors or agencies, and their family members and members of same household are ineligible. Addressee must redeem original mail piece in person by close of business June 6th, 2020. Any unclaimed prizes will not be awarded. All photos are for illustration purposes only. Vehicles are subject to prior sale. Void where prohibited by law. All offers end June 6th, 2020.

VALID ONLY AT: MADISON TENT EVENT
8760 MADISON BLVD. • MADISON, AL 35758

101

ISSUED To: _____
(PLEASE FILL IN COMPLETELY) NAME: _____
ADDRESS: _____
CITY, ST ZIP: _____

UP THE AMOUNT OF \$ **3,107.92**

UP TO THE AMOUNT OF: THREE THOUSAND ONE HUNDRED SEVEN AND ***92/100***


AUTHORIZED SIGNATURE

Void where prohibited, certificate has no cash value, non-negotiable certificate. This is not a check. Only valid if presented upon registration. Amount good toward select new vehicles. Cannot be used in conjunction with any other offers. Expires June 6th, 2020.

- VOID IF DUPLICATED • NOT A CHECK -

Batteries are included in attached Combination Box™ device and must be disposed of properly per state regulations

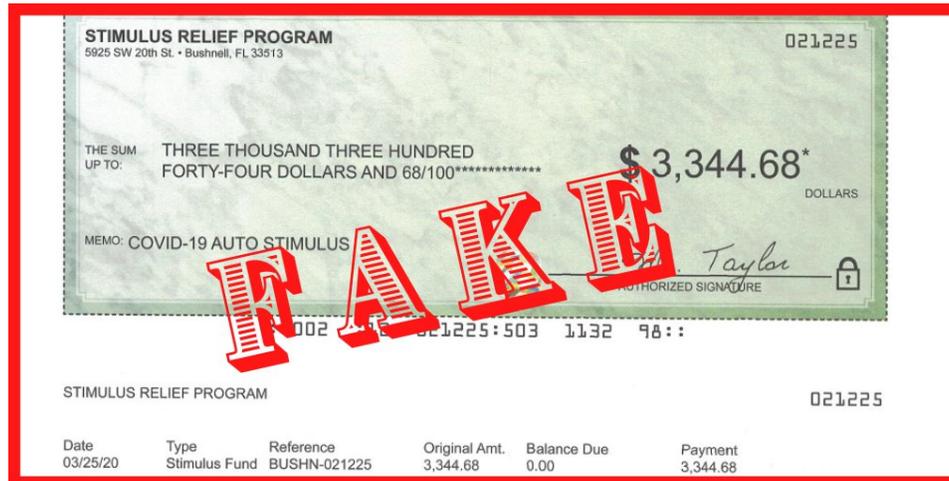
Attorney General Ashley Moody News Release

April 23, 2020

Contact: Kylie Mason

Phone: (850) 245-0150

Attorney General Moody Takes Legal Action against Marketing Company for Fake COVID-19 Stimulus Checks in Car Promotions



TALLAHASSEE, Fla.—Attorney General Ashley Moody’s Consumer Protection Division today filed a legal complaint and motion for temporary injunction against an advertising company, operating in Tampa, for mailing used car promotions disguised as COVID-19 stimulus checks. Traffic Jam Events, LLC and its owner David J. Jeansonne, II allegedly sent the deceptive mailers to more than 35,000 Florida consumers to attract them to an automotive tent sale taking place between March 27 through April 5 in Bushnell, Fla. The mailer also included a simulated check of more than \$3,000 appearing to represent funds available from a government stimulus program.

In response to consumer complaints related to the COVID-19 mail piece, the Consumer Protection Division opened an investigation against Traffic Jam Events and Jeansonne, as well as the auto dealer that supplied the automobiles for the tent sale, MK Automotive, Inc. d/b/a New Wave, and its owner, Michael Kastrenakes. The owner of the dealership is cooperating with the investigation and has entered an assurance of voluntary compliance with the Attorney General’s Office.

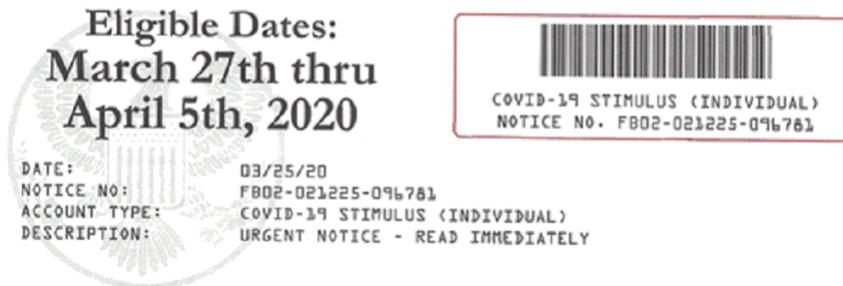
Attorney General Ashley Moody said, “This type of deceptive marketing is completely unacceptable and is even more outrageous during these challenging times. These marketing ploys prey on people’s desperate anticipation of stimulus assistance and falsely suggest that there is government stimulus funding for auto purchases. These misleading practices will not be tolerated, and if anyone tries to take advantage of this crisis and the legitimate financial assistance available for those in need, my office will hold you accountable.”

The Attorney General’s complaint alleges Traffic Jam Events organizes auto tent sale events at various locations throughout Florida and solicits consumers to attend these tent sales through direct mailers sent to Florida consumers. The fake COVID-19 stimulus mailers were sent to consumers in an oversized envelope stating that the contents were urgent and important COVID-19 economic stimulus document were enclosed. The envelope contained a document claiming to be a notice and an image of a check purporting to come from the Stimulus Relief

The notice referenced that relief funds and other incentives were available at the tent sale, and that consumers must claim the incentives during the temporary 10-day sale. The mailer also stated that the Automotive Stimulus Program would include hundreds of good quality, clean cars, trucks, vans and SUVs from participating dealerships in the area.

Part of the notice is copied below:

**URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM
RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS**



Along with the legal complaint, the Attorney General's Office filed a motion for temporary injunction to enjoin the defendants from making false and deceptive representations regarding the COVID-19 stimulus program. The Attorney General's Office is also seeking equitable relief, civil penalties and fees for violating Florida's Deceptive and Unfair Trade Practices Act.

MK Automotive and its owner are cooperating with the investigation and have entered an assurance of voluntary compliance, agreeing to cease using Traffic Jam Events in conjunction with the sale of its automobiles, and to pay \$10,000 toward consumer restitution and a \$1,000 civil penalty.

To view the complaint, click [here](#).

To view the motion for temporary injunction, click [here](#).

To view the AVC with MK Automotive and Michael Kastrenakes, click [here](#).

Attorney General Moody also recently released a Consumer Alert warning Floridians about potential scams targeting stimulus payments. To view the alert, click [here](#).

To view previous Consumer Alerts about emerging COVID-19 related scams, click [here](#).

Anyone who encounters a coronavirus stimulus package scam or any other types of COVID-19 fraud, should contact the Florida Attorney General's Office at 1(866) 9NO-SCAM or MyFloridaLegal.com.



**OFFICE OF THE ATTORNEY GENERAL
STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS**

IN THE INVESTIGATION OF:

AG Case No.: L20-3-1381

**MK AUTOMOTIVE, INC.,
d/b/a NEW WAVE AUTO SALES, AND
MICHAEL KASTRENAKES,
Respondents.**

ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to the provisions of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Florida Statutes (2019), Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General”) has investigated certain business acts and practices of MK Automotive, Inc. d/b/a New Wave Auto Sales (“New Wave”) and Michael Kastrenakes (“Kastrenakes”) (collectively, “Respondents”). Except for the false representation related to the Attorney General’s review of Respondents’ marketing materials, these

practices occurred between approximately March 2020 and the present (“Relevant Period”).

Respondents enter into this Assurance of Voluntary Compliance (“AVC”) with the Attorney General without an admission of wrongdoing and for the purpose of resolving this matter only.

Pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the Attorney General by said statute, the Attorney General, by and through the undersigned Assistant Attorney General and the undersigned Director, Consumer Protection Division, being in agreement, does in this matter accept this AVC in termination of the investigation into Respondents’ business practices, without litigation and further proceedings, related to direct mail solicitations purporting to offer consumers a COVID-19 stimulus check and misstatements related to the Attorney General’s review of Respondents’ direct mail solicitations.

1. STIPULATED FACTS

1.1 MK Automotive, Inc. is an active Florida corporation with its principal place of business located at 8000 Park Boulevard North, Pinellas Park, Florida 33781.

1.2 MK Automotive, Inc. does business as New Wave Auto Sales, a fictitious name actively registered by MK Automotive, Inc. with the Florida Department of State, Division of Corporations.

1.3 New Wave offers pre-owned vehicles to consumers for purchase.

1.4 Kastrenakes is an individual residing in Pinellas County, Florida.

1.5 Kastrenakes directly participated in, managed, operated, controlled, and had the ability to control the operations of New Wave, including, but not limited to, making marketing, operational and financial decisions for New Wave.

1.6 During the Relevant Period, Respondents profited from the marketing and sale of pre-owned vehicles through off-site tent sale events (“Tent Sales”).

1.7 The Attorney General opened an investigation following receipt of multiple consumer complaints concerning Respondents’ business practices at Tent Sales.

1.8 The Attorney General received and reviewed the aforementioned consumer complaints and determined that, during the Relevant Period, Respondents engaged in potentially unfair and deceptive business practices in advertising a Tent Sale with misrepresentations in a direct mail advertisement (i) purporting to have COVID-19 relief funds available to consumers; (ii) advertising that consumers can claim stimulus funds at a designated stimulus temporary relief site; (iii) giving the impression that Respondents are affiliated with a COVID-19 automotive stimulus program; (iv) claiming that Respondents have relief funds available for the purchase of a car; and (v) enclosing purported COVID-19 “stimulus checks” in a direct mail marketing piece sent to tens of thousands of Florida consumers. Respondents

AG Case # L20-3-1381

engaged in these acts in the course of soliciting consumers to purchase pre-owned vehicles at a Tent Sale in Bushnell, Florida.

1.9 During its investigation, the Attorney General also reviewed complaints received by the Better Business Bureau (the “BBB”) against Respondents. In response to a complaint submitted to the BBB, Respondents falsely stated that the “attorney general” reviewed its direct mail solicitations, which implies – inaccurately – that the Attorney General approves of such solicitations.

1.10 According to Respondents, they did not create, develop, review or approve the content of the direct mail solicitation purporting to be a “COVID-19 stimulus” that was sent to Florida consumers. Further, Respondents represent that they did not identify the consumers to whom the solicitation was sent, nor pay for the printing or mailing for the direct mail solicitation in question. Instead, Respondents state that an independent company, Traffic Jam Events, LLC (“Traffic Jam Events”) was solely responsible for the creation and distribution of the direct mail solicitation purporting to be related to “COVID-19 stimulus” package (the “COVID-19 Stimulus Mailer”). Respondents further represent that as soon as they were made aware of the content of the COVID-19 Stimulus Mailer, they immediately repudiated the content and stated that they refused to use the solicitation in further marketing efforts.

1.11 Respondents further represent they relied on Traffic Jam Events in formulating a response to the BBB complaint identified in paragraph 1.9 above. According to Respondents, Traffic Jam Events represented to New Wave that the Attorney General reviewed all direct mail solicitations prepared in connection with New Wave's Tent Sales.

1.12 This AVC is based upon the stipulated facts detailed herein. The Attorney General shall not be estopped from taking further action in this matter should the facts described herein be shown to be incorrect in any material way or this AVC not be complied with in full.

2. JURISDICTION AND VENUE

2.1 The parties agree that the Attorney General has jurisdiction over Respondents for the purposes of entering into this AVC and any enforcement actions arising out of this AVC.

2.2 It is further agreed by the parties that this AVC shall be governed by the laws of the State of Florida, and the venue for any matters relating to or arising out of this AVC shall lie solely in Hillsborough County, Florida.

3. COMPLIANCE TERMS

3.1 Respondents agree that Respondents and their officers, directors, shareholders, employees, independent contractors, representatives, agents, successors, assigns, and any persons acting under the actual direction or control of

any of the foregoing and those persons and entities in active concert or participation with them, or any other person or entity who, directly or indirectly, acts under or who will act under, by, through, or on behalf of the Respondents, shall permanently cease from directly or indirectly engaging in the following practices:

- a.) Representing and/or implying that Respondents are offering COVID-19 stimulus funds, including, but not limited to, funds available under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act;
- b.) Representing and/or implying that Respondents are affiliated with, supported by, endorsed by, certified by, licensed by, in partnership with, or an agent of any government agency for the purpose of offering COVID-19 stimulus relief funds, or any other stimulus or other government relief funds related to COVID-19;
- c.) Sending or otherwise providing fake, counterfeit, or misleading checks to consumers that purport to relate to the CARES Act, COVID-19 stimulus relief funds, or any other stimulus or other government relief funds related to COVID-19;
- d.) Representing and/or implying that any government COVID-19 stimulus relief can only be used towards the purchase of vehicles or other products or services sold by the Respondents, or that any portion

of government COVID-19 stimulus relief funds is being provided to consumers to purchase a vehicle; and

- e.) Representing and/or implying that the Attorney General reviews or approves of past, present or future solicitations to consumers, including but not limited to direct mail solicitations.

3.2 Respondents agree that they shall review for compliance with this AVC all marketing materials to be used by Respondents, including but not limited to those created, drafted, recommended, or produced by any third party.

3.3 Respondents agree that they will cease doing business with Traffic Jam Events.

3.4 Respondents further agree to cooperate with the Attorney General regarding any investigation or litigation as against Traffic Jam Events, or principals of Traffic Jam Events, in connection with the conduct set forth herein. Respondents agree to allow representatives of the Attorney General to interview any employer, consultant, independent contractor, representative, agent, or employee of the Respondents who has agreed to such an interview, relating in any way to any conduct subject to this AVC. The person interviewed may have counsel present.

3 MONETARY RELIEF

4.1 Payments to consumers. Respondents agree to pay Ten Thousand Dollars and 00/100 cents (\$10,000.00) (the "Payment") to the Attorney General in

AG Case # L20-3-1381

two installments for the purpose of making payments to eligible consumers who purchased a vehicle as a result of receiving the COVID-19 Stimulus Mailer, including consumers who have not filed complaints with the Attorney General and those who have not yet provided proof of loss with their complaint filed with the Attorney General, and also for future enforcement efforts as further described in Section 4.3. New Wave shall pay the first installment of five thousand dollars and 00/100 cents (\$5,000.00) no later than close of business on April 27, 2020. New Wave shall pay the second installment of five thousand dollars and 00/100 cents (\$5,000.00) no later than close of business on May 22, 2020.

4.2 The Payment identified above shall be made by wire transfer, cashier's check, or other certified funds payable to the Department of Legal Affairs and shall be sent to the attention of Jennifer Hayes Pinder, Senior Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, 3507 East Frontage Road, Suite 325, Tampa, Florida 33607.

4.3 Consumers' eligibility to receive payments, and determination of the amount of any consumer payment, lies solely within the discretion and judgment of the Attorney General on proof of payment and receipt of the COVID-19 Stimulus Mailer, or other supporting documentation, received from such consumers and terminates forty-five (45) calendar days from the Effective Date of this AVC (the "Eligibility Period"). Respondents shall take all reasonable steps to ascertain the

identity of eligible consumers and immediately provide all necessary documents within their possession requested by the Attorney General for this purpose. In the event the eligible claims exceed the \$10,000.00 available for consumer relief, payments will be distributed *pro rata* to the consumers who filed complaints and/or provided the required supporting documentation prior to the expiration of the Eligibility Period. Upon the conclusion of the Eligibility Period, and in the sole judgment of the Attorney General, if the Attorney General is unable to locate consumers for payments or determines that a payment is not practical, any remaining monies will revert to the Department of Legal Affairs and shall be used to defray the cost of attorney's fees and investigative costs, payment distribution, administration, and enforcement.

4.4 Civil Penalties. In light of Respondents' full cooperation and agreement to make the Payment for consumer relief, as well as Respondents' cooperation with the ongoing investigation and/or litigation against Traffic Jam Events, Respondents shall pay the Attorney General a civil penalty in the amount of One Thousand Dollars and 00/100 Cents (\$1,000.00) pursuant to Section 501.2075, Florida Statutes. The Payment shall be made by a wire transfer, cashier's check or other certified funds, payable to the Department of Legal Affairs and shall be sent to the attention of Senior Assistant Attorney General Jennifer

Pinder, Office of the Attorney General, 3507 E. Frontage Road, Suite 325, Tampa, FL 33607, no later than close of business on May 22, 2020. The Payment will be transferred to the General Revenue Fund, pursuant 501.2101 (2), Florida Statutes.

5 FAILURE TO COMPLY WITH TERMS AND CONDITIONS OF AVC

5.1 In the event Respondents fail to comply with any of the terms and conditions of this AVC, Respondent shall be in default of this AVC and hereby stipulate to entry of a final judgment against them, in favor of the Attorney General. Evidence of failure to comply with the terms and conditions of this AVC may be in the form of an affidavit from the Attorney General.

5.2 Respondents acknowledge and agree that any failure to comply with the terms and conditions of this AVC is, by statute, *prima facie* evidence of a violation of FDUTPA, and will subject Respondents to any and all civil penalties and sanctions provided by law, including the award of attorney's fees and costs.

5.3 Respondents agree that failure to make the payment as required under the Section 4.1 and/or Section 4.4 of this AVC within ten (10) days of the due date shall constitute a default of this AVC.

5.4 Time is of the essence in the performance of all terms and conditions of this AVC.

6 ACCEPTANCE OF THE AVC

6.1 The Attorney General may refuse to accept this AVC at its discretion, and this AVC shall only become effective upon the execution of this AVC by the

Deputy Attorney General or a designee.

6.2 The effective date (“Effective Date”) of this AVC is the date on which the AVC is fully executed by the parties.

7. BUSINESS RECORDS

Respondents agree to retain documents and information reasonably sufficient to establish their compliance with the provisions of this AVC for two (2) years from the Effective Date of this AVC. Respondents shall provide the Attorney General reasonable access to such documents and information upon written request from the Attorney General, and Respondents shall produce documents and information requested by the Attorney General within fifteen (15) calendar days of the written request.

8. CONSTRUCTION OF AVC

8.1 If any clause, provision, or section of this AVC shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this AVC, and this AVC shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

8.2 This AVC is the result of joint negotiations between the parties and shall be deemed to have been drafted by both the Attorney General and Respondents. In the event of a dispute, this AVC shall not be construed against either party.

Nothing herein shall be construed to limit or bar any other governmental entity from pursuing other available remedies against Respondents for acts and practices addressed by this AVC.

8.3 This AVC is the final, complete, and exclusive statement of the parties' agreement on the matters contained in this AVC, and it supersedes all previous negotiations and agreements. The parties have made no representations or warranties to each other than those representations expressly stated in this AVC. Moreover, neither party's decision to enter into this AVC is based upon any statements by the other party which are not contained in the instant AVC.

9. APPLICABILITY

9.1 Within thirty (30) calendar days of the Effective Date, Respondents shall make the terms and conditions of this AVC known to any managers, members, officers, directors, employees, agents, independent contractors, or other persons who are substantially affected by this AVC and are involved in the businesses, projects, and/or activities of Respondents, or anyone else acting for or on behalf of Respondents.

9.2 The obligations imposed by this AVC are continuing in nature and shall apply to New Wave's successors and assigns as well as any and all current or new officers, employees, agents, representatives or any other persons who become engaged in the business or activities of Respondents.

10. CHANGES IN LAW OR BUSINESS PRACTICES

Respondents shall not alter either their business practices or the organizational identity of any existing business entities or create any new business entities as a method of avoiding the obligations and terms and conditions set forth in this AVC.

11. MISCELLANEOUS

11.1. The Attorney General has not approved of any of Respondents' business practices, and Respondents shall not use the existence of this AVC to in any way imply such approval.

11.2. Nothing in this AVC is to be construed as a waiver of any private rights of any person or release of any private rights, causes of action, or remedies of any person against Respondents or any other person or entity.

11.3. Respondents expressly acknowledge that they had the opportunity to obtain the advice and counsel of an independent attorney of their choosing to assist in the negotiation and preparation of this AVC. Respondents have read this AVC, are aware of its terms and conditions, have voluntarily executed it, and acknowledge that to the extent they have waived any rights or defenses by entry into this AVC, such waiver was made voluntarily and with full knowledge of the ramifications of such waiver.

11.4. Respondents acknowledge that no promises of any kind or nature whatsoever, other than the written terms of this AVC, were made to induce

Respondents into entering into this AVC.

11.5. Respondents further waive and release any and all claims they may have against the Attorney General, its employees, representatives, or agents with respect to this investigation and AVC.

11.6. It is further agreed that facsimile copies of signatures and notary seals may be accepted as original for the purposes of establishing the existence of this agreement, and this AVC may be executed in counterparts the compilation of which shall constitute the full and final agreement.

11.7. Notice to any of the parties to this AVC as may be required shall be made by certified mail at the addresses set forth below unless any party notifies the other parties in writing of another address to which notices should be provided.

To Respondents:

Michael Kastrenakes
President
MK Automotives, Inc.
8000 Park Blvd. N.
Pinellas Park, FL 33781

To the Attorney General:

Jennifer H. Pinder
Senior Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
3507 East Frontage Road, #325
Tampa, Florida 33607

AG Case # L20-3-1381

IN WITNESS WHEREOF, Respondents have caused this AVC to be executed in the county and state listed below, as of the date affixed thereon.

MK AUTOMOTIVE, INC. D/B/A NEW WAVE AUTO SALES

BY MY SIGNATURE, I, Michael Kastrenakes, hereby affirm that I am acting in my capacity and within my authority as President of MK Automotive, Inc. d/b/a New Wave Auto Sales and that by my signature, I am binding MK Automotive, Inc. d/b/a New Wave Auto Sales to the terms and conditions of this AVC.

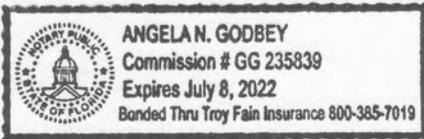
MK Automotive, Inc. d/b/a
New Wave Auto Sales

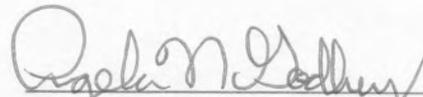

By: Michael Kastrenakes, President

**STATE OF FLORIDA
COUNTY OF PINELLAS**

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, Michael Kastrenakes personally appeared, individually. He acknowledged before me that he executed the foregoing instrument for the purposes therein stated on the 21st day of April, 2020.

Subscribed to before me, by ___ physical presence or X online notarization, this 21st day of April, 2020.




Notary Public – State of Florida

Personally known _____ or Produced identification X (check one).

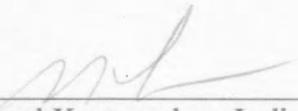
Type of identification produced: FL Driver License

AG Case # L20-3-1381

MICHAEL KASTRENAKES, INDIVIDUALLY

Agreed to and signed this 21st day of April 2020, by the below-stated person who states and affirms as follows:

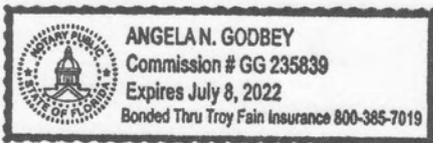
BY MY SIGNATURE, I affirm that my signature below binds me personally and individually to the terms and conditions of this AVC.

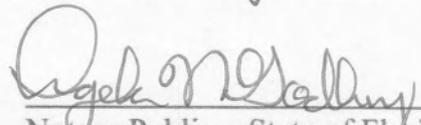

Michael Kastrenakes, Individually

**STATE OF FLORIDA
COUNTY OF PINELLAS**

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, Michael Kastrenakes personally appeared, individually. He acknowledged before me that he executed the foregoing instrument for the purposes therein stated on the 21st day of April, 2020.

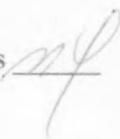
Sworn to and subscribed before me this 21st day of April, 2020.




Notary Public – State of Florida

Personally known _____ or Produced identification (check one).

Type of identification produced: FL Driver License

Initials 

**THE OFFICE OF THE ATTORNEY GENERAL
STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS**

Jennifer H. Pinder 4/22/2020

Jennifer H. Pinder
Senior Assistant Attorney General
Office of Attorney General
State of Florida
Department of Legal Affairs
3507 E. Frontage Rd., Suite 325
Tampa, FL 33607
Tel: 813-287-7950
Fax: 813-281-5515

Jennifer H. Pinder as designee for Victoria Butler

Victoria Butler
Director, Consumer Protection Division
Office of Attorney General
State of Florida
Department of Legal Affairs
3507 E. Frontage Rd., Suite 325
Tampa, FL 33607
Tel: 813-287-7950
Fax: 813-281-5515

Accepted this 22nd day of April, 2020

✓

EMILIE BURDETTE, #22094
Assistant Attorney General
Office of the Attorney General
Consumer Protection & Antitrust Division
120 SW 10th Ave., 4th Floor
Topeka, Kansas 66612-1597

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS. ✓
2010 SEP 15 P 2: 21

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 12**

STATE OF KANSAS, *ex rel.*)
STEVE SIX, ATTORNEY GENERAL,)
)
Plaintiff,)
)
)
)
)
v.)
)
TRAFFIC JAM EVENTS, LLC, a)
Louisiana Limited Liability Company,)
)
Defendant.)
)
)

Case No. 10-C-1278

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 14th day of September, 2010, the above-captioned matter comes before this Court for approval of a stipulated Journal Entry of Consent Judgment pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through counsel, Emilie Burdette, Assistant Attorney General. Defendant, Traffic Jam Events, LLC, appears by and through counsel, Terry A. Isles, of the Law Office of Terry A. Isles. There are no other appearances and none are required.

THEREUPON the Court, being fully advised in the premises and taking notice of the parties' stipulations, approves this agreement and adopts as its own the following findings and conclusions:

I. PARTIES TO THIS AGREEMENT

1. Plaintiff, State of Kansas, ex rel. Steve Six is the duly appointed and acting Attorney General of the State of Kansas.
2. The Attorney General’s authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-632(b).
3. Defendant, Traffic Jam Events (“TJE”), is a limited liability marketing company organized and domiciled under the laws of the State of Louisiana, with a principal place of business located at 110 Veteran’s Blvd., Suite 180A, Metairie, Louisiana.

II. JURISDICTION AND VENUE

4. Defendant TJE admits that, at all times relevant to the allegations set forth herein and, in the ordinary course of business, it acted as a “supplier,” either individually through employees, representatives, or agents, or acting as an agent for a Kansas supplier, as defined by K.S.A. 50-624(l), by soliciting or advertising the sale of automobiles to consumers in Johnson County, Kansas.
5. TJE admits that, at all times relevant to the allegations set forth herein and, in the ordinary course of business, it engaged in consumer transactions or solicitations as defined by K.S.A. 50-624(c), either individually through employees, representatives, or agents, or acting as agent for a Kansas supplier.
6. TJE further admits and this Court determines there is personal and subject matter of jurisdiction pursuant to K.S.A. 50-623 and K.S.A. 50-638(a).
7. Venue is also proper in the Third Judicial District of Kansas (Shawnee County), pursuant to K.S.A. 50-638(b).

III. PURPOSE AND INTENT OF THIS CONSENT JUDGMENT

8. In the interest of avoiding the costs and uncertainty associated with litigation, Defendant voluntarily enters into this stipulated judgment in order to settle all claims that could potentially be asserted by Plaintiff arising out of the specific allegations set forth herein. Further, this Consent Judgment shall not be deemed to be an admission of any violation of the KCPA by Defendant, and Defendant denies any and all liability as to the claims asserted herein. Consistent with the provisions of K.S.A. 50-632(b), the parties agree this Consent Judgment shall constitute a full and final satisfaction of the claims made by Plaintiff in this action.

IV. ALLEGED KCPA VIOLATIONS

9. Plaintiff alleges that TJE committed the following acts or practices in violation of the KCPA.
10. From approximately May through September of 2008, and all periods relevant hereto, TJE acted either individually through its employees, representatives, or agents, or acted as agent for a Kansas supplier, namely, Robert Brogden's Olathe Pontiac-Buick-GMC, Inc. d/b/a Robert Brogden Auto Plaza ("RBAP"), in designing and sending approximately 100,000 promotional fliers, which solicited Kansas consumers to attend various auto sales events hosted by RBAP. Each of the fliers implied to recipients they had the "winning number" for the grand prize giveaway when, in fact, they did not.¹
11. Specifically, in large, bold-face print, the flier stated: "**FINALIST,**" "**GRAND PRIZE GIVEAWAY,**" "**YOU HAVE BEEN CHOSEN AS A FINALIST,**" **CHECK YOUR NUMBER**

TO SEE IF IT MATCHES THE WINNING NUMBER!!." This language occurred in close proximity to a large scratch-off box stating: **"SCRATCH HERE TO REVEAL NUMBER. . .MATCH THE WINNING NUMBER TO SEE IF YOU'VE WON."** The winning number then readily appeared on the opposite side of each flier where a box in bold-face print stated, **"WINNING NUMBER,"** and showed an identical number to the one revealed under the scratch-off box. Consequently, every consumer receiving the flier had what impliedly was the "winning number."

12. However, various mouse print disclaimers on the inside of TJE's flier contradicted such representations, and showed that the winning number was actually printed in a small print directly under consumers' address on the front of the fliers. Such practices by TJE are alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), and (3), and K.S.A. 50-692(c)(6)(A) and (C).
13. It is further alleged the inside of the promotional flier designed by TJE and sent to consumers contained additional KCPA violations based upon the following representations: **"GRAND PRIZE GIVEAWAY for a "New 2008 [GMC],"** depicting various 2008 GMC automobiles along with other promotional offers, i.e., (1) **"THAT'S RIGHT 75% OFF! ORIGINAL MSRP;"** (2) **"SAVE THOUSANDS WITH 2.9% APR;"** (3) **"SAVE \$7000 OFF KELLEY BLUE BOOK;"** AND (4) **"0% DOWN PAYMENT. . .\$134 PER MONTH. . .AND NO PAYMENT FOR 3 FULL MONTHS!!."**
14. Consumers were led to believe such promotional offers referred to the primary advertisement containing text and pictures relating to the 2008 GMC vehicles. However, located in mouse print (i.e., size 8 pt. font or below) at the bottom of

¹ An example of a promotional flier is attached as Exhibit A.

the promotional flier, a paragraph containing multiple disclaimers materially altered the implied and/or express meaning of the primary offer.²

15. Specifically, the offer stated “**0% DOWN PAYMENT. . . \$134 PER MONTH,**” which was materially altered by such mouse print disclaimer stating that such offers applied only to a single 1999 Ford Taurus, sticker number of “T4583A. . . [at] a total sale price of \$4,900, for 48 months at 10% with approved credit.” Such an offer lacks clear and conspicuous disclosure. Consequently TJE’s advertisement is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).
16. TJE’s next questionable offer stated: “**THAT’S RIGHT 75% OFF! ORIGINAL MSRP,**” however, this offer was also altered by another mouse print disclaimer at the bottom of the page stating it applied only to “1997 Pontiac Grand Prix, sticker number C863A, original MSRP \$26,800 selling price of \$6,600. . . ,” rather than the 2008 GMC vehicles actually referenced and pictured directly above in large bold-face print. Again, use of mouse print disclaimers that materially alter the implied and/or express representations of the primary offer results in a lack of clear and conspicuous disclosure; therefore, such an offer is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3) and (7).

² The following is a scanned version of TJE’s disclaimer paragraph from the September 2008 flier shown in actual size:

(1) Zero down plus tax, title, license and dealer processing fees/ \$134-per month, example: 1999 Ford Taurus, sticker #T4583A, Total sale price \$4,900, 48-months at 10% with approved credit. Based on credit score 750 or above. Down payment may vary; vehicle payment tied to your current monthly payments must not exceed 50% of your gross monthly income. Must be at least 18 years of age. Any equity deficit in your current vehicle must be paid or refinanced with new vehicle. Basic payments must be discharged. Vehicles may have been obtained at auction. (2) 75 % off original MSRP example: 1997 Pontiac Grand Prix Sticker #C863A, original MSRP \$26,800 selling price \$6,600 plus tax, title, license, and dealer processing fees. (3) No payments until December 2008 subject to lender approval with approved credit. (4) 2.9% Interest Rate Available for this event- Available on all New 2008 GMC Sierra's and Yukon's. Financing available for 60 months through GMAC with approved credit subject to lender approval- see dealer for details. (5) \$7,000 off N.A.D.A. Book Retail available on select vehicles only, example: 2005 Chevrolet Corvette Sticker #T4300A N.A.D.A. retail price \$38,275 selling price \$31,275 plus tax, title, license, and dealer processing fees. * If the winning number by your address is posted at the dealership you may choose which prize to redeem. Winner has choice of the following prizes: Odds of winning #1 New 2008 Pontiac G3 sticker #P94667, Retail Value \$17,200; #2 \$5 LCD-Plasma Screen TV Model# LC 65099J valued at \$948; #3 2008 TRX700CX ATV Base MSRP \$7,899; #4 \$1,600 Shopping Spree. Certificate entitles you to obtain merchandise with a manufacturer suggested retail price equivalent to the value of the certificate stated above from www.selectyourgifts.com. In connection with your use of the certificate, you will be required to pay shipping, handling, and processing fees per item ranging from \$1.95 up to \$29.95 based upon the per item value of the merchandise that you select. You may view the merchandise available for selection and determine the costs for shipping, handling, and processing by visiting www.selectyourgifts.com. Other terms and conditions regarding the use of the certificate are set forth on the website. #5 \$1,400; #6 \$100 Cash; #7 \$100. A winning number will definitely be mailed in combination with other promotional invitations. While supplies last, no purchase necessary, one prize per winner. Must be present to win. Winners must be 18 years or older, have a valid driver's license and social security card and are responsible for all taxes. Contest begins September 16th, 2008 and ends September 20th, 2008. Purchase does not increase chance of winning. Void where prohibited. See complete rules available at Robert Brogden Pontiac GMC. Robert Brogden Pontiac GMC employees and associates, their family members and members of same household are ineligible. Addressee must redeem original prize in person by close of business on September 20th, 2008. In the event of printer/mechanical errors or duplicate winning numbers distributed in error, then the number match contest is void and no prizes will be awarded. All validly claimed prizes will be awarded. Any unclaimed prizes will not be awarded. Sponsor not responsible for lost, misdirected or damaged mail. All vehicles are for illustration purposes only; all vehicle examples are subject to prior sale. Pictures may not resemble exact prize models. Void where prohibited by law. All offers end September 20th, 2008.

17. Next, TJE's flier stated: "**SAVE THOUSANDS WITH 2.9% APR;**" however, the bottom of the page contained a mouse print disclaimer stating the offer applied only to "new 2008 GMC Sierras and Yukons," with approved credit under certain financing terms. The offer did not apply to any of the other vehicles referenced or pictured in the advertisement. Use of mouse print disclaimers that materially alter the implied and/or express representations of the primary offer results in a lack of clear and conspicuous disclosure; therefore, such an offer is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).
18. TJE's flier also stated: "**SAVE \$7000 OFF KELLEY BLUE BOOK;**" however, this representation contained another disclaimer stating that its application was limited to a single, "2005 Chevrolet Corvette, sticker number T4500A, N.A.D.A. retail price \$38,275, selling price \$31,275. . . ." The offer did not apply to any of the 2008 GMC vehicles referenced and pictured directly above the offer, nor did it apply to any other used vehicles. Use of mouse print disclaimers that materially alter the implied and/or express representations of the primary offer results in a lack of clear and conspicuous disclosure; therefore, such an offer is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).
19. TJE's flier contained another misleading representation stating that a "**JACKPOT ROLLS OVER EACH DAY UNTIL CLAIMED!!**." This representation by TJE implied there was a jackpot with an accumulation each day that, if not claimed, would be paid to another participant who comes forward to claim the prize if a winner failed to come forward. This representation promoted event attendance by implying to consumers there were additional chances to win. According to the

flier's mouse print, however, there was only one potential winner who was already identified by number on each flier, and that person could choose only one of the prizes offered, i.e., (1) a "New 2008 Pontiac G5;" (2) a "65-inch Plasma TV;" (3) a "Honda TRX 700 XX" four-wheeler; (4) a "\$1,000 Shopping Spree;" or, (5) "\$100 Cash." In sum, there was no jackpot, nothing to accumulate or "roll-over," even if a winning number failed to come forward. Such an ad is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).

20. TJE's flier also advertised several "gifts" or prize giveaways (i.e., "MP3 Player"), which amounted to multiple *per se* violations of the KCPA under K.S.A. 50-692. These offers failed to provide consumers with proper notice of a "*verifiable retail value*" for each of the prizes listed, failed to delineate the *costs of shipping/handling* and other limitations for claiming the prizes, and none of the offers were printed in size or type of font required by the statute, nor were they printed in "*immediate proximity*" to the prize listed.

V. AGREED REMEDIES

21. Defendant agrees to entry of judgment against it in the amount of \$25,000.00, and agrees to pay said amount at the time the filing of this Consent Judgment or as follows:
22. Pursuant to K.S.A. 50-636(a), Defendant shall pay the stipulated judgment amount of Twenty-Five Thousand Dollars (\$25,000.00) in settlement of this matter, in the form of a cashier's check, directly payable to the Office of the Kansas Attorney General. Said funds shall be distributed in accordance with the provisions of K.S.A. 50-632.

23. After payment of this judgment in full, the Attorney General shall file with the court a satisfaction of judgment and provide the Defendant with a file-stamped copy.
24. Defendant agrees to be permanently enjoined from committing the acts or practices set forth herein in any ongoing or future consumer transactions in this State. Defendant further agrees its agents, employees, and representatives are also permanently enjoined from committing the acts or practices described above in any ongoing or future consumer transactions within this State.
25. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.
26. The parties understand this Consent Judgment shall not be construed as an approval or sanction by the Kansas Attorney General of the business practices of Defendant, nor shall Defendant represent the decree as such approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such.
27. Nothing in this Consent Judgment shall be construed to limit the rights of any consumers from pursuing any and all legal remedies they may be entitled to assert individually against Defendant through a private cause of action.

28. Defendant acknowledges and agrees this Court has continuing jurisdiction over this matter pursuant to K.S.A. 50-632(b) and, any breach any of the terms, conditions, or payments set forth herein, shall be treated as a violation of the Court's order and shall be subject to further penalties under the law.
29. This Court shall also retain such jurisdiction for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and relief as may be necessary or appropriate for the modification or compliance of any provisions contained herein. This Court shall also retain jurisdiction if any violation of any term of this Consent Judgment is committed.
30. Defendant further acknowledges and agrees that, pursuant to the United States Bankruptcy code, specifically 11 U.S.C 523(a)(2)(A) and (a)(7), and due to the nature of the conduct underlying this agreement and the violations set forth herein, this judgment shall not be dischargeable in any federal court bankruptcy proceeding commenced after the entry of this judgment.
31. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements of the parties contained herein are found to be reasonable and just, and are hereby adopted and approved as the findings and conclusions of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Plaintiff against Defendant Traffic Jam Events, LLC, in the amount set forth herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of rendering any additional equitable relief, orders, decrees, or judgments as may be requested by the parties or may be deemed appropriate by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED



Judge of the District Court

Respectfully submitted and approved by:
STEVE SIX, Attorney General,

By: 

EMILIE BURDETTE, #22094
Assistant Attorney General
Office of the Attorney General
Consumer Protection & Antitrust Division
120 SW 10th Ave., 4th Floor
Topeka, Kansas 66612-1597
Tel: 785-368-8453
Email: emilie.burdette@ksag.org
Attorney for Plaintiff, State of Kansas

By: Terry A. Iles

Terry A. Iles, KS# 17133
Law Office of Terry A. Iles
The Liberty Building
214 SW 6th Avenue, Suite 305
Topeka, KS 66603
Tel. 785-232-7777
Email: terryiles@ileslawoffice.com
Attorney for Defendant, Traffic Jam Events

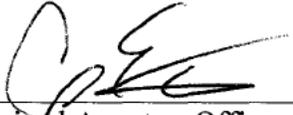
AND

By: _____
Authorized Agent or Officer of Defendant
Traffic Jam Events, LLC

By: _____
_____, KS# _____

(Law Firm)
(Address)
Tel. ____ - ____ - ____
Email: _____
Attorney for Defendant, Traffic Jam Events

AND

By:  _____
Authorized Agent or Officer of Defendant
Traffic Jam Events, LLC

IN THE TENTH JUDICIAL DISTRICT
DISTRICT COURT, JOHNSON COUNTY, KANSAS
CIVIL DEPARTMENT

STATE OF KANSAS, <i>EX REL.</i>)	
STEPHEN M. HOWE, DISTRICT ATTORNEY)	
TENTH JUDICIAL DISTRICT,)	
)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 12CV8191
)	Division No. 8
)	
TRAFFIC JAM EVENTS, LLC,)	
)	
)	
Defendant.)	
)	

Pursuant to Chapter 60 of the Kansas Statutes Annotated

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this ____ day of June, 2013, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff appears by and through Stephen M. Howe, District Attorney, and Emilie Burdette, Assistant District Attorney. Defendant appears by counsel Frank W. Lipsman of Hubbard, Ruzicka, Kremer and Kincaid, LC.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

1. Stephen M. Howe is the duly elected, qualified and acting District Attorney for the Tenth Judicial District of the State of Kansas.
2. The District Attorney's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*
3. Defendant Traffic Jam Events, LLC (hereinafter "Defendant" or "Defendant TJE"), is an entity organized under the laws of the State of Louisiana.

4. Defendant has a principal place of business located at 704 Hickory Avenue in Harahan, Louisiana.
5. Defendant is subject to the Court's jurisdiction under the Kansas Consumer Protection Act pursuant to K.S.A. 50-638(a).
6. Venue is proper in the Tenth Judicial District of Kansas, Johnson County, pursuant to K.S.A. 50-638(b).
7. At all times relevant and in the ordinary course of business, Defendant engaged in consumer transactions with consumers as defined in K.S.A. 50-624(c) and 50-624(b), either individually or through employees, representatives, or agents.
8. At all times relevant and in the ordinary course of business, Defendant acted as a supplier within the definition of K.S.A. 50-624(l).
9. At all times relevant and in the ordinary course of business, Defendant acted as a solicitor within the definition of K.S.A. 50-692(a)(3).
10. Defendant operates as a marketing firm that provides services for client car dealerships.
11. Defendant enters into contractual agreements with car dealerships to provide services during a specific period of time, denoted in contracts as a "Staffed Event Sale," (hereinafter "Event").
12. These services may include:
 - a. Creating or causing to be created direct mail advertising solicitations relating to the Event;
 - b. Sending or causing to be sent direct mail advertising solicitations promoting the Event at the client dealership;
 - c. Providing dealer kits to the client dealership with all point of sale materials for the Event;

- d. Providing the client dealership with radio and/or television spots in the media market local to the client dealership;
 - e. Furnishing staff for the Event; and
 - f. Providing insurance for the “grand prize” referenced in the solicitations.
13. During May and June, 2012, Defendant entered into at least three client agreements with Pride Suzuki of Olathe (hereinafter “PSO”) for Events to be held at that dealership. PSO is located in Olathe, Johnson County, Kansas.
 14. Defendant designed and/or produced not less than 6 different mailings to promote the three Events, and Defendant mailed or caused to be mailed not less than 64,000 pieces of promotional material to Johnson County residents in connection with the three Events.
 15. Defendant received at least \$90,740.98 from PSO for services rendered in connection with the three Events.
 16. The Plaintiff alleges that Defendant committed certain acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.* in connection with the three PSO Events. The Plaintiff alleges those violations include but are not limited to the following:
 - a. Defendant engaged in unconscionable acts by sending or causing to be sent no less than 60,000 prize notifications that did not comply with the prize notification act, in violation of K.S.A. 50-692 and 50-627.
 - b. During at least three sales events Defendant employed sales personal who were not licensed by the Kansas Department of Revenue as required by K.S.A. 8-2404. Defendant represented it had a sponsorship or approval that it did not enjoy, deceptive acts in violation of K.S.A. 50-626(b)(1)(B).
 17. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and without admitting any allegation contained herein.

18. From the time of execution of this Consent Judgment, Defendant agrees to be permanently enjoined from entering into any consumer transactions originating within Kansas.
19. Defendant agrees to entry of judgment in the amount of \$20,000.00.
20. Payment shall be delivered to Plaintiff in the form of a cashier's check or money order made payable to the JOHNSON COUNTY DISTRICT ATTORNEY INVESTIGATIVE FUND. Such funds shall be delivered at the time of execution of this Judgment.
21. Compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the District Attorney be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.
22. The parties understand this Consent Judgment shall not be construed as an approval or sanction by the District Attorney of the business practices of the Defendant, nor shall the Defendant represent the decree of such approval. The parties further understand that any failure by the District Attorney to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such.
23. Nothing in this Consent Judgment shall be construed to limit the rights of any consumers from pursuing any and all legal remedies they may be entitled to assert individually through a private cause of action.
24. Defendant acknowledges and agrees that this Court has continuing jurisdiction over this matter pursuant to K.S.A. 50-632(b) and, any breach of any of the terms or

conditions set forth herein, shall be treated as a violation of the Court's order and shall be subject to further penalties under the law.

25. This Court shall also retain such jurisdiction for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and relief as may be necessary or appropriate for the modification or compliance of any provisions contained herein. This Court shall also retain jurisdiction if any violation of any term of this Consent Judgment is committed.
26. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements of the parties contained herein are found to be reasonable and are hereby adopted and approved as the findings of fact and conclusions of law of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered against the Defendant in favor of Plaintiff in the amounts set forth herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of rendering any additional equitable relief, orders, decrees, or judgments as may be requested by the parties or may be deemed appropriate by the Court.

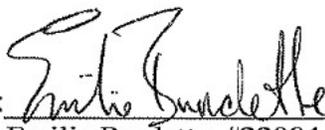
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED

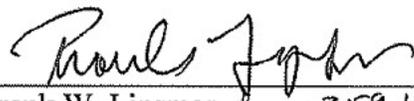
/s/ CHARLES DROEGE
Dated: 07/10/13

Honorable Charles Droege
Judge of the District Court, Division 8

Respectfully submitted and approved by:

By: 
Emilie Burdette, #22094
Assistant District Attorney
Johnson County Courthouse
P.O. Box 728
Olathe, KS 66051
(913) 715-3046
emilie.burdette@jocogov.org

Attorney for Plaintiff

By: 
Frank W. Lipsman, # 13591
Hubbard, Ruzicka, Kreamer and Kincaid
130 North Cherry, P.O. Box 550
Olathe, KS 66051
(913) 782-2350

Attorney for Defendant

STATE OF INDIANA
IN THE MARION COUNTY SUPERIOR COURT

CAUSE NO. 49D10-1806-PL-021546

STATE OF INDIANA,
Plaintiff,
v.
TRAFFIC JAM EVENTS, LLC,
Defendant.

CONSENT AGREEMENT

I. INTRODUCTION

1. The State of Indiana, by Attorney General Curtis T. Hill, Jr. and Deputy Attorney General Mark M. Snodgrass, having filed its Complaint for Injunction, Restitution, Civil Penalties and Costs, and the Defendant, Traffic Jam Events, LLC, hereby enter into this Consent Agreement without trial and adjudication of any issue of fact or law.
2. The parties believe it is in their best interest to resolve the issues presented by the State of Indiana and avoid further litigation with regard to the issues addressed in this Consent Agreement.
3. This Consent Agreement is for settlement purposes only and does not constitute an admission by Traffic Jam Events, LLC that the Indiana's Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, or the Promotional Gifts and Contests Act, Ind. Code § 24-8-1 *et seq.* have been violated or that the facts, other than the jurisdictional facts, alleged in the

Complaint are true, nor shall it be construed as an abandonment by the Attorney General of his position that Traffic Jam Events, LLC violated the above referenced statutes.

4. The parties consent to entry of judgment in this proceeding by the Court and accept this Consent Agreement as the final adjudication of this civil action.
5. Upon execution by all required parties, the State will file a Motion to Approve this Consent Agreement with the Court.
6. The terms of this Consent Agreement shall have the full force and effect of a Judgment issued by the Court upon the Court's approval of this Consent Agreement and no agreement, understanding, representation, or interpretation not contained in the order may be used to vary or contradict the terms of the order.

II. RELIEF

7. The parties consent to the Court entering Judgment in favor of the State of Indiana for the relief described in Paragraphs 8 through 13 of this Consent Agreement.
8. Pursuant to Ind. Code §24-5-0.5-4(c)(1), the Defendant, Traffic Jam Events, LLC, its agents, representatives, employees, successors, and assigns are permanently enjoined from engaging in the following with respect to any mailings directed to Indiana consumers:

8.1. Failing to include the following in any notice mailed to Indiana consumers representing to award a prize, or the chance at a prize, to the recipient:

8.1.1 the name and address of the promotor, Traffic Jam Events, LLC;

8.1.2 a statement of the odds of winning each prize in immediate proximity to each listing of a prize in each place it appears on a notice, listed in the same size type and boldness of the prize;

8.1.3 a statement of the verifiable retail value of each prize in immediate proximity to each listing of a prize in each place it appears on a notice, listed in the same size type and boldness of the prize;

8.1.4 a disclosure that recipients of notices may be required or invited to hear a sales presentation in order to claim their prize;

8.1.5 a conspicuous disclosure on the first page of the notice in at least 10 point font that recipients of a prize would be required make an additional purchase, including shipping and processing fees, in order to utilize the prize, if such a purchase is necessary;

- 8.2. representing on prize notice mailings that a consumer has won a specific prize when the consumer has not;
 - 8.3. representing in any medium, including mailings, telephone, live operator, recording, or website, that a consumer is a "winner," or has "won," unless the consumer has won a prize the majority of other recipients of the same mailing could not receive;
 - 8.4. awarding a prize that is not explicitly and prominently referenced on the front of the prize mailing;
 - 8.5. representing a game piece on a notice determines whether a recipient wins a prize, when the game piece is identical for each consumer and does not determine whether the recipient actually won a prize;
 - 8.6. committing any unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction, in violation of Ind. Code § 24-5-0.5- 3(a);
 - 8.7. representing that the subject of a consumer transaction has characteristics or benefits that it does not have, which Traffic Jam Events, LLC knows or reasonably should know it does not have, in violation of Ind. Code § 24-5-0.5-3(b)(1).
9. Traffic Jam Events, LLC agrees to provide the Attorney General with an exemplar copy of any future notice mailed to Indiana consumers representing to award the recipient a prize, or the chance at a prize. Service of each exemplar notice must be made upon the Attorney General no later than two

(2) weeks after the notice was mailed to recipients. This provision expires three (3) years from the date of the execution of this Assurance. Service of the exemplar notices can be made to the following:

Mark Snodgrass
Deputy Attorney General
Office of the Indiana Attorney General
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

10. Traffic Jam Events, LLC shall not represent that the Office of the Attorney General approves or endorses Traffic Jam Events, LLC's past or future business practices, or that execution of this Consent Decree constitutes such approval or endorsement. Nor shall Traffic Jam Events, LLC represent, orally or in writing, that its notices or mailings have been reviewed or approved by the Attorney General.
11. Traffic Jam Events, LLC agrees to fully cooperate with any litigation the Attorney General has brought, or may bring, against any auto dealer referenced in the State's Complaint on whose behalf Traffic Jam Events, LLC sent Prize Mailings. "Full cooperation" means providing complete, candid, and truthful testimony under oath at any proceedings brought by the Attorney General against such auto dealers. Additionally, Traffic Jam Events, LLC agrees to voluntarily provide any non-privileged information in its possession pertaining such auto dealers at the Attorney General's request. This includes providing requested information, documents, and making relevant employees available to speak to representatives of the Attorney General.

12. Traffic Jam Events, LLC shall pay a Civil Penalty under Ind. Code § 24-5-0.5-4(g) and Ind. Code § 24-5-0.5-8 in the amount of One Dollar (\$1.00) per offending Prize Mailing sent to Indiana recipients within the relevant statute of limitations. Traffic Jam Events, LLC sent, or caused to be sent, 57,500 offending Prize Mailings to Indiana recipients, resulting in a Civil Penalty in the total amount of Fifty-Seven Thousand, Five Hundred Dollars (\$57,500.00). The Civil Penalty shall be payable to the Office of the Attorney General and may be used for any purpose allowable under state law. The Civil Penalty will be paid in two equal installments, with the first installment of Twenty-Eight Thousand, Seven Hundred Fifty Dollars (\$28,750.00) due within thirty (30) days of the approval of the Consent Agreement by the Court, and the second installment of Twenty-Eight Thousand, Seven Hundred Fifty Dollars (\$28,750.00) due no later than six (6) months from the date of the execution of this Consent.

III. CONTINUING JURISDICTION

13. The Court shall retain jurisdiction for the purpose of issuing such orders as may be necessary to interpret or enforce the provisions herein. This Consent Agreement will terminate ten (10) years from the date of its issuance.

IN WITNESS WHEREOF, the parties have executed this Consent Agreement
this 7th day of February, 2019.

STATE OF INDIANA

DEFENDANT

CURTIS T. HILL, JR.
INDIANA ATTORNEY GENERAL
Attorney Number 13999-20

TRAFFIC JAM EVENTS, LLC

By: 
Mark M. Snodgrass
Deputy Attorney General
Attorney Number 29495-49

By: 

Office of Attorney General
Indiana Government Center South
302 West Washington St., 5th Floor
Indianapolis, IN 46204
Telephone: (317) 234-6784
Fax: (317) 233-4393
Mark.Snodgrass@atg.in.gov

Name: DAVID TEASDALE
Title: PRESIDENT