IN THE 6th CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2013 OCT 29 AM 9:04

STATE OF TENNESSEE, *ex rel.* ROBERT E. COOPER, JR., Attorney General and Reporter, **Petitioner,** **v.** **GARY MATHEWS MOTORS, LLC, a Tennessee Limited Liability Corporation, doing business as GARY MATHEWS CHRYSER DODGE JEEP RAM OF NASHVILLE,** **Respondent.**	)))))))))))))))	No. 13C4461

ASSURANCE OF VOLUNTARY COMPLIANCE

1. The State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter, at the request of the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, accepts, subject to Court approval, this Assurance of Voluntary Compliance given by Gary Mathews Motors, LLC, a Tennessee Limited Liability corporation, doing business as Gary Mathews Chrysler Dodge Jeep Ram of Nashville (hereinafter "Respondent" as defined below) of 5800 Crossings Blvd., Antioch, Tennessee 37013.

WITNESSETH:

2. Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of Gary

Mathew's "Regional Vehicle Clearance Event" mailer relating to sales event dates of May 14, 2013 to May 20, 2013 promoting certain financing offers on vehicles and a "SWEEPSTAKES PRIZE BOARD" offering a "BRAND NEW 2013 JEEP WRANGLER OR $20,000 CASH", "APPLE IPAD", "LOADED 4WHEELER" and "UP TO $1,500 in LOTTERY TICKETS". Billy W. Akers was the general manager that approved the specific direct mail campaign described above. He has signed an affidavit attached as Exhibit A regarding this Assurance. The Division and Attorney General's investigation was limited to the promotion attached as Exhibit B.

B. The Respondent purchased the target sales campaign from Susan Vincent and Chad Brooks of Accelerated Dealer Services, LLC, 700 N. Main St., Newcastle, Oklahoma 73065. Accelerated Dealer Services distributed the prizes for the Gary Mathew's promotional campaign. Respondent's business practices are more fully described in the State's Petition.

C. As a result of the investigation, the Division and the Attorney General have alleged that certain acts and practices of Respondent related to the use of Exhibit B violated the Tennessee Consumer Protection Act by failing to comply with the prize, gift and award statute set forth at Tenn. Code Ann. §§ 47-18-120 and -124, and otherwise engaging in unfair or deceptive acts in violation of § 47-18-104(a), (b), (b)(2), (b)(5) and (b)(27), such as promoting vehicles pictured in the campaign for $0 down and $99 per month when none of the vehicles photographed were actually part of the financing offer, making misleading financing offers, and failing to include the verifiable retail value of the prizes immediately adjacent to the prizes.

D. Respondent denies any wrongdoing. Further, Respondent sold the assets of Gary Mathews Chrysler Dodge Jeep Ram of Nashville dealership on July 11, 2013 to Premier

Automotive of Tennessee, LLC. Respondent does not own any other dealerships.

E. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Consumer Act except as set forth in section 47-18-109.

F. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense associated with litigation.

G. Now, therefore, acting pursuant to Tenn. Code Ann. § 47-18-107, subject to Court approval, Respondent gives, and the Attorney General accepts, the following assurances.

DEFINITIONS

3. As used in this Assurance and accompanying Order, the following words or terms shall have the following meanings:

A. "**Advertisement**" or "**Advertise**" shall mean and shall include at a minimum: any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, electronic mail, website or other digital form, slide, radio, broadcast television, cable television, or commercial or infomercial whether live or recorded.

B. "**And**" and "**Or**" shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

C. "**Assurance of Voluntary Compliance**" or "**Assurance**" shall mean and refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee ex rel. Robert E. Cooper, Jr., Attorney General and Reporter, v. Gary Mathews Motors, a Tennessee Limited Liability corporation, doing business as Gary Mathews Chrysler Dodge Jeep Ram of Nashville.*

D. "**Attorney General**" shall mean and refer to the Office of the Tennessee Attorney

General.

E. "**Clear and Conspicuous**" or "**Clearly and Conspicuously**" means a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, physical or temporal location, or volume (if applicable), compared to other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement is necessary to prevent other information from being misleading, deceptive or unfair, then the statement must be presented in close proximity to the other information, in a manner that is readily noticeable, readable and understandable, and it must not be obscured in any manner. To be "Clear and Conspicuous," warnings, disclosures, limitations or exceptions must be set out in close temporal or physical conjunction with the benefits or goods described or referenced, or with appropriate captions, of such prominence that warnings, disclosures, limitations or exceptions are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading or contradictory. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.

F. "**Consumer**" shall mean and refer to any person, a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

G. "**Division**" or "**Division of Consumer Affairs**" shall mean and refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

H. "**Document**" shall be synonymous in meaning and equal in scope to the usage of the term in Tenn. R. Civ. P. 34, and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained, extracted and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document.

I. "**Immediately Adjacent**" shall mean in such close proximity to the referenced item that the word(s), picture(s), or other representation(s) are perceived as an integral part of the referenced item. "Immediately Adjacent" shall explicitly not mean: included in a footnote, referenced by way of asterisk (*), cross (†), numbers or any other marking which directs the reader to any other location on the same page or on another page.

J. "**Including**" or "**Include**" shall mean including, without limitation.

K. "**MSRP**" shall mean the Manufacturer's Suggested Retail Price, specifically, the price displayed on the *Monroney* Sticker when that particular vehicle, or a vehicle of the same make and model year and with comparable equipment, was sold new.

L. "**Order**" or "**Agreed Final Order**" shall mean and refer to the Agreed Final Order entered in the matter of *State of Tennessee ex rel. Robert E. Cooper, Jr., Attorney General and Reporter, v. Gary Mathews Motors, a Tennessee Limited Liability corporation, doing business as Gary Mathews Chrysler Dodge Jeep Ram of Nashville.*

M. "**Petitioner**," "**State of Tennessee**" or "**Attorney General**" shall mean and refer to the Tennessee Attorney General and Reporter and the Office of the Tennessee Attorney General.

N. "**Prize**" shall mean any prize, gift, award, incentive, promotion or anything of value. "Prize" includes, but is not limited to, anything of value offered or awarded to a participant in a real or purported contest, sweepstakes, competition, puzzle, drawing, incentive offer, premium promotion or similar promotional offer by whatever name the company uses, scheme, plan, or other selection process.

O. "**Retail Value**" of a prize shall mean:

(1) The price at which the Respondent can substantiate that a substantial number of the goods or services which constitute the prize have been sold to the public in Tennessee in the preceding year; or

(2) If the Respondent is unable to satisfy the requirement in 3(O)(1), then no more than one and one half (1.5) times the amount the Respondent paid for the prize in a bona fide purchase from an unaffiliated seller.

P. "**Respondent**" or "**Gary Mathews**" shall mean and refer to Gary Mathews Motors, LLC, doing business as Gary Mathews Chrysler Dodge Jeep Ram of Nashville, and anyone conducting business on its behalf.

Q. "**Tennessee Consumer Protection Act**" or "**Consumer Act**" shall mean and refer to the Tennessee Consumer Protection Act of 1977, as may be amended from time to time, and related statutes found at Tenn. Code Ann. § 47-18-101, *et seq*.

JURISDICTION

4. Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply for such further orders and directions as may be necessary or appropriate for the construction, modification, or execution of this Assurance and Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Order against the Respondent.

VENUE

5. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance and Order is solely in the Circuit Court of Davidson County, Tennessee.

PERMANENT INJUNCTION AND REHABILITATION

6. Accordingly, it is hereby agreed that upon approval of this Assurance by the Court, Respondent and anyone in concert with Respondent shall be permanently and forever enjoined, restrained and bound from directly and indirectly engaging in the practices set forth herein, and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

(A) Respondent shall be prohibited from engaging in any misleading, unfair, or deceptive acts or practices in the conduct of trade, commerce or its business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§47-18-101, *et seq.*, including, but not limited to, §§ 47-18-104(a) and (b)(27) which prohibit unfair and deceptive acts and practices.

(B) Respondent shall not engage in the practice of placing any language in any advertisement in small, obfuscated, low contrast, or otherwise unreadable or difficult to read or locate fine print.

(C) Respondent shall fully comply with all Tennessee law regarding the offering of prizes, gifts, awards, incentive offers and/or travel services including, but not limited to, Tenn. Code Ann. §§ 47-18-120 and 47-18-124.

(D) Without limiting the scope of paragraph 6C, when offering a prize or travel service, Respondent shall, clearly and conspicuously, disclose the approximate verifiable retail price of each prize or the price of any product offered for sale through any promotional program in a position immediately adjacent to the item when the initial offer is in writing, in the same size and boldness of type as the reference to the prize.

(E) Without limiting the scope of paragraph 6C, when Respondent represents that it is offering a "Sweepstakes Prize Board, " "Come to the dealership to claim your prize," "You have Won!" or term of similar import implying that a person is a "winner," is a "finalist," has been "specially selected," or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize. This statement must also include whether the offer is limited only to consumers within Tennessee or it is part of a larger group of consumers residing in states other than Tennessee. If the offer includes consumers in states other than Tennessee, Respondent shall disclose the names of the states participating in the offer. This statement must be made in a position immediately adjacent to the representation, in the same size and boldness of type as the representation.

(F) Without limiting the scope of paragraph 6C, when offering a prize or travel service, Respondent shall, clearly and conspicuously, disclose each item's approximate verifiable retail value when the initial offer is verbal.

(G) Without limiting the scope of paragraph 6C, when offering a prize or travel service, Respondent shall, clearly and conspicuously, disclose immediately adjacent to each prize or travel service offered, a statement of the odds, if applicable, in Arabic numerals, of receiving each item offering, when the initial offer is in writing. Further, Respondent shall ensure that the statement of odds must be in the following form: "_____ (number of prizes) out of _____ notices distributed."

(H) Without limiting the scope of paragraph 6C, when offering a prize or travel service, Respondent shall disclose whether all prizes or travel services will be

awarded, if claimed, in Tennessee.

(I) Without limiting the scope of paragraph 6C, when offering a prize or travel service, Respondent shall not fail to award and distribute the prize or travel service or product or service in accordance with the rules, terms and conditions of the offer or promotional program as stated or disclosed.

(J) Without limiting the scope of paragraph 6C, when offering a prize or travel service, Respondent shall not require that a consumer or person incur any monetary obligation, excluding nominal postage costs, in order to determine which, if any, prize or travel service the consumer or person is offered or will receive or to continue to remain eligible to receive any prize or travel service.

(K) Without limiting the scope of paragraph 6C, when offering a prize or travel service, in the initial offer, Respondent shall not use or make a statement or representation in the main, primary or emphasized portion of the text of a solicitation, promotion or advertisement or other offering that is contradicted in a disclosure that is not easily read, noticeable or presented in small or fine print.

(L) Respondent shall not represent that a "SERVICE WORKERS APPRECIATION VOUCHER" or "DOWN PAYMENT ASSISTANCE VOUCHER" or other discount denoted by print bearing the likeness of a check with a consumer's name printed thereon is available unless the terms and conditions for use of such an item are clearly and conspicuously disclosed directly adjacent to the aforementioned item.

(M) Respondent shall not represent or imply pictured or other vehicles will be offered at "$0 DOWN" and "$99 PER MO." or term or phrase of similar import, unless such is the case.

(N) Respondent shall not represent or imply pictured vehicles or other vehicles will be offered for "new vehicles as low as $177 per month" or "no payments for 90 days" or term or phrase of similar import unless such is the case.

(O) When using the term "original price", Respondent shall clearly and conspicuously disclose the derivation, source, or substantiation for the use of the term "original price."

(P) Respondent shall not represent or imply that they will offer "active and retired teachers, police, firemen, city workers, military" "special incentives" or any other similar term of comparable import, unless such is the case.

(Q) Respondent shall not represent that it will have specific used cars for a specific price such as "$3,399" when those vehicles are not actually available.

(R) Respondent shall not advertise that a vehicle is available for "($X) down" and/or "($X) per month" or other comparable terms without clearly and conspicuously disclosing in an immediately adjacent position both the APR percentage and the term of months necessary for the consumer to make a purchase using the stated terms.

(S) Respondent shall not advertise a fixed percentage Annual Percentage Rate ("APR") (*e.g.*, "0% APR") without clearly and conspicuously disclosing in an immediately adjacent position that certain customer or consumer qualifications are necessary to obtain financing at that rate, and/or the fact that the specified rate of financing is available for only specific vehicles or groups of vehicles.

(T) Respondent shall not advertise a fixed percentage APR in close proximity to a vehicle or group of vehicles which in no manner qualify for that percentage APR.

(U) Respondent shall not advertise that the consumer can have "No payments for (X) (days, months, etc.)" or other comparable terms, without clearly and conspicuously disclosing in an immediately adjacent position that there exist certain customer or consumer qualifications necessary to obtain financing on those terms.

(V) Respondent shall not represent or imply that "Used vehicles are in prime condition and may have been reduced up to 50% off the original price" or term or phrase of similar import, unless such is the case.

(W) When using the term "original price," "MSRP," or term or phrase of similar import to advertise the sale of a used automobile, Respondent shall not do so in a deceptive, unfair or misleading manner and shall affirmatively clearly and conspicuously disclose that the vehicle for sale is used.

(X) Without limiting the scope of paragraph 6C, when offering a prize or travel service, Respondent shall clearly and conspicuously disclose whether the sweepstakes or prizes are exclusive to the Respondent's dealership or whether it is in conjunction with a nationwide sweepstakes in which other dealerships are promoting and participating the same prizes being offered to consumers.

(Y) Respondent shall not represent, state, promote, claim, advertise, or imply to any consumer that goods or services have sponsorship, approval, characteristics, ingredients, uses or benefits that they do not have, in violation of Tenn. Code Ann. § 47-18-104(b)(5).

(Z) Respondent shall not directly or indirectly cause likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods

or services, in violation of Tenn. Code Ann. § 47-18-104(b)(2).

(AA) Respondent shall not place financing terms such as but not limited to a stated amount per month near other terms of financing such as "$0 Down," "Down Payment Assistance Voucher," or "No Payments for 90 days" or term or phrase of similar import, unless all terms apply to the same transaction and are not separate offerings.

(BB) Respondent shall not place financing terms such as but not limited to a stated amount per month near other terms of financing such as "$0 DOWN" and "$99 PER MO." or term or phrase of similar import, unless all terms apply to the same transaction and are not separate offerings.

(CC) Respondent shall be prohibited from directly or indirectly making any representations to consumers that a transaction confers or involves rights, remedies, or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. § 47-18-104(b)(12).

(DD) Respondent shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

(EE) Respondent shall be prohibited from representing or implying that any procedure or other acts or practices hereafter used or engaged in by Respondent have been approved, in whole or in part, by the State.

REPRESENTATIONS REGARDING CONSUMER COMPLAINTS AND RESTITUTION

7. Respondent represents and warrants that, after reasonable search and inquiry and to the best of its knowledge:

(A) All prizes, gifts and awards promoted in the advertising campaign promoted for May 14, 2013 - May 20, 2013 referenced in Exhibit B were matched with consumers who were identified in the original mailing. However, none of the consumers who were identified as winners received a mailer from Respondent. The "lottery tickets" prizes were awarded to every consumer who came to a dealership.

(B) All financing was offered to consumers as advertised, i.e. consumers received new vehicles for $177 per month with no payments for 90 days and vehicles for $0 Down and $99 per month";

(C) Active and retired teachers, police, firemen, city workers and military received special incentives that were not offered to any other persons purchasing vehicles during the sales event;

(D) Consumers were given a reduction of $1500 if they presented a 'down payment assistance voucher' off the purchase of a value, i.e. the consumer paid $1500 less than a consumer who did not have a voucher during the sales event;

(E) Active and retired teachers, police, firemen, city workers and military were given a reduction of $500 if they presented a 'service workers appreciation voucher' off the purchase of a vehicle, i.e. the consumer paid $500 less than a consumer who did not have a voucher during the sales event;

(F) Used cars were offered to the public starting at $3,399 during the sales event;

(G) During the sales event "hundreds of cars, trucks, vans and SUVs" were "marked down to pennies on the dollar";

(H) Consumers were given top dollar for their trade ins during the sales event;

(I) There were hundreds of vehicles to choose from during the sales event;

(J) The vehicles identified with stock numbers were sold at the prices represented in the advertisements with no additional costs added; and

(K) Used vehicles were in "prime condition" and "many of them were reduced up to 50% off the original price."

8. Respondent represents and warrants that no consumers complained regarding the advertisement attached as Exhibit B, the related sweepstakes and prize offering, the financing offers and/or any resulting sales during May 14-20, 2013. Within 10 days of identification of a new complaining consumer, Respondent shall provide the Attorney General with the name and contact information of any consumer who complained after entry of the Assurance along with Respondent's proposed good faith response to said complaint. If the Director of the Division of

Consumer Affairs is not satisfied with the proposed resolution, he may elect to request the Assurance to be re-opened to consider what restitution is appropriate to consumers.

MONETARY PAYMENT TO THE STATE

9. Upon execution of this Assurance, Respondent shall be responsible to pay the sum of Ten Thousand and 00/100 Dollars ($10,000.00) to the Tennessee Attorney General by certified check made payable to the "Treasurer, State of Tennessee – Attorney General". Said funds shall be paid to the State of Tennessee's General Fund for Respondent's acts and/or practices as described in the State's Petition relating to the advertising campaign attached as Exhibit B.

10. If more than the amount anticipated is received by the State of Tennessee, it shall be paid to the State General Fund pursuant to paragraph 9.

MONITORING AND COMPLIANCE

11. Upon request, Respondent agrees to provide books, records, and documents to the State at any time, and further, to informally or formally, under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request at the Office of the Attorney General in Nashville, Tennessee or any other location within the State of Tennessee that is mutually agreeable, in writing, to the Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

12. The State of Tennessee has the right to conduct undercover investigations of the Respondent for the purpose of confirming compliance with this Assurance and state law. The

State's undercover operatives, if any, are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondents. Further, the State of Tennessee may record (audio and/or video) any or all aspects of its interactions with Respondent without notice to Respondent. Respondent agrees to void any transaction or sale that is commenced by an undercover operative on behalf of the State, upon notification by the State.

PRIVATE RIGHT OF ACTION AND ACTIONS RESERVED BY THE STATE

13. Nothing in this Assurance shall be construed to affect, limit or alter any private right of action that any consumer, person, or any local, state, federal or other governmental entity, may hold against the Respondent.

PENALTIES FOR FAILURE TO COMPLY

14. Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

15. Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars ($1,000.00) for each violation, in addition to any other appropriate penalties, remedies and sanctions including, but not limited to, contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and reasonable attorneys' fees associated with any successful petitions to enforce this Assurance and Order against the Respondent.

GENERAL PROVISIONS

16. The acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or business practices. Further, neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of Tennessee, the Attorney General, the Department of Commerce and Insurance, the Division of Consumer Affairs or any other governmental unit of the State of Tennessee has approved, sanctioned or authorized any practice, act, advertisement or conduct of the Respondent.

17. This Assurance may only be enforced by the parties hereto or this Honorable Court.

18. The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

19. As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

20. Nothing in this Assurance shall limit the Attorney General's right to obtain information, documents or testimony from the Respondent pursuant to any state or federal law, regulation or rule.

21. Nothing in this Assurance or related Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance or related Order shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against the Respondent.

22. Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

23. By agreeing to this Assurance and Order, Respondent reaffirms and attests to the truthfulness, accuracy, and completeness of all of the information provided by Respondent to the Attorney General prior to entry of this Assurance and Order. The Attorney General's agreement to this Assurance is expressly premised upon the truthfulness, accuracy, and completeness of the information provided by the Respondent to the Attorney General and Division throughout the course of the investigation of this matter, which information was relied upon by the State in negotiating and agreeing to the terms and conditions of this Assurance and Order.

24. If the Attorney General finds that the Respondent failed to disclose material information, or made any other material misrepresentation or omission relevant to the resolution of the State's investigation, the State retains the right to seek modification of this Assurance or Order upon proper written notice to the Respondent.

25. Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

26. Respondent hereby expressly waives and relinquishes any and all rights, remedies, appeals or other interests that it may possess to a jury trial or any derivative rights that flow from a trial by jury under the Tennessee Constitution or United States Constitution or any other law, regulation or rule.

27. No waiver, modification, or amendment of this Assurance shall be valid or binding unless made in writing, signed by the party to be charged, and approved by this Honorable Court, and then only to the extent set forth in such written waiver, modification or amendment.

28. Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys' fees to the State.

29. If any clause, provision or section of this Assurance 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 Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

30. Respondent waives any and all challenges in law or equity to the entry of the Assurance by the courts. Further, Respondent has waived any right to appeal, petition for

certiorari, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Assurance.

31. Time shall be of the essence with respect to each provision of this Assurance that requires action to be taken by the Respondent within a stated time period or upon a specified date.

32. This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance which are not fully expressed herein or attached hereto.

33. Nothing in this Assurance shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

34. If the Respondent declines to obtain the assistance of legal counsel, Respondent has expressly waived his/her/its right to counsel by executing this Assurance and Agreed Final Order.

35. Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

36. The lists and reports provided under this Assurance or required by this Assurance provided to the State of Tennessee and in the possession of the Respondent shall not be released to any person to protect the interest of consumer privacy, to prevent further marketing to these

consumers and possible identity theft, other than law enforcement authorities or pursuant to state or federal law.

37. Respondent also agrees that the consumer names, mail and email addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during the implementation of this Assurance will not be used for any marketing purposes or provided to any other person for any reason including, but not limited to, for the purposes of marketing to these consumers now or in the future.

38. Respondent has provided the State with certain documents, advertisements, and contracts. Respondent acknowledges and agrees that providing these documents to the State in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with this Assurance, or a release of any issues relating to such documents.

39. Respondent agrees that this Assurance does not entitle Respondent to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation or rule, and Respondent further waives any rights to attorneys' fees that may arise under such statute, regulation or rule.

40. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance.

41. This Assurance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

42. Respondent waives and relinquishes any arguments, rights or defenses regarding the fact that this Assurance and Order includes an injunction but no findings of fact or conclusions of law.

REPRESENTATIONS AND WARRANTIES

43. Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. Further, the Respondent represents and warrants that no offers, agreements, or inducements of any nature whatsoever have been made to the Respondent by the State of Tennessee, its attorney, or any employee of the Attorney General or the Division, to procure this Assurance.

44. Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

45. Respondent Gary Mathews Motors, LLC, doing business as Gary Mathews Chrysler Dodge Jeep Ram of Nashville, represents that it is the proper party to this Assurance and Order.

46. Respondent warrants and represents that Gary Mathews Motors, LLC is the true legal name of the individual and entity entering into this Assurance of Voluntary Compliance and Agreed Order.

47. Respondent represents and warrants that it paid $28,000 to Accelerated Dealer Services, LLC, 700 N. Main St., Newcastle, Oklahoma 73065 for the direct mail solicitations relating to the campaign set forth in Exhibit B of this Assurance and that 50,000 advertising mailers were sent or distributed to Tennessee consumers during the campaign.

48. Respondent represents and warrants that consumers responded to the mailing and came to Respondent's business during the sales event. Further, Respondent represents and warrants that approximately 64 consumers purchased a vehicle.

49. Respondent represents and warrants that after reasonable search and inquiry, it believes there were approximately 412 consumers who came to the sale event but who did not purchase a vehicle for one reason or another.

50. Respondent represents and warrants that all vehicles identified by stock number during each of the campaigns were in fact available for purchase on the dates of each specific campaign at the prices and financing plans listed in the solicitations except for stock number 2A1000805 and stock number VS300792 which were sold just prior to the event. Further, if any of these vehicles were purchased, Respondent represents and warrants it was sold at no more than the price listed and consumers were given the specific financing plan offered in the solicitation.

51. Respondent represents and warrants that each of the applicable lottery ticket prizes were actually awarded or would have been awarded had the consumer who received the solicitation arrived at a dealership to claim it.

52. Respondent represents and warrants that any vehicle featured in any of the campaign advertisements was actually offered and/or sold with the discounts shown and provided the financing promoted to the consumer.

53. Respondent represents and warrants that at the time of the advertising promotion attached as Exhibit B, it was in good standing as a Limited Liability Corporation with the Tennessee Secretary of State.

54. Respondent represents and warrants that the principal owners of the dealership were A. Gary Matthews and O.B. Garland, Jr.

55. Respondent understands that the State expressly relies upon all of the representations and warranties set forth in this Section, the Representations regarding Complaints and Restitution, and elsewhere within the Assurance and if any of them are false, misleading, deceptive, incomplete, unfair, or inaccurate, in any way, the State shall have the right to move to vacate or set aside (*inter alia*) this Assurance and Agreed Order (in whole or in part), and request that Respondent be held in contempt or seek statutory sanctions, if the State so elects.

COMPLIANCE WITH ALL LAWS, REGULATIONS, AND RULES

56. Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations, or rules.

FILING OF ASSURANCE

57. Upon the execution of this Assurance, the Attorney General shall prepare and file in the Circuit Court for Davidson County a Petition, Agreed Final Order, and this Assurance of Voluntary Compliance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance, and Agreed Final Order. Simultaneously, with the execution of this Assurance, Respondent shall execute an Agreed Final Order. This Assurance is made a part of and is incorporated into the Agreed Final Order. The Respondent consents to the entry of this Assurance and Agreed Order without further notice.

NOTIFICATIONS TO PARTIES

58. For five (5) years following execution of this Assurance, Respondent shall notify the Attorney General in writing at least ten (10) days prior to the effective date of any proposed changes in their corporate/business structure or any other business entity engaged in conduct that would be covered by this Assurance, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution of subsidiaries, or any other changes in status that may affect compliance with obligations arising out of this Assurance.

59. Any notices required by this Assurance shall be sent certified mail - return receipt requested, by United States mail or by any other nationally recognized courier service that provides tracking services and identification of the person signing for the document. The notifications shall be sent to the following addresses:

For the Attorney General:
Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202-0207
Phone: (615) 741-1671
Facsimile: (615) 532-2910

For the Respondent:
James W. Cameron III
Cameron Worley, P.C.
112 Westwood Place, Suite 240
Brentwood, TN 37027
Phone: (615) 515-1080
Facsimile: (615) 515-1081

The Respondent is required to provide the State with any changes to their contact information ten (10) days prior to any change of address becoming effective.

PAYMENT OF COURT COSTS

60. All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by the Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

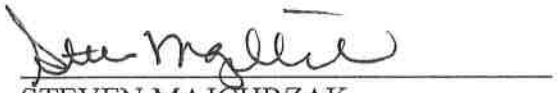
FOR THE STATE OF TENNESSEE, ATTORNEY GENERAL:

ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No.10934

CYNTHIA E. KINSER (MILLS)
Deputy Attorney General
B.P.R. No. 13533
Tennessee Attorney General's Office
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741-1671
Facsimile: (615) 532-2910

I hereby certify that this is a true copy of original instrument filed in my office this 2an day of Oct 20 13
RICHARD R. ROOKER Clerk
By Deputy Clerk

Referred by:



STEVEN MAJCHRZAK
Acting Director
Division of Consumer Affairs of the
Department of Commerce and Insurance
500 James Robertson Parkway
5th Floor, Davy Crockett Tower
Nashville, TN 37243-0600
(615) 741-4737

FOR THE RESPONDENT:

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Counsel for Respondent and Billy Akers
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