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Division of Consumer Affairs

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

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| In the Matter of<br><br>APK Auto Repair Corporation d/b/a APK Auto Repair and Towing,<br><br>Respondent. | Administrative Action<br><br>**CONSENT ORDER** |

**WHEREAS** this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), including the laws prohibiting excessive price increases during a state of emergency, N.J.S.A. 56:8-107 et seq., and the Predatory Towing Prevention Act, N.J.S.A. 56:13-7 et seq. ("PTPA"), have been or are being committed by APK Auto Repair Corporation d/b/a APK Auto Repair and Towing with its principal place of business at 2032 Route 37 East, Toms River, New Jersey 08753, as well as by its owners, officers, directors, managers, employees, representatives and/or agents (collectively, "APK"), (hereinafter referred to as the "Investigation");

**WHEREAS** the Division received complaints alleging that APK had engaged in unauthorized and excessively priced Towing services in Seaside Heights, New Jersey on and after Governor Chris Christie declared a State of Emergency on October 27, 2012 due to Tropical Storm Sandy reaching New Jersey;

**WHEREAS** APK has voluntarily and fully cooperated with the Investigation;

**WHEREAS** APK denies having committed any violation of any law, including, but not limited to, the CFA and the PTPA; and

**WHEREAS** the Division and Respondent (collectively, "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding this Investigation without the need for further action. In doing so, the Parties have consented to the entry of this order ("Consent Order"). For these reasons and for good cause shown:

**IT IS ORDERED AND AGREED** as follows:

## 1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division ("Effective Date").

## 2. DEFINITIONS

As used in this Consent Order, the following capitalized words or terms shall have the following meanings, and these meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.2 "Excessive Price Increase" shall be defined in accordance with N.J.S.A. 56:8-108.

2.3 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes Towing and related storage.

2.4 "New Jersey" or "State" shall mean the State of New Jersey.

2.5 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.6 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.7 "State of Emergency" shall be defined in accordance with N.J.S.A. 56:8-108.

2.8 "Towing" shall be defined in accordance with N.J.S.A. 56:13-9.

2.9 "Vehicles" shall include, but not be limited to, motor vehicles, motorized bicycles, motorcycles, trailers, and recreational vehicles.

2.10 "Watercraft" shall include, but not be limited to, any crafts, boats or vessels, powerboats, sailboats, motor sailers, mono hulls, catamarans or trimarans, and personal watercraft such as jet skis and waverunners.

## 3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 APK shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA and the PTPA.

3.2 APK shall not offer for Sale and/or sell Merchandise at a price constituting an Excessive Price Increase during a State of Emergency or within thirty (30) days after termination of the State of Emergency, in violation of N.J.S.A. 56:8-109.

## 4. DISPOSITION OF VEHICLES AND WATERCRAFT; RESTORATION OF FUNDS TO AFFECTED PERSONS

4.1 Upon the Effective Date of this Consent Order, the Division will:

(a) compile a listing of those Vehicles and Watercraft that have not, to date, been claimed for return or release by registered owners or their authorized agents (including, but not limited to, insurance adjusters) and will determine their ownership through review of information secured from the New Jersey Motor Vehicle Commission;

(b) upon determination of ownership, provide notice to the owner of record and the holder of any security interest, by regular and certified mail, facsimile or electronically, (copying APK on the notice) regarding possession of the Vehicle or Watercraft by APK, the intended Sale of the Vehicle or Watercraft and the manner in which the Vehicle or Watercraft can be claimed;

(c) engage the services of a Person to purchase all unclaimed Vehicles and Watercraft and to remit the proceeds to the Division to disburse in the manner provided by this Consent Order;

(d) sell the unclaimed Vehicles and Watercraft to the Person engaged by it not later than 21 days after notice has been provided, pursuant to Paragraph 4.1(b), unless circumstances require a reasonable extension of time; and

(e) apply the proceeds from the Sale: i) by reimbursing registered owners or their authorized agents (including, but not limited to, insurance adjusters) all sums paid by them for the release and return of Vehicles and Watercraft prior to the signing of the November 20, 2012 Agreement between the Parties up to the amount of $250; and ii) by donating any

remaining sums to one or more charitable organizations registered with the Division or found to be exempt from registration whose mission it is to assist victims of Tropical Storm Sandy.

4.2 APK shall directly reimburse registered owners or their authorized agents (including, but not limited to, insurance adjusters) all sums paid by them in excess of $250 for the release and return of Vehicles and Watercraft that occurred prior to the signing of the November 20, 2012 Agreement. All payments shall be made not later than January 31, 2013.

4.3 In aid of furthering an orderly winding up of the release and return of Vehicles and Watercraft and their Sale if unclaimed, the Division will issue a press release which states that APK's release and return of Vehicles and Watercraft to registered owners or their authorized agents (including, but not limited to, insurance adjusters) at no cost to them has ended and that the Division will notify the owner of record and the holder of any security interest, by regular and certified mail, facsimile or electronically (copying APK on the notice) regarding possession of the Vehicle or Watercraft by APK, the intended Sale of the Vehicle or Watercraft by the Division within 21 days after notice has been provided, unless circumstances require a reasonable extension of time, and the manner in which the Vehicle or Watercraft can be claimed.

## 5. COSTS ASSESSMENT

5.1 APK shall be assessed the sum of Fifteen Thousand Six Hundred Sixty Nine and 37/100 Dollars ($15,669.37) as reimbursement of the Division's costs as authorized by the CFA, N.J.S.A. 56:8-11.

5.2. Payment of the sum assessed in Paragraph 5.1 above shall be suspended for a period of one (1) year conditioned upon compliance with the terms of this Consent Order. In the event APK fails to comply with any term of this Consent Order, the Division will provide notice

of the violation, in writing, and APK will have 10 calendar days to correct it. In default of correcting the violation, the suspended sum shall become immediately due, payable and owing and the Division shall be authorized to seek and obtain all collection relief including the filing of a Certificate of Debt as authorized by the CFA (N.J.S.A. 56:8-17). On the other hand, if APK fully complies with the terms of this Consent Order for a period of one (1) year after its Effective Date, the suspended sum shall be vacated.

## 6. GENERAL PROVISIONS

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 APK represents and warrants that it has been advised by competent legal counsel regarding the terms and effect of this Consent Order and that its questions and concerns have been fully addressed by counsel.

6.4 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.5 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.6 Except as otherwise explicitly provided for in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.7 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.8 This Consent Order shall be binding upon APK as well as its owners, officers, directors, managers, members, agents, servants, employees, representatives, subsidiaries, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.9 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

6.10 This Consent Order is entered into by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of APK; and (b) an admission by APK that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate any of CFA or the PTPA. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as

defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.11 Nothing contained in this Consent Order shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Order with respect to any of the matters contained herein.

6.12 The Parties represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

6.13 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

6.14 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

## 7. RELEASE

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned upon APK's compliance with its terms, the Division hereby agrees to release APK from any and all civil claims or consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against APK for violations of the CFA and/or the PTPA arising out of the Investigation as well as any matters specifically addressed in Section 3.2 of this Consent Order ("Released Claims").

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, provided however, that nothing herein shall

prevent APK from raising the defense of set-off against a consumer who has received restitution, whether pursuant to Section 4 or otherwise; (b) actions to enforce this Consent Order; and (c) any claims against APK by any other agency or subdivision of the State.

## 8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations or both.

7.2 The Parties agree that any future violations of this Consent Order and/or the CFA shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that APK may be liable for enhanced civil penalties.

## 9. COMPLIANCE WITH ALL LAWS

9.1 Except as provided in this Consent Order, no provision herein shall be construed as:

(a) Relieving APK of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or

(b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from APK pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right APK may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

## 10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or APK pursuant to this Consent Order shall be sent by the United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service

that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Lorraine K. Rak, Deputy Attorney General
Chief, Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For APK:

Steven Secare, Esq.
Secare, Ryan & Hensel
16 Madison Avenue
Toms River, New Jersey 08753

**IT IS ON THE** 4th **DAY OF** January ~~2012~~ 2013 **SO ORDERED.**

JEFFERY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: _____
ERIC T. KANEFSKY, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES ADJACENT TO THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By:_____ Dated: January 4, 2013, ~~2012~~

Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 877-1280

FOR APK:

SECARE, RYAN & HENSEL

By:_____ Dated: 26 Dec 12, 2012

Steven Secare, Esq.

16 Madison Avenue
Toms River, New Jersey 08753
Telephone: (732) 349-2800