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[REDACTED]

FILED

JUL 31 2015

STEPHEN C. HANSBURY  
PROBING JUDGE  
CHANCERY DIVISION

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
SUSSEX COUNTY  
DOCKET NO.: SSX-C-15-15

JOHN J. HOFFMAN, Acting Attorney General  
of the State of New Jersey, and STEVE C. LEE,  
Acting Director of the New Jersey Division of  
Consumer Affairs,

Plaintiffs,

v.

JDN AA, LLC d/b/a Audi Newton and d/b/a  
Volkswagen Newton; JANE and JOHN DOES  
1-10, individually and as owners, officers,  
directors, shareholders, founders, managers,  
agents, servants, employees, representatives  
and/or independent contractors of JDN AA,  
LLC d/b/a Audi Newton and d/b/a Volkswagen  
Newton; and XYZ CORPORATIONS 1-10,

Defendant.

Civil Action

**FINAL CONSENT JUDGMENT**

The parties to this Action and Final Consent Judgment (“Final Consent Judgment”) are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey (“Attorney General”), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs (collectively, “Plaintiffs”), and defendant JDN AA, LLC d/b/a Audi Newton and d/b/a

Volkswagen Newton (“Defendant”); (collectively, “Parties”). As evidenced by their signatures below, the Parties do consent to the entry of this Final Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

### **PRELIMINARY STATEMENT**

On June 15, 2105, Plaintiffs commenced this action against Defendant by the filing of a four (4) count Complaint alleging violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-1.1 et seq. (“Motor Vehicle Advertising Regulations”), the Used Car Lemon Law, N.J.S.A. 56:8-67 et seq. (“UCLL”), and the Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.6(a)-(b)(1) (“UCLL Regulations”). Defendant denies the allegations.

The Court has reviewed the terms of this Final Consent Judgment and based upon the Parties’ agreement and for good cause shown:

### **IT IS HEREBY ORDERED AND AGREED AS FOLLOWS:**

#### **1. JURISDICTION**

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Final Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Final Consent Judgment.

## 2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Final Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Sussex County.

## 3. EFFECTIVE DATE

3.1 This Final Consent Judgment shall be effective on the date that it is entered with the Court (“Effective Date”).

## 4. DEFINITIONS

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

4.1 “Action” refers to the action entitled John J. Hoffman, et al. v. JDN AA, LLC, Superior Court of New Jersey, Chancery Division, Sussex County, Docket No. SSX-C-15-15, and all pleadings and proceedings related thereto, including the Complaint and the Answer.

4.2 “ADR Unit” refers to the Alternative Dispute Resolution Unit of the Division.

4.3 “Additional Consumer[s]” shall refer to any Consumer who submits to the Division directly or through CALA or another agency, after the Effective Date, a complaint concerning Defendant’s business practices.

4.4 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a) and includes the Websites. For purposes of the Motor Vehicle Advertising Regulations, “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-26A.3 and includes the Websites. These definitions apply to other forms of the word “Advertisement” including without limitation, “Advertise” and “Advertised.”

4.5 “Audi VW of Newton” shall refer to the dealership(s) operated by JDN AA LLC.

4.6 “After Sale Item” shall refer to items such as window etching, GAP Coverage, warranties, service contracts and/or credit life insurance.

4.7 “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.

4.8 “CALA” shall refer to Consumer Affairs Local Assistance offices located within counties and/or municipalities in the State.

4.9 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

4.10 “Consumer” shall refer to any Person who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale.

4.11 “GAP Coverage” shall refer to Guaranteed Auto Protection coverage.

4.12 “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

4.13 “M.S.R.P.” shall refer to manufacturers’ suggested retail price.

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

4.15 “Represent” means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed.

4.16 "Restitution" shall refer to all methods undertaken by Defendant to resolve Additional Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges, whether or not in the context of the Additional Consumer complaint resolution process set forth in Section 8.

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

4.18 "Sales Documents" shall be defined in accordance with N.J.A.C. 13:45A-26B.1.

4.19 "State" shall refer to the State of New Jersey.

4.20 "Used Motor Vehicle" shall be defined in accordance with N.J.A.C. 13:45A-26F.2.

4.21 "Websites" shall mean the websites located at audinewton.com, newtonaudivw.com, and yvnewton.com as well as any other website[s] maintained by or on behalf of Defendant.

## **5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

5.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of their business in the State and shall comply with all applicable 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 Motor Vehicle Advertising Regulations.

5.2 Defendant shall not add or charge for After Sale Item[s] without the Consumer's written authorization.

5.3 Defendant shall not Represent to Consumers that the purchase of an After Sale Item is mandatory when, in fact, it is not.

5.4 Defendant shall identify, in writing, any and all After Sale Items, whether provided to Consumers at no additional charge or purchased by Consumers.

5.5 For any After Sale Item[s] purchased by a Consumer, Defendant shall provide a written document containing a clear statement of cost for such After Sale Item[s], and shall obtain the Consumers' written acknowledgment to purchase such After Sale Item[s].

5.6 Defendant shall disclose in writing the full total price of an After Sale Item, in addition to the monthly financing price, including a breakdown per After Sale Item if being sold as part of a package.

5.7 If Defendant obtain Motor Vehicle plates, title and/or registration on behalf of a Consumer, Defendant shall make all diligent and good faith efforts to provide the Consumer with Motor Vehicle plates, title and/or registration prior to the expiration of temporary plates, title and/or registration.

5.8 Defendant shall provide Consumers with an opportunity to review all Sales Documents prior to signing.

5.9 Defendant shall not require Consumers to execute any blank or incomplete Sales Documents.

5.10 Defendant shall provide Consumers with complete copies of all signed Sales Documents in accordance with N.J.S.A. 56:8-2.22.

5.11 In their Advertisement of Motor Vehicles, Defendant shall include the statement that "price(s) include(s) all costs to be paid by consumer, except for licensing costs, registration fees, and taxes," in accordance with N.J.A.C. 13:45A-26A.5(a)(2).

5.12 In their Advertisement of Used Motor Vehicles, Defendant shall include the statement that "price(s) include(s) all costs to be paid by consumer, except for licensing costs, registration fees, and taxes," in accordance with N.J.A.C. 13:45A-26A.5(b).

5.13 Defendant shall honor all terms of a negotiated deal concerning the Sale of a Used Motor Vehicle.

5.14 Defendant shall pay off liens on trade-in vehicles in a timely manner.

5.15 Defendant shall not offer for Sale and/or sell a Used Motor Vehicle for which a prior lien has not been paid off.

5.16 Defendant shall refund in a timely manner excess funds paid toward Motor Vehicle Commission services.

5.17 Defendant shall not sell a Motor Vehicle without possession of the title to the Motor Vehicle.

5.18 Defendant shall not offer Motor Vehicles for Sale from a location other than that licensed by the State of New Jersey.

5.19 Defendant shall not charge a New Car Tire Fee to those Consumers purchasing a Used Motor Vehicle.

5.20 Defendant shall collect an administrative fee of \$0.50 from each Consumer who purchases a Used Motor Vehicle, in accordance with N.J.A.C. 13:45A-26F.6(a).

5.21 By the 15<sup>th</sup> of every January, Defendant shall remit to the Division's Used Car Lemon Law Unit the administrative fees and/or documentation concerning the Used Motor Vehicles sold, in accordance with N.J.A.C. 13:45A-26F.6(b).

## 6. SETTLEMENT AMOUNT

6.1 The Parties have agreed to a settlement of the Action in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) ("Settlement Payment"), payable within thirty (30) days of the Effective Date.

6.2 The Settlement Amount comprises Thirty One Thousand Six Hundred Fifty Five and 95/100 Dollars (\$31,655.95) in civil penalties, pursuant to N.J.S.A. 56:8-13, Fifteen Thousand Eight Hundred Sixteen and 00/100 Dollars (\$15,816.00) in reimbursement of Plaintiffs' attorneys' fees, and Two Thousand Five Hundred Twenty Eight and 04/100 Dollars (\$2,528.04) in reimbursement of Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

6.3 Defendant shall make the Settlement Payment by cashier's or certified check, money order, wire transfer or credit card made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Alina Wells, Deputy Attorney General  
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 - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

6.4 Upon making any payment under Sections 6.1, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

## 7. DISMISSAL OF ACTION

7.1 The entry of this Final Consent Judgment constitutes a dismissal with prejudice of the Action.

## 8. ADDITIONAL CONSUMER COMPLAINTS

8.1 For a period of one (1) year from the Effective Date, the Division shall forward to Defendant copies of any Additional Consumer complaints. The Division shall forward to Defendant such complaints within thirty (30) days of the Division's receipt thereof.

8.2 After forwarding to Defendant the complaints of an Additional Consumer, the Division shall notify each Additional Consumer, in writing, of the following: (a) that his/her complaint has been forwarded to Defendant; (b) that he/she should expect a response from Defendant within thirty (30) days from the date of this notice; and (c) the right to refer his/her complaint to the ADR Unit for binding arbitration if Defendant disputes the complaint and/or requested relief.

8.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Defendant shall send a written response to each Additional Consumer, with a copy sent by first class mail, fax or email to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, fax number: 973-648-3139, [cmt@dca.lps.state.nj.us](mailto:cmt@dca.lps.state.nj.us).

8.4 If Defendant does not dispute the Additional Consumer's complaint and requested relief, Defendant's written response shall so inform the Additional Consumer. Where Restitution concerns the reversal of credit or debit card charges, Defendant shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by bank check, money order or other guaranteed funds made payable to the Additional Consumer.

8.5 If Defendant disputes the Additional Consumer's complaint and/or requested relief, Defendant's written response shall include copies of all documents concerning Defendant's dispute of the Additional Consumer's complaint.

8.6 Within forty-five (45) days of receiving from the Division the Additional Consumer's complaint, Defendant shall provide the Division with written notification as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided as to each such Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Defendant's written response was returned as undeliverable, the efforts Defendant had undertaken to locate the Additional Consumer; and
- (f) Confirmation that Defendant sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

8.7 If within sixty (60) days of Defendant's receipt of the Additional Consumer's complaint: (a) Defendant has not notified the Division that the Additional Consumer's complaint has not been resolved; (b) Defendant has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Defendant has notified the Division that the Additional Consumer refuses Defendant's offer of Restitution, the Division shall forward such

Additional Consumer complaint to the ADR Unit for binding arbitration. Defendant agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Defendant further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify any such Additional Consumer and Defendant of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines.

8.8 If Defendant refuses to participate in the ADR program, the arbitrator may enter a default against Defendant. Unless otherwise specified in the arbitration award, Defendant shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

8.9 Defendant's failure or refusal to comply with the requirements of Sections 8.3 through 8.6 and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under these circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon written notice to Defendant.

8.10 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

8.11 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

8.12 After one (1) year from the Effective Date, either Party may opt out of the Additional Consumer complaint resolution process for any reason at any time.

8.13 Following the expiration of the one (1) year period, the Additional Consumer complaint resolution process shall automatically renew unless terminated by either party in accordance with Sections 8.9 and 8.12 above.

## 9. GENERAL PROVISIONS

9.1 This Final Consent Judgment 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 Final Consent Judgment.

9.2 This Final Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

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

9.4 This Final Consent Judgment contains the entire agreement between the Parties. Except as otherwise provided herein, this Final Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendant.

9.5 Except as otherwise explicitly provided for in this Final Consent Judgment, 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.

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

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

9.8 This Final Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Final Consent Judgment nor any action taken hereunder shall constitute, or 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 the Defendant; or (b) an admission by Defendant that any of her acts or practices described in or prohibited by this Final Consent Judgment are unfair or deceptive or violate the CFA and/or the Motor Vehicle Advertising Regulations, the UCLL, and/or the UCLL Regulations. This Final Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Final Consent Judgment; or (b) any action or proceeding involving a Released Claim (as defined in Section 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

9.10 The Parties represent and warrant that their signatories to this Final Consent Judgment have authority to act for and bind the respective Parties.

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

## **10. RELEASE**

10.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Final Consent Judgment and conditioned on Defendant making the Settlement Payment in the manner referenced in Section 6, Plaintiffs hereby agree to release Defendant from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA, and the Pet Regulations as alleged in the Action.

10.2 Notwithstanding any term of this Final Consent Judgment, the following do not comprise released claims: (a) private rights of action, provided however, that nothing herein shall prevent Defendant from raising the defense of set-off against a Consumer who has received restitution; (b) actions to enforce this Final Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

## **11. PENALTIES FOR FAILURE TO COMPLY**

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

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

## **12. COMPLIANCE WITH ALL LAWS**

12.1 Except as provided in this Final Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of her obligations 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 Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant 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 Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

**13. NOTICES UNDER THIS FINAL CONSENT JUDGMENT**

13.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Final Consent Judgment 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 Plaintiffs:

Alina Wells, Deputy Attorney General  
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 - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For the Defendant:

Shaun M. Malone, Esq.  
Bellavia Blatt & Crossett, P.C.  
200 Old Country Road  
Mineola, New York 11501

IT IS ON THE 31<sup>ST</sup> DAY OF JULY 2015 SO ORDERED,  
ADJUDGED AND DECREED.

*Stephan C. Hansbury*

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HON. STEPHAN C. HANSBURY, P.J.Ch.

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Alina Wells  
Alina Wells  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
[REDACTED]

Dated: July 29, 2015

FOR DEFENDANT:

BELLAVIA BLATT & CROSSETT, P.C.

By: Shaun M. Malone  
Shaun M. Malone, Esq.  
Bellavia Blatt & Crossett, P.C.  
200 Old Country Road  
Mineola, New York 11501

Dated: July 28<sup>th</sup>, 2015

JDN AA, LLC

By: Joseph Natale  
Joseph Natale, Member  
JDN AA, LLC  
34 Hampton House Road  
Newton, New Jersey 07083

Dated: July 27<sup>th</sup>, 2015