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Division of Law
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FILED

JUL 19 2017

Division of Consumer Affairs

By: Cathleen O'Donnell
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

SANSONE HYUNDAI, INC.,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter was 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"), the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-26A.1 et seq. ("Motor Vehicle Advertising Regulations"), the Regulations Governing Automotive Sales Practices, N.J.A.C. 13:45A-26B.1 et seq. ("Automotive Sales Regulations"), and the Consumer Protection Leasing Act, N.J.S.A. 56:12-60, et seq. ("Consumer Leasing Act"), have been or are being committed by Sansone Hyundai, Inc., as well as by its agents, servants and employees (collectively, "Respondent") (hereinafter referred to as the "Investigation");

WHEREAS Respondent has been engaged in the Advertisement, offer for Sale, and/or Lease of Motor Vehicles from its dealership location at 90-100 US-1 Avenel, New Jersey 07001;

WHEREAS the Division alleges that Respondent failed to itemize on Leases and Sales Documents all Aftermarket Merchandise (e.g., extended roadside assistance);

WHEREAS the Division alleges that Respondent failed to obtain a separate Aftermarket Contract for all Aftermarket Merchandise included in the Lease and/or Sales transaction;

WHEREAS the Division alleges that for certain of Respondent's Leases, Sales Documents and/or Aftermarket Contracts, Aftermarket Merchandise was included in the Lease and/or Sale at no charge, or the cost was left blank or indicated "N/A", when, in fact Respondent charged the Consumer for the Aftermarket Merchandise;

WHEREAS the Division alleges that Respondent included inconsistent prices for the same Aftermarket Merchandise on different documents executed for the same Lease or Sales transaction;

WHEREAS the Division alleges that Respondent sold to Consumers Aftermarket Merchandise that provided overlapping or similar benefits in part;

WHEREAS the Division alleges that Respondent failed to include in its Advertisements a list of Dealer-Installed Options and their retail prices;

WHEREAS the Division alleges that Respondent failed to include in the Advertised Price of Motor Vehicles, Dealer-Installed Options reflected on addendums to the MSRP sticker;

WHEREAS Respondent denies the allegations of the Division and alleges it complied with applicable New Jersey statues and regulations in its Advertisement and Sale of Motor Vehicles;

WHEREAS the Division and Respondent (collectively, "Parties") have reached an amicable agreement resolving the issues in controversy and concluding this Investigation without the need for

further action, and Respondent has voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) and for good cause shown:

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

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

2.1 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a), for purposes of the CFA, and in accordance with N.J.A.C. 13:45A-26A.3, for purposes of the Motor Vehicle Advertising Regulations, and Includes the Sansone Hyundai Websites. These definitions apply to other forms of the word “Advertisement” Including, “Advertise” and “Advertised.”

2.2 “Advertised Price” shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.3 “Aftermarket Contracts” shall refer to the contract pursuant to which Respondent sold Aftermarket Merchandise.

2.4 “Aftermarket Merchandise” shall refer to products or services, other than Dealer-Installed Options, added to an RBO, retail installment contract or Lease.

2.5 “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.

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

2.7 “Dealer-Installed Option” shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.8 “Documentary Service Fee” shall be defined in accordance with N.J.A.C. 13:45A-26B.1.

2.9 “Gross Capitalized Cost” shall be defined in accordance with N.J.S.A. 56:12-61.

2.10 “Include[s]” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.11 “Lease” shall be defined in accordance with N.J.S.A. 56:12-61, for purposes of the Consumer Leasing Act, and in accordance with N.J.A.C. 13:45A-26A.3, for purposes of the Motor Vehicle Advertising Regulations.

2.12 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

2.13 “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26A-3, for purposes of the Motor Vehicle Advertising Regulations, and in accordance with N.J.S.A. 56:12-60, for purposes of the Consumer Leasing Act.

2.14 “New Jersey” and “State” shall refer to the State of New Jersey.

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

2.16 “RBO” shall refer to a Retail Buyer’s Order.

2.17 “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. This definition applies to other forms of the word “Represent” including “Representation” and “Misrepresent.”

2.18 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e), for purposes of the CFA, and in accordance with N.J.A.C. 13:45A-26A.3, for purposes of the Motor Vehicle Advertising Regulations.

2.19 "Sales Document" shall be defined in accordance with N.J.A.C. 13:45A-26B.1, and Includes an RBO and/or Retail Installment Contract.

2.20 "Sansone Hyundai Website" shall refer to the website located at www.sansonehyundai.com, as well as any other website owned, operated by or on behalf of Respondent.

2.21 "Used Motor Vehicle" shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its 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 the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Regulations, and the Consumer Leasing Act.

3.2 Respondent shall honor all Advertised Motor Vehicle prices, terms and/or conditions.

3.3 Respondent shall not Misrepresent the terms and conditions of any financing or Lease plan.

3.4 Respondent shall not add and charge for aftermarket Merchandise (i.e. window etch, service contracts) without the Consumer's knowledge and/or authorization.

3.5 Respondent shall not Represent to Consumers that certain Dealer-Installed Options and/or Aftermarket Merchandise (i.e. window etch, service contracts) are mandatory when in fact they are not.

3.6 Respondent shall not sell to Consumers Aftermarket Merchandise that overlap or provide similar benefits in part to Merchandise which the Consumer has already purchased through the Lease or Sales transaction.

3.7 Respondent shall accurately reflect in Leases the Gross Capitalized Cost, as required by the Consumer Leasing Act, N.J.S.A. 56:12-62 and Regulation M, 12 C.F.R. 213.4.

3.8 Respondent shall itemize all Aftermarket Merchandise and Dealer-Installed options in the Lease, as required by the Consumer Leasing Act, N.J.S.A. 56:12-62 and Regulation M, 12 C.F.R. 213.4.

3.9 Respondent shall itemize all Aftermarket Merchandise and Dealer-Installed Options on Sales Documents.

3.10 Respondent shall provide to Consumers separate Aftermarket Contracts for all Aftermarket Merchandise Included in the Lease or Sale whether provided to the Consumer at no additional charge or purchased by the Consumer.

3.11 Respondent shall ensure that the cost of Aftermarket Merchandise shall be consistently reflected in: (a) a Lease or Sales Document; and (b) an Aftermarket Contract.

3.12 Respondent shall provide Consumers with an opportunity to review all Leases and/or Sales Documents and/or Aftermarket Contracts prior to signing.

3.13 At the time of Sale or Lease, Respondent shall provide Consumers with a full and accurate copy of all Sales Documents and Aftermarket Contracts, signed by the Consumer, as required by N.J.S.A. 56:8-2.22.

3.14 Respondent shall not require Consumers to execute any blank or incomplete Lease, Sales Documents and/or Aftermarket Contracts.

3.15 Respondent shall fully and accurately complete the RBO at the time the Sales transaction is consummated, and shall make certain that the Consumer signs the RBO in all necessary places.

3.16 Respondent shall fully and accurately complete all Sales Documents, Leases and Aftermarket Contracts at the time the Sales or Lease transaction is consummated.

3.17 Respondent shall not identify the Advertised Prices of a Motor Vehicle by reference to the MSRP sticker, when the Motor Vehicle includes an addendum to the MSRP sticker that reflects a higher total price.

3.18 In its Advertisement of a new Motor Vehicle for Sale at an Advertised Price, Respondent shall disclose the Dealer-Installed Options and the retail price of each as determined by Respondent, in accordance with N.J.A.C. 13:45A-26A.5(a)(7).

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

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a settlement of the Investigation in the amount of One Hundred Thirty-Six Thousand Two Hundred Fifty and 91/100 Dollars (\$136,250.91) ("Settlement Payment").

4.2 The Settlement Payment comprises One Hundred Thousand and 00/100 Dollars (\$100,000.00), pursuant to N.J.S.A. 56:8-13, Fifteen Thousand Eighteen and 91/100 Dollars (\$15,018.91), pursuant to N.J.S.A. 56:8-11, and Twenty-One Thousand Two Hundred Thirty-Two and 00/100 Dollars (\$21,232.00), pursuant to N.J.S.A. 56:8-19.

4.3 Respondent shall make the Settlement Payment according to the following schedule:

- a. Forty-Five Thousand Four Hundred Sixteen and 97/100 Dollars (\$45,416.97) shall be paid to the Division contemporaneously with Respondent's signing of this Consent Order;
- b. Forty-Five Thousand Four Hundred Sixteen and 97/100 Dollars (\$45,416.97) shall be paid to the Division on or before September 1, 2017; and
- c. Forty-Five Thousand Four Hundred Sixteen and 97/100 Dollars (\$45,416.97) shall be paid to the Division on or before December 31, 2017.

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

Cathleen O'Donnell, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street- 5th Floor
Newark, New Jersey 07101

4.5 Upon making the Settlement Payment, Respondent 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 Division pursuant to the terms herein.

4.6 In the event that Respondent fails to comply with Section 4.3, the outstanding portion of the Settlement Payment shall be immediately due and payable upon notice by the Division. In any such notice, however, the Division shall provide Respondent with the specific details of the alleged noncompliance and Defendant shall be afforded a fifteen day (15) day period within which to cure any such noncompliance. In the event of Respondent's failure to cure any such noncompliance, the Division shall file a Certificate of Debt for any unpaid portion of the Settlement Payment.

5. GENERAL PROVISIONS

5.1 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.

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

5.3 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.

5.4 This Consent Order contains the entire agreement between 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.

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

5.6 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.

5.7 This Consent Order shall be binding upon Respondent's employees, representatives, successors and assigns, and any Person 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.

5.8 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 be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order 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 Respondent; and (b) an admission by Respondent that any of its alleged acts or alleged practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Regulations, and/or the Consumer Leasing Act.

5.10 This Consent Order 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 Consent Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.11 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.

5.12 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.

5.13 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

6. RELEASE

6.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified in Section 4, the Division hereby agrees to release Respondent 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 Respondent for violations of the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Regulations, and the Consumer Leasing Act arising from the Investigation, as well as the matters specifically addressed in this Consent Order ("Released Claims").

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

7. PENALTIES FOR FAILURE TO COMPLY

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

7.2 The Parties agree that any future violations of Section 3 of this Consent Order, the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Regulations, and/or the Consumer Leasing Act, shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that the Respondent may be liable for enhanced civil penalties.

8. COMPLIANCE WITH ALL LAWS

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

- a. Relieving Respondent 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 Respondent 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 Respondent 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.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

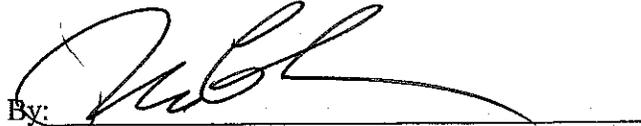
Cathleen O'Donnell, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street- 5th Floor
Newark, New Jersey 07101

For the Respondent:

John S. Fetten, Esq.
Montgomery, Chapin & Fetten, P.C.
745 Route 202/206, Suite 101
Bridgewater, New Jersey 08807

IT IS ON THE 19th DAY OF July, 2017 SO ORDERED.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 

STEVE C. LEE, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:

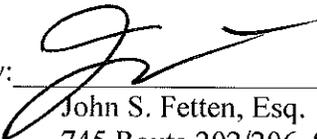
CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Cathleen O'Donnell
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: 7/19, 2017

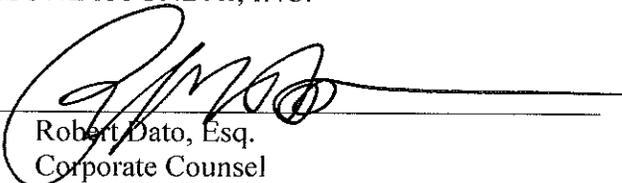
FOR THE RESPONDENT:

MONTGOMERY, CHAPIN & FETTEN, P.C.

By: 
John S. Fetten, Esq.
745 Route 202/206, Suite 101
Bridgewater, New Jersey 08807

Dated: 7/14, 2017

SANSONE HYUNDAI, INC.

By: 
Robert Dato, Esq.
Corporate Counsel
90-100 US-1
Avenel, New Jersey 07001

Dated: 7/14, 2017

By: 
Paul J. Sansone, Sr., President
90-100 US-1
Avenel, New Jersey 07001

Dated: 7/14, 2017