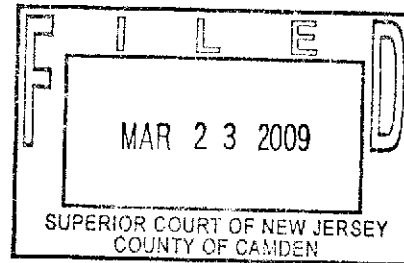


ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorneys for Plaintiffs

By: Lorraine K. Rak  
Gina M. Betts  
Deputy Attorneys General  
(973) 877-1280 / (973) 648-3070



SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CAMDEN COUNTY  
DOCKET NO. L-006482-07

ANNE MILGRAM, Attorney General of the  
State of New Jersey, and DAVID M.  
SZUCHMAN, Director of the New Jersey  
Division of Consumer Affairs,

Plaintiffs,

v.

FOULKE MANAGEMENT CORP. d/b/a  
CHERRY HILL TRIPLEX, CHERRY HILL  
DODGE, CHERRY HILL JEEP EAGLE,  
CHERRY HILL KIA, MT. EPHRAIM  
CHRYSLER DODGE, CHERRY HILL  
MITSUBISHI, JANE AND JOHN DOES 1-10,  
individually and as owners, officers, directors,  
shareholders, founders, managers, agents,  
servants, employees, representatives and/or  
independent contractors of FOULKE  
MANAGEMENT CORP. d/b/a CHERRY HILL  
TRIPLEX, CHERRY HILL DODGE, CHERRY  
HILL JEEP EAGLE, CHERRY HILL KIA, MT.  
EPHRAIM CHRYSLER DODGE, CHERRY  
HILL MITSUBISHI and XYZ  
CORPORATIONS 1-10,

Defendants.

Civil Action

**FINAL CONSENT JUDGMENT**

TRUE COPY

  
Frederick J. Schuck, J.S.C.

**WHEREAS** The parties to this action ("Action") and Final Consent Judgment ("Consent Judgment") are plaintiffs Anne Milgram, Attorney General of the State of New Jersey, and David M. Szuchman, Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs"),<sup>1</sup> and defendant Foulke Management Corp. d/b/a Cherry Hill Triplex, Cherry Hill Dodge, Cherry Hill Jeep Eagle, Cherry Hill Kia, Mt. Ephraim Chrysler Dodge and Cherry Hill Mitsubishi ("Defendant");

**WHEREAS** the Plaintiffs have asserted claims against Defendant in its operation of Cherry Hill Triplex, Cherry Hill Dodge, Cherry Hill Jeep Eagle, Cherry Hill Kia, Mt. Ephraim Chrysler Dodge and Cherry Hill Mitsubishi for alleged 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"), Used Car Lemon Law, N.J.S.A. 56:8-67 et seq. ("UCLL"), and Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.1 et seq. ("UCLL Regulations");

**WHEREAS** Defendant denies having committed any violation of law including, but not limited to, the CFA, Motor Vehicle Advertising Regulations, UCLL and UCLL Regulations; and

**WHEREAS** the Plaintiffs and Defendant (collectively, the "Parties") have reached an amicable agreement resolving the Action without trial or adjudication of any issue of fact or law, and without an admission of liability or wrongdoing of any kind. The Parties enter into this

---

<sup>1</sup> This action was commenced on behalf of former Attorney General Zulima Farber and Kimberly S. Ricketts, former Director of the New Jersey Division of Consumer Affairs ("Division"). Pursuant to R. 4:34-4, the caption has been revised to reflect the current Attorney General and Director of the Division.

Consent Judgment to avoid the expenses and uncertainty associated with further investigation and/or litigation.

**IT IS HEREBY ORDERED, ADJUDGED 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 Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to this Court at any time for such further orders and relief as may be necessary for the construction or enforcement of this 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 Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Law Division, Camden County.

**3. EFFECTIVE DATE**

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

**4. NO ADMISSION OF LIABILITY**

4.1 The Parties enter into this Consent Judgment to settle disputed claims and to avoid the cost, expense, distraction, uncertainty, delay and inconvenience that would be associated with the continued litigation of this Action. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken thereunder shall constitute, or be construed as: (a) an admission by Defendant that any of its acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate the CFA, Motor Vehicle

Advertising Regulations, UCLL and UCLL Regulations as well as any other Consumer protection laws of the State of New Jersey ("State"); (b) a concession by Defendant as to the validity of the Action; and (c) 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. Neither the existence of, nor the terms of this Consent Judgment shall be deemed to constitute evidence or precedent of any kind in any action against Defendant, except in any action or proceeding by one of the Parties to enforce or otherwise interpret any or all of the terms herein. The Plaintiffs and Defendant have the sole standing to allege any breach of this Consent Judgment.

## **5. DEFINITIONS**

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

5.1 "Additional Consumer" shall refer to any Consumer who submits to the Division directly or through another agency, after the Effective Date, a written Consumer complaint concerning Defendant's business practices.

5.2 "ADR Unit" shall refer to the Alternative Dispute Resolution Unit of the Division.

5.3 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(a). For purposes of the Motor Vehicle Advertising Regulations, "Advertisement" shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

5.4 "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.

5.5 "CALA" shall refer to Consumer Affairs Local Assistance offices within counties and/or municipalities in the State.

5.6 "Clear and Conspicuous" or "Clearly and Conspicuously" shall mean a statement that, regardless of the medium in which it is made, compared to the other information with which it is presented, and that is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning.

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

5.8 "Division" or "Division of Consumer Affairs" shall refer to the New Jersey Division of Consumer Affairs.

5.9 "Misrepresent" shall mean to give a false or misleading representation of.

5.10 "Monroney label" shall be defined in accordance with N.J.A.C. 13:45A-26A-3.

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

5.12 "M.S.R.P." shall refer to manufacturers suggested retail price.

5.13 "MVC" shall refer to the New Jersey Motor Vehicle Commission, formerly known as the New Jersey Division of Motor Vehicles, commonly known as DMV.

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

5.15 "Represent" shall mean to present, describe, state or set forth through statements, conduct, graphics, language and/or documents.

5.16 "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 7.

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

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

5.19 "Website" means the website located at [www.cherryhilltriplex.com](http://www.cherryhilltriplex.com) and any other website maintained by or on behalf of Defendant.

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

6.1 Defendant shall not engage in any 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, the Motor Vehicle Advertising Regulations, the UCLL and the UCLL Regulations.

6.2 Defendant shall honor all Advertised sale and/or lease prices, terms and/or conditions of a Motor Vehicle sale, with the understanding that negative equity and other factors (i.e. interest rate) may result in a higher sales price appearing on Sales Documents.

6.3 In any Advertisement, Defendant shall not Represent an unconditional or guaranteed promotion (i.e. trade-in allowance) and then fail to honor the terms of such promotion.

6.4 Defendant shall not Represent, in an Advertisement or otherwise, that a promotion (i.e. trade-in allowance) is guaranteed or unconditional, if such is not the case.

6.5 Defendant shall not Represent, in an Advertisement or otherwise, that Consumers are automatically approved for or otherwise guaranteed financing, and then fail to arrange for financing.

6.6 Defendant shall not Represent, in an Advertisement or otherwise, that it will obtain financing without a credit check, if such is not the case.

6.7 Defendant shall not Misrepresent to Consumers that their credit has been approved by a particular financial institution, if such is not the case.

6.8 Defendant shall not Misrepresent in Advertisements the number of Motor Vehicles that are available for sale or lease at an Advertised price.

6.9 Defendant shall not Represent, in an Advertisement or otherwise, that a Motor Vehicle is available for sale or lease, when the Motor Vehicle has already been sold or leased. Defendant shall remove from its Website any Motor Vehicle within thirty-six (36) hours of its sale or lease, not including Saturdays and Sundays.

6.10 Defendant shall not advertise a Motor Vehicle as part of a plan or scheme not to sell the Motor Vehicle or not to sell the Motor Vehicle at the advertised price, in accordance with N.J.S.A. 56:8-2.2 and N.J.A.C. 13:45A-26A.4.

6.11 Defendant shall not advertise a new Motor Vehicle which does not have Monroney Label, if such is required under federal law, in accordance with N.J.A.C. 13:45A-26A.9 (b).

6.12 In accordance with the December 19, 2008 ruling of the Honorable Frederick J. Schuck, J.S.C., Defendant shall not offer for sale or sell any Motor Vehicle unless the total selling price is plainly marked by a stamp, tag, label, or sign either affixed to the Motor Vehicle

or located at the point where the Motor Vehicle is offered for sale, in accordance with N.J.S.A. 56:8-2.5.

6.13 Defendant shall not sell any Motor Vehicle unaccompanied by, or in the absence of, a valid title at the time of the transaction, in accordance with N.J.A.C. 13:21-15.6(b).

6.14 Defendant shall not Misrepresent or fail to disclose to Consumers the material terms and conditions of a negotiated sale or lease deal as set forth in the Sales Documents.

6.15 Defendant shall undertake a search of AUTOCHECK or a similar service, to discern the prior use (i.e. rental) of a Motor Vehicle offered for sale or lease. Defendant shall disclose such information to Consumers, prior to their purchase or lease of the Motor Vehicle.

6.16 Defendant shall undertake a search of AUTOCHECK or a similar service, to discern whether a Motor Vehicle offered for sale or lease has been involved in an accident or otherwise sustained damage. Defendant shall disclose such information to Consumers, prior to their purchase or lease of the Motor Vehicle.

6.17 Defendant shall not Misrepresent to Consumers that certain products (i.e. GAP coverage, service contracts and/or Credit Life Insurance) are mandatory, when in fact they are not.

6.18 Defendant shall not Misrepresent the final down payment or monthly payment that a Consumer will be required to make for the sale or lease of a Motor Vehicle in the Sales Document.

6.19 Defendant shall accurately reflect in the Sales Documents the agreed-upon trade-in allowances and/or deposits made by Consumers for Motor Vehicle sales and/or leases.



6.20 Within thirty (30) days of taking possession of a Consumer's trade-in Motor Vehicle and the consummation of the sale or lease transaction, Defendant shall pay the full amount of the outstanding loan on that Motor Vehicle. Defendant's obligations under this Section will be subject to the passage of S2961 or any other legislation addressing a Motor Vehicle dealer's pay-off of a trade-in Motor Vehicle.

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

6.22 At the time of sale or lease, Defendants shall provide Consumers with a full and accurate copy of all Sales Documents signed by said Consumers, as required by N.J.S.A. 56:8-2.22.

6.23 Defendant shall not reproduce a Consumer's signature on any Sales Document.

6.24 Defendant shall not Misrepresent any financial or other information concerning a Consumer on any Sales Document.

6.25 Defendant shall immediately return a Consumer's check or reverse a credit card charge after the Consumer has cancelled the sale or lease transaction and has not executed any Sales Documents and has not taken possession of, or has returned, the Motor Vehicle subject to such transaction.

6.26 Defendants shall make available a Consumer's deposit no later than thirty-six (36) hours after the Consumer has cancelled the sale or lease transaction and has not taken possession of, or has returned, the Motor Vehicle subject to such transaction and after verification that the Consumer's deposit has cleared. The thirty-six (36) hour period excludes Saturdays and Sundays.

6.27 Defendant shall make available a Consumer's trade-in Motor Vehicle immediately after the Consumer has cancelled the sale or lease transaction and has not executed any Sales Documents and has not taken possession of, or has returned, the Motor Vehicle subject to such transaction, among other things, due to a failure to obtain financing.

6.28 Defendant shall make available a Consumer's trade-in Motor Vehicle within thirty-six (36) hours after the Consumer has cancelled the sale or lease transaction and has not taken possession of, or has returned, the Motor Vehicle subject to such transaction. If such cancellation occurs due to a failure to obtain financing, the thirty-six (36) hour period begins to run from Defendant's receipt of notice from the financing institution of non-acceptance of the contract assignment. The thirty-six (36) hour period excludes Saturdays and Sundays.

6.29 Defendant shall provide Consumers with title and registration to a Motor Vehicle prior to the expiration of temporary title and/or registration only if financing is approved within seven (7) days of the date the Sales Documents are signed.

6.30 In its Advertisement of Motor Vehicles, Defendant shall not use any type size, location, illustration, graphic depiction or color so as to obscure or make misleading any material facts, in accordance with N.J.A.C. 13:45A-26A.7(a)1.

6.31 In its Advertisement of Motor Vehicles, Defendant shall not fail to set forth adjacent to an advertised price whether it has been calculated by deducting a manufacturer's rebate or dealer's discount, in accordance with N.J.A.C. 13:45A-26A.7(a)(3).

6.32 In its Advertisement of Motor Vehicles, Defendant shall state all disclaimers, qualifiers or limitations that in fact limit, condition, or negate a purported unconditional offer

(i.e. low APR or high trade-in amount), Clearly and Conspicuously, next to the offer and not in a footnote identified by an asterisk, in accordance with N.J.A.C. 13:45A-26A.7(a)(4).

6.33 In its Advertisement of Motor Vehicles, Defendant shall state the applicable time period of any special offer, in 10-point type immediately adjacent to a special offer, unless the special offer is a manufacturer's program, in accordance with N.J.A.C. 13:45A-26A.7(a)(5).

6.34 In its Advertisement of Motor Vehicles, Defendant shall disclose whether a Motor Vehicle had been previously damaged and that substantial repair or body work has been performed on it when Defendant knows or should have known of such repair or body work, in accordance with N.J.A.C. 13:45A-26A.7(a)(7).

6.35 Defendant shall not use the term "guaranteed" or other similar term of import unless the Defendant Clearly and Conspicuously discloses, adjacent to the claim and not in a footnote, the manner in which the guarantee will be performed and any conditions or limitations controlling such performance, in accordance with N.J.A.C. 13:45A-26A.7(a)(11).

6.36 Defendant shall disclose the total cost of Motor Vehicles in its installment sale Advertisements, which shall include the down payment, trade-in or rebate, if any, plus the total scheduled periodic payments, in accordance with N.J.A.C. 13:45A-26A.8(a)(1). Defendant shall disclose such information adjacent to the claim and not in a footnote unless the information is the same for all Motor Vehicles advertised, in accordance with N.J.A.C. 13:45A-26A.8(a).

6.37 Defendant shall disclose the annual percentage rate in its credit and installment sale Advertisements, in accordance with N.J.A.C. 13:45A-26A.8(a)(2). Defendant shall disclose such information adjacent to the claim and not in a footnote unless the information is the same for all Motor Vehicles advertised, in accordance with N.J.A.C. 13:45A-26A.8(a).

6.38 In its Advertisement of a new Motor Vehicle at an advertised price, 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).

6.39 In its Advertisement of a new Motor Vehicle at an advertised price, Defendant shall disclose the M.S.R.P, as it appears on the Monroney label, clearly denominated by using the abbreviation "M.S.R.P.", in accordance with N.J.A.C. 13:45A-26A.5(a)(3).

6.40 In its Advertisement of a new Motor Vehicle at an advertised price, Defendant shall disclose the number of engine cylinders of the Motor Vehicle, in accordance with N.J.A.C. 13:45A-26A.5(a)(4).

6.41 In its Advertisement of a new Motor Vehicle at an advertised price, Defendant shall disclose whether the Motor Vehicle has an automatic or manual transmission unless such is standard equipment, in accordance with N.J.A.C. 13:45A-26A.5(a)(5).

6.42 In its Advertisement of a new Motor Vehicle at an advertised price, Defendant shall disclose whether the Motor Vehicle's brakes and steering mechanism are power or manual, unless such is standard equipment, in accordance with N.J.A.C. 13:45A-26A.5(a)(5).

6.43 In its Advertisement of a new Motor Vehicle at an advertised price, Defendant shall disclose whether the Motor Vehicle has air conditioning unless such is standard equipment, in accordance with N.J.A.C. 13:45A-26A.5(a)(5).

6.44 In its Advertisement of a new Motor Vehicle at an advertised price, Defendant shall disclose the dealer installed options and the retail price of each as determined by Defendant, in accordance with N.J.A.C. 13:45A-26A.5(a)(7).

6.45 In its Advertisement of a Used Motor Vehicle at an advertised price, Defendant shall disclose the Motor Vehicle's prior use, when such prior use is known or should have been known by the Defendant, unless previously and exclusively owned or leased by individuals for their personal use, in accordance with N.J.A.C. 13:45A-26A.5(b)(2).

6.46 For any advertised Motor Vehicle, Defendant shall maintain a copy of all applicable Advertisements and a copy of the executed Sales Document with the purchaser or lessee of that Motor Vehicle for at least 180 days after the transaction, in accordance with N.J.A.C. 13:45A-26A.10(a).

6.47 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).

6.48 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).

## **7. ADDITIONAL CONSUMER COMPLAINTS**

7.1 For a period of one (1) year from the Effective Date, the Division shall forward to Defendant copies of any Additional Consumer complaints received by the Division or forwarded to the Division, among other things, by any CALA office. The Division shall forward to Defendant the Additional Consumer complaints within thirty (30) days of the Division's receipt thereof.

7.2 During this one (1) year period, the Division shall notify each Additional Consumer in writing, with a copy to Defendant's designate, of the following: (a) that the Additional Consumer's complaint has been forwarded to Defendant; (b) that he/she should

expect a response from Defendant within thirty (30) days; and (c) the right to refer his/her complaint to the ADR Unit for binding arbitration if Defendant disputes the Additional Consumer's complaint and/or requested relief.

7.3 Within thirty (30) days of receiving the Additional Consumer's complaint from the Division, Defendant shall send a written response to each Additional Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, Post Office Box 45025, Newark, New Jersey 07101.

7.4 If Defendant does not dispute the Additional Consumer's complaint and requested relief, Defendant's written response shall so inform the Additional Consumer. Defendant shall contemporaneously provide the requested relief to such 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 a check payable to the Additional Consumer.

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

7.6 Within forty-five (45) days of Defendant's receipt of the Additional Consumer's complaint, Defendant shall notify the Division 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 to the 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 Judgment.

7.7 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 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's complaint to the ADR Unit to reach a resolution of the complaint through 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 in writing both the Additional Consumer and Defendant's designate of the referral of the Additional Consumer's complaint to the ADR Unit. Thereafter, upon the consent of the Additional Consumer, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached).

7.8 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.

7.9 Defendant's failure or refusal to comply with the requirements of Sections 7.3 through 7.6 and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Judgment. Under these circumstances, Plaintiffs may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Defendant.

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

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

7.12 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.

7.13 Following the expiration of the one (1) year period, Defendant may request to continue the Additional Consumer complaint resolution process for up to three (3) successive one (1) year periods, upon written notice by Defendant to the Division provided thirty (30) days prior to the expiration of the initial or any subsequent one (1) year period. The Division may decline to grant Defendant's request, at its sole discretion for any reason including, but not limited to, those set forth in Section 7.9.



## **8. SETTLEMENT AMOUNT**

8.1 The Parties have agreed to a Settlement of the Action in the amount of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) (the "Settlement Amount").

8.2 On or before the Effective Date, Defendant shall pay Two Hundred Twenty-Five Thousand and 00/100 (\$225,000.00) Dollars of the Settlement Amount. Within six (6) months of the Effective Date, Defendant shall pay Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00).

8.3 The payments referenced in Section 8.2 comprise Consumer restitution and reimbursement of the Plaintiffs' attorneys' fees and investigative costs pursuant to N.J.S.A. 56:8-8, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19. Plaintiffs shall determine and distribute Consumer restitution in their sole discretion. Any monies remaining shall be applied to the reimbursement of attorneys' fees and investigative costs.

8.4 The payments referenced in Section 8.2 shall be made by wire transfer or certified cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Gina M. Betts, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

8.5 Upon making the payments referenced in Section 8.2, 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.

8.6 For a period of one (1) year from the Effective Date, the Three Hundred Thousand and 00/100 Dollars (\$300,000.00) balance of the Settlement Amount, which comprises civil penalties pursuant to N.J.S.A. 56:8-13, shall be suspended and automatically vacated at the end of that period, provided:

- (a) Defendant complies in all material respects with the restraints and conditions set forth in this Consent Judgment;
- (b) Defendant makes all Restitution payments as required under Section 7; and
- (c) Defendant pays the sum of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) in the manner required under Section 8.2.

8.7 In the event Defendant materially fails to comply with Section 8.6, Plaintiffs shall provide Defendant with notice seeking payment of the entire suspended amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00). In any such notice, however, Plaintiffs shall provide Defendant with the specific details of the Defendant's alleged noncompliance, as well as the supporting Consumer complaint and/or other documentation. Defendant shall be afforded a fifteen (15) day period from receipt of such notice within which to cure any such noncompliance. In the event of Defendant's failure to cure any such noncompliance, either Party may request that the matter be submitted to binding arbitration before a retired Judge designated by the Parties. Defendant shall pay all costs associated with the arbitration. The Parties shall be responsible for their respective attorneys' fees and costs. As a result of such arbitration, the appointed arbitrator may render an award of civil penalties in Plaintiffs' favor in an amount of up to Three Hundred Thousand and 00/100 Dollars (\$300,000.00).

8.8 For purposes of Section 8.7, "materially fails to comply" shall be considered as a pervasive violation by Defendant of the CFA, Motor Vehicle Advertising Regulations, UCLL and/or UCLL Regulations and/or the provisions set forth in Sections 6 and 7 of this Consent Judgment and shall constitute: (a) more than 20 isolated Consumer complaints or issues; and/or (b) more than 20 Additional Consumer complaints that Defendant has failed to resolve through the Additional Consumer complaint resolution process set forth in Section 7 or otherwise. For purposes of Section 8.7, "cure" shall be considered as a good faith effort by Defendant to commence resolution or other methods to address a bona fide Consumer complaint or issue within the fifteen (15) day cure period.

#### **9. DISMISSAL OF ACTION**

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

#### **10. GENERAL PROVISIONS**

10.1 This 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 Consent Judgment.

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

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

10.4 Except as otherwise explicitly provided for in this 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.

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

10.6 This 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 Consent Judgment avoid compliance with this Consent Judgment.

10.7 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this 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 Consent Judgment.

#### **11. REPRESENTATIONS AND WARRANTIES**

11.1 The Parties Represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

11.2 Defendant Represents and warrants that it shall maintain uniform policies and procedures to facilitate the resolution of Consumer complaints, disputes and/or inquiries in a timely manner.

11.3 Plaintiffs Represent and warrant that they shall require any Consumer who receives Restitution out of the Settlement Amount to execute a General Release in favor of the Defendant (in a form to be prepared by counsel for the Plaintiffs). Plaintiffs Represent and warrant that they shall forward a copy of the executed General Release to the Defendant within twenty (20) days of receipt.

11.4 Plaintiffs Represent and warrant that once Restitution is paid to the Consumers out of the Settlement Amount, they shall provide Defendant with a letter identifying the total Restitution paid. Plaintiffs shall provide such letter within one (1) year of the Effective Date.

11.5 Plaintiffs Represent and warrant that within fifteen (15) days of the Effective Date, the Division shall return to Defendant the documents that bear the following Bates Numbers: (a) 22 FKLE 1 – 22 FLKE 18892; (b) 33 FKLE 1 – 33 FKLE 1404; (c) 44 FKLE 1 – 44 FKLE 1645; (d) 55 FLKE 1 – 55 FLKE 109037; and (e) CHIL 1 – CHIL 121681. These documents were produced by Defendant during the course of discovery in this Action.

11.6 Plaintiffs Represent and warrant that they will notify Defendant of any request for information made pursuant to the Open Public Records Act, 47:1A-1 et seq. ("OPRA") of which they are made aware.

## **12. RELEASE**

12.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendant making the payments referenced in Section 8, 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 brought or could have brought prior to the Effective Date against Defendant for violations of the CFA, the Motor Vehicle Advertising Regulations, the UCLL and the UCLL Regulations as alleged in the Action, as well as the matters specifically addressed in the Consent Judgment (the "Released Claims").

12.2 Notwithstanding any term of this 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 defenses including, but not limited to, set-off against a Consumer or Additional Consumer who has received Restitution, unless the Consumer or Additional Consumer has signed a general release; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

### **13. COMPLIANCE PROGRAM**

13.1 Within sixty (60) days of the Effective Date, Defendant shall implement a compliance program for the purposes of determining and securing compliance with this Consent Judgment on the part of Defendant's officers, directors, owners and general managers.

13.2 Within thirty (30) days of the Effective Date, Defendant shall submit a copy of the Consent Judgment to each of its officers, directors, owners and general managers. Within forty-five (45) days of the Effective Date, Defendant shall provide Plaintiffs with an acknowledgment that the above-referenced Persons have been supplied with a copy of the Consent Judgment along with an alphabetical list of the names, titles and business addresses of such Persons.

13.3 Within thirty (30) days of the Effective Date, Defendant shall appoint an employee or its attorney to act as a direct contact for Plaintiffs for the purpose of resolution of Consumer complaints. Defendant shall notify Plaintiffs of the name, address, telephone number and facsimile number of such employee no later than forty-five (45) days of the Effective Date.

13.4 For a period of five (5) years from the Effective Date, Defendant shall maintain records of:

- (a) All Consumer complaints or inquiries received by any office or agent of Defendant having responsibility for responding to or otherwise handling Consumer complaints or inquiries; and
- (b) All responses to and dispositions of such Consumer complaints or inquiries by Defendant.

For purposes of this Section, "records" shall include all writings, tape or digital recordings, electronic communications and all written notes related thereto. Written Consumer complaints shall be segregated from other Consumer inquiries. Defendant shall make all records available at no cost to Plaintiffs for inspection and copying during regular business hours upon reasonable notice and in accordance with State law.

#### **14. FORBEARANCE ON EXECUTION AND DEFAULT**

14.1 After one (1) year from the Effective Date, in the event Defendant fails to observe or perform any of its obligations under Section 7 of this Consent Judgment and Defendant fails to cure such default within thirty (30) days after receipt of written notice from the Plaintiffs to do so, the Plaintiffs may exercise any rights or remedies available under law.

14.2 Subject to Section 8.7, Defendant agrees to pay all reasonable attorneys' fees and costs including, but not limited to Court costs, associated with any successful collection or enforcement efforts by the Plaintiffs pursuant to this Consent Judgment.

14.3 On the Effective Date, Defendant shall provide the Plaintiffs with current addresses, telephone numbers and facsimile numbers for service of process in the event of default until its obligations under this Consent Judgment are completed. Within five (5) days of relocating to a new address or obtaining new telephone or facsimile numbers, Defendant shall provide such information to the Plaintiffs.

14.4 In the event of Defendant's default under Sections 7 and/or 8 of this Consent Judgment, service upon Defendant shall be effective upon mailing a notice via First Class Mail accompanied by a confirmed receipt facsimile transmission.

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

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

## **16. COMPLIANCE WITH ALL LAWS**

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

- (a) Relieving Defendant of its 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.

## **17. NOTICES UNDER THIS CONSENT JUDGMENT**

17.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this 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:

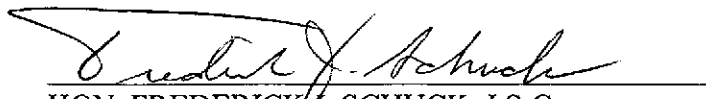
Gina M. Betts, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For the Defendant:

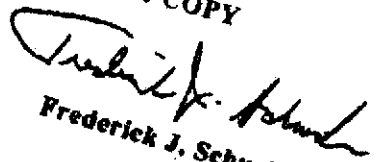
Carl Poplar, Esq.  
1010 Kings Highway South  
Building Two  
Cherry Hill, New Jersey 08034

Laura D. Ruccolo, Esq.  
Capehart & Scatchard, P.A.  
8000 Midlantic Drive  
Suite 300 South  
Mount Laurel, New Jersey 08054

IT IS ON THE 23<sup>RD</sup> DAY OF March 2009 SO ORDERED,  
ADJUDGED AND DECREED.

  
HON. FREDERICK J. SCHUCK, J.S.C.

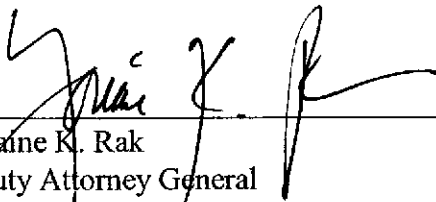
TRUE COPY

  
Frederick J. Schuck, J.S.C.

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

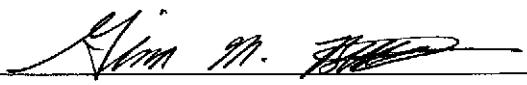
ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

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

Dated: 3/23/09, 2009

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

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

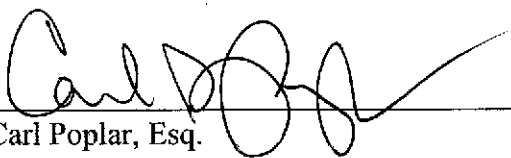
By:   
Gina M. Betts  
Deputy Attorney General  
Consumer Affairs Prosecution Section

Dated: 3/20/09, 2009

124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 648-3070

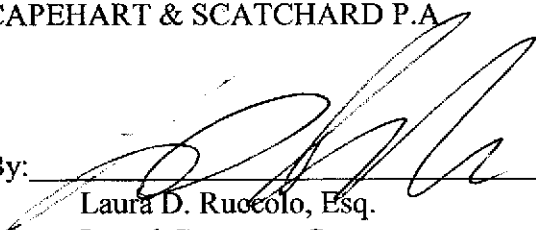
FOR DEFENDANT:

LAW OFFICES OF CARL POPLAR

By:   
Carl Poplar, Esq.  
1010 Kings Highway South  
Building Two  
Cherry Hill, New Jersey 08034  
Telephone: (856) 216-9979

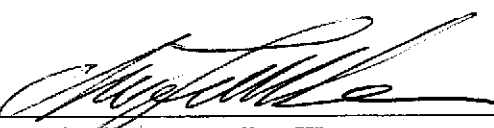
Dated: 3/19/09, 2009

CAPEHART & SCATCHARD P.A.

By:   
Laura D. Ruccolo, Esq.  
Laurel Corporate Center  
8000 Midlantic Drive  
Suite 300 South  
Mount Laurel, New Jersey 08054  
Telephone: (856) 234-6800

Dated: 3/17/09, 2009

FOULKE MANAGEMENT CORP.

By:   
Charles W. Foulke, III  
1503 Route 70 West  
Cherry Hill, New Jersey 08002

Dated: 3-14-09, 2009

# **EXHIBIT A**

NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
ALTERNATIVE DISPUTE RESOLUTION UNIT

**ADR UNIT GUIDELINES**

**INTRODUCTION**

The Division of Consumer Affairs ("Division") started the Alternative Dispute Resolution ("ADR") Unit in May 1992 as an independent, non-advocacy unit within the Division. It was designed to offer a method of resolving problems without using the court system, thereby avoiding the time and expense of court cases. Two programs are available for settling disputes: mediation and arbitration. In the mediation program, the parties involved work directly with a mediator who, as an uninvolved third party, helps to create an atmosphere that is conducive to resolving the issues. In arbitration, the parties present their problem to a neutral individual who analyzes the presentations and then issues a final decision that all parties must follow. Both approaches use trained volunteers and are generally available to the parties at no cost. Originally, the Division made these services available only for settling disputes between businesses and consumers. Over time, however, the focus has been expanded and this assistance is now available to various State agencies.

**I. DEFINITIONS**

Listed below are definitions for terms used in these Guidelines and in the various ADR processes:

(1) **"Arbitration"** is a voluntary means of settling a disagreement in which an arbitrator assigned by the ADR Unit reviews the facts of the case, meets with the parties, and issues a final non-reasoned award that is binding on everyone involved. (A "non-reasoned award" means the parties receive the decision reached by the arbitrator but not the rationale that went into reaching that decision.) Once such a decision is issued, the parties' right to seek further review through the court system is very limited. If necessary, however, the terms of the award can be enforced by the courts. (See discussion below). For the purposes of these Guidelines, an arbitration begins at the time the parties sign the arbitration agreement. (See section VI below.)

(2) An **"arbitrator"** is a volunteer trained by the Division who reviews the facts of the case, meets with the parties and issues a final and binding decision.

(3) A **"complaint"** is a dispute arising out of an interaction between a business and a consumer or between an individual and a State agency, as well as from cases referred by a State agency.

(4) A **"complainant"** is the person who brings the dispute to the attention of the Division or the Unit.

(5) **"Mediation"** is the process by which a mediator works with the parties in an effort to help them craft and agree upon a solution to the dispute. For the purposes of these Guidelines, a mediation begins at the time the parties agree to mediate. That settlement, once reached, is binding on the parties. (See section VI below.)

(6) A **"mediation document"** is any written material prepared before or during the mediation for purposes of the mediation. Such papers may include, but are not limited to, memoranda, notes, files and records.

(7) A **"mediator"** is a volunteer trained by the Division to serve as a neutral third party to help settle disputes brought to the ADR Unit. The mediator does not have the authority to impose a resolution upon the parties.

(8) A **"party"** is a complainant or respondent and may be an individual, corporation, association or other legal entity.

(9) A **"respondent"** is the party against whom the complaint is filed.

## II. **WHAT IS MEDIATION?**

In mediation, through one or more sessions, the mediator encourages the parties to explain their positions about the dispute and helps them develop a solution that is acceptable to them. This is a voluntary procedure that, when successful, quickly turns a dispute into a winning situation for both parties; as a result, long and costly litigation can be avoided.

The mediator may conduct joint and separate meetings with the parties and may propose oral and written suggestions for settlement. (At the discretion of the mediator, the mediation may be conducted by telephone.) The mediator determines when each party may speak during a mediation conference. The mediator may also decide whether the party's representative may speak during the conference. If necessary, the mediator may obtain expert advice concerning technical aspects of the dispute. When appropriate, and when they agree, the parties will jointly pay for such advice. Arrangements for obtaining that input will be made by the mediator or by agreement of all parties.

It is important to note that although mediation is non-binding, once a resolution is reached and agreed upon by the parties, it is binding on all involved, as would any agreed upon contract.

## III. **WHAT IS ARBITRATION?**

The arbitration process also uses trained volunteers to resolve disputes. The arbitrator reviews the facts and issues of the dispute, hears testimony, accepts evidence and evaluates the positions of the parties. Unlike mediation where the parties have agreed to a resolution, in arbitration the arbitrator issues a binding decision. That decision is in the form of a non-reasoned award; that is, no findings of fact and no opinion or rationale are provided by the arbitrator. Additionally, arbitration is not as formal as a court

proceeding. For example, evidence often unacceptable in a court proceeding may be admissible in an arbitration. The parties are bound by and must follow the decision. This process is also faster and less costly than taking a case to court, and the arbitrator's award is viewed as an end to the case. Arbitration awards cannot be challenged in court except under very limited circumstances. For example, in order to overturn a decision, there must be a showing of favoritism, prejudice, fraud, misconduct, or blatant disregard of the rules and procedures in relation to the process of the arbitration. Once a dispute has been submitted for arbitration and an award is issued, neither party can later choose to resolve the dispute again in any other manner, including use of the court system. Please note that if any party to the dispute fails to comply with the arbitrator's decision, the offended party may apply to a court of appropriate jurisdiction to have the decision enforced pursuant to N.J.S.A. 2A:23B-22.

#### **IV. GENERAL GUIDELINES FOR DISPUTE RESOLUTION**

##### **Standard for Participation**

The Director of the ADR Unit accepts referrals from State agencies for mediation or arbitration of complaints that are appropriate for those types of dispute resolution. Such complaints include, among others, requests for restitution, replacements or exchanges of merchandise, warranty claims, and specific performance under a contract.

The Director of the Unit may, in his discretion, decline to accept matters for dispute resolution if the matter is not suitable for arbitration or mediation. In making that determination, the Director shall consider the nature of the relief sought by the complainant (money damages or other relief that can be awarded) and whether the responding party continues to exist or has the resources to address the complaint (for example, the company is bankrupt). If the referral is made pursuant to a Consent Order from a State Agency, any decision to decline to attempt dispute resolution shall be promptly conveyed to that agency along with the reasons for the decision.

##### **Complaint Review**

The ADR Unit reviews the complaints it receives to determine their suitability for the Unit's dispute resolution processes. If the Unit finds that a complaint is appropriate for resolution, either through mediation or arbitration, it will offer those services to the parties involved. Though the ADR Unit and/or the parties decide if mediation or arbitration will be used, generally, unless otherwise required by consent order, matters will be mediated.

If the ADR Unit considers a complaint inappropriate for its dispute resolution procedures, it will return the complaint to the agency that initially referred it to the Unit.

##### **Beginning the Process**

Once a complaint has been accepted by the ADR Unit, a letter is sent to all parties. When

mediation is the proposed process, the letter to the complainant says that the complaint has been received and that the other party, the respondent, is being contacted. The letter to the respondent offers a brief description of the complaint. The letters to both parties name the neutral third party appointed and state how to best contact that person.

In matters to be arbitrated, both parties will be informed of the date of the hearing through ADR Unit staff. In arbitration, ex parte communication, that is contact by one party without the presence of the other, is strictly prohibited. Once the parties agree to participate in dispute resolution, the process is started. Should an arbitrator or mediator become unwilling or unable to serve, the ADR Unit will appoint an alternate.

### **Representation**

Any party may be represented by an attorney during dispute resolution proceedings. In mediation, any individual designated by a party may accompany the party to and participate in a mediation.

### **Date, Time and Place of Mediation or Arbitration**

The mediator shall set the date and time of each conference. In the case of an arbitration, the ADR Unit staff, will fix the date and time of the hearing. Unless the parties are notified otherwise, sessions are held at the offices of the ADR Unit, located at 153 Halsey Street, 7th floor, Newark, New Jersey. In mediation, the mediator and the parties may decide that the sessions will be conducted over the telephone. In arbitration, telephone hearings will only be conducted under extenuating circumstances. The Unit attempts to arrange convenient dates and times for all sessions. In the case of an arbitration, if necessary, the date and time of the hearing may be imposed by the ADR Unit staff. Parties failing to cooperate in setting a date and time or failing to appear when required, may forfeit the ability to present their case to the arbitrator and a decision may be rendered without their ability to offer testimony or evidence beyond those documents submitted to the Unit in advance of the arbitration.

### **Identification of Matters in Dispute**

#### **A) Mediation**

During an initial telephone conference, the mediator and the parties will discuss what information should be provided, including a brief description of the facts, issues and positions in dispute and the parties' desired outcome. That information and copies of any supporting documents must be produced at least five days before the first session. Documents may be exchanged between the parties if everyone expressly agrees to that process. The mediator may ask that additional information be provided before, during or after the sessions.

#### **B) Arbitration**

The ADR Unit will assign an arbitrator who will hear the matter. Once an arbitrator has been selected to hear the case, the arbitrator's curriculum vitae will be sent to each party to the dispute. (Please



see the **Disclosure** section - D, below, for the process used to challenge the selection of that arbitrator.) An ADR staff member will then contact the parties to establish a schedule. At least ten days before the first session, each party must provide the arbitrator, through the Unit staff, a brief written description of the facts and issues in dispute, all appropriate documents and background information that are relevant to the dispute and a statement of the relief sought through the arbitration process. Arbitration, through the ADR Unit will not award punitive or consequential damages. At any time during the process, the arbitrator may compel the production of additional information through documents or witnesses by way of subpoena.

Parties will be given the opportunity to present their case in its entirety, including all necessary documentation. However, unless otherwise expressly stated by the arbitrator, no evidence or testimony will be accepted by the arbitrator once the hearing has been concluded.

#### **C) Written Requirements**

Before starting a face-to-face mediation or an arbitration, parties must agree to certain terms. There are agreement forms that must be read, understood and signed before anyone can participate. Copies of those forms are provided to the parties prior to the initial mediation or arbitration session but are signed only in the presence of the mediator or arbitrator. (Generally parties who participate in telephone mediation are not required to sign the form. They will, however, be required to indicate acceptance of the terms governing the mediation during the telephone conference.)

#### **D) Disclosure**

A person appointed as an arbitrator shall disclose to the ADR staff and to the parties any circumstance likely to raise any question as to the arbitrator's impartiality or independence, including any bias or financial interest or past or present relationship with parties or their representatives. This shall remain a continuing obligation of the arbitrator. Notice of any challenge to the impartiality or independence of the arbitrator shall be made within five (5) days of becoming aware of circumstances giving rise to the challenge. This notice shall be in writing to the ADR Unit and shall set forth the facts and circumstances giving rise to the challenge.

#### **V Privacy**

All sessions are private and confidential. Only parties and their designated representatives may attend conferences and/or hearings. Other persons may attend only with the permission of the parties and with the consent of the mediator or arbitrator and the Unit Director.

#### **VI CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS**

All information provided by parties during the mediation process is confidential. Success of mediation depends in large part on a free exchange of information, so it is important that parties feel free to discuss issues openly. Information provided by one party will not be revealed to the opposing party without the explicit authorization of the revealing side. Mediators cannot be forced to release any

information or to testify about the mediation in a lawsuit or court proceeding. All mediation documents are considered confidential. (For a full description of these rights and responsibilities please see N.J.S.A. 2A:23C-4, 5 and 6.)

In arbitrations, information provided to the arbitrator must also be given to the opposing party. Parties must maintain the confidentiality of the arbitration and may not disclose information except to the staff of the ADR Unit. Confidentiality as discussed in this section, takes effect upon the parties' agreement to participate in the ADR process. The following documents related to the arbitration proceeding are not considered confidential and may be available upon request to persons or entities:

- a) The complaint, with all its attachments, that initiated the arbitration;
- b) The response to the initial complaint, with all its attachments,; and
- c) The arbitrator's award.

All other documents submitted in the course of the arbitration are considered confidential and not available to any person or entity except the parties involved, the staff of the ADR Unit and its counsel.

No taped or stenographic record may be made of any dispute resolution process.

## **VII     TERMINATION**

A mediation will be concluded in one of the following ways:

- 1) the signing of a written settlement agreement by the parties;
- 2) an oral agreement between the parties;
- 3) a written or oral statement of the mediator saying that further efforts at mediation will not be productive; or
- 4) a statement by a party or parties withdrawing from the mediation proceedings.

An arbitration will be concluded in one of the following ways:

- 1) upon the issuance of a decision by the arbitrator;
- 2) a written agreement between the parties resolving the dispute; or
- 3) a written statement by all parties that they no longer wish to continue the arbitration.

## **VIII    EXCLUSION OF LIABILITY**

Neither the staff of the ADR Unit nor any mediator or arbitrator is a necessary party in a judicial proceeding related to the dispute that is being resolved. Parties to an arbitration expressly agree 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. 59:10A-1 et seq. Parties to a mediation or arbitration shall be deemed to have consented that neither the staff of the ADR Unit nor any mediator or arbitrator shall be liable to any party in any way for damages or for injunctive relief for any act or omission in connection with any mediation or arbitration conducted under these rules.

## **IX      INTERPRETATION AND APPLICATION OF RULES**

Mediators and arbitrators shall interpret and apply these rules as they relate to their duties and responsibilities. All other rules shall be interpreted and applied by the Director of the ADR Unit.

*Revised June 2008*