

GURBIR S. GREWAL
Attorney General of New Jersey
Attorney for Petitioner
Division of Alcoholic Beverage Control Enforcement Bureau
140 East Front Street
P.O. Box 087
Trenton, New Jersey 08625-0087

By: Kevin Marc Schatz
Senior Deputy Attorney General
(609) 376-9691

STATE OF NEW JERSEY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

PETITION FOR RULEMAKING REGARDING)
THE RETAIL INCENTIVE PROGRAM) CERTIFICATION OF
PURSUANT TO N.J.A.C. 1:30-4.1) KEVIN MARC SCHATZ

I, Kevin Marc Schatz, of full age, hereby certify and say:

1. I am employed by the State of New Jersey, Department of Law and Public Safety as a Senior Deputy Attorney General and the Bureau Chief of the Division of Alcoholic Beverage Control's ("ABC") Enforcement Bureau. I make this certification based on my personal knowledge in accordance with N.J.A.C. 1:1-15.7(c) in support of the Enforcement Bureau's Petition for Rulemaking Regarding the Retail Incentive Program Pursuant to N.J.A.C. 1:30-4.1.

2. The Investigations and Enforcement Bureaus are currently conducting an investigation known as IMO: Trade Practices Investigation, Investigation No. H-DIVISION. I am personally supervising this investigation. The exhibits attached to the ABC's petition were either made by me or by Frank Mango at my direction.

2. Frank Mango is employed by the State of New Jersey, Department of Law and Public Safety, as a Special Services Investigator in the Division of Alcoholic Beverage Control's

(“ABC”) Investigations Bureau. He has been so employed for approximately 1 year and 3 months. Prior to working for ABC, he was employed by the Monmouth County Prosecutor’s Office as a Prosecutor’s Agent for 21 approximately years. He has been a licensed Certified Public Accountant since approximately 1983.

3. On or about October 29, 2019, Demands for Documents and Information (“Initial Demands”) were issued in the above referenced investigation to select licensed wholesalers. On January 16, 2019, Amended Demands for Documents (“Amended Demands”) were issued that modified the Initial Demands and, where necessary, identified deficiencies with responses received. Both the Initial Demands and the Amended Demands (collectively “Demands”) required Allied, Fedway, Winebow Group and R&R Marketing, LLC (“R&R”) to produce information regarding the implementation of their Retail Incentive Programs (“RIPs”) for their top 50 largest RIP customers.

4. The investigation spans 2017 and 2018. Allied acquired R&R Marketing, LLC in 2017. Thus, R&R was required to produce information prior to the acquisition. Winebow Group is not the subject of the Motion for the Order to Show Cause.

5. In response to the Demands, Allied and Fedway produced documents to the Division in response to the aforementioned Demands which included, in relevant part, EXCEL spreadsheets prepared in response to Demands 1 & 2 for the years 2017 and 2018. These spreadsheets included information regarding RIP sales terms, price schedules, RIP Checks, RIP check detail reports, invoices, payment dates and credit terms. Allied and Fedway each produced separate EXCEL files with data from 2017 and 2018.

6. Allied produced its responses to Demands 1 & 2 for 2017 on a combined EXCEL File, labeled Allied Beverage ABC H-Division – Demand 1 & 2 RIP’s, with responses within the

file separated into individual worksheets labeled “Demand 1A-2017,” “Demand 1B – 2017,” “Demand 2 2017RIP checks > 20,000,” and “Demand 2 2017 Ck Recap.” For 2018, Allied produced two separate EXCEL files labeled “Demand 1 Allied 2018” and “Demand 2 RIP’s 2018 Allied”.

7. Fedway’s initial response to Demand 1 was labeled “ABC Notice FEDWAY 2017 Demand 1” and “ABC Notice FEDWAY 2018 Demand 1.” Due to an omission in ABC’s request, Fedway’s initial Demand 2 responses did not include all necessary data, therefore they were requested to submit updated spreadsheets. The updated Demand 2 spreadsheets, labeled “ABC Notice FEDWAY 2017 Demand 2 rev 2” and “ABC Notice FEDWAY 2018 Demand 2 rev 2”, were used for all analyses rather than the initial submissions due to the deficiencies.

8. Upon receiving these EXCEL spreadsheets, Mr. Mango copied all original EXCEL files and appended documents to create a working copy (“Working Copy”) of each. The originally submitted EXCEL files were not edited or altered. All of the procedures described herein were then applied to the working copies only. He used the data provided by Allied and Fedway to identify specific information as follows:

a. ALLIED:

i. A copy of Demand 1 Allied 2018 was saved as Allied Top 50 RIP Accounts (Exhibit 2). Thereafter a column was added and Mr. Mango calculated RIPs as a percentage of Gross purchases for each retail licensee. The data on this worksheet was then filtered to show only the retailers with the top 20 RIP accounts. This worksheet was then saved as Allied’s Top 20 RIP Accounts 2018, which appears as Exhibit 2.

ii. Starting with Demand 2 RIP’s 2018 Allied, unnecessary columns were hidden and the RIP Check Date, RIP Invoice Date and Invoice Paid Date columns were

reformatted to allow for formula calculations. Mr. Mango then added a new column, labeled “Days from Inv Pd to RIP Ck Date” to compute the number of days from the Invoice Paid Date to RIP check date for each RIP item produced. Thereafter, he filtered this data to show only RIP items where the RIP Check was issued less than 30 days after the invoice paid date and added it in another new column, labeled “Days from Inv Pd to RIP Ck Date <30.” Likewise, he added a new column, labeled “Credit Compliance Days from Inv Date to Inv Pd Date,” to compute the number of days from the invoice date to the invoice paid date for each RIP item. This data was then filtered in a new column, labeled “Credit Compliance Days from Inv Date to Inv Pd Date >38,” to show only RIP items for which the invoice was paid in more than 38 days after the invoice date. Finally, subtotals were added for each retailer, counting overall number of records, the number of RIP Checks issued in less than 30 days, and the number of invoices paid in excess of 38 days. These computations were saved in a worksheet labeled “Allied 2018 Counts” in the Allied 2018 – RIPS GT1000 & LT30days EXCEL file, which appears as Exhibit 6.

iii. The Allied 2018 Counts worksheet, discussed in paragraph ii above, was re-saved as a new EXCEL file, “Allied 2018 Counts of RIP Prepayment and Credit Over-Extension)”, worksheet “Allied 2018 Counts,” and unnecessary columns were hidden to simplify the viewable data, which appears as Exhibit 14.

iv. Starting with the Allied Beverage ABC H-Division – Demand 1 & 2 RIP’s EXCEL FILE on the worksheet labeled “Demand 2 2017RIP Checks >20K,” Mr. Mango followed the same procedures outlined in paragraph 5 above in order, adding new columns to compute and filter out RIP items where the RIP check was issued in less than 30 days after invoice paid date and where the invoice was paid in excess of 38 days after the invoice

date. A descriptive header was added to this worksheet. This was saved as Allied Beverage ABC H-Division - Demand 1 & 2 RIP's, worksheet RIPS > 1,000. Unlike the Allied 2018 counts worksheet, retailer subtotals were not added to this worksheet. This information was then extracted and saved in a new file as Allied 2017 RIPs GT \$1,000, which appears as Exhibit 8.

v. Thereafter, Mr. Mango filtered this data to show only RIP items where the RIP Check was issued less than 30 days after the invoice paid date and added it in another new column, labeled "Days from Inv Pd to RIP Ck Date <30." Likewise, he added a new column, labeled "Credit Compliance Days from Inv Date to Inv Pd Date," to compute the number of days from the invoice date to the invoice paid date for each RIP item. This data was then filtered in a new column, labeled "Credit Compliance Days from Inv Date to Inv Pd Date >38," to show only RIP items for which the invoice was paid in more than 38 days after the invoice date. Thereafter, the descriptive header was removed from Allied 2017 RIPs GT \$1,000 and subtotals were added for each retailer, counting the overall number of RIP records, the number of RIP Checks issued less than 30 days after invoice payment, and the number of invoices paid in excess of 38 days. This was saved as EXCEL file labeled "Allied 2017 Counts RIPs GT \$1,000 RIP Pmt. Bf 30 Credit GT 38" on the worksheet labeled "RIPS > 1,000 Updated 041719," which appears as Exhibit 13.

vi. Starting with the Allied Beverage ABC H-Division – Demand 1 & 2 RIPs EXCEL FILE on the worksheet labeled "Demand 2 2017RIP Checks>20K," as discussed in paragraph ii, I did a largest to smallest sort of the column labeled RIP Amount Paid and removed two rows for which no Invoice Paid Date information was provided. I then created a report for RIP Amount Paid in excess of \$50,000 which appears as Exhibit 4.

vii. Starting with the Allied 2018 Counts worksheet, discussed in paragraph ii, Mr. Mango extracted the records for all RIP items where the RIP paid was more than \$1,000. This extraction was saved in the Allied 2018 – RIPS GT1000 & LT30Days EXCEL file as a separate worksheet labeled “RIPS >1,000.” Thereafter, this worksheet was sorted by retailer name and saved as a separate EXCEL file labeled Allied 2018 RIPS GT \$1,000 which appears as Exhibit 9.

viii. Thereafter, the Allied 2018 RIPS GT \$1,000 worksheet was sorted, from smallest to largest, by the number of days from the invoice paid date to the RIP check date. This was saved as Allied 2018 1375 RIPS paid LT30 on worksheet RIPS >1,000 Worksheet 1. This worksheet was re-sorted by RIP check number, from largest to smallest. All RIP items on RIP Check Number 982283 were identified and highlighted green. This was saved as a new worksheet, RIP Ch 982283 Worksheet 2, in the same EXCEL file, which appears as Exhibit 18.

vii. Starting with the RIPS>1,000 worksheet in the Allied 2018 – RIPS GT 1000 & LT 30 Days EXCEL file, Mr. Mango filtered the data by invoice number to show only RIP items with an Invoice Number of 999999. Thereafter, he sorted the remaining data from largest to smallest by the RIP Amount Paid. This was then saved as a new EXCEL file labeled Allied 2018 Adjustment Checks on a worksheet labeled RIPS >1,000, which appears as Exhibit 16.

b. FEDWAY:

i. In accordance with ABC’ Demand, the Fedway spreadsheets included headers which prevented them from being used to run sorts or perform formula calculations. Therefore, these headers were removed.

ii. Starting with a copy of ABC Notice FEDWAY 2018 Demand 2 rev 2, Mr. Mango added a column labeled “RIP %” and calculated the RIP percentage of Gross Sales for each retailer. Thereafter, he totaled up the columns labeled Gross Purchases and Total RIPs Paid for all retailers and calculated the average RIP percentage and included this information on the worksheet. This worksheet was then saved as Fedway’s Top 50 RIP customers (2018), which appears as Exhibit 3. Working from the Fedway’s Top 50 RIP Customer’s worksheet, he removed the “net sales” column to simplify the presentation, since this column was not used for any calculations, and filtered the data to show only the retailers with the top 20 RIP accounts. This was then saved as “Fedway’s Top 20 RIP Customers (2018),” which also appears in Exhibit 3.

iii. Starting with FEDWAY 2017 Demand 2 rev 2, Mr. Mango extracted the records for all RIP items where the RIP paid was more than \$1,000. This extraction was saved as EXCEL file Fedway 2017 RIPs GT \$1,000 on a worksheet labeled “RIPs > 1,000,” which appears as Exhibit 10.

iv. Starting back with FEDWAY 2018 Demand 2 rev 2, Mr. Mango added a new column, labeled “Days from Inv Pd to RIP Ck Date” to compute the number of days from the Invoice Paid Date to RIP check date for each RIP item produced. He filtered this data to show only RIP item where RIP Check was issued in less than 30 days after the invoice paid date and added it in a new column, labeled “Days from Inv Pd to RIP Ck Date <30.” Likewise, he added a new column, labeled “Credit Compliance Days from Inv Date to Inv Pd Date,” to compute the number of days from Invoice date to the invoice paid date for each RIP item. This data was then filtered in another new column, labeled “Credit Compliance Days from Inv Date to Inv Pd Date >38,” to show only data where invoice

was paid in excess of 38 days from invoice date. Unnecessary columns were hidden to simplify the data displayed on the worksheet. This worksheet was saved as EXCEL file Fedway 2018 RIPS GT \$1,000 on worksheet "RIPS > 1,000," which appears as Exhibit 11.

v. Thereafter, the "RIPS > 1,000 worksheet" was sorted by retailer, so that all RIP items for each retailer were presented consecutively. Subtotals were then added for each retailer, counting overall number of records, the number of RIP check issued in less than 30, and the number of invoices paid in excess of 38 days. This was saved as EXCEL file Fedway 2018 Counts of RIP Prepayment and Credit Over-Extension on worksheet Fedway 2018 Counts, which appears as Exhibit 15.

vi. Thereafter, the data on the RIPS > 1,000 worksheet was sorted, smallest to largest, by the number of days from the Invoice Paid Date to the RIP Check Date. RIP Checks issued prior to the invoice paid date were highlighted in green. RIP Checks issued on or after the invoice paid date were highlighted yellow. This was saved as a new EXCEL file "Fedway 2018 RIPS GT \$1,000 Paid Before Retailer Paid Invoice Worksheet 1" on worksheet labeled "Fedway 2018 RIPS Paid <30 Days," which appears in the Exhibit 17 folder.

vii. Beginning again with the RIPS > 1,000 worksheet, the data was re-sorted by RIP check number, from largest to smallest. All RIP items from RIP Check Number 343203 were identified and highlighted yellow. This worksheet was then saved as an EXCEL file named Check 333022 Worksheet 2, worksheet name 333022, which appears in the Exhibit 17 folder.

9. Exhibits 7, 12, 20, 22 and 24 are PDF copies of documents provided to ABC related to the transactions identified in the exhibit. Exhibit 25 is a printout of ABC's computer disciplinary data base regarding Current Price List violations.

10. Exhibits 19, 21 and 23 are copies of Current Price Lists submitted to ABC by Allied or Fedway.

11. The information from which the aforementioned reports were generated was provided by alcoholic beverage licensees. The truth and accuracy of that information is not within my personal knowledge or the personal knowledge of Mr. Mango. However, in response to a request from the Division of Alcoholic Beverage Control, all alcoholic beverage licensees have an affirmative duty to provide truthful and accurate information insofar as their ability to do so and they shall not hinder or delay an investigation in any manner whatsoever. N.J.S.A. 33:1-35. Consequently, the Enforcement Bureau relied on the information provided by the licensees and it accepts no responsibility for errors in its reports arising from inaccurate information provided by a licensee.

12. This Certification and all exhibits referenced herein are provided to Director James B. Graziano, Allied's attorney Robert C. Williams, Esquire, and Fedway President Neil Barnett on a "thumb drive." All such exhibits are true copies of the originals insofar as it is possible to verify same.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 6, 2019


Kevin Marc Schatz