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Clerk of the Court
30th Judicial Circuit

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN, *ex rel*
The People of the State of Michigan,

Petitioner,

No. 19-08-CP

HON. JAMES S. JAMO

v

EXECUTIVE CAR RENTAL, INC.,

Respondent.

Darrin F. Fowler (P53464)
Ashlee N. Lynn (P78789)
Attorneys for Petitioner
Michigan Department of Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632

ASSURANCE OF VOLUNTARY COMPLIANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan and Executive Car Rental, hereby execute and agree to be bound by this Assurance of Voluntary Compliance ("Assurance").

This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act, 1976 PA 331, as amended, MCL 445.901 *et seq.* (MCPA). Executive Car Rental agrees not to contest any terms of this Assurance.

The parties agree that the entry into this Assurance by Executive Car Rental is not an admission or agreement with respect to any legal or factual issues dealt with in this Agreement.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General (“the Department”) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. Executive Car Rental waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

II. Parties Bound

2.1 This Assurance binds Executive Car Rental, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. Executive Car Rental is responsible for compliance with the terms of this Assurance, and must ensure that all employees, subcontractors, agents and representatives comply with the terms of this Assurance.

III. Definitions

3.1 “Assurance” means this Assurance of Voluntary Compliance.

3.2 “BBB” means the Better Business Bureau of Southeastern Michigan.

3.3 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

3.4 “Executive Car Rental” refers to Executive Car Rental, Inc; owner Mark Waad; and all employees; agents; representatives; and contractors for Executive Car Rental, Inc.

3.5 “NIA” means the Notice of Intended Action issued to Executive Car

Rental on January 25, 2019.

3.6 “Parties” means COD and Executive Car Rental, collectively.

3.7 “Reservation System” refers to Priceline, Kayak, Expedia, and all other websites or portals used by customers to make online reservations or bookings with Executive Car Rental.

3.8 All other terms shall have the meaning specifically defined in the MCPA.

IV. COD’s informal investigation of Executive Car Rental.

4.1 Consumers who believe they have been treated unfairly in the purchase of goods or services may file complaints with the Attorney General either online or by writing to her. Since January 1, 2017, the Attorney General has received more than sixty complaints from consumers against Executive Car Rental. These complaints have common themes:

- Executive Car Rental has been collecting deposits from numerous consumers and then not making timely refunds. In some instances, Executive Car Rental failed to make any refund until being advised of the failure by the BBB or Attorney General’s Office.
- For consumers reserving vehicles through Reservation Systems, Executive Car Rental has provided terms and conditions that are different from those the consumer is presented with in the template contract given to the customer upon arriving to pick up the reserved vehicle;
- Although the terms and conditions available through at least one Reservation System stated that a \$250 deposit will be required for vehicles reserved using a credit card, we have documented at least one instance where the customer was charged a \$500 credit card deposit;

- Although the terms and conditions with the template contract state that “Late Fees: Are assessed once the Vehicle is not returned or extended by 3 p.m.,” some customers appear to have been charged additional daily rental rates even when the rented vehicle was returned before 3:00 p.m.;
- At the time of vehicle rental, some customers have been told a hold would be put on the credit or debit card for the security deposit, only to find the card was actually charged the purported hold amount;
- Some consumers who were aware the credit or debit card would be charged for the deposit were verbally informed the deposit would be returned in 3-7 days, which commitment was not met;
- Customers reserving vehicles through at least one Reservation System were advised through the terms and conditions there that the security deposit would be returned within fourteen days, which is a commitment that was not always kept;
- Upon returning vehicles, multiple customers received receipts purporting to show the costs of the transaction, but which did not show the security deposit that had, in fact, been charged to the credit or debit card;
- Upon complaining to Executive Car Rental about unrefunded deposits, some customers were sent receipts purporting to show the deposit had been refunded, only to learn from their credit or debit card companies that the refund was not effectuated;
- Some consumers have sustained inappropriate charges for damage to the rental vehicle;

4.2 Based on the consumer complaints, the COD conducted witness interviews, and obtained documentation from various consumers in anticipation of filing a lawsuit. This included gathering copies of trip itineraries and rental contracts, electronic payment receipts, vehicle damage reports and photographs, refund receipts, and other documentation. Several consumers provided the Attorney General with notarized affidavits.

4.3 In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, COD's potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of the Department's costs and expenses related to the investigation. The entry into this Agreement by Executive Car Rental is not an admission of liability with respect to the particular claims of any individual consumer. Executive Car Rental is offering this Assurance to avoid the time and expense of litigating this matter.

V. Implementation of Compliance Measures

5.1 To the extent that Executive Car Rental may have engaged in any unfair or deceptive business practices in the State of Michigan, Executive Car Rental shall immediately cease and desist such practices.

5.2 Executive Car Rental acknowledges that it has made mistakes with regard to deposits charged to its customers during 2018. Owner Mark Waad explains that the business expanded in November 2017 from its Michigan operational base to add four locations in Florida. The existing management structure at Executive Car Rental was ill-equipped to maintain the requisite quality control amidst this growth. Further difficulties arose for Executive Car Rental during 2018 when it began automatically charging deposits beyond the rental costs to customer debit and credit cards instead of simply placing a hold on the cards for potential additional costs, such as for damage to the vehicle, late returns, and returns without adequate refueling. Mr. Waad explained that the large volume of resultant chargebacks raised a red flag

with the financial institution processing these transactions for Executive Car Rental, resulting in a temporary freeze on these refunds.

Because of the resultant problems, Executive Car Rental has experienced a down-sizing of the number of Michigan locations from which it operates and has elected to close (at least for now) two of its four Florida locations in order to focus on improving its business practices. The regret expressed by owner Mark Waad in discussions with COD was a significant contributor to this assurance agreement.

In order to address the concerns raised by the Attorney General in the NIA, as well as additional issues explored by the Parties through consumer complaints, Executive Car Rental gives the following assurances:

- A. Executive Car Rental will no longer charge security deposits on vehicle rentals. Executive Car Rental states that it stopped this practice in mid-December 2018, and that it will not resume. The COD has received information from consumers strongly suggesting the practice of charging deposits has continued, at least in some situations, into 2019.

Notwithstanding any disagreement as to when the practice was fully halted, the Parties agree that absolutely no consumers will be charged deposits after the Effective Date.

- B. Executive Car Rental will refund all deposits collected from January 1, 2018, through the Effective Date of this Agreement, except to the extent Executive Car Rental can show a documented basis for withholding the refund that is consistent with both the rental agreement and this

Assurance. Executive Car Rental represents to the Attorney General that it has already made significant progress in providing such refunds, and that it will perform an internal audit to ensure full compliance with this requirement not later than thirty days following the Effective Date of this Agreement.

- C. If a customer is found to have not received a refund to which he or she is entitled based on the preceding subsection within thirty days of the Effective Date of this Agreement, the customer shall be entitled to receive from Executive Car Rental two times the amount of the original deposit. For example, if a consumer paid a deposit of \$250 that was not properly refunded within thirty days of the Effective Date, then that customer is entitled to receive \$500.
- D. Within thirty days of the Effective Date of this Agreement, Executive Car Rental shall develop and implement a procedure ensuring all persons renting vehicles from its Michigan locations are given an opportunity to inspect the vehicle and note any pre-existing damage prior to completing the rental transaction. The procedure shall include providing customers with a copy of any such inspection document at the time of the rental. Executive Car Rental will train all existing and new employees regarding this procedure and will provide the Attorney General with a copy of this procedure within forty-five days of the Effective Date. Executive Car Rental may modify this procedure from time-to-time, so long as the

substance of the assurance made in this Agreement is maintained. The procedure shall be deemed implemented on the date Executive Car Rental emails a copy of the procedure to COD, along with confirmation that all existing employees have received the requisite training.

- E. For the period from January 1, 2018, through the implementation of the procedure anticipated in the preceding subsection, there shall be a presumption that any damage to a rental vehicle rented from one of Executive Car Rental's Michigan locations was pre-existing and thus not chargeable to the customer. Executive Car Rental can overcome this presumption only with independent evidence of vehicle damage being sustained while in the customer's possession. Executive Car Rental will cease all collection efforts on vehicle damage claims falling under this subsection on the Effective Date absent such independent evidence. This will include collection efforts both from customers as well as their insurance carriers. Under no circumstances will Executive Car Rental seek any recovery for vehicle damage from any of the consumers receiving \$100 payments under Section 6.1, below.
- F. In any situation where Executive Car Rental seeks to charge a customer for economic losses arising from damage to a rented vehicle while in the customer's possession, Executive Car Rental must provide the customer with documentation confirming all costs and other economic losses resulting from the damage. When repairs to a vehicle are needed,

Executive Car Rental must provide the customer, or the customer's insurance carrier (where applicable), documentation showing the damage appraisal estimate. Customers will not be charged for damages that are reasonably considered ordinary wear-and-tear, such as but not limited to a single windshield chip.

- G. Executive Car Rental assures that all customer charges will be fully disclosed and clearly-stated, regardless of whether the customer is booking directly with Executive Car Rental or with a Reservation System. Executive Car Rental will provide a separate line-item for each fee that is being charged in addition to the base rental rate, and those fees shall be clear and legible.
- H. Executive Car Rental will take steps to ensure the Terms and Conditions listed with all Reservation Systems are consistent with the Terms and Conditions on the reverse side of its customer contract. This consistency must be achieved within sixty days of the Effective Date of this Agreement. Any inconsistency between contractual terms and conditions and those appearing on the website of a Reservation System will be resolved in the customer's favor.
- I. Executive Car Rental acknowledges that its contractual terms and conditions presently state that a late fee on a returned vehicle will not be applied if the rental is extended or returned before 3:00 p.m., but that the terms and conditions used for Third-Party Vendors suggest a late fee will

be applied if the vehicle is not returned by the time anticipated in the itinerary. Thus, one or more customers may have been charged late fees inconsistent with Executive Car Rental's contract. To the extent the application of any such late fees are brought to Executive Car Rental's attention by customers, or through complaints to the Attorney General or BBB, Executive Car Rental shall refund all such late fees.

- J. Customers will no longer be charged late fees or other additional rental charges for vehicles returned before 3:00 p.m. on the pre-established return date. This limitation shall be adjusted if Executive Car Rental modifies its contract to establish a different policy for the application of late fees. If it does so, any modification should be clear and legible. All existing and future employees shall be trained on the existing late fee policy and any modifications to it.
- K. Executive Car Rental acknowledges that an issue has been identified through which a customer making an early return of a vehicle booked through a Reservation System may be charged an amount higher than the booking price because the daily rate is applied by its database. Executive Car Rental will take any necessary steps to resolve this issue within sixty days of this Agreement to ensure customers are not charged more than the quoted rental price for a vehicle that is returned early. To the extent any customers have paid rental charges above the price quoted through a Reservation System on a vehicle that was returned early up to

the Effective Date, Executive Car Rental will refund the difference between the quoted price and the actual charge to any customer bringing this issue to its attention, whether directly or through the BBB. If any customer is charged an amount above the booking price quoted through a Reservation System based on an early return occurring after the Effective Date, Executive Car Rental shall refund that customer twice the difference between the quoted rental rate and the actual charge.

- L. Executive Car Rental will not require any customer to verify he or she has insurance as a prerequisite to vehicle rental. Executive Car Rental will not require the purchase of any additional insurance as a prerequisite to vehicle rental, nor shall it make any representations that such purchase is required.
- M. Executive Car Rental will continue to cooperate with the Attorney General's Office in mediating all existing and future consumer complaints. For a period of one year after the Effective Date, Executive Car Rental shall provide COD with any documents, database screen shots, or other information requested for the purpose of monitoring compliance with the Assurance.

5.3 Executive Car Rental understands that by accepting these assurances, the Attorney General and COD are making no representation as to their adequacy in providing good customer service, or compliance with the MCPA. In other words, if the Attorney General receives consumer complaints or other information in the future

suggesting that Executive Car Rental has violated, or is violating, the MCPA, Executive Car Rental's implementation of these assurances shall not deprive COD from taking any appropriate action described in the MCPA. COD warns Executive Car Rental that, if there is evidence of any future MCPA violations occurring after the effective date of this assurance, COD may seek judicial relief that includes, but is not limited to, injunctive relief and damages.

VI. Financial obligations

6.1 In addition to making all refunds and payments required under Section 5.2, Executive Car Rental shall make payments totaling \$39,500 and consisting of:

- A. A donation of \$4,000 to the BBB. This donation shall be mailed not more than thirty days after the Effective Date of this Agreement;
- B. Payments of \$100 each to the 55 consumers who filed complaints with the Attorney General between July 1, 2018, and issuance of the NIA. Such payment shall be made by check mailed to the customer. The Attorney General will provide Executive Car Rental with this list of names and addresses at the time it provides the fully-executed Agreement.

Executive Car Rental shall mail out these payments not more than fourteen days after receiving this list. These payments shall be in addition to any other refunds or payments to which the consumers are entitled under section 5.2. These payments reflect both the inconvenience experienced by these consumers, and the value of their complaints to the Attorney General's inquiry leading to the NIA;

C. A payment of \$30,000 to the Attorney General's Office through a check made payable to the State of Michigan. Of this sum, \$10,000 shall be used to offset the expense to the Michigan citizens of the Attorney General's investigation. COD will use the remaining \$20,000 of this Payment to compensate consumers identified through the course of the investigation described in Section IV, and to consumers who submit substantiated complaints after the Effective Date of this Assurance. These distributions will be made only upon claims the COD determines to be both substantiated and legitimate, and relating only to matters arising before the Effective Date for which Executive Car Rental is not required to provide a refund or payment under section 5.2. In other words, these distributions will not offset any obligations Executive Car Rental has under section 5.2. Executive Car Rental may not challenge the amounts or appropriateness of the consumer distributions. Further, COD may adjust the amounts of these payments as additional consumer complaints are received. Distributions will stop when the \$20,000 is exhausted, or August 31, 2019, whichever occurs first. If any of the \$20,000 remains on September 1, 2019, the balance shall be retained by the Attorney General to cover the costs associated with monitoring Executive Car Rental's compliance with this Assurance, and the consumer distribution process; and

D. COD shall give Executive Car Rental written notice of the consumer distributions made under this section within thirty days of making such distributions.

6.2 COD shall give Executive Car Rental written notice of the consumer distributions. This notice will be in the form of a letter that identifies the consumers who have received distributions, their addresses, and the amount of the distribution.

6.3 The payment to the Attorney General anticipated by Section 6.1 shall be made within ten days of the Effective Date, by check payable to the "State of Michigan." The payments and any other information shall be sent to Darrin F. Fowler, Assistant Attorney General, Corporate Oversight Division, P.O. Box 30755, Lansing, MI 48909.

VII. Release

7.1 Upon the Effective Date, the COD hereby releases and discharges Executive Car Rental and any of its parent entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are based directly or indirectly on the Attorney General's consumer protection investigation as identified in the aforementioned Notice of Intended Action, including the alleged acts, failures to act, omissions, misrepresentations, facts, events,

transactions, statement, occurrences or other subject matter which were or could have been set forth, alleged, complained of or otherwise referred to in the Notice of Intended Action. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD, or other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not affect, expand or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except that any common law right of set off would still be applicable. Further, this Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of Executive Car Rental business practices and Executive Car Rental must not make any representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 Within three business days of the Effective Date of this Assurance, COD will file a copy of this Assurance, as well as a notice with the Ingham County Circuit Court in the above-captioned matter stating that the investigation has been completed.

8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes Executive Car Rental to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief.

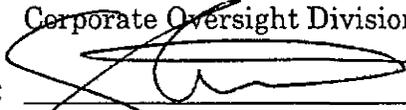
IX. Signatories

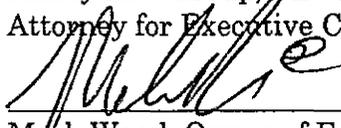
9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance.

X. Effective Date

10.1 The effective date of this Assurance is the date upon which the COD representative signs this Assurance.

Dated: 3/21/2019 By: 
Darrin F. Fowler (P53464)
Ashlee N. Lynn (P78789)
Assistant Attorneys General
Michigan Dep't of Attorney General
Corporate Oversight Division

Dated: 3/20/19 By: 
Steven A. Haney (P63947)
Haney Law Group, PLLC
Attorney for Executive Car Rental

Dated: 3/20/19 By: 
Mark Waad, Owner of Executive Car Rental