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ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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FILED

JAN 13 2014

Division of Consumer Affairs

By: Jeffrey Koziar
Deputy Attorney General


STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

ELDORADO NATIONAL (KANSAS),
INC.,

Respondent

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation in order to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Regulations Governing Automotive Repairs, N.J.A.C. 13:45A-26C.1 et seq. (“Automotive Repair Regulations”), have been or are being committed by Eldorado National (Kansas), Inc., with a main business address of 1655 Wall Street, Salina, Kansas, 67401, as well as by its owners, officers, directors, managers, agents, representatives, employees, successors, and/or assigns (collectively, “Eldorado”) (hereinafter referred to as the “Investigation”); and

WHEREAS the Investigation was prompted by concerns about whether Eldorado made the necessary Consumer disclosures concerning a Safety Defect in the 2012 Toyota Sienna Amerivan (“Amerivan”) and whether Eldorado has properly diagnosed the Safety Defect;

WHEREAS on June 26, 2013, Eldorado notified NHTSA of the Safety Defect in the Amerivan;

WHEREAS Eldorado has voluntarily and fully cooperated with the Division and provided information to assist with the Investigation;

WHEREAS Eldorado denies that it has committed any violation of the CFA, and/or the Automotive Repair Regulations; and

WHEREAS the Division and Eldorado (collectively, “Parties”) have reached an amicable agreement, thereby resolving the issues in controversy and concluding this Investigation without the need for further action, and Eldorado having consented to the entry of this Assurance of Voluntary Compliance (“AVC”) without having admitted any violation of law or finding of fact, and for good cause shown:

1. EFFECTIVE DATE

1.1 This AVC shall be effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

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

2.1 “Attorney General” shall refer to the Attorney General of the State of New Jersey (or designated representative) and the Office of the Attorney General.

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

2.3 “Communicate” means, without limitation, the transmittal of information (in the form of facts, ideas, inquiries or otherwise) including letters, memoranda, notes, e-mails, facsimiles and tape recordings.

2.4 “Consumer” shall mean any Person 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).

2.5 “Eldorado Dealerships” means the dealerships which are authorized through dealer agreements with Eldorado to sell or lease Eldorado Vehicles in the State.

2.6 “Eldorado Vehicles” shall mean any Motor Vehicle manufactured or modified by Eldorado.

2.7 “FMVSS No. 110” shall refer to Federal Motor Vehicle Safety Standard No. 110, which specifies requirements for original equipment tire and rim selection on new cars to prevent overloading. These include placard requirements relating to load distribution as well as rim performance requirements under conditions of rapid tire deflation.

2.8 “Gross Vehicle Weight Rating” shall refer to the maximum operating weight of a Motor Vehicle, including the Motor Vehicle’s chassis, body, engine, engine fluid, passengers and cargo.

2.9 “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26C.1.

2.10 “NHTSA” shall refer to the National Highway Traffic Safety Administration.

2.11 “NHTSA Laws and Regulations” shall refer to the provisions of the federal Motor Vehicle Safety Act, 49 U.S.C. § 30101, et seq.

2.12 “Payload Capacity” shall refer to the combined maximum recommended weight of cargo, occupants, and optional equipment that Eldorado Vehicles are designed to carry. Payload Capacity is equal to Gross Vehicle Weight Rating minus the curb weight of the Eldorado Vehicle.

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

2.14 “Safety Defect” means a defect related to Motor Vehicle safety as used in the Federal Motor Vehicle Safety Act, 49 U.S.C. § 30101, et seq.

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

2.16 “State” and “New Jersey” means the State of New Jersey.

2.17 “TSB” means a Technical Service Bulletin.

3. AGREED UPON BUSINESS PRACTICES

3.1 Eldorado shall not engage in any unfair and/or deceptive acts or practices in the conduct of its business in the State and shall comply with such State laws, rules and regulations as now constituted or as may hereinafter be amended, including, but not limited to, the CFA and the Automotive Repair Regulations.

3.2 Eldorado shall continue to investigate and respond to potential safety related issues, including Safety Defects, in accordance with NHTSA Laws and Regulations, with regard to Motor Vehicles operating in the State.

3.3 Eldorado shall continue to comply with its reporting obligations with respect to all known Safety Defects to Eldorado Dealerships in accordance with NHTSA Laws and Regulations,

and shall continue to Communicate service issues to Eldorado Dealerships by issuing TSBs in a timely manner.

3.4 Eldorado shall continue to Communicate all known Safety Defects to Persons in accordance with NHTSA Laws and Regulations, and shall continue to Communicate service issues to Persons by initiating service campaigns in a timely manner. Eldorado shall use its best efforts to conduct such service campaigns using language required by NHTSA for the purpose of the campaign being easily understood by Persons who do not have any knowledge about automotive repairs and as required by NHTSA.

3.5 Eldorado shall continue to monitor, analyze and timely and effectively respond to potential safety concerns, including those expressed by NHTSA, Eldorado Dealerships and Consumers, in accordance with NHTSA Laws and Regulations.

3.6 Eldorado shall disclose to Consumers purchasing Eldorado Vehicles weight information, as required by FMVSS 110, concerning its Motor Vehicles, including the Amerivan, by the following:

- (a) include in the Owner's Manual for Eldorado Vehicles, including the Amerivan, a discussion of the Motor Vehicle's Payload Capacity, the risks of exceeding that capacity, and the location in the Motor Vehicle of the placard stating the Payload Capacity; and
- (b) a hang tag shall be affixed on Eldorado Vehicles, including the Amerivan, that Clearly and Conspicuously directs the attention of Consumers that "The combined weight of the occupants and cargo should never exceed xx pounds or xx kilograms", in compliance with FMVSS 110 and as found and disclosed on the federal sticker located at the driver's door pillar.

3.7 Eldorado shall develop reporting requirements for Eldorado Dealerships with respect to the receipt of Consumer complaints about Eldorado Vehicles. Such requirements will instruct Eldorado Dealerships to report all such complaints and all subsequent information about these complaints including their disposition, to Eldorado in a timely manner.

4. REPRESENTATIONS AND WARRANTIES

4.1 Eldorado represents and warrants that the Eldorado Dealerships have repaired the Safety Defect in all the Amerivans in New Jersey.

5. COST REIMBURSEMENT PAYMENT

5.1 On or before the Effective Date, Eldorado shall pay the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (“Cost Reimbursement Payment”). Five Thousand and 00/100 Dollars (\$5,000.00) shall comprise reimbursement for attorneys’ fees pursuant to N.J.S.A. 56:8-19, and Five Thousand and 00 /100 Dollars (\$5,000.00) shall comprise reimbursement for investigative costs, pursuant to N.J.S.A. 56:8-11. The Cost Reimbursement Payment shall be made by cashier’s check, attorney trust account check or other guaranteed funds made payable to “New Jersey Division of Consumer Affairs” and forwarded to:

Jeffrey Koziar, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street-5th Floor
P.O. Box 45029
Newark, New Jersey 07101

5.2 Upon making the Cost Reimbursement Payment described in Section 5.1, Eldorado shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

6. GENERAL PROVISIONS

6.1 This AVC 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 AVC.

6.2 This AVC shall be governed by, and construed and enforced in accordance with, the laws of the State.

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

6.4 This AVC sets forth the entire agreement among the Parties. Except as otherwise provided herein, this AVC shall be modified only by a written instrument signed by or on behalf of the Division and Eldorado.

6.5 Except as otherwise explicitly provided in this AVC, 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.

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

6.7 This AVC shall be binding upon Eldorado as well as its owners, officers, directors, managers, agents, representatives, employees, successors and assigns, and any Person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.8 This AVC shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this AVC be used to avoid compliance with this AVC.

6.9 This AVC is agreed to by the Parties and entered by the Division for settlement purposes only. Neither the fact of, nor any provision contained in, this AVC nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Eldorado; and/or (b) an admission by Eldorado that any of its acts or practices described in or prohibited by this AVC are unfair or deceptive or violate the CFA and/or the Automotive Repair Regulations. This AVC is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this AVC; or (b) any action or proceeding involving a Released Claim (as defined in Section 7.1) or private rights of action (as set forth in Section 7.2) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

6.11 The Parties represent and warrant that their signatures to this AVC have authority to act for and bind the respective Parties.

6.12 This AVC is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

7. RELEASE

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this AVC and conditioned on Eldorado making the Cost Reimbursement Payment in the manner specified in Section 5, the Division hereby agrees to release Eldorado from any and

all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Eldorado, including those for violations of the CFA and/or the Automotive Repair Regulations arising from the Investigation as well as the matters specifically addressed in this AVC (“Released Claims”).

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

8. PENALTIES FOR FAILURE TO COMPLY

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

9. COMPLIANCE WITH ALL LAWS

- 9.1 Except as provided in this AVC, no provision herein shall be construed as:
- (a) Relieving Eldorado of its obligation to comply with all State and Federal laws, regulations, or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by such laws, regulations or rules, or
 - (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Eldorado 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 Eldorado may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS AVC

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Eldorado pursuant to this AVC shall be sent by 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 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:

a. All notices directed to the Division shall be sent to:

Jeffrey Koziar, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street-5th Floor
P.O. Box 45029
Newark, New Jersey 07101

b. All notices directed to Eldorado shall be sent to:

Matthew T. Pisano, Esq.
Pisano Law Firm
309 Fellowship Road
East Gate Center- Suite 200
Mt. Laurel, New Jersey 08054

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____

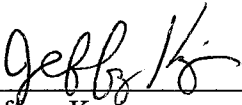

Eric T. Kanefsky, Director
Division of Consumer Affairs

Dated: 1/13/14, 2013

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

FOR THE DIVISION:


JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Jeffrey Koziar
Deputy Attorney General
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7819

Dated: January 10, 2013


FOR ELDORADO NATIONAL (KANSAS), INC.

PISANO LAW FIRM

By: 
Matthew T. Pisano, Esq.
309 Fellowship Road
East Gate Center- Suite 200
Mt. Laurel, New Jersey 08054
(856) 552-0987

Dated: December 31, 2013

ELDORADO NATIONAL (KANSAS), INC.

By: 

Dated: December 21, 2013