

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS

JULY 1, 2015, TO DECEMBER 31, 2015

IN THE MATTER OF

MATT BLATT INC.

AND

GLASSBORO IMPORTS, LLC

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS
OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4532; File No. 132 3285
Complaint, July 2, 2015 – Decision, July 2, 2015*

This consent order addresses Matt Blatt Inc.'s and Glassboro Imports, LLC's sale of the auto payment program to consumers. The complaint alleges that failed to disclose that consumers who enroll in the program are charged fees that in many cases offset any savings under the program, and also failed to disclose the total amount of these fees in violation of Section 5 of the FTC Act. The consent order prohibits respondents from representing that a payment program or add-on product or service will save consumers money, including interest, unless the amount of savings is greater than the total amount of fees associated with the product or service or any qualifying information is clearly and conspicuously disclosed.

Participants

For the *Commission*: Daniel Dwyer, Bradley Elbein, and Ioana Rusu.

For the *Respondents*: Laura D. Ruccolo, Capehart Scatchard, P.A.

COMPLAINT

The Federal Trade Commission, having reason to believe that Matt Blatt Inc. and Glassboro Imports, LLC (collectively, "Respondents") have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

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1. Respondent Matt Blatt Inc., also doing business as Matt Blatt KIA and as Matt Blatt Egg Harbor Township (“Matt Blatt Inc.”), is a New Jersey corporation, with its principal place of business at 6211 Black Horse Pike, Egg Harbor Township, New Jersey 08234. At all times material to this Complaint, Matt Blatt Inc. has advertised, marketed, distributed, or sold a “Biweekly Payment Plan” to consumers who are financing the purchase of an automobile.

2. Respondent Glassboro Imports, also doing business as Matt Blatt Glassboro Suzuki, as Matt Blatt Glassboro, and as Matt Blatt Auto Sales (“Glassboro Imports”), is a New Jersey corporation, with its principal place of business at 501 Delsea Drive North, Glassboro, New Jersey 08028. At all times material to this Complaint, Glassboro Imports has offered automobiles for sale and has advertised, marketed, distributed, or sold a “Biweekly Payment Plan” to consumers who are financing the purchase of an automobile. Respondents Matt Blatt Inc. and Glassboro Imports are commonly owned and controlled.

3. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Business Practices

4. Since at least November 2009, Respondents have advertised, marketed and sold a “Biweekly Payment Plan” (also referred to as the “Biweekly Payment Program”) as an add-on service to consumers financing the purchase of automobiles. Under the Biweekly Payment Plan, consumers make payments on their auto financing contract to a third-party company—National Payment Network, Inc. (“NPN”)—rather than to their financing entity (*e.g.*, a finance company or a bank), and this third-party company makes payments to the financing entity on the consumers’ behalf. In many instances, when enrolling consumers in the Biweekly Payment Plan, Respondents tout the savings it will provide to consumers, but fail to disclose that the significant fees in connection with the program can offset any savings. Respondents also fail to disclose the total amount of these fees, which add up to more than \$775 on a standard five-year auto financing contract.

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The Biweekly Payment Plan Is a Third-Party Add-On Service

5. Respondents have entered into agreements with NPN that describe the Biweekly Payment Plan, including its associated fees, and authorize Respondents to advertise and sell the Biweekly Payment Plan to consumers. Pursuant to these agreements, Respondents also receive training and marketing materials, as well as in-person training on how to describe and sell the Biweekly Payment Plan. Respondents receive a commission for each consumer that Respondents enroll in a Biweekly Payment Plan. Between July 2011 and December 2013, Respondents enrolled approximately 1,084 consumers in a Biweekly Payment Plan.

6. Most consumers learn about the Biweekly Payment Plan after they have selected a vehicle to buy at Respondents' dealerships. When purchasing a vehicle, consumers sign the legal paperwork to close the transaction with Respondents' Financing and Insurance ("F&I") departments. In many instances, an F&I employee offers consumers other products and services that can be "added on" to the financing contract; these are commonly called "add-on products and services." The Biweekly Payment Plan is one such add-on service.

Biweekly Payment Plan Structure and Fees

7. Under most automotive financing contracts, consumers pay the financing entity a specific amount on a monthly basis. Under the Biweekly Payment Plan sold by Respondents, NPN debits money from a consumer's bank account on a biweekly basis. The first biweekly debit is in the amount of one full monthly payment. Subsequent biweekly debits consist of half of the consumer's monthly payment, plus a processing fee. NPN pays the financing entity on the consumer's behalf on a monthly basis.

8. Under a traditional monthly payment plan, consumers make 12 monthly payments each year to their financing entity. Under the Biweekly Payment Plan sold by Respondents, consumers make 26 biweekly payments each year to NPN, which then makes a total of 13 monthly payments to the consumer's financing entity. Thus, under the payment program, consumers

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make one additional payment a year as compared to a traditional monthly payment plan.

9. Under the Biweekly Payment Plan sold by Respondents, consumers pay significant fees that they would not pay if they were making payments directly to the financing entity. Specifically, NPN charges fees that total more than \$775 on a standard five-year automotive financing contract:

- First, every consumer enrolling in the Biweekly Payment Plan is assessed a “Deferred Enrollment Fee” of \$399. NPN debits a portion of this fee from consumers during the first month of the contract, and the remainder from the extra payments made by consumers in the early years of the program by paying biweekly. Only after consumers have paid the entire enrollment fee does NPN send any of the extra payments to the consumers’ financing entity.
- In addition to the \$399 enrollment fee, in many instances, consumers who enroll in the Biweekly Payment Plan are charged a \$25 “cancellation fee” by NPN. This often occurs even when consumers “cancelled” because they had completed the Biweekly Payment Program or had finished paying off their financing contract.
- A processing fee is also added to every debit from consumers’ banks accounts through the Biweekly Payment Plan. The fee is currently \$2.99 per debit, but has ranged from \$1.95 up to \$2.99 per debit in prior years. Over the life of a standard five-year auto financing contract, a \$2.99 per-debit fee amounts to more than \$350.

Respondents’ Enrollment of Consumers in the Biweekly Payment Program

10. As noted above, Respondents sell consumers the Biweekly Payment Plan when consumers finance an automobile through Respondents. Often, Respondents inform consumers about the purported benefits of paying biweekly—that they would save on interest, match payments to paychecks, or eliminate multiple payments at the end of the loan—but not that the fees associated with the Biweekly Payment Plan can offset any savings, nor the

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total amount of such fees. Consumers in many instances report that they knew nothing about these fees when enrolling in the program.

11. The description of these fees that appears in the enrollment contracts is in small print, is buried in lengthy paragraphs, and is generally not brought to consumers' attention by Respondents during the automotive financing transaction. For example, in many instances, Respondents present the Biweekly Payment Plan to consumers by providing them with a pre-completed contract and instructing them to sign at the bottom if they would like to make biweekly payments. In addition, some consumers who were enrolled in the program do not recall ever receiving or reviewing an enrollment contract.

12. Respondents' savings claims do not account for the Biweekly Payment Plan's significant fees, which, as noted above, amount to more than \$775 on a standard five-year auto financing contract.

13. In many instances, consumers do not save any money with Respondents' Biweekly Payment Plan because they pay more in fees than they would save using the Biweekly Payment Plan.

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count I: Failure to Disclose Material Information About Fees and Program Effects

14. In numerous instances in connection with the marketing, promotion, offering for sale, or sale of automobiles or the financing of automotive loans, Respondents have represented, directly or indirectly, expressly or by implication, that consumers who enroll in the Biweekly Payment Plan will save money or achieve other benefits.

15. In numerous instances in which Respondents have made the representations described in Paragraph 14, Respondents have failed to disclose or to disclose adequately to consumers that in many instances:

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- a. Consumers are charged fees under the Biweekly Payment Plan that amount to hundreds of dollars; and
- b. Consumers either do not achieve savings overall or end up paying more money than they would under a traditional monthly payment program.

This additional information would be material to consumers in deciding to enroll in the Biweekly Payment Plan offered for sale by Respondents.

16. Respondents' failure to disclose or disclose adequately the material information described in Paragraph 15, in light of the representation described in Paragraph 14, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission, this second day of July, 2015, has issued this complaint against Respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45 *et seq.*; and

Respondents and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes a statement by Respondents that they neither admit nor deny any of the

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allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admit the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The parties, having agreed that the complaint may be used in construing the terms of the order and that no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of this order; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the FTC Act and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Matt Blatt Inc., also known as Matt Blatt KIA and as Matt Blatt Egg Harbor Township ("Matt Blatt Inc."), is a New Jersey corporation, with its principal place of business at 6211 Black Horse Pike, Egg Harbor Township, New Jersey 08234.
2. Respondent Glassboro Imports, LLC, also known as Matt Blatt Glassboro Suzuki, as Matt Blatt Glassboro, and as Matt Blatt Auto Sales ("Glassboro Imports"), is a New Jersey corporation, with its principal place of business at 501 Delsea Drive North, Glassboro, New Jersey 08028.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents, and the proceeding is in the public interest.

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ORDER**DEFINITIONS**

For the purpose of this order, the following definitions shall apply:

- A. **“Add-on product or service”** shall include any product or service relating to the sale, lease, or financing of a motor vehicle that is offered, provided, or arranged by the dealer that is not provided or installed by the motor vehicle manufacturer, including but not limited to extended warranties, payment programs, guaranteed automobile protection (“GAP”) or “GAP insurance,” etching, service contracts, theft protection or security devices, global positioning systems or starter interrupt devices, undercoating, rustproofing, fabric protection, road service or club memberships, appearance products, credit life insurance, credit accident or disability insurance, credit loss-of-income insurance, and debt cancellation and debt suspension coverage. The term excludes any such product or service that the dealer provides to the consumer at no charge.
- B. **“Clearly and conspicuously”** shall mean the following:
 - 1. In textual communications, the disclosure must be in a noticeable type, size, and location, using language and syntax comprehensible to an ordinary consumer;
 - 2. In communications disseminated orally or through audible means, the disclosure must be delivered in a volume, cadence, language, and syntax sufficient for an ordinary consumer to hear and comprehend them;
 - 3. In communications disseminated through video means: (1) written disclosures must be in a form consistent with definition B.1 and appear on the

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screen for a duration sufficient for an ordinary consumer to read and comprehend them, and be in the same language as the predominant language that is used in the communication; and (2) audio disclosures must be consistent with definition B.2; and

4. The disclosure cannot be combined with other text or information that is unrelated or immaterial to the subject matter of the disclosure. No other representation(s) may be contrary to, inconsistent with, or in mitigation of, the disclosure.
- C. **“Commerce”** shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- D. **“Competent and reliable evidence”** shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
- E. **“Payment program”** shall mean any product, service, plan, or program represented, expressly or by implication, to provide payment or meet other terms of a financing contract between a consumer and (1) a creditor, including an auto dealer, or (2) another financing entity, including a finance company, a bank, or another assignee.
- F. Unless otherwise specified, **“Respondents”** shall mean Matt Blatt Inc. and Glassboro Imports, corporations, individually or collectively; their successors and assigns; and their officers, agents, representatives, and employees.
- G. **“Material”** shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.

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- H. **“Person”** shall mean a natural person, an organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

I.

IT IS ORDERED that respondents and their officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program or add-on product or service, shall not in any manner, expressly or by implication:

- A. Represent that the payment program or add-on product or service will save any consumer money, including interest, unless:
1. The amount of savings a consumer will achieve is greater than the total amount of fees and costs charged in connection with the payment program or add-on product or service and the representation is otherwise true, or
 2. Any qualifying information relating to the savings a consumer might achieve from the payment program or add-on product or service is clearly and conspicuously disclosed, including, but not limited to, information about the total amount of fees and costs charged in connection with such payment program or add-on product or service.
- B. Represent that the payment program or add-on product or service will save any consumer a specific amount of money, including interest, unless:
1. The specified amount is the amount of savings after deducting any fees or costs charged in connection with the payment program or add-on product or service and the representation is otherwise true, or

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2. Any qualifying information relating to the savings a consumer might achieve from the payment program or add-on product or service is clearly and conspicuously disclosed, including, but not limited to, information about the total amount of fees and costs charged in connection with such payment program or add-on product or service.

II.

IT IS FURTHER ORDERED that respondents and their officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program shall not misrepresent, in any manner, expressly or by implication:

- A. The existence, amount, timing, or manner of any fee or cost charged by respondents or a third party in connection with such payment program;
- B. The benefits, performance, or efficacy of the payment program; and
- C. Any other material fact.

III.

IT IS FURTHER ORDERED that respondents and their officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any add-on product or service shall not misrepresent or assist others in misrepresenting, in any manner, expressly or by implication:

- A. That any person will provide any add-on product or service to any consumer;
- B. The total costs to purchase, receive, or use, or the quantity of, the add-on product or service;
- C. Any restriction, limitation, or condition on purchasing, receiving, or using the add-on product or service;

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- D. Any aspect of the performance, efficacy, nature, or characteristics of the add-on product or service;
- E. Any aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- F. That any add-on product or service has the ability to improve, repair or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit; and
- G. Any other material fact.

IV.

IT IS FURTHER ORDERED that respondents and their officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program or add-on product or service shall not make any representation or assist others in making any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of any payment program or add-on product or service, unless at the time such representation is made, respondents possess and rely upon competent and reliable evidence that substantiates that the representation is true.

V.

IT IS FURTHER ORDERED that respondents shall pay One Hundred Eighty-Four Thousand Two Hundred Eighty Dollars (\$184,280.00) as follows:

- A. Respondent Glassboro Imports shall pay to the Commission \$184,280.00, which, as respondent stipulates, its undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of

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this order by electronic fund transfer, pursuant to instructions to be provided by a representative of the Commission. If such payment is not made in full within 7 days of entry of this order, the monetary judgment becomes immediately due as to respondent Matt Blatt Inc., and respondent Matt Blatt Inc. shall pay to the Commission the amount specified in this Part, less any payment previously made pursuant to this Part, plus interest computed from the date of service of this order.

- B. In the event of default on the obligation pursuant to Part V.A of this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.
- C. All money paid to the Commission pursuant to this order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to respondents' practices alleged in the draft complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Respondents have no right to challenge any actions the Commission or its representatives may take pursuant to this Subpart. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondents relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law.

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Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

- E. Respondents agree that the facts as alleged in the draft complaint shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondents further agree that the facts alleged in the draft complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.
- F. Respondents acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which respondents must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this order, in accordance with 31 U.S.C. § 7701.
- G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.
- H. Respondents agree to provide sufficient customer information to enable the FTC to efficiently administer consumer redress. If a representative of the FTC requests in writing any information related to redress, respondents must provide it, in the form prescribed by the FTC, within 14 days;

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VI.

IT IS FURTHER ORDERED that each respondent shall, for five (5) years after the last date of dissemination of any representation regarding any payment program or add-on product or service, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representations;
- B. All materials that were relied upon in disseminating the representations;
- C. All evidence in its possession or control that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to all documents obtained, created, generated, or that in any way relate to the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order.

VII.

IT IS FURTHER ORDERED that respondents Matt Blatt Inc. and Glassboro Imports, and their successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

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VIII.

IT IS FURTHER ORDERED that respondents Matt Blatt Inc. and Glassboro Imports, and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re *Matt Blatt Inc.*

IX.

IT IS FURTHER ORDERED that respondents Matt Blatt Inc. and Glassboro Imports, and their successors and assigns, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

X.

This order will terminate on July 2, 2035, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

Analysis to Aid Public Comment

violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC") has accepted, subject to final approval, an agreement containing a consent order from Matt Blatt Inc., also known as Matt Blatt KIA and as Matt Blatt Egg Harbor Township ("Matt Blatt Inc."), and from Glassboro Imports, LLC, also known as Matt Blatt Glassboro Suzuki, as Matt Blatt Glassboro, and as Matt Blatt Auto Sales ("Glassboro Imports"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and

Analysis to Aid Public Comment

will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondents are dealerships that offer an auto payment program to consumers financing a motor vehicle. The matter involves the dealerships' sale of the auto payment program to consumers. According to the FTC complaint, respondents have represented that consumers who enroll in its biweekly payment program in order to pay off their auto-financing contract will save money or achieve other benefits through the program. However, respondents failed to disclose that consumers who enroll in the program are charged fees that in many cases offset any savings under the program, and also failed to disclose the total amount of these fees. These facts would be material to consumers in their decision to enroll in the biweekly payment program sold by respondents. The complaint alleges therefore that respondents' failure to disclose the above-mentioned facts is a deceptive practice in violation of Section 5 of the FTC Act.

The proposed order is designed to prevent respondents from engaging in similar deceptive practices in the future. Section I prohibits respondents from representing that a payment program or add-on product or service will save consumers money, including interest, unless the amount of savings is greater than the total amount of fees associated with the product or service or any qualifying information is clearly and conspicuously disclosed. Section I also prohibits respondents from representing that a payment program or add-on product or service will save any consumer a specific amount of money, including interest, unless the specified amount is the amount of savings after deducting any fees or any qualifying information relating to savings is clearly and conspicuously disclosed.

Section II of the proposed order prohibits respondents from making misrepresentations related to any payment programs, including regarding the existence, amount, timing, or manner of any fees, the program's benefits, performance, or efficacy.

Section III of the proposed order prohibits respondents from making misrepresentations related to any add-on products or services, including regarding the total costs of the add-on and the

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benefits, performance, or efficacy of the add-on, any restrictions or conditions associated with the add-on, the nature or terms of any refund, cancellation, or exchange of an add-on, and that any add-on product can improve, repair or otherwise affect a consumer's credit.

Section IV requires respondents to substantiate any representations about the benefits, performance or efficacy of any add-on product or service or any payment program.

Section V of the proposed order requires respondents to pay to the Commission One Hundred Eighty Four Thousand Two Hundred Eighty dollars (\$184,280.00) in monetary relief.

Section VI of the proposed order requires respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Section VII requires that respondent provide copies of the order to certain of its personnel. Section VIII requires notification of the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Section IX requires the respondent to file compliance reports with the Commission. Finally, Section X is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

Complaint

IN THE MATTER OF

**CERBERUS INSTITUTIONAL PARTNERS V,
L.P.,
AB ACQUISITION LLC,
AND
SAFEWAY INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT, AND OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT

*Docket No. C-4504; File No. 141 0108
Complaint, January 27, 2015 – Decision, July 2, 2015*

The consent order addresses the \$9.2 billion acquisition by Cerberus Institutional Partners of certain assets of Safeway. The complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by removing an actual, direct, and substantial supermarket competitor in the 130 local supermarket geographic markets. The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from the Acquisition. Under the terms of the proposed Consent Order, Respondents are required to divest 168 stores and related assets in 130 local supermarket geographic markets in eight states to four Commission-approved buyers. The consent order requires the divestiture of Albertson's or Safeway supermarkets in the relevant markets to four Commission-approved up-front buyers. These proposed buyers serve the purpose of restoring the competition that would be eliminated as a result of the Acquisition.

Participants

For the Commission: Lucas Ballet, Chester Choi, Paul Frangie, Elisa Kantor, Paul Nolan, Sean Pugh, Samuel Sheinberg, and Joshua Smith.

For the Respondents: Baker Botts; Paul Denis Jim Fishkin, and Chris MacAvoy, Dechert LLP; Michael Swartz, Schulte, Roth & Zabel LLP; Richard Weisburg, Weisburg Law.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission