

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF INTERNET AND TECHNOLOGY

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In the Matter of

Assurance No. 22-077

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

**ICX.COM LLC d/b/a LCX.COM LLC,  
LCX Digital Media, LCX, and LCX.com, and  
JOHN HILINSKI and  
TIMOTHY BROWNING, as individuals,**

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 349 into the use of consumers’ identities in letters and public comments to the government, by ICX.COM LLC d/b/a LCX.COM LLC, LCX Digital Media, LCX, and LCX.com (“LCX”) and its principals, John Hilinski and Timothy Browning (“Hilinski” and “Browning”, respectively, and collectively with LCX, “Respondents”). This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation into LCX’s advocacy campaigns and the relief agreed to by the NYAG and Respondent LCX, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries, and Respondents Hilinski and Browning (collectively, the “Parties”).

**FINDINGS OF NYAG**

1. Respondents were responsible for the submission of at least 2.4 million fake public comments to the government. These public comments ran across multiple official

proceedings on a range of policy issues, purportedly signed by individuals who in fact had neither approved or even been shown the messages sent using their identities, nor been told any such messages would be sent on their behalf.

2. Respondents represented to clients that LCX would generate leads for public comments by soliciting individuals through interactive online advertisements. Respondents further represented to clients that users clicking on those advertisements would be shown the text of the advocacy message, asked to provide their name and contact information that would be used to digitally sign it, and click a button to affirmatively consent to submission of the message to the government.

3. Contrary to its representations to clients, however, LCX did not actually obtain consumers' consent to send messages to the government on their behalf. Instead, LCX copied consumer names and contact information from a variety of sources, including a large data breach file found on the internet, client-supplied lists, and from a prior campaign LCX had operated. In all, LCX stole the identity of, and faked consent for, approximately 2.4 million consumers.

#### Background

4. Respondent LCX is a California limited liability company with its principal place of business at 1267 Willis Street, Suite 200, Redding, California 96601. Respondents John Hilinski and Timothy Browning are principals of LCX.

5. LCX provides digital lead-generation services. A lead generator collects personal information from consumers and then sells that information to third parties for leads to generate business.

6. LCX told prospective clients that the company would generate leads by running banner ads for client products or services on popular websites, and that visitors to these websites

could interact with these advertisements.

### LCX's Advocacy Campaigns

7. While many of the lead generation campaigns LCX ran were marketing campaigns for businesses, LCX also ran public advocacy campaigns.<sup>1</sup> The goal of these campaigns was to collect leads to generate public comments and letters to influence laws and regulations spanning a broad range of issues, including internet regulations, education policy and school choice, energy policy, renewable fuel standards, and more. The advocacy campaigns collectively generated millions of advocacy leads for advocacy campaign clients.

### 2017 FCC Net Neutrality Rulemaking Advocacy

8. In May 2017, in anticipation of the upcoming FCC rulemaking, a Virginia-based political advocacy consulting firm working on behalf of a Georgia-based political advocacy consulting firm, engaged LCX for a lead-generation campaign. The goal of the campaign was to solicit and obtain consent from 1.5 million individuals for the submission of public comments to the FCC on their behalf once the public comment period commenced.

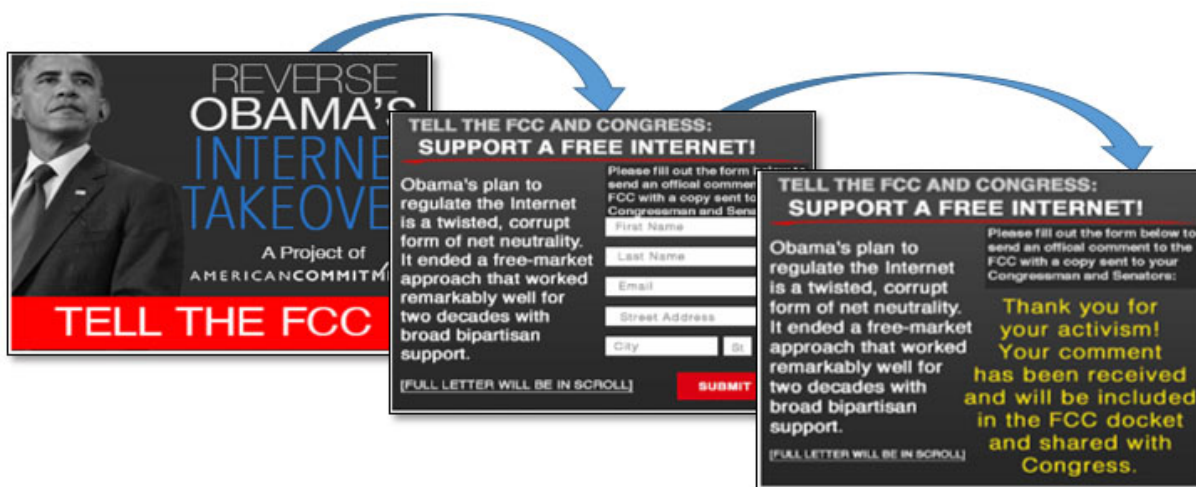
9. LCX represented to its advocacy campaign clients that it would place banner advertisements for the comment campaign on websites across the internet and then collect individuals' names, contact information, and consent to submit a comment to the FCC on their behalf, using text entry fields within the banner advertisement itself.

10. LCX provided its advocacy campaign clients with mockups of the advertisement, shown in the figure below. The first panel of the figure depicts the advertisement as LCX claimed it would appear when a user first loaded a webpage. LCX claimed that an individual

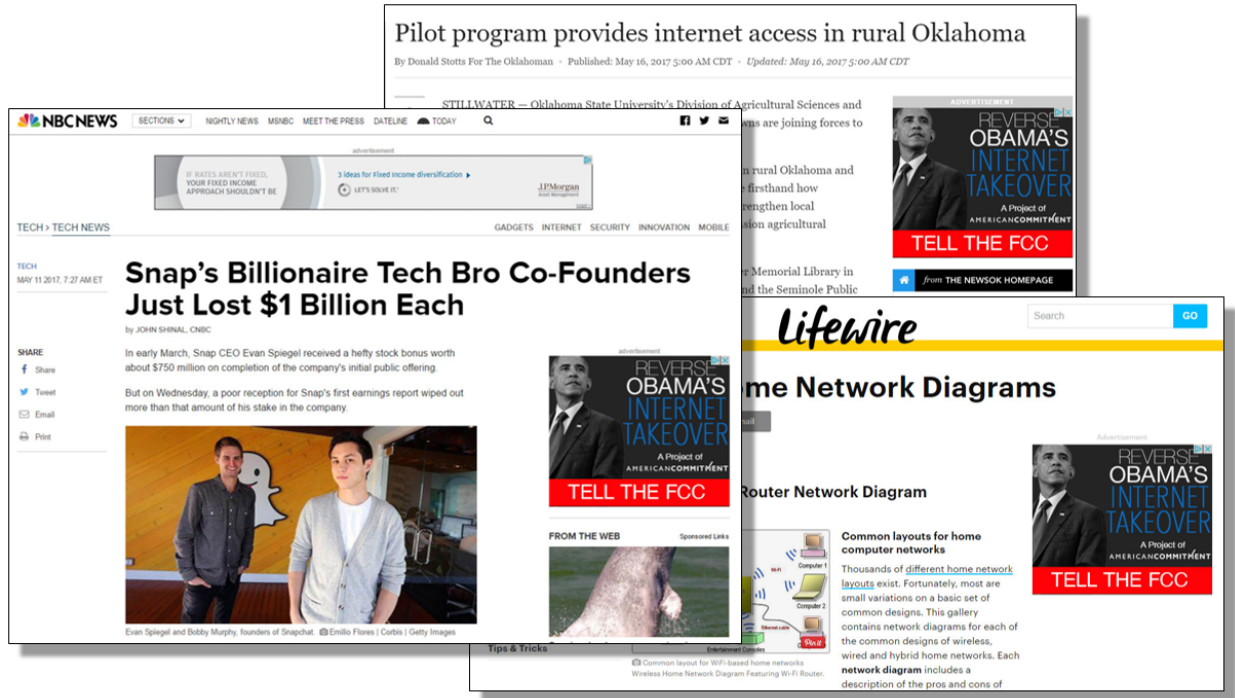
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<sup>1</sup> These campaigns were typically undertaken on behalf of "advocacy groups," which are entities organized to advance the public policy preferences of the group's members. In some cases the advocacy groups hired for-profit "digital strategy firms" to create and operate the campaigns (collectively with advocacy groups, "advocacy clients").

who clicked on the advertisement would then be asked to enter their name, email address, and address into several small text fields *within* the advertisement and click a button labeled “Submit,” as shown in the second panel. LCX further claimed that, after an individual clicked “Submit,” the message in the third panel would appear, thanking them for their submission to the government. LCX claimed that it would collect all of these submissions and then provide them to the Virginia-based client to submit to the government.



11. LCX reported to its advocacy campaign clients that its banner ads ran from May 12, 2017 to May 18, 2017, and appeared on dozens of high-traffic websites, including yahoo.com, economist.com, Breitbart.com, and dailycaller.com. LCX sent screenshots of sites where it claimed the ad had run to its advocacy campaign clients overseeing the campaign. Below are examples of screenshots that LCX sent to the Virginia-based client firm, purporting to show the advertisement appearing on several websites during the campaign period.



12. LCX represented that during the seven-day period of the campaign, more than 1.5 million people clicked on the internet banner advertisement, entered their personal information into the text boxes in the advertisement, and affirmatively agreed to have comments submitted to the FCC on their behalf.

13. Contrary to the foregoing representations to advocacy clients, however, few if any individuals consented to participate in the advocacy campaigns. Instead, the names and contact information of approximately 1.5 million people were simply copied from existing sources

14. For 1.4 million of those comments, the names, contact information, and IP addresses were copied from a 2016 data breach at Modern Business Solutions dumped on the internet. For most of the remaining net neutrality comments — approximately 100,000 — LCX copied information it had provided to the **REDACTED** just a year earlier for comments in a different FCC regulatory proceeding that had occurred in 2016.

## Other Rulemaking Advocacy

15. In 2017 and 2018, a DC-based political advocacy consulting firm engaged LCX for at least four lead-generation campaigns. The goal of each of these campaigns was to solicit and obtain consent from individuals for the submission of hundreds of thousands public comments to the Environmental Protection Agency (“EPA”) and the Bureau of Ocean Energy Management (“BOEM”) at the U.S. Department of the Interior on their behalf. Specifically, LCX was engaged to collect a combined 900,000 public comments for submission to the government as follows:

- a. an August 2017 campaign for 100,000 public comments;
- b. a December 2017 campaign for 350,000 public comments;
- c. a February 2018 campaign for 350,000 public comments; and
- d. an August 2018 campaign for 100,000 public comments.

16. As in the net neutrality campaign, LCX represented to the DC-based client firm that it would run interactive advertisements for the advocacy campaigns, asking individuals to enter their names, contact information, and consent to submit a comment to the government on their behalf.

17. Unlike in the net neutrality campaign, however, in all of these campaigns the DC-based client firm provided to LCX a list of individuals to target with the online advertisements soliciting public comments. LCX was required as part of its engagement in these campaigns to solicit information and consent from the individuals on this target list, as well as finding others.

18. LCX represented that during these campaigns, approximately 900,000 people clicked on the internet advertisements, entered their personal information into the text boxes in the advertisement, and affirmatively agreed to have comments submitted to the EPA or BOEM,

respectively, on their behalf.

19. Contrary to the foregoing representations to its advocacy client, however, few if any individuals consented to participate in the advocacy campaigns. Instead, LCX created fake records of consent using individuals' names and contact information that it copied from existing sources. LCX copied some of these individuals' information from the same Modern Business Solutions data breach file referenced above. LCX copied other individuals' names and contact information from the very lists that the DC-based client had provided to LCX to use for targeting advertisements.

20. In all, LCX generated approximately 2.4 million fake advocacy leads and provided them to advocacy clients to send to the government in multiple advocacy campaigns that it operated over several years, including between 2017 and 2018.

#### LCX's Further Misrepresentations

21. To conceal the true source of the consumer information – old data – LCX made further false claims. For example, in the 2017 net neutrality campaign, for each person whose name and contact information LCX provided to Virginia-based client and Georgia-based client, LCX also supplied a timestamp and an IP address. The timestamp purportedly reflected the moment at which the individual had interacted with the online solicitation for a public comment, and the IP address purportedly reflected the IP address the individual used when he or she was viewing and interacting with the online advertisement. In reality, the IP address information was also copied from old data along with the individual's name and contact information, and the timestamp was fabricated.

22. Additionally, LCX made misrepresentations to the Virginia-based client firm about discussions with Google concerning placing interactive advertisements for the net neutrality campaign. When the client requested an update, Hilinski represented in an email that

LCX had collected leads from approximately 87,000 individuals by that point, and that collection had been slowed because of a problem running advertisements through Google. Hilinski wrote, “Dealing with a Google issue [the] last 2 hours.” In fact, LCX had never contacted Google or tried to run any advertisements for the net neutrality campaign through Google.

23. Respondents Hilinski and Browning knew of and participated in every aspect of the conduct detailed above.

#### Respondents’ Violations

24. Respondents’ conduct violated, *inter alia*, Executive Law § 63(12), which authorizes the NYAG to pursue repeated fraudulent or illegal acts, and GBL §§ 349 and 350, which prohibit deceptive acts and practices and false advertising.

25. Respondents neither admit nor deny NYAG’s Findings, paragraphs 1-24 above.

26. NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL §§ 349 and 350.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

#### **RELIEF**

27. For the purposes of this Assurance, the following definitions shall apply:

a. “Advocacy Campaign” shall mean services that Respondent has been engaged to provide concerning the solicitation and collection of Advocacy Campaign Consent from a consumer.

b. “Advocacy Campaign Consent” shall mean a person’s affirmative act, such as a click of a button or a checking of a checkbox, giving unambiguous assent to



having an Advocacy Message attributed to him or her.

c. “Advocacy Campaign Client” shall mean any Individual or Entity that engages Respondent in connection with an Advocacy Campaign.

d. “Advocacy Campaign Sponsor” shall mean any Individual or Entity that engages, or on whose behalf a Respondent is engaged, in connection with an Advocacy Campaign.

e. “Advocacy Lead Information” for a consumer shall mean any information from or about a consumer that a Respondent obtains for, or is engaged to provide to, a third party in an Advocacy Campaign.

f. “Advocacy Message” shall mean any letter, email, text message, note, petition, image, chart, summary, or other memorialization of information, whether memorialized in writing, audio or video recording, or any other medium, that is intended to be transferred or disclosed to a Government Entity or Official and explicitly or implicitly expresses any opinion.

g. “Clear(ly) and Conspicuous(ly)” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“Triggering

Representation”) is made through only one means.

ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

iii. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

iv. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.

v. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the Triggering Representation appears.

vi. The disclosure must not be contradicted or mitigated by, or inconsistent with, any other representation(s).

vii. The disclosure must not be combined with other marketing or promotional text or information that is unrelated or immaterial to the subject matter of the disclosure or not legally required.

h. “Close Proximity” shall mean that the disclosure is next to the Triggering Representation. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in Close Proximity to the Triggering Representation, unless expressly provided otherwise herein.

i. “Government Entity or Official” shall mean any: (i) agency, instrumentality, subdivision or other body of any national, regional, local or other

government; (ii) commercial or similar entities owned or controlled by such government, including any state-owned and state-operated companies; (iii) public international organization; and (iv) any official, member, or employee of the foregoing acting in his or her official capacity, or any candidate or nominee to serve thereat.

j. “Personal Information” shall mean information from or about an individual consumer, including, but not limited to: (1) first and last name; (2) a home or other physical address, including street name and name of city or town; (3) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name; (4) a telephone number; (5) a Social Security number; (6) a driver’s license or other government-issued identification number; (7) a financial institution account number; (8) credit or debit card information; (9) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, Wi-Fi-based, or cell-based location information; (10) an authentication credential, such as a username and password; (11) a persistent identifier, such as a customer number held in a cookie, a MAC address, a mobile device ID, or an internet browser ID; or (12) an Internet Protocol (“IP”) address.

k. “Third-Party Vendor” means any person or entity that a Respondent uses to collect or assist in collecting Advocacy Campaign Consent from a consumer.

l. “Fourth-Party Vendor” means any person or entity that a Third-Party Vendor has used to collect or assist in collecting Advocacy Campaign Consent from a consumer.

28. Respondents shall comply with Executive Law § 63(12), and GBL §§ 349 and 350 in connection with the solicitation and collection of Advocacy Campaign Consent.

29. Advocacy Campaign Consent shall only be obtained through solicitation that:
- a. is found on a webpage, or single screen displayed in a computer application or other electronic interface, that does not contain any solicitations or offers other than the solicitation for Advocacy Campaign Consent;
  - b. Clearly and Conspicuously discloses the sponsor of the Advocacy Campaign, the intended recipient of the Advocacy Message, and the means by which the Advocacy Message would be submitted, as follows: “[Advocacy Campaign Sponsor] would like your consent to send [submission type, such as “a public comment” or “an email”] on your behalf to [full name of Government Entity or Official],” or substantially similar language;
  - c. discloses the full text of the Advocacy Message for which Advocacy Campaign Consent is being solicited, including the Personal Information that will be included with the Advocacy Message (e.g., first and last name, mailing address, email address), in the manner that it is intended to appear when transferred or disclosed to a Government Entity or Official. Either the full text of the Advocacy Message, or a readily noticeable hyperlink to the full text of the Advocacy Message and the following statement or substantially similar language, shall be Clearly and Conspicuously disclosed: “Click here to see the full text of your [submission type, such as ‘public comment’ or ‘email’] to [name of Government Entity or Official]”; and
  - d. Clearly and Conspicuously discloses, in Close Proximity to the mechanism for obtaining Advocacy Campaign Consent, the following statement: “I consent to having this message sent to [name of Government Authority or Official] identifying me as the author or signer, using my full name and other contact

information,” or substantially similar language.

30. Respondents shall not provide services to an Advocacy Campaign Client related to an Advocacy Campaign without first entering into a written agreement with the Advocacy Campaign Client requiring that:

a. the Advocacy Campaign Client disclose conspicuously and contemporaneously with the submission of any Advocacy Message to a Government Entity or Official Respondents’ identity and that Respondents obtained consent for submission of the Advocacy Message (the “Collection Disclosure”); and

b. if the Government Entity or Official will, or has stated that it may, make the Advocacy Message publicly available, the Collection Disclosure shall be made either (i) in text inserted within, or appended at the end of, each Advocacy Message that states, “LCX obtained consent for submission on behalf of [Individual’s name or ‘the signer(s),’ or substantially similar language meaning signer(s)].”; or (ii) in another format that ensures it is publicly available in association with the Advocacy Message.

31. Respondents, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, shall send a confirmation email message to each consumer that has provided Advocacy Campaign Consent within twenty-four (24) hours of the consumer having provided such Advocacy Campaign Consent. The email subject line shall state only “Confirmation of Your Message to [full name of Government Entity or Official]” or substantially similar language. The body of the email shall Clearly and Conspicuously: (a) state in Close Proximity to the top of the body section, “This email confirms that you have given your consent to have the following message sent to [Government Entity or Official] identifying you as the author or signer, using your full name and other contact information, as shown below,” or

substantially similar language; (b) display below the prior statement the full text of the Advocacy Message; and (c) state below the prior text, “If you did not agree to have this message sent on your behalf, click here to report abuse,” or substantially similar language, with a link to a webpage or email address that will collect and provide notice to Respondents, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, of the user’s report. Respondents may, in lieu of sending the confirmation email message described in this paragraph, rely on its Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message provided that Respondents have first entered into a written agreement with the Advocacy Campaign Client or Advocacy Campaign Sponsor that requires the Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message in compliance with this paragraph.

32. Respondents shall use reasonable measures designed to ensure that any Third-Party Vendor or Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent on behalf of Respondents does so consistent with the requirements of paragraphs 29 and 31. These measures shall include, at a minimum, that Respondents enter into a written contract with each Third-Party Vendor that mandates that the Third-Party Vendor:

- a. solicit and obtain Advocacy Campaign Consent in accordance with the requirements of paragraph 29;
- b. require any Fourth-Party Vendor that solicits and obtains Advocacy Campaign Consent to do so in accordance with the requirements of paragraphs 29 and 31;
- c. provide to Respondents, before any Advocacy Campaign Consent is solicited by the Third-Party Vendor or Fourth-Party Vendor, a mock-up or mock-ups depicting each version of the solicitation that will be used, including all disclosures, text,

and images;

d. obtain Respondents' written approval for use of the mock-up or mock-ups prior to their use;

e. provide to Respondents an unaltered image (such as a screenshot) or images depicting all of the solicitations for Advocacy Campaign Consent used by the Third-Party Vendor or Fourth-Party Vendor, including all disclosures, text, and images, within a reasonable amount of time after use for a given campaign; and

f. obtain and provide to Respondents, for each Advocacy Campaign Consent:

i. the date and time that the consumer provided the Advocacy Campaign Consent;

ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent;

iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);

iv. the IP address and/or device identifier of each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);

v. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and

vi. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and each item

of Advocacy Lead Information.

33. Respondents shall verify that each Third-Party Vendor and Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent in an Advocacy Campaign does so consistent with the requirements of paragraphs 29 and 31, including at a minimum:

- a. review of all mock-ups provided by the Third-Party Vendor or Fourth-Party Vendor in advance of the Advocacy Campaign;
- b. review of all live versions of the solicitation for Advocacy Campaign Consent to confirm it is consistent with all mock-ups;
- c. regular review of materials provided by the Third-Party Vendor or Fourth-Party Vendor as required in subparagraph 32.f; and
- d. investigate all consumer complaints it receives concerning an Advocacy Campaign.

34. Respondents shall designate an officer to receive and investigate all reports concerning a failure to obtain Advocacy Campaign Consent and any other consumer complaints concerning an Advocacy Campaign.

35. Respondents shall not represent, expressly or by implication, that a consumer has provided Advocacy Campaign Consent unless it was obtained in a manner consistent with the requirements of paragraph 29.

36. Respondents shall not misrepresent, expressly or by implication, any aspect of an Advocacy Campaign, including the actions taken or consent given by a consumer, the date and time when a consumer took such actions or gave such consent, the information solicited or obtained from a consumer, and the circumstances and manner in which consent or information was solicited or obtained from a consumer.



37. Respondent shall not transfer or disclose to a third party Advocacy Lead Information without transferring or disclosing the date and time each item of Advocacy Lead Information was obtained from the consumer.

38. Respondents shall not transfer or disclose to a third party Advocacy Lead Information solicited and obtained by a Third-Party Vendor or Fourth-Party Vendor unless the Third-Party Vendor complied with the contractual requirements in paragraph 32.

39. Respondents shall create and retain for a period of no less than six (6) years from the conclusion of a campaign begun after the effective date of this Assurance the following records:

a. the following data for each Advocacy Campaign Consent obtained by Respondents or by a Third-Party Vendor or Fourth-Party Vendor:

i. the date and time that the consumer provided the Advocacy Campaign Consent;

ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information (such as where Personal Information was obtained before the Advocacy Campaign);

iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (such as Personal Information that was obtained before the Advocacy Campaign);

iv. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and

v. the name and contact information of the Fourth-Party Vendor, if

any, that solicited and obtained the Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information;

b. copies of each version of a solicitation used, by Respondents or by a Third-Party Vendor or Fourth-Party Vendor, to obtain Advocacy Campaign Consent, including for each such solicitation copies of all disclosures required in paragraphs 29 and 31 as they were displayed to consumers (such as screenshots or archived webpages);

c. records of Respondents' review and/or approval of all solicitations used to obtain Advocacy Campaign Consent for compliance with the requirements in paragraphs 29 and 31;

d. records of each confirmation email message sent by Respondents as required in paragraphs 29 and 31, including the email recipient, the date and time the email was sent, and whether the email message was delivered to the recipient, and records of all complaints/reports of abuse by consumers in response thereto; and

e. all records necessary to demonstrate full compliance with each provision of this Assurance, including all submissions to NYAG.

#### Monetary Relief

40. Respondents shall pay to the State of New York one million nine hundred thousand dollars (\$1,800,000) in penalties and disgorgement (the "Monetary Relief Amount") as follows:

a. a first payment of fifty thousand dollars (\$50,000) shall be paid in full within fourteen (14) days of the effective date of this Assurance;

b. a second payment of fifty thousand dollars (\$50,000) shall be paid in full within forty-five (45) days of the effective date of this Assurance;

c. a third payment of three hundred thousand dollars (\$300,000) shall be paid in full by February 28, 2023; and

d. one million four hundred thousand dollars (\$1,400,000) shall be suspended; provided however, that the suspended amount will be immediately due and payable if the NYAG finds that the Statements of Financial Condition, dated February 22, 2022, February 23, 2022, and August 12, 2022, or the supporting materials that Respondents provided to NYAG contain material misstatements.

41. Payments shall be made by wire transfer in accordance with instructions provided by a NYAG representative and shall reference Assurance No. 22-077.

42. Respondents shall fully and promptly cooperate with NYAG in the course of NYAG's investigation of individuals or entities involved in the solicitation, collection, use, sale, offering for sale, transfer, and/or submission of Advocacy Campaign Consent or Advocacy Lead Information that Respondents have obtained for or were engaged to provide to a third party. Such cooperation shall include but not be limited to: providing truthful written or verbal testimony including through in-person appearance at depositions or trial in New York State; providing additional documents and other physical evidence within ten (10) days of NYAG's request; and complying with any future directives or requests of NYAG.

43. The Respondents shall provide NYAG with a certification affirming their compliance with the requirements set forth in this Assurance, paragraphs 28-39, to be submitted to NYAG within sixty (60) days of the effective date of this Assurance. This certification shall be in writing and be signed on Respondent LCX's behalf by the Chief Executive Officer of LCX, or such other officer (regardless of title) that is designated in Respondent LCX's bylaws or by resolution of the Board of Directors as having the duties of the principal executive officer of

Respondent LCX. Thereafter, a certification of compliance shall be submitted to NYAG on an annual basis for the following five (5) years. In any case where the circumstances warrant, NYAG may require Respondents to file an interim certification of compliance upon thirty (30) days notice.

44. For the following five (5) years, Respondents shall deliver a copy of this Assurance to (a) all current and future principals, officers, directors, and managers; (b) all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this Assurance; and (c) any business entity resulting from any change in structure. Respondents shall deliver this order to the personnel identified above within thirty (30) days.

#### **MISCELLANEOUS**

45. Respondents expressly agree and acknowledge that NYAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 52, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the NYAG may use statements, documents or other materials produced or provided by Respondents prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

46. If a court of competent jurisdiction determines that any Respondent has violated the Assurance, Respondent shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

47. This Assurance is not intended for use by any third party in any other proceeding.

48. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondents. Respondents shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

49. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

50. Any failure by the NYAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondent.

51. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-077, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic

mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondent LCX, to:

Jeffrey Wang  
Friedman Kaplan Seiler & Adelman LLP  
7 Times Square  
New York, NY 10036

If to Respondent Hilinski, to:

Jeffrey Wang  
Friedman Kaplan Seiler & Adelman LLP  
7 Times Square  
New York, NY 10036

If to Respondent Browning, to:

Jeffrey Wang  
Friedman Kaplan Seiler & Adelman LLP  
7 Times Square  
New York, NY 10036

If to NYAG, to:

Jordan Adler, Senior Enforcement Counsel, or in his/her absence, to the person holding the title of Bureau Chief  
Bureau of Internet & Technology  
28 Liberty Street  
New York, NY 10005

52. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondents and their counsel and NYAG's own factual investigation as set forth in NYAG's Findings, paragraphs 1-24 above. Respondents represent and warrant that neither they nor their counsel have made any material representations to NYAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

53. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

54. Respondents represent and warrant, through the signature below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that John Hilinski, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of ICX.COM LLC d/b/a LCX.COM LLC, LCX Digital Media, LCX, and LCX.com.

55. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

56. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondents' right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

57. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondents violate the Assurance after its effective date.

58. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

59. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or

unenforceable in any respect, in the sole discretion of NYAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

60. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

61. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.


62. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

63. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.



64. The effective date of this Assurance shall be November <sup>30</sup>~~17~~, 2022.

**LETITIA JAMES**  
ATTORNEY GENERAL OF THE  
STATE OF NEW YORK

  
\_\_\_\_\_  
By: Jordan Adler  
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11/30/22  
\_\_\_\_\_  
Date

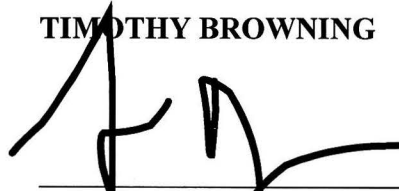
**ICX.COM LLC d/b/a LCX.COM LLC,  
LCX Digital Media, LCX, and  
LCX.com**

  
\_\_\_\_\_  
By: John Hilinski  
11/20/2022  
\_\_\_\_\_  
Date

**JOHN HILINSKI**

  
\_\_\_\_\_  
By: John Hilinski  
11/20/2022  
\_\_\_\_\_  
Date

**TIMOTHY BROWNING**

  
\_\_\_\_\_  
By: Timothy Browning  
11/18/2022  
\_\_\_\_\_  
Date

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF INTERNET AND TECHNOLOGY

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In the Matter of

Assurance No. 22-052

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

**LEAD ID, LLC, and  
ROBERT CARROLL, as an individual,**

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 349 into the use of consumers’ identities in letters and public comments to the government, by Lead ID, LLC (“Lead ID”) and its Chief Executive Officer, Robert Carroll (“Carroll,” and collectively with Lead ID, “Respondents”). This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation into Lead ID’s advocacy campaigns and the relief agreed to by the NYAG and Respondent Lead ID, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries, and Respondent Carroll (collectively, the “Parties”).

**FINDINGS OF NYAG**

1. Lead ID was responsible for the submission of approximately two million fake public comments, letters, and petition signatures aimed at influencing public policy. These messages and petitions ran across multiple official proceedings on a range of policy issues, purportedly signed by individuals who in fact had neither approved or even been shown the

messages sent using their identities, nor been told any such messages would be sent on their behalf.

2. Respondents represented to clients that Lead ID would collect names and addresses for these campaigns by offering rewards, such as a gift card or sweepstakes entry, in exchange for providing contact information and clicking through several sequential webpages to answer survey questions and view marketing offers.

3. However, contrary to Respondents' representations, Lead ID did not actually solicit or collect permission from consumers for most of the messages that were sent to the government on consumers' behalf. Instead, Lead ID provided old consumer data, copying names and addresses from unrelated earlier campaigns, misrepresenting that the consumers had expressly agreed to have their names and addresses used to sign the letters, comments, and petitions to support or oppose government policies.

4. Lead ID engaged in the same misconduct in marketing campaigns for businesses, copying old lead data it had purchased or collected years earlier and passing it off as new leads generated when consumers agreed to sign up for the business' marketing promotions.

#### Background

5. Respondent Lead ID is a California limited liability company with its principal place of business at 160 Newport Center Drive, Suite 200, Newport Beach, California 92660. Respondent Robert Carroll is the Chief Executive Officer of Lead ID.

6. Lead ID provided digital lead-generation services. A lead generator collects personal information from consumers and then sells that information to third parties for leads to generate business.

7. To obtain leads, Lead ID used a form of lead generation known as "co-

registration.”

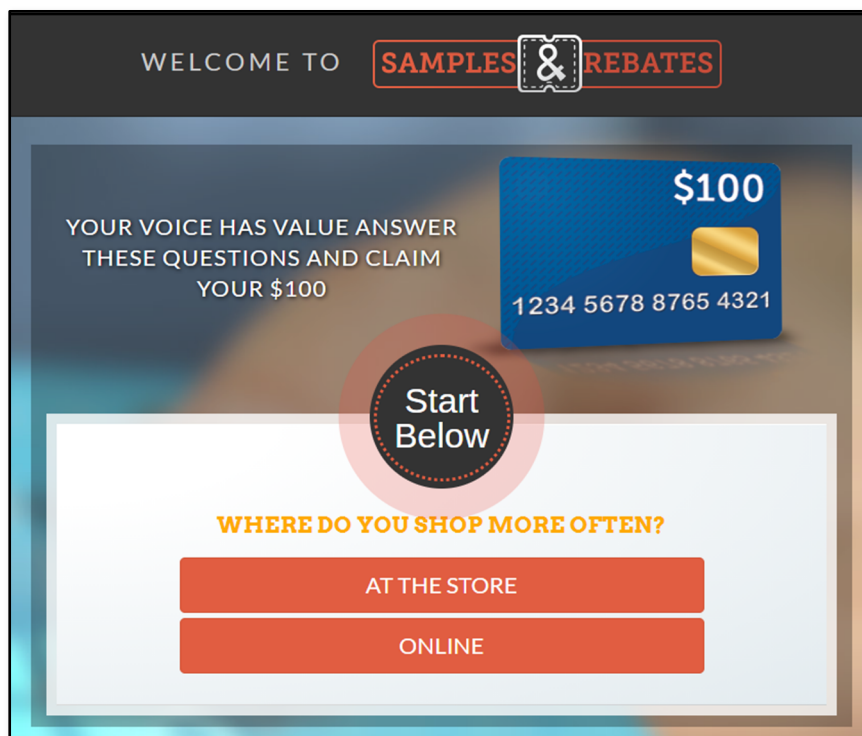
#### Lead ID’s Lead Generation Business Through Co-Registration

8. In co-registration, a consumer is presented with advertisements or solicitations from multiple third-party marketers. Typically, users are shown large numbers of these advertisements in succession. To encourage consumers to provide their information and enroll in the third-party marketers’ programs, consumers are typically offered incentives, such as gift cards or sweepstake entries.

9. Lead ID ran these advertisements on a range of co-registration websites including [samplesandrebates.com](http://samplesandrebates.com), [weeklygetaway.net](http://weeklygetaway.net), [weeklyglamour.com](http://weeklyglamour.com), and [dailyhealthcentral.com](http://dailyhealthcentral.com). Lead ID also ran advertisements on websites owned and operated by third-party affiliates and partners that are also in the co-registration business.

10. For example, a landing page on Lead ID’s site, [samplesandrebates.com](http://samplesandrebates.com), offered a “\$100 REWARD” to consumers if they “ANSWER...QUESTIONS.” Below is a screenshot of

the top portion of the landing page from an archived version of the website from June 2017:



11. After clicking to answer questions, the consumer is asked to register by submitting contact information – including name, mailing address, and email address – and date of birth.

12. After registration, consumers must browse through dozens of marketing offers.

13. In connection with some of the offers, the consumer would be presented with additional questions or other tasks to complete. The additional questions may relate to the consumer's habits, lifestyle, consumption of goods and services, experiences with a particular brand or company, or other topics. The other tasks may include signing up for consumer product newsletters or marketing. Below are screenshots showing some of the offers consumers could browse and complete, from a visit to [samplesandrebates.com](http://samplesandrebates.com) in March 2019 by NYAG during its investigation:

# Almost there.

*Just a few short steps to claim your reward.*

Check out these FREE offers! Choose as many as you like.

**Countrywide MEDICAL**

**Do you use a CPAP machine for sleep apnea?**  
It's important that you change your CPAP supplies every 90 days. Get your supplies and the newest most comfortable CPAP mask, all covered by your insurance.

City

State

Zipcode

Phone  -  -


Are you currently using a "CPAP"?

Yes  
 No

Are you interested in being contacted about home delivery of CPAP supplies covered by insurance?

Yes  
 No


By submitting this form, you are agreeing to be called, email or texted by A1T Diabetic/DBa Countrywide Medical, Specialty Medical Equipment, Inc and GoHealth360, LLC about health related products and services at the phone number and email you provided using automated or pre-recorded technology even if you are on the do not call list, do not email list or provided a wireless number. This consent is not required for purchase.


[Privacy Policy](#) 

# Almost there.

*Just a few short steps to claim your reward.*

Check out these FREE offers! Choose as many as you like.

 **Tara is an internationally renowned visionary Medium!**  
Open wide your doorway to Luck, Fortune and Love. It's certain! Great things are going to happen in your life. Request your First Free Reading and receive it by email within 2 hours. [Privacy Policy](#)

[Privacy Policy](#) 

**Almost there.**  
*Just a few short steps to claim your reward.*

Check out these FREE offers! Choose as many as you like.

**It's your space let's make it speak to you.**  
Start Your Project with A Free Painting Estimate Today from Paintzen and Save up to \$200. [Privacy Policy](#)

**paintzen**

City

State

Zipcode

Phone  -  -

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Are you a Homeowner?

---

Are you married?

---

Are you interested in painting 3 or more rooms?

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By submitting your information to request a free quote, you consent for Paintzen to use automated technology to contact you at the number provided, including by SMS, by phone and on wireless numbers. Joining monitoring service required to accept free system offer. For SMS messaging text "STOP" to stop. Msg and data rates may apply. Max ten messages per month. This is not required to make a purchase from us.

[Privacy Policy](#)

Lead ID's Advocacy Campaigns

14. While many of the lead generation campaigns Lead ID ran were marketing campaigns for businesses, Lead ID also ran public advocacy campaigns.<sup>1</sup>

15. Lead ID charged its clients based on the number of advocacy leads it collected, with the total number of advocacy leads (and corresponding total dollar charge) capped at a particular amount by the client. For example, in one large advocacy campaign, Lead ID was to receive \$0.07 for each advocacy lead up to a maximum of 10,000 advocacy leads daily, for \$7,000 per day.

16. The goal of these campaigns was to collect leads to generate public comments,

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<sup>1</sup> These campaigns were typically undertaken on behalf of “advocacy groups,” which are entities organized to advance the public policy preferences of the group’s members. In some cases the advocacy groups hired for-profit “digital strategy firms” to create and operate the campaigns (collectively with advocacy groups, “advocacy clients”).

letters, and petition signatures to influence laws and regulations spanning a broad range issues, including internet regulations, education policy and school choice, foreign policy and U.S. military aid spending abroad, energy policy and pollution, and more. The advocacy campaigns collectively generated approximately two million consumer advocacy leads for advocacy campaign clients.

17. Lead ID represented to its advocacy campaign clients that it would display an “offer” or “ad” that asked consumers to consent to the submission of a public comment to the government on their behalf.<sup>2</sup>

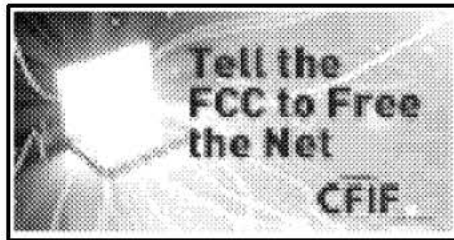
18. Below is an example showing the text and logo of an offer that Lead ID agreed to include among the offers presented to consumers on its websites, and those of its affiliates, to solicit the consumers’ participation in a campaign designed to generate comments urging the

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<sup>2</sup> Some advocacy organizations and digital strategy firms using co-registration to generate letters and public comments described the resulting advocacy leads as “low-affinity,” because consumers responding to co-registration offers usually have little connection, if any, to the advocacy issue, and are instead simply clicking through a long list of questions and offers in an attempt to obtain a free gift card or other commercial incentive.



government to roll back net neutrality rules.



**Tell the FCC to Free the Net.** Obama-era FCC regulations are suffocating the internet. They are impeding innovation and obstructing job creation. Join us to take action now to encourage the FCC to free the internet from Obama's regulatory overreach. [privacy policy](#)

Your letter to the FCC:

The Obama-era FCC regulations known as "Title II" enable the federal government to exert an extraordinary and unnecessary amount of regulatory control over the internet. This bureaucratic overreach impedes innovation, stifles investment and continues to create economic uncertainty for one of the largest sectors of the U.S. economy.

I support Chairman Pai's proposal to roll back Title II and restore the sensible regulatory framework that enjoyed broad bipartisan consensus and enabled the internet to thrive for more than two decades.

I strongly urge all of the FCC Commissioners to support the Chairman's proposal to repeal the harmful Title II internet takeover.

Sponsored by the Center for Individual Freedom - by submitting the above comment, you are agreeing to receive periodic email alerts and updates from CFIF. You can opt-out at any time.

19. Lead ID represented to its advocacy campaign clients that the creative would run starting on a particular date and continuing either until a particular end date or until a specified number of advocacy leads had been collected.

20. After the campaign period began, Lead ID provided advocacy leads to its advocacy campaign clients.

21. In setting up and operating the advocacy campaigns, Lead ID made repeated implicit and explicit representations to its clients indicating that leads would be generated by showing consumers the creative and collecting their express consent to participate in the advocacy campaign by having their name and address added to a letter or comment to be sent to the government, or a petition concerning a public policy issue.

22. For instance, prior to the start of a campaign, Lead ID would obtain specifications

from clients indicating how the clients wanted the offer to be displayed to consumers. Lead ID would then create mock-ups of the offer conforming to those specifications and send them to the advocacy client for approval.

23. Lead ID represented to clients that it would wait for their final approval on the offer before making the campaign live and visible to consumers on the websites of Lead ID and its affiliates.

24. From the time each campaign was live through the end of the campaign, Lead ID provided advocacy lead data to its clients that Lead ID said reflected consumers who had been shown the creative and affirmatively agreed to have their name added to a letter or comment to be sent to the government, or a petition concerning a public policy issue. Each advocacy lead included the consumer's contact information including name, mailing address, and email address.

25. The foregoing representations to advocacy clients were inconsistent with Lead ID's actual practice, which is described below.

#### Lead ID's Fraudulent and Deceptive Practices

26. Contrary to its representations to advocacy clients, few if any consumers consented to participate in the advocacy campaigns Lead ID had been paid to run. Instead, Lead ID simply took profiles of consumers it had purchased, or who had registered on its sites or those of its affiliates in prior months or years, well before the advocacy campaigns at issue, and sent those profiles to its advocacy clients. Lead ID falsely represented that this old data constituted leads collected from consumers during the client's campaign after the consumers viewed the creative and affirmatively agreed to have the advocacy message sent on their behalf.

27. For example, in campaigns to generate public comments to the Federal

Communications Commission (“FCC”) opposing “net neutrality” internet regulations, Lead ID misrepresented that more than 1.5 million consumers had agreed to participate in public comments to the FCC, when in fact all or nearly all of those consumers had not been shown the advocacy message or agreed to participate in the advocacy campaign.

28. To generate advocacy leads, Lead ID copied consumer name and contact information that it had purchased or collected years earlier. To conceal the true source of the consumer information – old data – Lead ID used a computer programming script to send leads to clients over a period of many hours to create the false appearance that the leads were being generated organically from consumers viewing and responding to solicitations over time during the course of the campaign.

29. Lead ID’s Chief Executive Officer, Robert Carroll, personally copied old consumer data and used the script to pass off old data as information newly collected in campaigns.

30. In all, Lead ID generated more than two million fake advocacy leads and provided them to advocacy clients to use in letters or comments to the government or in public policy petitions, in multiple advocacy campaigns that it operated over several years, including between 2017 and 2019. Some of these campaigns involved more than 1.5 million advocacy messages about net neutrality that were submitted to the FCC. Other campaigns involved more than half a million public comments, letters, and signatures on petitions, which were intended to influence policies spanning a broad range of industries and issues, including education policy and school choice, foreign policy and U.S. military aid spending abroad, energy policy and pollution, and more. The advocacy messages that Lead ID caused to be submitted were sent to many types of government bodies at the federal and state levels, including a U.S. Senator, state governor, and

federal agencies, including the FCC and the Environmental Protection Agency.

31. Nowhere did Lead ID disclose that it would use the information consumers provided to misrepresent that those consumers had agreed to participate in an advocacy campaign.

32. Lead ID also copied old leads and passed them off as new leads in marketing campaigns for businesses. In such instances, Lead ID took profiles of consumers it had purchased or who had previously registered on its sites, and sent those profiles to its marketing clients, falsely representing that they reflected leads collected from consumers during the client's campaign after the consumers viewed the creative and affirmatively agreed to receive marketing related to the client's campaign.

#### Respondents' Violations

33. Respondents' conduct violated, *inter alia*, Executive Law § 63(12), which authorizes the NYAG to pursue repeated fraudulent or illegal acts, and GBL §§ 349 and 350, which prohibit deceptive acts and practices and false advertising.

34. Respondents neither admit nor deny NYAG's Findings, paragraphs 1-33 above.

35. NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL §§ 349 and 350.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

36. For the purposes of this Assurance, the following definitions shall apply:

a. “Advocacy Campaign” shall mean services that Respondent has been engaged to provide concerning the solicitation and collection of Advocacy Campaign Consent from a consumer.

b. “Advocacy Campaign Consent” shall mean a person’s affirmative act, such as a click of a button or a checking of a checkbox, giving unambiguous assent to having an Advocacy Message attributed to him or her.

c. “Advocacy Campaign Client” shall mean any Individual or Entity that engages Respondent in connection with an Advocacy Campaign.

d. “Advocacy Campaign Sponsor” shall mean any Individual or Entity that engages, or on whose behalf a Respondent is engaged, in connection with an Advocacy Campaign.

e. “Advocacy Lead Information” for a consumer shall mean any information from or about a consumer that a Respondent obtains for, or is engaged to provide to, a third party in an Advocacy Campaign.

f. “Advocacy Message” shall mean any letter, email, text message, note, petition, image, chart, summary, or other memorialization of information, whether memorialized in writing, audio or video recording, or any other medium, that is intended to be transferred or disclosed to a Government Entity or Official and explicitly or implicitly expresses any opinion.

g. “Marketing Campaign” shall mean services that Respondent has been engaged to provide concerning the solicitation and collection of Marketing Campaign Consent from a consumer.

h. “Marketing Campaign Consent” shall mean a person’s affirmative act, such as a click of a button or a checking of a checkbox, giving unambiguous assent to disclosure of the person’s information that is not Advocacy Campaign Consent. A pre-checked box does not constitute consent.

i. “Marketing Lead Information” for a consumer shall mean any information from or about a consumer that a Respondent obtains for, or is engaged to provide to, a third party in a Marketing Campaign.

j. “Clear(ly) and Conspicuous(ly)” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“Triggering Representation”) is made through only one means.

ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

iii. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

iv. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.

v. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the Triggering Representation appears.

vi. The disclosure must not be contradicted or mitigated by, or inconsistent with, any other representation(s).

vii. The disclosure must not be combined with other marketing or promotional text or information that is unrelated or immaterial to the subject matter of the disclosure or not legally required.

k. “Close Proximity” shall mean that the disclosure is next to the Triggering Representation. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in Close Proximity to the Triggering Representation, unless expressly provided otherwise herein.

l. “Government Entity or Official” shall mean any: (i) agency, instrumentality, subdivision or other body of any national, regional, local or other government; (ii) commercial or similar entities owned or controlled by such government, including any state-owned and state-operated companies; (iii) public international organization; and (iv) any official, member, or employee of the foregoing acting in his or her official capacity, or any candidate or nominee to serve thereat.

m. “Personal Information” shall mean information from or about an individual consumer, including, but not limited to: (1) first and last name; (2) a home or other physical address, including street name and name of city or town; (3) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name; (4) a telephone number; (5) a Social Security number; (6) a driver’s license or other government-issued identification number; (7) a financial institution account number; (8) credit or debit card information; (9) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, Wi-Fi-based, or cell-based location information; (10) an authentication credential, such as a username and password; (11) a persistent identifier, such as a customer number held in a cookie, a MAC address, a mobile device ID, or an internet browser ID; or (12) an Internet Protocol (“IP”) address.

n. “Third-Party Vendor” means any person or entity that a Respondent uses to collect or assist in collecting Advocacy Campaign Consent from a consumer.

o. “Fourth-Party Vendor” means any person or entity that a Third-Party Vendor has used to collect or assist in collecting Advocacy Campaign Consent from a consumer.

37. Respondents shall comply with Executive Law § 63(12), and GBL §§ 349 and 350 in connection with the solicitation and collection of Advocacy Campaign Consent and Marketing Campaign Consent.

38. Advocacy Campaign Consent shall only be obtained through solicitation that:

a. is found on a webpage, or single screen displayed in a computer application or other electronic interface, that does not contain any solicitations or offers



other than the solicitation for Advocacy Campaign Consent;

b. Clearly and Conspicuously discloses the sponsor of the Advocacy Campaign, the intended recipient of the Advocacy Message, and the means by which the Advocacy Message would be submitted, as follows: “[Advocacy Campaign Sponsor] would like your consent to send [submission type, such as “a public comment” or “an email”] on your behalf to [full name of Government Entity or Official],” or substantially similar language;

c. discloses the full text of the Advocacy Message for which Advocacy Campaign Consent is being solicited, including the Personal Information that will be included with the Advocacy Message (e.g., first and last name, mailing address, email address), in the manner that it is intended to appear when transferred or disclosed to a Government Entity or Official. Either the full text of the Advocacy Message, or a readily noticeable hyperlink to the full text of the Advocacy Message and the following statement or substantially similar language, shall be Clearly and Conspicuously disclosed: “Click here to see the full text of your [submission type, such as ‘public comment’ or ‘email’] to [name of Government Entity or Official]”; and

d. Clearly and Conspicuously discloses, in Close Proximity to the mechanism for obtaining Advocacy Campaign Consent, the following statement: “I consent to having this message sent to [name of Government Authority or Official] identifying me as the author or signer, using my full name and other contact information,” or substantially similar language.

39. Respondents shall not provide services to an Advocacy Campaign Client related to an Advocacy Campaign without first entering into a written agreement with the Advocacy

Campaign Client requiring that:

a. the Advocacy Campaign Client disclose conspicuously and contemporaneously with the submission of any Advocacy Message to a Government Entity or Official Respondents' identity and that Respondents obtained consent for submission of the Advocacy Message (the "Collection Disclosure"); and

b. if the Government Entity or Official will, or has stated that it may, make the Advocacy Message publicly available, the Collection Disclosure shall be made either (i) in text inserted within, or appended at the end of, each Advocacy Message that states, "Lead ID obtained consent for submission on behalf of [Individual's name or 'the signer(s),' or substantially similar language meaning signer(s)]."; or (ii) in another format that ensures it is publicly available in association with the Advocacy Message.

40. Respondents, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, shall send a confirmation email message to each consumer that has provided Advocacy Campaign Consent within twenty-four (24) hours of the consumer having provided such Advocacy Campaign Consent. The email subject line shall state only "Confirmation of Your Message to [full name of Government Entity or Official]" or substantially similar language. The body of the email shall Clearly and Conspicuously: (a) state in Close Proximity to the top of the body section, "This email confirms that you have given your consent to have the following message sent to [Government Entity or Official] identifying you as the author or signer, using your full name and other contact information, as shown below," or substantially similar language; (b) display below the prior statement the full text of the Advocacy Message; and (c) state below the prior text, "If you did not agree to have this message sent on your behalf, click here to report abuse," or substantially similar language, with a link to a

webpage or email address that will collect and provide notice to Respondents, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, of the user's report. Respondents may, in lieu of sending the confirmation email message described in this paragraph, rely on its Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message provided that Respondents have first entered into a written agreement with the Advocacy Campaign Client or Advocacy Campaign Sponsor that requires the Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message in compliance with this paragraph.

41. Respondents shall use reasonable measures designed to ensure that any Third-Party Vendor or Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent on behalf of Respondents does so consistent with the requirements of paragraphs 38 and 40. These measures shall include, at a minimum, that Respondents enter into a written contract with each Third-Party Vendor that mandates that the Third-Party Vendor:

- a. solicit and obtain Advocacy Campaign Consent in accordance with the requirements of paragraph 38;
- b. require any Fourth-Party Vendor that solicits and obtains Advocacy Campaign Consent to do so in accordance with the requirements of paragraphs 38 and 40;
- c. provide to Respondents, before any Advocacy Campaign Consent is solicited by the Third-Party Vendor or Fourth-Party Vendor, a mock-up or mock-ups depicting each version of the solicitation that will be used, including all disclosures, text, and images;
- d. obtain Respondents' written approval for use of the mock-up or mock-ups prior to their use;

e. provide to Respondents an unaltered image (such as a screenshot) or images depicting all of the solicitations for Advocacy Campaign Consent used by the Third-Party Vendor or Fourth-Party Vendor, including all disclosures, text, and images, within a reasonable amount of time after use for a given campaign; and

f. obtain and provide to Respondents, for each Advocacy Campaign Consent:

i. the date and time that the consumer provided the Advocacy Campaign Consent;

ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent;

iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);

iv. the IP address and/or device identifier of each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);

v. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and

vi. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and each item of Advocacy Lead Information.

42. Respondents shall verify that each Third-Party Vendor and Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent in an Advocacy Campaign does so

consistent with the requirements of paragraphs 38 and 40, including at a minimum:

- a. review of all mock-ups provided by the Third-Party Vendor or Fourth-Party Vendor in advance of the Advocacy Campaign;
- b. review of all live versions of the solicitation for Advocacy Campaign Consent to confirm it is consistent with all mock-ups;
- c. regular review of materials provided by the Third-Party Vendor or Fourth-Party Vendor as required in subparagraph 41.f; and
- d. investigate all consumer complaints it receives concerning an Advocacy Campaign.

43. Respondents shall designate an officer to receive and investigate all reports concerning a failure to obtain Advocacy Campaign Consent and any other consumer complaints concerning an Advocacy Campaign.

44. Respondents shall not represent, expressly or by implication, that a consumer has provided Advocacy Campaign Consent unless it was obtained in a manner consistent with the requirements of paragraph 38.

45. Respondents shall not misrepresent, expressly or by implication, any aspect of an Advocacy Campaign or a Marketing Campaign, including the actions taken or consent given by a consumer, the date and time when a consumer took such actions or gave such consent, the information solicited or obtained from a consumer, and the circumstances and manner in which consent or information was solicited or obtained from a consumer.

46. Respondent shall not transfer or disclose to a third party Advocacy Lead Information or Marketing Lead Information without transferring or disclosing the date and time each item of Advocacy Lead Information was obtained from the consumer.

47. Respondents shall not transfer or disclose to a third party Advocacy Lead Information solicited and obtained by a Third-Party Vendor or Fourth-Party Vendor unless the Third-Party Vendor complied with the contractual requirements in paragraph 41.

48. Respondents shall create and retain for a period of no less than six (6) years from the conclusion of a campaign begun after the effective date of this Assurance the following records:

a. the following data for each Advocacy Campaign Consent obtained by Respondents or by a Third-Party Vendor or Fourth-Party Vendor:

i. the date and time that the consumer provided the Advocacy Campaign Consent;

ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information (such as where Personal Information was obtained before the Advocacy Campaign);

iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (such as Personal Information that was obtained before the Advocacy Campaign);

iv. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and

v. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information;

b. copies of each version of a solicitation used, by Respondents or by a

Third-Party Vendor or Fourth-Party Vendor, to obtain Advocacy Campaign Consent, including for each such solicitation copies of all disclosures required in paragraphs 38 and 40 as they were displayed to consumers (such as screenshots or archived webpages);

c. records of Respondents' review and/or approval of all solicitations used to obtain Advocacy Campaign Consent for compliance with the requirements in paragraphs 38 and 40;

d. records of each confirmation email message sent by Respondents as required in paragraphs 38 and 40, including the email recipient, the date and time the email was sent, and whether the email message was delivered to the recipient, and records of all complaints/reports of abuse by consumers in response thereto; and

e. all records necessary to demonstrate full compliance with each provision of this Assurance, including all submissions to NYAG.

#### Monetary Relief

49. Respondents shall pay to the State of New York eight hundred ninety thousand dollars (\$890,000) in penalties and disgorgement (the "Monetary Relief Amount") as follows:

a. a first payment of \$15,000 shall be paid in full within fourteen (14) days of the effective date of this Assurance;

b. a second payment of \$15,000 shall be paid in full within sixty (60) days of the effective date of this Assurance; and

c. \$860,000 shall be suspended; provided however, that the suspended amount will be immediately due and payable if the NYAG finds that either of the Respondents has intentionally, materially misstated its financial condition in the Statement of Financial Condition documents, dated April 12, 2022 and May 11, 2022, or

the supporting materials that Respondents provided to NYAG.

50. Payments shall be made in accordance with instructions provided by a NYAG representative and shall reference Assurance No. 22-052.

51. Respondents shall fully and promptly cooperate with NYAG in the course of NYAG's investigation of individuals or entities involved in the solicitation, collection, use, sale, offering for sale, transfer, and/or submission of Advocacy Campaign Consent or Advocacy Lead Information that Respondents have obtained for or were engaged to provide to a third party. Such cooperation shall include but not be limited to: providing truthful written or verbal testimony including through appearance at depositions or trial in New York State or by remote conference; providing additional documents and other physical evidence within ten (10) days of NYAG's request; and complying with any future directives or requests of NYAG.

52. The Respondents shall provide NYAG with a certification affirming their compliance with the requirements set forth in this Assurance, paragraphs 37-48, to be submitted to NYAG within sixty (60) days of the effective date of this Assurance. This certification shall be in writing and be signed on Respondent Lead ID's behalf by the Chief Executive Officer of Lead ID, or such other officer (regardless of title) that is designated in Respondent Lead ID's bylaws or by resolution of the Board of Directors as having the duties of the principal executive officer of Respondent Lead ID. Thereafter, a certification of compliance shall be submitted to NYAG on an annual basis for the following five (5) years. In any case where the circumstances warrant, NYAG may require Respondents to file an interim certification of compliance upon thirty (30) days' notice.

53. For the following five (5) years, Respondents shall deliver a copy of this Assurance to (a) all current and future principals, officers, directors, and managers; (b) all



current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this Assurance; and (c) any business entity resulting from any change in structure. Respondents shall deliver this order to the personnel identified above within thirty (30) days.

### **MISCELLANEOUS**

54. Respondents expressly agree and acknowledge that NYAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 61, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the NYAG may use statements, documents or other materials produced or provided by Respondents prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

55. If a court of competent jurisdiction determines that Respondent have violated the Assurance, Respondents shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

56. This Assurance is not intended for use by any third party in any other proceeding.

57. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondents. Respondents shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

58. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

59. Any failure by the NYAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondent.

60. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-052, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondents, to:

Rob Carroll  
Lead ID, LLC  
106 Newport Center Drive, Suite 200  
Newport Beach, CA 92660

With a copy to:

Ron Oines  
Rutan & Tucker LLP

18575 Jamboree Road, 9<sup>th</sup> Floor  
Irvine, CA 92612

If to NYAG, to:

Jordan Adler, Senior Enforcement Counsel, or in his/her absence, to the person holding the title of Bureau Chief  
Bureau of Internet & Technology  
28 Liberty Street  
New York, NY 10005

61. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondents and their counsel and NYAG's own factual investigation as set forth in NYAG's Findings, paragraphs 1-33 above. Respondents represent and warrant that neither they nor their counsel have made any material representations to NYAG relating to either Respondents' financial condition that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

62. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

63. Respondents represent and warrant, through the signature below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that Robert Carroll, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of Lead ID, LLC.

64. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

65. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondents' right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

66. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondents violate the Assurance after its effective date.

67. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

68. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of NYAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

69. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

70. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

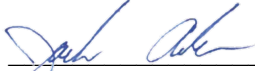
71. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

72. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one

agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

73. The effective date of this Assurance shall be August 16, 2022.

**LETITIA JAMES  
ATTORNEY GENERAL OF  
THE STATE OF NEW YORK**

  
\_\_\_\_\_

By: Jordan Adler  
Senior Enforcement Counsel  
Bureau of Internet and Technology  
Office of the New York State  
Attorney General  
28 Liberty St.  
New York, NY 10005  
Phone: (212) 416-8433  
Fax: (212) 416-8369

8/16/22  
Date

**LEAD ID, LLC**

  
\_\_\_\_\_

By: Robert Carroll

August 16 2022  
Date

**ROBERT CARROLL**

  
\_\_\_\_\_

By: Robert Carroll

August 16 2022  
Date

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF INTERNET AND TECHNOLOGY

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In the Matter of

Assurance No. 22-085

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

**IFFICIENT INC.**

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 349 into the use of consumers’ identities in public comments to the government, by Ifficient Inc. (“Ifficient”). This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation into Ifficient’s advocacy campaigns and the relief agreed to by the NYAG and Ifficient, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

**FINDINGS OF NYAG**

1. In 2017, firms working on behalf of the broadband industry hired Ifficient to provide hundreds of thousands of public comments for submission to the Federal Communications Commission in a rulemaking proceeding. The comments were to be generated by showing consumers a form-letter comment authored by an advocacy group and asking the consumers to agree to have their names and addresses used to endorse the comment and have the comment submitted to the government on their behalf.

2. Ifficient engaged several vendors for the campaign. However, two of the vendors

Ifficient engaged did not in fact solicit or collect consumers' information or consent to join the campaign. Instead, the vendors provided Ifficient names and addresses they had either purchased or had collected from unrelated campaigns without consumer knowledge or consent.

3. Ifficient nevertheless passed the information to its client, misrepresenting that the consumers had expressly consented to the submission of a public comment in their name and on their behalf. In all, Ifficient provided its client with faked consent for approximately 840,000 consumers from these two vendors.

### Background

4. Respondent Ifficient is a Colorado corporation with its principal place of business at 1756 Platte Street, Suite 200, Denver, Colorado.

5. Ifficient provides digital lead-generation services. A lead generator collects personal information from consumers and then sells that information to third parties as leads to generate business.

### Ifficient's Lead Generation Business Through Co-Registration

6. To obtain leads, Ifficient used a form of lead generation known as "co-registration." With co-registration, a consumer is presented with advertisements or solicitations from one or more third-party marketers. Typically, users are shown large numbers of these advertisements in succession. To encourage consumers to provide their information and enroll in the third-party marketers' programs, consumers are typically offered incentives, such as gift cards or sweepstake entries.

7. In addition to generating leads for use in business-to-consumer marketing campaigns, Ifficient also ran public advocacy campaigns.<sup>1</sup> The goal of these campaigns was to

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<sup>1</sup> These campaigns were typically undertaken on behalf of "advocacy groups," which are entities organized to



collect leads to generate public comments and letters to influence laws and regulations spanning a range of issues.

#### 2017 FCC Net Neutrality Rulemaking Advocacy

8. In 2017, lead generation firms working on behalf of the broadband industry engaged Ifficient to run an advocacy campaign related to the Federal Communications Commission's ("FCC") recently proposed repeal of its existing net neutrality regulations.

9. Ifficient charged its client based on the number of advocacy leads it collected, with the total number of advocacy leads (and corresponding total dollar charge) capped at a particular amount by the client. For example, in one part of the advocacy campaign, Ifficient was to receive \$0.07 for each advocacy lead up to a maximum of 50,000 advocacy leads daily, for \$3,500 per day.

10. In setting up and operating the advocacy campaign, Ifficient made repeated implicit and explicit representations to its client indicating that leads would be generated by displaying an "offer" or "ad" to consumers that asked them to consent to the submission of a public comment to the government on their behalf.<sup>2</sup>


11. Prior to the start of the campaign, Ifficient obtained specifications from the client indicating how the offer should be displayed to consumers. Ifficient then created mock-ups of the offer conforming to those specifications and sent them to the advocacy client for approval, as

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advance the public policy preferences of the group's members. In some cases the advocacy groups hired for-profit "digital strategy firms" to create and operate the campaigns (collectively with advocacy groups, "advocacy clients").<sup>2</sup> NYAG found that some advocacy organizations and digital strategy firms using co-registration to generate letters and public comments have described the resulting advocacy leads as "low-affinity," because consumers responding to co-registration offers usually have little connection, if any, to the advocacy issue, and are instead simply clicking through a long list of questions and offers in an attempt to obtain a free gift card or other commercial incentive.

shown in the screenshot below.

### Regular Preview



Yes  
 No

**Tell the FCC to Free the Net.**  
Obama-era FCC regulations are suffocating the internet. They are impeding innovation and obstructing job creation. Join us to take action now to encourage the FCC to free the internet from Obama's regulatory overreach. Privacy Policy

Your letter to the FCC: Before leaving office, the Obama Administration rammed through a massive scheme that gave the federal government broad regulatory control over the internet. That misguided policy decision is threatening innovation and hurting broadband investment in one of the largest and most important sectors of the U.S. economy. I support the Federal Communications Commission's decision to roll back Title II and allow for free market principles to guide our digital economy. Sponsored by the Center for Individual Freedom - by submitting the above comment, you are agreeing to receive periodic email alerts and updates from CFIF. You can opt-out at any time

\* First Name:

\* Last Name:

\* Email Address:

\* Address1:

\* City:

\* State:

\* Zip:

I authorize sending my contact information and letter to FCC  
 Yes

12. Ifficient represented to its client that it would wait for its final approval on the offer before making the campaign live and visible to consumers on the websites of Ifficient and its affiliates.

13. From the time the campaign was live through the end of the campaign, Ifficient provided its client with names and addresses that Ifficient said reflected consumers who had been shown the creative and affirmatively agreed to have their name added to a public comment to be sent to the government. Each advocacy lead included the consumer's contact information (name, mailing address, and email address) and IP address.

#### Ifficient's Practices

14. Contrary to its representations to its advocacy client, few if any consumers

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consented to participate in the advocacy campaign Ifficient had been paid to run. Instead, Ifficient purchased large volumes of fake leads from vendors. The majority of fake leads were supplied by Lead ID LLC (“Lead ID”) and A Level Marketing LLC d/b/a Mad Media (“A Level”).

15. The vendors – Lead ID and A Level – created these fake leads by copying old lead data from earlier unrelated campaigns.

16. In all, Ifficient provided approximately 840,000 fake advocacy leads from Lead ID and A Level to Ifficient’s advocacy client that were used in public comments submitted to the FCC.

17. Ifficient’s advocacy client accepted and paid for most of these leads: Ifficient delivered 840,000 leads from Lead ID and A Level (plus some from a third vendor) and was paid for approximately 750,000 of those advocacy leads. However, Ifficient falsely represented to its vendors that only 270,000 leads had been accepted. Ifficient then paid the campaign vendors for only 270,000 of the 750,000 leads that Ifficient had been paid for. In total, Ifficient invoiced its client approximately \$39,000 while paying its vendors approximately \$10,000.

18. On April 27, 2019, the NYAG issued a subpoena to Ifficient. Ifficient cooperated with the NYAG’s investigation.

#### Ifficient’s Violations

19. Ifficient’s conduct violated, *inter alia*, Executive Law § 63(12), which authorizes the NYAG to pursue repeated fraudulent or illegal acts, and GBL §§ 349 and 350, which prohibit deceptive acts and practices and false advertising.

20. Ifficient neither admits nor denies NYAG’s Findings, paragraphs 1-19 above.

21. NYAG finds the relief and agreements contained in this Assurance appropriate

and in the public interest. THEREFORE, NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL §§ 349 and 350.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

22. For the purposes of this Assurance, the following definitions shall apply:

a. “Advocacy Campaign” shall mean services that Respondent has been engaged to provide concerning the solicitation and collection of Advocacy Campaign Consent from a consumer.

b. “Advocacy Campaign Consent” shall mean a person’s affirmative act, such as a click of a button or a checking of a checkbox, giving unambiguous assent to having an Advocacy Message attributed to him or her.

c. “Advocacy Campaign Client” shall mean any Individual or Entity that engages Respondent in connection with an Advocacy Campaign.

d. “Advocacy Campaign Sponsor” shall mean any Individual or Entity that engages, or on whose behalf Respondent is engaged, in connection with an Advocacy Campaign.

e. “Advocacy Lead Information” for a consumer shall mean any information from or about a consumer that Respondent obtains for, or is engaged to provide to, a third party in an Advocacy Campaign.

f. “Advocacy Message” shall mean any letter, email, text message, note, petition, image, chart, summary, or other memorialization of information, whether memorialized in writing, audio or video recording, or any other medium, that is intended

to be transferred or disclosed to a Government Entity or Official and explicitly or implicitly expresses any opinion.

g. “Clear(ly) and Conspicuous(ly)” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“Triggering Representation”) is made through only one means.

ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

iii. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

iv. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.

v. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the Triggering Representation appears.

vi. The disclosure must not be contradicted or mitigated by, or inconsistent with, any other representation(s).

vii. The disclosure must not be combined with other marketing or promotional text or information that is unrelated or immaterial to the subject matter of the disclosure or not legally required.

h. “Close Proximity” shall mean that the disclosure is next to the Triggering Representation. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in Close Proximity to the Triggering Representation, unless expressly provided otherwise herein.

i. “Government Entity or Official” shall mean any: (i) agency, instrumentality, subdivision or other body of any national, regional, local or other government; (ii) commercial or similar entities owned or controlled by such government, including any state-owned and state-operated companies; (iii) public international organization; and (iv) any official, member, or employee of the foregoing acting in his or her official capacity, or any candidate or nominee to serve thereat.

j. “Personal Information” shall mean information from or about an individual consumer, including, but not limited to: (1) first and last name; (2) a home or other physical address, including street name and name of city or town; (3) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name; (4) a telephone number; (5) a Social Security number; (6) a driver’s license or other government-issued identification number; (7) a financial institution account number; (8) credit or debit card information; (9) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, Wi-Fi-based, or

cell-based location information; (10) an authentication credential, such as a username and password; (11) a persistent identifier, such as a customer number held in a cookie, a MAC address, a mobile device ID, or an internet browser ID; or (12) an Internet Protocol (“IP”) address.

k. “Respondents” shall mean Ifficient and Matt Mockus.

l. “Third-Party Vendor” means any person or entity that a Respondent uses to collect or assist in collecting Advocacy Campaign Consent from a consumer.

m. “Fourth-Party Vendor” means any person or entity that a Third-Party Vendor has used to collect or assist in collecting Advocacy Campaign Consent from a consumer.

23. Respondents shall comply with Executive Law § 63(12), and GBL §§ 349 and 350 in connection with the solicitation and collection of Advocacy Campaign Consent.

24. Advocacy Campaign Consent shall only be obtained through solicitation that:

a. is found on a webpage, or single screen displayed in a computer application or other electronic interface, that does not contain any solicitations or offers other than the solicitation for Advocacy Campaign Consent;

b. Clearly and Conspicuously discloses the sponsor of the Advocacy Campaign, the intended recipient of the Advocacy Message, and the means by which the Advocacy Message would be submitted, as follows: “[Advocacy Campaign Sponsor] would like your consent to send [submission type, such as “a public comment” or “an email”] on your behalf to [full name of Government Entity or Official],” or substantially similar language;

c. discloses the full text of the Advocacy Message for which Advocacy

Campaign Consent is being solicited, including the Personal Information that will be included with the Advocacy Message (e.g., first and last name, mailing address, email address), in the manner that it is intended to appear when transferred or disclosed to a Government Entity or Official. Either the full text of the Advocacy Message, or a readily noticeable hyperlink to the full text of the Advocacy Message and the following statement or substantially similar language, shall be Clearly and Conspicuously disclosed: “Click here to see the full text of your [submission type, such as ‘public comment’ or ‘email’] to [name of Government Entity or Official]”; and

d. Clearly and Conspicuously discloses, in Close Proximity to the mechanism for obtaining Advocacy Campaign Consent, the following statement: “I consent to having this message sent to [name of Government Authority or Official] identifying me as the author or signer, using my full name and other contact information,” or substantially similar language.

25. Respondents shall not provide services to an Advocacy Campaign Client related to an Advocacy Campaign without first entering into a written agreement with the Advocacy Campaign Client requiring that:

a. the Advocacy Campaign Client disclose conspicuously and contemporaneously with the submission of any Advocacy Message to a Government Entity or Official Respondents’ identity and that Respondents obtained consent for submission of the Advocacy Message (the “Collection Disclosure”); and

b. if the Government Entity or Official will, or has stated that it may, make the Advocacy Message publicly available, the Collection Disclosure shall be made either (i) in text inserted within, or appended at the end of, each Advocacy Message that states,



“Inefficient obtained consent for submission on behalf of [Individual’s name or ‘the signer(s),’ or substantially similar language meaning signer(s)].”; or (ii) in another format that ensures it is publicly available in association with the Advocacy Message.

26. Respondents, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, shall send a confirmation email message to each consumer that has provided Advocacy Campaign Consent within twenty-four (24) hours of the consumer having provided such Advocacy Campaign Consent. The email subject line shall state only “Confirmation of Your Message to [full name of Government Entity or Official]” or substantially similar language. The body of the email shall Clearly and Conspicuously: (a) state in Close Proximity to the top of the body section, “This email confirms that you have given your consent to have the following message sent to [Government Entity or Official] identifying you as the author or signer, using your full name and other contact information, as shown below,” or substantially similar language; (b) display below the prior statement the full text of the Advocacy Message; and (c) state below the prior text, “If you did not agree to have this message sent on your behalf, click here to report abuse,” or substantially similar language, with a link to a webpage or email address that will collect and provide notice to Respondents, or Third-Party Vendor or Fourth-Party Vendor if such Vendor solicited Advocacy Campaign Consent, of the user’s report. Respondents may, in lieu of sending the confirmation email message described in this paragraph, rely on its Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message provided that Respondents have first entered into a written agreement with the Advocacy Campaign Client or Advocacy Campaign Sponsor that requires the Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message in compliance with this paragraph.

27. Respondents shall use reasonable measures designed to ensure that any Third-Party Vendor or Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent on behalf of Respondents does so consistent with the requirements of paragraphs 24 and 26. These measures shall include, at a minimum, that Respondents enter into a written contract with each Third-Party Vendor that mandates that the Third-Party Vendor:

- a. solicit and obtain Advocacy Campaign Consent in accordance with the requirements of paragraph 24;
- b. require any Fourth-Party Vendor that solicits and obtains Advocacy Campaign Consent to do so in accordance with the requirements of paragraphs 24 and 26;
- c. provide to Respondents, before any Advocacy Campaign Consent is solicited by the Third-Party Vendor or Fourth-Party Vendor, a mock-up or mock-ups depicting each version of the solicitation that will be used, including all disclosures, text, and images;
- d. obtain Respondents' written approval for use of the mock-up or mock-ups prior to their use;
- e. provide to Respondents an unaltered image (such as a screenshot) or images depicting all of the solicitations for Advocacy Campaign Consent used by the Third-Party Vendor or Fourth-Party Vendor, including all disclosures, text, and images, within a reasonable amount of time after use for a given campaign; and
- f. obtain and provide to Respondents, for each Advocacy Campaign Consent:
  - i. the date and time that the consumer provided the Advocacy Campaign Consent;

- ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent;
- iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);
- iv. the IP address and/or device identifier of each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);
- v. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and
- vi. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and each item of Advocacy Lead Information.

28. Respondents shall verify that each Third-Party Vendor and Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent in an Advocacy Campaign does so consistent with the requirements of paragraphs 24 and 26, including at a minimum:

- a. review of all mock-ups provided by the Third-Party Vendor or Fourth-Party Vendor in advance of the Advocacy Campaign;
- b. review of all live versions of the solicitation for Advocacy Campaign Consent to confirm it is consistent with all mock-ups;
- c. regular review of materials provided by the Third-Party Vendor or Fourth-Party Vendor as required in subparagraph 27.f; and
- d. investigate all consumer complaints it receives concerning an Advocacy

Campaign.

29. Efficient shall designate an officer to receive and investigate all reports concerning a failure to obtain Advocacy Campaign Consent and any other consumer complaints concerning an Advocacy Campaign.

30. Respondents shall not represent, expressly or by implication, that a consumer has provided Advocacy Campaign Consent unless it was obtained in a manner consistent with the requirements of paragraph 24.

31. Respondents shall not misrepresent, expressly or by implication, any aspect of an Advocacy Campaign, including the actions taken or consent given by a consumer, the date and time when a consumer took such actions or gave such consent, the information solicited or obtained from a consumer, and the circumstances and manner in which consent or information was solicited or obtained from a consumer.

32. Respondent shall not transfer or disclose to a third party Advocacy Lead Information without transferring or disclosing the date and time each item of Advocacy Lead Information was obtained from the consumer.

33. Respondents shall not transfer or disclose to a third party Advocacy Lead Information solicited and obtained by a Third-Party Vendor or Fourth-Party Vendor unless the Third-Party Vendor complied with the contractual requirements in paragraph 27.

34. Respondents shall create and retain for a period of no less than six (6) years from the conclusion of a campaign begun after the effective date of this Assurance the following records:

a. the following data for each Advocacy Campaign Consent obtained by Respondents or by a Third-Party Vendor or Fourth-Party Vendor:

- i. the date and time that the consumer provided the Advocacy Campaign Consent;
  - ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information (such as where Personal Information was obtained before the Advocacy Campaign);
  - iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (such as Personal Information that was obtained before the Advocacy Campaign);
  - iv. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and
  - v. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information;
- b. copies of each version of a solicitation used, by Respondents or by a Third-Party Vendor or Fourth-Party Vendor, to obtain Advocacy Campaign Consent, including for each such solicitation copies of all disclosures required in paragraphs 24 and 26 as they were displayed to consumers (such as screenshots or archived webpages);
- c. records of Respondents' review and/or approval of all solicitations used to obtain Advocacy Campaign Consent for compliance with the requirements in paragraphs 24 and 26;
  - d. records of each confirmation email message sent by Respondents as required in paragraphs 24 and 26, including the email recipient, the date and time the

email was sent, and whether the email message was delivered to the recipient, and records of all complaints/reports of abuse by consumers in response thereto; and

e. all records necessary to demonstrate full compliance with each provision of this Assurance, including all submissions to NYAG.

### Monetary Relief

35. Respondents shall pay to the State of New York sixty-three thousand seven hundred dollars (\$63,750) in penalties and disgorgement (the “Monetary Relief Amount”). Payment of the Monetary Relief Amount shall be made in full within fourteen (14) days of the effective date of this Assurance and shall reference Assurance No. 22-085.

36. Payments shall be made by wire transfer in accordance with instructions provided by a NYAG representative.

37. Respondents shall fully and promptly cooperate with NYAG in the course of NYAG's investigation of individuals or entities involved in the solicitation, collection, use, sale, offering for sale, transfer, and/or submission of Advocacy Campaign Consent or Advocacy Lead Information that Respondents have obtained for or were engaged to provide to a third party. Such cooperation shall include but not be limited to: providing truthful written or verbal testimony including through in-person appearance at depositions or trial in New York State; providing additional documents and other physical evidence within ten (10) days of NYAG's request; and complying with any future directives or requests of NYAG.

38. The Respondents shall provide NYAG with a certification affirming their compliance with the requirements set forth in this Assurance, paragraphs 23-34, to be submitted to NYAG within sixty (60) days of the effective date of this Assurance. This certification shall be in writing and be signed on Respondent Ifficient's behalf by the Chief Executive Officer of

Ifficient, or such other officer (regardless of title) that is designated in Respondent Ifficient's bylaws or by resolution of the Board of Directors as having the duties of the principal executive officer of Respondent Ifficient. Thereafter, a certification of compliance shall be submitted to NYAG on an annual basis for the following five (5) years. In any case where the circumstances warrant, NYAG may require Respondents to file an interim certification of compliance upon thirty (30) days notice.

39. For the following five (5) years, Respondents shall deliver a copy of this Assurance to (a) all current and future principals, officers, directors, and managers; (b) all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this Assurance; and (c) any business entity resulting from any change in structure. Respondents shall deliver this order to the personnel identified above within thirty (30) days.

#### **MISCELLANEOUS**

40. Respondents expressly agree and acknowledge that NYAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 47, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the NYAG may use statements, documents or other materials produced or provided by Respondents prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

41. If a court of competent jurisdiction determines that Respondent have violated the Assurance, Respondents shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

42. This Assurance is not intended for use by any third party in any other proceeding.

43. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondents. Respondents shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

44. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

45. Any failure by the NYAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondent.



46. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-085, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondents, to:

c/o Neil E. Asnen, Esq.  
Klein Moynihan Turco LLP  
450 Seventh Avenue – 40<sup>th</sup> Floor  
New York, NY 10123  
nasnen@kleinmoynihan.com

If to NYAG, to:

Jordan Adler, Senior Enforcement Counsel, or in his/her absence, to the person holding the title of Bureau Chief  
Bureau of Internet & Technology  
28 Liberty Street  
New York, NY 10005

47. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondents and their counsel and NYAG's own factual investigation as set forth in NYAG's Findings, paragraphs 1-19 above. Respondents represent and warrant that neither they nor their counsel have made any material representations to NYAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

48. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

49. Respondents represent and warrant, through the signature below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that Matthew Mockus, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of IFFICIENT INC.

50. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

51. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondents' right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

52. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondents violate the Assurance after its effective date.

53. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

54. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of NYAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

55. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

56. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

57. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

58. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

May 8, 2023

59. The effective date of this Assurance shall be ~~March 24, 2023.~~

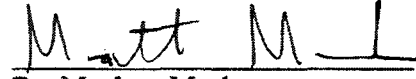
**LETITIA JAMES**  
**ATTORNEY GENERAL OF THE**  
**STATE OF NEW YORK**



By: Jordan Adler  
Senior Enforcement Counsel  
Bureau of Internet and Technology  
Office of the New York State  
Attorney General  
28 Liberty St.  
New York, NY 10005  
Phone: (212) 416-8433  
Fax: (212) 416-8369

5/2/23  
Date

**IFFICIENT INC.**



By: Matthew Mockus

4/26/23  
Date