

**IN THE SUPERIOR COURT OF FULTON COUNTY**

**STATE OF GEORGIA**

**JOHN D. SOURS, ADMINISTRATOR  
FAIR BUSINESS PRACTICES ACT,**

**COMPLAINANT,**

**v.**

**WAVEE US, LLC, D/B/A WAVEE.COM,  
JACKY LAI, INDIVIDUALLY AND  
PAUL TSYRLIN, INDIVIDUALLY,**

**RESPONDENTS.**

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**CIVIL ACTION FILE**

**NO. \_\_\_\_\_**

**ASSURANCE OF VOLUNTARY COMPLIANCE**

Pursuant to O.C.G.A. § 10-1-390 *et seq.*, the Fair Business Practices Act ("FBPA"), John D. Sours, Administrator of the FBPA ("Administrator"), has initiated an investigation and examination of certain acts or practices of the Respondents, Wavee US, LLC, d/b/a Wavee.com ("Wavee" or "the Company"), Jacky Lai, individually and Paul Tsyrlin, individually (hereinafter "Respondents"). Respondents are willing to enter into an Assurance of Voluntary Compliance, pursuant to O.C.G.A. § 10-1-402. The parties therefore stipulated and agreed as follows:

**I.**

Respondents have engaged in consumer transactions or consumer acts or practices in the conduct of trade or commerce in part or wholly within the State of Georgia, as defined in O.C.G.A. § 10-1-392(a).

II.

Wavee is a limited liability company having its principal place of business at 75 5th Street NW, Suite 212, Atlanta, Fulton County, Georgia, 30308. The Company's registered agent for service of process is Robert Hassett. Service of process upon this agent may be made at Six Concourse Parkway, Suite 2200, Atlanta, Fulton County, Georgia 30328. Service of process upon Jacky Lai may be made at 700 Park Regency Place NE, Apartment 1306, Atlanta, Fulton County, GA 30326. Service of process upon Paul Tsyrlin may be made at 2320 Tanglewood Circle NE, Atlanta, DeKalb County, Georgia 30345.

III.

The parties acknowledge that jurisdiction is proper in the Superior Court of Fulton County.

IV.

The parties acknowledge that venue is proper in this honorable Court.

V.

The Administrator alleges that the Respondents have used unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce as declared unlawful by the FBPA. Specifically, the Administrator alleges that Respondents have committed the following unfair or deceptive acts or practices:

- A. Respondents advertised that [www.wavee.com](http://www.wavee.com) is a "penny auction" website and conducted thousands of auctions on this website without the authority to do so. Respondents were not authorized to conduct such auctions because they were not registered with the Georgia Auctioneers Commission, as required by O.C.G.A. §

43-6-9. This conduct violates the FBPA in four ways. First, it violates the FBPA's general prohibition against unfair and/or deceptive acts or practices, O.C.G.A. § 10-1-393(a). Second, it violates O.C.G.A. § 10-1-393(b)(2), which prohibits causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of services. Third, it violates O.C.G.A. § 10-1-393(b)(5), which prohibits representing that services have sponsorship or approval that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have. Fourth, it violates O.C.G.A. § 10-1-393.5(b)(2), which makes it unlawful for any person who is engaged in any activity involving or using a computer or computer network to engage in any act, practice, or course of business that operates as a fraud or deceit upon a person, organization, or entity.

- B. Certain "Wavee Auction" participants purchased products for the cost of their winning bids, but did not receive the products they purchased. Respondents' failure to send these products as advertised violates O.C.G.A. § 10-1-393(a), as well as O.C.G.A. § 10-1-393(b)(10), which prohibits advertising goods with the intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- C. Respondents offered consumers who did not win an auction (via website representation) the option to purchase the auctioned product at retail price, less the cost of their losing bid investment. Respondents referred to this option as the "bid to buy" process. Respondents did not provide products to certain consumers

who exercised this option. This conduct is a violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393(b)(10).

- D. Respondents charged consumers for bid credits, but failed to clearly and conspicuously disclose that consumers were purchasing bid credits for products when they registered on Respondents' website, www.wavee.com. Specifically, this website led consumers to believe they were inputting information to merely register for the website when they were also being charged for a "credit bundle." This conduct is a violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393.5(b)(2).
- E. Respondents failed to clearly and conspicuously disclose on their website certain material limitations, such as bid credits purchased by consumers expiring after a period of time. This conduct is a violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393.5(b)(2).

#### VI.

Pursuant to O.C.G.A. § 10-1-402, which provides that an assurance of voluntary compliance shall not be considered an admission of violation of the FBPA for any purpose, Respondents hereby enter into this Assurance of Voluntary Compliance ("Assurance") in order to resolve this matter without the necessity of formal legal action.

#### VII.

By accepting this Assurance, the Administrator agrees not to request the initiation of legal action against Respondents concerning the matters covered herein, subject, however, to the provisions of O.C.G.A. § 10-1-402.

VIII.

Upon breach of any of the provisions of this Assurance by Respondents, the Administrator reserves the right to pursue any action available under O.C.G.A. § 10-1-390 *et seq.* against the Respondents concerning the subject matter of this Assurance.

IX.

Respondents hereby acknowledge the receipt of a copy of the FBPA. Respondents further acknowledge that they have knowledge of the FBPA and its provisions.

X.

Respondents further agree that, effective with the date of acceptance by the Administrator of this Assurance, Respondents, and all persons acting in concert with the Respondents, shall comply with the following:

- A. Respondents shall make every reasonable effort to act in full compliance with the FBPA in connection with any business that operates in Georgia or that may affect Georgia consumers.
- B. Respondents shall cease operating Wavee or any other unauthorized penny auction website and shall remove the website [www.wavee.com](http://www.wavee.com) from the internet.

XI.

Respondents shall do the following:

- A. ***Consumer Restitution:***
  - 1. By no later than August 3, 2011, Respondents shall deliver to each consumer identified in Exhibit "A," attached hereto, the product or products listed next to his or her name. By no later than August 10, 2011,

Respondents shall provide the Georgia Governor's Office of Consumer Protection ("OCP") copies of documents (e.g. tracking numbers, certified mail receipts, etc.) that confirm these shipments.

2. By no later than July 8, 2011, Respondents shall pay consumer restitution in the amount of **ONE HUNDRED SIX THOUSAND SEVEN HUNDRED ELEVEN AND 84/100ths DOLLARS** (\$106,711.84), according to the restitution amounts for each consumer listed in Exhibit "B," attached hereto. By no later than July 27, 2011, Respondents shall provide OCP with copies of documents (e.g. checks, electronic data transfer records, money order receipts, etc.) that confirm payment of the restitution set forth in this subsection.
3. If any payment or shipment of a product to an affected consumer (whose last address is known but not deliverable) is returned, Respondents shall:
  - a) provide OCP copies of the postmarked, returned envelopes for each consumer; and
  - b) take reasonable steps to locate the consumer. If the consumer is not located, or does not cash his or her refund check within sixty (60) days of the mailed date, Respondents shall deliver any funds due to that consumer to the Georgia Commissioner of Revenue ("Commissioner") as instructed by the "Disposition of Unclaimed Property Act," O.C.G.A. § 44-12-190, et seq. If the consumer is due a product, Respondents shall deliver the total amount spent by the consumer to the Commissioner. The total amount spent by the

consumer shall be calculated by adding the total value of the bids used by the consumer in the relevant auction, the final price of the relevant auction, and the consumer's transaction costs. Along with these funds, Respondents shall provide a report with all available information requested by the Commissioner to handle the funds as unclaimed property. No later than Monday, November 14, 2011, Respondents shall submit to OCP copies of this report as well as proof of payment of the funds submitted to the Commissioner.

**B. *Payment Plan:***

1. Respondents shall make payments totaling **ONE HUNDRED THOUSAND AND NO/100ths DOLLARS** (\$100,000.00) via certified check or money order made payable to The Governor's Office of Consumer Protection to fulfill their trust account, civil penalty and administrative expense obligations described below in Paragraph XI.C, D.
2. This payment plan shall be paid as follows:
  - a) Forty Thousand and No/100ths Dollars (\$40,000.00) to be paid on or before July 4, 2011;
  - b) Thirty Thousand and No/100ths Dollars (\$30,000.00) to be paid on or before July 25, 2011; and
  - c) Thirty Thousand and No/100ths Dollars (\$30,000.00) to be paid on or before August 26, 2011.
3. If any payment is made later than five (5) days after the due date of each payment detailed above, the entire amount shall become due and owing,

and Respondents shall be required to immediately remit the balance to OCP.

4. If the payments received total less than \$100,000.00, then the Administrator will determine the distribution of the funds.

C. ***Trust Account:***

1. Respondents shall pay **FIFTY THOUSAND AND NO/100ths DOLLARS** (\$50,000.00) for consumer restitution to be distributed by OCP.
2. Said funds shall be set aside in an account to be established by OCP for purposes of disbursement to eligible consumers.
3. Consumers who unintentionally purchased bid credits from Wavee may submit claims for restitution for a period of sixty (60) days from the effective date of this Assurance (“the Claim Period”). To apply for restitution, the consumer must complete, sign, and submit a designated claim form, which may be obtained from OCP upon request by affected consumers. To be eligible for restitution, the claim must meet the following requirements:
  - a) The claim must involve a consumer transaction with Wavee;
  - b) The claim must be a consumer complaint relating to the unintentional purchase of bid credits;
  - c) The consumer must have documentation showing that he or she did not intend to purchase bid credits. Acceptable documentation for these claims includes, but is not limited to copies of complaints



submitted to Wavee, to the Better Business Bureau, to any governing body (e.g. any attorney general's office, OCP, local elected officials, etc.), and e-mails or letters to credit card companies disputing the charge(s) prior to the effective date of this Assurance; and

d) The consumer must not have received a previous refund from Wavee for his or her purchase of bid credits. OCP will retain a list of all consumers who have previously received a refund from Wavee.

4. If the total value of the claims is greater than \$50,000.00, then the funds in the trust account shall be distributed pro rata.
5. Within sixty (60) business days after the end of the claim period, OCP shall send, via United States First-Class mail, restitution checks from said account. Any unencumbered funds remaining upon the expiration of the claim period shall be returned to the Administrator. These funds shall constitute a civil penalty.
6. This trust account is conditioned upon receiving the payments from Respondents described in Paragraph XI.B.

D. ***Civil Penalty, Administrative Costs and Expenses, and Filing Fee:***

1. Respondents shall pay a civil penalty in the amount of **THIRTY FIVE FIFTY THOUSAND AND NO/100ths DOLLARS** (\$35,000.00) made payable to OCP;

2. Respondents shall pay a certified check or money order made payable to OCP in the amount of **FIFTEEN THOUSAND AND NO/100ths DOLLARS** (\$15,000.00), to be used as a reimbursement of investigative fees and expenses incurred to date; and
3. Respondents shall pay, upon execution of this Assurance, a filing fee in the amount of **ONE HUNDRED FOUR AND 50/100ths DOLLARS** (\$104.50), which shall be paid by check or money order to “Clerk, Superior Court of Fulton County” and shall be delivered to OCP.

XII.

The parties agree that the obligations imposed in Paragraph XI represent an administrative resolution and the agreed upon obligation of Respondents. Therefore, the obligations are not subject to be discharged or set aside in any proceeding filed or held pursuant to Title 11 of the United States Code.

XIII.

OCP was induced to enter into this Assurance by certain representations and warranties by Respondents. Respondents acknowledge that they understand that OCP expressly relies upon all of the representations and warranties set forth herein, and that if they are false, unfair, deceptive, misleading or inaccurate, OCP may reopen this investigation and pursue additional legal actions against Respondents. The following are the representations and warranties from Respondents on which OCP relies:

A. ***Number of Products Wavee Sold and Shipped to Consumers:***

1. Respondents represent and warrant that Wavee sold 18,209 products to consumers either through the auction process or the “bid to buy” process.

Respondents further represent and warrant that the documents they produced to OCP relating to the number of products sold are true and accurate.

2. Respondents represent and warrant that before May 1, 2011, Wavee shipped products or provided reimbursement in lieu of products to consumers for FIFTEEN THOUSAND THREE HUNDRED FIFTY-EIGHT (15,358) products. Respondents further represent and warrant that the documents produced to OCP relating to the shipment of these products and the reimbursement in lieu of products to consumers are true and accurate.
3. Respondents represent and warrant that after the terms of Paragraph XI are completed each consumer who purchased a product from Wavee will either:
  - a) have had the product sent to his or her shipping address; or
  - b) will have received reimbursement in lieu of the product.

To the extent that Respondents learn that any consumers who purchased a product from Wavee have been omitted, Respondents will either ship the product or pay full monetary restitution to the consumer.

**B. *Number of Consumers who Previously Received Restitution:***

1. Respondents represent and warrant that they provided refunds to 16,627 consumers from September, 2010 through April, 2011. Respondents further represent and warrant that the total value of these refunds is **ONE**

**MILLION THIRTY EIGHT THOUSAND THREE HUNDRED SIXTY NINE AND NO/100ths DOLLARS (\$1,038,369.00).**

2. Respondents represent and warrant that the documents they produced to OCP regarding these refunds are true and accurate

XIV.

The consumers' full names in Exhibits "A" and "B" will be redacted in the copy of this Assurance that is filed in the Superior Court of Fulton County. A complete copy of these exhibits, containing the consumers' full names, will be retained by the Administrator and by Respondents to ensure Respondents' compliance with these obligations. The parties agree that neither this Assurance nor anything contained herein is intended to lessen in any way whatsoever the confidential treatment of information obtained pursuant to the above referenced investigation.

XV.

This Assurance, when accepted by the Administrator, will bind the Respondents and Respondents' successors and/or assigns who take with notice of the terms and provisions of this Assurance. Respondents hereby agree to give notice of this Assurance to their successors and/or assigns.

This Assurance, made and entered into by and between the undersigned parties, is effective upon the date of acceptance by the Administrator.

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Proposed, consented and agreed to by:

WAVEE, US, LLC, D/B/A WAVEE.COM,  
JACKY LAI, INDIVIDUALLY, AND  
PAUL TSYRLIN, INDIVIDUALLY

By: [Signature]

President  
Title

Sworn to and subscribed before me, this  
27<sup>th</sup> day of June, 2011.

Pamela B. Coyne  
NOTARY PUBLIC  
My commission expires: 1/29/2013

By: [Signature]  
Jacky Lai, Individually

President  
Title

Sworn to and subscribed before me, this  
27<sup>th</sup> day of June, 2011.

Pamela B. Coyne  
NOTARY PUBLIC  
My commission expires: 1/29/2013

By: [Signature]  
Paul Tsyrlin, Individually

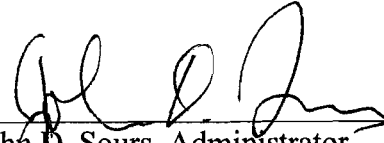
OFFICER  
Title

Sworn to and subscribed before me, this  
29<sup>th</sup> day of June, 2011.

Laura Soto  
NOTARY PUBLIC  
My commission expires: 04-30-12



ACCEPTED BY:

A handwritten signature in black ink, appearing to read 'John D. Sours', written over a horizontal line.

John D. Sours, Administrator

Date: July 1, 2011