



THE CITY OF NEW YORK
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

NYC DEPARTMENT OF CONSUMER
AND WORKER PROTECTION,

Petitioner,

-against-

CHAMPION AUTO SALES OF UTICA
AVENUE, LLC, ALL CAPITAL MOTORS,
INC., SIGNATURE AUTO SALES, INC.,
ABED EID ATIYEH and GEORGE
BUZZETTA,

Respondents.

OATH Index No. 2430/19

Final Agency Decision

On February 28, 2025, Administrative Law Judge Kara J. Miller of the Office of Administrative Trials and Hearings (“OATH”) issued a Report and Recommendation (“R&R”) in the above-captioned matter. OATH recommended that Respondents be directed to pay \$519,110 in civil penalties to the Department of Consumer and Worker Protection (“Department”) and \$28,895.39 in restitution to consumers Merrill Allen, Kingsley Appiah, Kevin Charles, Garhens Deriviere, Tiffany Myrick, Anuj Sharma, and Jing Wang. On May 29, 2025, the Department received written arguments from Petitioner. On May 31, 2025, the Department also received written arguments from Respondent Abed Eid Atiyeh.

The Department now issues this Final Agency Decision pursuant to section 2203(h)(l) of the New York City Charter and section 6-02 of title 6 of the Rules of the City of New York. Following review of the record, the Department adopts OATH’s R&R subject to the modifications explained below.

DISCUSSION

The Department modifies OATH’s R&R to (i) impose daily civil penalties for violations of the Consumer Protection Law (“CPL”), New York City Administrative Code (“NYC Code”) § 20-700 *et seq.*, (ii) sustain Count Six for twelve violations of NYC Code § 20-268.1(e)(2), (iii) sustain Count Eleven for thirteen additional violations of NYC Code § 20-268.2, (iv) sustain four violations with respect to consumer Brian Gonzales, and (v) award additional restitution to consumer Jing Wang. The Department modifies the amounts of total civil penalties and restitution in the R&R as outlined in the attached “Amended Civil Penalties Appendix” and “Amended Restitution Appendix.”

I. Petitioner is entitled to daily civil penalties for Respondents' deceptive advertisements.

In Count One, Petitioner alleged that Respondents violated the CPL by presenting numerous false and deceptive advertisements on its websites and requested the imposition of daily civil penalties.¹ As evidence, Petitioner provided biweekly screenshots of Respondents' websites during delineated time frames to demonstrate each type of violation charged under the CPL. Petitioner requested that the ALJ infer that these violations continued on the days where no screenshots were submitted. The ALJ, relying on *Dep't of Consumer Affairs v. Major World*, OATH Index No. 1897/17 (Jan. 24, 2019), recommended limiting civil penalties to only those days for which Petitioner presented direct screenshot evidence of false and deceptive advertisements and imposed a total of \$212,940 in civil penalties for Count One.²

The ALJ's reliance on *Major World* was misplaced. Petitioner's evidence was sufficient to infer that Respondents violated the CPL continuously, including on the days that lacked screenshots. In *Major World*, Petitioner submitted irregularly timed screenshots obtained from the Wayback Machine, a third-party online archive of websites. The ALJ declined to "fill in the gaps with speculation" and to make a "sweeping inference" that deceptive advertisements existed on days where no screenshots were entered in evidence. Unlike in *Major World*, here Petitioner provided screenshots taken directly and contemporaneously from Respondents' websites, which were also authenticated at trial. See *Dep't of Consumer and Worker Protection v. Prestige Motor Sales, Inc.*, OATH Index No. 2585/19 (June 21, 2023) (finding that biweekly screenshots taken directly from the Respondents' website to be sufficient circumstantial evidence to infer deceptive conduct on the days for which no screenshots were submitted).

In sum, the biweekly screenshots taken of Respondents' websites depicting deceptive advertisements were sufficient evidence to infer that violations continued on the days that no screenshots were provided. Respondents are therefore liable for an additional 1,984 violations, for an additional \$515,840 in civil penalties for Count One. Thus, Respondents owe a total penalty of \$729,040 for Count One.³

II. Count Six is sustained.

Count Six of Plaintiff's Second Amended Petition alleged eighteen violations under NYC Code § 20-268.1(e)(2) for failing to disclose all required information concerning financing and add-on products. At trial, Petitioner withdrew the violations concerning only one consumer, Monique Smart, which totaled six violations out of the eighteen that were alleged for Count Six,

¹ Respondents are hereinafter referred to collectively, unless otherwise specifically noted, because they acted as a common enterprise and are jointly and severally liable for penalties and restitution. See R&R at 161.

² The First Department upheld the decision following an Article 78 proceeding in which Respondent challenged the decision on other grounds, *Major World Chevrolet, LLC, et.al. v. Salas*, 216 A.D.3d 427,428 (1st Dep't 2023).

³ This total also includes the Count One claim pertaining to Brian Gonzales.

leaving twelve violations for adjudication. *See* R&R at 2, FN 2. However, in the R&R, the ALJ held that Petitioner withdrew Count Six in its entirety.

OATH misapprehended Petitioner's request and should have sustained twelve violations of Count Six. At trial, Petitioner withdrew Counts Six and Eleven "concerning ... consumer [Monique Smart]." (Trial Tr., 592-93) Petitioner's intent is further evidenced by Petitioner's summation, which discussed in detail each of the twelve consumer transactions that comprised Count Six but did not include Smart.

As Petitioner presented sufficient evidence in the record to sustain these violations, Respondents are liable for an additional \$9,000 in civil penalties. This number reflects a fine of \$750 for each of the twelve violations.

III. Count Eleven is sustained.

Count Eleven of Petitioner's Second Amended Petition alleged that Respondents engaged in seventeen transactions that violated NYC Code 20-268.2. Of these, four transactions involving consumer Monique Smart were withdrawn, leaving thirteen transactions to be adjudicated.

The R&R declined to find violations in these thirteen transactions and noted that Count Eleven was withdrawn at trial. *See* R&R at 2, FN 2. Despite dismissing Count Eleven, the ALJ nonetheless found that Respondents violated the *Consumer Protection Law* on ten occasions by providing pre-filled cancellation forms with the cancellation option already checked off, thereby misleading consumers about their right to cancel the contract. The R&R also held that Petitioner's contention that Respondents shortened consumers' time to return the automobile under NYC Code 20-268.2(b) and (c) was without merit because those consumers declined the option to cancel the contract

OATH erred in dismissing Count Eleven as withdrawn. As discussed, the record reflects that Petitioner only withdrew the transactions relating to consumer Monique Smart. OATH also erred, as a matter of law, in holding that the ten occasions where Respondents' misrepresented consumers' right to cancel the sales contract violated the CPL, as such conduct violated NYC Code § 20-268.2. OATH may have cited to the CPL in the body of the R&R in error, as its corresponding Appendix J, which calculated the penalty amount, cited correctly to NYC Code § 20-268.2.

- i. Respondents' failure to state the correct "Deadline to Cancel" in nine transactions violated NYC Code 20-268.2(b) and (c).

OATH misconstrued Respondents' obligations under NYC Code § 20-268.2(b)(5) by finding that because the consumers declined to exercise their right to cancel the transactions, Respondents did not commit violations by shortening consumers' time to return vehicles.

NYC Code § 20-268.2(b)(5) requires that the contract cancellation form clearly state the deadline to cancel the contract. This cancellation deadline shall be “no later than the dealer’s close of business on the second business day following the day on which either the bill of sale or the retail installment contract was signed by such consumer, whichever such signing occurred later.” NYC Code § 20-268.2(c).

Here, for nine consumers, Respondents inserted a cancellation time next to their signatures on the “NYC USED CAR CANCELLATION OPTION” form that was earlier than the second business day following the day on which the bill of sale or RIC was signed. Additionally, Respondents provided six of the nine consumers with pre-printed forms with the decline option already electronically checked off. Therefore, regardless of whether those consumers declined to exercise their right to cancel the transactions, the Respondents still failed to meet their legal obligations under NYC Code § 20-268.2(c).

- ii. Respondents’ failure to provide cancellation forms in four transactions violated NYC Code § 20-268.2.

NYC Code § 20-268.2(a) mandates that secondhand automobile dealers provide consumers with a cancellation option form authorizing them to cancel the sales contract. Petitioner presented sufficient evidence to show that four consumers were not given cancellation options forms. (See Pet.’s Summation, pp. 62-63).

The R&R is modified to reflect that Respondents committed thirteen violations of NYC Code § 20-268.2 under Count Eleven. These are in addition to the ten violations of NYC Code § 20-268.2 found by OATH, which were mistakenly attributed to the Consumer Protection Law rather than the NYC Code. Respondents are therefore liable for an additional \$9,750 in civil penalties.

IV. Consumer Brian Gonzales’s initial transaction occurred within the Department’s jurisdiction.

At trial, Petitioner charged Respondents with eleven violations in connection with Mr. Gonzales’s purchase of a 2013 Jeep Grand Cherokee on October 20, 2018. The R&R recommended dismissal of these violations, finding that the Department has no jurisdiction over this transaction because the vehicle was ultimately sold to Mr. Gonzales by Respondent Signature Auto Sales Inc., which was located outside of New York City. The ALJ reasoned that although Mr. Gonzales initially purchased the vehicle at Champion, located in Brooklyn, the bank loan was cancelled, and thus there was nothing in the record to show how much Champion charged Mr. Gonzales for the vehicle. Mr. Gonzales was also instructed to go to Long Island to sign new purchase documents for the vehicle.

Because a sufficient nexus exists between the violations and Brooklyn, OATH erred in finding that Mr. Gonzales’s initial transaction occurred outside the Department’s jurisdiction. Petitioner provided evidence that the purchase of the 2013 Jeep Grand Cherokee was initiated in

Brooklyn, that the paperwork to purchase the Jeep was completed in Brooklyn, and false information that the Jeep came with a complimentary-one year warranty was also provided in Brooklyn. Further, the ALJ failed to consider that Mr. Gonzales obtained paperwork that he executed at Signature from Champion's physical location in Brooklyn.

Thus, the R&R is modified to sustain the following CPL charges relating to Mr. Gonzales's vehicle: false prices and false one-year warranty (Count 1- NYC Code § 20-700), failure to provide required disclosures (Count 6 - NYC Code § 20-268.1(e)(2), failure to provide documents on request (Count 8- NYC Code § 20-268.3) and failure to provide a cancellation option (Count 11- NYC Code § 20-268.2). *See attached Revised Civil Penalties Summary.*

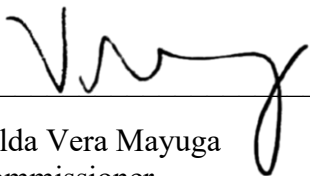
V. Consumer Jing Wang is entitled to additional Restitution.

The R&R granted the Department's request for restitution for consumers who were and still are making automobile payments and accruing interest on their loans. The R&R recommended that the formula for calculating this amount "should be based on how much a consumer would have paid under the same financing terms but for respondents' illegal actions and subtract that from the actual "Total Sale Price" from the consumer's RIC." (R&R, p. 162-163). In Exhibit J of Petitioner's Summation, Petitioner identified three such consumers: Jing Wang, Wilken Birks, and Beverly Simpson. (See Pet.'s Summation, pp. 77). The R&R recommended dismissal of the charges with respect to Beverly Simpson and Wilken Birks.

Therefore, Mr. Wang should be awarded an additional \$2,042.32 in restitution, which is the difference between how much Mr. Wang should have paid under the same financing terms but for Respondents' illegal actions (\$38,486.50) subtracted from the total sale price from RIC (\$40,528.84).

CONCLUSION

OATH's Report and Recommendation is adopted subject to the modifications explained above. Respondents are ordered to pay \$1,054,710 in civil penalties and \$30,937.71 in restitution. *See attached Amended Civil Penalty Appendix and Amended Restitution Appendix.*⁴



Vilda Vera Mayuga
Commissioner
Department of Consumer and Worker Protection

Date: 07/30/2025

⁴ Mr. Atiyeh's written argument merits no modifications to OATH's R&R as Respondent mainly presented policy concerns and failed to cite to any legal authority or refute any of the charges substantiated by OATH.

Amended Civil Penalty Appendix
(Modified Violations in **Bold**)

<u>Violation</u>	<u>Description</u>	<u>Violations</u>	<u>Modified Violations</u>	<u>Fine Per Violation</u>	<u>Total Fines in R&R</u>	<u>Modified Total Fines</u>
Admin. Code § 20-700	Advertising fake "suggested retail price" on website	63	746	\$260	\$16,380.00	\$193,960.00
Admin. Code § 20-700	Advertising cars with fake VINs	101	442	\$260	\$26,260.00	\$114,920.00
Admin. Code § 20-700	Advertising false prices on websites	553	948	\$260	\$143,780.00	\$246,480.00
Admin. Code § 20-700	Falsely claiming that cars received 120-point inspection	27	325	\$260	\$7,020.00	\$84,500.00
Admin. Code § 20-700	Falsely claiming to offer NIADA	24	291	\$260	\$6,240.00	\$75,660.00
Admin. Code § 20-700	Advertising cars that were no longer available	15	15	\$260	\$3,900.00	\$3,900.00
Admin. Code § 20-700	Misrepresenting contract cancellation rights by claiming no cancellation or "cooling off" period	19	19	\$260	\$4,940.00	\$4,940.00
Admin. Code § 20-700	Misrepresentations made to consumers	13	14 (adding Brian Gonzales)	\$260	\$3,380.00	\$3,640.00
Admin. Code § 20-700	Falsely certifying that cars are roadworthy	4	4	\$260	\$1,040.00	\$1,040.00
Admin. Code § 20-271(b)(1) (first day)	Failure to clearly display total selling price	5	5	\$260	\$2,500.00	\$2,500.00

Admin. Code § 20-271(b)(1) (second day)	Failure to clearly display total selling price	1	1	\$500	\$750.00	\$750.00
Admin. Code § 20-268(h)	Failure to provide copy of recall information from NHTSA	2	2	\$750	\$750.00	\$750.00
Admin. Code § 20-268.1(c)(1)	Requiring consumers to purchase add-on products as a condition of purchase	5	5	\$375	\$3,750.00	\$3,750.00
Admin. Code § 20-268.1(d)	Submitting false credit applications and contracts to finance companies	11	11	\$750	\$8,250.00	\$8,250.00
Admin. Code § 20-268.2	Providing defective cancellation option forms	10	10	\$750	\$7,500.00	\$7,500.00
Admin. Code § 20-268.3	Failure to provide copies of contracts and other documents requiring signatures prior to execution	9	10 (adding Brian Gonzales)	\$750	\$6,750.00	\$7,500.00
Admin. Code § 20-265 (Champion)	Engaging in unlicensed activity	41	41	\$100	\$4,100.00	\$4,100.00
6 RCNY § 2-103(i)	Selling car for more than advertised price	35	35	\$375	\$13,125.00	\$13,125.00
6 RCNY § 5-75	Failure to post FTC Buyer's Guides	7	7	\$260	\$1,820.00	\$1,820.00
6 RCNY § 2-103(b)	Failure to acquaint consumers with precise terms of recommended finance company	10	10	\$375	\$3,750.00	\$3,750.00

6 RCNY § 2-103(g)(1)(iii)	Including contract terms purporting to limit dealer responsibility under VTL § 417	35	35	\$375	\$13,125.00	\$13,125.00
6 RCNY § 2-103(h)	Failure to disclose prior use as taxicabs	2	2	\$375	\$750.00	\$750.00
6 RCNY § 2-103(k)(2)	Failure to include required information on deposit receipts	5	5	\$375	\$1,875.00	\$1,875.00
6 RCNY § 1-14(b)	Failure to respond to subpoena within 20 days.	607	607	\$375	\$227,625.00	\$227,625.00
Admin. Code § 20-268.5(a) Admin. Code § 20-273(a), (d)	Failure to maintain records	13	13	\$750	\$9,750.00	\$9,750.00
Admin. Code § 20-268.1(e)(2) (Count 6)	Failure to Provide Fin Disclosures	Erroneously dismissed as withdrawn	12	\$750	-	\$9,000
Admin. Code § 20-268.2 (Count 11)	Failure to Provide Cancel Option Altogether	Erroneously dismissed as withdrawn	4	\$750	-	\$3,000
Admin. Code § 20-268.2 (Count 11)	Early Cancellation Deadlines	Erroneously dismissed as withdrawn	9	\$750	-	\$6,750
Total-					\$519,110.00	\$1,054,710.00

Amended Restitution Appendix
(Modified Amounts in **Bold**)

<u>Consumer</u>	<u>Vehicle</u>	<u>Restitution Award per R&R</u>	<u>Final Total</u>
Merrill Allen	2013 Volkswagen Beetle	\$398.52	\$398.52
Kingsley Appiah	2015 Range Rover (1586)	\$3,990.22	\$3,990.22
Kevin Charles	2010 Infiniti G37 (0340)	\$1,258.96	\$1,258.96
Garhens Deriviere	2006 Range Rover Sport (6042)	\$8,000.00	\$8,000.00
Tiffany Myrick	2014 Acura MDX (2247) & 2015 Ford Explorer (0726)	\$3,000.00	\$3,000.00
Anuj Sharma	2012 Lamborghini Gallardo (1693)	\$4,837.50	\$4,837.50
Jing Wang	2016 Cadillac Escalade (3016)	\$7,410.19	\$9,452.53
Totals:		\$28,895.39	\$30,937.71