

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF TOWING HOLDINGS, LLC

This Assurance of Discontinuance (“Assurance”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the State” or “Colorado”), and Towing Holdings, LLC, d/b/a Wyatts Towing, Boulder Valley Towing, Klaus’ Towing, Lone Star Towing, Summit Vehicle Solutions, and Towing Operations, LLC (collectively, “Wyatts”) pursuant to the Attorney General’s powers under Colo. Rev. Stat. § 6-1-110(2), and constitutes a complete settlement between the State and Wyatts (the “Parties”) regarding the State’s allegations that Wyatts violated the Colorado Consumer Protection Act (“CCPA”) by towing cars with no valid permit or proper authorization, charging unlawful fees and unlawfully retaining certain funds, and seeking to deter consumers from exercising their rights under Colorado towing laws.

I. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 through 6-1-1121.

2. Wyatts is a Colorado limited liability company with a principal office street address of 13202 East Adam Aircraft Circle, Englewood, Colorado 80112.

3. Unless otherwise specified, all definitions found in C.R.S. § 6-1-105(1)

are incorporated herein, and any term defined in those Sections shall have the same meaning when used in this Assurance.

II. STATE ALLEGATIONS

4. With the exception of paragraphs 25, 26, 34, and 41, paragraphs 5-50 reflect the allegations of the State.

5. Wyatts is the largest towing company on the Front Range and tows approximately 40,000 vehicles a year through its various tow carriers.

6. Wyatts contracts with private property parking lot owners (and in particular, owners of residential apartment buildings) to be the exclusive towing operator for their lots. The lot owner or manager may give Wyatts permission to tow for causes such as parking without a permit, parking in a fire lane, or parking in a space reserved for disabled residents without the required placard.

7. Most of the tows conducted by Wyatts are nonconsensual, meaning they are requested by law enforcement, by property owners, or triggered by a tow truck company employee patrolling a parking lot, rather than being requested by a vehicle's owner or operator. Fees for nonconsensual tows are set by the industry's regulatory agency, the Public Utilities Commission ("PUC"). Each nonconsensual tow can cost hundreds—and sometimes thousands—of dollars for a consumer to recover their vehicle.

8. On or around October 7, 2022, the State began its investigation of Wyatts. Wyatts has cooperated with this investigation.

Allegations that Wyatts Has Withheld Refunds Owed to Consumers

9. According to the Colorado Code of Regulations, if a tow is “performed in violation of state statute or Commission rules, the towing carrier shall not charge or retain any fees or charges for the services it performs.” 4 CCR 723-6511(g).

10. Although any tow conducted in violation of a state law or rule must be refunded according to this code, Wyatts did not refund consumers who did not complain about the unlawful tows of their vehicles to the PUC.

11. Colorado law requires towing companies to apply for and receive a permit before they can operate in Colorado. *See* § 40-10.1-401(1)(a), C.R.S.

12. Towing companies must renew their permits annually are not allowed to tow vehicles without a valid permit. *See* 4 CCR 723-6-6503; § 40-10.1-401(1)(b), C.R.S.

13. On more than one occasion, Wyatts towed vehicles while its permit had lapsed between annual registration periods.

14. For example, in 2022, Wyatts Towing failed to properly renew permit number PUC T-04269 on time, and it lapsed for several days between September 5, 2022, and September 9, 2022. As another example, from June 25, 2022, to July 8, 2022, another Wyatts tow carrier, Klaus’ Towing, had a permit lapse.

15. During these two periods of permit lapses, Wyatts towed hundreds of vehicles and collected over one hundred thousand dollars from the towing fees and auction sales of these vehicles.

16. Wyatts had other permit lapses as well, including one that lasted from

August 24, 2019, through September 4, 2019 (for Wyatts Towing); one from May 3, 2020, to June 24, 2020 (Klaus' Towing); and one from June 16, 2021, to June 24, 2021 (Klaus' Towing).

17. During these permit lapses, the companies towed hundreds of vehicles—and refunded only the small number of consumers who happened to file a complaint with the PUC. Wyatts issued these refunds pursuant to an agreement with the PUC requiring Wyatts to refund any consumer who filed a complaint with the PUC for a tow conducted in the period of the permit lapse.

18. Before the Towing Bill of Rights was enacted, tow drivers were permitted to authorize, or approve, tows.

19. The new law prohibited this practice in C.R.S. § 40-10.1-405(3)(a)(IV)(A) and required a third party (such as a property manager or agent of the property) to authorize tows, and to put more checks in place to avoid improper tows.

20. Despite the new law, Wyatts still allowed tow carriers, specifically tow drivers, to authorize residential property tows for a period of some weeks beginning on August 10, 2022. At the time, Wyatts believed this portion of the Towing Bill of Rights Act only applied to commercial properties and did not extend to residential properties.

21. Wyatts conducted at least 3,250 tows from residential properties without proper authorization pursuant to C.R.S. § 40-10.1-405(3).

22. Once Wyatts was informed by the PUC that a tow operator could not authorize tows from residential properties, the company ceased this practice and

began obtaining third-party authorization for individual tows.

23. However, Wyatts did not refund the consumers towed improperly.

24. Because these tows occurred without proper authorization, no fees should have been retained.

Wyatts' Denial of Liability

25. Wyatts denies that it has improperly withheld refunds from consumers and contends that any lapses in its permits were due to administrative or clerical errors and were resolved with the PUC.

26. Wyatts denies any wrongdoing in connection with tows authorized by Wyatts employees, which were based on its reading of the Towing Bill of Rights, and contends that its actions were consistent with available legal and regulatory guidance at the time.

Allegations that Wyatts Improperly Applied the Notification Fee

27. The types and amounts of fees a towing carrier can charge are established both by statute and the Public Utilities Commission.

28. One such fee is commonly referred to as a "notification fee," which tow carriers may charge after meeting certain statutory requirements. *See* §§ 42-4-1804, 42-4-2103, C.R.S.

29. When a tow company conducts a nonconsensual tow from a private property, it must identify the vehicle's owner and lienholders and notify the owner of the tow by sending a notice via certified mail. § 42-4-2103(3)(c)(l)(A), C.R.S.

30. If a towing carrier cannot demonstrate that it has made a good faith

effort to comply with these statutory requirements, it cannot charge, collect, or retain fees associated with the tow or storage of the motor vehicle. 4 CCR 723-6511(h)(II).

31. Approximately 2,000 vehicle owners were charged a notification fee from October 1, 2019, to October 20, 2022, even though Wyatts could not demonstrate the statutory requirements had been met.

32. For these vehicles, there was no documentation that the required certified mail had been delivered pursuant to § 42-4-2103(3)(c)(I)(A), C.R.S.

33. Despite this lack of documentation, these vehicle owners were charged a notification fee of at least seventy-five dollars each. Some of these owners were charged this fee in violation of 4 CCR 723-6511(h)(II). But none of the vehicle owners were refunded for the fees associated with the tow or storage of their vehicles.

Wyatts' Denial of Liability

34. Wyatts denies that it has violated the notification statutes.

Allegations that Wyatts Charged and Retained Funds to Which It Was Not Entitled when Storing and Selling Abandoned Vehicles

35. At times, consumers do not claim their towed vehicles. When this happens, the vehicle is considered abandoned, and the towing operator may sell the consumer's vehicle to recover the cost of the tow and storage and related fees.

36. Under Colorado law, a tow carrier may first use the proceeds of the sale to satisfy its reasonable costs and fees from towing, storing, and selling the vehicle. But the tow carrier is not permitted to profit from the vehicle sale: any proceeds that exceed the tow carrier's costs (which Wyatts calls "overage") must be paid to the State and the vehicle's owners and lienholders. § 42-4-2108, C.R.S.

37. Before the Towing Bill of Rights, tow carriers were required to pay proceeds exceeding their costs and fees to the Colorado Department of Revenue. The Department of Revenue was authorized to recover from those proceeds any taxes and fees owed with respect to that vehicle, with any remainder to be paid to vehicle owners and lienholders or, if no owner or lienholder claimed the proceeds within one hundred and twenty days of the sale of the vehicle, to the State Treasurer.

38. Prior to the Towing Bill of Rights, Wyatts did not pay overage funds to the Department of Revenue from 2017 through 2022. Because Wyatt's did not pay the Department of Revenue, the Department of Revenue could not distribute overage to vehicle owners after satisfying outstanding taxes and fees. Under state law, these overage funds belonged to the Department of Revenue, to vehicle owners and lienholders, or to the State Treasurer.

39. Wyatts also instituted practices that had the effect of decreasing the amount of overage it was required to distribute, while increasing the amount of proceeds it could claim from vehicle sales.

40. Under Colorado law, tow carriers must sell abandoned vehicles within 60 days, as measured from the date they send notice of the tow to the vehicle's owners or lienholders. But Wyatts regularly stored some more valuable vehicles for greater than 60 days prior to selling the vehicle. This allowed Wyatts to accrue higher storage fees, increasing the amount it could claim to keep from the vehicle's sale proceeds once the vehicle is finally sold.

Wyatts' Denial of Liability

41. Wyatts denies any wrongdoing associated with its storage and sale of abandoned vehicles and maintains that in some circumstances, it is required to hold vehicles longer than 60 days in order to comply with federal law protecting active-duty service members.

Allegations that Wyatts' Implementation of the Retrieval Statute Deterred Consumers from Exercising Their Legal Rights

42. The Towing Bill of Rights gives vehicle owners the right to retrieve their towed vehicles so long as they pay 15% of the towing fees, up to a maximum of sixty dollars. § 40-10.1-405(5)(c), 405(6)(a), C.R.S.

43. The unpaid portion remains a debt owed to the tow carrier by the vehicle owner. Under C.R.S. § 40-10.1-405(5)(d), the consumer must “sign a form affirming that the authorized or interested person owes the towing carrier payment....” (“PUC Form”). “The towing carrier may use the form to take reasonable actions to collect the debt, including initiating a court action or using a collection agency.” *Id.*

44. This “retrieval statute” recognizes that for many people, the tow fees are simply too expensive for the person to pay all at once.

45. Wyatts instituted policies to implement the retrieval statute in August 2022.

46. Many of the policies Wyatts employed served as a deterrent with respect to consumers using the retrieval statute.

47. For example, Wyatts did not voluntarily provide consumers the PUC form.

48. Wyatts also initially had consumers enter into a loan agreement to utilize the retrieval statute. The loan agreements charged the highest allowable interest rate possible without obtaining a supervised lender license.

49. Wyatts requested consumers' Social Security number, driver's license information, bank account information, employment information, and personal income on the loan agreement forms, though it did not perform any underwriting on the loans to check credit worthiness. The nature and amount of information requested deterred individuals from completing the application.

50. Wyatts never collected or attempted to collect any fees or interest in connection with the loans and ceased the above practices in July 2023 after the State submitted a letter opposing this practice during the PUC rulemaking process. The company now provides consumers the PUC Form and no longer has a loan agreement program.

Wyatts' Denial of Liability

51. Wyatts denies any wrongdoing in connection with its implementation of the reduced retrieval statute and maintains that it acted in accordance with the law and available regulatory guidance.

Legal Allegations

52. The CCPA, C.R.S. § 6-1-105(1)(e), prohibits a person in the course of the person's business, vocation, or occupation from "knowingly or recklessly mak[ing] a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property...[.]"

53. The CCPA, C.R.S. § 6-1-105(1)(l), prohibits a person in the course of the person's business, vocation, or occupation from "mak[ing] false or misleading statements of fact concerning the price of goods, services, or property...[.]"

54. The CCPA, C.R.S. § 6-1-105(1)(z) prohibits a person in the course of the person's business, vocation, or occupation from "refus[ing] or fail[ing] to obtain all governmental licenses or permits required to perform the services...[.]"

55. The CCPA, C.R.S. § 6-1-105(1)(rrr) prohibits a person in the course of the person's business, vocation, or occupation from "knowingly or recklessly engag[ing] in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice."

56. The CCPA, C.R.S. § 6-1-105(1)(ttt) prohibits a person in the course of the person's business, vocation, or occupation from "violat[ing] part 4 of article 10.1 of title 40."

57. The State alleges that Wyatts conduct violated at least these subsections of the CCPA.

III. WYATTS' DENIALS

58. Wyatts denies any wrongdoing or liability in relation to the allegations above, including the allegations that it has engaged in violations of the CCPA.

IV. LEGAL AUTHORITY

59. C.R.S. § 6-1-110(2) authorizes the Attorney General to accept an assurance of discontinuance for any deceptive trade practice listed in the CCPA. Section 6-1-110(2) also allows the Attorney General to accept a voluntary payment

from Wyatts of any amount necessary to restore to any person money acquired by such alleged violator by means of a deceptive trade practice.

V. RELIEF

60. This Assurance applies only to Wyatts entities located and operating in Colorado. The obligations of this Section VI will be in effect beginning ninety days after the Effective Date of this Assurance.

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

a. The term “consumer” means any person, affiliate, or entity Wyatts has engaged in business with either bilaterally or unilaterally. This includes any person, affiliate or entity who did not consent to the services provided. This definition also includes, but is not limited to, those individuals who owned, leased, or otherwise had an interest in the vehicles that were the subject of nonconsensual tows.

b. The term “overage” means the amount of proceeds from the sale of a motor vehicle and its attached accessories or equipment that is greater than the sum of all charges of the tow operator that has perfected its lien on such vehicle.

c. The phrases “tow done in error” and “erroneous tow” means any executed tow that either was done in violation, or was not supported by a reasonable interpretation, of a federal, state, local, or regulatory agency rule or law.

62. Wyatts agrees to issue a refund of all fees and costs charged to

consumers if Wyatts becomes aware that a tow was done in error at any time after the tow occurred. Further, when Wyatts learns of a tow done in error, Wyatts agrees to make good faith efforts to determine whether the error applied to other towed vehicles, by, for example, checking Wyatts' internal database, if applicable. Wyatts agrees to make good faith efforts to refund all tows identified as done in error regardless of whether the tows have a corresponding internal or external complaint, such as with the Public Utilities Commission. These good faith efforts can be satisfied by demonstrating an attempt to contact the individual(s) who provided payment to release the vehicle and the identified vehicle owners via all phone number(s), address(es) and email address(es) provided. The obligations outlined in this paragraph only apply to tows done in error after the Effective Date of this Assurance.

63. Wyatts agrees to attempt to collect the following identifying information from all individuals paying to release a towed vehicle, and agrees to maintain such information: name, address, phone number, and email address. If individuals refuse or are reluctant to provide such information, Wyatts agrees to advise them this information is gathered and documented for the purposes of a refund if ever deemed necessary.

64. Wyatts agrees to do the following to comply with the "reduced retrieval statute," C.R.S. § 40-10.1-405(5)(c), (d):

- a. Wyatts agrees to provide the Public Utilities Commission's "Towed Vehicle Release Notice: Retrieval with Payment Owed" form to individuals upon request.

b. Wyatts agrees to establish and implement a policy to have an employee on call after standard business hours to approve any requests pursuant to C.R.S. § 40-10.1-405(5)(c), (d).

c. Wyatts will impose no conditional obligations on consumers to retrieve a vehicle other than submitting the PUC form.

d. Wyatts will not charge more than the permitted statutory interest of 8% annum pursuant to C.R.S. 5-12-102 when collecting any remainder.

65. Wyatts agrees to establish and implement a policy to require clear documentation of vehicle sale/auction information for every vehicle sold or auctioned by Wyatts, to facilitate overage calculation audits. This documentation should include the following, documented in a uniform manner, and be readily accessible via an internal database:

- a. Make and model of the vehicle;
- b. Vehicle year;
- c. Vehicle VIN number;
- d. Towing invoice number;
- e. Method of sale (including identifying auction house, online, platform, or third party);
- f. Sale price of vehicle;
- g. Vehicle appraisal amount;
- h. Vehicle buyer;

- i. Date of sale of vehicle;
- j. Wyatts reasonable costs arising from the sale pursuant to C.R.S. § 42-4-2104, with each cost broken out and its justification clearly identified;
- k. Wyatts costs and fees of towing and storing the abandoned vehicle, with each cost and fee broken out and its justification clearly identified;
- l. Any overage generated by the sale;
- m. Whether any overage was retained by Wyatts, paid to the State of Colorado, or to a third party;
- n. If overage was paid to the State of Colorado, when such overage was paid; and
- o. If overage was paid to a third party, the identity of that third party and when such overage was paid.

66. Wyatts will work with all applicable state agencies to formulate policies and mechanisms to remit overage fees in compliance with C.R.S. § 42-4-1208.

67. For any motor vehicle abandoned on private property that Wyatts does not attempt to sell earlier than sixty days after the postmarked date the notice was mailed pursuant to section 42-4-2103(4) for such vehicle or the date Wyatts receives notice that no record exists for such vehicle (the "Sixty Day Sale Deadline"), Wyatts agrees that (a) it shall not charge any fees for storing that vehicle beyond the Sixty Day Sale Deadline, and (b) it shall not charge any other fees to the vehicle's owner(s)

or lienholder(s) that accrue after the Sixty Day Sale Deadline, except that if Wyatts ultimately sells the vehicle, it may retain any fees from such sale that are allowed under C.R.S. §§ 42-4-2101 – 2110 that would have been retained if the vehicle had been sold prior to the Sixty Day Sale Deadline.

68. Wyatts will establish and implement a formal policy requiring clear documentation of towed vehicles that are stored beyond the Sixty Day Sale Deadline that enables Wyatts or any independent auditor to easily identify all such vehicles, the length of time each vehicle is stored, any fees charged or accrued by Wyatts for such vehicles, and the justification for storing the vehicle beyond the Sixty Day Sale Deadline.

69. For any motor vehicle abandoned on private property that Wyatts sells, including, but not limited to, vehicles sold at auction or through an online auction platform, Wyatts shall list the appraised value at the approximate time of sale of such vehicle in a location and manner that is readily apparent and easily accessible to all potential buyers.

70. Wyatts agrees not to charge a notification fee pursuant to C.R.S. § 42-4-1804 and C.R.S. § 42-4-2103 until all statutory requirements have been fulfilled. The statutory requirements are considered fulfilled once Wyatts conducts or requests the required address searches via Colorado Record Search and the National Database as set forth in the statute and notifies the third-party vendor to mail the notification letters. In circumstances where no owner or lienholder address can be identified, the statutory requirements are considered fulfilled once Wyatts completes the database

searches and search requests set forth in the statute and documents doing so.

71. Wyatts agrees to establish a precise timeline to investigate and respond to damage complaints regarding vehicles and attached personal property. These timelines shall be communicated to vehicle and property owners via Wyatts “Damage Claim Form” or any future damage complaint system used by Wyatts. Wyatts also agrees to establish and implement a policy requiring clear documentation of the following information when a “Damage Claim Form” is submitted. Wyatts agrees to provide the information below to any individual who submits a “Damage Claim Form” upon their request:

- a. Submission date of complaint;
- b. Name of employee investigating the damage complaint;
- c. Date, nature, and substance of all communications Wyatts has with an individual submitting a complaint;
- d. Date, nature, and substance of all steps Wyatts took to investigate and value a damage complaint. The documentation of these steps must be sufficiently specific so that a reasonable person could independently understand what occurred;
- e. Justification for the approval or denial of a damage complaint;
and
- f. Date the damage complaint was approved or denied.

72. Wyatts agrees to establish and implement a policy to audit for erroneous towing trends. Wyatts agrees to conduct these audits three times a year at a

minimum. These audits shall be available to regulatory and enforcement agencies upon request, but will not, solely by virtue of this agreement, be deemed available to the general public. Wyatts will gather the following information and record the information in a uniform manner:

- a. Number of tows audited;
- b. Towing invoice number for any tow deemed erroneous;
- c. Name of tow driver for any tow deemed erroneous;
- d. Nature of the error for any tow deemed erroneous;
- e. Whether and when a refund was issued for any tow deemed erroneous.

73. Wyatts agrees to instruct and train all monitors and tow drivers to search for both the number one, "1", and the letter "l/L" when searching for any VIN or license plate that contains either the number one "1" or the letter "l/L". Wyatt's also agrees to instruct and train all monitors and tow drivers to search for both the number zero, "0", and the letter "o/O" when searching for a license plate with either the letter o/O or the number zero.

74. For all consumers who used the reduced retrieval statute prior to the Effective Date of this agreement, Wyatt's agrees not to collect, attempt to collect, or assign any right to collect payment from outstanding payments stemming from such consumers' use of the reduced retrieval statute, totaling \$236,000, including any interest that might accrue on such payments after the Effective Date. Wyatt's shall not sell, assign, or otherwise transfer the outstanding payments or any interest

therein.

75. By March 31, 2024, Wyatt's shall e-mail at the last known e-mail address each of the consumers whose debt will not be collected pursuant to paragraph 74. If any e-mail is returned as undeliverable, or Wyatt's does not have an e-mail address for the consumer, it shall send the notice via first-class U.S. Mail. The notice will inform the consumer of the following:

- a. Wyatt's has entered into an agreement with the Colorado Attorney General concerning this outstanding payment;
- b. Wyatt's has agreed not to collect or attempt to collect any additional payments related to this outstanding payment;
- c. Wyatt's has agreed not to assign or transfer its right to collect on this outstanding payment;

76. By May 30, 2024 Wyatt's shall provide documentation to the State verifying that consumers have been notified.

VI. PAYMENT TO THE STATE

77. Wyatts shall pay to the State of Colorado \$764,000. Wyatts will pay \$191,000 on a quarterly basis for a twelve-month period beginning on March 31, 2024. All payments under this paragraph are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for payment of restitution, if any, reimbursement of the State's actual costs and attorneys' fees, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

VII. ENFORCEMENT

78. Wyatts expressly agrees and acknowledges that the State 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 82 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; and
- b. the State may use statements, documents or other materials produced or provided by Wyatts prior to or after the Effective Date of this Assurance.

79. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA under C.R.S. § 6-1-110(2). If the State believes that Wyatts has violated any term of this Assurance, the State shall be entitled to file a civil action under the CCPA and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance. In any such action, Wyatts agrees to waive any counterclaims that it may have had with respect to the subject matter of this Assurance and agrees to waive any challenge to the underlying enforceability of this Assurance. Wyatts does not waive any defenses as to whether it violated the Assurance. The State shall notify Wyatts at least 30 days in advance of any such filing and the Parties agree to meet and confer and engage in good faith negotiations to attempt to address the State's concerns. The Parties consent to venue and jurisdiction for any proceeding necessary to enforce the terms of this Assurance

within the District Court, Denver County, Colorado.

VIII. NOTICE

80. All notices regarding this Assurance shall be sent by certified mail, return receipt requested or reputable overnight delivery service (e.g., FedEx, UPS) at the addresses set forth below or by email unless any Party notifies the other Parties in writing of another address to which notices should be provided:

If to Wyatts, to:

Jason Dunn
Brownstein Hyatt Farber Schreck LLP
675 15th Street, Suite 2900
Denver, Colorado 80202
jdunn@bhfs.com

If to the State, to:

Betsy Atkinson
Assistant Attorney General
Consumer Fraud Unit
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, Colorado 80203

IX. RELEASE

81. The State acknowledges by its execution hereof that this Assurance constitutes a complete settlement and release of all claims under the CCPA on behalf of the State against Wyatts or any of Wyatts' subsidiaries, successors, officers, directors, managers, agents, and employees with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted by the Attorney General as plaintiff under the CCPA or any other applicable law or regulation for the conduct described in this Assurance, that arose prior to the

Effective Date and relating to or based upon the acts or practices which are the subject of this Assurance. The terms of this Assurance apply to any and all successors of Wyatts. The State agrees that, except as provided in this Assurance, it shall not proceed with or institute any civil action or proceeding by the Attorney General as plaintiff under the CCPA or any other applicable law or regulation against Wyatts for any conduct or practice prior to the Effective Date which relates to the subject matter of this Assurance.

X. MISCELLANEOUS PROVISIONS

82. The State has agreed to the terms of this Assurance based on, among other things, the representations made to the State by Wyatts and its counsel and the State's own factual investigation as summarized in the allegations above. Wyatts represents and warrants that neither it nor its counsel have made any material representations to the State that are inaccurate or misleading. If any material representations by Wyatts or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the State in its sole discretion.

83. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Wyatts. Wyatts shall include in 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 State.

84. This Assurance shall neither create nor waive any private rights or

remedies in any third parties nor waive any rights, remedies, or defenses of the Parties in respect to any third parties. Under no circumstances shall this Assurance or the name of the Attorney General or any of the State's employees or representatives be used by Wyatts or any person under its direction or control to suggest the State's endorsement of Wyatts' past, present, or future conduct, except that nothing in this paragraph will prevent Wyatts from relying on the State's factual allegations in this Assurance to the extent otherwise permitted by law.

85. Any failure by the State to insist upon the strict performance by Wyatts of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the State, 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 Wyatts.

86. This Assurance is the final, complete, and exclusive statement of the Parties' agreement on the matters contained herein, and it supersedes, terminates, and replaces any and all previous negotiations, agreements, and instruments as may exist between the Parties. Other than any representation expressly stated in this Assurance, the Parties have not made any representations or warranties to each other, and no Party's decision to enter into this Assurance is based upon any statements by any other Party outside of those in this Assurance. No change or modification of this Assurance shall be valid unless in writing and signed by all Parties. If any provision(s) of this Assurance is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions

shall not in any way be affected or impaired thereby.

87. Nothing in this Agreement shall relieve Wyatts of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

88. The terms and provisions of this Assurance may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

89. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

90. The State and Wyatts acknowledge that they had a full opportunity to review this Assurance and consult with legal counsel regarding it. The undersigned representatives of the State and Wyatts agree and represent that they have read and understood this Assurance, accept the legal consequences involved in signing it, and that there are no other representations, agreements, or understandings between the State and Wyatts that are not stated in writing herein.

91. This Assurance may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Assurance. Electronic copies of this Assurance and the signatures hereto may be used with the same force and effect as an original.

92. Nothing in this Agreement affects Wyatts' right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

93. Nothing contained herein shall be construed to limit the remedies available to the State in the event that Wyatts violates the Assurance after its Effective Date.

94. This Assurance shall be governed by the laws of Colorado without regard to any conflict of laws principles.

95. 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.

96. Wyatts represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved.

97. The Effective Date of this Assurance shall be December 21, 2023.

STATE OF COLORADO:

**PHILIP J. WEISER,
ATTORNEY GENERAL**

By:



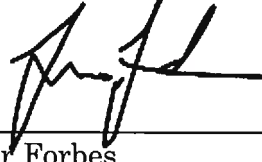
Elizabeth Atkinson
Assistant Attorney General
Attorney Reg. No. 42811

12/21/2023

Date

TOWING HOLDINGS, LLC

By:



Trevor Forbes
Towing Holdings CEO

12/21/2023

Date

Agree as to form:



Jason Dunn
Brownstein Hyatt Farber Schreck LLP
675 15th Street, Suite 2900
Denver, Colorado 80202
jdunren@bhfs.com