

STATE OF NEW YORK
DEPARTMENT OF STATE

In the Matter of the Alleged Violations of the
Do Not Call Registry

- by-

CONSENT ORDER
2018-080101

Donisi Jax, Inc.

1. The New York State Department of State is an executive agency of the State of New York charged with the regulation of the "Do Not Call" law and the enforcement of § 399-z of the General Business Law.
2. This enforcement action against Donisi Jax, Inc. (referred to as "Respondent") was initiated based upon a review of complaints received by the Department alleging violations of New York State General Business Law § 399-z and 19 New York Codes, Rules and Regulations (NYCRR), Part 221.
3. The Department alleges violations of New York General Business Law 399-z and 19 NYCRR Part 221.
4. The Department's staff conducted an investigation, which investigation resulted in the commencement of the above-captioned administrative action.
6. By executing this Consent Order, Respondent affirmatively waives its right to a hearing in the manner provided by law, consents to the issuance and entry of this Order and agrees to be bound by the terms, provisions and conditions contained herein.
7. In executing this Consent Order, Respondent enters into this agreement to resolve and settle allegations contained in a Notice of Apparent Liability issued on June 14, 2019, bearing Department File # 2018-080101. Respondent represents that all violations under investigation by the Department, regarding a pattern of business practices which allegedly violated the relevant sections of the General Business Law have been, or will be rectified, in accordance with the terms set forth herein.
 - a. To resolve the Department's allegations presently under investigation, Respondent admits liability for one hundred and sixteen (116) violations of New York General Business Law section 399-z(5), to wit: being a telemarketer having made or caused to be made 116 unsolicited telemarketing sales calls to customers when said customer's telephone numbers were on the national do-not-call registry, established by the Federal Trade Commission, for a period of thirty-one (31) days prior to the date each call was made.
 - b. To resolve the Department's allegations presently under investigation, Respondent also admits to liability for two (2) violations of New York General Business Law section 399-z(2), to wit: being a telemarketer having made or cause to be made 2 telemarketing sales calls at a time other than between 8:00 A.M. and 9:00 P.M. at the location of the

customer without the customer giving his or her express consent to the call at a different time.

c. To resolve the Department's allegations presently under investigation, Respondent also admits to liability for eleven (11) violations of New York General Business Law section 399-z(6), to wit: being a telemarketer having made or cause to be made 11 telemarketing sales calls initiated by means of a technology that delivers a pre-recorded message without express, written agreement from the consumer containing the minimum elements required by New York General Business Law section 399-z(6).

8. For the 129 violations referenced in paragraph 7, the Department and Respondent agree to a civil penalty of \$500 per call, for a total amount of **\$64,500**, subject to the conditions set forth below.
9. Respondent is aware that the Department is investigating additional violations of New York General Business Law section 399-z. The Department consents to close and discontinue the investigation into those additional violations, with prejudice, and seek neither prosecution nor penalty, if Respondent (1) is not adjudicated to have violated any provision of New York General Business Law section 399-z within the next twelve months, and (2) satisfies the civil penalty referenced in paragraph 8.

NOW, in consideration of the above premises, is the parties consent to entry of an **ORDER** with the following terms and conditions:

- TC1. That Respondent shall return the fully executed and notarized Consent Order such that same is received by the Department on or before **January 24, 2020**. The mailing address to send the Consent Order is: NYS Department of State, Division of Consumer Protection, Attn: Paula J. O'Brien, Division Director, One Commerce Plaza, 99 Washington Avenue, Suite 640, Albany, NY 12231.
- TC2. That Respondent shall pay the fine in the amount of **Sixty Four Thousand Five Hundred dollars (\$64,500.00)** in the **form of a certified check, or money order**, payable to **"NYS Department of State,"** delivered to the following address: **NYS Department of State, 99 Washington Avenue, Suite 640, Albany, NY 12231 ATTN: Paula J. O'Brien, Esq.** so that it is received by Department on or before **February 14, 2020**.
- TC3. That the Consent Order herein expressly depends upon representations made by Respondent both oral or written, formal or informal which relate to the subject matter of the Consent Order and that such representations have fully, accurately and truthfully disclosed all relevant facts to the Department. If any such representation is determined to be limited, inaccurate or untruthful, the Department shall not be bound by the terms herein and shall initiate any lawfully authorized action against Respondent.
- TC4. The effective date of this Order shall be the date on which the Secretary of State or her designee signs the same. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable after the Secretary of State, or her designee signs the same.

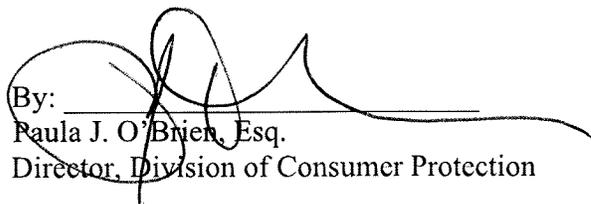
- TC5. The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order. Such default shall result in a referral to the Office of Attorney General for collection of the civil penalty, in full, pursuant to NY Executive Law § 63. Respondent hereby acknowledges the fine owed under this agreement, accepts the same as valid and waives the right to contest the same. Specifically, the civil penalty is owed by reason of Respondent's violations of, *inter alia*, Section 399-z of the GBL and the regulations promulgated thereunder as further indicated in paragraph 7 above.
- TC6. This Order constitutes the entire agreement of the parties and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Secretary of State or her designee indicating an intent to modify this Order.
- TC7. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demand whatsoever that the Department may have against anyone, other than Respondent, its parents, subsidiaries or affiliates; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; or (3) any right of the Department to bring any future action, either administrative or judicial, for any future violations of the applicable laws, the implementing regulations or conditions contained in orders if any, issued by the Department to Respondent.

The penalty per offense set forth in this Consent Order is neither intended to be nor shall not be construed by Respondent as consent by the Department as a benchmark for any penalty that may be imposed upon any determination against Respondent of future violations of New York General Business Law section 399-z.

- TC8. By entering into this Order, the Department expressly waives and releases Respondent from all claims or liability arising out of the allegations at issue in File # 2018-080101, and any and all complaints based on telephone calls that were made or allegedly made, or other facts that occurred or allegedly occurred, prior to the date of this Order, subject to the provisions contained in paragraphs 9 and 11 above.

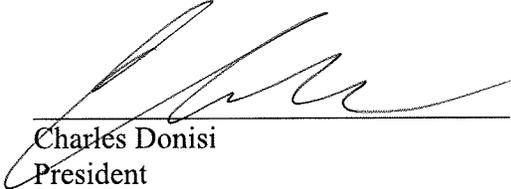
Dated: June 22, 2020
Albany, New York

NEW YORK STATE
DEPARTMENT OF STATE

By: 
Paula J. O'Brien, Esq.
Director, Division of Consumer Protection

CONSENT OF DONISI JAX, INC.

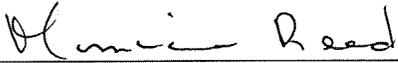
Charles Donisi, individually and on behalf of Donisi Jax, Inc., hereby consents to the issuing and entering of this Order, affirms that he is an officer of Donisi Jax, Inc. and is authorized to enter into this consent order on its behalf, waives the right to a hearing and agrees to be bound by the terms and conditions herein.



Charles Donisi
President

STATE OF NEW YORK)
)
) ss.:
COUNTY OF Broward)

On this 21 day of JAN in the year 2020 before me, the undersigned, personally appeared Charles Donisi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

