

IN THE CIRCUIT COURT OF TANEY COUNTY  
STATE OF MISSOURI

**FILED**

JUL 16 2021

AMY STRAHAN  
CIRCUIT CLERK  
TANEY COUNTY

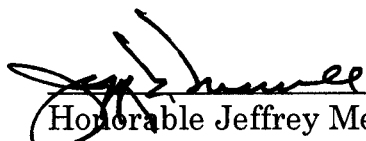
STATE OF MISSOURI ex rel. )  
Attorney General Eric S. Schmitt, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TUNING ELEMENT, LLC )  
 )  
Defendant. )

Case No. 2046-CC00115

**ORDER AND JUDGMENT APPROVING  
ASSURANCE OF VOLUNTARY COMPLIANCE**

The Court has received Plaintiff's Consent Motion for Approval of the Assurance of Voluntary Compliance ("AVC") executed by the parties and filed with the Court. Having considered the AVC and Motion, the Court hereby orders that the AVC is approved.

SO ORDERED on this 16 day of July, 2021.

  
\_\_\_\_\_  
Honorable Jeffrey Merrell  
Circuit Judge  
46<sup>th</sup> Judicial Circuit

IN THE CIRCUIT COURT OF TANEY COUNTY  
STATE OF MISSOURI

STATE OF MISSOURI <i>ex rel.</i>	)	
Attorney General Eric S. Schmitt,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2046-CC00115
	)	
TUNING ELEMENT, LLC	)	
	)	
Defendant.	)	

**ASSURANCE OF VOLUNTARY COMPLIANCE**

Plaintiff State of Missouri (“Plaintiff”), at the relation of Attorney General Eric S. Schmitt, and Defendant Tuning Element, LLC stipulate and agree to this Assurance of Voluntary Compliance (“AVC”) on the following terms pursuant to § 407.030, RSMo:

**General Findings**

1. Plaintiff is the State of Missouri acting by and through Attorney General Eric S. Schmitt, who has authority to enforce the Missouri Merchandising Practices Act (“MMPA”) codified in Chapter 407, RSMo.
2. Defendant Tuning Element is a limited liability company doing business in Taney County, Missouri.
3. Beginning in March of 2020, Defendant advertised, offered for sale, and sold masks and KN95 respirators at its website and store

location(s).

4. Plaintiff acknowledges that Defendant also donated masks or respirators to first responders and healthcare workers in the Branson area, including a donation of 1,500 masks in the early stages of the COVID-19 pandemic.

5. The average prices charged by Defendant to the public depended on the quantity of products purchased, and prices per unit for bulk orders were lower than the price per unit for a single mask or respirator.

6. Between March of 2020 and the present, Defendant has voluntarily reimbursed the two people who complained to Plaintiff about Defendant's mask or respirator prices, pursuant to Defendant's general return policy for any consumer who is dissatisfied with a product.

### **Stipulations**

7. Under § 407.030, an "assurance of voluntary compliance shall not be considered an admission of violation for any purpose."

8. The parties agree that this AVC is not an admission by Defendant to any allegation of price gouging, fraud, or deception, and Defendant has denied and continues to deny any such allegation. Furthermore, there is no evidence before this Court that Tuning Element violated the Merchandising Practices Act, or committed any other violation of Missouri law.

9. The parties acknowledge that this AVC embodies the entire agreement and understanding of the parties with respect to the subject matter contained herein.

10. The parties agree that the AVC constitutes a fair resolution of this litigation and adequately protects the public interest.

11. The parties agree that the Court has personal jurisdiction over Defendant and has subject matter jurisdiction to approve this AVC.

12. The parties agree the Court will retain jurisdiction of this cause as provided in § 407.030 and may issue any order necessary for the enforcement of the Assurances set forth below.

13. The parties recommend that the Court approve this AVC, and the parties agree that Plaintiff may submit the AVC itself, and that the parties may jointly submit a proposed judgment and order approving the AVC, to the Court.

**Assurances by Tuning Element and the Attorney General**

14. Plaintiff agrees that this AVC fully and finally resolves Plaintiff's claims against Defendant for all matters described in Plaintiff's petition.

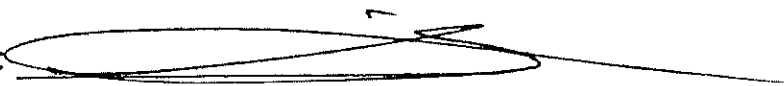
15. Plaintiff will bring no further civil or criminal action against Defendant for the matters described in Plaintiff's Petition, or for any acts or omissions related to Tuning Element's sale or marketing of masks and/or respirators in Missouri.

16. Defendant will not sell masks or respirators in Missouri.

17. Defendant has agreed to, and will, donate its remaining inventory of masks and respirators to a governmental or non-profit entity of its choice within ninety (90) days of the Court's approval of this AVC.

18. The parties will each bear their own costs.

DEFENDANT  
Tuning Element, LLC

By: 

Title: MANAGER MEMBER

State of Missouri )  
County of Taney )ss.

On this 12<sup>th</sup> day of July, 2021, before me, the undersigned notary public, personally appeared Sean Martinez who upon his/her oath stated that he/she is authorized to execute this Assurance of Voluntary Compliance on behalf of Defendant and has executed this Assurance of Voluntary Compliance as his/her free act and deed. Subscribed and sworn to before me this 12<sup>th</sup> day of July, 2021.

Allison Wiggans  
Notary Public

My commission expires on: 10-7-23

ALLISON WIGGANS  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Taney County  
My Commission Expires: 10-7-23  
Commission # 10857514

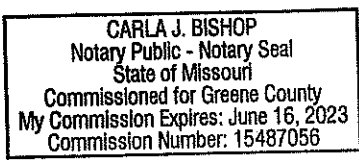
PLAINTIFF

State of Missouri ex. rel Attorney General Eric Schmitt

Thomas Kondro  
By: Thomas Kondro  
Assistant Attorney General  
State of Missouri

State of Missouri        )  
                                  )ss.  
County of Greene        )

On this 16 day of July, 2021, before me, the undersigned notary public, personally appeared Thomas Kondro, who upon his oath stated that he is an Assistant Attorney General of the State of Missouri; that he is the attorney for the Plaintiff State of Missouri ex. rel Eric Schmitt with respect to the above captioned matter; that he is authorized to execute this Assurance of Voluntary Compliance on behalf of the Plaintiff, and has executed this document as his free act and deed. Subscribed and sworn to before me this 16 day of July, 2021.



Carla J. Bishop  
Notary Public

My commission expires on: 06-16-2023