

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF INTERNET & TECHNOLOGY

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In the Matter of

Assurance No. 21-027

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

**FLUENT, INC.,**

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 349 into the collection and sale of consumers’ contact information, and the use of consumers’ identities in letters and public comments to the government, by Fluent, Inc. (“Respondent”). This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation into Fluent’s advocacy campaigns and the relief agreed to by the NYAG and Respondent, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

**FINDINGS OF NYAG**

1. From April 2016 through November 2018, Fluent was responsible for the submission of approximately ten million letters and public comments to government regulators and legislators – across dozens of official proceedings on a range of policy issues – purportedly signed by individuals who in fact had neither been shown the messages sent using their

identities, nor been told any such messages would be sent on their behalf.

2. Fluent engaged in this misconduct using its websites, where consumers can earn rewards, such as a gift card or sweepstakes entry, in exchange for providing contact information and clicking through several sequential webpages to answer survey questions and view marketing offers. Starting in 2016, Fluent represented to advocacy groups and other clients seeking to influence regulations and public policy that it could use Fluent's heavily trafficked sites – which Fluent typically uses for marketing on behalf of commercial clients – to solicit users in advocacy campaigns that would generate enormous volumes of letters and comments to government regulators and legislators.

3. Contrary to its representations to consumers and clients, however, NYAG found that Fluent did not actually solicit or collect permission from anyone to have letters and comments sent to the government on their behalf. Instead, Fluent took information collected from millions of consumers and – without telling those consumers – gave it to advocacy clients, misrepresenting that the consumers had expressly agreed to have their names and addresses used to sign the letters and comments to support or oppose government policies.

4. To conceal its misconduct, Fluent made further misrepresentations to at least two of its advocacy campaign clients, and created records falsely showing that it had presented advocacy messages to consumers.

5. The difference between Fluent's representations to consumers and clients on one hand, and its practice of providing advocacy leads without consumers' knowledge or authorization on the other hand, was known and openly discussed by at least a dozen employees in multiple business units.

## Background

6. Fluent, Inc. (“Fluent”) is a Delaware corporation with its principal place of business at 300 Vesey Street, New York, New York.

7. Fluent provides digital marketing services in which it charges advertisers a cost for a sale, sign-up, call, or for lead generation. Lead generation involves collecting personal information from consumers and then selling that information to third parties who want to use the leads to generate business.

8. To obtain leads, Fluent uses a form of lead generation known as “co-registration.” In co-registration, a consumer is presented with advertisements or solicitations from multiple third-party marketers. To encourage consumers to provide their information and enroll in the third-party marketers’ programs, consumers are typically offered incentives, such as gift cards or sweepstake entries.

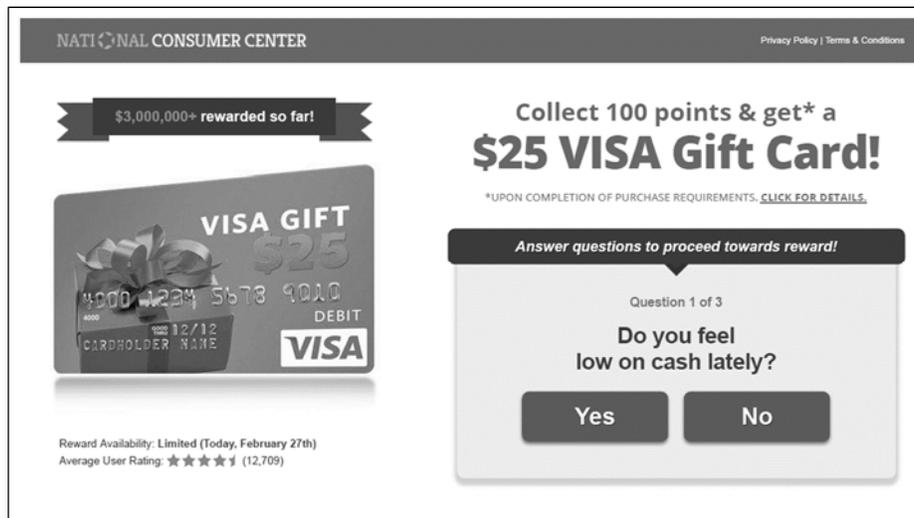
## Fluent’s Websites

9. Fluent operates dozens of websites that use co-registration. Each of these sites offer an incentive to attract consumers, such as a gift card, a free horoscope, free or discounted product samples and coupons, or the chance to win a cash prize.

10. Each of Fluent’s websites work in a similar fashion with respect to co-registration. A consumer enters the site on a landing page, which states that the consumer can earn an incentive in exchange for providing information or completing a task and presents the user with an initial question.

11. For example, a landing page on one Fluent website, nationalconsumercenter.com, offered a \$25 Visa gift card to consumers “upon the completion of purchase requirements.” The page also asks the consumer to respond to an initial question, such as “Do you feel low on cash

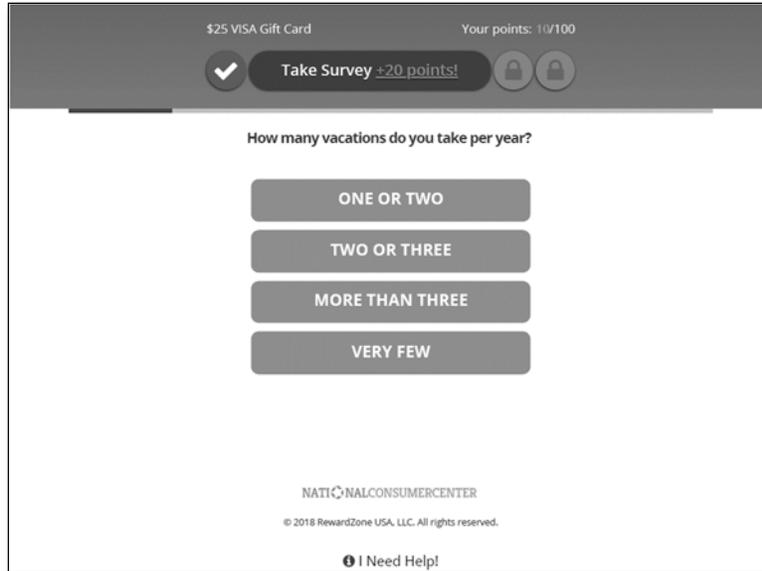
lately?” Below is a screenshot of the top portion of the landing page from a February 2019 visit by NYAG during its investigation:



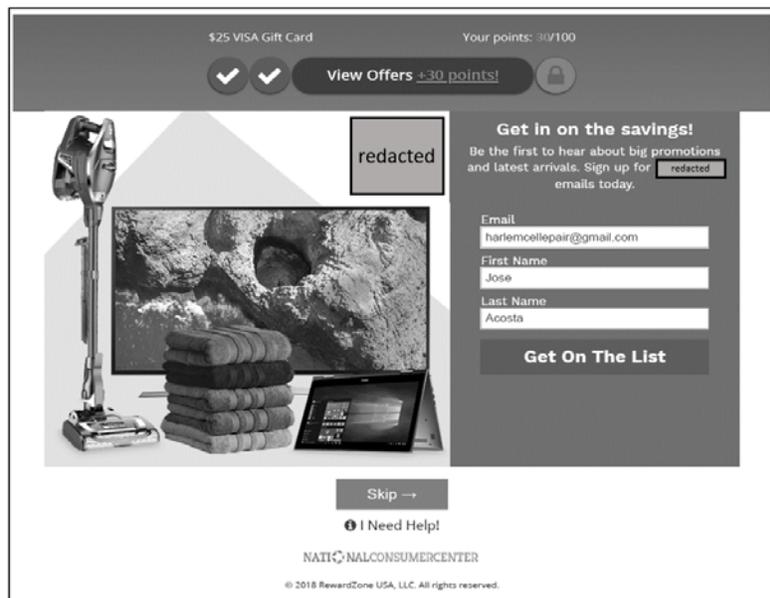
12. After answering the first question on the landing page, the consumer is directed to several pages with additional pre-registration questions, such as multiple-choice questions about his or her age and frequency of Facebook use.

13. Next, Fluent presents several sequential webpages that ask the consumer to register by submitting contact information – including name, mailing address, and email address – and date of birth and gender.

14. After registration, Fluent takes the consumer through a series of pages, labeled a “Survey,” with each webpage containing a yes/no or multiple-choice question. The questions may relate to the consumer’s habits, lifestyle, finances, consumption of goods and services, such as the number of vacations the consumer takes each year, how much debt the consumer owes, the consumer’s political affiliation, or other topics. Below is a sample survey page from nationalconsumercenter.com from a visit by NYAG in February 2019:

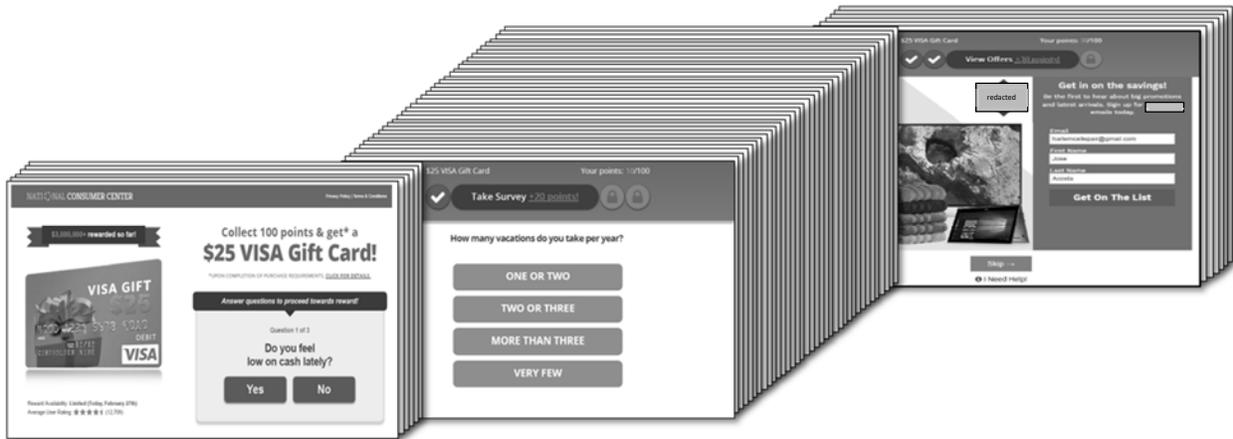


15. After the survey section, Fluent presents a series of webpages, labeled “Offers.” These are solicitations made on behalf of third parties, such as an invitation to sign up for marketing emails from a large national retailer or a solicitation to join large membership and advocacy organization and earn a “free” wallet. Below is an example from a NYAG visit to nationalconsumercenter.com in February 2019 during the office’s investigation (NYAG has redacted the name and logo of the retailer, which are not relevant to the investigation):



16. After navigating through the offer pages, consumers are presented with a webpage that contains additional solicitations labeled “deals.” The deals typically require the user to visit a third-party website and create an account and/or enroll in a service offering. Fluent required the consumer to complete four or more deals to be eligible to receive the \$25 Visa gift card offered on the site.

17. In total, depending on the Fluent site visited, the consumer may be required to click through dozens of webpages to complete the registration, answer questions, and respond to offers before claiming an incentive. For example, during its investigation NYAG visited nationalconsumercenter.com in February 2019 and had to click through 75 webpages – both on that site and the sites of third parties offering “deals” Fluent required be completed. Below is an illustration of that visit, showing the number of webpages in the different sections:



**Home & Registration section  
(several webpages)**

**Survey section,  
(dozens of webpages)**

**Offers section  
(several webpages)**

### Fluent’s Representations to Advocacy Clients

18. From 2010 until 2016, Fluent ran lead generation campaigns almost exclusively for business clients seeking to market to consumers or non-profits seeking to solicit new members or fundraise. In 2016, Fluent began offering its lead generation services to advocacy

campaigns to help clients generate letters and public comments to government regulators and legislators in support of, or in opposition to, laws or regulations under consideration.

19. These campaigns were typically undertaken by “advocacy groups,” which are entities organized to advance the public policy preferences of the group’s members. The advocacy groups were typically represented by for-profit “digital strategy firms,” which created and operated the campaigns. Fluent worked directly with the digital strategy firms, and directly or indirectly with the corresponding advocacy groups, to design and operate the letter or comment campaigns. Fluent thus provided its services in a given advocacy campaign to both the digital strategy firms and the associated advocacy group(s) (collectively, Fluent’s “advocacy clients”).

20. Fluent charged based on the number of advocacy leads it collected, with the total number of advocacy leads (and corresponding total dollar charge) capped at a particular amount by the client. For example, in its largest advocacy campaign, Fluent received \$0.30 for each advocacy lead up to a maximum of 3 million advocacy leads for \$900,000.

21. Fluent was engaged in eighty-nine advocacy campaigns from April 2016 through November 2018. The advocacy campaigns accounted for approximately 1% of Fluent’s annual revenues. The advocacy campaigns nonetheless involved a large number of consumers, since they generated approximately 10.2 million consumer advocacy leads for advocacy clients. Fluent has represented to NYAG that these advocacy leads included information from approximately 525,000 New Yorkers.

22. Fluent’s advocacy campaigns resulted in public comments and letters that were intended to influence laws and regulations spanning a broad range of industries and issues, including energy and drilling, internet regulations, criminal justice reform, trade policy, taxes on

products, state taxes, housing, flood insurance, health care, cannabis use, and more.

23. Fluent represented to its advocacy campaign clients that it would use demographic restrictions and custom survey questions on Fluent’s websites to identify visitors likely to support the advocacy group’s policy position, and then display a “creative” or “ad” to those consumers consisting of the text of the form letter or public comment that the consumer could review and a button for the consumer to click to grant agreement to having the letter or comment sent to the government.<sup>1</sup>

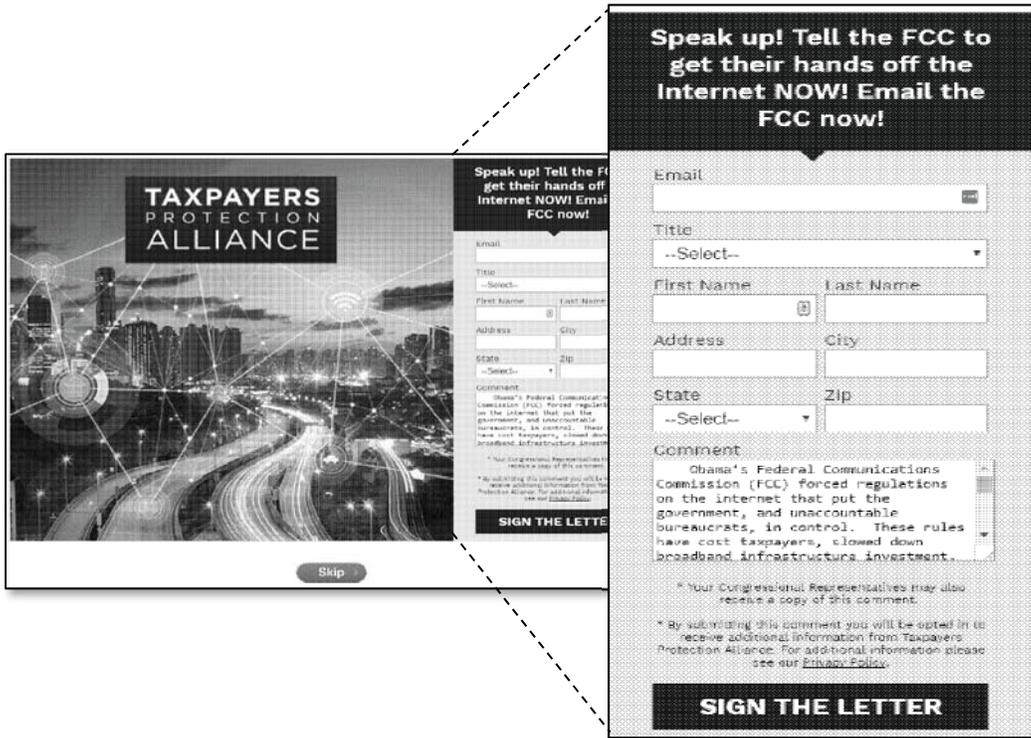
24. For example, below is a question Fluent told an advocacy client that it would include in the survey section of its websites to identify consumers likely to participate in a campaign seeking public comments urging the government to repeal internet regulations:



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<sup>1</sup> NYAG found that some advocacy organizations and digital strategy firms using co-registration to generate letters and public comments have described the resulting advocacy leads as “low-affinity,” because consumers responding to co-registration offers usually have little connection, if any, to the advocacy issue, and are instead simply clicking through a long list of questions and offers in an attempt to obtain a free gift card or other commercial incentive.

25. Below is a creative Fluent told the same client that it would include in the offers section of its websites to solicit the consumers' participation in the campaign (with a portion enlarged).



26. Over the course of its advocacy campaigns, Fluent made repeated implicit and explicit representations to its advocacy clients indicating that Fluent's websites would show consumers the creative with the text of the letter or comment and obtain the consumer's express agreement to have the letter or comment sent on the consumer's behalf.

27. At the start of each campaign, Fluent communicated with the client about the appearance of the creative that Fluent represented would be displayed to consumers. In many campaigns, Fluent discussed the appearance at length and in great detail, sending multiple versions of the creative to the client reflecting minor tweaks to text, imagery, and formatting, to suit the precise preferences of the advocacy group sponsoring the campaign.

28. Fluent also represented to clients that it would wait for their final approval on the creative before making the campaign live and visible to consumers on Fluent's websites.

29. From the time each campaign was live through the end of the campaign, Fluent provided advocacy lead data to its clients that Fluent said reflected consumers who had been shown the creative and affirmatively provided permission to have a letter or comment shown therein sent on their behalf to the government. Each advocacy lead included the consumer's contact information (name, mailing address, and email address).

30. The foregoing representations to advocacy clients were inconsistent with Fluent's actual practices through at least late 2018, which are described below. *See* paragraph 34 *et seq.*

#### Fluent's Representations to Consumers

31. Fluent represented to consumers who visited its websites that they could earn rewards such as a gift card, coupons, or a sweepstakes entry for answering survey questions and responding to offers. Nowhere did Fluent disclose that it would misrepresent consumers' agreement to participate in advocacy campaigns, using information consumers had provided to obtain commercial incentives instead to send letters or public comments to government regulators or legislators without the consumers' knowledge.

32. For example, on [nationalconsumercenter.com](http://nationalconsumercenter.com):

a. On a registration page, Fluent presents the consumer with messages in small print stating in relevant part that the consumer "agree[d] to email marketing" and to "receive relevant daily emails from" Fluent or its affiliates and agreed to the terms and conditions and privacy policy for the website, with hyperlinks to the text of these

policies, as shown in the example below from a February 2019 visit to the site by NYAG during its investigation.



b. During the same February 2019 visit and subsequent visits as part of its investigation, NYAG observed at the bottom of the home page and registration pages, on the twelfth line of a block of fine print, a statement by Fluent that use of the site constitutes “your consent to our sharing your personally identifiable information with our Marketing Partners for which we may be compensated and to receive email marketing from our Marketing Partners” as well as agreement with the hyperlinked policies.

c. Despite providing these disclosures related to Fluent’s commercial lead generation services, no webpage on the nationalconsumercenter.com site disclosed to consumers that their information would be used in connection with government letters or comments.

33. The foregoing representations to consumers were inconsistent with Fluent’s actual practices through at least late 2018, which are described below.

#### Fluent’s Actual Practices & Misconduct

34. Contrary to its representations to advocacy clients, from April 2016 through November 2018 Fluent never showed consumers any creatives with the text of advocacy clients’

letters or comments. Instead, Fluent simply sold the advocacy leads to advocacy clients – misrepresenting to these clients that the consumers had agreed to have letters and comments sent to the government on their behalf – knowing that, based on this misrepresentation, its clients would then submit letters and comments in the consumers’ names to the government.

35. Fluent selected profiles of consumers who had previously registered on its sites to send to its advocacy clients as fresh advocacy leads in one of three ways. First, Fluent chose some consumers based only on their demographics and their answer to a single custom survey question broadly related to a government policy but without any mention of advocacy.

36. For example, in campaigns to generate public comments to the FCC opposing “net neutrality” internet regulations, Fluent misrepresented that approximately 1.5 million consumers had agreed to participate in public comments to the FCC solely on the basis that these consumers had answered “yes” to a custom survey question about whether the consumer “supports” repealing internet regulations, without any mention of a public comment.

37. Second, Fluent misrepresented that some consumers had agreed to participate in advocacy campaigns based only on the consumers’ answers to questions about party affiliation, location, age range, and/or gender, without any mention of advocacy or any government policy.

38. For example, when Fluent could not generate enough advocacy leads opposing net neutrality regulations for the above-referenced public comment campaign based on consumers’ responses to the custom survey question about internet regulations, Fluent pulled from its database the contact information for approximately 2.5 million more consumers based solely on the consumers’ party affiliation and demographics. Fluent then provided the information to the clients and misrepresented that these 2.5 million consumers had agreed to sign an anti-net neutrality advocacy message for submission to the government on their behalf. As a

Fluent employee wrote to his team at one point in the campaign, “Can we loosen the [custom] question? Can we rephrase? ... Desperate.” Hours later, a team member responded they had received “[a]pproval to remove custom question” and asked, “Can we j[us]t do repub[lican]s/independents in these zips[?]” Another member of the team responded, “[D]one.”

39. Third, in several campaigns for one advocacy client, Fluent selected consumers information to provide to the client based only on the fact that the selected consumers had registered with one of Fluent’s sites in the past and perhaps other broad criteria such as party affiliation and/or age, even though the consumers had not visited Fluent’s website at the time of the client’s advocacy campaign. Fluent employees used the term “pooling” to refer to this practice of pulling consumers’ contact information from past campaigns to misrepresent as advocacy leads collected in a current campaign.

40. For example, at points when Fluent could not generate enough advocacy leads for a net neutrality campaign based solely on either a custom question or party affiliation and demographics, it used pooling to generate false advocacy leads for approximately 2.5 million consumers and provided these to its advocacy clients, knowing that the clients would use them to submit millions of public comments to the FCC and hundreds of thousands, at least, of letters to Congress. As a Fluent employee explained to another at one point in the campaign, “we want to pool 200k email address[es] [i.e., leads] and insert them into” the campaign results. A colleague replied, “[W]ill add more leads later tonight,” and then added “woohooooo!!!!” The following day, the employee updated the team, stating “I added leads yesterday.... I set the pace around 33k per day.”

41. In another instance for the same advocacy client, Fluent used pooling to generate advocacy leads for thousands of consumers and provided these to its advocacy client knowing

that the client would attach them to thousands of letters to the governor of Pennsylvania supporting the construction of an energy pipeline in the state.

42. The foregoing methods of generating advocacy leads to be used in public comments and letters to the government without ever showing the client's creative to consumers was known by at least a dozen employees across multiple business units, including at least one executive.

43. Fluent generated advocacy leads and provided them to clients to use in letters and comments to the government without having shown a creative to consumers in approximately eighty-nine advocacy campaigns that it operated through at least late 2018.

44. In all, Fluent's misconduct was responsible for approximately 10.2 million unauthorized and impersonating letters and public comments being submitted to the government for approximately a dozen digital strategy firm clients on behalf of several dozen advocacy groups.

a. Most advocacy campaigns ranged in size from a few thousand letters or comments per campaign, to more than 100,000 per campaign.

b. Some large campaigns involved millions of advocacy messages about net neutrality that were submitted to the FCC and hundreds of thousands, at least, of letters about net neutrality that were submitted to Members of Congress.

c. Fluent's smaller advocacy campaigns were responsible for the submission of public comments and letters in dozens of proceedings that were intended to influence laws and regulations spanning a broad range of industries and issues, including:

- i. air travel regulations;
- ii. cannabis/marijuana use;
- iii. consumer protection;
- iv. criminal justice reform;

- v. data privacy;
- vi. energy and drilling;
- vii. flood insurance;
- viii. gambling;
- ix. government agency funding;
- x. health care;
- xi. housing;
- xii. infrastructure;
- xiii. internet regulations;
- xiv. immigration;
- xv. taxes;
- xvi. tobacco/vaping/nicotine;
- xvii. tort reform; and
- xviii. trade policy.

d. The advocacy messages that Fluent caused to be submitted were sent to many types of government bodies at the federal and state levels, including:

- i. U.S. Congress and particular legislators;
- ii. U.S. President;
- iii. Federal agencies, including the Federal Communications Commission and the Bureau of Ocean Energy Management;
- iv. State legislatures and/or state agencies, including in California, Colorado, Florida, Massachusetts, Minnesota, Nebraska, New York, Oregon, Pennsylvania, and Texas;
- v. State governors, including in Pennsylvania; and
- vi. City government, including in New York City.

e. Fluent has represented to NYAG that the letters and comments it caused to be submitted without consumer authorization, as described above, included information from approximately 525,000 New Yorkers.

*Fluent Created Other Fake Campaign Data*

45. In addition to misrepresenting how it obtained advocacy leads, in some instances Fluent created other fake campaign data. For example, at least two advocacy clients required that Fluent include a checkbox in the creative through which consumers could subscribe to future email communications from the advocacy group sponsoring the campaign. Fluent employees created fake data showing that certain consumers had checked the box and agreed to join the

mailing list, to create the misleading appearance that consumers were seeing the creative where that checkbox was supposed to appear.

46. In one campaign in January 2017, the client instructed Fluent to have a checkbox on the creative that would be pre-checked but that consumers could uncheck if desired, and a Fluent manager told a colleague to randomly uncheck a percentage of consumers, writing “The checkbox should be prechecked and look like the below screenshot. [L]et’s randomize this as we’ve done with other campaigns and set it up so that 4% of users look like they’ve unchecked that box.”

47. In another campaign in July 2017, a Fluent employee told his colleague to check the box for a percentage of consumers at random, asking what percentage appeared realistic, writing to his colleagues, “Let’s go ahead and randomize these again, maybe with a higher percentage of folks who have opted in to receive future communication. Does around 30% seem reasonable?”

*Fluent Actively Conceals Its Deceptive Practices from Two Advocacy Clients*

48. Fluent also actively misled at least two advocacy clients to conceal its misconduct in generating leads for advocacy campaigns.

49. For example, in May 2017 a client asked Fluent for a screenshot of the creative appearing on its website. Although Fluent was in fact not displaying any creative to consumers, a Fluent employee sent a screenshot to the client purporting to show the creative was being displayed to visitors to its website, [samplesandsavings.com](http://samplesandsavings.com).

50. With another client, Fluent repeatedly posted creatives on sites without live-traffic, solely for the purposes of demonstrating to its largest advocacy client that the creatives were live. Fluent referred to these sites as “show-me” sites.

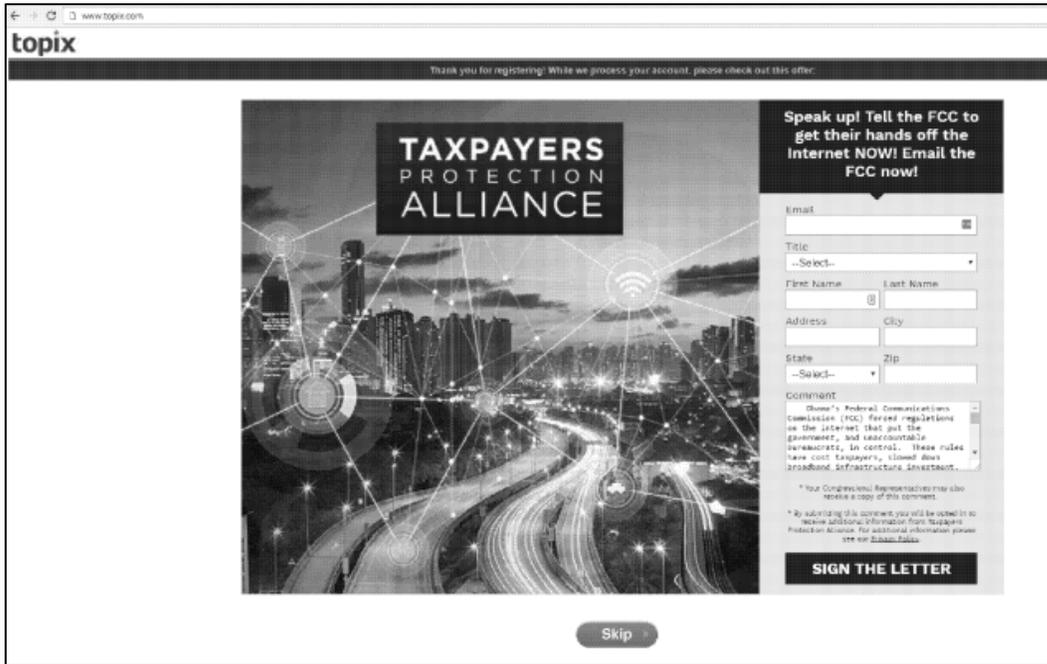
51. For example, in May 2017 Fluent used show-me sites in one of its FCC net neutrality campaigns after the advocacy client asked for screenshots showing the creatives appearing on Fluent’s websites after the campaign had gone live. Since it had not actually been displaying creatives, Fluent employees realized they would need to put them up on some sites so they could generate the requested screenshots, discussing the prior use of such a show-me site with a senior employee at the company.

a. In relaying the client’s request for screenshots, a Fluent account executive suggested to colleagues some Fluent sites that could be used. In that message he noted that he was copying a Fluent senior employee on the message “since he was tied in on this last similar request.”

b. Another employee, a director responsible for account services and data operations, responded to the group, suggesting which sites to use to match Fluent’s claims to clients about which sites receive the most traffic. The senior employee then asked if the team had what it needed, writing “Are you good here?”

c. The following day, the account executive emailed the group again, writing “Let me know if/when you can get me the screenshots in the live environment.”

d. Thirty minutes later, the senior employee sent screenshots showing the creatives up on a Fluent website at topix.com, as shown below.



e. The account executive subsequently wrote back to the client, attaching the screenshots showing the creatives on the topix.com show-me site.

52. Fluent used more show-me sites with the second advocacy client in June 2017.

a. For example, a Fluent employee wrote to team members: “I have to jump on a call with [the client] to prove our process is legit this morning. Just to be on the safe side I need someone to throw up one of these ads [i.e., creatives] ... on SamplesandSavings.”

b. The following day, the same employee confirmed his use of the show-me site, telling colleagues, “We ran the client through samplesandsavings....”

c. Later in the same campaign, Fluent’s client asked about a particular consumer, the same employee referred back to the show-me site and falsely represented

that the consumer had seen the creative there, writing “This user came through the same site we walked ... through the other week....”

#### Fluent Continues the Deception Upon Receipt of Complaints from Consumers and Clients

53. Consumers who learned of the misuse of their identities<sup>2</sup> complained to the advocacy group sponsoring the campaign or to government officials to whom impersonating advocacy messages had been addressed, and those recipients generally forwarded the complaints to the digital strategy firm that had engaged Fluent to operate the campaign, and in some cases a partner of the digital strategy firm that was also working with Fluent.

54. Many consumers also complained to law enforcement after NYAG publicly announced in late 2017 that it had been investigating fake comments in the FCC’s net neutrality proceeding and had launched a public website where consumers could search for fake comments under their names and file impersonation complaints.

55. One Fluent advocacy client and its partners forwarded complaints received during their campaigns to Fluent, seeking an explanation.

56. From these complaints, Fluent understood that consumers who learned about the misuse of their identities to influence government policy were outraged and felt that they had been impersonated, often to support policy that in fact they strongly opposed.

a. For example, one consumer complained in an email, “I did not authorize you to email using my name to anyone. You did this without my approval Never do this again! You should be sued for taking actions like this.”

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<sup>2</sup> In some cases, Fluent’s generation of a letter or comment triggered an automatic email response from the advocacy group sponsoring the campaign to the consumer named as the author of the letter or comment, which alerted the consumer to the letter or comment’s existence, prompting complaints. In other cases, consumers read press accounts citing large-scale irregularities (generated by conduct of a number of different parties) in the letters or comments being submitted to influence a government policy they cared about, and sought out the public docket and saw a comment attributed to them.

b. In another instance, a consumer sent a complaint to the advocacy group sponsoring the campaign, which was forwarded to Fluent, that stated:

This is a fraudulent use of my email address.... Please STOP using this email address to communicate with my [Congressional] representative about matters relating to net-neutrality. I do NOT support your organization, and I do NOT support ending net-neutrality.

57. Fluent responded to inquiries from its advocacy client and its partners with further misrepresentations, falsely stating that the consumers had indeed been shown the full text of a letter or comment and had affirmatively authorized submission, and that the consumers must have simply forgotten having done so.

58. To support its misrepresentations, Fluent provided data purporting to prove that consumers had agreed to sending the comment.

59. Usually Fluent provided data for each complainant that purported to show the date when the consumer had affirmatively given permission for the letter or comment to be submitted with their name and address after viewing its full text.

60. In some cases involving the same advocacy client, Fluent also posted additional content that had not been present during the client's campaign to mislead the client into thinking visitors to the site would have seen this content during the campaign.

61. For example, in August 2017, a complaint was relayed to Fluent concerning emails it had generated that were sent to the state's governor as part of an advocacy campaign concerning an energy pipeline in Pennsylvania, concerning a consumer who "says she never e mail [sic] the Governor about the pipeline." Fluent's client asked Fluent, "Can you provide the date/time of signup, IP, and what site the lead came from...?" Fluent took steps to conceal that the emails had been generated without consumers' knowledge or permission, retroactively adding a political affiliation survey question on a site to present to the client and providing the

client with a date, IP address, and the name of a Fluent website to support Fluent’s false claims regarding how and when the comment had been collected. A Fluent account representative asked his colleagues to post a creative for the client to see, despite knowing that such a creative had never been used, explaining, “I’ve never really gone through sites with them before, but before I send this over to them, we should make sure the ad is up. I’m betting they’ll check it.” In the case of this particular campaign, NYAG was unable to determine whether Fluent posted creatives retroactively.

62. In another instance, in March 2018, Fluent was forwarded complaints from eleven consumers and took steps to conceal its misconduct.

a. Fluent employees discussed with each other their use of pooling in the campaign, and they paused the pooling process to lower the risk of further complaints, with one employee telling colleagues:

Hey guys- FYI Ops started a pool to hit caps on ROC Phase 2. We're getting a bunch of complaints from this weekend. I asked them to pause the pool because it's too risky with this client. I'm asking them to pull all lead info for all the below email addresses complaints- if they are all from the pool... no bueno.

b. The employees later confirmed that all eleven complaints had indeed resulted from Fluent’s use of pooling earlier in the campaign.

c. Although none of these consumers had actually visited the Fluent website during the advocacy campaign, Fluent employees attributed timestamps during the campaign and IP addresses<sup>3</sup> to the advocacy leads. Fluent did so to make it appear – incorrectly – that the consumers had visited the Fluent site during the advocacy campaign at issue and participated in it. In providing this misleading information to the client, a

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<sup>3</sup> The IP addresses had been recorded when the consumer previously registered on a Fluent website, i.e., they were old IP addresses combined with fake current timestamps.

Fluent employee stated, “I’ve attached all the opt in info for the complaints sent over. Let me know if you need anything else.”

63. In June 2018, one Fluent employee alerted his colleagues to a complaint from a law enforcement official concerning an unauthorized comment, stating “We already have an issue with the new...campaign. We opted in a Deputy Sheriff who contacted the Congressman's office directly.” The Fluent employee then reminded his colleagues of his earlier advice to them to avoid leads for individuals more likely to detect and complain about misconduct by “suppressing” advocacy leads containing public interest email domains, such as “.edu, .org, etc. ... [and] ensure that we are only delivering letters from gmail, Hotmail, yahoo, aol, etc.”

64. In another instance, in July 2018, the following complaint was relayed to Fluent concerning letters it had generated that were sent to Congress concerning proposed net neutrality legislation:

I got a call late yesterday from staff in Ohio Rep. Renacci. She said they are getting a very high level of complaints (100+) from the...campaign, the office is responding to constituents and they are confused and say they never took action.

Fluent took steps to conceal that the letters had been generated without consumers’ knowledge or permission, including multiple calls with the client and its vendor in which Fluent repeated the misrepresentation that consumers had expressly authorized that letters to Congress be submitted on their behalf when in fact those consumers had not done so.

#### Fluent’s Motivations for Misrepresentations to Consumers and Advocacy Clients

65. Fluent priced its services on a per-advocacy lead basis up to a maximum budget or “cap” that the client would pay.

66. Fluent provided advocacy leads for its clients to use in comments and letters without consumers’ permission, and misrepresented that fact to consumers and its clients, to earn

larger profits than it could have earned if it had actually acted in accordance with its representations.

67. Thus, when Fluent feared it might not generate enough advocacy leads to hit the cap, it often removed the custom question and in some cases resorted to pooling.

68. For example, in a March 2018 campaign to generate letters to Congress about net neutrality, one employee noted the use of pooling by Fluent's operations team, "Ops started a pool to hit caps."

a. After discussing pooling, a Fluent employee told her team, "I added leads yesterday.... I set the pace around 33k per day." Another employee then commented, "[A]mazing thank you! [E]xtra \$13k yday!!!"

b. Despite the use of pooling, Fluent still had a shortfall between the cap and the number of advocacy leads it had collected later in the campaign, so employees removed the custom question. In reaching their decision, they first discussed rephrasing the custom question to try to generate more advocacy leads. Another employee responded that such rephrasing would not do enough to hit the cap, writing that it "won[']t make a dent in that \$300k we're leaving on the table. [N]eed to consider alternate strategies." The employees then requested and obtained approval to remove the custom question, and they removed it.

69. Fluent managers directly involved in collecting advocacy leads without showing creatives and generating advocacy leads without custom questions, and who were directly involved in its misrepresentations to advocacy clients, expressed the same intention to maximize profits by collecting or generating enough advocacy leads to hit the budget cap in other campaigns.

70. For example, in a campaign in July 2017, after one senior account manager told colleagues that she had pooled advocacy leads to improperly increase Fluent’s bill to its client, a colleague responded that she was pleased that this would allow them to reach the budget cap, writing “[S]o we’ll be able to hit [the cap]. [Y]ay[.]”

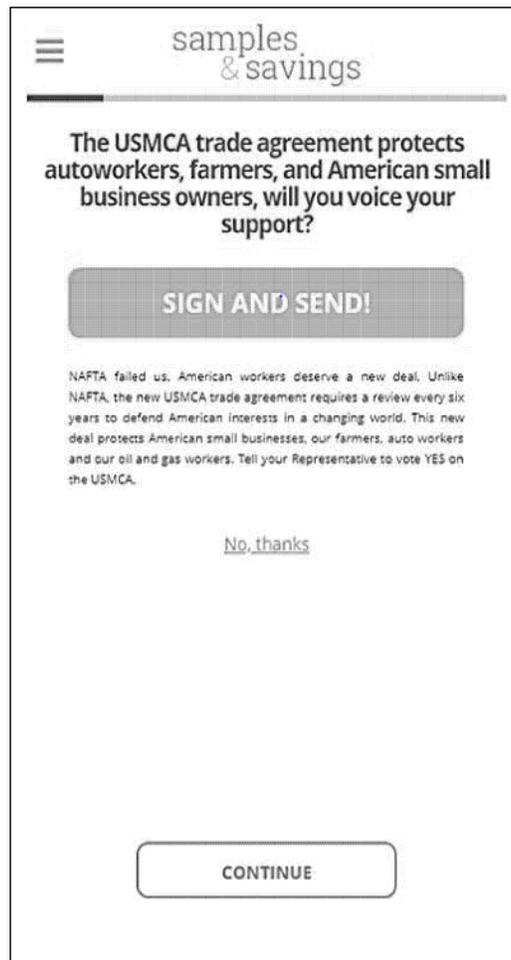
71. In another instance in early 2018, Fluent managers discussed the greater spending by clients on advocacy campaigns, and celebrated how that spending benefitted the bottom line, with one manager writing, “We have a pretty significant opportunity to continue this campaign through March and they've given us the potential for an additional 671,000 letters to various Congressional targets, so that equals out to about \$771,650 in potential additional spend.” Another team member wrote back, stating “BOOM.... Additional potential spend of \$775k on the net neutrality campaign with [the client] to spend by end of Q1.”

72. At all times, Fluent was aware that letters and public comments were being submitted to the government under the names of consumers without those consumers’ knowledge or consent.

#### Fluent’s Post-Subpoena Conduct

73. On October 26, 2018, the NYAG issued a subpoena to Fluent seeking documents and information concerning its solicitation and collection of consumer consent in advocacy campaigns. The NYAG’s investigation was limited to Fluent’s advocacy campaign business and did not extend to other areas of Fluent’s business. Fluent cooperated with the investigation and changed its practices in advocacy campaigns, including among other things, presenting users in many campaigns with messaging to be used in the advocacy campaigns.

74. However, in some instances the messaging did not clearly and conspicuously disclose what Fluent was soliciting consent for – the submission of a comment or letter to a government regulator or legislator in the user’s name. Below is an example:



Fluent presents the consumer with a message in large print describing a trade agreement and asking if the consumer will “voice your support” followed by a large button saying “SIGN AND SEND!” In fine print below concerning the trade agreement, the last sentence states “Tell your Representative to vote YES on the USMCA.” However, Fluent does not clearly disclose that a message that will be sent to the consumer’s congressperson, in the consumer’s name and using his or her contact information.

## Respondent's Violations

75. The NYAG finds that Respondent's conduct violated Executive Law § 63(12), which authorizes the OAG to pursue repeated fraudulent or illegal acts, and GBL §§ 349 and 350, which prohibits deceptive acts and practices and false advertising.

76. Respondent neither admits nor denies the NYAG's Findings, paragraphs 1-75 above.

77. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) and GBL §§ 349 and 350.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

### **RELIEF**

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

a. "Advocacy Campaign" shall mean services that Respondent was engaged to provide concerning the solicitation and collection of Advocacy Campaign Consent from a consumer.

b. "Advocacy Campaign Consent" shall mean a person's affirmative act, such as a click of a button or a checking of a checkbox, giving unambiguous assent to having an Advocacy Message attributed to him or her.

c. "Advocacy Campaign Client" shall mean any Individual or Entity that engages Respondent in connection with an Advocacy Campaign.

d. "Advocacy Campaign Sponsor" shall mean any Individual or Entity that engages, or on whose behalf Respondent is engaged, in connection with an Advocacy

Campaign.

e. “Advocacy Lead Information” for a consumer shall mean any information from or about a consumer that Respondent obtains for, or is engaged to provide to, a third party in an Advocacy Campaign.

f. “Advocacy Message” shall mean any letter, email, text message, note, petition, image, chart, summary, or other memorialization of information, whether memorialized in writing, audio or video recording, or any other medium, that is intended to be transferred or disclosed to a Government Entity or Official and explicitly or implicitly expresses any opinion.

g. “Clear(ly) and Conspicuous(ly)” shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“Triggering Representation”) is made through only one means.

ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

iii. An audible disclosure, including by telephone or streaming video,

must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

iv. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.

v. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the Triggering Representation appears.

vi. The disclosure must not be contradicted or mitigated by, or inconsistent with, any other representation(s).

vii. The disclosure must not be combined with other marketing or promotional text or information that is unrelated or immaterial to the subject matter of the disclosure or not legally required.

h. “Close Proximity” shall mean that the disclosure is next to the Triggering Representation. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in Close Proximity to the Triggering Representation, unless expressly provided otherwise herein.

i. “Government Entity or Official” shall mean any: (i) agency, instrumentality, subdivision or other body of any national, regional, local or other government; (ii) commercial or similar entities owned or controlled by such government, including any state-owned and state-operated companies; (iii) public international organization; and (iv) any official, member, or employee of the foregoing acting in his or her official capacity, or any candidate or nominee to serve thereat.

j. “Personal Information” shall mean information from or about an

individual consumer, including, but not limited to: (1) first and last name; (2) a home or other physical address, including street name and name of city or town; (3) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name; (4) a telephone number; (5) a Social Security number; (6) a driver's license or other government-issued identification number; (7) a financial institution account number; (8) credit or debit card information; (9) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, Wi-Fi-based, or cell-based location information; (10) an authentication credential, such as a username and password; (11) a persistent identifier, such as a customer number held in a cookie, a MAC address, a mobile device ID, or an internet browser ID; or (12) an Internet Protocol ("IP") address.

k. "Third-Party Vendor" means any person or entity that Respondent uses to collect or assist in collecting Advocacy Campaign Consent from a consumer.

l. "Fourth-Party Vendor" means any person or entity that a Third-Party Vendor has used to collect or assist in collecting Advocacy Campaign Consent from a consumer.

79. Respondent shall comply with Executive Law § 63(12), and GBL §§ 349 and 350 in connection with the solicitation and collection of Advocacy Campaign Consent.

80. Advocacy Campaign Consent shall only be obtained through solicitation that:

a. is found on a webpage, or single screen displayed in a computer application or other electronic interface, that does not contain any solicitations or offers other than the solicitation for Advocacy Campaign Consent;

b. Clearly and Conspicuously discloses the sponsor of the Advocacy

Campaign, the intended recipient of the Advocacy Message, and the means by which the Advocacy Message would be submitted, as follows: “[Third-party sponsor] would like your consent to send [submission type, such as “a public comment” or “an email”] on your behalf to [name of Government Entity or Official],” or substantially similar language;

c. discloses the full text of the Advocacy Message for which Advocacy Campaign Consent is being solicited, including the Personal Information that will be included with the Advocacy Message (e.g., first and last name, mailing address, email address), in the manner that it is intended to appear when transferred or disclosed to a Government Entity or Official. Either the full text of the Advocacy Message, or a readily noticeable hyperlink to the full text of the Advocacy Message and the following statement or substantially similar language, shall be Clearly and Conspicuously disclosed: “Click here to see the full text of your [submission type, such as ‘public comment’ or ‘email’] to [name of Government Entity or Official]”; and

d. Clearly and Conspicuously discloses, in Close Proximity to the mechanism for obtaining Advocacy Campaign Consent, the following statement: “I consent to having this message sent to [name of Government Authority or Official] identifying me as the author or signer, using my full name and other contact information,” or substantially similar language.

81. Respondent shall not provide services to an Advocacy Campaign Client related to an Advocacy Campaign without first entering into a written agreement with the Advocacy Campaign Client requiring that:

a. the Advocacy Campaign Client disclose conspicuously and

contemporaneously with the submission of any Advocacy Message to a Government Entity or Official Respondent's identity and that Respondent obtained consent for submission of the Advocacy Message (the "Collection Disclosure"); and

b. if the Government Entity or Official will, or has stated that it may, make the Advocacy Message publicly available, the Collection Disclosure shall be made either (i) in text inserted within, or appended at the end of, each Advocacy Message that states, "Fluent, Inc. obtained consent for submission on behalf of [Individual's name or 'the signer(s),' or substantially similar language meaning signer(s)]."; or (ii) in another format that ensures it is publicly available in association with the Advocacy Message.

82. Respondent shall send a confirmation email message to each consumer that has provided Advocacy Campaign Consent within 48 hours of Respondent obtaining information concerning such Advocacy Campaign Consent. The email subject line shall state only "Confirmation of Your Message to [Government Entity or Official]" or substantially similar language. The body of the email shall Clearly and Conspicuously: (a) state in Close Proximity to the top of the body section, "This email confirms that you have given your consent to have the following message sent to [Government Entity or Official] identifying you as the author or signer, using your full name and other contact information, as shown below," or substantially similar language; (b) display below the prior statement the full text of the Advocacy Message; and (c) state below the prior text, "If you did not agree to have this message sent on your behalf, click here to report," or substantially similar language, with a link to a webpage or email address that will collect and provide notice to Respondent of the user's report. Respondent may, in lieu of sending the confirmation email message described in this paragraph, rely on its Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message

provided that Respondent has first entered into a written agreement with the Advocacy Campaign Client or Advocacy Campaign Sponsor that requires the Advocacy Campaign Client or Advocacy Campaign Sponsor to send such confirmation email message in compliance with this paragraph.

83. Respondent shall use reasonable measures designed to ensure that any Third-Party Vendor or Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent on behalf of Respondent does so consistent with the requirements of paragraphs 80 and 82. These measures shall include, at a minimum, that Respondent enter into a written contract with each Third-Party Vendor that mandates that the Third-Party Vendor:

- a. solicit and obtain Advocacy Campaign Consent in accordance with the requirements of paragraph 80;
- b. require any Fourth-Party Vendor that solicits and obtains Advocacy Campaign Consent to do so in accordance with the requirements of paragraph 80;
- c. provide to Respondent, before any Advocacy Campaign Consent is solicited by the Third-Party Vendor or Fourth-Party Vendor, a mock-up or mock-ups depicting each version of the solicitation that will be used, including all disclosures, text, and images;
- d. obtain Respondent's written approval for use of the mock-up or mock-ups prior to their use;
- e. provide to Respondent an unaltered image (such as a screenshot) or images depicting all of the solicitations for Advocacy Campaign Consent used by the Third-Party Vendor or Fourth-Party Vendor, including all disclosures, text, and images, within a reasonable amount of time after use for a given campaign; and

- f. obtain and provide to Respondent, for each Advocacy Campaign Consent:
  - i. the date and time that the consumer provided the Advocacy Campaign Consent;
  - ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent;
  - iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);
  - iv. the IP address and/or device identifier of each item of Advocacy Lead Information was obtained from the consumer (including Personal Information obtained prior to the Advocacy Campaign);
  - v. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and
  - vi. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and each item of Advocacy Lead Information.

84. Respondent shall verify that each Third-Party Vendor and Fourth-Party Vendor that solicits or obtains Advocacy Campaign Consent in an Advocacy Campaign does so consistent with the requirements of paragraph 80 and 82, including at a minimum:

- a. review of all mock-ups provided by the Third-Party Vendor or Fourth-Party Vendor in advance of the Advocacy Campaign;
- b. review of all live versions of the solicitation for Advocacy Campaign Consent to confirm it is consistent with all mock-ups;

c. regular review of materials provided by the Third-Party Vendor or Fourth-Party Vendor as required in subparagraph 83.f; and

d. investigate all consumer complaints it receives concerning an Advocacy Campaign.

85. Respondent shall designate an officer to receive and investigate all reports concerning a failure to obtain Advocacy Campaign Consent and any other consumer complaints concerning an Advocacy Campaign.

86. Respondent shall not represent, expressly or by implication, that a consumer has provided Advocacy Campaign Consent unless it was obtained in a manner consistent with the requirements of paragraph 80.

87. Respondent shall not misrepresent, expressly or by implication, any aspect of an Advocacy Campaign, including the actions taken or consent given by a consumer, the date and time when a consumer took such actions or gave such consent, the information solicited or obtained from a consumer, and the circumstances and manner in which consent or information was solicited or obtained from a consumer.

88. Before transferring or disclosing Advocacy Lead Information to a third party, Respondent shall offer in writing to provide the third party with the date and time each item of Advocacy Lead Information was obtained from the consumer. Respondent shall provide such date and time information in response to any such request. Respondent may transfer or disclose Advocacy Lead Information without such date and time information to any third party that has declined in writing to receive such date and time information.

89. Respondent shall not transfer or disclose to a third party Advocacy Lead Information solicited and obtained by a Third-Party Vendor or Fourth-Party Vendor unless the

Third-Party Vendor complied with the contractual requirements in paragraph 83.

90. Respondent shall create and retain for a period of no less than six (6) years from the conclusion of a campaign the following records:

- a. the following data for each Advocacy Campaign Consent obtained by Respondent or by a Third-Party Vendor or Fourth-Party Vendor:
  - i. the date and time that the consumer provided the Advocacy Campaign Consent;
  - ii. the IP address and/or device identifier in use by the consumer when providing such Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information (such as where Personal Information was obtained before the Advocacy Campaign);
  - iii. the date and time each item of Advocacy Lead Information was obtained from the consumer (such as Personal Information that was obtained before the Advocacy Campaign);
  - iv. the web address or other location information of the solicitation through which the Advocacy Campaign Consent was obtained; and
  - v. the name and contact information of the Fourth-Party Vendor, if any, that solicited and obtained the Advocacy Campaign Consent and, where different, each item of Advocacy Lead Information;
- b. copies of each version of a solicitation used, by Respondent or by a Third-Party Vendor or Fourth-Party Vendor, to obtain Advocacy Campaign Consent, including for each such solicitation copies of all disclosures required in paragraph 80 as they were displayed to consumers on Respondent's webpages (such as screenshots or archived

webpages);

c. records of Respondent's review and/or approval of all solicitations used to obtain Advocacy Campaign Consent for compliance with the requirements in paragraph 80;

d. records of each confirmation email message sent by Respondent as required in paragraph 82, including the email recipient, the date and time the email was sent, and whether the email message was returned as undeliverable, and records of all complaints/reports by consumers in response thereto; and

e. all records necessary to demonstrate full compliance with each provision of this Assurance, including all submissions to NYAG.

#### Monetary Relief

91. Respondent shall pay to the State of New York three million seven hundred thousand dollars (\$3,700,000) in penalties and disgorgement (the "Monetary Relief Amount"). Payment of the Monetary Relief Amount shall be made in full within fourteen (14) days of the effective date of this Assurance.

92. Payments shall be made by wire transfer in accordance with instructions provided by a NYAG representative.

93. Respondent shall fully and promptly cooperate with NYAG in the course of NYAG's investigation of entities involved in the solicitation, collection, use, sale, offering for sale, transfer, and/or submission of Advocacy Campaign Consent or Advocacy Lead Information that Respondent has obtained for or was engaged to provide to a third party. Such cooperation shall include but not be limited to: providing truthful written or verbal testimony including through in-person appearance at depositions or trial in New York State; providing additional

documents and other physical evidence within ten (10) days of NYAG's request; and complying with any future directives or requests of NYAG.

94. The Respondent shall provide NYAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraphs 79-90, to be submitted to NYAG within sixty (60) days of the effective date of this Assurance. This certification shall be in writing and be signed by the Chief Executive Officer or President of Respondent, or such other officer (regardless of title) that is designated in Respondent's bylaws or by resolution of the Board of Directors as having the duties of the principal executive officer of Respondent. Thereafter, a certification of compliance shall be submitted to NYAG on an annual basis for the following seven (7) years. In any case where the circumstances warrant, NYAG may require Respondent to file an interim certification of compliance upon thirty (30) days notice.

95. For the following seven (7) years, Respondent shall deliver a copy of this Assurance to (a) all current and future principals, officers, directors, and managers; (b) all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this Assurance; and (c) any business entity resulting from any change in structure. Respondent shall deliver this order to the personnel identified above within thirty (30) days.

#### **Miscellaneous**

96. Respondent expressly agrees and acknowledges that NYAG 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 103, 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;

b. the NYAG may use statements, documents or other materials produced or provided by Respondent prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

97. If a court of competent jurisdiction determines that Respondent has violated the Assurance, Respondent shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

98. This Assurance is not intended for use by any third party in any other proceeding.

99. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondent. Respondent shall include 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 NYAG.

100. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

101. Any failure by the NYAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions

hereof, and the NYAG, 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 Respondent.

102. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-027, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondent, to:

Daniel Barsky  
General Counsel and Chief Compliance Officer  
Fluent  
300 Vesey Street, 9th Floor  
New York, NY 10282

If to NYAG, to:

Noah Stein, Assistant Attorney General, or in his/her absence, to the person holding the title of Bureau Chief  
Bureau of Internet & Technology  
28 Liberty Street  
New York, NY 10005

103. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondent and its counsel and NYAG's own factual investigation as set forth in NYAG's Findings, paragraphs 1-75 above. Respondent represents and warrants that neither it nor its counsel has made any material representations to NYAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

104. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

105. Respondent represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Daniel Barsky, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of FLUENT, INC.

106. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

107. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondent's right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

108. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondent violates the Assurance after its effective date.

109. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

110. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or

unenforceable in any respect, in the sole discretion of NYAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

111. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

112. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

113. 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.

114. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

115. The effective date of this Assurance shall be <sup>May</sup>~~April~~ 6, 2021.

<p><b>LETITIA JAMES</b> ATTORNEY GENERAL OF THE STATE OF NEW YORK</p> <p>By: <u>Noah Stein</u> Noah Stein Assistant Attorney General Bureau of Internet and Technology Office of the New York State Attorney General 28 Liberty St. New York, NY 10005 Phone: (212) 416-8433 Fax: (212) 416-8369</p> <p><u>5/6/21</u> Date</p>	<p><b>FLUENT, INC.</b></p> <p>By: <u>Daniel Barsky</u> By: Daniel Barsky General Counsel and Chief Compliance Officer Fluent 300 Vesey Street, 9th Floor New York, NY 10282</p> <p><u>4/26/21</u> Date</p>
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