

STATE OF INDIANA  
IN THE MARION COUNTY CIRCUIT/SUPERIOR COURT

CAUSE NO. \_\_\_\_\_

STATE OF INDIANA,

Plaintiff,

v.

EXECUTIVE TOUR AND TRAVEL  
SERVICES, INC.,

Defendant.

**COMPLAINT  
FOR INJUNCTION,  
RESTITUTION, CIVIL  
PENALTIES, AND COSTS**

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**I. INTRODUCTION**

1. The State of Indiana, by Attorney General Curtis T. Hill, Jr. and Deputy Attorneys General Mark M. Snodgrass and Michelle A. Alyea, commences this civil action under the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Promotional Gifts and Contests Act, Ind. Code § 24-8-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.
2. The defendant, Executive Tour and Travel Services, Inc. (“Executive Tour & Travel”), offers travel certificates designed to make consumers believe they have been awarded a free vacation. Executive Tour & Travel certificates are provided as prizes and awards at a variety of events, such as motor vehicle dealer sales events, time share tours, and cutlery demonstrations, among others. Executive Tour & Travel certificates represent the awards are the “vacation of a lifetime” and “one of the finest lodging awards ever created!”

The typical Executive Tour & Travel certificate represents the recipient will receive a two-night hotel stay in one of several specified cities. To activate their “award,” consumers must first pay Executive Tour & Travel an activation fee of \$50.00, before paying a “booking fee” of \$24.24 and an “agency fee” of \$25.00, plus all taxes on the hotel room. Consumers may then choose a city and dates where Executive Tour & Travel will purportedly book a hotel for the consumer. Consumers quickly learn most dates are unavailable or require additional charges due to weekend, holidays, and “peak seasons.” Many consumers who do submit their preferred travel destination and date never hear back from Executive Tour & Travel or are told the requested date is “unavailable.” Only 9% of Indiana consumers who paid Executive Tour & Travel an activation fee actually had hotel rooms booked for their use by Executive Tour & Travel. The travel certificates also do not include various disclosures required by Indiana law. Executive Tour & Travel’s misrepresentations and actions are unfair, abusive, and deceptive, and constitute violations of Indiana’s Deceptive Consumer Sales Act and Promotional Gifts and Contests Act.

## **II. PARTIES**

3. The plaintiff, the State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief under Ind. Code § 24-5-0.5-4(c).
4. The defendant, Executive Tour & Travel, is a Florida corporation engaged in the business of distributing promotional travel certificates, booking travel

and arranging timeshare presentations, with a principal place of business located at 301 Indigo Drive, Daytona Beach, Florida 32114.

5. Between January 1, 2017 and October 31, 2019, Executive Tour & Travel contracted and directly communicated by mail, email and/or telephone with 496 Indiana consumers to take money and arrange travel, including consumers located in Marion County.
6. Executive Tour & Travel is subject to the jurisdiction of an Indiana court pursuant to Ind. Trial R. 4.4(A) because Executive Tour & Travel has regularly transacted business in Indiana, purposely directed business activities into Indiana, and engaged in unlawful practices in Indiana against Indiana consumers.
7. Venue is proper in this Court pursuant to Ind. Trial R. 75(A)(10), as this case is brought by the State of Indiana, a governmental entity whose principal offices are located in Marion County, Indiana, and Executive Tour & Travel is a nonresident organization without a principal place of business in the state.

### **III. FACTS**

8. Executive Tour & Travel distributes tens of thousands of travel certificates per year to various vendors which distribute them as gifts, prizes, giveaways or awards to various contests, motor vehicle dealer giveaways, timeshare tours and other types of presentations or promotions. An exemplar travel certificate is attached to this Complaint and marked as Exhibit 1.

9. Executive Tour & Travel advertises its travel certificates to vendors as an “inexpensive simple and unique way to promote your businesses or products while protecting the bottom line” and as “sales premiums in support of timeshare and travel club presentations.”
10. Executive Tour & Travel’s travel certificate is entitled “Vacation of a Lifetime: 3 Day & 2 Night Accommodations.” The travel certificate further states: “Congratulations! You have received one of the finest lodging awards ever created.”
11. The prominent language of the travel certificate congratulating the consumer on their award, coupled with the consumer typically receiving the travel certificate as gift, prize, giveaway or award, implies the consumer has received a free vacation or hotel stay.
12. The travel certificate’s “lodging award” represents that consumers may choose a 3 day, 2 night hotel stay in one of 37 different cities.
13. The travel certificate instructs consumers to complete a portion of the travel certificate and mail it, along with a “\$50.00 refundable activation deposit,” to Executive Tour & Travel in order for the consumer to redeem their “lodging award.”
14. In addition to the \$50.00 activation deposit, in order to utilize the travel certificate, consumers must also pay Executive Tour & Travel a \$24.24 non-refundable “booking fee” and a \$25.00 non-refundable “agency fee.”

Consumers are also responsible for paying all state and local taxes on the hotel room.

15. Ind. Code § 24-8-3-7 requires the following statement, in at least 10 point boldface font, be completed and included on the first page of a notice if a person receiving a prize or award is required to pay any additional charges or costs to claim their prize or award: “You must pay \$\_\_\_\_\_ in order to receive this item.”
16. Executive Tour & Travel’s travel certificates do not include the completed statement quoted in Paragraph 15.
17. Executive Tour & Travel’s travel certificates do not include any statement of the verifiable retail value of the travel certificate.
18. Between January 1, 2017 and October 31, 2019, 496 Indiana consumers paid Executive Tour & Travel a deposit to activate their travel certificates.  
  
Attached to this Complaint and marked as Exhibit 2 is a full list of the 496 Indiana consumers as well as the amount each consumer paid Executive Tour & Travel.
19. The terms and conditions of the travel certificate, presented in small, difficult-to-read fine print, prevent consumers from requesting a hotel booking within three days before or three after 17 separate holidays (119 total unavailable days per year), arriving for their stay on a Friday or Saturday (104 total unavailable days), or booking during unspecified “peak seasons” without paying Executive Tour & Travel an additional surcharge.

20. Executive Tour & Travel eventually reveals to consumers it will waive some of the surcharges, which attach to most days under the travel certificate, if the consumer agrees to subject themselves to a 90 minute sales presentation attempting to sell the consumer a time share condo or apartment.
21. Executive Tour & Travel's travel certificates do not include any disclosure that the consumer may be required or invited to hear a sales presentation.
22. After paying their deposit, consumers are required to complete a form notifying Executive Tour & Travel of two potential arrival dates and the consumer's top two destination city preferences. Executive Tour & Travel only accepts this form by mail or fax and it must be submitted no later than 60 days prior to dates requested by the consumer.
23. Many of the consumers referenced in Exhibit 2 submitted their forms with date and destination preferences to Executive Tour & Travel and received no response and/or no booking of a hotel.
24. The consumers who did receive a response from Executive Tour & Travel to their date and destination preference form were often told the dates requested by the consumer were "unavailable."
25. There is nothing in the terms and conditions of the travel certificates that allows Executive Tour & Travel to deny the dates requested by the consumer or deem the dates "unavailable."

26. Executive Tour & Travel books hotel rooms through public websites such as Expedia.com or Orbitz.com, does not book or negotiate directly with hotels, and does not receive any discounted hotel room rates.
27. When Executive Tour & Travel informed consumers that the dates requested were “unavailable,” there were likely hotel rooms available in the requested city, just likely not at a rate Executive Tour & Travel was willing to pay.
28. Of the 496 Indiana consumers who activated their certificate and paid Executive Tour & Travel, only 48 Indiana consumers, or nine percent, actually had hotel rooms booked by Executive Tour & Travel on their behalf.
29. Contrary to being an “award,” Executive Tour & Travel likely charges consumers more than the consumers would likely have paid by simply booking hotels themselves using the same popular websites Executive Tour & Travel uses, in addition to the consumers unnecessarily subjecting themselves to the myriad of restrictions, administrative procedures, resort tours, and surcharges imposed by Executive Tour & Travel as described above.
30. Executive Tour & Travel’s certificates do not award consumers a “vacation of a lifetime,” contrary to the representation on the travel certificate.
31. The \$50.00 refundable activation deposit is only refundable after consumers actually travel using the travel certificate, thus 448 consumers were unable to request a return of their “refundable” deposit.

32. After traveling, consumers must request a return of their “refundable deposit” in writing by mail or by fax.
33. Executive Tour & Travel represents to consumers on the travel certificates that it refunds the deposits within 60 business days of receiving the refund request.
34. Several of the consumers who were able to request a refund of their deposit never heard back from Executive Tour & Travel and never received the return of their deposit.
35. The few consumers who did receive their refund often received it well after the 60 business days represented by Executive Tour & Travel.
36. In addition to the basic travel certificate described above, Executive Tour & Travel offers “gold” and “platinum” “Vacation of a Lifetime” travel certificates that have been provided to Indiana consumers. Exemplar gold and platinum travel certificates are attached to this Complaint and marked as Exhibits 3 and 4, respectively.
37. The “Vacation of a Lifetime Gold” travel certificate represents to award consumers a three night hotel stay, rather than the two nights offered under the basic travel certificate, but requires consumers to pay a \$75.00 deposit and a \$37.50 agency fee, rather than the \$50.00 deposit and \$25.00 agency fee required under the basic travel certificate. The remainder of the representations and terms of the gold travel certificate appear the same as the basic travel certificate.



38. The “Vacation of a Lifetime Platinum” travel certificate includes the same representations, terms and fees as the basic travel certificate, but additionally represents consumers are awarded two “bonus gifts” by virtue of possessing the platinum travel certificate.
39. To receive the “bonus gifts,” the consumer must first pay Executive Tour & Travel a \$50 activation fee as well as “\$4.95 postage and handling.”
40. The first “bonus gift” represented on the platinum travel certificate is “2 round trip airline tickets.”
41. These airline tickets are only available if a consumer purchases a seven night hotel stay booked through Executive Tour & Travel, at a hotel of Executive Tour & Travel’s choosing, at a rate of \$199.00 per night.
42. Thus, for a holder of the platinum travel certificate to utilize their “gift” of airline tickets, the consumer must first pay Executive Tour & Travel an additional \$1,393.00 at the time of booking.
43. The second “bonus gift” represented on the platinum travel certificate is a “4 day/3 night luxury cruise for 2.”
44. This cruise is only available if consumers upfront pay Executive Tour & Travel “applicable port charges, taxes and services fees starting at \$199.00 per person.”
45. Thus, for a holder of the platinum travel certificate to utilize their “gift” of a two person cruise, the consumer must first pay Executive Tour & Travel an amount “starting” at \$398.00, at the time of booking.

46. The platinum travel certificate makes no reference to the dollar amounts consumers are required to pay Executive Tour & Travel to obtain their “gifts.”
47. Executive Tour & Travel knowingly committed the actions described in this Complaint.

#### **IV. CAUSES OF ACTION**

##### **COUNT I:**

##### **VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT- MISREPRESENTATING VACATION PACKAGES ARE “AWARDS” OR “GIFTS”**

48. The State realleges Paragraphs 1 through 47 of this Complaint.
49. Executive Tour & Travel regularly engages in “consumer transactions” under Ind. Code § 24-5-0.5-2(a)(1).
50. Executive Tour & Travel is a “supplier” under Ind. Code § 24-5-0.5-2(a)(3).
51. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by representing its travel certificates as “awards” and “gifts” and congratulating the recipient, thereby implying the consumer was receiving a free or low cost vacation or amenities, but charging the consumers significant fees to utilize the travel certificates.
52. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-5-0.5-3(b)(1) by representing its travel certificates as “awards” and “gifts” while charging the consumers significant fees resulting in consumers having to pay significant money to utilize the travel certificates.

COUNT II:  
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT- FAILURE TO  
SET UP HOTEL ACCOMMODATIONS

53. The State realleges Paragraphs 1 through 52 of this Complaint.
54. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by failing to arrange hotel accommodations for consumers upon receipt of consumers' travel request form.
55. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-5-0.5-3(b)(1) by representing it would arrange hotel accommodations for consumers upon receipt of consumers' travel request form and failing to make any hotel accommodations after receiving the consumer's travel request form.
56. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by representing to consumers that the dates requested by consumers for their travel were "unavailable" despite the likely availability of hotel rooms in the requested city.

COUNT III:  
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT- FAILURE TO  
PROVIDE VACATIONS

57. The State realleges Paragraphs 1 through 56 of this Complaint.
58. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by taking money from at least

496 Indiana consumers to provide a “Vacation of a Lifetime” and failing to provide any service or product for 91% of those consumers.

59. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-5-0.5-3(b)(1) by representing it would provide a “Vacation of a Lifetime” to 496 Indiana consumers and failing to provide any service or product for 91% of those consumers.

COUNT IV:  
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT- UNNECESSARY  
LIMITATIONS ON USE OF TRAVEL CERTIFICATE

60. The State realleges Paragraphs 1 through 59 of this Complaint.
61. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by imposing severe limitations on the travel certificate, such as restrictions on arrival dates, holiday weeks and unspecified peak season events, rendering the travel certificate unusable for most consumers without incurring additional surcharges.

COUNT V:  
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT- FAILURE TO  
TIMELY REMIT REFUNDS OF DEPOSITS

62. The State realleges Paragraphs 1 through 61 of this Complaint.
63. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by imposing an unnecessary waiting period of 60 business days after a consumer has requested a refund of their deposit before Executive Tour & Travel refunds the consumer’s deposit.

64. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by requiring consumers to submit a request in writing to obtain their “refundable deposit” rather than automatically issuing such refunds of consumer deposits after the consumer has completed their hotel stay.
65. Executive Tour & Travel committed unfair and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by representing consumers would receive refunds of their deposits and failing to provide such refunds.
66. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-5-0.5-3(b)(1) by representing consumers would receive refunds of their deposits and failing to provide such refunds.
67. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-5-0.5-3(b)(10) by representing consumers would receive refunds of their deposits within 60 business days and failing to provide the refunds within the time period represented.

COUNT VI:  
VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT

68. The State realleges Paragraphs 1 through 67 of this Complaint.
69. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-8-3-3 and Ind. Code § 24-8-3-5 by failing to include a statement of the verifiable retail value of each prize in immediate proximity to each listing of a prize in each place it appears on a notice, listed in the same size type and boldness of the prize.

70. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-8-3-6 by failing to include a disclosure that recipients of notices may be required or invited to hear a sales presentation in order to claim their prize.
71. Executive Tour & Travel committed deceptive acts violating Ind. Code § 24-8-3-7 by failing to include and complete the following statement on its travel certificates, in at least 10 point boldface font on the first page of the travel certificate: “You must pay \$\_\_\_\_\_ in order to receive this item.”

COUNT VII:  
KNOWING VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

72. The State realleges Paragraphs 1 through 71 of this Complaint.
73. Executive Tour & Travel committed the deceptive acts asserted in this Complaint with knowledge of their deceptive acts.

COUNT VIII:  
INCURABLE DECEPTIVE ACTS

74. The State realleges Paragraphs 1 through 73 of this Complaint.
75. The deceptive acts asserted in this Complaint are incurable deceptive acts and were committed by Executive Tour & Travel as part of a scheme, artifice, or device with intent to defraud or mislead.

**V. RELIEF**

76. The State requests the Court enter judgment against Executive Tour & Travel for the relief described in Paragraphs 77 through 83 of this Complaint.
77. The State seeks a permanent injunction, under Ind. Code § 24-5-0.5-4(c)(1), enjoining Executive Tour & Travel, its agents, representatives, employees,

successors, and assigns, from taking any deposit, agency fee, booking fee, surcharge or any other charge or fee from any Indiana resident.

78. The State seeks consumer restitution, under Ind. Code § 24-5-0.5-4(c)(2), payable to the Office of the Attorney General, for all Indiana consumers who paid Executive Tour & Travel any funds in connection to a travel certificate or program, in an amount to be determined at trial.
79. The State seeks consumer restitution, under Ind. Code § 24-8-6-2(2), for all Indiana consumers who activated a travel certificate with Executive Tour & Travel, in the amount of two times the actual damages sustained by each person or five hundred dollars (\$500.00) per person, whichever is greater, payable to the Office of the Attorney General, for the benefit of those persons.
80. The State seeks costs, under Ind. Code § 24-5-0.5-4(c)(4), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action.
81. The State seeks civil penalties, under Ind. Code § 24-5-0.5-4(g), on Count VII of this Complaint, for Executive Tour & Travel's knowing violations of Ind. Code § 24-8-3 *et seq.*, Ind. Code § 24-5-0.5-3(a) and Ind. Code §§ 24-5-0.5-3(b)(1) and (10), payable to the State of Indiana in an amount to be determined at trial.
82. The State seeks civil penalties, under Ind. Code § 24-5-0.5-8, on Count VIII of this Complaint, for Executive Tour & Travel's incurable deceptive acts, payable to the State of Indiana in an amount to be determined at trial.

83. The State seeks all other just and proper relief.

Respectfully submitted,

CURTIS T. HILL, JR.  
INDIANA ATTORNEY GENERAL  
Attorney Number 13999-20

By: /s/ Mark M. Snodgrass  
Mark M. Snodgrass  
Deputy Attorney General  
Attorney Number 29495-49

Office of Attorney General  
Indiana Government Center South  
302 West Washington St., 5th Floor  
Indianapolis, IN 46204  
Telephone: (317) 234-6784  
Fax: (317) 233-4393  
Mark.Snodgrass[atg.in.gov]

By: /s/ Michelle A. Alyea  
Michelle A. Alyea  
Deputy Attorney General  
Atty. No. 30507-64

Office of Attorney General  
Indiana Government Center South  
302 West Washington St., 5th Floor  
Indianapolis, IN 46204  
Telephone: (317) 234-2255  
Fax: (317) 233-4393  
Michelle.Alyea[atg.in.gov]