

DEPARTMENT OF CONSUMER AFFAIRS
CITY OF NEW YORK

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NYC Department of Consumer Affairs,

Complainant,

-against-

Giuffre Motor Car Co., LLC

Giuffre Motor Car Co., LLC d/b/a Giuffre Kia

Giuffre Hyundai Ltd. d/b/a Giuffre Hyundai

**Giuffre Autoworld, LLC. d/b/a Giuffre
Mitsubishi**

**Giuffre Automotive, Inc. d/b/a Giuffre Chrysler
Jeep Dodge**

Giuffre Italian Cars, Inc. d/b/a Giuffre Fiat

Giuffre Auto Group, LLC. d/b/a Giuffre Mazda

**John Giuffre, Individually, and as President and
Sole Owner of Giuffre Motor Car Co., LLC,
Giuffre Hyundai, Ltd., Giuffre Autoworld, LLC,
Giuffre Automotive, Inc., Giuffre Italian Cars,
Inc., and Giuffre Auto Group, LLC.**

Respondents.
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CONSENT ORDER

Lic. No. 1311856
LL 5312925

Lic. No. 1021148
LL 5312926

Lic. No. 1261262
LL 5312927

Lic. No. 1385342
LL 5312928

Lic. No. 1397046
LL 5312929

Lic. No. 1199389 & 1460465
PL 1051202
LL 5321053

OL 5321057

Respondents Giuffre Motor Car Co., LLC d/b/a Giuffre Kia, Giuffre Hyundai Ltd. d/b/a Giuffre Hyundai, Giuffre Autoworld, LLC d/b/a Giuffre Mitsubishi, Giuffre Automotive, Inc. d/b/a Giuffre Chrysler Jeep Dodge, Giuffre Italian Cars, Inc. d/b/a Giuffre Fiat, Giuffre Auto Group, LLC d/b/a Giuffre Mazda, and John Giuffre, (collectively, "Respondents") enter into this Consent Order ("CO") with the New York City Department of Consumer Affairs ("DCA" or "the Department") to settle the above-captioned matter.

I. FINDINGS

1. Respondents were duly served with the Third Amended Notice of Hearing (“NOH”), dated October 9, 2013, in which the Department charged Respondents with violating the Dealer in Second-Hand Articles Law (New York City Administrative Code (“Code”) §§ 20-264, et. Seq.); the Consumer Protection Law (§§ 20-700 et. seq. of the Code), the License Enforcement Law (§§ 20-101 et. seq. of the Code), the Second-Hand Dealer Rules (Title 6 of the Rules of the City of New York (the “Rules”) §§ 2-101 et. seq.), the Consumer Protection Rules (§§ 5-01 et. seq. of the Rules), and the License Enforcement Rules (§§ 1-01 et seq. of the Rules).
2. Respondents' execution of this Consent Order shall not constitute an admission of the charges alleged in the Notice of Hearing.
3. Giuffre Motor Car Co., LLC d/b/a Giuffre Kia (“Giuffre Kia”) was licensed to conduct business as a second-hand automobile dealer at 426 89th Street, Brooklyn, New York, 11209, under DCA license number 1311856 until April 3, 2013, when it surrendered its license to conduct business at that location.
4. Giuffre Hyundai Ltd. d/b/a Giuffre Hyundai (“Giuffre Hyundai”) was licensed as a second-hand automobile dealer under DCA license number 1021148 at 8904 Fifth Avenue, Brooklyn, New York 11209, and was licensed as a dealer in second-hand articles under DCA license number 1021149 at 429 89th Street, Brooklyn, New York 11209. These licenses expired on July 31, 2013.
5. Giuffre Auto Group, LLC d/b/a Giuffre Mazda (“Giuffre Mazda”) was licensed as a second-hand automobile dealer at 9265 Fourth Avenue, Brooklyn, New York 11209 under DCA license number 1199389, until July 31, 2009, when its license expired. Giuffre Mazda was licensed as a second-hand automobile dealer under DCA license number 1460465 at 426 89th Street, Brooklyn, New York 11209 from April 4, 2013 until it surrendered its license on January 10, 2014.
6. Giuffre Autoworld, LLC d/b/a Giuffre Mitsubishi (“Giuffre Mitsubishi”) was licensed as a second-hand automobile dealer under DCA license number 1261262 at 1614 86th Street, Brooklyn, New York 11214. Its license expired on July 31, 2013.
7. Giuffre Automotive, Inc. d/b/a Giuffre Chrysler Jeep Dodge (“Giuffre Chrysler”) was licensed as a second-hand automobile dealer under DCA license number 1385342, at 8825 Fifth Avenue, Brooklyn, New York 11209. Its license expired on July 31, 2013. The Department issued a revocable temporary operating order, allowing Giuffre Chrysler to operate as a second-hand automobile dealer at this location, which was rescinded on January 23, 2014.
8. Giuffre Italian Cars, Inc. d/b/a Giuffre Fiat (“Giuffre Fiat”) was licensed as a second-hand automobile dealer under DCA license number 1397046 at 9265 Fourth Avenue, Brooklyn, New York 11209. Its license expired on July 31, 2013. The Department issued a revocable temporary operating order, allowing Giuffre Fiat to operate as a

second-hand automobile dealer at this location, which was rescinded on January 9, 2014.

9. John Giuffre was the sole owner and President of Giuffre Kia, Giuffre Hyundai, Giuffre Mitsubishi, Giuffre Chrysler, Giuffre Fiat, and Giuffre Mazda.
10. On March 22, 2013, Giuffre Kia submitted to the Department an application for a license to conduct business as a second-hand automobile dealer at 1626 86th Street, Brooklyn, New York, 11214. This application is currently pending.
11. On November 13, 2013, Giuffre Automotive, Inc. d/b/a Bay Ridge Chrysler Jeep Dodge Ram ("Bay Ridge Chrysler") submitted to the Department an application to operate as a second-hand automobile dealer at 8825 Fifth Avenue, Brooklyn, New York 11209. Ignazio Giuffre, Peter Bellina, John Cellardo, and Chris Erato are listed on this application as each owning 25% of the shares of the corporation. This application is pending. The Department has issued a revocable temporary operating order (# 2002700), allowing Bay Ridge Chrysler to operate as a second-hand automobile dealer at this location through February 8, 2014.
12. On November 13, 2013, Bay Ridge Chrysler submitted to the Department an application for a license to operate as a dealer in second-hand articles (general) at 8635 18th Avenue, Brooklyn, New York 11214. Ignazio Giuffre, Peter Bellina, John Cellardo, and Chris Erato are listed on this application as each owning 25% of the shares of the corporation. This application is pending. The Department has issued a revocable temporary operating order (# 2002701), allowing Bay Ridge Chrysler to operate as a dealer in second-hand articles (general) at this location through February 8, 2014.
13. On January 8, 2014, Giuffre Italian Cars, Inc. d/b/a Bay Ridge Fiat ("Bay Ridge Fiat") submitted to the Department an application for a license to operate as a second-hand automobile dealer at 8904 Fifth Avenue, Brooklyn, New York 11209. Ignazio Giuffre, Peter Bellina, John Cellardo, and Chris Erato are listed on this application as each owning 25% of the shares of the corporation. This application is pending. The Department has issued a revocable temporary operating order (# 2002702), allowing Bay Ridge Fiat to operate as a second-hand automobile dealer at this location through February 8, 2014.

II. DEFINITIONS

14. For the purposes of the CO, the following definitions apply:
 - a. "Add-on product" shall mean any product or service sold with an automobile, including, but not limited to, warranties and product guarantees, "etch" products, theft protection benefits and insurance, after-market service agreements, GAP insurance, GAP waiver agreements, and Portfolio Protection plans.
 - b. "Advertisement" or "advertisements" shall mean all labels, packaging, promotional materials, statements, visual descriptions or other representations of

any kind disseminated in print, orally or electronically, by or on behalf of Remaining Dealerships to New York City ("NYC") consumers including, but not limited to, mailings, postcards, business cards, signs, banners, in-store signs, store-front signs, billboards, newspaper print advertisements, internet advertisements, and social media.

- c. "Arm's-length transaction" shall have the meaning set forth in § 20-227.1(f) of the Code.
- d. "Clear and conspicuous" and "clearly and conspicuously" shall mean disclosure of material exclusions, reservations, limitations, modifications or conditions on an advertising statement, made in a manner that is readily apparent and understandable by an ordinary person and which complies with §§ 5-06 and 5-09 of the Rules. Factors to be considered for this purpose include, but are not limited to, use of plain language, relative type size, font, color contrast, location within an advertisement, and proximity to the statement or representation to which it applies. Moreover:
 - i. in print advertisements and mailings, the disclosure, representation or term shall be presented in a manner that is easy to read and placed reasonably near the statement that it modifies; and
 - ii. in radio advertisements, the disclosure, representation or term shall be made reasonably soon after the statement that it modifies and at a volume and speed likely to be understood by an ordinary listener.
 - iii. in advertisements disseminated by means of an interactive electronic medium such as the internet, online services, or other software, the disclosure, representation or term shall be placed reasonably near the statement that it modifies, in a type size at least as large as the claim to which it relates, and in a color that contrasts with the background; or made available through a clear and conspicuous hyperlink which is reasonably close to the statement, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same webpage, online service page, or other electronic page and near the representation it modifies, and takes the consumer directly to the disclosure on the click-through electronic page or other display window panel. Any page reached by such hyperlink shall not contain information unrelated to the applicable material terms, exclusions, reservations, limitations, modifications of conditions made in the advertisements. A disclosure that is too small to read on a mobile or tablet device and cannot be enlarged is not "clear and conspicuous."
- e. "Date of the CO" shall mean the date the CO is signed and executed by the Department, Respondents,

f. "Deal jacket" shall refer to all documents relating to the sale of a specific automobile, including, but not limited to:

- (1) Credit applications;
- (2) Retail installment contracts;
- (3) Retail finance agreements;
- (4) Buyer's orders;
- (5) Purchase orders;
- (6) Sales contracts;
- (7) Vehicle invoices;
- (8) Odometer statements;
- (9) All documentation related to add-on products including contracts, warranty documents, service agreements and receipts;
- (10) Receipts for all deposits and other payments towards the purchase or financing of the automobile;
- (11) DMV related information and documents;
- (12) Title documents, including vehicle title history documents;
- (13) Documents related to automobile repair history;
- (14) Vehicle history reports;
- (15) Inspection records;
- (16) Trade-in calculation documents;
- (17) Dealer worksheets;
- (18) Rebate documentation;
- (19) Washout sheets (i.e. dealer document listing how much the dealer paid for the automobile and the cost of any repairs made on it); and
- (20) Any other documents Respondents and Remaining Dealerships are required to maintain pursuant to state or federal law, the Code, or the Rules, that are not otherwise identified within this section.

g. "Material disclosures" or "material terms" shall mean words, representations, or documents that (1) are required by federal, state, or New York City law and rules; (2) alter the rights or responsibilities of any party to a transaction; or (3) alter the price, quality, or characteristics of any second-hand automobile, financing agreement, or any add-on product.

h. "Police book" shall refer to the record of purchases and sales that second-hand automobile dealers maintain pursuant to § 20-273 of the Code.

i. "Record of deposits" shall mean the record of deposits that second-hand automobile dealers maintain pursuant to § 2-103(k)(3) of the Rules.

j. "Remaining Dealerships" shall refer to:

- i. Bay Ridge Chrysler;
- ii. Bay Ridge Fiat;

- iii. All second-hand automobile dealers in New York City formerly operated, owned, or controlled by John Giuffre; and
- iv. All dealers in second-hand articles (general) in New York City formerly operated, owned, or controlled by John Giuffre.
- k. "Sales Representative" shall mean any person who, through a direct employment relationship, independent contract or otherwise, has been made responsible by Respondents or Remaining Dealerships, expressly or impliedly, orally or in writing, for selling, financing, or offering for sale second-hand automobiles, or products or services sold attendant to the purchase of a second-hand automobile.
- l. "Second-hand automobile dealer" shall mean any person or entity that in any way deals in the purchase or sale of second-hand automobiles, or accepts or receives second-hand automobiles as returns of merchandise or in exchange for credit on an automobile or any other merchandise in New York City.

III. LICENSES & GENERAL TERMS

- 15. This CO shall apply to Respondents, Remaining Dealerships, and their assignees and successors, other than successors by way of a sale of assets in an arm's-length transaction.
- 16. Giuffre Mitsubishi, Giuffre Mazda, Giuffre Kia, and Giuffre Hyundai shall not engage in the purchase or sale of second-hand automobiles, or accept or receive second-hand automobiles as returns of merchandise or in exchange for credit on an automobile or any other merchandise.
- 17. Remaining Dealerships shall not engage in the purchase or sale of second-hand automobiles, or accept or receive second-hand automobiles as returns of merchandise or in exchange for credit on an automobile or any other merchandise without a license.
- 18. Provided that all other requirements necessary for licensure are met, the Department will approve the pending license applications of Bay Ridge Chrysler and Bay Ridge Fiat.
- 19. The allegations in the Third Amended Notice of Hearing shall not be used as a basis to deny any application by the Remaining Dealerships for a Department-issued license, provided that Respondents and Remaining Dealerships comply with this CO, the applicant meets all other requirements necessary for licensure, and John Giuffre has no involvement with the applicant.

IV. INJUNCTIVE RELIEF

- 20. Giuffre Hyundai, Giuffre Mazda, and Giuffre Mitsubishi have ceased operations prior to the date of the CO.

21. Giuffre Kia will cease operations within six months of the date of the CO.
22. Remaining Dealerships shall not display second hand automobiles at a location other than the location designated on their licenses.
23. Remaining Dealerships shall comply fully with the Consumer Protection Law, the License Enforcement Law, the Second-Hand Dealer Law, and the Rules promulgated pursuant to these laws. Remaining Dealerships shall also comply with all applicable state and federal laws, including but not limited to the Federal Trade Commission's ("FTC") Trade Regulation Rule on the Sale of Used Motor Vehicles ("Used Car Rule"), 16 C.F.R. § 455. Nothing in the CO shall be construed to lessen or alter Remaining Dealerships' obligations with regard to statutes and rules not specifically cited in the CO.
24. Neither John Giuffre, nor any entity for which he is an owner, principal, officer, shareholder or member may apply for a license issued by the Department, or engage in the purchase or sale of second-hand automobiles within the City of New York.
25. John Giuffre shall not act as a Sales Representative, employee, or agent of a second-hand automobile dealer in New York City, or participate in the operation or management of any second-hand automobile dealer in New York City in any capacity.

A. ADVERTISEMENTS

26. Remaining Dealerships shall not publish or cause to be published advertisements that:
 - a. State or imply, directly or indirectly, that an offer of products or services applies to all automobiles where such offer is limited by specific eligibility requirements or to specific automobiles;
 - b. Offer an automobile for sale after the automobile is sold;
 - c. Offer an automobile for sale before the automobile's purchase is recorded in the police book;
 - d. Contain any false or misleading information regarding the automobiles offered for sale;
 - e. Contain footnotes or statements, which alone or in combination, contradict or confuse a principal message or that contain contradictory or ambiguous statements, which alone or in combination, contradict or confuse a principal message.
27. Remaining Dealerships shall clearly and conspicuously display a hyperlink to the Consumer Bill of Rights on the home page of every website it controls or operates, including but not limited to bayridgejd.com, and fiatusaofbrooklyn.com.

28. Remaining Dealerships shall include in all advertisements offering a second-hand automobile for sale the DCA license number and the trade name, as it appears on the dealership's license.
29. Remaining Dealerships shall not offer or advertise the sale or lease of "certified" used vehicles, unless the manufacturer of the used vehicle has an established inspection program for pre-owned vehicles backed by the manufacturer's warranty, and the vehicle advertised or offered for sale as a "certified" used vehicle has passed such an inspection according to the manufacturer's standards.
30. Whenever publishing advertisements offering credit that is not open-end credit, Remaining Dealerships shall comply with all applicable federal, state and local laws relating to consumer credit including, but not limited to, § 144 of the federal Truth in Lending Act, 15 U.S.C. § 1664; § 226.24 of Regulation Z, 12 C.F.R. § 226.24; the Consumer Protection Law; and §§ 5-09 and 5-21 of the Rules.
31. Whenever publishing advertisements that promote financing terms with minimum eligibility requirements, Remaining Dealerships shall disclose clearly and conspicuously the terms and conditions of qualification for such financing terms, and that not all consumers may qualify for financing at the advertised rate and terms.
32. Whenever publishing advertisements containing credit that is not open-end credit and containing the number of payments, the amount of a payment (such as "\$100 monthly"), the amount of any finance charge or the period of repayment, Remaining Dealerships shall also include in the advertisements 1) the down payment, 2) the terms of repayment, 3) the rate of the finance charge expressed as an annual percentage rate, and, if the rate may be increased after consummation.

B. SALES PRACTICES

33. Remaining Dealerships shall not sell a second-hand automobile to a consumer at a price greater than the price advertised, cited, quoted, or displayed on the automobile.
34. Remaining Dealerships shall include in the price advertised, cited, quoted, or displayed on the automobile all charges connected with the sale of the second-hand automobile, except for registration, title, and taxes.
35. If Remaining Dealerships do not include the price of a second-hand automobile in an advertisement and provide a verbal price quote to a consumer, or provide a verbal price quote to a consumer other than the advertised price, Remaining Dealerships shall record the date, the name of the consumer (if provided by the consumer), the vehicle identification number ("VIN"), and the price quoted in a logbook in a format prescribed by the Independent Monitor.
36. Remaining Dealerships shall not offer to sell or advertise add-on products as a bundled package with a single price, but shall offer add-on products separately and disclose the price of each product. Remaining Dealerships shall list each add-on product purchased and its final sales price on the sales contract.

C. SALES CONTRACTS

37. Remaining Dealerships shall use the sales contract form created by the Independent Monitor in all sales of second-hand automobiles and add-on products within two (2) weeks of being provided the form by the Independent Monitor.
38. Respondents will comply with § 5-33 of the Rules for all second-hand automobile transactions negotiated in Spanish, regardless of whether or not the transaction includes an agreement to pay in installments.
39. Remaining Dealerships' sales contracts shall clearly and conspicuously include:
 - a. The dealership's DCA license number and trade name as written on the dealership's license;
 - b. All disclosures and information required by the Code and the Rules;
 - c. All disclosures required by state and federal law;
 - d. Description of the automobile, including make, color, year of manufacture, and the VIN.
40. Remaining Dealerships' sales contracts shall clearly and conspicuously disclose:
 - a. The method of payment for the purchase;
 - b. The cash price for the automobile (excluding fees, options, and cost of add-on products);
 - c. Additions to the selling price, including:
 - i. An itemized list of costs of each add-on product
 - ii. Taxes;
 - iii. Non-taxable items; and
 - iv. Additional fees that are either required or permitted by law, which must be individually itemized on the sales contract;
 - d. Deductions from the selling price, including:
 - i. The amount of the trade in, identifying the make, model, vehicle identification number, and mileage of the trade-in; and
 - ii. Total down payment and method of payment;

- e. The final total sales price, clearly and conspicuously shown at the bottom of the sales contract with no other numbers below it; and
 - f. A disclaimer in a bold font next to the signature stating that all the terms are completed.
- 41. Remaining Dealerships shall require consumers to initial next to each additional fee or charge, other than the cash selling price of the vehicle and sales tax.
 - 42. Remaining Dealerships shall not pre-print optional fees on sales contracts.
 - 43. Remaining Dealerships shall write "N/A" or zeros next to blank or missing terms, and/or draw a line from the last charge or credit to the sub-total if there are no additional charges or credits in the price column.
 - 44. Remaining Dealerships and consumers shall sign all legally binding documents in duplicate, and Remaining Dealerships shall give a copy of the document to the consumer at the time the consumer signs both the original and duplicate copy.
 - 45. Remaining Dealerships shall complete all documents and forms requiring a consumer's signature completely and accurately prior to obtaining the consumer's signature, and shall draw a line from the last word of the undertaking to the signature of the purchaser.

D. ADD-ON PRODUCTS

- 46. Remaining Dealerships shall include all material terms, including price, benefits, limitations, and cancellation terms, on each contract or application for the purchase of an Add-on Product before presenting the contract or application to the consumer to sign.
- 47. Remaining Dealerships shall attach a cover sheet to all contracts and applications for products and services provided or administered by any entity other than Respondents. The cover sheet shall clearly and conspicuously state:
 - a. "This dealership is offering to sell you a product or service provided by another business. You are not required to purchase this product or service. If you have questions, you may call the business before signing the contract at the number below."
 - b. The name, address, and phone number of the third-party.
- 48. Remaining Dealerships shall not charge a consumer for an add-on product unless the consumer initials beside the price term and all cancellation terms at the time the contract for the product is executed. If the contract does not include cancellation terms, Remaining Dealerships shall not charge the consumer for the add-on product unless the consumer initials beside the price term on the contract and signs a written

disclosure of the third-party's cancellation and refund policy before the contract is executed.

E. FINANCING

49. If a consumer agrees to enter into a retail installment contract or retail finance agreement that includes all or part of the cost of an add-on product, Remaining Dealerships shall disclose the total finance charge and the monthly installment amount for each add-on product in writing.
50. If a consumer agrees to finance or pay for an automobile in monthly installments, Remaining Dealerships shall disclose in writing the total finance charge and the cost of each monthly installment for the purchase of the automobile without add-on products.
51. Remaining Dealerships shall not execute retail installment contracts or retail finance agreements in which the interest rate is greater than the maximum rate permitted by New York General Obligations Law § 5-501(1) and New York Banking Law § 14-a.

F. ROADWORTHINESS

52. Remaining Dealerships shall conduct a safety inspection of each second-hand automobile pursuant to New York VTL § 301 prior to offering it for sale. Remaining Dealerships shall include any inspection fee in the automobile price that is advertised cited, quoted, or displayed on the automobile. Remaining Dealerships shall not list the inspection fee as a separate charge on the sales agreement.
53. Remaining Dealerships shall give to each consumer a vehicle history report from an independent provider (e.g. Carfax, AutoCheck, etc.) prior to accepting a deposit or down payment, or executing a purchase order, buyer's order, or any other agreement concerning the sale of the automobile. Remaining Dealerships shall maintain a copy of the vehicle history report signed by the consumer in the consumer's deal jacket. Remaining Dealerships may attach a written disclaimer concerning the accuracy of vehicle history reports. Such disclaimer must be approved by the Independent Monitor prior to its use.
54. Remaining Dealerships shall give each consumer a certification that the vehicle being sold to the consumer has been inspected and is in such condition and repair as to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery, in compliance with § 417 of the VTL and § 78.13 of the New York Code of Rules and Regulations ("NYCRR"), Title 15. Remaining Dealerships shall refund the purchase price of an automobile and cancel the sales contract at a consumer's request if Remaining Dealerships:
 - a. Fail to certify at the time of delivery that the automobile is in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway; or

- b. Deliver an automobile that is not in the condition described in the certification.

G. CONSUMER BILL OF RIGHTS

- 55. Remaining Dealerships shall prominently display a Consumer Bill of Rights, attached as Exhibit A, at multiple locations at each dealership identified by the Independent Monitor.
- 56. Remaining Dealerships shall display the Consumer Bill of Rights on a poster at least 36 inches tall and 24 inches wide.

H. RECORD PRODUCTION AND RETENTION

- 57. Remaining Dealerships shall maintain the following documents in a manner that is organized and readily accessible for five years from the date of the CO:
 - a. All documents required to be maintained pursuant to § 2-103(k) of the Rules;
 - b. The logbook of price quotes (See paragraph 35);
 - c. All vehicle history reports for second-hand automobiles sold by Remaining Dealerships;
 - d. All deal jackets; and
 - e. All advertisement orders, advertisement mock-ups, published advertisements, electronic images of web advertisements that appear on Remaining Dealerships' website or other websites, all radio and TV advertisements, and any advertisements disseminated through social media.
- 58. Remaining Dealerships shall store internet advertisements by printing a copy of each automobile's advertisement or saving it in a Portable Document Format ("PDF") that preserves images as well as text. Remaining Dealerships shall print or save the automobile's advertisement at the time it is initially published, and every time there is a change to the automobile's price or terms.
- 59. Remaining Dealerships shall electronically store all internet videos, labeled in a format that identifies the automobile being advertised in the video.
- 60. Remaining Dealerships shall retain all consumer complaints received directly from consumers or from any agency or private entity that receives consumer complaints, including but not limited to, the Better Business Bureau and/or any governmental agency, including DCA. Remaining Dealerships shall maintain the consumer complaints in a manner that is organized, readily accessible, and searchable by the consumer's last name.

61. If requested by the Independent Monitor or DCA, Remaining Dealerships shall produce copies of all documents and records maintained pursuant to this section within five business days.

I. INDEPENDENT MONITOR

62. Within thirty (30) days of the date of the CO, Remaining Dealerships shall submit to the Department the resumes of three candidates to serve as Independent Monitor. The Independent Monitor shall serve for a period of three years at Remaining Dealerships' expense and shall have plenary authority for monitoring and auditing Remaining Dealerships' compliance with the Code, the Rules, and the terms of the CO.
63. Remaining Dealerships shall identify candidates who have demonstrable experience relevant to consumer protection law, automobile sales, law, compliance monitoring or auditing. The Department shall review the qualifications and independence of all candidates and shall exercise its discretion in approving the Independent Monitor. If the Department determines that none of the candidates possess the requisite qualifications and independence necessary to perform the duties of Independent Monitor, the Department shall notify Remaining Dealerships. Within fifteen (15) days of the date of that notice, Remaining Dealerships shall submit to the Department the resumes of three additional candidates. The Department, may, in its discretion, identify additional candidates.
64. Remaining Dealerships shall retain the Independent Monitor within ten (10) business days of approval of the candidate by the Department. Remaining Dealerships shall execute a contract with the Independent Monitor that shall include terms consistent with the CO including, but not limited to, the responsibilities of the Independent Monitor. Remaining Dealerships shall pay the Independent Monitor no less than \$38.00 per hour, as well as reasonable and necessary expenses incurred by the Independent Monitor in fulfillment of its responsibilities. Remaining Dealerships shall require the Independent Monitor to work onsite at least twenty-five (25) hours per week, including at least four (4) hours of work after 7:00 pm on weekdays and six (6) hours of work on weekends.
65. Six months after the date the Independent Monitor is retained, the Department shall review the hours per week required of the Independent Monitor, and may at its sole discretion, reduce the Independent Monitor's hours to no less than 15 hours per week.
66. Remaining Dealerships shall provide the Independent Monitor with a workstation located at 8825 Fifth Avenue, Brooklyn, New York 11209. If any dealership subject to the terms of the CO is located anywhere other than adjacent to, or across the street from 8825 Fifth Avenue, Remaining Dealerships shall also provide the Independent Monitor with a workstation at that location.
67. Remaining Dealerships shall provide the Independent Monitor with unlimited access to all records, electronic files, paper files, principals, officers and agents. Remaining

Dealerships shall make a fully-enclosed office space or room available for use by the Independent Monitor to privately interview consumers and employees without being observed or recorded by anyone. Remaining Dealerships shall not monitor or intervene in any manner with the Independent Monitor's duties and shall not retaliate against employees for communicating or providing information to the Independent Monitor.

68. The Independent Monitor shall review and revise Remaining Dealerships' contract forms and templates, including but not limited to contracts for financing, warranties, and other add-on product sales; deposit receipts; and disclosures, to ensure that all documents are in compliance with the Code, the Rules, and the CO. The Independent Monitor shall complete the revision of all documents within 60 days of the date the Independent Monitor is retained. The Department reserves the right to require specific, reasonable modifications on any of Remaining Dealerships' contract forms or templates at any time. Remaining Dealerships shall change their contract forms and templates as directed by the Department.
69. The Independent Monitor shall develop and deliver to Remaining Dealerships policies, procedures, and training on the following subjects within 60 days of the date the Independent Monitor is retained:
 - a. Advertising;
 - b. Second-hand Automobile Sales Practices;
 - c. Sales Contracts;
 - d. Add-on Product Sales Practices;
 - e. Document Management and Record Keeping;
 - f. Internal Compliance Monitoring and Reporting.
70. The Independent Monitor, or other party approved by the Department, shall conduct training for all Sales Representatives, employees, managers, and agents consistent with the terms of the CO and within 90 days of the date that the Independent Monitor is retained.
71. The Independent Monitor shall maintain attendance sheets for all employee trainings, and each employee shall attend at least one training session every six months. All Sales Representatives hired subsequent to the first training shall be provided with training prior to selling, financing, or offering for sale second-hand automobiles or add-on products.
72. The Independent Monitor shall review the following to assess Remaining Dealerships' compliance with the Code, the Rules and the CO:
 - a. All advertisements, prior to publication or dissemination;

- b. All second-hand automobile transactions within five (5) business days of the transaction;
 - c. All reports and record books maintained by Remaining Dealerships including, but not limited to, the police book, the record of deposits, and the logbook of price quotes;
 - d. All automobile inspection and service records;
 - e. Video footage and audio recordings of all consumer-employee interactions if Remaining Dealerships record the interactions;
 - f. All consumer complaints made to Remaining Dealerships, the Department, the Independent Monitor, the Better Business Bureau, or other agency;
 - g. All litigation including small claims court actions filed against Remaining Dealerships;
 - h. All performance reviews and personnel documentation; and
 - i. Consumer and transaction records including, but not limited to, electronic journal entries and deal jackets to ensure that files are properly maintained, complete, and compliant with the CO.
73. The Independent Monitor may interview providers or administrators of third-party add-on products; consumers regarding their experience negotiating the purchase of an automobile, the representations made to the consumers by Sales Representatives, and the consumers' comprehension of all signed contracts; and Remaining Dealerships' employees regarding their practices, their knowledge of policies and procedures, and their compliance with the Code, the Rules, and the requirements of the CO.
74. The Independent Monitor shall conduct:
- a. Weekly inspections of Remaining Dealerships' records and premises for compliance with the Code, the Rules and the CO;
 - b. Undercover and unscheduled inspections at least once per quarter and as needed to evaluate Remaining Dealerships' ongoing compliance with the Code, the Rules, and the CO.
75. Within three months of being retained, and every three months thereafter, the Independent Monitor shall prepare and send to DCA a report, with supporting documentation, on the Independent Monitor's activities and Remaining Dealerships' compliance with the CO. The report shall include, but not be limited to, the following:
- a. A summary of all inspections conducted by the Independent Monitor;

- b. A summary of all consumer complaints, and their resolution, for all complaints made to Remaining Dealerships, the Independent Monitor, or an outside agency in the three (3) months prior to the report;
 - c. The Independent Monitor's assessment of Remaining Dealerships' compliance with the CO including a separate evaluation of Remaining Dealerships' compliance with each requirement contained in Section IV of the CO;
 - d. The Independent Monitor's assessment of Remaining Dealerships' compliance with the laws and rules governing second hand auto dealers.
76. The Independent Monitor shall send the following documents to DCA with the Independent Monitor's report:
- a. Copies of all training documents and written policies and procedures provided to employees in the three (3) months prior to the report;
 - b. Copies of all new or amended templates and forms for all contracts and other documents provided to consumers in the three (3) months prior to the report;
 - c. Copies of training attendance sheets for all training conducted in the three (3) months prior to the report;
77. The Department may meet with, or request information from the Independent Monitor at any time.
78. The Independent Monitor shall promptly report to the Department any possible violations of the Code, the Rules, or the CO.
79. The Independent Monitor shall, if requested by the Department, testify as necessary at adjudication hearings.
80. If Remaining Dealerships know, or have reason to know of violations of the Code, the Rules or the terms of this CO by a Sales Representative, employee, or agent, Remaining Dealerships shall immediately report the violation to the Independent Monitor.
81. Remaining Dealerships shall promptly report all consumer complaints to the Independent Monitor, and make all possible efforts in good faith to resolve all consumer complaints, regardless of source, within twenty (20) days of receipt of the complaints. If a complaint is not resolved to the satisfaction of the Independent Monitor, or the Independent Monitor determines that the complaint may involve violations of the Code, the Rules, or the CO; the Independent Monitor shall promptly refer the complaint to the Department.
82. Remaining Dealerships shall promptly remedy all violations of the Code, the Rules or the CO identified by the Independent Monitor.

83. The Department may issue a Notice of Hearing to any or all of Remaining Dealerships for any violation reported to it.
84. Remaining Dealerships shall take appropriate disciplinary measures against Sales Representatives, employees, or agents who fail to comply with the requirements of the CO.
85. The Department shall review the need for continued onsite monitoring at Remaining Dealerships 18 months after the date the Independent Monitor is appointed. The Department shall amend this CO as necessary, including by amending the CO to include terms regarding compliance monitoring.

V. MONETARY RELIEF

86. Respondents and Remaining Dealerships shall be jointly and severally liable for all monetary relief in the CO.
87. Respondents and Remaining Dealerships shall remit all payments by check made payable to "New York City Department of Consumer Affairs," and sent to the New York City Department of Consumer Affairs Legal Division, Attn: Christine Santos, 42 Broadway, 9th Floor, New York, NY 10004.
88. If Respondents or Remaining Dealerships fail to submit any payment by its due date, the Department may, upon one-week's notice, suspend Remaining Dealerships' licenses until all overdue payments are made. If no payment is made by 30 days after its due date, Remaining Dealerships' licenses shall be revoked upon one-week's notice, and the entire remaining unpaid amount of the fine shall become immediately due and payable.

A. CIVIL PENALTIES

89. Respondents and Remaining Dealerships shall pay \$ [REDACTED] in civil penalties to the Department by making 18 monthly payments of \$ [REDACTED] each. The first payment shall be due on May 1, 2014, and each subsequent payment shall be due on the first business day of each month.

B. CONSUMER RESTITUTION FUND

90. Upon execution of this CO, Respondents and Remaining Dealerships shall pay \$ [REDACTED] to be held by the Department in a Consumer Restitution Fund (the "Fund"), and distributed by the Department to consumers named in the Third Amended Notice of Hearing, and other consumers who purchased a second-hand vehicle from Respondents or paid a deposit to Respondents on a second-hand vehicle between May 11, 2012 and the date of the CO, and demonstrate to the Department that they suffered economic harm as a result of Respondents' conduct, and have not otherwise received restitution for their economic harm.

91. The Department shall be the sole and final arbiter of the validity of claims by consumers for restitution from the fund.
92. Within ten days of retaining the Independent Monitor, Respondents shall provide the Independent Monitor with the Deal Jacket for every second-hand automobile sold by Respondents between May 12, 2012 and the date of the CO. The Independent Monitor shall review every deal jacket, and identify every consumer who purchased an add-on product from Respondents between May 12, 2012 and the date of the CO. The Independent Monitor will verify that each of these consumers received the add-on product by contacting the provider or administrator of the product.
93. If the deal jacket for any second-hand automobile transaction executed prior to October 30, 2012 is unavailable or incomplete due to its destruction or damage resulting from Hurricane Sandy, the Remaining Dealerships shall submit to the Independent Monitor whatever documents relating to the transaction are available, along with an affidavit from an officer or owner of the Remaining Dealership stating that to the best of his or her knowledge, the deal jacket was destroyed as a result of Hurricane Sandy.
94. If the Independent Monitor determines that a consumer who purchased an add-on product from Respondent did not receive the add-on product, the Independent Monitor will recommend to the Department the amount of restitution that should be paid to the consumer from the Fund. If the price of an add-on product was included in the vehicle's purchase price without being itemized, the Independent Monitor will determine restitution based on the average price charged by Respondents to other consumers for the same product. If the Department adopts the Independent Monitor's recommendation, the Independent Monitor shall notify the consumer of the settlement and the procedure to submit a claim for restitution.
95. All monies remaining in the Fund one year after the date of the CO shall revert to the Department as penalties.

VI. BREACH

96. If, following a hearing, Remaining Dealerships are found to have breached the CO, Remaining Dealerships shall pay a fine of \$ [REDACTED] for each breach of the CO. Remaining Dealerships shall pay \$ [REDACTED] per vehicle or advertisement per day for violating Subsection A of Section IV of the CO. Specific breaches of the CO shall, in addition to a breach of the CO, constitute independent and separate violations of any applicable laws and rules. If the same conduct gives rise to both a breach of the CO and a breach of the applicable laws and rules, Remaining Dealerships shall pay two penalties: the fine for breach of the CO and the maximum penalty for violation of the applicable law or rule. It shall be a defense to any such violation that the specific conduct complained of was approved by the Independent Monitor.

97. If, following a hearing, any of Remaining Dealerships is found to have violated any provision of the Consumer Protection Law and Rules, the violation shall be treated as a knowing violation.
98. Respondents' failure to submit the entire balance due pursuant to the terms of Section V of the CO shall result in the automatic revocation of Respondents' licenses with the Department, and Respondents will continue to owe the entire balance due.
99. If any Respondent, Remaining Dealership, or anyone acting on behalf of them, makes a false statement, misrepresentation, or omission of material fact on any application or document submitted to the Department, all licenses held by that Respondent or Remaining Dealership shall be immediately and automatically revoked, and the person making the false statement, misrepresentation, or omission of material fact shall be found permanently unfit to hold any license issued by the Department.
100. Failure by Respondents or Remaining Dealerships to produce any of the documents or records required by the Code, the Rules, or the CO shall constitute prima facie evidence at a hearing that Respondents and Remaining Dealerships have failed to maintain those records and that Respondents and Remaining Dealerships have violated the CO.

VII. MISCELLANEOUS

101. Within ten (10) days of the date of the CO, Remaining Dealerships shall provide a copy of the CO to all employees and independent contractors, and individuals and entities responsible for developing Remaining Dealerships' advertisements published in New York City.
102. Within ten (10) days of the date of the CO, Remaining Dealerships shall provide a copy of the CO to all third-party providers or administrators of warranties, insurance or other products and services sold by Respondents to consumers.
103. Respondents and Remaining Dealerships waive the right to a hearing on, or appeal of, the violations alleged in the above-captioned Notices of Hearing.
104. The acceptance of the CO by the Department shall not be deemed approval by the Department of any of Respondents' or Remaining Dealerships' business practices, and Respondents and Remaining Dealerships shall make no representation to the contrary.

105. [REDACTED] as Attorney for Respondents and Remaining Dealerships is authorized to enter into the CO on their behalf.

Dated: 4/7/14

Agreed to for the Respondents
and Remaining Dealerships by:

[REDACTED]

Attorney for Respondents

4/11/14

Accepted for the Department of Consumer
Affairs by:

[REDACTED]

Staff Attorney

Businesses licensed by the Department of Consumer Affairs (DCA) are required to comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.

Exhibit A



Used Car Buyer's Bill of Rights

- You do not need to buy any additional services or products, from this dealer to get the lowest advertised price or qualify for a loan.
- This dealer must give you a vehicle history report that tells you whether the car was in an accident or damaged.
- The dealer must tell you the prices of options, additional warranties, services or add-on products.
- If you choose to buy additional warranties, services or products, the price of each one must be listed on the contract.
- If this dealer requires you to get financing through the dealer, it must disclose the price of the car and the finance charges when you pay a deposit on the car.
- This dealer must give you a copy of every document that you sign when you sign it. Do not sign a form before it is completely filled out.
- Read every document carefully before you sign it. If you do not understand a document, do not sign it.
- You are allowed to test-drive a vehicle and have it inspected by an independent mechanic before you buy it.
- If you have a question or complaint, contact the NYC Department of Consumer Affairs at **311** or www.nyc.gov/dca

Licensee: (Insert name appearing on license(s))

Type of License: Second-Hand Automobile Dealer

License #: (Insert corresponding license number).