

**STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

IN THE MATTER OF:)	DOCKET NO. 525013
)	
Destination Auto Group)	
2044 Lockbourne Rd.)	
Columbus, Ohio 43207)	

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 23 day of May, 2017 by and between Marlene McKee and Destination Auto Group ("Suppliers") and Michael DeWine, Attorney General of the State of Ohio ("Attorney General"). For purposes of this Assurance, "Suppliers" means Marlene McKee, individually and doing business as Destination Auto Group, her partners, agents, servants, representatives, salespersons, employees, successors or assigns and all persons acting in concert or participation with her directly or indirectly, through any corporate device, partnership, association, or affiliation.

WHEREAS, the Attorney General, having reasonable cause to believe that Suppliers may have engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 4505 of the Revised Code ("Certificate of Motor Vehicle Title Act") has conducted an investigation pursuant to the authority granted him by R.C. 1345.06 of the Revised Code; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance; and

WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by Suppliers of their intent to conduct business in a manner designed to comply with the provisions

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of the Consumers Sales Practices Act, its Substantive Rules and the Certificate of Motor Vehicle Title Act; and

WHEREAS, Suppliers, desiring to comply with all aspects of the Consumer Sales Practices Act, its Substantive Rules, and the Certificate of Motor Vehicle Title Act, hereby voluntarily enter into this Assurance with the Attorney General.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of Suppliers' business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Suppliers agree to comply with all the terms of this Assurance, including all financial provisions, and to conduct any future business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act, R.C. 1345.01 et seq. and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) Marlene McKee ("McKee") is the owner and principal representative of Destination Auto Group, formerly located at 2044 Lockbourne Rd., Columbus, Ohio 43207.
- (5) Destination Auto Group ("Destination Auto") has been registered with the Ohio Secretary of State since July 23, 2015.

- (6) McKee exercised the authority to establish, implement or alter the policies of Destination Auto and committed, allowed, directed, ratified or otherwise caused the following unlawful acts and practices to occur.
- (7) McKee operated Destination Auto, a used motor vehicle dealership that engaged in the business of effecting consumer transactions by advertising and selling used motor vehicles in the State of Ohio, including Franklin County.
- (8) Destination Auto held license #UD021099 issued by the State of Ohio under R.C. 4517.01 et seq. allowing it to engage in the business of displaying or selling at retail or wholesale used motor vehicles.
- (9) Suppliers displayed for sale and sold used motor vehicles without obtaining certificates of title for the vehicles in the name of Destination Auto, and without possessing bills of sale for the motor vehicles displayed, offered for sale, or sold, and without a properly executed power of attorney or other related documents from the prior owners of the motor vehicles giving Destination Auto the authority to have certificates of title to the vehicles issued in its name.
- (10) Suppliers, in the ordinary course of business, sold or transferred used motor vehicles to Ohio retail purchasers and failed to apply for certificates of title in the name of the retail purchasers on or before the thirtieth day following the dates of the sales.
- (11) Suppliers, in the ordinary course of business, sold or transferred motor vehicles to Ohio retail purchasers and failed to obtain the certificates of title in the name of the retail purchasers on or before the fortieth day following the dates of the sales.
- (12) Suppliers received payment from the retail purchasers, and/or third parties on behalf of the retail purchasers, in full satisfaction for the purchase of the motor vehicles.

- (13) As a result of Suppliers' conduct, retail purchasers were unable to obtain certificates of title to their used motor vehicles, and filed claims pursuant to Ohio's Title Defect Recision (TDR) statute, R. C. 4505.181.
- (14) The Ohio Attorney General, as administrator of the TDR Fund, paid the retail purchasers' claims in the amounts listed below:

LAST NAME	FIRST NAME	AMOUNT
Austin	Jordon	\$1695.44
Booker	Arvella	\$648.00
Johnson	Thomas	\$674.00
Pannell	Laurie	\$1105.50
Speer	Rebecca	\$1400.00
Thomas	Jeseka	\$2411.00
Williams	Paul	\$1515.00

The total of all claims paid thus far is \$9,448.94

- (15) Destination Auto and McKee are "suppliers" as that term is defined in R.C. 1345.01(C), because they engaged in the business of effecting or soliciting consumer transactions, by offering for sale or selling or financing the purchase or transfer of used motor vehicles to individuals for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A).
- (16) Suppliers committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02, by selling or transferring used motor vehicles to Ohio retail purchasers and failing to apply for certificates of title in the name of the retail

purchasers on or before the thirtieth day following the date of the sale as required by R.C. 4505.06(A)(5)(b).

- (17) Suppliers committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02, by failing, on or before the fortieth day following the date of the sale, to obtain titles to the vehicles in the name of the retail purchasers in violation of R.C. 4505.181(B)(1).
- (18) The acts and practices described in paragraphs 16-17 of this Assurance have been previously determined by Ohio courts to violate the Consumer Sales Practices Act. Suppliers committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COMPLIANCE PROVISIONS

- (19) In connection with the display for sale, or sale of used motor vehicles, Suppliers shall refrain from displaying for sale and selling a used motor vehicle without obtaining a certificate of title for the vehicle in Destination Auto name, or without possessing a bill of sale for the motor vehicle displayed, or offering for sale, or selling, without a properly executed power of attorney or other related document from the prior owner of the motor vehicle giving Destination Auto the authority to have a certificate of title to the vehicle issued in its name, in violation of the TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).
- (20) In connection with the display for sale, or sale of used motor vehicles, Suppliers shall refrain from selling or transferring a motor vehicle to an Ohio retail purchaser when they fail to apply for a certificate of title in the name of the retail purchaser on or before the

thirtieth day following the date of the sale, in violation of the TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).

- (21) In connection with the display for sale, or sale of used motor vehicles, Suppliers shall refrain, in the ordinary course of business, from failing, on or before the fortieth day following the date of the sale, to obtain title to the vehicle in the name of the retail purchaser in violation of TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).

GENERAL PROVISIONS

- (22) Destination Auto and McKee understand and agree this Assurance applies to their principals, officers, directors, agents, servants, representatives, salespersons, employees, instructors, independent contractors, successors in interest and assigns, jointly and severally.
- (23) This Assurance shall be governed by the laws of the State of Ohio.
- (24) This Assurance is entered into by Suppliers of their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.
- (25) This Assurance does not constitute an approval by the Attorney General of any of Suppliers' business practices and neither shall represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of their business practices.
- (26) This Assurance sets forth the entire agreement between the Attorney General, Destination Auto, and McKee, and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the

subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.

- (27) The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
- (28) Suppliers shall negotiate in good faith, through the office of the Attorney General, any consumer complaints filed with this office concerning their conduct occurring prior to the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance. The Attorney General shall direct all complaints to the attention of McKee.
- (29) This Assurance is a public record and shall be maintained in the Public Inspection File.

REIMBURSEMENT TO THE TDR FUND

- (30) As part of the consideration for the termination of the Attorney General's investigation of Destination Auto and McKee under the Consumer Sales Practices Act, R.C. 1345.01 et seq., McKee shall reimburse the TDR Fund in the amount of nine thousand four hundred forty-eight dollars and ninety four cents (\$9,448.94). This amount represents payments made by the Attorney General to resolve complaints filed by the consumers listed in paragraph 14 above.
- (31) Payment of this amount shall be made in the following manner:
 - a. Fifty Nine (59) monthly payments of one hundred and fifty-seven dollars and forty eight cents (\$157.48) and a final payment of one hundred fifty-seven dollars and sixty-two cents (\$157.62). The first payment is due on or before July 1, 2017 and thereafter on the 1st of each month until paid in full.

- b. Each separate payment shall be made by delivery of a certified check or money order, payable to the "Ohio Attorney General's Office," delivered to the following address:

Finance Assistant
Consumer Protection Section
Ohio Attorney General's Office
30 E. Broad St., 14th Floor
Columbus, Ohio 43215

- (32) Payments made pursuant to this paragraph shall be placed into the TDR Fund. If Suppliers fail to comply with the Assurance, including the payment plan, the remainder of the amount due shall be immediately due and payable upon demand.
- (33) The vehicle purchased by consumer Rebecca Speer will be sold at auction and any proceeds from the sale will be applied to offset the total amount due the TDR fund.

PAYMENT TO THE STATE

- (34) Suppliers are liable for a payment in the amount of \$10,000 to the Attorney General to be placed into the Consumer Protection Enforcement Fund. Said payment is suspended upon timely compliance with this Assurance. If Suppliers fail to comply with any provisions in this Assurance, the \$10,000 payment shall be due and payable upon demand.

PENALTIES FOR FAILURE TO COMPLY

- (35) The Attorney General may assert any claim that Suppliers have violated this Assurance in a separate civil action to enforce this Assurance against Suppliers and the court shall apply applicable standards of law to determine damages per any subsequent violation, which may include any and all remedies available to the Attorney General pursuant to R.C. 1345.07. In any such action or proceeding, relevant evidence of conduct that

occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, Suppliers do not waive any evidentiary objection or any other objection they may have as permitted by law to the admissibility of any such evidence, including, but not limited to, showing evidence that Suppliers have fully and promptly cooperated in good faith with this investigation.

- (36) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the Consumer Sales Practices Act or the Substantive Rules adopted thereunder, by Suppliers. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq., if presented after the violation in an action brought under the Consumer Sales Practices Act, R.C. 1345.01 et seq.
- (37) This Assurance shall in no way exempt Suppliers from any other obligations imposed by law, and nothing contained herein shall relieve them of any legal responsibility for any acts or practices engaged in by them other than those acts specifically resolved by this Assurance.
- (38) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Suppliers under any legal authority granted to the Attorney General:
 - a. With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - b. With respect to transactions or occurrences which are not the subject of this action.

TOLLING AGREEMENT

- (39) Suppliers acknowledge and agree that Destination Auto and McKee shall not, in any action filed by the Attorney General, raise any applicable time-related or statute of limitations defense, either in law or equity, relating to the activities of Destination Auto and McKee in connection with the current Attorney General investigation, except as to any cause of action already barred as of the Effective Date, which shall remain barred, unless otherwise preserved.
- (40) If Destination Auto or McKee files a Motion to Dismiss based on statute of limitations grounds, the parties agree that this AVC shall be submitted as evidence in opposition to the motion, and that the Attorney General may seek to recover the costs incurred to defend such a frivolous motion.

REPRESENTATIONS AND WARRANTIES

- (41) Destination Auto warrants and represents that the individual signing this Assurance on behalf of Destination Auto is doing so in their official capacity and is fully authorized by Destination Auto to enter into this Assurance and to legally bind Destination Auto to all of the terms and conditions of the Assurance.
- (42) Destination Auto and McKee represent that by executing this Assurance that they have carefully read this Assurance and that if they so choose have had the opportunity to discuss the terms and conditions of this Assurance with an attorney, and that they agree to the terms and conditions as set forth in this Assurance by signing the same.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 23 day of May, 2017.

ACCEPTED BY:

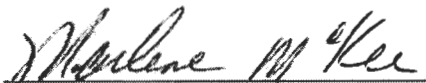


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5-23-17

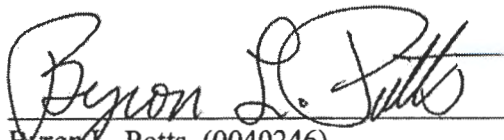
Date



Marlene McKee, on behalf of
Destination Auto Group, and
in her individual capacity.

5/12/17

Date



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Counsel for Marlene McKee

5-9-17

Date