

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

IN THE MATTER OF:) DOCKET NO. 539557
)
Catherine Manning dba)
1 Auto Exchange)
aka #1 Auto Exchange)

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 31 day of October, 2017 between Catherine Manning ("Manning") dba 1 Auto Exchange aka #1 Auto Exchange (hereinafter "Supplier"), a fictitious business, and the Attorney General of the State of Ohio ("Attorney General").

WHEREAS, the Attorney General, having reasonable cause to believe that Supplier has 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 Supplier of her intent to conduct her business 1 Auto Exchange in a manner designed to comply with the provisions of the Consumers Sales Practices Act, its Substantive Rules and the Certificate of Motor Vehicle Title Act; and

WHEREAS, Supplier desires to comply with all aspects of the Consumer Sales Practices Act, it's Substantive Rules, and the Certificate of Motor Vehicle Title Act in conducting her

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business 1 Auto Exchange, and hereby voluntarily enters 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 Supplier's business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Supplier agrees to comply with all the terms of this Assurance and to conduct her 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) Catherine Manning is an individual who owns and operates 1 Auto Exchange which is an unincorporated company operating under a fictitious name conducting business in Warren County and in the State of Ohio with its principal place of business located at 1380 E. Second St., Franklin, Ohio 45005.
- (5) Manning is the owner of and exercised the authority to establish, implement or alter the policies of 1 Auto Exchange and committed, allowed, directed, ratified or otherwise caused the following unlawful acts and practices to occur.
- (6) Manning operates 1 Auto Exchange which is a used motor vehicle dealership that engages in the business of effecting consumer transactions by advertising and selling used motor vehicles in the State of Ohio, including Warren County.

- (7) 1 Auto Exchange holds license #UD020332 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.
- (8) Supplier displayed for sale and sold used motor vehicles without obtaining certificates of title for the vehicles in its name, 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 Supplier the authority to have certificates of title to the vehicles issued in 1 Auto Exchange's name.
- (9) Supplier, 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.
- (10) Supplier, 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.
- (11) Supplier 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.
- (12) As a result of their 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.
- (13) The Ohio Attorney General, as administrator of the TDR Fund, paid a retail purchaser's claim in the amount of \$7,306.03.

- (14) R.C. 4505.181 requires that a dealer post a surety bond in an amount not less than \$25,000 after the Attorney General has paid a retail purchaser of the dealer from the TDR Fund.
- (15) After the payout was made from the TDR Fund, Supplier continued to engage in consumer transactions without posting a surety bond.
- (16) Manning, dba 1 Auto Exchange is a "supplier" as that term is defined in R.C. 1345.01(C), because she 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).
- (17) Supplier 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).
- (18) Supplier 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).
- (19) Supplier committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and R.C. 4505.181 by engaging in consumer transactions in connection with the display for sale, or sale of used motor vehicles after failing to post a surety bond after a payout was made from the TDR Fund.

- (20) Supplier committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) by failing to register with or report the fictitious trade name 1 Auto Exchange to the Ohio Secretary of State as required by R.C. 1329.01.

COMPLIANCE PROVISIONS

- (21) In connection with the display for sale, or sale of used motor vehicles, Supplier shall refrain from displaying for sale and selling a used motor vehicle without obtaining a certificate of title for the vehicle in its 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 1 Auto Exchange 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).
- (22) In connection with the display for sale, or sale of used motor vehicles, Supplier shall refrain from selling or transferring a motor vehicle to an Ohio retail purchaser while failing 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).
- (23) In connection with the display for sale, or sale of used motor vehicles, Supplier 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).

- (24) Supplier shall refrain from engaging in consumer transactions in connection with the display for sale, or sale of used motor vehicles, until she has posted a R.C. 4505.181 surety bond with the Ohio Attorney General's Office.
- (25) Supplier shall refrain from engaging in consumer transactions in connection with the display for sale, or sale of used motor vehicles, until she has registered 1 Auto Exchange with or reported the fictitious trade name 1 Auto Exchange to the Ohio Secretary of State.

GENERAL PROVISIONS

- (26) Supplier understands and agrees this Assurance applies to her principals, officers, directors, agents, servants, representatives, salespersons, employees, instructors, independent contractors, successors in interest and assigns, jointly and severally.
- (27) This Assurance shall be governed by the laws of the State of Ohio.
- (28) This Assurance is entered into by Supplier of her 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.
- (29) This Assurance does not constitute an approval by the Attorney General of any of Supplier's business practices and she shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of her business practices.
- (30) This Assurance sets forth the entire agreement between the Attorney General and Supplier, 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.

- (31) 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.
- (32) Supplier 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 Supplier.
- (33) This Assurance is a public record and shall be maintained in the Public Inspection File.

REIMBURSEMENT TO THE TDR FUND

- (34) As part of the consideration for the termination of the Attorney General's investigation of Supplier under the Consumer Sales Practices Act, R.C. 1345.01 et seq., Supplier shall reimburse the TDR Fund Seven Thousand Three Hundred Six Dollars and Three Cents (\$7,306.03). Payment of this amount shall be made in weekly installments of no less than One Hundred Dollars (\$100.00) with the first payment due on or before November 1, 2017 and thereafter weekly until paid in full. Payment shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to: **Compliance Officer, Consumer Protection Section, 30 E. Broad St., 14th FL, Columbus, Ohio 43215.** Payments made pursuant to this paragraph shall be placed into the TDR Fund. If Supplier fails to comply with the Assurance, including the payment plan, the remainder of the amount due shall be immediately due and payable upon demand.

PAYMENT TO THE STATE

- (35) As part of the consideration for the termination of the Attorney General's investigation of Supplier under the Consumer Sales Practices Act, R.C. 1345.01 et seq., she shall pay One Thousand Five Hundred Dollars (\$1,500.00) to the Office of the Ohio Attorney General for attorneys' fees and investigative costs. Payment shall be made weekly in an amount no less than One Hundred Dollars (\$100.00) beginning the week following the completion of payments made pursuant to paragraph 34 of the Assurance. Payment received shall be placed into the Consumer Protection Enforcement Fund. Payment shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to: **Compliance Officer, Consumer Protection Section, 30 E. Broad St., 14th Fl., Columbus, Ohio 43215.** If Supplier fails to comply with the Assurance, including the payment plan, the remainder of the amount due shall be immediately due and payable upon demand.

PENALTIES FOR FAILURE TO COMPLY

- (36) The Attorney General may assert any claim that Supplier has violated this Assurance in a lawsuit seeking injunctive and declaratory relief or a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, and a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation the Attorney General asserts she has committed. 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.

- (37) 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 Supplier. 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.
- (38) This Assurance shall in no way exempt Supplier from any other obligations imposed by law, and nothing contained herein shall relieve her of any legal responsibility for any acts or practices engaged in by her other than those acts specifically resolved by this Assurance.
- (39) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Supplier under any legal authority granted to the Attorney General:
- i. 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
 - ii. With respect to transactions or occurrences which are not the subject of this action.

TOLLING AGREEMENT

- (40) Supplier acknowledges and agrees that she 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 her activities 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.

- (41) If Supplier 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

- (42) Manning represents that by executing this Assurance she has carefully read this Assurance and that if she so chooses has had the opportunity to discuss the terms and conditions of this Assurance with an attorney, and that she agrees 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 31 day of October, 2017.

ACCEPTED BY:

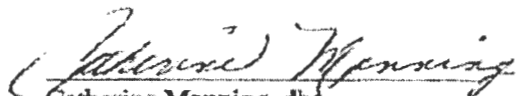


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10-31-17

Date



Catherine Manning, dba
1 Auto Exchange

October 31, 2017

Date