

BEFORE THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT
CODE STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF ENT CREDIT UNION.

Respondent.

THIS ASSURANCE OF DISCONTINUANCE (“AOD”) is made between the Administrator of the Uniform Consumer Credit Code, C.R.S. §§ 5-1-101, *et seq.* (“UCCC”), and Respondent Ent Credit Union (“Respondent”), arising out of the Administrator’s investigation into Respondent’s compliance with the UCCC and its rules, including 4 CCR 902-1:8 (“Rule 8”). Pursuant to C.R.S. § 5-6-110, without admitting or denying liability, Respondent has agreed that it will not engage in the conduct described herein in the future.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the Administrator and the Respondent, as follows:

1. The Administrator is the Administrator of the UCCC. *See* C.R.S. § 5-6-103. Among other things, the Administrator is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. §§ 5-6-101, *et seq.*

2. Respondent is a Colorado-chartered credit union with its principal office located at 11550 Ent Pkwy, Colorado Springs, CO 80921.

3. The Administrator has jurisdiction over Respondent and the subject matter of this AOD under C.R.S. § 5-6-110. The AOD applies to the consumer credit transactions described in paragraph 5, below, that were entered into with consumers in Colorado in accordance with C.R.S. § 5-1-201 (“Colorado consumers”).

4. Guaranteed Automobile Protection (“GAP”) means an agreement structured as either an insurance policy or a contractual term that relieves the consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds for property damage upon the total loss of the consumer’s automobile that was collateral securing the consumer loan, whether the loss occurred from the total destruction of the vehicle or theft (“GAP waiver”). *See* Rule 8(a).

5. Among other things, Respondent acts as a creditor under C.R.S. § 5-1-301(17) by purchasing from auto dealers retail installment sales contracts that include GAP purchased by Colorado consumers.

6. Respondent provides that it has always provided refunds of unearned GAP premiums for the direct automobile loans it made. For indirect automobile loans, purchased by Respondent after the initial loan from a dealer and where the dealer had collected the GAP premium, Respondent sent a letter to its members when the loan was paid off, suggesting their members go to the dealer and ask for a refund of any unearned GAP premium, as the dealer or GAP administrator possessed the GAP premium. Respondent has also always facilitated requests from its customers, by helping to direct customers who have requested a payment of unearned GAP premiums to the appropriate dealer or GAP administrator to obtain a refund.

7. Prior to being approached by the Administrator, Respondent provides that it discovered that unearned GAP premiums on indirect auto loans were not always repaid. Accordingly, Respondent took the following actions with respect to GAP policies: (a) implemented processes to pay unearned GAP premiums for indirect retail installment sales contracts in Colorado that are prepaid prior to maturity, (b) ensured that, as of August 1, 2020 going forward, in Colorado for loans Respondent purchased from car dealerships, it would pay Colorado consumers any unearned GAP premiums, or cause the dealer or administrator to refund any unearned GAP premiums to Colorado consumers, as may be required by Rule 8(h); (c) identified individuals who had purchased GAP in Colorado who had previously prepaid retail installment sales contracts prior to maturity, between August 1, 2017 through July 31, 2020, for purposes of making payments of unearned GAP premiums; and (d) paid to customers who had prepaid retail installment sales contracts prior to maturity for pro-rated unearned GAP premiums including interest for that time period. Respondent provided a total of 19,011 payments to consumers amounting to \$5,163,732.51. Respondent initiated these payments in or around November 2020. Since being approached by the Administrator, Respondent has voluntarily provided information to the Administrator concerning its payment of unearned GAP premiums. Respondent has fully cooperated in good faith since being engaged, and has been forthcoming with information in order to bring this matter to a swift and orderly resolution. Respondent represents that all information provided to the Administrator regarding GAP is true, accurate and complete.

8. The Administrator concludes, and the Respondent neither admits or denies the following:

- a. Respondent acted as a creditor as described in paragraph 5, above, and failed to make refunds to Colorado consumers in accordance with Rule 8(h). Rule 8(h) provides:

If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor

must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method.

- b. By failing to refund all or a prorated amount of the unearned GAP premiums, Respondent, in conjunction with auto dealers and GAP administrators, violated the Colorado Consumer Protection Act (“CCPA”) by engaging in unfair and deceptive trade practices, C.R.S. §§ 6-1-105 *et seq.*

9. Respondent desires to avoid the inconvenience and expense of a dispute against the Administrator, and, without admitting fault or liability, has therefore agreed to enter into this AOD. Except as provided in C.R.S. § 5-6-110, neither this AOD nor any action taken or proposed to be taken under the terms of this AOD shall be used as an admission of fault or liability of any kind, or as a waiver of any claims, rights, and/or defenses available to the Administrator or Respondent in any other action or proceeding.

10. Respondent:

- a. agrees, together with all affiliated entities, and its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with Respondent who receive actual notice of the order by personal service or otherwise, shall cease and desist from engaging in any conduct in the State of Colorado that violates Rule 8(h), and shall not engage in or commit such conduct in violation of Rule 8(h) in the future.

- b. verifies as true and accurate that it made 19,011 payments totaling \$5,163,732.51 to consumers, which Respondent initiated in or around November 2020.

11. Respondent has represented to the Administrator that it performed a self-audit of all transactions with Colorado consumers that had GAP coverage originated during the Applicable Period.¹ Respondent represents that it identified all transactions with Colorado consumers the Administrator contends are owed a payment under Rule 8(h) within the Applicable Period, and that Respondent has already made payments to Colorado consumers for unearned GAP premiums for the period of August 1, 2017 – July 31, 2020.

12. For each consumer identified, Respondent will provide the Administrator within 14 days of execution of the Agreement a list

¹ The Applicable Period means transactions for which the due date of the last scheduled payment was within four years of the Effective Date.

identifying (i) the name and the address of the consumer to which the payment was sent, (ii) confirmation that the vehicle was purchased in Colorado; (iii) the total amount the consumer was paid, (iv) the basis for the payment, i.e. whether the payment is for an early payoff or repossession, and (v) whether the Respondent provided a cash payment or account credit, and for all account credits the consumers' outstanding balances with the creditor prior to the payment, unless that information is not reasonably available to Ent. Respondent will provide the list to the Administrator in a native Microsoft Excel format and represents that the list is true and correct, except as to the consumers' addresses.

13. Within 30 days of the Effective Date, Respondent shall send each consumer who received a payment as a result of Respondent's self-audit a confirmation letter which has been preapproved by the Administrator. The letter shall inform the consumer that the Administrator has been in discussions with Respondent about Colorado law that requires creditors to refund unearned GAP premiums if consumers pay off their loans early or their car is repossessed. The letter will identify the amount of the payment and the estimated postmark. A template of the transmittal letter is attached as Exhibit A.

14. With respect to returned or unclaimed checks for refunds or payments of unearned GAP premiums Respondent cannot locate, the refund or payment amount becomes abandoned property and should be reported and delivered to the Colorado State Treasurer pursuant to the Colorado Unclaimed Property Act, C.R.S §§ 38-13-101 to 38-13-134. For more information contact the State Treasurer's Office at (303) 866-6070 or <https://colorado.findyourunclaimedproperty.com/app/reporting-guidelines>.

15. At Respondent's expense and at the Administrator's option, Respondent shall permit the Administrator to inspect its books and records once, at any time within normal business hours, for the sole purpose of enabling the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this AOD. The inspection must occur within one year of the Effective Date.

16. Within 14 days of the Effective Date, Respondent shall pay to the Office of the Attorney General \$30,000 to reimburse the Administrator for her costs in investigating this matter, and in lieu of the Administrator's pursuit of penalties, disgorgement and other appropriate injunctive relief against Respondent. This amount shall be held, along with any interest thereon, by the Attorney General of the State of Colorado, in trust, to be used in the Attorney General's sole discretion for reimbursement of attorneys' fees and costs, the payment of consumer restitution, if any, and for consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, or public welfare purposes.

17. This AOD fully resolves the issues between the Administrator and Respondent arising out of the specific issues, allegations, or charges raised by the Administrator against Respondent as set forth herein concerning the GAP refund or payment issue under the UCCC and the CCPA and only those issues. The Administrator releases Respondent, including any subsidiaries, shareholders, officers, or employees, from any and all further investigation, claims, violations, allegations, fines, fees and penalties for the specific refund or payment issue set forth herein and only that issue, whether they accrued or may have accrued as a result of any consumer credit sale transaction entered into by Respondent on or before the execution date of this AOD. This release does not apply to any GAP practices other than the specific refund or payment issue described herein, and does not apply to other claims arising under the UCCC, CCPA, or Rule 8, including but not limited to, claims for conduct concerning the failure to properly calculate GAP benefits in accordance with Rule 8.

18. This AOD is binding upon all the officers, directors, employees, shareholders, managers, members, principals, affiliates, heirs, agents, trade names, and successors of the Respondent.

19. This AOD represents the entire agreement between the parties. No party is relying on any prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD shall have any force or effect.

20. Any modification of this AOD must be in writing, signed by each of the parties or by authorized representatives of each of the parties hereto.

21. This AOD is entered into for purpose of resolving only the matter described herein. Nothing in this provision affects Respondent's right to take legal positions in litigation in which the Administrator is not a party.

22. If there is a Change in Law, after the date of the Change in Law, the Respondent's obligations to make refunds or payments to consumers under this Agreement shall be terminated but it shall not have any right to disclaim its obligation for any refunds or payments made prior to the date of the Change in Law. A "Change in Law" means a change to Respondent's obligation under a regulation finalized by the Administrator, including but not limited to Rule 8, to automatically, and without awaiting a request from a consumer, refund or pay consumers unearned GAP premiums if the consumer credit sale or consumer loan is prepaid prior to maturity.

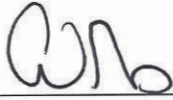
23. The date this AOD is executed by both of the parties shall be the Effective Date of this AOD for all purposes hereunder.

24. This AOD may be executed in counterparts, and may be executed by facsimile or by electronic transmission of signature pages, and as executed shall constitute one agreement.

25. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

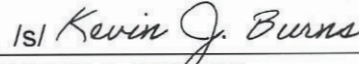
AGREED AND STIPULATED TO BY:

ENT CREDIT UNION

By: 
Chad Graves
Chief Executive Officer
11550 Ent Pkwy
Colorado Springs, CO 80921

DATE: 3/2/2022

COLORADO ATTORNEY GENERAL
ADMINISTRATOR, UCCC

By: 
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DATE: 2/24/22

APPROVED AS TO FORM:

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Attorneys for Ent Credit Union

DATE: March 3, 2022

EXHIBIT A

Dear Member:

Thank you for being a valued member of Ent Credit Union. Our records indicate you previously purchased a vehicle financed through Ent and your loan contained a Guaranteed Automobile Protection (GAP) addendum purchased from the dealership.

The Administrator, who works on behalf of the Colorado Attorney General, has concluded that Colorado law requires creditors to make payments of unearned GAP premiums (i.e. unused GAP premiums) if consumers pay off their loans early or if their car is repossessed. In 2020, Ent voluntarily initiated a process to verify that all appropriate payments of unearned GAP premiums had been made in accordance with the applicable laws and regulations. Through this process, Ent determined you were eligible for a payment of the unearned portion of the premium paid on your GAP addendum. After completing its process and making the payments to eligible members, Ent agreed to send this confirming letter of the payments following discussions with the Administrator. This letter confirms the payment was provided to you via check or through direct deposit to your savings account at Ent as noted below.

A check in the amount of \$____, with an estimated postmark of _____, was mailed to you for a pro-rata payment of unearned GAP premiums plus interest, where applicable. Any returned or uncashed checks will be reported and delivered to the Colorado State Treasurer pursuant to Colorado's Unclaimed Property Act, C.R.S. §§ 38-13-101 - 38-13-134. For more information contact the State Treasurer's Office at (303) 866- 6070 or <https://colorado.findyourunclaimedproperty.com/app/reporting-guidelines>.

OR

For those who received direct deposit: Around_____, a pro-rata payment of unearned GAP premiums plus interest in the amount of \$____ was deposited in your account.

If you have any questions about the process explained in this letter, or about the GAP product you purchased at the dealership, you can contact [insert name] at [insert number], who is an Ent GAP Representative.

We appreciate your membership and look forward to serving you in the future.

Sincerely,

Ent Credit Union