

BEFORE THE ADMINISTRATOR
UNIFORM CONSUMER CREDIT CODE
STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF NATIONAL AUTO CARE CORPORATION D/B/A FAMILY FIRST DEALER SERVICES.

Respondent.

THIS ASSURANCE OF DISCONTINUANCE ("AOD") is made between the Administrator (the "Administrator") of the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* ("UCCC") and Respondent National Auto Care Corporation d/b/a Family First Dealer Services ("Respondent" or "Family First") arising out of the Administrator's review of 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, Respondent has agreed 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 authorized to administer the UCCC. See C.R.S. § 5-6-103. Among other things, she 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 an Ohio corporation with a principal office located at 440 Polaris Parkway, Suite 250, Westerville, Ohio 43082. Family First is an affiliate of National Auto Care Corporation
3. The Administrator has jurisdiction over Respondent and the subject matter of this AOD under C.R.S. §§ 5-6-109 through 114.
4. This AOD applies to all consumer credit transactions with Colorado consumers that are administered by Respondent on behalf of creditors. C.R.S. § 5-1-201.
5. The Administrator is engaged in an ongoing investigation of the Guaranteed Automobile Protection ("GAP") industry. 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* 4 CCR 902-1:8(a).

6. The Administrator has identified systemic regulatory and compliance violations of Rule 8 within the industry and is in the process of remedying those failures on an industry-wide basis.

7. 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).

8. Among other things, Respondent processes consumer claims for GAP waivers on behalf of certain creditors in Colorado and calculates the amount of the waiver to be applied to the consumer's account. Typically, auto dealers are the original creditors and sell GAP to consumers.

9. In October 2022, the Administrator contacted Respondent by letter with concerns about Respondent's Rule 8 compliance.

10. Rule 8(e) provides that:

GAP must pay or forgive the deficiency balance owed by the consumer at the time of the total loss with the exception of amounts previously owed for unpaid installments, legally permitted delinquency fees, fees for the return or dishonor of checks or other instruments tendered as payment, premiums for creditor-imposed property damage insurance, and deferral fees. GAP must pay or forgive the deficiency balance that would have been owed if the consumer had maintained property damage insurance on the automobile (even if the consumer has not done so) or if the creditor has purchased property damage insurance for the automobile and added it to the amount of the debt pursuant to UCCC § 5-2-209, C.R.S.

11. Accordingly, Rule 8(e) requires creditors to waive the full deficiency balance and only permits certain specified deductions from the GAP waiver.

12. In response to the letter, Respondent self-reported that it attempted to comply in good faith with Rule 8, but due to certain manual processes in place and human error, it recommended a small number of improper deductions which may not have been permitted by Rule 8. Respondent, without admitting liability as to any actions, omissions or occurrences alleged herein, chose to accept responsibility and cooperate with the Administrator on these deductions for the benefit of and to promote good will with its Colorado customers, rather than deny allegations and

defend its conduct, and engage in protracted litigation which could delay a resolution of this review. Respondent provided information to the Administrator concerning its calculation of GAP waivers in good faith and on a voluntary basis. Respondent represents that all of this information is true, accurate and complete in all material respects.

13. Respondent recommended the following deductions not authorized in Colorado by Rule 8(e):

a. Loan-to-Value ("LTV")

- Automobile GAP addenda limit eligible loans to 150% of the value of the vehicle at the time of purchase, while certain RV, marine, and motorcycle GAP addenda limit eligible loans to a maximum of 120%.

b. Excess Mileage Driven

- Insurance payouts are based on driving an average number of miles during the period the vehicle is owned; driving in excess of that amount can result in deductions.

c. Prior Damages/condition adjustments

- Insurance companies sometimes reduce the insurance payout based on damage to the vehicle which was incurred prior to the total loss and which may have been subject to a prior insurance claim, and that was not repaired by the vehicle owner. A common example of this is when a consumer files a claim related to hail damage with their primary insurer. Insurance companies also sometimes reduce payouts if the condition of the vehicle is less than what would be expected for a vehicle in normal or average condition.

d. Storage/Towing

- Insurance companies sometimes reduce the insurance payout for storage and towing expenses incurred and not covered by the consumer's insurance policy.

e. Salvage Amount

- When the customer elects to keep totaled vehicle and the insurance company reduces the insurance proceeds.

14. As of November 2022, Respondent began implementation of an alert which visually appears on the claims adjudication screen to remind examiners of

specifics of Colorado Rule 8, as well as beginning January 2023 Respondent will perform a monthly audit of Colorado claims to ensure it does not recommend these deductions in the future.

15. Both parties wish to resolve this dispute in mutual agreement and without litigation. Accordingly, the parties agree as follows:

a. together with all related or affiliated entities, and its officers, directors, shareholders, managers, members, principals, subsidiaries, heirs, successors, and assigns, together with all other persons, corporations, associations, or other entities acting under the Respondent's direction and control, or in active concert or participation with Respondent, or by whom Respondent may be employed or contracted with who received actual notice of the AOD, hereby are prohibited and permanently enjoined from engaging in any conduct that violates Rule 8(e), including taking any deductions from GAP waivers not authorized by Rule 8(e), and shall immediately cease and desist from engaging in or committing such conduct, and shall not in the future engage in or commit conduct that violates Rule 8(e).

b. Respondent has voluntarily performed a self-audit of all transactions entered into by consumers in Colorado that Respondent administered from October 1, 2016 to the present. Respondent identified all consumers covered by this AOD, which received a GAP waiver during this time but did not receive a waiver of the full deficiency balance in accordance with Rule 8(e). For each consumer identified, Respondent voluntarily provided the Administrator a list identifying (i) the name and address of the consumer, (ii) the total amount of the refund, (iii) the specific charges refunded, and (iv) for each charge refunded the basis for the deduction. Respondent represents and affirms that the information contained in this list is true, accurate and complete. Respondent provided the list to the Administrator in Microsoft Excel. Respondent and Administrator shall maintain this list confidentially.

c. Respondent shall attempt to refund all unauthorized amounts erroneously withheld in violation of Rule 8(e) in accordance with paragraph 12(a). This implicates 65 consumers, and the total refund amount due and owing is \$64,031.56. This amount is payable to the Administrator, along with any interest thereon, in trust, to be used in the Administrator's sole discretion for attorneys' fees and costs, consumer restitution, if any, for consumer or creditor educational purposes, consumer credit or consumer protection enforcement efforts, or public welfare purposes. The Administrator elects, in lieu of making payment directly to the Administrator in the first instance, to direct

Respondent to attempt refunds directly to consumers, on behalf of the Administrator, any deductions it took from GAP waivers in violation of Rule 8(e). Any amount returned as undeliverable, unclaimed, uncashed, or undeposited shall revert to the Administrator

16. Respondent shall make the refunds, with interest, as follows:

a. Refunds. Respondent shall attempt to make any refunds due hereunder within 30 days after the Effective Date. Prior to issuing any refunds, Respondent shall update contact information, and use the most current information available. All refunds shall be made by check. If any refund is returned or not processed on the first attempt, Respondent shall exercise reasonable efforts and due diligence to re-attempt the refund for 120 days after the first attempted refund.

b. Transmittal Letter. Concurrently with any refunds sent by Respondent, Respondent shall send each consumer a letter, the form and contents of which has been pre-approved by the Administrator. The letter shall inform the consumer that the Respondent is cooperating with the Administrator, who works on behalf of the Colorado Attorney General in determining the amount of monies erroneously withheld from their GAP coverage in violation of Rule 8(e), and the Respondent is providing consumers with a refund for those amounts. The letter shall provide consumers with a point of contact to address consumers' questions and concerns. A template of the transmittal letter is attached as Exhibit A.

c. Proof of Refunds. Within 60 days after the Effective Date, Respondent shall provide the Administrator, if requested, with documentation reasonably acceptable to the Administrator that Respondent timely sent refunds to consumers, such as copies of checks. Additionally, Respondent shall update the list referenced in paragraph 16(b) updating any consumer contact information (mailing address, phone number, e-mail address), stating the date payment was issue, identifying the check number, the date the payments cleared, and identifying any payments sent that were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise.

d. Refunds Outstanding Beyond 150 Days. 150 days after the first attempted refund, all refund amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise, shall be paid to the Administrator.

17. 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, and to conduct a follow-up inspection upon reasonable notice to Respondent's counsel. The inspection must occur within one (1) year of the Effective Date, and shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this AOD.

18. All payments due the Administrator shall be deemed paid upon the Administrator's receipt of the payment. All such payments shall be by check made payable to the "Colorado Department of Law," and mailed to "Administrator, UCCC, Attn: Miriam Burnett, 1300 Broadway, 7th Floor, Denver, Colorado 80203.

19. This AOD fully resolve all of the issues between the Administrator and Respondent arising out of the particular issues, allegations, or charges raised by the Administrator as set forth herein and only those issues. This release does not apply to any GAP practices other than the specific benefits calculation issue described herein, and does not apply to other claims arising under Rule 8, including but not limited to, claims refunds owed under Rule 8(h). The Administrator releases Respondent, including any subsidiaries, officers, or employees, from any and all further investigation, claims, violations, allegations, fines, fees and penalties which accrued or may have accrued as a result of any consumer credit sale transaction entered into or administered by Respondent on or before the Effective Date.

20. Respondent's obligations under this AOD and all its exhibits are binding upon all of Respondent's officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order.

21. This AOD and its exhibits represent the entire agreement between the parties and supersede all prior agreements and understandings. No party is relying on any prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD or its exhibits. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD or its exhibits shall have any force or effect between the parties.

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

23. 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.

24. The parties agree that this AOD shall not be deemed to be, and may not be, argued to be offered or received, against Respondent as evidence of, or construed

as evidence of, any presumption, concession, or admission by Respondent, with respect to: (a) the truth of any fact alleged by the Administrator relating to the review or this AOD, other than paragraphs 1 through 3 regarding the jurisdiction of the Administrator, (b) the validity of any claim that has been or could have been asserted against Respondent in connection with the review or this AOD, (c) the deficiency of any defense that has been or could have been asserted by Respondent in connection with the review or this AOD, (d) any wrongdoing or liability by the Respondent in connection with the review or this AOD, (e) any fault, misrepresentation or omission with respect to any statement or written document approved or made by Respondent in connection with the review or this AOD, or (f) any liability, negligence, fault or wrongdoing as to Defendant in connection with the review or this AOD.

25. This AOD does not limit or affect the rights of Respondent against or with respect to any third party not a party to this AOD.

26. This AOD shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this AOD.

27. The parties shall bear their own costs with respect to this AOD, including attorneys' fees.

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

29. 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.

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AGREED AND STIPULATED TO BY:

ADMINISTRATOR, UCCC

By: *Kevin J. Burns*

KEVIN J. BURNS
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NATIONAL AUTO CARE CORP. D/B/A
FAMILY FIRST DEALER SERVICES

By: *Anton Wanderon*

ANTON WANDERON
Chief Executive Officer

Dated: 2-3-23

APPROVED AS TO FORM:

COUNSEL FOR RESPONDENT

By: *Deborah Burgi*

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EXHIBIT A

DATE

Customer Name
Address
City, State, zip

RE: GAP Waiver #:
Vehicle:
Date of Loss:

GAP Waiver Benefit Request #:
VIN:

Dear Customer:

We are writing regarding the GAP Waiver Benefit Request which you previously submitted for the above-referenced vehicle. Although National Auto Care Corporation* previously provided a claim payment for the loss, we recently audited that payment, and working in cooperation with the Colorado Attorney General and the Administrator of the Uniform Consumer Credit Code, we subsequently determined that you are eligible to receive an additional Gap Benefit payment relating to deductions that were incorrectly deducted from the original GAP benefit payout. Enclosed is a check which represents the additional payment, with interest.

Please cash the enclosed check within one hundred fifty (150) days, otherwise the money will be paid to the Colorado Attorney General, in trust.

If you have any questions about this additional payment, please contact Jared Behler, Director of Claims, at (800) 526-8678 or (614) 839-7646.

Sincerely,

Benefit Loss Department

**Administrative duties for the GAP Waiver program have been assigned to National Auto Care Corporation by the Administrator identified on the GAP Waiver.*