BEFORE THE ATTORNEY GENERAL AND
THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE
STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF JIM MORAN & ASSOCIATES, INC.

Respondent.

THIS ASSURANCE OF DISCONTINUANCE ("AOD") is made between the Attorney General of the State of Colorado ("Attorney General") and the Administrator (collectively, the "Administrator") of the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq*. ("UCCC") and Respondent Jim Moran & Associates, Inc. ("Respondent" or "JMA") 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") and the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq*. ("CCPA"). Pursuant to C.R.S. § 5-6-110, 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 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. The Administrator is a government official whose position is created by statute, and who works on behalf of the Attorney General. C.R.S. § 5-6-103. The Attorney General is authorized to enforce the CCPA. C.R.S. § 6-1-103.

3. Respondent is a foreign corporation with a principal office located at 350 Jim Moran Blvd., Deerfield Beach, Florida 33442.

4. The Administrator has jurisdiction over Respondent and the subject matter of this AOD under C.R.S. §§ 5-6-109 through 114 and C.R.S. § 6-1-101 *et seq*. 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. The AOD applies to any alleged unfair conduct committed by Respondent in Colorado. C.R.S. § 6-1-107.

5. The Administrator is engaged in an ongoing investigation of Guaranteed Automobile Protection ("GAP"). 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. GAP is often sold to Colorado consumers as an add-on to the financed sale of an automobile. Typically, auto dealers are the original creditors and sell GAP to consumers. Some consumers choose to finance GAP as part of an auto loan. Consumers and creditors typically contract for GAP in an addendum to the auto loan, which then becomes part of the auto loan. Many auto dealers assign the auto loan, along with any GAP coverage, to indirect lenders, including banks, credit unions, and sales finance companies.

7. Among other things, Respondent is a GAP administrator. In that role, it processes Colorado consumer claims for GAP Waivers. JMA does this on behalf of auto dealers, or if the auto loan is assigned, the assignee creditors. In processing GAP Waivers, Respondent calculates the amount of the waiver to be applied to the consumer's account and recommends certain deductions to creditors.

8. The Administrator contacted Respondent with concerns that it did not correctly calculate GAP Waiver payments or credits in compliance with Rule 8(e) because Respondent recommended certain deductions that were not specifically set forth in the rule. 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.

9. Respondent came forward and agreed to work with Administrator. Respondent reported that its calculation of the GAP Waivers to be applied to the accounts of Colorado consumers did not comply with Rule 8(e), as read by Administrator, for the entire duration of the Applicable Period.[1] Respondent

[1] The Applicable Period means November 1, 2016 to November 1, 2022.

represents that it altered its practices as of August 2021 to comply with Rule 8(e) as viewed by Administrator.

10. Respondent made the following deductions during the Applicable Period not specifically set forth in Colorado's Rule 8(e):

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

- GAP addenda limit eligible loans to one-hundred and fifty percent (150%) of the value of the vehicle at the time of purchase.

b. Excess Mileage Driven.

- Insurance companies sometimes reduce the insurance payout for vehicles driven in excess of an average number of miles.

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. A common example of this is hail damage. 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 insurance.

e. Salvage.

- Insurance companies sometimes reduce the insurance payout when the customer elects to keep totaled vehicle.

11. The Administrator additionally concludes that recommending the foregoing deductions violated the CCPA. C.R.S. § 6-1-105 (recklessly making a false representation about the benefits of services provided); C.R.S. § 6-1-105(rrr) (recklessly engaging in unfair, unconscionable, deceptive, deliberately misleading, or false acts or practices). Respondent does not admit to such violations but agrees to adjust its original claim calculations for the Applicable Period in accordance with paragraph 10 (a) – (e) above.

12. To calculate claims using only those deductions specifically authorized by Rule 8(e), the Administrator orders and the Respondent agrees 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 not explicitly permitted by Rule 8(e) (unless otherwise noted by Administrator and/or the UCCC Administrator in its September 12, 2022 Memorandum), 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 is not permitted by Rule 8(e), except as otherwise noted herein.

b. Respondent has voluntarily performed a self-audit of all transactions entered into by consumers in Colorado that Respondent administered for the Applicable Period. 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 as explicitly listed in Rule 8(e). For each consumer identified, Respondent voluntarily provided the Administrator a list identifying (i) the name and mailing 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 as outlined in paragraphs 10(a) to (e). 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.

c. Respondent shall attempt to refund amounts owed to consumers. The total refund amount due and owing to consumers is $1,655,124.78 to 1,999 consumers. 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 amount returned as undeliverable, unclaimed, uncashed, or undeposited shall revert to the Administrator as provided in paragraph 13(d).

13. Respondent shall make the refunds, as follows:

a. Refunds. Respondent shall attempt to make any refunds due hereunder within one hundred twenty (120) 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 ninety (90) 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 working with the Attorney General and Administrator to identify consumers owed additional GAP coverage as provided by Rule 8 and the CCPA, and Respondent is issuing refunds to consumers 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 one-hundred and fifty (150) days after the first attempted refund, Respondent shall provide the Administrator, if requested, with documentation reasonably acceptable to the Administrator showing that Respondent timely sent refunds to consumers, such as copies of checks and/or a check log illustrating what was sent. Additionally, Respondent shall update the list referenced in paragraph 12(b) updating any consumer contact information (mailing address), stating the date payment was issued, 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 One-Hundred and Twenty (120) Days. One-hundred and twenty (120) days after the first attempted refund, Respondent shall stop payment on outstanding refund checks, and pay to the Administrator within thirty (30) days the total amount of any and all refund amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise. Any amounts paid to the Administrator shall 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

14. 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 upon 10-days' written notice 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.

15. All payments due the Administrator shall be deemed paid upon the

Administrator's receipt of the payment. Respondent shall make one payment. Respondent may pay by check or an ACH payment. Payments by check shall be made payable to the "Colorado Department of Law," and mailed to "Administrator, UCCC, Attn: Kevin Burns and Miriam Burnett, 1300 Broadway, 6th Floor, Denver, Colorado 80203." All such payments are to be held, in trust, to be used in the Administrator's sole discretion for attorneys' fees and costs, consumer restitution, if any, and for consumer or creditor educational purposes, consumer credit or consumer protection enforcement efforts, or public welfare purposes.

16. This AOD fully resolves all 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 or the CCPA, including but not limited to, 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.

17. Respondent's obligations under this AOD 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.

18. 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 or its exhibits. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD shall have any force or effect.

19. 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.

20. 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.

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

22. 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.

AGREED AND STIPULATED TO BY:

RESPONDENT JIM MORAN & ASSOCIATES, INC.

DocuSigned by:
Scott Gunnell
By:_____
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SCOTT GUNNELL
Chief Operating Officer

DATE: 4/10/2023

COLORADO ATTORNEY GENERAL ADMINISTRATOR, UCCC

DocuSigned by:
Kevin Burns
By:_____
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KEVIN J. BURNS
Department of Law
Consumer Protection Section
Consumer Credit Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: (720) 508-6110
E-Mail: kevin.burns@coag.gov

DATE: 4/10/2023

APPROVED AS TO FORM:

RESPONDENT JIM MORAN & ASSOCIATES, INC.

DocuSigned by:
By:_____
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MARIA GUTTUSO
VP, General Counsel

DATE: 4/10/2023