

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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|--------------------------------------|---|-------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | No. 1:19-cv-02855 |
| GUARANTEED AUTO SALES, KELLY ANN |) | |
| WEST D/B/A GUARANTEED AUTO SALES, |) | |
| KELLY ANN WEST, and ROBERT CHESGREEN |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

CONSENT ORDER

1. This Consent Order (“Order”) is submitted jointly by the parties for the approval of and entry by the Court, to resolve the Complaint filed by the United States of America to enforce the Equal Credit Opportunity Act, 15 U.S.C. § 1691–1691f (“ECOA”), and its implementing regulations located at 12 C.F.R. Part 1002 (“Regulation B”). This Order fully resolves the United States’ claims that Defendants—a used car dealership in Glen Burnie, Maryland, and the dealership’s owner and manager—engaged in a pattern or practice of discrimination in credit transactions on the basis of race in violation of ECOA.

2. Specifically, the United States’ Complaint alleges that Defendants offered more favorable financing terms to white testers than to African American testers with similar credit characteristics on the same motor vehicles, including by allowing white testers to fund down payments in two installments when African American testers were not given that option, requiring larger down payments from African American testers than white testers, quoting higher biweekly payment amounts to African American testers on “Buy Here, Pay Here” retail installment sales contracts than to white testers, and making other statements to discourage

African American testers.

3. This Court has jurisdiction over the United States' claims under 28 U.S.C. §§ 1331 and 1345 and 15 U.S.C. § 1691e.

4. The United States and Defendants (collectively, "the Parties") have agreed that the claims against Defendants should be resolved amicably and without litigation. Therefore, the United States and Defendants consent to the entry of this Consent Order, as shown by the signatures below.

ACCORDINGLY, it is hereby ADJUDGED, ORDERED and DECREED:

I. GENERAL INJUNCTION

5. Defendants and their officers, agents, employees, representatives, successors, assigns, and all other persons in active concert or participation with them are hereby enjoined from engaging in any act, policy, or practice that discriminates on the basis of race in any aspect of a credit transaction, in violation of ECOA, 15 U.S.C. §§ 1691-1691f. This injunction includes, but is not limited to, the adoption, performance, or implementation of any policy, practice, or act that discriminates against or discourages African American borrowers. This Order further requires Defendants to take actions to remedy their alleged discrimination. Nothing in this Order will require Defendants to engage in unsafe or unsound credit transactions.

II. NON-DISCRIMINATORY POLICIES AND PROCEDURES

6. Defendants shall develop and implement a written policy designed to prevent discrimination and ensure compliance with ECOA. At a minimum, the policy should standardize procedures for all credit applicants ("Applicants") and reduce the discretion of individual decision makers in determining the terms and conditions of credit.

7. The written policy shall establish a standard procedure for collecting

applications and financial information, including examples of all forms, and describe any additional information or documentation that Defendants will require of Applicants as part of entering into a credit transaction for the purchase of a motor vehicle.

8. The written policy shall also standardize Defendants' procedures for determining what terms and conditions will be offered to customers to ensure that there is no disparity between customers on the basis of race or any other protected class. For example, the policy should set forth what income and other eligibility requirements apply to customers, how minimum down payment amounts and bi-weekly payments due from customers are calculated, whether down payments can be made in multiple installments and under what circumstances, and whether customers must purchase warranties as part of their financing terms. The provisions of this paragraph are intended to apply to "Buy Here, Pay Here" retail installment sales contracts and to third-party financing contracts to the extent that Defendants negotiate or influence any of the terms or conditions of those contracts.

9. The policy will also set forth what information will be provided to Applicants at the time of application to ensure that all Applicants receive standardized information about the credit process.

10. Finally, the written policy shall include a procedure for maintaining customer files that ensures retention of copies of all forms, information, and documents, whether electronic or paper, related to any aspect of the credit transaction. Each customer file should clearly indicate the form of financing, if any, including the creditor.

11. Before its implementation, the written policy outlined in this Section shall be provided to the United States for approval within ninety (90) days from the date of entry of this Order. Once the United States has approved these materials, Defendants must provide them to all of their principals, employees, or agents who participate in any way in the origination,

processing, underwriting, or servicing of retail installment sales contracts or other credit transactions within five (5) days.

III. NON-DISCRIMINATION NOTICE

12. Defendants shall post and prominently display in the location where financing applications are received a notice of non-discrimination, the content of which shall be substantially the same as Appendix A.

13. Defendants and any of their principals, employees, or agents who communicate with applicants regarding credit transactions shall provide to any Applicant a notice of non-discrimination that provides substantially the same information as is contained in Appendix A as early as practicable, but not later than the time of the credit application.

IV. TRAINING

14. Within ninety (90) days of the date of entry of this Order by the Court, Defendants, their principals, and any employees or agents who participate in any way in the origination, processing, underwriting, or servicing of credit transactions shall undergo training on the requirements of ECOA. The training shall be conducted by an independent, qualified third party. The United States shall approve the trainer and training curriculum in advance, and shall not unreasonably withhold such approval. During this training, each participant will receive training on the requirements of ECOA and his or her responsibilities to comply with its provisions.

15. At the conclusion of each training session, Defendants and any other attendees shall sign a statement acknowledging that he or she has attended the training required by paragraph 14. This statement shall be substantially in the form of Appendix B (Training Certification).

16. During the term of this Order, each newly designated or hired principal,

employee, or agent who participates in any way in the origination, processing, underwriting, or servicing of credit transactions shall review the training materials associated with the training conducted in paragraph 14 and complete the certification appearing in Appendix B within ten (10) days of beginning his or her designation or employment in that position.

17. Defendants shall bear all costs associated with the trainings described by paragraph 14.

V. COMPLIANCE MONITORING AND DOCUMENT RETENTION REQUIREMENTS

18. For the duration of this Order, Defendants shall retain all records that are the source of, contain, or relate to any of the information pertinent to their obligations under this Order, including, but not limited to, all customer records, both hard copy and electronic. Upon reasonable notice to counsel for Defendants, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, Defendants shall provide copies of such documents.

19. For the duration of this Order, Defendants shall notify the United States in writing within thirty (30) days of receipt of any complaint of racial discrimination against them, their employees or agents. Defendants shall also promptly provide the United States with all non-privileged information it may request concerning any such complaint. Within thirty (30) days of the resolution of any such complaint, Defendants shall advise the United States of such resolution. For purposes of this paragraph, a complaint shall mean a written communication alleging racial discrimination received directly by Defendants or forwarded to Defendants by any government agency or by the Better Business Bureau or similar consumer organization, an investigation of alleged racial discrimination initiated by any government agency, or the filing of suit alleging racial discrimination in any court.

20. Six (6) months after the date of entry of this Order, and every six (6) months thereafter for the duration of its term, Defendants shall submit a report to the United States describing the actions taken in compliance with the provisions of the Order. The reports shall include the following information:

- a. For each motor vehicle sold by Defendants during the reporting period and financed through a "Buy Here, Pay Here" retail installment sales contract or other credit transaction to the extent that Defendants negotiated or influenced any of the terms or conditions of those contracts: the customer's name, address, and telephone number; the date of the transaction; the retail price charged to the customer; tax, tag, title and any other dealer charges or fees; the down payment made by the customer (exclusive of tax, tag, title and other dealer charges or fees); whether the down payment was paid in more than one installment, and if so, how many installments; the date(s) the down payment was paid; and the creditor. Defendants may satisfy the obligations of this subparagraph by providing a copy of the Bill of Sale for each vehicle sold during the period so long as the Bill of Sale contains all of the preceding information;
- b. For each motor vehicle sold by Defendants and financed through a "Buy Here, Pay Here" retail installment sales contract during the reporting period: a copy of the contract;
- c. Copies of any signed Training Certifications (Appendix B) required by Section IV.

21. All notices or written submissions under this Order shall be sent by overnight delivery service to the following address,

Chief, Housing and Civil Enforcement Section
Attn: DJ# 188-35-44
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
4 Constitution Square
150 M St. NE
Washington, DC 20002

or at such other address or method as counsel for the United States may designate by notice to Defendants.

VI. ENFORCEMENT OF CONSENT ORDER

22. This Consent Order is effective immediately upon its entry by the Court.

23. The Court shall retain jurisdiction for the duration of this Order to enforce its terms, after which time the case shall be dismissed with prejudice.

24. This Order shall be in effect for a period of three (3) years from the date of its entry. The United States may move the Court to extend the duration of the Consent Order in the event of noncompliance, whether intentional or not, with any of its terms, or if it believes the interests of justice so require.

25. This Order shall be binding on Defendants, including all of their principals, officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with any of them, including any entities that may be created or operated by any of Defendants during the term of this Order for the purpose of motor vehicle sales. In the event Defendants seek to transfer, sell, or assign all or part of their interest in the Guaranteed Auto Sales dealership, and the successor(s) or assign(s) intend to carry on operation of Defendant Guaranteed Auto Sales, then as a condition of the transfer, sale or assignment, Defendants shall obtain the written accession of the successor(s) or assign(s) to any obligations remaining under this Order for the remaining term of this Order. If Defendants

cease operation of Guaranteed Auto Sales without transferring, selling, or assigning their interest in the dealership and are not otherwise engaged in the business of motor vehicle sales, upon notification to the United States, the provisions in paragraphs 6 through 21 of this Order shall no longer apply. Should any Defendants reenter the business of motor vehicle sales at any point during the original term of this Order that Defendant must notify the United States as set out in paragraph 21, and the provisions of this Order shall apply until the original term expires.

26. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by Defendants to perform in a timely manner any act required by this Order, or otherwise to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity. Remedies include, but are not limited to, findings of contempt, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees that may have been occasioned by the violation or failure to perform.

27. The United States may review compliance with this Order any time, including through testing of Defendants. Defendants agree to cooperate with the United States in any review of compliance.

28. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the Parties. The other provisions of this Order may be modified only by approval of the Court.

29. Nothing in this Order shall excuse Defendants' compliance with any currently or subsequently effective provisions of law or order of a regulator with authority over

Defendants that imposes additional obligations on Defendants.

VII. COSTS OF LITIGATION

30. Except as otherwise provided in paragraph 26, the Parties will bear their own costs and attorneys' fees associated with this litigation.

VIII. TERMINATION OF LITIGATION HOLD

31. The Parties agree that, as of the date of the entry of this Order, litigation is no longer "reasonably foreseeable" concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves the Parties of any other obligations imposed by this Order.

IT IS SO ORDERED.

RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE

Dated: July 2, 2020

Respectfully submitted,

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Respectfully submitted,

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Dated:

7/2/2020



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APPENDIX A

We do Business in Accordance with
Federal Fair Lending Laws

UNDER THE EQUAL CREDIT OPPORTUNITY ACT,
IT IS ILLEGAL TO DISCRIMINATE IN ANY
CREDIT TRANSACTION:

On the basis of race, color, national origin, religion, sex,
marital status, or age;

Because income is from public assistance; or

Because a right has been exercised under the Federal
Consumer Credit Protection Laws.

IF YOU BELIEVE YOU HAVE BEEN
DISCRIMINATED AGAINST, YOU SHOULD SEND
A COMPLAINT TO:

Consumer Financial Protection Bureau OR
P.O. Box 4503
Iowa City, Iowa 52244
<http://www.consumerfinance.gov/complaint>

U.S. Department of Justice
Civil Rights Division
Housing & Civil Enforcement Section
4 Constitution Square
150 M St. NE
Washington, DC 20530
<http://www.usdoj.gov/crt/housing>

APPENDIX B

TRAINING CERTIFICATION

I certify that on _____, I received training with respect to my responsibilities under the Equal Credit Opportunity Act as required by the Consent Order entered by the Court in *United States v. Guaranteed Auto Sales, et al.*, Case No. 1:19-cv-02855 (D. Md.). I have had the opportunity to have my questions answered. I understand my legal responsibilities not to discriminate under the Equal Credit Opportunity Act, and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date