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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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FILED

MAR 18 2009

Division of Consumer Affairs

By: Jeffrey Koziar
Deputy Attorney General
(973) 648-7819

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

IN THE MATTER OF

:
: Administrative Action
:

COMPASS DODGE, INC.

:

:
: **CONSENT ORDER**
:
:

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation into whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Regulations promulgated thereunder, N.J.A.C. 13:45A-1 et seq. (“CFA Regulations”), specifically the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-26A.1 et seq. (“MV Advertising Regulations”), and the Used Car Lemon Law, N.J.S.A. 56:8-67 et seq. (“UCLL”), and Regulations promulgated thereto, N.J.A.C. 13:45A-26F.1 et seq. (“UCLL Regulations”), have been or are being committed by Compass Dodge, Inc., as well as its owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors, assigns and/or independent contractors (collectively, “Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS the Respondent denies that it has committed any violation of the CFA, the CFA Regulations, the MV Advertising Regulations, the UCLL and/or the UCLL Regulations; and

WHEREAS the Division and Respondent (collectively, the “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) and for good cause,

IT IS on this 18th day of MARCH, 2009 **ORDERED AND AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is entered with the Division (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings:

2.1 “Advertise”, “Advertisement” or “Advertising” shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, commercial or any other medium. For purposes of the MV Advertising Regulations, “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.2 “Additional Consumer” shall refer to any Consumer who submits to the Division directly or through another agency, a written Consumer complaint concerning Respondent’s business practices after the Effective Date.

2.3 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.4 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.5 “CALA” shall refer to the county or municipal Consumer Affairs Local Assistance offices within the State.

2.6 “Clear and Conspicuous” or “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.7 “Consumer” shall refer to any Person, defined in accordance with N.J.S.A. 56:8-1(d), who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(e).

2.8 “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.9 “Represent” means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner

or means by which meaning might be conveyed. This definition applies to other forms of the word “Represent” including, without limitation, “Misrepresent.”

2.10 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges.

2.11 “Used Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26F.2.

2.12 “State” shall refer to the State of New Jersey.

3. BUSINESS PRACTICES AND INJUNCTIVE RELIEF

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, the CFA Regulations, the MV Advertising Regulations, the UCLL and the UCLI Regulations.

3.2 Respondent shall not Misrepresent Consumer credit information when submitting such information to lending institutions for the purpose of securing financing for Motor Vehicle purchases.

3.3 In its Advertisement of Used Motor Vehicles, Respondent shall Clearly and Conspicuously disclose any prior damage, as required by N.J.A.C. 13:45A-26A.7(a)(7).

3.4 In its Advertisement of Used Motor Vehicles, Respondent shall Clearly and Conspicuously disclose any prior use as required by N.J.A.C. 13:45A-26A.5(b)2.

3.5 In its Advertisement of Motor Vehicles, Respondent shall Clearly and Conspicuously include the statement required by N.J.A.C. 13:45A-26A.5(a)(2).

3.6 Respondent shall not Misrepresent the mechanical condition of a Used Motor Vehicle, in accordance with N.J.S.A. 56:8-68.

3.7 Respondent shall disclose, prior to sale, any material defect in a Used Motor Vehicle which is known to Respondent, in accordance with N.J.S.A. 56:8-68.

3.8 If Respondent has sold or offered for sale three (3) or more Used Motor Vehicles in the previous twelve (12) month period, Respondent shall collect an administrative fee of \$0.50 from each Consumer who purchases a Used Motor Vehicle and shall make yearly payments to the Division in the amount equal to the total sum of administrative fees collected during the preceding twelve (12) month period, as required by N.J.S.A. 56:8-80 and N.J.A.C. 13:45A-26F.6(a)-(b).

3.9 Respondent shall make every reasonable effort to provide all necessary title and registration documents to each Consumer within the time period proscribed by law, but no longer than twenty (20) days after the Consumer's receipt of temporary documentation.

3.10 Respondent shall post the Used Car Buyer's Guide on each Used Motor Vehicle offered for sale, in accordance with N.J.A.C. 13:45A-26A.9.

4. FUTURE CONSUMER COMPLAINTS

4.1 For a period of three (3) years from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints received by the Division or forwarded to the Division by any CALA office. The Division shall forward to Respondent the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof.

4.2 During this three (3) year period, the Division shall notify the Additional Consumers, in writing, of the following: (a) that the Additional Consumer complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within thirty (30) days; and

(c) the right to refer the Additional Consumer complaint to the ADR Unit for binding arbitration if Respondent disputes the Additional Consumer complaint and/or requested relief.

4.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondent shall send a written response to each Additional Consumer, with a copy to the following: The New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

4.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent's written response shall so inform the Additional Consumer. Respondent shall contemporaneously forward to such Additional Consumer the appropriate Restitution. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by certified check, money order or other guaranteed funds made payable to the Additional Consumer.

4.5 If Respondent disputes the Additional Consumer's complaint and/or requested relief, Respondent's written response shall include copies of all documents concerning Respondent's dispute of the complaint.

4.6 Within forty-five (45) days of Respondent's receipt of the Additional Consumer complaint, Respondent shall notify the Division as to whether such Additional Consumer complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer complaint has been resolved;

- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondent's written response was returned as undeliverable, the efforts Respondent had undertaken to locate the Additional Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer Complaint has been resolved, the Additional Consumer Complaint shall be deemed closed for purposes of this Consent Judgment

4.7 If within sixty (60) days of Respondent's receipt of the Additional Consumer complaint: (a) Respondent has not notified the Division that an Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer complaint has not been resolved; or (c) Respondent has notified the Division that the Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such Additional Consumer complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing the Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit A).

4.8 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against the Respondent. Unless otherwise specified in the arbitration award, Respondent shall

pay all arbitration awards within thirty (30) days of the arbitrator's decision. Respondent's failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this Consent Order.

4.9 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

4.10 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

5. SETTLEMENT JUDGMENT

5.1 The Parties have agreed to a Settlement Judgment in the amount of One Hundred Forty Two Thousand Five Hundred and 00/100 Dollars (\$142,500.00) to the Division (the "Settlement Judgment"). The Settlement Judgment comprises One Hundred Twenty Seven Thousand Five Hundred and 00/100 Dollars (\$127,500.00) as civil penalties pursuant to N.J.S.A. 56:8-13, and Twelve Thousand and 00/100 Dollars (\$12,000.00) as reimbursement of the Division's investigative costs pursuant to N.J.S.A. 56:8-11, and Three Thousand and 00/100 (\$3,000.00) as reimbursement of the Division's attorneys' fees, pursuant to N.J.S.A. 56:8-19.

5.2 Respondent shall pay Fifty Thousand and 00/100 Dollars (\$50,000.00) of the Settlement Judgment ("Settlement Payment") according to the following payment schedule: commencing on April 1, 2009, Respondent shall make ^{TEN (EK)} ~~twelve~~ payments of Five Thousand and 00/100 Dollars on the first day of each month until January 1, 2010.

5.3 For a period of one (1) year from the Effective Date, Ninety-Two Thousand Five Hundred and 00/100 Dollars (\$92,500.00) balance of the Settlement Judgment, which comprises

civil penalties pursuant to N.J.S.A. 56:8-13, shall be suspended and automatically vacated at the end of that period, provided:

- (a) Respondent complies with the restraints and conditions set forth in this Consent Order;
- (b) Respondent does not engage in any acts or practices in violation of the CFA, the CFA Regulations, the MV Advertising Regulations, the UCLL and the UCL1 Regulations; and
- (c) Respondent makes the payment of Fifty Thousand and 00/100 Dollars (\$50,000.00) as required under Section 5.2.

5.4 In the event Defendant fails to comply with Section 5.3, the entire suspended amount of Ninety-Two Thousand Five Hundred and 00/100 Dollars (\$92,500.00) shall be immediately due and payable upon notice by the Plaintiffs.

5.5 All payments in satisfaction of the Settlement Judgment shall be made by a certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Jeffrey Koziar, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street-5th Floor
P.O. Box 45029
Newark, New Jersey 07101

5.6 Upon making the Settlement Payment described in Section 5.2, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the New Jersey Attorney General's Office pursuant to the terms herein.

6. GENERAL PROVISIONS

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Division and Respondent.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon Respondent as well as its principals, owners, officers, directors, agents, managers, employees, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any persons who have authority to control or who, in fact, control and direct its business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

6.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the CFA Regulations, the MV Advertising Regulations, the UCLL and/or the UCLL Regulations. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

7. RELEASE

7.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified in Section 5.2, the Division hereby agrees to release Respondent from any and all civil claims or consumer related administrative claims, to the extent

permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA, the CFA Regulations, the MV Advertising Regulations, the UCLL and/or the UCLL Regulations arising from the Investigation, as well as the matters addressed in this Consent Order (the "Released Claims").

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that if Respondent engages in any acts or practices in violation of this Consent Order as well as the CFA, the CFA Regulations, the MV Advertising Regulations, the UCLL and/or the UCLL Regulations, Respondent shall be liable for enhanced civil penalties pursuant to N.J.S.A. 56:8-13.

9. COMPLIANCE WITH ALL LAWS

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- (a) Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by such laws, regulations or rules; or
 - (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have

pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

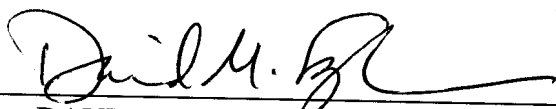
Jeffrey Koziar, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondent:

Eric Keltz, Esq.
The Major Automotive Companies, Inc.
43-40 Northern Blvd.
Long Island, New York 11101

IT IS ON THE 15th DAY OF MARCH, 2009 SO ORDERED.

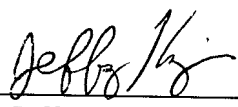
ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: 
DAVID M. SZUCHMAN, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:


ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: 
Jeffrey Koziar
Deputy Attorney General

Dated: March 16, 2009

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-7819


FOR RESPONDENT

By: 
Eric Keltz, Esq.

Dated: MARCH 10, 2009

The Major Automotive Companies, Inc.
43-40 Northern Blvd.
Long Island, New York 11101

COMPASS DODGE, INC.

By:  _____

Dated: MARCH 10, 2009