

THE CITY OF NEW YORK
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS, TRIALS DIVISION

NYC DEPARTMENT OF CONSUMER AFFAIRS,

Petitioner,

-against-

USA 1 AUTO SALES, INC.,
D&A GUARANTEED AUTO SALES, INC.,
LENDEN USED CAR SALES, INC.,
LINDEN USED CARS, INC.,
MOSULEI GROUP, INC.,
YACOUB SULEIMAN,
MOHAMMED SULEIMAN,
ABDEL a/k/a ABEDKARIM SULEIMAN,
CLOVER COMMERCIAL CORP.,
CREDIT ACCEPTANCE CORP., and
WESTLAKE SERVICES, LLC.

Respondents.

NOTICE TO RESPONDENTS

OATH Index No. _____

License Nos. 1426468
1408302
2005375
1273231
2030245

To the above-named Respondents, **TAKE NOTICE THAT**

YOU HAVE A RIGHT TO FILE AN ANSWER with the Office of Administrative Trials and Hearings (“OATH”). Under section 1-24 of Title 48 of the New York City Rules, your answer must be filed within (a) eight days of service, if service was by personal delivery, or (b) 13 days of service, if service was by mail.

YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY OR OTHER REPRESENTATIVE. If you choose to be represented by an attorney or other representative, your attorney or representative must file a notice of appearance with OATH before appearing before OATH.

YOUR FAILURE OR YOUR AUTHORIZED REPRESENTATIVE’S FAILURE TO APPEAR AT THE HEARING, CONFERENCE, OR TRIAL may result in a declaration of default and a waiver of the right to a hearing or other disposition against you.

OATH’S RULES OF PRACTICE are published in Title 48 of the New York City Rules. Copies of OATH’s rules are available at OATH’s offices at 100 Church Street, New York, NY 10007 and on OATH’s website, <http://www.nyc.gov/oath>.

CITY OF NEW YORK
OFFICE OF ADMINISTRATIVE TRIALS & HEARINGS, TRIALS DIVISION

**NYC DEPARTMENT OF CONSUMER
AFFAIRS,**

Petitioner,

-against-

**USA 1 AUTO SALES, INC.,
D&A GUARANTEED AUTO SALES, INC.,
LENDEEN USED CAR SALES, INC.,
LINDEN USED CARS, INC.,
MOSULEI GROUP, INC.;** and

**YACOUB SULEIMAN,
MOHAMMED SULEIMAN,
ABDEL a/k/a ABEDKARIM SULEIMAN,**
individually, and as officers and owners of USA 1
Auto Sales, Inc., D&A Guaranteed Auto Sales, Inc.,
Lenden Used Car Sales, Inc., Linden Used Cars,
Inc., and Mosulei Group, Inc.; and

**CLOVER COMMERCIAL CORP.,
CREDIT ACCEPTANCE CORP.,
WESTLAKE SERVICES, LLC d/b/a
WESTLAKE FINANCIAL SERVICES,** as
assignees of retail instalment sales contracts from
USA 1 Auto Sales, Inc., D&A Guaranteed Auto
Sales, Inc., Lenden Used Car Sales, Inc., and Linden
Used Cars, Inc.

Respondents.

PETITION

OATH Index No. _____

License Nos. 1426468
1408302
2005375
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The New York City Department of Consumer Affairs (“DCA”) brings this action against Respondents USA 1 Auto Sales, Inc., D&A Guaranteed Auto Sales, Inc., Lenden Used Car Sales, Inc., Linden Used Cars, Inc., Mosulei Group, Inc., Yacoub Suleiman, Mohammed Suleiman, Abdel a/k/a Abedkarim Suleiman; and their assignees, Clover Commercial Corp., Credit Acceptance Corp., and Westlake Services, LLC, and alleges as follows:

INTRODUCTION

1. USA 1 Auto Sales, Inc. (“USA1”), D&A Guaranteed Auto Sales, Inc. (“D&A”), Lenden Used Car Sales, Inc. (“Lenden”), and Linden Used Cars, Inc. (“Linden”) (collectively, the “Corporate Entities”) are all licensed second-hand automobile dealers owned and operated by Yacoub, Mohammed and Abdel Suleiman (collectively, the “Owners”). Since at least 2013, the Owners and Corporate Entities have engaged in a widespread, pervasive scheme to deceive New York City consumers about essentially every aspect of the second-hand automobile purchase process.

2. Corporate Entities and Owners (collectively, “Dealers”) begin by widely advertising deceptively low prices for second-hand automobiles. When skeptical consumers call to confirm the advertised prices, the Dealers assure them that the advertised prices are indeed correct. However, when consumers go to the dealerships to purchase the cars, the Dealers quote or charge a price that is thousands of dollars more than the advertised prices.

3. Dealers then take a series of steps to deceive consumers about the condition of the second-hand automobiles. First, Dealers fail to perform the safety inspections mandated by New York State Law prior to the sale of any automobile. Second, Dealers prevent consumers from discovering defective conditions by discouraging test-drives, while also attesting to the quality of the automobiles. Finally, despite having failed to perform the required safety inspections, Dealers falsely certify that automobiles are safe for operation and fraudulently affix New York State inspection stickers to automobiles after the cars have been sold. As a result of Dealers conduct, consumers are often left with unsafe or damaged automobiles, endangering themselves and the public at large.

4. Dealers also use a variety of tactics to improperly conceal or misrepresent disadvantageous terms of the sales and financing agreements, such as interest rates, finance charges and required payments. Even worse, Dealers often negotiate one price for an automobile, but surreptitiously write a higher price in the sales contract.

5. Dealers effectuate the sale and financing of automobiles through retail instalment sales contracts (“RIC”), which include purchase terms (make and model of vehicle, purchase price, taxes, etc.) and payment terms (number of payments, amount of payments, interest rate, etc.). Although RICs are agreements between consumers and Dealers, consumers have very little actual negotiating power. The RIC is effectively negotiated by Dealers and the finance company to which the RIC is assigned moments after execution. Following assignment, Dealers receive payment from the finance company, and the finance company obtains the right to receive principal and interest payments from the consumer.

6. As required by federal law, all of the RICs used by Dealers contain the following language: “Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.” Pursuant to this provision, each finance company assigned an RIC becomes liable to the consumer for the unlawful sales and financing practices attributable to Dealers.

7. Here, the finance companies implicated by Dealers are Clover Commercial Corp. (“Clover”), Credit Acceptance Corp. (“Credit Acceptance”), and Westlake Services, LLC d/b/a Westlake Financial Services (“Westlake”) (collectively, “Assignees”). DCA contends that, not only did Assignees enable, encourage, and profit from Dealers’ deceptive and illegal practices, they also played a significant role in the overall sales transaction by determining consumer

eligibility for financing, dictating the interest rate, and drafting the terms and conditions of each RIC. Moreover, by charging annual percentage rates (“APR”) as high as 24.99% on already overpriced second-hand automobiles, Assignees compounded their profits, as well as the problems faced by unwitting consumers.

8. [REDACTED] is one such consumer. In February 2016, [REDACTED] saw an advertisement on Respondent Lenden’s website¹ offering a 2007 Volvo XC90 for \$6,900. She called ahead, and was told that the Volvo was actually located at Respondent D&A’s lot. In reliance on this information, [REDACTED] traveled from [REDACTED] [REDACTED] to Brooklyn to examine the Volvo. When [REDACTED] arrived at D&A, a salesperson informed her that the actual price of the Volvo was \$12,900 – almost double the advertised price.

9. After convincing [REDACTED] to purchase the car in spite of the falsehood, D&A’s finance manager rushed her through the paperwork, at one point telling her that if she did not sign all of the papers quickly, the transaction would not be complete before the bank closed, and [REDACTED] would lose her \$2,200 down payment. The finance manager did not give [REDACTED] [REDACTED] a copy of the RIC, but represented (falsely, it turned out) that the finance company, here, Credit Acceptance, would mail it to her.

10. After many weeks of persistence, [REDACTED] obtained a copy of the RIC and discovered that D&A had raised the price an additional \$1,650, to \$14,550, more than double the advertised price, and that Credit Acceptance had charged her an APR of 23.99%, bringing the total cost of the Volvo to \$26,019.60.

11. Finally, [REDACTED] discovered that the Volvo had severe mechanical problems that caused the car to shake, which only became evident after she began driving on the highway

¹ Lindenedcars1.com.

back to New Haven. D&A refused to take the Volvo back, but offered to repair it. On the trip back to New Haven after D&A's "repair," the Volvo shook so badly that [REDACTED] was forced to stop for emergency services.

12. In sum, Dealers advertised the car at one price; quoted a price almost double what was advertised; charged a price even higher than that quoted; and negotiated a deal with an outrageous interest rate, for additional revenue of \$13,201.83. Now, [REDACTED] is left paying \$26,019.60, including finance charges, for a 2007 Volvo with over 100,000 miles on it and severe mechanical problems that she cannot afford to fix. [REDACTED] struggles to come up with her \$388.66 payment every month, and the RIC's five-year term means her struggle will continue until March 2021. If, by some miracle, she does not default on the RIC, her car payments will likely outlive her car. Credit Acceptance, to whom the RIC was assigned moments after the financing transaction was complete, will reap the benefits of [REDACTED] struggles by receiving either the fraudulently obtained monthly payments or the car, which will be forfeited if the payments cannot be maintained.

13. Together, the Dealers and Assignees' business practices have saddled consumers like [REDACTED] with broken-down automobiles they cannot afford to repair and loans they cannot afford to repay. Adding insult to injury, many of the automobiles sold by Dealers are repossessed by Assignees, leaving consumers with ruined credit, thousands of dollars of debt, and nothing to show for it except stress and aggravation.

14. In addition to the deceptive advertising and financing practices described above, Dealers engage in a number of other illegal practices at great cost to consumers, and great benefit to themselves and Assignees, including: (a) failing to clearly and conspicuously post the total selling price of second-hand automobiles offered for sale; (b) omitting from bills of sale and

contracts required disclosures and information concerning the automobiles; (c) concealing from consumers the precise terms of financing agreements, including interest rates and other charges; (d) falsifying consumers' income and rent information on credit applications; (e) misrepresenting to consumers the terms of sale, including information about vehicle histories and warranties; (f) selling or offering to sell second-hand automobiles without the required Federal Trade Commission ("FTC") Buyers Guide; (g) failing to maintain and open to DCA inspectors complete records of second-hand automobiles sold or otherwise disposed of; (h) failing to satisfy a judgment obtained by a consumer in New York City Civil Court in connection with the sale of a defective automobile; and (i) failing to fully respond to four subpoenas issued by DCA.

15. Dealers' deceptive and illegal conduct violates the New York City Consumer Protection Law ("CPL") and the laws and rules governing New York City licensed second-hand automobile dealers ("SHADs"). Assignees, in reaping the rewards of Dealers' conduct, also assumed the risk of litigation arising out of that conduct.

16. By this proceeding, and as against Dealers, DCA seeks restitution for aggrieved consumers, revocation of Dealers' second-hand automobile licenses, civil penalties and such other relief as authorized by section 2203(h) of Chapter 64 of the New York City Charter ("Charter"), the New York City Administrative Code ("NYC Code"), and Title 6 of the Rules of the City of New York ("6 RCNY" or "Rules"); and as against Assignees, DCA seeks consumer restitution pursuant to the terms of the RICs and New York State Personal Property Law § 302(9).

PARTIES

Petitioner

17. DCA is a mayoral agency of the City of New York responsible for protecting and enhancing the daily economic lives of New Yorkers to create thriving communities. DCA is charged with the protection and relief of the public from deceptive, unfair and unconscionable practices, and for the maintenance of standards of integrity, honesty, and fair dealing among persons engaging in licensed activities. Charter section 2203(h) and Chapter 1 of the NYC Code authorize DCA to enforce the licensing laws and rules governing SHADs and the CPL.

Respondent Corporate Entities

18. Respondent USA1 is a New York Domestic Business Corporation licensed to conduct business as a SHAD at 12047 Flatlands Avenue, Brooklyn, New York under DCA license number 1426468, and has been so licensed since April 25, 2012.

19. Respondent D&A is licensed to conduct business as a SHAD at 2407 Linden Boulevard, Brooklyn, New York under DCA license number 1408302, and has been so licensed since September 19, 2011. On August 31, 2016, the New York State Department of State (“NYS DOS”) dissolved D&A by proclamation for failure to file and/or pay taxes or fees for two consecutive years.

20. Respondent Linden is licensed to conduct business as a SHAD at 670 Powell Street, Brooklyn, New York under DCA license number 1273231, and has been so licensed since November 26, 2007. On June 29, 2016, NYS DOS dissolved Linden by proclamation for failure to file and/or pay taxes or fees for two consecutive years.²

² Both D&A and Linden have continued to operate despite NYS DOS’ dissolution of their corporations.

21. Respondent Lenden is a New York Domestic Business Corporation licensed to conduct business as a SHAD at 12047 Flatlands Avenue, Brooklyn, New York under DCA license number 2005375, and has been so licensed since March 28, 2014.

22. Respondent Mosulei Group, Inc. (“Mosulei”) is a New York Domestic Business Corporation licensed to conduct business as a SHAD at 670 Powell Street, Brooklyn, New York under DCA license number 2030245, and has been so licensed since November 9, 2015.

Respondent Officers and Owners

23. Respondents Yacoub Suleiman, Mohammed Suleiman, and Abdel Suleiman are Dealers’ owners, officers and managers who exercise dominion and control over the day-to-day business operations of the Corporate Entities, including management of personnel, advertising, sales, and financing of second-hand automobiles.

24. Owners and most of Dealers’ employees work for at least two Corporate Entities. Owners each claim management or ownership roles at multiple Corporate Entities and have overlapping responsibilities among the various entities.

25. According to Dealer’s own organizational charts:

- a. Mohammed Suleiman is: (a) President and sole owner of USA1, responsible for oversight of all business operations; (b) a USA1 salesperson; (c) sole owner and Manager of D&A, responsible for oversight and management of business operations, including all sales and financing; and (d) President of Mosulei.
- b. Yacoub Suleiman is: (a) President and sole owner of Linden and Lenden, responsible for oversight of all of the businesses’ operations; and (b)

manager of Lenden, responsible for sales and financing, customer retention, and employee hiring and monitoring.

- c. Abdel Suleiman is President of D&A, responsible for oversight of all business operations, and a Lenden salesperson.

Assignees

26. Respondent Clover is a New York domestic business corporation licensed by the New York State Department of Financial Services (“DFS”) as a sales finance company. Clover’s principal place of business is 2650 Merrick Road, Bellmore, New York 11710.

27. Respondent Credit Acceptance is a Michigan Business Corporation authorized to conduct business in the State of New York as a foreign business corporation, and licensed by DFS as a sales finance company. Credit Acceptance’s principal place of business is 25505 West 12 Mile Road, Southfield, Michigan 48034.

28. Respondent Westlake is a California Limited Liability Company authorized to conduct business in the State of New York as a foreign limited liability company, and licensed by DFS as a sales finance company. Westlake’s principal place of business is 4751 Wilshire Blvd., Suite 100, Los Angeles, California 90010.

FACTS

I. DEALER OPERATIONS

29. Dealers operate as a common enterprise, commingling all facets of the several Corporate Entities, rendering most distinctions impossible. Sale transactions are difficult to decipher, as the documentation often names multiple Dealers. For example:

- a. [REDACTED] purchased a 2006 Acura MDX at Linden; the RIC lists USA1 as the seller; her down payment was charged to Linden; but the title was transferred to [REDACTED] from D&A.
- b. [REDACTED] purchased a 2010 Dodge Charger at Linden; the RIC lists USA1 as the seller; but title was transferred to [REDACTED] from Linden.
- c. [REDACTED] purchased a 2008 BMW X3 at Linden; the RIC lists Linden as the seller; the warranty identifies D&A as the dealer; and the title was transferred to [REDACTED] from D&A.

30. The Corporate Entities are not only indistinguishable from each other, but they are indistinguishable from the Owners. In fact, the Owners have continued to conduct business as “D&A Guaranteed Auto Sales, Inc.” and “Linden Used Cars, Inc.” even though the corporations were dissolved by NYS DOS last year. Furthermore, the Owners sow confusion about which of them is an owner or officer of the Corporate Entities. For example:

- a. On D&A’s application for a DCA SHAD license, Mohammad Suleiman represented to DCA, in a sworn statement, that he is D&A’s sole owner and officer. At the same time, on D&A’s state dealer registration application, Abdel Suleiman represented himself as D&A’s President, owning 90% of D&A’s stock, and stated that Mohammed Suleiman was the Secretary/Treasurer, holding 10% of the stock.
- b. Mohammed Suleiman is USA1’s sole owner and Director according to its Articles of Incorporation. However, in its DCA license application, Yacoub Suleiman claims that he is USA1’s sole owner and President, and in its

Dealer Servicing Agreement with Credit Acceptance, Abdel Suleiman claims to be USA1's President.

II. BACKGROUND ON AUTOMOBILE FINANCING

A. Dealers' Sales

31. Dealers sell hundreds of second-hand automobiles each year to low-income, poor-credit, and often cash-poor consumers. Dealers offer these consumers the opportunity to pay for their automobiles over time through a mechanism known as the "time-price" doctrine. Similar to interest on a loan, the time-price doctrine permits sellers of personal property, including Dealers, to charge an increased credit price in exchange for receiving payments over time, rather than collecting the entire "cash price" up front. The price increase, known as the "time-price differential" or "credit charge," compensates the seller for the risk that the buyer will default, and for the interest that the seller otherwise could have earned on an up-front cash payment.

32. Although the "time-price differential" is functionally similar to interest on a loan, New York State law treats it differently. Specifically, loans are subject to New York state usury laws, which forbid lenders from charging "interest on the loan or forbearance of any money . . . at a rate exceeding [16% annually]." See N.Y. Gen. Oblig. Law § 5-501, N.Y. Banking Law § 14-a(1). New York state law, however, imposes no such limitation on the "time-price differential" or "credit charges." In fact, since 1980, the New York Motor Vehicle Retail Instalment Sales Act ("MVRISA"), the statute that regulates the sale of cars on credit, expressly allows dealers to finance transactions at whatever rate the seller and buyer agree upon. See N.Y. L. 1980, c. 883, §§ 73, 74. As a result, Dealers regularly charge consumers an APR of 24% -- just one percent below New York's criminal usury interest rate. See N.Y. Penal Law § 190.40.

B. Retail Instalment Contracts

33. Dealers memorialize these financing arrangements in RICs, which are immediately assigned to the finance company that extended the credit. Notably, although RICs are agreements between Dealers and buyers, the terms are dictated by the finance companies. Indeed, the finance companies draft the agreements, provide templates to the dealers, and take assignment of the RICs immediately upon execution. In return for an assignment, a finance company typically makes a payment to dealer, after which the finance company receives the full stream of payments over time from the consumer. Finance companies profit handsomely from this arrangement, given the nearly criminal, often fraudulently obtained annual percentage rates with which dealers and finance companies saddle consumers.

34. A list of RIC and Assignees that are the subject of this petition is attached hereto as Exhibit A.

C. Finance Company/Assignee Liability

35. As is relevant to this Petition, RICs contain Federal Truth-In-Lending-Disclosures, such as the APR, finance charges, amount financed, monthly payment amount, number of payments, down payment amount, total monthly payments, and other financing terms. Significantly, RICs also contain the following “Holder Rule” disclosure, as mandated by the Code of Federal Regulations:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES PURSUANT HERETO OR WITH THE PROCEEDS HERETO. RECOVERY HEREUNDER BY THE DEBTOR SHALL BE LIMITED TO AMOUNTS PAID BY THE DEBTOR HEREUNDER.³

³ In order to make the buyer whole, the Holder Rule permits the buyer to withhold future payments, and recover funds already paid under the RIC. See FTC Advisory Opinion to [REDACTED] and [REDACTED]

16 CFR § 433.2. Failure to include this disclosure in an RIC is an “unfair or deceptive act within the meaning of [the Federal Trade Commission Act].” Id. All of the RICs executed by Dealers and assigned to Assignees contain this required provision.

36. The Holder Rule corrects what the FTC believes to be an anomaly – that is, the creditor’s ability to assert his right to be paid by the consumer “despite misrepresentation, breach of warranty or contract, or even fraud on the part of the seller, and despite the fact that the consumer’s debt was generated by the sale.” 40 Fed. Reg. 53506, 53507 (Nov. 18, 1975). One of the underlying tenets of the Holder Rule is that “the creditor is always in a better position than the buyer to return seller misconduct costs to sellers, the guilty party.” Id. at 53524. Thus, the Holder Rule levels the playing field between the consumer and the finance company by rendering the finance company responsible for the behavior of the seller in connection with the sales transaction from which the finance company now benefits.

37. Consistent with the Holder Rule, New York State law subjects the assignee of an RIC to all claims and defenses the buyer has against the seller arising from the sale. To wit, the MVRISA provides:

No retail instalment contract shall contain any provision by which the buyer agrees not to assert against an assignee a claim or defense arising out of the sale or require or entail the execution of any note or series of notes, which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller. The assignee of a retail instalment contract or obligation shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee’s liability under this subdivision shall not exceed the amount owing

██████ (May 3, 2012) at 4. For example, a consumer who is awarded \$3,000 in restitution and still owes \$2,000 under the RIC would be permitted to withhold payment of the \$2,000 and affirmatively recover \$1,000 from the assignee. Id. Assignees are not liable for Dealers’ civil penalties.

to the assignee at the time the claim or defense is asserted against the assignee.

Id. § 302(9).

38. Accordingly, by operation of the Holder Rule, State law, and the RICs themselves, Assignees are liable for whatever relief is available to consumers as against Dealers.

III. DEALERS' DECEPTIVE AND ILLEGAL CONDUCT RELATED TO SAFETY

A. Dealers Sell or Offer for Sale Second-Hand Automobiles Without Legally Mandated Safety Inspections

39. In order to prevent the sale of defective automobiles, dealers are required to inspect every second-hand automobile for safety, and affix a certificate of inspection (“inspection sticker”) to the automobile’s front windshield in accordance with New York Vehicle and Traffic Law (“VTL”) § 301 prior to offering it for sale. 6 RCNY 2-103(g)(1)(i).

40. Dealers sell second-hand automobiles without conducting the legally required inspections, without regard for the automobiles’ fitness for use on public highways, and thus, without regard for public safety. In fact, Dealers sell consumers dangerous and defective second-hand automobiles that cost the consumers thousands of dollars in repair and towing costs, citations for traffic violations, and time away from work, school, or family. The defects are not trivial. Consumers have purchased automobiles with steering and brake problems; that have broken down on the highway; and that have caught on fire. Exhibit B identifies 17 such automobiles.

41. In some instances, Dealers’ blatant disregard for the law was express. For example, on January 15, 2016, Dealers sold a 2007 Saturn Sky Roadster to [REDACTED] without inspecting it, advising [REDACTED] that she needed to get the car inspected herself.

42. On March 24, 2016, DCA inspectors observed that at least 16 second-hand automobiles offered for sale by D&A did not have New York State inspection stickers affixed to them.

43. In other instances, Dealers have represented that the legally mandated inspections have occurred on the same day as the sale, notwithstanding that the vehicles had been advertised or offered for sale for days, weeks, or months before the sale date. Thus, to the extent Dealers undertook inspections at all, they did not occur *prior to offering the automobile for sale*, as mandated by 6 RCNY 2-103(g)(1)(i).

44. Between January 2013 and April 2016, Dealers sold or offered for sale approximately 5,000 second-hand automobiles, most of which had been advertised or offered for sale to consumers long before the occurrence of any actual sale. Dealers did not perform the legally mandated inspections prior to offering these vehicles for sale. Exhibit C identifies 92 such vehicles.

B. Dealers Lie About Performing Legally Mandated Safety Inspections

45. Dealers have affixed inspection stickers to automobiles on the day of sale even though such automobiles never left the lot while the consumer was present. Moreover, when Dealers have affixed inspection stickers, the stickers were typically provided by Montauk Auto Body, Inc. (“Montauk Auto”),⁴ an entity owned by Yacoub Suleiman and which had its New York State Department of Motor Vehicles (“DMV”) license to operate an inspection station suspended indefinitely for conducting fraudulent inspections, in violation of VTL § 303(e)(3).

⁴ Montauk Auto is located at the same address as Respondent Linden, and held a license to operate an inspection station (Facility No. 7104496) from 2007 until November 2, 2015, when the license was suspended.

46. Dealers have certified at least twelve second-hand automobiles as having passed inspection when, in fact, they had defects that would have precluded them from passing a bona fide inspection, such as faulty brakes, unsafe emissions, illegally tinted windows, and misaligned wheels. See Exhibit B.

47. For example, when [REDACTED] test-drove a Nissan Pathfinder at Linden, its engine malfunction indicator light (“MIL”) was illuminated.⁵ The salesperson assured her it would turn off eventually, and Linden certified the Pathfinder as inspected by Montauk Auto that same evening. The Pathfinder’s MIL turned back on while [REDACTED] was driving it home. She took the Pathfinder to AutoZone the next morning, where mechanics identified numerous problems, including a misfiring engine and a “gross leak” in the evaporative emission control system. These defects would have prevented the Pathfinder from passing a bona fide inspection.

C. Dealers Fail to Certify That Automobiles are Roadworthy and Fail to Provide Legally Mandated Notices

48. In connection with each sale, Dealers must provide the consumer with: (a) a bill of sale that includes a certification that the automobile is in a safe condition at the time of sale (“Roadworthy Certification”), and (b) an “Important Notice to Buyer” explaining consumers’ right to repairs if the automobile proves not roadworthy. See VTL § 417; 6 RCNY § 2-103(g)(1)(i)-(g)(1)(ii).

49. The Roadworthy Certification must state the following: “If this motor vehicle is classified as a used motor vehicle, the dealer named above certifies that the entire vehicle is in condition and repair to render, under normal use, satisfactory and adequate service upon the

⁵ Emissions inspections performed pursuant to VTL § 301 require the inspector to confirm that the MIL, also known as the “check engine” light, is *not* illuminated. See 15 NYCRR § 79.24(i), Procedure 9a.

public highway at the time of delivery.” 15 NYCRR 78.13; see also VTL § 417; 6 RCNY 2-103(g)(1)(i).

50. Although Dealers’ form retail purchase agreement contains the Roadworthy Certification, Dealers rarely provide consumers with the retail purchase agreements, and thus fail to comply with the law.

51. The “Important Notice to Buyer” must also be included in the sales contract and must read:

IMPORTANT NOTICE TO BUYER

(A) STATE LAW REQUIRES THAT SELLERS OF SECOND HAND CARS CERTIFY IN WRITING TO THE BUYER THAT EACH CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(B) THIS CERTIFICATION IS A GUARANTEE THAT THE CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(C) YOU HAVE A RIGHT TO REQUEST THE DEALER TO REPAIR OR TO PAY IN FULL FOR REPAIRS OF ANY UNSAFE CONDITION IN THE CAR WHICH DOES NOT COMPLY WITH THIS CERTIFICATION.

(D) THIS BUSINESS IS LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, (INSERT THE DEPARTMENT’S CURRENT ADDRESS), COMPLAINT PHONE: (212) (INSERT THE DEPARTMENT’S CURRENT TELEPHONE NUMBER).

6 RCNY § 2-103(g)(1)(ii).

52. Notably, Dealers’ sales contracts do not contain this required notice.

53. Exhibit C identifies 42 second-hand automobiles that were sold by Dealers without the certification that they were roadworthy, and 86 second-hand automobiles that were sold without the “Important Notice to Buyer.”

D. Dealers Lie About the Roadworthiness of Second-Hand Automobiles Sold or Offered for Sale

54. Dealers certified at least seven second-hand automobiles as roadworthy that were, in fact, not roadworthy due to defects like faulty brakes, leaking oil, unsafe emissions, illegally tinted windows, and worn out tires. See Exhibit B.

55. For example, on August 13, 2015, USA1 sold [REDACTED] [REDACTED] a 2008 Dodge Caliber, which was certified as roadworthy, for a total sale price of \$15,744.96, including finance charges. Less than 30 days later, the Dodge's transmission failed, leaving [REDACTED] [REDACTED] and her family stranded on the Verrazano Narrows Bridge. Dealers compounded a bad situation by instructing [REDACTED] [REDACTED] to lie about the date of the breakdown to her third-party repair service provider, so Dealers could avoid responsibility for the repairs under New York's Lemon Law. See NY Gen. Bus. Law § 198-b. [REDACTED] [REDACTED] refused to lie, and her claim was subsequently denied. The Dodge then spent three of the next four months out-of-service while Dealers purportedly attempted to repair it. The car is still in such poor condition that [REDACTED] [REDACTED] uses it only when absolutely necessary.

IV. DEALERS' DECEPTIVE AND ILLEGAL CONDUCT RELATED TO VEHICLE PRICING

A. Dealers Falsely Advertise the Prices of Automobiles Offered for Sale and Fail to Post Prices on the Vehicles Offered for Sale at Their Lots

56. Dealers offer for sale and advertise thousands of second-hand automobiles each year. The advertisements run for as a little as a few days to as long as several months.

57. Dealers' primary means of advertising their automobiles is on their own websites, as follows:

- a. USA1 – <http://usa1nyc.com>;
- b. D&A – <http://dandaguaranteedautosales.com>; and
- c. Lenden – <http://www.lindenusedcars1.com> (no longer active).

58. Dealers also advertised vehicles on Montauk Auto's website,⁶ and on various third-party websites, such as Cars.com and Craigslist.

59. To attract consumers, Dealers advertise second-hand automobiles at prices far below what they actually charge for those vehicles, and Dealers refuse any attempt by consumers to purchase vehicles for the advertised prices. For example:

- a. On or about March 12, 2014, [REDACTED] [REDACTED] son found an ad on D&A's website for a 2009 Infiniti G37, offered for sale at \$9,600. Skeptical, [REDACTED] [REDACTED] called D&A and was quoted the same price of \$9,600. As a result, [REDACTED] [REDACTED] husband and son drove 30 miles from [REDACTED] [REDACTED] to D&A, where they were told the actual price of the car was \$16,000.
- b. On or about May 15, 2015, [REDACTED] saw an ad on cars.com for a 2006 Ford Escape, offered for sale at USA1 for \$3,499. [REDACTED] called USA1 and was quoted a price of \$3,499. As a result, [REDACTED] drove to USA1 the next day, where he was told that actual price of the car was \$6,800.

60. On March 24, 2016, DCA conducted an inspection of Dealers, seeking to confirm the prices Dealers advertised on the internet. DCA inspectors inquired about eight automobiles; for seven of the vehicles, Dealers quoted prices far in excess of the advertised prices, and asserted that the eighth vehicle had just been sold.

61. Dealers have offered for sale many other cars for prices greater than the advertised or quoted price. A list of second-hand automobiles that Dealers sold or offered for sale for more than the advertised or quoted price is attached hereto as Exhibit D.

⁶ Located at <http://www.powellservices.com> (no longer active). Like Montauk Auto, Powell Services, Inc. is owned by Yacoub Suleiman and operated at 670 Powell Street.

62. Dealers' bait and switch advertising is aided by their failure to post prices on vehicles offered for sale on their lots. The net effect is utter confusion on the part of consumers, who are forced to rely upon Dealers' oral price quotes, which are made only after Dealers have assessed both the consumer and the circumstances of the sale.

63. Also notably absent from the cars offered for sale on Dealers' lots – and compounding Dealers campaign of failing to inform, or misinforming the consumer – are the legally mandated FTC Buyers Guides. The FTC Buyers Guide gives consumers important purchasing and warranty information, like: (a) a list of major defects that may occur in used vehicles; (b) the types of warranties that apply, if any, and what they mean; and (c) questions to ask the dealer about the car before leaving the lot. See 16 C.F.R. § 455.2. The Buyers Guide is incorporated into all second-hand automobile contracts. See 16 C.F.R. § 455.3(b).

64. On February 12, 2016, March 24, 2016, and August 4, 2016, D&A failed to post prices on second-hand automobiles offered for sale on its lot. On March 17, 2016, May 5, 2016, September 16, 2016, and December 3, 2016, USA1 failed to post prices on certain second-hand automobiles offered for sale on its lot.

65. On March 24 and August 4, 2016, D&A failed to post FTC Buyers Guides on at least 26 (both days combined) second-hand automobiles offered for sale on its lot. See Exhibit E.

B. Dealers' "Bait and Switch" Prices in Sales Documents

66. In addition to false advertising, failing to post proper notices, and bait and switch pricing, Dealers also pad the prices orally quoted to consumers when they draft the sales contracts. Dealers conceal the increased prices – which include exorbitant interest rates – by rushing consumers through the paperwork, physically obscuring important terms during the signing process, and evading consumers' questions. Dealers also fail to provide consumers with

copies of the sale and financing documents at the time of sale, instead promising to mail copies to the consumer. Many consumers never receive the documents, and those who persist in asking are told to contact the finance company. In this way, Dealers ensure that by the time consumers realize the full extent of what has occurred, Dealers no longer own the contract and have moved on to their next victim. Examples of this behavior abound.

67. [REDACTED] saw a 2007 Saturn Sky Roadster advertised at usa1nyc.com for \$5,000. [REDACTED] traveled 80 miles from [REDACTED] to USA1, where she was told that the car actually cost \$12,000. Dealers convinced [REDACTED] that she could build her credit by making a \$5,000 down payment and paying off the remaining \$7,000 with \$100 every two weeks. [REDACTED] was not told, and had no idea, that she would be charged interest on the \$7,000. [REDACTED] was told that copies of the sales documents were not available because the transaction had to be processed first. Weeks later, upon receiving the RIC, [REDACTED] discovered USA1 had: (a) raised the price of the automobile *again*, from \$12,000 to \$14,500, (b) added a \$395 document fee, and (c) added finance charges. Thus, [REDACTED], who intended to make a one-time \$5,000 cash purchase, ended up on the hook for \$18,714.14.

68. Dealers quoted [REDACTED] a price of \$8,000 for a 2004 Nissan Pathfinder Armada, surreptitiously wrote \$12,999 on the RIC, and then charged her an additional \$1,730 for an extended service plan that she had already expressly declined.

69. Linden's finance manager hurried [REDACTED] through the process of signing documents for the purchase of a 2006 Acura MDX, stating "the bank is closing," "we're closing," and "we have to call the bank right now." After the signing, Linden refused to provide [REDACTED] a copy of the RIC. When [REDACTED] finally obtained a copy of the RIC from Assignee Westlake, she discovered that Linden had added \$2,300 to the pre-finance sale price.

70. [REDACTED] purchased a 2008 Dodge Caliber from Dealers, for which she believed she was paying the advertised price of \$5,000. [REDACTED] was not supplied with transaction documentation at the time of the purchase. Two days later, Dealers gave her an unsigned RIC showing a cash price of \$9,909.81, and an unsigned credit application showing her rent as \$100 per month, when it was actually \$789.81 per month.

71. Dealers told [REDACTED] that a warranty was included in the \$11,000 price he paid for a Volkswagen Touareg. [REDACTED] never received copies of the sales documents or warranty. It was only after being shown a copy of the RIC by DCA that [REDACTED] discovered he had been charged an additional \$800 on the price of the car, as well as \$1,530 for the warranty.

72. Dealers failed to give copies of documents signed by the nine consumers listed in Exhibit F, Table 1, despite requests by those consumers that they be given the documents.

73. Exhibit F, Table 2 identifies 16 consumers from whom Dealers concealed material terms and important information contained in sales and financing documents.

V. DEALERS' DECEPTIVE AND MISLEADING CONDUCT RELATED TO ORAL AND CONTRACTUAL PROMISES

74. Dealers' deceptive conduct is not limited to misrepresentations about the price and condition of their automobiles. Dealers also misrepresent, mislead and/or lie about other important information about the vehicles they sell and offer for sale – to the detriment of the consumer.

75. For example, Dealers sold [REDACTED] a 2010 Mercedes Benz C-Class with a false dashboard vehicle identification number ("VIN") in order to conceal that the car was stolen. The New Jersey State Police subsequently confiscated the Mercedes, and arrested [REDACTED]

for possessing a motor vehicle with an altered VIN. Without transportation, both [REDACTED] and his wife were forced to drop out of school.

76. Similarly, Dealers concealed from consumer [REDACTED] that the 1999 BMW 3 Series sold to her for \$5,120 had a salvage title, and Dealers failed to disclose to [REDACTED] that the 2010 Dodge Charger sold to her for \$18,000 had previously been used as a rental car.

77. [REDACTED] was denied a test drive of the 2001 BMW X5 that he was attempting to purchase at USA1. The salesperson claimed that he had misplaced the keys, but assured [REDACTED] that he had driven the BMW himself and knew it to be in good condition. [REDACTED] stepped out to discuss the matter with his wife and when he returned, was told by the salesperson that the BMW had been added to [REDACTED] insurance, so now [REDACTED] had to buy the car. Having been denied a test drive, it was not until after [REDACTED] bought the BMW that he learned it had damaged tires, a transmission leak, and numerous other defects. USA1 refused to repair the problems or cancel the sale.

78. Dealers told [REDACTED] that his purchase came with a warranty included in the price that covered “all repairs except flat tires.” When [REDACTED] needed to replace the vehicle’s steering wheel column and control unit, Dealers refused to make the repairs. Ultimately, the warranty provider informed [REDACTED] that the repairs he needed were not covered. He still does not know if this is true because although Dealers promised to send him the warranty documents, they never did. It was only when DCA showed [REDACTED] a copy of the RIC that he discovered he had been charged \$11,800 for the Volkswagen, and an additional \$1,530 for the useless warranty.

79. Similarly, Dealers represented to ██████████ that the price of her 2006 Acura MDX included a warranty, and gave her a copy of a document purporting to explain her coverage. Dealers, however, subsequently refused to make repairs to the Acura, claiming it had been sold “as is.”

VI. DEALERS’ OTHER DECEPTIVE AND MISLEADING CONDUCT

A. Dealers Manipulate Financing Terms by Misrepresenting Down Payments

80. Dealers increase the sale prices of automobiles by many thousands of dollars and then misrepresent the down payment in order to reach financing terms that will maximize profitability for the Dealers.⁷ For example:

- a. Dealers increased the base price of the 2003 Toyota Corolla sold to ██████████ by \$4,450, then misrepresented on the RIC that she had made a \$2,500 down payment when in fact she put down \$1,500.
- b. Dealers increased the base price of the 2004 Nissan Pathfinder sold to ██████████ by \$1,999, then misrepresented on the RIC that she had made a \$2,000 down payment, when in fact, Dealers entered into a \$1,000 *deferred* down payment agreement with her.
- c. Dealers increased the base price of the 2007 Volvo sold to ██████████ by \$7,650, then misrepresented on the RIC that she had made a \$2,700 down payment, when she had paid only \$2,200. Further, D&A told ██████████ to lie if Credit Acceptance inquired about the amount of the down payment.

⁷ Notably, these all involved RICs assigned to Credit Acceptance.

B. Dealers Acted as a Broker for Formula 1 Auto Imports, Inc., an Unlicensed Second-hand Automobile Dealer, and Illegally Waived Warranties

81. Dealers acted as a broker or agent for Formula 1 Auto Imports, Inc. (“Formula 1”), which is not licensed by DCA as a dealer in second-hand automobiles.⁸ Acting as Formula 1’s agent in the sale of second-hand automobiles to [REDACTED] and [REDACTED], Dealers misleadingly executed sales documents as if the transactions had occurred in New Jersey when, in fact, both transactions occurred in Brooklyn. Compounding the illegality of the transaction, Dealers represented to [REDACTED] and [REDACTED] that New Jersey’s lemon law applied to the sales. Dealers then compelled them to waive the New Jersey warranties, and purchase the automobiles “as is.” In fact, New York law applied, pursuant to which is it illegal to sell a car “as is.”⁹ See NJ Stat. Ann. § 56: 8-73; NY VTL § 417; 6 RCNY § 2-103(G)(1)(iii).

C. Dealers Failed to Pay a Judgment Obtained by a Consumer

82. On October 13, 2016, consumer [REDACTED] obtained a judgment of \$2,490 against USA1 in the Small Claims Part of the Civil Court of the City of New York, Kings County (Index No. [REDACTED]). Dealers have refused to pay the judgment, claiming that it is “fake.”

D. Dealers Failed to Maintain Adequate Records

83. New York City laws and rules requires that Dealers keep complete, permanent records, commonly referred to as “Police Books,” of every second-hand automobile purchased,

⁸ Pursuant to section 2-103 of the Rules, “[a]ny licensee who acts as a broker, agent, or for the account of another person, or participates in any way, in the sale of a second-hand automobile, will be held responsible for such sale as if he were the principal.”

⁹ Even if these sales had occurred in New Jersey, Dealers were prohibited from waiving the lemon law warranty because (a) the lemon law can be waived only for automobiles with over 60,000 miles on them (the automobile sold to [REDACTED] had was under at the time 60,000 miles on it at the time of sale); and (b) the waiver must be in exchange for a lower price (both [REDACTED] and [REDACTED] paid more than the advertised price). See NJ Stat. Ann. § 56: 8-73.

sold or otherwise disposed of. Police Books must include a description of each automobile, the VIN number, and the manner in which the automobile was removed from the premises, including the name, address, date of birth, and driver's license number of the person who removes it, and the destination to which the automobile is being removed.

84. A review of Dealers' Police Books revealed 628 automobiles recorded merely as "returned to wholesaler," with no other identifying information.

85. Dealers sold the 31 automobiles listed in Exhibit G, Table 1 without recording the purchase and sale in their Police Books.

86. Dealers were unable, or illegally refused, to produce records for the 26 automobiles listed in Exhibit G, Table 2, despite a lawful request from DCA, making it impossible for DCA to locate them in their Police Books.

87. On March 24, 2016, both USA1 and Lenden were unable, or illegally refused, to make their Police Books available to a DCA inspector.

E. Dealers Failed to Respond to Department Subpoenas

88. On March 24, 2016, DCA served Dealers with five subpoenas (one each to USA1, Linden, Lenden, Mosulei, and D&A) requesting documents concerning Dealers' business practices and conduct as licensees. Although Dealers responded to several requests, Lenden, USA1 and D&A failed to comply fully with the subpoenas, refusing to produce numerous documents without legal basis.

89. Particularly, Dealers refused to provide DCA with *any* documents concerning the automobiles and consumers listed in Exhibit H – documents they are legally required to maintain and produce upon demand.

90. On November 2, 2016, DCA served USA1 with a supplemental subpoena requesting documents concerning an offer by USA1 on its website for free vacations for consumers. USA1 failed to respond to the subpoena.

F. Dealers Failed to Sufficiently Document Automobiles Accepted as Trade-ins.

91. Dealers accepted three automobiles, identified in Exhibit F, Table 3, as trade-ins without including in the corresponding sales contracts the amount credited for the trade-in, and the year, make, model and VIN of the trade-in vehicle.

G. Dealers Failed to Include Their DCA License Numbers on Printed Matter

92. In connection with the sale of the 67 second-hand automobiles listed in Exhibit I, Dealers failed to list the applicable DCA license number on either the retail purchase agreement or the RIC.

VIOLATIONS

COUNT ONE

*Engaging in deceptive trade practices, in violation of
NYC Code § 20-700
(142 Violations)*

93. NYC Code § 20-700 prohibits “any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts.”

94. NYC Code § 20-701(a) defines a deceptive trade practice as “[a]ny false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services, or in the extension of consumer

credit or in the collection of consumer debts, which has the capacity, tendency or effect of deceiving or misleading consumers.”

95. NYC Code § 20-701 provides that deceptive trade practices include, but are not limited to, the following:

(1) representations that goods or services have sponsorship, approval, accessories, characteristics, . . . uses, benefits, or quantities that they do not have; the supplier has a[n] . . . approval [or a] status . . . that he or she does not have; . . . or, goods or services are of a particular standard, quality, grade, style or model, if they are of another;

(2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive; . . .

(4) offering goods or services with intent not to sell them as offered; . . .

(7) stating that a consumer transaction involves consumer rights, remedies or obligations that it does not involve.

96. Dealers committed at least seven violations of NYC Code § 20-700 by falsely representing in retail purchase agreements that “the entire vehicle is in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery.” See Exhibit B.

97. Dealers committed at least twelve violations of NYC Code § 20-700 by falsely certifying that second-hand automobiles had been inspected in accordance with VTL § 301 when they had not. See Exhibit B.

98. Dealers committed at least 81 violations of NYC Code § 20-700 by making false statements in connection with the sale of at least 81 second-hand automobiles. Specifically, Dealers offered for sale at least 81 second-hand automobiles with the intent not to sell them as offered by: (a) falsely stating the prices of second-hand automobiles on their websites, and (b)

quoting prices for second-hand automobiles in person that were not the actual selling price. See Exhibit D.

99. Dealers committed at least two violations of NYC Code § 20-700 by falsely stating on an RIC that [REDACTED] had agreed to purchase a \$1,730 extended service plan that she had expressly declined, and telling [REDACTED] that the price of his warranty was included in the price of his car, then surreptitiously charging him an additional \$1,530.

100. Dealers committed at least three violations of NYC Code § 20-700 by lying about down payments on RICs for [REDACTED], [REDACTED] and [REDACTED]

101. Dealers have a duty to disclose when an automobile offered for sale has been used as a rental car. See VTL § 417-a. Dealers committed at least one violation of NYC Code § 20-700 when they failed to disclose to [REDACTED] that the automobile she purchased had been a rental car.

102. Dealers have a duty pursuant to disclose when a second-hand automobile has a salvage title. See DMV Regulations § 78.13(k). Dealers committed at least one violation of NYC Code § 20-700 when they failed to disclose to [REDACTED] that the automobile she purchased had a salvage title.

103. Dealers committed at least one violation of NYC Code § 20-700 by lying to [REDACTED] about the VIN on his 2001 Mercedes C-Class.

104. Dealers committed at least one violation of NYC Code § 20-700 by adding a 2001 BMW X5 to [REDACTED] automobile insurance policy without his knowledge or consent, then lying to him about his options.

105. Dealers committed at least one violation of NYC Code § 20-700 by adding an extended service plan to [REDACTED] RIC without her knowledge or consent, and

without providing her any documents concerning the plan, such as the identity of the provider or how to file a claim.

106. Dealers committed at least three violations of NYC Code § 20-700 by misrepresenting the scope of warranties to [REDACTED], [REDACTED], and [REDACTED] and then refusing to make repairs or reimburse these consumers for repairs.

107. Dealers committed at least two violations of NYC Code § 20-700 by misrepresenting to [REDACTED] and [REDACTED] that New Jersey's lemon law, not New York's, applied to the second-hand automobiles purchased by them, and that such warranty could be waived.

108. Dealers committed at least one violation of NYC Code § 20-700 by lying about [REDACTED] monthly rent on a credit application.

109. Effective July 12, 2015, 6 RCNY § 5-75(a) made it "a deceptive trade practice for purposes of section 20-701 of the administrative code for any seller to sell or offer to sell any used automobile without posting an FTC Buyers Guide as required under section 455.2 of title 16 of the code of federal regulations."

110. Dealers committed at least 26 violations of NYC Code § 20-700 by selling or offering to sell 26 second-hand automobiles without posting an FTC Buyers Guide. See Exhibit E.

COUNT TWO

*Selling or offering for sale second-hand automobiles that have not been inspected in accordance with § 301 of the VTL and certified in accordance with § 417 of the VTL, in violation of 6 RCNY § 2-103(g)(1)(i)
(134 Violations)*

111. Section 2-103(g)(1)(i) of the Rules states, "No dealer shall sell or offer for sale to a person other than another dealer a second-hand automobile unless such second-hand

automobile has been inspected in accordance with §301 of the Vehicle and Traffic Law and certified in accordance with § 417 of the Vehicle and Traffic Law.”

112. Section 301 of the VTL requires that “every motor vehicle sold or transferred for use on the public highways of this state by a dealer . . . must be inspected [for safety and emissions] and bear a valid certificate or certificates of inspection prior to delivery to the purchaser or transferee.”

113. Section 417 of the VTL and section 78.13(b) of the DMV Rules require that dealers provide each retail buyer with a bill of sale which contains, among other things, a notice on its face in at least ten point type reading, “If this motor vehicle is classified as a used motor vehicle, the dealer named above certifies that the entire vehicle is in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery.” 15 NYCRR § 78.13(b).

114. Dealers committed at least 134 violations of 6 RCNY § 2-103(g)(1)(i) by selling or offering for sale to a person other than another dealer a second-hand:

- a. 92 second-hand automobiles that had not been inspected in accordance with VTL § 301 prior to being offered for sale; and
- b. 42 second-hand automobiles that had not been certified in accordance with VTL § 417.¹⁰

COUNT THREE

*Failing to include the “Important Notice to Buyer” in contracts for the sale of second-hand automobiles, in violation of 6 RCNY § 2-103(g)(1)(ii)
(86 Violations)*

115. Section 2-103(g)(1)(ii) of the Rules states, in relevant part: “After January 31, 1971, all contracts for sale of second-hand automobiles shall contain the following provisions, in

¹⁰ See, 15 NYCRR § 78.13.

type which is 10 point or larger in scale, on that face of the contract on which the buyer's signature is affixed:

IMPORTANT NOTICE TO BUYER

(A) STATE LAW REQUIRES THAT SELLERS OF SECOND HAND CARS CERTIFY IN WRITING TO THE BUYER THAT EACH CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(B) THIS CERTIFICATION IS A GUARANTEE THAT THE CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(C) YOU HAVE A RIGHT TO REQUEST THE DEALER TO REPAIR OR TO PAY IN FULL FOR REPAIRS OF ANY UNSAFE CONDITION IN THE CAR WHICH DOES NOT COMPLY WITH THIS CERTIFICATION.

(D) THIS BUSINESS IS LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, (INSERT THE DEPARTMENT'S CURRENT ADDRESS), COMPLAINT PHONE: (212) (INSERT THE DEPARTMENT'S CURRENT TELEPHONE NUMBER).

116. Dealers committed at least 86 violations of 6 RCNY § 2-103(g)(1)(ii) by failing to include the "Important Notice To Buyer" disclosure in the contracts for the sale of second-hand automobiles executed with the consumers identified in Exhibit C.

COUNT FOUR

*Selling second-hand automobiles for more than the price advertised, cited, quoted, or marked thereon, in violation of 6 RCNY § 2-103(i)
(66 Violations)*

117. Section 2-103(i) of the Rules states, "The selling price of an automobile by a licensed second-hand dealer shall be price advertised, cited, quoted, or marked thereon It shall be a violation of this regulation for any licensee to exact a service charge, house commission or any such like assessment above the selling price of the car."

118. Dealers committed at least 66 violations of 6 RCNY § 2-103(i) by selling second-hand automobiles for more than the advertised, cited, quoted, or listed price. See Exhibit D.

COUNT FIVE

*Failing to clearly and conspicuously post the total selling price of each second-hand automobile offered for sale, in violation of NYC Code § 20-271(b)(1)
(7 Violations)*

119. NYC Code § 20-271(b)(1), which was effective September 15, 2015, requires dealers in second-hand automobiles to clearly and conspicuously post the total selling price, including fees, but exclusive of all taxes and fees for securing a registration or certificate of title, of each second-hand automobile offered for sale by means of a sign on the dashboard of each such automobile or by means of a sign at the point of display of each such automobile.

120. D&A and USA1 committed at least seven violations of NYC Code § 20-271(b)(1) by failing to clearly and conspicuously post the total selling price some second-hand automobiles offered for sale on February 12, March 17, March 24, May 5, August 4, September 16, 2016, and December 3, 2016.

COUNT SIX

*Failing to provide consumer with copies of documents signed by the Consumers upon request, in violation of 6 RCNY § 5-32(f)
(9 Violations)*

121. Section 5-32(f) of the Rules requires that “[u]pon request, a seller must provide a consumer with a copy of any document related to the sale which was signed by the consumer.”

122. Dealers committed at least ten violations of 6 RCNY § 5-32(f) by failing to provide, upon request, documents related to the sale of second-hand automobiles to the following consumers: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

COUNT SEVEN

*Failing to acquaint consumers with the precise terms the recommended finance company is entitled by law to charge, in violation of 6 RCNY § 2-103(b)
(16 Violations)*

123. Section 2-103(b) of the Rules requires that “[i]f financed by a finance company recommended by the dealer, the dealer must first acquaint the purchaser with the precise terms which such finance company is entitled by law to charge, including nature of collateral, interest rate, and other charges, if any.”

124. Dealers committed at least 16 violations of 6 RCNY § 2-103(b) by concealing terms from the following consumers: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

COUNT EIGHT

*Allowing a person not licensed as a dealer in second-hand automobiles to sell or offer for sale at or from Dealers’ licensed premises second-hand automobiles that were not Dealers’ property, in violation of 6 RCNY § 2-103(j)
(2 Violations)*

125. Section 2-103(j) of the Rules states, in relevant part, “No licensee shall allow or permit any person not licensed as a dealer in second-hand automobiles to sell or offer for sale at or from the licensee’s place of business any second-hand automobile, unless such automobile is the property of the licensee.”

126. Dealers committed at least two violations of 6 RCNY § 2-103(j) by engaging in or allowing unlicensed SHAD activity on Dealers’ licensed premises. Specifically, Dealers allowed an unlicensed dealer, Formula 1, to sell second-hand automobiles owned by Formula 1 to [REDACTED] and [REDACTED] on Dealers’ business premises.

COUNT NINE

*Including terms in a contract for sale of a second-hand automobile which purport to limit the dealer's responsibility under § 417 of the VTL, in violation of 6 RCNY § 2-103(g)(1)(iii)
(2 Violations)*

127. Section 2-103(g)(1)(iii) of the Rules states, “No dealer shall include terms in a contract for sale of a second hand automobile to a buyer other than another dealer which purport to limit the dealer’s responsibility under section 417 of the Vehicle and Traffic Law or under this regulation. Impermissible limitations shall include, but not be limited to, sale of the automobile ‘as is,’ with a disclaimer of warranties”

128. Dealers committed at least two violations of 6 RCNY § 2-103(g)(1)(iii) by including in contracts for the sale of second-hand automobiles sold to [REDACTED] and [REDACTED] [REDACTED] terms stating that the automobiles were being sold “as is.”

COUNT TEN

*Selling a motor vehicle with a motor or serial number that has been covered as to be effectually concealed, in violation of 6 RCNY § 2-103(c)
(1 Violation)*

129. Section 2-103(c) of the Rules states, “No automobile dealer licensed by this Department shall sell or offer for sale a motor vehicle or motorcycle, the motor or serial number of which shall have been so covered as to be effectually concealed.”

130. Dealers committed at least one violation of 6 RCNY § 2-103(c) by concealing the actual VIN of the 2001 Mercedes C-Class sold to [REDACTED]. Dealers also removed the federal decal.

COUNT ELEVEN

*Failing to pay an outstanding judgment to a consumer within 30 days,
in violation of 6 RCNY § 1-15
(1 violation)*

131. Section 1-15 of the Rules requires licensees to “satisfy any outstanding judgment against him or her that has been obtained by a consumer and that relates to activities for which a license is required: (a) within thirty (30) days from the date of entry of the judgment”

132. Dealers violated 6 RCNY § 1-15 of the Rules by failing to pay, within 30 days, a \$2,490 small claims court judgment obtained by consumer [REDACTED] against USA1 arising out of the sale of a defective 2008 Dodge Caliber.

COUNT TWELVE

*Failing to maintain a complete permanent record of every second-hand automobile sold
or otherwise disposed, in violation of NYC Code § 20-273(d)
(685 violations)*

133. NYC Code § 20-273(d) requires dealers in second-hand automobiles to keep a complete permanent record (“Police Book”) of “every secondhand automobile it sells or otherwise disposes of, including a description of the automobile, the VIN number, the manner in which the automobile was removed from the premises, including the name, address and date of birth of the person who removes it, the driver’s license number of such person, and the destination to which the automobile is being removed.”

134. Dealers violated NYC Code § 20-273(d) by failing to maintain a complete permanent record of at least 685 second-hand automobiles sold or otherwise disposed of. Specifically, Dealers failed to keep such permanent records in that:

- a. Dealers sold the 31 automobiles identified in Exhibit G, Table 1 to consumers without recording the purchase and sale in their Police Book(s);

- b. Dealers failed to keep a permanent record of the 26 automobiles identified in Exhibit G, Table 2 by refusing to provide documents sufficient to locate such records, even though DCA requested such documents; and
- c. Dealers disposed of 628 second-hand automobiles without identifying the person who removed the automobile, or the automobile's destination by merely writing "returned to wholesaler" in their Police Book(s).

COUNT THIRTEEN

*Failing to open Police Books to the inspection of DCA inspectors,
in violation of NYC Code § 20-273(e)
(2 violations)*

135. NYC Code § 20-273(e) requires that a second-hand automobile dealers' Police Books and other records "be open to the inspection of any police officer, the commissioner or any department inspector . . ."

136. Dealers committed two violations of NYC Code § 20-273(e) on March 24, 2016, by being unable or refusing to open their Police Books to DCA inspectors at USA1 and Lenden's licensed premises.

COUNT FOURTEEN

*Failing to respond to four Department subpoenas duces tecum,
in violation of 6 RCNY § 1-14
(4 violations)*

137. Section 1-14 of the Rules requires licensees to "appear in person at the Department to answer a . . . subpoena duces tecum served upon that licensee."

138. Dealers committed three violations of 6 RCNY § 1-14 by failing to comply with three subpoenas duces tecum issued to USA1, Lenden and D&A on March 24, 2016.

139. Dealers committed one violation of 6 RCNY § 1-14 by failing to respond to a supplemental subpoena duces tecum issued to USA1 on November 2, 2016.

COUNT FIFTEEN

*Failing to include the allowance on car traded-in, and description by year, make, motor, and serial numbers of same, in violation of 6 RCNY 2-103(a)(4)
(3 Violations)*

140. Section 2-103(a) of the Rules requires that “[e]very sale [of a second-hand automobile] must be evidenced by a bill of sale, receipted invoice, or other evidence of transferring title, which must contain the following information . . . (4) Allowance on car traded in, if any, and description by year, make, motor and serial numbers of same.”

141. Dealers committed three violations of 6 RCNY § 2-103(a)(4) by failing to include in a bill of sale the required information concerning automobiles that were traded-in by [REDACTED], [REDACTED], and [REDACTED].

COUNT SIXTEEN

*Failing to include DCA license numbers on printed matter, in violation of 6 RCNY § 1-05
(67 violations)*

142. Section 1-05 of the Rules states: “Any advertisement, letterhead, receipt or other printed matter of a licensee must contain the license number assigned to the licensee by [DCA]. The license number must be clearly identified as a [DCA] license number and must be disclosed and disseminated in a lawful manner.”

143. Dealers committed 67 violations of 6 RCNY § 1-05 by failing to include DCA license numbers on retail purchase agreements and retail instalment sales contracts. See Exhibit I.

RELIEF SOUGHT

WHEREFORE, the Department respectfully requests that OATH:



1. find Dealers and Owners failed to maintain the standards of integrity, honesty and fair dealing required of licensees;
2. find Dealers and Owners permanently unfit to hold Department licenses;
3. revoke the second-hand automobile dealer licenses issued to USA1, D&A, Linden, Lenden and Mosulei;¹¹
4. declare void the second-hand automobile dealer licenses issued to D&A and Linden because of their corporate dissolution;
5. order Dealers and Owners to pay civil penalties as follows:
 - a. pursuant to NYC Code § 20-703(a), \$350.00 for each violation of NYC Code § 20-700;
 - b. pursuant to section 2203(h)(1) of the Charter, \$500.00 for each violation of 6 RCNY §§ 2-103 and 5-32;
 - c. pursuant to NYC Code § 20-271(d)(1), \$500 for the first violation of NYC Code § 20-271(b)(1), \$750 for the second violation, and \$1,000 for each subsequent violation; and
 - d. pursuant to NYC Code § 20-275, \$500 for each violation of NYC Code § 20-273;
6. hold Corporate Entities and Owners jointly and severally liable for the above civil penalties;

¹¹ Revocation of Mosulei's DCA license is on the ground that its sole owner and President, Mohammed Suleiman is unfit to hold a DCA license.

7. hold Corporate Entities, Owners, and Assignees jointly and severally liable for restitution to consumers in an amount to be determined in accordance with Exhibit J, and order Assignees to provide to DCA a full accounting of monies paid by each consumer pursuant to each RIC, and monies still due and owing from each consumer within 15 days of the order;
8. finding Dealers to have engaged in “repeated, multiple or persistent violations” of the Consumer Protection Law, Title 20, Chapter 5, Subchapter 1 of the New York City Administrative Code; and
9. granting such other and further relief as is deemed just and proper.

Dated: May 22, 2017
New York, New York

For: New York City
Department of Consumer Affairs

By: 
Staff Counsel
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New York, NY 10004


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