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**IN THE MATTER OF THE  
CONSUMER PROTECTION ACT (CPA)**

THIS **UNDERTAKING** is made pursuant to Section 152 of the *Consumer Protection Act* ("CPA").

**BY: 2324388 ALBERTA LTD.**  
**operating as FINANCE AND LEASE AUTO**  
at or near the city of Calgary, in the Province of Alberta  
(hereinafter called the "Supplier")

**TO: The DIRECTOR OF FAIR TRADING (as delegated)**  
(hereinafter called the "Director")

**WHEREAS:**

- A. At the time of the complaint, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the automotive business activity of used sales and leasing in the Province of Alberta.
- B. An administrative review was held via teleconference call on May 31, 2022 at 9:00 a.m. Participating in the administrative review was Mr. El Moatasim El Sayad, owner and director of the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC manager of investigations south; and K. Lockton, Director of Fair Trading (as delegated).

Case File 21-12-019

- C. An AMVIC investigation was initiated as a result of a consumer complaint received by AMVIC in December 2021, regarding the contract details for a vehicle purchased from the Supplier.
- D. On Oct. 7, 2021, the consumers ("AB/PB") went to the Supplier as they had been in a car accident and were looking to get a new vehicle. On Oct. 13, 2022, AB/PB purchased a 2018 Mitsubishi Outlander (the "Outlander") from the Supplier for \$36,995 plus fees and taxes. AB/PB also purchased GAP insurance for \$2,200. This was itemized on the bill of sale ("BOS") as life insurance. However, the documentation supports AB/PB only purchased GAP insurance. AB/PB completed the financing paperwork with a finance company ("EP") and took the vehicle home the same day.
- E. A few days later the Supplier contacted AB/PB and advised them the financing through EP had not been approved but the Supplier had secured financing for them through another lender ("SC"), at a higher interest rate.
- F. The Supplier completed a second BOS for the transaction for the purchase of the Outlander for financing with SC. On the second BOS, the Supplier itemized the purchase of life insurance, the

same as the first BOS, however charged AB/PB \$3,500. The Supplier stated again, this was for the purchase of GAP insurance. The Supplier did not inform the insurance company of this change and therefore the GAP insurance is not in place. The bills of sale were also missing information required by Section 31.2 of the Automotive Business Regulation (“ABR”).

## **Automotive Business Regulation**

### **Bill of sale**

#### **Section 31.2**

- (1)** A business operator engaged in automotive sales must use a bill of sale that includes the following:
- (a) the name and address of the consumer;
  - (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
  - (c) the name, business address and licence number of the business operator;
  - (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
  - (e) the make, model and model year of the vehicle;
  - (f) the colour and body type of the vehicle;
  - (g) the vehicle identification number of the vehicle;
  - (h) the date that the bill of sale is entered into;
  - (i) the date that the vehicle is to be delivered to the consumer;
  - (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
    - (i) charges for transportation of the vehicle;
    - (ii) fees for inspections;
    - (iii) fees for licensing;
    - (iv) charges for warranties;
    - (v) taxes or levies, including GST;
  - (k) the timing for payment by the consumer of the fees and charges under clause (j);
  - (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
  - (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
  - (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
  - (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
    - (i) information about the vehicle being traded in, and
    - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
  - (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;

- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
  - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
  - (ii) the vehicle is a new, specifically identified vehicle;
- (u) any mechanical fitness assessment that has been issued under the Vehicle Inspection Regulation (AR 211/2006);
- (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
- (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.

**(2)** The business operator must ensure that all restrictions, limitations and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

- G. The Supplier provided a printout of the summary overview of the advertisement their software created when the Outlander was purchased. This overview summary lists the price of the Outlander to be \$36,995. Both bills of sale created by the Supplier added a \$999 "ADMIN FEE" above the price of the Outlander contrary to Section 11(2)(l) of the ABR.

## **Automotive Business Regulation**

### **Advertising**

#### **Section 11**

- (2)** A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
- (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing,

- H. During the administrative review, the Supplier indicated AB/PB had come to his business in search of financing for a specific vehicle which the Supplier did not have. The Supplier secured the vehicle AB/PB requested and had EP financing pre-approval in place. The Supplier indicated EP did

not approve the loan due to one of the consumers being on a different type of disability than what was initially provided to EP by the consumers. The Supplier indicated he was able to secure the financing with SC as they have different approval guidelines for consumers on disability.

- I. After the second transaction was completed AB/PB were provided a \$2,816 cheque. Based on the evidence it is unclear if this cheque was for cash back incorporated to the sale or returning monies back to the consumer.
- J. During the investigation, documents were requested to ascertain the reason for the \$2,816 cheque and to confirm why the EP financing was not approved, however the Supplier failed to provide the documents to the investigator as required by Section 132(2) of the CPA. The Supplier stated they had shredded the first BOS and EP documents when the second BOS and financing through SC had been completed. In addition, many of the documents that the Supplier had maintained were not accurate representations of the transaction that occurred. The Supplier must create and maintain accurate records in accordance with Section 9 of the ABR and Section 132(1) of the CPA.

### ***Consumer Protection Act***

#### **Duty to maintain records**

##### **Section 132**

- (1) Every licensee and former licensee must create and maintain
  - (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
  - (b) other records and documents described in the regulations for the period specified in the regulations.
- (2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

### **Automotive Business Regulation**

#### **Records**

##### **Section 9**

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

- K. The Outlander required minor autobody work and the Supplier agreed to have the work completed for AB/PB. AB/PB advised they left the Outlander with the Supplier and the Supplier did not get the autobody work completed. After AB/PB put in their complaint with AMVIC, the Supplier provided AB/PB a \$500 cheque to cover the autobody work required on the Outlander.

Case File 22-01-049

- L. An AMVIC investigation was initiated as a result of a consumer complaint received by AMVIC in January 2022, regarding the mechanical condition of a vehicle purchased from the Supplier.
- M. On Oct. 16, 2021, the consumers ("TD/TD") purchased a 2007 Land Rover (the "Land Rover") from the Supplier for \$9,499.61 including all fees and taxes. The Land Rover was delivered to the consumer's home on Oct. 27, 2021.
- N. During the winter months TD/TD had mechanical issues with the heater and the air ride suspension. TD/TD took the Land Rover in for repairs and discovered the warranty they had for the Land Rover did not cover the types of repairs the Land Rover required. TD/TD then filed a complaint with AMVIC.
- O. The investigation determined there was insufficient evidence to establish if the Land Rover required the repairs prior to the TD/TD purchase however, in reviewing the documents a number of compliance concerns were identified.
- P. The Supplier did not provide TD/TD with a Mechanical Fitness Assessment ("MFA") prior to entering into to a contract with the consumer to purchase the Land Rover. In addition, the MFA did not include the statement that the MFA expires 120 days after the date on which it was issued. This is contrary to Section 15 of the Vehicle Inspection Regulation.

**Vehicle Inspection Regulation**

**Sale of used motor vehicle**

**Section 15**

- (1)** Subject to subsection (2), a dealer in used motor vehicles shall, **before entering into a contract to sell a motor vehicle**, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:
- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
  - (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
  - (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
  - (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;**
  - (e) a statement certifying that at the time of sale the motor vehicle
    - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
    - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);

- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

- Q. The Supplier did not have the out of province inspection or the MFA completed until after TD/TD purchased the Land Rover.
- R. The advertisement for the Land Rover did not disclose the vehicle had been declared a total loss, was previously registered in another province immediately before it was acquired by the business operator and had been assigned a rebuilt status. This is contrary to Sections 11(2)(b) and 31.1 of the ABR.

## **Automotive Business Regulation**

### **Advertising**

#### **Section 11**

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
- (b) identifies vehicles that have been used as taxi cabs, police cars or emergency vehicles or that have been recertified when the previous use or condition of the vehicles is known to the business operator,

## **Vehicle history information**

### **Section 31.1**

- (1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:
- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
  - (b) whether the vehicle has sustained damage caused by fire;
  - (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
  - (d) whether the vehicle has been used as a police car or an emergency vehicle;
  - (e) whether the vehicle has been used as a taxi cab or a limousine;
  - (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
  - (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
    - (i) salvage motor vehicle;
    - (ii) non-repairable motor vehicle;
    - (iii) unsafe motor vehicle;
  - (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;

- (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
  - (i) the name of the jurisdiction in which the vehicle was previously registered,
  - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
  - (iii) whether the vehicle passed or failed any required inspections.

**(2)** The business operator must disclose the information required under subsection (1) in a clear and legible manner (a) in any online advertisement for the vehicle, (b) on any sales tag affixed to the vehicle, and (c) in writing to the consumer before purchase.

- S. The Supplier's BOS was missing information as required by Section 31.2 of the ABR. In addition, the Supplier failed to obtain written confirmation from the consumer that the consumer had received the information required under Section 31.1 of the ABR. This is contrary to Section 31.3 of the ABR.

#### **Automotive Business Regulation**

#### **Receipt of information**

#### **Section 31.3**

A business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has obtained written confirmation from the consumer that the consumer has received the information required under section 31.1.

- T. The Supplier indicated during the administrative review they want to ensure all their business practices are in compliance with the legislation and welcomed all education AMVIC could provide them.

#### **NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:**

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and ABR and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.
2. The Supplier will undertake to ensure they create and maintain complete and accurate business and financial records as required by Section 132(1) of the CPA and Section 9 of the ABR. The Supplier will make their records available when requested by the regulator as per Section 132(2) of the CPA.
3. The Supplier will undertake not to do or say anything that might reasonably deceive or mislead a consumer during the course of a consumer transaction as per Section 6(4)(a) of the CPA.
4. The Supplier will undertake to ensure they disclose the vehicle history information to the consumer before the purchase of the vehicle as per Section 31.1 of the ABR.

5. The Supplier will undertake to ensure their BOS is completed in compliance with Section 31.2 of the ABR.
6. The Supplier will undertake to provide a compliant MFA to the consumer prior to entering into a contract to sell a used motor vehicle as required by Section 15 of the Vehicle Inspection Regulation.
7. The Supplier will undertake to ensure their advertisements are in compliance with Section 11 of the ABR.
8. To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an industry standards inspection which will take place before **Dec. 31, 2022**.
9. The Supplier will reimburse AB/PB **\$2,348.95**. The amount represents \$999 plus GST for the administrative fee and the additional \$1,300 charged to the consumer for GAP insurance in the second transaction. This will be provided to the consumer within **thirty (30) days** from the date of signing this Undertaking.
10. The Supplier shall pay the sum of **\$1,000** to the Alberta Motor Vehicle Industry Council, an amount that represents a portion of the costs AMVIC has incurred investigating the matters herein. Such payment is to be made to AMVIC within **thirty (30) days** from the date of signing this Undertaking.
11. This Undertaking will remain in force,
  - Unless:
    - a. Terminated by the Director or varied with the consent of the Supplier;
    - b. Varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking; or
    - c. Terminated by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.
12. The Supplier acknowledges the Director may, upon breach of any term of the Undertaking, institute such proceedings and take such action under the CPA as they may consider necessary.
13. The Supplier acknowledges this Undertaking is a public document and will be maintained in the public record by the Director of Fair Trading (as delegated) as required by Section 157.1 of the CPA.



14. The Supplier acknowledges that they were advised by AMVIC, and are aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges they are entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 27 day of June, 2022.

**2324388 ALBERTA LTD.**  
**operating as FINANCE AND LEASE AUTO**

PER: "original signed by"  
El Moatasim El Sayed

ACCEPTED by the Director of Fair Trading on the 29 day of June, 2022.

PER: "original signed by"  
Katie Lockton  
Director of Fair Trading  
(as delegated)