

July 8, 2025

Administrative Review – 25-01-010  
Served via email: [REDACTED]  
[REDACTED]

### **Administrative Penalty**

FREEDOM FORD SALES LIMITED  
7505 75 STREET  
EDMONTON, AB  
T6C 4H8

**Attention: Daniel Priestner and Patrick Priestner**

Dear Daniel Priestner and Patrick Priestner:

**Re: Freedom Ford Sales Limited – Provincial Automotive Business Licence No. B176794**

As the Director of Fair Trading (as delegated) (the “Director”), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* (“CPA”) to provide you with written notice of the Administrative Penalty issued under that section.

### **Facts**

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) investigations department application report (the “Application Report”) prepared by the investigator and the senior manager of investigation. A copy of the Application Report is attached as Schedule “A” to this letter. I have also taken into consideration the written representations from the Supplier that were received on March 21, 2025 in advance of the scheduled administrative review attached as Schedule “B” as well as information exchanged during an administrative review held via teleconference call on April 22, 2025.

### ***Licensee Status***

Freedom Ford Sales Limited (the “Supplier”) holds an AMVIC business licence and carries on the business activities of garage, autobody, leasing, new and used sales, wholesale and service station in the Province of Alberta.

The Supplier was first issued a business licence in May of 1997. Mr. Singh advised the current auto group took over in 2014. The Supplier has 19 salespeople and has approximately 98 employees. The Supplier advised during the administrative review that their average volume of sales per month is between 210 and 220 new and used vehicles.

### ***Previous Enforcement History***

As a result of an administrative review held in 2023, the Supplier voluntarily agreed to enter into a voluntary Undertaking on June 19, 2023. Some of the conditions outlined in the Undertaking specifically stated:

- “1. The Supplier acknowledges and admits that it failed to comply with the aforementioned provisions of the CPA and ABR and undertakes to the Director that the Supplier has taken steps and 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 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.*
- 3. The Supplier will undertake not to make any misleading statements of opinion if a consumer is likely to rely on that opinion to the consumer's disadvantage as per Section 6(4)(b) of the CPA. The Supplier will not advise consumers that they are required to purchase a warranty or that they must purchase a warranty to obtain a loan with a lower interest rate.*
- 4. The Supplier will undertake not to enter into a consumer transaction if the Supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services as per Section 6(3)(a) of the CPA. The Supplier will not sell a consumer a warranty that the consumer will not be able to use due to any non-disclosed limitations or exclusions in the warranty coverage.*
- 5. The Supplier will undertake to ensure their BOS is completed in compliance with Section 31.2 of the ABR.”*

On Sept. 23, 2024, the Supplier was assessed an Administrative Penalty of \$7,000 as a result of two consumer complaints received by AMVIC regarding the conditions of the vehicles purchased from the Supplier. The Supplier was found to have breached their agreed upon Undertaking and therefore contravened Section 163(d) of the CPA. The Supplier was also found to have breached Sections 12(o) and 31.2 of the Automotive Business Regulation (“ABR”) and Section 15 of the Vehicle Inspection Regulation (“VIR”). This Administrative Penalty includes a consumer complaint with a similar fact circumstance to the current consumer complaint in which the consumer signed a bill of sale (“BOS”) using DocuSign prior to receiving the Mechanical Fitness Assessment (“MFA”).

### ***Administrative Review***

The administrative review was originally scheduled for Feb. 4, 2025 at 9 a.m. On Jan. 23, 2025, Amit Singh, general manager for the Supplier requested an adjournment as the employees that dealt with the consumer were both out of the country until Jan. 30, 2025. The Director granted the adjournment and

an Adjournment Letter dated Jan. 24, 2025 was sent to the Supplier re-scheduling the matter to proceed on March 11, 2025 at 9 a.m.

On Feb. 14, 2025, Ronald Berger, legal counsel for the Supplier provided correspondence advising he had been retained by the Supplier and requested a further adjournment. The Director granted the adjournment and an Adjournment Letter dated Feb. 20, 2025 was sent to the Supplier's legal counsel re-scheduling the matter to proceed on April 22, 2025 at 9 a.m.

An administrative review was held on April 22, 2025, at 9:23 a.m., via teleconference call. Participating in the administrative review were Ronald Berger, legal counsel for the Supplier; Amit Singh, general manager for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC investigations north; and K. Lockton, Director of Fair Trading (as delegated).

### ***Summary of Investigation***

#### **Case File 24-04-232**

1. In April 2024, AMVIC received a consumer complaint in regards to the mechanical condition of a vehicle that was purchased from the Supplier.
2. The consumer ("KK") reached out to the Supplier via the chat box on their website to purchase a vehicle. She advised the Supplier due to her poor credit score she had received approval from one lending company when she had recently attempted to purchase a different vehicle from a different automotive business. The Supplier advised KK that the previous approval was *"not transferable"* to the Supplier.
3. The Supplier sent KK a number of advertisements for vehicles that KK reviewed and she chose a 2015 Lincoln MKC. The Supplier applied for financing for the 2015 Lincoln MKC, however could not secure financing. The Supplier sent KK an advertisement for a 2021 Mitsubishi RVR (the "RVR") with a text message that stated *"Ultra low kms, also what Rifco likes to see"*. This was followed by correspondence between the Supplier and KK regarding the possibility of the purchase of a Jeep instead, however the Supplier advised her the amount of kilometres ("kms") on the Jeep were too high. KK then states, *"Ok lets [sic] go with this one please. I just need it asap"*, referencing the RVR.
4. The Supplier sent KK the documents via email to sign using DocuSign, which included the BOS and finance documents. On March 22, 2024, KK signed a BOS with the Supplier via DocuSign to purchase the RVR from the Supplier. At the time KK signed the documents via DocuSign, she had not seen the RVR in person, the entire transaction had been completed online.
5. Once KK had signed the purchase documents via DocuSign, the Supplier was to deliver the RVR to her as she did not reside in the City of Edmonton. The delivery of the RVR was delayed due to the lending institutions requirement to have a Global Positioning System ("GPS") installed in the vehicle.

6. On March 26, 2024, before the RVR was delivered, KK registered the RVR in her name. At this point the only BOS which would have been completed is the BOS that was signed via DocuSign on March 22, 2024. According to KK, in order for her to get a copy of the DocuSign BOS she had to contact the lending company as the link from the Supplier to access the BOS was expired. In a text message exchange between KK and the Supplier (see Schedule "A"; Exhibit L), in response to KK advising the Supplier she was at a Registry office, the Supplier stated:

*"Justin says once you send the registration we can move to the next step , [sic] trying to get someone that rifco allows to come and install the GPS they need to approve of the person".*

7. According to KK, two employees of the Supplier were involved in the delivery of the RVR to her. The first employee arrived with the documents, advised her that everything she needed to sign she had already signed online and directed her to sign the documents. According to KK, this employee did not go over or explain the documents she needed to sign, only gave her the documents saying everything was the same as she completed online. Further, the employee did not provide KK any documents to keep and advised her they could be accessed via email. KK indicated that this occurred before the RVR arrived that was driven by the second employee of the Supplier. In her complaint to AMVIC KK stated *"While signing the documents, the individual returned to their vehicle coinciding with the arrival of my vehicle."* When the person driving the RVR arrived, KK stated in her complaint, they removed the dealer licence plate and the two employees departed. The Supplier could not advise which of their employees were involved with the delivery of the RVR and did not dispute the details provided by KK describing the manner in which the RVR was delivered. At no time did KK attend the Supplier's business location during the course of the purchase of the RVR.
8. KK stated the following in her complaint to AMVIC:

*"Shortly after removing the license plate and bidding farewell, I observed a chip on the windshield. I contacted my sales representative regarding the issue, yet did not receive a response. Additionally, I noticed several other imperfections during the initial inspection, particularly the hood appearing atypical compared to my previous experiences. Initially attributing this to being overly critical, I conducted a secondary inspection upon reaching my residence. During this secondary review, I discovered two dents on the hood and identified a hole in the headlight. Seeking a second opinion, I invited a few individuals to assess the vehicle alongside me, confirming the discrepancies. It was noted that the hood exhibited two distinct colors, indicating a re-paint and bubbles, potentially explaining anomalies such as the malfunctioning speedometer, car pulling and unusual noises from the front end."*

9. After the purchase of the RVR, KK found the registration and insurance of the previous owners left in the glove box that indicated that the RVR had been a rental vehicle. KK alleges she was not made aware that the RVR was a rental prior to the purchase.
10. In August of 2024, the Supplier picked up the RVR and provided KK with a loaner. According to KK, while the Supplier had the RVR, KK spoke to the Supplier and was told there was not much mechanically wrong but that the vehicle required \$5,000 worth of body work to bring it up to her

standard. The Supplier had the RVR for approximately a month completing repairs. According to KK, she was not advised what work had been completed. No documentation was provided to the Director to demonstrate what repairs the Supplier completed on the RVR.

11. An undated letter from a third party automotive business ("CCGS") indicated the following in relation to the RVR (see Schedule "A"; Exhibit M):

*"Upon visual inspection of vehicle, we had found multiple areas that had been previously repaired, or in need of repair.*

1. *Lt rear quarter panel*
2. *Lt rear door*
3. *Lt roof rail paint blended out*
4. *Lt front door painted*
5. *Lt front fender painted/ missing upper fender bolt*
6. *Both front headlight mounts are cracked*
7. *Rad support repair*
8. *Front bumper fitment issues / paint peeling*
9. *Rt front fender*
10. *Hood still damaged / repair visible / misaligned*
11. *Lift gate either has paint blended out in panel or covered in overspray"*

12. During the course of the AMVIC investigation, the Supplier did not supply the DocuSign BOS and after speaking with the Supplier, the investigation determined that the Supplier did not maintain the BOS that was signed via DocuSign.
13. The MFA completed in relation to the RVR was completed by the technician on March 28, 2024, six days after KK signed a BOS via DocuSign.
14. The AMVIC investigation identified issues with the disclosure of the vehicle history of the RVR to KK before the purchase, specifically that the RVR was a rental vehicle.

**Supplier's Representations in relation to 24-04-232**

15. The Supplier provided written representations on March 21, 2025 in advance of the scheduled administrative review (see Schedule "B") which referenced Section 15(1) of the VIR and Section 31.2(1)(q) of the ABR and stated:

*"Freedom Ford states that the documents relied upon in support of the allegation of non-compliance of the supplier is not "a contract to sell motor vehicle" which the supplier could properly enforce. It is not an enforceable contract. Given the understanding on the part of both parties, the single purpose of preparing that first document is to facilitate the acquisition of a loan. When the loan approval was forthcoming to the satisfaction of the consumer, an enforceable contract was then signed but only after the MFA was delivered to and signed by the consumer."*

16. After the AMVIC investigator put forward the evidence in relation to AMVIC investigation (case file 24-04-232) and the Supplier's legal counsel put forward their position as outlined in their written representations they additionally stated:

- There is no enforceable contract absent of an agreement with the lender.
- The second BOS was executed because the first BOS was only for the proposed lender.
- This is to the benefit of the consumer.
- They must proceed with the sale step by step.
- The consumer wanted to move quickly due to her difficulty with financing.
- This step by step process applies to any dealership, they have to proceed in that way.
- The consumer could not proceed without a lender.

17. During the administrative review, the Director sought some clarification from the Supplier and they advised the following:

- The individual KK has named as an upper manager in the company is the general sales manager at Freedom Ford Sales.
- They did not retain the DocuSigned BOS because they had an original signed and they understand they need to maintain all documents created or received while carrying on the activities authorized by their AMVIC business licence in accordance with the legislation.
- When the Supplier sends a document to be DocuSigned, such as a BOS, they typically walk the consumer through the process over the phone so they understand where to initial and sign on the document.
- The Supplier does not know if their employee walked KK through the process of DocuSigning the BOS. This employee is still employed at the Supplier.
- When asked if the Supplier spoke to the employee who completed the transaction with KK to determine if they walked her through the DocuSigning process, the Supplier's legal counsel was not willing to answer the question.
- The Supplier advised that when a document is sent via DocuSign, there will be clear indicators that show the consumer where to initial and sign on the document.
- When asked why the BOS indicates the vehicle was not a rental, when the Carfax indicates it was, the Supplier did not have an answer, and the Supplier's legal counsel re-iterated that the March 22, 2024 BOS was only for the lender and not an enforceable contract.
- When asked if KK had refused delivery of the RVR, if the Supplier would have enforced the DocuSigned BOS, the Supplier's legal counsel was not willing to answer the question.

18. The Proposed Administrative Penalty dated June 5, 2025 was emailed to the Supplier's legal counsel on June 5, 2025. The Proposed Administrative Penalty provided the Supplier an opportunity to make written representations by July 7, 2025. The Supplier did not submit written representations in response to the Proposed Administrative Penalty.

## **Legislation**

### **Automotive Business Regulation**

#### **General codes of conduct**

##### **Section 12**

Every business operator must comply with section 6 of the Act and in addition must

- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

### **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.



## **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.

## **Consumer Protection Act**

### **Interpretation of documents**

#### **Section 4**

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
  - (b) a provision of the document is ambiguous,
- the provision must be interpreted against the supplier or licensee, as the case may be.

## **Administrative Penalties**

### **Notice of administrative penalty**

#### **Section 158.1**

- (1) If the Director is of the opinion that a person
- (a) has contravened a provision of this Act or the regulations, or
  - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,



the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

(2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

(3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

(4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

(5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

### **Right to make representations**

#### **Section 158.2**

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

### **Vicarious liability**

#### **Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

### **Analysis – Did the Supplier fail to comply with the provisions of the ABR and VIR?**

The material which formed the Application Report was the result of a consumer complaint received by AMVIC, case file 24-04-232.

The legislative breaches alleged by the AMVIC investigator, as outlined below, hinge on whether or not the BOS completed via DocuSign dated March 22, 2024 is a contract to sell the RVR. The Supplier's legal counsel put forward that on March 22, 2024 there was no credit agreement and therefore no disclosure statement as required by Section 31.2(1)(q) of the ABR, therefore the contract would not be enforceable as the lender would be required to be in place in order for there to be a disclosure statement.

AMVIC does not have the jurisdiction to speak to the validity of the enforceability of a contract. The Director must review the evidence in conjunction with the spirit and intent of the legislation that governs the automotive industry.

The spirit and intent of the *Consumer Protection Act* which governs the automotive industry is stated in the name of the act, "*Consumer Protection*". The preamble of the CPA states:

*"WHEREAS all consumers have the right to be safe from unfair business practices, **the right to be properly informed about products and transactions**, and the right to reasonable access to redress when they have been harmed;" [emphasis added]*

The spirit and intent of the legislation is to create an even playing field between the consumers and the businesses as well as foster a fair marketplace. The vehicle history information and MFA are both legislatively required to be provided to the consumer prior to the purchase of a vehicle for a reason. This information, which is held by the business operators in the industry, is pertinent in the consumer's ability to make an informed purchasing decision, which includes the price they are willing to pay for the product. If a vehicle has been in a substantial accident, was a rental, sustained damage by fire or flood etc., which are outlined in Section 31.1 of the ABR, these will affect not only the actual value of the vehicle but also what a person is willing to pay for a vehicle that has that particular history, or if they would be willing to purchase the vehicle at all. A similar sentiment can be said for the reason the MFA is required prior to entering into a contract to sell a motor vehicle. Whether a vehicle is found to be compliant or non-compliant with the Vehicle Equipment Regulation on an MFA, which is completed by a technician, the consumer should know this information so they can determine if they are willing to purchase the vehicle at the price set by the business operator, or if they want to purchase it at all based on the information contained in the MFA. In essence, the consumer has the right to be properly informed about products before agreeing to purchase and to determine the price they are willing to pay to purchase them, if they want to purchase them at all.

The BOS that was completed via DocuSign on March 22, 2024 has the heading "*BILL OF SALE*" and is signed by both the consumer and the Supplier. The vehicle history information that is required under 31.1 of the ABR is filled out, however it is inaccurate as it states the vehicle was not owned by a rental business or used as a rental vehicle, which is not the case. KK initialed seeing an MFA, although based on the evidence that is not accurate. During the administrative review, the Supplier stated that their employees either walk through the process over the phone with consumers or the document will show the consumer where they are required to sign or initial. In addition, the BOS states "*TO THE BEST OF MY KNOWLEDGE I DECLARE THAT ALL VEHICLE HISTORY INFORMATION HAS BEEN DECLARED AND DISCLOSED TO THE PURCHASER AS PER GOVERNMENT LEGISLATION*" and is signed by an employee of the Supplier beside "*DEALER AUTHORIZED SIGNATURE*". This BOS includes an agreed upon price KK would be purchasing the RVR for and does not have any clauses to provide KK an opportunity to refuse to purchase the vehicle or renegotiate the price based on the information that had not been disclosed to her about the RVR.

The Supplier's position that the BOS dated March 22, 2024 is not really a BOS and is not a contract is not supported by the evidence. By completing the BOS, which includes the purchase price and applying for

financing for that amount before a consumer is provided the required information to make an informed purchasing decision, the Supplier puts the consumer at a disadvantage and leverages their knowledge and position which does not foster a level playing field between the consumer and the Supplier, leading to financial harm to the consumer. The Supplier's argument only allowed the DocuSigned BOS to be not enforceable from the perspective of the Supplier and the lending institution, stating the BOS was not an enforceable contract without the required disclosure statement from the lending institution. Indicating the Supplier would be unable to conclude the sale if the financing was not approved; the Supplier did not take any position with regards to the consumer's right to the information to make an informed purchasing decision. During the administrative review, the Director asked the Supplier hypothetically if KK had refused delivery of the RVR, would the Supplier have enforced the DocuSigned BOS, the Supplier refused to answer the question.

In addition, before the March 28, 2024 BOS was provided to and signed by KK when the RVR was delivered, KK had already registered the RVR using the March 22, 2024 DocuSigned BOS and a GPS monitoring device was already installed in the RVR by the lending institution. It appears the Supplier advised KK that the vehicle needed to be registered before the GPS monitoring system was installed. In text message correspondence, in response to KK advising she was at an Alberta Registry, the Supplier stated *"Justin says once you send the registration we can move to the next step , [sic] trying to get someone that rifco allows to come and install the GPS they need to approve of the person"*. The registration was provided and shows that KK had registered the RVR in her name on March 26, 2024, before the March 28, 2024 BOS was signed.

In the opinion of the Director, the BOS dated March 22, 2024 and DocuSigned is a contract that was entered into between the Supplier and KK for the purpose of purchasing the RVR. As stated above, AMVIC does not have the jurisdiction to speak to the validity of the enforceability of a contract however, the spirit and intent of the legislation is clear that the consumer has the right to be informed about the products, and should be provided that information to allow a level playing field and for the consumer to make an informed purchasing decision.

#### A. Vehicle History Disclosure (ABR Section 31.1)

Section 31.1(2) of the ABR requires a business operator to disclose the relevant vehicle history information indicated in Section 31.1 to a consumer as follows:

### **Automotive Business Regulation**

#### **Vehicle history information**

##### **Section 31.1**

**(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** [emphasis added]
- (c) in writing to the consumer before purchase

When KK contacted the Supplier to purchase a vehicle a number of advertisements were provided to her as options of vehicles she could purchase. Based on the text messages exchanged, the RVR was not the first choice of KK but was agreed upon based on the advice of the Supplier in relation to the ability to be approved for financing as the RVR had low kms.

When KK decided to purchase the RVR, the Supplier provided her a BOS and finance documents via DocuSign. No other documents were provided to KK at this time. The BOS that was signed via DocuSign is dated March 22, 2024, and is signed by both KK and the Supplier. As stated above the DocuSigned BOS dated March 22, 2024, in the opinion of the Director, is a contract to purchase the RVR.

The Supplier had completed a CarFax on Feb. 27, 2024. The CarFax indicated the RVR had been a rental vehicle. The CarFax was not presented to KK on or before March 22, 2024 when the BOS was DocuSigned. KK did not see the CarFax until March 28, 2024 when the RVR was delivered. According to KK, the individual who brought the documents for her to sign told her that she had already signed everything online and this was just a paper copy, and therefore she didn't look that closely at the documents she had signed. The Supplier's employee did not go over or explain the documents she needed to sign, only gave her the documents saying everything was the same as she completed online. In her complaint to AMVIC KK stated *"While signing the documents, the individual returned to their vehicle coinciding with the arrival of my vehicle."* Further, the Supplier's employee did not leave any transaction documents with KK when the RVR was delivered. In reviewing all the BOS' currently before me, they all indicate the RVR was not owned by a rental business or used as a rental vehicle and have a declaration statement indicating *"TO THE BEST OF MY KNOWLEDGE I DECLARE THAT ALL VEHICLE HISTORY INFORMATION HAS BEEN DECLARED AND DISCLOSED TO THE PURCHASER AS PER GOVERNMENT LEGISLATION"*. KK only discovered the RVR was previously a rental vehicle as the previous owner's registration and insurance was left in the glove box.

The Supplier completed a CarFax prior to entering into a consumer transaction with KK to purchase the RVR. The CarFax indicated that the RVR was previously a rental vehicle and therefore the Supplier knew the RVR had previously been a rental vehicle on March 22, 2024 when they sent the BOS to KK to be signed via DocuSign. KK signed the BOS agreeing to purchase the RVR for a specific price and the BOS stated the RVR had not been owned by a vehicle rental business and had not been used as a rental vehicle, which is contrary to the facts. Further, the Supplier did not provide the CarFax to KK when the transaction documents were sent to her via DocuSign.

During the administrative review, the Supplier stated that the CarFax was available through a link in the advertisement of the RVR. There is no evidence currently before the Director to support this statement. Further, the legislation is clear that the information must be disclosed in a clear and legible manner in any online advertisement for the vehicle, on any sales tag affixed to the vehicle **and** in writing to the consumer before purchase. Including a link to a CarFax in the advertisement does not fully satisfy Section 31.1(2) of the ABR.

In the opinion of the Director, the Supplier has breached Section 31.1(2) of the ABR as the Supplier did not disclose the required information under 31.1(1) to KK in writing before the purchase of the RVR as required.

## B. MFA Compliance Issues (VIR 15(1))/General Code of Conduct (ABR Section 12(o))

The MFA is required as per Section 15(1) of the VIR. The VIR is a regulation under the *Traffic Safety Act* ("TSA"). The requirement to provide an MFA is required under the TSA and is therefore in the jurisdiction of Alberta Transportation. Although the MFA falls under the requirement of Alberta Transportation, it comes into AMVIC's purview in the course of our mandated duties as per a number of legislated sections that apply to following all legislation applicable to the sale of motor vehicles such as Section 12(o) of the ABR and Section 127(b)(v.1) of the CPA.

The Supplier is required to provide a consumer a valid MFA prior to entering into a consumer transaction. The Supplier entered into a consumer transaction with KK on March 22, 2024 but did not have an MFA completed until March 28, 2024, the day the RVR was delivered to KK.

The Supplier has taken the position that the DocuSigned BOS is not an enforceable contract and therefore the MFA did not have to be provided to KK until March 28, 2024, when it was delivered to her and a paper BOS was signed. As stated above, the Director does not have the jurisdiction to speak to the validity of the enforceability of a contract. However, based on the preamble of the CPA and the spirit and intent of the legislation governing the automotive industry, in the Director's opinion, the BOS dated March 22, 2024 and DocuSigned is a contract that was entered into between the Supplier and KK for the purpose of purchasing the RVR.

By failing to give KK an MFA for the RVR before entering into a contract to sell her the vehicle, the Supplier has breached Section 15(1) of the VIR and Section 12(o) of the ABR.

## C. Other Considerations

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking and suspension or cancellation of a licence as outlined in the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention.

The Supplier has been subject to the following enforcement actions:

- June 19, 2023 – voluntary Undertaking
- Sept. 23, 2024 – \$7,000 Administrative Penalty

The Director considered other enforcement actions. The AMVIC investigations department recommended an Undertaking as an appropriate administrative enforcement action. The Director cannot consider entering into an Undertaking as the Supplier's position is that they did not breach the legislation, therefore the Director cannot be satisfied that the Supplier has ceased the contraventions,

which is requirement that must be met when entering into a voluntarily agreed upon Undertaking as per Section 152(1)(b) of the CPA.

**Consumer Protection Act****Supplier's undertakings****Section 152****(1) When**

- (a) the Director is of the opinion that a person has contravened this Act or the regulations, and
- (b) the Director is satisfied that the person has ceased the contravention, the person may enter into an undertaking with the Director in the form and containing the provisions that the Director, on negotiation with that person, considers proper.

The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

In reviewing all the evidence and determining the contraventions of the legislation, in the opinion of the Director, the Supplier's business practices do not meet the standard expected of a business in the automotive industry. The automotive industry in Alberta is a regulated industry and it is the Supplier's responsibility to ensure they are complying with the legislation which regulates the automotive industry. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. vs. Registrar of Motor Dealers*, 2014 BCSC 903 which addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

*"In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator."*

A recent Service Alberta and Red Tape Reduction Appeal Board rendered a decision (attached as Schedule "C") regarding the importance of the legislation that regulates the automotive industry as well as the importance of the members within the regulated industry to operate within the regulatory framework. Paragraph 39 of the Service Alberta and Red Tape Reduction Appeal Board decision states:

*"Regulations are not merely a formality. They exist to protect consumers and fulfil the mandate of the CPA as described in its preamble."* [Paragraph 39.b.]

*"...it is [the Supplier's] responsibility to be compliant with regulations at all times."* [Paragraph 39.c.]

*"...regulations are not optional, they serve an important social purpose".* [Paragraph 39.d.]

Additionally, a recent Service Alberta Appeal Board rendered a decision (attached as Schedule "D") and addressed the onus and responsibility of salespeople and suppliers. The appeal panel at paragraph 91 stated:

*“At the same time, we recognize that AMVIC is not there to hold a party’s hand through the administrative process. Nor is it there to train applicants in terms of being administratively efficient. AMVIC is there to protect the public. The onus is on salespersons and car dealerships to remain current with AMVIC and to comply with the regulatory framework in place at any given time.”*

The Supplier failed to disclose the required vehicle history information in writing to the consumer before the purchase of the vehicle and failed to provide an MFA prior to entering into a consumer transaction. The Supplier’s actions as outlined above leverages the Supplier’s knowledge, and does not foster a level playing field between the consumer and the Supplier which eliminates the consumer’s ability to make an informed purchasing decision. In the opinion of the Director, the Supplier’s business practices are contradictory to the spirit and intent of the legislation governing the automotive industry, as identified in the preamble of the CPA.

The Supplier was previously assessed an Administrative Penalty in September of 2024 (see Schedule “A”; Exhibit P). The Sept. 23, 2024 Administrative Penalty was the result of two consumer complaints received by AMVIC and the subsequent investigations conducted. The Administrative Penalty addresses both the consumer transactions and identified both consumers were not provided an MFA prior to purchasing vehicles. One of the consumer complaints has a very similar fact circumstance to the matter currently before the Director. The consumer was provided a BOS to sign via DocuSign but was not provided the MFA until they took delivery of the vehicle. During the administrative review with the Registrar in relation to the previous complaint the Supplier acknowledged the MFA had not been provided as legislatively required. Based on the representations of the Supplier in relation to the current administrative matter, this is no longer their position.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumer, the resulting impact adversely affecting the consumer given the condition of the body of the RVR and the continued non-compliance with the rather straightforward requirements of the legislation. This Administrative Penalty is the third administrative enforcement action in a two year period.

The mitigating factors in this matter that can be taken into consideration is that the Supplier provided KK a loaner vehicle and completed some work on the RVR. While there is no evidence to support what work was completed on the RVR, the Director will consider this as a mitigating factor.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the investigation; the previous administrative enforcement; the aggravating and mitigating factors listed above; and the non-compliant business practices.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Freedom Ford Sales Limited pay an Administrative Penalty. This is based on my opinion Freedom Ford Sales Limited has contravened Sections 12(o) and 31.1 of the ABR and Section 15(1) of the VIR.



Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$15,000**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account the above listed aggravating and mitigating facts as well as:

1. The Supplier's history of non-compliance;
2. The seriousness of the contraventions or failure to comply;
3. The degree of wilfulness or negligence in the contravention or failure to comply;
4. The harm on the persons adversely affected by the contraventions or failure to comply;
5. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
6. The deterrent effect of the penalty.

**The amount of the Administrative Penalty is \$15,000.**

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **"Government of Alberta" and sent to AMVIC** at:

Suite 303, 9945 – 50th Street  
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of King's Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta and Red Tape Reduction.

Minister of Service Alberta and Red Tape Reduction  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for

appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000.

Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)

Katie Lockton, Deputy Registrar

Director of Fair Trading (as Delegated)

KL/ks

Encl.

cc: [REDACTED], Senior Manager of Investigations, AMVIC