

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT
DEP'T OF THE TRIAL COURT

Civ. No. 23-0115C

_____)
In the Matter of Toyota Motor Credit Corporation.
_____)

ASSURANCE OF DISCONTINUANCE

PURSUANT TO M.G.L. CHAPTER 93A, §5

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SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

I. Introduction

1. The Office of the Attorney General of the Commonwealth of Massachusetts ("AGO") through its Acting Attorney General, Elizabeth N. Dewar, is conducting an investigation pursuant to M.G.L. c. 93A, c. 106, c. 255B, and 940 CMR 7.00 *et seq* into whether certain entities collecting, servicing and/or funding consumer motor vehicle secured retail installment contracts ("Contracts") utilized notices to consumers post-repossession that failed to state that deficiencies would be based on the application of Fair Market Value for auctioned vehicles and whether certain entities initiated communications to debtors via telephone in excess of the limits prescribed by 940 CMR 7.04(1)(f) ("the Investigation"). As part of the Investigation, the AGO reviewed the practices of Toyota Motor Credit Corporation ("TMCC") from at least October 26, 2017 through the present.

2. The AGO alleges that there were instances between October 26, 2017 and the present in which TMCC provided post-repossession notices¹ to borrowers and co-borrowers which the AGO alleges failed to reference the use of Fair Market Value in the calculation of deficiency amounts ("Relevant Borrowers"). TMCC has represented to the AGO that it has substantially adopted compliant practices with respect to its post-repossession notices as of at least August 2018.

3. The AGO also alleges that there were instances between October 26, 2017 and the present in which TMCC allegedly violated 940 CMR 7.04(1)(f) by initiating communications to debtors via telephone in excess of two such communications in a seven-day period.

4. In recognition of TMCC's cooperation with the Investigation, the AGO agrees to accept this Assurance of Discontinuance ("Assurance") on the terms and conditions contained herein. TMCC, without admitting any facts, liability, or wrongdoing, in the interest of resolution of this matter and for settlement purposes only, agrees to accept this Assurance on the terms and conditions contained herein.² This Assurance is made without trial or adjudication of any issue of fact or of law.

II. Terms of the Assurance of Discontinuance

5. Within thirty (30) days of the filing of this Assurance, TMCC shall pay \$2,117,000 to an independent trust (the "Fund") for purposes of (i) making payments to eligible Relevant Borrowers, (ii) paying costs of implementation, and (iii) paying the Attorney General's costs of investigation. The Fund shall be overseen by an independent trustee (the "Trustee") to

¹ "Post-repossession" notices include notices sent pre-auction/sale and post-auction/sale.

² Any sums of money agreed to by TMCC do not necessarily reflect the scope of a particular alleged violation or actual damage.

be mutually agreed upon by the AGO and TMCC within ten (10) days of the date of this Assurance. If the AGO and TMCC are unable to agree on the identity of the Trustee, the AGO shall choose the Trustee in its sole discretion. The Trustee shall deposit the Fund into interest bearing accounts such that, to the extent possible: (a) all of the funds are fully guaranteed by the Federal Deposit Insurance Corporation or the United States Department of the Treasury; and (b) the interest rate at the time of the aforementioned deposit is at least equal to the highest interest rate available from among the five largest banks in the City of Boston for a fully liquid federally insured deposit account holding such a sum of money. The Trustee will make investments and disbursements from the Fund only with the consent of the AGO and may vary from the investment criteria of this paragraph only with the consent of the AGO. TMCC shall retain the Trustee and pay Trustee's fees and costs associated with its duties under this Assurance in an amount not to exceed \$75,000 (the "Limited Trust Administration Fee").

6. This Limited Trust Administration Fee is separate, apart, and in addition to any and all other payments required under this Assurance. No later than forty-five (45) business days after the filing of this Assurance, the AGO shall provide the Trustee with a list of borrowers that it preliminarily determines are eligible for relief based upon the information provided by TMCC and such other information as the AGO has otherwise developed, together with associated amounts (the "Relief List"). The Relief List shall include eligible Relevant Borrowers of certain Contracts serviced, funded or collected upon by TMCC where the borrowers were provided with allegedly defective notices as described in the Investigation and whom the AGO, in its sole discretion, determines should receive payments from the Fund. The AGO shall have sole

discretion concerning which borrowers are on the Relief List and the nature and amounts of relief to be provided to each borrower.

7. Within thirty (30) days of receiving the Relief List, the Trustee shall provide the AGO with the following information, to the extent the Trustee can obtain it without undue burden and in accordance with all requisite and advisable security protocols: the name, mailing address, and social security number of the borrower, as well as any other information reasonably requested by the AGO. This information shall be combined with the Relief List and the resulting list shall be known as the "Initial Borrower List." The AGO may make such corrections or amendments to the Initial Borrower List as it deems appropriate in its sole discretion. The finalized version of this list shall be referred to in this Assurance as the "Final Borrower List." The AGO may direct the Trustee to send a letter drafted by the AGO to each borrower on the Final Borrower List. The letter shall, if so directed by the AGO, include a web address and/or a dedicated telephone number for the Trustee that the recipient may use to obtain information concerning the Assurance.

8. With each letter, the Trustee shall also include a postage prepaid return envelope and a form drafted by the AGO for participation in the payment program of this Assurance ("Opt-in Form"). The letter shall also contain such other forms as the AGO shall determine. The Trustee shall send the letter and Opt-in Form within three (3) business days of the AGO's direction and shall resend them, if undeliverable, by such means as the AGO shall direct. Opt-in Forms executed and returned to the Trustee shall be maintained in a secure fashion. In addition, the Trustee shall keep in the same manner any additional Opt-in Forms provided to the Trustee by the AGO. The Trustee shall provide the AGO with information relating to the Contracts

and/or the payment program implementation reasonably available to the Trustee upon request. The Trustee shall cooperate fully with the AGO in the implementation of this Assurance. Should the AGO determine that additional letters are required in connection with implementing this Assurance, the Trustee shall send such letters at the AGO's direction.

9. For each borrower for whom the Trustee receives an executed Opt-in Form, the Trustee shall take action as directed by the AGO. Payments shall be made to identified recipients in the amounts specified on the Final Borrower List. If a check is not cashed within a number of days to be determined by the AGO, the AGO may direct the Trustee to stop payment on the check. At a date to be determined by the AGO but no earlier than three (3) months from the date of filing of this Assurance, the Trustee shall transfer some or all of the remaining monies in the Fund as the AGO directs to the AGO pursuant to G.L. c. 12, § 4A for the purposes of consumer financial education, monitoring and implementation of this Assurance, and related financial services mediation or investigative work.

10. Any funds paid under this Assurance may, at the discretion of the AGO, if not otherwise obligated, encumbered or expended by June 1, 2023, be directed to the Treasurer for deposit in the Commonwealth's General Fund. Deadlines in this Assurance, as well as procedures for the identification, contact, calculation or distribution to consumers of payments, may be altered by the AGO in its sole discretion.

11. Within sixty (60) business days from the date of the filing of this Assurance, TMCC shall cease collecting and waive each outstanding Contract deficiency balance for the Relevant Borrowers who received the notices referenced in paragraph 2.

12. For all Relevant Borrowers, TMCC shall request that the credit reporting bureaus remove the tradeline associated with the Relevant Borrowers' Contracts for which the Relevant Borrowers received the notices referenced in paragraph 2 within sixty (60) business days from the date of the filing of this Assurance.

13. TMCC agrees that it shall not initiate communications with debtors via telephone with a frequency that exceeds the limits prescribed by 940 CMR 7.04(1)(f).

14. Pursuant to G.L. c. 93A, § 4, the AGO agrees that it shall provide notice to TMCC at least five (5) days prior to initiating any action related to a violation of this Assurance to give TMCC an opportunity to confer with the AGO, except in circumstances where a temporary restraining order is sought.

15. This Assurance contains the complete agreement between the parties. This Assurance may be modified or supplemented only by a written document signed by both parties. This Assurance is not intended to impair any right of action that TMCC may have against any other person or entity, or any right of action that any person or entity other than the AGO might have against TMCC. Neither the terms of this Assurance nor the payment of any money hereunder is, nor shall either be construed to be, an admission of any wrongdoing, nor an admission to the allegations in this Assurance.

16. This Assurance and its provisions will be effective on the date that it is filed in the Superior Court for Suffolk County.

17. TMCC shall provide to the AGO, upon reasonable request, such information and data which relates to and/or will assist with the implementation of this Assurance. Such materials shall be productions under G.L. c. 93A § 6 and provided with the protections related

thereto. Any notifications by TMCC regarding the Assurance or its implementation shall be provided to AGO staff Andrew Labadini and Gia Kim at contact addresses provided for that purpose. The AGO may substitute other individuals as points of contact as necessary.

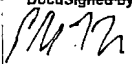
18. By signing below, TMCC agrees to comply with all the terms of this Assurance. By signing below, the AGO agrees that it will not recommend, proceed with or institute a civil action or proceeding, or make any referral, based upon M.G.L. c. 93A, c. 106, c. 255B, 940 CMR 7.00 *et seq.*, or any other statute or regulation, or common law, against TMCC, its parent corporations, or its parent corporations' subsidiaries, subdivisions, officers, agents, or employees for any acts or practices committed by TMCC prior to the date of this Assurance related to the Investigation. The terms of this Assurance may be enforced by the AGO in a civil action or proceeding.

Respectfully Submitted:


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FOR: Toyota Motor Credit Corporation

Dated: 1/13/2023

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By:
Ellen L. Farrell
Chief Legal, Compliance, and Administrative
Officer


By:
Vaishali S. Rao
Lauren Campisi
Hinshaw & Culbertson, LLP
Counsel for Toyota Motor Credit Corporation

**FOR: Elizabeth N. Dewar, Acting
Attorney General**

Dated: 1/17/2023



By:
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Assistant Attorney General
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