

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.

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| In the Matter of: UNITED AUTO CREDIT CORPORATION | CIVIL ACTION NO. |
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ASSURANCE OF DISCONTINUANCE PURSUANT TO G.L. c. 93A, §5

The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey (the “Attorney General”), and United Auto Credit Corporation (“UACC”) (collectively, the “Parties”) hereby agree to this Assurance of Discontinuance (“Assurance”) pursuant to Massachusetts General Laws chapter 93A, §§ 2 and 5.

I. STATEMENT OF ALLEGATIONS BY THE ATTORNEY GENERAL

1. On or about October 5, 2018, the Attorney General sent UACC a Civil Investigative Demand (“CID”), No. 2018-CPD-62, pursuant to her authority under Massachusetts General Laws c. 93A, §6, in connection with UACC’s purchase of automotive retail installment sales contracts (“RISCs”) with respect to two Massachusetts dealerships, F & R Auto Sales (“F & R Auto”) and City Line Auto Sales, Inc. (“City Line”), and its collection practices in Massachusetts (the “Investigation”).

2. UACC is a subprime automobile finance company that contracts with a network of used automobile dealerships nationwide, including dealerships in Massachusetts.

3. UACC purchases RISCs from automobile dealers. Under this arrangement, dealers sell automobiles and arrange financing for consumers based on UACC’s underwriting parameters. Dealers then assign the executed RISCs to UACC. UACC collects the payments

required by the RISCs and undertakes collection efforts if a consumer defaults on the RISC, including automobile repossession.

4. UACC employs sales representatives titled “Area Managers” responsible for prospecting and signing up new dealerships for UACC and overseeing the dealers in their portfolio.

5. Area Managers ask prospective dealerships to prepare and submit a “dealer application package” for UACC’s approval that includes a “dealer agreement,” a copy of the dealer’s license, a personal continuing guarantee, as well as information about the dealership owner.

6. UACC enters into “Dealer Agreements” with automobile dealers that govern UACC’s purchase of RISCs. The Dealer Agreements provide for circumstances under which the dealership would be required to repurchase the RISC from UACC. The Dealer Agreements set forth grounds for termination of the Dealer Agreements. UACC may terminate the Dealer Agreements with dealerships upon written notice at any time.

7. In connection with the RISCs purchased by UACC, UACC attempts to conduct a welcome call with each consumer to review the terms of the RISC and confirm the consumer is in receipt of the automobile purchased.

8. UACC maintains a complaint management system and it also separately maintains records related to consumer complaints that it receives through its welcome calls, funding calls, and collection calls.

9. UACC’s risk department tracks and scores dealership performance.

A. UACC's Purchase of RISCs from F & R Auto and City Line

10. UACC purchased RISCs associated with automobiles sold by certain dealerships that it should have known were defective and/or inoperable and failing to comply with Massachusetts law.

11. In particular, UACC purchased RISCs associated with automobiles sold by two dealers, F & R Auto and City Line, that routinely sold defective and/or inoperable automobiles and provided transactional sales and financing paperwork to consumers that failed to comport with Massachusetts law.

12. UACC should have known that F & R Auto was engaging in misconduct because it received complaints from consumers about the poor condition of their automobiles.

13. In September, 2016 the Massachusetts Attorney General's Office sued F & R Auto and obtained a preliminary injunction ordering F & R Auto to stop engaging in the unfair and deceptive practices the Attorney General challenged, specifically: (i) selling unsafe and defective used automobiles to consumers; (ii) failing to provide consumers with statutorily and contractually required sales and loan contract paperwork; (iii) failing to disclose statutorily required warranty information in an attempt to evade responsibility for repairing defective automobiles; and (iv) failing to execute the assignment of title to automobiles and preventing consumers from registering and having their automobiles inspected. The Town of Westport refused to renew F & R Auto's Class II dealership license. F & R Auto is now out of business.

14. UACC knew or should have known that City Line's ownership and operation was related or connected to that of F & R Auto when it contracted with City Line on January 26, 2018.

15. UACC failed to oversee and monitor F & R Auto and City Line to ensure the dealerships were meeting its standards under its Dealer Agreements.

16. UACC's RISCs provide, "Notice: 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."

17. G.L. c. 255B §19A, provides: "[t]he holder of a retail installment contract or other person acting in his behalf, shall be subject to all defenses, real and personal, which the retail buyer may have against the retail seller thereof."

18. Consumers who purchased automobiles from F & R Auto and City Line were more likely to default on their RISCs, lose their automobiles to repossession, experience negative credit impacts, and suffer long-term economic harm.

B. UACC's Use of Mandatory Releases in Voluntary Surrender Agreements

19. If a consumer defaults on a RISC, UACC undertakes collection activities. UACC's policies and procedures require compliance with Massachusetts law.

20. Once a consumer's account is more than 91 days past due, UACC seeks to repossess the consumer's automobile for non-payment, pursuant to the company's policies and procedures for repossessions.

21. If a consumer wants to voluntarily surrender his or her vehicle to avoid the costs and negative consequences of involuntary repossession, UACC employs a written "Voluntary Surrender Agreement" signed by the consumer and UACC.

22. If a deficiency balance is remaining after repossession, UACC attempts to collect on the deficiency.

23. UACC may report consumers' repossessions and deficiency balances to the credit bureaus.

24. UACC employs legal counsel to file lawsuits against consumers who fail to pay deficiency balances and obtain judgments against them.

25. When consumers fail to satisfy those judgments, UACC seeks garnishment of consumers' wages.

26. From approximately August 2017 until June 2020, UACC employed a Voluntary Surrender Agreement, attached as Exhibit A, which provided in relevant part:

I understand that I will be responsible for any deficiency remaining on the Account...In consideration of the agreement set forth herein and other goods and valuable consideration, which I acknowledge, I agree to release and discharge UACC, and each of UACC's affiliates and parent companies, and their officers, employees, agents, and representatives ("Releasees"), from any and all claims, damages, loss, liability, demands, actions, and causes of action whatsoever, known and unknown, asserted and unasserted, arising out of or relating to any loss, damages, or injury, sustained by Customer whether caused by the acts or omissions of the Releasees or otherwise, related to the surrender and subsequent repossession of the Vehicle and all prior collection activity and efforts, including phone calls, of the Account and Vehicle referenced above, as well as to the origination and terms of the Customer's Contract.

27. The provisions of the Voluntary Surrender Agreement, as written, requiring consumers to waive all their legal rights, are unfair and deceptive because they are unconscionable and offend public policy.

28. Based on the above conduct, the Attorney General alleges that UACC engaged in unfair and deceptive acts and practices, in violation of G.L. c. 93A, § 2.

29. UACC denies the Attorney General's factual allegations of wrongdoing, denies any liability based on the Attorney General's allegations, denies that it engaged in unfair or deceptive acts or practices of any kind, denies that it violated G.L. c. 93A, § 2 or any other Massachusetts law or regulation, and has voluntarily agreed to undertake the substantive actions set forth in Section II.B of this Assurance. Consent to this Assurance does not constitute an

admission by UACC of any wrongdoing or a waiver of any of its defenses or that UACC agrees with any of the Attorney General's allegations set forth in this Assurance.

30. UACC represents that it fully cooperated in the Attorney General's Investigation, and the Attorney General acknowledges UACC's cooperation. Specifically, UACC produced a substantial volume of documents and information in response to the CID and the Attorney General's follow-up requests for additional documents and information pursuant thereto. The Attorney General and UACC also met and conferred on multiple occasions to discuss the issues raised in the Investigation.

31. UACC agrees to the terms of this Assurance solely to resolve this dispute and to avoid the cost, delay, and uncertainty associated with litigation.

32. UACC represents that the collection activities the Attorney General alleges UACC undertakes in response to consumers who default on their RISCs, as reflected in Paragraphs 19 through 26 of this Assurance, are not always employed for every such consumer.

33. UACC represents that on or about September 26, 2016, immediately upon learning of the Attorney General's lawsuit against F & R Auto, UACC deactivated F & R Auto.

34. UACC represents that it ceased purchasing RISCs from City Line in October 2018, immediately upon learning of the Attorney General's allegations against City Line.

35. UACC represents that it ceased using the form of Voluntary Surrender Agreement attached as Exhibit A on or about June 15, 2020.

II. ASSURANCE TERMS

A. MONETARY RELIEF

1. Payment

36. On or before thirty (30) days from the Effective Date of this Assurance, UACC shall pay the Attorney General \$250,000, which the Attorney General shall use, at her sole discretion, to compensate consumers for ascertainable losses related to UACC's practices, as determined by the Attorney General. Any remaining funds shall be deposited into an account for the benefit of the Local Consumer Aid Fund established pursuant to G.L. c. 12, § 11G and/or the Massachusetts General Fund.

37. For avoidance of doubt, UACC shall have no right to direct, nor any responsibility as to the use or application of funds by the Attorney General.

38. Each party shall bear its own costs and attorney's fees associated with the Investigation, the CID, and this Assurance.

2. Agreement to Waive Deficiency Obligations and Credit Relief

39. On or before thirty (30) days from the Effective Date of this Assurance, UACC shall waive all uncollected deficiency obligations held by and due to UACC for all Massachusetts consumers who, on or after October 5, 2014, entered into the form of Voluntary Surrender Agreement attached as Exhibit A. As of the Effective Date of this Assurance, the total amount of outstanding deficiency obligations subject to this provision is approximately \$336,414.77.

40. On or before thirty (30) days from the Effective Date of this Assurance, UACC shall waive all uncollected deficiency obligations held by and due to UACC and release all liens held by UACC for all Massachusetts consumers who purchased automobiles from F & R Auto or

City Line, financed by UACC, through RISCs executed on or after October 5, 2014, and shall move to vacate affected judgments and/or dismiss with prejudice the underlying actions, as appropriate. As of the Effective Date of this Assurance, the total amount of outstanding deficiency obligations subject to this provision is approximately \$162,024.36.

41. On or before thirty (30) days from the Effective Date of this Assurance, UACC shall release and forgive the unsatisfied portion of any debt reduced to judgment owed or alleged to be owed by Massachusetts consumers who purchased automobiles from F & R Auto or City Line, financed by UACC, through RISCs executed on or after October 5, 2014. UACC represents and warrants that, as of the Effective Date of this Assurance, to the best of the company's knowledge and belief, there are approximately eight (8) affected judgments within the scope of this provision totaling approximately \$31,050.56 in unsatisfied debts.

42. On or before sixty (60) days from the Effective Date of this Assurance, UACC shall request that all credit reporting agencies to which it reports consumer information remove or delete all trade line(s) for each consumer described in Paragraphs 39, 40, and 41 of this Assurance.

3. Consumer Restitution

43. On or before thirty (30) days from the Effective Date of this Assurance, separate from and in addition to the payment provided for in Section II.A.1 of this Assurance, UACC shall pay consumer restitution to the following consumers:

- a. Massachusetts consumers who satisfy both of the following criteria: (i) on or after October 5, 2014, they executed the form of Voluntary Surrender Agreement attached as Exhibit A, and (ii) they made payments to UACC towards their

deficiency balances. As of the Effective Date of this Assurance, the total amount of restitution subject to this provision is approximately \$5,097.52;

b. Massachusetts consumers who satisfy all of the following criteria: (i) they purchased automobiles from F & R Auto or City Line, financed by UACC, through RISCs executed on or after October 5, 2014, (ii) their cars were repossessed by UACC, and (iii) they made payments to UACC towards their deficiency balances. As of the Effective Date of this Assurance, the total amount of restitution subject to this provision is approximately \$4,972.44;

c. Massachusetts consumers who satisfy all of the following criteria: (i) they purchased automobiles from F & R Auto or City Line, financed by UACC, through RISCs executed on or after October 5, 2014, (ii) UACC obtained judgments against them, and (iii) they made payments to UACC toward those judgment balances. As of the Effective Date of this Assurance, the total amount of restitution subject to this provision is approximately \$3,863.28.

B. BUSINESS PRACTICE COMMITMENTS

44. On or before ten (10) business days from the Effective Date of this Assurance, UACC shall implement the following business practices, or confirm in writing that the specific business practice has been implemented. Subject to applicable privileges, the Attorney General's Office has the right to seek additional information relating to the implementation of the business practices either formally or informally.

45. UACC shall implement processes and procedures designed to ensure compliance with Massachusetts law and regulations concerning debt collection practices, including but not limited to call frequency to Massachusetts consumers and references, as set forth in G.L. c. 93A,

940 CMR 7.00, et seq., and G.L. c. 93, § 49, as such law and regulations may be amended or modified from time to time.

46. UACC shall ensure that all policies or procedures concerning wage garnishment against Massachusetts consumers comply with Massachusetts law, including but not limited to the provisions of G.L. c. 246, §28, as such law may be amended or modified from time to time.

47. UACC shall not enforce against Massachusetts consumers the form of Voluntary Surrender Agreement attached as Exhibit A, and shall not enforce against Massachusetts consumers the provision quoted in Paragraph 26 of this Assurance in any subsequent version of the agreement.

48. UACC shall begin to implement additional processes and procedures to formalize its internal review of the dealerships with which it does business in the Commonwealth of Massachusetts, including but not limited to tracking and assessment of complaints received from consumers about dealers and UACC's responses thereto. Any complaint about a Massachusetts dealership's practices received by UACC in writing or by telephone call shall be tracked in such a manner as to include, at a minimum, the following information: (i) the name of the dealership; (ii) the number of complaints; (iii) the nature of each complaint; (iv) UACC's response and/or action taken in response to each complaint; and (v) the date on which UACC responded to the complaint.

49. UACC shall appoint a liaison to facilitate the resolution of consumer complaints with the Attorney General's Office.

C. RELEASE

50. As of the Effective Date of this Assurance, the Commonwealth fully releases and forever discharges UACC and all of its subsidiaries, affiliates, and parent entities, and all of their owners, officers, directors, agents, servants, employees, attorneys and insurers from all liability, civil claims, lawsuits and actions, causes of action, *parens patriae* claims, damages, restitution, fines, costs, attorneys' fees, remedies and/or penalties that the Commonwealth has as of the Effective Date arising out of or in any way relating to the Investigation, including conduct under G.L. c. 93A, 940 CMR 7.00, et seq., and G.L. c. 93, § 49(c). Notwithstanding the foregoing, the Attorney General may institute an action or proceeding for violation of any provision of this Assurance and/or for UACC's future conduct.

D. GENERAL PROVISIONS

51. The "Effective Date" of this Assurance shall mean the date of filing of this Assurance in the Superior Court.

52. This Assurance is without prejudice to and will in no way waive or limit any consumer's claims, and the right to privately pursue an action. However, nothing in this Assurance is intended to, nor shall it, create any private rights, causes of action, third party rights, remedies, or standing for any third party individual or third party entity against UACC.

53. Nothing contained in this Assurance, nor any negotiations or transactions connected in any way with this Assurance, shall be used, offered, or received in evidence in any proceeding to prove any liability, any wrongdoing, or any admission on the part of UACC or by any individual or entity not a party hereto; provided, however, that the foregoing provision shall not limit the Attorney General's rights under G.L. c. 93A, § 5, and shall not prevent this

Assurance from being used, offered, or received in evidence in any proceeding between the Parties to enforce its terms.

54. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

55. This Assurance contains the complete agreement between the Parties. No promises, representations, or warranties other than those set forth in this Assurance have been made by either party. This Assurance supersedes all prior communications, discussions, or understandings, if any, of the Parties, whether written or oral.

56. Nothing in this Assurance shall prevent the Parties from modifying or supplementing this Assurance, for example in the event that amendments or changes in federal, state, or local law, regulations, or rules, or unforeseen events, create a conflict with any provision of this Assurance. This Assurance can be amended or supplemented only by a written document signed by all Parties or by court order. Amendments or supplements may be executed in separate counterparts, with signatures conveyed by mail or by facsimile, electronic mail, or other electronic means.

57. UACC waives all rights to appeal or to otherwise challenge or contest the validity of this Assurance.

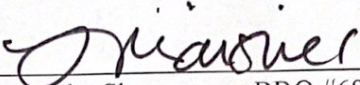
58. This Assurance may be signed in multiple counterparts, each of which will be considered an original and all of which, when considered together, will constitute a whole.

59. This Assurance shall not relieve UACC of any obligations to comply with all applicable federal and state laws and regulations.

60. UACC and its signatories have consulted with counsel in connection with their decision to enter into this Assurance.

61. Signatories for UACC represent and warrant that they have the full legal power, capacity, and authority to bind UACC.

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY, ATTORNEY GENERAL

By: 
Samantha Shusterman, BBO #689849
Lizabeth Lagarto Marshall, BBO #667729
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Consumer Protection Division
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Dated: May 20, 2021

UACC

By: _____
Amy L. Castell
General Counsel
4700 Mercantile Dr., Suite 100
Fort Worth, Texas 76137

Dated: May 24, 2021

EXHIBIT A



Voluntary Surrender Agreement

Customer: ~0120~

Co-Buyer: ~0864~

Account No.: ~0003~

Vehicle: ~0376~ ~0696~ ~0697~

VIN: ~0212~

I, ~0120~ (if applicable and ~0864~), voluntarily surrender and return to **United Auto Credit Corporation (“UACC”)** the above identified Vehicle, securing the above-mentioned Account, having not fulfilled the conditions of my retail installment sales contract (“Contract”) with UACC, subject to the terms of this Voluntary Surrender Agreement (the “Agreement”).

I certify that all personal property has been removed from the Vehicle and I have nothing further to declare.

I understand that UACC intends to sell the Vehicle, as permitted by law, and the money UACC gets from the sale (after paying its costs) will reduce the amount I owe. I understand that I will be responsible for any deficiency remaining on the Account. If UACC gets more money than I owe, UACC will refund the money to me unless UACC must pay it to someone else. I also understand that I am liable for any cost, fees, and storage incurred in securing and preparing the Vehicle for sale, and these costs will be applied to the Account balance. In exchange for my voluntary surrender of the Vehicle, I will be assessed lower repossession fees and costs, which shall be at least \$100 less than the involuntary repossession fees and costs assessed by the third party repossession company.

In consideration of the agreements set forth herein and other goods and valuable consideration, which I acknowledge, I agree to release and discharge UACC, and each of UACC’s affiliates and parent companies, and their officers, employees, agents, and representatives (“Releasees”), from any and all claims, damages, loss, liability, demands, actions, and causes of action whatsoever, known and unknown, asserted and unasserted, arising out of or relating to any loss, damage, or injury, sustained by Customer whether caused by the acts or omissions of the Releasees or otherwise, related to the surrender and subsequent repossession of the Vehicle and all prior collection activity and efforts, including phone calls, of the Account and Vehicle referenced above, as well as to the origination and terms of the Customer’s Contract.

BY SIGNING BELOW I ATTEST THAT I HAVE READ, UNDERSTAND, AND ENTER INTO THIS AGREEMENT WILLING AND VOLUNTARILY.

Signed: _____
~0120~

Date: _____

Signed: _____
~0864~

Date: _____

Witnessed: _____
(for United Auto Credit Corporation)

Date: _____