

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEW WORLD AUTO IMPORTS, INC., a
corporation, also d/b/a Southwest Kia,

NEW WORLD AUTO IMPORTS OF
ROCKWALL, INC., a corporation,
also d/b/a Southwest Kia, and Southwest Kia of
Rockwall,

and

HAMPTON TWO AUTO CORPORATION, a
corporation, also d/b/a Southwest Kia, Southwest
Kia-NW, and Southwest Kia Mesquite,

Defendants.

Case No. 3:16-cv-2401

COMPLAINT FOR CIVIL PENALTIES AND OTHER RELIEF

Plaintiff, the United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its complaint alleges that:

1. Plaintiff brings this action under Sections 5(*l*) and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(*l*) and 56(a), as amended; the Truth In Lending Act (“TILA”), 15 U.S.C. §§ 1601-1667, as amended; and its implementing Regulation Z, 12 C.F.R. Part 226, as amended; the Consumer Leasing Act (“CLA”), 15 U.S.C. §§1667-1667f, as

amended; and its implementing Regulation M, 12 C.F.R. Part 213, as amended; to obtain monetary civil penalties and other relief for Defendants' violations of a final Commission order.

2. The jointly owned and operated Defendants are automobile dealers in the Dallas metropolitan area. The Commission's final order, effective May 30, 2014 (as to Hampton Two Auto Corporation) and June 2, 2014 (as to the remaining Defendants), expressly requires Defendants: (i) not to make misrepresentations about costs and terms of financing or leasing vehicles; (ii) to conform their consumer credit advertisements to TILA and Regulation Z; (iii) to conform their consumer lease advertisements to CLA and Regulation M; and (iv) to maintain records related to representations covered by the final order. Defendants, from the effective date of the order until February 2015, routinely violated these order provisions.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(l), 56(a), and 1607(c).

4. Venue in this district is proper under 28 U.S.C. §§ 1391(b)-(d) and 1395(a).

DEFENDANTS

5. Defendant New World Auto Imports, Inc. ("Southwest Kia-Dallas"), also doing business as Southwest Kia, is incorporated in the State of Texas. Its registered agent is located at 39650 Lyndon B. Johnson Fwy., Dallas, TX 75237, and its physical retail address is 39650 Lyndon B. Johnson Fwy., Dallas, TX 75237. At all times material to this complaint, Defendant has participated in the acts and practices described in this complaint. Defendant transacts business in this district, including through a motor vehicle retail store or lot, through television, print, radio, Internet, email, and mobile device advertisements reaching consumers living in the

district, and through the websites southwestkia.com, southwestkia-dallas.com, 250carpayment.com, and DallasTruckWorld.com.

6. Defendant New World Auto Imports of Rockwall, Inc. (“Southwest Kia-Rockwall”), also doing business as Southwest Kia and Southwest Kia of Rockwall, is incorporated in the State of Texas. Its registered agent is located at 39650 Lyndon B. Johnson Fwy., Dallas, TX 75237, and its physical retail address is 1790 East Interstate 30, Rockwall, TX 75087. At all times material to this complaint, Defendant has participated in the acts and practices described in this complaint. Defendant transacts business in this district, including through a motor vehicle retail store or lot, through television, print, radio, Internet, email, and mobile device advertisements reaching consumers living in the district, and through the websites southwestkia.com, southwestkia-rockwall.com, 250carpayment.com, and DallasTruckWorld.com.

7. Defendant Hampton Two Auto Corporation (“Southwest Kia-Mesquite”), also doing business as Southwest Kia and Southwest Kia of Mesquite, is incorporated in the State of Texas. Its registered agent is located at 39650 Lyndon B. Johnson Fwy., Dallas, TX 75237, and its physical retail address is 1919 Oates Dr., Mesquite, TX 75150. At all times material to this complaint, Defendant has participated in the acts and practices described in this complaint. Defendant transacts business in this district, including through a motor vehicle retail store or lot, through television, print, radio, Internet, email, and mobile device advertisements reaching consumers living in the district, and through the websites southwestkia.com, southwestkia-mesquite.com, 250carpayment.com, and DallasTruckWorld.com.

COMMERCE

8. At all times material to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

PRIOR COMMISSION PROCEEDING

9. In a Commission proceeding bearing Docket No. C-4437, the Commission charged Defendants with, among other things:

- i. Making false or misleading representations that, when a consumer purchases a vehicle, the advertised monthly payments will pay off the entire balance due on the car when in fact a large “balloon” payment would be due at the end of the loan term, in violation of the FTC Act;
- ii. Making false or misleading representations that, when a consumer leases a vehicle, there would be almost no money due at lease signing when in fact several fees amounting to hundreds or thousands of dollars would be due at lease signing, in violation of the FTC Act;
- iii. Disseminating consumer credit advertisements for vehicles that failed to disclose and/or failed to disclose clearly and conspicuously terms for financing the purchase of the advertised vehicles, in violation of Regulation Z, 12 C.F.R. Part 226, as amended, and the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601-1667, as amended; and
- iv. Disseminating consumer lease advertisements for vehicles that failed to disclose and/or failed to disclose clearly and conspicuously terms for leasing the advertised vehicles, in violation of Regulation M, 12 C.F.R. Part 213, as amended, and the Consumer Leasing Act (“CLA”), 15 U.S.C. §§ 1667-1667f, as amended.

10. On February 20, 2014, the Commission issued its decision and order (“Consent Order”) approving a settlement with Defendants. In pertinent part, Parts I, II, and III of the Consent Order state:

I.

IT IS HEREBY ORDERED that [Defendants], directly or indirectly, in connection with any advertisement for the purchase, financing, or leasing of motor vehicles, shall not, in any manner, expressly or by implication:

- A. Misrepresent the cost of:
 - 1. Purchasing a vehicle with financing, including but not necessarily limited to, the amount or percentage of the down payment, the number of payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment; or
 - 2. Leasing a vehicle, including but not necessarily limited to, the total amount due at lease inception, the down payment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments; or
- B. Misrepresent any other material fact about the price, sale, financing, or leasing of any vehicle.

II.

IT IS FURTHER ORDERED that [Defendants], directly or indirectly, in connection with any advertisement for any extension of consumer credit, shall not in any manner, expressly or by implication:

- A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:
 - 1. The amount or percentage of the down payment;
 - 2. The terms of repayment; and
 - 3. The annual percentage rate, using the term “annual percentage rate” or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term[.]

III.

IT IS FURTHER ORDERED that [Defendants], directly or indirectly, in connection with any advertisement for any consumer lease, shall not, in any manner, expressly or by implication:

- A. State the amount of any payment or that any or no initial payment is required at lease inception, without disclosing clearly and conspicuously the following terms:
 - 1. That the transaction advertised is a lease;
 - 2. The total amount due at lease signing or delivery;
 - 3. Whether or not a security deposit is required;
 - 4. The number, amounts, and timing of scheduled payments; and
 - 5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle[.]

11. The Consent Order defines “clearly and conspicuously” to mean:

- a. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.
- b. In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration and in a location sufficient for an ordinary consumer to read and comprehend it.
- c. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.

d. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

e. In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or promotion.

12. The Consent Order additionally states:

IV.

IT IS FURTHER ORDERED that [Defendants and their] successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying: . . .

A. All advertisements and promotional materials containing the representation; [and]

B. All materials that were relied upon in disseminating the representation[.]

13. A copy of the Consent Order is attached hereto as Exhibit A. The FTC served the Consent Order on Southwest Kia-Mesquite on or about May 30, 2014. The FTC served the Consent Order on Southwest Kia-Dallas and Southwest Kia-Rockwall on or about June 2, 2014. The Consent Order has remained in full effect since.

DEFENDANTS' CONDUCT

14. Defendants' three motor vehicle dealerships in the Dallas metropolitan area operate under common ownership and management. In addition to three retail stores, Defendants sell cars through several interconnected Internet websites. Defendants advertise their dealerships and websites through a variety of media, including – but not limited to – television, print, radio, Internet, email, and mobile device advertising targeting consumers in the Dallas, Texas metropolitan area. Defendants often advertise jointly for all three dealerships, although

some advertising is Defendant specific. Through these dealerships, Defendants together sell or lease more than 5,000 new and used vehicles per year.

Defendants' Notice of the Consent Order

15. In 2014, all of the named Defendants stipulated to the Consent Order, specifically acknowledging potential liability for “civil penalties in the amount provided by law and other appropriate relief for each violation of the [Consent Order] after it becomes final.”

Advertisements with Hidden Conditions and Costs That Misrepresent Terms of Financing or Leasing Vehicles

16. Since receiving service of the Consent Order, Defendants have offered to finance or lease motor vehicles in thousands of television, print, radio, Internet, email, and mobile device advertisements and on their various websites. These ads frequently misrepresented the transaction by focusing only on a few attractive terms, such as a low monthly payment or annual percentage rate, while concealing material terms that add significant extra costs or that limit who can qualify for the advertised prices.

17. Defendants, for example, ran a joint television advertisement on local television stations in July 2014.¹ A copy of this advertisement is attached as Exhibit B. They advertised that consumers can “get up to \$7,000 off New Kias in stock” when they purchase at a Southwest Kia dealer. Defendants also offered “two vehicles for under \$200 per month” both in the voiceover and prominent text on the screen. Then, successive images of two vehicles prominently advertised at a cost of \$189 per month and \$179 per month appear. Defendants only mention in a barely legible, thirteen-line paragraph of dense, all caps, fine print flashed for two seconds that the advertised terms are not for the sale of a vehicle, but rather for leases requiring a \$1,999 payment at lease signing. At no other time during the ad do Defendants disclose these

¹ The comparative size of the images shown herein is similar to that which appears in advertisements provided to the FTC by Defendants.

terms. Across all media, from the effective date of the Consent Order until February 2015, Defendants regularly used such disclosures and juxtaposition in a manner that tends to mislead consumers.

18. Southwest Kia-Mesquite sent consumers direct mail advertisements for the financing of new vehicles in October 2014. According to the prominent terms of the advertisements, consumers could purchase a new vehicle for an attractive low monthly payment. However, in almost illegible fine print far removed from the prominently advertised terms Defendant Southwest Kia-Mesquite disclosed that consumers would be required to pay a down payment and an enormous balloon payment of nearly half of the car's suggested retail price at the end of the financing term. For example, the mailer prominently advertised a 2015 Kia Rio for sale for \$179 per month.



Defendant Southwest Kia-Mesquite hid terms that raised the price. Only in the fine print – illegible without magnification – could a consumer find the disclosure that \$1,999 (plus tax, title, and license fees) would be due upfront and \$8,271 would be due at the end of the 38-month financing term. A copy of this mailer, in the size produced to the FTC by Defendants, is attached as Exhibit C. All three Defendants sent out substantively identical advertisements that month, as well as others that were substantially similar.

19. Defendant Southwest Kia-Mesquite ran a Spanish-language television advertisement on Dallas, Texas-area television stations. A copy of this advertisement is attached

as Exhibit D. The spoken and visual text of the commercial tells consumers that “por solo \$500 de enganche puedes salir manejando” (“for only \$500 down, you can leave driving”).



At no point in the commercial did Defendant Southwest Kia-Mesquite disclose any of the other terms needed to allow consumers to comprehend the offer – *e.g.*, required monthly payments and the term for which payments must be made. Indeed, the advertisement never even clearly explains whether the offer is for financing of a purchase or for a lease.

20. Defendants ran a banner advertisement on the Internet targeted toward consumers in the Dallas, Texas metropolitan area that offered a vehicle for \$179 per month for 36 months. A copy of this advertisement, in the size produced to the FTC by Defendants, is attached as Exhibit E. Nowhere in the visible portion of the banner advertisement did Defendants specify whether the advertised price was for the sale or lease of the vehicle, or the required down payment and APR (if a sale) or the total due at signing and whether a security deposit was required (if a lease).



Defendants widely disseminated advertisements that failed to disclose clearly and conspicuously material terms.

Advertisements with Hidden Limitations on the Ability of Consumers to Qualify for Advertised Terms

21. Since receiving service of the Consent Order, Defendants have promoted motor vehicles for lease or for sale on credit in advertisements which often featured attractive financing terms or low monthly payments. In some instances, Defendants’ advertised terms often were only available to a small subset of the consumers seeing the advertisement, and Defendants failed to disclose clearly and conspicuously – if at all – the limitations on consumers’ ability to qualify for the advantageous terms.

22. Defendants, for example, ran a television advertisement for the website 250carpayment.com on Dallas, Texas-area television stations in or around February 2015. A copy of this advertisement is attached as Exhibit F. The advertisement begins with a voiceover stating “Repos or foreclosures? 250carpayment.com can help,” accompanied by prominent text encouraging consumers to log on to that website.



After specifically seeking the attention of consumers with such credit issues, the commercial advertises the availability of vehicles for \$250 per month with a \$250 down payment. In a fine print disclosure it stated that these payments are based on a 4.25 annual percentage rate. In fact, few if any borrowers with issues as severe as a repossession or foreclosure could have qualified for that annual percentage rate.

Consumer Credit Advertisements
Without Required Clear and Conspicuous Disclosures

23. Since receiving service of the Consent Order, Defendants have promoted the extension of consumer credit for motor vehicles, in thousands of television, print, radio, Internet, email, and mobile device advertisements and at the various websites under their control. Defendants' credit offers often contain a prominent "triggering term" (as it is commonly known under the Truth in Lending Act ("TILA") and Regulation Z), requiring clear and conspicuous disclosure of specific cost, annual percentage rate, duration, and down payment terms relating to the transaction. From the effective date of the Consent Order until February 2015, many of Defendants' advertisements prominently advertised the amount of any down payment, the number of payments or period of repayment, or the amount of any payment ("triggering terms"), but failed to disclose, or clearly and conspicuously disclose, the full terms of repayment and the annual percentage rate.

24. Defendants, for example, ran an advertisement for used cars sold on credit on Dallas, Texas-area television stations. A copy of this advertisement is attached as Exhibit G. The commercial prominently states that there are 250 cars available with a \$250 down payment for \$250 per month. White fine print at the bottom of the screen appears for about two seconds against a grey background — making it effectively illegible — disclosing the remaining terms of repayment and the finance charge expressed as an annual percentage rate. From the effective date of the Consent Order until February 2015, Defendants widely disseminated advertisements with fine print, difficult to read disclosures about finance terms.

25. Defendants ran an advertisement with a credit offer on Dallas, Texas-area television stations in or around January 2015. The commercial offered new vehicles with financing at a 0% rate for a financing term of sixty months. A copy of this advertisement is attached as Exhibit H. The advertisement contains the duration of the financing contract (the TILA “triggering term”) but fails to disclose the finance charge as an annual percentage rate.



Such omissions were common throughout many of Defendants’ advertisements for the sale of motor vehicles with financing.

**Consumer Lease Advertisements Without
Required Clear and Conspicuous Disclosures**

26. Since receiving service of the Consent Order, Defendants have promoted the extension of consumer leases for motor vehicles in hundreds of television, radio, direct mail, Internet, email, and mobile device advertisements and at the various websites under their control. Defendants' lease offers often contain a prominent "triggering term," (as it is commonly known under the Consumer Leasing Act ("CLA") and Regulation M), requiring the clear and conspicuous disclosure of specific terms relating to the transaction. From the effective date of the Consent Order until February 2015, several of Defendants' advertisements prominently advertised the amount of a payment (a CLA "triggering term"), but failed to disclose, or clearly and conspicuously disclose, that the transaction is a lease, the total amount due at signing or delivery, or whether a security deposit is required.

27. In a July 2014 commercial, Defendants' General Manager claims that consumers can get two vehicles "for under \$200 per month," including a 2014 Optima for "\$189/mo." At no point did Defendants state in the large text or the spoken script that the advertised monthly payments were not for the sale of vehicles, but rather for leases bearing \$1,999 down payments. *See Exhibit B.* The advertisement contains the amount of the monthly payments (a CLA "triggering term"). However, the advertisement only includes the following required disclosures in the midst of a large block of fine print twelve lines long in difficult-to-read all caps white lettering: (1) that the advertisement is for a lease; (2) the full amount due at lease signing; (3) the number of payments; and (4) whether there is a security deposit. From the effective date of the Consent Order until February 2015, Defendants widely disseminated several advertisements which failed to disclose clearly and conspicuously necessary finance terms required by CLA.

28. Defendants ran an Internet advertisement targeting consumers in the Dallas metropolitan area that prominently offered a vehicle for “\$219/mo for 36 months.” Although the advertised price was for a lease, that fact was only clear if consumers read the fine print – which would require significant magnification to do. Similarly, the consumer would have to look in the fine print to learn that nearly \$3,000 (the exact amount is not legible) would be due at lease signing. A copy of the internet advertisement, in the size produced to the FTC by Defendants, is attached as Exhibit I. The advertisement contains the CLA/Regulation M “triggering term” of the amount of monthly payments. The following terms appear in the midst of the miniscule, fine print seven lines long in difficult to read white lettering against a grey background: (a) that the transaction was a lease, (b) the full amount due at lease signing, and (c) whether a security deposit would be required. Defendants widely disseminated advertisements like these.

**Consumer Credit or Lease Advertisements Without
Required Clear and Conspicuous Disclosures**

29. Since receiving service of the final Order, Defendants have promoted their business by running advertisements across a variety of media. Many of these offers are for the sale of a vehicle with financing, while others are for the lease of a vehicle. In several instances, Defendants’ advertisements contain offers that highlight one or two terms of a transaction, but fail to disclose at any time whether the terms relate to the sale or lease of a vehicle or other required cost disclosures.

30. Defendants, for example, ran an advertisement in Spanish, telling consumers “for only \$500 down, you can leave driving.” The commercial includes the amount down (a CLA and a TILA “triggering term”) but never indicates whether the advertised terms are for financing or a lease, and never provides the required cost disclosures. *See* Exhibit D.



If the commercial is for a sale with financing, it fails to disclose: (a) the terms of repayment including the number, amount, and timing of payments and (b) the finance charge expressed as an annual percentage rate. If the commercial is for a lease, it fails to disclose: (a) that the transaction is a lease; (b) the number, amount, and timing of payments; (c) a statement of whether there is a security deposit; and (d) a statement that an extra charge may be imposed at the end of the lease term, where the lessee's liability is based on the difference between the residual value of the leased property and the realized value.

31. Defendants' Internet advertisement offered a vehicle for \$179 per month for 36 months ("triggering terms") without specifying whether the advertised price was for the sale or lease of the vehicle.



See Exhibit E. If the advertisement is for a sale with financing, it fails to disclose: (a) down payment and (b) the rate of finance charge expressed as an annual percentage rate. If the offer is for a lease, it fails to disclose: (a) that the transaction is a lease; (b) the amount due at lease signing; (c) a statement of whether there is a security deposit; and (d) a statement that an extra charge may be imposed at the end of the lease term, where the lessee's liability is based on the difference between the residual value of the leased property and the realized value. From the effective date of the Consent Order until February 2015, Defendants widely disseminated advertisements that failed to disclose clearly and conspicuously necessary cost terms required by TILA and/or CLA.

Defendants' Recordkeeping Failures

32. Defendants agreed, in Parts IV and VII of the Consent Order, to retain certain business records, produce them upon request, and submit compliance reports. After the Consent Order became effective, however, Defendants have failed to produce sufficient records. In absence of these records, it is often impossible to gauge the degree of the Defendants' compliance with the other provisions of the Order.

33. In their September 26, 2014 compliance report, Defendants stated that "With respect to advertisements on Southwest Kia's website and the internet, [Defendants are] in the process of establishing a method to record and maintain such records and, once established, will maintain such records for at least five (5) years from dissemination."

34. In 2014 and 2015, FTC staff sought further compliance information pursuant to the Consent Order from Defendants via narrowly tailored requests. Staff requested, among other things, copies of Defendants' mobile and Internet advertisements.

35. In various productions in 2014 and 2015, Defendants produced screenshots of mobile and Internet banner advertisements but were unable to provide either: (a) copies of the advertisements in their native format or (b) copies of the advertisements in any other format that would show all disclaimers, qualifications, or other information that consumers could view by interacting with the banner using their cursor. For example, Defendants produced a banner advertisement that included buttons for consumers to “view inventory” or “view incentives” but could not or did not produce a version that could show those disclaimers.



See Exhibit E.

VIOLATIONS OF CONSENT ORDER

FIRST CAUSE OF ACTION **(CONSENT ORDER PART I – MISREPRESENTATIONS)**

36. In numerous instances, from the effective date of the Consent Order until February 2015, Defendants disseminated or caused the dissemination of advertisements containing material facts regarding the cost or terms of offers for financing or leasing a motor vehicle, that represented expressly or by implication:

- A. The prominent costs or terms are inclusive of all material costs and terms of the transaction;
- B. The prominent costs or terms are generally available to consumers targeted by the advertisements; or

C. The prominent costs or terms are for vehicle purchases, not leases.

37. In truth and in fact:

A. The prominent costs or terms do not include costs and terms such as large down payments, balloon payments, capital cost reductions, acquisition fees, or other up-front payments;

B. The prominent costs or terms are not generally available to consumers targeted by the advertisement; or

C. The prominent costs and terms are for vehicle leases, and not purchases.

38. Defendants' representations described in Paragraph 36 above, constitute misrepresentations, in violation of Parts I(A) and (B) of the Consent Order.

SECOND CAUSE OF ACTION
(CONSENT ORDER PART II – TILA / REGULATION Z – CONSUMER CREDIT)

39. In numerous instances, Defendants disseminated or caused the dissemination of offers promoting, directly or indirectly, the extension of consumer credit for a motor vehicle.

40. In numerous instances, from the effective date of the Consent Order until February 2015, the offers for the extension of consumer credit for vehicles described in Paragraph 39 stated the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, but:

A. Omitted the amount or percentage of the down payment or the terms of repayment; or

B. Failed to state all required disclosures “clearly and conspicuously,” as defined in the Consent Order, including the amount or percentage of the down payment or the terms of repayment. These disclosures were not stated “clearly and conspicuously,” because, among other deficiencies, they appeared in small type, in a

distant location, for a short duration, in a fast speed or cadence, in unintelligible language or syntax, or were accompanied by distracting sounds or images.

41. By failing to make these disclosures required by Part II(A) of the Consent Order, or failing to make the required disclosures “clearly and conspicuously,” Defendants violated Part II(A) of the Consent Order.

42. In numerous instances, from the effective date of the Consent Order until February 2015, the offers for the extension of consumer credit for vehicles described in Paragraph 39 stated a finance charge, but failed to state the finance charge as an annual percentage rate or APR, using those terms.

43. Defendants’ failure to make these statements required by Part II(B) of the Consent Order constitutes a violation of Part II(B) of the Consent Order.

THIRD CAUSE OF ACTION
(CONSENT ORDER PART III – CLA / REGULATION M – CONSUMER LEASES)

44. In numerous instances, Defendants disseminated or caused the dissemination of offers promoting, directly or indirectly, consumer leases for a motor vehicle.

45. In numerous instances, from the effective date of the Consent Order until February 2015, the offers for consumer leases for vehicles described in Paragraph 44 stated the amount of any payment or that any or no initial payment was required at lease inception, but:

A. Omitted a statement that the transaction advertised is a lease, the total amount due at lease signing or delivery, a statement of whether or not a security deposit is required, or the number, amounts, and timing of scheduled payments; or

B. Failed to state all required disclosures “clearly and conspicuously,” as defined in the Consent Order, including a statement that the transaction advertised is a lease, the total amount due at lease signing or delivery, a statement

of whether or not a security deposit is required, or the number, amounts, and timing of scheduled payments. These disclosures were not stated “clearly and conspicuously,” because, among other deficiencies, they appeared in small type, in a distant location, for a short duration, in a fast speed or cadence, in unintelligible language or syntax, or were accompanied by distracting sounds or images.

46. By failing to make these disclosures required by Part III(A) of the Consent Order, or failing to make the required disclosures “clearly and conspicuously,” Defendants violated Part III(A) of the Consent Order.

FOURTH CAUSE OF ACTION
(CONSENT ORDER PART IV – FAILURE TO RETAIN AND PRODUCE RECORDS)

47. Part IV(A) of the Consent Order requires Defendants “for five (5) years after the last date of dissemination of any representation covered by [the Consent Order], [to] maintain and upon request make available to the Federal Trade Commission for inspection and copying . . . all advertisements and promotional materials containing the representation.”

48. From the effective date of the Consent Order until February 2015, in numerous instances in which Defendants disseminated specific offers to provide consumer credit or leases in connection with motor vehicles, Defendants:

A. Did not maintain materials, such as complete copies of all advertisements produced by or on behalf of Defendants, or

B. Did not make them available, upon request, to the FTC for inspection and copying.

49. Defendants’ acts or practices, as described in Paragraph 48 above, violated Part IV(A) of the Consent Order.

CIVIL PENALTIES

50. Each representation Defendants have made in violation of the Consent Order constitutes a separate violation for which Plaintiff may seek civil penalties. Additionally, each of Defendants' failures to maintain and make available materials and its failure to submit true and accurate written reports constitutes a separate violation for which Plaintiff may seek civil penalties.

51. Each day Defendants have made, or have continued to make, representations in violation of the Consent Order constitutes a separate violation for which Plaintiff may seek civil penalties.

52. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), as modified by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (note), and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes the Court to award monetary civil penalties of up to \$16,000 for each such violation of the Consent Order.

53. Under Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), this Court is authorized to permanently enjoin Defendants from violating the Consent Order and grant ancillary relief.

PRAYER FOR RELIEF

54. WHEREFORE, Plaintiff requests this Court, pursuant to 15 U.S.C. § 45(l), and pursuant to the Court's own equitable powers, to:

(1) Enter judgment against Defendants and in favor of the Plaintiff for each violation alleged in this complaint;

(2) Award Plaintiff monetary civil penalties from Defendants for each violation of the Consent Order alleged in this complaint;

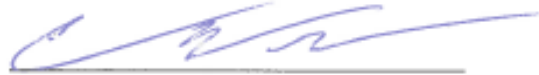
- (3) Enter a permanent injunction to prevent Defendants from violating the Consent Order;
- (4) Award Plaintiff its costs and attorneys' fees incurred in connection with this action; and
- (5) Award Plaintiff such additional relief as the Court may deem just and proper.

DATED: August 18, 2016

FOR THE COMMISSION:

JAMES A. KOHM
Associate Director for Enforcement

FRANK M. GORMAN
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