SOAH DOCKET NO. 466-18-2931

OCCC CASE NO. L17-017

IN THE MATTER OF: § BEFORE THE

§

§ OFFICE OF CONSUMER

MASTER FILE NUMBER: 14682

MAZ AUTO, INC. § CREDIT COMMISSIONER

8707 RICHMOND AVENUE §

HOUSTON, TEXAS 77063 § STATE OF TEXAS

FINAL ORDER

On December 8, 2017, the Office of Consumer Credit Commissioner ("OCCC") issued an Amended Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Maz Auto, Inc. ("Maz Auto"). A hearing was held on July 11, 2018, on whether the Amended Order should become final. Maz Auto failed to appear at the hearing. Therefore, the OCCC issues this Final Order after default under Title 7, Section 9.12 of the Texas Administrative Code.

Findings of Fact

- 1. Maz Auto is a motor vehicle sales finance dealer that was licensed by the OCCC to operate as a holder under Chapter 348 of the Texas Finance Code. Maz Auto operated under master file number 14682 at one licensed location, under license number 56083. Maz Auto is in the business of selling motor vehicles to retail buyers in retail installment transactions under Chapter 348 of the Texas Finance Code.
- 2. The OCCC examined Maz Auto on three occasions: (1) August 5, 2015, (2) December 12, 2016, and (3) April 29, 2016.
- 3. During each examination, the OCCC cited Maz Auto for violating Chapter 348 of the Texas Finance Code and Title 7, Chapter 84 of the Texas Administrative Code. In each examination report, the OCCC instructed Maz Auto to perform a self-review of its recent transactions to identify certain violations and to make restitution to consumers injured by the

- violations. Maz Auto did not complete the specified corrective actions for certain violations.
- 4. Maz Auto included an itemized charge labeled "Lender Processing" in motor vehicle retail installment contracts.
- 5. Maz Auto included an itemized charge for registration, certificate of title, and license in excess of the amount actually paid to public officials for these items.
- 6. Maz Auto failed to maintain records evidencing payment to public officials of title, license, and registration fees.
- 7. Maz Auto included a deputy fee in retail installment contracts where titling and registration services were not performed by an authorized deputy.
- 8. Maz Auto included itemized charges for motor vehicle inspections and failed to maintain copies of or access to work orders, inspection receipts, or other verifiable evidence reflecting the cost, date, and occurrence of specific inspections.
- 9. Maz Auto notified the OCCC of its intent to charge a \$125 documentary fee on January 25, 2013, and notified the OCCC of a \$150 documentary fee on June 14, 2017. Maz Auto did not file any cost analysis showing that a greater documentary fee amount would be reasonable.
- 10. Maz Auto charged a \$320 documentary fee without notifying the OCCC of this amount, and without providing a cost analysis showing that \$320 is a reasonable amount.
- 11. On December 8, 2017, the OCCC issued an Amended Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Maz Auto for violating Chapter 348 of the Texas Finance Code, and Title 7, Chapter 84 of the Texas Administrative Code.
- 12. On January 10, 2018, Maz Auto requested a hearing on the Order.

- 13. On March 30, 2018, the OCCC issued a Notice of Hearing to Maz Auto. The OCCC sent the Notice of Hearing by certified mail to the last known mailing address for Maz Auto's attorney, and by email to the last known email address for Maz Auto's attorney.
- 14. The Notice of Hearing informed Maz Auto of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing would be held; the particular sections of the statutes and rules involved; and the matters asserted.
- 15. The Notice of Hearing contained the following statement in 12-point, boldface type: "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."
- 16. The Notice of Hearing contained the following statement in 12-point, boldface type: "If you fail to appear at the hearing, the factual allegations listed in this notice could be deemed admitted, and the relief sought in the notice might be granted by default against you."
- 17. On June 19, 2018, the State Office of Administrative Hearings (SOAH) issued Order No. 3, Granting Motion for Continuance and Motion to Withdraw, and Ordering Maz Auto, Inc. to Respond to Discovery Requests. SOAH granted the motion of Maz Auto's attorney to withdraw as counsel, and continued the hearing to July 11, 2018.
- 18. A hearing was held on July 11, 2018, before Administrative Law Judge Holly Vandrovec at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas.
- 19. The OCCC appeared and was represented by Matthew Nance, Deputy General Counsel. Maz Auto failed to appear at the hearing.
- 20. On July 12, 2018, SOAH issued Order No. 4, Conditional Order of Default Dismissal and Remand. Order No. 4 found that the OCCC showed proof

of adequate notice to Maz Auto, and that this matter may be returned to the OCCC for informal disposition on a default basis.

Conclusions of Law

- 1. Under Section 14.208 of the Texas Finance Code, if the Commissioner has reasonable cause to believe that a person is violating Chapter 348 of the Texas Finance Code, the Commissioner may issue an order to cease and desist from the violation, an order to take affirmative action, or both to enforce compliance.
- 2. Under Section 14.251 of the Texas Finance Code, the Commissioner may order a person who violates Chapter 348 or a rule adopted under Chapter 348 to make restitution to an identifiable person injured by the violation.
- 3. Maz Auto violated Section 348.005 of the Texas Finance Code by including an itemized charge labeled "Lender Processing" in motor vehicle retail installment contracts.
- 4. Maz Auto violated Section 348.005 of the Texas Finance Code by including an itemized charge for registration, certificate of title, and license in excess of the amount actually paid to public officials for these items.
- 5. Maz Auto violated Title 7, Section 84.707 of the Texas Administrative Code by failing to maintain records evidencing payment to public officials of title, license, and registration fees.
- 6. Maz Auto violated Section 348.005 of the Texas Finance Code by including a deputy fee in retail installment contracts where titling and registration services were not performed by an authorized deputy.
- 7. Maz Auto violated Title 7, Section 84.707 of the Texas Administrative Code by including itemized charges for motor vehicle inspections and failing to maintain copies of or access to work orders, inspection receipts, or other verifiable evidence reflecting the cost, date, and occurrence of specific inspections.

- 8. Maz Auto violated Section 348.006 of the Texas Finance Code and Title 7, Section 84.205 of the Texas Administrative Code by charging an excessive and unauthorized \$320 documentary fee without notifying the OCCC of this amount, and without providing a cost analysis showing that \$320 is a reasonable amount.
- 9. The Commissioner has reasonable cause to believe that Maz Auto is violating Chapter 348 of the Texas Finance Code.
- 10. Maz Auto's violations of Chapter 348 and its implementing rules injured retail buyers by causing retail buyers to pay amounts that were not legally authorized.
- 11. The OCCC provided adequate notice of the hearing to Maz Auto.
- 12. Maz Auto defaulted as a matter of law under Title 1, Section 155.501 of the Texas Administrative Code and Title 7, Section 9.12 of the Texas Administrative Code.
- 13. The allegations in the Notice of Hearing are deemed admitted as true under Title 1, Section 155.501 of the Texas Administrative Code and Title 7, Section 9.12 of the Texas Administrative Code.
- 14. On March 4, 2015, the Commissioner issued a Delegation Order on contested case decision-making authority. The Order delegates the Commissioner's authority to issue a final order after a hearing to Juan V. Garcia, who is employed by the OCCC as Director of Strategic Communications, Administration and Planning.

Order

After review and due consideration, I hereby adopt the above-stated findings of fact and conclusions of law.

IT IS ORDERED that the Amended Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution issued against Maz Auto, Inc. on December 8, 2017 is FINAL and ENFORCEABLE.

SIGNED and ENTERED this 25th day of October, 2018.

By: /s/Juan V. Garcia

Juan V. Garcia

Office of Consumer Credit Commissioner

Pursuant to Delegation Order of March 4, 2015

SERVICE LIST

On October 25th, 2018, Juan V. Garcia, Director of Strategic
Communications, Administration and Planning, Office of Consumer Credit
Commissioner, sent this Final Order to:

Maz Auto Inc.

Maz Auto, Inc. hand-delivery Attn: Mazen Abdel Hafiz, Compliance Officer and Registered Agent | facsimile 8707 Schumacher Lane, Ste. 101 Houston, TX 77063 electronic mail 713-370-7231 (f) regular mail certified mail, return receipt requested #91 7108 2133 3939 0802 8164 | hand-delivery Matthew J. Nance Deputy General Counsel Office of Consumer Credit facsimile Commissioner 2601 N. Lamar Blvd. electronic mail Austin, TX 78705 regular mail 512-936-7660 (p) 512-936-7610 (f) matthew.nance@occc.texas.gov certified mail, return receipt requested ATTORNEY FOR THE OFFICE OF

CONSUMER CREDIT
COMMISSIONER

OCCC CASE NO. L17-017

IN THE MATTER OF:

\$ BEFORE THE

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\$ OFFICE OF CONSUMER

MASTER FILE NUMBER: 14682

MAZ AUTO, INC.

\$ CREDIT COMMISSIONER

8707 RICHMOND AVENUE

HOUSTON, TEXAS 77063

\$ STATE OF TEXAS

AMENDED ORDER TO CEASE AND DESIST, TO TAKE AFFIRMATIVE ACTION, AND TO MAKE RESTITUTION

The Office of Consumer Credit Commissioner ("OCCC") issues this Amended Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Maz Auto, Inc. ("Maz Auto"), based on the violations of law described below.¹

Statement of Facts and Law

Maz Auto is a motor vehicle sales finance dealer licensed by the OCCC under Chapter 348 of the Texas Finance Code. Maz Auto operates under master file number 14682 at one licensed location, under license number 56083, issued on December 21, 2009. Maz Auto's designated contact address is 8707 Richmond Avenue, Houston, Texas 77063.

The OCCC examined Maz Auto three times between August 2015 and April 2016. The examinations revealed that Maz Auto engaged in activity that violated Chapter 348 of the Texas Finance Code, and Title 7, Chapter 84 of the Texas Administrative Code.

The OCCC repeatedly instructed Maz Auto to perform a self-review for the period beginning August 5, 2011, and to make restitution to consumers of specified unlawful charges. During two follow-up examinations, the OCCC discovered more accounts with the same unlawful charges. Maz Auto was instructed to extend the period of self-review to encompass August 5, 2011 to April 29, 2016. Maz Auto has not completed the self-review and refunding.

¹ Tex. Fin. Code § 14.208.

I. Unauthorized "Lender Processing" Fee

Maz Auto financed the sale of motor vehicles through retail installment contracts.² The principal balance of a retail installment contract is computed by adding the cash price, authorized itemized charges, and a documentary fee.³

A retail installment contract may include an itemized charge for a limited number of items.⁴ A "Lender Processing" fee is not an itemized charge that is authorized to be included in a retail installment contract.⁵ Maz Auto violated Texas law by including an itemized charge labeled "Lender Processing" in motor vehicle retail installment contracts. Therefore, Maz Auto must refund the entire amount of any "Lender Processing" fee charged to buyers.

II. Excessive Public Official Fees

A retail installment contract may include an itemized charge for registration, certificate of title, and license fees paid to a public official.⁶ If the retail installment contract includes itemized charges for these items, then the licensee must maintain a copy of records reflecting the amount paid for each item.⁷

Maz Auto violated Texas law by including an itemized charge for registration, certificate of title, and license in excess of the amount actually paid to public officials for these items. Maz Auto also violated Texas law by failing to maintain records evidencing payment to public officials of title, license, and registration fees. Therefore, Maz Auto must refund the amount of any itemized charge for registration, certificate of title, and license in excess of the documented amount actually paid to public officials for these items.

² Tex. Fin. Code § 348.001 (defining retail installment contract, retail installment transaction, retail seller, and retail buyer).

³ Tex. Fin. Code § 348.006(a)(1).

⁴ Tex. Fin. Code § 348.005 (limiting authorized itemized charges in a retail installment contract to registration, certificate of title, and license fees; authorized deputy fees; taxes; inspection fees; and charges for insurance, service contracts, warranties, and other listed ancillary products).

⁵ See Tex. Fin. Code § 348.005.

⁶ Tex. Fin. Code § 348.005(1).

⁷ Tex. Admin. Code §§ 84.707(d)(2)(A)(iv), 84.708(e)(2)(A)(v) (requiring a licensee to maintain documents evidencing "fees for license, title, and registration of the vehicle").

III. Unauthorized Deputy Fees

A retail installment contract may include an itemized charge for a fee paid to an authorized deputy of a county tax assessor-collector for titling and registration services. Maz Auto violated Texas law by including a deputy fee in retail installment contracts where titling and registration services were not performed by an authorized deputy. Therefore, Maz Auto must refund the entire amount of any deputy fee charged to buyers where these services were not performed by an authorized deputy.

IV. Excessive Inspection Fees

A retail installment contract may include an itemized charge for fees prescribed by law and connected with the sale or inspection of the motor vehicle. If the licensee includes an itemized charge for performing a state inspection, the licensee must maintain a copy of the work order, inspection receipt, or other evidence reflecting that the inspection was performed, including the date and cost of the inspection. 10

Maz Auto violated Texas law by including itemized charges for motor vehicle inspections and failing to maintain copies of or access to work orders, inspection receipts, or other verifiable evidence reflecting the cost, date, and occurrence of specific inspections. Therefore, Maz Auto must refund the entire amount of any motor vehicle inspection that was not actually performed and documented.

V. Excessive Documentary Fees

A retail installment contract may include a documentary fee for services rendered by the licensee, for or on behalf of the buyer, in handling and processing documents related to the motor vehicle sale.¹¹ A documentary fee included in the principal balance of a retail installment contract must be reasonable.¹² A documentary fee of \$150 or less is presumed reasonable.¹³ Before

⁸ Tex. Fin. Code § 348.005(1); Tex. Transp. Code § 520.0071; 43 Tex. Admin. Code §§ 217.161–217.168.

⁹ Tex. Fin. Code § 348.005(3).

¹⁰ 7 Tex. Admin. Code §§ 84.707(d)(2)(M), 84.708(e)(2)(H).

¹¹ Tex. Fin. Code § 348.006(a)(1)(C).

¹² Tex. Fin. Code § 348.006(c)(2), (e).

¹³ 7 Tex. Admin. Code § 84.205(b)(1).

charging a documentary fee greater than \$150, a licensee must notify the OCCC of the amount of the documentary fee it intends to charge, and must provide a cost analysis showing that the documentary fee is reasonable.¹⁴

Maz Auto notified the OCCC of its intent to charge a \$125 documentary fee on January 25, 2013, and notified the OCCC of a \$150 documentary fee on June 14, 2017. Maz Auto did not file any cost analysis showing that a greater documentary fee amount would be reasonable. Nevertheless, Maz Auto included a documentary fee of \$320 in its retail installment contracts.

Maz Auto violated Texas law by charging an excessive and unauthorized \$320 documentary fee without notifying the OCCC of this amount, and without providing a cost analysis showing that \$320 is a reasonable amount. Therefore, in all retail installment transactions where Maz Auto charged a documentary fee over \$150, Maz Auto must refund any portion of the documentary fee exceeding \$150.16

Authority

If the Consumer Credit Commissioner ("Commissioner") has reasonable cause to believe that a person is violating Chapter 348 of the Texas Finance Code, the Commissioner may issue an order to cease and desist from the violation, an order to take affirmative action, or both to enforce compliance. Additionally, the Commissioner may order a person who violates Chapter 348 or a rule adopted under Chapter 348 to make restitution to an identifiable person injured by the violation.

¹⁴ Tex. Fin. Code § 348.006(e); 7 Tex. Admin. Code § 84.205(b)(2). (c)-(d). Before June 1, 2016, a licensee was required to provide notice for a documentary fee over \$50 and a cost analysis for a documentary fee over \$125. See Tex. H.B. 3621 (2009) (amending § 348.006); 35 Tex. Reg. 1956 (adopting new § 84.205 effective March 14, 2010). From June 1, 2016 to August 31, 2017, a licensee was required to provide notice for a documentary fee over \$50 and a cost analysis for a documentary fee over \$150. See 41 Tex. Reg. 3120 (repealing and replacing § 84.205 effective June 1, 2016). From September 1, 2017 to the present, a licensee is required to provide both a notice and a cost analysis for a documentary fee over \$150. See Tex. H.B. 2949 (2017) (amending § 348.006 effective Sept. 1, 2017); 42 Tex. Reg. 3120 (amending §84.205 effective Sept. 7, 2017).

¹⁵ Maz Auto claimed that the difference between \$320 and the filed amount was a "Dealer Preparation Charge." However, the retail installment contracts identify the \$320 as a "Documentary Fee" and not a "Dealer Preparation Charge." Moreover, a "Dealer Preparation Charge" is not an itemized charge listed in Section 348.005 of the Finance Code, and is therefore prohibited.

¹⁶ 7 Tex. Admin. Code § 84.205(c)(6)-(7); see also 35 Tex. Reg. 1956, 1959 (adopting § 84.205(f) stating that the OCCC may order a licensee to reduce its documentary fee and provide restitution to affected buyers). ¹⁷ Tex. Fin. Code § 14.208(a).

¹⁸ Tex. Fin. Code § 14.251(b).

The Commissioner has reasonable cause to believe that Maz Auto is violating Chapter 348 of the Texas Finance Code, and Title 7, Chapter 84 of the Texas Administrative Code by charging excessive and unauthorized charges and by failing to maintain required records.

Order

IT IS ORDERED that Maz Auto, Inc.:

- 1. with respect to unauthorized itemized charges:
 - a. cease and desist from charging a lender processing fee or similar charge;
 - b. review all motor vehicle retail installment contracts it made with buyers from August 5, 2011 to the present for any transactions including a lender processing fee or similar charge as an itemized charge;
 - c. make restitution to each of these buyers in the full amount charged for the lender processing fee or other unauthorized charge;
- 2. with respect to excessive public official fees:
 - a. cease and desist from including an itemized charge for title, license, or registration that exceeds the amount actually paid to public officials for these items;
 - b. maintain in each retail installment sales transaction file a copy of or access to a title application receipt or other verifiable evidence that reflects amounts actually paid to a public official for title, license, and registration;
 - c. review all retail installment contracts it made with buyers from August 5, 2011 to the present for any transactions including charges for title, license, and registration fees;
 - d. determine which of these transactions include excessive public official fees, including all transactions where the amount charged for title, license, and registration fees exceeds the amount actually paid to a public official, and all transactions where Maz Auto is unable to produce verifiable evidence showing the amount actually paid;

e. make restitution to each of these buyers in the amount of the excessive portion of the public official fees;

3. with respect to unauthorized deputy fees:

- cease and desist from including an itemized charge for a deputy fee that exceeds the authorized amount actually paid to an authorized deputy for performing titling and registration services;
- b. review all retail installment contracts it made with buyers from August 5, 2011 to the present for any transactions including a deputy fee;
- c. determine which of these transactions include an unauthorized deputy fee, including all transactions where a deputy fee was charged and Maz Auto is unable to produce verifiable evidence showing that the fee was paid to an authorized deputy for titling and registration duties;
- d. make restitution to each of these buyers in the full amount charged for the deputy fee;

4. with respect to excessive motor vehicle inspection fees:

- cease and desist from including an itemized charge for a motor vehicle inspection in an amount in excess of the actual cost of the motor vehicle inspection;
- b. maintain in each retail installment sales transaction file a copy of or access to the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed, including the date and cost of the inspection;
- c. review all retail installment contracts it made with buyers from August 5, 2011 to the present for any transactions including a motor vehicle inspection fee;
- d. determine which of these transactions include an excessive motor vehicle inspection fee, including all transactions where the amount charged exceeds the amount actually paid for the inspection, and all transactions where Maz Auto is unable to produce verifiable evidence showing the amount actually paid;
- e. make restitution to each of these buyers in the amount of the excessive portion of the motor vehicle inspection fee;

- 5. with respect to excessive documentary fees:
 - a. cease and desist from charging retail buyers a documentary fee greater than \$150, without providing prior written notice to the OCCC of the maximum amount it intends to charge and a cost analysis showing that the fee is reasonable;
 - b. review all retail installment contracts made with buyers from August 5, 2011 to the present in which it charged a documentary fee greater than \$150;
 - c. make restitution to each buyer in the amount of the excessive portion of the documentary fee;
- 6. with respect to proof of refunds:
 - a. maintain complete and accurate records of all refunds.¹⁹
 - b. create a spreadsheet labeled "L17-017MazAutoRestitution" listing each buyer who received restitution as described above with the following columns:
 - i. name of the retail buyer;
 - ii. date of retail installment contract;
 - iii. amount of the lender processing fee charged to the buyer;
 - iv. amount of the lender processing fee refunded to the buyer as described above;
 - v. amount of registration, certificate of title, and license fees charged to the buyer;
 - vi. amount of registration, certificate of title, and license fees refunded to the buyer as described above;
 - vii. amount of deputy service fee charged to the buyer;
 - viii. amount of deputy service fees refunded to the buyer as described above;
 - ix. amount of motor vehicle inspection fee charged to the buyer;
 - x. amount of motor vehicle inspection fee refunded to the buyer as described above;
 - xi. amount of the documentary fee charged to the buyer;
 - xii. amount of the portion of the documentary fee refunded to the buyer, as described above;

¹⁹ See 7 Tex. Admin. Code § 84.704(b), (g).

xiii. total amount refunded to the buyer;

xiv. date of the refund;

xv. form of the refund (i.e. check for closed account, and credit on open account); and

c. provide the OCCC with a copy of the spreadsheet and proof of restitution no later than **January 17, 2018**. Proof of restitution must contain a copy of refund checks for closed accounts and ledgers showing account credits for open accounts.

IT IS FURTHER ORDERED that the Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Maz Auto issued March 31, 2017, is hereby withdrawn and superseded by this Amended Order.

Violation of Order

Maz Auto may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.²⁰ Multiple violations of this Order may result in the revocation of Maz Auto's license.²¹

Right to Request Hearing

Maz Auto has the right to request a hearing regarding this Order.²² Maz Auto's request must be made in writing and sent to the OCCC not later than 30 days after Maz Auto receives this Order. Maz Auto must send its request to:

Matthew Nance Office of Consumer Credit Commissioner 2601 N. Lamar Blvd. Austin, Texas 78705

If Maz Auto requests a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.²³ If Maz Auto fails to request a hearing by this deadline, this Order is considered final and enforceable.²⁴

²⁰ Tex. Fin. Code § 14.208(c).

²¹ Tex. Fin. Code § 348.508.

²² Tex. Fin. Code § 14.208(b).

²³ Tex. Fin. Code § 14.208(b).

²⁴ Tex. Fin. Code § 14.208(c).

All communications with the OCCC concerning this matter must be through Matthew Nance, Deputy General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7660, or by email to matthew.nance@occc.texas.gov.

Signed this Signed this 2017.

Leslie L. Pettijohn ¹ Consumer Credit Commissioner State of Texas

CERTIFICATE OF SERVICE

I certify that on December _____, 2017, a true and correct copy of this Amended Order To Cease And Desist, to Take Affirmative Action, and to Make Restitution has been sent to Maz Auto, Inc. by regular mail and certified mail, return receipt requested, at:

Maz Auto, Inc. 91 7199 9991 7031 6475 9677

Attn: Mazen Abdel-Hafiz, Compliance Officer 8707 Richmond Avenue

Houston, Texas 77063

Maz Auto, Inc. 91 7199 9991 7031 6475 9684

Attn: Mazen Abdel-Hafiz, Registered Agent 8707 Schumacher Lane, #101

Houston, Texas 77063

Carl Selesky 91 7199 9991 7031 6475 9691

Counsel for Maz Auto, Inc. 9601 Katy Freeway, Suite 290 Houston, TX 77024

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Deputy General Counsel

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