

OCCC CASE NO. L18-00128

<p><b>IN THE MATTER OF:</b></p> <p><b>JORGE A. AMEZCUA-TREVINO</b>  <b>d/b/a J &amp; A AUTO SALES</b>  <b>8610 NEW LAREDO HWY</b>  <b>SAN ANTONIO, TEXAS 78211</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>BEFORE THE</b></p> <p><b>OFFICE OF CONSUMER</b></p> <p><b>CREDIT COMMISSIONER</b></p> <p><b>STATE OF TEXAS</b></p>
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**ORDER TO CEASE AND DESIST, TO TAKE AFFIRMATIVE ACTION, AND TO MAKE RESTITUTION**

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Jorge A. Amezcua-Trevino d/b/a J & A Auto Sales (“J & A Auto Sales”) based on the violations of law described below.<sup>1</sup>

**Statement of Facts and Law**

A motor vehicle sales finance license issued by the OCCC is required to act as a holder of a motor vehicle retail installment contract.<sup>2</sup> A holder is a person who operates as a retail seller or holds and collects on a contract in which the person agrees to accept the cash price of a motor vehicle in one or more deferred installments.<sup>3</sup>

Jorge A. Amezcua-Trevino (“Mr. Trevino”) is the owner of a sole proprietorship listed as Jorge A. Amezcua-Trevino d/b/a J & A Auto Sales (“J & A Auto Sales”).<sup>4</sup> J & A Auto Sales holds a dealer license, GDN#: P133568, issued by the Texas Department of Motor Vehicles. However, J & A Auto Sales does not hold a motor vehicle sales finance license issued by the OCCC.

On May 1, 2017, the OCCC received a complaint against Mr. Trevino and J & A Auto Sales from Carolina Castro (“Ms. Castro”). The complaint alleged that J & A Auto Sales sold a motor vehicle to Ms. Castro and agreed to accept the price of the vehicle in one or more deferred installments. Mr. Trevino placed a lien on the vehicle in his personal name. Mr. Trevino’s acceptance of the cash price of the motor vehicle in one or

<sup>1</sup> Tex. Fin. Code § 14.208.

<sup>2</sup> Tex. Fin. Code § 348.501.

<sup>3</sup> Tex. Fin. Code § 348.001(3), (7), (8).

<sup>4</sup> Assumed Name Certificate, County Clerk, Bexar County, Texas, <https://bexar.tx.publicsearch.us>, accessed September 21, 2018.

more deferred installments without a license violated Section 348.501 of the Texas Finance Code.<sup>5</sup>

Ms. Castro provided a cash down payment to J & A Auto Sales and took delivery of the vehicle. After a few weeks, Ms. Castro informed J & A Auto Sales that the vehicle had mechanical issues. J & A Auto Sales took possession of the vehicle to repair it. Mr. Trevino and Ms. Castro orally agreed that the repair bill would be added to the unpaid balance.

J & A Auto Sales' addition of a repair bill to the unpaid balance of a retail installment contract is not permitted under Section 348.115 of the Texas Finance Code. Furthermore, J & A Auto Sales' addition of the repair bill to the unpaid balance was not confirmed in a writing, signed by Ms. Castro, nor delivered to Ms. Castro as required by Section 348.116 of the Texas Finance Code.

When the repairs were complete, J & A Auto Sales requested an additional upfront payment to release the vehicle. Ms. Castro no longer wanted the vehicle and requested her down payment back. To date, J & A Auto Sales has not refunded the complainant's down payment.

The Title Application Receipt issued by the Texas Department of Motor Vehicles shows that on January 14, 2016, Mr. Trevino placed a lien on the vehicle in his personal name with his alternate mailing address at PO Box #1207, Helotes, Texas 78023. At the time, neither Mr. Trevino nor J & A Auto Sales had an active motor vehicle sales finance license with the OCCC. J & A Auto Sales financed the sale of a motor vehicle without a motor vehicle sales finance license, in violation of Section 348.501 of the Texas Finance Code.

### **Authority**

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.<sup>6</sup> 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.<sup>7</sup>

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<sup>5</sup> Tex. Fin. Code § 348.501; *Waite v. Cage (In re Moye)*, 458 Fed. Appx. 385 (5th Cir. 2012) (finding a retail installment transaction made by an unlicensed person in contravention of Section 348.501(a) to be void).

<sup>6</sup> Tex. Fin. Code § 14.208(a).

<sup>7</sup> Tex. Fin. Code § 14.251(b).

## Order

IT IS ORDERED that Jorge A. Amezcua-Trevino d/b/a J & A Auto Sales:

- (1) Cease and desist from accepting the cash price of a motor vehicle in one or more deferred installments without a motor vehicle sales finance license issued under Section 348.501 of the Texas Finance Code.
- (2) Comply with the motor vehicle sales finance license requirement, found in Section 348.501 of the Texas Finance Code.
- (3) Upon obtaining a motor vehicle sales finance license, ensure that all amendments to retail installment contracts are confirmed in a writing signed and delivered to the retail buyer, and that amounts added to the unpaid balance are authorized by Section 348.115 of the Texas Finance Code.
- (4) Maintain complete and accurate records of all items and information required under this Order for the full record retention period.<sup>8</sup>
- (5) No later than **March 1, 2019**, identify all motor vehicle retail installment transactions J & A Auto Sales entered without a license.
  - a. For accounts that it has not assigned or transferred:
    - i. Refund any finance charges that it collected from the retail buyer.
    - ii. Forfeit any finance charges that remain collectible from the buyer.
    - iii. For accounts with a remaining balance, the refund may be made by crediting the buyer's account. For accounts with no remaining balance, the refund must be made by sending the buyer a check.
  - b. For accounts that it has assigned or transferred:
    - i. Refund any finance charges that it collected from the retail buyer.
    - ii. Forfeit any finance charges that remain collectible from the buyer.
    - iii. Make restitution to the buyer the amount of any compensation that it received for finance charges from the assignee or transferee.
    - iv. Forfeit any remaining compensation for finance charges from the assignee or transferee.
    - v. For accounts with a remaining balance, any refund or other restitution may be made by crediting the buyer's account. For accounts with no remaining balance, any refund or other restitution must be made by sending the buyer a check.

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<sup>8</sup> See 7 Tex. Admin. Code § 84.704(b), (g).

- (6) No later than **March 1, 2019**, identify all motor vehicle retail installment transactions entered without a license in which J & A Auto Sales did not deliver the vehicle to the retail buyer, and make a full refund to the buyer of all payments.
- (7) No later than **March 1, 2019**, release any lien or other security interest held in a motor vehicle sold by J & A Auto Sales in a retail installment transaction entered without a license.
- (8) No later than **March 1, 2019**, provide the OCCC with a spreadsheet of all unlicensed transactions identified and all buyers that were provided a refund. This list must include: the buyer's name, account number, transaction date, amount collected from the buyer, amount refunded to the buyer, form of the refund (i.e., check for closed account, and credit on open account), check number (if refund provided by check), date the security interest was placed, date the security interest was released, and the total amount of refunds provided to all buyers.
- (9) No later than **March 1, 2019**, provide the OCCC with a list of any assignees or transferees to a motor vehicle retail installment transaction that J & A Auto Sales entered without a license.
- (10) Keep a copy of each customer's refund check or payment history showing an account credit for the required retention period.<sup>9</sup> J & A Auto Sales must also keep a copy of the release of lien or other proof of each released lien for the required retention period. The OCCC will perform an on-site investigation to confirm that J & A Auto Sales made all refunds and released all liens listed in the spreadsheet.

### **Violation of Order**

J & A Auto Sales may be assessed and administrative penalty of up to \$1,000 for each day of violation of this Order.<sup>10</sup>

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<sup>9</sup> See 7 Tex. Admin. Code § 84.704(b), (g).

<sup>10</sup> Tex. Fin. Code § 14.208(c).

## Right to Request Hearing

J & A Auto Sales has the right to request a hearing regarding this Order.<sup>11</sup> J & A Auto Sales' request must be made in writing and sent to the OCCC not later than 30 days after J & A Auto Sales receives this Order. J & A Auto Sales must send its request to:

Laurie B. Hobbs  
Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd.  
Austin, Texas 78705

If J & A Auto Sales requests a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.<sup>12</sup> If J & A Auto Sales fails to request a hearing by this deadline, this Order is considered final and enforceable.<sup>13</sup>

All communications with the OCCC concerning this matter must be through Laurie B. Hobbs, Assistant General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7621, or by email to [laurie.hobbs@occc.texas.gov](mailto:laurie.hobbs@occc.texas.gov).

Signed this 18th day of January, 2019.

/s/ Leslie Pettijohn  
Leslie L. Pettijohn  
Consumer Credit Commissioner  
State of Texas

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<sup>11</sup> Tex. Fin. Code § 14.208(b).

<sup>12</sup> Tex. Fin. Code § 14.208(b).

<sup>13</sup> Tex. Fin. Code § 14.208(c).

**CERTIFICATE OF SERVICE**

I certify that on January 18, 2019, a true and correct copy of this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution has been sent to Jorge A. Amezcua-Trevino d/b/a J & A Auto Sales by regular mail and certified mail, return receipt requested, at:

CMRRR: 91 7199 9991 7037 5228 6950

Jorge A. Amezcua-Trevino  
d/b/a J & A Auto Sales  
8610 New Laredo Hwy  
San Antonio, Texas 78211

CMRRR: 91 7199 9991 7037 5228 6967

Jorge A. Amezcua-Trevino  
P.O. Box #1207  
Helotes, Texas 78023

/s/ Laurie B. Hobbs  
Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
State Bar No. 24002296  
2601 North Lamar Blvd.  
Austin, Texas 78705  
(512) 936-7621  
(512) 936-7610 (fax)  
laurie.hobbs@occc.texas.gov