

OCCC CASE NO. L15-293

<p>IN THE MATTER OF:</p> <p>VIP FINANCE OF TEXAS, INC. d/b/a VIP FINANCE 801 E. DIVISION STREET ARLINGTON, TEXAS 76011</p>	<p>§ § § § § § §</p>	<p>BEFORE THE</p> <p>OFFICE OF CONSUMER</p> <p>CREDIT COMMISSIONER</p> <p>STATE OF TEXAS</p>
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AGREED ORDER

The Office of Consumer Credit Commissioner (“OCCC”) and VIP Finance of Texas, Inc. d/b/a VIP Finance (“VIP Finance”) enter this Agreed Order under Section 14.208 of the Texas Finance Code.

VIP Finance violated Chapters 341, 342, and 348 of the Texas Finance Code by requiring consumers to purchase automobile club memberships in order to obtain loans, by engaging in unlicensed activity, and by making false statements relating to loan terms. Under this Agreed Order, VIP Finance acknowledges these violations and agrees to cease doing business, as described below.

Statement of Facts and Law

VIP Finance makes title loans to consumers in Texas for personal, family, or household purposes. For each loan, VIP Finance takes a security interest in the consumer’s motor vehicle. VIP Finance operates at six locations in Texas:

- 801 E. Division Street, Arlington, Texas 76011
- 610 S. Central Expy., Richardson, Texas 75080
- 4125 Colleyville Blvd., Colleyville, Texas 76034
- 12095 Garland Rd., Dallas, Texas 75218
- 3040 N. Stemmons Fwy., Dallas, Texas 75247
- 6060 S. Stemmons Fwy., Suite 100B, Hickory Creek, Texas 75065

VIP Finance advertises title loans through a website, <https://www.vipfinanceoftexas.com/>, and through a Twitter account, @VIPFinanceTexas. VIP Finance’s chief executive officer is Jonson Lake.

VIP Finance is affiliated with Cash Auto Sales, Inc. (“Cash Auto Sales”), an automobile club.¹ VIP Finance and Cash Auto Sales are under common ownership and control. Both companies are owned by the Lake Family Trusts, Jonson Lake, the CLR Irrevocable Trust, and the JTR Irrevocable Trust. Jonson Lake serves as the chief executive officer for both companies.

In October 2012, the OCCC received a consumer complaint regarding VIP Finance. In May 2013, the OCCC conducted an investigation of VIP Finance, and reviewed records of 625 transactions entered from August 2009 to April 2013. During the investigation, the OCCC identified violations of Chapters 341, 342, and 348 of the Texas Finance Code.

I. Unlicensed Lending and Automobile Club Violations Under Chapter 342

VIP Finance has never held a license under Chapter 342. Because VIP Finance does not hold a Chapter 342 license, VIP Finance is limited to charging a maximum effective interest rate of 10% per year for all loans made to consumers for personal, family, or household purposes.²

VIP Finance’s loan agreement describes two “options” regarding collateral insurance for the vehicle. The consumer may either: (1) maintain both comprehensive and collision insurance and mechanical breakdown insurance, or (2) purchase and maintain a membership in the Cash Auto Sales automobile club. If the consumer fails to maintain one of these, the loan agreement provides that the consumer is in default, and VIP Finance may repossess the vehicle.

Virtually all VIP Finance consumers purchase the Cash Auto Sales automobile club. During the OCCC’s investigation, the OCCC reviewed a sample of 625 transactions from VIP Finance’s stores. In the sample, 623 transactions (99.68%) included an automobile club membership.

Mechanical breakdown insurance (MBI) is not a common insurance

¹ See Tex. Bus. Orgs. Code § 1.002(1) (defining “affiliate” as a “person who controls, is controlled by, or is under common control with another person”).

² See Tex. Fin. Code § 302.001(b) (“The maximum rate or amount of interest is 10 percent a year except as otherwise provided by law.”).

product. If offered by an insurance company, it is typically available only if a vehicle is still within its warranty period or has low mileage.³ Almost all of the vehicles used as collateral for VIP Finance loans are high-mileage vehicles, and do not qualify for typical MBI coverage.

The automobile club required by VIP Finance is more expensive than other automobile clubs and offers different services. At the time of the OCCC's investigation, the Cash Auto Sales automobile club cost between \$100 and \$300 per month (i.e., \$1,200 to \$3,600 per year), depending on the size of the loan. The services offered by the automobile club included towing up to 200 miles (only to a Cash Auto Sales center), installation of a GPS tracking system (monitored by VIP Finance and subject to \$1,000 fee if lost or damaged), and an estimate for Cash Auto Sales to repair the vehicle (actual repairs cost the list price of parts plus \$100). By comparison, in a survey that the OCCC conducted regarding the costs and benefits of other automobile clubs, the highest price for an automobile club was \$105 per year. Typical automobile clubs offer services such as roadside assistance, towing to a repair facility, locksmith services, tire repair, battery charges, legal fees, map services, and discounts.⁴

VIP Finance violated Chapter 342 of the Texas Finance Code by engaging in unlicensed regulated lending activity;⁵ by engaging in a device, subterfuge, or pretense to evade the licensing requirement;⁶ by requiring consumers to purchase automobile club memberships as a condition to obtain loans;⁷ and by charging unreasonable automobile club membership amounts.⁸ The automobile club fees are interest under Texas law, and the actual effective interest rate for the loans exceeds the 10% rate that VIP Finance is authorized to charge. VIP Finance contended throughout this litigation that its business practices were authorized based on judicial rulings in prior litigation.

³ See, e.g., GEICO, Mechanical Breakdown Insurance, <https://www.geico.com/auto-insurance/mechanical-breakdown-insurance/>, (accessed May 7, 2020) ("MBI is available for new or leased cars that are less than 15 months old and with less than 15,000 miles.").

⁴ See Tex. Transp. Code § 722.002(2) (describing services provided by an automobile club).

⁵ Tex. Fin. Code § 342.051(a).

⁶ Tex. Fin. Code § 342.051(b).

⁷ Tex. Fin. Code § 342.457(b).

⁸ Tex. Fin. Code § 342.457(f).

II. Unlicensed Motor Vehicle Sales Finance and Automobile Club Violations Under Chapter 348

VIP Finance has never held a motor vehicle sales finance license under Chapter 348 of the Texas Finance Code. In the OCCC's investigation, the OCCC found that VIP Finance entered motor vehicle retail installment transactions to sell motor vehicles and accept the cash price over time. VIP Finance used a promissory note to characterize the transaction as a "loan," even though there was not an advance of money to consumers.⁹

VIP Finance provided automobile club memberships to consumers in connection with these motor vehicle retail installment transactions. VIP Finance required consumers to purchase automobile club memberships as a condition of the retail installment transaction, and charged unreasonable amounts for automobile club memberships.

VIP Finance violated Chapter 348 of the Texas Finance Code by engaging in unlicensed motor vehicle sales finance activity;¹⁰ by engaging in a device, subterfuge, or pretense to evade the licensing requirement;¹¹ by requiring consumers to purchase automobile club memberships as a condition to retail installment transactions;¹² and by charging unreasonable automobile club membership amounts.¹³

III. False and Misleading Statements Under Chapter 341

VIP Finance's loan agreements include the following statement: "Lender is a registered lender with the State of Texas Office of Consumer Credit Commissioner." VIP Finance holds a registration as a registered creditor under Chapter 345 of the Finance Code, under master file number 1400005947. This registration authorizes VIP Finance to finance the sale of goods that are not motor vehicles.¹⁴ The registration does not authorize VIP Finance to make regulated loans under Chapter 342, or to finance the sale of motor vehicles under

⁹ See Tex. Fin. Code §§ 301.002(a)(10), 341.001(9) (defining a loan as "an advance of money that is made to or on behalf of an obligor, the principal amount of which the obligor has an obligation to pay the creditor").

¹⁰ Tex. Fin. Code § 348.501(a).

¹¹ Tex. Fin. Code § 348.501(d).

¹² Tex. Fin. Code § 348.414(b).

¹³ Tex. Fin. Code § 348.414(d).

¹⁴ Tex. Fin. Code §§ 345.001(2), 345.002(d), 345.351(a).

Chapter 348.¹⁵ The statement that VIP Finance is a “registered lender” would cause a consumer to believe that VIP Finance is authorized to make a regulated loan under Chapter 342.

VIP Finance’s loan agreement includes the following statement: “Borrower acknowledges that Lender may offer a membership in an automobile club in connection with this loan under Texas Finance Code §303.203 and §342.457.” The statement that VIP Finance “may offer” an automobile club under Section 342.457 would cause a consumer to believe that VIP Finance is authorized to make loans under Chapter 342.

VIP Finance’s website states: “All Loans 6% APR!”¹⁶ VIP Finance’s loan agreements contain Truth in Lending disclosures that disclose a 5.999% APR and include a finance charge. The disclosed finance charge does not include the automobile club membership fee. By disclosing an inaccurate finance charge and APR, VIP Finance violated the federal Truth in Lending Act and Regulation Z.¹⁷

VIP Finance violated Chapter 341 of the Texas Finance Code by falsely representing its authority to make regulated loans,¹⁸ and by falsely advertising the APR for its loans.¹⁹

Authority

The Commissioner has reasonable cause to believe that VIP Finance has violated Chapters 341, 342, and 348 of the Texas Finance Code as described in this Agreed Order. For this reason, the OCCC is authorized to issue this Agreed Order.²⁰

Order & Agreement

The OCCC and VIP Finance enter this Agreed Order in lieu of ordering VIP Finance to make restitution of all unauthorized interest, unauthorized time

¹⁵ Tex. Fin. Code §§ 345.002(d)(3), 345.007(b).

¹⁶ VIP Finance of Texas, <https://www.vipfinanceoftexas.com/> (accessed May 7, 2020).

¹⁷ Truth in Lending Act, 15 U.S.C. §§ 1605–1632; Regulation Z, 12 C.F.R. §§ 1026.4–.18.

¹⁸ Tex. Fin. Code § 341.404.

¹⁹ Tex. Fin. Code § 341.403(a).

²⁰ Tex. Fin. Code § 14.208(a).

price differential, and unreasonable automobile club fees charged from 2009 to the present.

By signing below, VIP Finance acknowledges the violations described above, waives all rights to any hearing or appeal, and otherwise agrees to comply with this Agreed Order and Texas law.

VIP Finance waives any argument that this enforcement action (or any portion of this enforcement action) is unauthorized or barred, including all of the following: any argument that the OCCC lacks jurisdiction in this action; any argument that this action is barred by a previous judgment (due to jurisdiction by a trial court, *res judicata*, collateral estoppel, or otherwise); any argument that sovereign immunity has been waived or abrogated; any argument that this action is subject to statute of limitations, laches, or estoppel;²¹ and any argument that the OCCC is not the appropriate venue or forum for this action.

This Agreed Order does not bar any consumer from seeking restitution from VIP Finance based on the violations described in this Agreed Order.²² This Agreed Order does not bar any consumer from seeking relief under the federal Truth in Lending Act.²³

IT IS ORDERED that:

1. VIP Finance must immediately cease and desist violating Chapters 341, 342, and 348 of the Texas Finance Code, as described in this Agreed Order.
2. VIP Finance must immediately cease and desist making, transacting, or negotiating all loans for personal, family, or household purposes.²⁴
3. VIP Finance must immediately cease and desist advertising that it will offer any new loans to consumers, whether through its website,

²¹ See *State v. Durham*, 860 S.W.2d 63, 67 (Tex. 1993) (“[T]he State in its sovereign capacity, unlike ordinary litigants, is not subject to the defenses of limitations, laches, or estoppel.”).

²² Tex. Fin. Code § 349.103(a).

²³ See Truth in Lending Act, 15 U.S.C. § 1640 (describing civil liability for violations of the Truth in Lending Act).

²⁴ See 7 Tex. Admin. Code § 83.102(15), (16), (28) (defining the terms “making a loan,” “negotiating a loan,” and “transacting a loan”).

its Twitter account, or otherwise.

4. VIP Finance must immediately cease and desist entering motor vehicle retail installment transactions or acting as a holder under Chapter 348 of the Texas Finance Code.
5. VIP Finance must immediately cease and desist repossessing motor vehicles from consumers due to failure to maintain an automobile club or mechanical breakdown insurance. VIP Finance must immediately cease and desist considering a consumer's failure to maintain an automobile club or mechanical breakdown insurance to be a default under a loan or retail installment transaction.
6. VIP Finance must not sell, assign, or transfer any loan or retail installment transaction to another person.
7. **No later than March 31, 2021**, VIP Finance must cease doing all business, and must cease directly or indirectly collecting any amounts from consumers.
8. **Between June 1, 2020, and March 31, 2021, no later than the 15th day of each month**, VIP Finance must send a status report to the OCCC identifying all outstanding loans or retail installment transactions as of the end of the previous month, including each transaction with outstanding debt or an outstanding judgment. The report must be sent by email to matthew.nance@occc.texas.gov. The report must include a row for each consumer and the following columns: account number; name of consumer; date of loan or retail installment transaction; and remaining amount of principal, interest, and other charges owed.
9. **No later than May 15, 2021**, VIP Finance must perform a self-review and identify each consumer loan or motor vehicle retail installment transaction that was outstanding as of May 1, 2021.
10. **No later than May 15, 2021**, for any outstanding loan or retail installment transaction, VIP Finance must waive any remaining principal, interest, or other amounts owed in connection with the

loan or retail installment transaction; must release any lien on a motor vehicle; and must release any judgment against a consumer.

11. **No later than May 15, 2021**, VIP Finance must create a spreadsheet labeled "L15-293VIPFinance." The spreadsheet must clearly list each outstanding loan or retail installment transaction that was outstanding as of May 1, 2021. The spreadsheet must include a row for each consumer and the following columns: account number; name of the consumer; date of loan or retail installment transaction; original principal balance of loan; total dollar amount of principal, interest, and other charges waived; date of the release of lien, if any; and date of the release of judgment, if any.
12. **No later than May 15, 2021**, VIP Finance must provide the OCCC with a copy of the spreadsheet. The spreadsheet must be sent by e-mail to Matthew Nance at matthew.nance@occc.texas.gov.
13. VIP Finance must allow the OCCC to examine the records of VIP Finance as necessary to verify compliance with this Agreed Order.
14. The Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution issued against VIP Finance on March 27, 2017, is withdrawn and replaced by this Agreed Order.

Signed this 1st day of June, 2020.

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

AGREED:

/s/ Jonson Lake
Jonson Lake
Chief Executive Officer
VIP Finance of Texas, Inc. d/b/a VIP Finance
(signed electronically with permission)

CERTIFICATE OF SERVICE

I certify that on June 1, 2020, a true and correct copy of this Agreed Order has been sent to VIP Finance of Texas, Inc. d/b/a VIP Finance by the following:

Mark Stout
Padfield & Stout, LLP
420 Throckmorton Street, Suite 1210
Fort Worth, TX 76102
817-338-1616 (p)
817-338-1610 (f)
mstout@padfieldstout.com

hand-delivery

facsimile

electronic mail

regular mail

ATTORNEY FOR VIP FINANCE OF TEXAS, INC.

certified mail, return receipt requested
#9214 8901 9403 8300 0013 5008 00

VIP Finance of Texas, Inc.
d/b/a VIP Finance
Attn: Jonson Lake, Chief Executive Officer
801 E. Division St.
Arlington, TX 76011

hand-delivery

facsimile

electronic mail

regular mail

certified mail, return receipt requested
#9214 8901 9403 8300 0013 5008 17

VIP Finance of Texas, Inc.
d/b/a VIP Finance
Attn: Mark Stout, Registered Agent
420 Throckmorton Street, Suite 1210
Fort Worth, TX 76102

hand-delivery

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certified mail, return receipt requested
#9214 8901 9403 8300 0013 5008 24

/s/ Matthew Nance
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