BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD13-1604

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **AUTO MART USA, LLC.**
d/b/a AUTO MART USA
MOTOR VEHICLE DEALER
LICENSE # 38257

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division ("Division"), Motor Vehicle Dealer Board ("Board") and Auto Mart USA, LLC., d/b/a Auto Mart USA, ("Respondent") (collectively the "Parties") in lieu of further legal action:

1. The Board has jurisdiction over the Respondent and the subject matter of this Stipulation and Final Agency Order as set forth in article 6 of Title 12, C.R.S. and the Administrative Procedure Act, article 4 of Title 24, C.R.S.

2. The Respondent has been licensed as a motor vehicle dealer in the State of Colorado at all times relevant herein.

3. The Board has alleged that Respondent violated the following:

A. Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles; To Wit: § 18-5-102 C.R.S. Forgery (1) A person commits forgery, if, with intent to defraud, such person falsely makes, completes, alters, or utters a written instrument which is or purports to be, or which is calculated to become or to represent if completed: (c) A deed, will, codicil, contract, assignment, commercial instrument, promissory note, check, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

B. Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's,

wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles; To Wit: § 6-1-708. Motor vehicle sales and leases - deceptive trade practice. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person: (b) Fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle is a salvage vehicle, as defined in section 42-6-102 (17), C.R.S., or that a vehicle was repurchased by or returned to the manufacturer from a previous owner for inability to conform the motor vehicle to the manufacturer's warranty in accordance with article 10 of title 42, C.R.S., or with any other state or federal motor vehicle warranty law or knowingly fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle has sustained material damage at any one time from any one incident.

C. Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever, subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer.

D. Regulation 12-6-118(3)(i) A copy of the completed contract form shall be given to the purchaser when signed by both parties. A dealer, wholesaler, or auction dealer shall disclose on the contract form when a motor vehicle is known by the dealer, wholesaler or auction dealer to be a salvage vehicle as defined in C.R.S. 42-6-102(10.6), or when a motor vehicle is known to have sustained material damage at any one time from anyone incident.

E. Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage.

F. Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (h) Having made a fraudulent or illegal sale, transaction, or repossession

4. The Respondent understands that:

A. The Respondent has the right to be represented by an attorney of the Respondent's choice, at the Respondent's expense;

B. The Respondent has the right to a formal hearing in accordance with article 6 of Title 12, C.R.S.;

C. By entering into this Stipulation and Final Agency Order, the Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Stipulation and Final Agency Order, and relieves the Board of its burden of proving such facts;

D. The Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Board; and,

E. The Respondent is knowingly and voluntarily giving up the right to judicial review of this matter.

5. The Respondent acknowledges receipt of sufficient notice, sufficient advisement of rights, and sufficient process in the proceedings of this case, and desires to resolve all issues, which were the subject of the investigation, by entering into this Stipulation and Final Agency Order.

6. The Respondent admits to six (6) counts of § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever, subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer.

7. The Respondent agrees, in lieu of subsequent administrative proceedings, to submit to the following sanctions:

A. The Respondent's motor vehicle dealer license is suspended for seventeen (17) days with credit for time served under the summary suspension order served on Respondent on August 18, 2015.

B. The Respondent shall, within twenty (20) days of the approval of this Stipulation and Final Agency Order, deliver to the Auto Industry Division a cashier's check made payable to Angela Buchanan in the amount of $5,000.00.

C. The Respondent shall pay a fine $30,000.00. The Respondent agrees $1,000.00 of the $30,000.00 fine shall be due and payable within 60 days from the date this Stipulation and Final Agency Order is approved by the Board.

D. The remaining balance, amounting to $29,000.00, will be held in abeyance for a period of one (1) year provided there are no additional violations of the statutes

and regulations pertaining to motor vehicle dealers or commerce, committed by the Respondent dealership during the one (1) year following the date this Stipulation and Final Agency Order is approved by the Board.

E. The Respondent will contract with an independent person/agency/organization for on-site, training and monitoring audits. This will require the Respondent to contract for four (4) training and monitoring audits on a quarterly basis with all to be completed within the one year probationary period. The independent person/agency/organization must be approved by the Executive Secretary for the Motor Vehicle Dealer Board prior to the first training and monitoring audit. The approved independent person/agency/organization will file reports at the conclusion of each training and monitoring audit with the Auto Industry Division regarding Respondent's progress. The Respondent shall be responsible for all costs associated with the training and monitoring.

F. The Respondent agrees to immediately implement policies and/or procedures within the dealership that will ensure these types of violations will not occur in the future. The respondent will forward copies of the policy/procedure to the Board for insertion in the Board file.

G. The Respondent agrees to a probation period that will commence with the approval of this Stipulation. Such term of probation will expire one (1) year from the date of the approval of this Stipulation by the Board.

H. The Respondent assures that it will comply with all state and federal laws and regulations related to the motor vehicle dealer industry and commerce during the probation period.

I. The Respondent agrees to cooperate with any and all compliance inspections and/or investigations conducted by the Auto Industry Division to ensure compliance with all state and federal laws and regulations related to the motor vehicle dealer industry and commerce.

8. The Respondent agrees to strictly adhere to and to completely fulfill all requirements established in this Stipulation and Final Agency Order.

9. The Respondent is aware that this Stipulation and Final Agency Order will not become an order of the Board unless and until the Board approves it. If this Stipulation and Final Agency Order is not approved by the Board, it is void, and the Respondent shall not be bound by any provisions hereof or admissions herein.

10. Each Party shall bear its own costs and fees incurred in this action.

11. This Stipulation and Final Agency Order is the complete integration of all understandings between the parties. No addition, deletion, or amendment, except as mutually agreed to in a writing signed by both Parties, shall have any force or effect whatsoever.

12. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Stipulation and Final Agency Order and which are not inconsistent with its terms.

13. The provisions of this Stipulation and Final Agency Order shall be enforceable by the Parties before the Colorado Motor Vehicle Dealer Board, by any lawful remedy.

14. The Respondent expressly acknowledges having read and understood completely the terms of this Stipulation and Final Agency Order. The Respondent enters this Stipulation and Final Agency Order knowingly and voluntarily, after the opportunity to consult with counsel, and with full understanding of the legal consequences of this Stipulation and Final Agency Order. The Respondent expressly states that the Respondent believes the terms of this Stipulation and Final Agency Order are lawful, fair, conscionable, and appropriate to reach a full and final resolution of this disciplinary matter.

15. This Stipulation and Final Agency Order and all its terms shall have the same force and effect as an order entered by the Board after hearing pursuant to article 6 of Title 12, C.R.S. except that this Stipulation and Final Agency Order cannot be appealed. The Respondent agrees that any violation of this Stipulation and Final Agency Order may constitute grounds for disciplinary proceedings pursuant to the Motor Vehicle Dealer Licensing Law and if proven may constitute a basis for further disciplinary action or for any other remedy authorized by law. In the event this matter is referred to hearing for violation of this Stipulation and Final Agency Order, this Stipulation and Final Agency Order shall be admissible as evidence. In the event an alleged violation of this Stipulation and Final Agency Order is taken to hearing and the facts that constitute the violation are determined not to be proven, the Board shall not take any disciplinary action, and this Stipulation and Final Agency Order shall remain operative and in full force and effect. The pendency of any disciplinary action pursuant to this Stipulation and Final Agency Order shall not affect the obligation of the Respondent to continue to comply with the terms of this Stipulation and Final Agency Order during the pendency of and after the conclusion of such disciplinary action.

16. This Stipulation and Final Agency Order is a public record in the Board's custody at all times.

17. Effective Date. This Stipulation and Final Agency Order shall become an order of the Board when accepted by the Board and signed by an authorized representative of the Board.

18. This Stipulation and Final Agency Order is a full and final resolution of case number BD13-1604 and investigative case numbers 15-1082 & 15-0490. This Stipulation and Final Agency Order does not resolve any other cases, complaints or matters, known or unknown to the Parties, as of the effective date of this Stipulation and Final Agency Order.

19. The Respondent shall immediately provide in writing to the Board any change of the Respondent's legal address, in order for any notice required under this Stipulation and Final Agency Order or any necessary follow-up to this Stipulation and Final Agency Order to be made

in a timely and efficient manner. Any notice required under this Stipulation and Final Agency Order shall be valid only if provided, in writing, to the Parties at their respective legal addresses, which the Parties acknowledge are currently as follows:

A. Board/Division:

Colorado Department of Revenue, Auto Industry Division
Attention: Bruce A. Zulauf, Division Director/Executive Secretary
1881 Pierce Street, Suite 112
Lakewood, Colorado 80214

B. Respondent:
Auto Mart USA, LLC.
d/b/a Auto Mart USA
835 South Havana
Aurora, CO. 80012

20. Should any term or provision of this Stipulation and Final Agency Order be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

21. This Stipulation and Final Agency Order may be signed in counterparts, each of which will have full force and effect upon execution by all Parties.

22. The Respondent warrants that it possesses the legal authority to enter into this Stipulation and Final Agency Order and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Stipulation and Final Agency Order and to bind the Respondent to its terms. The person executing this Stipulation and Final Agency Order on behalf of the Respondent warrants that such person has full authorization to execute this Stipulation and Final Agency Order.

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SIGNATURE PAGE TO FOLLOW

AGREED TO BY:

Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division
Motor Vehicle Dealer Board

Date 9/1/15

FOR THE RESPONDENT:

Mike Abssi
Auto Mart USA

Date 09/01/2015

APPROVED AS TO FORM:

Michael G. McKinnon
Attorney for Respondent

Date 9/1/15

Timothy Lamb
Attorney for Respondent

Date 9/1/15

The Stipulation and Final Agency Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this _____ day of _____, 2015.

COLORADO MOTOR VEHICLE BOARD

BY: _____
Jason Wagner, President

AGREED TO BY:

Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division
Motor Vehicle Dealer Board

9/1/15
Date

FOR THE RESPONDENT:

Mike Abssi
Auto Mart USA

05/01/2015
Date

APPROVED AS TO FORM:

Michael G. McKinnon
Attorney for Respondent

9/1/15
Date

Timothy Lamb
Attorney for Respondent

9/1/15
Date

The Stipulation and Final Agency Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this 3 day of SEPTEMBER, 2015.

COLORADO MOTOR VEHICLE BOARD

BY: _____
Jason Wagner, President

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND FINAL AGENCY ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, and personal service (as noted), this 3rd day of September 2015, addressed as follows:

Mike Abssi
Auto Mart USA
835 South Havana
Aurora, CO. 80012

Michael G. McKinnon
5984 South Prince, Suite 100
Littleton, Co. 80120
(Electronically via e-mail)

Timothy Lamb
1401 17th Street, Suite 330
Denver, CO 80202
(Electronically via e-mail)

Bruce A. Zulauf, Executive Secretary
Colorado Motor Vehicle Dealer Board
Director, Auto Industry Division
1881 Pierce Street, Room 112
Lakewood, CO 80214
(Placed in Board File)

Arleen Criddell-Tapanen

Arleen Criddell-Tapanen
Assistant to Director