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BEFORE THE MOTOR VEHICLE DEALER BOARD  
STATE OF COLORADO

Case No. BD15-1177

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**STIPULATION AND FINAL AGENCY ORDER**

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IN THE MATTER OF: **CMC AUTO LLC d/b/a CMC AUTO**  
**USED MOTOR VEHICLE DEALER LICENSE NO. 41569,**

Respondent.

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IT IS HEREBY STIPULATED AND AGREED to by and between the Colorado Department of Revenue, Motor Vehicle Dealer Board ("Board") and CMC Auto LLC d/b/a CMC Auto ("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 ("Stipulation") 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 the Respondent violated:
  - A. Section 12-6-118(3)(e), C.R.S., 11 counts of defrauding any buyer, seller, motor vehicle salesperson or financial institution to such person's damage;
  - B. Section 12-6-118(3)(h), C.R.S., 11 counts of having made a fraudulent or illegal sale, transaction, or repossession.
  - C. Section 12-6-118(3)(i), C.R.S. and 1 C.C.R. 205-1, Regulation 12-6-118 (3)(i), 11 counts of willful misrepresentation, circumvention, or concealment of, or failure to disclose, through whatsoever subterfuge or device, any of the material particulars in writing on the contract form.
  - D. Section 12-6-118(3)(o), C.R.S., 11 counts of willfully violating any state or federal law or regulation respecting commerce or motor vehicles, specifically, engaging in a deceptive trade practice in violation of section 6-1-708, C.R.S.
  - E. Section 12-6-118 (3)(s), C.R.S., 1 count of violating any state or federal statute or regulation issued thereunder dealing with odometers, specifically, a person may not, with intent to defraud, remove or alter a notice attached to a motor vehicle as required by 49 U.S.C.S. § 32704(a) in violation of 49 U.S.C.S. § 32704(b).

F. Section 12-6-118 (3)(s), C.R.S., 1 count of violating any state or federal statute or regulation issued thereunder dealing with odometers, specifically, any removal or alteration of such notice [required by section 42-6-202(4), C.R.S.] so affixed is unlawful. It is unlawful for any transferor to fail to comply with 49 U.S.C.S. § 32705 and any rule concerning odometer disclosure requirements or to knowingly give a false statement to a transferee in making any disclosure required by such law in violation of Sections 42-6-202(4) and (5), C.R.S.

G. Section 12-6-118(3)(c), C.R.S., 10 counts of willful failure to comply with part 1 or any rule or regulation promulgated by the executive director, specifically, failure to provide the buyer with required disclosures or information required by state or federal law in violation of Section 12-6-104(3)(k), C.R.S. and 1 C.C.R. 205-1, Regulation 12-6-104(3)(k).

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 and is so represented;
- 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, the Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Stipulation, 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.

6. The Respondent admits to:

- A. One (1) count of defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage pursuant to Section 12-6-118(3)(e), C.R.S.;

- B. One (1) count of violating any state or federal statute or regulation issued thereunder dealing with odometers, specifically, a person may not, with intent to defraud, remove or alter a notice attached to a motor vehicle as required by 49 U.S.C.S. § 32704(a) pursuant to Section 12-6-118 (3)(s), C.R.S., To Wit: 49 U.S.C.S. § 32704(b); and
- C. Eight (8) counts of 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 pursuant to Section 12-6-118(3)(i), C.R.S. and 1 C.C.R. 205-1, Regulation 12-6-118(3)(i).

Based upon this admission, the Board is authorized to impose the sanctions set forth in this Stipulation.

- 7. The Respondent agrees, in lieu of subsequent administrative proceedings, to submit to the following sanction:
  - A. The Respondent is assessed a fine of \$50,000.00.
  - B. \$5,000.00 of Respondent's fine shall be due and payable within thirty (30) days from the date this Stipulation is approved by the Board.
  - C. The remaining \$45,000 shall be held in abeyance and payable upon issuance to the Respondent of any license authorized by the Motor Vehicle Dealer Board.
  - D. The Respondent shall immediately voluntarily surrender used motor vehicle dealer license number 41569 and all rights and privileges that adhere thereto. Such surrender shall have the same force and effect as a revocation ordered by the Board.
- 8. This Stipulation and Final Agency Order constitutes a finding by the Board that the Respondent has engaged in fraudulent conduct that supports the opening of Respondent's surety bond for the purpose of reimbursement of any loss or damage suffered by any retail consumer. Respondent agrees not to oppose the opening of the surety bond.
- 9. Upon satisfaction of the terms and conditions of this stipulation including the monetary payments due, all other counts shall be deemed dismissed with prejudice.
- 10. The Respondent shall not engage in any act that would require licensure by the State of Colorado until the Respondent first obtains the appropriate licensure.
- 11. The Respondent agrees to strictly adhere to and to completely fulfill all requirements established in this Stipulation.

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

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

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

15. 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 which are not inconsistent with its terms.

16. The provisions of this Stipulation shall be enforceable by the Parties before the Colorado Motor Vehicle Dealer Board, by any lawful remedy.

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

18. This Stipulation 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 cannot be appealed. The Respondent agrees that any violation of this Stipulation 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, this Stipulation shall be admissible as evidence. In the event an alleged violation of this Stipulation 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 shall remain operative and in full force and effect. The pendency of any disciplinary action pursuant to this Stipulation shall not affect the obligation of the Respondent to continue to comply with the terms of this Stipulation during the pendency of and after the conclusion of such disciplinary action.

19. This Stipulation is a public record in the Board's custody at all times.

20. Effective Date. This Stipulation shall become an order of the Board when accepted by the Board and signed by an authorized representative of the Board.

21. This Stipulation is a full and final resolution of Case Number BD15-1177. This Stipulation does not resolve any other cases, complaints or matters, known or unknown to the Parties, as of the effective date of this Stipulation.

22. 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 or any necessary follow-up to this Stipulation to be made in a timely and efficient manner. Any notice required under this Stipulation 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:

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

B. Respondent:

CMC Auto LLC  
10640 E. Bethany Dr. Suite A  
Aurora, Colorado 80014

23. Should any term or provision of this Stipulation 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.

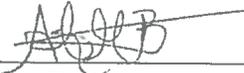
24. This Stipulation may be signed in counterparts, each of which will have full force and effect upon execution by all Parties.

25. The Respondent warrants that it possesses the legal authority to enter into this Stipulation 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 to bind the Respondent to its terms. The person executing this Stipulation on behalf of the Respondent warrants that such person has full authorization to execute this Stipulation.

AGREED TO BY:

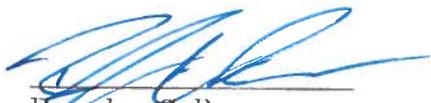
  
\_\_\_\_\_  
Bruce A. Zulauf  
Director/Executive Secretary  
Motor Vehicle Dealer Board

11/23/15  
\_\_\_\_\_  
Date

  
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Ana Bernuy  
CMC Auto LLC  
Owner  
Respondent

11/3/15  
\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Brendon C. Reese  
Assistant Attorney General

11/9/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Michael G. McKinnon  
Attorney for Respondent

11/3/15  
\_\_\_\_\_  
Date

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

ORDERED AND ENTERED this 23<sup>rd</sup> ~~day~~ <sup>NOVEMBER</sup> of ~~October~~, 2015.

COLORADO MOTOR VEHICLE DEALER BOARD

BY:   
\_\_\_\_\_  
~~Jason Wagner, President~~

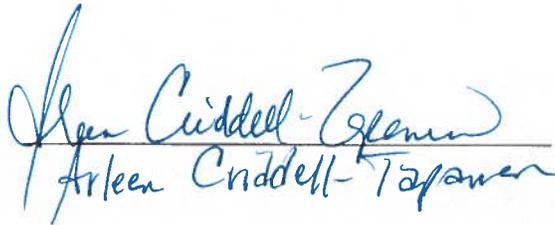
**JOE GEBHARDT, VP**

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, this 29<sup>th</sup> day of November, 2015 addressed as follows:

Michael G. McKinnon, Esq.  
5984 South Prince Street, Suite 100  
Littleton, CO 80120

Brendon C. Reese  
Assistant Attorney General  
1300 Broadway, 8<sup>th</sup> Floor  
Denver CO 80203

  
Arleen Craddell-Tapanen

cc: Bruce A. Zulauf, Executive Secretary  
Colorado Motor Vehicle Dealer Board