

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD13-0427

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**STIPULATION AND FINAL AGENCY ORDER**

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IN THE MATTER OF:     **CARFLEX**  
                              **d/b/a CARFLEX**  
                              **MOTOR VEHICLE DEALER**  
                              **LICENSE # 3332**

Respondent.

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**IT IS HEREBY STIPULATED & AGREED** by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and Carflex, d/b/a Carflex (“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. One (1) count 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.

B. One (1) count of 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 any one incident. (1 C.C.R. 205-1)

C. One (1) count 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: (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.

- D. One (1) count of § 12-6-102 C.R.S., Definitions. As used in this part 1 and in part 5 of this article, unless the context or section 12-6-502 otherwise requires: (16) "Principal place of business" means a site or location devoted exclusively to the business for which the motor vehicle dealer or used motor vehicle dealer is licensed and businesses incidental thereto, sufficiently designated to admit of definite description, with space thereon or contiguous thereto adequate to permit the display of one or more new or used motor vehicles, and on which there shall be located or erected a permanent enclosed building or structure large enough to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of such dealer, at which site or location the principal portion of such dealer's business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of such location at least thirty days in advance.
- E. One (1) count of § 12-6-104 C.R.S., Board - oath - meetings - powers and duties. (3) The board is authorized and empowered: (i) To require that a motor vehicle dealer's or used motor vehicle dealer's principal place of business and such other sites or locations as may be operated and maintained by such dealers in conjunction with their principal place of business have erected or posted thereon such signs or devices providing information relating to the dealer's name, the location and address of such dealer's principal place of business, the type of license held by the dealer, and the number thereof, as the board shall consider necessary to enable any person doing business with such dealer to identify such dealer properly, and for this purpose to determine the size and shape of such signs or devices, the lettering thereon, and other details thereof and to prescribe rules and regulations for the location thereof.

- F. One (1) count of Regulation 12-6-104 (3) (i). The principal place of business and other locations of the dealer shall display a permanent sign thereon with letters at least six (6) inches in height, clearly visible to the major avenue of traffic, which sign shall clearly designate the name of the business for which the license application is made or under which such business is conducted. (1 C.C.R. 205-1)
  - G. One (1) count 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: (m) For any licensed motor vehicle dealer or used motor vehicle dealer to engage in the business for which such dealer is licensed without at all times maintaining a principal place of business as required by this part 1 during reasonable business hours.
  - H. One (1) count of Regulation 12-6-118 (3) (m). All motor vehicle dealers and all used motor vehicle dealers must be open for business at least three (3) days per week for a continuous period of time not less than four (4) hours per day between the hours of 8 A.M. and 9 P.M. Any dealership open less than forty (40) hours a week must post a clear and legible sign on its place of business indicating the days and hours that it is open for business. In addition such dealerships shall notify the Board in writing of any subsequent change in such periods of time. Any dealership which will not be open for business for a period of at least two (2) weeks must post a clear and legible sign on its place of business indicating this fact as well as notifying the Board in writing of such fact. A dealer's principal place of business shall be made available to inspection by the Board or its agents and employees at any reasonable time even if such time is outside the usual business hours posted by the dealer. (1 C.C.R. 205-1)
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 One (1) count 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 shall, within thirty (30) days after this Stipulation and Final Agency Order is approved by the Board, deliver to the Auto Industry Division a cashier's check made payable to [REDACTED] in the amount of \$2,000.00.
- B. The Respondent shall pay a fine of \$5,000.00 for the admissions in paragraph 6 above. The respondent agrees \$1,000.00 of the \$5,000.00 fine shall be due and payable. The Respondent agrees to make monthly payments of \$100.00, with the first payment due within 60 days after this Stipulation and Final Agency Order is approved by the Board. All remaining payments will be paid by the 15<sup>th</sup> day of each month thereafter, until paid in full.
- C. The remaining balance, amounting to \$4,000.00, 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.
- D. 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.
- E. 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.
- F. 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 BD13-0427. 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:

Carflex  
d/b/a Carflex  
6657 Colorado Blvd, Unit F  
Commerce City, CO 80022

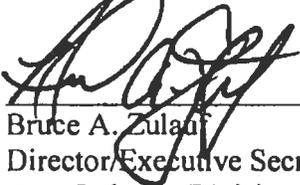
20. Should any term or provision of this Stipulation and Final Agency Order be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

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

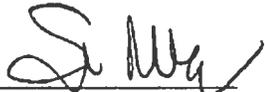
behalf of the Respondent warrants that such person has full authorization to execute this Stipulation and Final Agency Order.

**AGREED TO BY:**

  
\_\_\_\_\_  
Bruce A. Zulauf  
Director/Executive Secretary  
Auto Industry Division

2/26/14  
Date

**FOR THE RESPONDENT:**

  
\_\_\_\_\_  
Stanislaw Nowacki  
Carflex  
d/b/a Carflex  
6657 Colorado Blvd, Unit F  
Commerce City, CO 80022

02.22.2014  
Date

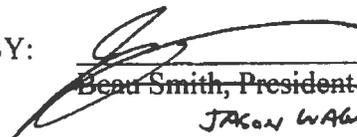
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The Stipulation and Final Agency Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this 13 day of MARCH, 2014.

**COLORADO MOTOR VEHICLE BOARD**

BY:

  
\_\_\_\_\_  
Beau Smith, President  
JACOB WAGNER, 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, and personal service (as noted), this 13<sup>th</sup> day of March 2014, addressed as follows:

Mr. Stanislaw Nowacki  
Carflex  
6657 Colorado Blvd, Unit F  
Commerce City, CO 80022

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

  
\_\_\_\_\_  
Arleen Criddell-Tapanen  
Assistant to Director