

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD10-1000

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **TRUCK TOWN MOTORS, LLC.**
 d/b/a TRUCK TOWN MOTORS, LLC
 MOTOR VEHICLE DEALER
 LICENSE #41075

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and Truck Town Motors, LLC., d/b/a Truck Town Motors, LLC., (“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. Three (3) 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: (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: § 42-6-112 C.R.S., Initial registration of a motor vehicle - dealer responsibility to timely forward certificate of title to purchaser or holder of a chattel mortgage. In order to facilitate initial registration of a vehicle, a dealer of motor vehicles shall have not more than thirty days after the date of sale of such vehicle to deliver or facilitate the delivery of the certificate of title to a purchaser or the holder of a chattel mortgage on such motor vehicle, subject to section 42-6-109 C.R.S.

B. 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: § 5-2-203 C.R.S., Delinquency charges (1) With respect to a consumer credit transaction, the parties may contract for a delinquency charge on any installment or minimum payment not paid in full within ten days after its scheduled due date in an amount not exceeding: (a) Fifteen dollars for a transaction not secured by an interest in land; except that, if the transaction is precomputed, the amount may not exceed the greater of fifteen dollars or the deferral charge described in section 5-2-204 (1) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

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: § 42-4-310 C.R.S., Periodic emissions control inspection required (1) (a) (I) Subject to subsection (4) of this section, a motor vehicle that is required to be registered in the program area shall not be sold, registered for the first time without a certification of emissions compliance, or reregistered unless such vehicle has passed a clean screen test or has a valid certification of emissions control as required by the appropriate county. The provisions of this paragraph (a) shall not apply to motor vehicle transactions at wholesale between motor vehicle dealers licensed pursuant to article 6 of title 12, C.R.S. An inspection is not required prior to the sale of a motor vehicle with at least twelve months remaining before the vehicle's certification of emissions compliance expires if such certification was issued when the vehicle was new.

D. 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: § 5-5-110 C.R.S., Notice of right

to cure (1) With respect to a consumer credit transaction, after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods or the mobile home that are collateral, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer pursuant to this section when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence, as defined in section 5-1-201 (6).

- E. 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: § 5-5-111 C.R.S., Cure of default (1) With respect to a consumer credit transaction, except as provided in subsection (2) of this section, after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation nor take possession of or otherwise enforce a security interest in the goods or the mobile home that are collateral until twenty days after giving the consumer a notice of right to cure described in section 5-5-110. Until the expiration of the minimum applicable period after the notice is given, all defaults consisting of a failure to make the required payment may be cured by tendering to the creditor the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his or her rights under the agreement as though the defaults had not occurred.
- F. 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: (h) Having made a fraudulent or illegal sale, transaction, or repossession.
- G. Two (2) 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: (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage.

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 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: (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: § 42-6-112 C.R.S., Initial registration of a motor vehicle - dealer responsibility to timely forward certificate of title to purchaser or holder of a chattel mortgage. In order to facilitate initial registration of a vehicle, a dealer of motor vehicles shall have not more than thirty days after the date of sale of such vehicle to deliver or facilitate the delivery of the certificate of title to a purchaser or the holder of a chattel mortgage on such motor vehicle, subject to section 42-6-109 C.R.S.
- B. 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: § 42-4-310 C.R.S., Periodic

emissions control inspection required (1) (a) (I) Subject to subsection (4) of this section, a motor vehicle that is required to be registered in the program area shall not be sold, registered for the first time without a certification of emissions compliance, or reregistered unless such vehicle has passed a clean screen test or has a valid certification of emissions control as required by the appropriate county. The provisions of this paragraph (a) shall not apply to motor vehicle transactions at wholesale between motor vehicle dealers licensed pursuant to article 6 of title 12, C.R.S. An inspection is not required prior to the sale of a motor vehicle with at least twelve months remaining before the vehicle's certification of emissions compliance expires if such certification was issued when the vehicle was new.

7. The Board and the Respondent agree, in lieu of subsequent administrative proceedings, to the following:

- A. The Respondent shall, within thirty (30) days of the approval of this Stipulation and Final Agency Order, deliver to the Auto Industry Division a cashier's check made payable to [REDACTED] in the amount of \$800.00.
- B. The Respondent shall pay a fine of \$10,000.00 for the violations admitted to in paragraph 6 above. The Respondent agrees \$1,000.00 of the \$10,000.00 fine shall be due and payable within sixty (60) days from the date this Stipulation and Final Agency Order is approved by the Board.
- C. The remaining balance, amounting to \$9,000.00, 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 BD10-1000 and investigative case numbers 13-1619, 13-1795, and 13-1638. 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:

Truck Town Motors, LLC.
d/b/a Truck Town Motors, LLC.
230 Federal Blvd.
Denver, CO 80219

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
Motor Vehicle Dealer Board

8/15/2014

Date

FOR THE RESPONDENT:

Mr. Luis A. Garcia
Truck Town Motors, LLC.

Date

APPROVED AS TO FORM:

Bradley D. Chapman
Attorney for Respondent

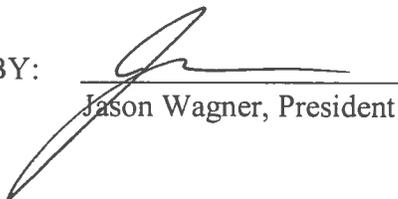
Date

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

ORDERED AND ENTERED this 19 day of August, 2014.

COLORADO MOTOR VEHICLE BOARD

BY: _____


Jason Wagner, President

AGREED TO BY:

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

Date

FOR THE RESPONDENT:

Luis A. Garcia
Mr. Luis A. Garcia
Truck Town Motors, LLC.

8-13-14

Date

APPROVED AS TO FORM:

Bradley D. Chapman
Attorney for Respondent

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 _____ day of _____, 2014.

COLORADO MOTOR VEHICLE BOARD

BY: _____
Jason Wagner, President

AGREED TO BY:

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

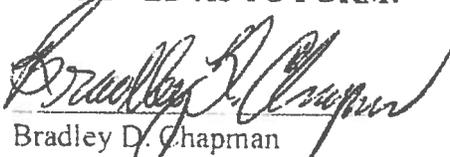
Date

FOR THE RESPONDENT:

Mr. Luis A. Garcia
Truck Town Motors, LLC.

Date

APPROVED AS TO FORM:



Bradley D. Chapman
Attorney for Respondent

8-13-14

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 _____ day of _____, 2014.

COLORADO MOTOR VEHICLE BOARD

BY: _____

Jason Wagner, President

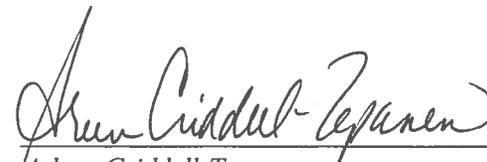
CERTIFICATE OF SERVICE

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 20th day of August 2014, addressed as follows:

Bradley D. Chapman
Attorney for Respondent
1410 Peninsula Circle
Castle Rock, CO. 80104

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)

Mr. Luis A. Garcia
Truck Town Motors, LLC.
230 Federal Blvd.
Denver, CO 80219



Arleen Criddell-Tapanen
Assistant to Director