

**STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT**

IN RE: POULIN AUTO SALES, INC.	)	CIVIL DIVISION
	)	Docket No. _____
	)	

**ASSURANCE OF DISCONTINUANCE**

Vermont Attorney General Thomas J. Donovan, Jr. (“the Attorney General”) and Poulin Auto Sales, Inc. (“Respondent”) hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**REGULATORY FRAMEWORK**

1. Vermont’s Consumer Protection Act prohibits “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453.
2. Vermont’s Consumer Protection Rule CP 118 specifically addresses automobile advertising, violation of which is a *per se* violation of the Consumer Protection Act. The sections of CP 118 that apply to this matter include:

a. CP 118.02(b):

All automobile advertising by dealers, whether printed or broadcast, shall be in plain language, clear and conspicuous and non-deceptive. By way of example and not of limitation, the following shall be considered deceptive:

- (1) direct statements or reasonable inferences that have the tendency to mislead consumers;
- (2) advertising whose overall impression has the tendency to mislead consumers;

- (3) the failure to disclose any limitations, disclaimers, qualifications, conditions, exclusions or restrictions;
  - (4) statements susceptible to both a misleading and a truthful interpretation;
  - (5) a first contact with a consumer secured by deception, even though the true facts are subsequently made known to the consumer.
- b. CP 118.02(d): “DISCLOSURES: All disclosures in advertising shall be clear and conspicuous and in close proximity to the terms they modify.”
  - c. CP 118.02(f): “RESPONSIBILITY FOR ADVERTISING: The dealer is responsible for knowing the law as it applies to advertising and is ultimately responsible for his or her advertising product. This does not preclude a finding that parties other than the dealer are also liable for a deceptive ad.”
  - d. CP 118.03:  
The following constitute unfair and deceptive acts or practices:
    - (a) FOOTNOTES AND ASTERISKS: Using footnotes or asterisks which, alone or in combination, contradict, confuse, significantly alter or unreasonably limit the principal message of the ad.
    - (b) PRINT SIZE: Using any type size so small that it is not easily readable if it alters a principal message of the ad.

### **RESPONDENT**

3. Respondent Poulin Auto Sales, Inc. (“Poulin Auto”) is an S-Corporation incorporated under the laws of Vermont, with its principal place of business located at 473 E. Barre Road, Barre, Vermont. Respondent is registered with the Vermont Secretary of State to conduct business in Vermont.

4. Respondent markets and sells used vehicles to Vermont consumers. As used in this AOD Respondent shall include its owners, shareholders, partners, parents, affiliates, subsidiaries, successors, and predecessors. Until December of 2017, Poulin Auto had a secondary location in South Burlington, Vermont. Until July 23, 2019, Poulin Auto had another secondary location in Colchester, Vermont which is now known as Auto Source Direct LLC, which is independently run and not affiliated with Poulin Auto Sales, Inc.

### **BACKGROUND**

5. In June 2017, Poulin Auto, through a direct marketing company, sent approximately 40,000 mailings to prospective consumers which advertised a contest in which recipients could win \$25,000 in cash, a flat screen TV, an Apple Watch, or a \$500, \$100, or \$5 Walmart gift card. The mailings stated in large print, "IF YOU HAVE A MATCHING SET OF NUMBERS, YOU HAVE WON\*\*" The advertisement is attached as Exhibit A

6. The advertisement contained six tabs labeled with the prizes, that the consumer was to pull back to see if the number beneath matched a scratch-off number. Several consumers received advertisements in which the number beneath one of the prizes from behind the pull tab matched the scratch-off number.

7. However, whether the two numbers matched bore no relation to whether the consumer actually won the particular prize labeled on the tab. Immediately below the tabs was the statement in small print, "Bring the mailer to the sale during event hours and your OFFICIAL PIN, located above your address, will be used with our prize redemption software to determine your prize." At the bottom of the advertisement was the statement, "MUST USE PIN TO DETERMINE ACTUAL PRIZE!"

8. Each consumer who complained to the Consumer Assistance Program believed that they had won the indicated prize, but instead received a \$5 Walmart Gift card.

9. It was reasonable for a consumer to conclude from the design of the advertisement that they had won or should have won the indicated prize from the pull out tab and matching number.

10. The advertisement was deceptive as defined by the Vermont consumer protection statutes cited herein.

11. Poulin Auto ran a similar advertising campaign in 2015, where the top prizes were \$25,000 cash or 2010 Toyota Tacoma. This mailing was sent to 50,000 consumers.

12. Respondent has been the subject of 84 consumer complaints since 2014. In addition to complaints about the above-referenced advertisement, complaints range from failing to timely respond to post-sale mechanical and operating complaints, failure to timely send in registration materials, management of financing paperwork and honoring vehicle warranties, and other issues.

13. Over the course of the investigation, the Attorney General worked with Respondent to resolve many of the complaints that had been filed against it.

14. Respondent has put in place certain process, procedural and structural measures since on or about July 1, 2019 toward making sales and business process improvements, including:

- a. Assigning a dedicated individual to respond timely to complaints.
- b. Rejoining the Vermont Vehicle and Automotive Distributors Association (“VADA”);

- c. Restructuring its organization, including divesting two (2) stores/branches (those located in Colchester and South Burlington respectively) and thus has consolidated operations into one (1) store location in Barre.
- d. Hiring a new general manager in July of 2019; and
- e. Implementing sales and business practices training for sales and finance personnel.

15. Consumer complaints against Poulin Auto have declined significantly since the Attorney General commenced its investigation. CAP received three complaints in 2020, versus an average of 16 per year from 2014 to 2019.

16. In response to a consumer complaint in late 2020, the Vermont Department of Motor Vehicles (“DMV”) investigated Poulin Auto and certain individual mechanics for allegedly falsifying vehicle inspection results. The DMV found that on eleven occasions in 2020, the electronic Vehicle Identification Number (VIN) captured by Poulin’s Automated Vehicle Inspection Program (“AVIP”) device was different from the automobile’s public VIN. The DMV concluded that the mechanics had used vehicles different from the ones being inspected to pass the emissions test requirements and stated, “These are serious indicators of fraudulent data being used to complete an inspection in order to circumvent the OBD-II readiness requirements of Vermont’s Inspection Program.” The DMV imposed a fine of \$2,160 for first time violations, which Poulin paid. The mechanics accused of falsifying the tests are no longer employed by Poulin.

17. Poulin Auto admits the truth of all facts set forth in the Background section.

18. The Attorney General alleges that the conduct described in paragraphs 5-12 constitute unfair and deceptive acts and practices under 9 V.S.A. § 2453.

## INJUNCTIVE RELIEF

19. Respondent shall not engage in any unfair or deceptive acts in violation of 9 V.S.A. § 2453, including, for example, representing that an automobile is roadworthy if it is not, failing to honor a warranty, providing incorrect information regarding financing, or failing to provide legally required documentation at the time of purchase.
20. Respondents shall comply with Consumer Protection Rule CP 118.
21. Respondents shall not issue any direct mail advertisements substantially in the form of Exhibit A hereto.
22. Respondent shall respond to any complaint forwarded by the Consumer Assistance Program or any other source within ten (10) days of receipt by Respondent, and work in good faith and expeditiously to resolve such complaints.
23. One employee of Respondent shall be dedicated to addressing complaints.
24. Respondent shall train all employees in accordance with the training and best practices resources provided by VADA or those resources provided through other generally accepted trade associations in the automobile sales industry.
25. **Sales of Vehicles** Respondent shall offer as part of its sales process to provide the Experian Autocheck report, or other equivalent vehicle history report for any used / pre-owned vehicle prior to confirming the sale of the vehicle.,
26. Respondent has and shall continue to allow and verbally recommend to all consumers the opportunity to conduct an independent inspection of any used vehicle with a licensed mechanic of the consumer's choosing prior to any confirmed sale. Respondent shall not recommend any specific mechanic but is permitted to make mention generally of mechanics who are located in the area.

27. Respondent shall complete all contracts and paperwork provided to consumers truthfully and accurately and in accordance with the verbally agreed to terms of sale.
28. In the event that a consumer requires financing of a vehicle, Respondent shall not permit any consumer to take possession of a vehicle until the financing of the vehicle has been pre-approved by the lender and Respondent has confirmed as part of the pre-approval process with the lender:
- a. the total price of the vehicle;
  - b. the amount to be financed;
  - c. the amount to be paid up front by the consumer;
  - d. the terms of the loan; and
  - e. the monthly payment amounts.
29. Respondent shall not resell a trade-in vehicle until the consumer's financing has been confirmed by the lender.
30. All retail installment contracts shall comply with 9 V.S.A. 2405 and financing terms in the previous paragraph shall be provided to the consumer on the forms required by law, including federal truth in lending forms and signed by the consumer prior to permitting the consumer to take possession of the vehicle.
31. Prior to selling any automobile, Respondent shall have confirmed the roadworthiness of the automobile in accordance with applicable Vermont laws. Consumers who purchase a vehicle from Respondent, shall not be permitted to test drive that motor vehicle, unless it has been inspected and has a valid inspection sticker, as required by 23 V.S.A. § 1222.
32. Respondent shall comply with all laws regarding vehicle inspections and shall ensure that all mechanics in its employ are complying with relevant laws.

33. Notwithstanding the foregoing, Respondent may sell “as is” used vehicles which in their current condition will not pass inspection without additional vehicle work, and which will require the consumer to put this work into the vehicle before it can be roadworthy and driven, if Respondent:

- a. fully and clearly discloses to the consumer that this is an “as is” sale and that the vehicle will not pass inspection, will require the consumer to put additional work in to be roadworthy and pass the Vermont State inspection, and that the consumer must bear the full cost of the additional work;
- b. requires the consumer to sign an acknowledgement form disclosure that clearly states that the consumer understands that this is the type of purchase they are making.

34. Respondent shall fully cooperate with the Attorney General regarding any investigation or enforcement action involving any dealerships or business operations previously owned by Poulin Auto, to the extent that the action requires information about events that occurred while the dealership or business operations were under the control of Poulin Auto.

### **Restitution**

35. Respondent shall establish a Restitution Fund of fifteen thousand dollars (\$15,000) to make payments to consumers with outstanding, unresolved Complaints filed with the Consumer Assistance Program prior to the effective date of this Assurance (“Qualifying Consumers”).

36. The “Effective Date” shall be the date on which both parties sign this Assurance of Discontinuance. Within 30 days of the Effective Date, Respondent shall pay five hundred



dollars (\$500.00) to each Qualifying Consumer who (1) filed a complaint with the Consumer Assistance Program between January 1, 2017 and the Effective Date, and (2) engaged in a good faith but unsuccessful effort to resolve their complaint with Respondent; totaling seven thousand five hundred dollars (\$7,500.00). The list of fifteen (15) Qualifying Consumers has been provided to Respondent by the Attorney General's Office in advance of the signing of this Assurance.

37. The \$15,000 payment Respondent is making to the Restitution Fund is considered as full restitution and settlement of the Qualifying Consumers' complaints with the Attorney General's Office.

38. The remaining amount in the Restitution Fund (\$7,500), shall be placed in escrow to be distributed six months after the Effective Date. Qualifying Consumers who contact the Attorney General within six months of the Effective Date will be eligible for restitution from this Restitution Fund in an amount to be determined at the end of the six-month period, at the sole discretion of the Attorney General.

39. Upon distributing the additional funds, any remaining funds in the Restitution Fund shall be paid to the Vermont Foodbank to help in Covid-19 relief efforts during these challenging times, as *cy pres*.

40. If any consumer cannot be located based on reasonable efforts at their last known address, as maintained by the Attorney General's Office, restitution amounts for those consumers shall be retained in the name of the consumer, as unclaimed funds with the State of Vermont.

41. No later than 360 days after the Effective Date, Respondent shall remit to Ryan Kriger, Assistant Attorney General, Office of the Vermont Attorney General, 109 State Street,

Montpelier, VT 05609 a list of all restitution payments made to consumers, and including a list of restitution payments that were not completed due to failure to locate the consumer after reasonable efforts made and due to returned mailings, or uncashed checks, as follows:

- a. a single check or by wire transfer, payable to “Vermont State Treasurer,” and indicating the company’s federal tax identification number, of the total dollar amount of all refunds that were returned or, in the case of checks, that went uncashed, to be treated as unclaimed funds; and
- b. a list, in electronic Excel format on a compact disc or via electronic mail, of the consumers whose refunds were returned or, in the case of checks, were not cashed (which list shall set out the first and last names of the consumers in distinct fields or columns), and for each such consumer, the last known address and dollar amount due.

### **PENALTIES**

42. Respondents shall pay civil penalties of Five Thousand Dollars (\$5,000) within thirty (30) days of the Effective Date. Respondents shall make payment to the “State of Vermont” and send payment to: Ryan Kriger, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

### **REPORTING**

43. To determine or secure compliance with this Assurance of Discontinuance, on reasonable notice of at least 3 business days given to Respondent to ensure and coordinate access, subject to any lawful privilege, for a period of three (3) years after the Effective Date, Respondent shall comply with any request for documents or other information requested.

### **OTHER TERMS**

44. Respondent agrees that this Assurance of Discontinuance shall be binding on Respondent, and its successors and assigns.
45. The Attorney General hereby releases and discharges any and all claims arising under the Consumer Protection Act, 9 V.S.A. §§ 2451-2480, that it may have against Respondent for the conduct described herein between the dates of January 1, 2013 and the signing of this Agreement.
46. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this Assurance of Discontinuance and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.
47. Acceptance of this Assurance of Discontinuance by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this Assurance of Discontinuance, and Respondent shall make no representation to the contrary.
48. Nothing in this AOD can be used by those who are not parties to and executing this Agreement as evidence or as an admission in another proceeding in any court or otherwise whatsoever.

### **STIPULATED PENALTIES**

49. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondents to be in violation of paragraphs 18 – 32 of this Assurance of

Discontinuance, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be \$5,000.

**NOTICE**

50. Respondents may be located at: 473 E. Barre Road, Barre, Vermont 05641.

51. For a period of five years, Respondent shall notify the State of Vermont of any change of business name or address within 20 business days of such changes. Notice shall be provided to: Ryan Kriger, Assistant Attorney General; Vermont Office of the Attorney General, 109 State St., Montpelier VT 05609.

**SIGNATURE**

In lieu of instituting an action or proceeding against Respondent, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submit to the terms of this Assurance of Discontinuance.

DATED at Barre, this 27 day of April, 2021.

POULIN AUTO SALES, INC.

By: 

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 30<sup>m</sup> day of APRIL, 2021.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By: 

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