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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Federal Trade Commission,  
  
Plaintiff,  
  
v.  
  
Tate’s Auto Center of Winslow  
Incorporation, et al.,  
  
Defendants.

No. CV-18-08176-PCT-DJH  
**ORDER**

Plaintiff, the Federal Trade Commission (“Commission”), filed its Complaint for Preliminary and Permanent Injunction and Other Equitable Relief (“Complaint”), pursuant to Sections 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b); the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601-1666j, and its implementing Regulation Z, 12 C.F.R. Part 226; and the Consumer Leasing Act (“CLA”), 15 U.S.C. §§1667-1667f and its implementing Regulation M, 12 C.F.R. Part 213. The Commission and Corporate Defendants stipulate to the entry of this Stipulated Order For Permanent Injunction and Monetary Judgment (“Order”) to fully resolve all matters in dispute in this action between them.

**THEREFORE, IT IS ORDERED** as follows:

**FINDINGS**

- 1. This Court has jurisdiction over this matter.
- 2. The Complaint charges that Corporate Defendants participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in

1 the advertising, sale, lease, and financing of automobiles. The Complaint further alleges  
2 that Corporate Defendants failed to include required disclosures in its advertisements for  
3 closed-end credit, in violation of TILA, 15 U.S.C. 1601-1666j, and its implementing  
4 Regulation Z, 12 C.F.R. Part 1026, and failed to include required disclosures in  
5 advertisements for consumers leases, in violation of CLA, 15 U.S.C. §§1667-1667f and  
6 its implementing Regulation M, 12 C.F.R. Part 213.

7 3. Corporate Defendants neither admit nor deny the allegations in the  
8 Complaint.

9 4. On March 8, 2019, Corporate Defendants filed separate petitions for relief  
10 under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in the United States  
11 Bankruptcy Court for the District of Arizona, Case Nos. 2:19-bk-02493-BMW, 2:19-bk-  
12 2523-PS, 2:19-bk-2524-PS, 2:19-bk-2527-DPC (collectively, the “Bankruptcy Cases”).  
13 The court ordered joint administration of the Bankruptcy Cases. On June 28, 2019, Bryan  
14 Perkinson was appointed Chapter 11 Trustee in the Bankruptcy Cases. On July 10, 2019,  
15 the Bankruptcy Cases were converted to jointly administered Chapter 7 proceedings, so  
16 that the Corporate Defendants’ assets would be liquidated. Mr. Perkinson is the Chapter  
17 7 Trustee in the Bankruptcy Cases.

18 5. The Commission’s action, including the enforcement of a judgment other  
19 than a money judgment obtained in this action, is not stayed by 11 U.S.C. § 362(a)(1),  
20 (2), (3), or (6) because it is an exercise of the Commissions’ police or regulatory power  
21 as governmental units according to 11 U.S.C. § 362(b)(4) and, thus, falls within an  
22 exception to the automatic stay.

23 6. Trustee waives all rights to appeal or otherwise challenge or contest the  
24 validity of this Order.

25 7. Trustee waives any claim that Corporate Defendants may have under the  
26 Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this  
27 action through the date of this Order, and agrees that the Corporate Defendants shall  
28 bear their own costs and attorney fees.



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2 **II. MONETARY JUDGMENT AND SUSPENSION**

3 **IT IS FURTHER ORDERED:**

4 A. Judgment in the amount of seven million, two hundred three thousand,  
5 two hundred twenty-seven Dollars (\$7,203,227) is entered in favor of the Commission  
6 against Corporate Defendants, jointly and severally, as equitable monetary relief.

7 B. On account of this judgment, the Commission shall hold an allowed  
8 general unsecured claim against each of the Corporate Defendants in the total amount of  
9 \$7,203,227 (“Claims”). The Trustee shall not contest the Commission’s Claims and  
10 each Claim shall be deemed allowed in each of the Bankruptcy Cases against the  
11 Corporate Defendants, because each of the Corporate Defendants is jointly and severally  
12 liable for the full amount of the judgment

13 C. All money paid to the Commission pursuant to this Order may be deposited  
14 into a fund administered by the Commission or its designee to be used for equitable relief,  
15 including consumer redress and any attendant expenses for the administration of any  
16 redress fund. If a representative of the Commission decides that direct redress to  
17 consumers is wholly or partially impracticable or money remains after redress is  
18 completed, the Commission may apply any remaining money for such other equitable  
19 relief (including consumer information remedies) as it determines to be reasonably  
20 related to Defendants’ practices alleged in the Complaint. Any money not used for such  
21 equitable relief is to be deposited to the U.S. Treasury as disgorgement. Corporate  
22 Defendants have no right to challenge any actions the Commission or its representatives  
23 may take pursuant to this Subsection.

24 **III. CUSTOMER INFORMATION**

25 **IT IS FURTHER ORDERED** that Corporate Defendants, and each of their  
26 officers, agents, servants, employees, and attorneys, and all other persons in active  
27 concert or participation with them who receive actual notice of this Order by personal  
28 service or otherwise, are permanently restrained and enjoined from directly or indirectly:



1 Such Corporate Defendants must provide truthful and complete information, evidence,  
2 and testimony. The Trustee must cause his employees, representatives, or agents to  
3 appear for interviews, discovery, hearings, trials, and any other proceedings that a  
4 Commission representative may reasonably request upon 14 days written notice, or other  
5 reasonable notice, at such places and times as a Commission representative may  
6 designate in Arizona, without the service of a subpoena.

7 **V. ACCESS TO CORPORATE DOCUMENTS AND DATA**

8 **IT IS FURTHER ORDERED** that the Trustee shall make available to the  
9 Commission, for inventory and copying, all correspondence, email, financial data  
10 including tax returns, and any other documents, computer equipment, and electronically  
11 stored information, in Trustee's possession, custody, or control, that contain information  
12 about Corporate Defendants' businesses and assets at the Commissions' expense.  
13 Commission shall return each item produced for inventory or copying to Trustee within  
14 5 business days from the date and time of Trustee's delivery of each such item. The  
15 Trustee need not make available or provide any privileged communications or attorney  
16 work product, and need only prepare a categorical privilege log or other record related to  
17 these documents at the request of a representative of the Commission.

18 **IT IS FURTHER ORDERED** the Trustee, to the extent he has possession,  
19 custody, or control of computer equipment or electronically stored information described  
20 above, shall provide the Commission with any necessary means of access to the computer  
21 equipment or electronically stored information, including, but not limited to, computer  
22 access codes and passwords, except nothing herein shall obligate the Trustee to provide  
23 the Commission access codes, passwords, computer equipment or any other means of  
24 directly accessing the dealer management software or "DMS" owned by CDK Global,  
25 LLC ("CDK") and as licensed to the Trustee as set forth in DE 532 in the Bankruptcy  
26 Cases. The Trustee need not make available or provide access to any of his attorneys'  
27 computer equipment.

28 **IT IS FURTHER ORDERED** the Trustee shall provide notice to the

1 Commission of any proposed abandonment of any corporate books or records of  
2 Corporate Defendants, and upon the Commissions' designation and the Bankruptcy  
3 Court's approval, the Trustee shall transfer such books and records to the Commission.

4 **VI. OBLIGATIONS OF THE BANKRUPTCY TRUSTEE**

5 **IT IS FURTHER ORDERED** the Trustee consents to the entry of this Order only  
6 in his fiduciary capacity as Chapter 7 Trustee for Corporate Defendants, and not  
7 individually. The Trustee's obligations under this Order include only the obligations set  
8 forth in this Order.

9 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that nothing in  
10 this Order shall be construed to impose liability upon Trustee for actions consistent with  
11 the Bankruptcy Code and pursuant to any of the Bankruptcy Court orders; provided,  
12 however, that Trustee shall not take actions inconsistent with this Order or seek to  
13 collaterally attack the provisions of this Order in Bankruptcy Court. Nothing in this  
14 Order shall be construed to require Trustee to violate the Bankruptcy Code, Bankruptcy  
15 Rules, or an order issued by the Bankruptcy Court.

16 **VII. RETENTION OF JURISDICTION**

17 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter  
18 for purposes of construction, modification, and enforcement of this Order.

19 **IT IS FINALLY ORDERED** that pursuant Rule 54(b), the Court finds there is  
20 no just reason for delay and directs the Clerk of Court to enter judgment for Plaintiff and  
21 against Corporate Defendants in accordance with this Order.

22 Dated this 18th day of August, 2020.

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25 Honorable Diane J. Humetewa  
26 United States District Judge  
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