

OCCC CASE NO. L24-00003

IN THE MATTER OF:	§	BEFORE THE
	§	
PARNTERS LENDING AUTO	§	OFFICE OF CONSUMER
GROUP, LLC	§	
d/b/a AUTO FINANCIAL GROUP	§	CREDIT COMMISSIONER
5555 SAN FELIPE, SUITE 2100	§	
HOUSTON, TX 77056	§	STATE OF TEXAS

**ORDER DISAPPROVING PLAIN LANGUAGE CONTRACT SUBMISSION**

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order Disapproving Plain Language Contract Submission against Partners Lending Auto Group, LLC d/b/a Auto Financial Group (“Auto Financial Group”).<sup>1</sup>

**Statement of Facts and Law**

Chapter 341 of the Texas Finance Code requires motor vehicle retail installment contracts to be written in plain language designed to be easily understood by the average consumer.<sup>2</sup> A creditor must use either a model contract adopted by rule of the Texas Finance Commission or a contract that the creditor has submitted to the OCCC for plain language review.<sup>3</sup> A contract must be submitted in accordance with the OCCC’s instructions.<sup>4</sup> The OCCC’s plain language contract submission form requires a form number to be included on the contract and requires a certification that the contract is fully compliant with state law.<sup>5</sup>

In March 2023, Auto Financial Group submitted a motor vehicle retail installment contract addendum to the OCCC for plain language review. Auto Financial Group’s submission form reflects that the form number is AFG Add V.1, but this form number does not appear on the submitted contract. The submitted contract is titled “BALLOON PAYMENT ADDENDUM.” The contract states that it is an addendum to a motor vehicle retail installment contract or loan agreement, and

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<sup>1</sup> Tex. Fin. Code §§ 14.208, 341.502.

<sup>2</sup> Tex. Fin. Code § 341.502(a).

<sup>3</sup> Tex. Fin. Code § 341.502(b)-(c).

<sup>4</sup> 7 Tex. Admin. Code § 84.802(c).

<sup>5</sup> OCCC Plain Language Contract Submission Form,

[https://occc.texas.gov/sites/default/files/uploads/misc/plain\\_language\\_submission\\_form-2016.pdf](https://occc.texas.gov/sites/default/files/uploads/misc/plain_language_submission_form-2016.pdf)

that the addendum is entered between the "Borrower" and the "Seller/Creditor." Under the addendum, the borrower may choose to keep the vehicle by making all payments as scheduled or to sell the vehicle to the seller/creditor. The seller/creditor agrees to purchase the vehicle from the borrower for an amount based on the "Residual Amount," mileage, disposition costs, and reductions for excess wear.

For the reasons discussed below, the contract submitted by Auto Financial Group does not comply with the OCCC's instructions and is inconsistent with state law.

First, the submitted contract does not include a form number on the contract, as required by the OCCC's instructions. A form number is necessary so that the OCCC can identify submitted forms and ensure compliance with Section 341.502 of the Finance Code and its implementing rules.

Second, the contract is inconsistent with a buyer's right to refinance a large installment under Section 348.123 of the Finance Code. If a scheduled installment of a retail installment contract is more than twice the average of previous installments, Section 348.123 provides that the buyer is entitled to refinance that installment: (1) when the installment is due, (2) without an acquisition cost, (3) in installments not greater or more frequent than the average amount and frequency of preceding installments, and (4) at a rate of time price differential that does not exceed the original contract's rate.<sup>6</sup> Section 348.123 provides an exception for a retail installment transaction where the seller is a franchised dealer and the buyer is entitled, at the end of the term of the retail installment contract, to choose one of the following: (1) sell the vehicle back to the holder according to a written agreement entered into between the buyer and holder concurrently with or as a part of the transaction, and under which the buyer will be released from liability or obligation for the final scheduled payment under the contract on compliance with the agreement; (2) pay the final scheduled payment under the contract; or (3) if the buyer is not in default under the contract, refinance the final scheduled payment with the holder for repayment in not fewer than 24 equal monthly installments or on other terms agreed to by the buyer and holder at the time of refinancing, at a rate of time price differential limited by statute.<sup>7</sup> A retail installment contract

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<sup>6</sup> Tex. Fin. Code § 348.123(a).

<sup>7</sup> Tex. Fin. Code § 348.123(b)(5).

under this exception must disclose that any refinancing may be for any period and payment schedule to which the buyer and holder agree.<sup>8</sup>

The contract submitted by Auto Financial Group states that the buyer has two options: “You may choose to keep the Vehicle by paying us the Balloon Payment on the Final Payment Date. Alternatively, you may sell the Vehicle to us on the following terms and conditions.” The contract does not specify the buyer’s right to refinance the final scheduled payment, does not disclose that any refinancing may be for any agreed period and schedule, and does not release the buyer from liability for the final scheduled payment if the buyer sells the vehicle back. Therefore, the submitted contract is inconsistent with the buyer’s right to refinance a large installment under Section 348.123 of the Finance Code.

Third, the submitted contract contains internally inconsistent provisions about which party is agreeing to purchase the vehicle and where title will be transferred. The contract defines the terms “Seller/Creditor,” “we” and “us” to refer to the seller identified on the contract and any subsequent assignee. The second sentence of the “Option To Sell the Vehicle” section states that the buyer “may sell the Vehicle to us,” suggesting that the seller/creditor is the person who will purchase the vehicle and the person to whom title will be transferred. The fourth bullet point under “Option To Sell the Vehicle” states that the buyer must “Transfer good title to the Vehicle to the person designated by the Administrator,” suggesting that the vehicle will be sold to a person designated by the administrator. The “Transfer of Vehicle to Another Party” section states: “If you choose to sell us the Vehicle as described above, we may transfer the title to the Vehicle directly from you to anyone we choose,” suggesting that the vehicle will be sold to a person designated by the seller/creditor. These provisions are inconsistent with each other regarding which party will purchase the vehicle and where title will be transferred.

Fourth, the submitted contract includes charges that are not authorized by Chapter 348 of the Texas Finance Code. Chapter 348 of the Texas Finance Code limits the charges that may be imposed in a motor vehicle retail installment transaction.<sup>9</sup> If a charge is not expressly authorized by statute, then a creditor may not contract for, charge, or receive the charge in a retail installment transaction.<sup>10</sup> A creditor is

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<sup>8</sup> Tex. Fin. Code § 348.123(c).

<sup>9</sup> Tex. Fin. Code §§ 348.004–348.006, 348.103–348.114.

<sup>10</sup> *Maley v. 7111 Sw. Freeway, Inc.*, 843 S.W.2d 229, 233 (Tex. App. – Houston [14th Dist.] 1992, writ denied)

subject to civil penalties if the creditor violates Chapter 348 by contracting for, charging, or receiving any amounts exceeding what is authorized by Chapter 348.<sup>11</sup> The submitted contract subtracts various charges from the agreed sale price if the buyer chooses to sell the vehicle back, including reductions for excess wear and mileage, a reduction for “disposition costs,” and a \$250 reduction for failing to deliver the vehicle to a place designated by the seller/creditor on or before the final payment date. Because the contract includes charges that are not authorized by Chapter 348, the contract is inconsistent with state law.

The contract submitted by Auto Financial Group does not comply with the OCCC’s instructions, contains internally inconsistent provisions, and is inconsistent with state law. The inconsistent provisions are misleading and are not designed to be easily understood by an average consumer. Therefore, the submitted contract does not comply with Section 341.502 of the Texas Finance Code or its implementing rules.

### **Authority**

If the Commissioner determines that a plain language contract does not comply with Section 341.502 of the Texas Finance Code or its implementing rules, then the Commissioner shall issue an order disapproving the contract.<sup>12</sup> If the Commissioner issues an order disapproving a contract, a person may not use the contract after the order takes effect.<sup>13</sup>

The Commissioner has determined that the motor vehicle retail installment contract addendum submitted by Auto Financial Group (form number AFG Add V.1) does not comply with Section 341.502 of the Texas Finance Code and its implementing rules. For this reason, the Commissioner issues this Order.

### **Order**

IT IS ORDERED that:

1. The plain language contract submitted by Auto Financial Group, form number AFG Add V.1, is DISAPPROVED.

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<sup>11</sup> Tex. Fin. Code § 349.001.

<sup>12</sup> Tex. Fin. Code § 341.502(c).

<sup>13</sup> Tex. Fin. Code § 341.502(d).

2. Auto Financial Group must cease and desist using form number AFG Add V.1 in motor vehicle retail installment transactions.

### **Violation of Order**

If you violate this Order, the OCCC may impose an administrative penalty of up to \$1,000 for each day.<sup>14</sup>

### **Right to Request Hearing**

You have the right to request a hearing regarding this Order.<sup>15</sup> To request a hearing, you must send a written hearing request to the OCCC no later than 30 days after the date of this Order.<sup>16</sup> You must send your request to Matthew Nance, General Counsel, by mail to 2601 N. Lamar Blvd., Austin, TX 78705, or by email to [matthew.nance@occc.texas.gov](mailto:matthew.nance@occc.texas.gov).

If you request a hearing, a hearing will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.<sup>17</sup> If you fail to request a hearing by this deadline, the Order will be considered final and enforceable.<sup>18</sup>

All communications with the OCCC concerning this matter must be through Matthew Nance, General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, TX 78705, by telephone at 512-936-7660, or by email to [matthew.nance@occc.texas.gov](mailto:matthew.nance@occc.texas.gov).

Signed this 6th day of December, 2023.

/s/ Leslie Pettijohn  
Leslie L. Pettijohn  
Consumer Credit Commissioner  
State of Texas

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<sup>14</sup> Tex. Fin. Code § 14.208(c).

<sup>15</sup> Tex. Fin. Code § 14.208(b).

<sup>16</sup> Tex. Fin. Code § 14.208(b).

<sup>17</sup> Tex. Fin. Code § 14.208(b).

<sup>18</sup> Tex. Fin. Code § 14.208(c).

**CERTIFICATE OF SERVICE**

I certify that on December 6, 2023, a true and correct copy of this Order Disapproving Plain Language Contract Submission has been sent to Partners Lending Auto Group, LLC d/b/a Auto Financial Group by the following:

Partners Lending Auto Group, LLC  
Attn: Tim Kelly, President  
5555 San Felipe, Suite 2100  
Houston, TX 77056  
tkelly@autofinancialgroup.com

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested  
# 9214 8901 9403 8300 0040 8680 89

Partners Lending Auto Group, LLC  
Attn: Richard Epley, Registered Agent  
5555 San Felipe, Suite 2100  
Houston, TX 77056

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested  
# 9214 8901 9403 8300 0040 9499 00

/s/ Matthew Nance

Matthew J. Nance  
General Counsel  
Office of Consumer Credit Commissioner  
State Bar No. 24074794  
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