

OCCC CASE NO. L21-00092

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NUMBER: 1400050029	§	OFFICE OF CONSUMER
1AND2 AUTOMOTIVE, LLC	§	
11311 REEDER ROAD BLDG. A	§	CREDIT COMMISSIONER
DALLAS, TEXAS 75229	§	
	§	STATE OF TEXAS

**ORDER OF REVOCATION, TO CEASE AND DESIST,
TO TAKE AFFIRMATIVE ACTION,
AND TO MAKE RESTITUTION**

The Office of the Consumer Credit Commissioner (“OCCC”) issues this Order of Revocation, to Cease and Desist, to Take Affirmative Action, and to Make Restitution against 1and2 Automotive, LLC (“1and2”), based on the violations of law described below.¹

Background

1and2 holds a motor vehicle sales finance license with the OCCC under Chapter 348 of the Texas Finance Code. 1and2 is licensed under master file number 1400050029 to do business at two locations. Under license number 150502 (issued on August 1, 2014) 1and2 may do business at 11311 Reeder Road, Bldg. A, in Dallas, Texas. Under license number 157796 (issued on April 26, 2017) 1and2 may do business at 10501 Harry Hines Blvd., in Dallas, Texas. Its registered agent is CSC-Lawyers Incorporating Service Company. Its compliance officer, statutory agent, and sole member is David Kost.

Failure to Maintain Records and License Information

On receipt of a written complaint or other reasonable cause to believe that a person is violating a statute, the commissioner may:

- (1) require the person to furnish information regarding a specific loan, retail transaction, or business practice to which the violation relates; and

¹ Tex. Fin. Code §§ 14.208, 348.508.

(2) conduct an investigation to determine whether a violation exists.²

Since 2015, the OCCC has received 35 complaints against 1and2, and had reasonable cause to believe that it is violating Texas law. Accordingly, on September 24, 2020, the OCCC requested copies of retail installment contracts and related records from 1and2 by certified mail and email. The certified mail was delivered and signed for. 1and2 has failed to produce the requested records.

The requested records are required to be kept by 1and2, and made available to the OCCC upon request.³ In its licensing information on file with the OCCC, 1and2 affirmed that its records will be held at 11311 Reeder Road in Dallas, Texas. 1and2 is required by law to keep its contact information current and correct.⁴ As described below, 1and2 is not conducting business at 11311 Reeder Road. The OCCC was unable to gain access to 1and2's records at 11311 Reeder Road.

The OCCC visited 1and2's licensed location at 11311 Reeder Road, but found that 1and2 was not conducting business at that location. On September 28, 2020, Auto Bueno, LLC d/b/a The Auto Cave (Master File No. 2000067874) filed an application for a motor vehicle sales finance license with the OCCC to operate at 11311 Reeder Road.

The OCCC also visited 1and2's licensed location at 10501 Harry Hines Blvd., but found that 1and2 was not conducting business at that location. Instead, Drive Casa, LLC was operating at that location. On August 14, 2020, Drive Casa, LLC (Master File No. 1500053531) filed a registered office with the OCCC to operate at 10507 Harry Hines Blvd., which is very close to (and possibly indistinguishable from) 1and2's licensed location (i.e. 10501 Harry Hines Blvd.).

On October 15, 2020, the OCCC issued an order to furnish information against 1and2.⁵ The Order required 1and2 to provide the items and information requested by the OCCC on September 24, 2020, as well as a spreadsheet

² Tex. Fin. Code § 14.202; Tex. Fin. Code § 14.201 (stating that the OCCC has investigative and enforcement authority under Chapter 14 with respect to violations of Subtitles B and C of Title 4 of the Texas Finance Code); Tex. Fin. Code Ch. 348 (located within Subtitle B of Title 4, and therefore subject to Chapter 14).

³ Tex. Fin. Code §§ 348.514, 348.517; 7 Tex. Admin. Code §§ 84.707, 84.708.

⁴ 7 Tex. Admin. Code § 84.607(c).

⁵ Order to Furnish Information, issued on October 15, 2020 in OCCC Case No. L21-00090.

identifying each retail installment contract assigned to another person since January 1, 2020.

On October 24, 2020, 1and2 responded to the order to furnish information by email.⁶ The email stated: “We are out of business as of August 31st. The bank foreclosed on us, they took all the files and computers to keep servicing the accounts.” Therefore, 1and2 knowingly or without the exercise of due care:

- failed to maintain records of its retail installment transactions;⁷
- failed to allow the OCCC access to 1and2’s records;⁸ and
- failed to ensure that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses.⁹

As of the date of this Order, 1and2 has an active license. After ceasing operations on August 31, 2020, 1and2 did not:

- inactivate its license by giving the OCCC notice not less than 10 calendar days prior to ceasing operations;¹⁰ or
- voluntarily surrender its license after ceasing operations.¹¹

Since an administrative action has been initiated through the issuance of this Order, 1and2 may not now surrender its license without the written agreement of the OCCC.¹² The suspension, revocation, or surrender of 1and2’s license does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.¹³

⁶ Email dated October 24, 2020 from David Kost to Nicko Fisher and Michael Rigby.

⁷ Tex. Fin. Code § 348.517; 7 Tex. Admin. Code §§ 84.707, 84.708.

⁸ Tex. Fin. Code §§ 348.514, 348.517.

⁹ 7 Tex. Admin. Code § 84.607(c).

¹⁰ 7 Tex. Admin. Code § 84.610(a).

¹¹ 7 Tex. Admin. Code § 84.610(c). 1and2 may not may not surrender its license after this administrative action has been initiated without the written agreement of the OCCC. 7 Tex. Admin. Code § 84.610(d).

¹² 7 Tex. Admin. Code § 84.610(d).

¹³ Tex. Fin. Code § 348.511(a).

Surrender of 1and2's license does not affect its civil or criminal liability for an act committed before surrender.¹⁴

Cash Price Violations

A cash price violation occurs when a cash price is established by the retail seller who then finances the sale of the vehicle for more than the established cash price.¹⁵ Texas law limits the cost of credit, and requires a seller to disclose the cost of credit, in a retail installment transaction.¹⁶ A seller's increase to the cash price is an undisclosed and excessive cost to the buyer for the use of credit in violation of Texas law.

A motor vehicle sales finance license is required to act as a holder of a motor vehicle retail installment contract.¹⁷ A holder means a person who is a retail seller, or the assignee or transferee of a retail installment contract.¹⁸ In a retail installment contract the buyer agrees to pay the seller part or all of the cash price in one or more deferred installments.¹⁹

A retail installment contract must contain the cash price of the retail installment transaction.²⁰ The cash price is the price at which the retail seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction.²¹ The true cash price is not the price that is ultimately agreed upon after negotiations, and is not the "cash price" listed on the retail installment contract.²²

¹⁴ Tex. Fin. Code § 348.511(b).

¹⁵ *Collins v. Fred Haas Toyota*, 21 S.W.3d 606, 607 (Tex. App.--Houston [1st Dist.] 2000, no pet.).

¹⁶ Tex. Fin. Code § 348.101 (requiring the use of a retail installment contract that is complete as to all essential provisions in a retail installment transaction); Tex. Fin. Code § 348.001(9) (defining "time price differential" as the total amount added to the principal balance to determine the balance of the retail buyer's indebtedness under a retail installment contract); Tex. Fin. Code § 348.009 (requiring a seller to make the disclosures required by the Truth in Lending Act in a retail installment transaction); Tex. Fin. Code §§ 348.103, .104, .105, .106 (limiting the amount of the time price differential to be included in a retail installment contract).

¹⁷ Tex. Fin. Code § 348.501.

¹⁸ Tex. Fin. Code § 348.001(3).

¹⁹ Tex. Fin. Code § 348.001(3), (7), (8).

²⁰ Tex. Fin. Code § 348.102(a)(5).

²¹ Tex. Fin. Code § 348.004(a); 7 Tex. Admin. Code § 84.804(2).

²² *Stephens v. Friendly Chevrolet, Ltd.*, 2005 Tex. App. LEXIS 3170 (Tex. App. – Dallas 2005, pet. denied), citing *Collins v. Fred Haas Toyota*, 21 S.W.3d 606, 607 (Tex. App. – Houston [1st Dist.] 2000, no pet.).

The cash price may be established through several methods. An advertised price may, but does not necessarily, establish the cash price.²³ The manufacturer's suggested retail price may establish the cash price.²⁴ The total vehicle price listed on the label attached to a vehicle ("sticker price") may establish the cash price.²⁵

The purpose of the cash price disclosure in a retail installment contract is to prevent the seller from charging a credit customer more than a cash customer.²⁶ An overstated cash price for a credit customer constitutes an undisclosed finance charge in violation of Texas law.²⁷ Under the federal Truth in Lending Act and Regulation Z, the finance charge is the cost of credit expressed as a dollar amount, and must be accurately disclosed to the consumer.²⁸ The cash price may not include the finance charge.²⁹ Therefore, a seller that overstates the cash price in a retail installment contract fails to accurately disclose the finance charge in violation of Texas law and the federal Truth in Lending Act.³⁰

land2 has repeatedly violated Section 348 of the Texas Finance Code by increasing the retail installment contract sale price well above the advertised price. The chart below identifies five examples of transactions involving this practice.

²³ Tex. Fin. Code § 348.004(a); *Collins v. Fred Haas Toyota*, 21 S.W.3d 606, 607 (Tex. App. – Houston [1st Dist.] 2000, no pet.).

²⁴ *Stephens v. Friendly Chevrolet, Ltd.*, No. 05-04-00788-CV, 2005 Tex. App. LEXIS 3170 (Tex. App. – Dallas Apr. 28, 2005, pet. denied).

²⁵ *Neal Autoplex, Inc. v. Franklin*, 441 S.W.3d 444 (Tex. App. – El Paso 2014, no pet.). The label includes the manufacturer's suggested retail price as well as optional equipment and pricing, and is required by federal law to be attached to a new vehicle. 15 U.S.C. §§ 1231-1233; https://en.wikipedia.org/wiki/Monroney_sticker.

²⁶ *Collins v. Fred Haas Toyota*, 21 S.W.3d 606, 607 (Tex. App. – Houston [1st Dist.] 2000, no pet.); *Neal Autoplex, Inc. v. Franklin*, 441 S.W.3d 444, 447 (Tex. App. – El Paso 2014, no pet.); *Bledsoe Dodge, L.L.C. v. Kuberski*, 279 S.W.3d 839, 842 (Tex. App. – Dallas 2009, no pet.); *Stephens v. Friendly Chevrolet, Ltd.*, No. 05-04-00788-CV, 2005 Tex. App. LEXIS 3170 at *5 (Tex. App. – Dallas Apr. 28, 2005, pet. denied).

²⁷ See *Stephens v. Friendly Chevrolet, Ltd.*, No. 05-04-00788-CV, 2005 Tex. App. LEXIS 3170 at *6 (Tex. App. – Dallas Apr. 28, 2005, pet. denied); *Bledsoe Dodge, L.L.C. v. Kuberski*, 279 S.W.3d 839 (Tex. App. – Dallas 2009, no pet.).

²⁸ Truth in Lending Act, 15 U.S.C. §§ 1605-1632; Regulation Z, 12 C.F.R. §§ 226.4(a), 226.18(d), 1026.4(a), 1026.18(d).

²⁹ Tex. Fin. Code § 348.004(b); 7 Tex. Admin. Code § 84.808(7) (model clause regarding Truth in Lending Act disclosure, describing a finance charge as the "dollar amount the credit will cost" the consumer).

³⁰ Tex. Fin. Code § 348.009 (applying Regulation Z of the Truth in Lending Act to retail installment transactions); Regulation Z, 12 C.F.R. §§ 226.18, 1026.18 (requiring disclosure of the finance charge and other terms).

Stock Number	Advertised Price	Retail Installment Contract Sales Price	Contract vs Advertised Price (Dollars)	Contract vs Advertised Price (Percentage)
R15677	\$ 9,488.00	\$ 18,700.00	\$ 9,212.00	197%
R16033	\$ 6,788.00	\$ 13,400.00	\$ 6,612.00	197%
R16211	\$ 10,988.00	\$ 21,800.00	\$ 10,812.00	198%
R15999	\$ 8,488.00	\$ 16,987.00	\$ 8,499.00	200%
R15990	\$ 10,988.00	\$ 22,000.00	\$ 11,012.00	200%

By increasing the cash price of vehicles on motor vehicle retail installment transactions, 1and2 has knowingly or without due care committed a violation of Chapter 348 of the Texas Finance Code.

Authority to Order Restitution and License Revocation

The Commissioner may issue an order to cease and desist from the violation, an order to take affirmative action, or both if the Commissioner has reasonable cause to believe that a person is violating Chapter 348 of the Texas Finance Code.³¹ The Commissioner may also order such a person to make restitution.³²

The Commissioner may issue an order to revoke 1and2's license if she finds that:

- 1and2 knowingly or without the exercise of due care violated Chapter 348 or a rule adopted or order issued under Chapter 348; or
- a fact or condition exists that, if it had been known at the time of the license application, would have justified the denial of the application.³³

The OCCC issued a license to 1and2 after finding that its license application warranted the belief that 1and2 would command the confidence of the public,

³¹ Tex. Fin. Code § 14.208(a).

³² Tex. Fin. Code § 14.251(b).

³³ Tex. Fin. Code § 348.508.

and would operate lawfully and fairly.³⁴ The conduct described above shows that 1and2:

- has knowingly or without the exercise of due care violated Chapter 348;
- has knowingly or without the exercise of due care violated a rule issued under Chapter 348;
- has knowingly or without the exercise of due care violated an order issued under Chapter 348;
- does not command the confidence of the public; and
- does not operate lawfully and fairly.

These facts or conditions, if they had been known at the time of 1and2's license application, would have justified the denial of the application. Accordingly, the license held by 1and2 should be revoked.

Order

IT IS ORDERED that the motor vehicle sales finance licenses issued to 1and2 Automotive, LLC under master file number 1400050029, and license numbers 150502 and 157796, are hereby REVOKED.

IT IS FURTHER ORDERED that 1and2 Automotive, LLC:

1. Cease and desist entering new motor vehicle retail installment transactions;
2. Cease and desist all of the following:
 - a. collecting any payments on any motor vehicle retail installment transactions,
 - b. repossessing any motor vehicles, and
 - c. selling any motor vehicles that it has repossessed;
3. Cease and desist from violating the cash price requirements found in Section 348.004 of the Texas Finance Code;
4. Cease and desist from violating the contents of a contract requirement found in Section 348.102 of the Texas Finance Code;
5. Otherwise cease and desist from violating the requirements of Chapter 348 of the Texas Finance Code;
6. No later than December 1, 2020, perform a self-review to identify all

³⁴ Tex. Fin. Code § 348.504(a)(1).

transactions where it committed a cash price violation by contracting for a cash price higher than the advertised cash price, and refund to each buyer a sum of money equal to the difference between the advertised cash price and any higher cash price listed on the retail installment contract;

7. No later than December 1, 2020, submit a spreadsheet in Microsoft Excel format to the OCCC that contains the following columns:
 - a. The advertised price, the retail installment contract cash price, and the amount of the refund or other payment under this order,
 - b. The name, address, account number, and telephone number of each person who received a refund or other payment under this order,
 - c. The date of any refund or other payment, and
 - d. The check number or other identifying form of any refund or other payment; and
8. No later than December 1, 2020, submit a report containing:
 - a. All current contact information for 1and2, including its mailing address, telephone number, and email address,
 - b. The current location of all records required to be maintained by 1and2 under Chapter 348 of the Texas Finance Code and 7 Texas Administrative Code Chapter 84,
 - c. A list of all records required to be maintained, but lost or destroyed, and
 - d. A list of each person who lost or destroyed each record required to be maintained.

Violation of Order

If you violate this Order, the OCCC may impose an administrative penalty of up to \$1,000 per day.³⁵

Right to Request Hearing

1and2 has the right to request a hearing regarding this Order.³⁶ 1and2's request must be made in writing and sent to the OCCC not later than 30 days after the date of this Order. 1and2 must send its request to Michael Rigby,

³⁵ Tex. Fin. Code § 14.208(c).

³⁶ Tex. Fin. Code § 14.208(b).

General Counsel, by mail to 2601 N. Lamar Blvd., Austin, Texas 78705, or by email to michael.rigby@occc.texas.gov.

If 1and2 requests a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.³⁷ If 1and2 fails to request a hearing by this deadline, this Order is considered final and enforceable.³⁸

All communications with the OCCC concerning this matter must be through Michael Rigby, General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7623, or by email to michael.rigby@occc.texas.gov.

Signed this 29th day of October, 2020.

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

CERTIFICATE OF SERVICE

I certify that on October 29, 2020, a true and correct copy of this Order of Revocation, to Cease and Desist, to Take Affirmative Action, and to Make Restitution has been sent to 1and2 Automotive, LLC by the following methods:

1and2 Automotive, LLC
Attn: David Kost, Compliance Officer
and Statutory Agent
11311 Reeder Road, Bldg. A
Dallas, Texas 75229
dkost@1and2automotive.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
9214 8901 9403 8300 0023 8999 94

³⁷ Tex. Fin. Code § 14.208(b).

³⁸ Tex. Fin. Code § 14.208(c).

1and2 Automotive, LLC
Attn: David Kost II
10501 Harry Hines Blvd.
Dallas, Texas 75220
dave@1and2automotive.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
9214 8901 9403 8300 0023 9000 03

1and2 Automotive, LLC
Attn: c/o CSC-Lawyers Incorporating
Service Company, Registered Agent
211 E. 7th Street, Suite 620
Austin, Texas 78701

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
9214 8901 9403 8300 0023 9000 10

/s/ Michael Rigby
Michael Rigby
General Counsel
Office of Consumer Credit Commissioner
State Bar No. 50511925
2601 North Lamar Blvd.
Austin, Texas 78705
(512) 936-7623
(512) 936-7610 (fax)
michael.rigby@occc.texas.gov