

OCCC CASE NO. L19-00408

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NO.: 1500053986	§	OFFICE OF CONSUMER
MARCOS RENE SALDIVAR	§	
d/b/a M2 MOTORS	§	CREDIT COMMISSIONER
4020 NORTH TEXAS BLVD.,	§	
WESLACO, TX 78599	§	STATE OF TEXAS
	§	
	§	

ORDER TO CEASE AND DESIST, TAKE AFFIRMATIVE ACTION, AND MAKE RESTITUTION

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Cease and Desist against Marcos Rene Saldivar d/b/a M2 Motors (“M2 Motors”).¹

Background Facts and Law

A motor vehicle sales finance license is required to act as a holder of a motor vehicle retail installment contract.² A holder is a person who operates as a retail seller or holds and collects on a contract in which the person agrees to accept the cash price of a motor vehicle in one or more deferred installments.³

M2 Motors is a motor vehicle dealer that does not hold a license with the OCCC. M2 operates at 4020 N. Texas Blvd., Weslaco, Texas 78599.⁴

On November 8, 2018, the OCCC received a license verification request that lead to suspicion that M2 Motors was entering into motor vehicle retail installment contracts without a license. The OCCC then performed an investigation into M2 Motors’ business. In a witness declaration to the investigator, Marcos Saldivar admitted that M2

¹ Tex. Fin. Code §§ 14.208, 14.251(b).

² Tex. Fin. Code § 348.501.

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

⁴ This is the address that M2 Motors provided to the OCCC, and currently listed in the OCCC’s Application Licensing Examination Compliance System (ALECS). In addition, on March 11, 2015 Marcos Saldivar filed an assumed name certificate with the Hidalgo County Clerk, listing his address as 2508 Roben, McAllen, Texas 78504, and listing the business address of M2 Motors as 5701 N. FM 1015, Weslaco, Texas 78599.

Motors had engaged in activity requiring a license by entering 34 motor vehicle retail installment contracts beginning in December 2017.⁵

Prior to the investigation, M2 Motors began an application for a motor vehicle sales finance license under master file #1500053986, but did not complete it. On July 29, 2019, the OCCC attempted to reach out to M2 in order to continue the late application process, but was unable to reach anyone. M2 has not obtained a license with the OCCC.

By accepting the cash price of motor vehicles in one or more deferred installments without a motor vehicle sales finance license, M2 Motors has violated Section 348.501 of the Texas Finance Code.

Authority

If the Commissioner has reasonable cause to believe that a person is violating Chapter 348 of the Texas Finance Code, the Commissioner may issue an order to cease and desist from the violation, an order to take affirmative action, or both to enforce compliance.⁶ Additionally, the Commissioner may order a person who violates Chapter 348 or a rule adopted under Chapter 348 to make restitution to an identifiable person injured by the violation.⁷

The Commissioner has reasonable cause to believe that M2 Motors is violating Chapter 348 of the Texas Finance Code.

Order

IT IS ORDERED that:

1. M2 Motors must comply with, and cease and desist from violating, the motor vehicle sales finance license requirement found in Section 348.501 of the Texas Finance Code.
2. M2 Motors must cease and desist from advertising or entering into new transactions in which it agrees to accept the cash price of a motor vehicle in one or more deferred installments.

⁵ Marcos Saldivar Witness Declaration.

⁶ Tex. Fin. Code § 14.208(a).

⁷ Tex. Fin. Code § 14.251(b).

3. M2 Motors must cease and desist from collecting payments on existing transactions that require a motor vehicle sales finance license.
4. **No later than December 9, 2019**, M2 Motors must perform a self-review and identify each motor vehicle retail installment transaction that M2 Motors has entered, including each sale of a motor vehicle in which:
 - a. M2 Motors entered a retail installment contract;
 - b. M2 Motors accepted payments in one or more deferred installments; or
 - c. M2 Motors held a lien.
5. **No later than December 9, 2019**, M2 Motors must refund any finance charges that it charged or received from any retail buyers.
6. **No later than December 9, 2019**, M2 Motors must release any liens that are currently filed on any motor vehicles in M2 Motors' name. M2 Motors may not charge a fee to any buyer for releasing these liens.
7. **No later than December 9, 2019**, M2 Motors must identify each retail installment transaction that it assigned to another creditor.
8. With respect to maintaining proof of refunds and release of liens:
 - a. M2 Motors must maintain complete and accurate records of all refunds, including copies of refund checks for closed accounts and ledgers showing account credits for open accounts, until the later of the following:
 - i. the fourth anniversary of the date of the retail installment transaction, or
 - ii. the second anniversary of the date on which the final entry is made in the buyer's record.⁸
 - b. M2 Motors must maintain documentation of the release of any liens until the later of the following:
 - i. the fourth anniversary of the date of the retail installment transaction, or
 - ii. the second anniversary of the date on which the final entry is made in the buyer's record.
 - c. **No later than December 9, 2019**, M2 Motors must create a spreadsheet labeled "L19-00408M2MotorsRestitution." The spreadsheet must

⁸ See 7 Tex. Admin. Code § 84.704(b), (g).

clearly list the total amount of refunds provided to buyers. In addition, the spreadsheet must list each retail installment transaction for which M2 Motors provided restitution or released a lien as described above, and each retail installment transaction that M2 Motors assigned to another creditor. The spreadsheet must include a row for each buyer and the following columns:

- i. account number;
- ii. name of the retail buyer;
- iii. date of retail installment contract;
- iv. amount of finance charge;
- v. amount of finance charge refunded to the buyer;
- vi. date of the refund;
- vii. form of the refund (i.e. check for closed account, and credit on open account);
- viii. date on which M2 Motors released the lien, if applicable; and
- ix. name of any creditor that M2 Motors assigned the transaction to, if applicable.

- d. **No later than December 9, 2019**, M2 Motors must provide the OCCC with a copy of the spreadsheet. The spreadsheet must be sent by e-mail to Audrey Spalding at audrey.spalding@occc.texas.gov

Violation of Order

You may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.⁹

Right to Request Hearing

You have the right to request a hearing regarding this Order.¹⁰ Your request must be made in writing and sent to the OCCC not later than 30 days after you receive this Order. You must send your request to:

Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner

⁹ Tex. Fin. Code § 14.208(c).

¹⁰ Tex. Fin. Code § 14.208(b).

2601 N. Lamar Blvd.
Austin, Texas 78705

If you request a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹¹ If you fail to request a hearing by this deadline, this Order is considered final and enforceable.¹²

All communications with the OCCC concerning this matter must be through Audrey Spalding, Assistant General Counsel. You may contact her by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7659, or by email to audrey.spalding@occc.texas.gov.

Signed this 28 day of October, 2019.

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

¹¹ Tex. Fin. Code § 14.208(b).

¹² Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on October 28, 2019, a true and correct copy of this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution has been sent to Marcos Rene Saldivar by regular mail and certified mail, return receipt requested, at:

Marcos Rene Saldivar
d/b/a M2 Motors
Attn: Marcos Rene Saldivar
4020 N. Texas Blvd.,
Weslaco, TX 78599

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#CMRR 91 7199 9991 7037 4753 2635

/s/Audrey Spalding
Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
State Bar No. 24111055
2601 North Lamar Blvd.
Austin, Texas 78705
(512) 936-7659
(512) 936-7610 (fax)
audrey.spalding@occc.texas.gov