

FILED  
LORENZO  
DISTRICT CLERK  
HARRIS COUNTY TEXAS

2009 MAR 25 AM 11:34 NO.

2009-18579

STATE OF TEXAS,  
Plaintiff  
BY \_\_\_\_\_  
DEPUTY

v.

DON MCGILL OF KATY, LTD.,  
DON MCGILL OF WEST HOUSTON,  
LTD. & RMA, INC.  
Respondents,

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF  
  
HARRIS COUNTY, TEXAS

152 JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

COMES NOW the STATE OF TEXAS, acting by and through Attorney General GREG ABBOTT, and Respondents DON MCGILL OF KATY, LTD., DON MCGILL OF WEST HOUSTON, LTD. and RMA, INC. (hereinafter Don McGill) and respectfully submits the following Assurance of Voluntary Compliance ("AVC") in accordance with the Deceptive Trade Practices - Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE ANN. § 17.58.

I.

The Office of the Attorney General alleges that Respondent Don McGill violated DTPA provisions §§ 17.46(b)(2), (3), (5), (7), (9), (12) and (24) and 17.46(a). More specifically, it is alleged that Respondent misrepresented to consumers that they were entering into a vehicle purchase agreement when in fact they were leased a vehicle. It is also alleged that Respondent failed to disclose to consumers the price they were to be charged for a LoJack security system or that they paid for such a system without being informed by Respondent that they were doing so. Respondent denies these allegations.

II.

It is stipulated that this Assurance of Voluntary Compliance shall fully and finally

resolve any and all claims, causes of action, and allegations which may have arisen out of the investigation by the Consumer Protection Division of the Texas Attorney General's Office into the business practices of Don McGill pertaining to any of the above allegations that arose out of transactions occurring before March 2009, including any and all claims for injunctive relief, court costs, civil fines and penalties, restitution, damages, investigative costs and attorneys' fees. It is further stipulated that the State and Respondent agree to and do not contest the entry of this agreement.

### III.

Respondent assures the Office of the Attorney General and thereby the consumers of Texas that from the date of the signing of this Assurance of Voluntary Compliance, which shall be filed with the appropriate District Court, that Respondents, their successors, assigns, officers, directors, servants, agents, employees, representatives, and any other persons in active concert or participation with them, agree to *refrain* from engaging in the following acts or practices:

- A. Representing, expressly or by implication, to any person<sup>1</sup> at any point during a transaction or negotiation that the person is entering into an agreement to purchase a motor vehicle outright, unless Respondent intends to, and does in fact, honor and abide by such representation;
- B. Charging any person for any optional item or benefit package, in connection with the sale or lease of a new or used automobile, which is not agreed to by the person prior to such charge and after appropriate oral and written disclosure that the item or package is optional;

---

<sup>1</sup>In this Assurance of Voluntary compliance, "person" is used as that term is defined in DTPA § 17.45(3).

- C. Representing to any person, expressly or by implication, that the purchase of any optional item or benefit package in connection with the sale or lease of a new or used automobile, is mandatory or required in order to purchase or lease a new or used automobile;
- D. Representing to any person, expressly or by implication, that the purchase of any optional item or benefit package in connection with the sale or lease of a new or used automobile will aid the person in obtaining better financing for the purchase or lease of the automobile;
- E. Misrepresenting, expressly or by implication, to any person the purpose or effect of any document related to the purchase or lease of a new or used automobile;
- F. Failing to explain to any person, through appropriate written and oral disclosures, the proper meaning of an automobile's residual value in a lease transaction;
- G. Failing to obtain a separate, signed disclosure from any person entering into a lease transaction which states that the person understands that the person has entered into a lease contract, will still have a balance owed at the end of the term of the lease, and that the terms and conditions were explained, in full, to the person by the finance manager or other appropriate agent of the Respondent;
- H. Taking any action, doing any thing, or making any statements which would have the natural effect of obstructing or impeding a person from reading or understanding any terms or conditions related to the purchase or lease of a new or used automobile;
- I. Failing to disclose, expressly or by implication, the cost of any optional item or benefit package in connection with the sale or lease of a new or used automobile prior to the execution (by consumers) of any documents needed by Respondent to effectuate

the purchase or lease of same;

- J. Failing to disclose the cost of a Lo Jack security system in writing prior to any sale or lease of a new or used automobile prior to any purchase of such system;
- K. Failing to obtain written authorization from every person who purchases or leases a Lo Jack security system prior to such purchase or lease of such a system.

IV.

It is further stipulated that Respondents shall institute reasonable practices to provide notice of the applicable terms of this agreement to all agents and employees involved in the sale or lease of new or used automobiles.

V.

As set forth in TEX. BUS. COM. CODE § 17.58(c), both the STATE OF TEXAS and DON MCGILL, INC. acknowledge that unless this AVC has been rescinded by agreement of the parties or voided by the Court for good cause, subsequent failure to comply with the terms of this AVC is *prima facie* evidence of a violation of the Texas Deceptive Trade Practices Act. It is also agreed and understood that this AVC shall not in any way affect individual rights of action by any consumers.

VI.

The acceptance of this AVC is conditioned upon payment by Respondents to the STATE OF TEXAS the sum of Seventy Eight Thousand One Hundred and One and 06/100 Dollars (\$ 78,101.06) for restoration of money and property to the consumers set forth on Exhibit "A" attached hereto, and the additional sum of Twenty Thousand dollars (\$20,000.00) for reimbursement of investigative costs and attorneys' fees incurred by the Office of the Attorney General in pursuit and resolution of this matter. Payment of these total amounts shall be made payable to the State of Texas by submission

of a cashier's check, payable to the State of Texas and delivered or mailed to 808 Travis, Suite 300, Houston, Texas 77002 within 14 days after this AVC is approved by the Court. Respondent shall have the right to request and receive a release from all consumers receiving restitution under this Assurance, provided the language of the release is approved in advance by the Office of the Texas Attorney General. The Office of the Texas Attorney General shall distribute the restitution set forth herein to the consumers listed on Exhibit "A" attached hereto. Any restitution which is not able to be distributed within one year from the date of Court approval of this AVC shall be remitted to the State Comptroller for placement in the Unclaimed Property Fund.

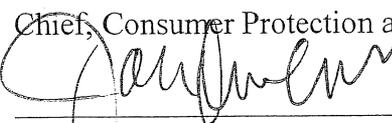
**AGREED:**

GREG ABBOTT  
Attorney General of Texas

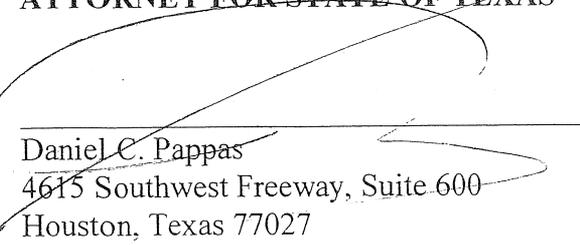
ANDREW WEBER  
First Assistant Attorney General

JEFF ROSE  
Deputy First Assistant Attorney General

PAUL CARMONA  
Chief, Consumer Protection and Public Health Division

  
\_\_\_\_\_  
John Owens  
Deputy Chief  
Consumer Protection Division  
300 W. 15<sup>th</sup> Street, 9<sup>th</sup> Floor  
Austin, Texas 78701  
State Bar No: 15379200  
(512) 473-8301-fax

**ATTORNEY FOR STATE OF TEXAS**

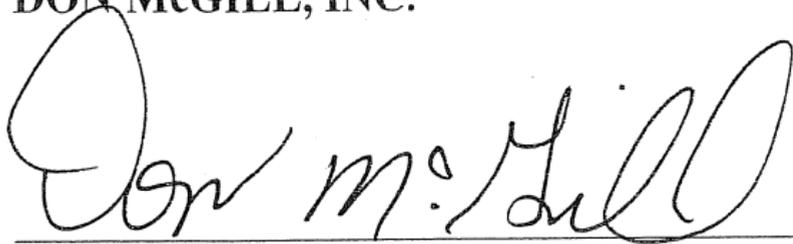
  
\_\_\_\_\_  
Daniel C. Pappas  
4615 Southwest Freeway, Suite 600  
Houston, Texas 77027

713-621-5222- phone

713-621-7094 - fax

**ATTORNEY FOR RESPONDENT**

**DON MCGILL, INC.**

A handwritten signature in black ink that reads "Don McGill". The signature is written in a cursive, flowing style with a large initial "D" and "M".

DON MCGILL OF KATY LTD., DON MCGILL  
OF WEST HOUSTON, LTD. & RMA, INC. by  
and through its authorized Representative

DON MCGILL

## EXHIBIT "A"

1.	Weimin Yao	\$ 1,229.00
2.	Zaida Gonzales	\$ 5,085.65
3.	Jing Zhou	\$ 1,995.00
4.	Matthew Smith	\$ 7,506.51
5.	Jeng Feng Li	\$ 1,995.00
6.	Latonyai Calamease	\$ 2,000.00
7.	Sue Su-Shien Chang	\$ 2,000.00
8.	"Hanna" Hong Huang	\$ 1,995.00
9.	Chiu K. Lee	\$ 1,995.00
10.	Zhi Yuan Liu	\$ 3,000.00
11.	Carla Shinn	\$ 6,774.90
12.	Lie Kai Pon	\$ 1,995.00
13.	Song-ih Shieh/Chi-Chih Tsai	\$ 1,995.00
14.	Mang-ling Wo/Yanfen Xian	\$ 1,995.00
15.	Guayue Yu	\$ 1,995.00
16.	Issak Golbraykh	\$ 1,995.00
17.	Juan & Adela Sifuentes	\$ 2,000.00
18.	Syed Ravzi	\$ 3,000.00
19.	Jung Sup Jin	\$ 2,000.00
20.	Tom & Cisy Kunthara	\$ 1,950.00
21.	Li Liu	\$ 2,000.00
22.	Jeff Saldivar	\$ 1,995.00
23.	A-chun Chou	\$ 1,995.00
24.	Tien La	\$ 1,065.00
25.	Frankie Jefferson	\$ 6,045.00
26.	Juan Ramon Mejia	\$ 2,000.00
27.	Alena Allen	\$ 2,500.00
28.	Rafael & Maria Alvarez	\$ 2,000.00
29.	Byung Don Choe	\$ 2,000.00
30.	Huu Dao	<u>\$ 2,000.00</u>

Total Restitution: \$78,101.06