COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **SUPERIOR COURT**

COMMONWEALTH OF MASSACHUSETTS, **Plaintiff,** **v.** **VENTURCAP INVESTMENT GROUP V, LLC d/b/a JD BYRIDER and VENTURCAP FINANCIAL GROUP, LLC d/b/a CNAC,** **Defendants.**	**COMPLAINT** **CIVIL ACTION NO. 17-**84CV03091 RECEIVED SEP 26 2017 SUPERIOR COURT-CIVIL MICHAEL JOSEPH DONOVAN CLERK/MAGISTRATE

I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, brings this enforcement action pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, § 4 against Venturcap Investment Group V, LLC d/b/a JD Byrider and Venturcap Financial Group, LLC d/b/a CNAC (collectively, "JD Byrider"). The Commonwealth seeks restitution, injunctive relief, civil penalties and reimbursement of its costs and expenses as remedies for JD Byrider's unfair and deceptive acts and practices.

2. JD Byrider is a "Buy Here Pay Here" used car dealership; it provides in-house car loans to consumers who purchase its cars. JD Byrider sells consumers only one deal, a bundled car sale, financing and repair service arrangement that is known as the "JD Byrider Program".

3. Consumers purchasing the JD Byrider Program get saddled with poor quality cars for which they often pay more than double the cars' fair market retail value. Compounding this

expense, consumers, regardless of their credit characteristics, must sign for a loan from JD Byrider which always comes with a fixed interest rate of 19.95%.

4. JD Byrider then bundles in its extended service contract at a fixed price of nearly $1,300.00 per car. Not only does the extended service contract have limitations which make it of questionable value, it generates additional interest for JD Byrider at 19.95%.

5. Consumers are unaware of the true costs of the unfavorable and unsustainable JD Byrider Program because JD Byrider employs misleading marketing and sales tactics that purposefully obfuscate material components of its package, including the car price, the car's true value and condition, the non-negotiable high-rate loan terms and the limitations on its extended service contracts.

6. The probability of any consumer to succeed after purchasing a car at JD Byrider is no better than a coin toss, with over half of JD Byrider's deals ending in repossession.[1]

7. JD Byrider's practices cause substantial and long-term economic harm to consumers not just due to the costs of the JD Byrider Program, but also because when deals fail, consumers lose their transportation together with the investment they have made in their cars. Almost without exception, entanglement with JD Byrider leaves consumers with damaged credit and with limited or non-existent options for alternative transportation.

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[1] "Repossession", as used here, includes involuntary and voluntary repossessions after the regular monthly payments required by the financing contract are due, as well as deals that are "backed off" (with voluntary or involuntary return of the car to JD Byrider) during the deferred down payment period, (a period during which, as described below, the consumer is making non-refundable payments to JD Byrider to cover the required down payment before the regular monthly loan payments are first due).

II. JURISDICTION AND VENUE

8. The Attorney General is authorized to bring this action pursuant to G. L. c. 93A, § 4, and G.L. c. 12, § 10. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4, G.L. c. 12, § 10, and G.L. c. 223A, § 3.

9. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5, and G. L. c. 93A, § 4.

III. THE PARTIES

10. The Plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action in the public interest.

11. Defendant, Venturcap Investment Group, V, LLC is a Rhode Island Limited Liability Company with a principal place of business at 615 Reservoir Avenue, Cranston, Rhode Island.

12. Defendant, Venturcap Financial Group, LLC d/b/a Car Now Acceptance Corporation or CNAC is a Rhode Island Limited Liability Company with a principal place of business at 615 Reservoir Avenue, Cranston, Rhode Island.

13. The Defendants operate four dealerships in Massachusetts, located in Brockton, Dorchester, Dartmouth and Springfield. Each dealership does business as "JD Byrider."

IV. FACTS

A. JD Byrider's Business Model Traps Vulnerable Consumers in Unsustainable Deals, Resulting in a Repossession Rate of Over 50%.

14. JD Byrider's Buy Here Pay Here business comprises two corporate entities which have identical ownership, Venturcap Investment Group, V, LLC and Venturcap Financial Group,

LLC d/b/a CNAC. CNAC is the exclusive in-house lender JD Byrider uses to provide financing for each car it sells.

15. The Buy Here Pay Here model avoids the counterbalancing role that a third party lender or finance company generally plays to ensure that transactions are financially sound and affordably underwritten.

16. JD Byrider targets low-income consumers with tarnished credit histories and promises them affordable loans, quality cars and an opportunity to improve their credit score. *E.g.*, JD Byrider Website, *available at*, http://www.jdbyrider.com/Why-JD-Byrider/buy-here-pay-here-car-dealer (last visited September 20, 2017) ("...in-house financing, [means]...easier credit approval for people who can't qualify for a traditional bank or finance company loan based on their lack of credit history, low credit score, income, job stability, etc."; "...JD Byrider may be better than a buy here pay here [because we provide]... affordable payments...serviced, computer tested and reconditioned cars... [and we] will put you in a position to improve your credit score.").

17. Consumers who go to JD Byrider to buy a car have no choice but to accept all the pieces of the JD Byrider Program. Consumers cannot negotiate any component of the deal. Every car on the lot is virtually the same price, every loan has the same interest rate and nearly identical terms, the price of the required extended service contract is uniform and when consumers' cars require repairs after purchase, they must use JD Byrider's service center to get coverage under state-law warranties or the extended service contract.

18. To sell the JD Byrider Program to consumers, JD Byrider uses a standardized sales pitch set forth in a "Flip Chart," that is fraught with false promises including that consumers will get "better cars," "affordable payments" and "better car care."

The Flip Chart intentionally omits material information, such as car prices and credit terms, so consumers are kept from understanding or evaluating the cost of these uniform deals until closing.

19. JD Byrider's Program harms consumers. As discussed below, the combination of components that comprise the Program makes it unaffordable and unsustainable for consumers.

B. JD Byrider's "One Price" Model for its Cars Conceals Excessively Marked-up Prices for Poor Quality Cars.

20. JD Byrider purchases used cars for approximately $5,000.00 to resell to consumers.

21. Each car generally has over 100,000 miles on it and is more than 7 years old.

22. Consumers pay a single, fixed, non-negotiable price for JD Byrider's cars, the amount of which increases with JD Byrider's profit goals and is currently more than $12,000.00.

23. On average, JD Byrider's customers pay more than 150% of the suggested retail value of the car they buy from JD Byrider when compared to commonly referenced industry standards such as the one published by the National Automobile Dealers Association ("NADA").

24. JD Byrider does not advertise its car prices or inform consumers that it charges a fixed price for its cars. Nor does it tell consumers the price of the car in most circumstances until the closing. Among other things, this diminishes the opportunities for consumers to use available pricing tools to evaluate whether JD Byrider's predetermined price is fair and consistent with those offered by other dealers.

25. Due to the uniform car pricing and financing terms, when a consumer qualifies for financing, he or she typically qualifies for any car on the lot.

26. Nevertheless, when JD Byrider approves a consumer for financing, JD Byrider typically offers only one particular car or a few limited cars, insinuating that cars on the lot have different prices. This undermines the consumer's ability to understand their real choices.

27. Nor can consumers meaningfully evaluate the condition of the cars JD Byrider offers them.

28. JD Byrider misrepresents that it, "...spends an average of $1,500.00 reconditioning all our cars." *E.g.*, JD Byrider Website, *available at*, http://www.jdbyrider.com/Why-JD-Byrider/buy-here-pay-here-car-dealer (last visited September 20, 2017).

29. In fact, JD Byrider spends significantly less than $1,500.00 on parts and labor costs to recondition cars prior to sale.

30. JD Byrider incentivizes its repair service employees to limit the amount of time and money they spend reconditioning cars prior to sale by providing money bonuses if the employees recondition cars in fewer hours than targets set by JD Byrider and if they spend less than JD Byrider's budgeted amount for reconditioning.

31. For example, the Service Manager's bonus plan in effect in November, 2015 set a target range of $551.00 to $575.00 for repair service employees to spend on parts to recondition cars. If repair service employees spent within the target range in a given month, the Service Managers received a bonus of $250.00. If they spend less than the target range, Service Managers were paid higher bonuses, as follows:

Amount Spent on Reconditioning	**Employee Bonus**
< $500	$325
$501 to $525	$300
$526 to $550	$275
$551 to $575 (target)	***$250***
> $575	$0

32. JD Byrider advertises that its cars "meet [] rigorous quality standards," and have undergone an extensive reconditioning process designed to prevent the need for repairs. JD Byrider Website, *available at*, http://www.jdbyrider.com/Why-JD-Byrider/buy-here-pay-here-car-dealer (last visited September 20, 2017) ("...we also offer quality cars that undergo a rigorous 92-point inspection, computer testing, servicing and reconditioning to bring the vehicle up to our high quality standards. This means that we make sure the critical components on your car are inspected and fixed or replaced if necessary, such as tires, brakes, hoses, belts, battery and more, and that the fluids and filters are checked or replaced. We do all this to help you avoid the unexpected cost of repairs and keep you on the road reliably.")

33. However, within a few months of purchase, JD Byrider cars routinely break down and need major repairs.

34. 42% of the cars JD Byrider sells require repairs within the first 3 months after purchase, excluding routine visits for oil changes.

35. Hundreds of cars that consumers bring in for service within the first 3 months after purchase have suffered from a mechanical breakdown of a major component such as the engine, electrical system, transmission, brakes or drive train.

36. For a period of time, JD Byrider charged consumers a marked-up price for car parts when they needed repairs, despite advertising that, unlike other dealers, it did not mark-up parts.

37. JD Byrider knows or should know that it is selling defective and sometimes inoperable cars because its business records and repair order data show that a large percentage of

the cars it sells require major repairs soon after consumers purchase them. In addition, many cars are towed to JD Byrider service centers (at the consumer's expense).

38. JD Byrider's practice of selling poor quality cars at inflated prices with minimal reconditioning shifts many of the costs of keeping the cars running onto consumers, ultimately contributing to their unaffordability.

C. JD Byrider Requires Consumers to Buy and Finance Expensive Extended Service Contracts that are of Limited Value.

39. JD Byrider adds a $1,295.00 extended service contract to the price of each car. Over 98% of JD Byrider deals include the extended service contract. Consumers finance the cost of the extended service contract thereby paying interest on it at a rate of 19.95%.

40. The value of the extended service contract is questionable because according to its terms, the service contract covers only certain car components that fail as a result of a mechanical breakdown and because only JD Byrider can perform covered repairs.

41. The extended service contract does not cover towing costs and does not cover a litany of parts such as, fuel injection components, seals and gaskets, hoses and belts, exhaust systems, catalytic converters, flywheels, radiators, standard transmission clutch parts, transmission mounts, transmission fluid lines, shocks, struts, stabilizer bars and ball joints.

42. The amount of money allowable for repairs performed under the extended service contract is limited to the NADA wholesale value of the car prior to the mechanical breakdown and the total of all repair costs cannot exceed the price paid for the car.

43. There is a $50 deductible applicable to each covered repair.

44. This minimal coverage expires after two years, with half the loan term remaining, leaving consumers with old, high mileage cars and no coverage for repairs.

45. Despite the fact that JD Byrider advertises that consumers can, "...bring [the car] back to the dealership you bought your car from..." for repairs, (JD Byrider's Website, *available at* www.jdbyrider.com/Service-and-Warranty, last visited on September 20, 2017), the extended service contract provides that the administrator of the contract or JD Byrider decides which JD Byrider service center will perform the repairs.

46. Many consumers have encountered long waiting times to get their cars fixed. Because JD Byrider chooses its repair center, consumers sometimes have long towing distances at their own expense.

47. Nearly one third of cars that go into JD Byrider's repair shop remain there for more than one day. Some cars are in the repair shop for weeks.

48. Regardless of how long consumers' cars are at JD Byrider's repair shop, consumers are obligated to make their monthly loan payments.

49. When consumers lose use of their cars, they must find alternative means of transportation so that they can get to work, take their children to school, and travel to medical appointments and grocery stores. This leads to loss of income from missed time at work and/or to unforeseen expenses for alternative transportation in addition to payment of the deductible under the extended service contract and any uncovered costs of repairing their car.

50. JD Byrider's requirement that consumers purchase a JD Byrider extended service contract allows it to profit in numerous ways from the poor quality of the cars it sells, including the price of the extended service contract, the collection of deductibles, and the likelihood that the extended service contract will coerce consumers into using JD Byrider service centers even for uncovered repairs.

D. JD Byrider Requires Each Consumer to Pay a 19.95% Interest Rate.

51. JD Byrider deals are always financed. In the last 5 years JD Byrider has made no cash deals.

52. JD Byrider finances all of its car sales at an annual percentage rate ("APR") of 19.95%, barely below the state law usury cap of 21%.

53. Consumers' monthly payments on JD Byrider's loans are, on average, over $400.00 per month, for 45-48 months.

54. Loan rates and payment amounts are non-negotiable.

55. When consumers ask questions about the loan, JD Byrider scripts responses for employees to use that avoid telling consumers about the loan's specific terms. If a consumer asks about the amount of the payment during the test drive, the sales representative is instructed to say:

> I don't have that information yet, but if you agree that this car meets your needs after the test drive, I will have the payment information available upon return.

56. JD Byrider trains its employees to say this even though car payments are standardized within a set range and the customer must qualify under JD Byrider's underwriting standards before being taken on a test drive.

57. Consumers learn the terms of the JD Byrider Program loan only at the closing, when they are presented with a stack of paperwork to sign. During the closing, JD Byrider trains its employees to discourage consumers from shopping for competitive offers from other dealerships with standardized statements.

58. For example, when consumers object "[t]hat finance charge (interest rate) is too high," JD Byrider employees are trained to respond:

> [t]he rate of finance charge is determined, in part, by your credit history. In your case, you admit that there is a credit history problem. You will find that our rates are very competitive with comparable financial institutions.

59. JD Byrider trains its employees to say this even though JD Byrider offers the same 19.95% interest rate regardless of the customer's credit characteristics.

60. Under JD Byrider's financing terms, its customers must pay interest at 19.95% to buy overpriced cars and extended service contracts.

E. JD Byrider Requires Deferred Down Payments After Each Deal Closes that Consumers Cannot Afford.

61. Whether or not consumers make a cash down payment to purchase the car, JD Byrider virtually always requires that they also pay a deferred down payment to obtain financing. The deferred down payments, referred to as "DIP" payments, are large scheduled payments the consumer makes on a periodic basis after the deal closes, but before the contractual loan payments begin.

62. The DIP payments always exceed consumers' regular monthly payment. JD Byrider does not evaluate consumers' financial ability to afford the DIP payments either from their income or other resources.

63. Hundreds of deals fail during the DIP payment period, resulting in repossession, because consumers cannot afford the payments or the cars break down or require too many repairs immediately after purchase.

64. When consumers cannot or do not make the DIP payments, they are required to voluntarily return the car or JD Byrider obtains possession through an involuntary repossession and JD Byrider does not refund any of the DIP or cash down payments made.

F. *To Qualify Consumers for Its Overpriced Cars and High Cost Loans, JD Byrider Employs a Flawed Underwriting Process and Incentivizes Its Employees to Close Unaffordable Deals.*

65. In public facing documents and internal policies, JD Byrider states that it only closes deals that are affordable and that are designed for customer success.

66. For example, the Flip Chart presentation emphasizes that JD Byrider is on the consumer's side, using statements such as, "[w]e make sure your payments are affordable, or we don't do the deal" and JD Byrider is, "...committed to getting you on the road and keeping you there," JD Byrider presents itself as a company structured to support consumer success.

67. JD Byrider also states, "[w]e always make sure your budget will fit your car payment before you sign the paperwork, so you can feel confident you can succeed." JD Byrider Website, *available at* http://www.jdbyrider.com/why-jd-byrider/buy-here-pay-here-car-dealer. (last visited September 20, 2017).

68. Despite these promises, JD Byrider routinely and deliberately underestimates consumers' monthly expenses. This means that JD Byrider often knows or should know that a JD Byrider car payment will exceed the consumer's budget.

69. JD Byrider underwrites consumers' loans by filling out a budget worksheet, which is supposed to capture consumers' monthly expenses and income. JD Byrider compares the monthly income to the consumers' monthly expenses by calculating an "expense to income" ("ETI") ratio. JD Byrider approves consumers for loans with ETIs of up to 100%, meaning the consumers' monthly expenses, including the car payment, fully exhaust their income.

70. Using the 100% ETI threshold to approve consumers for financing is inherently unsound. Even if JD Byrider accurately accounted for all consumer expenses at the time of the

budget analysis, a 100% ETI leaves no room for anticipated or unanticipated expenses that will arise over the course of the loan term.

71. Even if a 100% ETI threshold were a reasonable and sound proxy for affordability, JD Byrider routinely manipulates expense inputs to qualify consumers for the JD Byrider Program even though JD Byrider knows or should know that consumers' expenses, after purchasing a JD Byrider car, will exceed their income.

72. For example, JD Byrider underestimates the anticipated monthly car payment consumers will pay for a JD Byrider car. JD Byrider's budget worksheets include a pre-populated allowance for the anticipated JD Byrider car payment, when in fact the average actual car payment is almost always significantly higher.

73. JD Byrider routinely manipulates consumers' grocery expenses to get below the 100% ETI threshold. JD Byrider policy specifies an estimated $100.00 per month grocery expense for each member of the consumer's household. JD Byrider's software automatically multiplies the $100.00 per person grocery expense by the number of dependents the consumer has, and includes the total grocery expense in the budget worksheet. JD Byrider representatives often manually reduce the total grocery expense for households with one or more dependents down to $100.00 as if the dependents did not exist. This significantly underestimates the household grocery expenses in order to make it appear that the consumer can afford a loan that is unaffordable.

74. JD Byrider uses estimated amounts for most other expense categories including clothing, cigarettes, gas, car repairs and other items. These estimated values are not adjusted to reflect the consumers' individual circumstances or actual expenses.

75. JD Byrider does not include a cushion in the monthly budget for savings, life events, or the costs associated with missing work or using alternative transportation when its cars require repairs.

76. By underestimating and manipulating expense inputs, JD Byrider approves financing for consumers even if their payments are unaffordable because their expenses with the car loan will exceed 100% of their income.

77. By approving consumers for loans that cause their ETI to exceed 100%, JD Byrider violates its own policy, which is not to approve loans when a consumer has a "negative budget," (*i.e.*, an ETI that exceeds 100%).

78. JD Byrider trains its employees to manipulate consumers to go against their own judgment about the payments they can afford.

79. When customers object "[t]hat payment is too high," JD Byrider employees are trained to respond:

> [w]e proved that you have the income to support the payment when we completed your Budget Analysis. Budget discipline will be a major part of improving your credit status. Was the budget incorrect?

80. JD Byrider trains its employees to say this even though JD Byrider's budget analysis uses estimated values, the accuracy of which consumers do not have the ability to verify, such as the monthly car payment, which JD Byrider routinely underestimates.

81. JD Byrider incentivizes its employees to approve financing deals. JD Byrider employees have specific approval targets. If employees approve applications at those targets, employees receive bonuses. JD Byrider employees routinely manipulate consumers' expenses to get to a 100% ETI so they can close deals and receive bonuses.

82. JD Byrider's underwriting practices result in approving consumers for loans that exceed or strain the consumers' monthly budget, and in combination with the factors cited above, are unsustainable.

G. Contrary to JD Byrider's Representations, Consumers who Purchase the JD Byrider Program Are Largely Doomed to Fail.

83. When consumers purchase the JD Byrider Program they are set up to fail.

84. The expensive upfront DIP payments place consumers in financial stress at the outset of the deal, the high monthly payments bring them to the edge or beyond their budget and the faulty underwriting puts through loans that should have been declined. The old, high mileage cars need frequent repairs, requiring consumers to take time off work and find the money to cover repair costs not covered by the expensive extended service contract. JD Byrider cars are marked so high above retail value, that selling the car to fully pay off the loan is not an option.

85. More than half of JD Byrider deals have historically ended in involuntary or voluntary repossession and a majority of consumers default at least once on their loan payments.

86. In 2011, 1,279 consumers purchased a JD Byrider Program, and 667 (53%) of these consumers' cars were repossessed.[2] In 2012, 1,178 consumers purchased the JD Byrider Program, and 623 (53%) of these consumers' cars were repossessed. In 2013, 1,477 consumers purchased the JD Byrider Program and 737 (50%) of these consumers' cars were repossessed. Subsequent year purchases are on track to lead to similar repossession rates over time.

87. Consumers lose their savings making down payments and trying to keep up with monthly payments on loans they cannot afford, routinely spend days without access to their cars

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[2] *See* note 1, *supra.*

due to major mechanical breakdowns and often lose the entirety of their investment when the deal fails.

88. Consumers' credit suffers long-term damage when JD Byrider reports loan defaults and repossessions to credit reporting bureaus. JD Byrider knows or should know that consumers' credit scores are lowered by a JD Byrider deal far more often than they are helped.

V. CAUSES OF ACTION

COUNT ONE

Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, §2, 940 CMR 5.02(9) and 940 CMR 3.05(1)
Deceptive Advertising and Sales Presentations, Misrepresentations and Omissions

89. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

90. The Attorney General's regulation, 940 CMR 3.05(1) provides, in relevant part:

> No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect.
>
> This prohibition includes, but is not limited to, representations or claims relating to the durability, reliability, safety, condition, or life expectancy of such product, or financing relating to such product, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

91. The Attorney General's regulation, 940 CMR 5.02(9) provides, in relevant part:

> It is an unfair or deceptive act or practice for a motor vehicle dealer to make any representation or statement of fact in an advertisement if the dealer knows or should know that the representation or statement is false or misleading or if the dealer does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.

92. JD Byrider has made and continues to make false, deceptive, or misleading statements or representations and failed to disclose additional relevant information which had the capacity or tendency or effect of deceiving buyers or prospective buyers in material respects, in

its advertising and sales presentation, as to the price, the financing, and the quality of the cars offered by JD Byrider in violation of 940 CMR 3.05(1) and G.L. c. 93A, §2.

93. JD Byrider's false and deceptive statements and omissions of fact in its advertising and sales presentation include, but are not limited to, statements or omissions regarding:

(1) Key loan terms, such as JD Byrider's uniform 19.95% interest rate;

(2) The sales price of JD Byrider's cars;

(3) The condition of JD Byrider's cars;

(4) The financing terms available;

(5) The amount of money JD Byrider spends to recondition and repair cars prior to sale;

(6) The availability of better interest rates and lower down payments in comparison to other dealers;

(7) The impact that purchasing a JD Byrider car typically has on consumers' credit;

(8) That JD Byrider does not mark-up the cost of parts when making car repairs;

(9) That consumers qualify to purchase certain cars, rather than having their pick of those they can afford; and

(10) The total monthly cost of owning a JD Byrider car.

94. JD Byrider is in violation of 940 CMR 5.02(9) because it knows or should know that it is making false and misleading statements in its advertising and sales presentation based on information that is contained in its business records.

95. JD Byrider cannot cure these misrepresentations and omissions by providing new and contrary information at closing, when it is often too late for consumers to reverse course and forego the purchase.

COUNT TWO

Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, §2 Structural Unfairness – Deals that are Doomed to Fail

96. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

97. By selling its bundled auto sale, financing and repair service arrangement, described above as the JD Byrider Program, JD Byrider engaged in unfair or deceptive acts or practices in violation of G.L. c. 93A, §2. JD Byrider's unfair and deceptive conduct includes, but it not limited to, independently and collectively:

(1) Selling bundled auto sale, financing and repair service arrangements that are unfair and excessively risky to consumers;

(2) Approving loan applications where the estimated budget shows consumers cannot or are not likely to afford the required payments;

(3) Requiring upfront DIP payments that exceed the monthly loan payment, and which JD Byrider knows or should know that consumers cannot afford;

(4) Manipulating and/or underestimating consumer expenses in the budget analysis to extend financing to consumers who otherwise would not qualify;

(5) Selling poor quality cars that frequently require multiple repairs soon after sale and throughout the life of the loan;

(6) Inadequately staffing JD Byrider service centers such that consumers face delays in receiving repairs under JD Byrider's extended service contract;

(7) Selling cars at inflated prices such that consumers struggling to make payments are unable to sell the car in order to pay off the loan; and

(8) Failing to oversee or monitor JD Byrider representatives' compliance with internal underwriting policies, including the manipulation of values used in the budget analysis.

98. As a result of JD Byrider's conduct, the majority of consumers entering into the JD Byrider Program default and over 50% of JD Byrider deals fail and the cars are repossessed.[3]

99. JD Byrider knows or should know that the JD Byrider Program harms consumers who cannot afford required DIP payments or scheduled loan payments, who lose their investment when the car is repossessed and who suffer a negative impact on their credit due to the default and repossession.

100. JD Byrider knows or should know that many of its consumers lose work time to get their cars repaired, that they do not have alternate transportation so that they can continue income-producing activities while cars are being repaired, that they cannot afford unbudgeted car repair expenses and that they often have to arrange for expensive alternative transportation while there are in the shop.

101. JD Byrider knows or should know this conduct is unfair or deceptive in violation of G.L. c. 93A, §2(a).

[3] *See* note 1, *supra*.

COUNT THREE

Unfair or Deceptive Acts or Practices in Violation of 940 CMR 3.16(1) and G.L. c. 93A, §2
Using an Unconscionable and Unfair Sales Process to Close Deals

102. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

103. 940 CMR 3.16(1) provides that an act or practice is a violation of G.L. c. 93A if it is "oppressive or otherwise unconscionable in any respect."

104. JD Byrider's sales process is oppressive and/or unconscionable because it purposefully limits the consumer's ability to make a meaningful choice before entering into the JD Byrider Program and/or disproportionately allocates the risks in the contract formation to the less informed, unsophisticated consumer.

105. Specifically, JD Byrider's oppressive or otherwise unconscionable acts or practices include, but are not limited to:

(1) Omitting and actively preventing consumers from learning the terms of the financing and car price during the sales and application process;

(2) Telling consumers that they "qualify" only for certain cars;

(3) Making false or misleading statements during the closing in response to consumers' objections, including, but not limited to, statements related to consumers' ability to afford the loan and that JD Byrider's interest rates are competitive;

(4) Discouraging consumers from shopping for other alternative financing by methods including shaming the consumer regarding their bad credit; and

(5) Promising consumers that agreeing to and making oppressive payments will contribute to rehabilitation of their credit.

106. JD Byrider knows or should know that its standardized sales process and each element of it is unfair, deceptive and unconscionable in violation of G.L. c. 93A, §2 and 940 CMR 3.16(1).

VI. PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court enter judgment and grant the following relief after trial on the merits:

1. Award restitution to consumers injured by JD Byrider's unfair or deceptive acts or practices;
2. Award civil penalties of $5,000 for each violation of G.L. c. 93A;
3. Award attorneys' fees, costs and other relief available under G.L. c. 93A;
4. Enter injunctive relief preventing JD Byrider from continuing to engage in the unfair and deceptive practices set forth herein; and
5. Grant such other relief as permitted by law and the Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY, ATTORNEY GENERAL

By: [signature]

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