BEFORE THE ATTORNEY GENERAL AND
THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE
STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF SAFE-GUARD PRODUCTS INTERNATIONAL, LLC.

Respondent.

THIS ASSURANCE OF DISCONTINUANCE ("AOD") is made between the Attorney General of the State of Colorado ("Attorney General") and the Administrator (collectively, the "Administrator") of the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* ("UCCC") and Respondent Safe-Guard Products International, LLC ("Respondent" or "Safe-Guard") arising out of the Administrator's review of Respondent's compliance with the UCCC and its rules, including 4 CCR 902-1:8 ("Rule 8") and the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* ("CCPA"). Pursuant to C.R.S. § 5-6-110, Respondent has agreed that it will not engage in the conduct described herein in the future.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the Administrator and the Respondent, as follows:

1. The Administrator is authorized to administer the UCCC. *See* C.R.S. § 5-6-103. Among other things, she is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. § 5-6-101, *et seq.*

2. The Administrator is a government official whose position is created by statute, and who works on behalf of the Attorney General. C.R.S. § 5-6-103. The Attorney General is authorized to enforce the CCPA. C.R.S. § 6-1-103.

3. Respondent is a foreign limited liability company with a principal office located at Two Concourse Parkway, Suite 500, Atlanta, Georgia 30328.

4. The Administrator has jurisdiction over Respondent and the subject matter of this AOD under C.R.S. §§ 5-6-109 through 114 and C.R.S. § 6-1-101 *et seq.* This AOD applies to all consumer credit transactions with Colorado consumers that are administered by Respondent on behalf of creditors. C.R.S. § 5-1-201. The AOD applies to any alleged unfair conduct committed by Respondent in Colorado. C.R.S. § 6-1-107.

5. The Administrator is engaged in an ongoing investigation of the Guaranteed Automobile Protection ("GAP") industry. GAP means an agreement structured as either an insurance policy or a contractual term that relieves the consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds for property damage upon the total loss of the consumer's automobile that was collateral securing the consumer loan, whether the loss occurred from the total destruction of the vehicle or theft ("GAP Waiver"). *See* 4 CCR 902-1:8(a).

6. The Administrator has identified systemic regulatory and compliance violations within the industry based on the Administrator's interpretation of Rule 8 and is in the process of remedying those failures on an industry-wide basis.

7. GAP is sometimes sold to Colorado consumers as an add-on to the financed sale of an automobile. Typically, auto dealers are the original creditors and sell GAP to consumers. Some consumers choose to finance GAP as part of an auto loan. Consumers and creditors typically contract for GAP in an addendum to the auto loan, which then becomes part of the auto loan. Many auto dealers assign the auto loan, along with any GAP coverage, to indirect lenders, including banks, credit unions, and sales finance companies.

8. Among other things, Respondent is a GAP administrator. In that role, it processes Colorado consumer claims for GAP Waivers. Safe-Guard does this on behalf of auto dealers and the assignee creditors that regularly take assignment of the dealers' auto loans. In processing GAP Waivers, Respondent calculates the amount of the waiver to be applied to the consumer's account based on the terms and conditions of the GAP Agreement and recommends the amount that creditors should waive. This amount may include certain deductions from the GAP benefit that may leave the consumer with a remaining outstanding balance on the loan.

9. Auto dealers are the primary entities that promote and sell GAP products administered by Respondent to consumers. Although Respondent does not sell any GAP products directly to consumers, Respondent does, however, promote the marketing of GAP Waivers and Respondent's other available services to auto dealers and provides compliance services analyzing the legal requirements under state law applicable to the GAP product. Respondent generally collaborates with its GAP related business partners to prepare GAP Waivers and makes those available to dealers. Respondent provides optional sales training and marketing support to auto dealers and/or its GAP related business partners. Safe-Guard offers a course called Safe-Guard University that trains auto dealers on various Safe-Guard products, including GAP. Safe-Guard offers auto dealers optional customizable training. Finally, Safe-Guard offers dealers marketing support. Dealers can order marketing materials on Safe-Guard's products, including GAP.

10. In addition to Respondent's review of GAP agreements to confirm compliance with state law, many assignee creditors require that Respondent and

other GAP administrators submit GAP products it administers directly to the assignee creditor or the assignee creditor's outsource provider, such as F&I Sentinel, which on its website bills itself as having "unparalleled expertise in finance and insurance product regulation with robust software that provides a turn-key compliance solution pertaining to the financing of automotive F&I products" that "protect finance companies, auto dealers, and consumers by facilitating a compliant and efficient F&I product marketplace within the vehicle financing ecosystem", for review. These reviews are designed to confirm that the GAP agreements are in compliance with state law and the creditors' minimum business requirements before assignee creditors will take assignment of such GAP agreements within the loan package. At no time prior to the Administrator entering into a consent order with American Assurance Corporation on or about May 19, 2021, did any creditors or F&I Sentinel object to the deductions for Prior Damage, Salvage, and Excess Towing and Storage that Respondent disclosed to Colorado consumers within the GAP agreements. Instead, they were deemed to be compliant with Rule 8 and approved for use by Colorado dealers when financing was secured through that creditor.

11. The Administrator alleges that Respondent did not correctly calculate GAP Waiver payments or credits for some consumers in compliance with Rule 8(e) because Respondent recommended certain deductions that were not permitted by the rule. Rule 8(e) provides that:

> GAP must pay or forgive the deficiency balance owed by the consumer at the time of the total loss with the exception of amounts previously owed for unpaid installments, legally permitted delinquency fees, fees for the return or dishonor of checks or other instruments tendered as payment, premiums for creditor-imposed property damage insurance, and deferral fees. GAP must pay or forgive the deficiency balance that would have been owed if the consumer had maintained property damage insurance on the automobile (even if the consumer has not done so) or if the creditor has purchased property damage insurance for the automobile and added it to the amount of the debt pursuant to UCCC § 5-2-209, C.R.S.

12. The Administrator contends that Rule 8(e) provides a definitive list of deductions and only permits deductions on those bases. The Administrator concludes that Respondent made the following deductions not authorized in Colorado by Rule 8(e):

a. Loan-to-Value ("LTV")

- Automobile GAP addenda limit eligible loans to 150% of the value of the vehicle at the time of purchase, while certain RV, marine, and motorcycle GAP addenda limit eligible loans to a maximum of 120%.

b. Prior Damages/condition adjustments

- Insurance companies sometimes reduce the insurance payout based on damage to the vehicle which was incurred prior to the total loss and which may have been subject to a prior insurance claim, and that was not repaired by the vehicle owner. A common example of this is when a consumer files a claim related to hail damage with their primary insurer. Insurance companies also sometimes reduce payouts if the condition of the vehicle is less than what would be expected for a vehicle in normal or average condition.

c. Storage/Towing

- Insurance companies sometimes reduce the insurance payout for storage and towing expenses incurred and not covered by the consumer's insurance policy.

13. The Administrator alleges that recommending the foregoing deductions additionally violates the CCPA. C.R.S. § 6-1-105 (recklessly making a false representation about the benefits of services provided); C.R.S. § 6-1-105(kkk) (recklessly engaging in unfair, unconscionable, deceptive, deliberately misleading, or false acts or practices).

14. Rule 8 prohibits the sale of GAP agreements when a consumer's LTV ratio is above the contractual limit. Safe-Guard states that despite advising auto dealers to only offer GAP to consumers that fell within the LTV maximums, in a very limited number of cases auto dealers, which are the initial party to the GAP agreement with the consumer, sold a GAP agreement on an auto loan that exceeded the LTV maximum. In these instances, the LTV issue would not be readily apparent to Safe-Guard and Safe-Guard could only become aware of the LTV issue with additional research. Therefore, Safe-Guard had no knowledge that these transactions exceeded the LTV maximums until such a consumer submitted a waiver request to Safe-Guard, in some cases several years after the initial sale. Although those consumers should not have been sold a GAP agreement, Safe-Guard's position was to recommend that creditors accept those claims without reamortizing the outstanding balance. Despite this being Respondent's general practice, a small percentage of GAP claim recommendations to creditors were reamortized over a period of time from 2015 to 2020, thus reducing the GAP waiver benefit Respondent

recommended to creditors. In such cases, because the GAP agreement was sold and not voided at the outset, Respondent recommended to creditors that they provide the waiver benefit but reduce it to the amount that would have been waived had the LTV been at the maximum permissible amount.

15. Respondent states that it relied on insurers' calculations of the prior damage deductions assuming that such deductions were either related to prior claims for which the consumer received a settlement amount or damage that the consumer could have made a claim for under their primary insurance policy but did not. Based on these assumptions involving so-called "double recovery", Respondent recommended that creditors reduce the consumer's GAP Waiver by the amount of the insurance company's prior damage deduction.

16. Safe-Guard states that for a small number of towing and storage deductions the insurers would pay the towing company or storage facility for the portion of those charges that exceeded the consumer's policy limits, rather than have the towing company or storage facility bill the consumer directly. In those instances, the insurer would then deduct that amount from the consumer's total loss settlement amount. For a small number of claims, Respondent recommended that creditors reduce the GAP Waiver by the amount of the insurance company's storage or towing deductions, contrary to Rule 8(e).

17. By entering into this AOD, Respondent makes no admission of wrongdoing or any violation of the aforementioned UCCC and CCPA statutory provisions and specifically contends that it believed at all relevant times that it was complying with all applicable rules, regulations, and laws. Additionally, Respondent contends that it only provided recommendations to creditors, which they may or may not have applied to the consumers' accounts. Nonetheless, upon becoming aware of the Administrators concerns about the compliance issues discussed above, Respondent took steps to be in full compliance with the Administrator's interpretation of the relevant statutes and rules.

18. Respondent has ceased recommending deductions for prior damage and excessive towing and storage costs, and prior to the Administrator's engagement, Respondent had ceased recommending that claim benefits be reduced due to LTV ratios.

19. Both parties wish to resolve this dispute in mutual agreement and without litigation. Accordingly, the parties agree as follows:

a. together with all related or affiliated entities, and its officers, directors, shareholders, managers, members, principals, subsidiaries, heirs, successors, and assigns, together with all other persons, corporations, associations, or other entities acting under the Respondent's direction and control, or in active concert or participation with Respondent, or by whom Respondent may be employed or contracted with who received actual notice of

the AOD, hereby are prohibited and permanently enjoined from engaging in any conduct not permitted by Rule 8(e) as provided in **Exhibit A**, and shall immediately cease and desist from engaging in or committing such conduct, and shall not in the future engage in or commit conduct that is not permitted by Rule 8(e) and **Exhibit A**.

b. Respondent has voluntarily performed a self-audit of all transactions entered into by consumers in Colorado that Respondent administered from October 1, 2015 to the Effective Date. Respondent identified all consumers covered by this AOD, which received a GAP Waiver during this time but did not receive a waiver of the full deficiency balance in accordance with Rule 8(e). For each consumer identified, Respondent voluntarily provided the Administrator a list identifying (i) the name, mailing address, phone number, and e-mail address of the consumer, (ii) the total amount of the refund, (iii) the specific charges refunded, and (iv) for each charge refunded the basis for the deduction as outlined in paragraphs 12(a) to (c). Respondent represents and affirms that the information contained in this list is true, accurate and complete. Respondent provided the list to the Administrator in Microsoft Excel. Respondent and Administrator shall maintain this list confidentially. This list is exempt from public disclosure as provided in C.R.S. § 5-6-106(4) and C.R.S. §§ 24-72-204(2)(a)(IX)(A)-(B), and (3)(a)(IV), and the Administrator agrees to keep the documents confidential pursuant to those provisions unless ordered otherwise by a court of law or disclosure is agreed to by Respondent in writing.

c. Respondent shall attempt to refund amounts, if any, as calculated in **Exhibit A**, which contains the parties' restitution calculations based on confidential consumer information. Respondent and Administrator shall maintain **Exhibit A** confidentially. **Exhibit A** is exempt from public disclosure as provided in C.R.S. § 5-6-106(4) and C.R.S. §§ 24-72-204(2)(a)(IX)(A)-(B), and (3)(a)(IV). This amount is payable to the Administrator, along with any interest thereon, in trust, to be used in the Administrator's sole discretion for attorneys' fees and costs, consumer restitution, if any, for consumer or creditor educational purposes, consumer credit or consumer protection enforcement efforts, or public welfare purposes. The Administrator elects, in lieu of making payment directly to the Administrator in the first instance, to direct Respondent to attempt refunds for any amounts calculated pursuant to **Exhibit A** to pay those amounts directly to consumers on behalf of the Administrator. Any amount returned as undeliverable, unclaimed, uncashed, or undeposited less the cost of any applicable stop payment fees charged by Respondent's bank shall revert to the Administrator as provided in paragraph 14(d).

d. Within fourteen (14) days of the parties completing their restitution calculations as provided in **Exhibit A**, the parties will insert the

restitution amounts into **Exhibit B**. **Exhibit B** shall be a public document.

20. Respondent shall make the refunds, as follows:

a. Refunds. After the parties calculate restitution and supplement **Exhibit B**, Respondent shall attempt to make any refunds due hereunder within thirty (30) days after the parties supplement **Exhibit B**. Prior to issuing any refunds, Respondent shall update contact information, and use the most current information available. All refunds shall be made by check. If any refund is returned or not processed on the first attempt, Respondent shall exercise reasonable efforts and due diligence to re-attempt the refund for ninety (90) days after the first attempted refund, but shall not be required to make more than two such attempts.

b. Transmittal Letter. Concurrently with any refunds sent by Respondent, Respondent shall send each consumer a letter, the form, and contents of which has been pre-approved by the Administrator. The letter shall inform the consumer that the Respondent is working with the Attorney General and Administrator to identify consumers owed additional GAP coverage as provided by Rule 8 and the CCPA, and Respondent is increasing the waiver benefit to consumers for those amounts. The letter shall provide consumers with a point of contact to address consumers' questions and concerns. A template of the transmittal letter shall be approved by the Administrator before sending.

c. Proof of Refunds. Within sixty (60) days after the first attempted refund, Respondent shall provide the Administrator, if requested, with documentation reasonably acceptable to the Administrator showing that Respondent timely sent refunds to consumers, such as copies of checks. Additionally, Respondent shall update the list referenced in paragraph 13(b) updating any consumer contact information (mailing address, phone number, e-mail address), stating the date payment was issue, identifying the check number, the date the payments cleared, and identifying any payments sent that were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise. One hundred and twenty (120) days after the first attempted refund, Respondent shall again provide the Administrator with an updated list (the "Updated List") containing this information.

d. Refunds Outstanding Beyond Ninety (90) Days. Ninety (90) days after the first attempted refund, Respondent shall stop payment on outstanding refund checks.

21. Within seven (7) days of the Effective Date, Respondent shall pay to the Office of the Attorney General one hundred thousand dollars ($100,000) to reimburse the Administrator for her costs in investigating this matter, and in lieu of the

Administrator's pursuit of penalties, disgorgement, and other appropriate injunctive relief against Respondent. This amount shall be held, along with any interest thereon, by the Attorney General, in trust, to be used in the Attorney General's sole discretion for reimbursement of attorneys' fees and costs, the payment of consumer restitution, if any, and for consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, or public welfare purposes.

22. One (1) year after Respondent provides the Updated List as provided in paragraph 14(c), Respondent shall provide the Administrator with a report addressing its compliance with Rule 8(e) as provided in **Exhibit A**. Respondent shall identify any deductions not authorized by Rule 8(e) as stated in paragraph 12(a) to (c), provide the Administrator with any necessary documentation supporting these deductions, and identify all steps Respondent has taken to assure compliance with this AOD. At Respondent's expense and at the Administrator's option, Respondent shall permit the Administrator to inspect its books and records once, at any time within normal business hours, and to conduct a follow-up inspection upon reasonable notice to Respondent's counsel. The Administrator must notify Respondent that it intends to conduct an audit within ninety (90) days following the production of this compliance report. The inspection shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this AOD.

23. All payments due the Administrator shall be deemed paid upon the Administrator's receipt of the payment. All such payments shall be by check made payable to the "Colorado Department of Law," and mailed to "Administrator, UCCC, Attn: Kevin Burns, 1300 Broadway, 6th Floor, Denver, Colorado 80203." All such payments are to be held, in trust, to be used in the Administrator's sole discretion for attorneys' fees and costs, consumer restitution, if any, and for consumer or creditor educational purposes, consumer credit or consumer protection enforcement efforts, or public welfare purposes.

24. This AOD fully resolves all the issues between the Administrator and Respondent arising out of the particular issues, allegations, or charges raised by the Administrator as set forth herein and only those issues. This release does not apply to any GAP practices other than the specific benefits calculation issue described herein, and does not apply to other claims, if any, arising under Rule 8 or the CCPA. The Administrator releases Respondent, including any subsidiaries, officers, or employees, from any and all further investigation, claims, violations, allegations, fines, fees and penalties which accrued or may have accrued as a result of any consumer credit sale transaction entered into or administered by Respondent on or before the date the parties supplement **Exhibit B**.

25. Respondent's obligations under this AOD and all its exhibits are binding upon all of Respondent's officers, agents, servants, employees, and attorneys, and

those persons in active concert or participation with them who receive actual notice of the order.

26. This AOD and all its exhibits as of the Effective Date and as supplemented represent the entire agreement between the parties. No party is relying on any prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD or its exhibits. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD or its exhibits shall have any force or effect.

27. This AOD may be executed in counterparts, and may be executed by facsimile or by electronic transmission of signature pages, and as so executed shall constitute one agreement.

28. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

29. The date this AOD is executed by both of the parties shall be the Effective Date of this AOD for all purposes hereunder.

30. Any modification of this AOD must be in writing, signed by each of the parties or by authorized representatives of each of the parties hereto.

AGREED AND STIPULATED TO BY:

SAFE-GUARD PRODUCTS INTERNATIONAL, LLC

By:_____

DAMON WIENER, ESQ.
SVP and General Counsel
Two Concourse Pkwy, Suite 500
Atlanta, GA 30328
E-Mail: dwiener@sgintl.com

COUNSEL FOR RESPONDENT
COLORADO ATTORNEY GENERAL
AND
ADMINISTRATOR, UCCC

By: Kevin Burns

KEVIN J. BURNS, ESQ.
Assistant Attorney General
Consumer Credit Enforcement Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
E-Mail: kevin.burns@coag.gov

Dated: 9-10-22

APPROVED AS TO FORM:

BY: _____

JASON R. DUNN, ESQ.
Brownstein Hyatt Farber Schreck LLP
410 17th St. Suite 2200
Denver, Colorado 80202
E-Mail jdunn@bhfs.com