

BEFORE THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT
CODE STATE OF COLORADO

AMENDED ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF WESTERRA CREDIT
UNION

Respondent.

THIS AMENDED ASSURANCE OF DISCONTINUANCE (“AAOD”) is made between the Administrator of the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* (“UCCC”) and Respondent Westerra Credit Union (“Respondent”), arising out of the Administrator’s investigation of Respondent’s compliance with the UCCC and its rules, including 4 CCR 902-1:8 (“Rule 8”), the Respondent agreeing pursuant to C.R.S. § 5-6-110 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 the Administrator of 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. Respondent is a Colorado state-chartered credit union with a principal office located at 3700 East Alameda Avenue, Denver, CO 80209.

3. The Administrator has jurisdiction over Respondent and the subject matter of this AAOD under C.R.S. § 5-6-110. This AAOD applies to all consumer credit transactions entered into with consumers in Colorado in accordance with C.R.S. § 5-1-201 (“Colorado consumers”), which include Guaranteed Automobile Protection (“GAP”).

4. 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* Rule 8(a).

5. Among other things, Respondent acts as a creditor under C.R.S. § 5-1-301(17) by purchasing from auto dealers retail installment sales contracts that

include GAP protection that Colorado consumers purchased from auto dealers.

6. Rule 8(h) provides:

If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method.

7. The Administrator and Respondent entered into an Assurance of Discontinuance regarding GAP on October 1, 2021. The parties enter this AAOD to correct certain typographical errors contained in the original October 1, 2021 Assurance of Discontinuance.

8. In the latter part of 2020 Respondent determined that it unintentionally had not automatically provided pro rata refunds of GAP premiums to Colorado consumers whose loan was prepaid prior to maturity or the vehicle serving as collateral was no longer in possession of the consumer due to Respondent's repossession and disposition of the collateral ("GAP refunds"). *See* Rule 8(h). Respondent immediately initiated an audit to determine the GAP refunds that needed to be made and began the process to provide such GAP refunds. In November 2020, Respondent began revising and updating its processes and making any required GAP refunds to its members and former members. GAP refunds were made as follows:

- a. On April 22, 2021, Respondent made a total of 2,116 automated payments to members in a total amount of \$ 500,788.34. The notice with such payments read "Auto loan paid off prior to maturity for which a prorated GAP refund with interest has been deposited in your account."
- b. Manual checks were sent to members and former members on May 28, 2021 in the total of 958 manual checks in a total amount of \$281,509.50 were mailed on that date. The notice with the payment stated "Auto loan paid off prior to maturity for which a prorated refund check is enclosed."
- c. Following further audit, on July 21, 2021, Respondent made a total of 301 direct deposit payments to members in a total amount of \$55,887.19. The notice with such payments read: "Auto loan paid off prior to maturity for which a pro-rated GAP refund with interest has been deposited in your account." On July 22, 2021 Respondent mailed a total of 47 manual checks to members and former members in a total amount of \$7,929.54. The notice with the payments stated: "When you paid off your auto loan,

a pro-rated refund of the GAP insurance premium should have been paid to you at that time. The pro-rated refund amount with interest is in the enclosed check.”

9. When the Respondent was approached by a representative of the Administrator, it informed the Administrator regarding its GAP refund processes, and Respondent voluntarily provided information to the Administrator on May 5, 2021, including the information concerning its audit of the accounts and its implementation of GAP refunds which had already been made to those members that received automated payments on April 22, 2021 and Respondent was in the process of preparing to mail the paper checks, all as noted in paragraph 7 above. Respondent represented that, as of April 1, 2021, Respondent altered its business practices to ensure that, from that date forward, it will automatically make GAP refunds to consumers. Respondent has fully cooperated with the Administrator in good faith since being engaged, and has been forthcoming with information in order to bring this matter to a swift and orderly resolution. Respondent represents that all information provided to the Administrator regarding GAP is true, accurate and complete.

10. Respondent has represented to the Administrator that it performed a series of self-audits of all transactions with Colorado consumers that had GAP coverage originated during the Applicable Period.¹ Respondent represents that it identified all transactions with Colorado consumers to whom Respondent was owed GAP refunds within the Applicable Period.

11. For each consumer identified, Respondent provided the Administrator a list, which is subject to the confidentiality provisions governing the credit union under federal and state laws and regulations, including but not limited to the Gramm-Leach-Bliley Act of 1999, identifying (i) the name and address of the consumer, (ii) the total amount of the refund, (iii) the basis for the refund, and (iv) whether the Respondent provided a cash refund or account credit.² Respondent provided the list to the Administrator in a native Microsoft Excel format and represents that the list is true and correct.

12. The Administrator contends:

- a. Respondent failed to timely provide refunds to Colorado consumers as required by Rule 8(h).

¹ The Applicable Period means transactions for which the due date of the last scheduled payment was within four years of the Effective Date.

² For any consumers who have a balance outstanding with the creditor, Respondent has and may continue to make these refunds pursuant to an account credit.

- b. By failing to pay refunds and retaining unearned GAP premiums, Respondent, in conjunction with auto dealers and GAP administrators, violated the Colorado Consumer Protection Act (“CCPA”) by engaging in unfair and deceptive trade practices, C.R.S. § 6-1-105 *et seq.*

13. Without admitting liability,³ Respondent:

- a. agrees 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 entities’ direction and control, or in active concert or participation with Respondent, or by whom Respondent may be employed or contracted with, Respondent shall cease and desist from engaging in any conduct that violates Rule 8(h), which requires creditors to automatically, and without awaiting a request from a consumer, to refund consumers unearned GAP premiums (i.e., premiums related to the remaining period of the GAP policy) if the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer’s possession due to the creditor’s lawful repossession and disposition of the collateral, and shall not engage in or commit such conduct in violation of Rule 8(h) in the future.

- b. verifies as true and accurate that it has paid \$ 846,114.57 in GAP refunds to 3,422 consumers as specified in paragraph 7 above. Respondent further verifies that it has performed a thorough self-audit of all refunds owed to Colorado consumers from April 1, 2017 until April 1, 2021. Additionally, Respondent will subject itself voluntarily to an audit by the Administrator as described in paragraph 14.

14. Within 60 days of the Effective Date, Respondent shall send each consumer a confirmation letter, the form and contents of which has been pre-approved by the Administrator. The letter shall inform the consumer that the Administrator has been in discussions with Respondent about Colorado law that requires creditors to refund unearned GAP premiums if consumers pay off their loans early or their car is repossessed, and Respondent failed to make these refunds. The Administrator, who works on behalf of the Attorney General, has entered into an agreement with Respondent concerning refunds it failed to pay. The letter will

³ Nothing in this AAOD shall be deemed an admission of liability by Respondent and Respondent specifically denies the alleged violation in paragraph 11.b., and except as provided in C.R.S. § 5-6-110, this AAOD may not be used as evidence that Respondent violated Rule 8(h) or the CCPA.

identify the amount of the refund and the date it was provided. A template of the transmittal letter is attached as Exhibit A.

15. 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 inspection must occur within one year of the Effective Date, and 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 AAOD.

16. With respect to returned or unclaimed checks for refunds of unearned GAP premiums Respondent cannot locate, the refund amount becomes abandoned property and should be reported and delivered to the Colorado State Treasurer pursuant to the Colorado Unclaimed Property Act, C.R.S §§ 38-13-101 to 38-13-134. For more information contact the State Treasurer's Office at (303) 866-6070 or <https://colorado.findyourunclaimedproperty.com/app/reporting-guidelines>.

17. This AAOD fully resolves the issues between the Administrator and Respondent arising out of the particular issues, allegations, or charges raised by the Administrator against Respondent as set forth in paragraph 11 concerning the GAP refund issue under the UCCC and the CCPA and only those issues. This release does not apply to any GAP practices other than the specific refund issue described in paragraph 11, and does not apply to other claims arising under the UCCC, CCPA, or Rule 8, including but not limited to, claims for conduct concerning the failure to properly calculate GAP benefits in accordance with Rule 8. The Administrator releases Respondent, including any subsidiaries, officers, or employees, from any and all further investigation, claims, violations, allegations, fines, fees and penalties for the specific refund issue set forth herein and only that issue, whether they accrued or may have accrued as a result of any consumer credit transaction entered into by Respondent on or before the execution date of this AAOD.

18. Respondent agrees that it will voluntarily refrain from exercising any contractual right to enforce a class action waiver as to GAP related issues against Colorado consumers.

19. This AAOD is binding upon: the Administrator and her successors; and all the officers, directors, employees, shareholders, managers, members, principals, affiliates, heirs, agents, trade names, and successors of the Respondent; and the parties stipulate to its terms as indicated by their authorized designees' signatures below.

20. This AAOD represents 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 AAOD. No prior

statement, representation, agreement, or understanding of any kind that is not contained in this AAOD shall have any force or effect.

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

22. This AAOD is entered into for purpose of resolving only the matter described herein. Nothing in this provision affects Respondent's right to take legal positions in litigation in which the Administrator is not a party.

23. October 1, 2021 shall be the Effective Date of this AAOD for all purposes hereunder.

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

25. For the purpose of construing or interpreting this AAOD, 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.

[SIGNATURE PAGE TO FOLLOW]

AGREED AND STIPULATED TO BY:

WESTERRA CREDIT UNION

By: *James C. Champion*
JAMES C. CHAMPION
President/Chief Executive Officer
3700 East Alameda Avenue
Denver, CO 80209
(303) 329-4508
JChampion@westerracu.com

DATE: 10/19/21

COLORADO ATTORNEY GENERAL
ADMINISTRATOR, UCCC

By: *Nikolai Frant*
NIKOLAI FRANT
KEVIN J. BURNS
Department of Law
Consumer Protection Section
Consumer Credit Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
(720) 508-6110
nikolai.frant@coag.gov
kevin.burns@coag.gov

DATE: 10/19/21

APPROVED AS TO FORM:

WESTERRA CREDIT UNION

By: *M. Brent Case*
MARTIN SEMPLE
BRENT CASE
Semple, Farrington, Everall &
Case, P.C.
Chancery Building
1120 Lincoln Street, Suite 1308
Denver, Colorado 80203
(303) 595-0941
msemple@semplelaw.com
bcase@semplelaw.com

DATE: 10/19/21



Dear Member,

Thank you for being a valued member of Westerra Credit Union (Westerra"). Our records indicate you purchased a vehicle financed through Westerra and your loan contained a Guaranteed Automobile Protection (GAP) addendum purchased from the dealership. Westerra determined that you were eligible for a refund of the unearned portion of the premium paid on your GAP addendum.

Colorado law requires creditors to refund unearned GAP premiums if consumers pay off their loans early or their car is repossessed, and Westerra is ensuring these refunds are being made following a discussion with the Administrator, who works on behalf of Colorado Attorney General (the "COAG"). The premiums were paid either to the dealership where the vehicle was originally purchased or through the applicable GAP provider.

On May 28, 2021 a check in the amount of \$_____ was mailed to you for the pro-rated refund with interest. That check should have been cashed within ninety (90) days of that date, otherwise the money will be reported and delivered to the Colorado State Treasurer pursuant to Colorado Unclaimed Property Act, C.R.S. §§ 38-13-101 – 38-13-134 and for more information contact the State Treasurer's Office at (303) 866-6070 or <https://colorado.findyourunclaimedproperty.com/app/reporting-guidelines>. (For those who received direct deposit: On April 22, 2021, a pro-rated GAP refund with interest in the amount of \$_____ was deposited in your account.)

If you have any questions about the process explained in this letter, or about the GAP product you purchased at the dealership, you can contact Westerra at (303) 321-4209.

We appreciate your membership and look forward to serving you in the future.

Sincerely,

Westerra Credit Union