

**UNITED STATES OF AMERICA**  
**CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING

File No. 2014-CFPB-0017

In the Matter of:

**DriveTime Automotive Group, Inc.  
and DT Acceptance Corp.**

**CONSENT ORDER**

The Consumer Financial Protection Bureau (Bureau) has reviewed debt collection and credit information furnishing processes and practices of DriveTime Automotive Group, Inc. and its finance company DT Acceptance Corporation (DriveTime, as defined below). The Bureau has identified the following law violations: (1) DriveTime committed unfair acts and practices in violation of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536, by failing: (A) to prevent account servicing and collection calls to consumers' workplaces after consumers asked DriveTime to stop such calls; (B) to prevent calls to consumers' third-party references after the references or consumers asked DriveTime to stop calling them; and (C) to prevent calls to people at wrong numbers after they have asked DriveTime to stop calling; and (2) DriveTime furnished information to consumer reporting agencies that DriveTime had reasonable cause to believe was inaccurate, failed to correct or delete inaccurate information within a reasonable time after learning of the inaccuracies, and failed to establish and/or implement reasonable written policies and procedures regarding the "accuracy" and

“integrity” of the information it furnished to consumer reporting agencies, in violation of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, the Furnisher Rule, Subpart E of Regulation V, 12 C.F.R. §§ 1022.42(a) and (c). Under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, the Bureau issues this Consent Order (Consent Order).

## **I**

### **Jurisdiction**

1. The Bureau has jurisdiction over this matter under (a) Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565; and (b) Section 621 of the FCRA, 15 U.S.C. § 1681s.

## **II**

### **Stipulation**

2. DriveTime has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated November 17, 2014 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, DriveTime has consented to the issuance of this Consent Order by the Bureau under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that DriveTime admits the facts necessary to establish the Bureau’s jurisdiction over DriveTime and the subject matter of this action.

### **III**

#### **Definitions**

3. The following definitions apply to this Consent Order:
- a. “Affected Consumer” means any customer for whom DriveTime furnished Systemically Inaccurate Information.
  - b. “Board” means DriveTime’s duly-elected and acting Board of Directors.
  - c. “DriveTime” means DriveTime Automotive Group, Inc., and its subsidiaries, successors and assigns, and its affiliate DT Acceptance Corporation.
  - d. “Effective Date” means the date on which the Consent Order is issued.
  - e. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his/her delegee.
  - f. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against DriveTime based on substantially the same facts as set forth in Section IV of this Consent Order.
  - g. “Relevant Period” means the period from 2010 through the Effective Date.
  - h. “Systemically Inaccurate Information” means information furnished to one or more consumer reporting agencies by DriveTime that arises out of, or is related to, systems or processes resulting in similar inaccuracies for multiple accounts due to a similar cause.

## **BUREAU FINDINGS AND CONCLUSIONS**

### **IV**

#### **General**

The Bureau finds the following:

4. DriveTime is a “buy-here, pay-here” used car dealer headquartered in Phoenix, Arizona. It sells cars and, through its finance affiliate, DTAC, provides subprime vehicle financing at 117 dealership locations in 20 states.
5. DriveTime is a “covered person” as that term is defined by 12 U.S.C. § 5481(6).
6. DriveTime’s average customer is 26 to 42 years of age, has an annual income of \$37,000 to \$50,000, and has a FICO score between 461 and 554. As of December 31, 2013, DriveTime had 150,830 retail installment contracts outstanding. In 2013, DriveTime originated 68,177 retail installment contracts; the average amount financed for those transactions was \$16,299; the average APR was 19%; and the average customer FICO score was 520.
7. The used cars that DriveTime sells are usually between two and seven years old and usually have mileage of between 40,000 to 120,000 miles.
8. As of December 31, 2013, 46% of DriveTime’s outstanding retail installment contracts – approximately 69,000 – were past due. As of December, 31, 2013, 16% of DriveTime’s outstanding retail installment contracts – approximately 24,000 – were more than 30 days past due.

#### **Findings and Conclusions as to Unfair Collection Practices in Violation of the CFPA**

9. When DriveTime consumers fell behind on their installment payments, DriveTime’s extensive collections operation began calling them. DriveTime had

at least 290 collection employees in two domestic call centers and 80 contractors in Barbados. Collectively, these employees and contractors (*hereinafter*, “collectors”) placed tens of thousands of outbound collection calls each weekday to DriveTime’s consumers who fell behind on their installment payments.

*Calls to Workplaces*

10. DriveTime called consumers at their workplaces as part of the company’s collections efforts. DriveTime’s collections managers encouraged collectors to make these calls, in accordance with DriveTime’s collection procedures.
11. Upon receiving DriveTime’s calls to their workplaces, numerous consumers requested that DriveTime no longer call their workplaces. Nonetheless, DriveTime collectors had a practice of continuing to call consumers who requested not to receive calls (a “do not call” or “DNC” request) from DriveTime at work.
12. For example, one consumer was called 30 times at work after her DNC request. Another consumer, who had been called by DriveTime at her workplace eight times after her DNC request, was fired because of her receipt of those calls. Other consumers were reprimanded by their bosses or threatened with termination as a result of their receipt of DriveTime collection calls to their cell phones while at work.
13. Some DriveTime managers have encouraged collectors to call numbers that had previously been marked in its system as DNC.

*Calls to Third-Party References*

14. DriveTime required consumers to provide four to eight names and phone numbers as references when they applied for financing to purchase a vehicle.
15. When consumers fell behind in payments, DriveTime called references in an attempt to get the consumers to call DriveTime to discuss their accounts.
16. Upon receiving DriveTime's calls, numerous references orally requested that DriveTime no longer call them. Numerous customers of DriveTime also requested that DriveTime no longer call some or all of their references. Despite such requests from references and customers, DriveTime failed to prevent repeated calls to third-party references under these circumstances. For example, some references complained that DriveTime collectors called them for months after the references requested that the calls stop.
17. References experienced stress as a result of calls they could not stop, and at least one customer's references stopped speaking to her as a result of receiving daily calls from DriveTime. DriveTime's repeated, unwanted calls to references harmed those references and the company's customers' personal relationships with them.

*Calls to Wrong Numbers*

18. In its efforts to reach consumers who fell behind, DriveTime frequently used third-party databases to "skip trace" for new phone numbers for its customers. These searches frequently led to wrong numbers that were never, or were no longer, associated with a DriveTime customer (third parties).
19. Upon receiving DriveTime's calls, numerous third parties orally requested that DriveTime no longer call them. Despite such requests, DriveTime failed to

prevent calls to these third parties or did not remove their numbers from its systems in time to prevent such calls.

20. According to third parties and DriveTime's internal records, DriveTime collectors repeatedly dialed third-party phone numbers even after the company was told they were not associated with DriveTime consumers. In some cases, DriveTime called third parties for over a year before stopping the calls.
21. Until at least April 1, 2014, DriveTime did not have an effective system in place to prevent repeated calls to third parties as a result of skip tracing.
22. In December 2011, a DriveTime internal audit recommended systems changes – including increased use of physically blocking the system from calling certain numbers – to reduce calls to DNC numbers. But DriveTime took no action to implement those recommended changes.
23. Sections 1031 and 1036(a)(1)(B) of the CFPB prohibit “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. §§ 5531, 5536(a)(1)(B).
24. As set forth in Paragraphs 10-13, in numerous instances, DriveTime failed to prevent calls to consumers at their workplaces after consumers requested that DriveTime not call them at work or when DriveTime otherwise had reason to know that consumers were not permitted to receive calls at work.
25. As set forth in Paragraphs 14-17, in numerous instances, DriveTime failed to prevent repeated calls to third-party references after the references or consumers asked DriveTime to stop calling.
26. As set forth in Paragraphs 18-22, in numerous instances, DriveTime failed to prevent calls to third parties at wrong numbers after they asked DriveTime to stop calling.

27. The acts and practices set forth in Paragraphs 24-26 constituted activity that had the effect of annoying, abusing, or harassing consumers and third parties.
28. The acts and practices set forth in Paragraphs 24-26 caused or were likely to cause substantial consumer injury that was not reasonably avoidable by consumers or outweighed by countervailing benefits to consumers or to competition.
29. DriveTime's acts and practices therefore constituted unfair acts and practices in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

**Findings and Conclusions as to  
Violations of the Furnisher Rule**

30. DriveTime furnishes consumer account information for approximately 350,000 retail installment accounts to all three major consumer reporting agencies (CRAs): Experian, TransUnion, and Equifax.
31. DriveTime implemented written policies and procedures related to credit information furnishing in 2010 as mandated by the Furnisher Rule, Subpart E of Regulation V, 12 C.F.R. § 1022.42(a).
32. Until 2014, DriveTime's written furnishing policies and procedures were only a page-and-a-half long and had not been updated since they were implemented.
33. DriveTime's written policies and procedures did not include a discussion of credit furnishing dispute investigation procedures nor did they describe what constitutes a reasonable dispute investigation.



34. In November 2011, DriveTime started using a third-party loan servicing platform to compile information to be furnished. By April 2013, DriveTime outsourced its furnishing completely.
35. The conversion to a third-party servicing platform was a massive transition that led to inaccuracies in DriveTime's furnished information.
36. Following the November 2011 conversion, DriveTime furnished duplicate account information for at least 20,000 accounts. DriveTime did not detect these furnishing inaccuracies until April 2012, and it corrected the inaccuracies in June 2012.
37. In 2012, DriveTime furnished inaccurate current balances for consumers on 90,000 charged-off accounts, largely due to problems with the conversion. DriveTime did not detect these furnishing inaccuracies until July 2012, and it suspended furnishing until the cause of the inaccuracy was corrected in October 2012.
38. Although DriveTime detected these inaccuracies during the transition to a third-party servicing platform, DriveTime did not update its written furnishing policies and procedures during the transition to ensure their effectiveness.
39. At the point of sale, DriveTime described its credit information furnishing to consumers in a letter that read, "We want you to know that among the many benefits you receive as a DriveTime customer, we report your payment history with us to credit reporting agencies, such as Equifax, Experian and TransUnion. This is important to you because if you pay on time your credit report will improve and you will be eligible for better credit terms from us, finance companies and/or banks. We report all information, positive or negative.

Negative information means information concerning delinquencies, late payments, missed payments or any form of default. If you believe any information we have reported is inaccurate, please notify us immediately in writing at the address below.”

40. DriveTime received approximately 22,000 disputes per year related to its credit information furnishing practices. DriveTime had two employees who processed the credit information disputes that were received.
41. Some disputes involved the furnishing of information reflecting that a repossession occurred more recently than the actual date of repossession.
42. In several instances, consumers disputed the same account information several times without the inaccurate information being corrected.
43. In some instances, DriveTime informed the consumers in writing that the furnishing had been corrected, when it had not been.
44. In other instances, DriveTime responded in writing – often on the same day a consumer complained – and informed the consumer that the consumer’s dispute had come back as “non-conclusive” and “the reporting appears accurate” when in fact it was not.
45. The Furnisher Rule requires a furnisher of credit information to “establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency.” 12 C.F.R. § 1022.42(a).
46. The policies and procedures “must be appropriate to the nature, size, complexity, and scope of each furnisher’s activities.” 12 C.F.R. § 1022.42(a); Appendix E, § I(a).

47. The policies and procedures should be reasonably designed to promote “reasonable investigations of consumer disputes” and the taking of “appropriate actions based on the outcome of such investigations.” 12 C.F.R. § 1022.42(a); Appendix E. § I(b)(3).
48. The Furnisher Rule further requires a furnisher to perform a periodic review and update its policies and procedures as necessary to ensure their effectiveness. 12 C.F.R. § 1022.42(c).
49. Since 2010, DriveTime failed to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information it furnished to CRAs, and its policies and procedures were not appropriate to the nature, size, complexity, and scope of its furnishing activities. In addition, DriveTime’s written furnishing policies and procedures were not reasonably designed to promote reasonable investigations of consumer disputes or the taking of appropriate actions based on the outcome of such investigations.
50. From at least November 2011 until 2014, DriveTime failed to update its written furnishing policies and procedures as necessary to ensure their continued effectiveness since they were implemented in 2010, despite the fact that DriveTime concluded during a 2012 internal review of accounts that it had a problem with the furnishing of repossession information and that the conversion to a third-party platform for furnishing had led to widespread inaccuracies in the furnished information.
51. DriveTime therefore violated the Furnisher Rule, 12 C.F.R. §§ 1022.42(a); (c).

### **Findings and Conclusions as to Violations of the FCRA**

52. The FCRA prohibits a furnisher who does not clearly and conspicuously specify to the consumer an address for notices that specific information furnished is inaccurate from furnishing information it “knows or has reasonable cause to believe is inaccurate.” 15 U.S.C. § 1681s-2(a)(1)(A).
53. The FCRA provides that: “A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.” 15 U.S.C. § 1681s-2(a)(5).
54. The FCRA further imposes a duty on furnishers to conduct an investigation into disputes and, if an item is found to be inaccurate or incomplete, to modify, delete, or permanently block the furnishing of that information. 15 U.S.C. § 1681s-2(b)(1).
55. As set forth in Paragraphs 40-41 above, DriveTime received over 22,000 credit information furnishing disputes each year, including disputes related to the furnishing of information that inaccurately reflected the timing of repossessions and dates of first delinquency for charged-off accounts.
56. In connection with certain consumer complaints, including disputes related to the furnishing of information that inaccurately reflected the timing of repossessions and dates of first delinquency, DriveTime furnished information to the consumer reporting agencies that was different from that maintained in

DriveTime's account servicing database and was inaccurate. In other instances, consumers provided DriveTime – directly or through a CRA – with information indicating that the DriveTime information appearing in their credit reports was inaccurate.

57. DriveTime therefore had “reasonable cause” to believe information it was furnishing was inaccurate, yet it continued to furnish inaccurate information to the CRAs.
58. Some consumers complained about, or disputed, the same DriveTime-furnished information on more than one occasion without the inaccurate furnished information being corrected.
59. For some disputes, DriveTime failed to conduct reasonable investigations of credit information furnishing disputes, including disputes related to inaccurate dates of first delinquency and timing of repossessions.
60. DriveTime's acts and practices therefore constituted violations of the FCRA, 15 U.S.C. § 1681s-2.

## **ORDER**

### **V**

#### **Conduct Provisions**

**IT IS ORDERED**, under Sections 1053 and 1055 of the CFPA, that:

61. DriveTime and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly:
  - a. Must not violate Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, the Furnisher Rule, 12 C.F.R. §§ 1022.40-43, or the FCRA, 15 U.S.C. § 1681s-2;

- b. Must not communicate with consumers at their workplaces if consumers have requested that DriveTime not communicate with them at their workplaces or if DriveTime otherwise knows or has reason to know that the consumers' employers prohibit communications to their workplaces. DriveTime shall otherwise have reason to know of such prohibition if any representative of the consumer's employer has requested orally or in writing that DriveTime not call and the request identifies or refers to particular employees or particular numbers;
- c. Must, within 150 days of the Effective Date, provide a clear and conspicuous written notice to existing customers of their ability, on the DriveTime website used by customers to access information about their accounts, to limit the times during which account servicing calls will be made by DriveTime to the customer's cell phone. For all new customers, DriveTime must provide a clear and conspicuous written notice as part of a welcome kit, or other initial written communication to the customers, that includes a description of the customer's ability, using the DriveTime website that customers use to access information about their accounts, to limit the times during which account servicing calls will be made by DriveTime. At the beginning of every outbound welcome call, at the time of the first collection call on an account (in which DriveTime makes a right-party contact), and each time a customer inquires or complains about receiving a call to a cell phone, DriveTime must notify the consumer of the ability to limit the times of day when DriveTime will make calls to that phone number, and DriveTime must accept the customer's oral request to limit such calls, without requiring any additional steps by the

- consumer. DriveTime must also accept customers' requests to limit the times of account servicing calls by email, fax, and letter. If DriveTime reasonably believes it will be necessary to order the repossession of the vehicle in the next 72 hours, DriveTime may attempt to call the non-work numbers associated with the customer during those times permitted by applicable law;
- d. Must, within 120 days of the Effective Date, not call a particular phone number related to an account if any person has requested, orally or in writing, that DriveTime stop calling such number or has stated, orally or in writing, that the consumer that DriveTime is trying to contact cannot be reached at that number;
  - e. Must not communicate with any person, including references, other than the consumer in connection with the collection of a debt, except for the purpose of obtaining accurate location information for that consumer and then no more than once unless:
    - i. Requested to do so by the person after the account has become delinquent or DriveTime reasonably believes that the earlier response of such person is erroneous or incomplete and such person now has correct or complete location information; and
    - ii. DriveTime has not had contact (meaning outbound call with right-party contact or inbound call, email, or letter) with the consumer in 30 days or more.
  - f. Must not communicate with third parties, including references, after the third parties have requested, orally or in writing, that DriveTime not communicate with them;

- g. Must take the following affirmative actions within the time periods provided:
- i. Within 30 days of the Effective Date, adopt and implement reasonable policies and procedures to prevent communications that would violate the prohibitions described in Paragraphs (b) through (c) and (e) through (f) above, including, but not limited to:
    - (1) Create a Master do not call (DNC) list, integrated with a dialer exclusion system;
    - (2) Make changes to the account management system to:
      - a. Display customer accounts where a DNC has been requested in a different color to alert the loan advisor;
      - b. Display an account message on screen notifying the loan advisor of a DNC on a particular account;
      - c. Redact DNC numbers as appropriate in the call notes;
      - d. Provide a single method for loan advisors to mark a phone number DNC during a call; and
      - e. Provide managers with the capability to flag accounts as DNC.
  - ii. Within 30 days of the Effective Date, develop and implement written consumer information furnishing policies and procedures that comply with the Furnisher Rule in consultation with a third-party compliance consultant;
  - iii. Within 30 days of the Effective Date, cease furnishing information related to a voluntary or involuntary repossession, unless DriveTime has verified that the information is correct after the Effective Date;



- iv. Within 90 days of the Effective Date, identify all Systemically Inaccurate Information it has furnished to the CRAs that has not already been corrected, modified, deleted, or blocked as required by the FCRA. Within 120 days of the Effective Date, DriveTime must notify the CRAs of the inaccuracies and either: (1) provide to the CRAs the correct information or (2) delete the inaccurate information from the associated trade line if accurate information is not available. Thereafter, DriveTime must permanently block the refurnishing of the inaccurate information;
- v. Within 30 days of the Effective Date and until such time as DriveTime resolves all causes of Systemically Inaccurate Information, cease and desist from making any representation to consumers regarding the accuracy or integrity of information it furnishes to CRAs;
- vi. Arrange for any Affected Consumers, who have already obtained their free annual credit report from the applicable CRA, to obtain a credit report free of charge from one or more of the CRAs to which DriveTime furnished inaccurate information about that consumer. DriveTime must ensure the option to obtain the free credit report is available to such consumers for 180 days after they receive the notice specified in Subparagraph (vii);
- vii. Within 90 days of the Effective Date, post prominently on the DriveTime website used by customers to access information about their accounts, for a period of 90 days, and send to each Affected Consumer identified using the process set forth in Subparagraph (iv) at all home

addresses associated with their accounts (including home email addresses) a notice (Notice) that has been approved by the Enforcement Director advising of at least the following:

- (1) DriveTime has provided inaccurate information about some of its customers to the CRAs;
  - (2) As a result of those inaccuracies, DriveTime is the subject of a Consent Order by the Bureau;
  - (3) The inaccuracies may have had an adverse effect on the affected customers' credit;
  - (4) Consumers have a statutory right to receive a free credit report annually from each of the nationwide consumer reporting agencies;
  - (5) The process for obtaining a free credit report;
  - (6) To the extent that the Affected Consumers have already obtained a free report during the preceding 12 months, DriveTime will inform such consumers of the means by which a credit report can be obtained free of charge so long as they apply for such report within 180 days of receiving a Notice; and
  - (7) The process consumers may use to dispute inaccuracies in their credit report.
- viii. Within 60 days of the Effective Date, in consultation with a third-party compliance consultant, update its written policies and procedures to include a specific process for identifying Systemically Inaccurate Information ("Audit Program"). At a minimum, the policies and

- procedures for the Audit Program must require that DriveTime: (1) examine a randomly selected sample of accounts for furnishing inaccuracies on a monthly basis using industry-accepted standards for selection and testing; (2) monitor and evaluate disputes it receives from the CRAs and its customers for indications of Systemically Inaccurate Information; and (3) cease furnishing information for all consumer accounts potentially affected by Systemically Inaccurate Information until such time as the Systemically Inaccurate Information is corrected, modified, deleted, or blocked as required by the FCRA;
- ix. Implement the Audit Program within 90 days of the Effective Date;
  - x. For those accounts that were modified in the seven years prior to the Effective Date where DriveTime knows or has reasonable cause to believe that Systemically Inaccurate Information caused by a system conversion affected the information furnished by DriveTime to the consumer reporting agencies, confirm, within 90 days of the Effective Date, that all conversion issues and related inaccuracies have been resolved;
  - xi. For inaccurate account information that DriveTime has reason to believe it may have furnished to a CRA, provide, within 120 days of the Effective Date, the corrected information to the CRA or request that the CRA delete the inaccurate information from the Affected Consumer's file and permanently block the refurnishing of such information; and
  - xii. Within 60 days of the Effective Date, create new training materials and train staff to comply with the terms of the Consent Order.

## VI

### **Independent Consultant's Report and Compliance Plan**

**IT IS FURTHER ORDERED** that:

62. Within 30 days of the Effective Date, DriveTime must secure and retain one or more independent consultants, with specialized experience in debt collection and credit information furnishing, and acceptable to the Enforcement Director, to conduct an independent review of DriveTime's collection and furnishing policies, procedures, and practices. The review must include specific recommendations on improving DriveTime's compliance management systems, internal control systems, and compliance audit procedures. The purposes of the review must be to advise DriveTime of the consultant's opinion as to:
  - a. whether DriveTime's policies and procedures provide adequate safeguards to prevent calls to consumers, references, and third parties that violate this Consent Order; and
  - b. whether DriveTime has the furnishing policies and procedures, staffing, facilities, and systems necessary to furnish accurate information regarding consumer accounts and to correct Systemically Inaccurate Information, including but not limited to furnishing of information that inaccurately reflected the timing of repossessions and dates of first delinquency.
63. Within 180 days of the Effective Date, the independent consultant(s) must prepare a written report detailing the findings of the review (the "Independent Consultant Report"), and provide the Independent Consultant Report to the Board.

64. Within 20 days of receiving the Independent Consultant Report, the Board must:
  - a. Develop a plan (the “Compliance Plan”) to: (i) correct any deficiencies identified, and (ii) implement any recommendations or explain in writing why a particular recommendation is not being implemented; and
  - b. Submit the Independent Consultant Report and the Compliance Plan to the Enforcement Director.
65. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or to direct the DriveTime to revise it. If the Enforcement Director directs DriveTime to revise the Compliance Plan, the Board must make appropriate revisions and resubmit the Compliance Plan to the Enforcement Director within 20 days.
66. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, DriveTime must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

## **VII**

### **Role of the Board**

**IT IS FURTHER ORDERED** that:

67. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
68. Although this Consent Order requires DriveTime to submit certain documents for the review or non-objection by the Enforcement Director, the Board will

have the ultimate responsibility for proper and sound management of DriveTime and for ensuring that DriveTime complies with Federal consumer financial law and this Consent Order.

69. In each instance that this Consent Order requires the Board to ensure adherence to, or undertake to perform, certain obligations of DriveTime, the Board must:
- a. Authorize whatever actions are necessary for DriveTime to fully comply with the Consent Order;
  - b. Require timely reporting by management to the Board on the status of compliance obligations; and
  - c. Require timely and appropriate corrective action to remedy any material non-compliance with any Board directives related to this Section.

### **MONETARY PROVISIONS**

#### **VIII**

#### **Order to Pay Civil Money Penalties**

**IT IS FURTHER ORDERED** that:

70. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law set forth in Section IV of this Consent Order, and taking into account the mitigating factors set forth in 12 U.S.C. § 5565(c)(3), DriveTime must pay a civil money penalty of \$8,000,000 to the Bureau.
71. Within 10 days of the Effective Date, DriveTime must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

72. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
73. DriveTime must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, DriveTime must not:
- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
74. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, DriveTime must not argue that DriveTime is entitled to, nor may DriveTime benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, DriveTime must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be deemed an additional civil money penalty and will not be deemed to change the amount of the civil money penalty imposed in this action.
75. In the event of any default on DriveTime's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will

accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

76. DriveTime must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to DriveTime.
77. In accordance with 31 U.S.C. § 7701, DriveTime, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
78. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, DriveTime must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that DriveTime paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

## **COMPLIANCE PROVISIONS**

### **IX**

#### **Reporting Requirements**

**IT IS FURTHER ORDERED** that:

79. DriveTime must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to



this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against DriveTime; or a change in DriveTime's name or address. DriveTime must provide this notice at least 30 days before the development or as soon as possible after learning about the development, whichever is sooner.

80. Within 90 days of the Effective Date, and again one year after the Effective Date, DriveTime must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, which, at a minimum:
  - a. Describes in detail the manner and form in which DriveTime has complied with this Order; and
  - b. Attaches a copy of each Order Acknowledgment obtained under Section X, unless previously submitted to the Bureau.
81. After the one-year period, DriveTime must submit to the Enforcement Director additional Compliance Reports within 30 days of receiving a written request from the Bureau.

## **X**

### **Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that:

82. Within 30 days of the Effective Date, DriveTime must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

83. For five years from the Effective Date, DriveTime must deliver a copy of this Consent Order to any business entity resulting from any change in structure as set forth in Section IX, any future board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
84. DriveTime must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. §§ 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

## **XI**

### **Recordkeeping**

**IT IS FURTHER ORDERED** that:

85. DriveTime must create, for at least five years from the Effective Date, the following business records:
  - a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
  - b. Copies of all collection scripts; training materials; data on credit information furnishing; and including any such materials used by a third party on behalf of DriveTime.
  - c. All consumer complaints related to debt collection or disputes related to credit information furnishing (whether received directly or indirectly, such as

- through a third party), and any responses to those complaints or disputes.
86. DriveTime must retain the documents identified in Paragraph 85 for at least five years.
87. DriveTime must make the documents identified in Paragraph 85 available to the Bureau upon the Bureau's request.

## **XII**

### **Notices**

**IT IS FURTHER ORDERED** that:

88. Unless otherwise directed in writing by the Bureau, DriveTime must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re DriveTime Automotive Group, Inc.*, File No. 2014-CFPB-0017," and send them either:

- a. By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement  
Consumer Financial Protection Bureau  
ATTENTION: Office of Enforcement  
1625 Eye Street, N.W.  
Washington D.C. 20006; or

- b. By first-class mail to the below address and contemporaneously by email to Enforcement\_Compliance@cfpb.gov:

Assistant Director for Enforcement  
Consumer Financial Protection Bureau  
ATTENTION: Office of Enforcement  
1700 G Street, N.W.

Washington D.C. 20552.

### **XIII**

#### **Compliance Monitoring**

**IT IS FURTHER ORDERED** that, to monitor DriveTime's compliance with this Consent Order:

89. Within 30 days of receipt of a reasonable written request from the Bureau, DriveTime must submit additional compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
90. DriveTime must permit Bureau representatives to interview any employee or other person affiliated with DriveTime who has agreed to such an interview. The person interviewed may have counsel present.
91. Nothing in this Consent Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.
92. For the duration of the Order in whole or in part, DriveTime agrees to be subject to the Bureau's supervisory authority under 12 U.S.C. § 5514. Consistent with 12 C.F.R. § 1091.111, DriveTime must not petition for termination of supervision under 12 C.F.R. § 1091.113.

### **XIV**

#### **Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

93. DriveTime may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.

94. The Enforcement Director may, in his/her discretion, modify any non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to reporting requirements) if he/she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

## **XV**

### **Administrative Provisions**

95. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against DriveTime, except as set forth in Paragraph 96.
96. The Bureau releases and discharges DriveTime from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against DriveTime and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
97. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly

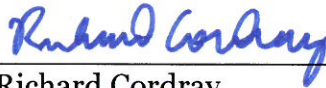
does not form, and may not be construed to form, a contract binding the Bureau or the United States.

98. This Consent Order will terminate five years from the Effective Date or five years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by DriveTime. If such action is dismissed or the relevant adjudicative body rules that DriveTime did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
99. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
100. The provisions of this Consent Order will be enforceable by the Bureau. Any violation of this Consent Order may result in the imposition by the Bureau of the maximum amount of civil money penalties allowed under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve DriveTime wherever DriveTime may be found and DriveTime may not contest that court's personal jurisdiction over DriveTime.
101. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than those set forth in this Consent Order

and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

102. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing DriveTime, its Board, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 7<sup>th</sup> day of November, 2014.



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Richard Cordray

Director

Consumer Financial Protection Bureau