

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING

File No. 2016-CFPB-0001

In the Matter of:

**Y KING S CORP., also doing business
as HERBIES AUTO SALES**

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the used automobile financing practices of Y King S Corp., d/b/a Herbies Auto Sales (Herbies), and has identified the following law violations: (1) TILA, 15 U.S.C. §§ 1601 *et seq.*, and its implementing regulation, Regulation Z, 12 C.F.R. Part 1026, for (a) failing to accurately disclose the finance charge and annual percentage rate for financing agreements; (b) failing to disclose the cost of the repair warranty as a finance charge; (c) failing to disclose the cost of the GPS payment reminder device as a finance charge; (d) failing to disclose the discount provided to cash customers as a finance charge; and (e) advertising a false annual percentage rate (APR); (2) the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536, for (a) misrepresenting the finance charges imposed on consumers, and (b) taking unreasonable advantage of consumers who were unable to protect their interests in selecting and obtaining financing for used car purchases. Under sections 1053 and 1055 of the Consumer Financial

Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I Overview

1. Herbies misrepresented credit information—finance charges and APRs—to its used car consumers in marketing materials and Truth-in-Lending-Act disclosures. Herbies required consumers from January 2012 through May 2014 to purchase an automobile repair policy when financing their car purchase but did not include the \$1,650 cost in the finance charges in disclosures. Also, from October 2013 through May 2014, Herbies required credit consumers to purchase a GPS payment reminder device but did not include the \$100 cost in the finance charges in disclosures. Finally, Herbies inflated used car prices to credit consumers but did not include the amounts in finance charges in disclosures. The car prices credit consumers paid were at inflated levels because Herbies maintained a practice of not negotiating prices with consumers who were financing their purchases while at the same time Herbies had a practice of negotiating with consumers who were paying for their purchases in cash. Thus, Herbies provided consumers with cash discounts, i.e., car prices at lower levels in cash transactions compared to car prices in credit transactions. The inflated prices associated with the cash discounts on average amounted to as much as a thousand dollars or more per car. These three costs of credit were not included as part of the finance charges in disclosures, making the promoted 9.99 percent APR inaccurate.

2. Further, Herbies took unreasonable advantage of consumers' inability to protect their interests in using or selecting Herbies' auto financing.

The opacity of the information, inaccurate credit terms, and the timing of disclosures Herbies provided relating to car pricing—including failing to post sticker prices—diminished consumers’ ability to protect their interests in selecting or using the financing offered by Herbies. Herbies took unreasonable advantage of this by exploiting its customers’ misunderstanding of the credit and sales terms for its own financial benefit.

II

Jurisdiction

3. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, and the Truth in Lending Act, 15 U.S.C. § 1607.

III

Stipulation

4. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated January 14, 2016 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent 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 Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

IV Definitions

The following definitions apply to this Consent Order:

5. “Affected Consumers” includes those consumers for whom Respondent originated financing for the purchase of automobiles on or after January 1, 2012; provided, however, the term does not include those consumers for whom Respondent charged-off their accounts prior to the Effective Date.
6. “Consumer” is defined as set forth in section 1002 of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5481.
7. “Clearly and prominently” means the disclosure must be of a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background on which it appears, and in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication with the consumer.
8. “Effective Date” means the date on which the Consent Order is issued.
9. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his delegate.
10. “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 Respondent based on substantially the same facts as described in Section V of this Consent Order.
11. “Respondent” means Y King S Corp., including Herbies Auto Sales and YKS Acceptance, Inc., and its successors and assigns.

12. “Service Provider” is defined as set forth in section 1002 of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5481.

13. The terms “annual percentage rate,” “credit,” and “finance charge,” are defined as set forth in sections 103, 106, and 107 of the Truth in Lending Act, 15 U.S.C. §§ 1602, 1605 and 1606 and sections 1026.2, 1026.4, and 1026.22 of Regulation Z.

V

Bureau Findings and Conclusions

The Bureau finds the following:

Respondent Herbies Auto Sales

14. Respondent is a used car dealer located in Greeley, Colorado.

15. Although Herbies now leases used cars to consumers, Herbies offered auto financing to consumers for used car purchases from January 2012 through May 2014. Herbies assigned the vast majority of these contracts to YKS Acceptance, Inc., an affiliated financing business that has the same corporate officers as Herbies and only takes assignment of Herbies’ installment contracts.

16. From January 2012 through May 2014, Herbies provided financing to more than a thousand Herbies’ used car consumers per year in the form of retail installment sales contracts, which are consumer financial products or services covered by the CFPA. 12 U.S.C. §§ 5481(5), 15 (A)(i). Therefore, Herbies is a “covered person” under the CFPA, 12 U.S.C. § 5481(6).

17. Under Regulation Z, a creditor is a person who regularly extends “consumer credit,” 12 C.F.R. § 1026.2(17), which includes credit offered or extended to a consumer for personal, family, or household purposes. 12 C.F.R. § 1026.2(12).

Therefore, under TILA, Herbies is the creditor and responsible for accurate disclosures in the retail installment contracts executed to finance Herbies car sales.

Herbies Credit Transactions

18. From January 2012 through May 2014, Herbies sold used cars to consumers—about 98% were sold to consumers in credit transactions and about 2% in cash transactions. Herbies' credit consumers typically had low or no credit scores and would generally therefore only qualify for what could be characterized as "subprime" loans.

19. The way Herbies approached these transactions and made—or failed to make—disclosures to these credit consumers resulted in additional financial benefit to Herbies through hidden and inaccurately disclosed finance charges, as described below.

20. Herbies' credit transactions occurred in the following sequence. First, the consumer set up an appointment online or simply stopped by Herbies' lot. Upon arrival, a sales member brought them to the sales manager to begin the credit application process before they had the opportunity to shop Herbies' inventory of cars.

21. Through the credit application process, Herbies sales manager would question the consumer—using a monthly budget sheet—to assess whether the consumer met Herbies' underwriting standards, and if so, how large a monthly payment the consumer could afford to pay for a car.

22. Based on that monthly payment determination (and assuming the consumer met Herbies' underwriting standards), Herbies' sales manager located a car within Herbies' inventory that matched the monthly payment Herbies determined the consumer could make, as well as the consumer's vehicle needs. Herbies' sales manager then directed the salesperson to show that specific car to the consumer. Herbies verified the consumer's employment by calling the consumer's workplace and checked with the

consumer's landlord about the consumer's rental payment history while the consumer test drove the selected car. If the employment was confirmed and the rental payment history was satisfactory, Herbies and the borrower executed the retail installment sales contract.

23. Herbies did not post sticker prices on the cars on its lot or otherwise provide consumers with asking prices. In fact, Herbies did not make purchase prices available to consumers until the very end of the transaction after they had come back from test drives and were ready to purchase the cars on credit. The car prices were disclosed only on paper along with all the other disclosures provided to the consumers at the end of the transaction.

24. Thus for credit consumers, Herbies' process amounted to a bundled car-and-credit transaction because Herbies did not tell the consumer the price of the vehicle until after the deal was struck.

25. Herbies had a policy or practice of not negotiating the price of the car with credit consumers.

26. Herbies cash sales were different. For consumers who wanted to pay cash for cars, Herbies maintained a policy or practice that the sales manager *could* negotiate with the consumer over the purchase price. In fact, cash consumers did typically negotiate with Herbies to lower the purchase prices of the cars.

**Findings and Conclusions as to the Failure to Disclose
the Cost of the Repair Warranty as a Finance Charge**

27. During the time from January 2012 and through May 2014, Herbies offered what it called a "new deal" to credit customers: Herbies lowered its APR in its retail sales installment contracts from an initial 21 percent (and an effective 16.2 percent

over the life of the loan) down to 9.99 percent and included with each sale a repair warranty policy.

28. Herbies funded the repair warranty program by charging a \$1,650 fee on the cars it sold to credit customers and allocating the fees in a reserve fund. This \$1,650 was an amount that offset the interest savings customers realized by being charged 9.99 percent instead of the previous 16.2 percent effective APR.

29. Herbies required each credit customer to purchase the repair warranty and pay the \$1,650; however, Herbies did not require cash customers to purchase the warranty and pay the \$1,650.

30. Herbies did not disclose the cost of the repair warranty as a finance charge in the Truth-in-Lending disclosures in the retail installment sales contracts entered into by credit consumers.

31. Regulation Z implements TILA, 15 U.S.C. § 1601 et seq., and is intended, among other things, “to promote the informed use of consumer credit by requiring disclosures about its terms and cost.” 12 C.F.R. § 1026.1. Regulation Z requires that the creditor provide consumers of closed-end credit, such as retail installment sales contracts, with clear and conspicuous written credit disclosures, 12 C.F.R. § 1026.17, including the finance charge and the APR. 12 C.F.R. § 1026.18(d), (e).

32. “The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.” 12 C.F.R. § 1026.4(a); *see also* 15 U.S.C. § 1605(a).

33. “The [APR] is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made.” 12 C.F.R. § 1026.22; *see also* 15 U.S.C. 1606.

34. By requiring that credit consumers purchase the repair warranty and imposing the cost of the repair warranty on credit consumers, but not cash consumers, Herbies imposed a finance charge.

35. By not accounting for the cost of the repair warranty as a finance charge in the retail installment sales contracts, Herbies inaccurately disclosed to consumers the cost of credit, including understating the finance charges and the resulting APRs.

36. Herbies’ inaccurate finance charge and APR disclosures violated TILA, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. § 1026.18(d), (e).

**Findings and Conclusions as to the Failure to Disclose
the Cost of the Required GPS Payment Reminder Device**

37. Since October 2013, Herbies has installed a GPS payment reminder device in each car it added to its inventory. This device allows Herbies to audibly remind borrowers to make their payments, disengage the ignition when a borrower is delinquent, and, when needed, locate the vehicle for repossession.

38. Herbies kept the GPS payment reminder device in each car it sold to credit consumers; however, Herbies removed GPS payment reminder devices from the cars it sold to consumers who engaged in cash transactions.

39. Herbies required each credit consumer to purchase the GPS payment reminder device and pay \$100 to cover the cost of the device; however, Herbies did not require cash consumers to purchase the device and pay the \$100.

40. Herbies did not disclose the \$100 cost of the GPS payment reminder device as a finance charge in the TILA disclosures in the retail installment sales contracts entered into by credit consumers.

41. By requiring that credit consumers purchase the GPS payment reminder device and imposing the cost of the device on credit consumers, but not cash consumers, Herbies imposed a finance charge.

42. By not accounting for the cost of the GPS payment reminder device as a finance charge in the retail installment sales contracts, Herbies inaccurately disclosed to consumers the cost of credit, including understating the finance charges and the resulting APRs.

43. Herbies' inaccurate finance charge and APR disclosures violated TILA, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. § 1026.18(d), (e).

Findings and Conclusions as to the Failure to Disclose the Discount Offered to Cash Customers through Negotiation as a Finance Charge

44. From January 2012 through May 2014, Herbies added a markup—over \$5,000 after refurbishing costs on average in 2014—to each of the cars it acquired for resale from auctions or other sources to determine a sales price.

45. The policy or practice of negotiating with cash customers—but not with credit consumers—led to markups being greater (as a percentage of the value of the purchased cars) for credit consumers than cash consumers, resulting in cash consumer receiving effective discounts. These discounts to cash consumers—or, in other words, the inflated prices to credit consumers—on average amounted to as much as a thousand dollars or more per car.

46. Herbies did not accurately provide in TILA disclosures any portion of the higher markups paid by credit consumers relative to cash consumers as part of the finance charge.

47. Under Regulation Z, a “finance charge” includes any discounts offered as an incentive to pay by a means other than credit. 12 C.F.R. § 1026.4(b)(9).

48. By negotiating the price of cars with cash consumers but not with credit consumers and forcing credit consumers to pay a greater markup, Herbies buried the cost of credit in the price of goods sold, thus imposing a finance charge on credit consumers. 12 C.F.R. § 1026.4(a).

49. Moreover, by allowing them to negotiate the price, cash customers were given an incentive to pay by a means other than credit. The discount that resulted from the negotiation is equivalent to the finance charge imposed on the credit customers.

50. By not accounting for this hidden finance charge in the retail installment sales contracts, Herbies inaccurately disclosed to consumers the cost of credit, including understating the finance charges and the resulting APRs.

51. Herbies’ inaccurate finance charge and APR disclosures violated TILA, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. § 1026.18(d), (e).

**Findings and Conclusions as to Misrepresentations and Omissions
Regarding the Finance Charges Imposed on Consumers**

52. Sections 1031 and 1036(a)(1)(B) of the CFPA prohibit “deceptive” acts or practices. 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

53. As stated above, Herbies failed to disclose the following charges as finance charges: the cost of the required repair warranty, the cost of the required payment reminder device, and the hidden finance charge associated with the discount received by cash customers through negotiation.

54. By failing to account for the finance charges, Herbies misrepresented the finance charges and the resulting APRs it was charging consumers in the retail installment sales contracts.

55. Failure to disclose these charges as costs of credit was likely to mislead the consumers acting reasonably under the circumstances about the actual cost of credit Herbies was offering.

56. The misrepresentation of these finance charges was material because a consumer would want to know how much he or she was paying for credit as opposed to how much he or she was paying for the car.

57. This misrepresentation was likely to the consumers' detriment because it was likely to mislead them into thinking they were paying less than they really were for financing, and it prevented them from being able to comparison-shop effectively.

58. Herbies' misrepresentations and failure to disclose material information constitute "deceptive" acts or practices that violate sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Findings and Conclusions as to Advertising an Inaccurate APR

59. Herbies has a highly visible lot and office, upon which for some time from January 2012 through May 2014 was painted in yellow and pink the promotional phrases, "9.99% Financing" and "24 month 24,000 mile Warranty."

60. When adding the costs of the repair warranty, the GPS payment reminder device, and higher markups, Herbies' credit consumers did not pay 9.99 percent APR. Instead, some consumers even paid APRs well beyond that 9.99 percent. And Herbies gained as much as thousands of dollars in hidden finance charges from each consumer.

61. “If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.”
12 C.F.R. § 1026.24.

62. By advertising a rate of 9.99 percent on its showroom windows while the actual APRs paid by consumers were more than 9.99 percent and often amounted to well beyond that 9.99 percent when the costs of the repair warranty, the GPS payment reminder device, and higher markups are added, Herbies’ advertisement misrepresented the actual terms of its retail installment sales contracts.

63. Herbies’ misrepresentation violated TILA, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. § 1026.24.

64. Sections 1031 and 1036(a)(1)(B) of the CFPA prohibits “deceptive” acts or practices. 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

65. By advertising a rate of 9.99 percent on its showroom windows while the actual APR was more than 9.99 percent and often amounted to well beyond that 9.99 percent when the costs of the repair warranty, the GPS payment reminder device, and the higher markups are added, Herbies’ advertisement misrepresented the actual terms of its retail installment sales contracts.

66. This advertisement was likely to mislead consumers acting reasonably under the circumstances into believing that the APR in the credit contracts they received was 9.99 percent; in fact, as described above, it was much higher.

67. Herbies’ misrepresentation associated with the APR was material because it was likely to affect consumers’ choice of or conduct regarding the financing of a vehicle from Herbies.

68. This misrepresentation was likely to the consumers' detriment because they would conclude they were paying less than they really were for financing, and it prevented them from being able to comparison-shop effectively.

69. Herbies' misrepresentation constitutes "deceptive" acts or practices that violate sections 1031 and 1036(a)(1)(B) of the CFPB, 12 U.S.C. § 5531; 12 U.S.C. § 5536(a)(1)(B).

Findings and Conclusion as to Herbies' Sales Tactics and Misrepresentations about Finance Charges

70. Sections 1031 and 1036(a)(1)(B) of the CFPB prohibits "abusive" acts or practices. 12 U.S.C. §§ 5531 and 5536(a)(1)(B). An act or practice is abusive if it "takes unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service. . . ." 12 U.S.C. § 5531(d)(2)(B).

71. During the time from January 2012 through May 2014, Herbies' consumers were unable to protect their interests in selecting and using the consumer financial products or services offered by Herbies.

72. Herbies' consumers were unable to distinguish the cost of the cars from the cost of the credit for the cars that they were purchasing. No sticker prices were placed on the cars for sale on Herbies' lot. Herbies did not disclose the prices of the cars until after the consumers had been approved for credit and the consumers had indicated that they would like to move forward with the purchase and financing.

73. Additionally, Herbies' consumers were unable to accurately assess the cost of credit for cars purchased from Herbies because Herbies misrepresented the APR charged to its credit consumers as 9.99 percent and failed to disclose the hidden finance charges for each transaction as part of the cost of credit, including the charge for the

repair warranty, the charge for the GPS payment reminder device, and the charge due to inflated purchase prices for credit transactions. Consumers were thus unable to negotiate or shop for better credit terms. Further, Herbies refused to negotiate terms with credit customers.

74. Herbies attracted credit sales by advertising and promoting an inaccurately low APR of 9.99 percent, while the actual APR for consumers was more than 9.99 percent and often amounted to well beyond that 9.99 percent when the costs of the repair warranty, the GPS reminder device, and the higher markups are added. And Herbies gained as much as thousands of dollars in hidden finance charges from each consumer.

75. Herbies took unreasonable advantage of the inability of consumers to protect their interests for its own financial benefit. Herbies advertised an inaccurately low APR, failed to post sticker prices or otherwise reveal the asking prices of cars offered to consumers until after consumers indicated that they would purchase a car, failed to disclose complete and accurate credit terms when providing them a periodic payment figure and before offering them a car, and failed to disclose accurate finance charges and APRs (due to not including the charge for the repair warranty, the charge for the GPS payment reminder device, and the charge due to inflated purchase prices for credit transactions). Those actions left consumers unable to protect their interests in selecting or using the credit transactions with Herbies, and Herbies exploited the situation for its own gain.

76. Herbies thus engaged in abusive practices in violation of CFPA sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

ORDER

VI

Conduct Provisions

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

77. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate the Truth in Lending Act, 15 U.S.C. § 1601 et seq., or its implementing regulation, Regulation Z, 12 C.F.R. Part 1026, and sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, as follows and must take the following affirmative actions:

- a. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or financing of any motor vehicle, may not misrepresent, or assist others in misrepresenting, expressly or impliedly, the interest rate, finance charge, amount financed, other credits terms of the sales, or any other fact material to consumers concerning the financing of any motor vehicle;
- b. In connection with its providing a retail installment sales contract to a consumer, Respondent and its officers, agents, servants, employees, and attorneys who receive actual notice of this Consent Order, shall provide consumers accurate disclosures of credit terms, including finance charges and APRs;
- c. In connection with offering or providing consumers credit for the purchase of an automobile, Respondent and its officers, agents, servants, employees, and attorneys who receive actual

notice of this Consent Order, shall clearly and prominently post a purchase price on all automobiles available for sale;

- d. In addition to the requirements of Regulation Z, and in connection with offering or providing consumers credit for the purchase of an automobile, Respondent and its officers, agents, servants, employees, and attorneys who receive actual notice of this Consent Order, shall disclose to the consumer in writing and obtain the consumer's signed acknowledgment of receiving the disclosure the following information that would apply in the event that the consumer financed the purchase of the automobile at the terms offered by the Respondent—prior or simultaneous to Respondent's offering a specific automobile to the consumer or in any way soliciting a commitment from the consumer to purchase from the Respondent:
 - i. The identity of the automobile by make, model, year, and vehicle identification numbers;
 - ii. The duration of the purchase financing contract;
 - iii. The timing, number, and dollar amount of periodic payments;
 - iv. The total number of payments that the consumer would need to make in order to acquire full ownership of the automobile;
 - v. The automobile purchase price if Respondent offers to finance the purchase for the consumer;
 - vi. The finance charge if Respondent offers to finance the purchase for the consumer;
 - vii. An itemization of any additional products to be included in the financing transaction including: warranties;

- payment reminder products (i.e., GPS devices); insurance products; vehicle enhancements; other automobile products; or memberships; and
- viii. The APR if Respondent offers to finance the purchase for the consumer (including amounts for any additional products that are not optional); and
- e. As Respondent complies with the Order to Pay Redress and other provisions of this Consent Order, Respondent shall update or correct any information furnished to any consumer reporting agency about the installment contract that is or becomes inaccurate.

VII

Compliance Plan

IT IS FURTHER ORDERED that:

78. Within 60 days of the Effective Date, Respondent must submit to the Enforcement Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's offering or providing consumers credit for the purchase of, an automobile complies with all applicable Federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:

- a. Detailed steps for addressing each action required by this Consent Order; and
- b. Specific timeframes and deadlines for implementation of the steps described above.

77. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent

to revise it. If the Enforcement Director directs the Respondent to revise the Compliance Plan, the Respondent must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 30 days.

78. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

VIII

Order to Pay Redress

IT IS FURTHER ORDERED that:

79. A judgment for equitable monetary relief is entered in favor of the Bureau and against Respondent, in the amount of \$700,000 dollars.

80. Within 60 days of the Effective Date, Respondent must submit to the Enforcement Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Enforcement Director will have the discretion to make a determination of non-objection to the Redress Plan or direct the Respondent to revise it. If the Enforcement Director directs the Respondent to revise the Redress Plan, the Respondent must make the revisions and resubmit the Redress Plan to the Enforcement Director within 15 days. After receiving notification that the Enforcement Director has made a determination of non-objection to the Redress Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

81. The Redress Plan must provide a calculation of the amount of redress to be paid to each Affected Consumer on a pro rata basis.

82. Under the Redress Plan, Respondent must issue redress as follows:

- a. For any Affected Consumer with an outstanding balance on a retail installment sales contract held by Respondent, Respondent must issue a one-time credit or credits over a period of time not to exceed three years from the Effective Date, send a redress check made payable to the consumer and mailed to the consumer's address as currently in the Respondent's books and records, or employ a combination of issuing a credit(s) and sending a check; and
- b. For any Affected Consumer with no outstanding balance on a retail installment sales contract held by Respondent, Respondent must send a redress check made payable to the consumer and mailed to the consumer's last-known address as set forth in the Respondent's books and records.

83. After completing the Redress Plan, if the amount of redress provided to Affected Consumers is less than \$700,000, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress provided to Affected Consumers and \$700,000.

84. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

85. Respondent may not condition the payment of any redress to any Affected Consumer under this Order on that Affected Consumer waiving any right.

IX

Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

86. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section V of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$100,000 to the Bureau, provided, however, that in consideration of Respondent's demonstrated inability to pay the penalty, full payment of this penalty shall be suspended upon satisfaction of the Respondent's obligations set forth in Section VIII (Order to Pay Redress).

X

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

87. In the event of any default on Respondent'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.

88. Respondent 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 Respondent.

89. Under 31 U.S.C. § 7701, Respondent, 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.

90. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent 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 Respondent 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.

91. Under section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 b(a)(1), any consumer reporting agency may furnish a consumer report concerning any Respondent to the Bureau, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

XI

Reporting Requirements

IT IS FURTHER ORDERED that:

92. Respondent 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 Respondent; or a change in Respondent's name or address. Respondent

must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.

93. Within 7 days of the Effective Date, Respondent must:

- a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent;
- b. Identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
- c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.

94. Respondent must report any change in the information required to be submitted under Paragraph 96 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

95. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which, at a minimum:

- a. Describes in detail the manner and form in which Respondent has complied with this Order; and
- b. Attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

XII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

96. Within 30 days of the Effective Date, Respondent 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.

97. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section XI (Reporting Requirements), 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.

98. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply 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.

XIII

Recordkeeping

IT IS FURTHER ORDERED that

99. Respondent must create, or if already created, must retain for at least 5 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. All documents and records pertaining to the Respondent's efforts to implement the Redress Plan, described in Section VIII (Order to Pay Redress) above.
 - c. Copies of all sales scripts; training materials; advertisements; websites; and other marketing materials; and including any such materials used by a third party on behalf of Respondent.
100. Respondent must retain the documents identified in Paragraph 99 for the duration of the consent order.
101. Respondent must make the documents identified in Paragraph 99 available to the Bureau upon the Bureau's request.

XIV Notices

IT IS FURTHER ORDERED that:

102. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re* Y King S Corp d/b/a Herbies Auto Sales, File No. 2016-CFPB-0001", 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

XV

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

103. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

XVI

Compliance Monitoring

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

104. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

105. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.

106. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

107. For the duration of the Order in whole or in part, Respondent agrees to be subject to the Bureau's supervisory authority under 12 U.S.C. § 5514. Consistent with 12 C.F.R. § 1091.111, Respondent may not petition for termination of supervision under 12 C.F.R. § 1091.113.

XVII

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

108. Respondent 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.

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

XVIII

Administrative Provisions

110. 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 Respondent, except as described in Paragraph 111.

111. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section V of this Consent Order, to the extent such practices occurred before the 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 Respondent 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.

112. All pending motions are hereby denied as moot.

113. 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.

114. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent 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.

115. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

116. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

117. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose 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 Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

118. 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 what is contained 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.

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

IT IS SO ORDERED, this 16 th day of January, 2016.



Richard Cordray
Director
Consumer Financial Protection Bureau