

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for New Jersey Division of Consumer Affairs

FILED

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Division of Consumer Affairs

By: Bryan S. Sanchez
Deputy Attorney General
(973) 648-2689

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

CARMAX AUTO SUPERSTORES, INC.,

Respondent.

Administrative Action

**ASSURANCE OF
VOLUNTARY COMPLIANCE**

WHEREAS this Assurance of Voluntary Compliance (“Assurance”) is entered into between the Attorney General of the State of New Jersey, Matthew J. Platkin (“Attorney General”), and the Acting Director of the New Jersey Division of Consumer Affairs, Cari Fais (“Director”), collectively “New Jersey”, and CarMax Auto Superstores, Inc., (“CarMax”) to resolve alleged violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 (“CFA”) without trial or adjudication on any issue of fact or law, and without admission of any wrongdoing or violation of law. Similar Assurances of Discontinuation or Assurances of Voluntary Compliance have been entered into by the Attorneys General of the States of Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii,¹ Illinois, Iowa, Kansas, Kentucky, Louisiana,

¹ Hawaii is represented on this matter by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to undertake

Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah,² Virginia, Washington, West Virginia, and Wisconsin (hereinafter referred to collectively as the “Attorneys General”);

WHEREAS New Jersey and CarMax (the “Part(y/ies)”), hereby enter into this Assurance and in consideration of their mutual agreement to the terms of this Assurance, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

THE PARTIES

1. The Attorney General is charged with the responsibility of enforcing the CFA. The Director is charged with the responsibility of administering the CFA on behalf of the Attorney General.

2. CarMax is a Virginia corporation with its principal place of business at 12800 Tuckahoe Creek Parkway, Richmond, Virginia 23238. CarMax currently offers used motor vehicles for sale at four retail stores located in Edison, Maple Shade, Sicklerville, and Wayne, New Jersey, from which vehicles could be purchased by New Jersey consumers.

consumer protection functions, including legal representation of the State of Hawaii. References herein to the “Attorneys General” or “Attorney General” as it pertains to Hawaii refers to the Executive Director of the State of Hawaii Office of Consumer Protection.

² With regard to Utah, references to “Attorney General” mean the Utah Attorney General acting as counsel to Utah Division of Consumer Protection (“Division”), the state agency charged with administering and enforcing the statutes listed in Utah Code Ann. § 13-2-6, including the Consumer Sales Practices Act, unless the context indicates otherwise.

DEFINITIONS

The following terms used herein shall have the following meanings:

3. “Clearly and Conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by consumers, including in all of the following ways:

- a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be made through the same means through which the representation requiring the disclosure is presented;
- b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood;
- c. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for consumers to easily hear and understand it;
- d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable;
- e. The disclosure must use diction and syntax understandable to consumers and must appear in each language in which the representation that requires the disclosure appears;

- f. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications; and
- g. The disclosure must not contradict or be contradicted by, or be inconsistent with, any other information with which it is presented. The disclosure must not mitigate or be mitigated by anything else in the communication. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is likely to be noticed, readable, and understandable, and it must not be obscured in any manner.

4. “Covered Conduct” shall mean CarMax’s misrepresentations and/or omissions of fact concerning the recall status of its vehicles sold to consumers prior to the Effective Date.

5. The “Effective Date” shall be thirty (30) days from the date that CarMax executes this Assurance.

6. “Open Recall” means an un-remedied vehicle or vehicle equipment defect as determined by either the vehicle manufacturer or the National Highway Traffic Safety Administration (“NHTSA”) and can be identified as having such defect by use of the Recalls Lookup by a Vehicle Identification Number (“VIN”) search available on NHTSA’s website (“NHTSA VIN Look-up”) or, in the alternative and at the option of CarMax, by use of a database with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results which provides substantially similar or superior information as provided by the then-current version of the NHTSA VIN Look-up.

7. “Triggering Event” shall mean a settlement agreement between CarMax and a state Attorney General not participating in this Assurance where such agreement requires CarMax to make additional disclosures beyond the terms of this Assurance as to whether a particular vehicle is subject to an Open Recall on any label affixed to the motor vehicle or internet advertisement.

APPLICATION

8. The provisions of this Assurance apply to CarMax and its officers, employees, representatives, agents, successors, assignees, merged or acquired entities, controlled affiliates, controlled subsidiaries or divisions, and parent or controlling entities.

9. The provisions of this Assurance shall apply to CarMax in connection with its advertising, marketing, offer and/or sale of vehicles to consumers.

10. This Assurance is not intended to constitute evidence or precedent of any kind except in any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all terms of this Assurance.

INJUNCTION

11. CarMax shall not engage in any act or practice in violation of the CFA.

12. So long as CarMax offers for sale used motor vehicles with Open Recalls, CarMax shall:

- a. Before documents are presented for signature by a consumer for the sale of an individual used motor vehicle to a consumer and before a consumer signs any of those documents, CarMax shall deliver and obtain the consumer’s signature to a standalone, written document that Clearly and Conspicuously conveys that the used motor vehicle is subject to an Open Recall that is unrepaired, and the safety risks associated with the recall, that is made

available by the NHTSA website or, in the alternative and at the option of CarMax, a commercial provider with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results which provides substantially similar or superior information as provided by the then-current version of the NHTSA VIN Look-up. For purposes of this paragraph, a “written document” includes an electronic document complying with United States Electronic Signatures in Global and National Commerce Act, P.L. 106-229, or similar state or federal statutes;

- b. Where CarMax offers a used motor vehicle for sale via internet properties owned and operated by CarMax (such as www.carmax.com or the CarMax mobile application), and such used motor vehicle may be the subject of an Open Recall, then CarMax shall Clearly and Conspicuously disclose, on the first page of any CarMax webpage that includes an overall description of the vehicle or vehicle history report (“Car Page”), that the used motor vehicle may be subject to an Open Recall for safety issues that have not been repaired. When a disclosure is required by this paragraph, CarMax shall also provide on the Car Page a hyperlink or other mechanism that will connect the consumer to the NHTSA VIN Look-up, or, in the alternative and at the option of CarMax, a commercial provider with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results which provides substantially similar or superior information as provided by the

then-current version of the NHTSA VIN Look-up, and will explain how consumers can determine whether an individual used motor vehicle is subject to an Open Recall for safety issues that have not been repaired; and

c. Where CarMax offers a used motor vehicle for sale on the premises of its stores, and such used motor vehicle may be the subject of an Open Recall, CarMax shall disclose, Clearly and Conspicuously, on any window sticker or other labeling affixed to used motor vehicles displayed for sale and which describes the vehicle and its price, that those used motor vehicles may be subject to an Open Recall for safety issues that have not been repaired. CarMax shall also provide on any applicable window sticker a hyperlink, QR Code, or other mechanism that will connect the consumer to the NHTSA VIN Look-up, or, in the alternative and at the option of CarMax, a commercial provider with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results which provides substantially similar or superior information as provided by the then-current version of the NHTSA VIN Look-up, and automatically fill the VIN of the used motor vehicle or Clearly and Conspicuously display a copy of the NHTSA VIN Look-up report. For those consumers without a smartphone or other means of accessing the internet, CarMax shall, upon request, provide to the consumer a device which allows the consumer to scan the hyperlink, QR code, or other mechanism, to access the NHTSA or commercial provider's website.

13. CarMax, directly or indirectly, in any manner, expressly or by implication shall not

represent in the marketing, advertising, offering for sale, or sale of used motor vehicles to consumers (including, but not limited to, on www.carmax.com or any other company website targeting consumers as well as vehicle labeling), regardless of whether the representation is written, oral or electronic, that the used motor vehicles that it offers for sale are “safe,” or have been repaired for “safety” issues.

14. CarMax, directly or indirectly, in any manner, expressly or by implication shall not represent that used motor vehicles that CarMax offers for sale or sells have been subject to rigorous inspection or reconditioning, unless:

- a. The used motor vehicles are not subject to any Open Recalls relating to safety, and the representation is otherwise not misleading; or
- b. CarMax discloses, Clearly and Conspicuously, and in close proximity to such representation if the representation is written or electronic, any material qualifying information related to Open Recalls, and the representation is not otherwise misleading. Material qualifying information related to Open Recalls shall include but not be limited to:
 - i. the fact that its used motor vehicles may be subject to recalls for safety issues that have not been repaired; and
 - ii. how consumers can determine whether an individual used motor vehicle is subject to an Open Recall for safety issues that has not been repaired.

15. When the rigorous inspection or reconditioning representation occurs as part of the in-store offer and sales process, the disclosure required under paragraph 14(b)(ii) shall occur in connection with that representation, and no later than the outset of any sales process involving

forms or other documents to be read and/or executed by a consumer in connection with the sale of an individual used motor vehicle to the consumer, and before a consumer signs any forms connected with the sale.

16. CarMax, directly or indirectly, in any manner, expressly or by implication shall not misrepresent in connection with the marketing, advertising, offering for sale, or sale of used motor vehicles to consumers the following:

- a. Whether there is or is not an Open Recall for safety issues on any of its used motor vehicles;
- b. Whether CarMax repairs used motor vehicles for Open Recalls; and
- c. Any other material fact about the safety or recall status of the used motor vehicles it advertises or offers for sale, or sells.

17. When CarMax engages third parties to offer for sale used motor vehicles via the third parties' internet properties, CarMax shall create and provide to the relevant third parties a seller representation page or the like, which page will include: (1) an express disclosure regarding potential Open Recalls on CarMax vehicles, and (2) an advisory to check the NHTSA VIN Look-up or the then-current website used by NHTSA, or through a database with information on vehicle recalls that is generally accepted based on the expertise of professionals in the relevant area to yield accurate and reliable results which provides substantially similar or superior information as provided by the then-current version of the NHTSA VIN Look-up.

18. CarMax shall implement the injunctive relief pursuant to the requirements of paragraphs 11-17 within 180 days of the Effective Date.

PAYMENT TO THE ATTORNEYS GENERAL

19. Within thirty (30) days after CarMax receives a fully executed Assurance containing both Parties signatures, CarMax shall pay to New Jersey, the agreed upon portion of the \$1,000,000 (One Million Dollars). The money received by the Attorneys General pursuant to this paragraph shall be used in accordance with state law at the sole discretion of each Attorney General for future consumer protection enforcement, consumer education or litigation, to defray the costs of the inquiry leading hereto, monitoring and potential enforcement of this settlement, or may be used for any other public purpose permitted by state law.

20. Pursuant to the amount designated by the Attorneys General, CarMax shall pay New Jersey \$27,294.97 by wire transfer.

21. New Jersey agrees to cooperate with any questions or requests for a copy of this settlement agreement or other documents made by the Internal Revenue Service, and New Jersey agrees to notify CarMax as soon as practicable of any such requests made by the Internal Revenue Service.

22. New Jersey takes no position on whether the Internal Revenue Service will allow any deduction by CarMax of any amounts paid under this settlement agreement. CarMax agrees that CarMax is fully responsible for the payment of all applicable taxes, including in the event any deductions for amounts paid under this settlement agreement are disallowed, as well as any fines or penalties imposed by the Internal Revenue Service. CarMax agrees that CarMax shall comply fully with this settlement agreement and not seek any modification regardless of the treatment by the Internal Revenue Service of amounts paid.

RELEASE

23. Following full payment of the amount due under paragraph 20 of this Assurance, New Jersey shall release and discharge CarMax from all civil claims, causes of action, damages, restitution, civil fines, costs, attorneys' fees, and penalties that New Jersey could have brought under the CFA based on the Covered Conduct prior to the Effective Date. Nothing in this paragraph shall be construed to limit the ability of the Attorneys General to enforce the obligations that CarMax has under this Assurance. Nothing in this Assurance shall be construed to create, waive, or limit any private right of action.

24. Notwithstanding any term of this Assurance, any and all of the following forms of liability are specifically reserved and excluded from the release in paragraph 23 as to any entity or person, including CarMax: (a) any criminal liability; and (b) any civil or administrative liability under any statute, regulation or rule not covered by the release in paragraph 23 above, including but not limited to, any and all of the following claims: (i) state or federal antitrust violations; (ii) state or federal securities violations; or (iii) state or federal tax claims.

COMPLIANCE MONITORING

25. No later than 180 days after the Effective Date, CarMax shall provide the Attorneys General with each of the disclosures it is making pursuant to the requirements of paragraphs 12, 14 and 15. Thereafter, for a period of five (5) years, CarMax shall give written notice, at least semi-annually, of any material changes to the required disclosures to the Attorney General of the State of Illinois using the following email and physical address: 500 South Second Street, Springfield, Illinois 62706 and Cassandra.halm@ilag.gov. CarMax also shall maintain and upon request provide the Attorneys General with the required disclosure(s). It is not necessary for CarMax to maintain and provide the Attorneys General with each individual use of the disclosures. If documents responsive to a request are in the nature

of a form or are standardized documents used in multiple transactions, then multiple copies of the same form or standardized document that are the same except for the information recorded on them need not be produced. CarMax shall not have to maintain responsive documents that differ only in the description of the vehicle or other ways not related to any representations covered by this order, including a website which differs only with respect to the individual vehicle details displayed in inventory or search page(s) of the site. The documents that CarMax must maintain and provide pursuant to this paragraph may be produced electronically or in a paper format.

DISPUTE RESOLUTION

26. For the purposes of resolving disputes with respect to CarMax's compliance with this Assurance, should New Jersey have a reasonable basis to believe that CarMax has engaged in a practice that violates a provision of this Assurance subsequent to the Assurance's Effective Date, then New Jersey shall notify CarMax in writing of the objection, identify the provision(s) of this Assurance that the practice appears to violate, and give CarMax ten (10) business days to respond to the notification.

27. Upon receipt of written notice from New Jersey, CarMax shall provide a good-faith written response to the notification, containing either a statement explaining why CarMax believes it is in compliance with the Assurance or a detailed explanation of how the alleged violation occurred and statement explaining how and when CarMax intends to remedy the alleged violation.

28. Except as set forth in paragraph 31 below, New Jersey may not take any action during the ten (10) business day response period. Nothing shall prevent New Jersey from agreeing in writing to provide CarMax with additional time beyond the ten (10) business days to respond to the notice.

29. It is agreed and understood that if any law applicable to the subject matter of this Assurance changes, whether state or federal, or if the NHTSA VIN Look-up changes or becomes unavailable, it is appropriate and contemplated that CarMax may request a modification of the Assurance and that the Attorneys General shall timely consider any modification requested with respect to the change. To seek a modification of this Assurance, for any reason, CarMax will send a request to New Jersey. In the event that New Jersey denies the modification request or fail to respond within thirty (30) days of the request, CarMax reserves all rights to pursue any legal or equitable remedies that may be available to it.

30. Nothing in this Assurance shall be interpreted to limit New Jersey's investigative subpoena authority.

31. New Jersey may assert any claim that CarMax has violated this Assurance in a separate civil action to enforce compliance with this Assurance, or may seek any other relief afforded by law, but only after providing CarMax an opportunity to respond to the notification and to remedy the alleged violation within the ten-business day response period as described above, or within any other period as agreed to by the Parties; provided, however, that New Jersey may take any action if it believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

GENERAL PROVISIONS

32. If a Triggering Event occurs within two years after the Effective Date of this Assurance, CarMax will notify each participating Attorney General of the Triggering Event and adopt those disclosures in all participating jurisdictions within 90 days of the Triggering Event.

33. CarMax shall not cause or encourage third parties, nor knowingly permit third parties acting as CarMax's agent or under its control or direction, to engage in practices from

which CarMax is prohibited by this Assurance.

34. CarMax shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in an act or practice in whole or in part that is prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance.

35. By agreeing to this Assurance, CarMax affirms and attests to the truthfulness, accuracy, and completeness of all of the information provided by it to Attorneys General prior to entry of this Assurance. The Attorneys General's agreement to this Assurance is expressly premised upon the truthfulness, accuracy, and completeness of the information provided by CarMax to the Attorneys General throughout the course of the inquiry into this matter, which information was relied upon by the Attorneys General in negotiating and agreeing to the terms and conditions of this Assurance.

36. This Assurance represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, the Parties agree that neither prior versions of this Assurance nor prior versions of any of its terms may be introduced in any court proceeding for any purpose whatsoever.

37. All Parties participated in the drafting of this Assurance. Any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in any interpretation of this Assurance.

38. No modification of the terms of this Assurance shall be valid or binding unless made in writing and signed and agreed to by all of the Parties.

39. This Assurance may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

40. Any notice that is made by any of the Parties to another Party shall be provided via Electronic and Overnight Mail to the persons identified below at the addresses listed below, unless a different contact person or address is specified in writing by the Party changing such contact person or address:

<p>For CarMax:</p> <p>Siran S. Faulders, Esq. Cozen O'Connor 1200 19th Street NW, 3rd Floor Washington, D.C. 20036 SFaulders@cozen.com</p>	<p>For the Attorney General and Director:</p> <p>Bryan S. Sanchez Deputy Attorney General State of New Jersey, Office of the Attorney General Division of Law 124 Halsey Street - 5th Floor P.O. Box 45029 Newark, New Jersey 07101 Bryan.Sanchez@law.njoag.gov</p>
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41. Any failure by any Party to this Assurance to insist upon the strict performance by any other Party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance. For New Jersey, this shall be without prejudice to the imposition of any applicable remedies, including but not limited to contempt or civil penalties as set forth in the CFA and/or the payment of attorneys' fees to New Jersey, and any other remedies under applicable state law.

42. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

43. Nothing in this Assurance shall be construed as relieving CarMax of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

44. The Parties understand and agree that this Assurance shall not be construed as an approval of or sanction by New Jersey of CarMax's business practices, and CarMax shall not represent otherwise. The Parties further understand and agree that any failure by New Jersey to take any action in response to any information submitted pursuant to the Assurance shall not be construed as an approval or sanction of any representation, act or practice indicated by such information, nor shall it preclude action thereon at a later date.

45. CarMax shall deliver a copy of this Assurance to, or otherwise apprise, its executive management having decision-making authority with respect to the subject matter of this Assurance within fourteen (14) days of the Effective Date.

46. CarMax represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

47. CarMax acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel as a compromise of disputed claims.

48. Nothing in this Assurance shall be construed to waive any claims of Sovereign Immunity the Attorney General may have in any action or proceeding.

49. This Assurance shall be governed by the laws of New Jersey.

IT IS ON THE 1st DAY OF December, 2022 SO
ORDERED.


MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: 
CARI FAIS, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS ASSURANCE ON THE DATES ADJACENT TO THEIR RESPECTIVE SIGNATURES.

FOR THE ATTORNEY GENERAL AND THE ACTING DIRECTOR

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: 
Patricia Schiripo
Section Chief, Deputy Attorney General
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: 11/1, 2022


CARMAX AUTO SUPERSTORES, INC.

By: 

Dated: 11/30, 2022

Daniel G. Bloor
Assistant Vice President and Associate General Counsel
12800 Tuckahoe Creek Parkway
Richmond, Virginia 23238

CARMAX AUTO SUPERSTORES, INC.
BY: COZEN O'CONNOR

By: 
Siran S. Faulders, Esq.
Member
1200 19th Street NW
Washington, DC 20036

Dated: November 30, 2022