

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Lina M. Khan, Chair**  
                                   **Rebecca Kelly Slaughter**  
                                   **Alvaro M. Bedoya**  
                                   **Melissa Holyoak**  
                                   **Andrew Ferguson**

**In the Matter of**

**ASBURY AUTOMOTIVE GROUP, INC.,  
a corporation,**

**ASBURY FT. WORTH FORD, LLC, a limited liability  
company, also d/b/a DAVID MCDAVID FORD  
FT. WORTH,**

**MCDAVID FRISCO – HON, LLC, a limited liability  
company, also d/b/a DAVID MCDAVID HONDA OF  
FRISCO,**

**MCDAVID IRVING – HON, LLC, a limited liability  
company, also d/b/a as DAVID MCDAVID HONDA OF  
IRVING, and**

**ALI BENLI, individually and as an officer of  
ASBURY FT. WORTH FORD, LLC,  
MCDAVID FRISCO – HON, LLC, and  
MCDAVID IRVING – HON, LLC.**

**DOCKET NO. D-9436**

**RESPONDENTS' ANSWER AND AFFIRMATIVE DEFENSES**

Respondents—Asbury Automotive Group, Inc., Asbury Ft. Worth Ford, LLC, also d/b/a David McDavid Ford Ft. Worth, McDavid Frisco – Hon, LLC, also d/b/a David McDavid Honda of Frisco, McDavid Irving – Hon, LLC, also d/b/a David McDavid Honda of Irving (collectively, “the 3 McDavid Dealerships”), and Ali Benli—respectfully state as follows for their Answer and Affirmative Defenses to the Complaint filed by the Federal Trade Commission (the “FTC” or the “Commission”).

Due to the general and unspecified nature of many of the allegations contained in the Complaint, Respondents can respond only to the information contained therein and when that information is overly general, Respondents cannot admit what is not plead specifically. To the extent that some of the Complaint merely quotes from statutory sources or portions thereof,

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Respondents simply defer to the language of the actual text in its entirety and do not admit or deny such references as they do not constitute factual assertions.

Except as specifically admitted below, Respondents deny the Commission's allegations. In addition, Respondents do not respond to the headings and sub-headings included in the Complaint—and reiterated below for ease of reference—as factual allegations because they are not well-pleaded allegations of fact. To the extent a response is required, any allegations in the headings and sub-headings are denied.

### **ADMISSIONS AND DENIALS BY PARAGRAPH**

Respondents admit that the FTC is bringing an action but deny the existence of any violations of law or that the FTC is entitled to any relief.

#### **Summary of Case**

##### **Complaint – Paragraph No. 1:**

*1. Respondents sell cars and trucks at multiple dealerships in and around Dallas, Texas. In selling these vehicles, Respondents often charge consumers for additional items (“add-ons”), such as service contracts, maintenance contracts, or chemical coatings, on top of the price of the vehicle. But in many instances, Respondents add these charges without consumers’ consent or misrepresent that the charges are required. And Respondents charge Black and Latino consumers more than non-Latino White consumers for add-ons, discriminatorily imposing higher costs on Black and Latino consumers. These add-on charges can amount to several thousand dollars, substantially increasing the cost of a vehicle—and Respondents’ profits.*

1. Respondents admit that cars and trucks are sold at the 3 McDavid Dealerships, other McDavid dealerships, and other dealerships owned or operated by Asbury Automotive Group, Inc. Respondents admit that when customers elect to purchase additional items—such as service contracts, maintenance contracts, or chemical coatings—Respondents may charge consumers for such additional items on top of the price of the vehicle. Respondents deny that “in many instances, Respondents add these charges without consumers’ consent or misrepresent that the charges are required.” Respondents deny that they “charge Black and Latino consumers more than non-Latino White consumers for add-ons, discriminatorily imposing higher costs on Black and Latino consumers.” Answering further, Respondents deny that their pricing and charges are based on the race or ethnicity of consumers, and deny that the FTC has any legitimate factual basis for determining the race or ethnicity of consumers who patronize their dealerships—much less for making the scurrilous and false accusation that Respondents charge certain consumers more based on their race or ethnicity. Answering further, Respondents admit that additional items, such as service contracts, maintenance contracts, or chemical coatings, can cost several thousand dollars. The Complaint does not include specific information as to what constitutes a “substantial increase.” Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegation that the cost of additional items “substantially increase[es] the cost of a vehicle—and Respondents’ profits” and on that basis deny the allegation. To the extent not

specifically addressed, Respondents deny the remainder of this paragraph. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details, including details regarding the alleged “survey” on which the Complaint is based, before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

### **Respondents**

#### **Complaint – Paragraph No. 2:**

2. *Respondent Asbury Automotive Group, Inc. (“Asbury”), is a Delaware corporation with its principal place of business at 2905 Premiere Parkway, Suite 300, Duluth, GA 30097. The individuals working at Asbury’s dealership locations are all Asbury employees, paid through a separately created wholly owned subsidiary.*

2. Respondents admit the factual assertions in the first sentence. Respondents admit that, with the exception of outside third-party vendors that perform work at dealership locations, workers at the 3 McDavid Dealership locations are Asbury employees and not independent contractors.

#### **Complaint – Paragraph No. 3:**

3. *Respondent Asbury Ft. Worth Ford, LLC, also d/b/a David McDavid Ford Ft. Worth (“McDavid Ford Ft. Worth”), is a Delaware limited liability company with its principal place of business at 300 West Loop 820 South, Ft. Worth, Texas 76108. McDavid Ford Ft. Worth is a wholly owned subsidiary of Asbury, and the individuals working at McDavid Ford Ft. Worth are all Asbury employees. At all relevant times, Asbury has performed various functions on behalf of McDavid Ford Ft. Worth, or has overseen such business functions, including human resources, finance, compliance auditing, and information technology and security. Asbury established relevant policies of McDavid Ford Ft. Worth, employed the personnel who worked at McDavid Ford Ft. Worth, and had control over the acts and practices of McDavid Ford Ft. Worth that are at issue in this Complaint.*

3. Respondents admit the factual assertions in the first sentence. Respondents admit the factual assertions in the second sentence with the exception that outside third-party vendors that perform work at dealership locations are not employees. The remainder of the paragraph is admitted except to the extent that it is denied that the alleged “acts and practices” are accurately described in the Complaint.

#### **Complaint – Paragraph No. 4:**

4. *Respondent McDavid Frisco – Hon, LLC, also d/b/a David McDavid Honda of Frisco (“McDavid Honda Frisco”), is a Delaware limited liability company with its principal place of business at 1601 North Dallas Parkway (7200 State Highway 121), Frisco, Texas 75034. McDavid Honda Frisco is a*

*wholly owned subsidiary of Asbury, and the individuals working at McDavid Honda Frisco are all Asbury employees. At all relevant times, Asbury has performed various functions on behalf of McDavid Honda Frisco, or has overseen such business functions, including human resources, finance, compliance auditing, and information technology and security. Asbury established relevant policies of McDavid Honda Frisco, employed the personnel who worked at McDavid Honda Frisco, and controlled the acts and practices of McDavid Honda Frisco that are at issue in this Complaint.*

4. Respondents admit the factual assertions in the first sentence. Respondents admit the factual assertions in the second sentence with the exception that outside third-party vendors that perform work at dealership locations are not employees. The remainder of the paragraph is admitted except to the extent that it is denied that the alleged “acts and practices” are accurately described in the Complaint.

#### **Complaint – Paragraph No. 5:**

*5. Respondent McDavid Irving – Hon, LLC, also d/b/a David McDavid Honda of Irving (“McDavid Honda Irving”), is a Delaware limited liability company with its principal place of business at 3700 West Airport Freeway, Irving, Texas 75062. McDavid Honda Irving is a wholly owned subsidiary of Asbury, and individuals working at McDavid Honda Irving are all Asbury employees. At all relevant times, Asbury has performed various functions on behalf of McDavid Honda Irving, or has overseen such business functions, including payroll, human resources, finance, compliance auditing, and information technology and security. Asbury established relevant policies of McDavid Honda Irving, employed the personnel who worked at McDavid Honda Irving, and controlled the acts and practices of McDavid Honda Irving that are at issue in this Complaint.*

5. Respondents admit the factual assertions in the first sentence. Respondents admit the factual assertions in the second sentence with the exception that outside third-party vendors that perform work at dealership locations are not employees. The remainder of the paragraph is admitted except to the extent that it is denied that the alleged “acts and practices” are accurately described in the Complaint.

#### **Complaint – Paragraph No. 6:**

*6. Respondent Ali Benli (“Benli”) is the General Manager of McDavid Ford Ft. Worth and an employee of Asbury, and was the General Manager of McDavid Honda Irving and the General Manager of McDavid Honda Frisco. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of McDavid Ford Ft. Worth, McDavid Honda Frisco, and McDavid Honda Irving, including the acts and practices set forth in this Complaint. As general manager, Respondent Benli has had control and responsibility over day-to-day operations of McDavid Ford Ft. Worth, McDavid Honda Frisco, and McDavid Honda Irving, including the implementation of financing and sales*

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*policies and the sale of add-on products and services. Respondent Benli has had knowledge of Respondents' unlawful practices, including* [REDACTED]

6. Respondents admit that Ali Benli ("Benli") is the General Manager of David McDavid Ford Ft. Worth and an employee of Asbury Automotive Group, Inc. Respondents admit that Benli was the General Manager of David McDavid Honda of Irving from December 16, 2020, to July 13, 2022. Respondents admit that Benli was the General Manager of David McDavid Honda of Frisco from May 15, 2019, to December 16, 2020. Respondents admit that, while employed as the General Manager at each dealership, Benli had responsibility for hiring, training, and supervising all department managers at the dealership at which he was then employed. In supervising department managers, Benli directed and monitored all supervisory personnel at the dealership at which he was then employed. Answering further, Respondents note that as General Manager, Benli was responsible for planning dealership operations for the coming years, which he would submit to Asbury Automotive Group, Inc. for approval for each dealership at which he was then employed. Respondents admit that, while employed as the General Manager of each dealership, Benli also oversaw the implementation of financing and sales policies, and policies related to the sale of additional items, such as service contracts, maintenance contracts, or chemical coatings. These financing, sales, and other policies related to the sale of additional items allow customers to negotiate for the purchase of vehicles and additional items. Answering further, Respondents note that, while employed as the General Manager of each dealership, Benli [REDACTED] related to the particular dealership at which Benli was the General Manager at the time. As the FTC has not provided any details regarding when and where particular acts alleged in this Complaint occurred, Respondents are unable to admit or deny that Benli was the General Manager at a particular dealership at the time the alleged acts took place. Respondents deny that there were any "unlawful practices." Respondents admit that as the General Manager of David McDavid Ford Ft. Worth, Benli has [REDACTED] Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 7:**

*7. Respondents Asbury, McDavid Ford Ft. Worth, McDavid Honda Frisco, and McDavid Honda Irving (collectively, "Corporate Respondents") have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Corporate Respondents have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, directors, business functions, employees, advertising, policies, and practices. Because Corporate Respondents have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below.*

7. Respondents deny the allegations in this paragraph other than that Respondents admit that Asbury Automotive Group, Inc., David McDavid Ford Ft. Worth, David McDavid

Honda of Frisco, and David McDavid Honda of Irving (collectively, “Corporate Respondents”) are a related network of companies.

**Complaint – Paragraph No. 8:**

8. *At all times relevant to this Complaint, acting alone or in concert with others, Respondents have advertised, marketed, distributed, or offered vehicles to consumers for sale, and have regularly arranged for the extension of credit.*

8. With the exception of the Complaint’s lack of specific information as to what constitutes “all times relevant to the Complaint” or “regularly,” Respondents admit the allegations of this paragraph.

**Complaint – Paragraph No. 9:**

9. *The acts and practices of Respondents alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.*

9. This paragraph contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that Section 4 of the Federal Trade Commission Act speaks for itself and deny any and all allegations inconsistent therewith.

**Respondents’ Business Activities**

**Complaint – Paragraph No. 10:**

10. *Asbury owns and operates a network of motor vehicle dealerships. It is the parent company and owner of the three dealership respondents—McDavid Ford Ft. Worth, McDavid Honda Frisco, and McDavid Honda Irving—and it employs the individuals who work at these dealerships. In many instances, Respondents have charged consumers for add-ons they did not agree to, misled consumers into believing add-ons were required, and charged Black and Latino consumers more than non-Latino White consumers for the same products, including add-ons.*

10. Respondents admit that Asbury Automotive Group, Inc. is the ultimate parent entity of a network of motor vehicle dealerships. Respondents deny that Asbury Automotive Group, Inc. directly owns any motor vehicle dealerships, including David McDavid Ford Ft. Worth, David McDavid Honda of Frisco, and David McDavid Honda of Irving. Respondents deny that Asbury Automotive Group, Inc. employs the individuals who work at the 3 McDavid Dealerships. Respondents admit that Asbury Automotive Group, Inc. directly employs only David Hult, Chief Executive Office of Asbury Automotive Group, Inc. Answering further, Respondents note that Asbury Automotive Group, LLC employs the individuals who work at the 3 McDavid Dealerships, with the exception that outside third-party vendors that perform work at dealership locations are not employees. Respondents also note that Asbury Management Services LLC provides payroll

for the 3 McDavid Dealerships. Respondents deny the third sentence in every respect. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

### **Respondents' Unauthorized and Deceptive Add-On Charges**

#### **Complaint – Paragraph No. 11:**

*11. Respondents charge consumers for an array of add-ons that are tacked on to the purchase of a vehicle, such as extended warranties, maintenance plans, chemical coatings, and dent protection. Under the policies set by Asbury, employees receive additional compensation for add-on charges, including bonuses that managers earn when a certain percentage of the dealer's sales include an add-on. Add-ons commonly cost consumers hundreds or thousands of dollars per transaction.*

11. Respondents deny the allegations in this paragraph other than that Respondents admit that when customers elect to purchase additional items, such as extended warranties, maintenance plans, chemical coatings, and dent protection, Respondents may charge consumers for such additional items and that some additional items can cost “hundreds or thousands of dollars.” Respondents admit that employees are compensated in accordance with their individual pay plans, not policy. Compensation may include several different components, including, for some employees, compensation based on the sales price of the vehicle, Customer Satisfaction Index (“CSI”) scores, customer agreement to purchase products, and other items. Respondents further note that they have policies that discourage the sale of products for the sole reason of increasing individual employees’ compensation.

#### *Unauthorized Charges*

#### **Complaint – Paragraph No. 12:**

*12. In numerous instances, Respondents have added unwanted charges to vehicle sales contracts. One tactic Respondents use is getting a consumer to agree to a monthly payment that exceeds what they need to pay under the contract to purchase a vehicle, and then “packing” the sales contract with add-on charges to make up the difference. For example, a salesperson might represent that a consumer qualifies for financing with a monthly payment of \$400, when the monthly payment for the vehicle under the contract is actually \$350. The salesperson then includes, or “packs,” the contract with add-ons to make up some or all of the difference between the two monthly payments, so that it appears the consumer is receiving a similar or smaller monthly payment.*

12. Respondents note that, despite repeated requests for same, the FTC refused to provide these or other details before filing the Complaint. Respondents deny all allegations in this paragraph, including the FTC’s description of “packing.” Respondents admit that they have a strict policy that prohibits any “payment packing.” Under Respondents’ internal audit standards, “payment packing” occurs when, during the *vehicle* negotiations, a sales employee presents the customer with monthly payments that are higher than the likely payments. If the dealership presents payments higher than they should be, based on that likely credit score, or fails to update

a payment quote once the likely credit score is known, Internal Audit finds that “payment packing” may have occurred. According to the Respondents’ internal audit standards, although “payment packing” may be done unintentionally, such as in response to a specific guest request for a quote at a specific rate, trade-in value, or with additional products that deviate from policy, when done intentionally the motive of payment packing can be for the sales team to get the guest accustomed to a higher payment. The hope is that the guest is then pleasantly surprised in the Finance Office with the good news that the dealership was able to get the base payment lowered. When happy with the savings, the guest may be more agreeable to purchasing add-on products, which the guest would still *voluntarily* purchase, by which time the guests will also have been presented with a written disclosure showing the true (lower) vehicle payment. Respondents admit that Respondents’ policy requires total transparency in the vehicle price negotiations. If customers are considering optional products, company policy requires that the customer receive both a quote that shows the price of the vehicle with no optional products and the price of the vehicle with the optional products. Customers must then approve the price of the vehicle and the price of the vehicle with any optional products selected. Respondents further admit that they strictly prohibit and monitor for this sort of gamesmanship of inflating the vehicle payment in the showroom to set the finance office up for easier sales of additional products.

**Complaint – Paragraph No. 13:**

*13. Many consumers have reported that Respondents, using this type of payment packing or other methods, charged them for add-ons the consumers never agreed to buy. For example, one consumer reported that McDavid Ford Ft. Worth charged him over \$2,800 for products he never agreed to, including \$1,200 for guaranteed asset protection (“GAP”) agreement; \$1,024 for ResistAll, a supposed microscopic chemical coating that claims to prevent damage to the vehicle’s interior and exterior; and \$584 for a key replacement service. Likewise, a David McDavid Honda Frisco consumer discovered that Respondents had charged her on multiple occasions for add-ons that she did not know about and never would have agreed to purchase, including \$3,000 for a service contract and over \$4,700 for a life insurance policy, a disability insurance policy, a maintenance plan, and a service contract.*

13. The Complaint does not include specific information as to what constitutes “many consumers” or to which customers, vehicles, or transactions the alleged reports relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 14:**

*14. Consumers have reported that Respondents sometimes did not mention the add-on items at all. For instance,*



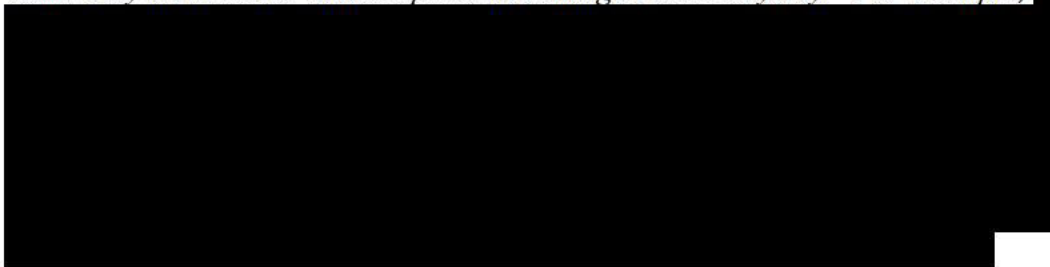




14. The Complaint does not include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Respondents deny that they “sometimes d[o] not mention the add-on items at all.” To the contrary, Respondents state that charges for additional products are identified for consumers at multiple times and in multiple documents throughout the purchasing process, including in the vehicle contracts. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 15:**

15. *Other consumers reported that they specifically declined add-on items only to discover that Respondents charged them anyway. For example,*



15. The Complaint does not include specific information as to which customers, vehicles, or transactions the allegations relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 16:**

16. *Consumers have reported that Respondents made it difficult for them to understand the terms of the transaction. One consumer described how a financing representative had the paperwork for the sale on his computer, but the screen was pointed in the direction of the representative so the consumer could not see it. She reported that the representative briefly described the document, and then asked her to sign on an electronic signature pad without viewing the document itself. And, not knowing that she had been charged for both a maintenance plan and service contract, she and her daughter paid for maintenance and repairs out of pocket. Similarly, a McDavid Honda Irving consumer signed his sales contract*

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*on a portable electronic device and was only shown the spots where he needed to sign and not the entire contract. Three weeks later, he discovered that the finance manager had added a \$1,750 maintenance package and \$609 key replacement package without permission.*

16. The Complaint does not include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 17:**

*17. Many consumers may not discover that Respondents have charged them without consent until after the vehicle transaction is complete, if ever. For example, after buying a car, a McDavid Ford Ft. Worth consumer discovered that the dealer had extended what he thought was a 72-month financing agreement to 84 months without his consent so that the lower monthly payment under the longer term masked the increase from the hidden charges for unwanted add-ons. Another consumer likewise discovered that his loan had been changed from a 72-month to an 84-month term without his consent, masking not only hidden charges for unwanted add-ons, but also a vehicle price increase of more than a thousand dollars.*

17. The Complaint does not include specific information as to what constitutes “many consumers” or to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 18:**

*18. Asbury has received directly many complaints from consumers reporting that they were charged for add-on products without consent. For example,*

*[REDACTED]*

*Other complaints Asbury has received include:*

- *[REDACTED]*
- *[REDACTED]*

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

18. The Complaint does not include specific information as to what constitutes “many complaints” or to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them, except that Respondents state that, from time to time, they may receive complaints regarding various issues. Respondents admit that they investigate and resolve such complaints that they receive. [REDACTED]

[REDACTED] Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 19:**

19. *Mr. Benli has received direct notice of consumer complaints. In particular, he tracked public complaints and pressured consumers to take down negative reviews.* [REDACTED]

*Among the complaints Mr. Benli received, in addition to those noted above:*

- *Consumer complaining he* [REDACTED]
- [REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]

19. The Complaint does not include specific information as to what constitutes “direct notice” or to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them, except that, Respondents state that, from time to time, they may receive complaints regarding various issues. Respondents admit that they investigate and resolve such complaints that they receive. [REDACTED]

[REDACTED] Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Respondents deny that Benli has “tracked” public complaints about the Respondents and “pressured” consumers to take them down. Respondents state that, at times, Benli may receive complaints regarding the sales or service departments at the dealerships at which he is employed, for example, via email or Google reviews. When Benli receives a complaint, he contacts the guest and works with the guest to remedy the stated concerns as Respondents’ goal is to retain guests for the long term. Answering further, Respondents note that, at times, following successful remedy of guest concerns, Benli may politely request that guests consider updating their online reviews regarding Respondents to the extent the guests feel an updated review is warranted. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

*Charges Misrepresented as Required*

**Complaint – Paragraph No. 20:**

*20. In numerous other instances, Respondents falsely represent that consumers are required to purchase an optional add-on. These representations are false. Neither the finance companies nor the vehicle manufacturers require that the add-ons be sold.*

20. The Complaint does not include specific information as to what constitutes “numerous other instances” or to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Respondents admit that finance companies and vehicle manufacturers

do not require the sale of additional products and deny that they make contrary representations to consumers. Answering further, Respondents note that all documents in the vehicle sales process which identify charges for additional products clearly state that the sale of such additional products is not required by the finance companies or vehicle manufacturers. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 21:**

21. *Many consumers have been charged thousands of dollars for add-ons that Respondents falsely claimed were required. For example, a David McDavid Ford Ft. Worth representative told one consumer that to finance the purchase of a truck, he had to purchase a bundle of add-ons—including a maintenance plan, chemical protection and warranty, windshield, extended vehicle warranty, and key replacement service—that ended up being more than \$9,500. Asbury has received many complaints from consumers that they were falsely told that add-ons were required. For example:*

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

21. The Complaint does not include specific information as to what constitutes “many consumers,” “many complaints,” and/or what statements the FTC contends constitute “complaints”—much less alleged complaints that Asbury Automotive Group, Inc. supposedly received. Nor does the Complaint include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them, except that, Respondents admit that, from time to time, they may receive complaints regarding various issues. Respondents admit that they investigate and resolve received

complaints. [REDACTED]

[REDACTED] Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 22:**

22. *Many consumers do not catch the dealers' misrepresentations before the paperwork is signed and the transaction is finalized. But even if consumers were to discover false representations or unauthorized charges mid-transaction, it is often unrealistic for consumers to walk away at that point. Buying a vehicle is a lengthy process involving complex, dense paperwork; it can take several hours or days to finalize, on top of the hours it can take to drive to and from a dealership. Consumers may need to take time off work or arrange childcare, and the immediate need for the vehicle for work, school, or other vital household reasons makes it infeasible to start the process anew at a different dealership.*

22. This paragraph appears to consist of speculation rather than factual allegations about Respondents, but to the extent they are considered factual allegations, Respondents deny them.

*Respondents' Add-on Misconduct Is Widespread*

**Complaint – Paragraph No. 23:**

23. *Respondents have added unwanted add-ons to vehicle sales without consumers' knowledge or consent, or misrepresented that an add-on was required, in numerous instances. According to a survey of consumers who Respondents charged for at least one add-on:*

- a) *At least 58% of consumers who purchased a vehicle at McDavid Ford Ft. Worth were charged for at least one add-on that they did not agree to buy or that was misrepresented as required.*
- b) *At least 75% of consumers who purchased a vehicle at McDavid Honda Frisco were charged for at least one add-on that they did not agree to buy or that was misrepresented as required.*
- c) *At least 73% of consumers who purchased a vehicle at McDavid Honda Irving were charged for at least one add-on that they did not agree to buy or that was misrepresented as required.*

23. The Complaint does not include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Nor does the Complaint include specific information as to the alleged "survey" report, results, and underlying data upon which the alleged "survey" relies. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them.

Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details regarding the alleged “survey” before filing the Complaint. The FTC’s allegations are inconsistent and are thus denied. On the face of the allegations in this paragraph, the FTC alleges that it conducted a survey of “consumers who Respondents charged for at least one add-on” and then alleges the results as percentages “of consumers who purchased a vehicle,” which is not the same population as supposedly surveyed. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.


**Complaint – Paragraph No. 24:**

*24. Asbury periodically audits its dealerships for misconduct. Asbury’s audit process relies on what the dealerships document in writing; Asbury does not contact consumers during the audit process to ask what employees at the dealership told them or what consumers understood about add-ons.*

24. The Complaint does not include specific information as to what constitutes “misconduct.” Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents admit that the Corporate Respondents employ audits on an ongoing real-time and after-the-fact basis to ensure compliance with company policies and legal requirements. On an ongoing real-time basis, an accounting center deal clerk, who is not a dealership employee, audits every single deal jacket before finalizing the sale against a “Compliance Checklist” to confirm all paperwork and signatures required, including signatures related to the purchase of additional items, are present in the deal jacket and correctly executed. On an after-the-fact basis, Asbury employs multiple compliance auditors who conduct frequent compliance audits of sampled deals. The samples target “higher risk” deals (*i.e.*, subprime guests, purchases where the loan amount is high, or purchases with higher-than-average profits on product sales). As with the deal clerks, the compliance auditors confirm the required paperwork is correctly executed. These auditors also conduct forensic review of the entire purchase process. The Corporate Respondents also outsource several audits a year to an external compliance consultant retained by the legal department for benchmarking/training of its own internal audit team. Corporate Respondents acknowledge that customers are not contacted during the audit process in which deal jackets are reviewed to confirm that all required paperwork and signatures—including signatures related to the purchase of additional items—are present in the deal jacket and correctly executed because the accuracy and completeness of a deal jacket is apparent on its face. Respondents state that employees of the 3 McDavid Dealerships regularly discuss with customers any concerns they may have regarding their individual transactions. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 25:**

*25. Despite their limited nature, audits at each Respondent dealership have uncovered substantial evidence that consumers are charged for add-ons without consent: the dealerships have each failed multiple audits due to payment packing and other*



PUBLIC

[REDACTED]

25. The Complaint does not include specific information as to what constitutes “substantial evidence,” that incomplete documentation is evidence that add-ons were “without consent,” or to which audits the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, thus deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Respondents deny that the Complaint accurately reflects the findings of the [REDACTED] audits [REDACTED]

In the audits of deals that closed [REDACTED]

[REDACTED] as only one example, auditors found that [REDACTED] deals [REDACTED] examined had *the potential* to have “inconsistent payment” or “suspected payment packing,” not that those deals actually involved payment packing. [REDACTED]

[REDACTED] Deals may be identified in this category of audit findings because they were inconsistent with the dealership’s heightened internal policy related to payment quotes without necessarily constituting the deceptive practice of payment packing. For example, a deal may be identified as being included in this category of audit findings if a payment quote was handwritten instead of being given through the Respondents’ electronic compliance tool. By falsely suggesting that [REDACTED] transactions [REDACTED] involved payment packing, the FTC unscrupulously and inappropriately relies on sample bias to assert the allegations in this paragraph. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 26:**

26. [REDACTED]

26. The Complaint does not include specific information as to what constitutes [REDACTED] or to which [REDACTED] the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Respondents deny that the Complaint accurately reflects [REDACTED]



[REDACTED]

[REDACTED] By  
[REDACTED] falsely suggesting that  
[REDACTED] the FTC unscrupulously and inappropriately relies  
on [REDACTED] to assert the allegations in this paragraph.

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

Respondents also deny that the allegation, [REDACTED] accurately reflects [REDACTED] Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 27:**

27. *As a rule, Asbury does not contact consumers after the audits, even if they determine that consumers have been the victim of “Deceptive Practice[s].”*

27. Respondents deny the premise of and allegations in this paragraph. No internal audit has “determined that consumers have been the victim of ‘Deceptive Practice[s].’” Respondents further deny that they, “[a]s a rule, . . . do[ ] not contact consumers after the audits.” Respondents admit that at times they do contact customers following audits of their deals.

**Complaint – Paragraph No. 28:**

28. *Additional Asbury internal documents confirm the widespread problems identified in the audits. For example,* [REDACTED]

28. The Complaint does not include specific information as to what internal documents the allegations of this paragraph refer or what constitutes “widespread problems.” Nor does the Complaint include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 29:**

29. *Similarly,* [REDACTED]

29. The Complaint does not include specific information as to what constitutes a [REDACTED] as the term is used in this paragraph, nor to which [REDACTED] the allegations of this paragraph refer. The Complaint also fails to include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents deny that they would ever [REDACTED]

Respondents admit that if they learn of allegations related to their business, they investigate, confirm or deny the allegations, and respond to such allegations.

**Complaint – Paragraph No. 30:**

30. *Also* [REDACTED]

30. The Complaint does not include specific information as to what [REDACTED] the allegations of this paragraph refer. Nor does the Complaint include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. While the Complaint does not specifically identify the source of its factual assertions, Respondents admit

PUBLIC

that they impose price caps for the sale of certain additional items. The sale of additional products at costs that exceed price caps is a violation of company policy but not a violation of law.

**Complaint – Paragraph No. 31:**

31. [REDACTED]

31. The Complaint does not include specific information as to what internal documents the allegations of this paragraph refer. Nor does the Complaint include specific information as to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. [REDACTED]

**Respondents’ Discriminatory Add-on Financing Practices**

**Complaint – Paragraph No. 32:**

*32. Respondents arrange financing through third-party financing entities for consumers to purchase motor vehicles and pay for these add-ons. In these credit transactions, Respondents mark up the price on add-ons for Black and Latino consumers and extract more in profit from them than from others, even though the cost to Respondents is the same. As detailed above, many consumers do not know that Respondents are charging them for add-ons, let alone that they are being charged more than consumers of a different race, color, or national origin.*

32. Respondents admit that they arrange financing through third-party financing entities for consumers who seek such financing to purchase motor vehicles and pay for additional items. Respondents deny the other allegations in this paragraph. The Complaint does not include specific information as to what constitutes “many consumers” or to which customers, vehicles, or transactions the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated request for same, the FTC refused to provide these and other details before filing the Complaint. While having been denied any information regarding the basis for the allegations, Respondents deny them based on their own review of Asbury sales data which does not show the alleged racial disparity, and notes that the FTC never requested and did not have access to the detailed information necessary to account for other factors that could affect the cost of financing or additional items. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 33:**

33. *Respondents routinely charge different consumers for the same add-ons at prices that are hundreds of dollars apart. In particular, McDavid Fort Worth charges Latino consumers, on average, approximately \$ [REDACTED] more for the same add-ons than non-Latino White consumers. McDavid Honda Frisco charges Black consumers, on average, \$ [REDACTED] more for the same add-ons, and charges Latino consumers, on average, \$ [REDACTED] more for the same add-ons, than non-Latino White consumers. And McDavid Honda Irving charges Black consumers, on average, \$ [REDACTED] more for the same add-ons, and charges Latino consumers, on average, \$ [REDACTED] more for the same add-ons, than non-Latino White consumers. These disparities are statistically significant even when accounting for other factors that could affect the cost of add-ons.*

33. The Complaint does not include specific information as to the basis for the allegations of this paragraph. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated request for same, the FTC refused to provide these and other details before filing the Complaint. While having been denied any information regarding the basis for the alleged calculations, Respondents deny that they track the race and/or ethnicity of consumers in the ordinary course of business. Answering further, Asbury notes that the FTC never requested and did not have access to the detailed information necessary to “account[] for other factors that could affect the cost of add-ons” as alleged in the Complaint. Respondents admit that customers may be charged differently for additional products for a variety of reasons, including for example, due to the make, model, and model year of the vehicle purchased, and/or the types of coverages purchased. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 34:**

34. *Respondents treat Black and Latino consumers differently from non-Latino White consumers. Respondents target Black and Latino consumers with packed add-ons and higher-priced add-ons. For example, Respondents encourage employees to pack add-ons more often in contracts with Latino consumers and consumers who are non-native English speakers. No legitimate, nondiscriminatory reasons exist for the Respondents charging higher prices for the same or similar add-ons to Black and Latino consumers than to similarly situated non-Latino White consumers.*

34. Respondents deny the allegations in this paragraph.

**Complaint – Paragraph No. 35:**

35. *Moreover, Respondents’ policy and practice is to give their employees free rein to charge different prices for the same or similar add-ons, leading to statistically significant disparities. This practice is not justified by a business necessity that could not be met by a less discriminatory alternative.*

35. Respondents deny the allegations in this paragraph.

### **VIOLATIONS OF THE FTC ACT**

#### **Complaint – Paragraph No. 36:**

36. *Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”*

36. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute referenced, 15 U.S.C. § 45(a), speaks for itself and deny any and all allegations inconsistent therewith.

#### **Complaint – Paragraph No. 37:**

37. *Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.*

37. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute referenced, 15 U.S.C. § 45(a), speaks for itself and deny any and all allegations inconsistent therewith.

#### **Complaint – Paragraph No. 38:**

38. *Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).*

38. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute referenced, 15 U.S.C. § 45(n), speaks for itself and deny any and all allegations inconsistent therewith.

### **Count I**

#### **Misrepresentations Regarding Charges**

#### **Complaint – Paragraph No. 39:**

39. *In numerous instances, in connection with the offering for sale or financing, or sale and financing of vehicles, Respondents represent, directly or indirectly, expressly or by implication, that charges appearing on consumers’ sales contracts are authorized by consumers.*

39. The Complaint does not include specific information as to what constitutes “numerous instances” or to which vehicles or customers the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the

Complaint. Respondents admit that when customers purchase additional items with vehicles, each of the documents that identify the additional items purchased requires a customer acknowledgement or signature assenting to the purchase of such additional items. Indeed, immediately below the signature line on the final acceptance forms for purchase, the forms state:

“You should be aware the products above are optional and contain additional benefits, limitations, and exclusions from coverage. PLEASE REVIEW THE CONTRACT. By signing above you certify that all valuable options have been clearly explained and fully understand that there is no requirement to purchase any of these coverages in order to obtain financing. I further represent that Dealership personnel have disclosed their Privacy Policy as mandated under the Gramm Leach Bliley Act.”

Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 40:**

40. *In fact, in numerous instances in which Respondents make the representations set forth in Paragraph 39, the charges appearing on consumers’ sales contracts include charges not authorized by consumers.*

40. The Complaint does not include specific information as to what constitutes “numerous instances” or as to the vehicles or customers to which the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these or other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 41:**

41. *Therefore, Respondents’ representations as set forth in Paragraph 39 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).*

41. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute cited speaks for itself and deny that they have violated the cited statute.

**Count II**  
**Misrepresentation Regarding Add-On Charges**

**Complaint – Paragraph No. 42:**

42. *In numerous instances, in connection with the offering for sale or financing, or sale and financing of vehicles, Respondents represent, directly or*

PUBLIC

*indirectly, expressly or by implication, that consumers are required to buy one or more add-ons.*

42. The Complaint does not include specific information as to what constitutes “numerous instances” or to which vehicles or customers the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 43:**

*43. In fact, in numerous instances in which Respondents make the representations set forth in Paragraph 42, consumers are not required to buy the add-ons.*

43. The Complaint does not include specific information as to what constitutes “numerous instances” or to which vehicles or customers the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 44:**

*44. Therefore, Respondents’ representations as set forth in Paragraph 42 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).*

44. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute cited speaks for itself and deny that they have violated the cited statute.

**Count III  
Unfair Practices Relating to Unauthorized Charges**

**Complaint – Paragraph No. 45:**

*45. In numerous instances, Respondents charge consumers without obtaining their express, informed consent.*

45. The Complaint does not include specific information as to what constitutes “numerous instances” or to which vehicles or customers the allegations of this paragraph relate. Therefore, Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, deny them. Respondents note that, despite repeated requests for same, the FTC refused to provide these and other details before filing the



Complaint. Except as expressly admitted herein, Respondents deny the allegations of this paragraph.

**Complaint – Paragraph No. 46:**

46. *Respondents' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.*

46. Respondents deny the allegations in this paragraph.

**Complaint – Paragraph No. 47:**

47. *Therefore, Respondents' acts or practices as set forth in Paragraph 45 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).*

47. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute cited speaks for itself and deny that they have violated the cited statute.

**VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B**

**Complaint – Paragraph No. 48:**

48. *Section 701(a)(1) of the ECOA, 15 U.S.C. § 1691(a)(1), and Section 202.4(a) of Regulation B, 12 C.F.R. § 202.4(a), prohibit a creditor from discriminating against an applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. Ch. 41.*

48. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute and regulation cited speak for themselves and deny any and all allegations inconsistent therewith.

**Complaint – Paragraph No. 49:**

49. *Corporate Respondents are creditors as defined in Section 702(e) of the ECOA, 15 U.S.C. § 1691a(e), and Section 202.2(l) of Regulation B, 12 C.F.R. § 202.2(l).*

49. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute and regulation cited speak for themselves and deny any and all allegations inconsistent therewith.

**Complaint – Paragraph No. 50:**

50. *Section 704(c) of the ECOA, 15 U.S.C. § 1691c(c), specifically empowers the Commission to enforce the ECOA. Respondents' violations of the ECOA are deemed to be violations of the FTC Act and are enforceable as such by the Commission under that Act. Further, the Commission is authorized to use all of its functions and powers under the FTC Act to enforce compliance with the ECOA by any person, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests set by the FTC Act. This includes the power to enforce a Consumer Financial Protection Bureau regulation promulgated under the ECOA, such as Regulation B, in the same manner as if a violation of that regulation had been a violation of an FTC trade regulation rule.*

50. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statutes cited speaks for themselves and deny that they have violated the cited statutes.

**Count IV**  
**Discriminatory Financing Practices**

**Complaint – Paragraph No. 51:**

51. *In connection with motor vehicle credit transactions, on the basis of race, color, or national origin, Respondents impose higher costs on Black and Latino applicants on average than on similarly situated non-Latino White applicants.*

51. Respondents deny the allegations in this paragraph.

**Complaint – Paragraph No. 52:**

52. *Respondents' acts, policies, and practices as set forth in Paragraph 51 constitute discrimination against applicants with respect to any aspect of a credit transaction on the basis of race, color, or national origin in violation of Section 701(a)(1) of the ECOA, 15 U.S.C. § 1691(a)(1), and Section 202.4(a) of Regulation B, 12 C.F.R. § 202.4(a).*

52. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, Respondents state that the statute and regulation cited speak for themselves and deny that they have violated the cited statute and/or regulation.

**AFFIRMATIVE AND OTHER DEFENSES**

Respondents assert the following affirmative and other defenses without waiver of any others that may be available to it. Each is asserted in the alternative and none is an admission by Respondents. Respondents specifically reserve the right to raise any additional defenses and affirmative defenses at any time during the pendency of these proceedings, including any and all that may come to light through discovery or otherwise. In alleging these affirmative and other

defenses, Respondents do not assume any burden of proof, persuasion, or production not otherwise assigned them under applicable law.

1. **Laches.** The FTC served its Civil Investigative Demand on Respondents approximately two years ago, on August 1, 2022. Having waited such a long time before taking any action, excluding any period for which the Tolling Agreement applied, the FTC is barred by laches from asserting any claim for preliminary or permanent injunctive relief. Any request for preliminary or permanent injunctive relief based upon allegations that are several years old and for which there is no evidence that they are ongoing or continuing courses of conduct should also be barred by laches.

2. **Failure to State a Claim Against the Respondents.** The Complaint fails to state a claim for which relief can be granted. The Complaint makes no specific, identifiable allegations attributed to Respondents. Further, the Complaint fails to assert any ongoing violations of law such that would entitle the FTC to relief.

3. **Failure to State a Claim Against Respondent Benli.** The Complaint fails to state a claim against Respondent Benli for which relief can be granted. The Complaint makes no specific allegations attributed to Respondent Benli in his individual capacity related to his participation in unlawful acts or his enactment or enforcement of any policies or procedures that promote unlawful acts. All allegations which refer to Respondent Benli refer to his possible receipt of complaints, without addressing his response to such complaints. There is no theory by which the FTC can argue that Respondent Benli is vicariously or jointly and severally liable as an individual for any and all acts of the Asbury Automotive Group, Inc., David McDavid Ford Ft. Worth, David McDavid Honda of Irving, or David McDavid Honda of Frisco.

4. **No Monetary Relief Available.** Section 13(b) of the FTC Act provides the FTC with the ability to file suit in District Court for injunctive relief to halt ongoing violations. According to *AMG Capital Management, LLC v. FTC*, 141 S.Ct. 1341 (2021) and *FTC v. Credit Bureau Center, LLC*, 937 F.3d 764 (7th Cir. 2019, cert. granted), the FTC is not authorized to seek monetary relief in this matter, to the extent the Notice of Contemplated Relief, including at paragraph j, could be construed to include claims for monetary relief because Section 13(b) authorizes only prospective, not retrospective relief. The Complaint fails to state a claim for which monetary relief may be granted under Section 701(a)(1) of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1), and Section 202.4(a) of Regulation B, 12 C.F.R. § 202.4(a).

5. **Respondents Acted in Good Faith.** At all relevant times, Respondents acted in good faith and in accordance with all applicable statutory and common law obligations.

6. **Violations of Respondents' Due Process & Other Constitutional Rights.**

- a. The Seventh Amendment to the U.S. Constitution requires that the right to a jury trial for suits arising in common law exceeding \$20 in value be preserved. This proceeding entails the administrative adjudication of issues for which the Seventh Amendment affords Respondents' the right to trial by jury and is governed by a statutory scheme that provides for the potential future imposition of civil penalties. Under the statutes and regulations governing this proceeding, however,

Respondents have no right to a jury trial. Therefore, this proceeding violates Respondents' right to a trial by jury under the Seventh Amendment.

- b. Article III of the U.S. Constitution requires that the judicial power of the United States be vested in Article III courts. As a result, cases involving private rights may not be removed from the jurisdiction of those courts. Such private rights that cannot be removed from the jurisdiction of the Article III courts include property rights. The FTC seeks to usurp the exclusive jurisdiction of the Article III courts by actively impinging on respondents' private rights to property. The FTC's adjudication of private rights, including in this proceeding, violates Article III of the U.S. Constitution and the Seventh Amendment.
- c. The Commission's procedures arbitrarily subject Respondents to administrative proceedings rather than to proceedings before an Article III judge in violation of Respondents' right to Equal Protection under the Fifth Amendment to the U.S. Constitution.
- d. Congress unconstitutionally delegated legislative power to the FTC by failing to give the FTC an "intelligible principle" by which to exercise the delegated power. Congress may grant legislative power to an agency only if it provides an "intelligible principle" by which the agency can exercise that power. Congress cannot otherwise properly delegate to the FTC the decision whether it should use administrative action, rather than a civil action in a court, to redress alleged misconduct. Congress' unconstitutional delegation of legislative power to the FTC violates Article I of the U.S. Constitution.
- e. The statutory procedures for appointment and removal of the FTC's administrative law judges violate the appointments clause set forth in Article II, Section 2, Clause 2 of the U.S. Constitution and the separation of powers.
- f. Article II, Section 3 of the U.S. Constitution provides that the President must "take Care that the Laws be faithfully executed," and grants the President appointment and removal powers over executive officers. The Commissioners are executive officers because they exercise executive authority delegated to them by the President of the United States, including by exercising prosecutorial discretion and the ability to initiate enforcement proceedings. The Commissioners are not freely removable by the President. *See* 15 U.S.C. § 41. They may only be removed from their positions for "inefficiency, neglect of duty, or malfeasance in office." *Id.* Because they exercise executive authority but are not freely removable by the President, the Commissioners' insulation under Section 41 of the FTC Act violates Article II, Section 3 of the U.S. Constitution and the separation of powers.
- g. Under the FTC Act, the FTC, as prosecutor, initiates an administrative proceeding in its discretion, and, as judge, finally adjudicates the matter, including through factual findings and legal determinations. Such a structural dual role of prosecutor and adjudicator violates Respondents' right to due process under the Fifth

PUBLIC

Amendment to the U.S. Constitution because it brings into serious question whether the respondent will receive a fair and unbiased hearing before a neutral arbiter.

- h. The FTC's structural dual role under the FTC Act also violates the separation of powers.
- i. The FTC's procedures also violate Respondents' rights to procedural due process under the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
- j. Granting the relief the FTC seeks in these proceedings would constitute a taking of Respondents' property in violation of the Fifth Amendment to the U.S. Constitution.

### **ADDITIONAL DEFENSES**

Respondents have not knowingly or intentionally waived any applicable affirmative or other defense and reserve the right to rely upon such defenses as may become available or apparent. Respondents further reserve the right to amend this Answer and/or affirmative defenses accordingly, and/or withdraw affirmative defenses Respondents determine are not applicable.

### **RESPONDENTS' PRAYER FOR RELIEF**

Respondents respectfully request that the case be dismissed because here, the FTC, its processes, and the FTC Act:

- a. Fail to comply with the Seventh Amendment to the U.S. Constitution by failing to provide for trial by jury;
- b. Adjudicate private rights outside of an Article III tribunal, in violation of Article III of the U.S. Constitution and the Seventh Amendment;
- c. Violate equal protection for Respondents under the Fifth Amendment to the U.S. Constitution by arbitrarily subjecting Respondents to administrative proceedings rather than to proceedings before an Article III judge;
- d. Violate Article I of the U.S. Constitution by improperly delegating legislative power;
- e. Violate Article II of the U.S. Constitution and the separation of powers due to the appointments and removal processes for the Commissioners and the administrative law judge;
- f. Violate separation of powers and Respondents' right to due process under the Fifth Amendment to the U.S. Constitution because of the FTC's structural dual role under the FTC Act;
- g. Violate Respondents' rights to procedural due process under the Due Process Clause of the Fifth Amendment to the U.S. Constitution because of the FTC's procedures;

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- h. Violate the Respondents' right to procedural due process under the Fifth Amendment to the U.S. Constitution; and
- i. Intend to Take Respondents' property in violation of the Fifth Amendment to the U.S. Constitution through the relief sought by the FTC in this proceeding.

Respondents further request that judgment be entered in their favor and against the Federal Trade Commission, remove Benli as a Respondent, and that Respondents be granted such other and further relief as is just and proper.

**THEREFORE**, the Respondents this 3rd day of September, 2024, have issued this Answer in response to the Federal Trade Commission's Complaint.

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COUNSEL FOR RESPONDENTS

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2024, I caused the forgoing **RESPONDENTS'**  
**ANSWER AND AFFIRMATIVE DEFENSES** to be filed electronically using the FTC's E-  
Filing system, which will send notification of such filing to:

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Rm. H-113  
Washington, DC 20580  
[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

OFFICE OF ADMINISTRATIVE LAW JUDGES  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Rm. H-110  
Washington, DC 20580

The Honorable Dania L. Ayoubi  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I further certify that on September 3, 2024, I caused a courtesy copy of the forgoing to be  
served via email to:

[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

[OALJ@ftc.gov](mailto:OALJ@ftc.gov)

I further certify that on September 3, 2024, I caused the forgoing to be served via email  
to:

Jamie D. Brooks (Attorney)  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
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