

**IN THE MATTER OF
CARMAX AUTO SUPERSTORES, INC.**

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between CarMax Auto Superstores, Inc. ("CarMax") and North Carolina Attorney General Joshua H. Stein ("the Attorney General"), pursuant to his powers under Chapters 75 and 114 of the North Carolina General Statutes (the aforesaid persons and entities shall collectively be referred to as the "Parties") to resolve alleged violations of North Carolina's consumer protection laws without trial or adjudication on any issue of fact or law, and without admission of any wrongdoing or violation of law. In consideration of their mutual agreements to the terms of this Settlement Agreement, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

PARTIES

1. The Attorney General is responsible for the enforcement of North Carolina's consumer protection laws.
2. CarMax Auto Superstores, Inc. is a Virginia corporation with its principal place of business at 12800 Tuckahoe Creek Parkway, Richmond, VA 23238. CarMax offers used motor vehicles for sale at retail stores located in certain states, including North Carolina, from which vehicles could be purchased by consumers residing in North Carolina.

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

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.
- 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. **“Consumer Protection Act”** means the following statute: North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*

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

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.

APPLICATION

7. The provisions of this Agreement 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.

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

COMPLIANCE PROVISIONS

9. CarMax shall not engage in any act or practice in violation of the Consumer Protection Act.

10. So long as CarMax offers for sale used motor vehicles with open recalls:

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.

- 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.

11. 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.

12. 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.

13. When the rigorous inspection or reconditioning representation occurs as part of the in-store offer and sales process, the disclosure required under paragraph 12(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.

14. 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 safety 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.

15. 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.

16. CarMax shall implement the injunctive relief pursuant to the requirements of paragraphs 9-15 within 180 days of the Effective Date.

PAYMENT TO THE ATTORNEY GENERAL

17. Within thirty (30) days after CarMax receives a fully executed Agreement, CarMax shall pay the Attorney General the sum of Thirty Thousand Eighty-Six Dollars and Twenty-Nine Cents (\$30,086.29) to be used for attorney's fees, investigative costs, consumer protection enforcement, other consumer protection purposes, and other purposes allowed by law, at the discretion of the Attorney General.

18. The Attorney General 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 the Attorney General agrees to notify CarMax as soon as practicable of any such requests made by the Internal Revenue Service.

19. The Attorney General 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

20. Following full payment of the amount due under paragraph 17 of this Agreement, the Attorney General shall release and discharge CarMax from all civil claims, causes of action, damages, restitution, civil fines, costs, attorneys' fees, and penalties that the Attorney General could have brought under the Consumer Protection Act based on the covered conduct prior to the Effective Date. For purpose of this release, "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. Nothing in this paragraph shall be construed to limit the ability of the Attorney General to enforce the obligations that CarMax has under this Agreement. Nothing in this Agreement shall be construed to create, waive, or limit any private right of action.

21. Notwithstanding any term of this Agreement, any and all of the following forms of liability are specifically reserved and excluded from the release in paragraph 20 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 20 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

22. No later than 180 days after the Effective Date, CarMax shall provide the Attorney General with each of the disclosures it is making pursuant to the requirements of paragraphs 10, 12 and 13 supra. 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 Attorney General with the required disclosure(s). It is not necessary for CarMax to maintain and provide the Attorney 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

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

24. Upon receipt of written notice from the Attorney General, CarMax shall provide a good faith written response to the Attorney General notification, containing either a statement explaining why CarMax believes it is in compliance with the Agreement or a detailed explanation

of how the alleged violation occurred and statement explaining how and when CarMax intends to remedy the alleged violation.

25. Except as set forth in paragraph 28 below, the Attorney General may not take any action during the ten-business day response period. Nothing shall prevent the Attorney General from agreeing in writing to provide CarMax with additional time beyond the ten business days to respond to the notice.

26. It is agreed and understood that if any law applicable to the subject matter of this Agreement 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 Agreement and that the Attorney General shall timely consider any modification requested with respect to the change. To seek a modification of this Agreement, for any reason, CarMax will send a request to the Attorney General. In the event that the Attorney General denies the modification request or fails 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.

27. Nothing in this Agreement shall be interpreted to limit the Attorney General's Civil Investigative Demand or investigative subpoena authority.

28. The Attorney General may assert any claim that CarMax has violated this Agreement in a separate civil action to enforce compliance with this Agreement, 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 CarMax and the Attorney General; provided, however, that the Attorney General may take any action if the Attorney General believes

that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

GENERAL PROVISIONS

29. If a Triggering Event occurs within two years after the Effective Date of this Agreement, CarMax will notify the Attorney General of the Triggering Event and adopt those disclosures in all participating jurisdictions within 90 days of the Triggering Event. For purposes of this paragraph, a "Triggering Event" shall mean a settlement agreement between CarMax and a state not participating in this settlement where such agreement requires CarMax to make additional disclosures beyond the terms of this Agreement as to whether a particular vehicle is subject to an open recall on any label affixed to the motor vehicle or internet advertisement.

30. 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 Agreement.

31. This Agreement 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 Agreement nor prior versions of any of its terms may be introduced in any court proceeding for any purpose whatsoever.

32. All parties participated in the drafting of this Agreement.

33. No modification of the terms of this Agreement shall be valid or binding unless made in writing and signed and agreed to by all of the parties.

34. This Agreement 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.

35. 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.

For CarMax: Siran S. Faulders, Esq.
 Cozen O'Connor
 1200 19th Street, NW, 3rd Floor
 Washington, D.C. 20036
 sfaulders@cozen.com

For State: Torrey D. Dixon
 Special Deputy Attorney General
 North Carolina Department of Justice
 P.O. Box Office 629
 Raleigh, NC 27602
 tdixon@ncdoj.gov

36. Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, 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 Agreement. For the Attorney General, 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 Consumer Protection Act and/or the payment of attorneys' fees to the Attorney General, and any other remedies under applicable state law.

37. If any clause, provision or section of this Agreement 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 Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

38. Nothing in this Agreement 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 Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

39. The parties understand and agree that this Agreement shall not be construed as an approval of or sanction by the Attorney General of CarMax's business practices, and CarMax shall not represent otherwise. The parties further understand and agree that any failure by the Attorney General to take any action in response to any information submitted pursuant to the Agreement 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.

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

41. 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 Agreement or for any other purpose which would otherwise circumvent any part of this Agreement.

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

43. Nothing in this Agreement shall be construed to waive any claims of Sovereign Immunity any State may have in any action or proceeding.

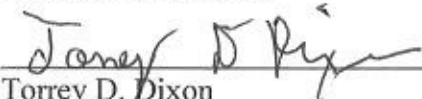
THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENT OF THE FOREGOING SETTLEMENT AGREEMENT.

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


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STATE OF NORTH CAROLINA
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Dated: November 30, 2022

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