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ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Motor Vehicle Dealer and
Sales Finance Company Licenses of:

No. 14F-BD030-SBD

**326 CARS, L.L.C. d/b/a 326 CARS; JOANN
ELIZABETH HIGDON, MANAGING
MEMBER; JOSEPH DONALD HIGDON,
MANAGING MEMBER; AND DAVID A.
KINAS, MANAGER**

CONSENT ORDER

3101 East Prince Road
Tucson, Arizona 85716

Respondents.

On October 16, 2013, the Arizona Department of Financial Institutions (“Department”) issued an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent To Entry Of Order, alleging that Respondents 326Cars, L.L.C. d/b/a 326 Cars, Joseph Donald Higdon and Joann Elizabeth Higdon Managing Members of Respondent Company, and David A. Kinas had violated Arizona law. Wishing to resolve this matter in lieu of an administrative hearing, Respondents consent to the following Findings of Fact and Conclusions of law, and consent to the entry of the following Order.

FINDINGS OF FACT

1. 326 Cars, L.L.C. d/b/a 326 Cars (“Respondent Company”) is an Arizona limited liability company that was organized on or about April 1, 2011 and that is not and was not, at anytime material herein, authorized to transact business in Arizona as a motor vehicle dealer or a sales finance company within the meaning of A.R.S. §§ 44-281 *et seq.*

2. Joseph Donald Higdon (“Mr. Higdon”) and Joann Elizabeth Higdon (“Mrs. Higdon”) are Managing Members of Respondent Company and are not authorized to transact business in Arizona as a motor vehicle dealer or sales finance company within the meaning of A.R.S. § 44-281 *et seq.*

3. Respondent David A. Kinas (“Mr. Kinas”), a former Managing Member of

1 Respondent Company,¹ is currently the Operations Manager of Respondent Company and is not
2 authorized to transact business in Arizona as a motor vehicle dealer or a sales finance company
3 within the meaning of A.R.S. §§ 44-281 *et seq.*

4 4. Respondents are not exempt from licensure as a motor vehicle dealer or a sales
5 finance company within the meaning of A.R.S. §§ 44-281(12)(c) and 44-282(J).

6 5. On or about July 2, 2013, the Department received from Respondents the Motor
7 Vehicle Dealer/Sales Finance Company Application No. #0923721 (“Application”), seeking a
8 Motor Vehicle Dealer license.

9 6. In response to the Department’s inquiry, Respondent Company disclosed to the
10 Department that it sold forty-five (45) vehicles on a non-cash basis from April 5, 2012 until July 19,
11 2013, and that at least ten (10) of those vehicles were financed via a “buy here pay here”
12 arrangement between buyers and Respondent Company, with Respondent Company carrying or
13 holding the retail installment contracts for these cars in an amount in excess of a total aggregate
14 outstanding indebtedness of fifty thousand (\$50,000.00) dollars.

15 7. The website of the Arizona Department of Transportation (“ADOT”) <http://www.azdot.gov/mvd/MotorVehicleDealers/LicensedDealers.asp> and its brochure inform
16 applicants that dealers “selling on a non-cash basis may be required to obtain a motor vehicle sales
17 license from Arizona Department of Financial Institutions.”

18 8. These Findings of Fact shall also serve as Conclusions of Law.

19
20 **LAW**

21 1. Pursuant to A.R.S. §§ 6-122, 6-123, 6-101(17), 44-281 *et seq.*, the Superintendent
22 has the authority and the duty to regulate all persons engaged in business and affairs of financial
23 institution and enterprises, including Motor Vehicle Dealers and Sales Finance Companies, and
24 require appropriate records, documents, information and reports from any financial institution or
25 enterprise.

26

¹ Mr. Kinas was a managing member of Respondent Company until January 10, 2013, when the Respondent Company’s ownership was transferred to Mr. Higdon and Mrs. Higdon.

1 2. The conduct of Respondents, as alleged above, constitutes a violation of the statutes
2 and rules governing financial institutions and enterprises.

3 3. A.R.S. § 44-282(A) states, “No person shall engage in the business of a sales finance
4 company in this state without a license therefor as provided in this article. No dealer shall engage in
5 business in this state without a license issued by the administrator. No dealer shall sell or transfer
6 any contract to a person in Arizona not licensed under the terms of this chapter.”²

7 4. Respondents transacted motor vehicle dealer business and sales finance company
8 business in Arizona without a license. Specifically:

9 a. Respondents sold at least three (3) or more motor vehicles on a non-cash basis
10 annually within the meaning of A.R.S. § 44-281(3), while unlicensed by the
11 Department as a motor vehicle dealer, in violation of A.R.S. § 44-282(A).

12 b. Respondents created or held retail installment contracts exceeding a total aggregate
13 outstanding indebtedness of fifty thousand dollars (\$50,000.00), while unlicensed by
14 the Department as a sales finance company, in violation of A.R.S. § 44-281(12).

15 5. The violations set forth above constitute grounds for: (1) the issuance of an order
16 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
17 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
18 Superintendent to correct the conditions resulting from the unlawful acts, practices, and
19 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; and (3) an
20 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
21 motor vehicles dealers and sales finance companies pursuant to A.R.S. §§ 6-123 and 6-131.

22 ² A.R.S. § 44-281(3) defines a “Dealer” as “any person who in any year sells on a non-cash basis three or
23 more motor vehicles at retail.” A.R.S. § 44-281(12) defines a “Sales finance company” as “(a) . . . a person
24 engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail
25 sellers. (b) Includes a person engaged, in whole or in part, in the business of creating or holding retail
26 installment contracts that exceed a total aggregate outstanding indebtedness of fifty thousand dollars. (c)
 Does not include: (i) The pledgee of an aggregate number of retail installment contracts to secure a bona fide
 loan thereon. (ii) A dealer who creates retail installment contracts and assigns the retail installment contracts
 to third party lenders or financial institutions unless the dealer holds retail installment contracts that exceed a
 total aggregate outstanding indebtedness of fifty thousand dollars.”

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ORDER

1. Respondents shall immediately stop the violations set forth in the Findings of Fact and Conclusions of Law.

2. Respondents shall comply with all Arizona statutes and rules regulating Arizona Motor Vehicle Dealers and Sales Finance Companies.

3. Respondents shall immediately, and no later than **March 10, 2014**, pay to the Department a civil money penalty in the amount of **seven thousand five hundred dollars (\$7,500.00)**. Respondents are jointly and severally liable for payment of the civil money penalty.

4. The provisions of this Order shall be binding upon Respondents, their employees, agents and other persons participating in the conduct of the affairs of Respondents.

5. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated or set aside.

SO ORDERED this 13 day of March, 2014.

Lauren W. Kingry
Superintendent of Financial Institutions

By: 
Robert D. Charlton
Assistant Superintendent

CONSENT TO ENTRY OF ORDER

1. Respondents acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of the right to an administrative hearing in this matter, and have waived the same.

2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Respondents state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.

4. Respondents agree to immediately cease from engaging in the violative conduct set

1 forth above in the Findings of Fact and Conclusions of Law.

2 5. Respondents acknowledge that the acceptance of this Agreement by the
3 Superintendent is solely to settle this matter and does not preclude this Department, any other
4 agency or officer of this state or subdivision thereof from instituting any proceeding as may be
5 appropriate now or in the future.

6 6. Failure to correct the violations set forth above or any future examination findings of
7 repeat violations shall result in disciplinary action which may include a greater civil money penalty.

8 7. Donald Higdon represents that he is the Managing Member of Respondent Company
9 and is authorized to consent to the entry of this Order individually and on behalf of Respondent
10 Company.

11 8. Joann Elizabeth Higdon represents that she is the Managing Member of Respondent
12 Company and is authorized to consent to the entry of this Order individually and on behalf of
13 Respondent Company.

14 9. David A. Kinas represents that he is the Manager of Respondent Company and is
15 authorized to consent to the entry of this Order individually and on behalf of Respondent Company.

16 10. Respondents waive all rights to seek judicial review or otherwise to challenge or
17 contest the validity of this Cease and Desist Order.

18 DATED this 27th day of Feb., 2014.

19
20 By Joanne Elizabeth Higdon
21 Joann Elizabeth Higdon, Managing Member
22 326 Cars, L.L.C.

20 By Donald Higdon
21 Donald Higdon, Managing Member
22 326 Cars, L.L.C.

23 By D. Kinas
24 David A. Kinas, Manager
25 326 Cars, L.L.C.

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ORIGINAL of the foregoing filed this 14th
day of March, 2014, in the office of:

Lauren W. Kingry, Superintendent of Financial Institutions
Arizona Department of Financial Institutions
Attn: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

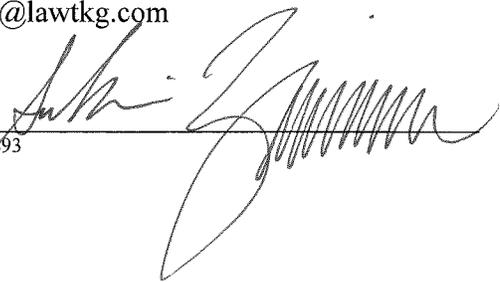
COPY of the foregoing e-mailed/delivered same date to:

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Natalia.Garrett@azag.gov

Robert D. Charlton, Assistant Superintendent
Tammy Seto, Senior Examiner
Attn: Sabrina Zimmerman
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Sabrina.Zimmerman@azdfi.gov

AND COPY mailed and emailed same date, to:

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Tucson, AZ 85715
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scott@lawtkg.com

By: 
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