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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF NEVADA**

13
14 In the Matter of

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 vs.

18 A AAAAUTO CAR BROKERS, INC.;
AAA ANYWHERE ANYTIME AUTO
19 BROKERS, INC.; and

20 KATHERINE ANN CARTER, individually
and as an officer of said corporations.

21 Defendants.
22

STIPULATED FINAL ORDER
FOR PERMANENT
INJUNCTION AND
SETTLEMENT OF CLAIMS
FOR CONSUMER REDRESS

23 Plaintiff, the Federal Trade Commission (“Commission”), and defendants A AAAAuto
24 Brokers, Inc., AAA Anywhere Anytime Auto Brokers, Inc., and Katherine Ann Carter, individually
25 and as an owner or officer of said corporations (“defendants”), hereby stipulate and agree to entry of a
26 Stipulated Final Order for Permanent Injunction and Settlement of Claims for Consumer Redress

1 against the defendants under the terms stated herein. This Stipulated Final Order for Permanent
2 Injunction and Settlement of Claims for Consumer Redress (“Order”) against A AAAAuto Brokers,
3 Inc., AAA Anywhere Anytime Auto Brokers, Inc., and Katherine Ann Carter resolves all matters
4 raised by the Complaint the Commission filed against said defendants pursuant to Sections 13(b) of the
5 Federal Trade Commission Act, 15 U.S.C. §§ 53(b), which charged defendants with violating Section
6 5(a) of the FTC Act, 15 U.S.C. 45(a).

7 The Summons and Complaint having been served on defendants, plaintiff Commission and
8 defendants request that the Court enter the accompanying Order with the following terms to resolve all
9 matters of dispute between them in this action:

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

11 **FINDINGS**

- 12 1. This Court has jurisdiction over the subject matter and the parties.
- 13 2. Venue is proper as to all parties in the District of Nevada.
- 14 3. The activities of defendants are in or affecting commerce, as defined in the FTC Act,
15 15 U.S.C. § 44.
- 16 4. The Complaint states a claim upon which relief may be granted against defendants
17 under §§ 5(a)(1) and (13(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 53(b).
- 18 5. Defendants have waived any and all rights that may arise under the Equal Access to
19 Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64
20 (1996).
- 21 6. Plaintiff and defendants, by and through their counsel, have agreed that the entry of this
22 Order resolves all matters of dispute between them arising from the Complaint in this
23 action, up to the date of entry of this Order.
- 24 7. Plaintiff and defendants waive all rights to seek appellate review or otherwise challenge
25 or contest the validity of this Order. Defendants further waive and release any claim
26 they may have against the Commission, its employees, agents, and representatives.

- 1 8. This Order is for settlement purposes only and does not constitute and shall not be
2 interpreted to constitute an admission by defendants that they have engaged in violations
3 of any law or regulation, including but not limited to the FTC Act, or that the facts
4 alleged in the Complaint, other than the jurisdictional facts, are true.
- 5 9. Entry of this Order is in the public interest.

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7 **ORDER**

8 **DEFINITIONS**

- 9 1. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or
10 services;
- 11 2. Unless otherwise indicated, the term “defendants” refers to and includes
12 A AAAAuto Brokers, Inc., AAA Anywhere Anytime Auto Brokers, Inc., and
13 Katherine Ann Carter;
- 14 3. “Automobile Transportation Brokerage services” means the business of arranging for
15 the transportation of consumers’ automobiles by truck, rail, or ship in Commerce;
- 16 4. “Automobile Transportation Broker” means any person, partnership, corporation or
17 entity engaged in the business of arranging for the transportation of consumers’
18 automobiles by truck, rail or ship in commerce.

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20 **PROHIBITED BUSINESS ACTIVITIES**

21 **I.**

22 **IT IS HEREBY ORDERED** that, in connection with the advertising, promotion, offering for
23 sale, sale or provision of automobile transportation brokerage services, the defendants, and each of
24 their successors, assigns, officers, agents, servants, employees, subsidiaries and affiliates, and those
25 persons in active concert or participation with them who receive actual notice of this Order by personal
26 service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or
27 other device, are hereby restrained and enjoined from, directly or indirectly:

1 A. Falsely representing, in any manner, expressly or by implication

2 1. That it is certain or virtually certain that a consumer's vehicle will be picked up
3 or delivered on certain dates or ranges of dates;

4 2. That it is likely that a consumer's vehicle will be picked up or delivered on
5 certain dates or ranges of dates;

6 3. That transportation is available for pickup or delivery of the consumer's vehicle
7 on specific dates or ranges of dates.

8 4. That consumers, by paying a fee or satisfying any other condition, have greater
9 assurance that their vehicle will be picked up or delivered by a certain date or
10 range of dates; or

11 5. That Defendant have a typical or superior record of on-time pickup or delivery
12 of consumer vehicles.

13 B. Representing, in any manner, expressly or by implication that defendant will arrange for
14 the consumer's vehicle to be picked up or delivered on specific dates or ranges of dates, or otherwise
15 in a timely manner, unless, at the time the representation is made, defendant possess reasonable basis
16 for such representation. For purposes of this Order, such reasonable basis shall consist, among other
17 things, of defendants' reasonable assurance (1) that a trucking or other transportation firm is available
18 to make the requested pick up and delivery on the relevant dates and has available capacity, (2) that
19 the trucking firm is reliable, (3) that the trucking firm is prepared to do business with defendants, and
20 (4) that the trucking firm will be paid all added fees or amounts necessary to ensure pickup on the
21 represented dates or ranges of dates.

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26 **MONETARY RELIEF**

27 **II.**

1 **IT IS FURTHER ORDERED:**

2 A. That judgment is hereby entered against each of the defendants, jointly and severally,
3 in the amount of FORTY-FIVE THOUSAND DOLLARS (\$ 45,000) for equitable monetary relief,
4 including but not limited to consumer redress, and for paying any attendant expenses of administering
5 any redress fund. Such payment shall be made by cashier’s check or certified check payable to the
6 Federal Trade Commission and shall be delivered to the Federal Trade Commission, 901 Market
7 Street, Suite 570, San Francisco, CA 94103 no later than five (5) business days after entry of this
8 Order.

9 B. That any funds paid by defendants pursuant to Part A of this Paragraph shall be paid
10 into a redress fund administered by the Commission. If the Commission, in its sole discretion,
11 determines that redress is wholly or partially impractical, any funds not so used shall be deposited into
12 the United States Treasury as an equitable disgorgement remedy. Defendants shall have no right to
13 contest the manner of distribution chosen by the Commission or its designated agent.

14 C. In the event that defendants default on the \$45,000 payment set forth in Part A of this
15 Paragraph, that amount, less the sum of payments made pursuant to Part A of this Paragraph, becomes
16 immediately due and payable by defendants, and interest computed at the rate prescribed under 28
17 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance; and

18 D. That any funds paid by defendants pursuant to Parts C above shall be paid into the
19 redress fund described in Part B of this Paragraph.
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24 **RIGHT TO REOPEN**

25 **III.**

26 **IT IS FURTHER ORDERED** that the Court’s approval of this Order is expressly premised
27 upon the truthfulness, accuracy, and completeness of the financial statements provided to counsel by the

1 defendants. If, at any time following entry of this Order, the Commission obtains evidence that the
2 defendants' representations on their financial statements concerning their assets, liabilities or net worth
3 were materially fraudulent, misleading, inaccurate or incomplete, the Commission may, upon motion to
4 the Court, request that this Order be reopened for the purposes of requiring the defendant who made
5 materially fraudulent, misleading, inaccurate or incomplete representation to pay additional consumer
6 redress, and the defendants agree not to contest any reasonable evidence the Commission introduces
7 on consumer injury; *provided however*, that in all other respects this Order shall remain in full force
8 and effect unless otherwise ordered by the Court; *and provided further*, that proceedings initiated
9 under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be
10 provided by law, including any other proceedings the Commission may initiate to enforce this Order.
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12 ORDER DISTRIBUTION

13 IV.

14 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of
15 this Order, defendants, their successors and assigns, and any business of which defendant Katherine
16 A. Carter is the majority owner or which she directly or indirectly manager or controls, which engages
17 in, or assists others engaged in, the sale of automobile transportation brokerage services shall:

18 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
19 receipt of same from, each officer or director, each individual serving in a management capacity, all
20 personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether
21 designated as employees, consultants, independent contractors or otherwise, immediately upon
22 employing or retaining any such persons; and

23 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,
24 make available to representatives of the Commission, the original signed and dated acknowledgments
25 of the receipt of copies of this Order, as required in Subpart A of this Paragraph.
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27 RECORD KEEPING PROVISIONS

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V.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, defendants, their successors and assigns, and any business of which defendant Katherine A. Carter is the majority owner or which she directly or indirectly manager or controls, which engages in, or assists others engaged in, the sale of automobile transportation brokerage services is hereby restrained and enjoined from:

A. failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

1. Books, records, and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
2. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The business subject to this paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;
3. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items, services or investments purchased, and description of items, services, or investments purchased for all consumers to whom such business has sold, invoiced or shipped any good, service, or investment;
4. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:
 - a. the consumer's name, address, telephone number and the dollar amount paid by the consumer;

- 1 b. the written complaint or refund request, if any, and the date of the
2 complaint or refund request;
3 c. the basis of the complaint, including the name of any salesperson
4 complained against, and the nature and result of any investigation
5 conducted concerning any complaint;
6 d. each response and the date of the response;
7 e. any final resolution and the date of the resolution; and
8 f. in the event of a denial of a refund request, the reason for the denial;

9 5. Copies of all sales scripts, training materials, advertisements, or other marketing
10 materials utilized; *provided* that copies of all sales scripts, training materials,
11 advertisements, or other marketing materials utilized shall be retained for three
12 (3) years after the last date of dissemination of any such materials.

13 B. Destroying, throwing away, mutilating, changing, concealing, altering, transferring, or
14 otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs,
15 accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures,
16 manuals, electronically stored data, banking records, consumer lists, files, invoices, telephone records,
17 ledgers, payroll records, or other business or financial documents of any kind, including information
18 stored in computer-maintained form, in the possession, custody, or control of defendant or any other
19 person or entity in active concert or participation with defendant.

20 **COMPLIANCE REPORTING BY DEFENDANTS**

21 **VI.**

22 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this
23 Order may be monitored:

24 A. For a period of three (3) years from the date of entry of this Order, defendants shall
25 notify the Commission of the following:

- 26 1. Any changes in any individual defendant's residence, mailing addresses, and
27 telephone numbers, within ten (10) days of the date of such change;

1 2. Any changes in any individual defendant's employment status (including
2 self-employment) within ten (10) days of such change. Such notice shall include
3 the name and address of each business that any such defendant is affiliated with
4 or employed by, a statement of the nature of the business, and a statement of
5 such defendant's duties and responsibilities in connection with the business or
6 employment; and

7 3. Any proposed change in the corporate structure of any corporate defendant, or
8 any proposed change in the structure of any business entity owned or controlled
9 by any individual defendant, such as creation, incorporation, dissolution,
10 assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of
11 a bankruptcy petition, or change in the corporate name or address, or any other
12 change that may affect compliance obligations arising out of this Order, thirty
13 (30) days prior to the effective date of any proposed change; *provided,*
14 *however,* that, with respect to any proposed change in the corporation about
15 which any defendant learns less than thirty (30) days prior to the date such
16 action is to take place, such defendant shall notify the Commission as soon as is
17 practicable after learning of such proposed change;

18 B. One hundred eighty (180) days after the date of entry of this Order, defendants shall
19 provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner
20 and form in which defendants have complied and are complying with this Order. This report shall
21 include but not be limited to:

- 22 1. The individual defendant's then current residence address and telephone
23 number;
- 24 2. The individual defendant's then current employment, business addresses and
25 telephone numbers, a description of the business activities of each such
26 employer, and defendant's title and responsibilities for each employer;

1 3. A copy of each acknowledgment of receipt of this Order obtained by
2 defendant pursuant to Part IV of this Order;

3 4. A statement describing the manner in which each such defendant has complied
4 and is complying with the (a) the injunctive provisions of this Order, and (b) the
5 consumer redress provisions of this Order;

6 C. Upon written request by a representative of the Commission, each defendant shall
7 submit additional written reports (under oath, if requested) and produce documents on fifteen (15)
8 days' notice with respect to any conduct subject to this Order;

9 D. For the purposes of this Order, defendants shall, unless otherwise directed by the
10 Commission's authorized representatives, mail all written notifications to the Commission to:

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16 Federal Trade Commission
 901 Market Street, Room 570
 San Francisco, CA 94103

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18 E. For the purposes of this Part, "employment" includes the performance of services as an
19 employee, consultant, or independent contractor; and "employers" include any individual or entity for
20 whom any defendant performs services as an employee, consultant, or independent contractor; and

21 F. For purposes of the compliance reporting required by this Part, the Commission is
22 authorized to communicate directly with defendants.

23 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

24 **VII.**

25 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor defendants'
26 compliance with this Order by all lawful means, including but not limited to the following means:
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1 of this Part applies, concerning matters relating to compliance with the terms of this Order. The person
2 interviewed may have counsel present.

3 *Provided that*, upon application of the Commission and for good cause shown, the Court may
4 enter an *ex parte* order granting immediate access to defendants' business premises for the purposes of
5 inspecting and copying all documents relevant to any matter contained in this Order.

6 **IX.**

7 **RECEIPT OF ORDER**

8 **IT IS FURTHER ORDERED** that within five (5) business days after receipt by defendants
9 of this Order as entered by the Court, defendants shall submit to the Commission a truthful sworn
10 statement, in the form shown on Attachment A, that shall acknowledge receipt of this Order.

11 **X.**

12 **RETENTION OF JURISDICTION**

13 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for the
14 purpose of enabling any of the parties to this Order to apply to the Court at any time for such further
15 orders or directives as may be necessary or appropriate for the interpretation or modification of this
16 Order, for the enforcement of compliance therewith or the punishment of violations thereof.

17 The parties, by their respective counsel, hereby consent to the terms and conditions of the
18 Stipulated Final Order for Permanent Injunction and Settlement of Claims for Consumer Redress as set
19 forth above and consent to the entry thereof.

20
21 **FOR THE DEFENDANTS**

FOR PLAINTIFF

22
23 _____
24 Katherine Ann Carter, individually and as an
25 officer of A AAAuto Car Brokers, Inc. and AAA
26 Anywhere Anytime Auto Brokers, Inc,

Jerome M. Steiner, Jr.
David M. Newman
Federal Trade Commission

26 _____
27 Donald D. Beury
Attorney for Defendants

Attorneys for Plaintiff
Federal Trade Commission

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There being no just reason for delay, the Clerk of Court is hereby directed to enter this Order.

IT IS SO ORDERED

Dated: _____

UNITED STATES DISTRICT JUDGE

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ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

In the Matter of
FEDERAL TRADE COMMISSION,
Plaintiff,
vs.
A AAAAUTO CAR BROKERS, INC.;
AAA ANYWHERE ANYTIME AUTO
BROKERS, INC.; and
KATHERINE ANN CARTER, individually
and as an officer of said corporations.
Defendants.

CV No.
AFFIDAVIT OF KATHERINE ANN
CARTER

Katherine Ann Carter, being duly sworn, hereby states and affirms as follows:

1. My name is Katherine Ann Carter. My current residence address is _____
_____. I am a citizen of the United States and am over
the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a defendant in A AAAAuto Car Brokers, Inc., AAA Anywhere Anytime Auto
Brokers, Inc. and Katherine Ann Carter, individually and as an officer of said
corporations. CV 01- S _____ (United States District Court
for the District of Nevada).
3. On _____, 2001, I received a copy of the Final Judgment and Order for
Permanent Injunction Against Defendants A AAAAuto Car Brokers, Inc., AAA
Anywhere Anytime Auto Brokers, Inc.; and Katherine Ann Carter, individually and as
an officer of said corporations, which was signed by the Honorable [name of U.S.

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District Judge] and entered by the Court on _____, 2001. A true and correct copy of the Order I received is appended to this Affidavit.

4. I hereby state that the information contained in my financial statement, as identified in paragraph III of the Order, which was executed signed on _____, and provided to the Federal Trade Commission shortly thereafter was true, accurate, and complete at such time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, 2001, at [place].

Katherine Ann Carter

State of _____, City of _____

Subscribed and sworn to before me
this _____ day of _____, 2001.

Notary Public
My Commission Expires:
