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IN THE MATTER OF:

ASSURANCE OF VOLUNTARY
COMPLIANCE

GUNNING & ASSOCIATES MARKETING,
INC., an Ohio corporation, doing business as
FLEET LIQUIDATORS OF AMERICA,
NATIONAL FLEET LIQUIDATORS, G & A
MARKETING, and G & A MARKETING INC.
and FLEET LIQUIDATORS OF AMERICA,
INC., an Ohio corporation,

1.

This Assurance of Voluntary Compliance (AVC) is between GUNNING &
ASSOCIATES MARKETING INC. doing business as FLEET LIQUIDATORS OF
AMERICA, NATIONAL FLEET LIQUIDATORS, G & A MARKETING, and G & A
MARKETING INC. and FLEET LIQUIDATORS OF AMERICA, INC. (hereafter
“Respondents”) and the Attorneys General (hereafter “Attorneys General”) of the states of
California, Delaware, Florida, Iowa, Maine, North Dakota, Oregon, Tennessee, Vermont, and
Washington (hereafter “Participating States”) and the District Attorney of Tulare County,
California (hereafter “District Attorney”). GUNNING & ASSOCIATES MARKETING INC.
and FLEET LIQUIDATORS OF AMERICA, INC. are Ohio corporations and all Respondents
do business in the Participating States. The Attorneys General and the District Attorney act
pursuant to their respective consumer protection statutes.¹

¹ California Business and Professions Code Sections 17200 et seq. and 17500 et seq.; Delaware Consumer Fraud Act, 6 Del. C. Sec. 2511 et seq. and Delaware Prohibitive Trade Practices Act, 6 Del. C. sec. 2531 et seq.; Florida Deceptive and Unfair Trade Practices Act, s. 501, Part II, Fl. Stat.; Iowa Consumer Fraud Act, Iowa Code section 714.16; Maine Unfair Trade Practices Act, 5 MRSA c. 10; North Dakota’s N.D.C.C. Chapters 51-12, 51-15 and 53-11; Oregon Unlawful Trade Practices Act, ORS 646.605 et seq.; Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, et seq.; Vermont’s 9 Vt. Stat. Annot. Section 2453, et seq.; Washington’s RCW 19.86.020 and RCW 46.70.180(1).

1 PROCEDURE

2 2.

3 This AVC is a settlement of a disputed matter. The Attorneys General and the District
4 Attorney allege that Respondents engaged in the conduct described in this paragraph.
5 Respondents enter into agreements with motor vehicle dealerships to provide promotional
6 materials, consulting, training and staff assistance for sales promotions. Under these
7 agreements, dealerships pay Respondents an up-front advertising fee and a percentage of every
8 vehicle sold during the “sales event.” Respondents create and require by contract that
9 dealerships use promotional materials that materially misrepresent the nature of the “sales
10 events,” such as representing that the vehicles are from bankruptcy proceedings or other
11 legal/governmental proceedings, rental car companies, bank repossessions, fleet companies,
12 liquidation companies or auctions and must be sold immediately, when in fact, the vehicles are
13 no different than those regularly found on the participating dealership’s lot. Many of these
14 “sales events” are held in a location other than the dealership’s normal place of business to
15 create the impression in the minds of consumers that the sale is a “special” event. Respondents
16 supplement the dealership’s employees by providing personnel such as salespersons, a “team
17 leader,” a “closer” and a “F&I” (Finance and Insurance) manager for the duration of the “sales
18 event.” Respondents, directly or in concert with dealerships, negotiate the sales terms for all
19 vehicles sold during the “sales event.” Respondents use aggressive sales techniques in an
20 attempt to get the highest possible profit for the dealership, including giving potential buyers
21 purchase and monthly payment amounts which tend to confuse consumers into paying more
22 than a vehicle is worth, adding charges for extra products or services the buyer may not have
23 authorized or desired, and offering consumers less than wholesale value minus reasonable
24 reconditioning costs for trade-ins. Furthermore, Respondents’ advertisements misrepresent the
25 value of the vehicles and the ease with which consumers can get financing. Additionally,
26 Respondents fail to adequately disclose the terms and conditions of prizes offered during some

1 of these “sales events” and misrepresent to consumers they are winners of free vacations and
2 other prizes.

3 3.

4 Respondents deny all of the allegations. Thus, this AVC shall not be considered an
5 admission of a violation of any federal, state or local law for any purpose. Respondents, the
6 Attorneys General and the District Attorney agree that no provision of the AVC operates as a
7 penalty, forfeiture, or punishment under the Constitution of the United States or under the
8 Constitution and laws of the Participating States.

9 4.

10 Respondents waive receipt of a formal notice from any Participating State and the
11 County of Tulare, California (hereafter “County”) of the alleged unlawful trade practice and the
12 relief to be sought.

13 5.

14 Respondents understand and agree this AVC applies to Respondents, their principals,
15 officers, directors, agents, employees, successors and assigns, jointly and severally, while acting
16 directly, or through any corporation or other business entities, whose acts, practices or policies
17 are directed, defined or controlled by Respondents and all others for whose conduct
18 Respondents may be held liable under applicable law.²

19 6.

20 Respondents agree and understand that following acceptance of the AVC by the
21 Participating States and the County, the Attorneys General and the District Attorney may
22 communicate directly with Respondents for the purpose of executing and enforcing the terms of
23 this agreement, resolving future complaints, and for any other purpose permitted by law.

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26 ² Nothing in Paragraph 5 shall be construed as an agreement to restrict or expand the scope of the laws of any Participating State pertaining to principles of agency, respondeat superior, vicarious liability, or any other legal principle whereby Respondents might arguably be legally responsible for the conduct of another.

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7.

Respondents understand and agree that if this AVC is accepted by the Participating States and the County, it may be filed in court in those states that are required or permitted by law to file AVCs with the court.

8.

Respondents waive any further notice of submission to and filing with any court of this AVC. Respondents agree to accept service of a conformed or court certified copy from each state that files the AVC by prepaid first class mail sent to the addresses following their signatures.

9.

Respondents understand that a violation of any of the terms of this AVC may result in the Participating States and the County seeking all available relief, including civil penalties and any such further relief as a court may deem appropriate.

10.

The parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the parties. The parties further acknowledge that this AVC constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

REMEDIES

11.

Respondents shall obey all applicable laws of the Participating States, including without limitation the laws of the Participating States as listed in Footnote 3.³ Each Participating State

³ Delaware Consumer Fraud Act, 6 Del. C. Sec. 2511 *et seq.* and Delaware Prohibitive Trade Practices Act, 6 Del. C. sec. 2531 *et seq.*; Florida Deceptive and Unfair Trade Practices Act, s. 501, Part II, Fl. Stat. s. 320, s. 627 and s. 849; Iowa Consumer Fraud Act, Iowa Code section 714.16, Iowa Code section 322.3, and Iowa Code chapter 714B; Maine Unfair Trade Practices Act, 5 MRSA c. 10, Maine Motor Vehicle Dealers, 10 MRSA sec. 1174 and 29A MRSA c. 9, and Maine Attorney General Motor Vehicle Advertising Rules, Chapter 104; North Dakota's N.D.C.C. Chapters 51-12, 51-15, 53-11, 10-19.1, 10-32, 26.1-02, 26.1-26, 26.1-30, 39-22, 45-10.2, 45-22 and 45-

1 and the County shall have jurisdiction only over acts committed within or affecting commerce
2 within its state, including but not limited to advertising Respondents can reasonably anticipate
3 will be received by consumers in that state.

4 12.

5 Respondents shall not represent or imply that the Participating States or the County
6 acquiesce or approve of Respondents' past business practices, current efforts to reform their
7 practices, or any future practices which Respondents may adopt or consider adopting. The
8 decision of the Attorneys General and the County to settle this matter or to otherwise
9 unilaterally limit current or future enforcement action does not constitute approval or imply
10 authorization for any past, present, or future business practice.

11 13.

12 Respondents shall pay on behalf of the Participating States and the County directly to
13 the Oregon Attorney General the sum of three hundred thousand dollars (\$300,000.00) for
14 attorneys fees and investigative costs, consumer education, litigation or local consumer aid
15 funds, or public protection or consumer protection purposes as allowed by each of the States'
16 laws at the discretion of each of the Participating States' Attorneys General or the District
17 Attorney. Respondents shall make a payment of one hundred fifty thousand dollars
18 (\$150,000.00) on or before October 2, 2006. Respondents shall make a second payment of one
19 hundred fifty thousand dollars (\$150,000.00) on or before January 2, 2007. The Oregon
20 Attorney General will distribute the funds to the Participating States and the County in
21 accordance with the terms of this AVC and agreements between the States and the County to
22 which Respondents are not parties.

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24 23; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*, ORS 822.005 *et seq.*, ORS 744.001 *et seq.*, and
25 OAR 137-020-0010 *et seq.*; Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*,
Tennessee Motor Vehicle Sales Licenses Act, Tenn. Code Ann. § 55-17-101, *et seq.*, Tennessee Insurance Producer
26 Licensing Act of 2002, Tenn. Code Ann. § 56-6-101, *et seq.*, and Rules of Tennessee Motor Vehicle Commission
Rule 0960-1-.12; Vermont's 9 Vt. Stat. Annot. Section 2453, *et seq.*, Titles 8 and 23, and CF Rules; Washington's
RCW 19.86.020, RCW 46.70.180(1), RCW 46.70.027, RCW 48.17.160 and RCW 19.170.

Effective immediately upon execution by Respondents of this AVC, Respondents agree to adhere to each of the following requirements:

(a) Respondents shall not, in their advertising or otherwise, make false, deceptive or misleading representations of fact concerning any motor vehicle sales promotions, contests or prize offers.

(b) In all advertisements which Respondents publish, broadcast or otherwise disseminate, or cause to be published, broadcast or otherwise disseminated, in the Participating States, Respondents shall clearly and conspicuously disclose all material limitations, conditions and restrictions relating to any offer in close proximity to any terms or conditions to which they relate.

(c) Respondents shall not make or imply false or misleading claims in an advertisement regarding the actual sources of vehicles offered for sale, including but not limited to misrepresenting or implying that the vehicles are, or have been obtained from, vehicle fleets, auto auctions, bank repossessions, off-lease or from rental car companies in bankruptcy.

(d) Respondents shall not represent or imply a false premise for a sale of motor vehicles. This prohibition includes, but is not limited to: (1) representing that any sale conducted by Respondents or their clients is being conducted, sponsored, or operated by any bank, lending institution, fleet company, liquidation company, repossession company, auto auction or other entity, unless such claims are in fact true, and Respondents have sufficient documentation to prove such claims are true, or (2) representing that Respondents or their clients are in the vehicle liquidation business, including but not limited to, by using their corporate name "Fleet Liquidators of America, Inc.," the name "National Fleet Liquidators," or the name "American Fleet," in any advertisements or representations to consumers.

(e) Respondents shall not make any statement in any promotion that is false or that creates a false impression regarding the premise of a sale, the offering price of the vehicles,

1 monthly payments, any other terms of payment, the interest rate and/or availability of credit, the
2 amount of the down payment, or the availability of significant discounts or savings.

3 (f) Respondents shall comply with the Fair Credit Reporting Act and the Truth in
4 Lending Act in any advertising or sales practice.

5 (g) Respondents shall not represent that Respondents are conducting a sale of motor
6 vehicles in a Participating State that requires a business conducting a motor vehicle sale to have
7 a license unless Respondents possess the required license at the time of the representation.

8 (h) Respondents shall not offer, sell or promote any cash rewards program, including but
9 not limited to cash-back promotional vouchers, rebates, coupons, checks or cashable vouchers.

10 15.

11 Within 90 days following the effective date of this AVC, Respondents shall provide
12 notice of this AVC to any person who participates in a sales event on behalf of Respondents.
13 This notice shall be in the form set forth in Appendix A. Respondents shall obtain confirmation
14 of receipt from all persons required to receive this notice. The requirements of this Paragraph
15 may be satisfied electronically. Respondents shall maintain all acknowledgments and shall,
16 within three working days of receipt of a request by the Attorney General or the District
17 Attorney for any Participating State or County, produce a copy of such acknowledgment form.
18 When participating in a sales event, Respondents agree to adhere to each of the following
19 requirements:

20 (a) Respondents shall disclose to the buyer, before the buyer signs the documents
21 relating to the transaction, the cash sale price and monthly payments required for the purchase
22 of the vehicle without any additional products and services, including but not limited to a
23 service contract or extended warranty, paint sealants, undercoating, fabric protection, window
24 etching, credit life or disability insurance or a financial gap (guaranteed asset protection)
25 program, and inform the buyer that the purchase of any additional products and services is
26 optional and that the buyer can purchase the vehicle without buying any additional products or

1 services.

2 (b) If additional products or services, including but not limited to a service contract or
3 extended warranty, paint sealants, undercoating, fabric protection, window etching, credit life or
4 disability insurance or a financial gap program, are offered for sale to a buyer, Respondents
5 shall disclose to the buyer, before the buyer signs the documents relating to the transaction, the
6 amount of the monthly payment which will be required for the vehicle without additional
7 products and services and the amount of the aggregate monthly payment which will be required
8 for the vehicle if the additional products and services are included in the sale.

9 (c) Respondents shall not misrepresent, directly or by implication, a monthly payment
10 or price of a vehicle, or the individual prices for any additional products and services, including
11 but not limited to a service contract or extended warranty, paint sealants, undercoating, fabric
12 protection, window etching, credit life or disability insurance or a financial gap program.

13 (d) Respondents shall not represent or imply that the purchase of a finance and
14 insurance (F&I) product or service will improve a loan term or feature or the likelihood of a
15 loan being approved.

16 (e) Respondents shall disclose the asking or sales price of a vehicle upon initiation of sales
17 negotiations and thereafter upon request of the consumer and shall affirmatively disclose any
18 subsequent price change that occurs during negotiations.

19 16.

20 Effective immediately upon execution by Respondents of this AVC, Respondents agree
21 to adhere to each of the following requirements in the states of California, Oregon and
22 Tennessee: For the next five years, Respondents shall send a copy of any advertising which
23 they plan to use for any retailer in a Participating State referenced above at least 14 days before
24 its publication or dissemination to the respective State's Attorney General⁴. Respondents shall

25 ⁴ These materials shall be addressed to: Dennis W. Dawson, Deputy Attorney General, Consumer Law Section,
26 California Attorney General's Office, 110 West A St., Suite 1100, San Diego, CA 92110 in California; Oregon
Department of Justice, Financial Fraud Section, 1162 Court Street NE, Salem, OR 97301-4096 in Oregon; and
Office of the Tennessee Attorney General, Consumer Advocate and Protection Division, attn.: John S. Smith, III,

1 not represent or imply that failure of an Attorney General or District Attorney to take any action
2 thereon constitutes acquiescence, approval or endorsement of an advertisement by any
3 Participating State or County.

4 17.

5 Effective immediately upon execution by Respondents of this AVC, Respondents agree
6 to maintain records of all advertisements which they publish, broadcast or otherwise
7 disseminate, or cause to be published, broadcast or otherwise disseminated, in the Participating
8 States. These records shall include a copy of the advertisement, identify the sponsoring motor
9 vehicle dealership, identify the dates of sales and other promotional events and be sufficient to
10 substantiate the representations or claims made in the advertisement.

11 18.

12 It is a violation of this AVC for Respondents to sell or provide any materials which
13 would enable any other individual or business entity, including but not limited to motor vehicle
14 dealerships, to engage in any act or practice which would violate this AVC were it committed
15 directly by Respondents. Respondents shall not direct, train, instruct or induce any person to
16 perform any act prohibited, or to refrain from performing any act required, by this AVC.
17 Respondents are not liable under this AVC for actions of any motor vehicle dealership or
18 dealership personnel participating in conjunction with Respondents in conducting a sales event
19 if the acts of the motor vehicle dealership or dealership personnel are not directed, defined or
20 controlled by Respondents.

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26 Assistant Attorney General, P.O. Box 20207, 425 Fifth Avenue, North, Nashville, TN 37202 in Tennessee. The materials may be sent electronically as mutually agreed upon by the applicable parties.

APPENDIX A

ACKNOWLEDGMENT OF NOTICE OF ASSURANCE OF VOLUNTARY COMPLIANCE

INSTRUCTIONS

Gunning & Associates Marketing, Inc., has entered into an Assurance of Voluntary Compliance ("AVC") with the Attorneys General for the States of California, Delaware, Florida, Iowa, Maine, North Dakota, Oregon, Tennessee, Vermont and Washington (the "Participating States"). G&A has agreed to abide by the terms of that AVC. G&A must ensure that both its employees and independent contractors understand and agree to abide by those same rules.

Read the agreement below. If you have any questions regarding any term of the agreement, contact us by return email. If you understand each of the terms and agree to be bound by those terms, sign at the place indicated and print your name below your signature. Then fax the signed agreement to us at Fax Number 513-xxx-xxxx. In the alternative, you may send an electronic copy of the signed document to us at xxxxx@gamarketing.com. **You are not authorized to perform any function at any sales event until you have signed and sent to us the agreement below.**

AGREEMENT TO ADHERE

I have been given notice that Gunning & Associates Marketing, Inc. ("G&A"), has entered into an Assurance of Voluntary Compliance ("AVC") with the Attorneys General for the States of California, Delaware, Florida, Iowa, Maine, North Dakota, Oregon, Tennessee, Vermont and Washington (the "Participating States") and the District Attorney of Tulare County, California (the "County"). I understand the AVC is a settlement of a disputed matter. I agree to abide by the terms of the AVC. Specifically:

1. I shall obey all applicable laws of the Participating States, including without limitation the applicable consumer protection laws of the Participating States.
2. I shall not represent or imply that the Participating States or the County acquiesced in, or approved of any of G&A's past business practices, current efforts to reform their practices, or any future practices which G&A may adopt or consider adopting.
3. I shall not, in advertising or otherwise, make false, deceptive or misleading representations of fact concerning any motor vehicle sales promotions, contests or prize offers.
4. In all advertisements which I publish, broadcast or otherwise disseminate, or cause to be published, broadcast or otherwise disseminated, in the Participating States, I shall clearly and conspicuously disclose all material limitations, conditions and restrictions relating to any offer in close proximity to any terms or conditions to which they relate.

5. I shall not make or imply false or misleading claims in an advertisement or otherwise regarding the actual sources of vehicles offered for sale, including but not limited to misrepresenting or implying that the vehicles are, or have been obtained from vehicle fleets, auto auctions, bank repossessions, off-lease, or from rental car companies in bankruptcy.

6. I shall not represent or imply a false premise for a sale of motor vehicles. For example, I will not represent that any sale conducted by me or G&A or G&A's clients is being conducted, sponsored or operated by any bank, lending institution, fleet company, liquidation company, repossession company, auto auction or other entity, unless such claims are in fact true, and G&A has sufficient documentation to prove such claims are true. In addition, I will not represent that I am or G&A is in the vehicle liquidation business. Nor will I use their corporate name "Fleet Liquidators of America, Inc." the name "National Fleet Liquidators," or the name "American Fleet," in any advertisements or representations to consumers.

7. I shall not make any statement in any promotion that is false or that creates a false impression regarding the premise of a sale, the offering price of the vehicles, monthly payments, any other terms of payment, the interest rate and/or availability of credit, the amount of the down payment, or the availability of significant discounts or savings.

8. I shall comply with the Fair Credit Reporting Act and the Truth in Lending Act in any advertising or sales practice.

9. Before conducting a sale of motor vehicles in a participating State that requires a business conducting a motor vehicle sale to have a license, I shall obtain the required license.

10. I shall not offer, sell or promote any cash rewards program, including but not limited to cash-back promotional vouchers, rebates, coupons, checks or cashable vouchers.

11. I shall disclose to the buyer, before the buyer signs the documents relating to the transaction, the cash sale price and monthly payments required for the purchase of the vehicle without any additional products and services, including but not limited to a service contract or extended warranty, paint sealants, undercoating, fabric protection, window etching, credit life or disability insurance or a financial gap (guaranteed asset protection) program. I will inform the buyer that the purchase of any additional products and services is optional. I will inform the buyer that the buyer can purchase the vehicle without buying any additional products or services.

12. If additional products or services, including but not limited to a service contract or extended warranty, paint sealants, undercoating, fabric protection, window etching, credit life or disability insurance or a financial gap program, are offered for sale to a buyer, I shall disclose to the buyer, before the buyer signs the documents relating to the transaction, the amount of the monthly payment which will be required for the vehicle without additional products and services and the amount of the aggregate monthly payment which will be required for the vehicle if the additional products and services are included in the sale.

13. I shall not misrepresent, directly or by implication, a monthly payment or price of a vehicle, or the individual prices for any additional products and services, including but not

limited to a service contract or extended warranty, paint sealants, undercoating, fabric protection, window etching, credit life or disability insurance or a financial gap program.

14. I shall not represent or imply that the purchase of a finance and insurance (F&I) product or service will improve a loan term or feature or the likelihood of a loan being approved.

15. I shall disclose the asking or sales price of a vehicle upon initiation of sales negotiations and thereafter upon request of the consumer and shall affirmatively disclose any subsequent price change that occurs during negotiations.

16. I shall not sell or provide any materials which would enable any other individual or business entity, including but not limited to motor vehicle dealerships, to engage in any act or practice which would violate this AVC were it committed directly by me.

17. I shall not direct, train, instruct or induce any person to perform any act prohibited, or to refrain from performing any act required, by this AVC.

Signature

Printed Name

Date