

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2277CV00881

COMMONWEALTH OF MASSACHUSETTS,)
)
 Plaintiff,)
)
 v.)
)
 JAFFARIAN’S SERVICE, INC.,)
)
 Defendant.)

RECEIVED

9/15/2022

COMPLAINT

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through Attorney General Maura Healey, (the “Commonwealth”) brings this enforcement action against Jaffarian’s Service, Inc. (“Jaffarian”) for violations of the Consumer Protection Act, G.L. c. 93A, § 2, and the Public Accommodations Act, G.L. c. 272, § 98.

2. Jaffarian operates a car dealership in Massachusetts where it sells cars as well as related products and services, generally called ancillary or add-on products.

3. Jaffarian gives its employees unfettered discretion in pricing ancillary products and offers no guidance, training, auditing, or supervision to prevent discrimination in these transactions. Its compensation model incentivizes employees to arbitrarily increase the prices charged to consumers for such products. Alone and in combination, these conditions have resulted in Black and Hispanic and/or Latin (hereafter, referred to as “Hispanic”) consumers being unfairly charged higher prices and markups for ancillary products than non-Hispanic white (hereafter, referred to as “white”) consumers.

4. These unfair pricing practices result in tens of thousands of dollars in extra profits to Jaffarian because Black and Hispanic consumers pay on average \$510 and \$429 more, respectively, than white consumers when purchasing ancillary products from Jaffarian. These amounts are 54 and 45 percent higher than the profits on white consumers' purchases.

5. Unbeknownst to many consumers, a dealership's profits on add-on products can equal or exceed the profits on the sale of the car itself. Despite this fact, the negotiation for add-on products is generally quite different from that for the car. Consumers typically have limited time and information when deciding whether to purchase add-on products and, therefore, face significant barriers in determining if the prices they are quoted for ancillary products are fair or reasonable. Ancillary products are often sprung on consumers in the final steps of completing a transaction when consumers may be fatigued from multiple rounds of negotiation on the price of a car and/or car financing. They frequently do not have the time or energy to delay the transaction in order to research the ancillary products.

6. In these circumstances, Jaffarian seeks and extracts disproportionately higher profits from Black and Hispanic consumers.

7. Jaffarian's actions impede Black and Hispanic consumers' ability to participate fully and fairly in commerce, thereby contributing to the racial wealth gap.

8. Through this action, the Commonwealth seeks to redress the harm caused by the defendant's unfair and discriminatory practices. The Commonwealth seeks injunctive relief, restitution, civil penalties, attorneys' fees and costs, and all other equitable relief deemed appropriate to stop these harmful practices and protect the Commonwealth's consumers.

II. JURISDICTION AND VENUE

9. The Attorney General is authorized to bring this action pursuant to her authority under G.L. c. 93A, § 4.

10. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4.

11. Venue is proper in Essex County pursuant to G.L. c. 93A, § 4 and G.L. c. 223, § 5.

12. In accordance with G.L. c. 93A § 4, the Commonwealth notified the Defendant of its intent to bring this action on April 8, 2022.

13. By agreement of the parties, the statute of limitations and all other time related defenses in this matter were tolled from August 26, 2020 through August 2, 2021, and from April 8, 2022 through September 15, 2022.

III. PARTIES

14. Plaintiff, the Commonwealth of Massachusetts, acting by and through the Office of Attorney General Maura Healey, brings this action in the public interest pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 10.

15. Jaffarian's Service, Inc. ("Jaffarian") is a for-profit corporation incorporated in the Commonwealth of Massachusetts. It operates a car dealership in Haverhill, Massachusetts, and does business as Jaffarian Volvo Toyota, among other d/b/as. Jaffarian has a principal place of business located at 600 River Street in Haverhill, Massachusetts.

IV. FACTUAL ALLEGATIONS

A. Discretionary pricing has long resulted in unfair and discriminatory practices that harm consumers and exacerbate the racial wealth gap.

16. Black and Hispanic families have dramatically less wealth than white ones.

According to the Federal Reserve Board's 2019 Survey of Consumer Finances, white families have a median family wealth of \$188,200 while Black families' median wealth is \$24,100 and Hispanic families' is \$36,100.¹

17. These disparities are driven not just by historic policies or injustices but also by today's practices.

18. One critically unfair phenomenon in today's marketplace is pricing disparities based on the purchaser's race or ethnicity.

19. Numerous studies demonstrate that those disparities are caused when salespeople are given discretion in pricing.²

¹ Neal Bhutta, et al., Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>. In the Boston Metropolitan area (Essex, Middlesex, Norfolk, Plymouth, and Suffolk counties), the median white household wealth is \$247,500, whereas the U.S. Black household wealth is \$8, Puerto Rican is \$3,020, Dominican is \$0, and other Hispanic household wealth is \$2,700. Ana Patricia Muñoz, et al., The Color of Wealth in Boston (2015), 20, <https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx>.

² See National Consumer Law Center, Auto Add-Ons Add Up (Oct. 2017), 27 n.52, <https://www.nclc.org/issues/auto-add-ons-add-up.html> (citing to studies finding that the pricing discretion given to dealers on markups of interest rates results in Black and Hispanic consumers paying higher interest rates than white ones with the same credit risk); Robert G. Schwemm, Jeffrey L. Taren, Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act, 45 Harv. C.R.-C.L. L. Rev. 375, 398–402 (2010) (describing and citing to numerous sources demonstrating that discretionary pricing in the mortgage context leads to disparate pricing for racial minorities).

20. But discriminatory, discretionary pricing is not a new problem. Federal agencies and private attorneys have tried to address this societal problem at intervals, resulting in lawsuits and other enforcement actions against businesses that employ unfair and discriminatory discretionary pricing practices.³

21. These efforts have often focused on housing and auto purchases because they are the largest expenditures the average household makes. Indeed, behind housing, transportation is the largest household expenditure in the United States.⁴ And vehicles are often the biggest purchase, other than a home, a consumer makes in their lifetime.

22. These lawsuits have frequently resulted in settlements and other ameliorative actions, such as restricting markups on products or services, including dealer-arranged car financing.⁵

23. These ameliorative efforts were often found to be effective tools to, at least, decrease the size of racial pricing disparities.

³ See, e.g., United States v. Provident Funding Associates, No. 3:15-CV-02373 (N.D. Cal. May 28, 2015), <https://www.justice.gov/usao-ndca/file/450936/download>; United States v. Springfield Ford, Inc., No. 2:07-CV-03469 (E.D. Pa. Sep. 17, 2007); Coleman v. General Motors Acceptance Corp., 220 F.R.D. 64 (M.D. Tenn. 2004); Smith v. Chrysler Fin. Co., No. Civ. A. 00-6003 (DMC), 2003 WL 328719 (D.N.J. Jan. 15, 2003); Cason v. Nissan Motor Acceptance Corp., 212 F.R.D. 518 (M.D. Tenn. 2002); Jones v. Ford Motor Credit Co., No. 00 CIV. 8330 (LMM), 2002 WL 88431 (S.D.N.Y. Jan. 22, 2002).

⁴ See Bureau of Labor Statistics, Consumer Expenditures in 2020 (Dec. 2021), 3, <https://www.bls.gov/opub/reports/consumer-expenditures/2020/pdf/home.pdf>.

⁵ See Consent Order, United States v. Sage Bank, No. 1:15-CV-13969 (D.Mass. Dec. 1, 2015), <https://www.justice.gov/crt/file/796671/download>; Consent Order, Ally Financial Inc., No. 2013-CFPB-0010 (Consumer Financial Protection Bureau, Dec. 19, 2013), https://files.consumerfinance.gov/f/201312_cfpb_consent-order_0010.pdf; Consent Order, United States v. Springfield Ford, Inc., No. 2:07-CV-03469-PBT (E.D. Pa. Sep. 4, 2007).

B. Jaffarian’s policies allow and encourage its employees to sell ancillary products to members of the public at discriminatory, discretionary markups.

24. Jaffarian is a for-profit business that operates a car dealership in Massachusetts that is open to the public. At its dealership, Jaffarian offers for sale and sells cars, dealer-arranged financing, and ancillary products to consumers.

25. Ancillary products are goods or services that are added or relate to a car that is purchased or leased by a consumer.

26. Jaffarian’s ancillary products include Guaranteed-Asset Protection (GAP), prepaid car repair or service agreements, Lojack, paint protection shields, key replacement, and wheel/tire repair agreements, among others.⁶

27. The profit margins on the sale of add-on products are generally much greater than those on the sale of a car and, indeed, the absolute profits on ancillary products are often larger as well. Nevertheless, the car is still the more expensive purchase for the consumer.

28. Neither Jaffarian nor its staff regularly disclose that Jaffarian charges a markup, and thereby makes a profit, on dealer-arranged financing and on ancillary products.

29. Given the increased transparency in car pricing, many car dealerships now make the majority of their profits on the sale of dealer-arranged financing and ancillary products.⁷

⁶ Since January 2016, Jaffarian has offered the add-on products described in the list appended as Exhibit 1.

⁷ See, e.g., William Hoffman, Adding-On Risk: Consumers Rack up Tabs On Ancillary Products, Auto Finance News, Aug. 16, 2018, <https://www.autofinancenews.net/allposts/comp-reg/adding-on-risk/>. We note that over the last year or so, supply chain disruptions and market shortages have changed this analysis; as some dealerships now charge “market adjustment fees” or similar charges that have substantially increased their profits on the sale of cars during the current shortage.

Markups on ancillary products tend to be particularly high, often well above 100%, or double the actual cost of the products being sold.

30. Ancillary products are usually sold by a car dealership but administered by a third party. In essence Jaffarian acts like a broker, contracting with those third parties (or wholesalers) to sell ancillary products to consumers.

31. Jaffarian purchases each ancillary product from its wholesalers at a pre-set cost based on a schedule that accounts for the specific ancillary product being sold and the car for which it is offered.

1. Jaffarian profits from selling ancillary products to consumers with a markup.

32. When Jaffarian offers and sells ancillary products to its consumers, Jaffarian increases the price above the wholesale cost to generate a profit. The difference between the wholesale cost that Jaffarian pays for an ancillary product and the price that Jaffarian charges a consumer for that product is known as the “markup.”

33. At Jaffarian, ancillary products are usually offered and sold to consumers by specific staff in the dealership, often referred to as finance managers, who also sell dealer-arranged financing to consumers.

34. Finance managers help consumers complete all necessary paperwork to purchase and/or finance a vehicle.

35. Jaffarian’s finance managers typically offer ancillary products after the consumer has already selected a car, negotiated a price for the lease or purchase of that car, and arranged for financing (if needed). As these steps are being finalized, finance managers try to sell the consumer ancillary products, usually during face-to-face interactions.

36. Thus, by the time Jaffarian's finance managers offer the ancillary products as one of the final steps in the transaction, consumers may not understand these prices are negotiable or have the energy to negotiate over ancillary products.

37. Moreover, consumers may feel pressured to act quickly to complete the vehicle transaction and, therefore, have limited time and ability to evaluate the benefits or prices of the ancillary products offered to them.

38. In addition, because finance managers are involved in helping consumers to arrange financing for their cars, some consumers may incorrectly believe that finance managers are helping or advocating for the consumer's interest during this process.

2. Jaffarian gives finance managers complete discretion to increase the amount of the markup they charge each consumer for add-on products.

39. On information and belief, Jaffarian has target profit margins and sales volumes for its add-on products.

40. Since at least January 2016, it has been Jaffarian's policy to give finance managers full discretion to increase the amount of the markup they charge individual consumers for ancillary products.

41. As a result, two consumers may be charged wildly different markups for the same ancillary product.

3. Jaffarian's compensation model unfairly incentivizes finance managers to sell more add-on products and to seek higher markups.

42. In addition to giving finance managers unchecked authority to increase the markup on add-on products, Jaffarian also uses compensation plans that incentivize its finance managers to steer consumers to purchase more add-on products and to place higher markups on those products.

43. Since at least January 2016, Jaffarian has structured all finance manager compensation plans such that finance managers are able to earn more money by selling add-on products to consumers at higher markups.

44. Jaffarian pays its finance managers a portion of the profit margin for their add-on product sales and increases that portion based on the salesperson's monthly average profit per sale and the "penetration" of certain products, meaning the proportion of their sales that include a given product.

45. For example, one Jaffarian finance manager earned 12% of the profit (or markup) on add-on products, plus an additional 1% of profits if he reached each of the following benchmarks: 45% of his deals included a service contract; 50% of his deals included a service contract; 35% of his deals included GAP insurance; 40% of his deals included GAP insurance; the monthly average profit per retail sale was \$1,000; and the monthly average profit per retail sales was \$1,100. His pay plan included the following chart summarizing this incentive program:

Additional Bonus Incentives:

Product	Monthly Production Level Bonus Paid	
Service Contracts	45%	Additional 1%
	50%	Additional 1%
GAP	35%	Additional 1%
	40%	Additional 1%
Monthly Average Profit per Retail Sale	\$1,000	Additional 1%
	\$1,100	Additional 1%

46. As a result of this compensation structure, Jaffarian's finance managers can substantially increase their earnings if they sell more add-on products at particularly high markups. The higher the markups, the more a finance manager earns.

47. The compensation structure also increases Jaffarian's profits, since Jaffarian pockets the overwhelming majority of the profits made on add-on product sales.

4. Despite selecting pricing and compensation policies that are likely to result in unfair and discriminatory conduct, Jaffarian fails to provide any instruction or auditing to ensure fair, nondiscriminatory treatment of its consumers.

48. While Jaffarian may review its sales transactions to ensure that the markup information reported by its staff is accurate, Jaffarian does not review the transactions for any indicia of unfair treatment of consumers; such as vast, unexplained differences in the markups obtained on add-on products or disproportionately higher markups being charged to specific individuals or subsets of consumers, like women or people of color.

49. Similarly, Jaffarian has not provided its finance managers or other staff with any training, guidance, or written policies on their obligation to avoid making pricing decisions based on unlawful factors such as the race, ethnicity, or gender of the consumer.

50. Discretionary pricings policies that are not coupled with regular audits, trainings, and other controls to prevent conscious or unconscious biases from influencing pricing decisions has long been known to result in discrimination, particularly against consumers of color.⁸

51. Despite this well-known history in the auto industry,⁹ Jaffarian implemented and continues to maintain a discretionary pricing policy for ancillary products without providing any relevant auditing or training to prevent or redress discriminatory pricing.

⁸ See footnotes 2 and 3, supra.

⁹ See, e.g., National Automobile Dealers Association, NADA Fair Credit Guidance, <https://www.nada.org/faircredit/> (providing guidance to dealership on ways to avoid discriminatory bias when staff have discretion to price dealer arranged financing).

52. On information and belief, Jaffarian has consistently engaged in the same or substantially similar policies and practices since at least January 2016.

C. Jaffarian’s pricing and compensation practices, combined with its failure to implement appropriate controls, unfairly discriminate against Black and Hispanic consumers.

1. Jaffarian charges higher markups to Black and Hispanic consumers.

53. Jaffarian’s sales records demonstrate that, as a result of Jaffarian’s practices and policies, it charges Black and Hispanic consumers higher markups for ancillary products than white consumers.

54. The Commonwealth has reviewed Jaffarian’s sales transactions for the time period from January 1, 2016 through March 31, 2018 (the “Review Period”), focusing on transactions that included the purchase of add-on products.

55. Using the Bayesian Improved First Name Surname Geocoding (BIFSG), Bayesian Improved Surname Geocoding (BISG), or Bayesian Improved First name Geocoding (BIFG) methodologies, the Commonwealth analyzed the first names, last names, and addresses of the consumers along with census data to determine each consumer’s predicted race and ethnicity.¹⁰

56. These methodologies predicted a race/ethnicity composite for 98% of Jaffarian’s consumers that purchased cars and/or add-on products during the review period, for a sample size of several thousand transactions.

¹⁰ For more information describing this methodology, see Ioan Voicu, Using First Name Information to Improve Race and Ethnicity Classification, 5 Statistics and Pub. Pol. 1 (2018), <https://doi.org/10.1080/2330443X.2018.1427012>; Consumer Financial Protection Bureau, Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity (Summer 2014), https://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

57. Based on the review of this sample, as detailed below, Jaffarian charges higher markups to Black and Hispanic consumers than to white consumers who purchase add-on products.

All Add-on Products ¹¹	Hispanic	Black	White
Profit (\$)	\$1,380	\$1,461	\$951
Profit Margin (%)	185%	187%	142%
Difference from White Consumers (\$)	\$429	\$510	--
Population Size	367	30	2021

58. While Jaffarian obtained an average markup of under \$1,000 from white consumers who purchased add-on products, Jaffarian sought and extracted a markup of almost \$1,500 from Black consumers and a markup of \$1,380 from Hispanic consumers. These markups were 54 and 45 percent higher for Black and Hispanic consumers, respectively, than those paid by white consumers.

59. These disparities exist based on both the dollar amount of the markup Jaffarian charged to these consumers, as well as the markup percentage Jaffarian charged. Further, the results meet or exceed the common standard for statistical significance, meaning there is less than a 5% probability that the measured disparities would occur by chance.

60. Analysis of Jaffarian's sales of specific types of add-on products similarly reveals statistically significant disparities in the markups Jaffarian charged.

¹¹ This includes all add-on products for which Jaffarian's finance managers receive a commission.

61. For example, the disparities for consumers purchasing a service contract are as follows:

Service Contracts	Hispanic	Black	White
Profit (\$)	\$1,233	\$1,177	\$1,008
Profit Margin (%)	176%	149%	123%
Difference from White Consumers (\$)	\$225	\$168 ¹²	--
Number of Transactions	212	19	1,027

62. Jaffarian's pricing and compensation policies thus caused Black and Hispanic consumers to pay significantly more for ancillary products, compared to white consumers.

63. Jaffarian derived approximately \$170,000 in extra profits from Hispanic and Black consumers' overpayments during the Review Period.

64. That amount should not only be analyzed relative to Jaffarian's overall profits. Rather, as an absolute value, it is money that Jaffarian would not have without its unfair and discriminatory practices— it is money that should be in the wallets of Jaffarian's consumers of color.

65. In combination, Jaffarian's discretionary pricing practices, compensation incentives, and lack of oversight denied Black and Hispanic consumers treatment on par with that afforded to white consumers in a place of public accommodation.

¹² Although in this table the difference between the profits on sales to Black consumers (\$1,177) and white ones (\$1,008) appears to be \$169, the actual difference is \$168 because the numbers above are rounded to the nearest whole dollar for viewing simplicity.

2. Jaffarian knew or should have known its practices are unfair.

66. Jaffarian knew or should have known that its pricing and compensation policies, alone and in combination, would likely result in unfair and discriminatory pricing that harms consumers.

67. Jaffarian knew or should have known that offering its finance managers total discretion to increase the prices charged to individual consumers for add-on products, without any training or controls, was likely to result in higher markups and prices being sought and extracted from Black and Hispanic consumers.

68. Likewise, Jaffarian knew or should have known that incentivizing its finance managers to increase their incomes by charging higher markups to individual consumers, without any training or controls, was likely to result in higher markups and prices being sought and extracted from Black and Hispanic consumers.

69. Less restrictive alternative policies and practices exist which would not have the same discriminatory impact on Jaffarian's consumers.

V. CAUSES OF ACTION

COUNT I:

Violations of General Laws Chapter 93A, Section 2

70. The Commonwealth realleges paragraphs 1-69 of this Complaint.

71. Jaffarian violated G.L. c. 93A, § 2 and 940 C.M.R. 3.16(1) by:

- a. engaging in unfair, unethical and immoral discrimination against Black and Hispanic consumers, by charging them substantially higher markups for the ancillary products offered and sold by Jaffarian; and

- b. implementing pricing and/or compensation policies and practices that Jaffarian knew or should have known would, and in fact did, result in racially disparate pricing practices by its employees.

72. Jaffarian violated G.L. c. 93A, § 2 and 940 C.M.R. 3.16(3) by violating the Public Accommodations Act, G.L. c. 272, § 98, which has, among others, a purpose of protecting consumers from unlawful discrimination when engaged in trade or business in places of public accommodation, like Jaffarian's car dealership.

73. Jaffarian knows or should know that these practices are unfair and/or deceptive.

COUNT II:

Violations of General Laws Chapter 272, Section 98

74. The Commonwealth realleges paragraphs 1-69 of this Complaint.

75. Jaffarian violated the Public Accommodations Act, G.L. c. 272, § 98, by distinguishing between and discriminating against consumers on account of their race, color, and/or national origin.

76. Jaffarian is a place of public accommodation as that term is defined in G.L. c. 272, § 92A.

77. Jaffarian adopted and maintained pricing and compensation policies and practices that caused Black and Hispanic consumers to be charged significantly higher markups for add-on products than were charged to white consumers.

78. There is no legitimate business justification for such practices. And even if one were to exist, less restrictive alternative policies exist which would not result in such discrimination.

79. Jaffarian is liable for the foregoing unlawful conduct individually and as *respondeat superior* for its employees.

VI. PRAYER FOR RELIEF

80. Wherefore, the Commonwealth respectfully requests that the Court find Jaffarian liable for violations of G.L. c. 93A, § 2 and G.L. c. 272, § 98 and order injunctive relief to prevent Jaffarian from engaging in similar misconduct; civil penalties, disgorgement of ill-gotten profits, attorneys' fees and costs, restitution to consumers, and all other equitable relief as this Court deems just and appropriate.

Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS

ATTORNEY GENERAL
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/s/ Mychii Snape

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EXHIBIT 1

Add-On Products Sold By Jaffarian's Service Inc.

PRODUCT DESCRIPTION
Maintenance
Resistall
Tire and wheels
Keycare
Remote Starter
Ding and dent
3M Film
Lojack
Smart Start