IN THE CIRCUIT COURT OF JACKSON COUNTY
INDEPENDENCE
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.	)	
Attorney General Chris Koster,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No:**
	)	**Division:**
SUMMIT WEST AUTO GROUP, LLC	)	
	)	
Serve: Nader Aldewick	)	
4401 SE Secretariat Dr.	)	
Lees Summit, MO 64082	)	
	)	
and	)	
	)	
NADER ALDEWICK	)	
	)	
Serve: 4401 SE Secretariat Dr.	)	
Lees Summit, MO 64082	)	
	)	
and	)	
	)	
LORI ALDEWICK	)	
	)	
Serve: 4401 SE Secretariat Dr.	)	
Lees Summit, MO 64082	)	
	)	
Defendants.	)	

<u>PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS, RESTITUTION, CIVIL PENALTIES AND OTHER COURT ORDERS</u>

COMES NOW Plaintiff the State of Missouri, ex rel. Chris Koster, Attorney General, by and through Assistant Attorney General Melissa A.

Cullmann, for its Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties and Other Court Orders, against Summit West Auto Group, LLC, Nader Aldewick, and Lori Aldewick and upon information and belief states as follows:

PARTIES

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo 2010.[1]

2. Defendant Summit West Auto Group, LLC ("Summit West") is a Missouri limited liability company that transacts business in Jackson County, Missouri, among other places. Its principal place of business was located at 1029 South West Blue Parkway, Lees Summit, Missouri, 64063.

3. Defendant Nader Aldewick is an individual who transacted business in Jackson County, Missouri, among other places as Summit West Auto Group, LLC. Defendant Nader Aldewick resides at 4401 Southeast Secretariat Drive, Lees Summit, Missouri 64082.

4. Defendant Lori Aldewick is an individual who transacted business in Jackson County, Missouri, amount other places as Summit West

[1] All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* "(Supp. 2012)"—the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

Auto Group, LLC. Defendant Lori Aldewick resides at 4401 Southeast Secretariat Drive, Lees Summit, Missouri 64082.

5. Any acts, practices, methods, uses, solicitations or conduct of the Defendants alleged in this Petition include the acts, practices, methods, uses, solicitations or conduct of Defendants and Defendants' employees, agents, or other representatives acting under Defendants' direction, control, or authority.

6. Defendants have done business within the State of Missouri by marketing, advertising, financing, offering for sale, and selling automobiles to persons within the State of Missouri.

JURISDICTION

7. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

8. This Court has subject matter and personal jurisdiction over the Defendants under Art. V, § 14 Mo. Const.

9. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020.

VENUE

10. Venue is proper in this Court pursuant to § 407.100.7, which provides that "[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business."

11. Defendants have marketed, advertised, financed, offered, and sold automobiles in Jackson County, Missouri, and have engaged in the acts, practices, methods, uses, solicitation and conduct described below that violate § 407.020, RSMo in Jackson County, Missouri.

MERCHANDISING PRACTICES ACT

12. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

> 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice… Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

13. "Person" is defined as "any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation,

whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof." § 407.010.5.

14. Wholesalers are "persons" liable for violations of the Merchandising Practices Act, and privity with consumer is not required. *Gibbons v. J. Nuckolls, Inc.*, 216 S.W. 3d 667, 670 (Mo. 2007).

15. "Merchandise" is defined as "any objects, wares, goods, commodities, intangibles, real estate, or services." § 407.010(4).

16. "Trade" or "commerce" is defined as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms "trade" and "commerce" include any trade or commerce directly or indirectly affecting the people of this state." § 407.010(7).

17. Defendants have advertised, marketed, and sold merchandise in trade or commerce within the meaning of § 407.010.

18. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in Sections 407.010 to 407.145 of the Merchandising Practices Act. Said Rules are contained in the Missouri Code of State Regulations (CSR). The rules

relevant to the Merchandising Practices Act allegations herein include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

SALE AND TRANSFER OF VEHICLES

19. Section 301.210 of the Missouri Revised Statutes provides in pertinent part:

> 1. In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued, the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the director of revenue, with a statement of all liens or encumbrances on such motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of such motor vehicle or trailer…

20. Dealer, as the certificate owner of a vehicle, has a legal right to transfer possession of a vehicle to a buyer pending completion of the sale. Physical transfer of possession creates an executor contract between dealer and buyer which grants buyer the right to compel assignment of the certificates of ownership from dealer; and consequently the right to seek delivery of the certificates from floor plan financer. *Bradley v. K & E Investments,* 847 S.W.2d 915, 920 (Mo. App. 1993)

ALLEGATIONS OF FACT RELEVANT TO ALL COUNTS

21. From at least 2010, Defendants Lori and Nader Aldewick owned and operated Summit West Auto Group, LLC as an automobile dealership that marketed, advertised, offered to sell and sold automobiles to Missouri consumers.

22. Defendants contracted with Dealer Services Corporation and Adventure Finance ("Floor Planners") that offered financing services to automobile dealerships.

23. Floor Planners loaned the Defendants money to purchase automobiles from auctions in return for a security interest in any vehicles that Defendants purchased.

24. Floor Planners kept physical possession of certificates of title of the automobiles in Defendants' inventory.

25. Floor Planners withheld transfer of titles from Defendants in order to assure repayment on Defendants' loan.

26. When Defendants sold an automobile to a consumer, Defendants were required to pay Floor Planners before Floor Planners would release the title to Defendants.

27. Despite knowing that they did not possess the titles, Defendants sold vehicles and promised consumers that they would provide titles to the vehicle after sale or transfer.

28. Defendants, pursuant to § 301.210, RSMo, were required to transfer motor vehicle titles to buyers at the time of sale or transfer of the vehicle.

29. Defendants failed to transfer title at the time of sale or transfer.

30. As a result of Defendants' actions, at least six consumers have paid or financed approximately $60,589.00 for automobiles they are unable to drive.

Consumer Example 1

31. On or about October 5, 2012, David Diamond purchased and accepted delivery of a 2006 Volkswagen Passat for approximately $9,480.00 from Defendants.

32. As part of the agreement, Diamond traded in a 2006 Toyota Sienna that had been financed through Wells Fargo & Company and had a remaining loan balance of $14,000.

33. Defendants agreed to pay the remaining loan on the Toyota Sienna if Diamond agreed to pay an additional $2,370.00.

34. Diamond paid Defendants $2,370.00 with a cashier's check and financed the remaining amount of the purchase price.

35. At the time of the sale and delivery of the Volkswagen Passat, Defendants informed Diamond that they would provide him with the

certificate of title in a week because the certificate of title was being held by the floor planner, Dealer Services Corporation.

36. Diamond never received the certificate of title from Defendants.

37. Diamond is unable to register his vehicle and is continuing to pay $250.00 per month for an automobile he cannot legally drive.

38. Defendants did not pay the remaining loan balance on the Toyota Sienna.

39. Defendants sold the Toyota Sienna to another consumer who has since had the car repossessed by Wells Fargo & Company for non-payment of the loan.

40. The defaulted loan has been reported on Diamond's credit.

Consumer Example 2

41. On or about November 2012, Kiara Rodriquez purchased and accepted delivery of a 2006 Pontiac G6 for approximately $7,239.00 from Defendants.

42. Rodriquez paid Defendants a down payment of $3,000 and financed the remaining purchase price through Defendants' in-house financer.

43. Defendants told Rodriquez to bring proof of insurance and telephone bills and then she would receive the certificate of title to the automobile.

44. Rodriquez brought proof of insurance and the required telephone bills to Defendants and was told that they would call her about receiving the certificate of title.

45. Approximately one week after the purchase date, Defendants told Rodriquez she needed to return the automobile to them so that the bank could examine the automobile to insure that there was no insurance fraud and for loan financing purposes.

46. Rodriquez returned the automobile and was told she could pick it up later the same afternoon. Rodriquez was later told that Defendants would need to keep the automobile until the following Monday.

47. When Rodriquez drove past the car lot the following Monday, tow trucks were removing automobiles from the lot. Rodrqieuz was told by Defendants that her automobile was safe.

48. Rodriquez requested a refund but Defendants refused.

49. Rodriquez has been unable to contact Defendants and has yet to receive her automobile or a refund.

VIOLATIONS OF LAW

COUNT I: FALSE PROMISE

50. Plaintiff incorporates all allegations stated above.

51. Defendants violated Section 407.020 by falsely promising consumers that the Defendants would provide the vehicle's title to the consumer, a statement which was false or misleading as to Defendants' intention or ability to perform the promise, or likelihood the promise will be performed.

COUNT II: DECEPTION

52. Plaintiff incorporates all allegations stated above.

53. Defendants violated Section 407.020 by using deception in that Defendants engaged in acts or practices which had the tendency or capacity to mislead, deceive, or cheat and tended to create the false impression that Defendants had the ability to transfer the certificates of title for the vehicles being sold and delivered to consumers when in fact Defendants did not physically possess the certificates of title.

COUNT III: CONCEALMENT, SUPPRESSION, OR OMISSION OF A MATERIAL FACT

54. Plaintiff incorporates all allegations stated above.

55. Defendants violated Section 407.020 by concealing, suppressing or omitting the material fact that Defendants did not physically possess the certificates of title to be able to transfer them to consumers at the time of delivery.

COUNT IV: UNFAIR PRACTICE

56. Plaintiff incorporates all allegations stated above.

57. Defendants violated Section 407.020 by engaging in the method, use or practice of selling and delivering automobiles to consumers without passing or transferring title which violates § 301.210, RSMo, a statute intended to protect the public.

58. Defendants' violation presents the risk of, and causes substantial injury to consumers because violations of § 301.210 harmed, and will continue to harm, consumers.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that the Defendants violated the provisions of Section 407.020.

B. Issuing Preliminary and Permanent Injunctions issued pursuant to §§ 407.100.1 and 407.100.2 prohibiting and enjoining the Defendants and their agents, servants, employees, representatives and other individuals acting at its direction or on its behalf from selling automobiles in the State of Missouri.

C. Issuing Preliminary and Permanent Injunctions that require the Defendants and their agents, servants, employees, representatives and other individuals acting at their direction or on their behalf to transfer titles on

vehicles purchased by consumers to any and all consumers who purchased vehicles prior to the filing of this action and have not received properly executed title.

D. Requiring the Defendants pursuant to § 407.100.4 to provide full restitution to all consumers who suffered any ascertainable loss, including but not limited to any monies or property acquired by Defendants through unlawful practices.

E. Requiring the Defendants pursuant to § 407.100.6 to pay the State of Missouri a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

F. Requiring the Defendants pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against the Defendant, or such other amount as the Court deems fair and equitable.

G. Requiring the Defendants pursuant to § 407.130 to pay all court, investigative and prosecution costs of this case.

H. Granting any further relief that this Court deems proper in the premise.

Respectfully submitted,

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Attorney General

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