

IN THE MATTER OF:) DOCKET NO. 498271
Kevin Kline, individually and)
d/b/a Public Auto Wholesalers LLC)

This Assurance of Voluntary Compliance ("Assurance") is entered into this 3rd day of October, 2014 between Public Auto Wholesalers LLC ("Public Auto"), an Ohio used automotive dealership, Kevin Kline ("Kline"), individually, and the Attorney General of the State of Ohio ("Attorney General").

WHEREAS, Public Auto and Kline desire to comply with all aspects of the Consumer Sales Practices Act, the Substantive Rules, and the Certificate of Motor Vehicle Title Act, Public

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ATTORNEY GENERAL OF OHIO

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NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of Public Auto and Kline's business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Public Auto and Kline agree to comply with all the terms of this Assurance and to conduct their business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act, R.C. 1345.01 et seq. and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) Public Auto was an Ohio limited liability corporation conducting business in Cuyahoga County and in the State of Ohio with its principal place of business located at 3089 W. 11th St., Cleveland, OH 44111.
- (5) Kline exercised the authority to establish, implement or alter the policies of Public Auto and committed, allowed, directed, ratified or otherwise caused the following unlawful acts and practices to occur.
- (6) Kline and Public Auto operated a used motor vehicle dealership that engaged in the business of effecting consumer transactions by advertising and selling used motor vehicles in the State of Ohio, including Cuyahoga County.
- (7) Public Auto held license #UD018399 issued by the State of Ohio under R.C. 4517.01 et seq. allowing it to engage in the business of displaying or selling at retail or wholesale used motor vehicles.

- (8) While participating in the Title Defect Recision Fund, Public Auto displayed for sale and sold used motor vehicles without obtaining certificates of title for the vehicles in its name, and without possessing bills of sale for the motor vehicles displayed, offered for sale, or sold, and without a properly executed power of attorney or other related documents from the prior owners of the motor vehicles giving Public Auto the authority to have certificates of title to the vehicles issued in its name.
- (9) Public Auto, in the ordinary course of business, sold or transferred used motor vehicles to Ohio retail purchasers and failed to apply for certificates of title in the name of the retail purchasers on or before the thirtieth day following the dates of the sales.
- (10) Public Auto, in the ordinary course of business, sold or transferred motor vehicles to Ohio retail purchasers and failed to obtain the certificates of title in the name of the retail purchasers on or before the fortieth day following the dates of the sales.
- (11) Public Auto received payment from the retail purchasers, and/or third parties on behalf of the retail purchasers, in full satisfaction for the purchase of the motor vehicles.
- (12) As a result of Public Auto's conduct, retail purchasers were unable to obtain certificates of title to their used motor vehicles, and filed claims pursuant to Ohio's Title Defect Recision (TDR) statute, R.C. 4505.181.
- (13) The Ohio Attorney General, as administrator of the TDR Fund, paid the retail purchasers' claims in the amount of Twenty-Four Thousand One Hundred Ninety-Two Dollars and Fifty Cents (\$24,192.50).
- (14) Public Auto and Kline are "suppliers" as that term is defined in R.C. 1345.01(C), because they engaged in the business of effecting or soliciting consumer transactions, by offering for sale or selling or financing the purchase or transfer of used motor vehicles

to individuals for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A).

STATUTORY VIOLATIONS

- (15) Public Auto and Kline committed an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.02, by selling or transferring used motor vehicles to Ohio retail purchasers and failing to apply for certificates of title in the name of the retail purchasers on or before the thirtieth day following the date of the sale as required by R.C. 4505.06(A)(5)(b).
- (16) Public Auto and Kline committed an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.02, by failing, on or before the fortieth day following the date of the sale, to obtain titles to the vehicles in the name of the retail purchasers in violation of R.C. 4505.181(B)(1).

COMPLIANCE PROVISIONS

- (17) In connection with the display for sale, or sale of used motor vehicles, Public Auto and Kline shall refrain from displaying for sale and selling a used motor vehicle without obtaining a certificate of title for the vehicle in its name, or without possessing a bill of sale for the motor vehicle displayed, or offering for sale, or selling, without a properly executed power of attorney or other related document from the prior owner of the motor vehicle giving Public Auto the authority to have a certificate of title to the vehicle issued in its name, in violation of the TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).
- (18) In connection with the display for sale, or sale of used motor vehicles, Public Auto and Kline shall refrain from selling or transferring a motor vehicle to an Ohio retail purchaser

when they fail to apply for a certificate of title in the name of the retail purchaser on or before the thirtieth day following the date of the sale, in violation of the TDR, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).

- (19) In connection with the display for sale, or sale of used motor vehicles, Public Auto and Kline shall refrain, in the ordinary course of business, from failing, on or before the fortieth day following the date of the sale, to obtain title to the vehicle in the name of the retail purchaser in violation of TDR Act, R.C. 4505.01 et seq. and the Consumer Sales Practices Act, R.C. 1345.02(A).

GENERAL PROVISIONS

- (20) Public Auto and Kline understand and agree this Assurance applies to their principals, officers, directors, agents, servants, representatives, salespersons, employees, instructors, independent contractors, successors in interest and assigns, jointly and severally.
- (21) This Assurance shall be governed by the laws of the State of Ohio.
- (22) This Assurance is entered into by Public Auto and Kline of their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.
- (23) This Assurance does not constitute an approval by the Attorney General of any of Public Auto or Kline's business practices and Public Auto or Kline shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of Public Auto's business practices.
- (24) This Assurance sets forth the entire agreement between the Attorney General, and Public Auto and Kline, and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject

matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.

- (25) 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 Assurance 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.
- (26) Public Auto and Kline shall negotiate in good faith, through the office of the Attorney General, any consumer complaints filed with this office concerning Public Auto or Kline's conduct occurring prior to the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance. The Attorney General shall direct all complaints to the attention of Kline.
- (27) This Assurance is a public record and shall be maintained in the Public Inspection File.

REIMBURSEMENT TO THE TDR FUND

- (28) As part of the consideration for the termination of the Attorney General's investigation of Public Auto and Kline under the Consumer Sales Practices Act, R.C. 1345.01 et seq., Kline shall reimburse the TDR Fund Twenty-Four Thousand One Hundred Ninety-Two Dollars and Fifty Cents (\$24,192.50). This amount represents payments made to the following consumers in the amounts listed, less any amounts received from auction:

Sharina Moyer	\$5,700.00
Laniece Turner	\$1,000.00
Yijun Yang	\$4,015.50 (includes \$37.00 temporary tag fees)
Douglas Gawthrop	\$3,813.50

Carlton Creer	\$1,392.50
Jehad Almarhoon	\$4,318.50
Katie Lemmeyer	\$3,887.50 (includes \$74.00 temporary tag fees)
GCAA	\$65.00 (tow fee Lemmeyer vehicle)

- (29) Kline will make a payment of Fifteen Thousand Dollars (\$15,000.00) upon signing of this entry leaving a balance due of Nine Thousand One Hundred Ninety-Two Dollars and Fifty Cents (\$9,192.50). Payment of this amount shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to: **Compliance Officer, Consumer Protection Section, 30 E. Broad St., 14th Fl., Columbus, Ohio 43215**. Payment of the remaining amount shall be made in eleven monthly payments of Seven Hundred Sixty-Six Dollars and Four Cents (\$766.04) per month with the first payment due on or before November 1, 2014, and each subsequent payment due on or before the 1st of each month, with the last payment of Seven Hundred Sixty-Six Dollars and Six Cents (\$766.06) made no later than October 1, 2015. Payments made pursuant to this paragraph shall be placed into the TDR Fund. If Kline fails to comply with the Assurance, the remainder of the restitution due shall be immediately due and payable upon demand.

PAYMENT TO THE STATE

- (30) As part of the consideration for the termination of the Attorney General's investigation of Public Auto and Kline under the Consumer Sales Practices Act, R.C. 1345.01 et seq., Kline shall pay Two Thousand Five Hundred Dollars (\$2,500.00) to the Office of the Ohio Attorney General for attorneys' fees and investigative costs. Said amount is suspended. If Kline fails to comply with any provision of the Assurance, including the

Kline shall pay Two Thousand Five Hundred Dollars (\$2,500.00) to the Office of the Ohio Attorney General for attorneys' fees and investigative costs. Said amount is suspended. If Kline fails to comply with any provision of the Assurance, including the payment provisions, the Two Thousand Five Hundred Dollars (\$2,500.00) payment to the State shall be immediately due and payable upon demand. Payment shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to: **Compliance Officer, Consumer Protection Section, 30 E. Broad St., 14th Fl., Columbus, Ohio 43215.**

PENALTIES FOR FAILURE TO COMPLY

- (31) The Attorney General may assert any claim that Public Auto or Kline have violated this Assurance in a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, and a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation the Attorney General asserts Public Auto or Kline have committed. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law.
- (32) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the Consumer Sales Practices Act or the Substantive Rules adopted thereunder, by Public Auto and Kline. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq., if presented after the violation in an action brought under the Consumer Sales Practices Act, R.C. 1345.01 et

seq.

- (33) This Assurance shall in no way exempt Public Auto or Kline from any other obligations imposed by law, and nothing contained herein shall relieve Public Auto or Kline of any legal responsibility for any acts or practices engaged in by Public Auto or Kline other than those acts specifically resolved by this Assurance.
- (34) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Public Auto or Kline under any legal authority granted to the Attorney General:
- (a) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
- (b) With respect to transactions or occurrences which are not the subject of this action.

REPRESENTATIONS AND WARRANTIES

- (35) Public Auto warrants and represents that the individual signing this Assurance on behalf of Public Auto is doing so in his official capacity and is fully authorized by Public Auto to enter into this Assurance and to legally bind Public Auto to all of the terms and conditions of the Assurance.
- (36) Public Auto and Kline represent by executing this Assurance that they have carefully read this Assurance and that if they so choose have had the opportunity to discuss the terms and conditions of this Assurance with an attorney, and that they agree to the terms and conditions as set forth in this Assurance by signing the same.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 3rd day of October, 2014.

ACCEPTED BY:



Rosemary E. Rupert (0042389)
Principal Assistant Attorney General
Director Title Defect Recision Unit
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-3381
Counsel for the Ohio Attorney General

10-3-14

Date



Kevin Kline, Owner, on behalf of
Public Auto Wholesalers LLC, and in his
individual capacity, and as guarantor

10/11/14

Date