

MAR 16 2017

SANDRA KURT

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY SUMMIT COUNTY, OHIO
CLERK OF COURTS

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

STATE OF OHIO, ex rel.
MICHAEL DEWINE,

Plaintiff

vs.

PHOENIX INDOOR AUTO SALES, et al.,

Defendants

CASE NO. CV-2016-09-4085

JUDGE LYNN S. CALLAHAN

DEFAULT JUDGMENT ORDER
AND FINAL ENTRY

Plaintiff, the State of Ohio, moved this Court to grant Default Judgment against Defendants Phoenix Indoor Auto Sales and Elizabeth Severy, pursuant to Civ. R. 55(A). The Defendants did not answer the State's Complaint or appear within twenty-eight days as required by Civ. R. 12(A). The State has demonstrated that it has complied with the Servicemembers Civil Relief Act of 2003, 50 U.S. C. App. §§ 501-596. The State has also requested the submission of affidavit testimony over live testimony on the issue of damages, which is hereby granted. Attached to Plaintiff's Motion for Default Judgment were affidavits from the Ohio Attorney General Investigator and Ohio Attorney General Title Defect Recision Fund Administrator, setting forth the damages. Accordingly, the Court hereby grants the State's Motion for Default Judgment against Defendants, and makes the following findings of facts and conclusions of law and orders the relief as recited below.

FINDING OF FACTS

The Court finds the following facts:

1. Defendant Phoenix Indoor Auto Sales ("Phoenix") is an Ohio company registered with

the Ohio Secretary of State since June 16, 2008, most recently operating from a Summit County address at 903 E. Tallmadge Ave., Akron, Ohio 44310.

2. Defendant Elizabeth Severy is a natural person and the Agent for Phoenix Indoor Auto Sales. Defendant Elizabeth Severy's most recent address is 3870 Wood Duck Ct., Oshkosh, WI 54904.
3. Defendant Severy owned, controlled, directed and operated the business activities and sales of Phoenix Indoor Auto Sales.
4. Defendants held used motor vehicle dealer license #UD017571 from the State of Ohio.
5. Defendants told some consumers that the used motor vehicles they were purchasing included warranties which Defendants either failed to provide or failed to honor.
6. Some consumers left the used motor vehicles they purchased in Defendants' possession for repair work, only to return to discover Defendants had re-sold or otherwise removed the motor vehicles from the property.
7. Defendants failed to file applications for certificates of title within thirty (30) days after assignment or delivery of motor vehicles.
8. Defendants failed to obtain certificates of title on or before the fortieth (40th) day after the sale of motor vehicles.
9. Defendants failed to provide or failed to honor warranties to consumers.
10. Defendants sold vehicles to consumers which required some repair work, but in some instances the consumers returned to Defendants' business to discover their vehicles had been re-sold or otherwise removed from the property.
11. The Title Defect Recision ("TDR") Fund, administered by the Ohio Attorney General's Office, has made expenditures from the TDR Fund directly attributable to the Defendants.

actions in the amount of **One Hundred Sixty Thousand, One Hundred Sixty-four dollars and thirty-one cents (\$160,164.31)**, representing consumer claims of Forty-six Thousand, Four Hundred Fifty-two dollars and twenty-six cents (\$46,452.26); One Hundred Thirteen Thousand, Seven Hundred Eighty-eight dollars and fifty-five cents (\$113,788.55) to lienholders; and Six Hundred Ninety-one dollars and fifty cents (\$691.50) in title fees, less a recoupment from the sale of one motor vehicle at auction in the amount of Seven Hundred Sixty-eight dollars (\$768.00).

CONCLUSIONS OF LAW

1. The Court has personal jurisdiction over Defendants pursuant to R.C. 2307.382 because this cause of action arises from Defendants' business transactions with residents of Ohio.
2. The Court has subject matter jurisdiction over this action pursuant to R.C. 1345.04 of the Consumer Sales Practices Act ("CSPA").
3. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(2) and (3) because Defendants operated their principal place of business and conducted the activities which gave rise to the State's claim for relief in Summit County, Ohio.
4. Defendants engaged in unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02 by failing to file applications for certificates of title within thirty (30) days after assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b).
5. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by selling motor vehicles to consumers, in the ordinary

course of business, and then failing to obtain certificates of title on or before the fortieth (40th) day of sale of the motor vehicles as required by R.C. 4505.181(B)(1).

6. These acts and practices described above have previously been determined by Ohio courts to violate CSPA. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

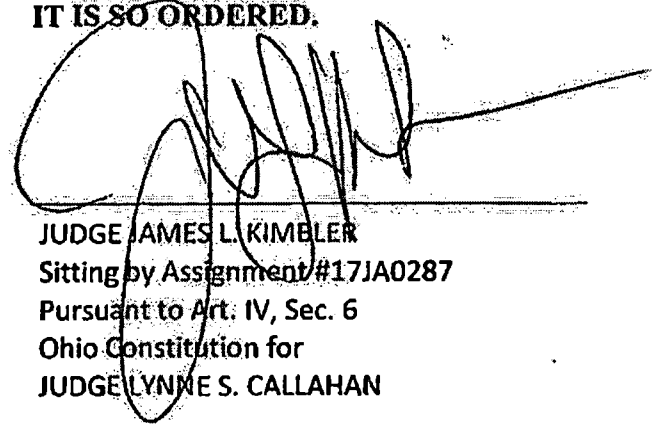
ORDER

It is therefore **ORDERED, ADJUDGED, and DECREED:**

- A. Plaintiff's request for a Default Judgment is hereby **GRANTED** as Defendants have violated the CSPA, R.C. 1345.01 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*, in the manner as set forth herein.
- B. Defendants, under these or any other names, and their officers, agents, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert or participation with Defendants, directly or indirectly, are **PERMANENTLY ENJOINED** from further violating the CSPA, 1345.01 *et seq.* and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*
- C. Defendants are **ORDERED** jointly and severally liable for reimbursement to the Title Defect Recision Fund in the amount of One Hundred Sixty Thousand, One Hundred Sixty-four dollars and thirty-one cents (\$160,164.31) representing monies expended from the TDR fund to resolve title defects caused by Defendants' motor vehicle title violations.
- D. Defendants are **ASSESSED, FINED AND IMPOSED**, jointly and severally, a civil penalty of One Hundred Thousand Dollars (\$100,000.00) pursuant to R.C. 1345.01(D) of the CSPA.

- E. Defendants are **ORDERED**, as a means of ensuring compliance with this Court's Order and with the consumer protection laws of Ohio, to maintain in their possession and control for a period of five (5) years all business records relating to the Defendants' solicitation and sale of used motor vehicles in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all records.
- F. Defendants are **ENJOINED** from engaging in consumer transactions as suppliers in the State of Ohio and from applying for or renewing a R.C. 4517 auto dealer's license until they have satisfied all reimbursement, civil penalties, and costs ordered herein.
- G. Defendants, jointly and severally, are **ORDERED** to pay all court costs associated with this matter.

IT IS SO ORDERED.



JUDGE JAMES L. KIMBLER
Sitting by Assignment #17JA0287
Pursuant to Art. IV, Sec. 6
Ohio Constitution for
JUDGE LYNNE S. CALLAHAN

Prepared and submitted by:

/s/ Rebecca F. Schlag

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