

**STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

IN THE MATTER OF:

DOCKET NO. 536773

Churney's Bodyworks
20660 Aurora Rd.
Warrensville Hts, Ohio 44146

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ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("AVC") is entered into this 20th day of July, 2017 by and between Michael J. Churney, Churney's Bodyworks dba Churney's Truck Center (hereafter "Suppliers" or "Churney's") and Michael DeWine, Attorney General of the State of Ohio ("Attorney General"). For purposes of this AVC, "Suppliers" includes Michael J. Churney, individually, as well as the business entities of Churney's Bodyworks dba Churney's Truck Center, their partners, agents, servants, representatives, salespersons, employees, successors or assigns and all persons acting in concert or participation with them directly or indirectly, through any corporate device, partnership, association, or affiliation.

WHEREAS, the Attorney General, having reasonable cause to believe that Suppliers may have engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 4505 of the Revised Code ("Certificate of Motor Vehicle Title Act") has conducted an investigation pursuant to the authority granted him by R.C. 1345.06; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an AVC; and

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PUBLIC INSPECTION FILE

WHEREAS, this AVC is an assurance in writing by Suppliers of their intent to conduct business in a manner designed to comply with the provisions of the Consumers Sales Practices Act, its Substantive Rules and the Certificate of Motor Vehicle Title Act; and

WHEREAS, Suppliers, desiring to comply with all aspects of the Consumer Sales Practices Act (“CSPA”), its Substantive Rules, and the Certificate of Motor Vehicle Title Act, hereby voluntarily enter into this AVC with the Attorney General.

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 AVC.
- (2) By accepting this written AVC, the Attorney General agrees to terminate the current investigation of Suppliers’ business practices and actions occurring on or before the Effective Date of this AVC.
- (3) By giving this written Assurance, Suppliers agree to comply with all the terms of this AVC, including all financial provisions, and to conduct any future business in compliance with all applicable Ohio laws, including without limitation, the CSPA, 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) Michael J. Churney is the owner and principal representative of Churney’s Bodyworks, Inc. and the entity known as Churney’s Truck Center, located at 20660 Warrensville Rd., Cleveland, Ohio 44146.
- (5) Churney’s Bodyworks, Inc. has been registered with the Ohio Secretary of State since September 27, 1983.

- (6) Churney exercised the authority to establish, implement or alter the policies of Churney's Bodyworks and committed, allowed, directed, ratified or otherwise caused the following unlawful acts and practices to occur.
- (7) Churney operated Churney's Bodyworks, 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.
- (8) Churney's Bodyworks, Inc. as either as Churney's Bodyworks or and its dba Churney's Truck Center, currently holds dealer licenses LD004183, UD021069, ND002644, and previously held license ND002159. These dealer licenses, issued by the State of Ohio under R.C. 4517.01 et seq., allow Suppliers to engage in the retail or wholesale business of displaying or selling used motor vehicles.
- (9) Suppliers displayed for sale and sold used motor vehicles without obtaining certificates of title for the vehicles in the Supplier's 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 Suppliers the authority to have certificates of title to the vehicles issued in its name.
- (10) Suppliers, 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.
- (11) Suppliers, 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.

- (12) Suppliers received payment from the retail purchasers, and/or third parties on behalf of the retail purchasers, in full satisfaction of the purchase of the motor vehicles.
- (13) As a result of Suppliers' 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 Fund (TDR), R.C. 4505.181. The Ohio Attorney General, as administrator of the TDR Fund, paid the following retail purchasers' claims in the amounts listed below:

| NAME | AMOUNT | PURPOSE |
|-------------------------|-------------|--|
| Cuyahoga Fiscal Office | \$15.00 | Transfer of Euclid Heat Treating title |
| Automotive Finance Corp | \$10,633.38 | Lienholder on Admiral Logistics title |
| Cuyahoga Fiscal Office | \$15.00 | Transfer of Admiral Logistics title |
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The total of all claims paid thus far is \$10,663.38

- (14) Suppliers committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 et seq., 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).
- (15) Suppliers committed unfair and deceptive acts or practices in violation of the CSPA, 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).

- (16) The acts and practices described in paragraphs 15-16 of this AVC have been previously determined by Ohio courts to violate the CSPA. Suppliers committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COMPLIANCE PROVISIONS

- (17) In connection with the display for sale, or sale of used motor vehicles, Suppliers shall refrain from displaying for sale and selling a used motor vehicle without obtaining a certificate of title for the vehicle in the name of Churney's Bodyworks, Inc. or related dba names, or from 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 Churney's Bodyworks, Inc. the authority to have a certificate of title to the vehicle issued in its name, in violation of the Certificate of Motor Vehicle Title Act, and in particular, R.C. 4505.181, and the CSPA, R.C. 1345.02(A).
- (18) In connection with the display for sale, or sale of used motor vehicles, Suppliers 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 Certificate of Motor Vehicle Title Act, R.C. 4505.01 et seq. and the CSPA, R.C. 1345.02(A).
- (19) In connection with the display for sale, or sale of used motor vehicles, Suppliers 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 R.C. 4505.181 and the CSPA, R.C. 1345.02(A).

GENERAL PROVISIONS

- (20) Churney's Bodyworks, Inc., its dbas and Michael Churney understand and agree this AVC applies to their any and all of their businesses, dba's, principals, officers, directors, agents, servants, representatives, salespersons, employees, instructors, independent contractors, successors in interest and assigns, jointly and severally.
- (21) This AVC shall be governed by the laws of the State of Ohio.
- (22) This AVC is entered into by Suppliers 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 AVC.
- (23) This AVC does not constitute an approval by the Attorney General of any of Suppliers' business practices and it shall not be represented directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of their business practices.
- (24) This AVC sets forth the entire agreement between the Attorney General, Churney's Bodyworks, Inc., Churney's Truck Center and Michael Churney, 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 AVC 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 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.

- (26) Suppliers shall negotiate in good faith, through the office of the Attorney General, any consumer complaints filed with this office concerning their conduct occurring prior to or after the Effective Date of this AVC, which are brought by consumers that are discovered after entering into this AVC. The Attorney General shall direct all such complaints to the attention of Churney's Bodyworks, Inc.
- (27) This AVC 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 Churney's Bodyworks, Inc., Churney's Truck Center and Michael Churney under the CSPA, R.C. 1345.01 et seq., Suppliers shall reimburse the TDR Fund in the amount of Ten Thousand Six Hundred Sixty-three dollars and Thirty-eight cents (\$10,663.38). This amount represents payments made by the Attorney General to resolve complaints filed by the consumers listed in paragraph 14 above.
- (30) Payment of this amount shall be made in the following manner:
- a. Three (3) monthly payments of Three Thousand Five Hundred Fifty-four dollars and Forty-six cents (\$3,554.46). The first payment is due on or before July 22, 2017 and thereafter on the 22nd of each month until paid in full on or before September 22, 2017.
 - b. Each separate payment shall be made by delivery of a certified check or money order, payable to the "Ohio Attorney General's Office," delivered to the following address:

Finance Specialist
Consumer Protection Section
Ohio Attorney General's Office
30 E. Broad St., 14th Floor
Columbus, Ohio 43215

- (31) Payments made pursuant to this paragraph shall be placed into the TDR Fund. If Suppliers fail to comply with the terms of this AVC, including the payment plan, the remainder of the amount due shall be immediately due and payable upon demand.

PAYMENT TO THE STATE

- (32) Suppliers are hereby assessed and moreover agree to be liable for a payment in the amount of \$10,000 to the Attorney General to be placed into the Consumer Protection Enforcement Fund, R.C. 1345.51. Said payment is suspended upon timely compliance with this AVC. If Suppliers fail to comply with any provisions in this AVC, the \$10,000 payment shall be due and payable upon demand.

PENALTIES FOR FAILURE TO COMPLY

- (33) The Attorney General may assert any claim that Suppliers have violated this AVC in a separate civil action to enforce this AVC against Suppliers and the court shall apply applicable standards of law to determine damages per any subsequent violation, which may include any and all remedies available to the Attorney General pursuant to R.C. 1345.07. 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. By this paragraph, Suppliers do not waive any evidentiary objection or any other objection they may have as permitted by law to the admissibility of any such evidence, including, but not limited to, showing evidence that Suppliers have fully and promptly cooperated in good faith with this investigation.
- (34) Pursuant to R.C. 1345.06(F), this AVC is not, and shall not be construed as, evidence of any violation of the CSPA or the Substantive Rules adopted thereunder. Evidence of a

violation of an AVC, however, is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.

- (35) This AVC shall in no way exempt Suppliers from any other obligations imposed by law, and nothing contained herein shall relieve them of any legal responsibility for any acts or practices engaged in by them other than those acts specifically resolved by this AVC.
- (36) Nothing in this AVC shall in any way preclude any investigative or enforcement action against Suppliers 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 AVC are not fully obeyed; or
 - b. With respect to transactions or occurrences which are not the subject of this action.

TOLLING AGREEMENT

- (37) Suppliers acknowledge and agree that Churney's Bodyworks, Inc., Churney's Truck Center and Michael Churney shall not, in any action filed by the Attorney General, raise any applicable time-related or statute of limitations defense, either in law or equity, relating to the activities of these Suppliers in connection with the current Attorney General investigation, except as to any cause of action already barred as of the Effective Date, which shall remain barred, unless otherwise preserved.
- (38) If Churney's file any Motion to Dismiss based on statute of limitations grounds, the parties agree that this AVC shall be submitted as evidence in opposition to the motion,

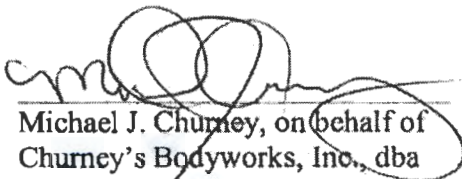
and that the Attorney General may seek to recover the costs incurred to defend such a frivolous motion.

REPRESENTATIONS AND WARRANTIES

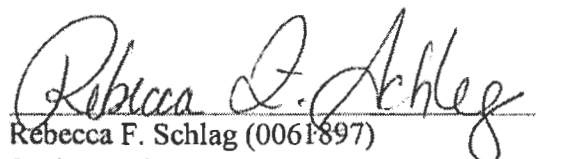
- (39) Churney's warrants and represents that the individual signing this AVC on behalf of Churney's is doing so in their official capacity and is fully authorized to enter into this AVC and to legally bind Churney's to all of the terms and conditions of the AVC.
- (40) Churney's represent that by executing this AVC that they have carefully read this AVC and that they have had the opportunity to discuss the terms and conditions of this AVC with an attorney, and that they agree to the terms and conditions as set forth in this AVC by signing the same.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 20th day of July, 2017.

ACCEPTED BY:


Michael J. Churney, on behalf of
Churney's Bodyworks, Inc., dba
Churney's Truck Center and
in his individual capacity

July 20, 2017
Date


Rebecca F. Schlag (0061897)
Senior Assistant Attorney General
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July 24, 2017
Date

Counsel for the Ohio Attorney General