

APR 18 2012

LINDA K. FANKHAUSER, CLERK,
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF PORTAGE COUNTY, OHIO

STATE OF OHIO, ex rel.)
MICHAEL DEWINE)
ATTORNEY GENERAL OF OHIO)
30 East Broad St., 14th Floor)
Columbus, Ohio 43215)

CASE NO.)
2012 CV 442)

JUDGE)
LJP)

Plaintiff,)

COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF,
RESTITUTION, CIVIL
PENALTIES, AND OTHER
APPROPRIATE RELIEF

v.)

KEEP IT MOVING AUTO INC.)
c/o Ronnie Simmons)
Statutory Agent)
26480 Cambridge Dr.)
Oakwood, Ohio 44146)

and)

RONNIE SIMMONS JR., Individually)
26480 Cambridge Dr.)
Oakwood, Ohio 44146)

and)

CHESTER LEONARD, Individually)
16604 Fairfax Ave.)
Cleveland, Ohio 44128)

Defendants.)

JURISDICTION

1. Plaintiff, State of Ohio, by and through Counsel, the Attorney General of Ohio, Michael DeWine, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the Retail Installment Sales Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and Disclosure Act, R.C.

4549.41 *et seq.*, and the Certificate of Motor Vehicle Title Act R.C. 4505.01 *et seq.*

2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, Portage County and other Ohio counties and, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the Retail Installment Sales Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and Disclosure Act, R.C. 4549.41 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*
3. Defendants, as described below, are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting or soliciting “consumer transactions” as that term is defined in R.C. 1345.01(A).
4. Defendants, as described below, engaged in “consumer transactions” by offering for sale, selling or financing the purchase of used motor vehicles to individuals for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
5. The actions of Defendants, hereinafter described, have occurred in the State of Ohio and Portage County.
6. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act and R.C. 4549.48 of the Odometer Rollback and Disclosure Act.
7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that

some of the transactions complained of herein, and out of which this action arose, occurred in Portage County.

STATEMENT OF FACTS

8. Defendant, Keep It Moving Auto Inc., (hereinafter "KIMA") is an Ohio corporation dba Keep It Moving Auto Sales, with locations at 8941 Broadway Ave., Cleveland, Ohio 44105 (Cuyahoga County) and 8948 SR 14, Streetsboro, Ohio 44241 (Portage County).
9. On information and belief, Defendant, Ronnie Simmons Jr., (hereinafter "Simmons") is an individual whose last known address is 26480 Cambridge Dr., Oakwood, Ohio 44146. Defendant Simmons has an ownership interest in and operates Defendant KIMA and dominated, controlled and directed the business activities and sales conduct of Defendant KIMA, and exercised the authority to establish, implement or alter the policies of Defendant, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
10. On information and belief, Defendant, Chester Leonard (hereinafter "Leonard") is an individual whose last known address is 16604 Fairfax Ave., Cleveland, Ohio 44128. Defendant Leonard has a salespersons license and sold used motor vehicles for Defendant KIMA, and assisted the other Defendants and/or committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
11. Defendants are, and have been at all times relevant to this action, engaged in the business of soliciting, promoting, purchasing, selling, financing and collecting the

proceeds of the sales of used motor vehicles from their present locations in Cleveland and Streetsboro to consumers residing in Cuyahoga, Portage and other Ohio counties.

12. Defendants, operating under the name KIMA, solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
13. Defendants offered financing to consumers interested in purchasing or leasing used motor vehicles through transactions commonly known as "buy here pay here".
14. At all relevant times hereto, Defendant KIMA held license # UD017418 for its Cleveland location 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.
15. At all relevant times hereto, Defendant KIMA held license # UD014296 for its Streetsboro location 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.
16. At all relevant times hereto, Defendant KIMA held license # LD006500 issued by the State of Ohio under R.C. 4517.01 et seq., allowing it to engage in the business of displaying or leasing at retail or wholesale used motor vehicles.
17. At all relevant times hereto, the Defendants were displaying or selling used motor vehicles at their two KIMA locations.
18. Some of the consumers who purchased used motor vehicles from the

Defendants were required to make substantial deposits as partial payment for the used motor vehicles.

19. Consumers paid deposits for the purchase of used motor vehicles contingent upon financing through the Defendants (via “buy here pay here” purchasing and financing) and the Defendants delivered these motor vehicles without a written agreement stating the parties’ obligations should such financing not be obtained.
20. The Defendants failed to provide consumers with dated receipts stating:
 - a.) The time during which the option to purchase the used motor vehicles was binding.
 - b.) Whether the deposits, as that term is defined in O.A.C. 109:4-3-07(D), were refundable or under that conditions the deposits were refundable.
21. In some instances, documents captioned “BILL OF SALE: SALE CONTRACT: SECURITY AGREEMENT AND DISCLOSURE STATEMENT” and/or “RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT” (hereinafter “contract”) were used by the Defendants for the sale of used motor vehicles.
22. In some instances, the Defendants failed to fill in the blanks for the documents described in paragraph 21 of the statement of facts, including failing to fill in the blanks for those disclosures required by the Federal Truth in Lending Act (TILA), and the Retail Installment Sales Act (RISA), including the annual percentage rate of the loan; finance charge; amount financed; total of payments and total sales price.
23. In some instances, the contract included an excessive finance charge of Two

Hundred Fifty Dollars (\$250.00) separate from and in addition to a documentary fee that the Defendants added to the total sales price of the used motor vehicles.

24. In some instances, the contract inaccurately disclosed to consumers that consumers were charged an annual percentage rate of interest of Twenty Four and Ninety-Five percent (24.95%) to purchase used motor vehicles from the Defendants.
25. In some instances, the contract included a late charge for payments less than Ten (10) days late.
26. In some instances, the contract included an acceleration clause, whereby upon default, all sums due under the contract were immediately due and payable at the Defendants option without notice to the buyers.
27. In some instances, the contract included a provision allowing repossession and resale without notice.
28. The Defendants repossessed a used motor vehicle for non-payment even though the contract failed to notify the consumer of the due-date of each payment necessary to pay off the total amount of the time balance.
29. In some instances the Defendants failed to provide consumers with a written odometer disclosure statement or a true and complete odometer disclosure statement.
30. The Defendants entered into consumer transactions on terms the Defendants knew were substantially one-sided in favor of the Defendants by entering into contracts with consumers and extending credit to consumers without obtaining

adequate information from them regarding the consumers' ability to pay their obligations in full pursuant to the terms of the contract.

31. The Defendants entered into consumer transactions on terms the Defendants knew were substantially one-sided in favor of the Defendants by entering into contracts with consumers and failing to include in the contracts the actual payment due dates.
32. The Defendants required consumers to make payments pursuant to payment schedules that were not based on the combined total of the cash price and all finance charges and service charges nor were the payment schedules payable in substantially equal consecutive installments.
33. The Defendants failed to file applications for certificates of title within Thirty (30) days after the assignment or delivery of a motor vehicle.
34. The Defendants failed to obtain certificates of title on or before the Fortieth (40th) day after the sale of motor vehicles.
35. The Defendants failed to send a notice to a consumer informing the consumer of the default and why the default led to the vehicle's repossession within Five (5) days after the repossession and failed to allow the vehicle to be inspected by the consumer after the motor vehicle was repossessed.
36. The Defendants failed to dispose of a consumer's motor vehicle after repossession in a commercially reasonable manner, and failed to provide a notice to the consumer at least Ten (10) days prior to disposition of the collateral stating the time and place the collateral would be sold, and the minimum price for

which such collateral would be sold, together with a statement that the debtor could be held liable for any deficiency resulting from such sale.

37. Defendants charged consumers late fees for payments that were less than Ten (10) days late.
38. Defendants accelerated all payments due where the default in the retail installment contract payment was less than Thirty (30) days.
39. Defendants failed to make certain repairs to the vehicles before or after the sale after promising to do so.
40. Defendants failed to notify consumers that some of the vehicles being purchased by consumers were rebuilt salvage vehicles.
41. Defendants advertised for sale a motor vehicle and misrepresented the true actual odometer mileage of the motor vehicle.
42. The contracts the Defendants used included liquidated damages clauses.

FIRST CAUSE OF ACTION

VIOLATIONS OF THE RETAIL INSTALLMENT SALES ACT (RISA)

43. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Two (1-42) of this Complaint.
44. The Defendants entered into contracts with consumers and failed to include in the contracts the date of each payment necessary to pay the time balance of the total amount due under the retail installment contracts, in violation of R.C. 1317.04(G).

45. The Defendants entered into contracts with consumers and failed to provide consumers with payment schedules that were based on a combined total of the cash price and all finance charges and service charges, in violation of R.C. 1317.06(C).
46. The Defendants entered into contracts with consumers and failed to provide consumers with payment schedules where all payments were substantially equal, in violation of R.C. 1317.06(C).
47. The Defendants entered into contracts with consumers and failed to disclose the actual cost of credit, in violation of R.C. 1317.06(C).
48. The Defendants entered into contracts with consumers and failed to fill in the blanks of the contracts in violation of R.C. 1317.04.
49. The Defendants entered into contracts with consumers and the contracts included excessive finance charges of Two Hundred Fifty Dollars (\$250.00) that the Defendants added to the total sales price of the used motor vehicles in violation of R.C. 1317.07.
50. The Defendants inaccurately disclosed to consumers in the contracts that consumers were being charged an annual percentage rate of interest of Twenty Four and Ninety-Five percent (24.95%) to purchase used motor vehicles from the Defendants in violation of R.C. 1317.04.
51. The Defendants included an acceleration clause in the contracts, whereby upon default, all sums due under the contract were immediately due and payable at Defendants option, without notice to the consumers in violation of R.C.

1317.06(C).

52. The Defendants included in the contracts a provision allowing repossession and resale without notice in violation of R.C. 1317.12.
53. The Defendants repossessed used motor vehicles for non-payment even though the contracts failed to include any language notifying consumers of the date of each payment necessary to pay the time balance of the total amount due under the contracts, in violation of R.C. 1317.12 and R.C. 1317.16.
54. The Defendants repossessed automobiles even before the payments were due or consumers were in default of the contracts, in violation of R.C. 1317.12.
55. The Defendants failed to send a notice setting forth specifically circumstances constituting a default within Five (5) days after repossessing a consumer's motor vehicle, in violation of R.C. 1317.12.
56. The Defendants failed to allow the repossessed vehicle to be inspected by the consumer after repossessing a consumer's motor vehicle, in violation of R.C. 1317.12.
57. The Defendants failed to dispose of the consumer's vehicle after repossessions in a commercially reasonable manner, and failed to provide notices to the consumer at least Ten (10) days prior to disposition of the collateral stating the time and place the collateral would be sold and the minimum price for which such collateral would be sold, together with a statement that the debtor could be held liable for any deficiency resulting from such sale, in violation of R.C. 1317.16.
58. The Defendants imposed late fees for payments that were less than Ten (10)

days late, in violation of R.C. 1317.06(B).

59. The Defendants accelerated payments where the default in the contract payment was less than Thirty (30) days, in violation of R.C. 1317.06(C).
60. The acts and practices described in paragraphs 44-59 are unfair, deceptive and unconscionable sales practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 and R.C. 1345.03.
61. The acts or practices described in paragraphs 44-46 and 53-59 have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

SECOND CAUSE OF ACTION

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT (CSPA)

62. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Two (1-42) of this Complaint.
63. The Defendants entered into a consumer transactions when the Defendants knew at the time the consumer transactions were entered into that there was no reasonable probability of payment of the obligation in full by the consumers, in violation of R.C. 1345.02(A) and R.C. 1345.03(A) as set forth in R.C. 1345.03(B)(4).
64. The Defendants required consumers to enter into consumer transactions on terms the Defendants knew were substantially one-sided in favor of the

Defendants, in violation of R.C. 1345.02(A) and R.C. 1345.03(A) as set forth in R.C. 1345.03(B)(5).

65. The Defendants failed to provide to the consumers at the time of the initial deposits dated written receipts stating clearly and conspicuously the time during which the option to purchase the used motor vehicle was binding, whether the deposits were refundable and under what conditions, in violation of R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-07(B)(5).
66. The Defendants failed to make certain repairs to the vehicles before or after the sale after promising to do so, in violation of R.C. 1345.02.
67. The Defendants delivered motor vehicles to consumers pursuant to sales which were contingent upon financing without written agreements stating the parties' obligations should such financing not be obtained in violation of R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-16(B)(30).
68. The Defendants failed to disclose prior to obtaining the signatures by the consumers on any documents for the purchase of the vehicles the fact that such vehicles were previously titled as a salvage vehicles when the Defendants had actual knowledge of such facts, in violation of R.C. 1345.02 and the Ohio Adm. Code 109:4-3-16(B)(29).
69. The acts or practices described in paragraphs 63-64 have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. The Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

THIRD CAUSE OF ACTION

VIOLATION OF THE ODOMETER ROLLBACK AND DISCLOSURE ACT

70. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Two (1-42) of this Complaint.
71. The Defendants have committed an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.02, and the Odometer Rollback and Disclosure Act, R.C. 4549.46(A), by failing to provide true and complete odometer disclosures required by R.C. 4505.06.
72. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. The Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

FOURTH CAUSE OF ACTION

VIOLATIONS OF THE CERTIFICATE OF MOTOR VEHICLE TITLE LAW

73. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Two (1-42) of this Complaint.
74. The Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 and R.C. 4505.06(A)(5)(b) by failing to file applications for certificates of title within Thirty (30) days after the assignment of delivery of motor vehicles.

75. The Defendants committed unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, 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).
76. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* The Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff's Complaint violates the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the Retail Installment Sales Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and the Disclosure Act, R.C. 4549.41 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.* in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants and their officers, agents, servants, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the

Retail Installment Sales Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and Disclosure Act, R.C. 4549.41 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*

- C. ORDER Defendants jointly and severally liable for reimbursement to all consumers found to have been damaged by the Defendants' unfair, deceptive, and unconscionable acts and practices, odometer rollback, disclosure and motor vehicle title violations.
- D. ASSESS, FINE, AND IMPOSE upon Defendants, jointly and severally, a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each of the appropriate unfair, deceptive or unconscionable acts alleged in the Complaint, pursuant to R.C. 1345.07(D).
- E. ASSESS, FINE, AND IMPOSE upon Defendants, jointly and severally, an additional civil penalty of not less than One Thousand Dollars (\$1,000.00) nor more than Two Thousand Dollars (\$2,000.00) for each violation of the Odometer Rollback and Disclosure Act, pursuant to R.C. 4549.48(B).
- F. ASSESS, FINE, AND IMPOSE upon Defendants, jointly and severally, an additional civil penalty of not more than Two Hundred Dollars (\$200.00) for each violation of the Certificate of Motor Vehicle Title Act, pursuant to R.C. 4505.99.
- G. ORDER the Defendants, jointly and severally, to pay to the Attorney General all costs together with all expenses the Attorney General incurred in the investigation of this action, and the payment of reasonable attorneys' fees incurred by the

Attorney General in the prosecution of violations of the Odometer Rollback and Disclosure Act, pursuant to R.C. 4549.48(A).

- H. ORDER, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, Defendants 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.
- I. Order that the Defendants be enjoined from engaging in consumer transactions until they have satisfied all restitution, civil penalties, Attorney General costs to investigate and prosecute this action and any court costs ordered.
- J. ORDER the Defendants to pay all court costs.
- K. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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