

IN THE COURT OF COMMON PLEAS WARREN COUNTY, OHIO

STATE OF OHIO, ex rel.  
DAVE YOST  
ATTORNEY GENERAL OF OHIO  
30 East Broad St., 14th Floor  
Columbus, Ohio 43215

Plaintiff,

v.

1 AUTO EXCHANGE  
aka #1 AUTO EXCHANGE  
1380 East Second Street  
Franklin, Ohio 45005

and

CATHERINE MANNING  
2910 Oxford Ave.  
Middletown, Ohio 45042

Defendants.

CASE NO.

19 CV 92139

JUDGE

JUDGE PEELER  
CLERK OF COURTS

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

JURISDICTION

1. Plaintiff, State of Ohio, by and through Counsel, the Attorney General of Ohio, Dave Yost, 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 ("CSPA"), R.C. 1345.01 *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, Warren County and, as set forth below, are in violation of the CSPA, R.C. 1345.01 *et*

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

3. Defendants, as described below, are “supplier[s]” as that term is defined in R.C. 1345.01(C) as Defendants are, at all times relevant herein, engaging 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 Warren County.
6. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C), in that Defendants engaged in the transaction complained of herein in Warren County.

#### STATEMENT OF FACTS

8. Defendant 1 Auto Exchange aka #1 Auto Exchange (“1 Auto”) is an Ohio domestic limited liability company operating at 1380 East Second Street, Franklin, Ohio 45005.
9. On information and belief, Defendant Catherine Manning (“Manning”) is an individual whose address is 2910 Oxford Avenue, Middleton, Ohio 45042.
10. Defendant Manning owns and operates Defendant 1 Auto, and dominates, controls and directs the business activities and sales conduct of 1 Auto, and exercises the authority to

establish, implement or alter the policies of 1 Auto, and commits, allows, directs, ratifies or otherwise causes the following unlawful acts to occur.

11. On October 31, 2017, Defendant Manning, both individually and in her capacity as an agent/owner of 1 Auto Exchange aka #1 Auto Exchange, signed an Assurance of Voluntary Compliance (“AVC”) with the Consumer Protection Section of the Ohio Attorney General’s office, which included but was not limited to the agreements that Defendants would:

- a. Refrain from displaying for sale and selling a used motor vehicle without obtaining a certificate of title for the vehicle, 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 1 Auto the authority to have a certificate of title to the vehicle issued in its name in violation of the Title Defect Recision (“TDR”) Act, R.C. 4505.01 et seq. and the CSPA, R.C. 1345.02(A).
- b. 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 Act, R.C. 4505.01 et seq., and the CSPA, R.C. 1345.02(A).
- c. 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 CSPA, R. C. 1345.02(A).

- d. Refrain from engaging in consumer transactions in connection with the display for sale, or sale of used motor vehicles, until 1 Auto has posted a R.C. 4505.181 surety bond with the Ohio Attorney General's Office.
  - e. Reimburse the TDR Fund, which is a Fund administered by Plaintiff, Seven Thousand Three Hundred Six Dollars and Three Cents (\$7,306.03) at the rate of One Hundred Dollars (\$100.00) per week with the 1<sup>st</sup> payment due November 1, 2017 and thereafter weekly until paid in full.
  - f. Reimburse Plaintiff One Thousand Five Hundred Dollars (\$1,500.00) for attorneys' fees and investigative costs at the rate of One Hundred Dollars (\$100.00) per week with the 1<sup>st</sup> payment due the week following the completion of payments referenced in paragraph (e) above.
12. To date, Defendants have made twenty-seven (27) payments of One Hundred Dollars. In total Defendants have paid Two Thousand Seven Hundred Dollars (\$2,700.00), with the last payment received by the Ohio Attorney General's office on July 9, 2018.
13. To date, Defendants owe a remaining Four Thousand Six Hundred Six Dollars and Three Cents (\$4,606.03) of the amount Defendants promised to pay to reimburse the TDR Fund as part of the AVC entered into with the Ohio Attorney General's Office on October 31, 2017.
14. To date, Defendants have made no payments of the \$1,500.00 they promised to pay for investigative and administrative costs as part of the AVC entered into with the Ohio

Attorney General's Office on October 31, 2017.

15. Defendants have violated the terms of the October 31, 2017 AVC that was agreed upon with the Consumer Protection Section of the Ohio Attorney General's Office.
16. Defendants are at all times relevant to this action engaging in the business of soliciting, promoting, purchasing, selling, financing and collecting the proceeds of the sales of used motor vehicles from their location in Franklin to consumers residing in Warren and other Ohio counties.
17. Defendants, operating under the name 1 Auto Exchange aka #1 Auto Exchange, solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
18. At all relevant times hereto, Defendants held license #UD020332 issued by the State of Ohio under R.C. 4517.01 *et seq.*, allowing them to engage in the business of displaying or selling at retail or wholesale used motor vehicles.
19. At all relevant times hereto, Defendants displayed or sold used motor vehicles at the 1 Auto location.
20. Defendant failed to file an application for a certificate of title within thirty (30) days after the assignment or delivery of the motor vehicle.
21. Defendants failed to obtain a certificate of title on or before the fortieth (40th) day after the sale of the motor vehicle.
22. A TDR consumer claim totaling \$7,306.03 thus far was paid from the TDR Fund, administered by the Ohio Attorney General's Office, after the Defendants failed to obtain a certificate of title on or before the fortieth (40th) day after the sale of the motor vehicle.

23. R.C. 4505.181 requires that a dealer post a bond in an amount not less than \$25,000 after the Attorney General has paid a retail purchaser of the dealer from the TDR Fund.
24. After the payout was made from the TDR Fund, Defendants posted a bond with Hartford Fire Insurance Company on October 20, 2017, which expired October 20, 2018, and was not R.C. 4505.181 compliant.

PLAINTIFF'S CAUSE OF ACTION:  
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT ONE  
VIOLATIONS OF THE TERMS OF AN  
ASSURANCE OF VOLUNTARY COMPLIANCE

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Four (1-24) of this Complaint.
26. Defendants have committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by violating the terms of an Assurance of Voluntary Compliance entered into on October 31, 2017.
27. Pursuant to R.C. 1345.06(F)(2), evidence of a violation of an Assurance of Voluntary Compliance is prima-facie evidence of an act or practice in violation of the CSPA.
28. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT TWO  
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

29. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Four (1-24) of this Complaint.

30. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 by failing to file an application for a certificate of title within thirty (30) days after the assignment or delivery of a motor vehicle as required by R.C. 4505.06(A)(5)(b).
31. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by selling a motor vehicle to a consumer, in the ordinary course of business, and then failing to obtain a certificate of title on or before the fortieth (40th) day of sale of the motor vehicle as required by R.C. 4505.181(B)(1).
32. Defendants continued to operate after failing to post a surety bond after the Attorney General paid a retail purchaser of the dealer from the TDR Fund due to the Defendants' failure to deliver a title to the purchaser, as required by R.C. 4505.181(A)(2).
33. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, 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).

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 CSPA, R.C. 1345.01 *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, 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 CSPA,

R.C. 1345.01 *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 and deceptive acts and practices, and motor vehicle title violations.
- D. ORDER Defendants jointly and severally liable for reimbursement to the TDR Fund for funds expended to resolve title defects caused by Defendants' motor vehicle title violation.
- E. 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 or deceptive acts alleged in the Complaint, pursuant to R.C. 1345.07(D).
- F. ORDER Defendants jointly and severally liable to reimburse Plaintiff its \$1,500.00 investigative and administrative costs Defendants were required to pay as part of the AVC and to reimburse Plaintiff its costs to prosecute this matter.
- G. Order that the Defendants be enjoined from engaging in consumer transactions as a used car dealer if Defendants have not posted with the Attorney General's Office in favor of this state a bond of a surety company authorized to do business in this state, in an amount of not less than twenty-five thousand dollars.
- 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

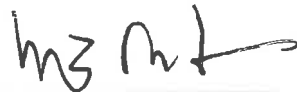


representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all records.

- I. Order that the Defendants be enjoined from engaging in consumer transactions as a supplier until they have satisfied all restitution, civil penalties, Attorney General costs to investigate and prosecute this action, and any court costs ordered.
- J. Order that Defendant Manning be prohibited from maintaining, applying for or being granted a salesperson or auto dealer license under Chapter 4517 of the Revised Code.
- K. ORDER Defendants to pay all court costs.
- L. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

DAVE YOST  
Attorney General



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