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PATRICIA A. NOLAND
CLERK, SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

C 20085200

STATE OF ARIZONA, *ex rel.* TERRY GODDARD, Attorney General, and FELECIA A. ROTELLINI, Superintendent of the Arizona Department of Financial Institutions, Plaintiffs, vs. John David Franklin, Sr., individually, and John David Franklin, Sr. and Jane Doe Franklin, Sr., as a marital community and dba Hurricane Motor Sales; John David Franklin, Jr., individually; and John David Franklin, Jr. and Jane Doe Franklin, Jr., as a marital community, Defendants.	No. _____ **COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF** **Unclassified Civil** JOHN DAVIS

Plaintiffs State of Arizona and the Arizona Department of Financial Institutions, by and through its attorneys, alleges the following:

JURISDICTION AND VENUE

1. The State of Arizona brings this action pursuant to the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.* and Motor Vehicle Time Sales Disclosure Act, A.R.S. § 44-281 *et*

seq., to obtain restitution, declaratory and injunctive relief, civil penalties, attorneys' fees and costs, investigative expenses and other relief to prevent the unlawful acts and practices alleged in this Complaint and to remedy the consequences of such unlawful practices.

2. Venue is proper in Pima County, Arizona.

3. The Superior Court has jurisdiction to enter appropriate orders, both prior to and following a determination of liability, pursuant to A.R.S. § 44-1528.

PARTIES

4. Plaintiff is the State of Arizona, *ex rel.* Terry Goddard, who is authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq* and the Motor Vehicle Time Sales Act, A.R.S. § 44-281 *et seq.*

5. Plaintiff Felecia A. Rotellini is the superintendent of the Arizona Department of Financial Institutions.

6. Defendant John David Franklin, Sr. (hereinafter "Franklin, Sr.") and Susan Franklin, Sr. (hereinafter "S. Franklin"), a marital community, are residents of San Diego County, California and are the owners and sole officers of Hurricane Motor Sales, a used car dealership in Tucson, Arizona.

7. Defendant John David Franklin, Jr. (hereinafter "Franklin, Jr.") is the general manager of Hurricane Motor Sales. Franklin Jr. and LaDonna Lomeli (hereinafter "Lomeli"), are a marital community.

8. Hurricane Motor Sales is a sole proprietorship that conducts a used-car dealership in Pima County, Arizona. At all times relevant to this action, Defendant Franklin, Sr. was the owner of Hurricane Motor Sales.

9. Defendants Franklin, Sr. and Franklin, Jr. acted in their individual capacities in all acts alleged herein and also conducted, controlled, and participated in the day-to-day

operations of Hurricane Motor Sales as owners, managers, agents, and employees. All acts of Hurricane Motor Sales are in fact the acts of Defendants Franklin, Sr. and Franklin, Jr.

10. Whenever in this Complaint reference is made to any act of a Defendant, such reference shall be deemed to mean the acts of each Defendant.

ALLEGATIONS

11. Since approximately January 12, 2006, Defendants Franklin, Sr. and Franklin, Jr. have operated and continue to operate Hurricane Motor Sales in Pima County, Arizona.

12. Hurricane Motor Sales is a used-car dealership through which Defendants advertise, offer for sale and sell used vehicles.

13. Defendants deceptively induce consumers to enter into contracts to purchase vehicles by using false information to deceive consumers into believing they have received in-house financing when such is not the case.

a. For example, Defendants told a consumer that she had in-house financing. After the consumer purchased the vehicle, she discovered that she had been financed through "Riteway." Riteway is owned by Defendants, but, according to Defendant Franklin, Sr., "has no role in the sale and financing of the vehicle of Hurricane Motor Sales."[1] Neither Defendants nor "Riteway" is licensed with the Arizona Department of Financial Institutions to provide financing. CAR Financial Services, Inc., a licensed sales finance company, bought the consumer's account on July 7, 2006. On January 23, 2007,

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[1] Defendants have not disclosed any California or Arizona state licenses permitting "Riteway" to engage in financing activities.

Defendants repossessed the consumer's vehicle without CAR Financial Services, Inc.'s consent.

b. For example, a consumer entered into a contract with Defendants that stated that Hurricane Motor Sales is regulated by the "State Banking Department" and would be financing the consumer's purchase. Neither Defendants nor Hurricane Motors are licensed through the Arizona Department of Financial Institutions. The consumer was financed through Riteway.

14. Defendants sell vehicles on the false pretense that consumers will be able to legally operate the vehicles in Arizona.

a. For example, a consumer purchased a vehicle from Defendants, but was unable to drive the vehicle because Defendants failed to give him the title and registration. Additionally, the consumer's vehicle did not pass Arizona's emissions test when he took it to an emission testing facility after he purchased the vehicle from Defendants. Because of these issues, the consumer eventually voluntarily surrendered the vehicle to the lien holder.

15. Defendants deceptively induce consumers to trade-in their vehicles and purchase vehicles from Defendants on the false pretense that the consumers' existing loan will be paid off once they trade their vehicles in and purchase vehicles from Defendants.

a. For example, a consumer traded in his vehicle and Defendants sold his vehicle without paying off his existing loan or getting the title for the trade-in vehicle from DM Federal Credit Union. Thus, the consumer was still responsible for payments on his trade-in after he purchased a vehicle from Defendants.

16. Defendants deceptively induce consumers to make payments to them and falsely

repossess consumers' vehicles.

a. For example, CAR Financial Services, Inc. purchased a contract from Defendants on July 7, 2006. Defendants continued to collect payments on the account by telling the consumer that they still held the account and to pay them rather than CAR Financial Services, Inc. Defendants then repossessed the consumer's vehicle. CAR Financial Services, Inc. had the original title to the vehicle in their possession and did not authorize the repossession.

17. Defendants sold more than three motor vehicles on a non-cash basis in a year within the meaning of A.R.S. § 44-281(3).

a. A consumer financed the purchase of an Acura RSX on or about January 24, 2006.

b. A consumer financed the purchase of an Infiniti I 30 T on or about January 28, 2006.

c. A consumer financed the purchase of a Honda Civic on or about February 3, 2006.

d. A consumer financed the purchase of a Nissan Frontier on or about February 28, 2006.

e. A consumer financed the purchase of an Isuzu Rodeo on or about April 24, 2006.

f. A consumer financed the purchase of a Lincoln Navigator on or about January 31, 2007.

g. A consumer financed the purchase of a Toyota Solara on or about February 17, 2007.

h. A consumer financed the purchase of a Honda Accord on or about April 26,

2007.

i. A consumer financed the purchase of a Cadillac Seville on or about November 27, 2007.

18. Defendants either created or held retail installment contracts that exceeded a total aggregate outstanding indebtedness of $25,000.00 within the meaning of A.R.S. § 44-281(12)(b).

a. On or about January 24, 2006, Defendants created or held a retail installment contract for a consumer in which $22,461.41 was financed.

b. On or about January 28, 2006, Defendants created or held a retail installment contract for a consumer in which $10,196.06 was financed.

c. On or about February 17, 2007, Defendants created or held a retail installment contract a consumer in which $14,321.63 was financed.

d. On or about April 26, 2007, Defendants created or held a retail installment contract for a consumer in which $9,587.27 was financed.

e. On or about November 27, 2007, Defendants created or held a retail installment contract for a consumer in which $8,879.66 was financed.

VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT

A. FIRST CLAIM FOR RELIEF

1. The State re-alleges all preceding paragraphs.

2. Beginning in or around January, 2006, and continuing through January, 2008, Defendants, in connection with the sale of merchandise, used or employed deception, deceptive

acts or practices, fraud, false pretenses, false promises, misrepresentations or concealment, suppression or omission of material fact with the intent that others rely on such concealment and/or suppression or omission in violation of A.R.S. § 44-1522(A).[2]

3. Defendants continue these practices through the present. These acts include, but are not limited to the acts described below.

4. Defendants deceptively induce consumers to enter into contracts to purchase vehicles from them and to trade their vehicles in to them.

5. Defendants falsely and deceptively cause consumers to believe that the vehicles consumers are purchasing can be legally operated in Arizona.

6. Defendants falsely and deceptively finance vehicles that they sell to consumers, but are not licensed with the Arizona Department of Financial Institutions to sell vehicles to consumers on a non-cash basis or to provide financing to consumers.

7. Defendants falsely and deceptively induce consumers to make payments to them on accounts that they have sold to other financial institutions.

8. Defendants falsely and deceptively repossess consumers' vehicles.

9. Defendants have engaged in a pattern and practice of misrepresentations and deceptive conduct in the sale of goods to consumers.

B. SECOND CLAIM FOR RELIEF

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[2] A violation of the Consumer Fraud Act means "the act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby." *A.R.S. 44-1522(A).*

1. The State re-alleges all preceding paragraphs as though fully set forth herein.

2. With regard to the foregoing violations, Defendants knew or should have known that the above acts and practices violated the Consumer Fraud Act, and those violations were, therefore, willful within the meaning of A.R.S. § 44-1531(A).[3]

VIOLATIONS OF THE ARIZONA MOTOR VEHICLE TIME SALES ACT

CLAIM FOR RELIEF

1. The State re-alleges all preceding paragraphs.

2. Defendants sold more than three vehicles, on a non-cash basis, in a year without a Motor Vehicle Dealer License from the Arizona Department of Financial Institutions in violation of A.R.S. § 44-282(A).[4]

3. Defendants either created or held retail installment contracts that exceeded a total aggregate outstanding indebtedness of $25,000 without a Sales Finance Company License from the Arizona Department of Financial Institutions in violation of A.R.S. § 44-282(A).[5]

PRAYER FOR RELIEF

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[3] "[A] wilful violation occurs when the party committing the violation knew or should have known that his conduct was of the nature prohibited by § 44-1522." A.R.S. § 44-1531(B).

[4] "No dealer shall engage in business in this state without a license issued by the administrator. No dealer shall sell or transfer any contract to a person in Arizona not licensed under the terms of this chapter." A.R.S. § 44-282(A). A dealer is "any person who in any year sells on a non-cash basis three or more motor vehicles at retail." A.R.S. § 44-281(3).

[5] "No person shall engage in the business of a sales finance company in this state without a license therefore as provided in this article." A.R.S. § 44-282(A). A Sales Finance Company "(a) Means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers; (b) includes a person engaged, in whole or in part, in the business of creating or holding retail installment contracts that exceed a total aggregate outstanding indebtedness of twenty-five thousand dollars." A.R.S. § 44-281(12).

WHEREFORE, the State respectfully requests that the Court:

A. Prohibit Defendants from violating the Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, as it is currently written or as may be amended in the future.

B. Prohibit Defendants from violating A.R.S. § 44-281, *et seq.*, as it is currently written or as may be amended in the future.

C. Prohibit Defendants from conducting any business in, into, or from the State of Arizona, including any Internet business.

D. Enjoin and restrain Defendants permanently from engaging in the course of conduct alleged herein as a violation of A.R.S. § 44-1521 *et seq.* Such conduct includes, but is not limited to, the following:

(1) Deceptively inducing consumers to enter into contracts to purchase vehicles.

(2) Falsely and deceptively representing to consumers that the vehicles they purchase are legally operable in Arizona.

(3) Falsely and deceptively representing to consumers that Defendants will pay off existing loans on vehicles consumers trade in when purchasing vehicles.

E. Order Defendants, jointly and severally, to restore to all persons any money or property, real or personal, that was acquired by means of any practice alleged herein to be a violation of A.R.S. § 44-1521 *et seq.*, and such additional amounts as may be deemed proper by the Court pursuant to A.R.S. § 44-1528(A)(2).

F. Order Defendants, jointly and severally, to pay to the State of Arizona a civil penalty of up to $10,000.00 for each violation of the Arizona Consumer Fraud Act pursuant to A.R.S. § 44-1531.

G. Enjoin and restrain Defendants permanently from engaging in the course of

conduct alleged herein as a violation of A.R.S. § 49-542 *et seq.* Such conduct includes, but is not limited to, the following:

(1) Creating or holding retail installment contracts without a Sales Finance Company License from the Arizona Department of Financial Institutions

(2) Selling vehicles, on a non-cash basis, without a Motor Vehicle Dealer License from the Arizona Department of Financial Institutions.

H. Order Defendants, jointly and severally, to pay to the Arizona Department of Financial Institutions $10,000.00 for their violations of the Motor Vehicle Time Sales Disclosure Act, A.R.S. § 44-281 *et seq.*

I. Order Defendants, jointly and severally, to reimburse the Attorney General for the costs of investigation and reasonable attorneys' fees pursuant to A.R.S. § 44-1534.

J. Order such other and further relief as the Court deems proper.

DATED this 28th day of July, 2008.

TERRY GODDARD, Attorney General

Taren M. Ellis

Taren M. Ellis
Assistant Attorney General
Attorneys for Plaintiffs

STATE OF ARIZONA)
) §.
County of Pima)

The undersigned hereby certifies that she is a Legal Assistant with the Arizona Attorney General's Office. In that capacity, she is authorized to make this affidavit on behalf of the State; that she has read the foregoing Complaint and knows the contents thereof, and the same are true to the best of her knowledge, information and belief, as set forth therein.

DATED this 28th day of July, 2008.

Diana Himelic, Legal Assistant
Office of the Attorney General

SUBSCRIBED AND SWORN to before me this 28th day of July, 2008.

Notary Public

Commission Expires:

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OFFICIAL SEAL
YOLANDA U. LEON
Notary Public - STATE OF ARIZONA
PIMA COUNTY
My Commission Expires December 21, 2008