

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
and IOWA DEPARTMENT OF
TRANSPORTATION,

Plaintiffs,

v.

BRUCE RUBEN DUQUE, TINA R. DUQUE
(a/k/a Tina R. Heth), FRANCISCO J. DUQUE, JR.,
and ESPERANZA DUQUE,
individually and d/b/a AARDVARK AUTO
SERVICE & SALES, STATE STREET CAR
COMPANY, THE MOTORHAUS, AUTO KINGS,
UBA AUTO REPAIR and/or URA AUTO REPAIR,
and THE CAR BOYS,

Defendants.

EQUITY NO. 107838

**CONSENT JUDGMENT
AND ORDER FOR
PERMANENT INJUNCTION**

BASED UPON the Stipulation of the undersigned parties to this action, as evidenced
below,

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

I. INTRODUCTION.

1. The State of Iowa, ex rel. Thomas J. Miller, Attorney General of Iowa, and the Iowa Department of Transportation brought this action against Defendants Bruce Ruben Duque, Tina R. Duque (a/k/a Tina R. Heth), Francisco Duque, Jr., and Esperanza Duque, individually and d/b/a Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, Auto Kings, UBA Auto Repair and/or URA Auto Repair and The Car Boys alleging systematic violations of the Iowa Consumer Fraud Act, The Iowa Motor Vehicle Dealer's Code and the Iowa Consumer Credit Code.

2. The parties have now reached agreement on the terms and relief provided for by the Court in this Consent Judgment and Order for Five-Year Injunction.

II. JURISDICTION AND BASIS FOR JUDGMENT

3. This Court has jurisdiction over the subject matter of, and the parties to, this action.

4. Venue is proper as to all parties.

5. The Petition states a claim upon which relief may be granted.

6. Defendants have entered into this Consent Judgment and Order ("Order") freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

7. Plaintiffs and Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.

8. Defendants Bruce Ruben Duque, Tina R. Duque (a/k/a Tina R. Heth), Francisco J. Duque, Jr. and Esperanza Duque have been engaged in the business of selling motor vehicles and related goods and services and financing purchases of motor vehicles and related goods and services as Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, The Car Boys and various other trade names. The State alleges that in that business, Defendants have engaged in unfair or deceptive acts or practices in commerce, as described in the State's Petition initiating this action, in violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16, and the Iowa Consumer Credit Code, Iowa Code Chapter 537. In addition, the State alleges that Defendants have engaged in the business of selling at retail used motor vehicles without a license in

violation of the Iowa Motor Vehicle Dealer's Code, Iowa Code § 322.11. Defendants deny those allegations.

III. DEFINITIONS.

9. The term "Defendants" means Defendants Bruce Ruben Duque, Tina R. Duque (a/k/a Tina R. Heth), Francisco J. Duque, Jr. and Esperanza Duque, individually and d/b/a Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, Auto Kings, UBA Auto Repair and/or URA Auto Repair, but not The Car Boys, and (as applicable) their directors, officers, principals, partners, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities and all others persons, corporations and other entities acting in concert or participating with the Defendants who have actual or constructive notice of the Court's order.

10. The term "Car Business" means:

- a. Engaging, directly or indirectly, in any business, entity, organization or activity that involves the purchase, sale, lease, rent-to-own, financing, warranty, salvage, repossession, or repair of any motor vehicle or motor vehicle part;
- b. Holding or applying for, personally or through a representative, any motor vehicle dealer's license or any other type of license, permit or registration required for or associated with the retail sale, wholesale, purchase, lease, repair, rental, titling, financing, warranty, recycling, salvaging, or repossession of a motor vehicle or motor vehicle parts;
- c. Attending any non-wholesale auto auction, personally or through any

representative or through an online transaction;

- d. Performing, supervising, participating in, managing, financing, brokering, consulting about, or profiting from any of the following activities: selling, buying, leasing, renting, repairing, altering, modifying, titling, financing, warranting, recycling, salvaging, repossessing, wholesaling, storing, transporting, hauling, carrying, or towing motor vehicles or motor vehicle parts;
- e. "Car Business" does not include the purchase by Defendants of two motor vehicles each year that the Defendants purchase and use solely for their own personal transportation and that may be sold by Defendants for less than the Defendants paid for the motor vehicles (hereinafter referred to as "excluded motor vehicles"). "Car Business" does not include the repair or sale of these excluded motor vehicles;
- f. "Car Business" does not include Defendants transporting vehicles within the State of Iowa in connection with an out of state car business.
- g. "Car Business" does not include any activities by Defendants conducted outside of the state of Iowa except to the extent specifically proscribed in sub-parts (a) - (d).
- h. "Car Business" does not include written and oral communications into Iowa arising from out-of-state transactions, provided same comply with state and federal law; provided that Defendants shall record and maintain for six months (and provide to the Iowa Attorney General on

request) all outgoing telephone calls to consumers residing in the State of Iowa.

- i. "Car Business" does not include enforcement of Defendants' rights in the State of Iowa arising from out-of-state transactions, provided said enforcement is limited to activities through the court system—e.g., replevin, collection lawsuits, garnishments, etc.

IV. INJUNCTIVE RELIEF.

Pursuant to Iowa Code sections 322.3(12), 322.11, 537.6110, 537.6111, and 714.16(7), until April 25, 2012, Defendants are hereby enjoined, as follows:

A. Cessation of Car Business within the State of Iowa.

11. Defendants are restrained and enjoined from the following activities within the State of Iowa: (a) engaging in the "Car Business", (b) assisting others engaged in the "Car Business", and (c) owning, managing, controlling or profiting from any entity engaged in the "Car Business".

12. Defendants shall not engage in, work in the business of, or receive remuneration from sales or financing of automobiles occurring within the State of Iowa.

13. Defendants shall not lease to, rent to or otherwise permit the use of the property located at 802 W. 2nd Street, Davenport, Iowa or any other property which Defendants own or lease within the State of Iowa, by any person or entity engaged in the Car Business if any portion of the lease or rent payment or other compensation to Defendants for use of the property is tied to the profitability of the person or entity engaged in the Car Business or otherwise tied to the sale or financing of vehicles.

14. Defendants shall not utilize the property located at 802 W. 2nd Street, Davenport, Iowa to promote, advertise, store, offer for sale, collect payments, or display for sale any motor vehicles for sale by any dealership owned or operated by Defendants which is properly licensed in a jurisdiction outside of Iowa.

15. For any dealership owned and lawfully operated by Defendants in another state, Defendants may not advertise in any media which Defendants can reasonably anticipate will be broadcast or circulated in the State of Iowa, including but not limited to any written advertisements in newspapers or periodicals or telephone book listings, or any television or radio broadcast advertisements, unless any such advertisements clearly and conspicuously disclose that Defendants' dealership location is in a state other than Iowa and otherwise comply in all respects with Iowa law. Defendants further may not facilitate sales from a dealership owned and lawfully operated by Defendants in another state to Iowa residents in a manner which involves delivery of any documents or vehicles into Iowa by Defendants to the Iowa buyers or by offering or providing any transportation services to Iowa residents to enable them to travel to Defendants' dealership lots in another state.

16. Defendants shall not engage in any conduct they are prohibited from doing by this Order through or in concert with any other person.

B. Maintenance of Records and Continuance of Legal Responsibilities as Motor Vehicle Dealer or Creditor.

17. Other than as specifically set forth in this Order, Defendants' legal rights and responsibilities with respect to any consumers and pursuant to any statutory or regulatory requirement shall be unaffected by this Order.

18. In relation to any consumers who have purchased or financed automobiles or related goods or services from them within the State of Iowa, Defendants shall comply with all applicable laws and regulations.

19. Defendants shall retain and maintain in good order any and all records of their motor vehicle dealership business, including but not limited to those records that they may be required to maintain by any federal or state law or regulation, until the later of:

- a. any date that any such records are required to be maintained by any state or federal law or regulation; or
- b. two years from the date of this Order.

V. REMEDIES PROVIDED TO CONSUMERS AND THE STATE.

20. For Part V only, "consumer" or "consumers" mean any person in possession of their car who purchased, negotiated or entered into a transaction to purchase a motor vehicle at Defendants' dealership locations in Iowa or who negotiated or transacted to purchase a motor vehicle in Iowa from a person who had either real or apparent authority to sell on Defendants' behalf or whom the consumer believed had such authority; or any consumer who negotiated or entered into a transaction to purchase a motor vehicle at Defendants' dealership locations in Iowa, including those who may have gone to Defendants' dealership outside of Iowa to sign the final papers, or who negotiated or transacted to purchase a motor vehicle in Iowa from a person who had either real or apparent authority to sell on Defendants' behalf or whom the consumer believed had such authority.

21. Defendants agree to release all outstanding title liens regardless of any alleged debt owed by the consumer to Defendants. Defendants further agree to provide clear,

valid and legal title for these consumers' vehicles to the State of Iowa within sixty (60) days following entry of this Order or by a date ten (10) days after written notice to Defendants by Plaintiffs, whichever is later. If Defendants cannot provide clear, valid and legal title for a consumer, or a consumer's successor or assignee, Defendant's shall, to the Attorney General's satisfaction, either pay to the consumer or on the consumer's behalf an amount sufficient to purchase with cash an automobile of equivalent value to that which was conveyed without proper title, at the time it was conveyed to the consumer.

VI. REMEDIES TO CONSUMERS AND THE STATE.

22. Pursuant to Iowa Code sections 537.6113, 537.5201, and 714.16(7) , thirty days after the entry of this Consent Judgment, Defendants hereby agree to pay to the Attorney General of Iowa the sum of \$ 10,000 to be used for consumer reimbursement, civil penalties, costs and attorney fees, to be apportioned at the discretion of the Attorney General of Iowa. A year after the entry of this Consent Judgment Defendants hereby agree to pay to the Attorney General of Iowa the additional sum of \$ 10,000 to be used for consumer reimbursement, civil penalties, costs and attorney fees, to be apportioned at the discretion of the Attorney General of Iowa.

23. Within five days of execution of this Consent Decree, the State will provide a copy of all outstanding consumer complaints against Defendants made to the Iowa Attorney General's Office. Defendants will provide a written response to each consumer complaint and the allegations therein within ten days of receiving same. Defendants will provide clear, valid title to any vehicle where such title is owed to the consumer.

VII. GENERAL PROVISIONS.

24. Defendants are jointly and severally liable for the payments and are each, together with their successors and assigns, employees and agents, bound by the injunctive relief and all affirmative actions described in this Order.

25. No private consumer claims are released or waived by this Order.

26. Defendants shall comply with any reasonable requests for information, access to documents, requests for inspection of the premises at 802 W. 2nd Street, Davenport, Iowa or other requests for cooperation by the Attorney General either in implementing the terms of this Order or in any further or future investigation of the subject matter of this action.

27. Any Prior Injunctions involved in this litigation are hereby dissolved, except with respect to those specific terms which are extended by this Order.

28. The Court shall retain jurisdiction of this matter for the purposes of construction, modification and enforcement of this Order.

29. Defendants shall pay all court costs.

IT IS SO ORDERED, ADJUDGED AND DECREED.

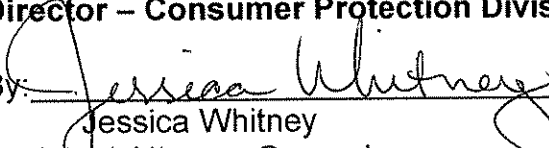
Dated: _____

District Judge

THE UNDERSIGNED PARTIES, individually and through their duly authorized attorneys,
agree and stipulated to entry of this Consent Judgment and Order:


THOMAS J. MILLER
Attorney General of Iowa

WILLIAM L. BRAUCH
Special Assistant Attorney General of Iowa
Director – Consumer Protection Division

By:  _____
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Des Moines, Iowa 50319
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and

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By:  _____
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ATTORNEYS FOR PLAINTIFFS

and

H.J. DANE

By: 

H.J. Dane

1111 East River Drive

Davenport, Iowa 52803-5740

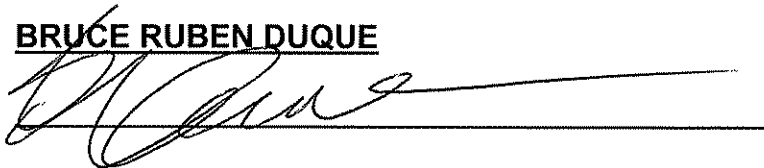
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ATTORNEY FOR DEFENDANTS

BRUCE RUBEN DUQUE



TINA R. DUQUE (A/K/A TINA R. HETH)

FRANCISCO J. DUQUE, JR.

ESPERANZA DUQUE

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, ex rel.)
THOMAS J. MILLER,)
ATTORNEY GENERAL OF IOWA,)
and IOWA DEPARTMENT OF)
TRANSPORTATION,)

Plaintiffs,)

vs.)

EQUITY NO. 107838

BRUCE RUBEN DUQUE, TINA R.)
DUQUE (a/k/a Tina R. Heth),)
FRANCISCO J. DUQUE, JR., and)
ESPERANZA DUQUE, JONATHAN WILLE,)
individually and d/b/a AARDVARK AUTO)
SERVICE & SALES, STATE STREET CAR)
COMPANY, THE MOTORHAUS, AUTO KINGS,)
UBA AUTO REPAIR and/or URA AUTO)
REPAIR and THE CAR BOYS,)

DISMISSAL OF DEFENDANT)
JONATHAN WILLE, WITHOUT)
PREJUDICE)

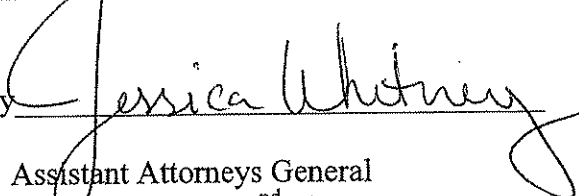
Defendants.)

COMES NOW Plaintiff State of Iowa, and hereby dismisses Jonathan Wille,
without prejudice, as a Defendant in the above-captioned cause.

THOMAS J. MILLER
Attorney General of Iowa

WILLIAM L. BRAUCH
Special Assistant Attorney General of Iowa
Director, Consumer Protection Division

By



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