

STATE OF NORTH CAROLINA
JUSTICE

IN THE GENERAL COURT OF

WAKE COUNTY

SUPERIOR COURT DIVISION

NO. _____

STATE OF NORTH CAROLINA ex rel.)
Roy Cooper, Attorney General,)

Plaintiff,)

v.)

JAY D. MURPHREE, an individual;)

And)

ACTION INTEGRATED MARKETING,)
INC., a Georgia corporation,)

Defendants.)

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

FILED
2011 MAR 26 PM 1:10
WAKE COUNTY, N.C.S.C.
BY _____

PREAMBLE

THIS CAUSE came before the undersigned Judge for entry of a Consent Judgment between Plaintiff State of North Carolina, by and through its Attorney General Roy Cooper (the "State" or "Plaintiff"), and Defendants Jay D. Murphree and Action Integrated Marketing, Inc. (collectively, "Defendants").

The Court, with the consent of all Parties, makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1.1. The State of North Carolina is the Plaintiff in the case.

1.2. Jay D. Murphree ("Murphree") and Action Integrated Marketing, Inc. ("AIM") are defendants in the case.

1.3. Defendant AIM is a for-profit Georgia corporation that does business in North Carolina.

1.4. Murphree is an adult individual residing in the State of Georgia. At all times relevant to this action, he was AIM's president, chief executive officer ("CEO") and owner.

1.5. Murphree and AIM are the proper parties to this Consent Judgment. Murphree warrants and represents that the individual(s) signing this Consent Judgment is fully authorized to enter into this Consent Judgment and to legally bind himself and AIM to all of the terms, conditions and injunctions of this Consent Judgment.

1.6. Defendants advertise, offer for sale and sell advertising campaigns and associated promotional materials to motor vehicle dealerships.

1.7. Defendants enter into agreements with motor vehicle dealers in many states, including North Carolina, to provide promotional materials for "sale events."

1.8. Under these agreements, motor vehicle dealers pay Defendants a fee for advertising related to the sale event.

1.9. Defendants' promotional materials include television, radio, newspaper and internet advertisements.

1.10. Defendants also provide dealerships with consulting, training and sales staff composed of employees and/or independent contractors.

1.11. Defendants create and require dealers to use the promotional materials that are utilized in conjunction with sale events.

1.12. The State and the Defendants have resolved the matters in controversy between them and have consented to the terms of this Consent Judgment.

1.13. Defendants recognize and state that this Consent Judgment is entered into voluntarily to ensure understanding of and future compliance with the relevant laws and statutes of the State of North Carolina and that no promises or threats have been made by the Attorney General's Office or any member, officer, agent or representative thereof to induce Defendants to enter into this Consent Judgment, except as provided herein.

1.14. This Consent Judgment shall not be construed as, or be evidence of, admissions by Defendants, nor shall it be construed as a finding by this Court of any violation of N.C.G.S. § 75-1.1, or any other law.

1.15. The State alleges that the Defendants violated N.C.G.S. §§ 75-1.1, *et seq.*, through the following misrepresentations, omissions and actions:

- a. Defendants' promotional materials create the false and misleading impression that the vehicles offered in conjunction with sale events are obtained from an outside source and are not part of the dealer's normal used car inventory;
- b. Defendants' promotional materials create the false and misleading impression that the vehicles offered in conjunction with sale events are not usually available for purchase by the general public;
- c. Defendants' promotional materials create the false and misleading impression that the vehicles offered in conjunction with sale events were procured by the Defendants;
- d. Defendants' promotional materials create the false and misleading impression that vehicles offered in conjunction with the sale events are available to the public at a discounted price because of their origin;
- e. Defendants' promotional materials create the false and misleading impression that all of the vehicles being offered for sale in conjunction with a sale event may be purchased with a certain down payment amount, when such is not the case;
- f. Defendants' promotional materials create the false and misleading impression that all of the vehicles being offered for sale in conjunction with a sale event may be purchased at a certain monthly payment amount, when such is not the case;

- g. Defendants' promotional materials create the false and misleading impression that the standard down payment amount advertised is not dependent on the creditworthiness of the purchaser, the term of the contract and/or the annual percentage rate of financing ("APR");
- h. Defendants' promotional materials create the false and misleading impression that the standard monthly payment amount advertised is not dependent on the creditworthiness of the purchaser, the down payment, the term of the contract and/or the APR; and
- i. Defendants' promotional materials, by including material terms in smaller print by way of asterisks and related footnotes, fail to adequately disclose that the ability to purchase a vehicle for the featured down payment and monthly payment amounts is dependent upon a number of factors including the creditworthiness of the purchaser, their down payment, the term of the contract and/or the APR.

1.16. Defendants deny each and every one of the allegations above. The State of North Carolina and Defendants agree that this Consent Judgment is entered into solely for the purpose of settlement and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendants expressly deny.

BASED ON THE FOREGOING FINDINGS OF FACT AND THE AGREEMENT OF THE PARTIES MANIFESTED HEREIN, the Court concludes as follows:

II. CONCLUSIONS OF LAW

- 2.1. The Court has jurisdiction over the parties and the subject matter of this action.
- 2.2. Venue is proper.

2.3. North Carolina's Unfair and Deceptive Practices Act, N.C.G.S. . § 75-1.1, *et seq.* governs the alleged business practices of Defendants that gave rise to this controversy.

2.4. The North Carolina Attorney General is the proper party to commence these proceedings under the authority of N.C.G.S. §§ 75-14 and 15, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of North Carolina.

2.5. This Consent Judgment shall be governed by the laws of the state of North Carolina.

2.6. Good cause exists for the Court to enter judgment as to Defendants, as set forth herein.

2.7. The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties.

WHEREAS the Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

BASED ON THE FOREGOING FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE AGREEMENT OF THE PARTIES MANIFESTED HEREIN IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

III. DEFINITIONS

For purposes of this Consent Judgment, the following definitions apply:

3.1. "Advertise," "advertising," and "advertisement" as used herein shall include the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

3.2. "Defendants" shall mean Jay D. Murphree, individually, and Action Integrated Marketing, Inc. (AIM), under its own name or any other business name, its principals,

officers, directors, agents, servants, representatives, salespersons, employees, successors and assigns, and all persons acting on behalf, and at the direction, of AIM, directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, including all persons and entities that receive actual notice of this Consent Judgment.

3.3. "Defendants" or "AIM" shall not mean an "independent contractor," who is a person who provides services and who, in the provision of such services, is free from direction and control over the means and manner of providing the services, subject only to the right of Defendants to specify the desired result. Independent contractor status cannot be a subterfuge to avoid employee status, including an apparent agency relationship, and the service(s) performed by the independent contractor must be outside the usual course of the business of Defendants.

3.4. "Effective Date" shall mean the date by which all Parties have executed the Consent Judgment.

3.5. "Individual States" and "States" shall mean each Signatory Attorney General who is participating in the Multistate Working Group.

3.6. "Multistate Working Group" shall mean the Attorneys General and their staffs representing Georgia¹, Idaho, Illinois, Kentucky, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee and Washington.

3.7. "Parties" shall mean Defendants and the Individual States.

3.8. "Signatory Attorney(s) General" shall mean the Attorney General, or his or her designee, of each state in the Multistate Working Group.

¹ With respect to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions for the State of Georgia. When the entire group is referred to as the "Individual States," "States," "Attorneys General," or "Multistate Working Group," such designation, as it pertains to Georgia, refers to the Administrator of the Fair Business Practices Act.

3.9. "State Consumer Protection Laws" shall mean the consumer protection laws under which the Signatory Attorneys General have conducted their investigation.²

IV. COMPLIANCE PROVISIONS AND INJUNCTIONS

4.1. Defendants shall not engage in any violations of State Consumer Protection Laws.

4.2. In all advertisements or otherwise, Defendants shall not make false, deceptive or misleading representations of fact concerning any motor vehicle sales promotion or event, contests, or prize offers.

4.3. In all advertisements Defendants shall clearly and conspicuously disclose all material terms, limitations, exclusions, conditions and restrictions relating to any offer in close proximity to any terms or conditions to which they relate.

4.4. Defendants shall not explicitly or implicitly make false or misleading claims in an advertisement regarding the origin of vehicles offered for sale, including, but not limited to:

- a. that the vehicles included are from some other source than the dealer's normal used vehicle inventory when such is not the case;
- b. that the vehicles included have been brought onto the lot specifically for this sale event when such is not the case;
- c. that the vehicles included will only be available for sale at the event when such is not the case; and/or

² Georgia, Georgia Fair Business Practices Act, O.C.G.A. 10-1-390 *et seq.*; Idaho, Idaho Code § 48-601 *et seq.*; Illinois, 815 ILCS 505/1 *et seq.*; Kentucky, KRS 367.170 *et seq.*; North Carolina, N.C.G.S. 75-1.1 *et seq.*; Ohio, Ohio Consumer Sales Practices Act, O.R.C. 1345.01 *et seq.* and the Substantive Rules thereunder, Ohio Admin. Code 109: 4-3-01 *et seq.*; Oregon, ORS 646.605 *et seq.*, OAR 137-020-0010 *et seq.*; Pennsylvania, Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1 *et seq.* and the Pennsylvania Automotive Industry Trade Practices, 37 Pa. Code §301.1 *et seq.*; Tennessee, Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, § 47-18-106; Washington, RCW 19.86.020.

d. that the vehicles included will be removed from the lot following the sale, when such is not the case.

4.5. Additionally, in the event Defendants advertise, through the use of the term "Repo Joe" or otherwise, that repossessed vehicles, auction cars and/or lease terminations are to be offered in a dealer's sale, Defendants shall clearly and conspicuously disclose in the advertising for the sale that all of the dealer's inventory of pre-owned vehicles, including repossessed vehicles, will be available for sale at the same event.

4.6. Defendants shall not make or imply a false premise for a sale of motor vehicles. This prohibition includes, but is not limited to: (1) representing that any sale conducted by Defendants or their clients is being conducted, sponsored, or operated by any bank, lending institution, fleet company, liquidation company, repossession company, auto auction, law enforcement entity, governmental unit or other entity, unless such claims are in fact true and Defendants have sufficient documentation to prove such claims are true; or (2) representing in any context that Defendants or their clients are in the vehicle liquidation business.

4.7. Defendants shall not explicitly or implicitly make false or misleading claims regarding the premise of a sale, the offering prices of any vehicles, monthly payments, any other terms of payment, the interest rate and/or availability of credit, the amount of the down payment, or the availability of significant discounts or savings.

4.8. Defendants shall comply with the Fair Credit Reporting Act and the Truth in Lending Act in all of its advertising and sales practices.

4.9. Defendants shall fully comply with each Individual State's motor vehicle dealer and salesperson licensing requirements and shall not contract with an independent contractor to conduct a sale unless the independent contractor is in compliance with all motor vehicle dealer and salesperson licensing requirements.

4.10. Defendants shall not advertise in a manner which may create a false sense of urgency based upon misrepresentations related to the source or nature of the vehicles offered for sale. Defendants shall be permitted to state that the promotion or event is of finite temporal duration if in fact it is, and to state the time at which the promotion or event terminates.

4.11. When advertising the price of a motor vehicle, Defendants shall include within the price all mandatory charges for non-governmental fees, including any documentary fees as required by applicable law.

4.12. Defendants shall not use footnotes or asterisks in its advertisements that confuse, contradict, materially modify, and/or unreasonably limit the material terms of more prominent content of the advertisement.

4.13. Defendants shall not misrepresent, expressly or by implication, the terms of this Consent Judgment.

4.14. Upon the entry of this Consent Judgment, Defendants shall immediately provide notice of this Consent Judgment to any employee or independent contractor of AIM who participates in a sale event on behalf of Defendants, including their independent contractors. This notice shall be in the form set forth in Appendix A. Defendants shall obtain confirmation of receipt from all persons required to receive this notice. The requirements of this Paragraph may be satisfied electronically. Defendants shall maintain all acknowledgments for a period of one (1) year and shall, within three working days of receipt of a request by the State, produce a copy of such acknowledgment form.

4.15. Defendants shall not represent or imply that any of the Individual States acquiesce or approve of Defendants' past business practices, current efforts to reform their policies and procedures, or any further practices, which Defendants may adopt or consider adopting.

4.16. Effective immediately upon execution by Defendants of this Consent Judgment, and for a subsequent period of five years, Defendants agree to maintain records of all advertisements which Defendants publish, broadcast or otherwise disseminate, cause to be published, broadcasted or otherwise disseminated, or which are published, broadcasted or otherwise disseminated by anyone else pursuant to an agreement or contract with Defendants, in the State of North Carolina. These records shall include a copy of the advertisement, shall identify the sponsoring motor vehicle dealership, and shall identify the dates of the sale and other promotional events, and shall be sufficient to substantiate the representations or claims made in the advertisement about the source of the dealer's inventory at the events.

4.17. Defendants shall, within fourteen days of receipt of a written request by an authorized representative of the Signatory Attorney General, produce a copy of any advertisement from that state which Defendants are required to maintain under Paragraph 4.16.

4.18. It shall be a violation of this Consent Judgment for Defendants to sell or provide any materials that would enable any other individual or business entity, including, but not limited to, motor vehicle dealerships and/or independent contractors, to engage in any act or practice that would violate this Consent Judgment were the act or practice committed directly by Defendants. Defendants shall not direct, train, instruct, or induce any person or business entity to perform any act prohibited, or to refrain from performing any act required, by this Consent Judgment.

4.19. Notwithstanding the foregoing, Jay D. Murphree shall not be liable for any acts or omissions by AIM, its successors or affiliates, which occur after such time as Mr. Murphree is no longer the CEO of, or an owner in whole or in part of, AIM or the successors or affiliates; and provided he did not direct or oversee the conduct which resulted in said act or omission at the time it occurred.

V. ENFORCEMENT

5.1. Pursuant to N.C.G.S. § 75-15.2, the Court may impose a civil penalty for each violation of this Consent Judgment in addition to any other remedy allowed by law.

5.2. Nothing in this Consent Judgment shall in any way preclude any investigation or enforcement under any legal authority granted to the State for transactions not subject to this action.

5.3. Any failure of the States to exercise any of their rights under this Consent Judgment shall not constitute a waiver of its rights hereunder.

5.4. The Court retains jurisdiction over this action in order to take any further action deemed necessary to enforce this Consent Judgment and to award the State judgment for any costs, including attorney's fees, it incurs in the event of noncompliance by Defendants.

5.5. In the event of the commencement of an enforcement action, any objections to venue are hereby waived by Defendants.

VI. PENALTIES / PAYMENT TO THE STATES

6.1. The States are hereby awarded a Civil Penalty against the Defendants in the amount of One Hundred Thirty Thousand Dollars and 00/100 Cents (\$130,000.00). Said Civil Penalty is to or for a governmental unit and is not for pecuniary loss. Said Civil Penalty shall be suspended contingent on the Defendants' full compliance with the terms of the Consent Judgment. If this Court later determines that the Defendants violated this Consent Judgment, Defendants shall pay the Civil Penalty in full via a cashier's check within three (3) business days of entry of the Court's order. In the event of such a determination, Defendants' obligation to pay the suspended amount shall be in addition to any other monetary or other sanctions which may be imposed for such violation. Said amount may be recovered by one or more of the Individual States, but in no event shall the Defendants' obligation to pay the

suspended amount exceed One Hundred Thirty Thousand Dollars and 00/100 Cents (\$130,000.00).

6.2. Upon execution of this Consent Judgment, Defendants shall pay the States a sum of One Hundred Fifty Thousand Dollars and 00/100 Cents (\$150,000.00) for attorneys' fees, investigative costs, consumer education, enforcement or other consumer protection purposes at the discretion of the Attorney General. Such sums are to be divided among the States as they may agree and shall be used by the States for attorneys' fees and other costs of investigation and litigation and/or applied to the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law at the sole discretion of each of the Attorneys General. Defendants shall pay the amount set forth in this paragraph in three (3) installments as follows:

- a. An initial payment of Seventy Five Thousand Dollars and 00/100 Cents (\$75,000.00), upon execution of this Consent Judgment;
- b. A second payment of Fifty Thousand Dollars and 00/100 Cents (\$50,000.00), on or before December 31, 2011; and
- c. A third payment, of Twenty Five Thousand Dollars and 00/100 cents (\$25,000.00) on or before July 31, 2012.

6.3. Defendants shall be jointly and severally liable for all amounts that are due and owed under this Consent Judgment.

6.4. Any payment amount due hereunder shall be made payable to the Commonwealth of Pennsylvania, Office of Attorney General and shall be delivered on or before the due date to the Pennsylvania Office of Attorney General, Bureau of Consumer Protection, 564 Forbes Ave., 6th Floor, Manor Complex, Pittsburgh Pennsylvania 15219,

Attention: Jesse F. Harvey, or at such other places as the States may from time to time designate in writing, and shall be made by certified check or money order.

6.5. If Defendants fail to make any payment required under Paragraph 6.2 of this Consent Judgment or any Defendant makes an assignment for the benefit of its or his creditors, files or has filed against it or him any proceedings under any reorganization, bankruptcy act or similar law, is adjudicated bankrupt, or becomes insolvent, then any unpaid portion of the fees and costs due under Paragraph 6.2 shall become immediately due and payable without notice.

6.6. Failure to make any payment when due shall be construed as a violation of this Consent Judgment. Provided, however, that in the event of a failure to make timely payments, Defendants shall be entitled to a written notice from the Commonwealth of Pennsylvania of any such delinquent payment and shall be given a period of ten (10) days to make the payment before their payment obligations may be declared in default. Any notice to Defendants provided under this paragraph shall be made by mailing such notice, first class mail, to the following person(s) designated by Defendants:

Peter D. Raymond, Esq.
Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650

VII. RELEASE OF CLAIMS

The State of North Carolina and Defendants agree that this Consent Judgment is intended to cover all acts performed by Defendants for motor vehicle sale events, particularly in creating and selling advertising campaigns and associated promotional materials to motor vehicle dealerships located in the State of North Carolina and that Defendants are hereby fully released from all associated civil State Consumer Protection Law claims up through and including the date of this Consent Judgment. Nothing contained herein shall be construed to

waive any individual right of action by any consumer or any local, state, federal or other governmental entity, unless as specifically provided herein.

VIII. JURISDICTION RESERVED

Defendants further agree that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of this Consent Judgment and for all other purposes.

IX. MISCELLANEOUS

9.1. AIM shall pay any and all court costs incurred in this action.

9.2. This Consent Judgment sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Consent Judgment that are not fully expressed herein or attached hereto. Each party specifically warrants that this Consent Judgment is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

9.3. The mailing of a copy of this signed and filed Consent Judgment to Defendants or their attorney shall constitute notice and acceptance by Defendants of all the terms of this Consent Judgment; Defendants have waived the necessity of having a copy of this Consent Judgment served upon them.

9.4. Any signature required to effectuate all or any part of this document, may be executed by the parties in counterparts, each of which signatures shall be deemed an original, and any such document executed in counterparts shall have the same effect and authority. One or more counterparts of this Consent Judgment may be delivered by facsimile or

electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

9.5. Defendants further agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Consent Judgment.

IT IS SO ORDERED THIS 24th day of MARCH, 2011.

Howard S.
JUDGE

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

ROY COOPER

Attorney General

[Signature]
By: Kimberly L. Wierzel

DATED: 3-24-11

DEFENDANT JAY D. MURPHREE, Individually

[Signature]
JAY D. MURPHREE, Individually

DATED: 3/7/11

DEFENDANT ACTION INTEGRATED MARKETING, INC.,

By:

[Signature]
By: JAY D. MURPHREE, President and CEO

DATED: 3/7/11

APPROVED AS TO FORM:

POYNER SPRULL LLP

[Signature]
Eric Stevens, Esq.
Counsel for Defendants

DATED: 3-2-2011

APPENDIX A

ACKNOWLEDGMENT OF NOTICE

OF CONSENT JUDGMENT

INSTRUCTIONS

Action Integrated Marketing, Inc. ("AIM") has entered into Consent Judgments with the Attorneys General for the States of Idaho, Illinois, Kentucky, North Carolina, Ohio, Oregon, Pennsylvania, Washington and Tennessee and the Administrator of the Fair Business Practices Act in the State of Georgia ("Participating States"). AIM has agreed to abide by the terms of these Consent Judgments. AIM must ensure that both its employees and independent contractors understand and agree to abide by those same terms and conditions.

Read the agreement below. If you have any questions regarding any term of the agreement, contact us by return mail. If you understand each of the terms and agree to be bound by those terms, sign at the place indicated and print your name below your signature. Then fax the signed agreement to us at Fax Number (253)597-4408. In the alternative, you may send an electronic copy of the signed document to us at MaryL@atg.wa.gov. **You are not authorized to perform any function at any sales event until you have signed and sent to us the agreement below.**

AGREEMENT TO ADHERE

I have been given notice that AIM has entered into Consent Judgments with the Attorneys General for the States of Idaho, Illinois, Kentucky, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee and Washington and the Administrator of the Fair Business Practices Act in the State of Georgia ("Participating States"). I understand that the Consent Judgments are settlements of disputed matters. I agree to abide by the terms of the Consent Judgments. Specifically:

1. I shall obey all applicable laws of the Participating States, including without limitation the applicable consumer protection laws of the Participating States.
2. I shall not represent or imply that the Participating States acquiesced in, or approved of any of AIM's past business practices, current efforts to reform their practices, or any future practices which AIM may adopt or consider adopting.
3. Everything I do in connection with my association with AIM shall be done consistent with the injunctive terms of the Consent Judgments and the relief provided therein.

Signature

Date

Printed Name