

1.3. Defendant Level 10 Marketing, Inc., ("Level 10 Marketing") is a for-profit corporation organized under the laws of the state of Louisiana.

1.4. Defendant David M. Bottner, has been at all times relevant to this action, President of Level 10 Marketing, and has individually controlled, directed, participated in, and formulated the policies relating to the acts, practices, and activities of said corporation that are the subject of this action. Defendant Bottner warrants and represents that in signing this Consent Judgment he is fully authorized to enter into this Consent Judgment and to legally bind himself and Level 10 Marketing to all of the terms, conditions and injunctions of this Consent Judgment.

1.5. "Defendants" shall mean David M. Bottner, individually, and Level 10 Marketing 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 Level 10 Marketing, directly or indirectly, through any corporate or other device, contract, partnership or association, jointly or severally, including all persons and entities that receive actual notice of this Consent Judgment.

1.6. The State alleges that Defendants engaged in deceptive and unfair practices in the advertisement and sale of motor vehicles to consumers located in the State of North Carolina through advertising designed by Defendants and sold by Defendants to motor vehicle dealerships which broadcast or disseminated the advertising within the State of North Carolina to promote the retail sale of motor vehicles, as set forth in the State's Complaint.

1.7. Defendants deny the State's allegations, but are willing to agree to the entry of this Consent Judgment.

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

CONCLUSIONS OF LAW

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

DEFINITIONS

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

- 3.1. "Advertise," "advertising," and "advertisement" as used herein shall include the

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 David M. Bottner, individually, and Level 10 Marketing, Inc., under its own name or any other business name, its principals, directors, agents, servants, representatives, salespersons, employees, successors and assigns, and all persons acting on behalf, and at the direction, of Level 10 Marketing, directly or indirectly, though 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. "Effective Date" shall mean the date by which all Parties have executed the Consent Judgment.

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

COMPLIANCE PROVISIONS AND INJUNCTIONS

IT IS ORDERED, ADJUDGED AND DECREED that:

4.1. Defendants, and their successors, assigns, transferees, officers, agents, servants, employees, representatives and all other persons or entities in active concert or participation with Defendants are hereby permanently enjoined and restrained from engaging in any conduct in connection with the sale, lease or advertisement of merchandise that creates and provides promotional advertising services, consultations or materials for automobile dealers of new or used motor vehicles in the State of North Carolina.

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 his action.

5.3. Any failure of the State to exercise any of its 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.

Penalties/ Payment to the States

6.1. The State is hereby awarded a Civil Penalty against Defendant Level 10 Marketing in the amount of Twenty Thousand Dollars and 00/100 Cents (\$20,000.00). Said Civil Penalty is to or for a governmental unit and is not for pecuniary loss. Said Civil Penalty shall be suspended contingent on Defendant Level 10 Marketing's full compliance with the terms of the Consent Judgment. If this Court later determines that Defendant Level 10 Marketing violated this Consent Judgment for conduct that occurred after the entry thereof, Defendant 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, Defendant Level 10 Marketing's obligation to pay the suspended amount shall be in addition to any other monetary or other sanctions which may be imposed for such violation.

6.2. The State is hereby awarded a Civil Penalty against Defendant David M. Bottner in the amount of Twenty Thousand Dollars and 00/100 Cents (\$20,000.00). The Civil Penalty

shall be suspended contingent on Defendant Bottner's full compliance with the terms of the Consent Judgment. If this Court later determines that Defendant Bottner violated this Consent Judgment for conduct that occurred after the entry thereof, Defendant Bottner 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, Defendant Bottner's obligation to pay the suspended penalty shall be in addition to any other monetary or other sanctions which may be imposed for such violation.

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

6.4. 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 North Carolina law, or any other law.

6.5. Defendants shall pay any and all court costs incurred in this action.

6.6. The Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the State judgment for any costs, including attorneys fees, it incurs in the event of noncompliance by Defendants.

6.7. The mailing of a copy of this signed and filed Consent Judgment to Defendants, or to their attorneys, 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.

6.8. Defendants hereby accept and expressly waive any defect in connection with service of process issued to Defendants by the Plaintiff.

6.9. This Judgment is entered into voluntarily by Defendants with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon it by this Judgment. Defendants consent to its entry without further notice.

6.10. This Judgment shall bind Defendants and shall be binding on any and all future purchasers, merged parties, inheritors, or other successors in interest.

6.11. The acceptance of this Judgment by the State shall not be deemed approval by the State of any of Defendants' advertising or business practices. Further, neither Defendants nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the State of North Carolina, the Attorney General, or any other governmental unit of the State of North Carolina has approved, sanctioned or authorized any practice, act, advertisement or conduct of the Defendants.

6.12. Defendants will not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part in the State of North Carolina which are prohibited in this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

6.13. Nothing in this Judgment shall be construed to affect any private right of action that a consumer, person, entity, or by any local, state, federal or other governmental entity, may hold against the Defendants.

IT IS SO ORDERED this

15 day of January, 2012
Donald W. Stephens
JUDGE



JOINTLY APPROVED AND SUBMITTED FOR ENTRY BY:

ROY COOPER

Attorney General

Torrey D. Dixon DATED: 1-15-13

By: Torrey D. Dixon

NC Bar # 36176

Assistant Attorney General

Consumer Protection Division

114 West Edenton St.

Raleigh, NC 27602

DEFENDANT LEVEL 10 MARKETING, INC.

BY:  DATE SIGNED: _____
David M. Bottner
President, Level 10 Marketing Automotive Group, L.L.C.

DEFENDANT DAVID M. BOTTNER
 DATE SIGNED: _____
David M. Bottner