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STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF

vs.

ATV DISCOUNTER.COM OF DALLAS,
LLC; FRONTIER IMPORTS, INC. dba
ATVDISCOUNTER.COM;
NATHAN BARLING, Individually; SHERI
LYNN BARLING, Individually; and GLEN
MARK BARLING, Individually
Defendants

DALLAS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through Attorney General GREG ABBOTT, filing Plaintiff's Original Petition for Civil Penalties and Injunctive Relief complaining of and against ATV DISCOUNTER.COM OF DALLAS, LLC; FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM; NATHAN BARLING, Individually; GLEN MARK BARLING, Individually; and SHERI LYNN BARLING, Individually.

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of the Texas Rules of Civil Procedure 190.

II. AUTHORITY

2. This suit is brought by the ATTORNEY GENERAL through the Consumer Protection Division in the name of the STATE OF TEXAS and in the public interest under the authority granted

to him by Section 17.47 of the Deceptive Trade Practices-Consumer Protection Act (“TDTPA”) (Tex. Bus. & Com. Code Ann. § 17.41 *et seq.*).

III. DEFENDANTS

3.1 Defendant ATV DISCOUNTER.COM OF DALLAS, LLC is a domestic limited liability company that engages in business in the State of Texas. The registered agent resigned. No registered agent was appointed in his place. Each manager of a manager-managed domestic company is an agent of that limited liability company for service of process. Texas Business Organization Code Section 5.225 (3). SHERI BARLING is a manager of ATV DISCOUNTER.COM OF DALLAS, LLC. Consequently, service of process on Defendant may be accomplished by serving SHERI BARLING at her home at 1695 Chestnut Mountain Rd., Santo, TX 76472 or at one of her places of businesses including 13700 Stemmons Freeway, Farmers Branch, TX 75234, 6795 Corporation Pkwy #200, Fort Worth, TX 76126, or 11221 N. Stemmons Freeway, Dallas, TX 75229 or wherever she may be found.

3.2 Defendant FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM is a domestic for profit corporation that engages in business in the State of Texas. Service of process on Defendant may be accomplished by serving the corporation’s registered agent, Elmer Perez at 220 Adams Dr., Suite 280 # 309, Weatherford, TX 76086.

3.3 Defendant SHERI LYNN BARLING is an individual residing in Texas and may be served with citation and process at her home at 1695 Chestnut Mountain Rd., Santo, TX 76472 or at one of her places of businesses including 13700 Stemmons Freeway, Farmers Branch, TX 75234, 6795 Corporation Pkwy #200, Fort Worth, TX 76126, or 11221 N. Stemmons Freeway, Dallas, TX

75229 or wherever she may be found.

3.4 Defendant GLEN MARK BARLING is an individual residing in Texas and may be served with citation and process at his home at 1695 Chestnut Mountain Rd., Santo, TX 76472 or at his place of business at 6795 Corporation Pkwy # 200, Fort Worth, TX 76126 or wherever he may be found.

3.5 Defendant NATHAN BARLING is an individual residing in Texas and may be served with citation and process at his home at 3209 Arcadia Dr., Arlington, TX 76017 or at his place of business at 6795 Corporation Pkwy # 200, Fort Worth, TX 76126 or wherever he may be found.

IV. VENUE

4.1 Venue of this action lies in Dallas County pursuant to Section 17.47(b) of the TDTPA because the transactions and events giving rise to this action occurred in Dallas County and/or because ATV DISCOUNTER.COM OF DALLAS, LLC; FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM; NATHAN BARLING, Individually; GLEN MARK BARLING, Individually; and SHERI LYNN BARLING, Individually (hereinafter "Defendants") have done or are doing business in Dallas County.

4.2 Venue of this action also lies in Dallas County on the basis of section 15.002(a)(1) and (3) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Dallas County.

V. ACTS OF AGENTS

5. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing and that such act was performed by the

officers, agents, or employees of Defendants, and in each instance, the officers, agents, or employees of Defendants that were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

VI. PUBLIC INTEREST

6. By reason of the institution and operation of the unlawful practices set forth herein, Defendants have and will cause immediate and irreparable injury, loss and damage to the STATE OF TEXAS and its citizens, and will also cause adverse effects to legitimate business enterprises which conducts its trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

7. Defendants are engaged in “trade” and “commerce” as defined by Section 17.45(6) of the TDTPA as that Defendants are engaged in the sale of All Terrain Vehicles (ATV’s), scooters, Go-Karts, and mopeds to consumers.

VIII. NOTICE BEFORE SUIT

8. Plaintiff provided notice to Defendants regarding this action of the alleged unlawful conduct of which complaint is now made, pursuant to Section 17.47(a) of the TDTPA on or about August 24, 2009.

IX. SPECIFIC FACTUAL ALLEGATIONS

9.1 ATV DISCOUNTER.COM OF DALLAS, LLC; FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM; SHERI LYNN BARLING, Individually; GLEN MARK BARLING,

Individually; and NATHAN BARLING, Individually sold all terrain vehicles (hereinafter ATV's), mopeds, Go-Karts, and scooters to consumers over the internet as well as from physical locations including but not limited to a showroom located at 11221 N. Stemmons Freeway in Dallas, Texas. SHERI BARLING serves as director and president of FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM and served as manger of ATV DISCOUNTER OF DALLAS, L.L.C. GLEN MARK BARLING serves as a director of FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM while NATHAN BARLING served as a director of FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM until very recently.

9.2 Consumers indicate that they ordered ATV's, scooters, and mopeds from the Defendants' website and by telephone. At the time that consumers ordered the vehicles, they were told the vehicles were in stock and would be delivered within a specific period of time. Often the consumers paid extra fees so that the vehicles would arrive in time to be given as birthday and Christmas gifts. Consumers were told that the scooters were street legal and could be titled and licensed by state authorities. Consumers were assured that the vehicles would be under warrantee for thirty days and that an extended warranty could be purchased for three months, six months, or twelve months.

9.3 Consumers complain that Defendants deceived them in many ways including the following. Defendants did not ship the vehicles as promised. Vehicles arrived after the promised delivery dates and sometimes weeks and months after the promised date. Sometimes, a different vehicle was shipped to the consumer than the one purchased. In some of those cases, consumers were shipped a less expensive vehicle and received no refund or exchange. In many cases, Defendants shipped the wrong color vehicle and Defendants would not exchange the vehicle.

Consumers concluded that Defendants knowingly sold vehicles to them that were not in stock, shipping instead the vehicles that Defendants had on hand without notifying the consumers. Some consumers complain they did not receive delivery of the vehicles they ordered.

9.4 Consumers also complain that they received damaged vehicles. Sometimes the vehicles were shipped in undamaged crates with broken lights, missing parts (including but not limited to wheels and mirrors). In other cases the vehicles were scratched, mud caked, and had miles logged on the odometer indicating that the vehicles had been driven and or owned before they were shipped to the consumers. Defendants would not accept a return of the vehicles but instead promised to ship parts which arrived weeks or months later. Some consumers complained they never received the promised parts.

9.5 Other consumers complained that the vehicles were delivered with damaged carburetors and fuel lines. Many complained the vehicles would not initially start and finally once they were able to start the vehicles, the vehicles failed to operate after they had been driven for 100 miles or less. Many complained about leaking fuel lines, damaged carburetors and damaged brakes. In some cases, defendants shipped replacement parts but the vehicles failed shortly after the carburetors were replaced.

9.6 Consumers also complain that while they were promised “street legal” scooters, the scooters arrived without the Manufacturer’s Statement of Origin (MSO) so that it was impossible to register the vehicles with state departments of motor vehicles. Many consumers complained that the VIN numbers they were provided were not correct and were not recognized by state authorities. While consumers purchased scooters that were advertised as “street legal,” in reality the scooters

could not be registered, licensed, or insured and consequently could not be driven.

X. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

10.1 Defendants, as set out in Paragraphs 1 through 9, in the course and conduct of trade and commerce, have directly and indirectly engaged in and will continue to engage in false, misleading, deceptive or unconscionable acts and practices declared unlawful by Sections 17.46(a) and (b) of the TDTPA, including but not limited to:

- A. Representing that the vehicles offered for sale have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have in violation of Section 17.46(b)(5) of the TDTPA;
- B. Representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand in violation of Section 17.46(b)(6) of the TDTPA;
- C. Representing that vehicles are of a particular standard, quality, or grade, or are of a particular style when they are of another in violation of Section 17.46(b)(7) of the TDTPA;
- D. Advertising vehicles with the intent not to sell them as advertised in violation of Section 17.46(b)(9) of the TDTPA;
- E. Advertising goods with the intent not to supply a reasonable expectable public demand in violation of Section 17.46(b)(10) of the TDTPA;
- F. Knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service in violation of Section 17.46(b)(13);

- G. Representing that a guarantee or warranty confers or involves rights or remedies, including but not limited to a full refund, which it does not have or involve in violation of Section 17.46(b)(20) of the TDTPA;
- H. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been in violation of Section 17.46(b)(24) of the TDTPA; and
- I. Failing to deliver a product when payment had been made.

XI. LIABILITY OF SHERI LYNN BARLING, INDIVIDUALLY; GLEN MARK BARLING, INDIVIDUALLY; and NATHAN BARLING, INDIVIDUALLY

11.1 The Texas Business Corporation Act provides that a holder of shares, an owner of a beneficial interest in shares, is under no obligation to the corporation or to the obligees. . . unless the obligee demonstrates that the owner, subscriber, or affiliate caused the corporation to be sued for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, owner, subscriber, or affiliate. Tex. Bus. Corp. Act Art. 2.21(A)(2). Moreover, “Courts will not disregard the corporation fiction and hold individual officers, directors, or stockholders liable on the obligation of a corporation except where it appears the individuals are using the corporate entity as a sham to perpetrate a fraud, to avoid personal liability, avoid the effect of a statute, or in a few other exceptional situations.” *Bell Oil & Gas Co. v. Allied Chemical Corp.*, 41 S.W.2d 336, 340 (Tex. 1968).

11.2 Consequently, SHERI LYNN BARLING, is individually liable because she used FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM and ATV DISCOUNTER.COM OF DALLAS, L.L.C. as shams to perpetrate a fraud and to avoid personal liability in the deceptive sale of ATV's, scooters, Go-Karts, and mopeds to consumers.

11.3 Consequently, GLEN MARK BARLING, is also individually liable because he used FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM as a sham to perpetrate a fraud and to avoid personal liability in the deceptive sale of ATV's, scooters, Go-Karts, and mopeds to consumers.

11.4 Consequently, NATHAN BARLING, is also individually liable because he used FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM as a sham to perpetrate a fraud and to avoid personal liability in the deceptive sale of ATV's, scooters, Go-Karts, and mopeds to consumers.

XII. INJURY TO CONSUMERS

12. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money should be restored, or who in the alternative are entitled to an award of damages.

XIII. DISGORGEMENT

13. All of the Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken

from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XIV. NECESSITY OF IMMEDIATE HALT TO DECEPTIVE TRADE PRACTICES

14. Plaintiff requests immediate relief by way of a Temporary Injunction to prevent Defendants from harming additional consumers resulting in the consumers' loss of money.

XV. DISCOVERY REQUEST

15. Under Texas Rule of Civil Procedure 194, Defendants ATV DISCOUNTER.COM OF DALLAS, LLC; FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM; SHERI LYNN BARLING, Individually; GLEN MARK BARLING, Individually; and NATHAN BARLING, Individually are each requested to disclose, within 50 days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2 (a), (b), (c), (d), (e), (f), (g), (h),(i) and (l).

XVI. PRAYER

16.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon hearing a TEMPORARY INJUNCTION and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants, ATV DISCOUNTER.COM OF DALLAS, LLC; FRONTIER IMPORTS, INC. dba ATVDISCOUNTER.COM; SHERI LYNN BARLING, Individually; GLEN MARK BARLING, Individually; and NATHAN BARLING, Individually, Defendants' successors, assigns, officers, agents, servants, employees, and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices or making

representations including:

- A. Making deceptive, misleading, and/or false claims that goods are in stock and available for shipping when in fact Defendants are not in possession of the goods;
- B. Making deceptive, misleading, and/or false claims that goods will be shipped on a date certain and/or received on a date certain when in all likelihood the goods will not be shipped and/or received by those dates;
- C. Making deceptive, misleading, and/or false claims that a vehicle is “street legal” and/or the vehicle may be registered and licensed in a given state and/or in any state when in all likelihood the consumer will not be able to register and license the vehicle;
- D. Making deceptive, misleading, and/or false claims that vehicles are new when in fact they have been previously owned, driven, or used;
- E. Making deceptive, misleading, and/or false claims that vehicles will be covered by a warranty when the defendants do not provide repair parts or accept returned vehicles;
- F. Accepting payment for expedited delivery when the items will not be sent to and/or received by the consumer by the designated date;
- G. Accepting payment for an extended warranty when defendants do not provide repair parts or accept returned vehicles;
- H. Accepting orders for models of vehicles and colors of vehicles but fulfilling orders by shipping different models of vehicles and different colors of vehicles than

what were ordered;

I. Failing to accept returns of vehicles that are shipped to consumers when the consumer ordered a different color or model of a vehicle;

J. Making deceptive, misleading, and/or false claims that parts will be shipped to repair vehicles when the parts are not in stock or in fact delivery of the parts is not likely to take place for weeks or months;

K. Providing vehicle VIN numbers that are false or inaccurate to consumers regarding the vehicles they have purchased;

L. Providing warranties on vehicles when Defendants have information that vehicles of the same brand and model have failed when they have been driven less than one thousand (1,000) miles;

M. Failing to provide replacement parts for vehicles that have been damaged during shipping or were received in damaged condition from the manufacturer; and

N. Failing to deliver products for which payments have been made.

16.2 FURTHER, THE STATE OF TEXAS prays that the Court:

A. Adjudge against Defendants civil penalties in favor of Plaintiff in the amount of \$20,000 per violation of the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code § 17.47(c)(1));

B. Adjudge against Defendants civil penalties in favor of Plaintiff in the amount of \$250,000 for violations of the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code § 17.47(c)(2));

- C. Order Defendants to restore all money or other property taken from identifiable people by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;
- D. Adjudge against Defendants reasonable attorneys' fees, investigative fees and court costs pursuant to Section 401.006(c) of the Texas Government Code;
- E. Adjudge against Defendants prejudgment and post judgment interest at the highest lawful rate;
- F. Order disgorgement of all monies taken by Defendants as a result of their deceptive sale of motor vehicles;
- G. Adjudge that all fines, penalties, or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to Title 11 of the United States Code, Section 523(a)(7); and
- H. Adjudge that all Defendants are jointly and severally liable for all fines, penalties, restitution, and attorneys fees.

16.3 FURTHER , Plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which Plaintiff may be justly entitled.

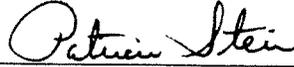
Respectfully submitted,

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