

NO. C2010-1628A

STATE OF TEXAS,
Plaintiff

vs.

BRANDON OLSON, and
DEBRA OLSON, d/b/a
THE FAMILY EXCHANGE,
OLSON POWERSPORTS,
BIG TIME POWERSPORTS,
BIG TIME ATV, and
STAR POWER,
Defendants

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IN THE DISTRICT COURT OF

22nd JUDICIAL DISTRICT

COMAL COUNTY, TEXAS

OCT 13 2011
KATHY H. BURNETT
Clerk, District Court, Comal County, TX
Deputy

FILED FOR RECORD
10/13/11
DMM

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this day came on to be heard the above-entitled and numbered cause wherein The State of Texas is Plaintiff and **BRANDON OLSON and DEBRA OLSON d/b/a THE FAMILY EXCHANGE, OLSON POWERSPORTS, BIG TIME POWERSPORTS, BIG TIME ATV, and STAR POWER (Olsons)** are Defendants. The Plaintiff appearing by and through its attorneys of record, and Defendants appearing pro se, have made the following stipulations and agree to the entry of this Agreed Final Judgment and Permanent Injunction.

I. STIPULATIONS

1. It is stipulated that the Plaintiff is the **STATE OF TEXAS** and the Defendants are **BRANDON OLSON and DEBRA OLSON, d/b/a THE FAMILY EXCHANGE, OLSON POWERSPORTS, BIG TIME POWERSPORTS, BIG TIME ATV, and STAR POWER**, as stated by Plaintiff in its Petition in this cause.

2. It is further stipulated that Plaintiff and the Defendants agree to and do not contest the entry of this Judgment.

3. It is further stipulated that the Defendants deny the allegations made in Plaintiff's Original Petitions and deny that they have engaged in any conduct in violation of the laws of Texas and enter

Petitions and deny that they have engaged in any conduct in violation of the laws of Texas and enter into this Agreed Judgment in order to avoid the expense and uncertainty of litigation.

4. It is further stipulated that the Defendants acknowledge and represent to the Court that they are no longer engaged in any Internet or Store Front Vehicle Sales or Repair Operations.

5. All parties agree to waive the thirty (30) day period in which to file a Motion for New Trial and waive any and all rights to appeal this Judgment.

II. DEFINITIONS

6. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that, as used in this Judgment, the following terms are defined as follows:

- A) "Consumer" means an individual, person, sole proprietorship, partnership, corporation, firm, or entity of any kind, however organized, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;
- B) "Defendants" means **BRANDON OLSON, DEBRA OLSON, d/b/a THE FAMILY EXCHANGE, OLSON POWERSPORTS, BIG TIME POWERSPORTS, BIG TIME ATV and STAR POWER** also doing business as **thefamilyexchange.com, olsonpowersports.net, atvfun.net and bigtimeatv.com** , their successors, assigns, officers, agents, subcontractors, servants, employees, corporations, and any other persons in active concert or participation with them;
- C) "Defendants' business" means any other sole proprietorship, firm, partnership, corporation, association, joint venture or other group, or business entity of any kind or form, however organized that sells or offers to sell vehicles or offers services related to the maintenance and repair of vehicles; and

D) "Representing," "selling," "marketing," "promoting," "distributing," "advertising" or "soliciting" means any type of contact with a consumer or entity including use of the Internet, for the purpose of requesting, persuading, or seeking any type of contribution, sponsorship, compensation, or anything of value from said consumer or entity for selling vehicles or offering services related to the maintenance and repair of vehicles, other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction.

III. PERMANENT INJUNCTION

7. **IT IS FURTHER ORDERED** that Defendants, their officers, agents servants, employees, and any other persons in active concert or participation with them, who receive actual notice of this Agreed Final Judgment and Permanent Injunction by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, **SHALL BE PERMANENTLY ENJOINED** from engaging in the following acts or practices:

A) Engaging in any Internet or Store Front Vehicle Sales or Repair Operation, other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction, without a valid license from the Texas Department of Transportation - Motor Vehicle Division, and without the express written consent of Plaintiff, State of Texas;

B) Operating, managing, controlling, or directing any Internet or Store Front Vehicle Sales or Repair Operation, other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction, without a valid license from the Texas Department of Transportation - Motor Vehicle Division, and without the express written consent of Plaintiff, State of Texas;

C) Being a majority shareholder, managing partner, or managing member of any Internet or Store Front Vehicle Sales or Repair Operation, other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction, without a valid license from the Texas Department of Transportation - Motor Vehicle Division, and without the express written consent of Plaintiff, State of Texas;

D) Being employed by any person or business entity for the purpose of participating in Internet or Store Front Vehicle Sales or Repair Operation, other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction, without a valid license from the Texas Department of Transportation - Motor Vehicle Division, and without the express written consent of Plaintiff, State of Texas. Notwithstanding the foregoing, neither Brandon Olson nor Debra Olson are enjoined from being employed by any person or business entity provided that the employment duties are limited only to operations that neither sell vehicles nor offer services related to the maintenance and repair of vehicles, other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction;

E) Being hired as a consultant or independent contractor by any person or business entity for the purpose of participating in Internet or Store Front Vehicle Sales or Repair Operation, other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction, without a valid license from the Texas Department of Transportation - Motor Vehicle Division, and without the express written consent of Plaintiff, State of Texas. Notwithstanding the foregoing, neither Brandon Olson nor Debra Olson are enjoined from being employed as a consultant or independent contractor by any person or business entity provided that the employment duties are

other than for warranty work for those vehicles sold to consumers prior to the signing of this Judgment and Injunction; and

F) Reporting, or causing to be reported, any negative credit activity of any Consumer to any credit reporting agency or bureau, or any other activity which affects the credit score or report of any Consumer, arising from any purchase of a vehicle from the Defendants prior to the signing of this Agreed Final Judgment and Permanent Injunction.

IV. JUDGMENT

8. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Plaintiff shall have judgment from the Defendants jointly and severally of TWO MILLION DOLLARS (\$2,000,000.00) in civil penalties pursuant Sections 17.47 (c)(1) of the DTPA.

9. **IT IS FURTHER ORDERED** that the Plaintiff shall have judgment from the Defendants jointly and severally of TEN THOUSAND DOLLARS (\$10,000.00), representing attorneys' fees and expenses, pursuant to Section 402.006(c) of the Texas Government Code.

10. **IT IS FURTHER ORDERED** that the Defendants jointly and severally shall pay to the State of Texas a sum of THIRTY THOUSAND DOLLARS (\$30,000.00), which represents TWENTY THOUSAND DOLLARS (\$20,000.00) in civil penalties and TEN THOUSAND DOLLARS (\$10,000.00) in attorneys' fees, on or before October 15, 2014. The total of THIRTY THOUSAND DOLLARS (\$30,000.00) shall be paid to: "STATE OF TEXAS" by check or money order sent to the Office of the Attorney General. All payments are to be delivered to the attention of James E. Custer at 115 E. Travis, Ste.925, San Antonio, Texas 78205-1615 and referencing **AG # 103172276**. Payments shall begin on **October 15, 2011**, with each payment due on the 15th day of each month, and with the last payment due on **October 15, 2014**. Payments shall be in thirty-six installments as follows: the first payment of \$845.00, on **October 15, 2011**, with each payment of \$833.00 due on

shall be in thirty-six installments as follows: the first payment of \$845.00, on **October 15, 2011**, with each payment of \$833.00 due on the 15th of each month; and the last payment \$833.00 due on **October 15, 2014**. In the event the Defendant has not paid the full amount within ninety (90) days of the last payment due, interest will accrue on any unpaid portion of this amount at the rate set pursuant to Section 304.003(c) of the Texas Finance Code, in effect at the time this judgment is rendered.

11. **IT IS FURTHER ORDERED** that the remainder of the civil penalties, ONE MILLION NINE-HUNDRED EIGHTY THOUSAND DOLLARS (\$1,980,000.00) shall be waived by the Plaintiff, if the Defendants remain in compliance with the terms of this Agreed Final Judgment and Permanent Injunction. If the court determines, after notice and hearing, that any Defendant has failed to comply with this Agreed Final Judgment and Permanent Injunction, said remaining penalties shall be due and owing immediately

12. **IT IS FURTHER ORDERED** that any and all funds frozen as a result of this Court's order shall be used by the Plaintiff at its discretion, as restitution to consumers who have an outstanding claim against the Defendants for refunds of monies sent to Defendants for the purchase of a vehicle.

13. **IT IS FURTHER ORDERED** that any and all financial institutions that have funds held as a result of this Court's orders in this cause, shall immediately *turn over any and all* frozen funds to the Office of the Attorney General of Texas, upon presentment of this judgment to it by any agent of the Office of the Attorney General of Texas, as those funds constitute a Constructive Trust belonging to the Defendants consumers.

14. **IT IS FURTHER ORDERED** that all funds held in the Registry of this Court, shall be released to the Plaintiff, the State of Texas, for use as restitution to consumers as ordered in

paragraph 12 above, as those funds constitute a Constructive Trust belonging to the Defendants consumers.

15. **IT IS FURTHER ORDERED** that the Plaintiff shall have all writs of execution, contempt action, and other process necessary to enforce this Agreed Final Judgment and Permanent Injunction. Defendants, by their signatures, hereby acknowledge notice of this Judgment and acceptance of the same; therefore, no writ need be issued.

16. **IT IS FURTHER ORDERED** that all costs of Court expended or incurred in this cause are adjudged against the party incurring the same.

17. **IT IS FURTHER ORDERED** that this is a final judgment disposing of all issues and parties. All relief not expressly granted herein is denied.

Signed on this 13 day of ~~September~~ ^{October} 2011.


JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:



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