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KS. DISTRICT COURT
THIRD JUDICIAL DIST

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GENERAL JURISDICTION
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division Three

STATE OF KANSAS, *ex rel.*,)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)

v.)

Case No. 00 C 835

FORREST (BUD) FOSTER, individually, and)
d/b/a BUD FOSTER ENTERPRISES, and)
KRISTIAN KANE, individually, and d/b/a)
BUD FOSTER ENTERPRISES, and)
CARLSON AUCTION SERVICE, INC.)
)
Defendants)

and)

CARLSON AUCTION SERVICE, INC.)
)
Plaintiff,)

v.)

FORREST (BUD) FOSTER, individually, and)
d/b/a BUD FOSTER ENTERPRISES, and)
KRISTIAN KANE, individually, and d/b/a)
BUD FOSTER ENTERPRISES)
)
Defendants.)

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF DEFAULT AND CONSENT JUDGEMENT

NOW, on this 14th day of September, 2000, comes before the Court the Journal Entry of Default and Consent Judgment entered into between the Plaintiff and Defendant Carlson Auction Service, Inc. The Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. The Defendant, Carlson Auction Service, Inc., appears by and through L.N. Collier of Topeka. There are no other appearances.

WHEREUPON, the parties make their arguments and cite their authorities to the court and rest.

THEREUPON, the Court being informed of the record in the matter and being otherwise well and duly advised in the premises, makes the following rulings and Orders:

1. Carla J. Stovall is the duly elected, qualified, and acting Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
3. Defendant Forrest (Bud) Foster, d/b/a Bud Foster Enterprises, is a motor vehicle dealer as defined in K.S.A. 8-2401, *et seq.*, dealer license number D-3133.
4. Defendant Kristian Kane, d/b/a Bud Foster Enterprises, is a motor vehicle dealer as defined in K.S.A. 8-2401, *et seq.*, dealer license number D-3133.
5. Defendant Carlson Auction Service, Inc., is an auction motor vehicle dealer as defined in K.S.A. 8-2401, *et seq.*

6. Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, were personally served on July 17, 2000, with process through the Kansas Secretary of State pursuant to K.S.A. 8-2417, and given an opportunity to answer and to be present and heard.

7. Defendant Carlson was personally served on July 17, 2000, with process through its attorney, L.N. Collier, and given an opportunity to answer and to be present and heard.

8. To date, Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, have failed to respond to the Plaintiff's petition or otherwise plead.

9. Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, are suppliers as defined by K.S.A. 50-624(i).

10. At all times relevant hereto, and in the ordinary course of business, Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, have submitted to the jurisdiction of the courts of this state by transacting business within this state and by engaging in consumer transactions as defined by K.S.A. 50-624(c) with consumers as defined by K.S.A. 50-624(b).

11. At all times relevant hereto, and in the ordinary course of business, Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, engaged in the wholesale purchases of motor vehicles from Defendant Carlson. In said transactions, Defendant Carlson retained the certificates of titles as security in the motor vehicles purchased by Defendants Foster and Kane until payment was made. Defendant Carlson currently is in possession of certificates of titles to motor vehicles that have not been paid for by Defendants Foster and Kane.

12. Defendant Carlson, while willing to convey titles to the consumer buyers pursuant to K.S.A. 84-2-403, is aware of K.S.A. 21-3758, which prohibits the failure to show complete chain of title. On March 6, 2000, the Kansas Department of Revenue Dealers Licensing placed an

administrative hold on Defendant Bud Foster Enterprises' dealer number 3133, based upon numerous complaints of failure to deliver title and the Department's investigation that concluded that Defendants Foster and Kane had abandoned the dealership premises.

13. Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, have engaged in acts and practices which are deceptive and unconscionable, in that consumers were unable to receive a material benefit by not being provided a clear title to the vehicles purchased. K.S.A. 50-627(b)(3); K.S.A. 84-2-312; K.S.A. 8-135; K.S.A. 8-2410(a) (5) and(12).

14. The Court finds that the above-mentioned acts and practices of Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, are declared deceptive and/or unconscionable and in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632 (a)(1).

15. The Court Orders that Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, and its employees be permanently enjoined from these and other violative acts and practices.

16. The Court finds that Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, have committed acts in violation of the Kansas Motor Vehicle Dealers' Licensing Act, K.S.A. 8-2401, *et seq.*, and, specifically, K.S.A. 8-2410(a)(12), which resulted in a loss of material benefit to consumers, in a loss of material benefit to the person, Defendant Carlson, a loss of the otherwise secured payment obligation to Defendant Carlson represented by the retaining of the certificates of titles to the vehicles and a loss to Defendant Carlson of any property interest in the vehicles. Such acts create sufficient legal cause to revoke dealer license number 3133 currently held by Defendants Foster and Kane, pursuant to K.S.A. 50-632(a)(2) and K.S.A. 50-632(c)(1) and (5).

17. The Court Orders the declaratory relief that Defendant Carlson be authorized by the Kansas Department of Revenue and empowered by this Order to assign certificates of title to purchasers of the vehicles listed below, in a manner approved by the Kansas Department of Revenue, as though such assignment of title were done by Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, provided that Defendant Carlson shall not be deemed the "supplier" of such vehicles to "consumer" as such terms are defined and contemplated by the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, in these specific transactions, pursuant to K.S.A. 50-632(a)(3):

<u>VEHICLE</u>	<u>VIN</u>	<u>CONSUMER</u>
1989 Ford Taurus	[REDACTED]	[REDACTED]
1988 Honda Prelude	[REDACTED]	[REDACTED]
1990 Ford Taurus	[REDACTED]	[REDACTED]
1985 Dodge Pickup	[REDACTED]	[REDACTED]
1989 Pontiac Sunbird	[REDACTED]	[REDACTED]
1990 Dodge Pickup	[REDACTED]	[REDACTED]
1978 Dodge Diplomat	[REDACTED]	[REDACTED]
1988 Ford Pickup	[REDACTED]	[REDACTED]
1984 Chevrolet Camaro	[REDACTED]	[REDACTED]
1980 Cadillac	[REDACTED]	[REDACTED]
1984 Mercedes	[REDACTED]	[REDACTED]
1988 Ford Thunderbird	[REDACTED]	[REDACTED]
1988 Chevrolet Nova	[REDACTED]	[REDACTED]
1989 Hyundai	[REDACTED]	[REDACTED]
1989 Ford Taurus	[REDACTED]	[REDACTED]
1985 Ford Van	[REDACTED]	[REDACTED]
1989 Ford Escort	[REDACTED]	[REDACTED]
1983 Ford Thunderbird	[REDACTED]	[REDACTED]
1994 Mercury Tracer	[REDACTED]	[REDACTED]
1986 Dodge Pickup	[REDACTED]	[REDACTED]
1985 Buick Riviera	[REDACTED]	[REDACTED]
1987 Ford Taurus	[REDACTED]	[REDACTED]
1990 Chevrolet Beretta	[REDACTED]	[REDACTED]
1987 Mazda 323	[REDACTED]	[REDACTED]
1984 Cadillac	[REDACTED]	[REDACTED]

18. The Court further find that other consumers whose identities are not presently known may be discovered who made similar motor vehicle purchases from Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, and Orders that should such consumers be discovered, that Defendant Carlson, if in possession of a certificate of title to the consumer's vehicle, is empowered by this Order upon receipt of a formal letter finding from the Office of the Kansas Attorney General to assign certificate of title to purchasers of the vehicles in a manner approved by the Kansas Department of Revenue, as though such assignment of title were done by Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, provided that Defendant Carlson shall not be deemed the "supplier" of such vehicles to "consumer" as such terms are defined and contemplated by the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, in these specific transactions.

19. The Court Orders that Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, pay \$1,000.00 in investigative fees and expenses to the Office of the Attorney General, pursuant to K.S.A. 50-632(a)(4).

20. The Court Orders that Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, pay \$70,000.00 in civil penalties for violation of the Kansas Consumer Protection Act as provided by K.S.A. 50-636(a).

21. The Court Orders that Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, pay all court costs.

22. With respect to the Cross-Claim of Carlson Auction Service, Inc. against Defendants Forrest (Bud) Foster and Kristian Kane, both d/b/a Bud Foster Enterprises, the Court finds that Defendants Foster and Kane, both d/b/a Bud Foster Enterprises, have failed to pay to Third-Party Plaintiff Carlson Auction Services, Inc. the total sum of \$13,860.00, for the vehicles listed below,

which amount is still due and owing, and the Court awards judgment to Third-Party Plaintiff Carlson in the amount of \$13,860.00 plus prejudgment interest of \$1,155.63, and attorney fees of \$1,822.50, for a total judgment amount of \$16,838.13.

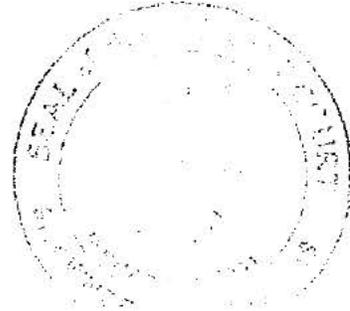
<u>VEHICLE</u>	<u>VIN</u>	<u>CONSUMER</u>
1989 Ford Taurus	[REDACTED]	[REDACTED]
1988 Honda Prelude	[REDACTED]	[REDACTED]
1990 Ford Taurus	[REDACTED]	[REDACTED]
1985 Dodge Pickup	[REDACTED]	[REDACTED]
1989 Pontiac Sunbird	[REDACTED]	[REDACTED]
1990 Dodge Pickup	[REDACTED]	[REDACTED]
1978 Dodge Diplomat	[REDACTED]	[REDACTED]
1988 Ford Pickup	[REDACTED]	[REDACTED]
1984 Chevrolet Camaro	[REDACTED]	[REDACTED]
1980 Cadillac	[REDACTED]	[REDACTED]
1984 Mercedes	[REDACTED]	[REDACTED]
1988 Ford Thunderbird	[REDACTED]	[REDACTED]
1988 Chevrolet Nova	[REDACTED]	[REDACTED]
1989 Hyundai	[REDACTED]	[REDACTED]
1989 Ford Taurus	[REDACTED]	[REDACTED]
1985 Ford Van	[REDACTED]	[REDACTED]
1989 Ford Escort	[REDACTED]	[REDACTED]
1983 Ford Thunderbird	[REDACTED]	[REDACTED]
1994 Mercury Tracer	[REDACTED]	[REDACTED]
1986 Dodge Pickup	[REDACTED]	[REDACTED]
1985 Buick Riviera	[REDACTED]	[REDACTED]
1987 Ford Taurus	[REDACTED]	[REDACTED]
1990 Chevrolet Beretta	[REDACTED]	[REDACTED]
1987 Mazda 323	[REDACTED]	[REDACTED]
1984 Cadillac	[REDACTED]	[REDACTED]

23. Pursuant to K.S.A. 50-632(c)(5) and (6), the Court hereby revokes dealer motor vehicle license number 3133 issued to Defendants Foster and Kane and enjoins Defendants Foster and Kane from engaging in any business in the State of Kansas.

IT IS SO ORDERED.

Marla J. Luckert
The Honorable Marla J. Luckert
District Court Judge

Approved by:



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STATE OF KANSAS and COUNTY OF DEWARBEE, SS
I, Clerk of the Court, do hereby certify that the foregoing is a true and correct copy of the original which is filed and entered in the files of the Court.

Dated *Sept 14, 2000*
Patricia A Sanchez

Attorney for Defendant Carlson Auction Service, Inc.