Attorney No. 99000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, ex. rel., LISA MADIGAN, Attorney General of the State of Illinois, and ex. rel., JESSE WHITE, Secretary of State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 08CH43121
WHOLESALE BUYING GROUP INC., an Illinois Corporation and CHRISTOPHER SWEIS, individually, and as President of Wholesale Buying Group Inc.,	)	
Defendants.	)	

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex. rel. LISA MADIGAN, Attorney General of the State of Illinois, and ex. rel., JESSE WHITE, Secretary State of Illinois by LISA MADIGAN, Attorney General of the State of Illinois, and brings this action complaining of Defendants, WHOLESALE BUYING GROUP INC., an Illinois Corporation and CHRISTOPHER SWEIS, individually, and as President of Wholesale Buying Group Inc., and respectfully states as follows:

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CIRCUIT COURT OF COOK COUNTY, ILLINOIS CHANCERY DIV.
DOROTHY BROWN CLERK

I. JURISDICTION AND VENUE

1. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, ex. rel. LISA MADIGAN, Attorney General of the State of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*), and her common law authority as Attorney General to represent the People of the State of

Illinois and THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JESSE WHITE, Secretary of State of Illinois, by and through LISA MADIGAN, Attorney General of the State of Illinois, pursuant to the provisions of the Illinois Vehicle Code (625 ILCS 5/5 *et seq.*).

2. Venue for this action properly lies in Cook County, Illinois, pursuant to sections 2-101 and 2-102(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-101, 735 ILCS 5/2-102(a)), in that the Defendants are doing business in Cook County, Illinois and Cook County is the county of residence of Defendant CHRISTOPHER SWEIS.

II. PARTIES

3. Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, is charged, *inter alia*, with the enforcement of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*).

4. Plaintiff, JESSE WHITE, is the duly elected Secretary of State of Illinois and is charged with the duty and authority to administer and enforce the provisions of the Illinois Vehicle Code. (625 ILCS 5/5 *et seq.*).

5. WHOLESALE BUYING GROUP INC. is an Illinois Corporation which incorporated on August 31, 2006. WHOLESALE BUYING GROUP INC.'s principal place of business is 1209 Diane Lane, Elk Grove Village, Illinois 60007.

6. Defendant, CHRISTOPHER SWEIS, is sued individually, and in his capacity as President of WHOLESALE BUYING GROUP INC.

7. Defendant, CHRISTOPHER SWEIS, formulated, directed, controlled and had knowledge of the acts and practices of Defendant, WHOLESALE BUYING GROUP INC., and, at all times relevant hereto, was an officer, director, owner and/or agent of Defendant WHOLESALE BUYING GROUP INC.

8. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Defendant, WHOLESALE BUYING GROUP INC., shall mean that such acts and practices are by and through the acts of said corporation's officers, owners, directors, employees, or other agents.

9. To adhere to the fiction of separate corporate existence between Defendants, CHRISTOPHER SWEIS and WHOLESALE BUYING GROUP INC. would serve to sanction fraud and promote injustice.

10. Defendants, CHRISTOPHER SWEIS and WHOLESALE BUYING GROUP INC. are hereinafter collectively referred to as "Defendants."

III. COMMERCE

11. Subsection 1(f) of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1(f)), defines "trade" and "commerce" as follows:

> The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated and shall include any trade or commerce directly or indirectly affecting the people of this State.

12. The Defendants, were at all times relevant hereto, engaged in trade and commerce of advertising, soliciting, offering for sale, selling, and brokering the sale of used and new automobiles to consumers.

IV. DEFENDANTS COURSE OF CONDUCT

13. The Defendants solicit consumers to purchase automobiles via affiliations with private corporations and by way of the internet (http://www.wholesalebuyinggroup.net).

14. The Defendants have not obtained a new Illinois vehicle dealer's license, pursuant

to Section 101 of the Illinois Vehicle Code (625 ILCS 5/5-101).

15. The Defendants have not obtained a used Illinois vehicle dealer's license, pursuant to Section 102 of the Illinois Vehicle Code (625 ILCS 5/5-102).

16. The Defendants do not inform consumers that they are not licensed as a new or used vehicle dealer.

17. Defendants' website states that consumers can save thousands of dollars by purchasing vehicles "wholesale" from the Defendants.

18. Consumers initiate contact with the Defendants via telephone or by email.

19. Once communication has been established, the Defendants offer various vehicles for purchase.

20. The parties reach an agreement on a vehicle and purchase price.

21. Consumers are instructed to mail or electronically wire the agreed upon funds to the Defendants.

22. The Defendants use the funds obtained from the consumers to purchase the agreed upon vehicles and deliver or arrange delivery of the vehicles to the consumers.

23. In some instances, the Defendants solicit business by advertising vehicles for sale via online classified websites such as: www.autotrader.com.

24. The Defendants online classified advertisements state or imply an ownership interest in the vehicles advertised, when in fact, the Defendant have no ownership interest in vehicles advertised.

25. On several occasions the Defendants received full payment for a vehicle, failed to deliver the purchased vehicle, and engaged in one of the following types of behavior:

A. failed to issue a refund;

B. arranged for a comparable vehicle to be delivered to the consumer approximately 7 weeks after the purchase date and subsequent to the filing of a consumer complaint with the Office of the Attorney General of the State of Illinois;

C. did not issue a full refund until a consumer complaint was filed with the Office of the Attorney General of the State of Illinois, approximately 10 weeks after the purchase date.

26. More specifically, but not by way of limitation, the following allegations are pled as illustrations of unlawful business practices of the Defendants and are not meant to be exhaustive. The Plaintiff has received three complaints against the Defendants as of the time this complaint is filed and intends to seek restitution for these complainants, as well as for all additional consumer complainants the Plaintiff discovers:

Donna Capon

27. On or about December 28, 2007, Donna Capon contacted the Defendants seeking to purchase a vehicle.

28 Donna Capon had been vacationing in Florida and Texas and sought to purchase a vehicle to drive to her residence in Thunder Bay, Ontario, Canada.

29. The Defendants sent Ms. Capon pictures of vehicles that were available for purchase.

30. Ms. Capon choose a 2007 Toyota Sienna and the parties agreed upon a purchase price of Twenty Four Thousand Three Hundred Fifty Five Dollars and 00/000 cents ($24,355.00).

31. Ms. Capon was instructed to electronically wire the $24,355 to the Defendants.

32. Ms. Capon informed the Defendants that her bank in Canada determined that it would take approximately one week for the funds to be electronically transferred to Defendants'

bank in the United States.

33. In light of the possible week delay, the Defendants instructed Ms. Capon to overnight a $24,355 personal check.

34. On or about January 10, 2008, Ms. Capon overnighted a $24,355 personal check to the Defendants.

35. Upon receipt of the personal check, the Defendants contacted Ms. Capon and informed her that it would take 45 days for Ms. Capon's personal check to clear.

36. The Defendants informed Ms. Capon that they could not wait 45 days for the personal check to clear as they needed the funds to purchase the 2007 Toyota Sienna.

37. The Defendants instructed Ms. Capon to electronically wire the money. The Defendants informed Ms. Capon that they would destroy Ms. Capon's personal check, wait one week for the electronic funds to clear, and then deliver Ms. Capon her 2007 Toyota Sienna.

38. On or about January 12, 2008, Ms. Capon electronically wired the Defendants $24,355.

39. On or about January 18, 2008, Ms. Capon's $24,355 personal check was deposited into Defendants' bank account despite the Defendants having already received the funds electronically and their promise to destroy Ms. Capon's personal check.

40. The Defendants failed to provide Ms. Capon the 2007 Toyota Sienna, despite receiving $48,710.

41. Ms. Capon contacted the Defendants on many occasions seeking the whereabouts of her 2007 Toyota Sienna.

42. The Defendants made numerous promises to deliver a 2007 Toyota Sienna to Ms. Capon, but failed to produce a vehicle.

43. On or about April 3, 2008, Ms. Capon traveled to Elk Grove, Illinois in an attempt to meet with the Defendants to receive her 2007 Toyota Sienna or obtain a refund.

44. The Defendants again provided Ms. Capon with pictures of a 2007 Toyota Sienna and promised to purchase and deliver a 2007 Toyota Sienna to Ms. Capon.

45. The Defendants again failed to produce a vehicle to Ms. Capon or provide Ms. Capon with a refund of monies she paid.

46. Ms. Capon again contacted the Defendants via email and telephone and was repeatedly promised a 2007 Sienna. However, each promise was unfulfilled.

47. On or about April 21, 2008 Ms. Capon filed a complaint with the Office of the Attorney General of the State of Illinois.

48. The Office of the Attorney General of the State of Illinois forwarded Ms. Capon's complaint to the Defendants.

49. On numerous occasions, the Defendants promised the Office of the Attorney General of the State of Illinois that they would be shipping a 2007 Toyota Sienna to Ms. Capon.

50. Despite making numerous promises to Ms. Capon and the Office of the Attorney General of the State of Illinois, Ms. Capon has never received a 2007 Toyota Sienna nor a refund of the monies she has paid to the Defendants.

Alan Cutler

51. On or about March 28, 2008, Alan Cutler, an Illinois resident, contacted the Defendants seeking to purchase a vehicle.

52. The Defendants provided Mr. Cutler with a list and pictures of vehicles available for purchase.

53. Mr. Cutler choose a 2007 Audi Quattro and the parties agreed upon a purchase

price of Twenty Five Thousand Dollars and 00/000 cents ($25,000.00).

54. The Defendants promised the 2007 Audi Quattro would be delivered in 5 days.

55. On or about March 31, 2008, Mr. Cutler tendered Defendants a Nine Thousand Dollars and 00/100 cents ($9,000.00) check.

56. On or about March 31, 2008, the Defendants cashed the $9,000 check.

57. On or about March 31, 2008, Mr. Cutler also tendered Defendant a Sixteen Thousand Dollars and 00/100 cents ($16,000.00) check.

58. On or about April 1, 2008, the Defendants cashed the $16,000 check.

59. Mr. Cutler paid Defendants a total of Twenty-Five Thousand Dollars and 00/100 cents ($25,000).

60. The Defendants failed to provide Mr. Cutler with a 2007 Audi Quattro, despite receiving $25,000.

61. Mr. Cutler contacted the Defendants on numerous occasions inquiring about the whereabouts of the 2007 Audi Quattro. The Defendants informed Mr. Cutler that the original vehicle purchased had a defect, requiring a substitute vehicle to be purchased.

62. Mr. Cutler agreed to a substitute 2007 Audi Quattro.

63. For over 5 weeks, Mr. Cutler patiently waited for a substitute vehicle.

64. During the 5 week period, Mr. Cutler contacted the Defendants on numerous occasions asking the whereabouts of his replacement 2007 Audi Quattro vehicle. Despite many promises, no vehicle was provided to Mr. Cutler.

65. On or about May 9, 2008, Mr. Cutler sent the Defendants a 10-day demand letter in an attempt to complete the transaction.

66. The Defendants again promised to deliver a substitute Audi Quattro and in the

interim provided Mr. Cutler with a 2001 Mercedes Benz to hold and use as collateral. The Defendants provided Mr. Cutler with title to the 2001 Mercedes Benz.

67. The 2001 Mercedes Benz given to Mr. Cutler by the Defendants to hold and use as collateral had a rebuilt title.

68. The Defendants again failed to produce a Audi Quattro to Mr. Cutler or provide Mr. Cutler with a refund of monies he paid.

69. On or about May 10, 2008 Mr. Cutler filed a consumer complaint with the Office of the Attorney General of the State of Illinois.

70. The Office of the Attorney General of the State of Illinois forwarded Mr. Cutler's complaint to the Defendants.

71. On or about May 15, 2008, Defendants subsequently arranged for a comparable vehicle to be delivered to Mr. Cutler via a licensed used car dealer.

Boris Abrashevich

72. On or about February 15, 2008, Boris Abrashevich saw an advertisement for a 2006 Mercedes ML350 the Defendants were offering for sale on http://www.autotrader.com.

73. Mr. Abrashevich called the number listed on the advertisement and spoke to the Defendants.

74. The parties agreed upon the purchase price of Thirty-Two Thousand Two Hundred Dollars and 00/100 cents ($32,200.00).

75. Per the Defendants request, Mr. Abrashevich wired Defendants $32,200 on or about February 15, 2008.

76. The parties agreed that Mr. Abrashevich would fly from Colorado to Chicago to accept delivery of the 2006 Mercedes ML350.

77. On or about February 17, 2008, Mr. Abrashevich flew to Chicago from Colorado to accept delivery of the 2006 Mercedes ML350.

78. Mr. Abrashevich arrived at the Defendants address; however, neither the 2006 Mercedes ML350, nor the Defendants were present.

79. Mr. Abrashevich contacted the Defendants via telephone. The Defendants informed Mr. Abrashevich that the 2006 Mercedes ML350 had been sold to another customer. Mr. Abrashevich requested a refund of his $32,200.

80. Mr. Abrashevich returned to Colorado without the 2006 Mercedes ML350, nor his $32,200.

81. On or about February 19, 2008, the Defendants contacted Mr. Abrashevich and informed him that the Defendants provided a $32,200 refund via wire transfer.

82. On or about February 20, 2008, Mr. Abrashevich checked his bank account to discover that no monies had been refunded.

83. On or about February 21, 2008, Mr. Abrashevich received a fax from Mr. Sweis stating that he had refunded Mr. Abrashevich his money via a $29,000 bank check and a $3,200 company check.

84. The $3,200 company check was rejected for non-sufficient funds.

85. On or about February 22, 2008, Mr. Abrashevich filed a complaint with the Secretary of State of the State of Illinois.

86. The Secretary of State of the State of Illinois, referred Mr. Abrashevich's complaint to the Office of the Attorney General of the State of Illinois.

87. The Office of the Attorney General of the State of Illinois forwarded Mr. Abrashevich's complaint to the Defendants.

88. On or about April 28, 2008, the Defendants refunded Mr. Abrashevich his remaining $3,200.

V. APPLICABLE STATUTES

89. Section 2 of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2), provides:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the 'Uniform Deceptive Trade Practices Act', approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

90. Section 5-101 of the Illinois Vehicle Code (625 ILCS 5/5-102), provides in relevant part as follows:

> 5-101. New vehicle dealers must be licensed.
>
> (a) No person shall engage in this State in the business of selling or dealing in, on consignment or otherwise, new vehicles of any make, or act as an intermediary or agent or broker for any licensed dealer or vehicle purchaser other than as a salesperson, or represent or advertise that he is so engaged or intends to so engage in such business unless licensed to do so in writing by the Secretary of State under the provisions of this Section.

91. Section 5-102 of the Illinois Vehicle Code (625 ILCS 5/5-102), provides in relevant part as follows:

> 5-102. Used vehicle dealers must be licensed.
>
> (a) No person, other than a licensed new vehicle dealer, shall engage in the business of selling or dealing in, on consignment or otherwise, 5 or more used vehicles of any make during the year ...

> or act as an intermediary, agent or broker for any licensed dealer or vehicle purchaser (other than as a salesperson) or represent or advertise that he is so engaged or intends to so engage in such business unless licensed to do so by the Secretary of State under the provisions of this Section.

VI. COUNT I - VIOLATIONS OF THE CONSUMER FRAUD ACT

92. The Defendants, in the course of trade or commerce, have engaged in the following unfair and deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2):

A. receiving payment from consumers for the sale of automobiles and subsequently failing to deliver vehicles to the consumers;

B. repeatedly informing consumers that their vehicle would soon be delivered, and subsequently failing to produce said vehicles;

C. failing to timely deliver purchased vehicles;

D. failing to issue refunds to a consumer;

E. falsely representing or implying ownership of vehicles offered for sale, when in fact, the Defendants did not own advertised vehicles; and

F. falsely informing consumers that they would destroy and not cash a personal check after receiving funding electronically, and subsequently depositing the consumer's personal check.

VII. COUNT I - STATUTORY REMEDIES

93. Section 7 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7), provides:

> Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or

> practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: Injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or association to do business in this State; and restitution.
>
> In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the Court has the authority to impose a civil penalty in a sum not to exceed $50,000 per violation.
>
> In addition to any other civil penalty provided in this Section, if a person is found by the Court to have engaged in any method, act or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the Court may impose an additional civil penalty not to exceed $10,000 for each violation.

94. Section 10 of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 5605/10). provides:

> In any action brought under the provision of this Act, the Attorney General is entitled to recover costs for the use of this State.

COUNT I - PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this honorable Court enter an Order:

A. Finding the Defendants have violated Section 2 of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1), including, but not limited to, the unlawful acts and practices alleged herein;

B. Preliminarily and permanently enjoining the Defendants from offering, brokering or selling automobiles to consumers in the State of Illinois;

C. Declaring that all contracts entered into between the Defendants and Illinois consumers by the use of methods and practices declared unlawful are rescinded and requiring that full restitution be made to said customers;

D. Assessing a civil penalty in the amount of Fifty Thousand Dollars ($50,000) per violation of the Act found by the Court to have been committed by the Defendants with the intent to defraud; if the Court finds the Defendants have engaged in methods, acts or practices declared unlawful by the Act, without the intent to defraud, then assessing a statutory civil penalty of fifty thousand dollars ($50,000), all as provided in Section 7 of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/7);

E. Assessing an additional civil penalty in the amount of ten thousand dollars ($10,000) per violation of the Consumer Fraud and Deceptive Business Practices Act found by the Court to have been committed by the Defendants against a person 65 years of age and older as provided in Section 7(c) of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7(c);

F. Requiring the Defendants to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/10;

G. Providing such other and further equitable relief as justice and equity may require.

COUNT II- VIOLATIONS OF THE ILLINOIS VEHICLE CODE

1-91. Plaintiffs re-allege and incorporate Paragraphs 1 - 91 as Paragraphs 1 - 91 of

Count II.

92. Sections 101 and 102 of the Illinois Vehicle Code, (625 ILCS 5/5-101, 625 ILCS 5/5-102) provides, *inter alia*, that no persons shall engage in the following activities unless they have obtained a valid new or used dealer license by the Secretary of State:

A. the business of selling or dealing in new vehicles;

B. the business of selling or dealing in 5 or more used vehicles of any make during the year;

C. acting as an intermediary, agent or broker for any licensed dealer or vehicle purchaser;

D. representing or advertising that they are engaged in or intends to engage in the business of selling or dealing in, on consignment or otherwise, new and used vehicles.

93. Defendant have engaged in the business of selling new and used vehicles without obtaining a proper license in violation of Sections 5-101 and 5-102 of the Illinois Vehicle Code (625 ILCS 5/5-101, 625 ILCS 5/5-102) by:

A. Advertising and offering for sale new vehicles:

B. Advertising and offering for sale used vehicles;

C. Engaging in the business of selling or dealing in new vehicles;

D. Engaging in the business of selling or dealing in used vehicles;

E. Advertising and offering to enter into agreements to sell new and used vehicles;

F. Advertising, acting, or offering as an intermediary, agent or broker for any licensed dealer or vehicle purchaser;

G. Making representations and giving information to prospective purchasers which indicate or reasonable imply activity within the scope of the Illinois vehicle Code without first obtaining valid licenses.

COUNT II - STATUTORY REMEDIES

94. Section 5-502 of the Illinois Vehicle Code (625 ILCS 5/5-202) provides: If any person operates in violation of any provision of this Chapter, or any rule, regulation, order or decision of the Secretary of State, or of any term, condition or limitation of any license, the Secretary of State, or any person injured thereby, or any interested person, may apply to the Circuit Court of the county in which such violation or some part thereof occurred, or in which the person complained of has his established or additional place of business or resides, to prevent such violation. The Court has jurisdiction to enforce obedience by injunction or other process restraining such person from further violation and enjoining upon him obedience.

COUNT II - PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this honorable Court enter an Order:

A. Finding that Defendants have engaged in the business of selling new vehicles without obtaining a proper license in violation of Section 5-101 of the Illinois Vehicle Code (625 ILCS 5/5-101);

B. Finding that Defendants have engaged in the business of selling used vehicles without obtaining a proper license in violation of Section 5-102 of the Illinois Vehicle Code (625 ILCS 5/5-102);

C. Preliminarily and permanently enjoining the Defendants from engaging in the business of selling new vehicles in the State of Illinois;

D. Preliminarily and permanently enjoining the Defendants from engaging in the business of selling used vehicles in the State of Illinois;

E. Preliminarily and permanently enjoining Defendant from engaging in the business offering, brokering or selling automobiles to consumers in the State of Illinois;

F. Declaring that all contracts entered into between Defendant and Illinois consumers by the use of methods and practices declared unlawful are rescinded and requiring that full restitution be made to said consumers; and

G. Providing such other and further equitable relief as justice and equity may require.

Respectfully submitted,

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL

By: _____
JAMES KOLE, Chief
Consumer Fraud Bureau

_____
Cecilia Abundis
Assistant Attorney General

_____
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