

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV- _____

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 LINNEHAN LEASING)
 (d/b/a CREDIT NOW AUTO CO.),)
 and ATLANTIC ACCEPTANCE CORP.,)
)
 Defendants)
)

UNFAIR TRADE PRACTICE
COMPLAINT
(Injunctive Relief Requested)

INTRODUCTION

1. The plaintiff, State of Maine, brings this action by and through the Attorney General pursuant to 5 M.R.S.A. § 209 to enjoin the Defendants from engaging in unfair and deceptive trade practices in connection with the credit sale of motor vehicles, their repossession and the collection of consumer loan deficiencies, in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207. The State also seeks restitution for persons injured by these practices and civil penalties for intentional violations of the Unfair Trade Practices Act.

PARTIES

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§ 191 and 209 and the powers vested in him by common law.

3. The Defendants are the following Maine corporations:

A. Linnehan Leasing is a Maine corporation which engages in the retail sales of used cars. One of the names it operates under is Credit Now Auto

Company. Its corporate headquarter address is PO Box 553, Ellsworth, Maine 04605. Credit Now Auto Company is one part of the “Linnehan Family Businesses.”

- B. Atlantic Acceptance Corporation is a Maine corporation that specializes in financing of “automobile paper” and the collection of debt. Its corporate headquarters is also PO Box 553, Ellsworth, Maine 04605 and it also is one of the “Linnehan Family Businesses.”

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act.

5. Pursuant to 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act, this action is brought in the Superior Court of Kennebec County.

STATUTORY BACKGROUND

6. Pursuant to 5 M.R.S.A. § 207, unfair and deceptive acts and practices in trade or commerce are unlawful.

7. Pursuant to 5 M.R.S.A. § 209, whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by § 207 to be unlawful, the Attorney General may bring an action against such person to restrain by temporary or permanent injunction the use of unfair and deceptive trade practices and to order the return of any illegally obtained money or property.

8. Pursuant to 9-A M.R.S.A. § 6-111 (1) (C), creditors are prohibited from “fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions.”

9. Pursuant to 10 M.R.S.A. § 1174 (1), it is unlawful for any motor vehicle dealer to engage in any action which is “in bad faith or unconscionable and which causes damage to...the public.”

10. Pursuant to 10 M.R.S.A. § 1475 (2-A) (g), it is illegal for a dealer to offer for sale or to sell a repossessed used motor vehicle without disclosing that it was repossessed. Pursuant to 10 M.R.S.A. § 1477 a violation of this requirement is a *per se* violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

11. Pursuant to 11 M.R.S.A. § 9-504, the sale of a vehicle that has been repossessed must be “commercially reasonable” as to “method, manner, time, place and terms.”

12. Pursuant to 11 M.R.S.A. § 9-504 (3) a secured party may not purchase the vehicle at a private motor vehicle dealers’ auction unless the vehicle is collateral “of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations.”

13. Pursuant to 11 M.R.S.A. § 9-504 (2) a secured party must account to the debtor for any surplus realized from the sale of the collateral, and unless otherwise agreed, the debtor is liable for any deficiency.

14. Pursuant to 11 M.R.S.A. § 9-505, in the absence of objection by the debtor, a secured party may retain the collateral in satisfaction of the debtor’s obligation.

15. Pursuant to 11 M.R.S.A. § 9-507, if the finance company fails to exercise good faith and fails to sell the repossessed vehicle in a commercially reasonable manner the injured

consumer has a right to recover from the finance company “any loss” caused by the improper sale.

FACTS

16. Linnehan Leasing, d/b/a Credit Now Auto Company (hereinafter referred to as “Credit Now”) and Atlantic Acceptance Corporation (hereinafter referred to as “Atlantic Acceptance”) are privately owned corporations that join together to sell and finance motor vehicles to consumer purchasers and are members of the “Linnehan Family Businesses.”

17. A recent Defendants’ advertisement states:

Linnehan’s is proud to be able to offer financing through its privately owned finance company – Atlantic Acceptance Corporation. As a matter of fact, Atlantic Acceptance is the #1 privately owned used vehicle lender in the entire state of Maine. We pride ourselves in our flexibility in the fact that Atlantic Acceptance, every person’s credit is approved – 100% Guaranteed.

18. Atlantic Acceptance finances all, or practically all, Credit Now sales that are finance sales.

19. The Defendants aggressively solicit consumers who have poor credit records and have difficulty being able to afford the cost of a motor vehicle.

20. The Defendants widely advertise that if a consumer purchases a vehicle at Credit Now there is “100% Guaranteed Credit Approval.” Among its advertising claims are: “*Your approved! Your credit cannot be denied!*” And: “*Your approved! We specialize in 2nd chance credit financing.*”

21. An Atlantic Acceptance advertisement specifically states:

Bad Credit – No Problem!
No Credit – No Problem!
Bankruptcy – No Problem!
Divorce - No Problem!
Repossessions – No Problem!

22. While Credit Now and Atlantic Acceptance are separate corporations they are part of a unitary business and are in fact *alter egos*. As stated in one of their advertisements: “The Linnehan Family of Businesses is made up of two companies whose primary operations are retailing of used automobiles and the financing of these vehicles.”

23. Credit Now and Atlantic Acceptance share both an address and employees. For example, the same person is general manager of both Credit Now and Atlantic Acceptance. The same person is the chief financial officer for both Atlantic Acceptance and Credit Now.

24. Within the past several years Credit Now/Atlantic Acceptance has had retail sale lots in the following Maine locations: Ellsworth, Calais, Presque Isle, Lincoln, Brewer, Bangor.

25. Credit Now/Atlantic Acceptance combine to form a used car dealership commonly known as a “Buy-Here/Pay-Here” sales operation.

26. Credit Now/Atlantic Acceptance, like other “Buy-Here/Pay-Here” sales operations, finance motor vehicles on the spot. High-risk borrowers, who are often low-income consumers, can purchase high mileage vehicles at high prices and at high interest rates.

27. When Credit Now sells a vehicle it typically provides financing to its consumer purchasers. The financing contract is immediately assigned to Atlantic Acceptance. If the consumer subsequently defaults on the loan it has been the Defendants’ practice that Atlantic Acceptance repossesses the vehicle and collects any loan deficiency. But it has been Credit Now which sells the repossessed vehicle in order to determine the amount of the loan deficiency.

28. Credit Now/Atlantic Acceptance sell high mileage motor vehicles which are more likely to need repairs than motor vehicles with fewer miles.

29. The consumer buyers who purchase at Credit Now/Atlantic Acceptance are more likely to default on their motor vehicle loans than consumers who purchase at dealerships that are not a “Buy-Here/Pay-Here” operation.

30. Credit Now/Atlantic Acceptance, in volume of sales, is one of Maine's largest used car dealers.

31. The single biggest expense for Credit Now/Atlantic Acceptance is the losses caused by consumers who default on their loans and whose vehicles are repossessed by Atlantic Acceptance.

32. When Atlantic Acceptance repossesses a vehicle it immediately provides the vehicle's title to Credit Now. Credit Now, claiming to be the owner of the vehicle, then sells the vehicle at a private "dealers-only" auction such as Central Maine Auto Auction (50 Sparks Avenue, Brewer, Maine 04412).

33. When Credit Now sells the vehicle at auction it immediately gives back to Atlantic Acceptance all the proceeds from the sale at auction. Atlantic Acceptance then calculates the consumer's loan deficiency, and attempts to collect the debt.

34. The Central Maine Auto Auction is a private, limited access auction. Bidders are limited to Maine licensed motor vehicle dealers. Vehicles purchased at this auction are bought at wholesale prices rather than retail prices and typically are purchased by dealers in order to be re-sold on a retail used car lot. Defaulting Atlantic Acceptance consumers are not informed of the time and place their vehicles will be auctioned off, although this information is known to the Defendants.

35. One of Credit Now's retail sale lots is within a few miles of the Central Maine Auto Auction.

36. When the Defendants sell their repossessed vehicles at the Central Maine Auto Auction the purchase price is used to establish the loan deficiency still owed to Atlantic Acceptance by the defaulting consumer.

37. While Atlantic Acceptance gives the title of the repossessed vehicles to Credit Now so they can be sold at auction, it does not re-assign or sell to Credit Now the debt of the defaulting consumer.

38. Once the loan deficiency is established, Atlantic Acceptance informs the consumer the amount the consumer still owes and, if the consumer does not pay, it then initiates debt collection procedures against that person.

39. When selling repossessed vehicles at the Central Maine Auto Auction, Atlantic Acceptance and Credit Now have secretly contracted with another motor vehicle dealer so that they could re-acquire the best of the repossessed vehicles in order that they could be sold again at retail by Credit Now.

40. This is how this secret arrangement has worked: Credit Now/Atlantic Acceptance would determine that a repossessed vehicle would bring a good price at retail and then would provide a written description of that vehicle to another Maine motor vehicle dealer, with instructions to bid on that vehicle at the auction up to a specified amount.

41. If the agent dealer successfully bid on the listed vehicle and purchased it, then Credit Now, pursuant to its agreement with the dealer, would immediately purchase it back from the dealer so it could be offered for sale at one of Credit Now's retail lots.

42. In cases in which Credit Now intended to re-acquire the vehicle being auctioned off, a low winning bid at auction would result in a greater profit when Credit Now later sold it at retail.

43. From January 1, 1999 through August, 2001, at least 342 vehicles were subject to this auction self-dealing scheme so that Credit Now could sell the repossessed vehicle both at the wholesale auction and again at retail.

44. Upon information and belief, since approximately 1996 the Defendants have been using a secret agent at the dealers-only auction so that they could immediately repurchase a desirable repossessed vehicle and then sell it at retail on a Credit Now lot.

45. This specific steps of this pattern of self-dealing (also described as “churning”) were as follows:

- A. Credit Now would sell a vehicle at retail and the Retail Sale Finance Agreement was immediately assigned to Atlantic Acceptance.
- B. The consumer would default on the loan.
- C. Atlantic Acceptance would repossess the vehicle and transfer, without consideration, the title of the vehicle back to Credit Now.
- D. Credit Now, claiming to be the owner of the vehicle, would sell the vehicle at a private “dealers-only” wholesale auction in order to establish the consumer’s loan deficiency.
- E. At this auction Credit Now, not Atlantic Acceptance, was the seller.
- F. In a certain number of cases, the Defendants would before hand determine that the vehicle was of such good quality that it could bring substantial additional profits if they could also sell it off one of their retail lots.
- G. Credit Now would then contact another Maine motor vehicle dealer it had a non-public agreement with and instruct the dealer to bid up to a certain amount on the vehicle.
- H. In most cases, but not all, this agent dealer was Country Cars, Inc., d/b/a/ Maine Motors, Inc., (hereinafter referred to as “Maine Motors”).

- I. If the bidding for the selected vehicle exceeded the limit Credit Now had set, Maine Motors was instructed to stop bidding and to allow a higher bidder to purchase the vehicle.
- J. One or two days after Maine Motors purchased the vehicle at auction, it would sell the vehicle back to Credit Now. Pursuant to their agreement, the purchase price was the amount that Maine Motors had bid, plus a fee (often more than \$100) for its services.
- K. Once the vehicle was transferred at auction in the sham sale to Maine Motors, Credit Now would immediately pay the auction price to Atlantic Acceptance.
- L. Once Credit Now re-purchased the vehicle from Maine Motors it would be taken to one of Credit Now's Bangor, Brewer or Ellsworth area retail lots and resold at retail.
- M. Once Atlantic Acceptance received from Credit Now the auction purchase price it would calculate the outstanding loan deficiency and inform the defaulting consumer how much the defaulting consumer still owed Atlantic Acceptance (the consumer's loan deficiency after sale). If the consumer did not pay, Atlantic Acceptance would initiate debt collection procedures.

46. When the Defendants sell a repossessed vehicle at the dealers-only auction, it is sold "as is" without any express warranty or a warranty that the vehicle met State inspection standards. It can be returned only if the odometer is faulty or the frame is seriously damaged.

47. However, when the re-purchased vehicle is sold by Credit Now at retail it typically is sold both with a substantial express warranty and with a new inspection sticker

issued within the past 60 days and the guarantee that the vehicle meets State inspection standards.

48. After the vehicle is sold at auction, Atlantic Acceptance claims credit for the sales tax paid when Credit Now originally sold the vehicle and is reimbursed this amount by the State.

49. Atlantic Acceptance/Credit Now's hidden arrangement to use an agent at auction and to, in effect, sell itself certain repossessed vehicles accomplishes the following:

- A. Because the vehicle is sold at a private auction for a relatively low wholesale price, Atlantic Acceptance obtains a larger loan deficiency than if it were sold at retail, to the detriment of the defaulting consumer.
- B. By then purchasing back a vehicle from its agent Maine Motors, Credit Now is then able to sell the vehicle at retail and to obtain the full retail value of the vehicle without the defaulting consumer realizing the benefit of that sale and thereby receiving a reduced loan deficiency or payment of a surplus.

50. This "churning" of repossessed cars allowed Atlantic Acceptance/Credit Now to obtain both a high loan deficiency based on the relatively low wholesale auction price and then a high retail price that they did not have to share with the defaulting consumer.

51. Atlantic Acceptance/Credit Now realize significant financial benefits from their "churning" scheme at the expense of the defaulting consumer.

52. By way of example only, on December 21, 1998, consumers James and Lisa Lunden purchased from Credit Now a 1993 Ford Tempo (with 68,415 miles) for \$9,941 (14.99% APR). The Lundens eventually defaulted on the loan and Atlantic Acceptance repossessed the vehicle (at 73,972 miles). Credit Now then sold it at a dealers-only wholesale auction for only \$1,160. Based on this wholesale price Atlantic Acceptance set the Lundens' loan deficiency (the

amount they still owed Atlantic Acceptance) at \$6,009. The dealer who purchased the Ford Tempo at the auction was secretly in the employ of Credit Now and immediately sold the vehicle back to Credit Now. Credit Now then sold the vehicle at retail off one of its lots for \$10,587 (14.98% APR). This price was *greater* than the price originally paid by the Lundens. This “churning” of the Lundens’ vehicle allowed Atlantic Acceptance and Credit Now to realize not only the Lundens’ \$6,009 loan deficiency but also the profits from the \$10,587 retail sale. Further, by “churning” this vehicle Credit Now and Atlantic Acceptance avoided their statutory obligation to pay the Lundens any surplus that would have belonged to them if the vehicle had been initially sold at retail.

53. By way of example only, on May 5, 1999, consumers Head and Sanborn purchased from Credit Now a 1994 Ford Taurus (with 91,848 miles) for \$11,981 (14.98% APR). Head and Sanborn eventually defaulted on the loan and Atlantic Acceptance repossessed the vehicle (at 108,953 miles). Credit Now then sold it at the dealers-only wholesale auction for only \$1,510. Based on this wholesale price Atlantic Acceptance set Head’s and Sanborn’s loan deficiency (the amount they still owed Atlantic Acceptance) at \$5,247. The dealer who purchased the Ford Taurus at the auction was secretly an agent of Credit Now and immediately sold the vehicle back to Credit Now. Credit Now then sold the vehicle at retail off one of its lots for \$12,952 (16.98% APR). This price was *greater* than the price originally paid by Head and Sanborn. This “churning” of Head’s and Sanborn’s vehicle allowed Atlantic Acceptance and Credit Now to realize not only Head’s and Sanborn’s \$5,247 loan deficiency but also the profits from the \$12,952 retail sale. Further, by “churning” this vehicle Credit Now and Atlantic Acceptance avoided their statutory obligation to pay Head and Sanborn any surplus that would have belonged to them if the vehicle had been initially sold at retail.

54. By way of example only, on October 12, 1999, consumers Mark and Jennifer Meiredirk purchased from Credit Now a 1998 Ford Truck F250 (with 70,263 miles) for \$13,381 (14.98% APR). The Meiredirks eventually defaulted on the loan and Atlantic Acceptance repossessed the vehicle (at 74,551 miles). Credit Now then sold it at the dealers-only wholesale auction for only \$3,400. Based on this wholesale price Atlantic Acceptance set the Meiredirks' loan deficiency (the amount they still owed Atlantic Acceptance) at \$5,283. The dealer who purchased the Ford Truck at the auction was secretly an agent of Credit Now and immediately sold the vehicle back to Credit Now. Credit Now then sold the vehicle at retail off one of its lots for \$14,244 (14.98% APR). This price was *greater* than the price originally paid by the Meiredirks. This "churning" of the Meiredirks' vehicle allowed Atlantic Acceptance and Credit Now to realize not only the Meiredirks' \$5,283 loan deficiency but also the profits from the \$14,244 retail sale. Further, by "churning" this vehicle Credit Now and Atlantic Acceptance avoided their statutory obligation to pay the Meiredirks any surplus that would have belonged to them if the vehicle had been initially sold at retail. The consumer who subsequently purchased the Meiredirks' Ford Truck at retail off the Credit Now lot also defaulted on her loan and Credit Now and Atlantic Acceptance then "churned" this same vehicle a second time by repossessing it and selling it both at the dealers-only auction and then at a Credit Now retail lot.

55. By way of example only, on February 3, 1999, consumer Carla Pelky purchased from Credit Now a 1994 Pontiac Sunbird (with 71,086 miles) for \$9,047 (14.98% APR). Pelky eventually defaulted on the loan and Atlantic Acceptance repossessed the vehicle (at 85,185 miles). Credit Now then sold it at the dealers-only wholesale auction for only \$2,050. Based on this wholesale price Atlantic Acceptance set Pelky's loan deficiency (the amount she still owed Atlantic Acceptance) at \$3,198. The dealer who purchased the Pontiac Sunbird at the auction was secretly an agent of Credit Now and immediately sold the vehicle back to Credit Now.

Credit Now then sold the vehicle at retail off one of its lots for \$12,084 (12.98% APR). This price was *greater* than the price originally paid by Pelky. This “churning” of Pelky’s vehicle allowed Atlantic Acceptance and Credit Now to realize not only Pelky’s \$3,198 loan deficiency but also the profits from the \$12,084 retail sale. Further, by “churning” this vehicle Credit Now and Atlantic Acceptance avoided their statutory obligation to pay Pelky any surplus that would have belonged to her if the vehicle had been initially sold at retail. The consumers Karol and Michael Murphy, who subsequently purchased Pelky’s Pontiac Sunbird at retail off the Credit Now lot, also defaulted on their loan and Credit Now and Atlantic Acceptance then “churned” this same vehicle a second time by repossessing it and selling it both at the dealers-only auction and then at a Credit Now retail lot.

56. If Atlantic Acceptance/Credit Now had bypassed the dealers-only auction and instead sold its repossessed vehicles off a Credit Now retail lot the defaulting consumer’s loan deficiency would either have been significantly lower or the consumer would have been entitled to a surplus.

57. The sale of the repossessed vehicles at auction and their purchase by Credit Now’s agent Maine Motors is not an arms-length transaction because Credit Now was the original seller of the vehicle and well informed of any defects. Further, after repossession, the Defendants carefully chart the current condition of each vehicle. Therefore, Maine Motor’s bids at auction are dictated by “insider” information.

58. Credit Now has maintained retail lots in various locations around the State at which repossessed vehicles conveniently could be sold, at retail instead of selling them at a wholesale dealers-only auction.

59. Atlantic Acceptance employs both in-house personnel and outside legal counsel to collect from the defaulting consumers the loan deficiencies that are established by the sale of the repossessed vehicles at auction.

60. By purchasing back these repossessed vehicles from Maine Motors, Credit Now is able to “wash” the disclosures required by the Used Car Information Act, with the result that when selling these repossessed vehicles at retail, Credit Now fails to disclose to the retail consumer purchaser that the vehicle had been repossessed.

61. The predecessor to Atlantic Acceptance was CN Credit Collection Co. (P.O. Box 553, Ellsworth, ME 04605). On information and belief, CN Credit Collection Co. repossessed vehicles in the mid-1990s and then purchased back these vehicles at dealer-only auctions.

COUNT ONE

(Violation Of The Unfair Trade Practices Act – Illegal Purchase By A Secured Party Of a Consumer Good)

62. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

63. The Defendants purchase at auction, through an agent, vehicles they have repossessed is an illegal purchase of collateral at a private sale, in violation of 11 M.R.S.A. § 9-504 (3).

64. As a result of the Defendants’ self-dealing at the auction and subsequent sale of repossessed vehicles at retail prices, a defaulting consumer’s loan deficiency is either unfairly high or the consumer is denied reimbursement of a surplus.

65. The Defendants’ pattern of selling itself collateral at the Central Maine Auto Auction constitutes a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

66. The Defendants’ violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

COUNT TWO

**(Violation Of Unfair Trade Practices Act –
Failure To Sell Collateral In A Commercially Reasonable Manner)**

67. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.
68. The Defendants' sale of collateral at the Central Maine Auto Auction at wholesale prices was not commercially reasonable and was in violation of 11 M.R.S.A. § 9-504 (3) and 11 M.R.S.A. § 9-507.
69. The Defendants' pattern of sales of collateral in a commercially unreasonable manner and then collecting unfairly high deficiencies constitutes a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.
70. The Defendants' violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

COUNT THREE

**(Violation Of Unfair Trade Practices Act –
Unconscionable Conduct In The Collection Of Debts)**

71. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.
72. The Defendants' sale of repossessed vehicles at the Central Maine Auto Auction and their scheme to buy back the most attractive vehicles so they could be offered for sale at their retail lots was in bad faith and constitutes unconscionable conduct in the collection of consumer debts, in violation of 9-A M.R.S.A. § 6-111 (1) (C).
73. The Defendants' pattern of unconscionable sales at the Central Maine Auto Auction constitutes a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.
74. The Defendants' violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

COUNT FOUR

(Violation Of Unfair Trade Practice Act – Bad Faith Or Unconscionable Actions)

75. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

76. Defendant Credit Now's sale of repossessed vehicles at the Central Maine Auto Auction and its scheme to buy back the most attractive vehicles so they could be sold at its retail lots constitutes bad faith or unconscionable actions in violation of 10 M.R.S.A. § 1174(1).

77. Defendant Credit Now's pattern of bad faith and unconscionable conduct constitutes a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

78. Defendant Credit Now's violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

COUNT FIVE

(Violation Of Unfair Trade Practice Act – Breach Of Fiduciary Duty)

79. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

80. The Defendants' aggressive solicitation of poor credit risk consumers as customers establishes a fiduciary duty to act in their best interests when the consumers default and the Defendants repossess and sell the vehicles.

81. The Defendants' method of liquidating collateral through a self-dealing "churning" scheme is a breach of both their statutory and common law good faith duty to maximize the proceeds of the collateral's sale.

82. The Defendants practice of buying back repossessed vehicles at auction and then selling them at retail is a breach of their fiduciary duty to their credit customers and constitutes a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

83. The Defendants' violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

COUNT SIX

(Violation Of Unfair Trade Practice Act – Failure To Disclose Information)

84. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

85. Defendant Credit Now's failure to disclose to subsequent consumer purchasers of vehicles purchased at the Central Maine Auto Auction that these vehicles had been repossessed by Atlantic Acceptance was in violation of 10 M.R.S.A. § 1475, Used Car Information Act.

86. The Defendants' violations of the Used Car Information Act disclosure requirement constitutes a *per se* violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

87. Defendant Credit Now's violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

RELIEF REQUESTED

Plaintiff requests the following relief:

1. Declare that the conduct of each Defendant as described in this Complaint violates the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.
2. Pursuant to 5 M.R.S.A. § 209, permanently enjoin each Defendant, its agents, servants, employees and those persons acting in concert or participation with the Defendants from continued or further violations of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207, including failing to sell repossessed vehicles at a price reflective of an "arm's length" transaction.

3. Order each Defendant to provide a full accounting of any consumer sale of any used vehicle from 1993 to the present in which the consumer defaulted on the Atlantic Acceptance loan and Credit Now subsequently re-purchased the repossessed vehicle and then sold it at retail, including an accounting of all attempts to collect any consumer loan deficiency.

4. Based on the subsequent sale of these repossessed vehicles at retail, order the Defendants to re-calculate the defaulting consumers' loan deficiencies including any surpluses owed to any consumer.

5. Pursuant to 5 M.R.S.A. § 209, order each Defendant to pay full restitution to any consumer injured by the illegal practices set forth in this Complaint, including dismissing any outstanding loan deficiencies.

6. Pursuant to 5 M.R.S.A. § 209, order each Defendant to pay the Department of the Attorney General the cost of this suit, including its attorney's fees.

7. Pursuant to 5 M.R.S.A. § 209, order each Defendant to pay the Department of the Attorney General a civil penalty of up to \$10,000 for each intentional violation of the Unfair Trade Practices Act.

8. Order such other and further relief, as may be necessary to remedy the effects of the Defendants' unfair and deceptive trade practices.

Dated: 6/6/02

Respectfully submitted,

G. STEVEN ROWE
Attorney General



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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-02- 111

STATE OF MAINE,)
)
 Plaintiff)
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 v.)
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 LINNEHAN LEASING (d/b/a/)
 CREDIT NOW AUTO CO.), and)
 ATLANTIC ACCEPTANCE CORP.,)
)
 Defendant)

CONSENT DECREE
(Maine Unfair Trade Practice
Act, 5 M.R.S.A. §207)

Plaintiff, State of Maine, filed its Complaint in the above-captioned matter on 6/6/02. The Department of the Attorney General (“Attorney General”) and Defendants Credit Now Auto Company (“Credit Now”) and Atlantic Acceptance Corporation (“Atlantic Acceptance”) have consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein. This Decree does not constitute evidence against either Defendant nor an admission by either Defendant of any of the allegations in the Plaintiff’s Complaint.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby ORDERED and decreed as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Decree. This Complaint states claims for relief which may be granted against Defendants Credit Now and Atlantic Acceptance, pursuant to the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §§206-214 (1989 and Pamph. 2002).

2. Defendants Credit Now and Atlantic Acceptance, their agents, employees, assigns or other persons acting for the them or under their control or guidance are permanently enjoined and restrained from:

- A. Repurchasing, directly or through an agent or surrogate, repossessed motor vehicles they sold for their own account at an auction restricted to licensed motor vehicle dealers.
- B. Selling motor vehicles and failing to disclose to subsequent consumer purchasers that the vehicle had been repossessed when defendants have knowledge of such repossession, in violation of 10 M.R.S.A. § 1475, Used Car Information Act.

3. Within 60 days of the date of this Consent Decree, the Defendants shall provide the Department of the Attorney General an accounting of all vehicles repossessed by the Defendants from January 1, 1993 through the date of this Consent Decree which were subject to the activity described in Section 2(A) above, setting forth the following information:

- A. the VIN number of the vehicle;
- B. the name of the original consumer purchaser and the most current address and phone number known to the Defendants;
- C. the price for which the vehicle was sold at the private auction;

D. the resulting consumer purchaser loan deficiency.

The Defendants shall also provide the Attorney General with mailing labels for each of the consumers included in 3(B).

4. As of the date of this Consent Decree, the Defendants are permanently enjoined and restrained from taking any action to collect any deficiency amount remaining after repossession and resale of any vehicle identified in paragraph 3 of this Consent Decree. This injunction applies to any deficiency owed by a consumer purchaser whose vehicle was repossessed by the Defendants from January 1, 1993 through the date of this Consent Decree and then repurchased by Defendants, their agents or surrogates at an auction restricted to licensed motor vehicle dealers and which was then resold again at retail by the Defendants. These debts are henceforth deemed extinguished.

5. Within 60 days of the date of this Consent Decree the Defendants shall inform each of the major credit reporting agencies, and any other credit reporting agency to which they have furnished information in the past, that the above consumer purchasers' debts have been fully satisfied.

6. Upon receiving the mailing labels required by paragraph 3, the Attorney General will attempt to contact by mail each consumer purchaser listed in paragraph 3(B) and inform them of the consumer relief provided in this Consent Decree. The letter will be similar in form and content to the sample attached to this Consent Decree as Exhibit A. It is hereby ordered that the Defendants return to any such consumers all money collected from the consumer to date on the loan deficiency resulting from the repossession of their vehicle. To receive such payment, the consumer needs to return to the Attorney General an executed settlement agreement and release agreement in substantially the same form as

Exhibit B, attached to this Consent Decree. In no event will the Defendants be obligated to make any restitution payment to any consumer who has not returned to the Attorney General the executed settlement and release within 180 days from the date of this Consent Decree.

7. The Defendants are further ordered within 90 days of receipt of notice from the Attorney General that a consumer has complied with the requirements of paragraph 6 of this Consent Decree the refund required by paragraph 6 must be forwarded to the consumer. Within 210 days of the date of this Consent Decree, the Defendants will provide a report to the Court and the Attorney General of any restitution payments.

8. Pursuant to 5 M.R.S.A. §§ 203-A, 209 as of the date of entry of this Consent Decree the Defendants shall pay the Attorney General \$40,000, for consumer education, litigation, public protection purposes, or consumer protection purposes at the discretion of the Attorney General.

9. Any violation by the Defendants of the mandatory injunctions listed above in paragraphs 2-6 and 7 shall be subject to the civil penalty listed in 5 M.R.S.A. § 209.

10. Pursuant to 5 M.R.S.A. § 209 the Defendants shall pay to the Department of the Attorney General the costs of this suit, including its attorney's fees, in the amount of \$11,000.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purposes of enabling any party to this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the construction, modification, or enforcement of any provision of this decree

and injunction, and for further orders pursuant to 5 M.R.S.A. § 209, including additional civil penalties for future violations of the provisions of this Consent Decree.

The undersigned acknowledge the terms of this Consent Decree; agree to these terms and to the entry of this Decree.

The Clerk is directed to incorporate this Order in the docket by reference pursuant to M.R. Civ. P. 79(a).

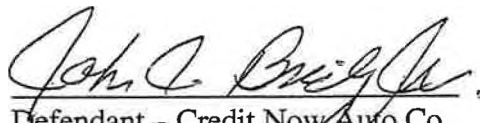
Dated: 6/6/02



Justice, Superior Court

WE CONSENT:

Dated: 5-31-02



Defendant - Credit Now Auto Co.

Dated: 5-31-02

Corp.



Defendant - Atlantic Acceptance

Dated: 6/6/02



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