

AUG 18 2011

RECEIVED

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Amendments Attached

Do Not Write in These Spaces Claim No. 12-0151-CC Date Filed August 18, 2011 Amount of Claim \$ 105,500.00+ Fund DFA/RD

W.W. Magness Company, Inc., d/b/a Claimant Magness Toyota vs.

State of Arkansas, Respondent DFA/Revenue Division

COMPLAINT Loss of Profit Failure to Follow Procedure

W.W. Magness Company, Inc. the above named Claimant, of 1407 Highway 65 North, Harrison County

AR 72601 (870)741-5451 County of Boone represented by James Carter Coulter, PLC of 500 Broadway, STE 400, Little Rock, AR 72201 (501)372-1414 (501)372-1659

State agency involved: Department of Finance & Administration Amount sought: \$105,500 plus

Explanation: Beginning on or about August 22, 2008, and continuing from time to time thereafter, the Department of Finance and Administration, negligently issued duplicate titles to Benchmark Automotive. Claimant held the original titles to the vehicles in question the issuance of the duplicate title deprived Claimant of its interest in the vehicles and caused Claimant to suffer damages.

The Office of Motor Vehicles was negligent in that it failed to follow its procedures and to make inquiries into deficient and suspicious paperwork submitted to the Office of Motor Vehicles.

The Office of Motor Vehicles failed to follow proper procedures which deprived Claimant of its interest in the vehicles in question.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? Yes when? December 10, 2010 to whom? Arkansas Department of Finance & Administration

and that \$ -0- was paid thereon: (2) Has any third person or corporation an interest in this claim? NO; if so, state name and address and that the nature thereof is as follows:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believes that they are true. (Print Claimant/Representative Name) (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock Arkansas on this 18th day of August 2011 Stacy Golleher (Notary Public) My Commission Expires: 03/20/2019



MAY 31 2013

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

W.W. MAGNESS COMPANY, INC.,
d/b/a MAGNESS TOYOTA

CLAIMANT

VS.

CLAIM NO. 12-0151-CC

DFA/REVENUE DIVISION

RESPONDENT

AMENDED COMPLAINT

Comes now the Claimant, W.W. Magness Company, Inc., d/b/a Magness Toyota ("Magness"), by and through its attorneys, James, Carter & Coulter PLC, and for its amended complaint:

1. Beginning on or about August 22, 2008, and continuing from time to time thereafter, the Department of Finance and Administration, the Office of Motor Vehicles, (hereinafter, "Respondent") issued duplicate titles to Benchmark Automotive.
2. Benchmark Automotive obtained the duplicate titles from the Respondent through the services of Vehicle Titles, Inc. and Heather Healy.
3. Magness held the original titles to the vehicles in question and the issuance of the duplicate titles deprived Magness of its interest in the vehicles and caused it to suffer damages.
4. There are five vehicles at issue.
 - a. 2006 Toyota Sequoia, VIN 5TDBT44A76S270424
 - b. 2006 Chevrolet HD (2KH), VIN 1GCHK23D66F146268
 - c. 2006 Ford F150 (F2S), VIN 1FTSW21P86EB93945
 - d. 2005 Chevrolet Suburban (C15), VIN 3GNFK16Z45G231171

e. 1999 Chevrolet Silverado, VIN 1GCEK19T5XE115550

5. The Respondent was negligent in that it failed to follow its rules, procedures and make inquiries into deficient and suspicious paperwork submitted to the Respondent.

6. The Respondent made the following errors and omissions in failing to follow its duplicate title procedures then in effect:

- a. failing to obtain the signature and proper proof of identification of the last titled owner of the vehicle;
- b. failing to obtain a written statement from the lien holder that the lien was satisfied;
- c. failing to return the duplicate title to the lien holder;
- d. failing to verify that the signature of the lien holder was proper;
- e. failing to follow Department rules and procedures for obtaining a duplicate title.
- f. failing to question deficient and suspicious paperwork submitted for the duplicate titles.

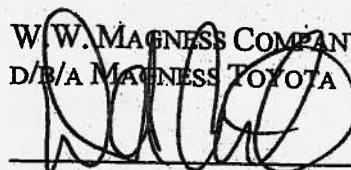
7. Due to the Respondent's negligence, errors and omissions, Magness has been damaged in the amount of \$105,500.

8. Magness has resolved part of its claim with other responsible parties and its claim before the State Claims Commission is now ripe for consideration.

WHEREFORE, Magness Toyota prays that its claim be granted in the amount which it has been damaged and for all other just and proper relief.

Respectfully submitted,

W/W. MAGNESS COMPANY, INC.,
D/B/A MAGNESS TOYOTA



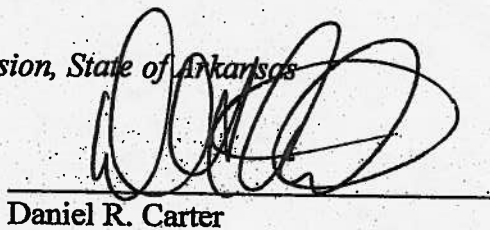
Daniel R. Carter (Ark. Bar No. 80023)
JAMES, CARTER, & COULTER, PLC
PO Box 907
Little Rock, AR 72203-0907
Telephone: (501) 372-1414
Facsimile: (501) 372-1659
E-mail: dcarter@jamescarterlaw.com

CERTIFICATE OF SERVICE

I, Daniel R. Carter, do certify on this 30th of May, 2013, that I have served a true and correct copy of the above and foregoing document by depositing same in the U.S. Mail, postage prepaid, and via e-mail to:

William E. Keadle, Esq.
Revenue Legal Counsel
PO Box 1272, Room 2390
Little Rock, AR 72203
Tel 501.682.7030
E-mail: will.keadle@dfa.arkansas.gov

Attorney for Respondent DFA/Revenue Division, State of Arkansas



Daniel R. Carter

**BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS**

**ARKANSAS STATE
CLAIMS COMMISSION**

JUN 13 2013

RECEIVED

W. W. MAGNESS COMPANY, INC. d/b/a MAGNESS TOYOTA, CLAIMANT

VS.

CLAIM NO. 12-0151-CC

DFA/REVENUE DIVISION

RESPONSE TO AMENDED COMPLAINT

Comes now the Respondent, DFA/Revenue Division, by and through its attorney, William E. Keadle, and in response to the Complaint (Claim) filed herein, states as follows:

1. Respondent adopts and realleges its responses to Plaintiff's original Complaint filed herein.
2. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 1 of Claimant's Amended Complaint and therefore denies the averments contained in Paragraph 1 of Claimant's Amended Complaint.
3. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 2 of Claimant's Amended Complaint and therefore denies the averments contained in Paragraph 2 of Claimant's Amended Complaint.
4. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 3 of Claimant's Amended Complaint and therefore denies the averments contained in Paragraph 3 of Claimant's Amended Complaint.

5. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 4 of Claimant's Amended Complaint and therefore denies the averments contained in Paragraph 4 of Claimant's Amended Complaint.

6. The averments contained in Paragraph 5 of Claimant's Amended Complaint are denied.

7. The averments contained in Paragraph 6(a), 6(b), 6(c), 6(d), 6(e), 6(f) of Claimant's Amended Complaint are denied. Respondent affirmatively states that Claimant has not stated the specific statutes, rules and procedures that were allegedly not followed by Respondent that resulted in the damages claimed herein. Respondent further affirmatively states that Claimant has not plead facts sufficient to demonstrate Claimant's compliance with the law with regard to perfecting a lien on the referenced motor vehicles, and how Respondent's actions or inaction caused the loss claimed.

8. The averments contained in Paragraph 7 of Claimant's Amended Complaint are denied. Respondent affirmatively states that Claimant has not complied with the provisions of Claims Commission General Rule of Practice and Procedure 1.5(e) by failing to provide an itemized outline of the damages sought in relation to the total amount claimed.

9. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 8 of Claimant's Amended Complaint and therefore denies the averments contained in Paragraph 8 of Claimant's Amended Complaint. Respondent affirmatively states that on August 18, 2011, Claimant filed a lawsuit in the Circuit Court of Pulaski County, Arkansas concerning the activities

referenced in the Complaint filed herein. This lawsuit is styled W.W. Magness Company, Inc. d/b/a Magness Toyota v. Vehicle Titles, Inc., Jack Daniel Porter, Jr., Individually and d/b/a Benchmark Automotive, Brandy Porter, Individually and d/b/a Benchmark Automotive, Heather Healey, and John Does 1-10, Docket No. 60CV-2011-4052 and will be hereafter referred to as "the lawsuit." The attorney for Claimant in the lawsuit is the same person as the attorney for Claimant herein, Daniel R. Carter. A copy of this Complaint is attached to this Response as Exhibit A. The liability for the loss allegedly suffered by Claimant was attributed solely to the actions of the named Defendants, with no statement of any alleged negligence or wrongdoing on the part of the Arkansas Department of Finance and Administration.¹ Respondent further affirmatively states that Claimant settled the lawsuit, as evidenced by the Order of Dismissal entered by the Pulaski County Circuit Court on May 16, 2013. A copy of this Order is attached hereto as Exhibit B. The failure to state or itemize the amount of compensation received from the Defendants to effect this settlement, which would arguably reduce the amount of the claim herein, constitutes an additional violation of Claims Commission General Rule of Practice and Procedure 1.5(e). Finally, Respondent affirmatively states that Claimant's settlement and dismissal of the lawsuit short of a Circuit Court determination of liability and damages for an amount possibly less than the total loss allegedly suffered constitutes

¹ In Paragraph 4 of the Affidavit accompanying the Circuit Court Complaint, Mr. Carter states as follows: "John Does 1-10 are unknown persons who may be liable for the acts, omissions and wrongs alleged in the Complaint. John Does 1-10 include but are not limited to corporations, agents, employees who engaged in the wrongful conduct, insurers and bond or sureties who may provide indemnity for damages" (emphasis added). This statement should not be read to include the Arkansas Department of Finance and Administration since the Department's alleged "negligence" was known to Claimant at the time of the filing of the lawsuit, as evidenced by the fact that the Claim filed herein was filed on August 19, 2011, one day after the filing of the Circuit Court Complaint. Although Claimant was prohibited from filing suit against the Department of Finance and Administration due to the doctrine of sovereign immunity, Claimant made no effort to apportion responsibility for the claimed loss in its lawsuit Complaint.

a failure to properly mitigate damages and an election of remedies, precluding Claimant from seeking further damages from Respondent

10. Any allegation or averment not specifically admitted or otherwise responded to herein are specifically denied.

11. Claimant's failure to plead with sufficient specificity also prevents Respondent from ensuring that each applicable affirmative defense has been plead and preserved. As such, the Respondent affirmatively pleads each of the following affirmative defenses:

- a. Laches
- b. Estoppel
- c. Lack of personal jurisdiction
- d. Lack of venue
- e. Accord and satisfaction
- f. Res judicata
- g. Statute of Limitations
- h. Ratification
- i. Waiver
- j. Release
- k. Contributory negligence
- l. Intervening or supervening cause; and
- m. Failure to properly mitigate

12. Respondent reserves the right to amend its response based upon information obtained from Claimant through discovery.

MOTION TO DISMISS

13. The Respondent moves to dismiss the Claimant's Complaint pursuant to:

- a. Claims Commission General Rule of Practice and Procedure 1.5(d) for failure to state a cause of action against the State in ordinary and concise language.
- b. Claims Commission General Rule of Practice and Procedure 1.5(e) for failure to provide an itemized outline of the damages sought in relation to the total amount claimed.

c. Claims Commission General Rule of Practice and Procedure 2.1 for failure to sufficiently state the specific circumstances giving rise to the claim

14. The Claimant's failures to sufficiently plead are not merely technical violations of the Rules; they unduly prejudice the Respondent in preparing a responsive pleading to adequately protect the resources of the taxpayers of the State of Arkansas.

15. The Respondent likewise moves to dismiss Claimant's Complaint pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure of the Complaint to state a claim upon which relief can be granted.

16. Should the Commission approve the Claim, the amount awarded should be paid from: Agency – 0630; Fund Center 241; Cost Center 397671; GL Accounting 5110003000; Internal Order I0630164.

WHEREFORE, Respondent prays that Claimant's Claim be dismissed and for all other relief to which Respondent is entitled.

Respectfully Submitted,

DFA/REVENUE DIVISION
STATE OF ARKANSAS

By:



William E. Keadle, Attorney

Revenue Legal Counsel

Attorney for Respondent

ABN 83099

P. O. Box 1272, Room 2390

Little Rock, Arkansas 72203

Telephone: (501) 682-7030

E-mail: will.keadle@dfa.arkansas.gov

CERTIFICATE OF SERVICE

I, William E. Keadle, on this 13th day of June, 2013, do hereby certify that I have served a true and correct copy of the above and foregoing document upon the Claimant by depositing same in the U. S. Mail, postage prepaid, addressed as follows:

W. W. Magness Company, Inc. (Claimant)
1407 Highway 65 North
Harrison, AR 72601

Daniel R. Carter
Attorney at Law
James Carter Coulter, P.L.C. (Claimant's representative as listed on Claim)
500 Broadway, Suite 400
Little Rock, AR 72203
(Electronic copy also e-mailed to dcarter@jamescarterlaw.com)



William E. Keadle
Attorney for Respondent

6TH DIVISION

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

W.W. MAGNESS COMPANY, INC.
d/b/a MAGNESS TOYOTA

PLAINTIFF

V.

60CV 2011 4052
CASE NO. _____

FILED 08/18/11 14:25:32
Larry Crane Pulaski Circuit Clerk
AR

VEHICLE TITLES, INC., JACK DANIEL PORTER, JR.,
Individually and d/b/a BENCHMARK AUTOMOTIVE,
BRANDY PORTER, Individually and d/b/a BENCHMARK
AUTOMOTIVE, HEATHER HEALEY, and JOHN DOES 1-10

DEFENDANTS

COMPLAINT

COMES NOW, Plaintiff, W.W. MAGNESS COMPANY, INC., d/b/a MAGNESS TOYOTA, by and through its attorneys, James, Carter & Coulter, PLC, and for their Complaint, states:

1. Plaintiff W. W. Magness Company, Inc., d/b/a Magness Toyota is an Arkansas Corporation with its principal place of business in Boone County, Arkansas.
2. Defendant, Vehicle Titles, Inc., is an Arkansas Corporation with an office Pulaski County, Arkansas.
3. Defendant Jack Daniel Porter, Jr., a/k/a Dan Porter ("Dan Porter") is an individual who was an officer and shareholder of Benchmark Automotive, Inc., Benchmark Automotive, Inc's, corporate charter was revoked December 31, 2009. Dan Porter is a resident of Benton County, Arkansas. He did business as Benchmark Automotive.

EXHIBIT A

60CV-11-4052 601-60100030365-018
W.W. MAGNESS CO, INC V VEHICL 8 Pages
PULASKI CO 08/18/2011 02:24 PM
CIRCUIT COURT CC055

11

4. Defendant Brandy Porter is an individual who was an officer and shareholder of Benchmark Automotive, Inc. Benchmark Automotive, Inc's., corporate charter was revoked December 31, 2009. Brandy Porter, Inc., is a resident of Benton County, Arkansas. She did business as Benchmark Automotive.

5. Defendant Heather Healey is an individual who does business in Pulaski County, Arkansas.

6. John Does 1-10 are unknown individuals or businesses who are liable for the wrongs alleged in the Complaint.

7. Plaintiff wholesaled certain automobiles to the Defendants Benchmark Automotive, and Dan Porter. Plaintiff retained the original title for some of the automobiles.

8. Defendants Benchmark Automotive and Dan Porter agreed to pay Plaintiff for each vehicle when the vehicle would be sold. At that time, the original transfer title to the vehicle would be transferred to the purchaser.

9. After the vehicles were wholesaled, Defendants, Benchmark Automotive, Dan Porter, Vehicle Titles, Inc., and Heather Healey would obtain a duplicate title for the vehicle at the Arkansas Department of Finance, Office of Motor Vehicles; in Little Rock, Arkansas.

10. Once a duplicate title was obtained, the vehicle would be sold. Plaintiff was not informed of the sale and was not paid for the vehicle.

11. Defendants' action in obtaining the duplicate title deprived the Plaintiff of the purchase price due it for the vehicles. Plaintiff has been damaged by the conduct of the Defendants in an amount in excess of that required by federal diversity jurisdiction.

12. All Defendants actively participated in the obtaining of the duplicate titles which deprived the Plaintiff of the monies due it. Each Defendant aided and abetted the other Defendant in committing the wrongs alleged herein. As a result of this civil conspiracy, all Defendants are jointly and severally liable for the damages incurred by the Plaintiff.

13. A substantial part of the events or omissions which give rise to the claims asserted in this lawsuit occurred in Pulaski County, Arkansas.

INTERFERENCE WITH CONTRACTUAL RELATIONSHIP AND BUSINESS EXPECTANCY

14. Plaintiff re-alleges paragraphs one through thirteen of the Complaint.

15. Plaintiff had a valid contractual relationship and business expectancy that it would be paid for the vehicles which were to be sold by Benchmark Automotive.

16. Defendants were aware of this contractual relationship and business expectancy.

17. Defendants improperly interfered with the contractual relationship and business expectancy.

DECEIT

18. Plaintiff re-alleges paragraphs one through twenty-one of the Complaint.

19. Defendants, Benchmark Automotive and Dan Porter represented that they would pay Plaintiff for the vehicles it was to retail for the Plaintiff.

20. Plaintiff relied on these representations.

21. Defendants, Benchmark Automotive and Dan Porter knew that the representation was false when made.

22. Defendants, Benchmark Automotive and Dan Porter intended to induce Plaintiff to let it wholesale the automobiles.

23. Plaintiff justifiably relied on Benchmark and Dan Porter representations.

24. Defendants, Vehicle Titles, Inc., and Heather Healey, aided and abetted Benchmark Automotive's and Dan Porter's fraudulent conduct.

25. As a proximate result of the Defendants' conduct, Plaintiff has been damaged.

DECEPTIVE TRADE PRACTICES

26. Plaintiff re-alleges paragraphs one through twenty-five of the Complaint.

27. The Defendants engaged in unconscionable, false, and deceptive acts in commerce, which proximately caused the Plaintiff's damages.

BREACH OF CONTRACT

28. Plaintiff re-alleges paragraphs one through twenty-seven of the Complaint.

29. Defendants Benchmark Automotive and Dan Porter breached its' contract with Plaintiff.

30. Defendants, Vehicle Titles, Inc., and Heather Healey, aided and abetted the breach of contract.

31. As a proximate result of the Defendants' breach of contract, the Plaintiff has been damaged.

CONVERSION

32. Plaintiff re-alleges paragraphs one through thirty-one of its Complaint.

33. Plaintiff has owned the vehicles and held title thereto.

34. Defendants intentionally exercised dominion over the property belonging to the Plaintiff, in violation of the Plaintiff's rights.

35. Plaintiff has been damaged as a proximate result of Defendants' actions.

UNJUST ENRICHMENT

36. Plaintiff re-alleges paragraphs one through thirty-five of the Complaint.

37. Plaintiff provided property to the Defendants who received a benefit.

38. Plaintiff expected to be paid for the value of the property.

39. Defendants were aware that Plaintiff provided property to the Defendants with the expectation of being paid and accepted the goods.

40. Defendants did not pay Plaintiff for the value of the property.

41. Defendants aided and abetted each other in depriving Plaintiff the value of the property.

42. Defendants have been unjustly enriched by their actions. Plaintiff is entitled to damages.

NEGLIGENCE

43. Plaintiff re-alleges paragraphs one through forty-two of its Complaint.

44. Vehicle Title, Inc., and Heather Healey had a duty to use ordinary care in the obtaining of duplicate titles for Benchmark Automotive.

45. Vehicle Title, Inc., and Heather Healey failed to use ordinary care in the obtaining of the duplicate title for Benchmark Automotive.

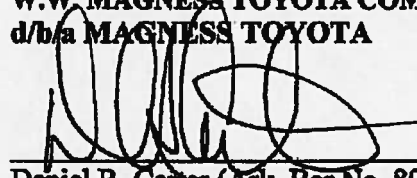
46. Defendants, Benchmark Automotive, Dan Porter, and Brandy Porter, aided and abetted the negligence of Heather Healey and Vehicle Titles, Inc.

47. As a proximate result of the negligence of Vehicle Title, Inc., and Heather Healey, the Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays that it have judgment against the Defendants, jointly and severally, in an amount to be determined, in excess of that required for federal diversity jurisdiction, for its costs incurred herein, including reasonable attorneys fees, and for all other just and proper relief to which they may be entitled.

Respectfully submitted,

**W.W. MAGNESS TOYOTA COMPANY, INC.,
d/b/a MAGNESS TOYOTA**



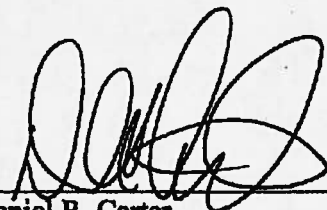
Daniel R. Carter (Ark. Bar No. 80023)
James, Carter, Coulter, PLC
PO Box 907
Little Rock, AR 72203
Telephone: (501) 372-1414
Facsimile: (501) 372-1659
E-mail: dcarter@jamescarterlaw.com

STATE OF ARKANSAS)
)
COUNTY OF PULASKI) ss.

AFFIDAVIT

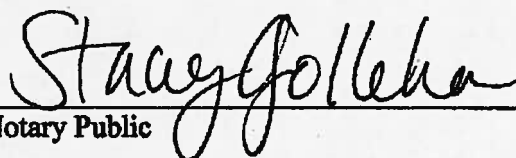
Before the undersigned Notary Public, duly commissioned and acting within the County and State aforesaid, appeared in person, Daniel R. Carter, who stated the following under oath:

1. I am an attorney licensed in the State of Arkansas.
2. This affidavit is being filed contemporaneous with a complaint pursuant to Ark. Code Ann. § 16-56-125.
3. I represent W.W. Magness Company, Inc., d/b/a Magness Toyota in a potential claim against Vehicle Titles, Inc., Jack Daniel Porter, Jr., Brandy Porter, Heather Healey, and John Does 1-10.
4. John Does 1-10 are unknown persons who may be liable for the acts, omissions, and wrongs alleged in the Complaint. John Does 1-10 include but are not limited to corporations, agents, employees who engaged in the wrongful conduct, insurers, and bond or sureties who may provide indemnity for damages.
5. Further affiant sayeth not.



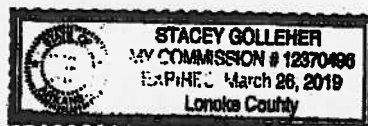
Daniel R. Carter

SUBSCRIBED AND SWORN to before me this 18th day of August, 2011.



Notary Public

My Commission Expires: 03/26/2019



Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed.

**COVER SHEET
STATE OF ARKANSAS
CIRCUIT COURT: CIVIL**

The civil reporting form and the information contained herein shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. This form is required pursuant to Administrative Order Number 8. Instructions are located on the back of the form.

FILING INFORMATION

County: Pulaski District: 6 Docket Number: 60CV-11-4052
Judge: Jay Division: 6 Filing Date: 8-18-2011

Plaintiff: W.W. Magness Toyota Company, Inc., d/b/a Magness Toyota Defendant: Vehicle Titles, Inc., Jack Daniel Porter, Jr., Individually and d/b/a Benchmark Automotive, Brandy Porter, Individually and d/b/a Benchmark Automotive, Heather Healey, and John Does 1-10

Attorney Providing Information: Daniel R. Carter of James, Carter & Coulter PLC
500 Broadway, STE 400, Little Rock, AR 72201

Plaintiff Defendant Intervenor

Litigant, if Pro Se: _____

Address _____

Related Case(s): Judge _____

Type of Case: _____

Case Number(s) _____

Torts

- (NM) Negligence: Motor Vehicle
- (NO) Negligence: Other
- (BF) Bad Faith
- (FR) Fraud
- (MP) Malpractice
- (PL) Product Liability
- (OD) Other _____

Equity

- (FC) Foreclosure
- (QT) Quiet Title
- (IJ) Injunction
- (PT) Partition
- (OT) Other _____

Miscellaneous

- (CD) Condemnation
- (RE) Replevin
- (DJ) Declaratory Judgment
- (UD) Unlawful Detainer
- (IN) Incorporation
- (EL) Election
- (FJ) Foreign Judgment
- (WT) Writs _____

Contracts

- (IS) Insurance
- (DO) Debt: Open Account
- (PN) Debt: Promissory Note
- (EM) Employment
- (OC) Other _____

- (AA) Administrative Appeal
- (CF) Property Forfeiture
- (RD) Remove Disabilities
- (NC) Name Change
- (OM) Other _____

Jury Trial Requested: Yes No

Manner of Filing: Original Re-open Transfer
 Return from Federal/Bankruptcy Court

DISPOSITION INFORMATION

Disposition Date: _____ Bench Trial Non-Trial Jury Trial

Judgment Type:

- (DJ) Default Judgment
- (SJ) Summary Judgment
- (CJ) Consent Judgment
- (TJ) Trial Judgment
- (OJ) Other Judgment
- (PG) Petition Granted
- (PD) Petition Denied
- (DF) Decree of Foreclosure

Dismissal Type:

- (DW) Dismissed with Prejudice
- (DN) Dismissed without Prejudice

Other:

- (TR) Transferred to Another Jurisdiction
- (RB) Removed to Bankruptcy Court
- (RF) Removed to Federal Court
- (AR) Arbitration

Judgment For:

Plaintiff Defendant Both

Judgment Amount: \$ _____

Clerk's Signature
AOC 23 10-01
625 Marshall Street
Little Rock, AR 72201

Date

Send 1 paper or electronic copy to AOC upon filing.
Send 1 paper or electronic copy to AOC upon disposition.
Keep original in court file.

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

W.W. MAGNESS COMPANY, INC.
d/b/a MAGNESS TOYOTA

PLAINTIFF

VS.

CASE NO. 60CV-2011-4052

VEHICLE TITLES, INC., JACK DANIEL
PORTER, JR., Individually and d/b/a
BENCHMARK AUTOMOTIVE, BRANDY
PORTER, Individually and d/b/a BENCHMARK
AUTOMOTIVE, HEATHER HEALEY, and
JOHN DOES 1-10

DEFENDANTS

ORDER OF DISMISSAL WITH PREJUDICE

On Motion of the parties, it having been announced to the Court that all the issues between plaintiff and defendants have been resolved, the Court finds that the Complaint of plaintiff should be and it is hereby dismissed with prejudice.

IT IS SO ORDERED.




HONORABLE TIMOTHY D. FOX

Dated: 5/16/13

APPROVED BY



Mr. Daniel R. Carter
JAMES, CARTER & COULTER
Attorneys for Plaintiff
P. O. Box 907
Little Rock, AR 72203



James D. Robertson #95181
BARBER, MCCASKILL, JONES & HALE, P.A.
Attorneys for Heather Healy
2700 Regions Center
400 W. Capitol Avenue
Little Rock, AR 72201

JUL 02 2014

SETTLEMENT AND RELEASE AGREEMENT

RECEIVED
on

This Settlement and Release Agreement (hereinafter referred to as the "Agreement"), entered into by and between W.W. Magness Company, Inc. d/b/a Magness Toyota (hereinafter referred to as "Magness") and the Arkansas Department of Finance and Administration (hereinafter referred to as "DFA");

WITNESSETH:

WHEREAS, Magness has instituted an action against DFA in the Claims Commission of Arkansas styled W.W. Magness Company, Inc. d/b/a Magness Toyota v. DFA/Revenue Division, Claim Number 12-0151-CC (hereinafter referred to as the "Action"); AND

WHEREAS, the Action concerns the allegation by Magness that it has suffered monetary damages as a result of the issuance by DFA of duplicate titles to the following motor vehicles:

- (a) 2006 Toyota Sequoia, VIN 5TDBT44A76S270424;
- (b) 2006 Chevrolet HD (2KH), VIN 1GCHK23D66F146268;
- (c) 2006 Ford F-150 (F2S), VIN 1FTSW21P86EB93945;
- (d) 2005 Chevrolet Suburban, VIN 3GNFK16Z45G231171; and
- (e) 1999 Chevrolet Silverado, VIN 1GCEK19T5XE115550;

AND

WHEREAS, DFA has denied in the Action that it is liable for the damages claimed by Magness; AND

WHEREAS, the parties wish to resolve and settle all of their past, present and any future claims, disputes and controversies, including but not limited to those related to the subject matter of the Action;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing recitals are incorporated into and constitute a part of this Agreement.

2. **No Admission of Liability.** This Agreement is entered into as an expedient and effective alternative to litigation in this Action, with both parties being able to present evidence to the Claims Commission concerning purported negligence by the other party that contributed to the damages claimed by Magness as a result of the vehicles being sold to bona fide purchasers after the issuance of the duplicate titles. DFA and Magness make no admission of liability, express or implied, by entering into this Agreement.

3. **DFA Payment to Magness.** DFA, in exchange for the release set forth below and in full and final settlement of the Action, agrees to pay to Magness the total amount of FORTY THOUSAND and no/100 DOLLARS (\$40,000.00), payable within thirty (30) days after:

- (a) Submission of the Agreement to the Claims Commission of Arkansas and approval of the Agreement by the Claims Commission;
- (b) Review of the Agreement by the Litigation Reports Oversight Committee of the Arkansas General Assembly; and
- (c) Appropriation of the settlement payment by the Arkansas General Assembly.

Should the approvals or actions specified in paragraph 3(a) – (c) not occur, this Settlement and Release Agreement is null and void.

4. **Magness Release of DFA.** For and in consideration of the foregoing consideration, and upon the full execution of this Agreement and payment of the amount agreed, Magness, on behalf of itself, its officers, shareholders, agents, heirs, administrators, attorneys, successors and assigns, do hereby dismiss, release and hold harmless DFA, its employees, agents, insurers, attorneys, predecessors, successors and assigns, of any from any and all matters,

debts, dues, sums of money, covenants, controversies, agreements, promises, trespasses, damages, losses, expenses, costs, liabilities, obligations, claims, demands, grievances, suits, causes of action, complaints, judgments, decrees, executions of whatever kind, in law or in equity, absolute, contingent, likely or unlikely, known or unknown, which have existed from the beginning of time to the date of this Agreement, including but not limited to all claims asserted or which could have been asserted in the Action. Magness further agrees that upon receipt of the settlement payment from DFA, Magness will take all steps necessary to withdraw its Claim filed in the Action with the Claims Commission of Arkansas.

5. **Extent of Release.** The release set forth in Paragraph 4 of this Agreement is intended to have the broadest possible application and includes, but is not limited to, any tort, contract, common law, constitutional or other statutory claims arising out of any federal, state or local laws. The release set forth herein shall apply to the present and future officers, directors, stockholders, attorneys, agents, insurers, servants, members, representatives, employees, subsidiaries, subcontractors, contractors, affiliates, partners, family members, predecessors, and successors in interest and assigns of the parties.

6. **Costs and Expenses.** The parties shall be responsible for their respective attorney's fees, costs and expenses incurred in the Action.

7. **Controlling Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Arkansas.

8. **Amendments.** This Agreement cannot be altered or otherwise amended except by written instrument signed by each of the parties hereto.

9. **Entire Agreement.** The parties acknowledge and agree that this Agreement constitutes the full, complete, and entire agreement of the parties and that there are no other representations, covenants, warranties, or other agreements binding of the parties that are not expressly set forth herein.

10. **Rule of Construction.** The parties acknowledge and agree that they have each had the opportunity to have this Agreement reviewed by counsel of their choosing. Therefore, the normal rule that ambiguities are construed against the drafter shall not apply in connection with the interpretation and construction of this Agreement.

11. **Validity of Agreement.** The parties represent and agree that the persons executing this Agreement on behalf of the parties have the full and complete permission and authority of the entity for which he or she is executing this Agreement, and have the full right and authority to commit and fully bind themselves, their representatives, agents, principals, predecessors, successors, and privies according to the provisions hereof. This Agreement is a legally valid, binding and enforceable obligation of the parties in accordance with its terms.

12. **Counterpart Signatures.** This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

WITNESS our hands and seals as of the date set forth below.

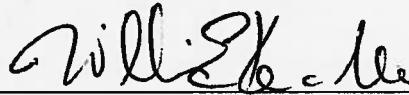
W.W. MAGNESS COMPANY, INC. d/b/a MAGNESS TOYOTA

By: William W. Magness, Pres
William W. Magness, President

Date: 7-1-14

SETTLEMENT AND RELEASE AGREEMENT - PAGE 4

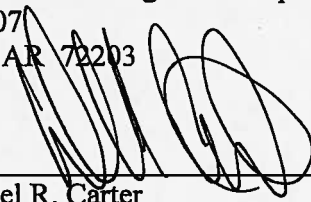
**ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION,
RICHARD WEISS, DIRECTOR**

By: 
William E. Keadle, Attorney Supervisor
Revenue Legal Counsel
Arkansas Bar Number 83099
P. O. Box 1272, Room 2380
Little Rock, AR 72203

Date: 07 / 02 / 2014

APPROVED BY:

JAMES, CARTER & COULTER
Attorneys for W.W. Magness Company d/b/a Magness Toyota
P. O. Box 907
Little Rock, AR 72203

By: 
Daniel R. Carter
Arkansas Bar Number 80023

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF) SS

On this day before the undersigned, a Notary Public, duly qualified and acting in and for the county and state aforesaid, personally appeared WILLIAM W. MAGNESS, satisfactorily proven to be the person whose name appears in the foregoing instrument, and stated that he has executed the same for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and seal on this 15th day of July, 2014.

My Commission Expires:
1-24-2023

Mary J. Hodge
NOTARY PUBLIC



ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF PULASKI) SS.

WEX

On this day before me, the undersigned, a notary public, duly commissioned qualified and acting, within and for said County and State, appeared William E. Keadle, who stated that he is the Attorney for Richard Weiss, Director of the Arkansas Department of Finance and Administration, duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of the State of Arkansas, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 16th day of July, 2014.

Mary J. Hodge
Notary Public

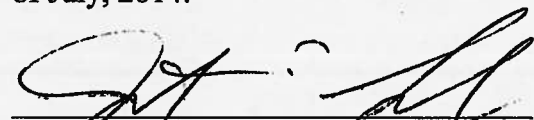


ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF PULASKI) SS.

On this day before me, the undersigned, a notary public, duly commissioned qualified and acting, within and for said County and State, appeared William E. Keadle, who stated that he is the Attorney for Richard Weiss, Director of the Arkansas Department of Finance and Administration, duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of the State of Arkansas, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 2nd day of July, 2014.



Notary Public

JARETT C. LAMB
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires:
August 14, 2022
Commission No. 12389231

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 105,500.00

Claim No. 12-0151-CC

W. W. Magness Co., Inc.
d/b/a Magness Toyota Claimant
vs.

Attorneys
Daniel Carter, Attorney Claimant

AR Department of Finance & Administration/
Revenue Division Respondent

William Keadle, Attorney Respondent

Date Filed August 18, 2011

Type of Claim Loss of Property
Failure to Follow Procedure

FINDING OF FACTS

This claim was filed for loss of property and failure to follow procedure in the amount of \$105,500.00 against the Arkansas Department of Finance and Administration/Revenue Division.

Present at a hearing July 10, 2014 was the Claimant, represented by Daniel Carter, Attorney, and the Respondent, represented by William Keadle, Attorney.

A "Negotiated Settlement Agreement" by the claim parties was presented to the Claims Commission in an oral presentation, July 10, 2014, by the parties, along with the Respondent's recommendation of payment in the amount of \$40,000.00.

Upon consideration of all the facts as stated above the Claims Commission hereby **unanimously allows the Claimant the amount of \$40,000.00 and will include the claim in a claims bill to be submitted to the 90th General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.**

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby **unanimously allows the Claimant the amount of \$40,000.00 and will include the claim in a claims bill to be submitted to the 90th General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.**

Date of Hearing July 10, 2014

Date of Disposition July 10, 2014

[Signature] Chairman
[Signature] Commissioner
[Signature] Commissioner