

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO.

STATE OF NORTH CAROLINA ex rel. )  
ROY COOPER, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
T AND L ENGINE DEVELOPMENT, INC., )  
LLOYD MCCLEARY SR., AND LLOYD )  
MCCLEARY, JR. D/B/A T AND L ENGINES )  
 )  
Defendants. )  
 )

CONSENT JUDGMENT AS  
T AND L ENGINE  
DEVELOPMENT, INC., AND  
LLOYD MCCLEARY, SR., AND  
LLOYD MCCLEARY, JR. D/B/A T AND L ENGINES

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WAKE COUNTY N.C.  
BY

This cause coming on to be heard and being heard before the undersigned Superior Court Judge in Wake County for entry of a Consent Judgment at the joint request of plaintiff State of North Carolina, by and through Attorney General Roy Cooper, defendant T and L Engine Development, Inc., defendant Lloyd McCleary, Sr., and defendant Lloyd McCleary, Jr. d/b/a T and L Engines, the Court, with the consent of plaintiff and defendants T and L Engine Development, Inc., Lloyd McCleary, Sr., and Lloyd McCleary, Jr., makes the following:

FINDINGS OF FACT

1. Plaintiff is the State of North Carolina, acting on the relation of Roy Cooper, Attorney General, pursuant to authority granted in Chapters 75 and 114 of the General Statutes of North Carolina.

2. Defendant T and L Engine Development, Inc. ("TLED") was a North Carolina corporation with its principal place of business at 12303-a Renee Ford Road, Stanfield, North Carolina 28163. TLED was primarily engaged in the manufacture and sale of custom engines

for automobiles. The North Carolina Secretary of State administratively dissolved TLED on August 12, 2010.

3. Defendant Lloyd McCleary, Sr., a resident of North Carolina, was the owner and president of TLED. Defendant McCleary Sr. controlled and managed the operations of TLED. Defendant McCleary, Sr., also managed and controlled the operation of T and L Engines, a d/b/a/ of defendant Lloyd McCleary, Jr.

4. Defendant Lloyd McCleary, Jr., a resident of North Carolina, worked for defendant TLED and has conducted business as a sole proprietorship under the name of T and L Engines.

5. The State alleges the following:

- a. From at least December 2007 to the present, defendants advertised custom-made automobile engines to consumers worldwide on website at [www.tandlengines.com](http://www.tandlengines.com), on an Ebay.com seller page under the ID "tandlengines," and as T and L Engines, a d/b/a for defendant McCleary, Jr.;
- b. Defendants solicited and accepted engine orders from consumers worldwide by mail, telephone and over the Internet;
- c. Prior to beginning work on an order, defendants required a substantial down payment. Consumers had to remit payment for the order balance before their engines were shipped. In several cases, defendants requested and received payment for the order balance from consumers after telling the consumers that defendants were getting ready to ship the engine, but

defendants failed to ship the engines after the consumers sent their final payments;

- d. When consumers placed an order, defendants provided a clear delivery date range, averaging eight weeks after receipt of the down payment but did not fulfill the orders as promised. Consumers, who placed orders more than a year ago, have not received their engines;
- e. In some cases, defendants applied down payments from new orders for work on previous orders, leaving defendants with no remaining funds to apply towards the cost of the outstanding engine orders;
- f. Defendants failed to keep consumers informed about the status of their orders and have either failed to respond or responded intermittently and after great delay to consumer inquiries about order status, delivery date and refund status;
- g. In many cases, defendants provided inaccurate, revised delivery dates to consumers with no reasonable basis to believe defendants could meet the revised delivery dates. Defendants failed to meet the revised delivery dates in these cases;
- h. Numerous consumers requested refunds of their down payments once the promised delivery date for their engines passed. Defendants agreed to provide refunds in these cases but failed to do so;
- i. Defendants repeatedly violated the Federal Trade Commission's Mail and Telephone Order Merchandise Rule ("Mail Order Rule"), at 16 C.F.R. §§

435.1 and 435.2, by (i) providing delivery dates without a reasonable basis to believe they would be met; (ii) failing to contact consumers once delivery dates were not met to offer them the choice of consenting to a revised delivery date or cancelling their order and receiving a refund; and (iii) failing to provide prompt refunds when validly requested by consumers, defendants repeatedly violated the Federal Trade Commission's Mail and Telephone Order Merchandise Rule ("Mail Order Rule"), at 16 C.F.R. §§ 435.1 and 435.2;

j. As a result of the defendants' conduct, consumers who paid several thousand dollars each in down payments for engines have not received either their engine or a refund as promised months earlier; and

k. Defendants' alleged unfair or deceptive business practices actions as stated in Paragraph 5 were in or affecting commerce in North Carolina.

6. Defendants TLED, McCleary, Sr., and McCleary, Jr. neither admit nor deny the State's allegations in Paragraph 5 but desire to resolve this controversy.

7. Defendants TLED, McCleary Sr., and McCleary, Jr. provided financial information to the State in connection with the settlement of this proceeding. Defendants TLED, McCleary, Sr., and McCleary, Jr. warrant that the financial information each provided is true and accurate and fully and fairly reflects each's financial condition as of the date reflected on the financial information.

#### CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties and the subject matter.

2. Entry of this Consent Judgment is just and proper.

3. The Complaint states a cause of action pursuant to N.C.G.S. § 75-1.1 against defendants TLED, McCleary, Sr., and McCleary, Jr. in connection with their failure to provide engines after soliciting and accepting orders and advance payment for the engines and their violations of the Mail Order Rule, and the Court finds good and sufficient cause to adopt the agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for the entry of this Consent Judgment. Entry of this Consent Judgment is in the public interest.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendants TLED, McCleary, Sr., and McCleary, Jr. are permanently enjoined from collecting money from consumers for selling or building goods or products, including but not limited to automobile engines, prior to the time of delivery of the completed goods or products to consumers unless:

- a. defendants secure a bond in the amount of \$500,000.00 in favor of the North Carolina Attorney General's Office to be used to provide refunds to consumers who engage in future transactions with defendants and who do not receive the goods or products for which they have paid or a prompt refund for the undelivered goods or products; or
- b. defendants establish an escrow account with an independent escrow agent, acceptable to the Attorney General's Office. The independent escrow agent shall hold all money collected by defendants until such time as the good or product is completed and placed with a third party shipper for delivery to the consumer and a

tracking number is given to the independent escrow agent as evidence that the good or product has been shipped.

2. Defendants TLED, McCleary, Sr., and McCleary, Jr. are permanently enjoined from engaging in sales of goods and products without complying with the following:

- a. all provisions of the Mail Order Rule, 16 C.F.R. §§ 435.1 and 435.2, including:
  - i. providing to consumers at the time of order a clear and conspicuous delivery date only when there is a reasonable basis to believe that the delivery date will be met (16 C.F.R. § 435.1(a)(1));
  - ii. implementing a 30 day default delivery date when defendants do not clearly and conspicuously specify a delivery date at the time of order (16 C.F.R. § 435.1(a)(1));
  - iii. providing a revised delivery date after the order has been made only when there is a reasonable basis for making such a definite representation (16 C.F.R. § 435.1(a)(2));
  - iv. informing consumers of an indefinite delivery delay only when there is a reasonable basis for not being able to provide a definite date and consumers are told of the reason for indefinite delay (16 C.F.R. § 435.1(a)(3)(i) and (ii));
  - v. on defendants' own initiative and within a reasonable amount of time once it is apparent that the original delivery date will not be met, offering consumers the option of (a) consenting to a revised,

- definite delivery date, or (b) cancelling the order and receiving a refund (16 C.F.R. § 435.1(b)(1));
- vi. on defendants' own initiative and within a reasonable amount of time once it is apparent that the first, revised delivery date will not be met, offering consumers the option of (a) consenting to a second revised, definite delivery date, or (b) cancelling the order and receiving a refund (16 C.F.R. § 435.1(b)(2));
  - vii. expressly informing consumers who consent to a revised, indefinite delivery delay that the consumer retains the continuing right to cancel their order at any time prior to actual shipment (16 C.F.R. §§ 435.1(b)(1)(iii)(B) and 435.1(b)(1)(iv));
  - viii. fulfilling valid refund requests within seven business days where the consumer paid by cash, check or money order (16 C.F.R. § 435.2(f)(1)); and
  - ix. fulfilling valid refund requests within one billing cycle where the consumer paid by credit card (16 C.F.R. § 435.2(f)(2));
- b. responding in a timely manner to consumers' inquiries about their order or refund status.

3. Defendants TLED, McCleary Sr., and McCleary, Jr. shall contract with an auctioneer licensed by the North Carolina Auctioneer Licensing Board to auction all equipment and assets used in the operation of defendant TLED or Lloyd McCleary, Jr. d/b/a T and L. After a reasonable commission is paid to the auction company, the remainder of the proceeds of the

auction shall be paid directly to the North Carolina Department of Justice for the Consumer Protection Division to use as restitution to consumers who have previously filed complaints with the Attorney General's Office or who file complaints within sixty days of the entry of this Consent Judgment and for consumer protection purposes at the discretion of the Attorney General.

4. Defendant McCleary, Sr. shall list for sale with a licensed real estate broker his primary residence at 8537 Bartlett Road, including all real property on which his primary residence is located as well as all other improvements to the real property, owned in his name or as tenants by the entirety with his wife. After a reasonable commission is paid to the licensed broker, the proceeds from any sale shall be paid directly to the North Carolina Department of Justice for the Consumer Protection Division to use as restitution to consumers who have previously filed complaints with the Attorney General's Office or who file complaints within sixty days of the entry of this Consent Judgment and for consumer protection purposes at the discretion of the Attorney General.

5. Defendants McCleary, Sr., and McCleary, Jr., collectively, shall pay the North Carolina Department of Justice \$100,000 in civil penalties. Payment of the civil penalty is suspended as long as defendants McCleary, Sr., and McCleary, Jr. are in full compliance with the terms of this Consent Judgment. If at any time defendants McCleary, Sr., or McCleary, Jr. violate the terms of this Consent Judgment, this penalty shall be immediately due to the State.

6. Nothing in this consent judgment should be construed to prevent defendants McCleary, Sr. or McCleary, Jr. from working as employees who build engines in a company in which they (1) are not owners, officers, managers, or directors and (2) are personally unable to

collect advance fees or deposits from customers.

7. This Consent Judgment shall not affect the rights of any private party to pursue any remedy or remedies allowed pursuant to the laws of the State of North Carolina.

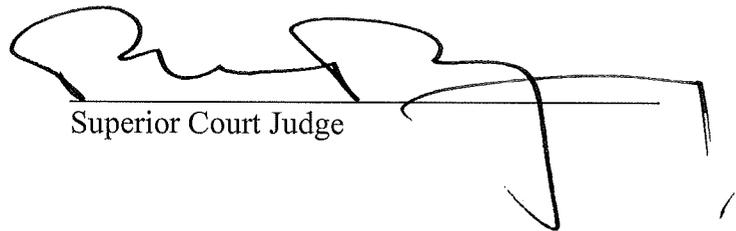
8. This Consent Judgment Agreement shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina.

IT IS FURTHER ORDERED THAT

9. If any part of the financial information or tax returns provided to the State by defendants TLED, McCleary, Sr., and McCleary, Jr. is false, unfair, deceptive, misleading, or inaccurate in any material respect, the State, in its sole discretion, may:

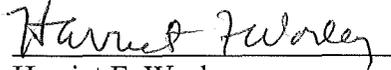
- a. move the Court to impose sanctions;
- b. move the court to rescind this Consent Judgment and proceed on its original complaint; and
- c. seek any other remedy or relief afforded by law or equity.

This the 20 day of December, 2010.

  
Superior Court Judge

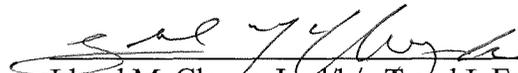
WE CONSENT:

STATE OF NORTH CAROLINA  
ex rel. ROY COOPER,  
Attorney General

  
Harriet F. Worley  
Assistant Attorney General

  
Christopher C Fialko.  
Counsel for Lloyd McCleary, Sr.

  
Lloyd McCleary, Sr.

  
Lloyd McCleary, Jr. d/b/a T and L Engines  
*Pro Se*

  
T and L Engine Development, Inc.  
By: Lloyd McCleary, Sr., President

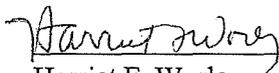
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing CONSENT JUDGMENT and COMPLAINT by first class mail, first class postage prepaid, addressed as follows:

Christopher C. Fialko  
Rudolf Widenhouse & Fialko  
225 E. Worthington Ave., Ste. 200  
Charlotte, North Carolina 28203  
Counsel for Lloyd McCleary, Sr.

Lloyd McCleary, Jr.  
10876 Jim Sossoman Road  
Midland, North Carolina 28107-7710

This the 20<sup>th</sup> day of December, 2010

  
\_\_\_\_\_  
Harriet F. Worley  
Assistant Attorney General