NO. _____

STATE OF TEXAS	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
V.	§	
	§	
ARIE SHALEV, a/k/a ERIC SHALEV,	§	**HARRIS COUNTY, TEXAS**
A & R DISTRIBUTORS, INC., E.S. AUTO	§	
SALES, INC., BEST BUY MOTORS, INC.,	§	
GIANT MART, INC. and GOLDEN ARIBAH	§	
INVESTMENTS, L.L.C.,	§	
Defendants	§	**_____ JUDICIAL DISTRICT**

EX PARTE TEMPORARY RESTRAINING ORDER

Plaintiff, State of Texas, has filed its Original Petition in this cause seeking a Temporary and Permanent Injunction against Defendants Arie Shalev a/k/a Eric Shalev, A&R Distributors, Inc., E.S. Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, L.L.C. and in the same petition has presented its request for an Ex Parte Temporary Restraining Order. The Court FINDS that Defendants may be violating §§17.46(a) and (b) of the Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN §17.41 *et. seq.* It appears from facts set forth in the Plaintiff's Original Petition and the exhibits and sworn affidavits attached thereto that unless Defendants are immediately restrained from the acts prohibited below, Defendants will commit such acts before notice can be given and a hearing can be held on the State of Texas' request for a Temporary Injunction. Furthermore, Defendants will continue to use deception in the course of auctioning automobiles and other merchandise, and may well dissipate and secrete their assets before a judgment for restitution can be rendered. Such injury would be irreparable because continued violations of the DTPA may well cause many more consumers to lose their money by deception. Given the likelihood of dissipation of Defendants' assets prior to rendition of a final

judgment, the possibility of restitution for consumers will be remote unless an order freezing assets is granted.

1. **IT IS THEREFORE ORDERED** that Defendants Arie Shalev a/k/a Eric Shalev, A&R Distributors, Inc., E.S. Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, L.L.C. , their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, including but not limited to, all financial institutions such as **Wells Fargo Bank,**[1] **Bank of America, N.A.,**[2] **Compass Bank,**[3] **Frost Bank,**[4] **Bank Hapoalim B.M.,** and **Bank Leumi Le Israel** holding money in the name and/or for the benefit of the above named Defendants, who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

A. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed,

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[1] The following (known) Wells Fargo accounts of Defendants are covered by this order: Account Numbers [redacted]. The following two (2) Wells Fargo accounts are ***not*** to be frozen by virtue of this Court's order: account #[redacted] (standing in the name of Giant Mart, Inc.) and #[redacted](standing in the name of Golden Aribah Investments, LLC)[see paragraph 2 of this order].

[2] The following (known) Bank of America accounts of Defendants are covered by this order: Account Numbers 5[redacted]nd 5[redacted].

[3] The following (known) Compass Bank accounts of Defendants are covered by this order: Account Numbers 28[redacted]

[4] At this time the Frost Bank account number(s) are unknown.

wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this court unless expressly stated otherwise herein;

B. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or any of Defendants' assumed names, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access.

2. **IT IS ALSO ORDERED** that Defendants Arie Shalev, A&R Distributors, Inc., E.S. Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, L.L.C., their agents, relatives, attorneys and persons in active concert or participation with them, are prohibited from transferring, spending, encumbering, withdrawing, or removing any sum of money from any accounts specifically referenced in paragraph 1 of this order or from any other such account(s) where monies or proceeds from the operation of said Defendants' auction businesses *have been* placed or deposited in the past; however Defendants Arie Shalev, A&R Distributors, Inc., E.S. Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, L.L.C. are not prohibited from utilizing monies on deposit in Wells Fargo Bank account numbers 3[redacted] and 344-4430999 for the sole purpose of operating their auction businesses within the confines of this order, or from expending monies (not to exceed the sum $50,000) for reasonable living expenses and attorney fees from said Wells Fargo account numbers [redacted] and 3[redacted], or from expending monies on deposit in other accounts standing in their names which do not (and have never) contained monies or proceeds from the operation of Defendants' auction business, or from monies earned by them or their family members by virtue of other employment or business ventures wholly unrelated to the operation of Defendants' auction businesses. Defendants are **FURTHER**

ORDERED to deposit all money, cashier's checks, money orders, and cash received by them from their auction business during the pendency of this order by depositing same in Wells Fargo account number 344-4430734.

3. **IT IS FURTHER ORDERED** that Defendants, Arie Shalev a/k/a Eric Shalev, A&R Distributors, Inc., E.S. Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, L.L.C., their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

1) Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;

2) Making, expressly or by implication, false, untrue, or misleading statements of fact to consumers concerning the quality or quantity of any merchandise sold;

3) Advertising goods with intent not to sell them as advertised;

4) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

5) Representing that goods or services have sponsorship, approval, characteristics or benefits which they do not have;

6) Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

7) Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed;

8) Refusing to allow consumers the opportunity to fully read any proposed written agreements prior to accepting any money from them and prior to them signing said written agreements relating to conditions and terms of Defendants' auctions;

9) Representing, expressly or by implication, that any form required or requested by Defendants' to be signed by consumers will be explained to them later after they sign the forms;

10) Representing to consumers, expressly or by implication, that forms that they are initialing and signing have no significance other than a requirement to enter the auction or receive a bid number;

11) Failing to provide forms in Spanish to consumers who do not read or understand the English language prior to accepting any money from said consumers;

12) Failing to inform consumers orally and in writing and in Spanish of each condition and fee to be charged with respect to any auction or item successfully bid upon prior to the commencement of the auction and prior to accepting any money from consumers;

13) Failing to inform consumers orally and in writing and in Spanish of each and every term and condition of the auction prior to consumers paying any deposits or down payments for auction items;

14) Failing to explain all terms and conditions of the auction orally and in writing and in Spanish prior to the auction beginning and prior to accepting any money from consumers;

15) Failing to provide consumers with a copy in English and Spanish of all terms and conditions of the auction prior to requiring them to sign said forms or prior to requiring them to pay any money;

16) Failing to provide consumers with a copy of the terms and conditions of any auction in both English and Spanish after consumers have signed said terms and conditions relating to any auction;

17) Failing to explain the terms and conditions of the auction orally and clearly and in English and Spanish in a manner that can be understood by consumers prior to accepting any money from consumers;

18) Failing to orally and fully explain the terms and conditions of the auction completely in Spanish for the benefit of Spanish speaking consumers and prior to accepting any money from said consumers;

19) Failing to disclose all auctioneer's fees, in English and Spanish, and in a manner which can be clearly understood what consumers will be required to pay if they win a bid on an auction item before the auction begins and prior to accepting any money from consumers;

20) Failing to disclose all buyer's premiums which will be assessed against consumers if they win a bid on any auction item in both English and Spanish and in a manner which can be clearly understood before the auction begins and prior to accepting any money from consumers;

21) Failing to disclose to consumers the total price of their auction item, including taxes and fees prior to receiving down payments or bids on an item;

22) Failing to allow consumers the opportunity to inspect or test drive vehicles to be auctioned before the auction begins and prior to accepting any money from consumers;

23) Failing to allow consumers the opportunity to inspect or test drive vehicles after the consumer wins the bid on an auction item;

24) Failing to disclose to consumers that the vehicles they are bidding on are flood damaged, salvaged or possibly stolen prior to consumers bidding on them and prior to accepting any money from consumers;

25) Representing to consumers, expressly or by implication, that Defendants' vehicles are in good condition when they are not;

26) Failing to refund money to consumers when they have not been informed of any additional fees, terms or conditions which are being imposed;

27) Failing to inform consumers in English and Spanish that they will lose any money paid if they fail to pay the additional fees prior to accepting any money from them;

28) Failing to provide consumers with a copy of all paperwork which was filled out by consumers prior to accepting any money from them;

29) Failing to keep copies of all paperwork where consumers have put down deposits or down payments but did not complete the sale;

30) Refraining from shredding documents which have been filled out by consumers who paid money on an auction item but did not complete the sale;

31) Failing to provide terms and conditions of the auction in 12 point Times New Roman Font in any advertising materials;

32) Failing to provide information on the specific fees to be charged in at least 12 point Times New Roman Font in any advertising materials;

33) Representing to consumers, expressly or by implication, that a product will cost one

price and then charging a higher price;

34) Failing to inform consumers of any and all additional fees applicable to auction purchases at the time the consumer agrees to participate in the auction prior to accepting any money from consumers;

35) Failing to provide to each consumer a written record of each specific charge incurred and the amounts paid by the consumer for the purchase; and

36) Failing to keep accurate, detailed records of all sales made by Defendants whether or not such sales resulted in the consumer taking receipt of merchandise or automobiles.

4. **IT IS FURTHER ORDERED** that the Defendants advise any financial or brokerage institution, escrow agent, title company, storage facility, commodity trading company, business entity or person maintaining or having custody or control of any account or other asset of Defendants Arie Shalev a/k/a Eric Shalev, A&R Distributors, Inc., E.S. Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, L.L.C., which receives actual notice of this Order by personal service or otherwise, to within five (5) business days of the date of service of this Order, provide to counsel for the plaintiff and the defendants/account holders a statement or letter setting forth:

A. The identification of each account or asset titled in the name, individually or jointly, of Defendants, or held on behalf of, or for the benefit of, Defendants;

B. The balance of each such account, or a description and estimated value of such assets, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;

and

C. The identification of any safe deposit box or storage facility that is either titled in the name individually or jointly, of Defendants, or is otherwise subject to access or control by Defendants;

5. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that, as used in this Judgment, the following terms are defined as follows:

A. "Consumer" means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;

B "Defendant(s)" means Arie Shalev a/k/a Eric Shalev, A&R Distributors, Inc., E.S. Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, L.L.C., their successors, assigns, officers, agents, subcontractors, servants, present and former employees, corporations and any other persons in active concert or participation with them;

C. "Item" means property or service and includes automobiles and other types of vehicles and items sold at auction by Defendants;

D. "Owner" means a person who has any control of or is entitled to, by ownership or other claim, at least a percent of the net income of a seller;

E. "Person" means an individual, sole proprietorship, firm, partnership, corporation, association, joint venture or other group, or business entity, however organized;

F. "Purchaser" means a person who either is solicited to become or becomes obligated for the purchase or rental of an item, or is offered the opportunity to claim or receive an item.

6. **IT IS FURTHER ORDERED** that Plaintiff shall be granted leave to take telephonic, video,

written, and other depositions (including depositions with subpoenas duces tecum) prior to any scheduled temporary injunction hearing and prior to Defendants' answer date upon reasonable shortened notice to Defendants and their attorneys if known;

7. **IT IS FURTHER ORDERED** that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14) day after entry or until further order of this Court, whichever is less.

8. The Clerk of the above-entitled Court shall forthwith issue an ex parte temporary restraining order in conformity with the law and the terms of this Order. This Order shall be effective without the execution and filing of a bond as Plaintiff, State of Texas is exempt from such bond under TEX. BUS. & COM. CODE ANN. §17.47(b).

Hearing on Plaintiff, State of Texas' Application for an Temporary Injunction is hereby set for the _____day of _____ 2006 at _____o'clock,____m.

SIGNED this _____day of _____, 2006 at _____o'clock,____m.

_____
JUDGE PRESIDING