

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 09-cv-01509-MSK-BNB

BIG O TIRES, LLC, a Nevada limited liability company f/k/a BIG O TIRES, INC., a Colorado corporation,

Plaintiff,

v.

D&T AUTO SALES & SERVICES, INC., an Indiana corporation;
T&M SALES AND SERVICE, INC., an Indiana corporation;
WILLIAM T. MEEK and
MARY E. MEEK,

Defendants.

ORDER ADOPTING RECOMMENDATION AND SETTING CONTEMPT HEARING

THIS MATTER comes before the Court on the Recommendation dated January 8, 2010 of the Magistrate Judge (**#38**) certifying facts and recommending that Defendants D & T Auto Sales & Service, Inc. and William T. Meek be ordered to appear to show cause why they should not be held in contempt. No objection has been filed to this recommendation.

The Court has reviewed the history of this case including the injunction entered October 5, 2009 (**#18**) and the Recommendation. Based upon the facts in the Recommendation, the Court agrees with the conclusion that the a show cause hearing is warranted to determine whether Defendants D & T Auto Sales & Service Inc. and William T. Meek have failed to comply with this Court's Orders—specifically, the injunction contained in the Judgment entered by this Court on October 5, 2009—and, ultimately, whether they should be held in contempt for such failure.

Failure to appear and show cause why they should not be held in contempt can result in imposition of fines and penalties, including arrest and incarceration. As D & T Auto Sales & Service Inc. is a corporate entity, it may appear only through an attorney. *See Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006); 28 U.S.C. § 1654; D.C. Colo. L. Civ. R. 11.1. Because incarceration is a potential penalty, Defendant William T. Meek is entitled to be represented by counsel. If he desires counsel, but represents that he is unable to afford counsel, counsel will be appointed to represent him.

IT IS THEREFORE ORDERED that

- (1) The Recommendation of the Magistrate Judge (#38) is **ADOPTED**.
- (2) Defendants D & T Auto Sales & Service Inc. and William T. Meek are ordered to **SHOW CAUSE** why they should not be held in contempt at a **CONTEMPT HEARING** on May 13, 2010 at 3:00 p.m. in Courtroom A901 in the Alfred A. Arraj Courthouse at 901 19th Street, Denver, Colorado. Failure to appear and show cause why they should not be held in contempt can result in imposition of fines and penalties, including arrest and incarceration.

- (3) The Plaintiff shall serve this Order on D&T Auto Sales & Service Inc., and William T. Meek no later than 14 days before the scheduled hearing, failing which such hearing will be vacated.

Dated this 19th day of April, 2010

BY THE COURT:

A handwritten signature in black ink, reading "Marcia S. Krieger", written in a cursive style. The signature is positioned above a horizontal line.

Marcia S. Krieger
United States District Judge