

CL-10520369-2589

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JUN 13 2013

ADMITTED IN NEW YORK,
NEW JERSEY & GEORGIA

June 6, 2013

U.S. Department of Transportation
National Highway Traffic Safety Administration
Office of Defect Investigations (NVS 210)
1200 New Jersey Avenue, SE
West Building
Washington, DC 20590

**Re: Sea-Nic Excavation, LLC v. Ford Motor Company and
Country Lincoln Mercury West, LLC
Supreme Court, Nassau County Index No.: 11-016341**

Dear Sir/Madam:

Please be advised that I represent the owner / consumer of a 2008 Ford F350 Super Duty diesel pick up truck, which has been plagued with engine problems, EGR valves and high pressure fuel pumps that the manufacturer has failed and refused to repair. In connection with my research in the above pending lawsuit in the state of New York, I have discovered that there are other pending class action lawsuits of the same nature involving Ford and tens of thousands of their diesel trucks wherein the manufacturer fails to honor its warranties and their dealers cast false blame upon the consumers, notwithstanding their knowledge of chronic defects. Moreover, there appears to be pending major litigation between Ford and the manufacturer of the diesel engines, Navistar a/k/a International Harvester. A copy of my client's Complaint in the above-referenced lawsuit is enclosed herewith.

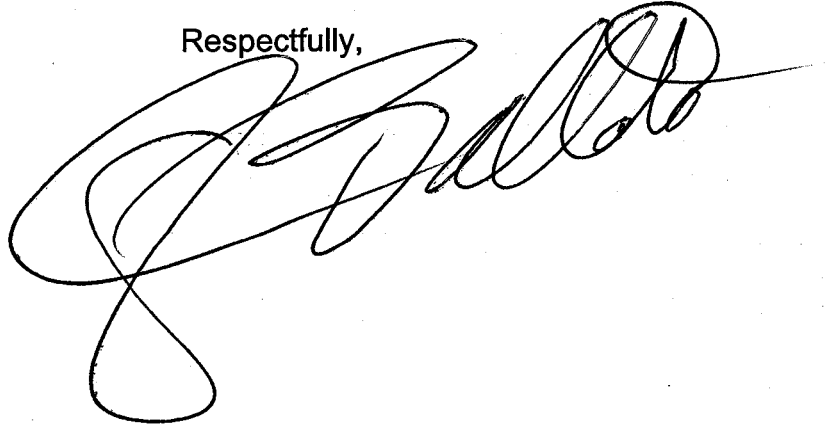
Given the serious and costly nature of total engine failures that have cost countless businesses not only the loss of value to their vehicle but also perhaps even greater economic damages to loss of business and unproductive work force as well as the national scope of this matter, it would be appropriate for your office and the Federal Government to conduct an investigation and access appropriate sanctions and fines against Ford for its deliberate failures to honor vehicle warranties and cause countless damages to consumers throughout the United States.

NAM
614B
SMD

Please call me at your soonest convenience to discuss this matter and what assistance your office may be able to render. I will be pleased to provide any further documents, deposition transcripts or evidence that I have to assist you in the investigation of this serious matter.

I thank you in advance for your attention to this matter and reply herein.

Respectfully,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

ATB/kaf
Encl.

cc: Sea-Nic Excavation

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----x
SEA-NIC EXCUVATION, LLC,

Plaintiff,

- against -

FORD MOTOR COMPANY and COUNTRY LINCOLN
MERCURY WEST, LLC d/b/a
VALLEY STREAM LINCOLN MERCURY,

Defendants.
-----x

SUMMONS

Index No. 11-016341
Date Purchased: 11-17-11

The basis of venue is
Defendant's business
address

RECEIVED

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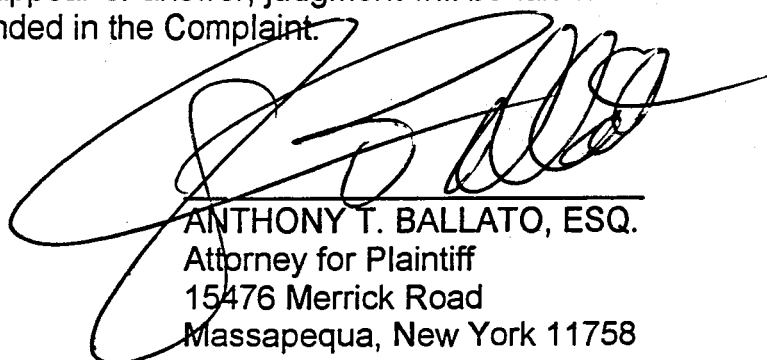
NASSAU COUNTY
COUNTY CLERK'S OFFICE

Defendant's business
address:
676 West Merrick Road
Valley Stream, NY 11580
County of Nassau

To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within twenty (20) days after the service of this Summons, exclusive of the date of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: November 15, 2011
Massapequa, New York



ANTHONY T. BALLATO, ESQ.
Attorney for Plaintiff
15476 Merrick Road
Massapequa, New York 11758
(516) 541-9080

Defendants' Address:
Ford Motor Company
P.O. Box 6248
Dearborn, MI 48126

Country Lincoln Mercury West, LLC
676 West Merrick Road
Valley Stream, NY 11580
J:\SEA-NIC\PLEADINGS\Summons.doc

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SEA-NIC EXCUVATION, LLC,

Plaintiff,

- against -

FORD MOTOR COMPANY and COUNTRY LINCOLN
MERCURY WEST, LLC d/b/a
VALLEY STREAM LINCOLN MERCURY,

Defendants.
-----X

Index No.: 11-01634

**VERIFIED
COMPLAINT**

AS AND FOR PLAINTIFF'S COMPLAINT in the above-captioned action, Plaintiff, SEA-NIC EXCUVATION, LLC ("*Plaintiff*"), by and through Plaintiff's attorney, ANTHONY T. BALLATO, ESQ. alleges as follows:

PARTIES

1. Plaintiff, SEA-NIC EXCUVATION, LLC, is a Limited Liability Company which has a place of business at 10 Matinicock Avenue, Port Washington, County of Nassau, New York.

2. Upon information and belief, Defendant, FORD MOTOR COMPANY ("*Manufacturer*"), is a domestic corporation authorized to do business in the State of New York and is engaged in the manufacture, sale, and distribution of the motor vehicles and/or related equipment and services in the county in which this action has been venued. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships and sales agents, including Defendant, COUNTRY LINCOLN MERCURY WEST, LLC d/b/a VALLEY STREAM LINCOLN MERCURY ("*Dealer*").

3. Upon information and belief, Defendant, FORD MOTOR COMPANY ("Seller"), is a corporation with a principal place of business located at Dearborn, Michigan. Defendant Seller is engaged in the sale and lease of both new and used motor vehicles. Defendant Seller also sells extended warranties and service contracts for those motor vehicles it sells and leases.

4. Upon information and belief, Defendant, COUNTRY LINCOLN MERCURY WEST, LLC d/b/a VALLEY STREAM LINCOLN MERCURY ("Dealer") is a domestic limited liability company authorized to do business in the State of New York having its principal address at 676 West Merrick Road, Valley Stream, NY 11580.

BACKGROUND

5. On or about April 13, 2007, Plaintiff leased/purchased from Seller a 2008 Ford F350 Diesel Pick-Up Truck with a 6.4 liter diesel engine (the "Vehicle"), manufactured and sold by Manufacturer, Vehicle Identification No. 1FTWW33R88FA38403 for valuable consideration.

6. The purchase/sale price of the Vehicle, including registration charges, document fees, sales tax and finance charges totaled approximately Sixty One Thousand Six Hundred Ninety Five (\$61,695.00) Dollars.

7. Plaintiff avers that as a result of certain defects identified herein below and the ineffective repair attempts made by Manufacturer and Seller, the Vehicle cannot be utilized for personal, family and household use as intended by Plaintiff at the time of acquisition.

8. In consideration for the purchase of the Vehicle, Manufacturer and Seller issued and supplied to Plaintiff several written warranties, including a five (5) year or one hundred thousand (100,000) mile manufacturer's warranty, as well as other standard warranties fully outlined in the Manufacturer's New Car Warranty booklet.

9. On or about April 13, 2007 Plaintiff took possession of the Vehicle and shortly thereafter experienced the various defects listed below which substantially impaired the use, value and/or safety of the Vehicle.

10. The nonconformities described below violate the express written warranties issued to Plaintiff by Manufacturer and Seller.

11. Plaintiff has brought the Vehicle to Seller and/or an authorized service dealer(s) of Manufacturer on several occasions in 2008 and 2009 for the same defects and nonconformities, including but not limited to: defective engine, and any and all other defects whether or not reflected on Dealer's invoices/repair orders.

12. Plaintiff has provided Manufacturer and Seller sufficient opportunity to repair and/or replace the defective components/engine in the Vehicle.

13. Manufacturer and/or Seller have refused to honor the warranty and have refused to attempt to repair the nonconformities or replace the Vehicle, as provided in the written warranties, notwithstanding the total engine failure on or about March 20, 2009 following chronic engine problems.

14. Plaintiff has justifiably lost confidence in the Vehicle's safety and reliability, and said nonconformities have substantially impaired the value of the Vehicle to Plaintiff.

15. Said nonconformities could not reasonably have been discovered by Plaintiff prior to Plaintiff's acceptance of the Vehicle.

16. As a result of these defects, Plaintiff revoked acceptance of the Vehicle orally by notifying the Seller, on or about March 20, 2009 following unsuccessful attempts by Plaintiff to have Manufacturer and its authorized dealer(s) repair/replace the defective diesel engine.

17. At the time of said revocation, the Vehicle was in substantially the same condition as at delivery except for engine damage caused by its own nonconformities and ordinary use.

18. Defendant, Manufacturer and Seller, have refused Plaintiff's revocation of acceptance, and has refused in bad faith to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation while said Defendant knew the engine was defective in the Plaintiff's vehicle and Defendant's other vehicles.

19. The Vehicle remains in a defective and unmerchantable condition, and continues to exhibit the above mentioned defects which substantially impair its use, value and/or safety, and Plaintiff has incurred substantial damages through the loss of use of the vehicle to date as well as expensive repairs.

20. Plaintiff has been and will continue to be financially damaged due to Manufacturer and Seller's failure to comply with the provisions of its warranty.

COUNT I

BREACH OF WRITTEN WARRANTY AGAINST MANUFACTURER (FORD MOTOR COMPANY) PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT

21. Plaintiff realleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this Complaint.

22. Plaintiff is the purchaser of a consumer product who received the Vehicle during the duration of a written warranty period applicable to the Vehicle and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

23. Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiff.

24. Defendant, Dealer, is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties, and Defendant, Dealer, did so in a reckless, negligent and careless manner to Plaintiff's vehicle from on or about January 20, 2011 through June 1, 2011 while leaving Plaintiff's vehicle outside for months exposed to the elements with engine apart and causing further damages to same.

25. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("*Warranty Act*") is applicable to Plaintiff's Complaint in that the Vehicle was manufactured and sold after July 4, 1975, and costs in excess of ten dollars (\$10.00).

26. Plaintiff's purchase of the Vehicle was accompanied by written factory warranties for any nonconformities or defects in material or workmanship, an undertaking in writing in connection with the sale of the Vehicle to refund, repair, replace, or take other remedial action free of charge to Plaintiff with respect to the Vehicle in the event that it failed to meet the specifications set forth in said undertaking.

27. Said warranties were the basis of the bargain of the contract between the Plaintiff and Manufacturer for the sale of the Vehicle.

28. Said sale/lease of Plaintiff's Vehicle was induced by, and Plaintiff relied upon, these written warranties.

29. Plaintiff has met all of Plaintiff's obligations and preconditions as provided in the written warranties.

30. As a direct and proximate result of Manufacturer's failure to comply with its express written warranties, Plaintiff has suffered damages of approximately \$100,000.00 and, in accordance with 15 U.S.C. § 2310(d)(1), as well as N.Y. -U.C.C. 2-714; 2-715, Plaintiff is entitled to bring suit for such damages.

COUNT II

BREACH OF IMPLIED WARRANTY AGAINST MANUFACTURER (FORD MOTOR COMPANY) PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT

31. Plaintiff realleges and incorporates by reference as though fully set forth herein, Paragraphs 1-30 of this Complaint.

32. Plaintiff's Vehicle was subject to implied warranties of merchantability, as defined in 15 U.S.C. § 2301(7) and N.Y.-U.C.C. 2-314 and 2-318, running from the Seller to the intended consumer, Plaintiff herein.

33. Manufacturer and Seller are engaged in the sale of motor vehicles to consumers and more generally engaged in the business of supplying consumer goods directly to consumers.

34. Manufacturer and Seller are prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer or Seller have entered into a contract in writing to perform services relating to the maintenance or repair of a motor vehicle within ninety (90) days of a sale.

35. Any disclaimer of the implied warranty of merchantability by Seller is prohibited because Seller has "adopted" the Manufacturer's new car warranty pursuant to New York state law and has actually made a written warranty to Plaintiff(s).

36. Pursuant to 15 U.S.C. § 2308 and N.Y.-U.C.C. 2-314 and 2-318, Plaintiff's Vehicle was impliedly warranted to be substantially free of defects and nonconformities in both material and workmanship, and thereby fit for the ordinary purpose for which it was intended.

37. The Vehicle was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of it contained in the contracts and labels.

38. The above described defects and nonconformities present in the Vehicle render it unmerchantable, unsafe, and thereby not fit for the ordinary and essential purpose for which it was intended and as represented by Manufacturer and Seller.

39. As a result of the breaches of implied warranty by Manufacturer and Seller, Plaintiff is without the reasonable value or use of the Vehicle.

40. As a result of the breaches of implied warranties by Manufacturer and Seller, Plaintiff has suffered and will continue to suffer various damages of approximately \$100,000.00.

COUNT III

REVOCATION OF ACCEPTANCE AGAINST MANUFACTURER (FORD MOTOR COMPANY) PURSUANT TO SECTION 2310(d) OF THE MAGNUSON-MOSS WARRANTY ACT

41. Plaintiff realleges and incorporates by reference as though fully set forth herein, paragraphs 1-40 of this Complaint.

42. Manufacturer's and Seller's tender of the Vehicle was substantially impaired to Plaintiff.

43. Manufacturer's and Seller's tender of the Vehicle which was substantially impaired to Plaintiff constitutes a violation of 15 U.S.C. § 2310(d) and Plaintiff is entitled to the remedy of revocation as set forth in N.Y.U.C.C. 2-608.

COUNT IV

AWARD OF COSTS, FEES AND EXPENSES PURSUANT TO 15 U.S.C. 2310(d) (2) AGAINST MANUFACTURER AND SELLER

44. Plaintiff realleges and incorporates by reference as though fully set forth herein, paragraphs 1-43 of this Complaint.

45. Article 15 of the United States Code, Section 2310(d)(2) provides that a consumer who finally prevails in an action brought under paragraph (1) of the aforementioned section may recover his/her costs, expenses and attorney fees.

46. Upon "finally prevailing", as that term is used in the aforementioned section, Plaintiff is entitled to a judgment against Defendant equal to the aggregate amount of Plaintiff's costs, expenses and attorney fees.

COUNT V

NEGLIGENCE AND PROPERTY DAMAGE AGAINST DEFENDANTS DEALER (COUNTRY LINCOLN MERCURY WEST, LLC) AND MANUFACTURER (FORD MOTOR COMPANY)

47. Plaintiff realleges and incorporates by reference as though fully set forth herein, paragraphs 1-46 of this Complaint.

48. On or about January 20, 2011, following a series of unsuccessful repairs by the Defendant, Manufacturer, at other authorized FORD dealers, Plaintiff's vehicle was delivered to the Defendant, Dealer for substantial repairs or replacement of the diesel engine.

49. Plaintiff's vehicle remained in Defendant's, Dealer's, possession for about approximately six (6) months until on or about June 1, 2011 when returned to Plaintiff with the engine disassembled having been left outside the Dealer's premises exposed to the elements for many months, rusted and further damaged by the reckless and negligent acts of the Dealer and while acting under the authority and direction of the Manufacturer.

50. The Manufacturer and Dealer had accepted the Plaintiff's vehicle on or about January 20, 2011 for substantial repairs or replacement of the diesel engine, but they failed to do so pursuant to the subject warranty, but rather unreasonably, recklessly and negligently caused further property damages to Plaintiff's vehicle by disassembling the diesel engine, failing to repair or replace same, and leaving the engine in pieces in the rear of the Plaintiff's pick up truck and stored outside of the Dealer's repair facilities exposed to the elements for many months. The Manufacturer and Dealer were reckless and negligent in the possession, care, bailment, and handling of the Plaintiff's vehicle at all said times and in material breach of the subject warranty.

51. The Manufacturer and Dealer owed a duty of care to the Plaintiff and were negligent and reckless in their said acts and omissions and breached the duty of care owed to the Plaintiff without cause, fault or contribution of the Plaintiff.

52. That by reason of the acts and omissions of the Manufacturer and Dealer, Plaintiff's vehicle was not repaired nor even returned in the same condition as it was delivered to the Defendants by the Plaintiff, but rather the Defendants caused substantial property damages and destruction of the diesel engine and failed and refused to repair or replace same notwithstanding the timely demands of the Plaintiff to do so.

53. That by reason of the foregoing, the Plaintiff has been unduly deprived of the use and enjoyment of the vehicle for a period of time from on or about March 20, 2009 when there was a total engine failure until the present time.

54. The aforementioned conduct, acts and omissions of the Defendants were reckless, negligent and outrageous in the treatment of the Plaintiff and its vehicle and Defendants knowingly acted in material breach of the subject Manufacturer's warranty and the aforementioned statutes.

55. That by reason of the foregoing, the Plaintiff has been damaged in the approximate sum of \$100,000.00.

COUNT VI

FRAUDULENT CONCEALMENT AND INTENTIONAL PROPERTY DAMAGE **AGAINST DEFENDANTS DEALER (COUNTRY LINCOLN MERCURY WEST, LLC)** **and MANUFACTURER (FORD MOTOR COMPANY)**

56. Plaintiff realleges and incorporates by reference as though fully set forth herein, paragraphs 1-55 of this Complaint.

57. Upon information and belief, both Defendants are charged with actual notice of the inherent product defects involving the Plaintiff's vehicle and its diesel engine by reason of same being inherently defective and their being numerous complaints of

other consumers who have purchased or leased similar products from the Defendants and/or brought such vehicles to the Defendants for repair as well as their being numerous lawsuits pending throughout the United States against the Manufacturer and its supplier of the subject diesel engine as well as cross complaints between FORD MOTOR COMPANY and the supplier of the diesel engines, NAVISTAR, INC. f/k/a INTERNATIONAL TRUCK AND ENGINE CORPORATION. Both Defendants very well knew at all times herein mentioned that the Plaintiff's vehicle had an inherently substantially defective diesel engine which should have been repaired or replaced under the Manufacturer's warranty, but rather than doing so in bad faith and in an attempt to defraud the Plaintiff herein and other consumers similarly situated, the Defendants failed and refused to honor the warranty but rather to lied to the Plaintiff and/or made up excuses for non-existent causes of the subject engine failure rather than admitting the truth and repairing or replacing the defective diesel engine.

58. The Defendants knew at all times herein stated of the foregoing facts of others' complaints and lawsuits and of the inherent defective diesel engine in the Plaintiff's vehicle and many others manufactured by the Defendant, Manufacturer, and the Defendants intentionally violated the subject warranty and failed and refused to repair or replace the Plaintiff's diesel engine.

59. Upon information and belief, the Defendants nevertheless fraudulently concealed from the Plaintiff the truth of these matters and the pendency of numerous other consumers' complaints and numerous other law suits throughout the United States involving the subject consumer products and diesel engines, and deliberately removed the

diesel engine from the Plaintiff's vehicle and dismantled same while exposing it to the elements to cause further damages and cover-up the Manufacturer's own product defects.

60. Upon information and belief, the Defendants engaged in a conspiracy to defraud the Plaintiff herein and numerous other consumers similarly situated while knowingly materially breaching the subject Manufacturer's warranty and deliberately causing property damages to the Plaintiff's vehicle in an effort to cover-up the truth of these matters and avoid the Defendants' responsibility to repair or replace the subject diesel engine or vehicle without charge to the consumer. Instead Defendant, Dealer, improperly demanded storage fees or other charges from Plaintiff in the approximate sum of \$1,358.00.

61. At all times herein mentioned, the Plaintiff was unaware of the truth of these matters and acted in good faith by delivering its vehicle to the Defendants for repair.

62. That by reason of the foregoing, the Plaintiff was defrauded and damaged in the approximate of \$100,000.00.

63. That by further reason of the foregoing, the Plaintiff is entitled to recover punitive or exemplary damages against the Defendants as well attorneys' fees and the costs and disbursements of this action pursuant to statute and the common law of this jurisdiction.

WHEREFORE, Plaintiff, SEA-NIC EXCUVATION, LLC, seeks judgment against the Defendants as follows:

- I. Against Defendant, Ford Motor Company, in the sum of \$100,000.00;
- II. Against Defendant, Ford Motor Company, in the sum of \$100,000.00;
- III. Against Defendant, Ford Motor Company, in the sum of \$100,000.00;

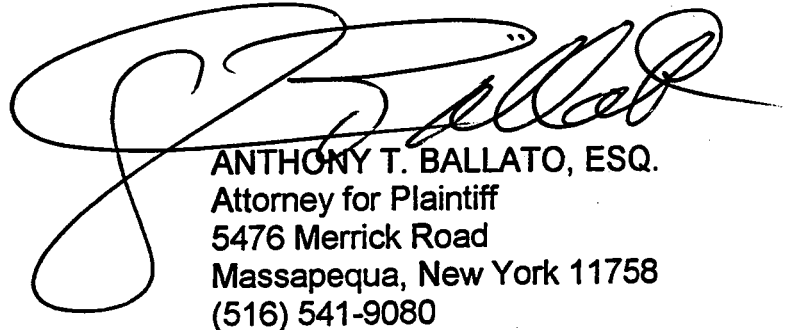
IV. Against Defendant, Ford Motor Company, in the sum of \$100,000.00;

V. Against Defendants, Ford Motor Company and Country Lincoln Mercury West, LLC d/b/a Valley Stream Lincoln Mercury, in the sum of \$100,000.00; and

VI. Against Defendants, Ford Motor Company and Country Lincoln Mercury West, LLC d/b/a Valley Stream Lincoln Mercury, in the sum of \$100,000.00 and punitive or exemplary damages plus Plaintiff's attorneys' fees and the costs and disbursement of this action; and

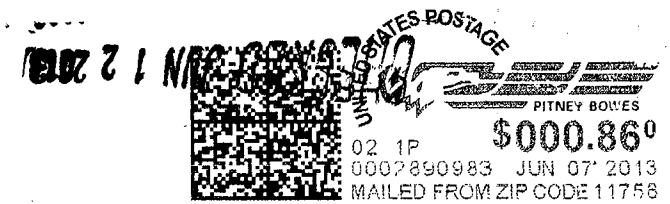
VII. On each and all counts, awarding plaintiff statutory costs and disbursements, attorneys' fees and statutory interest against the Defendants, Manufacturer (Ford Motor Company) and Dealer (Country Lincoln Mercury West) together with such other further and different relief as this Court deems just and proper.

Dated: November 15, 2011
Massapequa, New York



ANTHONY T. BALLATO, ESQ.
Attorney for Plaintiff
5476 Merrick Road
Massapequa, New York 11758
(516) 541-9080

ANTHONY T. BALLATO
ATTORNEY AND COUNSELLOR AT LAW
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