interest as provided by law, and that Plaintiffs receive such other relief as the Court deems proper and just under the circumstances, including payment of costs and expenses incurred in filing this suit, and reasonable attorney's fees.

COUNT II

Breach of Implied Warranty of Merchantability

Under the Magnuson-Moss Act, 15 U.S.C. § 2310

28. Plaintiff incorporates by reference all allegations in all preceding paragraphs of this Complaint.

29. Under the Uniform Commercial Code there exists an implied warranty of merchantability.

30. The Magnuson-Moss Warranty Act provides for a civil action by consumers for failure to comply with an implied warranty arising under state law. *See* 15 USCA § 2310 (d)(1)(A) (1976).

31. Defendant breached the implied warranty of merchantability by selling goods which were not merchantable. TMS has breached the warranty of merchantability by having sold its automobiles with defective floor mats and accelerator pedals that were not fit for their ordinary purpose. As stated herein, the floor mats can interfere with the operation of the accelerator pedal and cause unintended acceleration. TMS has acknowledged that the floor mats are not fit for their ordinary purpose, as it has instructed owners of subject automobiles to remove the driver's floor mats and not replace them. TMS has also acknowledged that its accelerator pedals are not fit for their ordinary purpose, as it has agreed to reconfigure them as part of its vehicle-based remedy.

32. Plaintiff and the Class have been damaged and have suffered direct economic loss as the floor mats they purchased and the accelerator pedals in their vehicles are not fit for their ordinary purpose.

WHEREFORE Plaintiff requests that judgment be granted against Defendant in an amount that is fair and reasonable, together with prejudgment