

Mazda

1-15-04

Appendix D for EA02-027

Attorney/Client Communication
Privileged & Confidential

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Mazda North American Operations

Date: December 18, 2003

To: Mr. T. Tanaka Office of Legal Affairs Mazda Motor Corporation	From: D. Core, Senior Paralegal <i>dc</i> Product Litigation Legal Division	Page: 1 of 1 Attached: 12 Complaints
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RE: Tribute: NHTSA Investigation



INFORMATION ONLY



Attached are the complaints I referred to in my e-mail of 12/18/03.

Regards,

IN THE CIRCUIT COURT OF PRINCE GEORGE'S COUNTY, MARYLAND
CIVIL DIVISION

LX 0158

[REDACTED]

Bowie, Maryland

Plaintiff,

v.

MAZDA NORTH AMERICAN OPERATIONS

Case No. CAL03-14998

SERVE: JAMES E. LIEVOIS
7755 Irvine Center Drive
Irvine, California 92618

Defendant,

and

DARCARS IMPORTS

SERVE: STEPHEN C. HOSEA
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770

AMENDED COMPLAINT FOR BREACH OF WARRANTY

COMES NOW THE Plaintiff, [REDACTED] by and through her attorney,
Rosalind D. Lewis, and the Law Offices of Banks Bailey & Lewis and in support of her
Complaint for Breach of Implied Warranty and for Breach of the Maryland Automobile Warranty
Enforcement Act, and respectfully represents unto this court the following:

1. That jurisdiction is conferred upon this Court pursuant to C J Title 6 §6-103 *et. seq.*
2. That plaintiff is a resident of the United States and is a resident of Prince George's

County, Maryland;

3. The Defendant DARCARS Imports, Inc. (hereinafter referred to as Defendant DARCARS) is, and at all times relevant herein, a corporation organized under the laws of the state of Maryland, and engaged in the business of automobile sales in the Maryland.

4. The Defendant Mazda Motor of America, Inc. (hereinafter referred to as Defendant Mazda) is, and at all times relevant herein, a corporation with continuous contact in the state of Maryland and engaged in the business of manufacturing and shipping automobiles to the state of Maryland.

5. On or about October 30, 2000, Plaintiff Akochukwu E. Aghazu (hereinafter known as Plaintiff) and Defendant DARCARS entered into a contract for sale of a 2001 Mazda Tribute Sport Utility Vehicle.

6. That in or about January 2001, Plaintiff was driving and the vehicle stalled and the tires locked.

7. That in an attempt to repair the vehicle, on or about February 6, 2001, Plaintiff took her vehicle back to Defendant DARCARS.

8. That in various attempts to repair the problem, Plaintiff brought the Mazda Tribute back to Defendant DARCARS on or about 2/19/2001, 3/5/2001, 3/6/2001, 5/30/2001, 1/31/2002, 7/10/2002, 7/24/2002, 8/14/2002, 10/25/2002, 11/14/2002, and 3/11/2003, but Defendant DARCARS was unable to repair the problem.

9. That in another attempt to repair the problem, on or about May 3, 2001, at the Defendant Mazda's request, Plaintiff brought her Mazda Tribute to another Mazda dealer, but that dealer was unsuccessful.

10. That on or about June 4, 2001, Plaintiff notified Defendant Mazda by certified mail

regarding the continuing problem with her 2001 Mazda Tribute and that Defendant DARCARS attempts to repair the problem was unsuccessful.

11. That on or about July 6, 2001, Defendant Mazda advised Plaintiff that they would schedule a final repair of the vehicle under the condition reported that only occurred during inclement weather.

12. In July 2001, Plaintiff filed a complaint with State of Maryland Office of the Attorney General Consumer Protection Division against Defendant Mazda.

13. That on or about July 7, 2001, Plaintiff notified Defendant Mazda by certified mail, a request to repurchase the 2001 Mazda Tribute pursuant to the Maryland Automobile Warranty Enforcement Act, Md. Code Ann., Comm. Law § 14-1501 *et. seq.*

14. That on or about July 18, 2001, Defendant Mazda notified State of Maryland Office of the Attorney General Consumer Protection Division that they declined Plaintiff's request to repurchase her vehicle because Defendant DARCARS could not duplicate the problem and Defendant Mazda's history shows no repairs made to the breaking system.

15. That on or about July 31, 2001, Plaintiff notified Defendant Mazda by certified mail refuting Defendant Mazda's statement in the July 18, 2001, correspondence that the problem with the vehicle was the Plaintiff's fault and to reiterate that the vehicle stalls during dry and inclement conditions.

16. On or about August 27, 2001, the State of Maryland Office of the Attorney General Consumer Protection Division sent a letter to Defendant Mazda advising based on the information provided by the Plaintiff and Defendant Mazda it appeared that Plaintiff is eligible for a replacement vehicle or refund under the Md. Code Ann., Comm. Law § 14-1501 *et. seq.*

17. That to date Plaintiff's vehicle continues to experience stalling and tire locking.

18. That on or about June 7, 2003, Plaintiff's vehicle stalled while driving causing Plaintiff to strike a tree and suffer injuries.

COUNT ONE: BREACH OF IMPLIED WARRANTY

19. The allegations contained in paragraphs one (1) through eighteen (18) are incorporated herein.

20. That Defendant DARCARS and Defendant Mazda, either individually or jointly, breached its implied warranty under the Maryland Uniform Commercial Code, Maryland Code (1957, 1997 Repl. Vol., 2000 Sup.) § 2-314 of the Commercial Law Article by reason that the Plaintiff's Mazda Tribute was and is not fit for the ordinary purpose it was sold by reason that while driving the vehicle it continuously stalls and the tires lock.

WHEREFORE, the premises considered, Plaintiff respectfully prays that this Honorable Court:

21. Grant Plaintiff judgment against Defendants DARCARS and Mazda, jointly and severally, in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00).

22. Grant Plaintiff judgment against Defendants DARCARS and Mazda, jointly and severally, in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for consequential damages for injuries proximately resulting from breach of the warranty.

23. Grant Plaintiff costs, interest, and attorney's fees.

24. Grant Plaintiff any other relief as this Court deems just and appropriate.

COUNT TWO: BREACH OF THE MARYLAND AUTOMOBILE WARRANTY ENFORCEMENT ACT.

24. The allegations contained in paragraphs one (1) through eighteen (18) are incorporated herein.

25. Defendants DARCARS and Mazda, either individually or jointly breached the Maryland Automobile Warranty Enforce Act, Maryland Code (1984, 2000 Repl. Vol., 2000Supp.) §§ 14-1501 - 14-1504 of the Commercial Law Article by reason of a reasonable number of attempts, failing to correct the reported defect of the vehicle during the warranty period and the failure to repair the defect or condition of the vehicle has substantially impaired the use and market value of the vehicle.

WHEREFORE, the premises considered, Plaintiff respectfully prays that this Honorable Court:

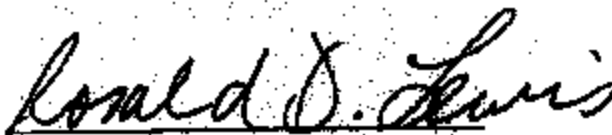
26. Grant Plaintiff judgment against Defendants DARCARS and Mazda jointly and severally, the vehicle full purchase price, including all license fees, registration fees, and any similar governmental charges, less a reasonable allowance for the Plaintiff's use.

27. Grant Plaintiff costs, interest, and attorney's fees.

28. Grant Plaintiff any other relief this Court deems just and appropriate.

CERTIFICATE SIGNING ATTORNEY WITH OUT OF STATE OFFICE

PURSUANT to the provisions of Maryland Rule 1-313, I hereby certify that I am duly admitted to the Bar of the State of Maryland.



Rosalind D. Lewis
Attorney for Plaintiff
717 D Street, NW, Suite 309
Washington, D.C. 20004
202-589-0751

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Plaintiff's Amended Complaint was mailed, first class postage prepaid, this 23rd day of September 2003, to the following:

Mazda North America Operations
James Lievols
7755 Irvine Center Drive
Irvine, California 92618

and

DARCARS Imports
Stephen C. Hoeser
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770



Rosalind D. Lewis

**STATE OF MICHIGAN
IN CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

Plaintiff,

Case No. 03-340 -CP
Hon. Timothy P. Connors

vs.

**MAZDA MOTOR OF AMERICA, INC., a California Corporation,
EUROPEAN AUTO SERVICE LTD. DBA METRO MAZDA, a Michigan Corporation
and SESI LINCOLN MERCURY, INC., DBA SESI MAZDA, Michigan Corporation.**

**Defendants,
Jointly and Severally.**

CHARLES M. GROH, P.C.
Charles M. Groh (P48062)
Attorney for Plaintiff
320 N. Main, Ste. 306
Ann Arbor, MI 48104
(734) 663-2202

FIRST AMENDED COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, _____, by and through counsel, Charles M. Groh, P.C., and states the following as her Complaint:

FACTUAL BACKGROUND

1. Plaintiff is a resident of the City of Ann Arbor, County of Washtenaw, State of Michigan.
2. Upon information and belief, Defendant Mazda Motor of America (hereinafter "Mazda") is a California Corporation in the business of manufacturing new vehicles, and does a substantial amount of business in the State of Michigan.

3. Upon information and belief, Defendant European Auto Service Ltd. Dba Metro Mazda (hereinafter "Metro") is a Michigan Corporation in the business of buying, selling, and leasing new and used motor vehicles, and does a substantial amount of business in the City of Ferndale, County of Wayne, State of Michigan.
4. Upon information and belief, Defendant Sesi Lincoln Mercury, Inc. DBA Sesi Mazda (hereinafter "Sesi") is a Michigan Corporation in the business of buying, selling, and leasing new and used motor vehicles, and does a substantial amount of business in the City of Ypsilanti, County of Washtenaw, State of Michigan.
5. The cause of action in the suit arose in the County of Washtenaw, State of Michigan.
6. The complaint seeks damages in excess of the twenty-five thousand dollars (\$25,000.00) jurisdictional limit for equitable relief, and the Court otherwise has jurisdiction.
7. On or about May 11, 2001 Plaintiff visited Defendant Metro with the intention of inquiring about buying a new motor vehicle.
8. On or about May 11, 2001 Plaintiff test-drove a 2001 Mazda Tribute, VIN # 4F2YU081X1KM55352 (hereinafter the "Tribute").
9. On or about May 11, 2001 Plaintiff entered into a sales contract for the Tribute for \$23,998.21 with 5 miles on it. (Exhibit 1)
10. Plaintiff has out of pocket expenses for repairs, maintenance and add-ons in the amount of \$328.33.

11. Defendant placed a downpayment of \$1,100 dollars on the car consisting of a new car \$1,000 purchase voucher as part of her employment at Ford Motor Co., and \$100 cash. (Exhibit 2)
12. Defendant Metro sold the Tribute with a manufacturer's express limited warranty. The warranty states, in part, that all components and parts shall be covered for three years- fifty- thousand miles.
13. On or about November 04, 2001, Plaintiff's Tribute would not start and was towed 35 miles to Sesi Mazda. She presented the Tribute to Sesi Mazda for inspection and repair of loose pins in connector T-201 and T-207. (Exhibit 3)
14. On or about December 23, 2001, Plaintiff's Tribute would not start. After 30 minutes the vehicle did start. Plaintiff drove the Tribute to Sesi Mazda, for inspection and repair of loose connection at 4-Pin connector T207. (Exhibit 4)
15. On or about January 25, 2002, Plaintiff tribute would not start. Two days later Plaintiff took the Tribute into Sesi Mazda for inspection and repair of loose wiring in 4-Pin connector and replacement of relay. (Exhibit 5)
16. On or about January 31, 2002, Plaintiff's attempted to pick up the Tribute but it would not start. Plaintiff again presented the car to Sesi Mazda for inspection and repair of a connector and relay. (Exhibit 6)
17. On or about September 23, 2002, Plaintiff complained for the 5th time of the same starting problems, specifically that the check engine light came on and the car started to backfire, misfire, hesitate and feeling like it would stall. Plaintiff feared to turn it off since this was, to her, a precursor to the prior 4 times it failed to start.

Again she presented the Tribute to Metro Mazda for inspection and repair. Defendant Metro replaced the exact same PCM wire #26 as on the other 4 occasions. (Exhibit 7)

18. After the 4th repair attempt Plaintiff's car is a lemon per se pursuant to the statute.
19. Plaintiff contacted Defendant via a letter revoking acceptance, dated February 5, 2002. (Exhibit 8) to which they failed to reply and inform her where to take the car for repair.
20. Plaintiff has complained a total of five (5) times that the car contains defects and a similar condition that it would not start and or stalled as follows:
 - A. November 4, 2001
 - B. December 23, 2001
 - C. January 25, 2002
 - D. January 31, 2002 and
 - E. September 23, 2002
21. The loose wires causing stalling and operating functions substantially impair the use and value of the Tribute to Plaintiff, [REDACTED] who has to drive alone to and from work and other appointments in a car that she no longer trusts.
22. Plaintiff's first complaint was within the first year of ownership (on or about November 4, 2001), and the mileage was within the warranty period at seven-thousand, seven-hundred and three miles (7,703) miles.
23. The subsequent four (4) repair attempts were within one year of the first repair attempt of the vehicle.

24. Plaintiff, extremely frustrated with Defendants' failure to repair the defect, requested that they accept return of the vehicle and refund her purchase price, plus statutory interest and out of pocket expenses.
25. For the second time, October 8, 2002, Plaintiff, extremely frustrated with the numerous problems and time without her car, informed Mazda, Inc. in writing, via certified mail, that she believed the car to again be a "lemon." (Exhibit 9)
26. Defendant Mazda never responded to the February 5, 2002 or the October 8, 2002 letters.
27. Currently the Tribute continues to exhibit the following defects hard starting and stalling, hesitating and the defects and condition continue to be present.
28. Defendant Mazda, to date, has not accepted return of the Tribute in exchange for refund of the purchase price despite being unable to repair it after four repair attempts.

**COUNT 1:
VIOLATION OF MCLA 257.1401 et. seq. (Lemon Law).**

29. Plaintiff repeats and re-alleges Paragraphs 1 through 28 of the Complaint as though set forth in their entirety.
30. Defendants have neither replaced the vehicle with a comparably priced replacement motor vehicle nor accepted return of the vehicle and refunded Plaintiff their purchase money, plus custom add-ons and statutory interest.
31. Under the lemon law, Plaintiff is entitled to the remedies described and delineated in the Lemon Law.

WHEREFORE, Plaintiff respectfully request that the court:

- A. Enter judgment in favor of Plaintiff and against the Defendants as the Lemon Law, MCLA 257.1401 et. seq. which allows for return and a refund of the full purchase price or a comparable replacement vehicle at Plaintiff's discretion;
- B. Award Plaintiff incidental, consequential and foreseeable damages in an amount no less than five thousand dollars (\$5,000.00) for the breach of the Lemon Law, suffered by Plaintiff as a result of the Breach;
- C. Award Plaintiff statutory interest, costs and attorney fees pursuant to MCLA 257.1407 (1) and (2);
- D. Grant such other further relief as the Court deems just and equitable.

COUNT II:
VIOLATION OF CONSUMER PROTECTION ACT
(MCLA 445.903, et. seq.)

32. Plaintiff repeats and re-alleges Paragraphs 1-31 of the Complaint as though set forth in their entirety.
33. The actions and representations of Defendants constitute unfair, unconscionable, and deceptive methods, acts, or practices in the conduct of trade or commerce in violation of the Michigan Consumer Protection Act (hereinafter the "CPA"). The specific violations include, but are not limited to:
 - A. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he does not have, contrary to MCLA 445.903 (1).
 - B. Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand, contrary to MCLA 445.903 (1).
 - C. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular, style or model, if they are of another, contrary to MCLA 445.903 (1).

D. Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented, contrary to MCLA 445.903 (1).

E. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of, price reductions, contrary to MCLA 445.903(1).

F. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of, price reductions, contrary to MCLA 445.903(1)(f).

G. Failing to reveal a material fact, the omission of which intended to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer, contrary to MCLA 445.903(1).

H. Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction or failure of the other party to the transaction to provide the promised benefits, contrary to MCLA 445.903(1).

I. Taking advantage of the consumer's inability reasonably to protect her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability, contrary to MCLA 445.903(1).

J. Charging the consumer a price which is grossly in excess of the price at which similar property or services are sold, contrary to MCLA 445.903(1).

K. Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is, contrary to MCLA 445.9031.

L. Failing to reveal facts which are material to the transaction in light of representations of fact made in a positive manner, contrary to MCLA 445.9031.

M. Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, contrary to MCLA 445.903(1).

N. Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction, contrary to MCLA 445.903(1).

O. Using deceptive representations or deceptive designations of geographic origin in connection with goods or services, contrary to MCLA 445.903(1).

P. Representing that a part, replacement, or repair service is needed when it is not, contrary to MCLA 445.903(1).

Q. Representing that a consumer will receive goods or services "free", "without charge", or words of similar import, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised, contrary to MCLA 445.903(1).

R. Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction, contrary to MCLA 445.903(1).

S. Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed, contrary to MCLA 445.903(1).

T. Failing, in a consumer transaction which is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of the law, to promptly restore to the person or persons entitled thereto any deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest, contrary to MCLA 445.903(1).

U. Representing to a party to whom goods or services are supplied that the goods or services are being supplied in response to a request made by or on behalf of the party, when they are not, contrary to MCLA 445.903(1).

V. Misrepresenting that because of some defect in a consumer's home the health, safety, or lives of the consumer or his family are in danger if the product or services are not purchased, when in fact the defect does not

exist or the product or services would not remove the danger, contrary to MCLA 445.903(1).

W. Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction, contrary to MCLA 445.903(1).

X. Causing a probability of confusion or of misunderstanding as to the terms or conditions or credit, or of credit if credit is extended in a transaction, contrary to MCLA 445.903(1).

Y. Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it, contrary to MCLA 445.903(1).

Z. Causing coercion or duress as the result of the time and nature of a sales presentation, contrary to MCLA 445.903(1).

AA. Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services, contrary to MCLA 445.903(1).

BB. Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time if the merchant knows or has reason to know it will not be so provided, contrary to MCLA 445.903(1).

CC. Taking or arranging for the consumer to sign an acknowledgment, certification, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance if the merchant knows or has reason to know that the statement is not true, contrary to MCLA 445.903(1).

34. Specifically, Defendants, with knowledge and intent, concealed and/or failed to disclose to Plaintiff that significant repairs, a material fact, would be required to the Tribute prior to Plaintiff's inspection or purchase of the vehicle.
35. Any and all other violations of the CPA made by the Defendants were intentionally made.

36. As a result of Defendants' violations and their intentional and malicious conduct, Plaintiff has suffered injuries including, but not limited to, costs of repair and replacement, loss of use and enjoyment of the vehicle for extended periods of time, loss of expectation, and emotional distress and trauma.

WHEREFORE, Plaintiff requests that the Court:

- A. Enter judgment in favor of Plaintiff for violation of the CPA and award damages in an amount the Court determines is sufficient to compensate Plaintiff for her injuries, but not less than the full purchase price of the car, plus costs and additions;
- B. In the alternative, award damages based upon Plaintiff's proper rejection of the goods pursuant to MCL 440.2601 and MCL 440.2608;
- C. In the alternative, award damages based upon Plaintiff's proper revocation of the goods pursuant to MCL 440.2601 and MCL 440.2608;
- D. Award Plaintiff exemplary damages in an amount no less than ten thousand dollars (\$10,000.00) for the intentional and malicious violations of the CPA;
- E. Award Plaintiff incidental, consequential and foreseeable damages in an amount no less than one thousand dollars (\$1,000.00) for the damages suffered by Plaintiff as a result of the Breach;
- F. Award Plaintiff statutory interest, costs and reasonable actual attorney fees as provided in MCLA 445.911(2), and such other and further relief as the Court deems just and equitable.

**COUNT III:
BREACH OF CONTRACT**

37. Plaintiff repeats and re-alleges Paragraphs 1-36 of the Complaint as though set forth in their entirety.
38. Defendants Metro Mazda and Mazda promised, prior to execution of the contract, that the vehicle was a good and merchantable vehicle.
39. After taking possession, Plaintiff learned of non-conformities in the Tribute due to the numerous and extensive repairs required shortly after her purchase.

40. The nondisclosure of repairs and damage constitute a breach of the Contract between the parties.
41. Plaintiff would not have purchased the vehicle had its true damaged condition been disclosed.
42. The Defendants are jointly and severally responsible for the breach and for their intentional and malicious acts for the reason that representations were made personally by them.
43. As a result of Defendants' breach of contract, Plaintiff has been damaged to the extent that Plaintiff did not receive the vehicle she contracted for, did not receive a vehicle that conformed to the contract because the nonconformity substantially impairs the value of goods; loss of expectation, incidental damages for loss of use, rental, towing, other out of pocket expenses, and additional defects.

WHEREFORE, Plaintiff respectfully requests that the court:

- A. Enter judgment for Breach of Contract in favor of Plaintiff and against the Defendant in an amount the Court determines is sufficient to compensate Plaintiff for her injuries;
- B. In the alternative, award the equitable remedy of rescission on the contract based upon the unilateral mistake as to the terms and conditions of the contractual agreement by Plaintiff;
- C. In the alternative, award the equitable remedy of rescission of the contract based upon the parties mutual mistake as to the prior damage history;
- D. In the alternative, award the equitable remedy of rescission of the contract based upon the parties mutual mistake as to the car's working condition;
- E. In the alternative, award the equitable remedy of restitution for loss of value in the amount of the difference between the contract price paid for the Tribute (\$22,4998.21), plus costs and the amount the vehicle was worth (\$0.00);

- F. In the alternative, award damages based upon Plaintiff's proper rejection of the goods pursuant to MCL 440.2601 and MCL 440.2608;
- G. In the alternative, award damages based upon Plaintiff's proper revocation of the goods pursuant to MCL 440.2601 and MCL 440.2608;
- H. Award Plaintiff exemplary damages in an amount no less than five thousand dollars (\$5,000.00) for the intentional breach of contract by the Defendants;
- I. Award incidental damages pursuant to MCLA 440.2715, MCLA 440.2719 and all consequential damages incurred by Plaintiff in an amount no less than one thousand dollars (\$1,000.00);
- J. Award Plaintiff statutory interest, costs and attorney fees;
- K. Grant such other further relief as the Court deems just and equitable

**COUNT IV:
FRAUD AND MISREPRESENTATION**

- 44. Plaintiff repeats and re-alleges Paragraphs 1-43 of the Complaint as though set forth in their entirety.
- 45. Defendants Metro Mazda and Mazda made numerous representations regarding the good and merchantable condition of the Tribute.
- 46. The representations made by Defendants Metro Mazda and Mazda as to the condition of the vehicle and its history were false and, at the time of making the representations, they knew they were false or made them with reckless disregard as to their truth or falsity.
- 47. Defendants Metro Mazda and Mazda made the representations with the intention that they be relied upon by Plaintiff.
- 48. Plaintiff relied upon the representations by entering into a contract to purchase the Tribute.

49. As a result of Defendants' fraud and misrepresentations and their intentional and malicious conduct, Plaintiff has suffered injuries including, but not limited to, costs of repair and replacement, loss of use and enjoyment of the vehicle for extended periods of time, loss of use of monies due and owing, loss of expectation, and emotional distress and trauma.

WHEREFORE, Plaintiff requests that this Court:

- A. Enter judgment in favor of Plaintiff and against Defendants in an amount this Court determines is sufficient to compensate Plaintiff for her injuries;
- B. Award Plaintiff exemplary damages in an amount no less than \$5,000.00 for the intentional and malicious fraudulent acts and misrepresentations by Defendant;
- C. Award Plaintiff statutory interest, costs and attorney fees; and such other and further relief as this Court deems just and equitable.

**COUNT V:
REVOCATION OF ACCEPTANCE**

50. Plaintiff repeats and re-alleges Paragraphs 1-49 of the Complaint as though set forth in their entirety.
51. The condition of the Tribute at the time of sale substantially impairs the use and value of the subject vehicle to Plaintiff.
52. Plaintiff has previously notified Defendants of said non-conformities and Plaintiff's intent to revoke acceptance pursuant to MCL 440.2608 and demanded return of the purchase price of said vehicle.
53. Defendants have nevertheless refused to accept return of the subject vehicle and have refused to refund Plaintiff's purchase price.

54. Plaintiff hereby offers again to tender the vehicle to Defendants in exchange for the purchase price and such incidental and consequential damages permitted by law.

WHEREFORE, Plaintiff requests that this Court:

- A. Enter an Order requiring Defendants to accept return of the subject vehicle and refund Plaintiff's purchase price, together with incidental and consequential damages.
- B. Award Plaintiff statutory interest, costs and reasonable attorney fees;
- C. Award any other such relief this Court deems to be equitable and just.

**COUNT VI:
BREACH OF DUTY OF GOOD FAITH**

55. Plaintiff repeats and re-alleges Paragraphs 1-54 of the Complaint as though set forth in their entirety.
56. Defendants owed Plaintiff an implied duty to conduct the transaction of November 4, 2001 honestly and in full disclosure of the facts known to Defendants at that time, in good faith.
57. For the reasons discussed in greater detail above, Defendants did not uphold their duty of good faith to Plaintiff.
58. As the proximate result of Defendants breach of their duty of good faith Plaintiff has suffered injuries including, but not limited to, costs of repair and replacement, loss of use and enjoyment of the vehicle for extended periods of time, loss of use of monies due and owing, loss of expectation, and emotional distress and trauma.

WHEREFORE, Plaintiff requests that this Court:

- A. Enter an Order requiring Defendants to accept return of the subject vehicle and refund Plaintiff's purchase price, together with incidental and consequential damages;
- B. Award Plaintiff statutory interest, costs and reasonable attorney fees;
- C. Award any other such relief this Court deems to be equitable and just.

COUNT III: BREACH OF EXPRESS WARRANTY

59. Plaintiff repeats and re-alleges Paragraphs 1-58 of the Complaint as though set forth in their entirety.
60. Defendants Mazda and Metro made express warranties to Plaintiff that:
- A. The Vehicle contained no breaks, malfunctions or non-conformities;
 - B. Any malfunction or non-conformity in any component of the car would be repaired at no charge to Plaintiff;
 - C. The Vehicle was safe and reliable transportation.
61. Defendants Mazda and Metro breached the express warranties that the car contained no breaks, malfunctions or non-conformities.
62. Defendants Mazda and Metro breached the express warranties that any malfunction or non-conformity would be repaired reasonably at no charge to Plaintiff and the electrical condition has not been repaired.
63. Defendants Mazda and Metro breached the express warranty that the Vehicle was safe and reliable transportation.
64. Any and all disclaimers of warranties made by the Defendants are non-binding and unenforceable for the reason that they do not comport with the provisions set forth in MCL 440.2315 and MCL 440.2316.
65. The breach was a proximate cause of the damages incurred by Plaintiff, including lack of safe and reliable transportation, inability to enjoy her Vehicle and emotional distress and trauma.

WHEREFORE, Plaintiff respectfully requests that the court:

- A. Enter judgment in favor of Plaintiff and award damages for Breach of Warranty for the difference between the value of the Vehicle when purchased \$23,998.21 and its value with substantial defects, plus the loss of expectation damages and add-ons in an amount determined by this court;
- B. In the alternative, enter judgment in favor of Plaintiff and award damages in an amount the Court determines is sufficient to compensate Plaintiff for his injuries;
- C. Award Plaintiff incidental, consequential and foreseeable damages in an amount no less than five thousand dollars (\$5,000.00) for the damages suffered by Plaintiff as a result of the Breach;
- D. Award Plaintiff statutory interest, costs and attorney fees;
- E. Grant such other further relief as the Court deems just and equitable.

COUNT IV: BREACH OF IMPLIED WARRANTY

OF MERCHANTABILITY (MCLA 440.2314)

- 66. Plaintiff repeats and re-alleges Paragraphs 1-65 of the Complaint as though set forth in their entirety.
- 67. On or about May 11, 2001 Defendant Metro was a merchant with respect to the sale/lease of new and used Vehicles.
- 68. Defendants Mazda and Metro warranted that the Vehicle purchased by Plaintiff was merchantable and fit for the ordinary purpose for which the Vehicle was to be used.
- 69. Plaintiff's Vehicle never conformed to promises made at the time of sale and was not in merchantable condition when sold to Plaintiff.
- 70. Defendants breached the warranty of merchantability implied by law in the instant transaction.

71. As a result of the Breach of the Implied Warranty of Merchantability, Plaintiff has been damaged to the extent that she did not receive the vehicle contracted for, bought a vehicle worth less than contracted for, incurred out of pocket expenses, loss of expectation, received less than that bargained for in the contract and has had further defects.

WHEREFORE, Plaintiff respectfully request that the court:

- A. Enter a judgment in favor of Plaintiff, and award damages for Breach of Warranty for the difference between the value of the Vehicle when purchased \$23,998.21 and an amount this court determines it is worth with the substantial defects present, plus the loss of expectation damages and add-on;
- B. In the alternative, enter judgment in favor of Plaintiff in an amount the Court determines is sufficient to compensate Plaintiff for his injuries;
- C. Award Plaintiff incidental, consequential and foreseeable damages in an amount no less than five thousand dollars (\$5,000.00) for the damages suffered by Plaintiff as a result of the Breach
- D. Award Plaintiff statutory interest, costs and attorney fees;
- E. Grant such other further relief as the Court deems just and equitable.

**COUNT V: BREACH OF MAGNUSON-MOSS WARRANTY ACT
(15 USC 2301 et. seq.)**

72. Plaintiff repeats and re-alleges Paragraphs 1-71 of the Complaint as though set forth in their entirety.
73. The Vehicle is a consumer product, as that term is defined in sec. 2301(K) of Magnuson-Moss Act (hereinafter the "Act"), and was manufactured after July 4, 1975.
74. Defendants Mazda and Metro are warrantors as defined in sec. 2301(S) of the Act.

75. Plaintiff is a consumer as defined in sec. 2301(3).
76. The express and implied warranties provided by Defendants Mazda and Metro are warranties as defined by the Act (16 CFR 701.1 (c) and (d) respectively).
77. Any and all notifications regarding informal dispute settlement included in the warranty are illegitimate and do not comport with the specifications of the Act.
78. Plaintiff gave each Defendant opportunities to remedy the breaches of warranty as described in more particulars above, which Defendants did not.
79. Defendant Mazda has disregarded Plaintiff's numerous complaints and expressions of distress made orally and in writing stemming from the above detailed problems with the Vehicle.

WHEREFORE, Plaintiff respectfully request that the court:

- A. Enter a judgment in favor of Plaintiff under the Act, which allows for return and a refund of the full purchase price or a comparable replacement vehicle at Plaintiff's discretion;
- B. In the alternative, enter a judgment for Plaintiff for Breach of Warranty under the Act, and award damages for the difference between the value of the Vehicle when purchased \$23,998.21, and its actual value with the defects present as this court determines, plus costs and add-ons;
- C. Award Plaintiff incidental, consequential and foreseeable damages in an amount no less than five thousand dollars (\$5,000.00) for the damages suffered by Plaintiff as a result of the Breach;
- D. Award Plaintiff punitive damages in an amount no less than ten thousand dollars (\$10,000.00) for Defendant Metro's and Daimler-Mazda's unconscionable trade practices, repeated neglect of and disregard for customer satisfaction, continuing denial of safe and reliable transportation for Plaintiff over the past year;
- E. Award Plaintiff statutory interest, costs and attorney fees pursuant to the Act;

Grant such other further relief as the Court deems just and equitable.

**THE ABOVE IS BELIEVED TRUE BASED UPON KNOWLEDGE, INFORMATION
AND BELIEF.**

Respectfully submitted,



Charles M. Groh (P48062)
Attorney for Plaintiff

4-3-03

Dated

JURY DEMAND

Plaintiff, Shimul Bhurva, by and through counsel, Charles M. Groh, P.C., hereby
demands a trial by jury.



Charles Groh (P48062)
Attorney for Plaintiff

4-3-03

Dated

Dawid T. Jones 0031494
Attorney for Plaintiff

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

[REDACTED]

Cincinnati, Ohio [REDACTED]

Plaintiff,

vs.

**MAZDA MOTOR OF
AMERICA, INC.**
C/O Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, Ohio 44114

and

JAKE SWEENEY AUTOMOTIVE
d/b/a **JAKE SWEENEY MAZDA**
C/O Statutory Agent:
Joseph Grathwohl
33 West Kemper Road
Cincinnati, Ohio 45246

and

**FORD MOTOR CREDIT
COMPANY d/b/a MAZDA
AMERICAN CREDIT**
C/O Statutory Agent:
Ford Motor Credit Company
9009 Carothers Parkway
Franklin, Tennessee 37067

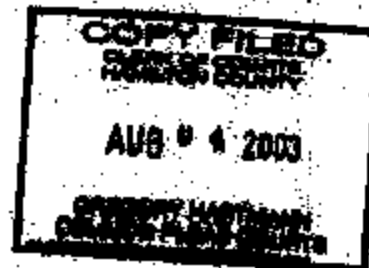
and

JOHN DOE ONE

Case No. **A0305808**

Judge

**COMPLAINT
JURY DEMAND ENDORSED
HEARON, INTERROGATORIES
AND DOCUMENT REQUESTS
ATTACHED HERETO**



(Correct Name Unknown)

and

JOHN DOE TWO
(Correct Name Unknown)

Defendants.

THE PARTIES

1. The Plaintiff, [REDACTED] is a citizen of Ohio and a resident of Hamilton County.
2. The Defendant, Mazda Motor Of America, Inc. (hereinafter Defendant Mazda), is a California corporation with its principal place of business located at 7755 Irvine Center Drive, Irvine, California 92618-2922. The Defendant Mazda is authorized and existing in the State of Ohio. The Defendant Mazda is engaged in the business of manufacturing and selling motor vehicles.
3. The Defendant, Jake Sweeney Automotive, Inc. dba Jake Sweeney Mazda (hereinafter Defendant Sweeney) is an Ohio corporation with its principal place of business located at 33 West Kemper Road in Hamilton County, Ohio. At all relevant times, the Defendant Sweeney was engaged in the business of buying, selling, repairing and servicing motor vehicles.
4. Upon information and belief, the Defendant, Ford Motor Credit Company dba Mazda American Credit (hereinafter Defendant Ford) is a foreign corporation with its principal place of business located at 9009 Carothers Parkway, Franklin, Tennessee 37067. At all relevant times, the Defendant Ford was engaged in the business of financing the purchase of motor vehicles.
5. The Defendants, John Doe One and John Doe Two, are persons, corporations, or other business entities, whose correct names are unknown to the Plaintiff. The Plaintiff could not

discover the correct names of Defendants, John Doe One and John Doe Two, with reasonable diligence.

**FIRST CAUSE OF ACTION
(Lemon Law)**

6. The Plaintiff restates the allegations contained in paragraphs one through five as if fully rewritten herein.

7. The Defendant Mazda and/or the Defendant John Doe One and/or the Defendant John Doe Two manufactured a 2001 Mazda Tribute VIN: 4F2YU09141KM71593 (hereinafter the vehicle). The vehicle was offered for sale by the Defendant Sweeney.

8. On or about October 12, 2001, the Plaintiff purchased the vehicle from the Defendants for a total sales price of \$22,299.84. See New Vehicle Department Retail Buyer's Order (attached hereto as Exhibit A) and Ohio Simple Interest Promissory Note And Security Agreement (attached hereto as Exhibit B).

9. The Defendants, Mazda and/or John Doe One and/or John Doe Two provided written express warranties applicable to the vehicle. A copy of the warranty is not attached to this Complaint because of its size, and because Defendants have copies of the warranty in their possession.

10. The Plaintiff has performed all conditions precedent to private enforcement of the Ohio Lemon Law.

11. During the period of one year following the date of original delivery and during the first eighteen thousand miles of operation, there has been at least one attempt to repair a nonconformity that results in a condition that is likely to cause death or serious bodily injury if the

vehicle is driven, and the nonconformity either continues to exist or recurs.

12. Defendants, Mazda and/or John Doe One and/or John Doe Two's failure to conform the vehicle to the express warranties, as set forth above, violates Ohio's "Lemon Law" as set forth in R.C. 1345.71 et seq.

13. As a direct and proximate result of the Defendants, Mazda and/or John Doe One and/or John Doe Two's violation of R.C. 1345.71 et seq., the Plaintiff suffered damages as follows: payment of the full purchase price; finance charges and interest; automobile insurance; loss of use of the vehicle; great frustration, aggravation and inconvenience; incidental and consequential damages; and other damages to be proven at trial.

**SECOND CAUSE OF ACTION
(Breach of Warranty)**

14. The Plaintiff restates the allegations contained in paragraphs one through thirteen as if fully rewritten herein.

15. The vehicle was sold with express warranties and an implied warranty of merchantability by the Defendants.

16. The vehicle was not fit for the ordinary purposes for which automobiles are used.

17. The vehicle is so defective that the warranties fail in their essential purpose.

18. Plaintiff has no confidence in the vehicle. The value of the vehicle to the Plaintiff has been substantially impaired due to its non-conformities, which undermine Plaintiff's faith in the integrity, reliability, and safety of the vehicle.

19. The vehicle does not conform with the warranties applicable to the vehicle, and the Defendants have thereby breached their warranties to the Plaintiff.

20. As a direct and proximate result of the Defendants' breach of warranty, the Plaintiff has suffered the damages hereinafore related.

**THIRD CAUSE OF ACTION
(Consumer Sales Practices Act)**

21. The Plaintiff restates the allegations contained in paragraphs one through twenty as if fully rewritten herein.

22. On or about July 24, 2002 and April 4, 2003, the Plaintiff brought the vehicle to the Defendant Sweeney's dealership for repairs because the vehicle had stalled, causing it to lose braking and steering. On July 24, 2002, the Defendant Sweeney attempted to repair the vehicle and failed to do so.

23. At all relevant times, the Plaintiff was a "consumer" as defined in R.C. 1345.01(D).

24. At all relevant times, the Defendant Sweeney was a "supplier" as defined in R.C. 1345.01(C).

25. Each of the Defendant Sweeney's attempts to repair the vehicle was a "consumer transaction" as defined in R.C. 1345.01(A).

26. On July 25, 2002, the Defendant Sweeney committed a deceptive act or practice in violation of a Substantive Rule of the Consumer Sales Practices Act, Ohio Adm. Code 109:4-3-13(C)(9), by representing to the Plaintiff that it had repaired her vehicle, when it had not.

27. On July 25, 2002, the Defendant Sweeney committed an unfair or deceptive act or practice, in violation of R.C. 1345.02(B)(2), by representing to the Plaintiff that its "repair and/or service" of her vehicle was of a particular standard, quality or grade, when it was not.

27. As a direct and proximate result of the Defendant Sweeney's violations of the Consumer Sales

Practices Act, the Plaintiff has been damaged as hereinbefore related.

**FOURTH CAUSE OF ACTION
(Liability of Assignee)**

28. The Plaintiff restates the allegations contained in paragraphs one through twenty-seven as if fully rewritten herein.

29. The Defendant Ford is the assignee of the Ohio Simple Interest Promissory Note And Security Agreement (attached hereto as Exhibit B), entered into between the Plaintiff and the Defendant Sweeney on October 12, 2001.

30. As the assignee of the promissory note arising out of this consumer transaction, the Defendant Ford is subject to all claims brought by the Plaintiff against the assignor of said promissory note, Defendant Sweeney. As such, the Plaintiff is entitled to recover from the Defendant Ford, any damages she would have been entitled to recover from the Defendant Sweeney, for Defendant Sweeney's conduct, as set forth above.


WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. On the First and Second Causes of Action, against the Defendants Mazda and/or John Doe One and/or John Doe Two; (1) for compensatory and statutory damages in an amount in excess of \$22,299.84; (2) for their attorney's fee and the costs of this action; (3) for prejudgment interest pursuant to R.C. 1343.03; and (4) for any and all other relief to which they may be entitled; and

B. On the Second and Third Causes of Action, against the Defendant Sweeney and the Defendant Ford: (1) for her actual damages to be determined at trial; (2) in addition to the remedies otherwise available to her for the same conduct under State or local law, for each

violation of the Consumer Sales Practices Act, her actual damages and three times her actual damages or \$200.00, whichever is greater, pursuant to R.C. 1345.09(B); (3) a declaratory judgment that Defendant Sweeney's practices, as set forth above, are unfair, deceptive, and unconscionable sales practices, and an injunction against continuation of these practices by Defendant Sweeney, pursuant to R.C. 1345.09(D); (4) for her reasonable attorney's fee pursuant to R.C. 1345.09(F); (5) for prejudgment interest pursuant to R.C. 1343.03; (6) for her court costs; and (7) for any and all other relief to which she may be entitled.

Respectfully submitted,



Donald T. Jones #0031494
Attorney for Plaintiff
914 Main Street
Suite 200
Cincinnati, Ohio 45202
513-241-5550
513-241-6649 fax

JURY DEMAND

The Plaintiff hereby demands a trial by jury on all issues herein except the following issues, which are reserved for determination by the Court: (1) declaratory judgment and injunction against the Defendant Sweeney to prevent future unfair, deceptive, and unconscionable conduct in violation of the Consumer Sales Practices Act; and (2) determination of a reasonable attorney's fee and costs in the event that Plaintiff prevails at the trial on the merits.

RECEIVED

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LEGAL
IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

[Redacted]

Plaintiffs.

v.

MAZDA MOTORS OF AMERICA, INC.,

Defendant.

Civil Action No.

JURY TRIAL DEMAND

0208241543 H

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COMPLAINT

COMES NOW, [Redacted] Plaintiffs in the above-styled action, by and through their undersigned attorneys, and hereby file this, their Complaint against Defendant, MAZDA MOTORS OF AMERICA, INC., and show this honorable Court as follows:

STATEMENT OF JURISDICTION AND VENUE

1. Plaintiffs, [Redacted] (hereafter "Plaintiffs") are individuals, who at all times relevant hereto have resided in the State of Georgia.
2. Defendant, MAZDA MOTORS OF AMERICA, INC. (hereafter "Manufacturer"), is a Georgia Corporation/foreign Corporation authorized to do business in the State of Georgia, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public through a system of authorized dealerships.
3. Manufacturer may be served through its registered agent: Takeshi Tanahira, 7755 Irvine Center Drive, Irvine, California 92618 Manufacturer is therefore subject to the jurisdiction of this Court.
4. Venue is proper in Fulton County, as their statutory agent is properly registered there.

STATEMENT OF FACTS

5. On or about July 1, 2002, Plaintiffs purchased a 2002 Mazda Tribute from Tom Nao Mazda (VIN # F2YU09182KM56581) (hereafter "vehicle") for valuable consideration.
6. Plaintiffs' vehicle is manufactured and distributed by Manufacturer, for valuable consideration.
7. The price of the vehicle, including registration charges, document fees and sales tax, but excluding other collateral charges, such as bank and finance charges, totaled \$36,250.00
8. In consideration for the purchase of the Vehicle, Manufacturer issued and provided Plaintiffs a written warranty, including three year (3) or thirty-six thousand (36,000) mile bumper-to-bumper coverage, as well as other warranties fully outlined in the Manufacturer's New Car Warranty booklet.
9. Plaintiffs took possession of the vehicle on July 1, 2002.
10. Shortly after taking possession of the vehicle, Plaintiffs experienced various defects, including, but not limited to, the following: (a) Engine.
11. Those defects violate the Manufacturer's warranty and the implied warranty of merchantability.
12. Plaintiffs afforded the Dealer a reasonable number of attempts to cure the defects.
13. The defects in Plaintiffs' vehicle remain uncorrected.
14. As a result of the numerous repair attempts and Defendant's inability to repair the vehicle, Plaintiffs justifiably lost confidence in the vehicle's safety and reliability.
15. The value of the vehicle has been substantially impaired to Plaintiffs.
16. The defects were not and could not have been reasonably discovered by Plaintiffs prior to their purchase of the vehicle.

02 DEC -2 AM 7:5
STATEMENTS OF
IN JUSTICE DE.

17. As a result of the defects and Defendant's inability to cure, Plaintiffs revoked acceptance of the vehicle pursuant to The Magnuson Moss Warranty Act and Georgia Statutory law.

18. At the time of revocation, the vehicle was in substantially the same condition as it was at the time of delivery except for damage caused by its own defects and ordinary wear and tear.

19. Defendant refused Plaintiffs' demand for revocation and the corresponding remedies to which Plaintiffs is entitled under the law.

20. Plaintiffs have been and will continue to be financially damaged due to Defendants' failure (a) to comply with the provisions of the written warranty and (b) to provide Plaintiffs with a merchantable vehicle.

COUNT I
BREACH OF WRITTEN WARRANTY

(Pursuant to the Uniform Commercial Code, the Magnuson-Moss Warranty Act, and Georgia Law)

21. Paragraphs 1 through 20, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.

22. Plaintiffs are a consumer, as contemplated by the Uniform Commercial Code, the Magnuson Moss Warranty Act.

23. Defendant is a warrantor, as contemplated by the UCC and the Magnuson-Moss Warranty Act.

24. Plaintiffs are entitled by the terms of the written warranty provided to them by Manufacturer/Dealer to enforce the obligations of said warranty.

25. Plaintiffs' was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).

26. The warranty provided that Defendant would repair or replace defective parts, or take other remedial action free of charge to Plaintiffs in the event that the Vehicle failed to meet the specifications set forth in written warranty.

27. The written warranty was the basis of the bargain with respect to the contract for sale executed and entered into between Plaintiffs and Defendant.

28. The purchase of Plaintiffs' Vehicle was induced by the written warranty, upon which Plaintiffs relied.

29. Plaintiffs have honored their obligations under the warranty.

30. Defendant breached their obligations under the written warranty, by failing to seasonably repair the vehicle's defects after being afforded a reasonable number of attempts to cure.

31. Plaintiffs notified Defendant of its breach within a reasonable period of time after discovering it.

32. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiffs have suffered damages, including, but not limited to, (a) loss of use; (b) diminished value; (c) lost wages; (d) aggravation; and (e) incidental and consequential damages (such as the cost of inspecting the vehicle, returning the goods for repair, insurance, tax and registration fees, etc.) In accordance with 15 U.S.C. §2310(d)(1) and the UCC, are entitled to bring suit for damages and other relief.

33. Plaintiffs requests attorney's fees and shows that they are entitled to fees and costs pursuant to the fee-shifting provision of the Magnuson Moss Warranty Act.

WHEREFORE, Plaintiffs prays that:

- a. The Complaint be filed and service be perfected as provided by law;
- b. Plaintiffs be awarded damages to which they are entitled under the Magnuson Moss

Warranty Act, the Uniform Commercial Code, and Georgia Law, including, but not limited to, (i) the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless the jury finds that special circumstances show proximate damages of a different amount; (ii) loss of use; (iii) lost wages; (iv) aggravation; and (v) any other incidental and consequential damages (such as the cost of inspecting the vehicle, returning the goods for repair, insurance, tax and registration fees, etc.)

- c. Plaintiffs be awarded reasonable attorneys' fees and costs; and
- d. Plaintiffs be awarded such other and further relief as the Court deems right and appropriate.

COUNT II BREACH OF IMPLIED WARRANTY

(Pursuant to the Uniform Commercial Code, the Magnuson-Moss Warranty Act, and Georgia Statutory Law)

- 34. Paragraphs 1 through 33, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.
- 35. The vehicle purchased by Plaintiffs are subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7), UCC Section 2-103(1)(d) and OCGA Section 11-2-314(2)(c).
- 36. Defendant is a person who contracts to sell goods. Defendant sell vehicles to purchasers, order component parts, and/or assemble them into final products. They are merchants with respect to the goods of the kind sold to Plaintiffs.
- 37. The parties' contract for sale as a matter of law implies that the vehicle is merchantable, because Defendant is a merchant with respect to such goods.
- 38. The implied warranty was breached by Defendant(s), because they sold Plaintiffs a vehicle of

insufficient quality. The vehicle is not fit for the ordinary purpose for which such goods are used.

39. The vehicle has failed to meet Plaintiffs' reasonable expectations.

40. The vehicle has failed to perform with reasonable safety, efficiency, and comfort.

41. The vehicle has not provided dependable transportation, and it has not been trouble-free.

42. The vehicle would not pass without objection in the trade under the contract description and does not conform to the promises or affirmations of fact made by Defendant.

43. Manufacturer has attempted, in contravention to the law, to disclaim the implied warranty of merchantability.

44. As a result of the breach of implied warranty by Defendant, Plaintiffs are without the reasonable value of the Vehicle.

45. As a result of the breach of implied warranty by Defendant, Plaintiffs have suffered and continue to suffer damages, including those specifically identified in the foregoing paragraphs.

WHEREFORE, Plaintiffs prays that:

- a. The Complaint be filed and service be perfected as provided by law;
- b. Plaintiffs be awarded damages to which they are entitled under the Magnuson Moss Warranty Act, the Uniform Commercial Code, and Georgia Law, including, but not limited to, (i) the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless the jury finds that special circumstances show proximate damages of a different amount; (ii) loss of use; (iii) lost wages; (iv) aggravation; and (e) any other incidental and consequential damages (such as the cost of inspecting the vehicle, returning the goods for repair, insurance, tax and registration fees, etc.)
- c. Plaintiffs be awarded reasonable attorneys' fees and costs; and

- d. Plaintiffs be awarded such other and further relief as the Court deems right and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE

(Pursuant to the Uniform Commercial Code, the Magnuson Moss Warranty Act, and Georgia Statutory Law)

46. Paragraphs 1 through 45, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.

47. Plaintiffs is a consumer who have been damaged by Defendant's failure to comply with the terms of its written and implied warranties, as contemplated by 15 U.S.C. Section 2310(d).

48. Defendant was obligated to repair the manufacturer's defects in Plaintiffs' vehicle, and defaulted on that obligation.

49. Plaintiffs' faith in the vehicle's integrity and reliability has been shaken irreparably.

50. Any defects cured by Defendant were not done seasonably.

51. Plaintiffs are entitled to elect either a refund for, or replacement without charge pursuant to Section 2304(A)(4) of the Magnuson-Moss Warranty Act.

52. Plaintiffs are also entitled to revoke acceptance of the vehicle pursuant to OCGA § 11-2-608 and OCGA §11-2-719(2).

53. Paragraphs 1 through 52, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.

54. Plaintiffs' new motor vehicle has certain non-conformities, which were reported during the lemon law rights period to the manufacturer, its agent, or the new motor vehicle dealer who sold the vehicle to Plaintiffs.

55. Plaintiffs afforded Defendant a reasonable number of opportunities to cure the defects, but Defendant failed to correct the nonconformities.

56. Plaintiffs notified Defendant by certified mail, return receipt requested, of the breach.

57. Defendant did not follow the procedure alluded to in 10-1-784(a)(1), which constitutes a per se violation of Code Section 10-1-393.

58. The vehicle remains in a defective condition.

59. Plaintiffs have not been provided with a replacement vehicle or a repurchase.

WHEREFORE, Plaintiffs prays that:

- a. The Complaint be filed and service be perfected as provided by law;
- b. Plaintiffs be awarded damages to which they are entitled under the Magnuson Moss Warranty Act, the UCC and OCGA OCGA § 11-2-608 and OCGA §11-2-719(2);
- c. Plaintiffs be awarded reasonable attorneys' fees and costs; and
- d. Plaintiffs be awarded such other and further relief as the Court deems right and appropriate.

Pursuant to O.C.G.A. 15-12-122(c)(2), Plaintiffs requests that the present case be tried by a jury of twelve.

Submitted this 14 day of November 2002



E. Scott Fortas, Esq.
Georgia Bar No. 269980

Attorney for Plaintiffs
KROHN & MOSS
455 E. Paces Ferry Road, NE

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CLERK OF SUPERIOR COURT
FOR JUSTICE CLERK

Suite 218
Atlanta, Georgia 30305
(404) 869-4280

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SHERIFF'S DEPT
COR JUSTICE CENTER

S1036M1 OPEN CUSTOMER CONTACT INQUIRY 12/04/02 12:04:50 CRPP024
 P277
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 Md1/Yr...: TRB / 02 Mileage: 2500 Dely Dt: 07/01/02 Trns: A Srv Agrat:
 Last Nm.: [REDACTED] First Nm: [REDACTED] R/T0.....:
 Mid1 Nm.: [REDACTED] Address: [REDACTED]
 Adr2: [REDACTED] City....: ALPHARETTA
 State...: GA Zip: [REDACTED] Day Ph.: - - Ext.:
 Eve Ph.: 770 - 442 - 1965 Brand.: N DSA...: Y Assigned Rgn: SE R/A: N
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 CST STS THAT VEN STALLED WHILE DRIVING ABOUT 45 MPH ON STRAIGHT FLAT ROAD.
 CST STS DLR ADV CAN NOT RESOLVE FOR A MONTH BECAUSE MAZDA WAITING ON SOFTWARE
 UPDATE.
 **CST STS IF HAS TO HAVE A RENTAL, ING FOR COMPARABLE RENTAL IF NEEDED.

Region: MA Opened by: CRPC398 Opened Dt: 08/02/02 Closed Dt: 08/12/02

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PF3=EXIT PF5=RFH PF6=ZIP PF9=FLP PF10=CLS PF11=SNT PF12=RETN PF15=360

Michael Power, Esquire
Identification No. 46574
Power & Associates, P.C.
117 Wilmington Pike
Glen Mills, PA 19342
(610) 558-6220

Attorney for Plaintiff

[REDACTED]
GIBSONIA, PA [REDACTED]

v.

MAZDA MOTOR OF AMERICA
865 CENTENNIAL AVENUE
PISCATAWAY, NJ 08854

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
PENNSYLVANIA

MARCH 2003

TERM
002085
NO.
ARBITRATION CASE

COMPLAINT
CODE:

1. Plaintiff, [REDACTED] is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, residing at 1220 Woodhill Drive, Pittsburgh, PA 15044.

2. Defendant, Mazda Motor of America, is a business that can be served at 865 Centennial Avenue, Piscataway, NJ 08854.

3. Venue is proper in Philadelphia County as the defendant conducts extensive business in and a certain number of transactions and occurrences giving rise to this action are in Philadelphia County.

BACKGROUND

4. On or about May 8, 2002 Plaintiff purchased a used 2001 Mazda Tribute, manufactured and warranted by the Defendant, bearing

the Vehicle Identification Number 4F2CU08101km70226. The vehicle was purchased and registered in the Commonwealth of Pennsylvania.

5. The purchase price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges but, excluding other collateral charges not specified, yet recoverable under the Lemon Law, totaled more than \$34,846.80. A true and correct copy of the Retail Installment Contract/Purchase papers is attached hereto, made a part hereof and marked Exhibit "A".

6. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant and its authorized dealer, the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

7. At the time the above referenced vehicle was purchased, and at all pertinent times thereafter, the manufacturer's original warranties and/or extended warranty were in effect including a three (3) year or thirty-six thousand (36,000) mile warranty, as well as other standard warranties fully outlined in the warranty booklet, delivered at time of sale.

8. On or about May 8, 2002 Plaintiff took possession of the above mentioned vehicle and experienced non-conformities which substantially impair the use, value and/or safety of the vehicle.

9. The non-conformities described violate the express written warranties issued to Plaintiff by Defendant.

10. Plaintiff avers her vehicle has been subject to repair on numerous occasions for the same non-conformities and the non-

conformities remain uncorrected.

11. In addition, the above vehicle has, or will be in the future, out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

12. Plaintiff has delivered the non-conforming vehicle to an authorized service and repair facility of the manufacturer on numerous occasions. After a reasonable number of attempts, the manufacturer was unable to repair the non-conformities.

13. The first warranty repair attempt is believed to have occurred on or before June 10, 2002, when the vehicle's odometer showed 7,020 miles. On that date, repair attempts were made to the vehicle's defective engine. A true and correct copy of the repair documents is attached hereto, made a part hereof and marked Exhibit "B".

14. The second warranty repair attempt is believed to have occurred on or before June 17, 2002. On that date, repair attempts were made to the vehicle's defective transmission. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "C".

15. The third warranty repair attempt is believed to have occurred on or before July 12, 2002, when the vehicle's odometer showed 9,071 miles. On that date, repair attempts were made to the vehicle's defective transmission. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "D".

16. The fourth warranty repair attempt is believed to have occurred on or before August 2, 2002, when the vehicle's odometer showed 10,912 miles. On that date, repair attempts were made to the vehicle's defective engine and transmission. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "E".

17. The vehicle continues to exhibit defects and non-conformities which substantially impair its use, value and/or safety. The vehicle has been returned to the dealership on numerous additional occasions for complaints regarding the same type of nonconformities referenced above as well as others. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "F".

18. In addition, Plaintiff avers her vehicle has been subject to additional repair attempts for defects and/or non-conformities and/or conditions for which the dealer did not maintain records.

19. Plaintiff has been, and will continue to be, financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with its warranty obligations.

20. Plaintiff further avers she has resorted to Defendant's arbitration process prior to filing the within Complaint.

21. Plaintiff avers Defendant's Dispute Resolution Program has not been found in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

22. Plaintiff seeks relief for losses due to the non-

conformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

COURT I
MAGNISON-MOSS CLAIM

23. Plaintiff hereby incorporates paragraphs 1 through 22 by reference as if set forth at length herein.

24. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

25. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

26. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

27. Defendant's authorized service facility has made attempts on several occasions to comply with the terms of its express warranties, however, such repair attempts have been ineffective.

28. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

29. Title 15 U.S.C. Section 230 provides:

If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and

expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

30. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all reasonable attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendant in an amount equal to the purchase price of the subject vehicle, plus all available collateral charges and attorney fees in an amount not to exceed \$50,000.00.

COUNT II
BREACH OF WARRANTY

31. Plaintiff hereby incorporates paragraphs 1 through 30 by reference as if set forth at length herein.

32. The defects and non-conformities existing within the vehicle constitute a breach of contractual and statutory obligations of Defendant, including but not limited to the following:

- a. Express Warranty;
- b. Implied Warranty Of Merchantability as found in the Pennsylvania Uniform Commercial Code;
- c. Implied Warranty Of Fitness For A Particular Purpose as found in the Pennsylvania Uniform Commercial Code.

33. The purposes for which Plaintiff purchased this vehicle

include but are not limited to her personal, family and household use.

34. At the time of the purchase and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.

35. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

36. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

37. Such damages include, but are not limited to, the price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known in an amount not to exceed \$50,000.00.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendant, in an amount equal to the purchase price of the subject vehicle, plus all available collateral charges and attorney fees not to exceed \$50,000.00.

COUNT III

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION CLAIM

38. Plaintiff hereby incorporate paragraphs 1 through 37 by reference as if set forth at length herein.

39. The Unfair Trade Practices and Consumer Protection Law defines unfair methods of competition to include the following:

(xiv). . . Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

40. Plaintiff believes, and therefore avers, the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranties constitutes an unfair method of competition.

41. Section 201-9.2(a) of the Unfair Trade Practices and Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral charges and attorney fees in an amount not to exceed \$50,000.00.

POWER & ASSOCIATES, P.C.

By: _____

MICHAEL POWER, Esquire
Attorney for Plaintiff
117 Wilmington Pike
Suite 200
Glen Mills, PA 19342

DELCO MOTORS, INC.

13700 Berry Highway - Rt. 10

Box 489

WILKESBORO, PA 18380-0489

PHONE: (717) 840-1000 • FAX: (717) 840-1035

Best Ribbon Service



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Professional Staff

NAME: DANIEL PRADY 74	DATE: 10/20/00	PROPERTY: DELCO	QUANTITY: 1
MODEL: 0802	YEAR: 1999	MAKE: DELCO	TYPE: 1
VIN: 4P2C080101E 000000		DESCRIPTION: DELCO	REMARKS:
TYPE:	DATE:	REMARKS:	
NO: 7021			

INSPECTION		
	STATUS	TIME
RIGHT FRONT	/	32
LEFT FRONT	/	32
RIGHT REAR	/	32
LEFT REAR	/	32

PROPERTY
6

Thank You!

Craig Thor Kimmel, Esquire
Identification No. 57108
Amy D. Cox, Esquire
Identification No. 85682
KIMMEL & SILVERMAN, P.C.
30 East Butler Place
Ambler, PA 19002
(215) 548-8888

ATTORNEYS FOR PLAINTIFF

THIS IS AN ARBITRATION
MATTER. ASSESSMENT OF
DAMAGES HEARING IS
REQUESTED.

██████████
Harleysville, PA ██████████

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v.

MAZDA MOTOR AMERICA
7755 Irvine Center Drive
P.O. Box 19734
Irvine, California 92713-9734

CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiff, ██████████, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, 310 Hamilton Drive, Harleysville, PA 19428.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about October 15, 2001, Plaintiff purchased a new 2002 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2CU08132KM03928.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than 30176.60. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. North Penn Mazda is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about October 15, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S. §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

If a manufacturer fails to repair correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchaser's use of the vehicle, not exceeding \$.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

- (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
- (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: stalling

condition; windshield wipers; engine; throttle body; air flow sensor and air control valve. True and correct copies of all invoices in Plaintiff possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW

43. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

(vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;

(xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;

(xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;

(xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of Fifty Thousand Dollars (\$50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: 

CRAIG THOR KIMMEL, ESQUIRE

Attorney for Plaintiff


30 East Butler Pike

Ambler, Pennsylvania 19002

(215) 540-8888

VERIFICATION

Craig Thor Kimmel, states that he is the attorney for the Plaintiff herein; that he is acquainted with the facts set forth in the foregoing Complaint; that same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the Penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsifications to authorities.



CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

St. Clairsville, Ohio

Plaintiff,

vs.

MAZDA MOTORS OF AMERICA, INC.
c/o CT Corporation Systems
1300 East Ninth Street
Cleveland, Ohio 44114

RICART PROPERTIES, INC.
c/o CWS Agency Corporation
65 East State Street, Suite 1000
Columbus, Ohio 43215

Defendants.

03CVH09 10490

No.

JURY DEMAND ENDORSED HEREON

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
03 SEP 24 PM 2 52
CLERK OF COURTS-CV

COMPLAINT

NOW COMES the Plaintiff, [REDACTED], by and through her attorneys, KROHN & MOSS, LTD., and for her complaint against Defendants, MAZDA MOTORS OF AMERICA, INC. and RICART PROPERTIES, INC., alleges and affirmatively states as follows:

PARTIES

1. Plaintiff, [REDACTED] ("Plaintiff"), is an individual who was at all times relevant hereto residing in the State of Ohio.
2. Defendant, MAZDA MOTORS OF AMERICA, INC. ("Manufacturer"), is a foreign corporation authorized to do business in the State of Ohio, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including Ricart Properties, Inc.

("Seller"). Manufacturer does business in all counties of the State of Ohio including Franklin County.

3. Defendant, RICART PROPERTIES, INC. ("Seller"), is a business corporation qualified to do business and regularly conducting business in the State of Ohio, and is a corporation of the State of Ohio.

BACKGROUND

4. On or about May 25, 2002, Plaintiff purchased from Seller a 2002 Mazda Tribute ("Tribute"), manufactured and/or distributed by Manufacturer, Vehicle Identification Number 4F2YU08172KM34881, as reflected in the document(s) attached hereto as Exhibit 1.

5. The price of the Tribute, including certain collateral charges, such as registration charges, document fees, and sales tax, but excluding finance charges, totaled more than \$34,678.64.

6. Plaintiff avers that as a result of ineffective repair attempts made by Manufacturer and/or its agent(s), the Tribute cannot be utilized for personal, family and household use as was intended by Plaintiff at the time of its acquisition.

7. In consideration for the purchase of the Tribute, Manufacturer issued and supplied to Plaintiff several written warranties, including a three (3) year or thirty-six thousand (36,000) mile "bumper-to-bumper" warranty. In addition, Seller entered into a four (4) year or forty-eight thousand (48,000) mile extended warranty/service contract with Plaintiff.

8. On or about May 25, 2002, Plaintiff took possession of the Tribute and shortly thereafter experienced the various defects listed below which substantially impair the use, value and/or safety of the Tribute.

9. The nonconformities described below violate the express written warranties issued to Plaintiff by Manufacturer.

10. Plaintiff has delivered the Tribute to Manufacturer's authorized servicing dealerships on numerous occasions.

11. Plaintiff has brought the Tribute to Seller and/or an authorized service dealer of Manufacturer for attempted repairs to various defects and nonconformities, including but not limited to:

- a. Defective engine as evidenced by the vehicle stalling and running roughly, the illumination of the coolant light, and the idle falling quickly when decelerating;
- b. Defective electrical system as evidenced by inoperable speakers;
- c. Defective cruise control;
- d. Defective rear hatch;
- e. Defective doors as evidenced by loose molding and a latch sticking; and
- f. Any additional defects and/or non-conformities as contained in the repair records of Manufacturer's authorized dealerships.

12. Plaintiff has provided Manufacturer sufficient opportunity to repair and/or replace the Tribute pursuant to its written warranties.

13. After a reasonable number of attempts to cure the defects in Plaintiff's Tribute, the Manufacturer and its authorized servicing dealerships have been unable and/or have failed to repair the nonconformities or replace the Tribute, as provided in the Manufacturer's written warranties.

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

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

16. As a result of these defects, Plaintiff revoked her acceptance of the Tribute in writing on August 26, 2003. A copy of the revocation of acceptance letter is attached and labeled as Plaintiff's Exhibit 2.

17. At the time of revocation, the Tribute was in substantially the same condition as at delivery except for damage caused by its own nonconformities and ordinary wear and tear.

18. Manufacturer and Seller have refused Plaintiff's revocation of acceptance, and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation.

19. The Tribute remains in a defective and unmerchantable condition, and continues to exhibit some or all of the above mentioned defects that substantially impair its use, value and/or safety.

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

COUNT I
BREACH OF WRITTEN WARRANTY PURSUANT TO
THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

21. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

22. Plaintiff is a lessee/purchaser of a consumer product who received the Tribute during the duration of a written warranty period applicable to the Tribute 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. Seller is an authorized dealership and agent of Manufacturer, designated to perform repairs on vehicles pursuant to Manufacturer's automobile warranties.

25. Plaintiff's purchase of the Tribute was accompanied by written factory warranties covering any nonconformities or defects in material or workmanship, undertaking in writing to refund, repair, replace, or take other remedial action free of charge to Plaintiff with respect to the Tribute in the event that the Tribute failed to meet the specifications set forth in the warranties.

26. Said warranties were the basis of the bargain of the contract between the Plaintiff and Manufacturer for the sale of the Tribute to Plaintiff.

27. Said purchase of Plaintiff's Tribute was induced by, and Plaintiff relied upon, these written warranties.

28. Plaintiff has met all of the obligations and preconditions as provided in the written warranties.

29. As a direct and proximate result of Manufacturer's failure to comply with its express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief, including attorneys' fees incurred in connection with this action.

WHEREFORE, Plaintiff, [REDACTED] prays for judgment against Manufacturer as follows:

- a. Return of all monies paid or diminution in value of the Tribute, and all incidental and consequential damages incurred, including, but not limited to, all finance charges incurred;
- b. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff, and
- c. Such other and further relief that this Court deems just and appropriate.

COINT II
BREACH OF IMPLIED WARRANTY PURSUANT TO
THE MAGNUSON-SPSS WARRANTY ACT
MANUFACTURER

30. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

31. The Tribute purchased by Plaintiff was subject to an implied warranty of merchantability as defined in 15 U.S.C. § 2301(7), running from the Manufacturer to the Plaintiff herein.

32. Manufacturer is a supplier of consumer goods as a "person" engaged in the business of making a consumer product directly available to Plaintiff.

33. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer.

34. Plaintiff's Tribute 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 the Tribute was intended.

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

36. As a result of the breaches of implied warranty by Manufacturer, Plaintiff is without the reasonable value of the Tribute and Plaintiff has suffered and continues to suffer various damages, including attorneys' fees incurred in connection with this action.

WHEREFORE, Plaintiff, [REDACTED], prays for judgment against

Manufacturer as follows:

- a. Return of all monies paid or diminution in value of the Tribute, and all incidental and consequential damages incurred, including, but not limited to, all finance charges incurred;
- b. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff; and
- c. Such other and further relief that this Court deems just and appropriate.

**COUNT III
OHIO MOTOR VEHICLES WITH
WARRANTY NON CONFORMING TO FACT
MANUFACTURER**

37. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

38. Pursuant to O.R.C. §1345.72, the Tribute does not conform to the express warranties issued to Plaintiff by Manufacturer.

39. Pursuant to O.R.C. §1345.72(B), Plaintiff is entitled to a refund of the full purchase price of the vehicle, including all collateral charges and finance charges, and/or a replacement vehicle, plus all attorney fees and costs.

WHEREFORE, Plaintiff, [REDACTED], prays for judgment against

Manufacturer as follows:

- a. Return of the Tribute's purchase price and all incidental and consequential damages incurred by Plaintiff;
- b. Return of all finance charges incurred by Plaintiff for the Tribute;
- c. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff; and
- d. Such other and further relief that this Court deems just and appropriate.

**COUNT IV
BREACH OF IMPLIED WARRANTY
PURSUANT TO THE REASONABLE EXPECTATIONS WARRANTY ACT
SELLER**

41. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

42. The Tribute purchased by Plaintiff was subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7) running from the Seller to Plaintiff herein.

43. Seller is a supplier of consumer goods as a "person" engaged in the business of making a consumer product directly available to Plaintiff.

44. Seller is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Seller has entered into a contract in writing relating to the maintenance or repair of a motor vehicle within ninety (90) days of a purchase.

45. Plaintiff's Tribute 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 the Tribute was intended.

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

47. As a result of the breaches of implied warranty by Seller, Plaintiff is without the reasonable value of the Tribute and Plaintiff has suffered and continues to suffer various damages, including attorneys' fees incurred in connection with this action.

WHEREFORE, Plaintiff [REDACTED] prays for judgment against Seller as follows:

- a. An order sustaining Plaintiff's revocation of acceptance pursuant to Ohio Revised Code Section 1302.66 or diminution in value of the Tribute;
- b. Return of the Tribute's purchase price and all incidental and consequential damages incurred by Plaintiff;
- c. Return of all finance charges incurred by Plaintiff for the Tribute;
- d. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff; and
- e. Such other and further relief that this Court deems just and appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues in this action, except for any issues relating to:

1. The amount of attorneys' fees and litigation costs to be awarded should Plaintiff prevail in this action;
2. The amounts to be paid to Plaintiff and to the lender who financed the purchase of the subject vehicle, pursuant to Ohio Rev. Code § 1345.72, should Plaintiff prevail under the Ohio Motor Vehicles with Warranty Nonconformities Act; and
3. The amounts to be paid to Plaintiff and to the lender who financed the purchase of the subject vehicle, pursuant to Ohio Rev. Code § 1302.66, should Plaintiff prevail on the claim for revocation of acceptance.

1 LAW OFFICES OF WILLIAM R. MCGEE
2 William R. McGee (State Bar No. 122153)
3 18855 West Bernardo Drive, SU. 350
4 San Diego, California 92127
5 (658) 485-0332; Fax: (658) 485-0332

6 ROSNER, LAW & MANSFIELD
7 Helen D. Rosner (State Bar No. 108740)
8 Allen M. Mansfield (State Bar No. 125908)
9 10086 Carroll Canyon Rd., 1st Floor
10 San Diego, CA 92131
11 (658) 948-1008; Fax: (658) 948-1150

12 Attorneys for Plaintiffs

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 25 2003

ALAN BLATNIK, Clerk of the Court

BY: NESTOR PERAZA, DEPUTY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF ORANGE

BY FAX

15 [REDACTED] both individually and on
16 behalf of the general public,

17 Plaintiff,

18 v.

19 MAZDA MOTORS of AMERICA, INC.,
20 and DOES 1 through 10, inclusive,

21 Defendants.

Case No. **03CC00553**

COMPLAINT FOR RESTITUTION,
INJUNCTIVE RELIEF AND DAMAGES

(VIOLATION OF THE SONG-BEVERLY
CONSUMER WARRANTY ACT AND
CAL. BUS. & PROF. CODE SECTIONS
17200 ET SEQ.)

JUDGE STEPHEN J. SUNDVOLD
DEPT. CX108

22 Plaintiff, [REDACTED] alleges as follows, all on information and belief except
23 where specifically identified:

24 **FIRST CAUSE OF ACTION - VIOLATION OF THE SONG-BEVERLY CONSUMER**
25 **WARRANTY ACT**

26 1. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 defendant MAZDA MOTORS OF AMERICA, INC. is and was a corporation and registered
28 to do business in the State of California and doing business in the County of San
Francisco. Plaintiff resided in the County of San Francisco at the time the lease for the
subject consumer good was entered into.

///

COMPLAINT

Filed By
One Legal

1 2. The true names and capacities of Does 1 through 10, inclusive, are not
2 known to plaintiff at this time and therefore plaintiff sues those defendants by such fictitious
3 names. Plaintiff will amend this complaint to allege the true names and capacities of such
4 defendants when they are ascertained.

5 3. Each of the defendants in this case acted as the principal, agent, employee
6 or other authorized representative in relation to the other; all defendants acted at all times
7 mentioned in this complaint within the course and scope of their respective authority and
8 with the full knowledge and consent of the other defendants. Furthermore, plaintiff is
9 informed and believes and thereon alleges that all acts of corporate employees as
10 hereinafter alleged were authorized or ratified by an officer, director or managing agent of
11 the corporate employer.

12 4. On, or about April 29, 2002, plaintiff leased a new 2002 Mazda Tribute
13 automobile, vehicle identification number 4F2YU08152XM19570.

14 5. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter the "Act")
15 Civil Code sections 1790 et seq., the aforementioned vehicle constitutes a "consumer
16 good" and a "new motor vehicle."

17 6. Plaintiff is a "buyer" of consumer goods under the Act.

18 7. Defendant MAZDA MOTORS OF AMERICA, INC. is a "manufacturer" and/or
19 "distributor" under the Act.

20 8. Defendant MAZDA MOTORS OF AMERICA, INC. provided an "express
21 warranty" to plaintiff under the Act.

22 9. The sale of the aforementioned vehicle to plaintiff was accompanied by an
23 implied warranty that the vehicle was merchantable. The sale of the aforesaid vehicle to
24 plaintiff was also accompanied by defendant MAZDA MOTORS OF AMERICA, INC.'s
25 implied warranty of fitness.

26 10. The subject vehicle has suffered from a serious defect(s) and
27 nonconformity(s) to warranty which causes its engine to suddenly and without warning
28 hesitate, die and/or stall as the vehicle is being driven. The foregoing defect(s) and

1 nonconformity(s) to warranty manifested themselves within the applicable express warranty
2 period.

3 11. Plaintiff delivered the aforementioned vehicle to an authorized MAZDA
4 MOTORS OF AMERICA, INC. service and repair facility for repair of the aforementioned
5 nonconformity(s) on numerous occasions.

6 12. Defendant has been unable and/or has refused to conform plaintiff's vehicle
7 to the applicable express and implied warranties after a reasonable number of attempts.
8 Furthermore, the aforementioned nonconformity(s) substantially impairs the use, value
9 and/or safety of the subject vehicle to plaintiff.

10 13. Notwithstanding plaintiff's entitlement, defendant refused to comply with
11 plaintiff's demand for restitution under the Act.

12 14. By failure of defendant to remedy the defects as alleged above within a
13 reasonable number of attempts, or to issue a refund or replacement, defendant is in
14 breach of its obligations under the Act.

15 15. Plaintiff is entitled to justifiably revoke acceptance of the aforementioned
16 vehicle under the Act.

17 16. Under the Act, plaintiff is entitled to reimbursement of the purchase price paid
18 for the subject vehicle less that amount directly attributable to use by the plaintiff prior to
19 discovery of the nonconformity(s).

20 17. Plaintiff is entitled to all incidental, consequential and general damages
21 resulting from defendant's failure to comply with its obligations under the Act.

22 18. Plaintiff is entitled under the Act to recover as part of the judgment a sum
23 equal to the aggregate amount of costs and expenses, including attorney's fees,
24 reasonably incurred in connection with the commencement and prosecution of this action.

25 19. Plaintiff is entitled in addition to the amounts recovered, a civil penalty of up
26 to two times the amount of actual damages in that defendant has willfully failed to comply
27 with its responsibilities under the Act.

28 ///

1 **SECOND CAUSE OF ACTION – UNLAWFUL, UNFAIR AND FRAUDULENT**
2 **BUSINESS ACTS AND PRACTICES**

3
4 20 Plaintiff incorporates by reference the allegations in Paragraphs 1 through
5 19, inclusive, of this Complaint. This cause of action is brought by plaintiff individually and
6 on behalf of the general public.

7 21. Defendants' acts, omissions, misrepresentations, practices and non-
8 disclosures as set forth above and herein constituted unlawful, unfair and fraudulent
9 business acts and practices within the meaning of California Business & Professions Code
10 §§17200, et seq.

11 22. Defendants have engaged in "unlawful" business acts and practices by the
12 following: (1) improperly selling plaintiff's vehicle, and similar vehicles, in California, that
13 contain a similar defect as described above, i.e., an unexplained and unresolved stalling
14 that may occur without warning when the vehicle is traveling in excess of 30 miles per
15 hour; (2) improperly failing to provide restitution or refunds for such vehicles or repairs
16 thereto when demand therefor is made; (3) unjustifiably refusing to perform repairs on such
17 vehicles that actually resolve such defects; (4) continuing to sell or service such vehicles
18 without disclosing the material facts as set forth herein to all appropriate persons and
19 agencies; and (5) concealing from consumers that vehicles had been sold to them needed
20 material repairs before they could be safely driven. These policies, acts and practices
21 violated, *inter alia*, California Civil Code §1700, the Consumers Legal Remedies Act,
22 California Civil Code §§1750, et seq., The Song-Beverly Consumer Warranty Act,
23 California Civil Code §§1790 et seq., California Penal Code §367 and California Business
24 and Professions Code §17200 et seq, as well as constituted wrongful denial of warranty
25 coverage and breach of the express and implied warranties and the implied covenant of
26 good faith and fair dealing. Plaintiff reserves the right to identify additional violations of the
27 law as circumstances warrant. Accordingly, defendants have violated Business &
28 Professions Code Section 17200's proscription against engaging in an "unlawful" business

1 act or practice.

2 46. Defendants have also engaged in a "fraudulent" business act or practice in
3 that the representations and omissions of material fact regarding the failure to advise
4 consumers and all other appropriate persons of the defects contained in said vehicles have
5 a tendency and likelihood to deceive both purchasers or lessees of these vehicles and the
6 general public as to the quality and safety of the vehicles being purchased or leased.

7 47. Defendants have also engaged in an "unfair" business act or practice in that
8 the justification for selling or leasing vehicles that contain material defects based on false
9 representations or omissions of material fact is outweighed by the gravity of the resulting
10 harm, particularly considering the available alternatives, and offends public policy, is
11 immoral, unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

12 48. The above-described unlawful, fraudulent, or unfair business acts and
13 practices conducted by defendants continue to this day and present a threat to plaintiff
14 and/or the general public in that defendants have failed to publicly acknowledge the
15 wrongfulness of their actions, repair or replace such vehicles and provide the full equitable
16 injunctive and monetary relief required by the statute.

17 49. Pursuant to California Business & Professions Code Section 17203, plaintiff,
18 both individually and on behalf of the general public, seeks an order of this Court requiring
19 defendants to immediately cease such acts of unfair competition and enjoining defendants
20 from continuing to conduct business via the unlawful, fraudulent, or unfair business acts
21 and practices set forth in this Complaint and from failing to fully disclose the true nature of
22 their misrepresentations, and ordering defendants to engage in a corrective campaign that
23 remedies this defect and discloses its existence to consumers. Plaintiff additionally
24 requests an order from the Court requiring that defendants provide complete equitable
25 monetary relief so as to prevent defendants from benefiting from practices that constitutes
26 unfair competition or the use or employment of any monies resulting from the sale or lease
27 of these vehicles, including requiring the payment of restitution of any monies as may be
28 necessary to restore to plaintiff and any member of the general public with a vested interest

1 therein any money or property which may have been acquired by defendant either directly
2 or indirectly by means of such acts of unfair competition, plus appropriate fees and costs
3 as provided for under appropriate statutory and legal authority.

4 WHEREFORE, plaintiff prays for judgment against defendant as follows:

- 5 1. For restitution and other equitable monetary relief;
- 6 2. For incidental and consequential damages according to proof at time of trial;
- 7 3. That such actual damages be doubled and awarded to plaintiff as a civil
8 penalty;
- 9 4. For appropriate injunctive relief;
- 10 4. For prejudgment interest;
- 11 5. For attorney's fees incurred herein according to proof;
- 12 6. For costs of suit incurred herein; and
- 13 7. For such other and further relief as the Court deems just and proper.

14 DATED: November 25, 2003

LAW OFFICES OF WILLIAM R. MCGEE
Attorneys for Plaintiff

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17 By: 
18 WILLIAM R. MCGEE
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GORBERG, GORBERG AND ZUBER

By: **DAVID J. GORBERG**

Attorney for Plaintiff

Identification No. 53084

1234 Market Street

Suite 2040

Philadelphia, PA 19107

(215) 563-7210

Bethel Park, PA _____

vs.

MAZDA NORTH AMERICA, INC.

7755 Irvine Center Drive

Box 19734

Irvine, CA 92713

: COURT OF COMMON PLEAS

: PHILADELPHIA COUNTY

: TERM, 2002

: NO.

COMPLAINT

1. Plaintiff, _____ is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, residing at 5590 Beverly Court, Bethel Park, PA 15102.
2. Defendant, Mazda North America, Inc., is a business corporation qualified to do business and regularly conducts business in the Commonwealth of Pennsylvania with its legal residence and principal place of business at 7755 Irvine Center Drive, Box 19734, Irvine, CA 92713.

BACKGROUND

3. Plaintiff incorporates by reference paragraphs 1 and 2 as fully as if set forth here length.

4. On or about March 10, 2001, Plaintiff purchased a 2001 Mazda Tribute manufactured and warranted by Defendant bearing the Vehicle Identification Number 4F2CU08121KM31685. The vehicle was purchased and registered in the Commonwealth of Pennsylvania.

5. The price of the vehicle, including registration charges, document fees, sales tax, but, excluding other collateral charges not specified, totaled more than \$27,674.64.

6. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer, the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

7. In consideration of the purchase of the above vehicle, Defendant, issued to Plaintiff several warranties, fully outlined in the warranty booklet.

8. On or about March 10, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities, which substantially impaired the use, value and/or safety of the vehicle.

9. Said nonconformities consisted of, but was not limited to, defective engine and/or electrical system and defective steering. Copies of repair receipts are attached hereto and marked as Exhibit "A".

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for

the same nonconformity, and the nonconformity remains uncorrected.

12. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the defendant on numerous occasions. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

13. In addition, the above vehicle has or will in the future be out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

14. The vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and/or safety.

15. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and/or nonconformities and/or conditions for which the Defendant and/or its authorized service center, may not have maintained records.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its warranty.

17. Plaintiff seeks relief for losses due to the nonconformities and defects in the above mentioned vehicle in addition to attorney fees and all court costs.

COUNT I

PENNSYLVANIA AUTOMOBILE LEMON LAW CLAIM

18. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

19. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

20. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

21. Plaintiff's vehicle is a "New Motor Vehicle" as defined by 73 P.S. §1952.

22. Said vehicle experienced non conformities within the first year of purchase, which

substantially impairs the use, value and safety of said vehicle.

23. Defendant failed to correct and/or repair said nonconformities.

24. The vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and/or safety.

25. Defendant does not require participation in any informal dispute settlement program prior to filing suit.

26. As a direct and proximate result of Defendant's failure to repair the nonconformities, Plaintiff has suffered damages and, in accordance with 73 P.S. §1958, Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

27. Plaintiff avers that upon successfully prevailing upon the Lemon Law claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral charges and attorney fees. Amount not in excess of \$50,000.00.

COUNT II
MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT

28. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

29. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

30. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

31. Plaintiff uses the subject product for personal, family and household purposes.

32. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

33. Defendant failed to make effective repairs.

34. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d) (1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

35. Section 15 U.S.C. §2310 (d) (1) provides:

If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the Court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the Court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the Court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

36. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral charges and attorney fees. Amount not in excess of \$50,000.00.

COUNT III UNIFORM COMMERCIAL CODE

37. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if fully set forth at length herein.

38. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of the Defendant, including but not limited to the following:

- a. Breach of Express Warranty
- b. Breach of Implied Warranty of Merchantability;
- c. Breach of Implied Warranty of Fitness For a Particular Purpose;

d. Breach of Duty of Good Faith.

39. The purpose for which Plaintiff purchased the vehicle include but are not limited to his personal, family and household use.

40. At the time of this purchase and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranty of merchantability.

41. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

42. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

43. Such damages include, but are not limited to, the purchase price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral charges and attorney fees. Amount not in excess of \$50,000.00.

COUNT IV
PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION CLAIM

44. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if set forth at length herein.

45. The Unfair Trade Practices and Consumer Protection Law defines unfair methods

of competition to include the following:

(xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

46. Plaintiff, as a Pennsylvania resident, believes, and therefore, swears the reckless, wanton and wilful failure of Defendant to comply with the terms of the written warranty constitutes an unfair method of competition.

47. Section 201-9.2(a) of the Unfair Trade Practices and Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral charges and attorney fees. Amount not in excess of \$50,000.00.

GORBERG AND ZUBER

BY: 
DAVID GORBERG, ESQUIRE
Attorney for Plaintiff

VERIFICATION

I, **DAVID J. GORBERG**, verify that I am the attorney for the Plaintiff, and that the statements made in the attached Civil Action Complaint are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit; and that the language of this pleading is that of counsel. Signer verifies that he has read the within pleadings and that they are true and correct to the best of his knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.



DAVID J. GORBERG, ESQUIRE
Attorney for Plaintiff

DATE: December 26, 2002

W1016K1 OPEN CUSTOMER CONTACT INQUIRY 12/19/03 16:22:17
R392 CRPP243
File #...: 775057 - 2 Source: 1 VIN.....: 4F2CU08121KM31685 Goodwill.: N
Mdl/Yr...: TRX / 01 Mileage: 16515 Dlvry Dt: 03/10/01 Trans: A Srv Agrmt:
Last No.: [REDACTED] First No: [REDACTED] R/TO.....:
Mdl No.: [REDACTED] Address1: [REDACTED]
Adr2: City.....: BETHEL PARK
State...: PA Zip: [REDACTED] Day Ph.: [REDACTED] Ext.:
Eve Ph.: 412 - 833 - 1519 Brand.: N DBA...: Y Assigned Rgn: NE R/A: N
Resp Dlr: Rslv Dlr: 51462 TOMSIC MAZDA
E-mail:
1) Typ: 1 Rea: 1B Cat: T05 CC: 64 2) Typ: 1 Rea: 1B Cat: B CC: 05
3) Typ: Rea: Cat: CC: 4) Typ: Rea: Cat: CC:
CUST CLLD TO INQ ABOUT LEMON LAW. STS VEH HAD LOW COOLANT LIGHT ON AND THE VEH
WAS STALLING.

Region: MA Opened by: CRPC489 Opened Dt: 11/19/02 Closed Dt: 11/20/02

SVCD0001I Function Completed

PF3=EXIT PF5=RFE PF6=IIP PF9=FLP PF10=CLS PF11=ENT PF12=RETN PF15=360

MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT

03CC-011963

[REDACTED]
Jackson, MO [REDACTED]

Plaintiff,

vs.

MAZDA NORTH AMERICA
OPERATIONS,
R/A, The Corporation Company
120 S. Central Ave.
Clayton, MO 63105

Defendant.

Case No. **1**
Division No.

PETITION

NOW COMES the Plaintiff, [REDACTED], by and through her attorneys, KROHN & MOSS, LTD., and for her complaint against Defendant, MAZDA NORTH AMERICA OPERATIONS, alleges and affirmatively states as follows:

PARTIES

1. Plaintiff, [REDACTED] ("Plaintiff") is an individual who was at all times relevant hereto residing in the State of Missouri.
2. Defendant, MAZDA NORTH AMERICA OPERATIONS ("Manufacturer"), is a foreign corporation authorized to do business in the State of Missouri, County of St. Louis, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including MCDONOUGH MAZDA ("Seller"). Manufacturer does business in all counties of the State of

Missouri including St. Louis County, and maintains offices in the County of St. Louis, State of Missouri.

BACKGROUND

3. On or about July 29, 2002, Plaintiff purchased from Seller a 2002 Mazda Tribute ("Tribute"), manufactured by Manufacturer, Vehicle Identification

No. 4F2YU0S162EM5561, for valuable consideration (See copy of Plaintiff's Purchase Invoice, attached hereto as Exhibit "A").

4. The price of the Tribute, including registration charges, document fees and sales tax, and excluding other collateral charges, such as bank and finance charges, totaled more than \$30,000.00.

5. Plaintiff avers that as a result of the ineffective repair attempts made by Manufacturer and Seller, the Tribute cannot be utilized for personal, family and household use as intended by Plaintiff at the time of acquisition.

6. In consideration for the purchase of the Tribute, Manufacturer issued and supplied to Plaintiff a new vehicle written warranty which included three (3) year or thirty-six thousand (36,000) mile bumper to bumper coverage, as well as other warranties outlined in the Manufacturer's New written warranty booklet.

7. On or about July 29, 2002 Plaintiff took possession of the Tribute and shortly thereafter experienced the various defects listed below that substantially impair the use, value and/or safety of the Tribute.

8. The defects described below violate the written warranty issued to Plaintiff by Manufacturer, as well as the implied warranty of merchantability.

9. Plaintiff delivered the Tribute to Manufacturer and Seller on numerous occasions.

10. Plaintiff avers that the Tribute has been subject to repair on at least five (5) occasions for the same defects, and that the defects remain uncorrected.

11. Plaintiff brought the Tribute to Seller and/or an authorized service dealer of Manufacturer for the following defects:

- a. Defective engine as evidenced by the vehicle dying;
- b. Defective moon-roof as evidenced by the moon-roof failing to close; and
- c. Any additional defects as contained on repair orders of Defendant's authorized dealerships, or otherwise.

12. Plaintiff provided Manufacturer and Seller, a reasonable number of attempts to repair the Tribute.

13. After a reasonable number of attempts to cure the defects in Plaintiff's Tribute, Manufacturer and Seller were unable and/or have failed to repair the defects, as provided in Manufacturer's written warranty.

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

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

16. As a result of these defects, Plaintiff revoked her acceptance of the Tribute in writing.

17. At the time of revocation, the Tribute was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear.

18. Defendant refused Plaintiff's revocation of acceptance and continue to refuse provide Plaintiff with the remedies to which Plaintiff are entitled upon revocation.

19. The Tribute remains in a defective and unmerchantable condition, and continues to exhibit the above-mentioned defects that substantially impair its use, value and/or safety.

20. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its written warranty and Manufacturer's and Seller's failure to provide Plaintiff with a merchantable Tribute.

COUNT I
BREACH OF WRITTEN WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

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

22. Plaintiff is a purchaser of a consumer product who received the Tribute during the duration of a written warranty period applicable to the Tribute 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 Plaintiffs.

24. Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's written warranty.

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 Tribute was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).

26. Plaintiff's purchase of the Tribute was accompanied by a written warranty for any defects in factory supplied materials or workmanship, comprising an undertaking in writing in

connection with the purchase of the Tribute to repair or replace defective parts, or take other remedial action free of charge to Plaintiff with respect to the Tribute in the event that the Tribute failed to meet the specifications set forth in Manufacturer's warranty.

27. Manufacturer's warranty was the basis of the bargain of the contract between the Plaintiff and Manufacturer for the sale of the Tribute to Plaintiff.

28. Said purchase of Plaintiff's Tribute was induced by, and Plaintiff relied upon, Manufacturer's written warranty.

29. Plaintiff has met all of her obligations and preconditions as provided in Manufacturer's written warranty.

30. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

31. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss Warranty Act claim herein, all attorneys' fees are recoverable and are demanded against Manufacturer.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

32. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-31 of this complaint.

33. The Tribute purchased by Plaintiff was subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7) running from the Manufacturer to the intended consumer, Plaintiff herein.

34. Manufacturer is a supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiff.

35. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing within ninety (90) days of a purchase to perform services relating to the maintenance or repair of a motor vehicle.

36. Pursuant to 15 U.S.C. §2308, Plaintiff's Tribute was impliedly warranted to be substantially free of defects in both material and workmanship, and thereby fit for the ordinary purpose for which the Tribute was intended.

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

38. The above-described defects in the Tribute renders the Tribute unmerchantable, unsafe, and thereby not fit for the ordinary and essential purpose for which the Tribute was intended and as represented by Manufacturer.

39. As a result of the breaches of implied warranty by Manufacturer, Plaintiff is without the reasonable value of the Tribute.

40. As a result of the breaches of implied warranty by Manufacturer, Plaintiff has suffered and continues to suffer various damages.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

COURT III
REVOCATION OF ACCEPTANCE PURSUANT TO SECTION 2310(d)
OF THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

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

42. Manufacturer's tender of the Tribute was substantially impaired to Plaintiff.

43. Manufacturer's tender of the Tribute, which was substantially impaired to Plaintiff constitutes a violation of 15 U.S.C. §2310(d).

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

COUNT IV
BREACH OF MISSOURI'S "LEMON LAW", V.A.M.S SEC. 407.560 et seq.
DEFENDANT MANUFACTURER

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

45. Plaintiff is a consumer who purchased a new motor vehicle, i.e. the Tribute, along with an express warranty, from Manufacturer.

46. Plaintiff's new motor vehicle did not conform to all applicable express warranties.

47. Plaintiff reported the nonconformity(ies) to the manufacturer, or its agent, during the term of the applicable express warranty, or during the period of one year following the original delivery of the new motor vehicle to the Plaintiff.

48. The manufacturer, through its authorized dealer or its agent, could not conform Plaintiff's new motor vehicle to any applicable express warranty after a reasonable number of repair attempts.

49. The nonconformity(ies) substantially impairs the use, market value, and/or safety of the new motor vehicle.

50. The nonconformity(ies) is/are not the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.

51. Plaintiff's claim was not filed in bad faith.

52. The same nonconformity(ies) in Plaintiff's vehicle has/have been subject to repair four or more times by the manufacturer, or its agents, and such nonconformity(ies) continue(s) to exist.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
- b. Replacement of Plaintiff's Tribute with a comparable new motor vehicle;
- c. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- d. Such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,
ELLEN WOOD

By

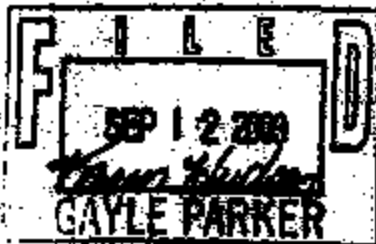


David J. Mittleman
Missouri Bar No. 52529

KROHN & MOSS, LTD.
Attorneys for Plaintiff
120 West Madison Street, 10th Floor
Chicago, Illinois 60602
(312) 578-9428

IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

[REDACTED]



PLAINTIFFS

C.# 2003-1495

VS.

MR. BOBBY'S IMPORTS, INC., now
GULFSIDE IMPORTS, INC., and
MAZDA MOTOR OF AMERICA, INC.

DEFENDANTS

COMPLAINT

COMES NOW [REDACTED] Plaintiff herein, and files this, their

Complaint against Mr. Bobby's Imports, Inc., now Gulfside Imports, Inc., (hereinafter "Mr. Bobby's"),
and Mazda Motor of America, Inc., (hereinafter "Mazda") and for cause would show unto this Honorable
Court as follows, to-wit:

1.

Plaintiff [REDACTED] are adult resident citizens of Pascagoula,
Mississippi.

2.

Defendant, Mr. Bobby's Imports, Inc., now Gulfside Imports, Inc. is a Mississippi
Corporation who may be served with process by service upon its registered agent, Kim B. Sevant, 622
East Pass, Gulfport, Mississippi 39507. Defendant, Mazda Motor of America, Inc. is a Foreign Business
Corporation who may be served with process by serving CT Corporation System, 645 Leland East,
Suite 101, Flowood, Mississippi 39232.

3.

Defendant Mr. Bobby's, is a distributor for the Defendant Mazda. Defendant Mazda is

a manufacturer of the vehicle.

4.

On or about February 11, 2002, the Plaintiffs purchased a 2002 Mazda Tribute, VIN 4F2YU09192KM31107, hereinafter "vehicle", from the Defendant Mr. Bobby's in Gulfport, Mississippi for the cash purchase price of \$26,625.09. The vehicle was and is warranted.

5.

On or about May 20, 2002, the vehicle was taken to the Defendant Mr. Bobby's for repair concerning a missing lug nut. This Defendant replaced a stripped stud and replaced the lug. The vehicle was ready for pick up on May 28, 2002.

6.

On or about July 25, 2002, the vehicle was taken to the Defendant Mr. Bobby's for repair concerning the vehicle not starting. This Defendant diagnosed the problem as a bad connection and made repairs to the vehicle. The vehicle was ready for pick up on July 29, 2002 at 4:21 p.m.

7.

On or about August 16, 2002, the vehicle was taken to the Defendant Mr. Bobby's for repair concerning the vehicle not starting again. This Defendant diagnosed the problem as an internal electrical malfunction in reference to the wiring harness. The vehicle was ready for pick up August 24, 2002 at 11:12 a.m.

8.

On or about December 17, 2002, the vehicle was taken to the Defendant Mr. Bobby's for repair concerning the engine dying while driving, loss of steering and brakes. This Defendant diagnosed an internal failure without finding any codes. The vehicle was ready for pickup December 24, 2002, at 5:30

p.m.

9.

On or about April 21, 2003, the vehicle was taken to the Defendant Mr. Bobby's for repair concerning the vehicle not starting again. This Defendant could not diagnose the problem and could not duplicate the problem. The Defendant replaced numerous parts and items. The vehicle was ready for pick up May 7, 2003 at 8:34 a.m. The Defendants could not guarantee the problem with the vehicle was fixed.

10.

On April 22, 2003 the Plaintiff mailed Mazda Consumer Compliance a certified letter giving the Defendants notice of the nonconformity and 10 days to conform the motor vehicle. Mazda Consumer Compliance received the certified letter April 24, 2003.

11.

The Defendant Mr. Bobby's consulted with the Defendant Mazda concerning the vehicle in relation to paragraphs 5 through 8.

12.

The vehicle was out of service for thirty-nine (39) cumulative total days by reason of repair of the nonconformity. In addition, the Defendants could not guarantee the vehicle has been repaired after a reasonable number of attempts were made.

13.

The Plaintiffs have demanded a refund, as provided for in §63-17-159, Mississippi Code Annotated, on the vehicle but have been refused. The Plaintiffs have complied with all the provision of §63-17-151 et seq, and are now availing themselves of the protections and rights thereunder.

The Plaintiffs are entitled to a refund of the full purchase price, including all reasonable incurred collateral charges and attorney's fees.

WHEREFORE PREMISES CONSIDERED, the Plaintiffs pray this Honorable Court will issue process, set this matter for trial and after a hearing thereon grant the Plaintiffs the following relief:

- a. A full refund of the purchase price, including all reasonable incurred collateral charges;
- b. Attorney fee's; and
- c. Any other relief the Court deems just and equitable.

Respectfully submitted,



By:


SCOTT J. PINTARD

SCOTT J. PINTARD
Pintard & Pintard
207 South Commerce Street
Post Office Box 1053
Natchez, Mississippi 39121
(601) 445-9800

IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

[REDACTED]

F I L E D
SEP 12 1983
James H. Parker
GAYLE PARKER

PLAINTIFFS

C. # *2003-1945*

vs.

MR. BOBBY'S IMPORTS, INC., now
GULFSIDE IMPORTS, INC., and
MAZDA MOTOR OF AMERICA, INC.

DEFENDANTS

CAPTION

COMES NOW [REDACTED] Plaintiff herein, and states, their

Complaint against Mr. Bobby's Imports, Inc., now Gulfside Imports, Inc., (hereinafter "Mr. Bobby's"),
and Mazda Motor of America, Inc., (hereinafter "Mazda") and for cause would show unto this Honorable
Court as follows, to-wit:

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Mississippi.

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Defendant, Mr. Bobby's Imports, Inc., now Gulfside Imports, Inc. is a Mississippi
Corporation who may be served with process by service upon its registered agent, Kim B. Stewart, 622
East Pass, Gulfport, Mississippi 39507. Defendant, Mazda Motor of America, Inc. is a Foreign Business
Corporation who may be served with process by serving CT Corporation System, 646 Lakeland East,
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WHEREFORE PREMISES CONSIDERED, the Plaintiffs pray this Honorable Court will issue process, set this matter for trial and after a hearing thereon grant the Plaintiffs the following relief:

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- b. Attorney fee's; and
- c. Any other relief the Court deems just and equitable.

Respectfully submitted,



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LAW OFFICES OF WILLIAM R. MCGEE
William R. McGee State Bar No. 122153
18655 West Bernardo Drive, Su. 380
San Diego, California 92127
(858) 485-9332

Attorneys for Plaintiff

CASE MGMT. CONF.
FRI. OCT. 24, 2003
9:00 AM IN 212

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2003 MAY 27 AM 9:58

GORDON, P. J. LI. CLERK

[Signature]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

[Redacted] both individually and
on behalf of the general public,

Plaintiff,

v.

MAZDA MOTORS OF AMERICA, INC.
and DOES 1 through 10, inclusive,

Defendants.

Case No. **CGC-03-420802**
**COMPLAINT FOR RESTITUTION,
INJUNCTIVE RELIEF AND DAMAGES**

**VIOLATION OF THE SONG-BEVERLY
CONSUMER WARRANTY ACT AND
CAL. BUS. & PROF. CODE SECTIONS
17200 ET SEQ.]**

BY FAX

Plaintiff, **[Redacted]** alleges as follows, all on information and belief except
where specifically identified:

**FIRST CAUSE OF ACTION - VIOLATION OF THE SONG-BEVERLY CONSUMER
WARRANTY ACT**

1. Plaintiff is informed and believes, and thereon alleges, that at all times herein
defendant MAZDA MOTORS OF AMERICA, INC. is and was a corporation and registered
to do business in the State of California and doing business in the County of San
Francisco. Plaintiff resided in the County of San Francisco at the time the lease for the
subject consumer good was entered into.
2. The true names and capacities of Does 1 through 10, inclusive, are not
known to plaintiff at this time and therefore plaintiff sues those defendants by such fictitious

Filed by
One Legal

1 names. Plaintiff will amend this complaint to allege the true names and capacities of such
2 defendants when they are ascertained.

3 3. Each of the defendants in this case acted as the principal, agent, employee
4 or other authorized representative in relation to the other; all defendants acted at all times
5 mentioned in this complaint within the course and scope of their respective authority and
6 with the full knowledge and consent of the other defendants. Furthermore, plaintiff is
7 informed and believes and thereon alleges that all acts of corporate employees as
8 hereinafter alleged were authorized or ratified by an officer, director or managing agent of
9 the corporate employer.

10 4. On or about September 27, 2000, plaintiff leased a new 2001 Mazda TR2-
11 4x4 automobile, vehicle identification number 4F4YR16V91TM27654.

12 5. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter the "Act")
13 Civil Code sections 1790 et seq., the aforementioned vehicle constitutes a "consumer
14 good" and a "new motor vehicle."

15 6. Plaintiff is a "lessee" of consumer goods under the Act.

16 7. Defendant MAZDA MOTORS OF AMERICA, INC. is a "manufacturer" and/or
17 "distributor" under the Act.

18 8. Defendant MAZDA MOTORS OF AMERICA, INC. provided an "express
19 warranty" to plaintiff under the Act.

20 9. The lease of the aforementioned vehicle to plaintiff was accompanied by an
21 implied warranty that the vehicle was merchantable. The lease of the aforesaid vehicle to
22 plaintiff was also accompanied by defendant MAZDA MOTORS OF AMERICA, INC.'s
23 implied warranty of fitness.

24 10. The subject vehicle has suffered from a serious defect(s) and
25 nonconformity(s) to warranty which causes its engine to suddenly and without warning
26 hesitate, die and/or stall as the vehicle is being driven. The foregoing defect(s) and
27 nonconformity(s) to warranty manifested themselves within the applicable express warranty
28 period.

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11. Plaintiff delivered the aforementioned vehicle to an authorized MAZDA MOTORS OF AMERICA, INC. service and repair facility for repair of the aforementioned nonconformity(s) on numerous occasions.

12. Defendant has been unable and/or has refused to conform plaintiff's vehicle to the applicable express and implied warranties after a reasonable number of attempts. Furthermore, the aforementioned nonconformity(s) substantially impairs the use, value and/or safety of the subject vehicle to plaintiff.

13. Notwithstanding plaintiff's entitlement, defendant refused to comply with plaintiff's demand for restitution under the Act.

14. By failure of defendant to remedy the defects as alleged above within a reasonable number of attempts, or to issue a refund or replacement, defendant is in breach of its obligations under the Act.

15. Plaintiff is entitled to justifiably revoke acceptance of the aforementioned vehicle under the Act.

16. Under the Act, plaintiff is entitled to reimbursement of the purchase price paid for the subject vehicle less that amount directly attributable to use by the plaintiff prior to discovery of the nonconformity(s).

17. Plaintiff is entitled to all incidental, consequential and general damages resulting from defendant's failure to comply with its obligations under the Act.

18. Plaintiff is entitled under the Act to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees, reasonably incurred in connection with the commencement and prosecution of this action.

19. Plaintiff is entitled in addition to the amounts recovered, a civil penalty of up to two times the amount of actual damages in that defendant has willfully failed to comply with its responsibilities under the Act.

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1 **SECOND CAUSE OF ACTION - UNLAWFUL, UNFAIR AND FRAUDULENT**
2 **BUSINESS ACTS AND PRACTICES**

3
4 20 Plaintiff incorporates by reference the allegations in Paragraphs 1 through
5 19, inclusive, of this Complaint. This cause of action is brought by plaintiff individually and
6 on behalf of the general public.

7 21. Defendants' acts, omissions, misrepresentations, practices and non-
8 disclosures as set forth above and herein constituted unlawful, unfair and fraudulent
9 business acts and practices within the meaning of California Business & Professions Code
10 §§17200, et seq.

11 22. Defendants have engaged in "unlawful" business acts and practices by the
12 following: (1) improperly selling plaintiff's vehicle, and similar vehicles, in California, that
13 contain a similar defect as described above, i.e., an unexplained and unresolved stalling
14 that may occur without warning when the vehicle is traveling in excess of 30 miles per
15 hour; (2) improperly failing to provide restitution or refunds for such vehicles or repairs
16 thereto when demand therefor is made; (3) unjustifiably refusing to perform repairs on such
17 vehicles that actually resolve such defects; (4) continuing to sell or service such vehicles
18 without disclosing the material facts as set forth herein to all appropriate persons and
19 agencies; and (5) concealing from consumers that vehicles had been sold to them needed
20 material repairs before they could be safely driven. These policies, acts and practices
21 violated, *inter alia*, California Civil Code §1709, the Consumers Legal Remedies Act,
22 California Civil Code §§1750, et seq., The Song-Beverly Consumer Warranty Act,
23 California Civil Code §§1790 et seq., California Penal Code §387 and California Business
24 and Professions Code §17200 et seq, as well as constituted wrongful denial of warranty
25 coverage and breach of the express and implied warranties and the implied covenant of
26 good faith and fair dealing. Plaintiff reserves the right to identify additional violations of the
27 law as circumstances warrant. Accordingly, defendants have violated Business &
28 Professions Code Section 17200's proscription against engaging in an "unlawful" business

1 act or practice.

2 46. Defendants have also engaged in a "fraudulent" business act or practice in
3 that the representations and omissions of material fact regarding the failure to advise
4 consumers and all other appropriate persons of the defects contained in said vehicles have
5 a tendency and likelihood to deceive both purchasers or lessees of these vehicles and the
6 general public as to the quality and safety of the vehicles being purchased or leased.

7 47. Defendants have also engaged in an "unfair" business act or practice in that
8 the justification for selling or leasing vehicles that contain material defects based on false
9 representations or omissions of material fact is outweighed by the gravity of the resulting
10 harm, particularly considering the available alternatives, and offends public policy, is
11 immoral, unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

12 48. The above-described unlawful, fraudulent, or unfair business acts and
13 practices conducted by defendants continue to this day and present a threat to plaintiff
14 and/or the general public in that defendants have failed to publicly acknowledge the
15 wrongfulness of their actions, repair or replace such vehicles and provide the full equitable
16 injunctive and monetary relief required by the statute.

17 49. Pursuant to California Business & Professions Code Section 17203, plaintiff,
18 both individually and on behalf of the general public, seeks an order of this Court requiring
19 defendants to immediately cease such acts of unfair competition and enjoining defendants
20 from continuing to conduct business via the unlawful, fraudulent, or unfair business acts
21 and practices set forth in this Complaint and from failing to fully disclose the true nature of
22 their misrepresentations, and ordering defendants to engage in a corrective campaign that
23 remedies this defect and discloses its existence to consumers. Plaintiff additionally
24 requests an order from the Court requiring that defendants provide complete equitable
25 monetary relief so as to prevent defendants from benefitting from practices that constitutes
26 unfair competition or the use or employment of any monies resulting from the sale or lease
27 of these vehicles, including requiring the payment of restitution of any monies as may be
28 necessary to restore to plaintiff and any member of the general public with a vested interest

1 therein any money or property which may have been acquired by defendant either directly
 2 or indirectly by means of such acts of unfair competition, plus appropriate fees and costs
 3 as provided for under appropriate statutory and legal authority.

4 WHEREFORE, plaintiff prays for judgment against defendant as follows:

- 5 1. For restitution and other equitable monetary relief;
- 6 2. For incidental and consequential damages according to proof at time of trial;
- 7 3. That such actual damages be doubled and awarded to plaintiff as a civil
 8 penalty;
- 9 4. For appropriate injunctive relief;
- 10 4. For prejudgment interest;
- 11 5. For attorney's fees incurred herein according to proof;
- 12 6. For costs of suit incurred herein; and
- 13 7. For such other and further relief as the Court deems just and proper.

14 DATED: May 23, 2003

LAW OFFICES OF WILLIAM R. MCGEE
 Attorneys for Plaintiff

16 By: 
 17 WILLIAM R. MCGEE

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