FORD 12/2/2004 APPENDIX F-2 PART 1 OF 4 BOOK 2 OF 4 Robert M. Silverman, Esquire Identification No. 55914 KIMMEL & SILVERMAN, P.C. 30 East Butler Pike Ambier, PA 19802 (215) 540-8888 ATTORNEY FOR PLAINTIFF

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

Beethwyn, Pemnylvania

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

FORD MOTOR COMPANY C/O CT Corporation 1515 Market Street, Suite 1210 Philadelphia, PA 19103 CIVIL ACTION

### COMPLAINT CODE: 1900

Plaintiff, and the is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania
 Boothwyn, Pennsylvania

2. Defendant, Ford Motor Company, 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 Delaware, with its legal residence and principal place of business located at 300 Renaissance Center, P.O. Box 43301, Detroit, MI, 48243, and can be served at c/o CT Corporation, 1515 Market Street, Suite 1210, Philadelphia, PA, 19103.

### BACKGROUND

- On or about June 06, 2003, Plaintiff purchased a new 2003 Ford F-350, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1FTSX31P13F
- The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.
- 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 \$43,031.04. A true and correct copy of the contract is attached bereto, 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.
- The above-referenced warranties, guarantees, affirmations or undertakings are/were part
  of the basis of the bargain between Defendant and Plaintiff.
- The parties' bargain includes an express 3-year / 36,000 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.
- 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.
  - Pleintiff is a "Purchaser" as defined by 73 P.S. §1952.
  - Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

- 15. Matthews Paoli Ford 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 June 06, 2003, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 <u>et seq.</u>, 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 Perasylvania Automobile Lemon Law provides:

If a manufacturer fails to repair or contect a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the porchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refined to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers 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 ameconformity 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 measurationality for a complative 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 calcular days.
- 22. Plaintiff has delivered the nonconforming vehicle to an anthorized service and repair facility of the Defendant on numerous occasions as outlined below.
- 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) occessions about defects and or non-conformities to the following vehicle components: abnormal stalling condition, no-start condition, idle fluctuates, oil leak and defective injectors. 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).
  - The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(t).
- 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 actions of custs and expenses (including attorney fees based upon school time expended), determined by the court to have been reasonably incorred by the Plaintiff for, or in connection with the commencement and presecution of such action, unless the court, is 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 Magnason-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.

WHEREFORB, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential demands, 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 Antomobile 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 Permsylvania 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 minernescriting 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 frauthless or deceptive conduct which creates a likelihood of confusion of of minutelessanding.

- 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 demages.

KIMMEL & SILVERMAN, P.C.

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ROBERT M. SILVERMAN, ESQUIRE

Attorney for Plaintiff 30 East Butler Pike

Ambler, Pennsylvania 19002

(215) 540-8888

### VERIFICATION

Robert M. Silverman, 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.

ROBERT M. SILVERMAN, ESQUIRE Attorney for Plaintiff

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Robert M. Silverman, Esquire Identification No. 55914 Robert A. Rapkin, Esquire Identification No. 61628 KIMMEL & SILVERMAN, P.C. 30 East Butter Pike Ambler, PA 19002 (215) 540-8888 ATTORNEYS FOR PLAINTIFF

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

Hightingion Valley, Pa

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

FORD MOTOR COMPANY C/O CT Curporation 1515 Market Street, Swite 1210 Philadelphia, PA 19103 CIVIL ACTION

### COMPLAINT CODE: 1980

1. Plaintiff,	is	លា	adult	individual	citizen	and	legn!	resident	of	the
Commonwealth of Pennsylvania,				Hun	tington <sup>1</sup>	Valley	, PA			

2. Defendant, Ford Motor Company, is a corporation qualified to do and regularly conduct business in the Commonwealth of Pennsylvania, with its address and principal place of business located at 300 Renaissance Center, P.O. Box 43301, Detroit, MI 48243, and can be served at C/O CT Corporation, 1515 Market Street, Suite 1210, Philadelphia, PA 19103.

### BACKGROUND

- On or about April 10, 2004, Plaintiff purchased a new 2004 Ford Excursion, manufactured and warranted by Defendant, bearing the Vehicle Identification Number IFMSU43P94F
- The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.
- The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but <u>excluding</u> other collateral charges not specified, yet defined by the

Lemon Law, totaled more than \$66,879.68. 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.
- The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.
- The parties' bargain includes an express 3-year / 36,000 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.
  - Plaintiff is a "Porchaser" as defined by 73 P.S. §1952.
  - 14. Defendant is a "Mamufacturer" as defined by 73 P.S. §1952.

- 15. McCafferty Ford 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 April 10, 2004, 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 or 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, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding \$.10 per mile driven or 19% 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 dualers and the noneteeformity 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: defective

transmission and vehicle runs rough and stalls. 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 end 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 count 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.
  - 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.
  - 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 Defendent 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 Magnatson-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.

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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).
  - 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 see 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 province of goods or services is made;
  - (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
  - (xvf). Making repairs, improvements or replacements on tangible, real or personal property of a netter 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, ettorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By:

ROBERT M. SILVERMAN, ESQUIRE

Attorney for Plaintiff 30 East Butler Pike Ambler, Pennsylvania 19002

(215) 540-8888\*

## **VERIFICATION**

Robert M. Silverman, 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.

ROBERT M SILVERMAN, ESQUIRE
Attorney for Plaintiff

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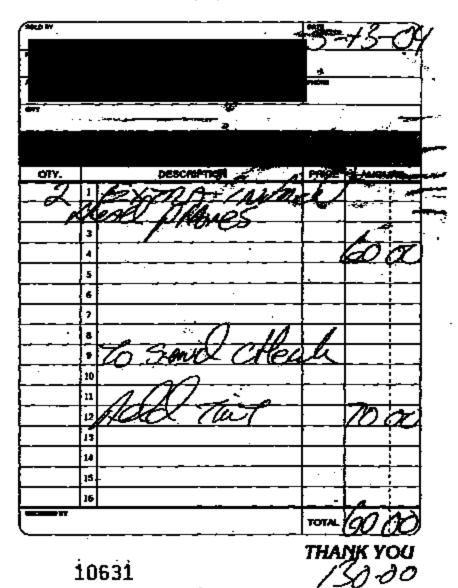
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### CREATIVE AUTOSOUND, INC.

76 Twiningbridge Road NEW(TOWN, PEDRISYEVANIA 18940 (215) 579-1889 Cell (215) 783-4060



1:888.RSC.2YOU (772-2968)

**RSC Restyling Specialists** 3153 Lincoln Highway (Route 1 North) Trevose, Pa. 19053

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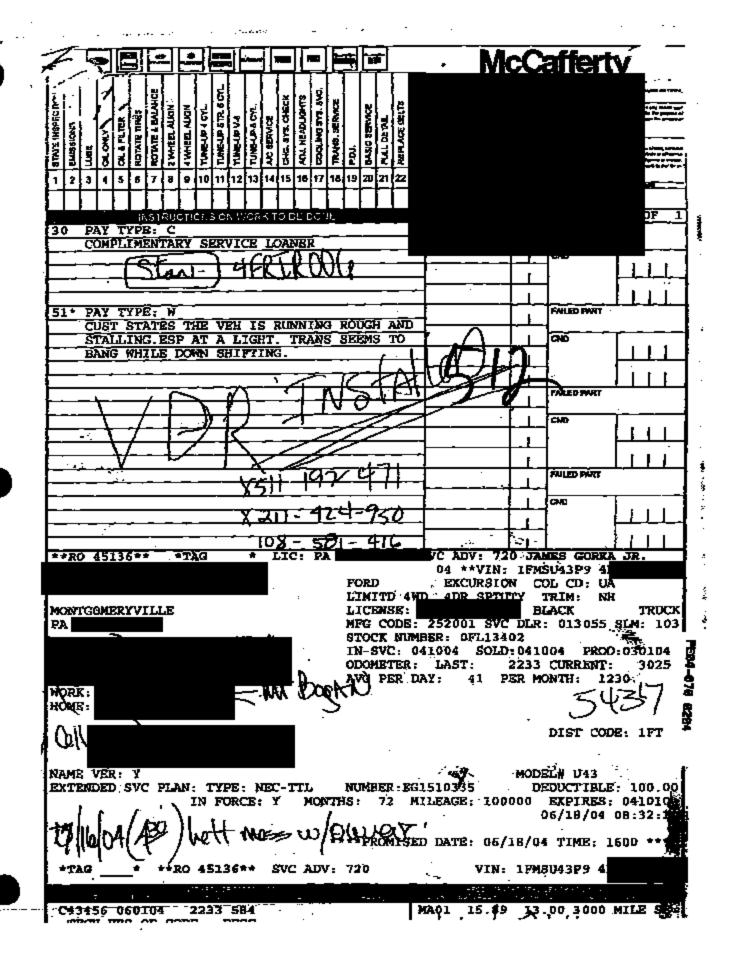


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HEARSTLEFORE PARTIES. INC. WAL OAG DTE WAL DIES NO CUSTOREY PU NUMBER -196250 1 [LADELPHIA, PA. 19115-438] Sales Person Invoice Date 15)464-8200 Invoice No. \*\*\* INVDICE \*\*\*\* 05/15/04 JR 85/15/84 89137 41560# Stan To Information: Lt Na :CASH01 it Name FORT MACHINETON, PA FORT HASHINGTON, PA Vehicle Info 213/263-3194 Make : FORD THANK YOU FOR DOING BUSINESS WITH Model : EXCLIRSION Year : 2004 Mile : EPPJE'B \*\*\*Lic No: DWL9184 tee Number Description Quantity Price FET Disc Extended 1.00 200.00 4-ASSORTED FLOOR MATS 286.60 Q. 00 6. 00 **ERICAN EXPRES** 214.00 Sub Total 200.00 FET Labor Other Tire Discount Parts Tax Total 14.00 Appent Des



in the st	ATE COURT OF COBB COUNTY AND
	(600) 3157
Plaintiff.	
¥8.	Civil Action No 2004A 73 85
FORD MOTOR COMPANY,	) JURY TRIAL DEMAND
Defendant.	}

#### COMPLAINT

Plaintiff in the above-styled action, by and through Plaintiff's undersigned attorneys, and hereby files Plaintiff's Complaint against Defendant, FORD MOTOR COMPANY, and shows this Honorable Court as follows:

### STATEMENT OF JURISDICTION AND VENUE

- Plaintiff (hereafter "Plaintiff") is an individual, who at all times relevant hereto has resided in the State of Georgia.
- 2. Defendant, FORD MOTOR COMPANY (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.
- Manufacturer may be served through its registered agent: Corporation Process
   Company 180 Cherokee St N.E., Marietta GA 30060. Manufacturer is therefore subject to the jurisdiction of this Court.
  - Venue is proper in Cobb County, as Manufacturer's statutory agent is properly

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registered there or in the alternative venue is proper in Cobb County for the following additional reasons:

- a. Manufacturer does business in each county in Georgia as it injects its vehicles into the stream of commerce in each county by way of distributing its vehicles to authorized dealers/agents located within each county.
- Manufacturer advertises its vehicles for sale through a nationwide marketing program
  that is intended to reach consumers located within each county of Georgia.
- c. Manufacturer enters into sales and servicing agreements with its authorized dealers that are located in numerous counties of the State of Georgia including the county wherein this lawsuit was filed.
- d. Manufacturer's authorized dealers are sales and servicing agents for Manufacturer. As such, Manufacturer by and through its sales and servicing agents maintain places of business in numerous counties of the State of Georgia including the county wherein this lawsuit was filed. As the principal for its sales and servicing agents ("authorized dealers"), Manufacturer requires its authorized dealers to display Manufacturer's logo on each authorized dealer's sign outside the dealer. Manufacturer requires its authorized dealers to seek authorization for performing repairs as covered by Manufacturer's warranty. Manufacturer reimburses its authorized dealers for repairs covered by Manufacturer's warranty. Manufacturer requires its authorized dealers to provide its customers with Manufacturer's written warranty when a new vehicle is sold by Manufacturer's authorized dealer. Finally, Manufacturer supervises each and every authorized dealer through a system of zone offices that is set up to monitor dealerships located within each respective county of the State of Georgia.

#### STATEMENT OF FACTS

On or about January 10, 2004, Plaintiff purchased a 2004 Ford F-250 from Jim

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Tidwell's World of Ford (VIN # 1FTNW21PX4E (hereafter "vehicle") for valuable consideration.

- Plaintiff's vehicle is manufactured and/or distributed by Manufacturer through its authorized dealers as described above 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 more than 549,315.00.
- 8. In consideration for the purchase of the Vehicle, Manufacturer issued and provided Plaintiff's 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.
  - Plaintiff took possession of the vehicle on January 10, 2004.
- 10. Shortly after taking possession of the vehicle, Plaintiff experienced various defects in the vehicle, including, but not limited to, defects in the following components of the vehicle: (a) Stalling; (b) Engine; (c) Electrical; (d) and other defects identified on the repair receipts generated by Manufacturer's authorized repair facilities/dealers.
- 11. These defects are items specifically covered by the issues of Manufacturer's written warranty identified above and these defects render the vehicle unfit for its ordinary purpose.
- 12. Manufacturer by and through its authorized dealers was unable to repair the vehicle after being afforded a reasonable number of attempts or reasonable opportunity to cure the defects in the vehicle.
- 13. As a result of the defects in the vehicle and Manufacturer's inability to repair the vehicle, Plaintiff justifiably lost confidence in the vehicle's reliability.

- The value of the vehicle has been substantially impaired to Plaintiff.
- 15. The defects were not and could not have been reasonably discovered by Plaintiff prior to Plaintiff's purchase of the vehicle.
- 16. As a result of the defects and Menufacturer's inability to cure, Plaintiff revoked acceptance of the vehicle.
- 17. 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.
- 18. Manufacturer refused Plaintiff's demand for revocation and the corresponding remedies to which Plaintiff is entitled under the law.
- 19. Plaintiff has been and will continue to be financially damaged due to Manufacturer's failure (a) to comply with the provisions of the written warranty and (b) to provide Plaintiff with a merchantable vehicle.
- 20. Specifically, in addition to the value of the vehicle being impaired due to its defects, Plaintiff suffered aggravation and inconvenience by being forced to use and operate a vehicle fraught with defects in addition by being forced to rearrange Plaintiff's personal affairs to tender the vehicle for repair. Plaintiff also was without the beneficial use of the vehicle during the time it was tendered for repair and/or unable to be operated to its fullest extent due to its defects.

### COUNT I BREACH OF WRITTEN WARRANTY

#### (Pursuant to the Magnuson-Moss Warranty Act)

- Paragraphs I through 20, above, are re-alleged and hereby incorporated by reference
   as if fully set forth herein, verbatim.
  - 22. Plaintiff is a consumer, as contemplated by the Magnuson-Moss Warranty Act.

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- Manufacturer is a warrantor and supplier of a consumer product, as contemplated by the Magnuson-Moss Warranty Act.
- 24. Plaintiff is entitled by the terms of the written warranty provided to him by Manufacturer through its authorized dealer to enforce the obligations of said warranty.
- Plaintiff's vehicle was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).
- 26. The warranty provided that Manufacturer would repair or replace defective parts, or take other remedial action free of charge to Plaintiff 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 Plaintiff and Manufacturer.
- 28. The purchase of Plaintiff's Vehicle was induced by the written warranty, upon which Plaintiff relied.
  - Plaintiff has honored Plaintiff's obligations under the warranty.
- 30. Manufacturer breached its obligations under the written warranty, by failing to seasonably repair the vehicle's defects after being afforded a reasonable number of attempts or reasonable opportunity to cure.
- 31. Plaintiff notified Manufacturer of its breach within a reasonable period of time after discovering it by tendering the vehicle to Manufacturer's authorized dealers for repair as instructed by Manufacturer's written warranty and by providing written notification to Manufacturer.
- 32. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiff has suffered damages, including, but not limited to, (a) loss of use; (b) diminished value; (c) lost wages; (d) aggravation; and/or (e) incidental and consequential damages (such as the

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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), Plaintiff is entitled to bring suit for damages and other relief.

Plaintiff requests attorney's fees and shows that he is entitled to fees and costs
 pursuant to the fee-shifting provision of the Magnuson-Moss Warranty Act.

### WHEREFORE, Plaintiff prays that:

- a. The Complaint be filed and service be perfected as provided by law;
- Plaintiff be awarded damages to which he is entitled under the Magnuson-Moss Warranty
   Act, and Georgia Statutory Law, including, but not limited to:
  - (i) Diminished value pursuant to O.C.G.A. § 11-2-714,
  - (ii) loss of use;
  - (iii) lost wages;
  - (iv) aggravation and inconvenience damages;
  - (v) Revocation of Acceptance pursuant to O.C.G.A. § 11-2-608, O.C.G.A.
     § 11-2-719(2); and the Magnuson-Moss Warranty Act;
  - (vi) any other incidental and consequential damages;
  - (vii) Reasonable attorneys' fees and costs; and
  - (viii) such other and further relief as the Court deems right and appropriate.

## COUNT II BREACH OF IMPLIED WARRANTY

### (Pursuant to the Magauson-Mess Warranty Act)

34. Paragraphs 1 through 33, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.

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- The vehicle purchased by Plaintiff is subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7), and OCGA Section 11-2-314(2)(c).
- 36. Manufacturer contracts to sell goods. Manufacturer sells 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 Plaintiff.
- 37. The parties' contract for sale as a matter of law implies that the vehicle is merchantable, because Manufacturer is a merchant with respect to such goods.
- 38. The implied warranty was breached by Manufacturer because they sold Plaintiff a vehicle of insufficient quality. The vehicle is not fit for the ordinary purpose for which such goods are used.
  - The vehicle has failed to meet Plaintiff's reasonable expectations.
- 40. The vehicle has not provided dependable transportation, and it has not been troublefree.
- 41. 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 Manufacturer.
- 42. As a result of the breach of implied warranty by Manufacturer, Plaintiff is without the reasonable value of the Vehicle.
- 43. As a result of the breach of implied warranty by Manufacturer, Plaintiff has suffered and continues to suffer damages, including those specifically identified in the foregoing paragraphs.

WHEREFORE, Plaintiff prays that:

- The Complaint be filed and service be perfected as provided by law;
- Plaintiff be awarded damages to which he is entitled under the Magnuson-Moss Warranty
   Act, and Georgia Statutory Law, including, but not limited to:

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- (i) Diminished value pursuent to O.C.G.A. § 11-2-714,
- (ii) loss of use;
- (iii) lost wages;
- (iv) aggravation and inconvenience damages;
- (v) Revocation of Acceptance pursuant to O.C.G.A. § 11-2-608, O.C.G.A.
- § 11-2-719(2); and the Magnuson-Moss Warranty Act;
- (vi) Any other incidental and consequential damages;
- (vii) Reasonable attorneys' fees and costs; and
- (viii) such other and further relief as the Court deems right and appropriate.

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

Submitted this 12 day of August 2004.

Georgia Bar No. 269980

Attorney for Plaintiff KROHN & MOSS 1100 Spring Street NW Suits 350 Atlanta, Georgia 30309 (404) 869-4280

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Jacqueline C. Herritt, Esquire KIMMEL & SELVERMAN, P.C. Executive Quarters 1930 E. Mariton Pike, Seite T11 Cherry Hill, NJ 08003 (856)429-8334 ATTORNEY FOR PLAINTIFF

JURY TRIAL DEMANDED.

### COMPLAINT

- Pleintiff is an adult individual citizen and legal resident of the State
   of New Jersey

  Trenton, New Jersey
- Defendant, Ford Motor Company, is a corporation qualified to do and regularly conduct business in the State of New Jersey, with its address and principal place of business located at 300 Renaissance Center, P.O. Box 43301, Detroit, MI 48243, and can be served at C/O CT Corporation, 820 Bear Tavern Road, Suite 350, West Trenton, NJ 08628.

### **BACKGROUND**

- On or about August 18, 2003, Plaintiff purchased a new 2003 Ford F-350, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1FTSW31P33P
- The vehicle was purchased in the State of New Jersey and is registered in the State of New Jersey.
- 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 \$43,212.41. A true and correct copy of the contract is attached bereto, 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.
- The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.
- The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.
- 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 evers 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 NEW JERSEY MOTOR VEHICLE WARBANTY ACT

- 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 "Consumer" as defined by N.J.S.A. 56:12-30.
  - 14. Defendant is a "Manufacturer" as defined by N.J.S.A. 56:12-30.

- 15. Haldeman Ford, is and/or was at the time of sale a "Dealer or Motor Vehicle Dealer" in the business of buying, selling, and/or exchanging vehicles as defined by N.J.S.A. 56:12-30.
- 16. On or about August 18, 2003, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by N.J.S.A. 56:12-29 at seq., which substantially impair the use, value and/or safety of the vehicle.
- 17. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act as provided in N.J.S.A. 56:12-34(c). Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., as well as a violation of the New Jersey Motor Vehicle Warranty Act.
- 18. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.
  - Section 56:12-32 of the New Jersey Motor Vehicle Warranty Act provides:
    - a. If, during the period specified in section 3 of this act, the manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the consumer. The membershall provide the consumer with a full refund of the purchase price of the original motor vehicle including any stated credit or allowance for the consumer's used motor vehicle, the cost of any options or other modifications arranged, installed, or made by the manufacturer or its dealer within 30 days after the date or original delivery, and any other charges or fees including, but not limited to, sales tax, because and registration fees, finance charges, reimbursement for towing and reimbursement for actual expenses incurred by the communer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to a nonconformity, less a reasonable allowance for vehicle use.
- 20. Section 56:12-33 of the New Jersey Motor Vehicle Warranty Act provides a presumption of a reasonable number of repair attempts:
  - a. It is presented that a manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time if, within the first 18,000 miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a communer, whichever is the earlier date:
    - Substantially the same proconformity has been subject to repair three or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
    - (2) The quoter vehicle is out of service by reason of repair for one or more nonconformities for a commistive total of 20 or more calendar days since the original delivery of the motor vehicle and a nonconformity continues to exist.
  - b. The presumption contained in sub-section at of this section shall apply against a manufacturer only if the manufacturer has received written notification, by or on behalf of the consumer, by cartified paid

return receipt requested, of a potential claim pursuant to the provisions of this act and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. Notification by the consumer shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

- 21. 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.
- 22. In addition, the above vehicle has or will be out of service by reason of the nonconformities complained of for a cursulative total of twenty (20) or more calendar days.
- 23. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.
- 24. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.
- 25. During the first 24 months and/or 18,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: abnormal oil leak, high idle, bolts missing in transmission and defective torque converter seal and crankshaft sensor. True and correct copies of all invoices in Plaintiff possession are attached hereto, made a part hereof, and marked Exhibit "B".
- 26. 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 N.J.S.A. 56:12-29 et seq.
- Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.
- 28. Pursuant to N.J.S.A. 56:12-29 at seq. Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney 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

- 29. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length berein.
  - Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).
- 31. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).
  - 32. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).
- 33. 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.
- 34. 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.
- 35. Defendent has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.
  - 36. 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 in the amount of aggregate amount of costs and expenses (including atterney feer 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 atterney's fees would be inappropriate.
- 37. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

- 38. As a direct and proximate result of Defendant's faiture 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.
- 39. Defendant's faiture 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.
- 40. 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.
- 41. 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 UNIFORM COMMERCIAL CODE

- 42. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length berein.
- 43. The defects and nonconformities 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 Werranty Of merchantability; and
  - Implied Warranty Of Pitness For A Particular Purpose.

- 44. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Plaintiff has justifiably relied upon Defeodant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.
- 45. At the time of obtaining possession of the vehicle 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.
- 46. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.
- 47. Such damages include, but are not limited to, the contract 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 against Defendant in an amount equal to the contract price of the vehicle, plus all collateral charges and attorneys' fees.

# COUNT IY NEW JERSEY CONSUMER FRAUD ACT

- 48. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set firsth at length berein.
  - Plaintiff is a "Person" as defined by N.J.S.A. 56:8-1(d).
  - Defendant is a "Person" as defined by N.J.S.A. 56:8-1(d).
- 51. Defendant's actions surrounding the sale and servicing of the subject vehicle were unconscionable. Defendant's agents also acted with a reckless and callous disregard for Plaintiff's rights in negotiating and handling Plaintiff's warranty claims.
- 52. Defendant's actions surrounding the sale and servicing of said vehicle constitute a meanscionable commercial practice, deception, fraud, false pretense, false promise, and/or misrepresentation. Defendant and its agents acted affirmatively in such a manner as to be an unlawful commercial practice.

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- Defendant acted knowingly with the intent to cause Plaintiff's reliance thereupon.
- 54. Defendant knowingly concealed, suppressed, or omitted facts material to the transactions at issue, in that Defendant was aware the defect(s)/condition(s) could not be repaired, and that the ineffectual repairs were performed by incompetent or unqualified individuals. Defendant's failure to verify the defect(s) or condition(s) constitutes a refusal to perform the repairs under its statutory or contractual obligations.
- 55. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act N.J.S.A. 56:12-34(c) and Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq. as well as a violation of the New Jersey Motor Vehicle Warranty Act.
- 56. Plaintiff helieves and therefore avers that the defect(s) or condition(s) outlined previously is/are an inherent design defect and that as such the Defendant must certify the existence of this defect or condition to the Division of Consumer Affairs. Defendant has failed to file this certification and this failure is a violation of the New Jersey Consumer Fraud Act N.J.S.A. 56;8-1 et seq.
- 57. Defendant's failure to supply an itemized legible statement of repair is an unlawful practice pursuant to the New Jersey Consumer Praud Act N.J.S.A. 56:8-2.
- 58. The Act prohibits the aforementioned action of Defendant in the sale and attempted repair of the subject vehicle.
- 59. 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.
- 60. As a result of Defendant's unlawful conduct, Plaintiff has and will continue to suffer ascertainable financial loss proximately caused by the Defendant's conduct. Said losses are outlined as follows:

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- a. Plaintiff is entitled to a full refund N.J.S.A. 56:8-2.11-12;
- b. Plaintiff's vehicle, given the defect/condition, is worthless;
- Plaintiff lost time from work and other money as a result of having to take the vehicle
  in for the repeated repair attempts;
- d. Plaintiff has been relegated to finding alternative means of transportation while the vehicle was in for repairs and while the vehicle has been in its present condition. As a result, Plaintiff has incurred additional transportation costs; and
- Plaintiff has expended sums to maintain, store, insure, register, and other expenses for transportation.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant for compensatory damages, treble damages, attorney fees, costs of suit, and any further relief as the Court may deem just and proper.

KIMMBL & SILVERMAN, P.C.

Bv:

JACQUELINE C. HERRITK ESQUIRE

Anomey for Plaintiff Executive Quarters

1930 E. Marlton Pike, Suite T11

Cherry Hill, NJ 08003

(856) 429-8334

# JURY-DEMAND

Plaintiff hereby demands a trial by jury as to all the issues

KIMMEL & SILVERMAN, P.C.

# CERTIFICATION PURSUANT TO R.4:15-1

Upon knowledge and belief I hereby certify that there are no other actions or arbitrations related to this suit pending or presently contemplated.

KIMMEL & SILVERMAN, P.C.

QUELINE C. HERRITT, ESQUIRE
Attorney for Plaintiff

# CERTIFICATION OF NOTICE

Pursuant to N.J.S.A. 56:8-20 Plaintiff is mailing a copy of this Complaint to the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 West Market Street in the City of Trenton, County of Mercer, in the state of New Jersey on

KIMMEL & SILVERMAN, P.C.

JACQUELINE C. HERRITT.

Attemey for Plaintiff

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TRENTON

SENVICE ADVISOR MICHAEL R SCOTT CART, NO. TABRO, PA NO. .1MARO4 18MAR04 **1FTBN31P33**1 **T745** 18MARO4 161957 or was referred to the second MAIN & MINORA TELEPHONE NO. 08:32 03 FORD F350 PICKUP 08:02 82.00 OLJANO3 2574 6690 6696 . PERFORM MULTI-POINT INSPECTION 99P PERFORM MULTI-POINT INSPECTION "UMITED LABOR WARRANTY" 46 DON SPLITTER LIC#: 46 THE REPART PACTURY GENERALITED TO THE LABOR LIBED IN MAY USED THE SECOND THE SECOND THE SECOND THE APPLIES OF THE SECOND CPT 0.00 0.00 FREE BATTERY CK N INSPECTION M THE DATE BC FREE BATTERY CK N INSPECTION 45 DON SPLITTER LIC#: 46 DETENDED TO THE VENERAL INTERPOLATION OF ANY DITIES PERSON.

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HOURS FOR PICK-UP & DROP OFF MON - FRI. 7:30 AM - 8:00 PM SAT - 8:00 AM - 2:00 PM



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TRENTON NJ

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O/RG-PU/INJ PMP HD PTG 1 3C3Z\*9N693\*HA O/RG-PU/INJ PMP HD FTG FC: 1465 D8

PART#: 3C3Z+9N693+JA COUNT:

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# IN THE STATE COURT OF COBB COUNTY STATE OF GEORGIA

Plaintiff.

Civil Action No.

2004A 2433-2

FORD MOTOR COMPANY,

Defendant.

COMPLAINT

COMES NOW, VINCE EARLY, Plaintiff in the above-styled action, by and through his undersigned attorneys, and hereby files this, his Complaint against Defendant, FORD MOTOR. COMPANY, and shows this honorable Court as follows:

### STATEMENT OF JURISDICTION AND VENUE

- 1. Plaintiff, hereafter "Plaintiff") is an individual, who at all times relevant hereto has resided in the State of Georgia.
- 2. Defendant, FORD MOTOR COMPANY (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.
- Manufacturer may be served through its registered agent: Corporation Process Company 180
   Cherokee Street, N.E. Marietta, GA 30060. Manufacturer is therefore subject to the jurisdiction of this Court.
- 4. Venue is proper in Cobb County, as their statutory agent is properly registered there.

### STATEMENT OF PACTS

- 5. On or about June 8, 2003, Plaintiff purchased a 2003 Ford F-350 from Jim Tidwell Ford (VIN # 1FTWW33P53E the consideration) for valuable consideration.
- Plaintiff's vehicle is manufactured and distributed by Manufacturer for valuable consideration.
- 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 more than \$21,000.00
- 8. In consideration for the purchase of the Vehicle, Manufacturer issued and provided Plaintiff's 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.
- Plaintiff took possession of the vehicle on Jane 8, 2003.
- 10. Shortly after taking possession of the vehicle, Plaintiff experienced various defects, including, but not limited to, the following: (a) Electrical; (b) Stalling; (c) Engine; (d) Brake; (e) Trim; (f) Failure to diagnose and repair defects.
- 11. Those defects violate the Manufacturer's warranty and the implied warranty of merchantability.
- Plaintiff afforded the Dealer a reasonable number of attempts to cure the defects.
- The defects in Plaintiff's vehicle remain uncorrected.
- 14. As a result of the numerous repair attempts and Defendant's inability to repair the vehicle, Plaintiff justifiably lost confidence in the vehicle's safety and reliability.
- The value of the vehicle has been substantially impaired to Plaintiff.
- The defects were not and could not have been reasonably discovered by Plaintiff prior to his

purchase of the vehicle.

- 17. As a result of the defects and Defendant's inability to cure, Plaintiff 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.
- Defendant refused Plaintiff's demand for revocation and the corresponding remedies to which Plaintiff is entitled under the law.
- 20. Plaintiff has been and will continue to be financially damaged due to Defendant's failure (a) to comply with the provisions of the written warranty and (b) to provide Plaintiff with a merchantable vehicle.

# COUNT 1 BREACH OF WRITTEN WARRANTY

### (Pursuant to the Magnuson-Moss Warranty Act)

- 21. Paragraphs 1 through 20, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.
- 22. Plaintiff is a consumer, as contemplated by the Magnuson Moss Warranty Act.
- 23. Defendant is a warrantor, as contemplated by the Magnuson-Moss Warranty Act.
- 24. Plaintiff is entitled by the terms of the written warranty provided to him by Manufacturer/Dealer to enforce the obligations of said warranty.
- 25. Plaintiff's vehicle 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 Plaintiff 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 Plaintiff and Defendant.
- 28. The purchase of Plaintiff's Vehicle was induced by the written warranty, upon which Plaintiff relied.
- 29. Plaintiff has benered his obligations under the warranty.
- 30. Defendant breached its 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. Plaintiff 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, Plaintiff has 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), Plaintiff is entitled to bring suit for damages and other relief.
- 33. Plaintiff requests attorney's fees and shows that he is entitled to fees and costs pursuant to the fee-shifting provision of the Magnuson Moss Warranty Act.

WHEREFORE, Plaintiff prays that:

- The Complaint be filed and service be perfected as provided by faw;
- b. Plaintiff be awarded damages to which he is entitled under the Magnuson Moss Warranty Act, including, but not limited to:
  - (i) loss of use;

- (ii) lost wages;
- (iii) aggravation and inconvenience damages;
- (iv) Revocation of Acceptance pursuant to O.C.G.A. § 11-2-608, O.C.G.A.
   § 11-2-719(2); and Magnuson Moss Warranty Act;
- any other incidental and consequential damages;
- (vi) Plaintiff be awarded reasonable attorneys' fees and costs; and
- c. Plaintiff be awarded such other and further relief as the Court deems right and appropriate

## COUNT II BREACH OF IMPLIED WARRANTY

### (Pursuant to the Magnuson-Moss Warranty Act)

- 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 Plaintiff is subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7), and OCGA Section 11-2-314(2)(c).
- 36. Defendant contracts to self goods. Defendant sells 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 Plaintiff.
- 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 because they sold Plaintiff 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 Plaintiff's 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, Plaintiff is without the reasonable value of the Vehicle.
- 45. As a result of the breach of implied warranty by Defendant, Plaintiff has suffered and continues to suffer damages, including those specifically identified in the foregoing paragraphs.

## WHEREFORE, Plaintiff prays that:

- The Complaint be filed and service be perfected as provided by law;
- b. Plaintiff be awarded damages to which he is entitled under the Magnuson Moss Warranty Act, including, but not limited to:
  - (i) loss of use;
  - (ii) lost wages;
  - (iii) aggravation and inconvenience damages;
  - (iv) Revocation of Acceptance pursuant to O.C.G.A. § 11-2-608, O.C.G.A. §
  - 11-2-719(2); and Magnuson Moss Warranty Act;
  - (v) any other incidental and consequential damages;
  - (vi) Plaintiff be awarded reasonable attorneys' fees and costs; and
- c. Plaintiff 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), Plaintiff requests that the present case be tried by a jury.

Submitted this <u>10</u> day of March 2004.

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

Attorney for Plaintiff KROHN & MOSS 1100 Spring Street NW Suite 350 Atlanta, Georgia 30309 (404) 869-4280

# FED4-070 8242

## Law Offices Lehrer & Canavan, P.C.

429 West Wesley Wheaton, IL, 60187

Norman H. Lehrer R. Lawrence Canavan

(630) 462-0700

William G. Hutul

September 23, 2003

Zimmerman Ford. Inc. 2525 E. Main St. St. Charles, IL 60174

Fifth Third Bank 1500 N. Main St. Wheaton, IL 60187 Attn: Bank Officer

Re: REVOCATION OF ACCEPTANCE/DEMAND LETTER

Dear Sir/Madam:

I have been retained by the problems of a 2003 Ford F350, VIN No. 1FTSF31P23E This vehicle was sold to by Edward by Edward Bank. The vehicle has a number of mechanical problems, including but not limited to stalling problems and engine drivability problems, plus other problems. Many attempts at repair have been unsuccessful. As a result of its defects, the vehicle remains in a defective and dangerous condition.

It also appears that Zimmerman Ford, Inc. may have violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/10 in this transaction in that there was no window sticker in the when my client purchased it and revocation of acceptance was refused as was his demand for refund of the funds paid. Plaintiff believes he has suffered financial harm as a result of this conduct.

Pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Actually is requesting \$40,000.00 and revocation of the purchase contracts, for settlement of the claims under the Consumer Fraud Act. In the event that this part of the claim is settled, it would not affect claims under any other law or a cause of action.

You are hereby notified that the Plaintiff is revoking acceptance of the vehicle, and is demanding the return of any and all funds paid, cancellation of all contracts pertaining to this transaction, and compensation for all of his damages. In the event you wish to resolve this tnatter amicably, feel free to contact my office within thirty (30) days. After that time. I have been

directed to file a lawsuit, in the Circuit Court of DuPage County, under the provisions of the Magnuson Mosa Warranty Act, the Illinois Consumer Fraud and Deceptive Business Practices Act, Federal law, 16 CFR 433.2, and for Common Law Fraud and Revocation and other appropriate statutes.

This letter is also to notify you that it is making payments on the Retail Installment Contract under protest as his revocation of acceptance has been refused.

Sincerely yours,

Norman Lehrer

NHE.dh

Dispute Settlement Board P.O. Box 1424 Waukesha, WI 53187-1424

Casa Number: 357620783

Meeting Date: August 14, 2003

VIN: 1FTSF31P23E



August 18, 2003

Wasco, II

At the Dispute Settlement Board's most recent meeting, we reviewed the history and status of your case involving your 2003 Ford F-Series, as reported in the statements and supporting documents submitted by you, the dealer, and Ford Motor Company.

After careful consideration of this information, the Board determined that the rough idle and stalling concerns have been resolved. Therefore, the Hoard concluded that no further action was necessary and no relief was granted. The Board based this decision on the Company Statement. The Board noted that no compelling evidence was provided to the contrary.

Decisions by the Board are binding on the dealer and Ford, but not on consumers who are free to seek remedies available under State or Federal law. The decisions of the Board, however, may be introduced into evidence by any party in any subsequent legal proceedings that may occur.

On behalf of the other Board members, I wish to express our appreciation for the opportunity to review your request.

Sincerely,

David Nelson

Board Chairperson

Ford Motor Company cc: Zimmerman Ford



. Dispute Settlement Board Administration P.O. Box 1424 Waukesha, WI 53187-1424





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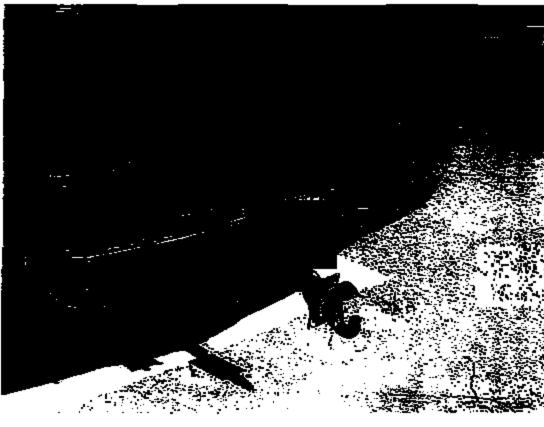


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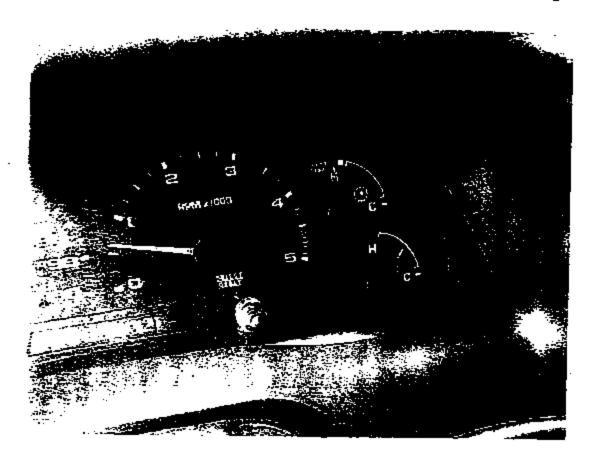






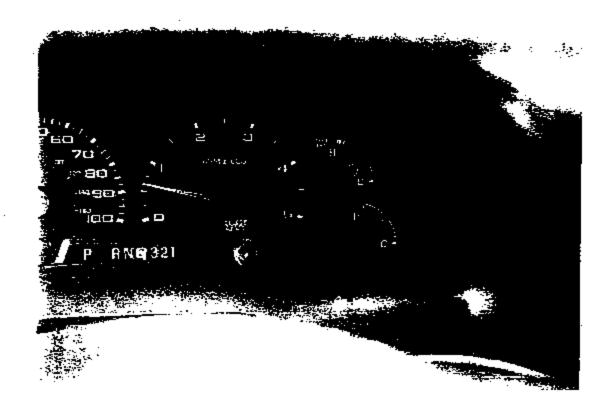


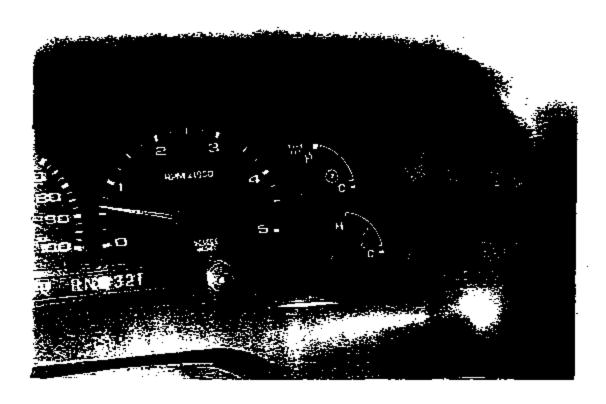


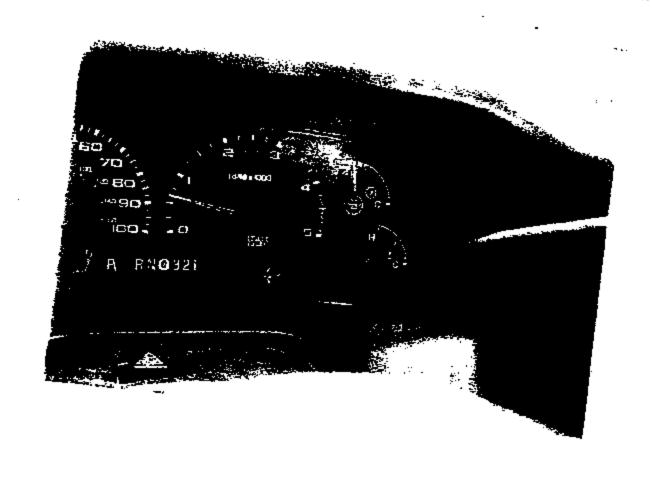






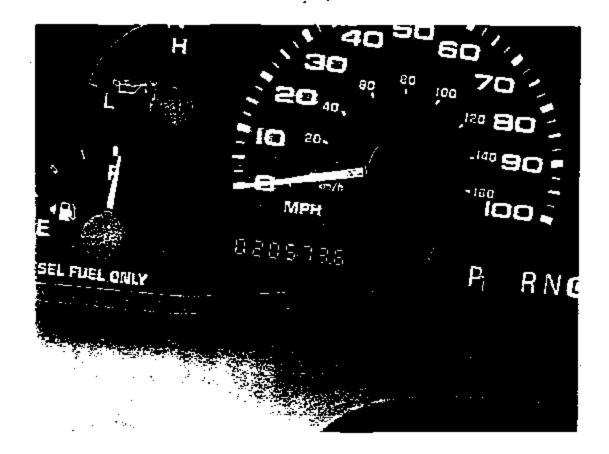






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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDIC KANE COUNTY, ILLINOIS SEZ FOR CASE MANAGEMENT CONFERENCE. GEFORE THE ABOVE ENVED HARRE Plaintiff Farlure to appear last result si No. CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED. Zimmerman Ford, Inc., Ford Motor Company and Fifth Third Bank DONALD J. FARE JURY TRIAL DEMANDE Defendants COMPLAINT Now comes the Plaintiff, by his attorneys, Lehrer & 🕰🖼Van by way of his Complaint against Defendants, states as follows:

## BREACH OF WRITTEN WARRANTY AGAINST DEFENDANTS DEALER AND MANUFACTURER UNDER MAGNUSON-MOSS WARRANTY ACT

COUNT I

Now comes the Plaintiff, which was by his attorneys, Lehrer & Canavan, P.C., and by way of his Complaint against Defendants Dealer and Manufacturer, states as follows:

- Defendant Ford Motor Company, (hereinafter "Manufacturer") is a foreign
  corporation, in the business of manufacturing automobiles, with the intention of selling these
  automobiles to the public at large through a system of authorized dealerships. Defendant
  Mamafacturer does business in all counties of the State of Illinois including Kane County, State
  of Illinois.
- Defendant Zimmerman Ford, Inc. (hereinafter "Dealer"), is a corporation, existing
  under the laws of the State of Illinois, with offices and business establishments in St. Charles,
  County of Kane, Illinois. Defendant Dealer is an authorized dealership for Defendant

Manufacturer, and is engaged in the business of selling and repairing automobiles manufactured by Defendant Manufacturer to the public at large.

- 3. Plaintiff, at a state of at all times relevant hereto was residing in Illinois.
- 4. On or about December 9, 2002, Plaintiff purchased from Defendant Dealer a new 2003 Ford 350 pick-up truck, manufactured by Defendant Manufacturer, Serial No. 1FTSF31P23E for valuable consideration (a copy of purchase contract attached as Exhibit "A").
  - 5. Plaintiff is a "consumer" under 15 U.S.C. 2302.
- 6. That in addition to applicable State law, the Magnuson-Moss Warranty Act, Ch. 15 U.S.C.A., Section 2301, et. seq. (hereinafter "Warranty Act") is applicable to this Complaint, in that the automobile is a consumer product, built subsequent to January 4, 1975, and costs in excess of \$10.00.
- Defendants Manufacturer and Dealer are suppliers and Service Contractors as defined in the Warranty Act. 15 U.S.C.A., Section 2301 (4), (5).
- 8. Plaintiff's purchase of the automobile was accompanied by written warranties offered by Defendants and extending to the Plaintiff, which warranties were part of the basis of the bargain of the Contract between Plaintiff and the Defendant, for the sale of the automobile.
- 9. In these written warranties, Defendants warranted the automobile for three years/36,000 miles for any non-conformities in material or workmanship and that Defendants would provide repair or replacement free of charge to Plaintiff if the product failed to meet the specifications set forth in the agreements. (copy of Affidavit of William G. Hutul not available, and documents memorializing these warranties, attached as Exhibit B).
  - Said purchase was induced by, and Plaintiff relied on, these written warranties.

- 11. Defendants breached said warranties, in that shortly after purchase, the automobile manifested various non-conformities, including but not limited to stalling problems, engine driveability problems, defective transmission, defective engine, lack of power, and other problems. A mechanic has determined the vehicle has these non-conformities. A copy of his report is attached hereto as Exhibit "C".
- Plaintiff met all of his obligations and preconditions as provided in the written warranties.
- 13. Plaintiff has provided Defendants sufficient opportunity to repair and/or replace the automobile. The Plaintiff attempted to resolve his repair complaints through the Dispute Settlement Board, but his application was denied.
- 14. Defendants have failed to repair and/or replace the automobile, as provided in the written warranties, or as provided by law, and the automobile remains in a defective and unmerchantable condition.
- 15. Plaintiff justifiably lost confidence in the automobile's safety and reliability, and said non-conformities have substantially impaired the value of the automobile to Plaintiff. These non-conformities could not reasonably have been discovered by Plaintiff prior to Plaintiff's acceptance of the automobile.
- 16. As a result of the non-conformities, Plaintiff revoked his acceptance of the automobile on or about September 23, 2003 (copy of letter of revocation of acceptance attached hereto as Exhibit "D"). Plaintiff also revoked acceptance through the Dispute Settlement Board of Ford but his application was refused (see Exhibit "E").
- 17. At the time of revocation, the automobile was in substantially the same condition as at delivery except for damage caused by its own non-conformities and ordinary wear and tear.

- 18. Defendants have refused Plaintiff's revocation of acceptance, and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation.
- 19. As a result of Defendents' breaches of the written warranties, Plaintiff has incurred substantial damages, including all payments made on the vehicle, including a \$7,000.00 down-payment and monthly payments, aggravation and inconvenience, and other damages, including attorneys fees.

WHEREFORE Plaintiff prays for relief against Defendants Dealer and Manufacturer as follows:

- A. That the contract between Plaintiff and Defendants Dealer and Manufacturer concerning the automobile be judicially canceled and revoked.
- B. That Plaintiff have judgment against Defendants Dealer and Manufacturer for the full purchase price, insurance fees, cancellation of the installment contract, costs of "cover", loss of use, and incidental and consequential damages in a sum of \$30,000.00, aggravation and inconvenience, and prejudgment interest at the prime rate, from the date this cause of action accrued.
- C. That Plaintiff have judgment against Defendants Desler and Manufacturer for attorneys fees, witness fees, and other fees incurred as a result of bringing this action, pursuant to Ch. 15 U.S.C.A. Sec. 2310 (d) (2).
- D. That Plaintiff be awarded such other and further relief that the Court deems just and appropriate.

#### COUNT II

# BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY AGAINST DEFENDANTS DEALER AND MANUFACTURER UNDER THE MAGNUSON MOSS WARRANTY ACT

Now comes the Plaintiff The Complaint against Defendants Manufacturer and Dealer:

1-19. Plaintiff restates and realleges paragraphs 1-19 of Count I as paragraphs 1-19 of this Count II, and states further as follows:

- 20. The automobile purchased by Plaintiff was subject to an implied warranty of merchantability under Illinois Compiled Statutes Chapter \$10 ILCS 5/2-314, and as defined in 15 U.S.C. 2301(7), running from both Defendants to the intended consumer, Plaintiff berein.
- 21. That 15 U.S.C. 2308 prohibits a supplier of consumer goods from disclaiming or modifying any implied warranty when said supplier makes a written warranty to the consumer, or when a supplier has entered into a service contract with the consumer within ninety (90) days of a sale.
- 22. Pursuant to Illinois Compiled Statutes 810 ILCS 5/2-314, and/or 15 U.S.C. 2308, the automobile was impliedly warranted to be substantially free of non-conformities in material and workmanship, and thereby fit for the ordinary purpose for which the vehicle was intended, and was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the vehicle contained in the contracts and labels.
- 23. The non-conformities described above render the vehicle unmerchantable, unsafe, and thereby not fit for the ordinary purpose for which the vehicle was intended, and these non-conformities existed when the vehicle left the manufacturer's control and was sold by the dealer to Plaintiff.
- 24. As a result of the breaches of implied warranty by Defendants Manufacturer and Dealer, Plaintiff is without the reasonable value of the automobile.
- 25. As a result of the breaches of implied warranty by Defendants Manufacturer and Dealer, Plaintiff has suffered various damages, including all payments made, a down-payment of \$7,000.00, aggravation and inconvenience, and other damages including that the vehicle is substantially diminished in value by forty percent (40%) of its value.

WHEREFORE, Plaintiff prays for relief against Defendants Manufacturer and Dealer as follows:

- A. That the contract between Plaintiff and Defendants Manufacturer and Dealer concerning the automobile be judicially canceled and revoked.
- B. That Plaintiff have judgment against Defendants Manufacturer and Dealer for the full purchase price, insurance fees, cancellation of the installment contract, costs of "cover", loss of use, and incidental and consequential damages in a sum of \$30,000.00, aggravation and inconvenience, and prejudgment interest at the prime rate, from the date this cause of action accrued.
- C. That Plaintiff have judgment against Defendants Manufacturer and Dealer for Attorney's fees, witness fees, and other fees incurred as a result of bringing this action, pursuant to Cb. 15, U.S.C.A., Sec. 2310(d)(2).
- D. That Plaintiff be awarded such other and further relief that the Court deems just and appropriate.

#### COUNT III

## VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT AGAINST DEFENDANTS DEALER AND MANUFACTURER

Now comes the Plaintiff, by his attorneys, Lehrer & Canavan P.C., and states as follows by way of Complaint against Defendant Zimmennan Ford, Inc. & Ford Motor Company.

- 1-5. Plaintiff restates and realleges paragraphs 1-5 of Count 1 as paragraphs 1-5 of this Count III, and states further as follows:
- At all times relevant hereto, there was in effect in the State of Illinois a statute known as the Illinois Consumer Fraud and Deceptive Business Practices Act, Ill.Comp.Stat. 815 ILCS 505/1 et seq.
- Defendants were at all times relevant, engaged in trade or commerce as defined by the Consumer Fraud Act.
- On or about September 23, 2003 Plaintiff served written notice on the Defendant
   Zimmerman Ford, Inc. and Ford Motor Company of their violations of the Consumer France Act

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and various Federal and State laws.

- 9. The Defendants made the following representations and/or omissions to the Plaintiff:
  - (a) represented that the vehicle had been inspected and was in excellent condition with no defects after a thorough inspection by a qualified mechanic;
  - (b) in violation of State and Federal law, Defendant Zimmerman Ford refused Plaintiff's revocation of acceptance and refused to afford Plaintiff's replacement vehicle without charge or refund. This practice was an unfair and deceptive act; and
  - (c) in violation of Federal and State law, there was no window sticker on the vehicle.
- 10. The representations and/or omissions set forth above were made with the intent that Plaintiff rely on them.
- The representations and/or omissions set forth above were false and untrue, or the
   Defendants committed unfair acts, in that:
- (a) the vehicle was defective and not in excellent condition and no proper inspection of the vehicle had occurred by a qualified mechanic, as the vehicle manifested defects shortly after purchase, including stalling and engine problems; and
- (b) as set forth above, Defendant Dealer unfairly refused Plaintiff's attempts at revocation, refused to give Plaintiff a refund or replacement vehicle without charge, and otherwise acted in a defective and/or unfair manner.
- 12. The misrepresentations and/or omissions set forth above were known to be untrue at the time they were made by Defendants or the Defendants made the representations in reckless disregard of the truth or falsity of the representations.
  - At all times relevant, Defendant Ford Motor Company exercised control over the

business activities of its dealers, including Zimmerman Ford in the following ways:

- (a) required dealers to follow the rules and policies of Ford Motor Company in doing business;
- (b) required dealers to use the Ford Motor Company logo and signs, and identify themselves as authorized dealers of Ford Motor Company;
- (c) required dealers selling a Ford Motor Company vehicle to pass on to customers the Ford Motor Company warranties, and to explain these warranties to customers; required dealers to do warranty repairs on these vehicles, and to do the repairs according to procedures and policies set forth by Ford Motor Company;
- (d) required the dealers to use parts and tools either provided by Ford Motor Company or chosen by Ford Motor Company in performing repairs under the Ford Motor Company warranties and Ford Motor Company service contracts;
- (e) trained the service and sales personnel of its authorized dealers; provided training and seminars and other educational materials to the sales and service personnel of the authorized dealers;
- (f) Ford Motor Company audited the activities of the dealers and directly contacted the customers in order to audit the activities of the dealers and ensure that the dealers were acting under the policies and rules of Ford Motor Company as they pertain to dealing with customers;
- (g) Ford Motor Company had the right, at all times, to enter onto the premises of the authorized dealers, check the books, and to investigate the dealership business activities to ensure that the dealers were following the rules and procedures and policies of Ford Motor Company;