FORD 12/2/2004 APPENDIX F-2 PART 3 OF 4 BOOK 2 OF 4

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OGEMAW

Plaintiff.

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FORD MOTOR COMPANY, a Delaware Corporation and DEAN ARBOUR FORD, INC., a Michigan Corporation, Jointly and Severally,

Oefendants.

CONSUMER LEGAL SERVICES, P.C. CHRISTOPHER M. LOVASZ P-44472 MARK ROMANO P-44014 Attorneys for Plaintiff 30928 Ford Road Garden City, MI 48135 (734) 281-4700

There is, no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed end dismissed, transferred or otherwise disposed of after having been assigned to a judge in this Court.

COMPLAINT AND JURY DEMAND

NOW COMES the Plaintiff, by and through Plaintiff's attorneys, CONSUMER LEGAL SERVICES, P.C., who complains against the above named Defendants as follows:

Plaintiff is a resident of the City of Petoskey, Emmet County, Michigan.

- 2. Defendant, Ford Motor Company (hereinafter referred to as "Manufacturer"), is a Delaware Corporation authorized to do business in the State of Michigan and, at all times relevant hereto, was engaged in the manufacture, sale distribution and/or importing of Ford vehicles and related equipment, with its registered office in the City of Dearborn, Wayne County, Michigan.
- 3. Defendant, Dean Arbour Ford, Inc. (hereinafter referred to as "Lessor"), is a Michigan Corporation authorized to do business in the State of Michigan and, at all times relevant hereto, was an authorized agent for the Manufacturer, and was engaged in the business of selling and servicing Manufacturer's cars in the City of West Branch, Ogernaw County, Michigan.
- 4. On or about April 17, 2003, Plaintiff leased a new 2003 Ford F250, VIN 1FTSW31P238 (hereinafter referred to as "2003 F250"), from the Lessor which was manufactured by the Manufacturer (see copy of Vehicle Lease Agreement attached as Exhibit A).
- 5. Along with the lease of the 2003 F250 Plaintiff received written warranties and other express and implied warranties including, by way of example and not by way of limitation, warranties from Manufacturer and Lessor (a copy of the written warranty is in the possession of the Defendants).

6. Plaintiff has taken the 2003 F250 to the Manufacturer's authorized agent/dealer, Lessor, on at least six (6) separate occasions (see copy of repair orders attached as Exhibit B). By way of example, and not by way of limitation, the defects with Plaintiff's 2003 F250 include the following:

| Date | <u>Mileage</u> | <u>lnyoice #</u> | <u>Complaint</u> |
|----------|----------------|-------------------|--|
| 01/12/04 | 30,171 | 79249 | ENGINE DEFECT: Ran rough, lost power and stalled |
| 01/16/04 | 30,172 | 79351 | CD/STEREO DEFECT: CD player cuts out when playing cd |
| 01/26/04 | 30,354 | 119972 | ENGINE DEFECT: Engine turns over, won't start; stalled out 4 times coming from Wolverine; vehicle towed in |
| 01/28/04 | 30,587 | 79552 | ENGINE DEFECT: Runs rough and stalls; will not restart for 1 hour |
| 02/02/04 | 30,587 | 79 644 | ENGINE DEFECT: Runs poor and stalls out, no power |
| 04/07/04 | 35,797 | 41897 | ENGINE DEFECT: Engine loses power and quits while driving |

- 7. This cause of action arises out of Defendants' misrepresentations, various breaches of warranties, violations of statutes and breaches of covenants of good faith and fair dealing as hereinafter alleged.
- 8. The amount in controversy exceeds TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), exclusive of interest and costs, for which Plaintiff seeks judgment against Defendants, together with equitable relief. In addition, Plaintiff seeks damages from Defendants for incidental, consequential, exemplary and actual damages including interest, costs, and actual attorneys' fees.

COUNT I BREACH OF EXPRESS WARRANTY

- Plaintiff incorporates herein by reference each and every allegation contained
 Paragraphs 1 through 8 as though herein fully restated and realleged.
- Plaintiff is a "buyer" under the Michigan Uniform Commercial Code, MCLA
 440.2103; MSA 19.2103.
- Manufacturer and Lessor are "Lessors" under the Michigan Uniform.
 Commercial Code, MCLA 440.2103; MSA 19.2103.
- The 2003 F250 constitutes "goods" under the Michigan Uniform Commercial
 Code, MCLA 440,2105; MSA 2105.
- This is a "transaction in goods", to which MCLA 440.2102; MSA 19.2105 is
 applicable.
- 14. Plaintiff's lease of the 2003 F250 was accompanied by an express warranty, written and otherwise offered by the Manufacturer and Lessor. Whereby said warranty was part of the basis of the bargain of the contract, upon which Plaintiff relied, between Plaintiff and Manufacturer/Lessor for its sale of the vehicle.
- 15. In this express warranty, the Manufacturer warranted if any defects were discovered within certain periods of time, the Manufacturer and/or Lessor would provide repair of the 2003 F250 free of charge to Plaintiff under specific terms as stated in the express warranty.
- 16. In fact, Plaintiff discovered the 2003 F250 had defects and problems after Plaintiff purchased the vehicle as discussed above.
 - Plaintiff notified Manufacturer and Lessor of the aforementioned defects.

- Plaintiff has provided the Lessor and the Manufacturer with sufficient opportunities to repair or replace the 2003 F250.
- Plaintiff has reasonably met all obligations and pre-conditions as provided in the express warranty.
- 20. The Manufacturer and Lessor have failed to adequately repair the 2003 F250 end/or have not repaired the 2003 F250 in a timely fashion, and the 2003 F250 remains in a defective condition.
- 21. Even though the express warranty provided to Plaintiff limited Plaintiff's remedy to repair and/or adjust defective parts, the 2003 F250's defects have rendered the limited warranty ineffective to the extent that the limited remedy of repair and/or adjustment of defective parts failed of its essential purpose pursuant to MCLA 440.2719(2); MSA 19.2719(2); and/or the above remedy is not the exclusive remedy under MCLA 440.2719(1)(b); MSA 19.2719(1)(b).
- The 2003 F250 continues to contain defects which substantially impair the value of the automobile to the Plaintiff.
- 23. These defects could not reasonably have been discovered by the Plaintiff prior to Plaintiff's acceptance of the 2003 F250.
- 24. The Manufacturer and Lessor induced Plaintiff's acceptance of the 2003 F250 by agreeing, by means of the express warranty, to remedy, within a reasonable time, those defects which had not been or could not have been discovered prior to acceptance.
- 25. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2003 F250 and the Plaintiff cannot reasonably rely upon the vehicle for the ordinary purpose of safe, efficient transportation.

- 26. If the finder of fact finds revocation and/or rejection was improper, then, in the alternative, Plaintiff alleges that as of the date of revocation, the 2003 F250 was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear. Therefore, Plaintiff is entitled to damages for breach of warranty calculated by 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.
- 27. The Manufacturer and Lessor have refused Plaintiff's demands and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled pursuant to MCLA 440.2313; MSA 19.2313 and MCLA 440.2711, 440.2714 and 440.2715; MSA 19.2711, 19.2714 and 19.2715.

WHEREFORE, Plaintiff prays for judgment against Defendants:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
- B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;
 - To cancel the lease contract and pay off the balance on the contract;
 - For incidental, consequential and actual damages;
 - E. For costs, interest and actual attorneys' fees; and
 - For such other relief this Court deems appropriate.

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COUNT II BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

- 28. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 27 as though herein fully restated and realleged.
- The Manufacturer and Lessor are "merchants" with respect to automobiles under the Michigan Uniform Commercial Code, MCLA 440.2104; MSA 19.2104.
- 30. The 2003 F250 was subject to implied warranties of merchantability under MCLA 440.2314; MSA 19.2314, running from the Manufacturer and the Lessor to the benefit of Plaintiff.
- The 2003 F250 was not fit for the ordinary purpose for which such goods are used.
- The defects and problems hereinbefore described rendered the 2003 F250 unmerchantable.
- 33. The manufacturer and Lessor failed to adequately remedy the defects in the 2003 F250; and the 2003 F250 continues to be in an unmerchantable condition at the time of revocation.

WHEREFORE, Plaintiff prays for judgment against Defendants:

- Declaring acceptance has been properly revoked and for damages incurred

 In revoking acceptance;
 - For damages occasioned by the breach of the implied warranty;
- C. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;
- D. To cancel the lease contract covering the 2003 F250 and pay off the balance on the contract;

- For consequential, incidental and actual damages;
- F. Costs, interest and actual attorneys' fees; and
- G. Such other relief this Court deems appropriate.

COUNT III REVOCATION OF ACCEPTANCE

- 34. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 33 as though herein fully restated and realleged.
- 35. Plaintiff accepted the 2003 F250 without discovering the above defects due to the fact Plaintiff was reasonably induced to accept the vehicle by the difficulty of discovery of the above defects.
- 36. In the alternative, Plaintiff reasonably assumed, and Manufacturer and Lessor represented, that all of the aforesaid defects and/or nonconformities would be cured within a reasonable time.
- After numerous attempts by Defendants to cure, it has become apparent the nonconformities could not be seasonably cured.
- 38. The nonconformities substantially impaired the value of the 2003 F250 to the Plaintiff.
- 39. Plaintiff had previously notified Manufacturer and Lessor of the nonconformities and Plaintiff's intent to revoke acceptance pursuant to MCLA 440.2608; MSA 19.2608 and demanded the refund of his purchase price for the 2003 F250 and out-of-pocket expenses (see copy of Plaintiff's revocation of acceptance letter attached as Exhibit C).

40. Manufacturer and Lessor have nevertheless refused to accept return of the 2003 F250 and have refused to refund any part of the sum equal to the purchase price and out-of-pocket expenses incurred by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Defendants:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
- B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;
- C. To cancel the lease contract covering the 2003 F250 and pay off the balance on the contract.
 - For consequential, incidental and actual damages;
 - Costs, interest and actual attorneys' fees; and
 - F. Such other relief this Court deems appropriate.

COUNT IV BREACH OF EXPRESS WARRANTY

- 41. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 40 as though herein fully restated and realleged.
- Plaintiff is a "lessee" under the Michigan Uniform Commercial Code, MCLA
 440.2803 (n).
- 43. Manufacturer is a "supplier" under the Michigan Uniform Commercial Code,
 MCLA 440.2803 (x).
- Lessor is a "lessor" under the Michigan Uniform Commercial Code, MCLA
 440.2803 (p).

- The 2003 F250 constitutes "goods" under the Michigan Uniform Commercial
 Code, MCLA 440.2803 (h).
- 46. The Michigan Net Lease attached as Exhibit A is a "consumer lease" under the Michigan Uniform Commercial Code, MCLA 440.2803 (e).
- 47. Plaintiff's lease of the 2003 F250 was accompanied by an express warranty, written and otherwise offered by the Manufacturer and Leasor. Whereby said warranty was part of the basis of the bargain of the lease contract, upon which Plaintiff relied, between Plaintiff and Manufacturer/Lessor for its lease of the 2003 F250.
- 48. The benefit of the Manufacturer's express warranty extends to Plaintiff under the Uniform Commercial Code, MCLA 440.2859 (1).
- 49. In this express warranty, the Manufacturer warranted if any defects were discovered within certain periods of time, the Manufacturer and/or Lessor would provide repair of the 2003 F250 free of charge to Plaintiff under specific terms as stated in the express warranty.
- 50. In fact, Plaintiff discovered the 2003 F250 had defects and problems efter Plaintiff purchased said vehicle as discussed above.
 - Plaintiff notified Manufacturer and Lessor of the aforementioned detects.
- Plaintiff has provided the Leasor and the Manufacturer with sufficient opportunities to repair or replace the 2003 F250.
- Plaintiff has reasonably met all obligations and pre-conditions as provided in the express warranty.

- 54. The Manufacturer and Lessor have failed to adequately repair the 2003 F250 and/or have not repaired the 2003 F250 in a timely fashion, and the 2003 F250 remains in a defective condition.
- 55. Even though the express warranty provided to Plaintiff limited Plaintiff's remedy to repair and/or adjust defective parts, the 2003 F250's defects have rendered the limited warranty ineffective to the extent that the limited remedy of repair and/or adjustment of defective parts failed of its essential purpose.
- 56. The 2003 F250 continues to contain defects which substantially impair the value of the automobile to the Plaintiff.
- These defects could not reasonably have been discovered by the Plaintiff
 prior to Plaintiff's acceptance of the 2003 F250.
- 58. The Marsufacturer and Lessor induced Plaintiff's acceptance of the 2003 F250 by agreeing, by means of the express warranty, to remedy, within a reasonable time, those defects which had not been or could not have been discovered prior to acceptance.
- 59. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2003 F250 and the Plaintiff cannot reasonably rely upon the vehicle for the ordinary purpose of safe, efficient transportation.

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- 80. If the finder of fact finds revocation and/or rejection was improper, then, in the alternative, Plaintiff alteges that as of the date of revocation, the 2003 F250 was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear. Therefore, pursuant to M.C.L.A. 440.2969 (4), Plaintiff is entitled to damages for breach of warranty calculated by the difference at the time and place of acceptance between the value of the use of the good accepted and the value it would have had if it had been as warranted for the lease term.
- 61. The Manufacturer and Lessor have refused Plaintiff's demands and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled pursuant to M.C.L.A. 440.2958; and M.C.L.A. 440.2969; and 440.2967; and 440.2970.

WHEREFORE, Plaintiff prays for judgment against Defendants:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
- For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;
- C. To cancel the lease contract covering the 2003 F250 and payoff the balance on the same:
- D. For incidental and consequential damages, and actual damages for breach of warranty;
 - E. For costs, interest and actual attorneys; fees; and
 - For such other equitable relief this Court deems appropriate.

COUNT V BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

- 62. Plaintiff Incorporates herein by reference each and every allegation contained in Paragraphs 1 through 61 as though herein fully restated and realleged.
- The Manufacturer and Lessor are "merchants" with respect to automobiles under the Michigan Uniform Commercial Code, MCLA 440.2104; MSA 19.2104.
- 64. The 2003 F250 was subject to implied warranties of merchantability under MCLA 440.2862, running from the Manufacturer and the Lessor to the benefit of Plaintiff.
- 65. The 2003 F250 was not fit for the ordinary purpose for which such goods are used.
- 66. The defects and problems hereinbefore described rendered the 2003 F250 unmerchantable.
- 67. The Manufacturer and Lessor failed to adequately remedy the defects in the 2003 F250 and the 2003 F250 continued to be in an unmerchantable condition at the time of revocation.

WHEREFORE, Plaintiff prays for judgment against Defendants:

- Declaring acceptance has been properly revoked and for damages incurred in revoking acceptance;
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 - For damages occasioned by the breach of the implied warranty;
- C. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;

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- To cancel the lease contract covering the 2003 F250 and pay off the balance on the same;
- E. For incidental and consequential damages, and actual damages for breach
 of warranty;
 - For costs, interest and actual attorneys' fees; and
 - G. For such other equitable relief this Court deems appropriate.

COUNT VI BREACH OF WRITTEN WARRANTY UNDER MAGNUSON-MOSS WARRANTY ACT

- 68. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 67 as though herein fully restated and realleged.
- 69. Plaintiff is a "consumer" as defined in the Magnuson-Moss Warranty Act (hereinafter referred to as the "Warranty Act") 15 USC 2301(3).
- 70. The Lessor is a "supptier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).
- 71. The Manufacturer is a "supplier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).
- 72. The 2003 F250 is a "consumer product" as defined in the Warranty Act, 15 USC 2301(1).
 - The 2003 F250 was manufactured, sold and purchased after July 4, 1975.
- 74. The express warranty given by the Manufacturer pertaining to the 2003 F250 is a "written warranty" as defined in the Warranty Act, 15 USC 2301(6).

- 75. The Lessor is an authorized dealership/agent of the manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.
- 76. The above-described actions (failure to repair and/or properly repair the above-mentioned defects, etc.), including failure to honor the written warranty, constitute a breach of the written warranty by the Manufacturer and Lessor actionable under the Warranty Act, 15 USC 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Defendants:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
- B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;
- C. To cancel the lease contract covering the 2003 F250 and pay off the balance on the contract:
 - For consequential, incidental and actual damages;
 - E. For costs, interest and actual attorneys' fees; and
 - F. Such other relief this Court deems appropriate.

COUNT VII BREACH OF IMPLIED WARRANTY UNDER MAGNUSON-MOSS WARRANTY ACT

77. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 76 as though herein fully stated and realleged.

78. The above-described actions on the part of the Lessor and Manufacturer constitute a breach of the implied warranties of merchantability actionable under the Warranty Act, 16 USC 2301(7), 2308, 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lesson.

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
- B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;
- C. To cancel Plaintiff's retail installment contract and pay off the balance on the contract;
 - For consequential, incidental and actual damages;
 - E. For costs, interest and actual attorneys' fees; and
 - F. Such other relief this Court deems appropriate.

COUNT VIII VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT MCLA 445.901 ET SEQ: MSA 19.418(1) ET SEQ.

- 79. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 78 as though herein fully restated and realleged.
- 80. Pleintiff is a "person" within the meaning of MCLA 445.902(c); MSA 19.418(2)(c).
- Manufacturer and Lessor are engaged in "trade or commerce" as defined in MCLA 445.902(d).

- 82. The Manufacturer and Lessor have engaged in unlawful, unfair, unconscionable, or deceptive methods, acts or practices, including but not limited to:
- (a) The Manufacturer and Lessor represented to Plaintiff the 2003 F250 and the warranty thereof had characteristics, uses, benefits, qualities, and standards which they did not actually have.
- (b) The Manufacturer and Lessor represented to Plaintiff the 2003 F250 and the warranty thereof were of a particular quality and standard and they were not.
- (c) If Plaintiff allegedly waived a right, benefit, or immunity provided by law in purchasing the 2003 F250, the Manufacturer and Lessor have failed to clearly state the terms of such waiver and Plaintiff has not specifically consented to such waiver.
- (d) The Manufacturer and Lessor have failed to restore an amount equal to Plaintiff's down payment and other payments made by Plaintiff on the 2003 F250.
- (e) The Manufacturer and Lessor have made gross discrepancies between the oral representations to Plaintiff and written agreements covering the same transaction relative to the 2003 F250 and the Manufacturer failed to provide the promised benefits to Plaintiff with regard thereto.
- (f) The Manufacturer and Lessor have made representations of fact and/or statements of fact material to said transaction such that the Plaintiff reasonably believed that the represented or suggested standard, quality, characteristics, and uses of the 2003 F250 to be other than they actually were.

- (g) The Manufacturer and Lessor have made representations of fact and/or statements of fact material to such transaction such that the Plaintiff reasonably believed that the represented or suggested service to the 2003 F250 to be other than it actually was.
- (h) The Manufacturer and Lessor have failed to provide the promised benefits to Plaintiff with regard to the sale of the 2003 F250 to Plaintiff.
- (i) The Manufacturer and Lessor have failed to disclaim or limit the implied warranty of merchantability and fitness for use in a clear and conspicuous manner.
- (j) The Manufacturer and Lessor have failed to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.
- 83. The Plaintiff has suffered loss and damages as a result of the aforesaid violations of the Consumer Protection Act.

WHEREFORE, Plaintiff prays this Court enter a declaratory judgment as to the violations of the Michigan Consumer Protection Act and for judgment against Manufacturer and Lessor for all damages Plaintiff has incurred, including reasonable attorneys' tees as provided by statute, together with interest, costs and expenses of this suit, and such other relief as this Court deems appropriate and equitable.

COUNT IX BREACH OF CONTRACT

84. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 83 as though herein fully restated and realleged.

- 85. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2003 F250 to Plaintiff. The limited warranty provided the Lessor would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.
- 86. The limited warranty, given by the Manufacturer and adopted by the Lessor when the Lessor serviced and repaired the 2003 F250 created a contractual relationship between the Manufacturer/Lessor and Plaintiff.
- 87. The Manufacturer and Lessor have breached the express limited warranty contract in that they have falled to repair or adjust defective parts covered under the limited warranty, have failed to do the same within the limited warranty coverage period, and within a reasonable time.

WHEREFORE, Plaintiff prays for judgment against Defendants:

- A. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monies paid for the lease of the 2003 F250;
 - For incidental, consequential, exemplary and actual damages;
 - C. For costs and expenses, interest, and actual attorneys' fees; and
 - D. Such other relief this Court deems appropriate.

COUNT X RESCISSION OF CONTRACT

88. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 87 as though herein fully restated and realleged.

- 89. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2003 F250 to Plaintiff. The limited warranty provided the Lessor would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.
- 90. The limited warranty, given by the Manufacturer and adopted by the Lessor when the Lessor serviced and repaired the 2003 F250 created a contractual relationship between the Manufacturer/Lessor and Plaintiff.
- 91. The Manufacturer and Lessor have breached the express limited warranty contract in that they have failed to repair or adjust defective parts covered under the limited warranty, have failed to do the same within the limited warranty coverage period, and within a reasonable time.
- 92. The actions of the Manufacturer and Lessor have resulted in a failure of consideration justifying the rescission of the contract.
- 93. Without a judicial declaration that the contract has been rescinded, Plaintiff will suffer irreparable and substantial harm if the consideration paid by Plaintiff and damages sustained by Plaintiff, together with interest, are not restored.

WHEREFORE, Plaintiff prays for judgment and the following relief against all Defendants:

A. That this Court order a resclasion of the lease contract covering the 2003 F250 by ordering Defendants to refund all monies paid by Plaintiff and ordering Plaintiff to return the 2003 F250 to the Defendants;

- B. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monles paid for the lease of the 2003 F250;
 - For incidental, consequential, exemplary and actual damages;
 - D. For costs and expenses, interest, and actual attorneys' fees; and
 - E. Such other relief this Court deems appropriate.

COUNT XI VIOLATION OF NEW MOTOR VEHICLE WARRANTIES ACT; MCL 257.1401 ET SEQ; MSA 9.2705

- 94. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 93 as though herein fully restated and realleged.
- 95. Plaintiff is a "consumer" under the Michigan New Motor Vehicle Warranties.

 Act (hereinafter referred to as "Lemon Law"), MCL 257.1401(a).
 - 96. Manufacturer, is a "manufacturer" under the Lemon Law, MCL 257, 1401(d).
 - The 2003 F250 is a "motor vehicle" under the Lemon Law, MCL 257.1401(f).
- 98. The 2003 F250 is a "new motor vehicle" under the Lemon Law, MCL 257.1401(g).
- 99. The express warranty given by Manufacturer, covering the 2003 F250 is a "manufacturer's express warranty" under the Lemon Law, MCLA 257.1401(e).
- 100. The Lessor is a "new motor vehicle dealer" under the Lemon Law, MCLA 257.1401(h).
- 101. Plaintiff's 2003 F250 has been subject to a reasonable number of repair attempts for the aforementioned defects:

- (a) Said motor vehicle has been subject to at least four repair attempts by Defendant Manufacturer, through its new motor vehicle dealers, within 2 years of the date of the first attempt to repair the defect or condition; and/or
- (b) Said vehicle was out of service for 30 or more days within the time limit of the Manufacturer's express warranty and within one year from the date of delivery to Plaintiff.
- 102. After notifying Manufacturer of the aforementioned defects following the third repair attempt and/or 25 days in a repair facility, the Manufacturer was allowed a final repair attempt.
- 103. Manufacturer's attempted repair was unsuccessful as the 2003 F250 continues to manifest the aforementioned defects.
- 104. The aforementioned defects substantially impair the use or value of the 2003 F250 to the Plaintiff and/or prevent the 2003 F250 from conforming to the Manufacturer's express warranty.

WHEREFORE, Plaintiff prays for the following relief:

- Replacement of the 2003 F250 with a comparable replacement motor vehicle currently in production and acceptable to Plaintiff, or
- B. Manufacturer must accept return of the vehicle and refund to Plaintiff the lease price including options or other modifications installed or made by or for manufacturer, the amount of all charges made by or for Manufacturer, towing charges and rental costs less a reasonable allowance for Plaintiff's use of the vehicle. In addition, pursuant to MCL 257.1403(4), the Manufacturer must pay off the balance on the retail installment contract unless consumer accepts a vehicle of comparable value.

- C. Pursuant to MCL 257.1407, Plaintiff is entitled to a sum equal to the aggregate amount of costs and expenses, including attorneys' fees based on actual time expended by Plaintiff's attorney in commencement and prosecution of this action.
 - Incidental and consequential damages.
 - For prejudgment interest.
 - F. For such other and further relief as may be justified in this action.

COUNT XII REVOCATION OF ACCEPTANCE

- 105. Plaintiffincorporates herein by reference each and every allegation contained in Paragraphs 1 through 104 as though herein fully restated and realleged.
- 106. Plaintiff accepted the 2003 F250 without discovering the above defects due to the fact Plaintiff was reasonably induced to accept the vehicle by the difficulty of discovery of the above defects.
- 107. In the alternative, Plaintiff reasonably assumed, and Manufacturer and Lessor represented, that all of the aforesaid defects and/or nonconformities would be cured within a reasonable time.
- 108. After numerous attempts by Defendants to cure, it has become apparent the nonconformities could not be seasonably cured.
- 109. The nonconformities substantially impair the value of the 2003 F250 to the Plaintiff.

- 110. Plaintiff has previously notified Manufacturer and Lessor of the nonconformities and Plaintiff's intent to revoke acceptance pursuant to MCLA 440.2967 and demanded the refund of Plaintiff's lease payments (rent) and security interest for the 2003 F250 and out-of-pocket expenses (see copy of Plaintiff's revocation of acceptance letter attached as Exhibit C).
- 111. Manufacturer and Lessor have nevertheless refused to accept return of the 2003 F250 and have refused to refund any part of the aum equal to the lease payments (rent) and security interest and out-of-pocket expenses incurred by Plaintiff.

WHEREFORE, Plaintiff prays for Judgment against Manufacturer and Lessor:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
- B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2003 F250;
- C. To cancel the lease contract covering the 2003 F250 and pay off the balance on the same;
- D. For incidental and consequential damages, and actual damages for breach
 of warranty;
 - For costs, interest and actual attorneys' fees; and
 - For such other equitable relief this Court deems appropriate.

COUNT XIII VIOLATION OF THE MOTOR VEHICLE SERVICE AND REPAIR ACT MCLA 257.1301. ET SEQ.

112. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 111 as though fully restated and realleged.

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- 113. The Leasor is a "motor vehicle repair facility" as defined by MCLA 257.1302(g)
- 114. The Lessor is subject to the Motor Vehicle Service And Repair Act, MCLA 257.1301, gt seq.
- 115. The Lessor has engaged or attempted to engage in methods, acts, or practices which were unfair or deceptive under said Act and/or the rules in effect during the relevant time period herein pursuant to MCLA 257.1307, 257.1334, 157.1335, 257.1336, and 257.1337; and Michigan Administrative Rules 257.131 through 257.137 including, but not fimited to:
- (a) Failing to reveal material facts, the omission of which tends to mislead or deceive the Plaintiff and which facts could not reasonably be known by Plaintiff;
- (b) Allowing Plaintiff to sign on acknowledgement, certificate or other writing which affirms acceptance, delivery, compliance with a requirement of law, or other performance, when the Lessor, knows or had reason to know that the statement is not true;
- (c) Failing to promptly restore to the Plaintiff entitled thereto any deposit, down payment, or other payment when a contract is rescinded, canceled, or otherwise terminated in accordance with the terms of the contract or the Act;
- (d) Failing upon return of the vehicle to the Plaintiff to give a written statement of repairs to the Plaintiff which discloses:
- (i) Repairs or services performed, including a detailed identification of all parts that were replaced and a specification as to which are new, used, rebuilt, or reconditioned; and

- (ii) A certification that authorized repairs were completely proper or a detailed explanation of an inability to complete repairs properly, to be signed by the owner of the facility or by a person designated by the owner to represent the facility and showing the name of the mechanic who performed the diagnosis and the repair,
- 116. As a result of the Lessor's actions Plaintiff has suffered damages as set forth in the preceding Counts and is also entitled to statutory damages and attorneys' fees as provided in the Motor Vehicle Service and Repair Act, specifically MCLA 257.1336.

WHEREFORE, Plaintiff prays for a judgment against the Lessor in an amount to be determined by the trier of fact, but to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), plus double damages and costs and reasonable attorneys fees, and for such other and further relief as the Court deems appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues triable as such.

Respectfully submitted,

CONSUMER LEGAL SERVICES, P.C.

By:

CHRISTOPHER M. LOVASZ P-44472

MARK ROMANO P-44014

Attorneys for Plaintiff 30928 Ford Road

Garden City, MI 48135

(734) 261-4700

Dated: April 15, 2004

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EXHIBIT A



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EXHIBIT B

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West Branch, MI 48061
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RONALD J. 804.2 CHRISTOPHER N. LOYASZ STEVEN S. TOTH MARK P. BOMANO STEVEN G. STANCROFF TROY T. GORMAN CHRISTOPHER A. WINKLER MATTHEW W. DELPZENNE KARL P. HEIL BRIAN M. PERKINS CONSUMER
EGAL
SERVICES, P.C.
ATTORNEYS AND COUNSELORS

30928 FORD RIJAD GARDEN CITY, MI 48135 (734) 261-4700 FAX (734) 261-4737

April 15, 2004

Mr. John D. Arbour 3520 Huron Rd. Pinconning, MI 48650

RE: <u>2003 Ford F250, VIN 1F7SW31F23B</u>

Dear Mr. Arbour:

Please be advised that I represent regarding the above-referenced vehicle leased from Dean Arboux Ford, Inc. on or about April 17, 2003. pursuant to the Michigan Uniform Commercial Code, which covers breach of express and implied warranties, revocation of acceptance and other rights and remedies, the Michigan Consumer Protection Act, and the Federal Magnuson-Moss Warranty Act, does hereby revoke acceptance of the 2003 F250 and is prepared to file suit to effect revocation of acceptance, cancellation of the lease, return of the vehicle, and payment to him of all morries expended putting him back in the position he was prior to the contract.

intends to hold Dean Arbour Ford, Inc. and Ford Motor Company liable for all other foreseeable damages due to the nonconforming vehicle, including actual attorneys' fees incurred with enforcing his rights pursuant to the following: M.C.L.A. 445.911 Sec. 11(b)(2), 15 USC 2310(d)(2), M.C.L.A. 440.2987, M.C.L.A. 440.2715(1) Cady y. Dick Loehr's, 100 Mich App 543; 299 NW2d 69 (1980).

EXHIBIT C.

Mr. John D. Arbour April 15, 2004 Page Two

Since the determinant took delivery, the vehicle has been in for repair on at least six (6) different occasions.

Please be advised that we are asserting an attorney's tien on any and all proceeds in this matter. All further communications with must be directed through my office.

Thank you for your anticipated cooperation.

Very truly yours,

GONSTIMER LEGAL SERVICES, P.C.

Christopher M. Lovasz, Esq.

CML/dla

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Marshall Meyers (620584) KROHN & MOSS, LTD. 111 West Monroe, Suite 711 Phoenix, AZ 85003 (602) 275-5588 (866) 385-5215 (facsimile) Attorney for Plaintiff

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IN THE SUPERIOR COURT OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

| Plaintiff, vs. | Case No.: CV 2004-013457 COMPLAINT BREACH OF STATUTORY WARRANTIES |
|---------------------|---|
| FORD MOTOR COMPANY, |)) |
| Defendant. |))) |
| · | ·- |

- This Court has jurisdiction to hear this matter pursuant to 15 U.S.C. §2310(d) and A.R.S. Const. Art. 6 §14.
- Plaintiff, ("Consumer"), is an individual who was at all times relevant hereto residing in the State of Arizona.
- 3. Defendant, Ford Motor Company ("Warrantor"), is a foreign corporation authorized to do business in the State of Arizona, County of Maricopa, and is engaged in the manufacture, sale, supply and distribution of motor vehicles and related equipment and services, such as written warranties. Warrantor supplies its products and services to the public at large athrough a system of authorized dealerships, including Babbitt Ford ("Dealer").
- On or about December 31, 2003, Consumer purchased a 2004 Ford F-350 ("F-350") manufactured and supplied by Warrantor, Vehicle Identification No.

1FTSW31P34F for \$50,888.32, inclusive of all collateral charges incurred at the time of purchase. See Retail Installment Contract, attached hereto as Exhibit "A."

- 5. In connection with Consumer's purchase of the F-350, Warrantor issued and supplied to Consumer its written warranty, which included three (3) year or thirty-six thousand (36,000) mile bumper to bumper coverage, as well as other warranties fully outlined in the Warrantor's New Vehicle Warranty booklet.
- 6. On or about the aforementioned date, Consumer took possession of the F-350 and shortly thereafter experienced various defects and non-conformities within the same that diminish its value and/or substantially impair its use and value to Consumer. These defects include, but are not limited to a defective engine, defective electrical system, persistent dying in flight condition, persistent recall, defective air conditioning system, and, any other complaints actually made, whether contained on Warrantor's invoices or not.
- Consumer provided Warrantor, through its authorized dealership network, a sufficient opportunity to repair the defects, non-conformities and conditions within the F-350.
- Despite being given more than a reasonable number of attempts/reasonable
 opportunity to cure said defects, non-conformities and conditions, Warrantor failed to do so.
- Warrantor's failure to correct said defects violate Warrantor's statutory duty to
 Consumer and the expectations created by Warrantor's warranty.
- 10. Consumer avers that as a result of the ineffective repair attempts made by Warrantor through its authorized dealership network, the F-350 cannot be utilized as intended by Consumer at the time of acquisition and that the use and value of the F-350 has been diminished and/or substantially impaired to Consumer.

11. Consumer relied on Warrantor's product advertisements, written, verbal, electronic and/or otherwise, regarding the length and duration of Warrantor's bumper to bumper warranty when deciding to purchase the subject vehicle.

- 12. Consumer provided Warrantor written notification of the defects within the subject vehicle, an offer for a final opportunity to cure, and Consumer's demand for compensation on July 1, 2004. <u>See</u> Notice Letter, attached bereto as Exhibit "B."
- 13. Warrantor refused Consumer's demand for compensation and has refused to provide Consumer with the remedies to which Consumer is entitled.
- 14. Consumer has been and will continue to be financially damaged due to Warrantor's failure to comply with Warrantor's statutory duty to Consumer and the provisions of its written and/or express warranty.
- 15. Consumer has met all obligations and preconditions as provided in Warrantor's warranty and by statute(s).
- 16. As a direct and proximate result of Warrantor's failure to comply with its written warranty, Consumer has suffered damages and, in accordance with 15 U.S.C. §2310(d) and A.R.S. §44-1263, Consumer is entitled to bring suit for such damages and other legal and equitable relief.

WHEREFORE, prays for relief against Ford Motor Company in the form of a refund or replacement, an award of diminution in value damages, any equitable relief to which Plaintiff may be entitled, all attorney fees, expert fees and court costs incurred charing the commencement and prosecution of this matter, and all other relief deemed just and appropriate by this Court.

Respectfully submitted this // day of // day of // day of // , 2004

Marshall/Meyers
KROHN & MOSS, LTD.
III West Monroe St., Suite 711
Phoenix, AZ 85003
(602) 275-5588
Attorney #020584
Attorney for Plaintiff

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Krohn & Moss, Ltd.

Arimona Office 111 West Monroe, Suite 711 Phoonis, AZ 85003 www.krohnandmoss.com



Writer's Direct Number (602) 275-5588 aut. 5805 Writer's Direct Foodmik (866) 385-5215 Writer's Direct B-Mail managers@consumerle-conten.com

Licensed to Practice in Arisana

Also practicing in California Florida Georgia Ilhinois Indiana Missouri Ohio Wisconsin

July 1, 2004

SENT VIA U.S. MAIL

Ford Motor Company Customer Relationship Center P.O. Box 6248 Dearborn, MI 48126

Re:

Our Clients

Your Client:

Vehicle:

VIN:

Ford Motor Company 2004 Ford F350

1FTSW31P34

Our File Number: A04014210Z

Dear Sir/Madam:

Please be advised that this office represents the above-named individual regarding claims against your company pursuant to the Federal Magnuson-Moss Warranty Act, the Arizona Lemon Law and/or the Uniform Commercial Code with regard to the above-listed vehicle. Please direct all future contacts and correspondence to the office listed above.

HAVING BEEN FORMALLY NOTIFIED OF OUR REPRESENTATIONS, YOU ARE INSTRUCTED NOT TO CONTACT OUR CLIENT UNDER ANY CIRCUMSTANCES. DIRECT ALL INQUIRIES TO THIS OFFICE. IF YOU FAIL TO ACT IN CONFORMITY WITH THIS DIRECTIVE, INJUNCTIVE RELIEF WILL BE SOUGHT AGAINST YOU.

There were numerous non-conformities with my client's automobils for which relief is sought, and numerous attempts to repair the vahicle have been unsuccessful. There were also numerous violations of both Federal and State law in connection with the delivery and/or repair of the absencentioned vehicle. The primary non-conformities and violations include, but are not limited to:

- 1. Defective engine,
- 2. Defective electrical system,
- A dieing in flight condition,
- Defective air conditioning system.
- 5. A recall condition, and,
- Any additional complaints actually made, whether contained on your company's invoices or otherwise.

The non-conformities listed above constitute a substantial impairment of the use, value and safety of the subject vehicle. Accordingly, my client has had enough! Because of the inordinate amount of repairs within the applicable warranty period, my client has justifiably lost confidence in the vehicle. As one court has stated,

For a majority of people the purchase of a new car is a major investment, rationalized by the prace of mind that flows from its dependability and safety. Once their faith is shaken, the vahicle loses not only its real value in their eyes, but becomes an instrument whose integrity is substantially impaired and whose operation is fraught with apprehension. Zabriskie Chevrolet, Inc. v. Smith, 240 A.2d 195.

Concerning the amount of grief a person need take with a vehicle, one court expressed the consumer's lament in the following manner:

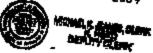
There comes a time when enough is enough – when an automobile purchasor, after having to take his car into the shop for repairs an inordinate number of times and experiencing all of the attendant inconvenience, is entitled to say, "That's all," and revoke, notwithstanding the seller's repeated good faith efforts to fix the car. Rester v. Morrow, 491 So.2d 204.

My client's repair history clearly shows there was a breach of written warranty "based upon the generally accepted rule that an unsuccessful effort to remedy defects found to exist renders the warrantor liable; the huyer is not bound to allow him the opportunity or permit him to timber with the article indefinitely in the hope that it may ultimately be made to comply with the warranty." Kure v. Chevrolet Motor Division, 581 P.2d 603, 608.

Therefore you are hereby notified that my client is revoking acceptance of the vehicle. Please return all funds paid towards the vehicle, cancel all applicable contracts, and compensate my client for the damages sustained to date. This letter also constitutes prior direct written notification of the defects within my client's vehicle and of my client's intent to pursue a claim pursuant to A.R.S. \$44-1261 et. seq. If you have "final opportunity rights" under A.R.S. \$44-

COPY

JUL 1 4 2004



Marshall Meyers (020584) KROHN & MOSS, LTD. 111 West Monroe, Suite 711 Phoenix, AZ 85003 (602) 275-5588 (866) 385-5215 (facsimile) Attorney for Plaintiff

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IN THE SUPERIOR COURT OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

| CV2004-013457 | | | | |
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|) CERTIFICATE OF COMPULSOR | | | | |
| ARBITRATION | | | | |
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The undersigned certifies that he or she knows dollar limits and any other limitations set forth by the local rules of practice for the applicable superior court, and further certifies that this case (is) / (is not) subject to compulsory arbitration, as provided by Rules 72 through 76 of the Arizona Rules of Civil Procedure.

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Marshall Meyers (020584) KROHN & MOSS, LTD. 111 West Monroe, Suite 711 Phoenix, AZ 85003 (602) 275-5588 (866) 385-5215 (facsimile) Attorney for Plaintiff

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IN THE SUPERIOR COURT OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

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VS.

FORD MOTOR COMPANY,

Defendant.

Case No.:

CV2004-013457

JURY DEMAND

Pursuant to 38(a) Ariz.R.Civ.P. Plaintiff(s) demand(s) a trial by jury on all claims on which the right to trial by jury exists.

RESPECTFULLY SUBMIFFED on this

Marshall Meyers KROHN & MOSS, LTD. 111/W. Monroe, Ste. 711 Photenix, AZ 85003 (602) 275-3588 Attorney No\020584

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Robert M. Silverman, Esquire Identification No. 55914 KIMMEL & SILVERMAN, P.C. 30 East Butter Pike Ambier, PA 19002 (215) 549-8888 ATTORNEY FOR PLAINTIFFS

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

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

Newark, Detaware

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

COMPLAINT CODE: 1900

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- 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 February 10, 2004, Plaintiffs purchased a new 2004 Ford Excursion, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1FMSU45P64I
- The vehicle was purchased in the State of Delaware and is registered in the State of Delaware.

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- 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 \$47,047.88. 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 Plaintiffs 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 Plaintiffs.
- 8. 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 Plaintiffs.
- 10. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.
- 11. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. Sec, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997).

COUNT I DELAWARE AUTOMOBILE WARRANTY ACT

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

- 13. Plaintiffs are "Consumers" as defined by the Delaware Automobile Warranty Act (hereinafter "Lemon Law"), 6 Del. C §5001(3).
- 14. Defendant is a "Manufacturer" as defined by the Delaware Lemon Law, 6 Del. C. §5001(3).
- 15. Willis Ford, is and/or was at the time of sale a "Dealer" engaged in the business of buying, selling, and/or exchanging automobiles as defined by the Delaware Lemon Law, 6 Del. C. §5001(2).
- 16. On or about February 10, 2004, Plaintiffs took possession of the above mentioned vehicle and experienced nonconformities which substantially impair the use, value and/or safety of the vehicle.
- 17. The nonconformities described violate the express written warranties issued to Plaintiffs by Defendant.
 - The Delaware Lemon Law, 6 <u>Del</u>. <u>C</u>. §5002 provides:

If a new automobile does not conform to the manufacturer's express warranty, and the consumer reports the nesconformity to the manufacturer or its agent or dealer thring the term of the warranty or during the period of 1 year following the date of original delivery of an automobile to the consumer, whichever is earlier, the manufacturer shall make, or arrange with its dealer or agent to make, within a reasonable period of time, all repairs necessary to conform the new automobile to the warranty, notwithstanding that the repairs or corrections are made after the expiration of the term of the warranty or the 1-year period.

- 19. Section 5003 of the Delaware Lemon Law provides:
 - a. If the manufacturer, it's agent, or it's authorized dealer does not conform the automobile to any applicable express warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer shall either replace the automobile with a comparable new automobile acceptable to the communer or repurchase the automobile from the communer and refund the communer the full price, including all credits and allowances for any trade-in vehicle; provided, however, that the communer shall have the unqualified right to decline a replacement automobile and to demand instead a repurchase.;
 - b. In instances in which an automobile is replaced by a manufacturer under this section, said manufacturer shall accept return of the automobile and reimburse the consumer for any incidental costs, including dealer preparation fees, fees for transfer of registration, sales taxes or other charges or fees incurred by the consumer as a result of such replacement. In instances in which an automobile which was financed by the manufacturer or its subsidiary or agent is replaced under this section, said manufacturer, subsidiary or agent shall not require the consumer to enter into any refinancing agreement for a replacement automobile which would create any financial obligations beyond those created by the originally financing agreement.
 - c. In instances in which a refund is tendered under this section, the manufacturer shall accept return of the automobile from the consumer and shall reimburse the consumer for related purchase costs, including sales taxes, registration fees and dealer preparation fees, less:

- (1) A reasonable allowance for the consumer's use of the automobile, not to exceed the full purchase price of the automobile multiplied by a fraction which consists of the number of miles driven before the consumer first reported the nonconformity to the manufacturer, its agent or dealer divided by 100,000 miles; and
- (2) A reasonable allowance for damage not attributable to normal wear and tear, but not to include damage resulting from a nonconformity.
- d. Refunds shall be made to the consumer, and lienholder, if any, as their interest may appear.
- e. No authorized dealer shall be held liable by the manufacturer for any refunds or automobile replacements in the absence of swidence indicating that dealership repairs have been carried out in a manner inconsistent with the manufacturer's instructions. (64 Del. Laws, c. 173 § 1; 66 Del. Laws, c. 36, §3).
- 20. The Delaware Lemon Law, 6 Del. C. §5004 provides:

§5004. PRESUMPTIONS

- a. It shall be presumed that a reasonable number of attempts have been undertaken to conform a new automobile to the manufacturer's express warranty if, within the warranty term or chiring the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:
 - Substantially the same nonconformity has been subject to repair or correction 4 or more times by
 the manufacturer, its agents or its dealers and the nonconformity continues to exist, or
 - (2) The automobile is out of service by reason of repair or correction of a nonconformity by the manufacturer, its agents or its dealers for a cumulative total of more than 30 calendar days since the original delivery of the motor vehicle to the consumer. This 30-day limit shall commence with the first day on which the consumer presents the automobile to the manufacturer, its agent or dealer for service of the nonconformity and a written document describing the nonconformity is prepared by the manufacturer, its agent or dealer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer, its agents or its dealers, including wer, invasion, strike, fire, floud or other natural disaster.
- b. The presumption provided in this section shall not apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to repair or correct the nonconformity; provided, however, that if the manufacturer does not directly attempt or arrange with its dealer or agent to repair or correct the nonconformity, the manufacturer may not defend a claim by a consumer under this chapter on the ground that the agent or dealer failed to properly repair or correct the nonconformity or that repairs or corrections made by the agent or dealer caused or contributed to the nonconformity. (64 Del. Laws, c. 173, §1; 66 Del. Laws, c. 36, §4.)
- 21. Plaintiffs have satisfied the above definition as the vehicle has been subject to repair more than four (4) 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 cumulative total of thirty (30) or more calendar days.
- 23. Plaintiffs have delivered the nonconforming vehicle to an authorized service and repair facility of the manufacturez on numerous occasions.

- 24. After a reasonable number of attempts, the manufacturer was unable to repair the nonconformities.
- 25. During the first 12 months and/or 12,000 miles, Plaintiffs complained on at least four (4) occasions about defects and or non-conformities to the following vehicle components: abnormal stalling condition, hard-to-start condition, defective driver's side door and passenger front seat.

 True and correct copies of all invoices in Plaintiffs possession are attached hereto, made a part hereof, and marked Exhibit "B".
- 26. Plaintiffs have been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton, and negligent failure to comply with the provisions of the Delaware Automobile Lemon Law.
- 27. Plaintiffs have (1) given notice to the manufacturer and (2) provided an opportunity for final repair.
- 28. Plaintiffs seek relief for losses due to the nonconformities and defects in the abovementioned vehicle in addition to reasonable attorney fees and all court costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorney fees, and court costs.

COUNT II MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

- 29. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length berein.
 - 30. Plaintiffs are "Consumers" 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. Defendant 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 to the amount of aggregate amount of ensist and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Piaintiff 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.

- 37. Plaintiffs have 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 failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.
- 39. 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.
- 40. Plaintiffs aver 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. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand 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.

KIMMEL & SILVERMAN, P.C.

Bv:

ROBERT M. SILVERMAN, ESQUIRE

Attorney for Plaintiffs 30 East Butler Pike

Ambler, Pennsylvania 19002

(215) 540-8888

VERIFICATION

Robert M. Silverman, states that he is the attorney for the Plaintiffs 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 Plaintiffs

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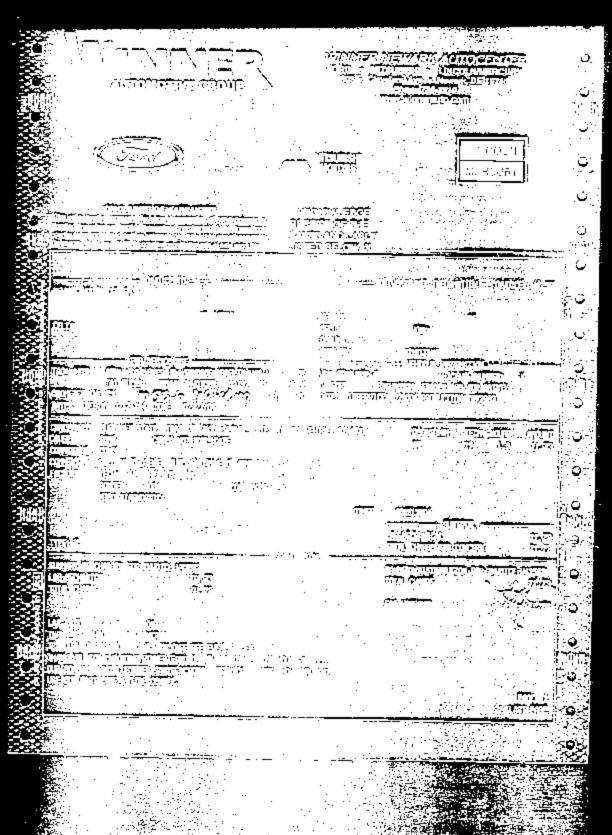
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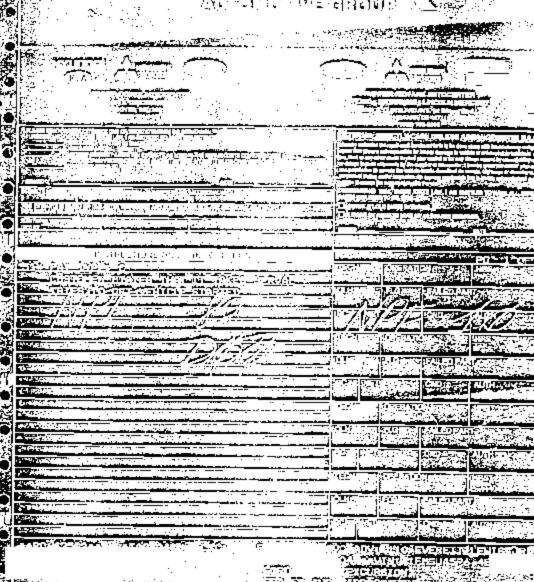
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Robert M. Silverman, Esquire Identification No. 55914 Robert A. Rapkin, Esquire Identification No. 61628 KIMMEL & SILVERMAN, P.C. 30 East Butler Pike Ambler, PA 19002 (215) 540-8888 ATTORNEYS FOR PLAINTIPF

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

Callegeville, PA

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

FORD MOTOR COMPANY C/O CT Corporation 1515 Market Street, Suite 1218 Philadelphia, PA 19163 CIVIL ACTION

COMPLAINT CODE: 1900

- Plaintiff, and a second of the Commonwealth of Pennsylvania, 3957 Mill Road, Collegeville, PA 19426.
- 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 October 01, 2003, Plaintiff purchased a new 2003 Ford F-250, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1FTNX21P73E
- 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 \$32,008.02. 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.
- 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. Sec, 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 "Purchaser" as defined by 73 P.S. §1952.
 - 14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

- 15. Norristown 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 October 01, 2003, 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 Peunsylvania 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 perchaser, 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 5.10 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:
 - (i) The same aconomic 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.
- After a reasonable number of attempts, Defendant was unable to repair the nonconformities.
- 24. The first documented warranty repair attempt is believed to have occurred on or before October 15, 2003, when the vehicle odometer showed 1,500 miles. On that date, repair attempts were made to the electronic engine controls, engine for idle surges and racing conditions, PCM

for recalibration, radio for excessive static, radio electrical grounds and connectors. A true and correct copy of the repair involce is attached hereto, made a part hereof and marked Exhibit "B".

25. The second documented warranty repair attempt is believed to have occurred on or before November 05, 2003, when the vehicle odometer showed 2,967 miles. On that date, repair attempts were made to the electronic engine controls, engine surges, and front seat damage. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "C".

26. The third documented warranty repair attempt is believed to have occurred on or before December 10, 2003, when the vehicle odometer showed 5,142 miles. On that date, repair attempts were made to the radio for poor reception, electrical battery light and defective alternator. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "D".

27. The vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and/or safety as provided in 73 P.S. §1951 <u>et seq</u>. True and correct copies of the additional warranty invoices are attached hereto, made a part hereof and marked Exhibit "E".

28. 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.

29. 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.

30. 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.

- 31. 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).
- 32. 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

- 33. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.
 - 34. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).
- 35. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).
 - 36. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).
- 37. 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.
- 38. 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.
- 39. 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 uggst gale 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 presecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

- 41. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.
- 42. 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.
- 43. 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.
- 44. 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.
- 45. 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

- 46. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.
 - 47. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).
 - 48. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

- 49. 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."
- 50. 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.
- 51. 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:
 - (vir). 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 enother;
 - (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 sature 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 misuralerstanding.
- 52. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.
- 53. 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.
- 54. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."
- 55. 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.

Bv:

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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