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

Robert M. Silvarman, Esquire Identification No. 55914 KIMMEL & SILVERMAN, P.C. 30 East Butler Pike Ambler, PA 19082 (215) 549-8888

ATTORNEY POR PLAINTIFF

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

Belle Vernon, Pennsylvania

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

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PORD MOTOR COMPANY C/O CT Corporation 1515 Market Street, Suite 1216 Philadelphia, PA 19103 CIVIL ACTION

COMPLAINT CODE: 1900

1. Plaintiff, is an adult individual citizen and legal resident of the Commonwealth of 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 May 19, 2003, Plaintiff purchased a new 2003 Ford F-250, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1FTNX21PX3E
- The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

- 5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than \$3,996,040.00. 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 <u>PENNSYLVANIA AUTOMOBILE LEMON LAW</u>

- 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.

- Defendant is a "Manufacturer" as defined by 73 P.S. §1952.
- 15. Riverside Motor Sales 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 May 19, 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 Pennsylvania Automobile Lemon Law provides:

If a manufacturer fails to repair or correct a noncomformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vahicle from the purchaser, and refund to the purchaser the full purchase price, including all colluteral 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 nonconformity has been subject to repair three times by the manufacturer, its agents or anthorized dealers and the nonconformity still exists; or
 - (2) The vehicle is out-of-service by reason of any concomformity 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 calcular 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: abnormal

stalling condition and defective fuel injector. 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 <u>MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT</u>

- 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).

- The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(i).
- 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 inought under paragraph (1) of this subsection, be may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate around of easts and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

- 38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.
- 39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.
- 40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.
- 41. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.
- 42. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

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

COUNT III PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

- 43. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.
 - 44. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).
 - 45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).
- 46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."
- 47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 of seq.
- 48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73

 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:
 - (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another,
 - (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or acryices is trade;
 - (xv). Knowingly misrepresenting that services, replacements or require are needed if they are not needed:
 - (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
 - (xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confesion or of miscondststanding.
- 49. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

- 50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.
- 51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."
- 52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

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

KIMMEL & SILVERMAN, P.C.

By:

ROBERT M-SILVERMAN, ESQUIRE

Attorney for Plaintiff 30 East Butler Pike

Ambler, Pennsylvania 19002

(215) 540-8888

VERIFICATION

Robert M. Silvetman, 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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C. HARPER FORD INC. 4049 Route 51 South Pulls Vernor, PA 15012 (724) 629-2670

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C. HARPER FORD INC. 4049 Route 51 South Belly Vernon, PA 150/12 (724) 923-2900

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

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Plaintiff,	j
)
V.) CL03 <u>600364</u>
	}
FORD MOTOR COMPANY	į
Defendant,	Į
Serve:	Į
Commonwealth Legal Services Corp.	,
4701 Cox Rd., Suite 301	?
Glenn Allen (Renrico County), VA 23060)
)
and)
)
VINTON MOTOR COMPANY)
t/a VINTON MOTORS)
Defendant.)
Serve:)
Alton B. Prillaman, Esq.)
3912 Electric Road, SW)
Roanoke (County), VA 24018)

MOTION FOR JUDGEMENT

COMES NOW your plaintiff, _________, by counsel, and moves for judgment against your defendants, Ford Motor Company, and Vinton Motor Company, jointly and severally, and states the following in support thereof:

- (1) On or about April 17, 2003, your plaintiff, purchased a 2003 year model

 Ford "F350" pickup truck (VIN#1FTWW33PP3E from your defendant, Vinton

 Motor Company, a Ford dealership located in Vinton (Roamoke County), Virginia.
 - (2) The purchase price of the said pickup truck was \$45,214.00.

Teristopher K. Kewedezali Alforacy et Law P. O. Box 11971 Resnoke, VA 28022-1971 (3) Since your plaintiff's purchase of the said pickup truck on April 17, 2003, the vehicle has been taken back to Vinton Motor Company, or their designated repair agent, more than three times for repairs to the engine, in order for Ford Motor Company and/or Vinton Motor Company to conform the vehicle to the applicable warranty by repairing or correcting the defective engine.

(4) Despite the repeated efforts by Vinton Motor Company, or their designated repair agent, the same nonconformity continues to exist causing a significant impairment of the use, market value, and safety of the said vehicle.

(5) On or about July 19, 2003, your plaintiff notified Vinton Motor Company, in writing, that he was invoking the protections of Virginia's "lemon law" pursuant to §59.1-207.13 and § 59.1-207.14 of the Code of Virginia (1950), as amended.

(6) Notwithstanding the written notification as set forth herein in paragraph three, your defendants have failed to conform the said pickup truck to the applicable warranty.

WHEREFORE, your plaintiff, by counsel, moves for judgment, jointly and severally, against Ford Motor Company and Vinton Motor Company in the amount of FORTY-FIVE-THOUSAND-TWO-HUNDRED-FOURTEEN (\$45,214.00) DOLLARS plus reasonable attorney's fees, and his other associated costs incurred in bringing this action.

GROVER LEE LOVERN, JR.

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Christopher K., Kowaliczak Altoracy et Lew P. O. Best 11971 Resenoke, VA 26022-1971 Christopher K. Kowalczuk, Esq. P.O. Box 1197! Roznoke, VA 24022 (540) 345-0101 Counsel for Plaintiff

Teistopher K. Kawaiczek Adomsy at Law P. O. Box 11971 Resente, VA 24022-1971 Robert M. Silverman, Esquire Identification No. 55914 KIMMEL, & SILVERMAN, P.C. 30 East Butter Pike Ambler, PA 19002 (215) 540-8888 ATTORNEY FOR PLAINTIFF

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

Amburg, Pennsylvanie

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

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

COMPLAINT CODE: 1900

- Plaintiff, and the Pennsylvania, 121 Ruth Street, Amburg, Pennsylvania 19526.
- 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 April 16, 2003, Plaintiff purchased a new 2003 Ford F-350, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1FTWW32P63E
- The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

- 5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than \$43,280.00. A true and contract 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 4-year / 50,000 mile warranty, as well as other
 guarantees, affirmations and undertakings as stated in Defendant's warranty materials and
 owner's manual.
- 9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.
- 10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.
- 11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 65 (Apr. 2, 1997).

COUNT 1 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.

- Defendant is a "Manufacturer" as defined by 73 P.S. §1952.
- 15. George D. Manderbach, Inc. 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 16, 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 Pennsylvania Automobile Lemon Law provides:

If a manufacturer fails to repair or correct a nonconformity after a reasonable mamber of attempts, the approfesturer 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 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 nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
 - (2) The vehicle is out-of-service by reason of any monominatity 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: abnormal

popping noise from engine, check engine light on, no-power condition, defective air conditioner and catalytic converter. 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 altorneys' 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 MACNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

- 30. Plaintiff hereby incorporates all facts and allogations 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 Ast requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.
- 36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.
 - 37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

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

- 38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.
- 39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.
- 40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.
- 41. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

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

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

COUNT III PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

- 43. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.
 - 44. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).
 - 45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).
- 46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."
- 47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.
- 48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73

 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:
 - (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or recelel, if they are of another;
 - (xiv). Failing to comply with the terms of any written guarantee or warranty gives to the buyer at, prior to, or after a contract for the purchase of goods or services is made,
 - (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
 - (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
 - (xvii). Bagaging in any other franchilent or deceptive conduct which creates a likelihood of confusion or of migurderstanding.

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

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

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

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

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

KIMMEL SILVERMAN, P.C

By:

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 Penatties of 18 Pa. C.S.A. §4904, relating to unsworn falsifications to authorities.

ROBERT M'SILVERMAN, ESQUIRE

Attorney for Plaintiff

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Sales - Service - Lousing 4450 5th STIRET HIGHWAY

P.O. BOX 70

TEMPLE, PA 19860

PHONE 4610) 829-3683

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P.O. BOX 70

TEMPLE, PA 19680

PHONE (810) 928-3683

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A FORD DEALER YOU CAN RELYYON # 3

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A FORD DEALER YOU CAN RELY ON MANDERBACH FORD

4450 5th STREET HIGHWAY

P.O. BOX 70

TEMPLE, PA 19860

PHONE (810) 829-3883

HAMBURG, PA PAGE 1 P & A CODE: 01353 HOME: BUS: SERVICE ADVISOR: 4882 ALLEN HAIN MAKEMBOEL TORENDO 03 FORD F350 DIESEL 1FTM 10.754 PAYMENT DIV. DAT 16APR2003 3 DEAR03 21:00 028EP03 VART 0**38EP2**003 " : MEADY OPTIONS: BTK:3684 DLR:16F221 BMG:99P 6.0L V-8 DIRSKL OF THE POST OF THE TRIN: 448 5-SPEED DIESEL AUTOMATIC TRANS A (More AUMER BOAD TEST VERIFIED CONCERN CHK BASIC BNG OK PERFOR M ESC TEST RECEIVED CODES P0404 P0478 P2263 MEVLAS H PCM PER SSM 16839 REPLACED BOR VALVE 12650D BEC (QUICK TEST) - DIAGNOSIS - L 1416WFC94 13.25 🛊 13.25 126500X1 BBC (QUICK TEST) - DIAGNOSIS - L EXTRA TIME TO REPEAT FINAL QUICK TEST 1416MFC94 12650084 PCM REFROGRAMMING - TEST - L 6.62 14.16NPC94 13,25 MT9838A REPLACE ICP SERSOR 1416WPC94 46.37 -1 3C3E*9F836*EA ENS ABY-FU/INJ TIM(PRRSSER) 117,18 MISF452 DIAGNOSIS & REPLACE EGR VALVE 1416MFC94 165.60 165.60 1 3C3Z+9F452+AB VLV ASY-E/G/R BK PRESS 242.11 152.53 152.53 PC: D42 42 retel PART#: 3C32*9F838*EA COUNT: CLAIM TYPE: AUTH CODE: 4351416 OTHER: 0.00 TOTAL LINE A: 0.00 ************ *************** SERVICE DEPARTMENT HOURS Mon-Wed-Fri 7:30am - 5:00pm ** Tue-Thur 7:30am - 8:00pm Saturday 8:00am - 4:00mm

DEALER, GENERAL MANAGER OR ALITHORIZED PERSON BOATS

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TEMPLE, PA 19560 PHONE 15100 929-3683 HAMBURG, PA PAGE 1 HOME: BUS : P & A CODE: 01353 SERVICE ADVISOR: <u>4805 жүсылы жүржү</u> COLDAY: A SERVICE AND THE SERV MILLACIE IN CHATE TAG LICA.NSÉ FN TORKADO 03 [FORD F350 DIESEL 1FTW032P63E DELIDATE NO PRINT DATE OF THE PRINT OF THE P BATHER BY DATE SALERZOOS IS IMA ROS <u>21.00 0808001</u> VART CASH 23DBC2003 H! ALY (XP) HONS 57K: 1684 DLR: 16F221 ENG:99P 6.0L V-8 DIESEL 17:58 ONDECO3 12:36 23DBC03 TRN: 44B 5-SPEED DIRSEL AUTOMATIC TRANS A (More...) INE OPCODE TECH TYPE HOURS LIST TOTAL ENGINE RUNS POORLY CAUSE: VERIFIED COSTOMERS CONCERN. REPLACED EXPLINE. MT6007 DISASSEMBLE ENGINE TO DETERMINE CONDITION 9716WFC94 198.72 198.72 1 3C3Z*6007*GA ENG ASY - A/P 6.0L DSL 12950.00 12950.00 12950.00 CORE CHARGE W 3200.00 3200.00 I 4C3Z*6C646*BA DCT ASY-ENG CHG AIR COOL 82.08 68.95 68.95 1 3C3Z*6C640*FA COMN-ENG CHG AIR COCK DCT 25.80 21.67 21.67 1 2L1Z+9F479*AA MAP SENSOR 38.51 24.26 24.26 I VC*7*A ANTI/FZ (PREM. GOLD ENG. COOLA 2.17 2.17 2.17 FC: D50 42 PART#: 3C3 Z*6007*CIA COUNT: CLAIM TYPE: AUTH CODE: 9716 ARTS: 0.00 LABOR: 0.00 OTHER: TOTAL LINE A: 0.00 SERVICE DEPARTMENT HOURS Monday - Thursday 7:30am - 6:00pm Friday 7:30am - 5:00pm Saturday 8:00am - NOON Our Goal is Friendly Excellent Service 1218 - 1210 - Fent maken company - Senator Dic لاستانها أور المركبالياسوا came A-// 12/13 4:≥ gumphilad STATEMENT OF DISCLAMMEN ON BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE MYFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWASE SHOWN. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO DWINER. THERE WAS NO INDICATION FROM THE PAPEARANCE OF THE WHICLE ON OTHERWISE, THAT ANY PART REPARABLE OR REPLACED UNIDER THE CLAIM HAD MEN' CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISURE. RECORDS BUPPORTING THIS ACCIDENT, NEGLIGENCE OR MISURE. RECORDS BUPPORTING THIS ACCIDENT, NEGLIGENCE OR MISURE. RECORDS BUPPORTING THIS VALUE AND ALL DATE OF PAYMENT WOTH CATION AT THE BERVICING SEALER FOR RESPECTION BY MANUFACTURER'S REPRESENTATIVE. CALLES HOW TOTALS LABOR AMOUNT 0.00 TAILONA ETRAS 0.00 GAG, OFL, LUBE 0.00 SUBLET AMOUNT 0.00 MISC. CHARGES 0.00 TOTAL CHARGES 0.00 LESS MISURANCE 0.00SALES TAX 0.00 DEALER, GENERAL MANAGER OF AUTHORIZED PERSON (DATE) CLETONOL SCHATIME PLEASE PAY

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LAW OFFICES OF WILLIAM R. MCGEE William R. McGee, State Bar No. 122153 Jana L. Micak, State Bar No. 211084 16855 West Bernardo Drive, Sta. 380 San Diego, California 02127 (858) 485-9332

Attorneys for Plaintiffs

CONFORMED COP OF OREGINAL PELISO Los Augelos Superior Court

MAY 0 1 2003

John A. Clarke, Executive Officer/Cli Deploy

SUE CARR

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

BY FAX

Plainliffs.

FORD MOTOR COMPANY, and DOES 1 through 10, inclusive.

Defendants.

Case No.

BC295199

COMPLAINT FOR RESTITUTION AND DAMAGES

MOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT)

Plainit

allege as follows:

GENERAL ALLEGATIONS

- Plaintiffs are informed and believe, and thereon allege, that at all times herein defendant FORD MOTOR COMPANY is and was a corporation and registered to do business in the State of California and doing business in the County of Los Angeles.
- 2. The true names and capacities of Does 1 through 10, inclusive, are not known to plaintiffs at this time and therefore plaintiffs are those defendants by such tictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of such defendants when they are ascertained.
- Æ. Each of the defendants in this case acted as the principal, egent, employee or other authorized representative in relation to the other; all defendants acted at all times

COMPLAINT

mentioned in this complaint within the course and scope of their respective authority and with the full knowledge and consent of the other defendants. Furthermore, plaintiffs are informed and believe and thereon allege that all acts of corporate employees as hereinafter alleged were authorized or ratified by an officer, director or managing agent of the corporate employer.

- On or about January 21, 2003, plaintiffs purchased a new 2003 Ford 250,
 VIN # 1FTNW21P83E
- 5. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter the "Act") Civil Code sections 1790 et seg., the sforementioned vehicle constitutes "consumer goods" used, bought or leased primarily for personal, family or household purposes and plaintiffs have used the vehicle primarily for said purposes.
 - 6. Plaintiffs are a "buyer" and/or "lessee" of consumer goods under the Act.
- Optiondant FORD MOTOR COMPANY is a "manufacturer" and/or "distributor".

 under the Act.
- Defendant FORD MOTOR COMPANY offered an "express warranty" under the Act.
- 9. The sale of the aforementioned vehicle to plaintiffs was accompanied by an implied warranty that the vehicle was merchantable. The sale of the aforesaid vehicle to plaintiffs was also accompanied by defendant FORD MOTOR COMPANY's implied warranty of fitness.
- 10. The subject vehicle has suffered from a serious defect and nonconformity to warranty, including, but not limited to, the following: engine/turbo/injection and driveline problems. The vehicle has spent over thirty (30) days in an authorized Ford dealership undergoing repairs. The foregoing defect(s) and nonconformity(s) to warranty manifested themselves within the applicable express warranty period.
- Plaintiffs delivered the aforementioned vehicle to an authorized FORD MOTOR COMPANY service and repair facility for repair of the aforementioned nonconformity(s) on numerous occasions.

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- 12. Defendant has been unable and/or has refused to conform plaintiffs' vehicle to the applicable express and implied warranties under the Act after a reasonable number of attempts. Furthermore, the aforementioned nonconformity(s) substantially impairs the use, value and/or safety of the subject vehicle to plaintiffs.
- Notwithstanding plaintiffs' entitlement, defendant refused to comply with its obligations under the Act to repurchase the vehicle and make restitution.
- 14. By failure of defendant to comply with its obligations under the Act to repurchase the vehicle and make restitution, defendant is in breach of its obligations under the Act.
- Plaintiffs are entitled to justifiably revoke acceptance of the aforementioned vehicle under the Act.
- 16. Under the Act, plaintiffs are entitled to reimbursement of the purchase price paid for the subject vehicle less that amount directly attributable to use by the plaintiffs prior to discovery of the nonconformity(s).
- 17. Plaintiffs are entitled to all incidental, consequential and general damages resulting from defendant's failure to compty with its obligations under the Act.
- 18. Plaintiffs are entitled under the Act to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees, reasonably incurred in connection with the commencement and prosecution of this action.
- 19. Plaintiffs are entitled in addition to the amounts recovered, a civil penalty of up to two times the amount of actual damages in that defendant has willfully failed to comply with its responsibilities under the Act.

WHEREFORE, plaintiffs pray for judgment against defendant as follows:

- For rescission of the contract and restitution of all consideration;
- For actual compensatory and general damages according to proof at time of trial;
- That such actual, compensatory and general damages be doubled and awarded to plaintiffs as a civil penalty;

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4.	Prejudgment	interest from	date	Of resciesion:
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- For attorney's fees incurred herein according to proof;
- For costs of suit incurred herein; and
- For such other and further relief as the Court deems just and proper.

DATED: May 5, 2003

LAW OFFICES OF WILLIAM R. McGEE Attorneys for Plaintiffs

8y:

WILLIAM P. MCGEE

COMPLAINT ~ 4 -

STATE OF MINNESOTA

DISTRICT COURT

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-	317 4		v	,		•

TENTH JUDICIAL DISTRICT
Case Type - Contract

Plaintiff.

VS.

COMPLAINT

Ford Motor Company, a Delaware Corporation licensed to transact business in the State of Minnesota.

Defendant.

Plaintiff, ("Plaintiff"), as and for his cause of action against

Defendant alleges as follows:

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At all times relevant herein, Plaintiff has resided all times relevant herein has relevant herein herein has relevant herein has relevant herein herein has relevant herein herein has relevant herein herein herein has relevant herein he

II.

Defendant is a Delaware corporation qualified to transact business in the State of Minnesota. Defendant continually and systematically transacts business in the State of Minnesota by selling motor vehicles to its authorized dealers in the State of Minnesota, County of Anoka, which ultimately are sold by such authorized dealers to Minnesota consumers.

On March 31, 2003, Plaintiff purchased a 2003 F550 truck from Defendant's authorized dealer which was manufactured by Defendant. The vehicle identification number for said vehicle is 1FDAF56P43E

IV.

Plaintiff took delivery of the subject vehicle on March 31, 2003.

V.

Plaintiff purchased with said vehicle a manufacturer's express new vehicle warranty.

VI.

The warranty purchased by Plaintiff is a "manufacturer's express warranty" and "warranty" as those terms are defined by Minn. Stat. § 325F.665 (Minnesota "Lemon Law") and 15 U.S.C. § 2301 et seq. ("Magnuson-Moss Warranty Act").

VII.

Since taking delivery of his new motor vehicle, Plaintiff experienced numerous warranted problems with his vehicle which substantially impair the vehicle's use and value to him. Said defects include, but are not necessarily limited to, front brakes sticking/squeak, air conditioning working improperly, rough running engine/improper engine title, vehicle stalling, fuel leak, clunking in drive line, vibration at higher speeds, and rear axie springs creaking. Said defects continue, and problems/defects continue to develop.

COUNT I - AGAINST DEFENDANT VIOLATION OF MINN. STAT. §325F.665, SUBD. 2.

VIII.

Plaintiff realleges Paragraphs I through VII if fully stated herein.

IX.

Plaintiff is a "consumer" as that term is defined under the Lemon Law.

Defendant is a "manufacturer" as that term is defined in the Lemon Law.

X.

Plaintiff reported the vehicle non-conformities outlined above to Defendant and/or its authorized dealers during the term of the applicable express warranty and during the two years following the date of original delivery of the new motor vehicle to Plaintiff.

XI.

Defendant failed to make the repairs necessary to conform Plaintiff's vehicle to the applicable express warranty.

XII.

Defendant has therefore violated Minn. Stat. §325F.665, subd. 2 and, therefore, Plaintiff is entitled to be compensated in an amount to be determined at trial, plus reasonable attorney's fees and litigation costs incurred in bringing this action as set forth under the Lemon Law.

COUNT II - AGAINST DEFENDANT VIOLATION OF MINN. STAT. §325F.665, SUBD. 3.

XIII.

Plaintiff realleges Paragraphs I through XII as though fully set forth herein.

Defendant is unable to conform Plaintiff's new motor vehicle to the applicable express warranty by repairing or correcting the defects in Plaintiff's motor vehicle.

XV.

The defects in Plaintiff's motor vehicle substantially impair the use and/or market value of the motor vehicle to Plaintiff.

XVI.

Defendant has made a reasonable number of attempts to repair Plaintiff's vehicle, and the substantially impairing defects continue and defects continue to develop.

XVII.

Defendant has therefore violated Minn. Stat. §325F.665, subd. 3, thereby entitling Plaintiff to a full refund, plus reasonable attorney's fees and litigation costs incurred in bringing this action as set forth under the Lemon Law.

COUNT III - AGAINST DEFENDANT VIOLATION OF 15 U.S.C. SECTION 2301 ET SEQ. (MAGNUSON-MOSS WARRANTY ACT)

XVIII.

Plaintiff realleges Paragraphs I through XVII as though fully set forth herein.

XIX.

Plaintiff's motor vehicle is a "consumer product" as that term is defined by the Magnuson-Moss Warranty Act. XX.

Plaintiff is a "consumer" as that term is defined by the Magnuson-Moss Warranty

Act.

XXI.

Defendant is a "warrantor" as that term is defined by the Magnuson-Moss.

Warranty Act.

XXII.

As set forth above, Defendant has failed to conform Plaintiff's motor vehicle to its written/express warranty.

XXIII.

Defendant has therefore violated the Magnuson-Moss Warranty Act, thereby entitling Plaintiff to a vehicle replacement or refund at his choice, plus reasonable attorney's fees, litigation costs and loss of use damages as set forth in the Magnuson-Moss Warranty Act.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendant for damages, attorney fees and litigation costs in a reasonable amount cumulatively in excess of \$50,000 and to be specifically proven at the time of trial, together with his pre-judgment and post-judgment interest and all other costs the Court deems just.

Dated: __/2/3-/+2____

HAUER, FARGIONE, LOVE, LANDY & MCELLISTREM P.A.

Todd E. Gadtke, I.D. #276704

Attorneys for Plaintiff

5901 South Cedar Lake Road

Minneapolis, MN 55416

(952) 544-5501

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OGEMAW

Plaintiff,

CP

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

Defendants.

CONSUMER LEGAL SERVICES, P.C. MARK ROMANO P-44014
CHRISTOPHER M. LOVASZ P-44472
Attorneys for Plaintiff
30928 Ford Road
Garden City, MI 48135
(734) 261-4700

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 panding or was previously filed and 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 Sterling, Arenac 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 Motor vehicles and related equipment, with its registered office in the City of Dearborn, Wayne County, Michigan.
- 3. Defendant, Dean Arbour Ford of West Branch, Inc. (hereinafter referred to as "Sefer"), 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, Ogemaw County, Michigan.
- 4. On or about January 31, 2003, Ptaintiff purchased a new 2003 Ford F-250, VIN 1FTNW21P43E (hereinafter referred to as "2003 F-250"), from the Seller which was manufactured by the Manufacturer (see copy of the Buyer's Purchase Agreement attached as Exhibit A).
- 5. Along with the sale of the 2003 F-250, 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 Seller (Defendants are in possession of a copy of the written warranty).

6. Plaintiff has taken the 2003 F-250 to the Manufacturer's authorized agents/dealers, including Seller, on at least four (4) 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 F-250 include the following:

<u>Date</u>	<u>Mileage</u>	Invoice#	Complaint
02/18/03	1,163	72272	ENGINE DEFECT: Idles rough or will not idle at all; wires under vehicle hanging down too low
05/05/03	3,259	73626	ENGINE DEFECT: perform program
06/27/03	4,044	74671	ENGINE DEFECT : idle erratic and has no power pulling trailer
08/21/03	5,378	75705	ENGINE DEFECT: idles rough and tacks power, a/c inoperative

- 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 VIOLATION OF NEW MOTOR VEHICLE WARRANTIES ACT; MCL 257.1401 ET SEQ: MSA 9.2705

- Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 8 as though herein fully restated and realleged.
- Plaintiff is a "consumer" under the Michigan New Motor Vehicle Warranties
 Act (hereinafter referred to as "Lemon Law"), MCL 257.1401(a).
 - 11. Menufacturer, is a "manufacturer" under the Lemon Law, MCL 257, 1401(d).
 - 12. The 2003 F-250 is a "motor vehicle" under the Lemon Law, MCL 257.1401(f).
- 13. The 2003 F-250 is a "new motor vehicle" under the Lemon Ław, MCL 257.1401(g).
- 14. The express warranty given by Manufacturer, covering the 2003 F-250 is a "manufacturer's express warranty" under the Lernon Law, MCLA 257.1401(e).
- 15. The Seller is a "new motor vehicle dealer" under the Lemon Law, MCLA 257.1401(h).
- 16. Plaintiff's 2003 F-250 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.

- 17. 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.
- Manufacturer's attempted repair was unsuccessful as the 2003 F-250 continues to manifest the aforementioned defects.
- 19. The aforementioned defects substantially impair the use or value of the 2003 F-250 to the Plaintiff and/or prevent the 2003 F-250 from conforming to the Manufacturer's express warranty.

WHEREFORE, Plaintiff prays for the following relief:

- A. Replacement of the 2003 F-250 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 purchase 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.
 - E. For prejudgment interest.

F. For such other and further relief as may be justified in this action.

COUNT II BREACH OF CONTRACT

- Plaintiff incorporates herein by reference each and every aflegation contained
 Paragraphs 1 through 19 as though herein fully restated and realleged.
- 21. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2003 F-250 to Plaintiff. The limited warranty provided the Setler would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.
- 22. The limited warranty, given by the Manufacturer and adopted by the Seller when the Seller serviced and repaired the 2003 F-250 created a contractual relationship between the Manufacturer/Seller and Plaintiff.
- 23. The Manufacturer and Seller 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.

WHEREFORE, Plaintiff prays for judgment against all Defendants:

- A. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monles paid for the purchase of the 2003 F-250;
- B. For return of an amount equal to Plaintiff's down payment and all payments made by Plaintiff to the Defendants;
 - For incidental, consequential, exemplary and actual damages;

- D. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
 - For costs and expenses, interest, and actual attorneys' fees; and
 - F. Such other relief this Court deems appropriate.

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

- 24. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 23 as though fully restated and realleged.
 - The Seller is a "motor vehicle repair facility" as defined by MCLA 257.1302(g)
- The Seller is subject to the Motor Vehicle Service And Repair Act, MCLA
 257.1301, et seq.
- 27. The Seller 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 limited to:
- (a) Falling 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 an acknowledgment, certificate or other writing which affirms acceptance, delivery, compliance with a requirement of law, or other performance, when the Seller, 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) Falling upon return of the 2003 F-250 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.
- 28. As a result of the Seller'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 Seller 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.

COUNT IV RESCISSION OF CONTRACT

Plaintiff incorporates herein by reference each and every allegation contained
 Paragraphs 1 through 28 as though herein fully restated and realleged.

- 30. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2003 F-250 to Plaintiff. The limited warranty provided the Seller would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.
- 31. The limited warranty, given by the Manufacturer and adopted by the Seller when the Seller serviced and repaired the 2003 F-250 created a contractual relationship between the Manufacturer/Seller and Plaintiff.
- 32. The Manufacturer and Seller have breached the express limited warranty contract in that they have falled to repair or adjust defective parts covered under the limited warranty, have falled to do the same within the limited warranty coverage period, and within a reasonable time.
- 33. The actions of the Manufacturer and Seller have resulted in a failure of consideration justifying the rescission of the contract.
- 34. 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 rescission of the purchase and retail installment contract by refunding all montes paid by Plaintiff, terminating the retail installment contract, requiring Defendants to pay off the balance of the contract and ordering Plaintiff to return the 2003 F-250 to the Defendants;

- B. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monies paid for the purchase of the 2003 F-250;
- C. For return of an amount equal to Plaintiff's down payment and all payments made by Plaintiff to the Defendants;
 - For Incidental, consequential, exemplary and actual damages;
 - E. For costs and expenses, interest, and actual attorneys' fees; and
 - F. Such other relief this Court deems appropriate.

COUNT V VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT MCLA 445,901 ET SEQ: MSA 19.418(1) ET SEQ.

- 35. Pfaintiff Incorporates herein by reference each and every allegation contained in Paragraphs 1 through 34 as though herein fully restated and realleged.
- 36. Plaintiff is a "person" within the meaning of MCLA 445.902(c); MSA 19.418(2)(c).
- Manufacturer and Seller are engaged in "trade or commerce" as defined in MCLA 445.902(d).
- 38. The Manufacturer and Seller have engaged in unlawful, unfair, unconscionable, or deceptive methods, acts or practices, including but not limited to:
- (a) The Manufacturer and Seller represented to Plaintiff the 2003 F-250 and the warranty thereof had characteristics, uses, benefits, qualities, and standards which they did not actually have.
- (b) The Manufacturer and Seller represented to Plaintiff the 2003 F-250 and the warranty thereof were of a particular quality and standard and they were not.

- (c) if Plaintiff allegedly walved a right, benefit, or immunity provided by law in purchasing the 2003 F-250, the Manufacturer and Selier have failed to clearly state the terms of such waiver and Plaintiff has not specifically consented to such waiver.
- (d) The Manufacturer and Seller have failed to restore an amount equal to Plaintiff's down payment and other payments made by Plaintiff on the 2003 F-250.
- (e) The Manufacturer and Seller have made gross discrepancies between the oral representations to Plaintiff and written agreements covering the same transaction relative to the 2003 F-250 and the Manufacturer failed to provide the promised benefits to Plaintiff with regard thereto.
- (f) The Manufacturer and Seiter 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 F-250 to be other than they actually were.
- (g) The Manufacturer and Seller 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 F-250 to be other than it actually was.
- (h) The Manufacturer and Seller have failed to provide the promised benefits to Plaintiff with regard to the sale of the 2003 F-250 to Plaintiff.
- 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 Seller for all damages Plaintiff has incurred, including reasonable attorneys' fees 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 VI BREACH OF WRITTEN WARRANTY UNDER MAGNUSON-MOSS WARRANTY ACT

- 40. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 39 as though herein fully restated and realleged.
- 41. Plaintiff is a "consumer" as defined in the Magnuson-Moss Warranty Act (hereinafter referred to as the "Warranty Act") 15 USC 2301(3).
- 42. The Seller is a "supplier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).
- 43. The Manufacturer is a "supplier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).
- 44. The 2003 F-250 is a "consumer product" as defined in the Warranty Act, 15 USC 2301(1).
 - The 2003 F-250 was manufactured, sold and purchased after July 4, 1975.
- 46. The express warranty given by the Manufacturer pertaining to the 2003 F-250 is a "written warranty" as defined in the Warranty Act, 15 USC 2301(6).
- 47. The Seller is an authorized dealership/agent of the manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

48. The above-described actions (failure to repair and/or property repair the above-mentioned defects, etc.), including failure to honor the written warranty, constitute a breach of the written warranty by the Manufacturer and Seller actionable under the Warranty Act, 15 USC 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Selfer:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
 - B. For a refund of the purchase price paid by Plaintiff for the 2003 F-250;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of 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 COVENANT OF GOOD FAITH AND FAIR DEALING

- 49. The Plaintiff incorporates herein by reference each and every altegation contained in Paragraphs 1 through 48 as though herein fully restated and realleged.
- 50. MCLA 440.1203 provides that "every contract or duty within this act imposes an obligation of good faith in its performance or enforcement."

- 51. Good faith is defined in the Michigan Uniform Commercial Code as "honesty in fact in the conduct or transaction concerned" [MCLA 440.1201(19)], and "in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade" [MCLA 4402103(1)(b)].
- 52. Implied in the agreement between the Plaintiff and all Defendants for purchase and/or repair of the 2003 F-250 was a covenant of good faith and fair dealing between the parties, wherein Defendants impliedly covenanted they would deal with the Plaintiff fairly and honestly and do nothing to impair, interfere with, hinder or potentially injure the rights of Plaintiff with respect to:
- (i) the preparation, inspection, and processing of said vehicle prior to delivery to Plaintiff;
 - (ii) the delivery of sald vehicle free from manufacturing or workmanship defects;
 - (lii) the repair of said vehicle using good workmanship.
- 53. Defendants have breached their covenants of good faith and fair dealing by their actions as previously set forth herein, and in refusing to deal honestly and fairly with Plaintiff regarding the express and implied warranties covering the 2003 F-250 and the repair of the same.
- 54. The conduct of the Defendants as aforementioned is without just or reasonable cause, and the Defendants knew or now know that such conduct is contrary to the law and the terms and conditions of the express warranty on the 2003 F-250.

WHEREFORE, Plaintiff prays that this Court award Plaintiff a judgment against all Defendants, in an amount equal to all monies paid on the 2003 F-250 and for all damages, including consequential and exemplary damages, together with interest, costs and actual attorneys' fees reasonably incurred as provided for by the appropriate statute or rule, and for such other legal and equitable relief as this Court may deem proper in an amount to be determined by the trier of fact exceeding TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), and other relief this Court deems fair and equitable.

COUNT VIII REVOCATION OF ACCEPTANCE

- 55. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 54 as though berein fully restated and realleged.
- 56. Plaintiff accepted the 2003 F-250 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.
- 57. In the alternative, Plaintiff reasonably assumed, and Manufacturer and Selfer represented, that all of the aforesaid defects and/or nonconformities would be cured within a reasonable time.
- 58. After numerous attempts by Defendants to cure, it has become apparent the nonconformities could not be seasonably cured.
- 59. The nonconformities substantially impaired the value of the 2003 F-250 to the Plaintiff.

- 60. Plaintiff had previously notified Manufacturer and Seller of the nonconformities and Plaintiff's intent to revoke acceptance pursuant to MCLA 440.2608; MSA 19.2608 and demanded the refund of her purchase price for the 2003 F-250 and out-of-pocket expenses (see copy of Plaintiff's revocation of acceptance letter attached as Exhibit C).
- 61. Manufacturer and Seller have nevertheless refused to accept return of the 2003 F-250 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 Manufacturer and Selfer:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
 - For a refund of the purchase price paid by Plaintiff for the 2003 F-250;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract:
 - For consequential, incidental and actual damages;
 - Costs, interest and actual attorneys' fees; and
 - F. Such other relief this Court deems appropriate,

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

62. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 61 as though herein fully stated and realleged.

63. The above-described actions on the part of the Seller and Manufacturer constitute a breach of the implied warranties of merchantability actionable under the Warranty Act, 15 USC 2301(7), 2308, 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Seller:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
 - For a refund of the purchase price paid by Plaintiff for the 2003 F-250;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of 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.

GOUNT X BREACH OF EXPRESS WARRANTY

- 64. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 63 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 Seller are "sellers" under the Michigan Uniform
 Commercial Code, MCLA 440.2103; MSA 19,2103.
- The 2003 F-250 constitutes "goods" under the Michigan Uniform Commercial
 Code, MCLA 440.2105; MSA 2105.

- 68. This is a "transaction in goods", to which MCLA 440.2102; MSA 19.2105 is applicable.
- 69. Plaintiff's purchase of the 2003 F-250 was accompanied by an express warranty, written and otherwise offered by the Manufacturer and Seller. Whereby said warranty was part of the basis of the bargain of the contract, upon which Plaintiff relied, between Plaintiff and Manufacturer/Seller for its sale of the vehicle.
- 70. In this express warranty, the Manufacturer warranted if any defects were discovered within certain periods of time, the Manufacturer and/or Seller would provide repair of the 2003 F-250 free of charge to Plaintiff under specific terms as stated in the express warranty.
- 71. In fact, Plaintiff discovered the 2003 F-250 had defects and problems after Plaintiff purchased the vehicle as discussed above.
 - Plaintiff notified Manufacturer and Seller of the aforementioned defects.
- 73. Plaintiff has provided the Seiler and the Manufacturer with sufficient opportunities to repair or replace the 2003 F-250.
- 74. Plaintiff has reasonably met all obligations and pre-conditions as provided in the express warranty.
- 75. The Manufacturer and Seller have failed to adequately repair the 2003 F-250 and/or have not repaired the 2003 F-250 in a timely fashion, and the 2003 F-250 remains in a defective condition.

- 76. Even though the express warranty provided to Plaintiff limited Plaintiff's remedy to repair and/or adjust defective parts, the 2003 F-250's defects have rendered the limited warranty ineffective to the extent the limited remedy of repair and/or adjustment of defective parts falled 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).
- 77. The 2003 F-250 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 F-250.
- 79. The Manufacturer and Seller induced Plaintiff's acceptance of the 2003 F-250 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.
- 80. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2003 F-250 and the Plaintiff cannot reasonably rely upon the vehicle for the ordinary purpose of safe, efficient transportation.
- 81. 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 F-250 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.

82. The Manufacturer and Seller 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 Manufacturer and Seller:

- A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;
 - B. For a refund of the purchase price paid by Plaintiff for the 2003 F-250;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of 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.

COUNT XI BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

- 83. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 82 as though herein fully restated and realleged.
- 84. The Manufacturer and Seller are "merchants" with respect to automobiles under the Michigan Uniform Commercial Code, MCLA 440.2104; MSA 19.2104.
- 85. The 2003 F-250 was subject to implied warranties of merchantability under MCLA 440.2314; MSA 19.2314, running from the Manufacturer and the Seffer to the benefit of Plaintiff.

- 86. The 2003 F-250 was not fit for the ordinary purpose for which such goods are used.
- 87. The defects and problems hereinbefore described rendered the 2003 F-250 unmerchantable.
- 88. The Manufacturer and Seller falled to adequately remedy the defects in the 2003 F-250; and the 2003 F-250 continues to be in an unmerchantable condition at the time of revocation.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Seller.

- A. 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 purchase price paid by Plaintiff for the 2003 F-250;
- D. To cancel Plaintiff's retail installment contract and pay off the balance of the contract:
 - For consequential, incidental and actual damages;
 - F. Costs, interest and actual attorneys' fees; and
 - G. Such other relief this Court deems appropriate.

JURY DEMAND

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

Respectfully submitted,

CONSUMER LEGAL SERVICES, P.C.

By:

MARK ROMANO P'44014

CHRISTOPHER M. LOVASZ P-44472

Attorneys for Plaintiff 30928 Ford Road

Garden City, MI 48135

(734) 281-4700

Dated: October 27, 2003

IN THE SUPERIOR COURT HAMILTON COUNTY, INDIANA

Plaintiffs,	}	
v.) No.	_
FORD MOTOR COMPANY,) 29002-0311	pr dai
Defendant.)	

COMPLAINT

NOW COME the Plaintiffs.

Plaintiffs' attorneys, KROHN & MOSS, LTD., and for Plaintiffs' Complaint against Defendant,

FORD MOTOR COMPANY, alleges and affirmatively states as follows:

<u>PARTIES</u>

- 1. Plaintiff

 "Plaintiffs"), are individuals

 who were at all times relevant hereto residing in the State of Indiana.
- 2. Defendant, FORD MOTOR COMPANY ("Manufacturer"), is a foreign corporation authorized to do business in the State of Indiana and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including Don Hinds Ford ("Seller"). Manufacturer does business in all counties of the State of Indiana.

BACKGROUND

On or about January 23, 2003, Plaintiffs purchased from Seller a 2003 Ford F350
 ("F350"), manufactured by Manufacturer, Vehicle klaptification No. 1FTWX33P03E

valuable consideration (A copy of Plaintiffs' purchase contract is attached hereto and marked as Exhibit "A").

- 4. The price of the F350, <u>including</u> sales tax and excluding registration charges, document fees and other collateral charges, such as bank and finance charges, totaled more than \$38,845.45.
- 5. In consideration for the purchase of the F350, Manufacturer issued and supplied to Plaintiffs several written warranties, including a three (3) year or thirty-six thousand (36,000) mile factory warranty, as well as other standard warranties fully outlined in the Manufacturer's Warranty booklet.
- 6. On or about Jamary 23, 2003, Plaintiffs took possession of the F350 and shortly thereafter experienced the various defects listed below that substantially impair the use, value and/or safety of the F350.
- The defects described below violate the express written warranties issued to
 Plaintiffs by Manufacturer, as well as the implied warranty of merchantability.
- Plaintiffs brought the F350 to Seller and/or other authorized service dealers of
 Manufacturer for various defects, including but not limited to the following:
 - Defective engine as evidenced by running rough, smoke, an oil leak, missing, a hard start condition, low power, and a rough idle;
 - Defective transmission as evidenced by slipping and hesitation;
 - Defective exhaust system as evidenced by leaking; and
 - Defective window as evidenced by scratches in the glass.
- Plaintiffs provided Manufacturer through Seller and/or other authorized dealers of
 Manufacturer sufficient opportunities to repair the F350.
- 10. Manufacturer through its authorized dealers was unable and/or faifed to repair the F350 within a reasonable number of attempts.

- Plaintiffs justifiably lost confidence in the F350's reliability and said defects have substantially impaired the value of the F350 to Plaintiffs.
- Said defects could not have reasonably been discovered by Plaintiffs prior to
 Plaintiffs' acceptance of the F350.
- As a result of these defects, Plaintiffs revoked acceptance of the F350 in writing on August 26, 2003 (A copy of said letter is attached hereto and marked as Exhibit "B").
- 14. At the time of revocation, the F350 was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear.
- 15. Manufacturer refused Plaintiffs' demand for revocation and has refused to provide Plaintiffs with the remedies to which Plaintiffs are satisfied upon revocation.
- 16. The F350 remains in a defective and unmerchantable condition, and continues to exhibit the above mentioned defects that substantially impair its use, value and/or safety.
- 17. Plaintiffs have been and will continue to be financially damaged due to Mapufacturer's failure to comply with the provisions of its express and implied warranties.
- 18. Prior to filing this Complaint, Plaintiffs submitted to Manufacturer's informal dispute resolution program and were unsatisfied with the results therein.

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

- 19. Plaintiffs reallege and incorporate by reference as though fully set forth herein, paragraphs 1-18 of this Complaint.
 - 20. Plaintiffs are purchasers of a consumer product who received the #350 during the

duration of a written warranty period applicable to the F350 and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

- Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiffs.
- Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.
- 23. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Plaintiffs' Complaint in that the F350 was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).
- 24. Plaintiffs' purchase of the F350 was accompanied by written factory warranties for any pop-conformities or defects in material or workmanship, comprising an undertaking in writing in connection with the purchase of the F350 to repair the F350 or take other remedial action free of charge to Plaintiffs with respect to the F350 in the event that the F350 failed to meet the specifications set forth in said undertaking.
- 25. Said warranties were the basis of the bargain of the contract between the Plaintiffs and Manafacturer for the sale of the F350 to Plaintiffs.
- Said purchase of Plaintiffs' F350 was induced by, and Plaintiffs relied upon, these
 written warranties.
- 27. Plaintiffs have met all of Plaintiffs' obligations and preconditions as provided in the written warranties.
- 28. As a direct and proximate result of Manufacturer's failure to comply with its express written warrenties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §

2310(d), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.
WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

- Return of all monies paid or in the alternative applicable damages pursuant to section 2-714 of the Commercial Code, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other
- Such other and further relief that the Court deems just and appropriate.

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

- 29. Plaintiffs reallege and incorporate by reference as though fully set forth herein, paragraphs 1-18 of this Complaint.
- 30. The F350 purchased by Plaintiffs were subject to an implied warranty of merchantability as defined in 15 U.S.C. § 2301(7) running from the Manufacturer to the intended consumer, Plaintiffs berein.
- 31. Manufacturer is a supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiffs.
- 32. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing within ninety (90) days of a purchase to perform services relating to the maintenance or repair of a motor vehicle.
- 33. Pursuant to 15 U.S.C. § 2308, Plaintiffs' F350 was impliedly warranted to be substantially free of defects and non-conformities in both material and workmanship, and thereby fit for the ordinary purpose for which the F350 was intended.

- 34. The F350 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.
- 35. The above described defects in the F350 tender the F350 unfit for the ordinary and essential purpose for which the F350 was intended.
- 36. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs have suffered and continues to suffer various damages,

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

- Return of all monies paid or in the alternative applicable damages pursuant to section 2-714 of the Commercial Code, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other
- c. Such other and further relief that the Court deems just and appropriate.

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

- Plaintiffs reallege and incorporate by reference as though fully set forth herein,
 paragraphs 1-18 of this Complaint.
 - Manufacturer's tender of the F350 was substantially impaired to Plaintiffs.
- 39. Manufacturer's tender of the F350, which was substantially impaired to Plaintiffs, constitutes a violation of 15 U.S.C. § 2310(d).

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

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

<u>COUNT IY</u> <u>INDIANA MOTOR VEHICLE PROTECTION ACT</u>

- 40. Plaintiffs reallege and incorporate by reference as though fully set forth herein, paragraphs 1-18 of this Complaint.
- 41. Plaintiffs have presented the F350 to Seller and/or other authorized service dealers of Manufacturer within the term of protection and have tendered the subject vehicle four (4) or more times for the same defects and/or non-conformities, and those defects and/or non-conformities continue to exist.
- 42. Pursuant to the Act, the F350 does not conform to the express warranties issued to Plaintiffs by Manufacturer.
- 43. Pursuant to the Act, Plaintiffs are entitled to a refund of the full price of the vehicle, including all collateral charges and finance charges, and/or a replacement vehicle, plus all attorneys' fees and costs.

WHEREFORE, Plaintiffs, CARL ABBOTT and SHELIA ABBOTT, pray for judgment against Manufacturer as follows:

- Return of the F350's purchase price and all incidental and consequential damages incurred by Plaintiffs;
- Return of all finance charges incurred by Plaintiffs for the F350;
- All reasonable attorneys' fees, witness fees, court costs and other fees incurred by the Plaintiffs, and;
- Such other and further relief that this Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand trial by jury on all issues in this action.

Respectfully Submitted,

CARL ABBOTT and SHELIA ABBOTT

Attorney for Plaintiffs

John D. Barker KROHN & MOSS, LTD. 120 West Madison Street, 10th Floor Chicago, Illinois 60602 (312) 578-9428 Attorney No. 22885-49