

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

IN THE CIRCUIT COURT OF COMINGTON COUNTY, MISSISSIPPI

FILED

NOV 13 2003

PLAINTIFF

VERSUS

NO. _____ PAGE _____
KEITH EARL COLLINS, CIR. CLK.

NO. 2003-218C

FORD MOTOR COMPANY

DEFENDANT

BY _____ DC

COMPLAINT
JURY TRIAL REQUESTED

COMES NOW, the plaintiff, [REDACTED] through counsel and files this his
Complaint against the above named defendant as follows:

I.

The plaintiff [REDACTED] is an adult resident citizen of Lamar County, Mississippi,
currently residing at [REDACTED] Sumrall, Mississippi.

II.

The defendant Ford Motor Company (hereinafter "Ford") is a Delaware corporation
whose registered agent for service of process is CT Corporation System, 645 Lakeland East
Drive, Suite 101, Flowood, Mississippi 39232. At all relevant times to this action, Ford is and
was the manufacturer of a 2003 Ford 250 Lariat crew cab diesel 4x4 truck bearing vehicle
identification number 1FTNW21P23E [REDACTED] hereinafter referred to as "the subject vehicle."

III.

On or about May 19, 2003, plaintiff purchased the subject vehicle from Woolwine Ford-
Lincoln-Mercury, Inc. (hereinafter "Woolwine") in Collins, Mississippi, for an original purchase
price of \$45,040.45.

IV.

As soon as the vehicle was purchased, it began to "idle rough," smoke and stall and
developed problems with the engine revving without provocation, causing the plaintiff and his

family to fear for their safety while traveling in the vehicle for fear that it would stall and leave them stranded, stall and cause an accident or present additional problems.

V.

On or about May 27, 2003, the subject vehicle was allegedly repaired by Woolwine where it was determined that the problem would be corrected by replacement of the number 8 injector, the injector was replaced but it did not repair the problems.

VI.

The plaintiff returned the subject vehicle to Woolwine on June 20, 2003 and on August 15, 2003 for the same problems, and the dealership did not issue invoices for those repair visits, at which times nothing was done to repair the vehicle.

VII.

On August 25, 2003, the plaintiff contacted Ford to seek assistance with repair or repurchase of the subject vehicle, again to no avail.

VIII.

The plaintiff invokes his rights pursuant to the Motor Vehicle Warranty Enforcement Act, Mississippi Code Annotated § 63-17-151 *et seq.*

IX.

Plaintiff has complied with Mississippi Code Annotated § 63-17-159 specifically in subsection 3A by allowing a Ford dealership three opportunities within the first year of purchase to repair the nonconformity which impairs the use, market value and safety of the subject vehicle.

X.

The plaintiff, through counsel, contacted Ford at all three addresses provided in the Owner's Manual, and a copy of the September 24, 2003 correspondence is attached and incorporated herein by reference as Exhibit A, to which no response was received but for the forwarding of a copy of the Dispute Settlement Board Application and brochure to undersigned counsel.

XI.

Ford has acknowledged through its dealership and through representatives by telephone that Ford is aware of the defects in the subject vehicle and other similar vehicles, but the subject vehicle has not been repaired despite multiple attempts by Ford through Woolwine.

XII.

The plaintiff and his family fear for their safety and cannot use the subject vehicle in its current condition. Plaintiff also believes and therefore avers that the nonconformities of the subject vehicle impair the vehicle's market value.

XIII.

The plaintiff has completed the Dispute Settlement Board Application, a copy of which is attached as Exhibit B and incorporated herein by reference as if copied *in extenso*, and transmitted same to the Dispute Settlement Board, Post Office Box 5120, Southfield, Michigan 48086-5120, without response.

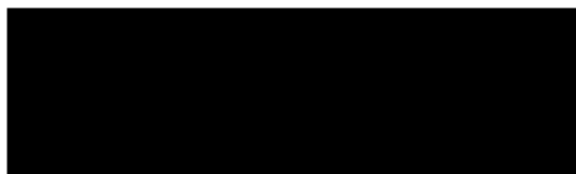
XIV.

The plaintiff is entitled to and therefore prays for judgment requiring Ford Motor Company to repurchase the vehicle for \$45,040.45, deducting \$.20 per mile for each mile on the subject vehicle at the time of payment, plus \$500.00 for the fifth wheel attachment plus

attorney's fees of 40% plus all costs and expenses incurred in relation to this dispute and for such other general and equitable relief to which the plaintiff is entitled.

WHEREFORE, plaintiff prays that upon trial of this cause that judgment be entered against Ford Motor Company for all actual and compensatory damages in amounts that are just and equitable, as provided by the evidence and allowed by statute, such amounts being in excess of the jurisdictional limits of this Court for both compensatory damages and punitive damages, for plaintiff's costs, attorney's fees in an amount of 40% and pre-judgment interest, and for such other equitable relief to which plaintiff is entitled.

Respectfully submitted on the 13th day of November, 2003.



A handwritten signature in cursive script, appearing to read "Donna Powe Green", written over a horizontal line.

DONNA POWE GREEN (#4460)
BARNES & GREEN, P.C.
Post Office Box 17947
Hattiesburg, MS 39404-7947
601/271-9031

BARNES & GREEN, P.C.

Attorneys at Law

Michael R. Barnes
Donna Powe Green*

32 Office Park Drive
Hattiesburg, MS 39402

*Also licensed in Louisiana

Post Office Box 17947
Hattiesburg, MS 39404-7947
Telephone: (601) 271-9031
Telecopier: (601) 271-9033

September 24, 2003

Ford Motor Company
Customer Relationship Center
16800 Executive Plaza Drive
P.O. Box 6248
Dearborn, MI 48121

Ford Motor Company
Memphis Region
8000 Centerview Parkway
Suite 2001
Cordova, TN 38018-0190

Ford Motor Company
Dispute Settlement Board
P.O. Box 5120
Southfield, MI 48086-5120

RE: 2003 Ford F-250 Lariat Crew Cab Diesel 4x4 Truck
VIN: 1FTNW21P23E [REDACTED]
Our File No: 03-10 [REDACTED]

Dear Sir/Madam:

We have been retained to represent [REDACTED] with regard to the above-captioned vehicle purchased new on May 19, 2003 from Woolwine Ford Lincoln Mercury, Inc. in Collins, Mississippi. The original purchase price was \$45,040.45. As soon as the vehicle was purchased, it began "idling rough" and smoking, and [REDACTED] took the vehicle to the dealership and reported that there was a miss in the engine when the vehicle was under acceleration. The dealership issued an invoice number FOCS 88241 that indicated work performed on May 27, 2003, where they found that the number eight injector was bad and replaced it to correct the problem. The problem was not corrected.

The vehicle was returned to the shop, without an invoice, on June 20, 2003, for the same problem. Woolwine reported that they could find nothing wrong and that the customers should just drive the vehicle.

Once again, the vehicle was returned to Woolwine on August 15, 2003, for the same problem. At that time, Woolwine acknowledged that there was something wrong with this type of vehicle and that they were aware of it, but did not know how to fix it. In addition to the idling

ENCLOSURE

A

PE04-070 1212

rough and smoking, the vehicle stalls, which presents a safety hazard. It also has an additional problem with revving on its own while no one is in the vehicle.

On August 25, 2003, the [REDACTED] resorted to contacting Ford at the number printed in the owner's manual. Lyndon of Ford said that the Ford representative would call them by August 29, 2003 or to call Ford back. She did not. On August 29, 2003, having heard nothing from Ford, they called again and talked to Rodney who told them that Kathy would call by September 5, 2003, and he would call back to check that she had. She did not, but Rodney did follow up and put the request in the system again for her to call within five (5) more days. The Ford representative, Kathy, finally called at approximately 9:00 p.m. on September 11, 2003. She offered to pay one of the truck notes at \$725.00 per month and to contact Terry at Woolwine with regard to that payment. She knew that there was a problem with the vehicle, but Ford was "waiting for the government to issue the recall notice" before Ford could repair any of the defective vehicles. She acknowledged that there were many vehicles that have this same problem.

On September 19, 2003, the [REDACTED] returned to Woolwine and asked the dealership to repurchase the vehicle. The [REDACTED] were offered a trade-in at an "even swap" for a \$35,000.00 truck. This was unacceptable.

On September 22, 2003, the [REDACTED] spoke to Michael at Ford and were told that there was a special department for diesels. They were then referred to Andrew, who was exceptionally rude, and his response was along the lines of, "what do you want me to do?" [REDACTED] asked that the vehicle be purchased back, with her paying \$.20 per mile for usage or she would have to file a Lemon Law suit. Andrew responded that Ford does not buy back vehicles, notably contrary to Mississippi law.

In summation, this \$45,000.00 vehicle purchased new in May, with an added fifth wheel gooseneck attachment which cost \$500.00 which was to allow the [REDACTED] family to pull their boat and horse trailer, does not operate properly and presents a hazard to the [REDACTED] their family and the motoring public. Rest assured that Ford will be the party held responsible if this vehicle causes an accident that injures any person or property. [REDACTED] works on a busy thoroughfare where the usual minimum traffic speed is fifty-five miles per hour. A vehicle that stalls is simply unacceptable.

Please allow me to call your attention to M.C.A. §63-17-151, et seq. M.C.A. §63-19-3 provides that the [REDACTED] are entitled to receive reimbursement of the purchase price of their vehicle after they have afforded the manufacturer three attempts to repair the non-conformity. The vehicle has been in the shop three times, to no avail. The condition of this vehicle impairs its use, market value and its safety, and could easily leave the [REDACTED] stranded on the side of the

Ford Motor Company
Page Number Three
September 24, 2003

road. This is certainly not what is expected when one purchases a brand new vehicle. Ford has had ample opportunities, through its dealer and agent Woolwine, to repair this vehicle.

The [REDACTED] hereby demand re-purchase of the vehicle at a cost of \$45,040.45, less \$.20 per mile for reasonable usage, currently at approximately 9,000 miles, plus attorney's fees at forty percent of the purchase price, based upon M.C.A. §63-17-159(7).

We look forward to your response within fourteen days. If we do not resolve this matter within that period of time, my clients will have no choice but to file suit under the Lemon Law, seeking full attorney's fees as allowed by the statute, and they must consider whether to add a separate cause of action against the dealer for a potential fraud claim since it appears that Ford knew or should have known of the condition of this model of vehicle and the problems with this particular engine before this vehicle was ever sold to the [REDACTED]. We trust that Ford will want to resolve this amicably and without further delay. Please call.

With best regards, I am

Very truly yours,



DONNA POWE GREEN

DPG/mac

cc: Richard Woolwine
Woolwine Ford Lincoln Mercury, Inc.



DISPUTE SETTLEMENT BOARD APPLICATION

(Please supply all requested information.)

Please print (in black ink) or type.

Case No. _____

(Internal Use Only)

Owner/Lessee Name ☒ Mr. ☐ Mrs. ☐ Ms. _____

Address _____

City Sumner, IL

State MS

Zip _____

Vehicle I.D. No. 4FTNW21P23E

Home Phone _____

Business Phone _____

(Required)

Vehicle Year 2003

Make Ford

Model F250

Acquired: New ☒ Used ☐ Leased ☐

Vehicle Use: ☐ Personal ☐ Commercial

* Mileage at time of used vehicle purchase _____

Date Purchased/Leased 5-19-03

Current Mileage approx. 9,800

How did you hear about the Dispute Settlement Board process?

☐ Dealer

☐ Factory Representative

☐ Ford 800 *

☐ State or Federal agency

☒ Other (specify) Attorney

Selling Dealer Woolwine Ford Lincoln Mercury, Inc.

City Collins, MS

Servicing Dealer(s) Symc

City _____

1. Briefly describe your unresolved service concern(s) below: (Attach legible copies of applicable repair orders and/or other supporting documents. Keep the originals for your records.)

The vehicle "idles rough," smokes and stalls. Invoice F066 88241 was issued 5-27-03 indicating the number eight injector was replaced, to no avail. No invoices were provided for the attempted repairs on June 20 and August 15, 2003, but it has finally been admitted that Ford is aware of the defect in this vehicle model.

2. How many times has the vehicle been in for the same warranty repair? 3

First repair attempt:

Date 5/27/03

Mileage 1103

Last repair attempt:

Date 8/15/03

Mileage unsure - < 9,800

3. How many days has the vehicle been out of service for warranty repairs? See the dealer. Otherwise undrivable

due to safety concern

4. Have you recently contacted your dealer about this concern? Yes ☒ No ☐

Individual's name Richard Huelwijn

5. Does the stated warranty concern now exist? Yes ☒ No ☐

6. Would you like to make an oral presentation to the Board? Yes ☒ No ☐

If you travel here.

If yes, would you like to make it in person _____ or by teleconference _____

By teleconference with attorney.

7. Describe what you want done to resolve your concern:

Danna Buehman (601) 271-5031.

Re-purchase the vehicle for \$45,040.45 less \$20/mile, plus \$500 for an additional wheel attachment, plus \$1,000 attorney's fees if resolved before suit is filed, 40% thereon.

DISPUTE SETTLEMENT BOARD - a voluntary, free, independent dispute settlement program

Signature _____

Date _____

and any supporting documents to:

Dispute Settlement Board

P.O. Box 5120

Southfield, MI 48086-5120

Woolwine Ford-Lincoln-Mercury, Inc.

P.O. Drawer 1509 - Highway 49 South

Telephones: 765-4461

Hattiesburg 544-6146 Laurel 649-5561

Collins, Mississippi 39428

"Customer Satisfaction is our Main Concern"



CUSTOMER NO.	18516	ADVISOR	OWEN LOFT	239	TAG NO.	WARRANTY DATE	05/27/03	PRODUCT NO.	FOCS88241
		LABOR RATE			1,103	COLOR	OXFORD WHIT	STOCK NO	7209
		YEAR / MAKE / MODEL	03/FORD TRUCK/F250/CRW CAB SRW 4X4			DELIVERY DATE	05/19/03	DELIVERY MILES	10
SUMRALL, MS		VEHICLE ID NO.	1 F T N W 2 1 P 2 3 E			SELLING DEALER NO.		PRODUCTION DATE	
		R.T.E. NO.				R.O. DATE	05/27/03		

LABOR	J# 2 04F0206	MISS IN ENGINE	HOURS:	TECH(S):228	WARRANTY
CUSTOMER STATES THERE IS A MISS IN THE ENGINE UNDER ACC. RAN DIAG. FOUND # 8 INJ. BAD REPLACED 3 8 INJ TO CORRECT.					
TOTAL - LABOR					0.00
PARTS	QTY	FP-NUMBER	DESCRIPTION	UNIT PRICE	WARRANTY
JOB # 1	1	3C3Z-9E527-AE	NOZ ASY-FU/INJ		0.00
JOB # 1	-1	3C3Z-9E527-AE	CORE RETURN		0.00
TOTAL - PARTS					0.00

DISCLAIMER OF WARRANTIES
WARRANTY STATEMENT: Any warranties on the products sold hereby are those made by the manufacturer. The Seller, WOOLWINE FORD-LINCOLN-MERCURY, INC., hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and WOOLWINE FORD-LINCOLN-MERCURY, INC., neither asks, nor authorizes any other person to.
NOT RESPONSIBLE FOR LOSS OR DAMAGE TO ARTICLES LEFT IN CARE IN CASE OF FIRE, THEFT OR OTHER CAUSE BEYOND OUR CONTROL.
TERMS: STRICTLY CASH, UNLESS OTHERWISE NOTED

COMMENTS	
TOTALS	
CUSTOMERS ARE RESPONSIBLE FOR PAYMENT OF ANY INSURANCE CLAIM IF THEIR INSURANCE COMPANY DOES NOT PAY.	
DEAR CUSTOMER: WE WANT YOU TO BE COMPLETELY SATISFIED WITH YOUR SERVICE VISIT. IF YOU HAVE ANY QUESTIONS OR CONCERNS PLEASE CALL US SO WE CAN ATTEMPT TO RECTIFY YOUR CONCERNS IMMEDIATELY. YOU MAY BE RECEIVING A QUESTIONNAIRE FROM FORD MOTOR CO. REGARDING YOUR SERVICE VISIT TO WOOLWINE FORD PLEASE COMPLETE THE SURVEY AND RETURN IT TO FORD. IT IS OUR REPORT CARD. IF FOR SOME REASON YOU ARE UNABLE TO GIVE US PERFECT "10'S" ON THAT SURVEY, PLEASE CONTACT US TO RESOLVE YOUR CONCERNS.	
THANK YOU FOR YOUR BUSINESS. THE EMPLOYEES OF WOOLWINE FORD LINCOLN MERC INC	
CUSTOMER SIGNATURE	
TOTAL LABOR.....	0.00
TOTAL PARTS.....	0.00
TOTAL SUBLET.....	0.00
TOTAL G.O.G.....	0.00
TOTAL MISC CHG.....	0.00
TOTAL MISC DISC.....	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE \$	0.00

Thank You!

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Case No. A0304084

[REDACTED]
Cincinnati, Ohio

Plaintiff

vs.

COMPLAINT AND JURY
DEMAND

FORD MOTOR COMPANY
Suite 514
3 Parklane Blvd.
Dearborn, MI

Defendant

COPY FILED
CLERK OF COURTS
HAMILTON COUNTY

MAY 29 2003

GREGORY HARTMANN
COMMON PLEAS COURTS

Now comes the Plaintiff, by and through counsel, and for his complaint in the above captioned matter states as follows:

FIRST CAUSE OF ACTION

1. On information and belief, defendant is a Michigan Corporation licensed to do business in the State of Ohio and doing business by manufacturing, importing and/or distributing new automobiles to the general public.
2. At all times complained of herein defendant was a manufacturer as that term is defined in Ohio Revised Code §1345.71.
3. At all times complained of herein plaintiff was a consumer as that term defined in Ohio Revised Code §1345.71.
4. At all times complained of herein Crown Ford Lincoln Mercury, Inc. and Beechmont Ford, Inc. were authorized dealers of defendant.
5. On or about January 20, 2003 Plaintiff purchased a 2003 Ford F250 Pickup truck, Serial No.: 1FTNX21P93E [REDACTED] from defendant's authorized dealer.

16. Plaintiff has within the applicable express warranty period presented the vehicle to defendant's authorized dealers requesting that the dealers make repairs under the warranties between plaintiff and defendant.

17. Defendant has breached its express warranties with plaintiff by failing to repair plaintiff's vehicle within a reasonable number of repair attempts and pursuant to 15 U.S.C. Section 2304, plaintiff is entitled to rescind the transaction and recover all purchase monies paid plus reasonable attorney's fees.

THIRD CAUSE OF ACTION

18. Plaintiff realleges the allegations contained in paragraphs 1 through 17 as if fully rewritten here.

19. Defendant warranted that the vehicle purchased by the plaintiff would be free of defects for a period of three years or thirty-six thousand miles.

20. Within the express warranty period plaintiff has requested that defendant's authorized dealers repair his vehicle to conform the vehicle to defendant's express warranties.

21. Defendant has breached its warranty by failing to conform the vehicle to the express warranties covering the vehicle.

22. The warranties covering plaintiff's vehicle have failed of their essential purpose and plaintiff is entitled to rescind the purchase of his vehicle and recover all monies paid plus reasonable attorney's fees.

WHEREFORE, Plaintiff demands judgment against defendant rescinding the transaction, a complete refund of all monies paid, plus reasonable attorney's fees and costs.

DEREK W. GUSTAFSON 0005144
Attorney for Plaintiff
1919 Kroger Building
1014 Vine St.
Cincinnati, OH 45202
(513) 241-7880

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DEREK W. GUSTAFSON 0005144
Attorney for Plaintiff

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

[REDACTED]

Plaintiff,

v

CP

FORD MOTOR COMPANY, a Delaware
Corporation and HAROLD ZEIGLER FORD, 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 pending 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:

1. Plaintiff is a resident of the City of Lowell, Kent 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, Harold Zeigler Ford, Inc. (hereinafter referred to as "Seller"), 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 Lowell, Kent County, Michigan.

4. On or about January 16, 2003, Plaintiff purchased a new 2003 Ford F-350, VIN 1FTWW33P53E [REDACTED] (hereinafter referred to as "2003 F-350"), from the Seller which was manufactured by the Manufacturer (see copy of the Vehicle Purchase Order attached as Exhibit A).

5. Along with the sale of the 2003 F-350, 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).

CONSUMER LEGAL SERVICES

6. Plaintiff took the 2003 F-350 to Seller on two occasions and the vehicle was out of service due to repair for at least thirty-five (35) days (see copy of the repair orders attached as Exhibit B). By way of example, and not by way of limitation, the defects with Plaintiff's 2003 F-350 include the following:

<u>Date</u>	<u>Days</u>	<u>Mileage</u>	<u>Invoice#</u>	<u>Complaint</u>
03/10/03	30	1,957	75548	Vehicle made strange noises, lost most of its power and would not run above idle; name decal peeling off rear; rust spots all over vehicle
04/21/03	5	2,362	76437	Engine difficult or slow to start; no throttle response when leaving a stop

TOTAL: 35 DAYS OUT OF SERVICE

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 1
VIOLATION OF NEW MOTOR VEHICLE WARRANTIES ACT;
MCL 257.1401 ET SEQ; MSA 9.2705

9. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 8 as though herein fully restated and realleged.

CONSUMER LEGAL SERVICES

-J-

10. Plaintiff is a "consumer" under the Michigan New Motor Vehicle Warranties Act (hereinafter referred to as "Lemon Law"), MCL 257.1401(a).

11. Manufacturer, is a "manufacturer" under the Lemon Law, MCL 257.1401(d).

12. The 2003 F-350 is a "motor vehicle" under the Lemon Law, MCL 257.1401(f).

13. The 2003 F-350 is a "new motor vehicle" under the Lemon Law, MCL 257.1401(g).

14. The express warranty given by Manufacturer, covering the 2003 F-350 is a "manufacturer's express warranty" under the Lemon 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-350 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.

CONSUMER LEGAL SERVICES

18. Manufacturer's attempted repair was unsuccessful as the 2003 F-350 continues to manifest the aforementioned defects.

19. The aforementioned defects substantially impair the use or value of the 2003 F-350 to the Plaintiff and/or prevent the 2003 F-350 from conforming to the Manufacturer's express warranty.

WHEREFORE, Plaintiff prays for the following relief:

A. Replacement of the 2003 F-350 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.

D. Incidental and consequential damages.

E. For prejudgment interest.

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

CONSUMER LEGAL SERVICES

- 5 -

PEBA-878 1224

COUNT II
BREACH OF CONTRACT

20. Plaintiff incorporates herein by reference each and every allegation contained in 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-350 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.

22. The limited warranty, given by the Manufacturer and adopted by the Seller when the Seller serviced and repaired the 2003 F-350 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 monies paid for the purchase of the 2003 F-350;

B. For return of an amount equal to Plaintiff's down payment and all payments made by Plaintiff to the Defendants;

C. For incidental, consequential, exemplary and actual damages;

D. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;

CONSUMER LEGAL SERVICES

- E. 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.

25. The Seller is a "motor vehicle repair facility" as defined by MCLA 257.1302(g)

26. 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) 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 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) Failing upon return of the 2003 F-350 to the Plaintiff to give a written statement of repairs to the Plaintiff which discloses:

CONSUMER LEGAL SERVICES

(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

29. Plaintiff incorporates herein by reference each and every allegation contained in 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-350 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.

CONSUMER LEGAL SERVICES

31. The limited warranty, given by the Manufacturer and adopted by the Seller when the Seller serviced and repaired the 2003 F-350 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 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.

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 monies 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-350 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-350;

C. For return of an amount equal to Plaintiff's down payment and all payments made by Plaintiff to the Defendants;

D. For incidental, consequential, exemplary and actual damages;

CONSUMER LEGAL SERVICES

- 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. Plaintiff 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).

37. 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-350 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-350 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 F-350, the Manufacturer and Seller 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-350.

CONSUMER LEGAL SERVICES

(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-350 and the Manufacturer failed to provide the promised benefits to Plaintiff with regard thereto.

(f) The Manufacturer and Seller 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-350 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-350 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-350 to Plaintiff.

39. 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.

CONSUMER LEGAL SERVICES

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-350 is a "consumer product" as defined in the Warranty Act, 15 USC 2301(1).

45. The 2003 F-350 was manufactured, sold and purchased after July 4, 1975.

46. The express warranty given by the Manufacturer pertaining to the 2003 F-350 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 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 Seller actionable under the Warranty Act, 15 USC 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Seller:

CONSUMER LEGAL SERVICES

- 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-350;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- D. 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 allegation 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 440.2103(1)(b)].

52. Implied in the agreement between the Plaintiff and all Defendants for purchase and/or repair of the 2003 F-350 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 said vehicle free from manufacturing or workmanship defects;

(iii) 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-350 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-350.

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-350 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 herein fully restated and realleged.

CONSUMER LEGAL SERVICES

56. Plaintiff accepted the 2003 F-350 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 Seller 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-350 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 his purchase price for the 2003 F-350 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-350 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 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-350;

CONSUMER LEGAL SERVICES

C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;

D. For consequential, incidental and actual damages;

E. 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;

B. For a refund of the purchase price paid by Plaintiff for the 2003 F-350;

C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;

D. For consequential, incidental and actual damages;

E. For costs, interest and actual attorneys' fees; and

F. Such other relief this Court deems appropriate.

CONSUMER LEGAL SERVICES

COUNT 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.

65. Plaintiff is a "buyer" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

66. Manufacturer and Seller are "sellers" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

67. The 2003 F-350 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-350 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-350 free of charge to Plaintiff under specific terms as stated in the express warranty.

71. In fact, Plaintiff discovered the 2003 F-350 had defects and problems after Plaintiff purchased the vehicle as discussed above.

CONSUMER LEGAL SERVICES

72. Plaintiff notified Manufacturer and Seller of the aforementioned defects.

73. Plaintiff has provided the Seller and the Manufacturer with sufficient opportunities to repair or replace the 2003 F-350.

4 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-350 and/or have not repaired the 2003 F-350 in a timely fashion, and the 2003 F-350 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-350's defects have rendered the limited warranty ineffective to the extent 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).

77. The 2003 F-350 continues to contain defects which substantially impair the value of the automobile to the Plaintiff.

78. These defects could not reasonably have been discovered by the Plaintiff prior to Plaintiff's acceptance of the 2003 F-350.

79. The Manufacturer and Seller induced Plaintiff's acceptance of the 2003 F-350 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.

CONSUMER LEGAL SERVICES

80. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2003 F-350 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-350 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-350;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- D. For incidental, consequential and actual damages;
- E. For costs, interest and actual attorneys' fees; and
- F. For such other relief this Court deems appropriate.

CONSUMER LEGAL SERVICES

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-350 was subject to implied warranties of merchantability under MCLA 440.2314; MSA 19.2314, running from the Manufacturer and the Seller to the benefit of Plaintiff.

86. The 2003 F-350 was not fit for the ordinary purpose for which such goods are used.

87. The defects and problems hereinbefore described rendered the 2003 F-350 unmerchantable.

88. The Manufacturer and Seller failed to adequately remedy the defects in the 2003 F-350; and the 2003 F-350 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;
- B. 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-350;

CONSUMER LEGAL SERVICES

- D. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- E. 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) 261-4700

Dated: April 24, 2003

CONSUMER LEGAL SERVICES

Robert M. Silverman, Esquire
Identification No. 55914
KEMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEY FOR PLAINTIFF

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

[REDACTED]
Harleysville, Pennsylvania [REDACTED]

v.

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

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiff, [REDACTED] is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, [REDACTED] Pennsylvania [REDACTED]

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

3. On or about March 13, 2003, Plaintiff purchased a new 2003 Ford F-350, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1FTSF31P53E [REDACTED]

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

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the

Lemon Law, totaled more than \$39,295.31. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

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

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

8. The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

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

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

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

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

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

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

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

15. Faulkner 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 March 13, 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 number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchaser's use of the vehicle, not exceeding \$.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

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

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

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

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

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

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

24. The first documented warranty repair attempt is believed to have occurred on or before March 27, 2003, when the vehicle odometer showed 594 miles. On that date, repair attempts

were made to the abnormal hard-start condition and idle fluctuates. A true and correct copy of the repair invoice 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 March 31, 2003, when the vehicle odometer showed 802 miles. On that date, repair attempts were made to the abnormal no-start condition, shudders at idle and defective engine cooling fan clutch. 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 April 11, 2003, when the vehicle odometer showed 1,074 miles. On that date, repair attempts were made to the abnormal shudder when idle. 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 et seq.

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.

40. 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.

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:

- (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
- (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
- (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
- (xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

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.

By: 

ROBERT M. SILVERMAN, ESQUIRE

Attorney for Plaintiff

30 East Butler Pike

Ambler, Pennsylvania 19002

(215) 540-8888

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AUG 27 2003

PATRICIA PRESLEY, COURT CLERK

By _____

Capacity

Plaintiff,

vs.

FORD MOTOR COMPANY,

Defendant.

-2003-7270


P E T I T I O N

COMES NOW PLAINTIFFS and for their cause of action against Defendant, Ford Motor Company, states as follows:

1. On or about January 6, 2003, Plaintiff purchased from Sooner State Trucks dba Fleming Truck Center in Oklahoma City, Oklahoma County, State of Oklahoma, a new 2003 Ford F-350 truck vin 1FTNX21P33E [REDACTED] for a purchase price of \$40,185.00;
2. That following purchase of the truck Plaintiffs paid tag, title and tax costs on the truck totaling \$1019.50;
3. Sooner State Trucks dba Fleming Truck Center is an authorized Ford dealer of trucks and an authorized Ford warranty repair center;
4. Said vehicle was the subject of the Ford express limited warranty of repair or replacement;
5. That following purchase of the truck the engine of the truck malfunctioned by stalling intermittently several times;
6. Each time Plaintiffs returned the truck to Defendant for repairs under the Ford Motor Company express limited warranty and repairs were attempted but the vehicle continues to stall;
7. That neither Ford nor its authorized dealer repair center has been able to make lasting

repair to the vehicle and therefore the essential purpose of the Ford express warranty of repair or replacement has failed of its essential purpose pursuant to 12 O.S. §2-719(2) and Plaintiffs have been damaged thereby;

WHEREFORE, premises considered, Plaintiffs pray that judgment be entered against Ford Motor Company in the sum of \$41,204.50; costs of this action; and a reasonable attorney fee.



DONALD L. EASTER OBA 2597
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Oklahoma City, OK 73154
Telephone: (405) 232-6946
Facsimile: (405) 232-6947
Attorney for Plaintiff

1 Rob Schelling
2 A Professional Corporation
3 445 South "D" Street
4 Perris, CA 92570
5 Telephone No: (909) 940-1980
6 Fax No: (909) 940-1933
7 Bar #124443

8 Attorney for Plaintiffs [REDACTED]
9 and [REDACTED]

FILED
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 02 2003

Den

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF RIVERSIDE-CENTRAL DISTRICT

12 [REDACTED] CASE NO. 399244
13 [REDACTED] Husband and Wife,

14 Plaintiffs,

15 vs.

16 FORD MOTOR COMPANY, a corporation;
17 LAKE ELSINORE FORD, a corporation; and
18 DOES 1 through 25, inclusive,

19 Defendants.
20 _____

COMPLAINT FOR DAMAGES FOR
VIOLATION OF THE SONG-BEVERLY
CONSUMER WARRANTY ACT,
VIOLATION OF THE MAGNUSON-MOSS
WARRANTY ACT, NEGLIGENT REPAIR
AND RESCISSION

21
22 Plaintiffs allege:

23 1. Plaintiffs are informed and believe, and on the basis of that information and belief
24 allege, that defendant Ford Motor Company is, and at all times relevant herein was, a corporation
25 organized and existing under the laws of the State of Michigan, that was, and is, doing business in
26 Riverside County, California.

27 2. Plaintiffs are informed and believe, and on the basis of that information and belief
28

1 allege, that defendant Lake Elsinore Ford is, and at all times relevant herein was, a corporation
2 organized and existing under the laws of the State of California that was, and is, doing business in
3 Riverside County, California.

4 3. Plaintiffs do not know the true names and capacities, whether corporate, partnership,
5 associate, individual or otherwise of defendants sued herein as Does 1 through 25 and, therefore, sue
6 them by these fictitious names. Plaintiffs are informed and believe, and on the basis of that information
7 and belief allege, that defendants, Does 1 through 25, inclusive, are in some manner responsible for the
8 acts, occurrences and transactions set forth herein, and are legally liable to Plaintiffs. Plaintiffs will
9 seek leave to amend this complaint to set forth the true names and capacities of said fictitiously-named
10 defendants, together with appropriate charging allegations, when ascertained.
11

12 4. Plaintiffs are informed and believe, and on the basis of that information and belief
13 allege, that at all times mentioned herein each defendant, whether actually or fictitiously named herein,
14 was the principal, agent or employee of each other defendant, and in acting as such principal or within
15 the course and scope of such employment or agency, took some part in the acts and omissions
16 hereinafter set forth, by reason of which each defendant is liable to Plaintiffs for the relief prayed for
17 herein.
18
19

20 ACTS OF DEFENDANTS

21 5. On or about April 6, 2003, Plaintiffs purchased a 2003 Ford F-350 truck, Vehicle
22 Identification Number: 1FTSW31P43 [REDACTED] (hereinafter "FORD F-350"), from Lake Elsinore Ford
23 in Lake Elsinore, California, at a purchase price of \$44,555.98, not including finance charges.
24

25 7. Plaintiffs' purchase of the FORD F-350 was accompanied by express warranties given
26 by defendant Ford Motor Company, which extended to the Plaintiffs. These warranties were part of
27 the basis of the bargain of Plaintiffs's contract for purchase of the FORD F-350.
28

1 8. Ford Motor Company covered the FORD F-350 with a "Bumper-to-Bumper" warranty
2 for 36 months or 36,000 miles, whichever occurred first. Under its warranty, Ford Motor Company
3 agreed to repair, replace or adjust all parts that are defective in factory-supplied materials or
4 workmanship occurring during the warranty period.

5
6 9. In fact, the FORD F-350 was defective in materials and workmanship, such defects
7 being discovered within the warranty periods. These defective and nonconforming conditions include,
8 but are not limited to, the following:

- 9 a. defective engine;
10 b. defective electrical system;
11 c. defective steering wheel; and
12 d. defective oil temperature sensor;
13

14 10. Within the first twelve (12) months of its purchase, and within the first 18,000 miles of
15 use, the FORD F-350 was out of service by reason of repairs performed by authorized Ford Motor
16 Company warranty repair facilities for the defective and nonconforming conditions listed in Paragraph
17 9 on four or more occasions.

18
19 11. The FORD F-350's defective and nonconforming conditions have substantially impaired
20 its use, value and safety to Plaintiffs. From the time Plaintiffs took possession of the FORD F-350, it
21 experienced defects in material and workmanship of components covered under Ford Motor Company
22 warranties. Moreover, the defendants' attempts at repairing the more significant defects have not been
23 successful. As a result, the FORD F-350 continues, to this day, to exhibit defects and nonconforming
24 conditions which substantially impair its use, value and safety to Plaintiffs.

25
26 12. Plaintiffs directly notified Ford Motor Company and Lake Elsinore Ford of the FORD
27 F-350's defective and nonconforming condition.
28

1 13. Also, Plaintiffs has requested that Ford Motor Company replace or repurchase the FORD
2 F-350 pursuant to the requirements of the Song-Beverly Consumer Warranty Act. However, despite
3 having full knowledge of its non-conforming and defective condition, Ford Motor Company has
4 refused, unreasonably, to replace or repurchase the FORD F-350 as required under the Song-Beverly
5 Consumer Warranty Act.
6

7 **FIRST CAUSE OF ACTION**
8 **(Willful Violation of the Song-Beverly)**

9 14. Plaintiffs reallege, and incorporate herein by reference, each and every allegation set
10 forth in paragraphs 1 through 13. For the purpose of this cause of action, the term defendants refers
11 to Ford Motor Company and DOES 1 through 5.

12 15. The FORD F-350 is a "consumer good" as defined in Civil Code §1791(a).

13 16. Ford Motor Company is a "manufacturer" as defined in Civil Code §1791(j). Plaintiffs
14 are informed and believe, and on the basis of that information and belief allege, that defendants Does
15 1 through 5 are "manufacturers" as defined in that code section.
16

17 17. The express written warranties given by Ford Motor Company to Plaintiffs in connection
18 with their purchase of the FORD F-350 were each an "express warranty" as defined in Civil Code
19 §1791.2.

20 18. The FORD F-350 was subject to the implied warranty of merchantability pursuant to
21 Civil Code §1792.
22

23 19. Ford Motor Company, as manufacturer of the FORD F-350, failed to comply with its
24 legal obligations under the Song-Beverly Consumer Warranty Act, Civil Code §§1790 et seq., including
25 the obligation to repair the FORD F-350 within a reasonable number of attempts or within a reasonable
26 amount of time. Ford Motor Company also failed to comply with its obligation to either replace or
27 repurchase the FORD F-350.
28

1 20. The FORD F-350's defective condition rendered it unmerchantable and unfit for the
2 ordinary purposes for which it is to be used. The FORD F-350 has failed to conform with Ford Motor
3 Company' express and implied warranties, in that the FORD F-350 exhibited defects in material and/or
4 workmanship which substantially impaired its use, value and safety to Plaintiffs. Ford Motor Company
5 was given adequate notice of the FORD F-350's defective condition. Ford Motor Company was also
6 given a reasonable amount of time in which to repair the FORD F-350's defective conditions.
7

8 21. Ford Motor Company's refusal to repair the FORD F-350 so that it conformed with its
9 express and implied warranties, deprived Plaintiffs of their benefits and rights under the warranties and
10 of their benefits and rights under the provisions of the Song-Beverly Consumer Warranty Act.
11

12 22. Moreover, because of its seriously impaired safety caused by the FORD F-350's
13 defective condition, Plaintiffs requested that Ford Motor Company replace or repurchase the FORD F-
14 350. However, despite the extreme safety risk that would be imposed on the Plaintiffs by having to
15 continue to drive the FORD F-350, Ford Motor Company has steadfastly refused to replace or
16 repurchase the FORD F-350 pursuant to the provisions of the Song-Beverly Consumer Warranty Act.
17

18 23. Plaintiffs have performed each and every duty required of them under the terms of Ford
19 Motor Company's warranties and that were required of them under the provisions of the Song-Beverly
20 Consumer Warranty Act, including those described in Civil Code §1793.2, but excepting those excused
21 or prevented by Ford Motor Company's conduct as herein alleged.
22

23 24. Ford Motor Company has failed to satisfactorily repair the FORD F-350 and has clearly
24 demonstrated their inability to do so. Moreover, Ford Motor Company' failure to repair the FORD F-
25 350, and its subsequent refusal to replace or repurchase the FORD F-350, or otherwise comply with the
26 provisions of the Song-Beverly Consumer Warranty Act was willful, unreasonable, and in
27 contravention of Civil Code §1793.2.
28

1 25. Plaintiffs are informed and believe, and on the basis of that information and belief
2 allege, that Ford Motor Company purports to maintain a third-party dispute resolution process pursuant
3 to Civil Code §§1793.2(e)(2) and (3) run by the Dispute Settlement Board. Plaintiffs are further
4 informed and believe, and on the basis of that information and belief allege, that this third-party dispute
5 resolution process is a sham program designed to undermine the protected interests and rights of
6 consumers as set forth in the Song-Beverly Consumer Warranty Act. Accordingly, Plaintiffs did not
7 resort to this third-party dispute resolution process prior to bringing this lawsuit.

9 26. Plaintiffs, if they prevail in this matter, are entitled, pursuant to Civil Code §1794(d),
10 to recover a sum equal to the aggregate amount of costs and expenses, including attorney fees, based
11 on actual time expended.

13 27. As a direct and proximate result of Ford Motor Company's willful violation of the Song-
14 Beverly Consumer Warranty Act, Plaintiffs has suffered actual and consequential damages, including,
15 but not limited to, money expended on the purchase of the FORD F-350, damages associated with the
16 inconvenience and aggravation suffered as a result of the failure of the FORD F-350 to operate
17 properly, the loss of use of the FORD F-350 during the time it was in the shop for repairs, the cost of
18 alternative transportation, the loss of the Plaintiffs's general needs and requirements and attorneys' fees.
19 Plaintiffs have incurred these damages, and will continue to incur damages, in order to protect their
20 rights in this matter. The precise amount of these damages is unknown at the present time but is
21 estimated to be more than \$25,000.00 and will be shown according to proof at trial.

23 **WHEREFORE**, Plaintiffs pray for judgment, including actual damages as established
24 according to proof at time of trial and for a civil penalty in an amount two times that of the actual
25 damages, pursuant to Civil Code §1794(c), and for all other relief as hereinafter set forth.

SECOND CAUSE OF ACTION
(Violation of the Magnuson-Moss Warranty Act)

28. Plaintiffs reallege, and incorporate by reference, herein each and every allegation set forth in paragraphs 1 through 27, inclusive. For the purpose of this cause of action, the term defendants refers to Ford Motor Company and DOES 1 through 5.

29. Plaintiffs are "consumers" as defined in the Magnuson-Moss Warranty Act (hereinafter "Warranty Act"), 15 U.S.C. §2301(3).

30. Ford Motor Company is a "supplier" and "warrantor" as defined in the Warranty Act, at 15 U.S.C. §§2310(4) and (5). Plaintiffs are informed and believe, and on the basis of that information and belief allege, that Does 1 through 5 are "suppliers" and "warrantors" as defined in the Warranty Act.

31. The FORD F-350 is a "consumer product" as defined in the Warranty Act, 15 U.S.C. §2301(1).

32. The express warranties offered by Ford Motor Company to Plaintiffs, in connection with their purchase of the FORD F-350, is each a "written warranty" as defined in the Warranty Act, at 15 U.S.C. §2301(b). Under California law there was created in connection with the sale of the FORD F-350 an implied warranty of merchantability.

33. By failing to tender Plaintiffs a FORD F-350 that was free of defects and thereafter, being unable to repair the FORD F-350, Ford Motor Company breached the written and implied warranties applying to the FORD F-350 and it violated the Warranty Act. Ford Motor Company further breached the warranties and violated the Warranty Act by failing to replace or repurchase the FORD F-350.

34. Plaintiffs has performed all things agreed to and required of them under the warranties and Warranty Act, except as may have been excused or prevented by Ford Motor Company's conduct

1 as herein alleged.

2 35. Plaintiffs are informed and believe, and on the basis of that information and belief
3 allege, that Ford Motor Company purports to maintain a third-party dispute resolution process that
4 substantially complies with the requirements of the Warranty Act which is run by the Dispute
5 Settlement Board. Plaintiffs are also informed and believe, and on the basis of that information and
6 belief allege, that this third-party dispute resolution process is a sham program designed to undermine
7 the interests and rights of consumers as set forth in the Warranty Act. Accordingly, Plaintiffs did not
8 resort to this third-party dispute resolution process prior to bringing this lawsuit.
9

10 36. Plaintiffs are entitled, pursuant to the Warranty Act, as set forth in 15 U.S.C.
11 §2310(d)(2), to recover as part of the judgment the costs and expenses of this suit including their
12 attorney fees, based on actual time expended.
13

14 37. As a direct and proximate result of Ford Motor Company's acts and omissions as set
15 forth herein above, Plaintiffs have been damaged in an amount estimated to be more than \$25,000.00
16 to be shown according to proof at time of trial.
17

18 WHEREFORE, Plaintiffs prays for judgment as hereafter set forth.

19 **THIRD CAUSE OF ACTION**
20 **(Negligent Repair)**

21 38. Plaintiff reallege, and incorporate herein by reference, each and every allegation set
22 forth in paragraphs 1 through 37, inclusive. For purpose of this cause of action, the term "defendants"
23 refers to Lake Elsinore Ford and DOBS 6 through 20.

24 39. On several occasions between April 6, 2003 and September 5, 2003, Plaintiffs delivered
25 the FORD F-350 to the defendants for repair of defective and non-conforming conditions which were
26 covered under Ford Motor Company's express warranties and under the implied warranties created by
27 law.
28

1 40. Plaintiffs are informed and believe, and on the basis of that information and belief
2 allege, that on each occasion that the FORD F-350 was brought to the defendants for repair, the
3 defendants attempted each such repair pursuant to their obligations under Ford Motor Company's
4 express warranties and pursuant to their obligations under the Song-Beverly Consumer Warranty Act.
5 Accordingly, the defendants owed plaintiffs a duty of care to perform repairs on the FORD F-350 in
6 a good and workmanlike manner and within a reasonable time. Defendants breached this duty.

7
8 41. Defendants' attempts at repair of the FORD F-350 were so negligently, carelessly and
9 recklessly done that they rendered the FORD F-350 dangerous in its operation and use. At no repair
10 attempt was the FORD F-350 fully and completely repaired, nor were those conditions of which
11 plaintiffs complained significantly improved by defendants' attempts at repair, since the conditions
12 either grew worse or immediately returned.

13
14 42. As a direct and proximate result of defendants' negligent failure to repair the FORD F-
15 350 within a reasonable number of attempts and time, or at all, the plaintiffs were forced to drive a
16 defective and dangerous vehicle. As a further direct and proximate result of defendants' failure to repair
17 the FORD F-350 in a timely and workmanlike fashion, or at all, plaintiffs were forced to take the FORD
18 F-350 in for further repair attempts at great inconvenience and aggravation to them. As a result,
19 plaintiffs have sustained general and special damages.

20
21 43. The damages that plaintiffs have suffered as a direct and proximate result of defendants'
22 negligence include, but are not limited to, costs of alternative transportation, expenses associated with
23 the inconvenience and aggravation of returning the FORD F-350 to defendants for repeated repair
24 attempts and loss of use. These damages are estimated to be in excess of \$25,000.00 and will be shown
25 according to proof at time of trial.

26
27 **WHEREFORE**, Plaintiffs pray for judgment as hereafter set forth.

FOURTH CAUSE OF ACTION
(Rescission)

44. Plaintiffs reallege, and incorporate herein by reference, each and every allegation set forth in paragraphs 1 through 43, inclusive. For purpose of this cause of action, the term "defendants" refers to Lake Elsinore Ford and Does 21 through 25.

45. On April 6, 2003, Plaintiffs entered into a Retail Installment Sale Contract whereby they purchased the FORD F-350 from Lake Elsinore Ford, at a purchase price of \$44,555.98, not including finance charges. A true and correct copy of the Retail Installment Sale Contract is attached hereto as Exhibit "A" and is incorporated herein by reference.

46. As previously alleged herein, the FORD F-350 was, and is, defective. The FORD F-350's defective condition substantially, and wholly, impaired its use, value and safety to Plaintiffs. Ford Motor Company and Lake Elsinore Ford have been unable to satisfactorily repair the FORD F-350. Ford Motor Company and Lake Elsinore Ford have also refused to replace or repurchase the FORD F-350 as required under the Song-Beverly Consumer Warranty Act. As a result, the consideration received by Plaintiffs under this contract has failed in whole or material part through the defendants' fault.

47. The defendants expressly, and impliedly, represented that the FORD F-350 was not defective and that if defects were to arise that they would be repaired in a timely fashion under the terms of the applicable express and implied warranties. Such promises induced Plaintiffs to enter into the Retail Installment Sale Contract. The defendants knew, or should have known, that their representations were false and misleading, and that as a result of such representations people such as the Plaintiffs would be induced to purchase trucks from Lake Elsinore Ford. Moreover, because of their apparent skill and knowledge, Plaintiffs reasonably relied on the defendants' representations in entering into the contract.

1 48. Plaintiffs entered into the Retail Installment Sale Contract, under the mistaken belief that
2 the FORD F-350 they were buying was free from defects and was in a fit and merchantable condition.
3 In fact, it was a LEMON! Had Plaintiffs known of the FORD F-350's true condition, they would not
4 have entered into the Retail Installment Sale Contract.

5 49. Plaintiffs have performed all duties required of them under the terms of the contract.
6
7 As previously alleged, Ford Motor Company and Lake Elsinore Ford have failed to fulfill the terms of
8 the warranties offered in connection with the purchase of the FORD F-350, and have failed to fulfill
9 the terms of the implied warranty of merchantability. Furthermore, the defendants have failed in their
10 obligation to supply Plaintiffs with a nondefective truck in connection with the Retail Installment Sale
11 Contract and in their obligation to see to it that the FORD F-350 was repaired in a timely and efficient
12 manner.

13
14 50. Plaintiffs did not know that the defendants would refuse to abide by their obligations
15 under the contract and under the law until approximately August 2003. It was then that the Plaintiffs
16 learned that Ford Motor Company and Lake Elsinore Ford could not repair the FORD F-350 and that
17 they did not intend to replace or repurchase it.

18 51. Plaintiffs have offered, and they remain prepared, to restore all consideration furnished
19 to them by the defendants on April 6, 2003. Plaintiffs hereby tender the return of the FORD F-350 to
20 the defendants. The defendants have refused to restore any consideration whatsoever to Plaintiffs.
21 Plaintiffs will suffer irreparable and substantial harm if the consideration furnished by them in the sum
22 of not less than \$44,555.98, plus incidental damages, consequential damages and attorney fees, with
23 interest thereon at the rate of 10% per annum from the date of rescission, is not restored, in that without
24 such money Plaintiffs will be unable to purchase another truck to replace the FORD F-350.

25 52. The Retail Installment Sale Contract provides for the recovery of attorney fees in the
26 event of a dispute or litigation. In an effort to protect their rights and to enforce the terms of the
27
28

1 contract, Plaintiffs were required to employ the legal services of Rob Schelling, A Professional
2 Corporation. As a result, Plaintiffs have incurred, and continue to incur, legal fees, costs and expenses.

3 **WHEREFORE**, Plaintiffs pray for judgment as follows:

4 1. For actual damages in excess of \$25,000.00, to be shown according to proof at time of
5 trial;

6 2. For a civil penalty, pursuant to the provisions of Civil Code §1794(c), in a sum twice
7 the amount of actual damages;

8 3. For punitive damages, pursuant to the provisions of Civil Code §1770, to be shown
9 according to proof at time of trial;

10 4. For an order from the Court rescinding the Retail Installment Sale Contract, and ordering
11 payment of restitution with interest;

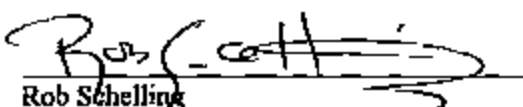
12 5. For prejudgment interest according to law;

13 6. For attorney fees pursuant to Civil Code §1794(d) and 15 U.S.C. §2310(d)(2);

14 7. For litigation costs and expenses, pursuant to Civil Code §1794(d) and 15 U.S.C.
15 §2310(d)(2); and

16 8. For any other relief that the court deems just and proper under the circumstances.

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21 Dated: September 6, 2003


Rob Schelling
Attorney for Plaintiffs Michael A. Elliott and
Sally J. Elliot

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EXHIBIT "A"

SIMPLE INTEREST FINANCE CHARGE

PEB4-078 1284

Dealer Number 71F045 Contract Number 40281 R.O.S. Number 5463846 Stock Number 2001103DATE: 04/06/2003CONTROL # 3051105Salesperson: VERONICA VERA

Buyer (and Co-Buyer) Name and Address (including County and Zip Code)

Creditor - Seller (Name and Address)

LAKE ELSTONORE FORD
31500 AUTO CENTER DR
LAKE ELSTONORE, CA 92530

MURRIETA, CA COUNTY: RIVERSIDE

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New Used	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2003	FORD F350	14	1FTSW31P43E	<input checked="" type="checkbox"/> personal, family or household <input type="checkbox"/> business <input type="checkbox"/> agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of
4.94 %	\$ 7037.70 (a)	\$ 43555.98	\$ 50593.68 (a)	\$ 1000.00 is \$ 51593.68 (a)

(a) means an estimate

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of	N/A	N/A
One Payment of	N/A	N/A
71 Payments	702.69	Monthly Beginning 05/21/2003
One Final Payment	702.69	04/21/2009

Late Charge: If payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the past due payment that is late.

Prepayment: If you pay off all your debt early, you may be charged a minimum finance charge.

Security Interest: You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, minimum finance charges, and security interest.

STATEMENT OF INSURANCE

NOTICE: No person is required as a condition of financing the purchase of a motor vehicle to purchase or negotiate any insurance through a particular insurance company, agent or broker.

Vehicle Insurance

	Term	Premium
\$ N/A Ded. Comp., Fire & Theft	N/A Mo.	\$ N/A
\$ N/A Ded. Collision	N/A Mo.	\$ N/A
Bodily Injury	\$ N/A Limits N/A Mo.	\$ N/A
Property Damage	\$ N/A Limits N/A Mo.	\$ N/A
Medical	N/A N/A Mo.	\$ N/A
	N/A N/A Mo.	\$ N/A
Total Vehicle Insurance Premiums		\$ N/A (a)

UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.

You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit.

Buyer _____
Co-Buyer _____
Seller _____

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Application for Optional Credit Insurance

☐ Credit Life: ☐ Buyer ☐ Co-Buyer ☐ Both
☐ Credit Disability (Buyer Only)

	Term	Exp.	Premium
Credit Life	N/A Mo.		\$ N/A
Credit Disability	N/A Mo.		\$ N/A
Total Credit Insurance Premiums			\$ N/A (a)

Insurance Company Name _____

Home Office Address _____

N/A

Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless you sign and agree to pay the extra cost. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increases in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown above.

You are applying for the credit insurance marked above. Your signature below means that you agree that: (1) You are not eligible for insurance if you have reached your 55th birthday. (2) You are eligible for disability insurance only if you are working for wages or profit 30 hours a week or more on the Effective Date. (3) Only the Primary Buyer is eligible for disability insurance.

ITEMIZATION OF THE AMOUNT FINANCED

1. Total Cash Price

A. Cash Price of Motor Vehicle and Accessories \$ 40587.00 (A)

1. Cash Price Vehicle \$ 40587.00

2. Cash Price Accessories \$ N/A

B. Discount Preparation Fee (not a governmental fee) \$ 15.00 (B)

C. Stamping Fee Paid to Seller \$ N/A (C)

D. Sales Tax (on A + B + C) \$ 3148.98 (D)

E. (Optional) BPA New Vehicle Report of Sale or Renewal Transaction Fee \$ N/A (E)

F. (Optional) Service Contract \$ N/A (F)

G. Prior Credit or Lease Balance paid by Seller to \$ N/A (G)

(see downpayment and trade-in calculation)

H. (Optional) Gap Contract (to whom paid) \$ N/A (H)

I. Other (to whom paid) \$ N/A (I)

For N/A

Total Cash Price (A through I) \$ 43780.98 (1)

2. Amounts Paid to Public Officials

A. License Fees \$ 770.00 (A) Estimated

B. Registration/Transfer/Titling Fees \$ N/A (B)

C. California Title Fees \$ 5.00 (C)

D. Other \$ N/A (D)

E. Other \$ N/A (E)

Total Official Fees (A through E) \$ 775.00 (2)

3. Amount Paid to Insurance Companies

(Total premiums from Statement of Insurance column 3 + b) \$ N/A (3)

4. Stamping Certification Fee Paid to State

\$ N/A (4)

5. Subtotal (1 + 2 + 3 + 4)

Model N/A Odom N/A
VIN N/A

B. Less (Prior Credit) or Lease Balance \$ N/A (B)
C. Net Trade-In (A less B) (Indicate if a negative number) \$ N/A (C)
D. Deferred Downpayment \$ N/A (D)
E. Manufacturer's Rebate \$ 1000.00 (E)
F. Other N/A (F)
G. Cash \$ N/A (G)
Total Downpayment (C through G) \$ 1000.00 (H)
(If negative, enter zero on line 6 and enter the amount less than zero as a positive number on line 10 above)
7. Amount Financed (G less E) \$ 48555.98 (I)

*Seller may keep part of these amounts.

SELLER ASSISTED LOAN

BUYER MAY BE REQUIRED TO PLEDGE SECURITY FOR THE LOAN, AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THE RETAIL INSTALLMENT SALE CONTRACT AND THE LOAN.

Proceeds of Loan From: N/A
Amount \$ N/A Finance Charge \$ N/A
Total \$ N/A Payable in N/A
Installments of \$ N/A \$ N/A
from this loan is shown in item 6D.

AUTO BROKER FEE DISCLOSURE

If this contract reflects the retail sale of a new motor vehicle, the sale is not subject to a fee received by an autobroker from us unless the following box is checked:

☐ Name of autobroker receiving fee, if applicable:
N/A

NOTICE OF RESCISSION RIGHTS

If Buyer and Co-Buyer sign here, the provisions of the Rescission Rights section on the back giving the Seller the right to rescind if Seller is unable to deliver this contract to a first

Buyer X [Signature] Co-Buyer X [Signature]

OPTION: ☐ You pay no finance charge if the Amount Financed, item 7, is paid in full by the end of the year. Year [Blank] SELLER'S INITIALS [Blank]

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

WARNING: YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT. THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SH SHE UNDERSTANDS THESE PUBLIC

Represent and accuracy of the information provided by you in connection with the Trade-In Vehicle. You represent that you have given a true payoff amount on the vehicle traded in. If the payoff amount is more than the amount shown above in item 6B as "Prior Credit or Lease Balance," you [Blank] Seller the excess on demand. If the payoff amount is less than the amount shown above in item 6B as "Prior Credit or Lease Balance," [Blank] fund the difference to you.

Buyer X [Signature] Co-Buyer X [Signature]

Notice to buyer:

(1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to such changes, and if an unfair or deceptive practice by the seller is the cause of such a change.

Buyer Signature [Signature] Co-Buyer Signature [Signature]

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

Buyer Signature [Signature] Co-Buyer Signature [Signature]

Co-Buyers and Other Owners: If co-buyer or other owner is responsible for paying the entire debt. An other owner is a person whose name is on the title but does not have to pay the debt. The co-buyer or other owner knows that the Creditor has a security interest in the vehicle and consents to the security interest.

Other Owner Signature X [Signature] Address [Blank]

Seller Signature X LARRY ELSTON FORD Date 05/05/2003 By [Signature]

DISCLOSURE OF INFORMATION IN THE LAST 6 MONTHS (Refer to "Total Disabilities Not Covered" in your policy for details).

04/06/2003 X N/A
Date Buyer Signature [Signature] Age [Blank]
Date X N/A
Co-Buyer Signature [Signature] Age [Blank]

OPTIONAL GAP CONTRACT A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra cost. If you choose to buy a gap contract, the cost is shown in item 14. See your gap contract for details on the protection it provides.

Term N/A Mos N/A
Name of Gap Contract [Blank]

Buyer X [Signature] N/A

OPTIONAL SERVICE CONTRACT You want to purchase a service contract written with the following company for the term shown below for the price shown in item 15.

Company [Blank]
Term N/A Mos, or N/A Miles
Buyer X [Signature] N/A

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to the contract must be in writing and both you and we must sign it. No oral changes are

Buyer initials [Signature] Co-buyer initials [Signature]

YOU ACKNOWLEDGE THAT YOU HAVE READ BOTH SIDES OF THIS CONTRACT BEFORE SIGNING BELOW.

YOU ACKNOWLEDGE RECEIPT OF A TRUE AND COMPLETE FILLED IN COPY OF THIS CONTRACT AND EVERY OTHER DOCUMENT THAT YOU SIGNED DURING CONTRACT

PE04-070 1285

FORM NO. 553-CA with U.S. Safety Net Center

Route Pk # (909) 644-4044

Such as a car, truck, or other vehicle

CUSTOMER/TRUE IN LENDING COPY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LAPEER

[REDACTED]

Plaintiff,

v

CP

FORD MOTOR COMPANY, a Delaware
Corporation and IMLAY CITY FORD, INC.,
a Michigan Corporation, Jointly and Severally,

Defendants.

CONSUMER LEGAL SERVICES, P.C.
STEVEN S. TOTH P-44487
MARK ROMANO P-44014
Attorneys for Plaintiff
30828 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 pending 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:

1. Plaintiff is a resident of the City of Brown City, Sanilac 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, Imlay City Ford, Inc. (hereinafter referred to as "Seller"), 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 Imlay City, Lapeer County, Michigan.

4. On or about December 13, 2002, Plaintiff purchased a new 2003 Ford F-350, VIN 1FTSW31P93E [REDACTED] (hereinafter referred to as "2003 F-350"), from the Seller which was manufactured by the Manufacturer (see copy of the Purchase Order attached as Exhibit A).

5. Along with the sale of the 2003 F-350 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).

CONSUMER LEGAL SERVICES

6. Plaintiff has taken the 2003 F-350 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-350 include the following:

<u>Date</u>	<u>Mileage</u>	<u>Invoice#</u>	<u>Complaint</u>
01/06/03	2,204	95960	ENGINE DEFECT: miss in engine at idle; clear coat on step bar peeling
01/17/03	2,901	96375	ENGINE DEFECT: engine stalls when turning
01/27/03	3,380	96706	ENGINE DEFECT: runs rough and stalls
01/31/03	3,576	96882	ENGINE DEFECT: running rough, rocks at idle and smoke from tailpipe at idle

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**

9. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 8 as though herein fully restated and realleged.

10. Plaintiff is a "consumer" under the Michigan New Motor Vehicle Warranties Act (hereinafter referred to as "Lemon Law"), MCL 257.1401(a).

CONSUMER LEGAL SERVICES

11. Manufacturer, is a "manufacturer" under the Lemon Law, MCL 257.1401(d).
12. The 2003 F-350 is a "motor vehicle" under the Lemon Law, MCL 257.1401(f).
13. The 2003 F-350 is a "new motor vehicle" under the Lemon Law, MCL 257.1401(g).

14. The express warranty given by Manufacturer, covering the 2003 F-350 is a "manufacturer's express warranty" under the Lemon 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-350 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.

18. Manufacturer's attempted repair was unsuccessful as the 2003 F-350 continues to manifest the aforementioned defects.

19. The aforementioned defects substantially impair the use or value of the 2003 F-350 to the Plaintiff and/or prevent the 2003 F-350 from conforming to the Manufacturer's express warranty.

WHEREFORE, Plaintiff prays for the following relief:

- A. Replacement of the 2003 F-350 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.
- D. 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

20. Plaintiff incorporates herein by reference each and every allegation contained in 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-350 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.

CONSUMER LEGAL SERVICES

22. The limited warranty, given by the Manufacturer and adopted by the Seller when the Seller serviced and repaired the 2003 F-350 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 monies paid for the purchase of the 2003 F-350;
- B. For return of an amount equal to Plaintiff's down payment and all payments made by Plaintiff to the Defendants;
- C. For incidental, consequential, exemplary and actual damages;
- D. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- E. 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.

25. The Seller is a "motor vehicle repair facility" as defined by MCLA 257.1302(g)

CONSUMER LEGAL SERVICES

26. 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) 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 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) Failing upon return of the 2003 F-350 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

CONSUMER LEGAL SERVICES

(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

29. Plaintiff incorporates herein by reference each and every allegation contained in 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-350 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-350 created a contractual relationship between the Manufacturer/Seller and Plaintiff.

CONSUMER LEGAL SERVICES

32. 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.

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 monies 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-350 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-350;

C. For return of an amount equal to Plaintiff's down payment and all payments made by Plaintiff to the Defendants;

D. 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.

CONSUMER LEGAL SERVICES

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

35. Plaintiff 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).

37. 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-350 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-350 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 F-350, the Manufacturer and Seller 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-350.

CONSUMER LEGAL SERVICES

(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-350 and the Manufacturer failed to provide the promised benefits to Plaintiff with regard thereto.

(f) The Manufacturer and Seller 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-350 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-350 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-350 to Plaintiff.

39. 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.

CONSUMER LEGAL SERVICES

**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-350 is a "consumer product" as defined in the Warranty Act, 15 USC 2301(1).

45. The 2003 F-350 was manufactured, sold and purchased after July 4, 1975.

46. The express warranty given by the Manufacturer pertaining to the 2003 F-350 is a "written warranty" as defined in the Warranty Act, 15 USC 2301(8).

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 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 Seller actionable under the Warranty Act, 15 USC 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Seller:

CONSUMER LEGAL SERVICES

- 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-350;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- D. 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 allegation 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 440.2103(1)(b)].

52. Implied in the agreement between the Plaintiff and all Defendants for purchase and/or repair of the 2003 F-350 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:

CONSUMER LEGAL SERVICES

(i) the preparation, inspection, and processing of said vehicle prior to delivery to Plaintiff;

(ii) the delivery of said vehicle free from manufacturing or workmanship defects;

(iii) 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-350 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-350.

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-350 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 herein fully restated and realleged.

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56. Plaintiff accepted the 2003 F-350 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 Seller 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-350 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 his purchase price for the 2003 F-350 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-350 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 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-350;

CONSUMER LEGAL SERVICES

- C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- D. For consequential, incidental and actual damages;
- E. 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), 2306, 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;
- B. For a refund of the purchase price paid by Plaintiff for the 2003 F-350;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- D. For consequential, incidental and actual damages;
- E. For costs, interest and actual attorneys' fees; and
- F. Such other relief this Court deems appropriate.

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COUNT 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.

65. Plaintiff is a "buyer" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

66. Manufacturer and Seller are "sellers" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

67. The 2003 F-350 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-350 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-350 free of charge to Plaintiff under specific terms as stated in the express warranty.

71. In fact, Plaintiff discovered the 2003 F-350 had defects and problems after Plaintiff purchased the vehicle as discussed above.

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72. Plaintiff notified Manufacturer and Seller of the aforementioned defects.

73. Plaintiff has provided the Seller and the Manufacturer with sufficient opportunities to repair or replace the 2003 F-350.

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-350 and/or have not repaired the 2003 F-350 in a timely fashion, and the 2003 F-350 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-350's defects have rendered the limited warranty ineffective to the extent 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).

77. The 2003 F-350 continues to contain defects which substantially impair the value of the automobile to the Plaintiff.

78. These defects could not reasonably have been discovered by the Plaintiff prior to Plaintiff's acceptance of the 2003 F-350.

79. The Manufacturer and Seller induced Plaintiff's acceptance of the 2003 F-350 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.

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80. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2003 F-350 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-350 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-350;
- C. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- D. For incidental, consequential and actual damages;
- E. For costs, interest and actual attorneys' fees; and
- F. For such other relief this Court deems appropriate.

CONSUMER LEGAL SERVICES

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-350 was subject to implied warranties of merchantability under MCLA 440.2314; MSA 19.2314, running from the Manufacturer and the Seller to the benefit of Plaintiff.

86. The 2003 F-350 was not fit for the ordinary purpose for which such goods are used.

87. The defects and problems hereinbefore described rendered the 2003 F-350 unmerchantable.

88. The Manufacturer and Seller failed to adequately remedy the defects in the 2003 F-350; and the 2003 F-350 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;

B. 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-350;

CONSUMER LEGAL SERVICES

- D. To cancel Plaintiff's retail installment contract and pay off the balance of the contract;
- E. 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: 

STEVEN S. TOTH P-44487

MARK ROMANO P-44014

Attorneys for Plaintiff

30928 Ford Road

Garden City, MI 48135

(734) 281-4700

Dated: February 13, 2003

CONSUMER LEGAL SERVICES

COPY
FEB - 5 2004
PATRICIA A. NOLETT
CLEAR SUPERVISOR

Plaintiff,

vs.

Case No.: 1:07-cv-00001
COMPLAINT --
BREACH OF
STATUTORY WARRANTIES

CHARLES S. SHIELDS

4. On or about April 5, 2003, Consumer purchased a 2003 Ford F350 ("F350") manufactured and supplied by Warrantor, Vehicle Identification No. 1FTSW31P43E [REDACTED] for valuable consideration.

1 5. In connection with Consumer's purchase of the F350, Warrantor issued and
2 supplied to Consumer its written warranty, which included three (3) year or thirty-six thousand
3 (36,000) mile bumper to bumper coverage, as well as other warranties fully outlined in the
4 Warrantor's New Vehicle Warranty booklet.
5

6 6. On or about the aforementioned date, Consumer took possession of the F350 and
7 shortly thereafter experienced various defects and non-conformities within the same that
8 diminish its value and/or substantially impair its use and value to Consumer. These defects
9 include, but are not limited to a defective engine, a defective electrical system, persistent coolant
10 leaks, a defective power window system, persistent recalls, persistent stalling in flight conditions,
11 persistent fluid leaks, a defective interior trim, a defective instrument panel, persistent oil leaks,
12 and, any other complaints actually made, whether contained on Warrantor's invoices or not.
13

14 7. Consumer provided Warrantor, through its authorized dealership network, a
15 sufficient opportunity to repair the defects, non-conformities and conditions within the F350.
16

17 8. Despite being given more than a reasonable number of attempts/reasonable
18 opportunity to cure said defects, non-conformities and conditions, Warrantor failed to do so.
19

20 9. Warrantor's failure to correct said defects violate Warrantor's statutory duty to
21 Consumer and the expectations created by Warrantor's warranty.
22

23 10. Consumer avers that as a result of the ineffective repair attempts made by
24 Warrantor through its authorized dealership network, the F350 cannot be utilized as intended by
25 Consumer at the time of acquisition and that the use and value of the F350 has been diminished
26 and/or substantially impaired to Consumer.
27
28

1 11. Consumer relied on Warrantor's product advertisements, written, verbal,
2 electronic and/or otherwise, regarding the length and duration of Warrantor's bumper to bumper
3 warranty when deciding to purchase the subject vehicle.
4

5 12. Consumer provided Warrantor written notification of the defects within the
6 subject vehicle, an offer for a final opportunity to cure, and Consumer's demand for
7 compensation on January 23, 2004. See Notice Letter, attached hereto as Exhibit "A."

8 13. Warrantor refused Consumer's demand for compensation and has refused to
9 provide Consumer with the remedies to which Consumer is entitled.
10

11 14. Consumer has been and will continue to be financially damaged due to
12 Warrantor's failure to comply with Warrantor's statutory duty to Consumer and the provisions of
13 its written and/or express warranty.

14 15. Consumer has met all obligations and preconditions as provided in Warrantor's
15 warranty and by statute(s).
16

17 16. As a direct and proximate result of Warrantor's failure to comply with its written
18 warranty, Consumer has suffered damages and, in accordance with 15 U.S.C. §2310(d) and
19 A.R.S. §44-1263, Consumer is entitled to bring suit for such damages and other legal and
20 equitable relief.
21

22 WHEREFORE [REDACTED] prays for relief against Ford Motor Company in
23 the form of a refund or replacement, an award of diminution in value damages, any equitable
24 relief to which Plaintiff may be entitled, all attorney fees, expert fees and court costs incurred
25 during the commencement and prosecution of this matter, and all other relief deemed just and
26 appropriate by this Court.
27
28

1 Respectfully submitted this 2 day of June, 2004.

2
3
4 By: _____

5 Marshall Meyers
6 KROHN & MOSS, LTD.
7 111 West Monroe St., Suite 1124
8 Phoenix, AZ 85003
9 (602) 275-5588
10 Attorney #020584
11 Attorney for Plaintiff
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A

Krohn & Moss, Ltd.

Arizona Office
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Phoenix, AZ 85003
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www.krohnandmoss.com

Licensed to Practice in Arizona

Also practicing in:
California
Florida
Georgia
Illinois
Indiana
Missouri
Ohio
Wisconsin



COPY

January 23, 2004

SENT VIA U.S. MAIL

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

Re:	[REDACTED]	<u>Ford Motor Company</u>
Our Client:	[REDACTED]	
Your Client:	Ford Motor Company	
Vehicle:	2003 Ford F350	
VIN:	1FTSW31P43E [REDACTED]	
Our File Number:	A04002010Z	

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.

IN ADDITION, YOU ARE HEREBY NOTIFIED OF OUR ATTORNEYS' LIEN.

January 23, 2004

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

1. Defective Engine,
2. Defective Electrical System,
3. Defective Interior Trim,
4. Persistent Fluid Leaks,
5. Persistent Oil Leaks,
6. Defective Power Window System,
7. Persistent Recalls,
8. Persistent Stalling in Flight Conditions,
9. Defective Instrument Panel,
10. Persistent Coolant Leaks, and,
11. Any additional complaints actually made, whether contained on your company's invoices or otherwise.

 **COPY**

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 peace of mind that flows from its dependability and safety. Once their faith is shaken, the vehicle 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 purchaser, 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. Rexter 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 buyer is not bound to allow him the opportunity or permit him to tinker 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.

January 23, 2004

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. §44-1264 (C), and wish to exercise said rights, you are hereby directed to contact this office within fourteen (14) days.

Please be advised that under U.C.C. § 2-711(3) my client has a security interest in the car for return of the total amount above, plus expenses in handling and inspecting the car. Until you pay this amount, my client will hold the car and use it to the extent necessary to preserve it, to protect its security interest, and to minimize your damages. Moreover, my client needs return of the monies listed above before substitute goods can be acquired. In addition, any attempt by you or your agents to repossess the car will be wrongful and will subject you to liability for conversion and for wrongful repossession under U.C.C. §§ 9-503 and 9-507 as well as other applicable Arizona Consumer Fraud remedies.

If the seller [or, if applicable the assignee, or any creditor subject to the FTC Holder Rule] has filed a financing statement covering the goods, I demand, pursuant to U.C.C. § 9-404, that you file a termination statement within ten days to terminate your security interest and forward a copy to this office. Since my client has revoked acceptance, there is no outstanding secured obligation. If you do not file a termination statement within ten days and cooperate in removing the lien, you will be liable under U.C.C. § 9-404(1) in the amount of \$100.00 plus any loss caused my client by your failure.

To avoid any litigation, my client merely requests a refund for the defective product, plus payment of our attorney's fees pursuant to the fee-shifting provisions of the Magnuson-Moss Warranty Act and/or Arizona Lemon Law. Our attorneys' fees are minimal at this stage and we would prefer to resolve this matter without the need for any more time spent on our part or on the part of your attorneys. A great deal of time, money and effort would be saved by both sides with a quick resolution of this claim.

Accordingly, if you wish to resolve this matter amicably, please feel free to contact my office within fourteen (14) days. If the matter has not been resolved within that time, we will file a formal claim.

Sincerely,
[Signature]

Marshall Meyers
Attorney at Law

MSM/tld
[Redacted]

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

04-2005400

Kaukauna, Wisconsin

Plaintiff,

vs.

FORD MOTOR COMPANY,
a foreign corporation,
The American Road
P.O. Box 1899
Dearborn, Michigan 48121-1899,

Defendant.

HON. DENNIS P. MORONEY, BR. 20

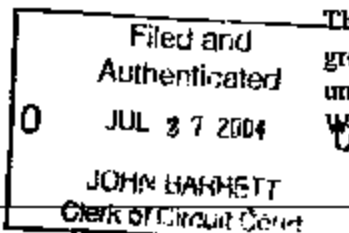
CIVIL D

SUMMONS

Case No.

Code No. 30703

Unclassified



The amount claimed is
greater than the amount
under sec. 799.01(1)(d),
Wis. Stats.

THE STATE OF WISCONSIN, TO EACH PERSON NAMED ABOVE AS A
DEFENDANT:

YOU ARE HEREBY NOTIFIED that the Plaintiff named above has filed a lawsuit
or other legal action against you. The Complaint, which is attached, states the nature and
basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a
written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the
Complaint. The Court may reject or disregard an Answer that does not follow the
requirements of the Statutes. The Answer must be sent or delivered to the Court, whose
address is Clerk of Courts, Milwaukee County Courthouse, 901 North 9th Street, Milwaukee,
Wisconsin 53233-1425, and to Jastroch & LaBarge, S.C., Plaintiff's attorneys, whose address

is 640 West Moreland Boulevard, P.O. Box 1487, Waukesha, Wisconsin 53187. You may have an attorney help or represent you.

If you do not provide a proper Answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 27th day of July, 2004.

JASTROCH & LABARGE, S.C.,
Attorneys for Plaintiff

BY: 

WILLIAM S. POCAN
State Bar No. 1007248
VINCENT P. MEGNA
State Bar No. 1013041
SUSAN M. GRZESKOWIAK
State Bar No. 1031586

POST OFFICE ADDRESS:
640 West Moreland Boulevard
P.O. Box 1487
Waukesha, WI 53187
(262) 547-2611

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

04CV006400

[REDACTED]
Kaukauna, Wisconsin

Plaintiff,

vs.

FORD MOTOR COMPANY,
a foreign corporation,
The American Road
P.O. Box 1899
Dearborn, Michigan 48121-1899,

Defendant.

COMPLAINT

Case No.

Code No. 30703

Unclassified

Filed and
Authenticated
JUL 27 2004
JOHN BARRETT
Clerk of Circuit Court

The amount claimed is
greater than the amount
under sec. 799.01(1)(d),
Wis. Stats.

NOW COMES the above-named Plaintiff, by its attorneys, Jastroch & LaBarge, S.C.,
and as and for claims against the above-named defendant, alleges and shows to the Court as
follows:

1. That the Plaintiff [REDACTED] is a Wisconsin Limited Liability
Company with its principal offices located at [REDACTED] Kaukauna, Wisconsin
[REDACTED] that said Plaintiff is a "consumer," as that term is defined in sec. 218.0171(1)(b), Wis.
Stats.

2. That upon information and belief, the defendant, Ford Motor Company, is a
foreign corporation engaged in the manufacture and sale of motor vehicles, including new
motor vehicles, through its duly authorized dealers in the State of Wisconsin and elsewhere;
that said defendant does substantial business in Milwaukee County, Wisconsin; that upon

information and belief, its principal offices are located at [REDACTED] P.O. Box [REDACTED] Dearborn, Michigan [REDACTED]; that upon information and belief, the registered agent for said defendant in the State of Wisconsin is C T Corporation System, 8025 Excelsior Drive, Suite 200, Madison, Wisconsin 53717; that said defendant is a "manufacturer," as that term is defined in sec. 218.0171(1)(c), Wis. Stats.

3. That on or about May 19, 2003, the Plaintiff purchased from Badger Truck Center, Inc. ("Badger Truck"), 2326 West St. Paul Avenue, Milwaukee, Wisconsin 53201, an authorized Ford motor vehicle dealer, a 2003 Ford F-450 4x2 Chas Cab, vehicle identification number 1FDXF46P831 [REDACTED], as more fully set forth in copies of the Motor Vehicle Purchase Contract and Wisconsin Title & License Plate Application which are attached hereto, incorporated by reference herein and collectively marked as Exhibit A; that the Plaintiff received delivery of said 2003 Ford F-450 4x2 Chas Cab on or about May 19, 2003; that said 2003 Ford F-450 4x2 Chas Cab is a "motor vehicle," as that term is defined in sec. 218.0171(1)(d), Wis. Stats.

4. That upon information and belief, the full purchase price of said 2003 Ford F-450 4x2 Chas Cab purchased by the Plaintiff from Badger Truck was approximately \$39,575.00, plus sales tax in the sum of \$1,978.75, plus title, loan filing and license plate fees in the sum of \$179.33, plus possible other charges; that upon information and belief, the Plaintiff made a down payment in the sum of \$2,000.00 and financed the balance of said purchase price.

5. That a Ford Motor Company manufacturer's warranty was provided by the defendant to the Plaintiff at time of purchase; that as part of said purchase, said 2003 Ford F-450 4x2 Chas Cab was warranted in writing to be free from mechanical and other defects.

6. That during the term of said warranty, and within the earlier of one year from the date of delivery or the expiration of said warranty, said 2003 Ford F-450 4x2 Chas Cab was out of service for more than 30 days because of warranty nonconformities; that conditions or defects included, but were not necessarily limited to, problems with the engine, won't start, sensor, electronic fan clutch, leaks oil, turbo charge, injector leaking, low power, no power, CAC tube blow off, engine misses, dies out, runs rough, oil overfull with fuel, PCM and injection pump.

7. That upon information and belief, during the term of said warranty, and within the earlier of one year from the date of delivery or the expiration of said warranty, said 2003 Ford F-450 4x2 Chas Cab has been the subject of four unsuccessful attempts to repair the same warranty nonconformity (or nonconformities) as that term is defined in sec. 218.0171(1)(f), Wis. Stats.; that upon information and belief, the warranty nonconformity or nonconformities continued thereafter.

8. That on or about June 4, 2004, the Plaintiff notified the defendant of such conditions or defects and demanded that the defendant accept the return of said 2003 Ford F-450 4x2 Chas Cab and provide the Plaintiff with a refund calculated in accordance with

the Lemon Law; that a true and accurate copy of said notice is attached hereto, incorporated herein by reference and marked as Exhibit B.

9. That despite said notice, the defendant failed or refused to provide the relief provided for by the Lemon Law sought by the Plaintiff.

10. That upon information and belief, an informal dispute settlement procedure, as defined in sec. 218.0171(4), Wis. Stats., should be available to the Plaintiff through the "Dispute Settlement Board"; that on or about June 4, 2004, the Plaintiff notified the "Dispute Settlement Board" of the dispute; that consequently, the Plaintiff may bring this action pursuant to sec. 218.0171(7), Wis. Stats.

11. That since said 2003 Ford F-450 4x2 Chas Cab has been out of service a total of thirty (30) or more days due to warranty nonconformities, the defendant has violated sec. 218.0171, Wis. Stats., entitling the Plaintiff to the choice of either a comparable new motor vehicle or rescission of the afore-described purchase agreement, and the refund of all the monies described herein that were paid by the Plaintiff, together with all other relief provided for by such law; that alternatively, since said 2003 Ford F-450 4x2 Chas Cab was made available on at least four occasions for the repair of the same warranty nonconformity (or nonconformities) that substantially impairs the use, value or safety of said 2003 Ford F-450 4x2 Chas Cab, and the warranty nonconformity (or nonconformities) continued thereafter, the defendant has violated sec. 218.0171, Wis. Stats., entitling the Plaintiff to the choice of either a comparable new motor vehicle or rescission of the afore-described purchase

agreement, and the refund of all monies described herein that were paid by the Plaintiff, together with all other relief provided for by such law.


WHEREFORE, the Plaintiff demands judgment against the defendant as follows:

(a) For a refund to the Plaintiff and any holder of a perfected security interest in said 2003 Ford F-450 4x2 Chas Cab of the full purchase price of said 2003 Ford F-450 4x2 Chas Cab, plus sales tax, title, loan filing and license plate fees, finance charges, all amounts paid at the point of sale, all collateral costs and all other amounts paid after sale for improvements/accessories, as applicable, less a reasonable allowance for use, and twice the amount of all pecuniary losses incurred heretofore or hereafter, as all these terms are defined and intended in sec. 218.0171, Wis. Stats.;

- (b) For rescission of the Purchase Agreement;
- (c) For prejudgment interest on all liquidated sums as provided by law;
- (d) For the Plaintiff's actual attorneys' fees;
- (e) For the costs and disbursements incurred in this action; and
- (f) For such other relief as the Court deems just and equitable.

Dated this 27th day of July, 2004.

JASTROCH & LaBARGE, S.C.
Attorneys for Plaintiff

By: 
WILLIAM S. POCAN
State Bar No. 1007248
VINCENT P. MEGNA
State Bar No. 1013041
SUSAN M. GRZESKOWIAK
State Bar No. 1031586

POST OFFICE ADDRESS:
640 West Moreland Boulevard
P.O. Box 1487
Waukesha, Wisconsin 53187
(262) 547-2611

EXHIBIT

WISCONSIN TITLE & LICENSE PLATE APPLICATION
MV11 10/2002

Title No. _____ New License Plate No. _____

Processor ID No. _____

Received - Date, Amount _____

Amount Received, Document Number
Check _____ Cash _____

DO NOT WRITE ABOVE THIS LINE.
Complete form using BLUE or BLACK INK.

Section A - Vehicle Owner Information

Application Type (check one) ☐ Title Transfer ☒ Original Title ☐ Title Only ☐ Salvage Title ☐ Check Also WSP

Vehicle Identification Number (VIN) _____ Title Number _____

Co-Owner (last) - Name - Last, First, Middle Initial _____ Birth Date _____

☐ OR ☐ AND (check one)

Street Address _____ City **KAUKAUNA** State **WI** Zip Code _____

Vehicle (last) - Name - Last _____ First _____ Middle Initial _____ License Number _____ Area Code-Telephone # _____

Street Address _____ City _____ State _____ Zip Code _____

Section B - Vehicle Information

Vehicle Identification Number (VIN) (same as on title) **1FDX46P83E** Year **2003** Make **FORD** Type (car, truck, van, etc.) **TRUCK** Color **WHITE** Fleet Number _____

WI License Plate to Transfer (Plate may be transferred from another vehicle) ☐ Temporary License Plate Number _____

Vehicle kept in County **OUTAGAMIE** City ☐ Village ☐ Town ☒ **KAUKAUNA** State First Operator of this vehicle in WI, as resident _____ Registration Period **ANNUAL** Gross Weight **16000**

Section C - Loan Information

Secure Party Number(s) _____ List all SECURED PARTY NAME(S) (check all that apply) _____ Street Address, City, State, Zip Code _____ Area Code-Phone Number _____

Are secured party, check **002823 FORD MOTOR CREDIT COMPANY P.O. BOX 106704 ATLANTA GA 30348**

☐ None

Section D - Odometer Disclosure

Federal and State law require that seller state the mileage in connection with the transfer of ownership. Failure to complete a mileage statement or providing a false mileage statement may result in fines and/or imprisonment and may make you liable for damages to your transferee (Purchaser).

Exempt from odometer disclosure because vehicle is: ☐ 10 or more model years old ☐ Gross vehicle weight rating exceeds 15,000 lbs.

ODOMETER NOW READS (No Tenth): **111,112** ☒ The odometer reading reflects the actual mileage in excess of its mechanical limit. ☐ The odometer reading is NOT actual mileage. **WARNING ODOMETER DISCREPANCY**

Section E - Vehicle Transaction

	39575.00	06/15/03
a. Full purchase price (vehicle described in section B)		
b. Less trade-in allowance	N/A	
c. Amount subject to tax (see a, minus line b)	39575.00	
d. State Sales Tax (5% of line c.)	1978.75	
e. Local Sales Tax if applicable (see local sales tax chart)	N/A	
f. Fee Computation	25.00	
g. Title Fee (\$25 (replacement \$30))	4.00	
h. Loan Filing Fee \$4	146.33	
i. License Plate Fee (see section H)		
j. Miscellaneous Fees	N/A	
k. Municipal Wheel Tax (check 410; See also instructions)	N/A	
l. Motor Carrier Class Fee (see section H)	N/A	
m. Optional Fees (customer initials to OK)	N/A	
n. Priority Service Fee \$4 (see address below)	6.00	
o. Counter Service Fee \$5 (if you apply in person at DOT)	N/A	
p. Electronic Title/License Plate Filing Fee \$17.50	179.33	
ENTER FEE TOTAL	\$	5119/03

Make check payable to: Registration Fee Trust

Section F - Dealer's Statement of Sale and Warranty

Dealer's Name: **GEN BADOA TRUCK CENTER INC** Dealer Number: **687**

Required Title brand (see instructions back of page 3): ☐ Police ☐ Taxi ☐ Fleet Damage ☐ Military

Signature of Seller/Dealer's Authorized Agent: **David Badoa** (Date) **5/19/03**

Certification: All parties certify with their signature that to the best of their knowledge the information and statements on this application are true and correct. This prior owner's odometer statement has been shown to the applicant and a copy of this completed application including odometer statement has been furnished to the applicant.

COMMERCIAL CARRIERS - I further certify knowledge of applicable federal and state laws and declare that all

Mail application and check for Title and Plate fees to: Wisconsin Dept. of Transportation, P.O. Box 7848, Madison, WI 53707-7848.

Priority Service processing (Mail-In) - Remit on extra \$4 fee to WI Dept of Transportation, P.O. Box 7208, Madison, WI 53707-7208

(Co-Owner Signature) _____ (Date) _____

Remit state, county and local tax with form ST-12 to WI Department of Revenue.

3-PURCHASER COPY

PE64-670 1384

Motor Vehicle Lemon Law Notice
Demand for relief under s. 218.0171(2)(b), Wisconsin Statutes

Pursuant to the Wisconsin Lemon Law, I am notifying Ford Motor Company of the following:
(check one) manufacturer

- ☒ My vehicle has been made available for repair at least 4 times for the same condition or defect during its first year of warranty.
- ☒ My vehicle has been out of service at least 30 days because of one or more condition or defect during its first year of warranty.

In addition, I also qualify for relief under sec. 218.0171(2)(a), Wis. Stats. and the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, et seq. (refund or damages).

Vehicle make Ford Model F-450 4x2 Reg Chas Cab Year 2003 VIN 1FDXP46P83H

Name and city/state of selling or leasing dealer or leasing company Badger Truck Center, Inc., Milwaukee, Wisconsin

Date of vehicle delivery May 19, 2003 Today's date June 4, 2004

Name of institution that financed/leased vehicle Ford Motor Credit Company Loan account # [REDACTED]
By providing this information, I authorize the manufacturer to contact this financial institution for financing information needed to calculate a refund. Authorization expires 35 days after the date of this form.

My vehicle has a condition(s) or defect(s) that substantially impairs its use, value or safety. I demand that the manufacturer give me one of the following within 30 days:

(check one)

- ☐ A comparable new motor vehicle in accordance with the Lemon Law, plus collateral costs
- ☒ A refund calculated in accordance with the Lemon Law, plus collateral costs (including see attached copy of Motor Vehicle Purchase Contract and Wisconsin Title & License Plate Application)

Description of collateral costs I have incurred in connection with vehicle repairs. (Examples include: alternative transportation, towing costs.) _____

Description of non-removable options that have been added to my vehicle after the sale, but not included in the vehicle purchase price. (Examples include sunroof, rustproofing, roof rack, pinstriping, etc.) _____

Description of missing equipment or serious unrepaired vehicle damage. (Do not include normal wear and tear such as minor dents, scratches, pitted glass, soiled carpets, minor stains or tears.) _____

I offer to return my vehicle and transfer title after the manufacturer meets my demand for Lemon Law relief.

Owner name [REDACTED]

Jastroch & LaBarge, S.C., Attorneys at Law, is representing the consumer in this matter; the manufacturer should communicate with the consumer only through Jastroch & LaBarge, S.C.

Address 640 W. Moreland Boulevard, P.O. Box 1487, Waukesha, Wisconsin 53187-1487
Phone 262/547-2611 Fax 262/547-6195

Signature (Attorney) Vincent P. Megna
Attorney Vincent P. Megna



Vehicle repair information

I have made my vehicle available to an authorized dealership for repair because of the condition(s) or defect(s) on these dates:

Date in/out	Mileage	Dealership name	Condition(s) or defect(s) reported *
6/11/03 - 6/17/03	1,544	Horn Ford Mercury Marine	Engine won't start.
12/10/03 - 12/15/03	8,719	L & S Truck Center	Engine leaking fuel and oil.
After 12/15/03 but prior to 1/29/04	unknown	L & S Truck Center	Leaking anti-freeze.
1/29/04 - 1/30/04	10,791	Badger Truck Center	Low power.
3/24/04 - 3/26/04	13,189	L & S Truck Center	Engine miss; engine died.
4/21/04 - 4/27/04	15,229	L & S Truck Center	Engine died; leaks oil.

* See also materials submitted to Ford's Dispute Settlement Board on June 4, 2004, as well as consult your own records and with your dealers. Do not rely solely on the above.

Faxed and mailed to Ford Motor Company and mailed to Badger Truck Center, Inc. on June 4, 2004.

**WISCONSIN TITLE &
LICENSE PLATE APPLICATION**
MV11 10/2002

Processor ID No.

Received Date - Owner

Title No. New Lien or Policy No.

Amount Received Document Number
Check Cash

DO NOT WRITE ABOVE THIS LINE.

Complete form using BLUE or BLACK INK.

Section A - Vehicle Owner Information Application Type (check one) ☐ Title Transfer ☒ Original Title ☐ Title Only ☐ Salvage Title ☐ Check Value BIP

Area Code - Telephone #

Co-Owner (Name) - Name - Last, First, Middle Initial

☐ OR ☐ AND (check one)

City **KAUKAUNA** State **WI**

Placed on file, Licensee Name - Last First Middle Initial Licensee Signature

Street Address City State Zip Code

Section B - Vehicle Information

VEHICLE IDENTIFICATION NUMBER (license number on top of hood) Year Make Model Type (car, truck, van, etc.) Color Finish/Interior

1FDX46P83E 2003 FORD TRUCK WHITE

Use License Plate to Transfer (this may be required for bonded or title only) Temporary License/Plate Number

Vehicle kept in County City Village Town Date First Operated in Wisconsin Title is Resident Registration Period Gross Weight

OUTAGAMIE ☐ ☐ ☐ **OF KAUKAUNA** **ANNUAL** **16000**

Section C - Loan Information

For Section C, check one: ☐ Section C Party Member(s) List all SECURED PARTY NAME(S) (parties) Street Address, City, State, Zip Code Area Code - Phone Number

002823 FORD MOTOR CREDIT COMPANY P.O. BOX 106704

ATLANTA GA 30348

Section D - Odometer Mileage

Reading Federal and State law requires that seller state the mileage in connection with the transfer of ownership. Failure to complete a mileage statement or providing a false mileage statement may result in fines and/or imprisonment and may make you liable for damages to your insurance (Purchaser).

Example: For a regular disclosure because vehicle is: ☐ 10 or more model years old ☐ Gross vehicle weight rating exceeds 15,000 lbs.

111,142 ☒ The odometer reading reflects the amount of mileage in excess of its mechanical limit.

WARNING ODOMETER DISCREPANCY

ODOMETER NOW READS (in Tenth): and to the best of my knowledge is the actual mileage of this vehicle unless one of the following statements is checked.

Section E - Vehicle Transaction

a. Full purchase price (include dealer fee) **39676.00**

b. Less trade-in allowance **N/A**

c. Amount subject to tax (line a, minus line b) **39676.00**

d. State Sales Tax (5% of line c) **1978.76**

e. Local Sales Tax (if applicable) (see local sales tax chart) **N/A**

f. Title Fee \$25 (replacement \$5) **25.00**

g. Loan Filing Fee \$4 **4.00**

h. License Plate Fee (see section "H") **145.33**

i. Miscellaneous Fees **N/A**

j. Motor Carrier Class Fee (see section "H") **N/A**

k. Optional Fees (customer initials in OK) **N/A**

l. Priority Service Fee \$4 (see page 18 below) **5.00**

m. Counter Service Fee \$5 (if you apply in person at DOT) **N/A**

n. Electronic Title/License Plate Filing Fee \$17.50 **179.33**

ENTER FEE TOTAL \$

Make check payable to: Registration Fee Trust

Mail application and check for Title and Plate fees to: Wisconsin Dept. of Transportation, P.O. Box 7948, Madison, WI 53707-7948.

Priority Service processing (Mail-In) - Return on check \$4 fee to: WI Dept. of Transportation, P.O. Box 7306, Madison, WI 53707-7306

Remit local, county and local tax with form ST-12 to WI Department of Revenue.

3-PURCHASER COPY

PE04-878 1307

PE04-070 1308

- d. Defendant PUBLIC EMPLOYEES CREDIT UNION is a Texas credit union whose principal place of business is in Travis County at 306 East 10th St., Austin, TX 78701. Defendant PUBLIC EMPLOYEES CREDIT UNION may be served with process by serving its president Halton Jonell at the principal place of business 306 East 10th St., Austin, TX 78701, phone (512) 474-1955, Texas. See Tex. Bus. Corp. Act art. 2.11(A); Tex. Rev. Civ. Stat. art. 1396 2.07(A).
3. Venue. Venue is proper in Travis County, Texas because all or a substantial part of the events or omissions occurred in Travis County. See Tex. Civ. Prac. & Rem. Code §15.002(a)(1).
4. Conditions Precedent. All conditions precedent necessary to maintain this action have been performed or have occurred.

B. SUMMARY OF FACTS

1. On or about June 5, 2003 Plaintiff [REDACTED] purchased a new 2003 Ford F-250 Pickup (V.I.N. # 1FTNW21P13E [REDACTED]) ("the vehicle") from Defendant MAXWELL FORD. The vehicle was to be used by both herself and her fiancée Plaintiff [REDACTED]. As such both Plaintiffs "acquired" the vehicle within the meaning of the DTPA. The vehicle was manufactured by Defendant FORD MOTOR COMPANY. Defendant PUBLIC EMPLOYEES CREDIT UNION financed the purchase of the vehicle, and, as such, became a "holder in due course." As such Defendant PUBLIC EMPLOYEES CREDIT UNION bears the liability of the seller Defendant MAXWELL FORD under the terms of the Retail Installment Contract. The Retail Installment Contract states:

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.

2. The sales staff at MAXWELL FORD represented to Plaintiff [REDACTED] that the vehicle would have certain qualities and characteristics, and would be of a certain quality or grade. The salesman made express warranties and a warranty for fitness for a particular purpose. Defendant MAXWELL FORD represented to Plaintiff [REDACTED] that, because of new redesigned engine, would run much smoother and quieter and that it would have a lot more power than the 2002 year model Ford F-250. In reliance on these statements, Plaintiff [REDACTED] purchased the vehicle.
3. The vehicle did not have the promised qualities and characteristics, nor was of the promised quality, standard or grade. The truck in fact lacked power in the engine and had an extremely rough idle. Mere days after its purchase, the engine vehicle repeatedly stalled. The vehicle would be turned on, put in gear and then immediately stall. For a period of time warming the engine up for many minutes allowed the vehicle to drive

without stalling, but then the vehicle began stalling even after being warmed up. Plaintiffs would push the accelerator but the vehicle would not respond.

4. Plaintiff [REDACTED] brought the vehicle in over and over again for a period of months to the Maxwell Ford service department. They repeatedly failed to deliver on their promises to repair the vehicle. The vehicle is not merchantable, is not of the quality standard or grade promised, and/or Defendant MAXWELL FORD failed to perform repair services in a good and workmanlike manner. Defendant MAXWELL FORD admitted that there was a design problem with the computer with this particular type of vehicle. Defendant FORD MOTOR COMPANY designed and built the vehicle. Defendant MAXWELL FORD claimed to have downloaded new computer information to fix the problem, but the problem not only continued, but in fact became even more serious. The technicians at MAXWELL FORD further admitted that the computer updates do not seem to repair the problem for this type of "early production" vehicle. (The production date of the vehicle was May, 2003 and the vehicle was purchased on June 6, 2003). Indeed, MAXWELL FORD stated the Defendant FORD MOTOR COMPANY had bought back hundreds of this particular early production vehicle because the problems could not be fixed. Plaintiffs contacted Defendant MAXWELL FORD to resolve the matter, but they refused to offer any serious resolution, despite their admission as to the problem. Not only did the salesman fail to disclose this problem when the vehicle was purchased, he affirmatively misrepresented the quality of the vehicle, and the characteristics it would have.
5. The Plaintiffs have young children, and began to fear driving the car at all. Unfortunately, Plaintiffs' fear proved justified. On or about December 18, 2003, Plaintiff [REDACTED] was driving to work in the vehicle. While driving at highway speed on a single lane highway, the engine suddenly stalled. Since the engine shut down, the vehicle suddenly had no power steering or power brakes. At highway speed, Plaintiff [REDACTED] had jerk the steering hard in order to avoid hitting an approaching school bus head on. Plaintiff [REDACTED] pulled his shoulder out in trying to control the vehicle and avoid a head on collision; he drove the vehicle into a ditch by the time he could get the truck to a stop. This caused Plaintiff [REDACTED] physical injury, pain and suffering, and risked loss of work income.
6. MAXWELL FORD refused to rectify the problem, so Plaintiffs were forced to file suit.

C. CLAIMS BASED ON THE ABOVE FACTS

Plaintiff incorporates by reference the above statement of facts as the basis for the following claims.

1. **Counts 1-Breaches of warranty.** Defendants made express and written warranties to Plaintiff and breached those warranties. Defendants made implied warranties to Plaintiff and breached those warranties. By way of example and not of limitation, Defendants

made the warranty that repair services would be performed in a good and workmanlike manner and the warranty of merchantability.

2. **Count 2—Breach of Contract.** Breach of contract is plead in the alternative to the DTPA claim. See, e.g., Southwell v. University of the Incarnate Word, 974 S.W.2d 351, 354-55 (Tex.App.—San Antonio 1998, pet. denied).
 - i. Plaintiffs and Defendants had a valid, enforceable contract;
 - ii. Plaintiffs performed, tendered performance, or was excused from performing its contractual obligations;
 - iii. The Defendants breached the contract; and
 - iv. The Defendants breach caused the Plaintiffs injury.
 - v. Plaintiff is entitled to attorney's fees and costs pursuant to Tex. Civ. Pract. & Rem. C. § 38.01 *et seq.*
3. **Intentional Common Law Violations.**
 - a. **Count 3—Fraud.** Defendants' actions demonstrate that Defendants made representations about the quality standard or grade of the vehicle that were material and false. When Defendants made the representations, they knew them to be false; or made the representations recklessly, as a positive assertion, and without knowledge of its truth. Defendants made the representations with the intent that Plaintiffs act on it. Plaintiffs in fact relied on the representations, causing Plaintiffs injury. See Stum v. Stum, 845 S.W.2d 407, 416 (Tex.App.—Fort Worth 1992), overruled on other grounds, Humphreys v. Meadows, 938 S.W.2d 750, 751 (Tex.App.—Fort Worth 1996, writ denied).
 - b. **Count 4—Breach of fiduciary duty and duty of good faith and fair dealing.** As a seller with superior knowledge, Defendants had a fiduciary relationship with Plaintiffs. Defendants breached that duty causing injury to Plaintiffs and/or benefit to the Defendants.
 - c. **Count 5—Intentional Misrepresentation.** Defendants made false statements of fact as to the use of and repayment of funds invested by Plaintiffs; made promises of future performance with an intent, at the time the promise was made, not to perform as promised; made statements of opinion based on a false statement of fact; made statements of opinion that the maker knew to be false; or made an expression of opinion that was false, while claiming or implying to have special knowledge of the subject matter of the opinion.
 - d. **Count 6—Civil Conspiracy.** In selling a vehicle to Plaintiffs that was defective, Defendant conspired with one or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. See Massey v. Armco Steel Co., 652 S.W.2d 932, 934 (Tex. 1983); see also Triplex Communications, Inc. v. Riley, 900 S.W.2d 716, 719-20 (Tex. 1995); Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp., 435 S.W.2d 854, 856 (Tex. 1968).

4. **Negligent Common Law Violation.** In addition to and/or the alternative to the intentional violations listed above, Defendants made the following negligent common violations.
- a. **Count 6—Negligence & Gross Negligence.** Defendants' actions demonstrate that Defendants owed a legal duty to Plaintiff and breached that duty, proximately causing Plaintiff injury.
- b. **Count 7—Negligent and Grossly Negligent Misrepresentations.** Defendants' actions demonstrate Defendants made representations in the course of its business or in a transaction in which it has a pecuniary interest; the representations supplied false information for the guidance of others in their business; and the parties making the representation did not exercise reasonable care or competence in obtaining or communicating the information.

D. Pre-suit Notice of DTPA Claims

Plaintiffs hereby tenders formal notice of violations of Tex. Bus. & Com. C. § 17.01 *et seq.* The facts giving rise to this claim are listed in the Statement of Facts section above. Defendants actions constitute "false, misleading, or deceptive acts or practices" within the meaning of Tex. Bus. Com. Code § 17.46; violate express and implied warranties; and are "unconscionable" within the meaning of the DTPA.

Plaintiffs estimates their minimum economic damages at the total payout amount of the vehicle that cannot be safely driven, \$56,147.40. In addition, economic damages include the loss of use for this type of vehicle for the length of time the vehicle has not been operating as promised. Assuming that the reasonable rental value of the vehicle was \$1,000.00 per month, the loss of use damages would be approximately \$6,000.00. Finally, Plaintiff expended thousands of dollars to add additional components to the vehicle in anticipation of the vehicle performing as promised. With the vehicle safely inoperable, the cost of these additions minus the resale value is lost. Plaintiff estimates attorney's fees and costs at \$3,000.00. In order to facilitate settlement, Plaintiff will forego seeking treble damages and damages for mental anguish, pain and suffering, and any lost wages that might accrue for an amount of \$65,000.00.

Recession is an equitable remedy available under the DTPA, and Plaintiffs would not be hostile to exploring settlement prospects based on unwinding the deal, payment of the note, return of the vehicle, plus attorney's fees and consequential damages.

E. JURY DEMAND.

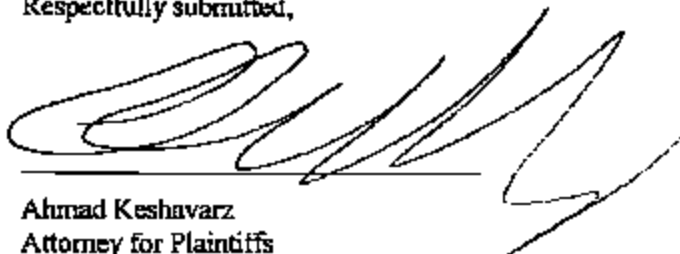
Plaintiff asserts his right to a trial by jury, under Texas Constitution article 1, §15, and makes this demand for a jury trial at least 30 days before the date this case is set for trial, in accordance with Texas Rule of Civil Procedure 216.

F. PRAYER.

For these reasons, Plaintiff asks they have judgment against Defendants for the following:

- i. Economic damages within the jurisdictional limits of this court;
- ii. Treble economic damages;
- iii. Attorney fees and costs;
- iv. Exemplary and punitive damages;
- v. Prejudgment and post-judgment interest as allowed by law;
- vi. Costs of suit;
- vii. General relief; and
- viii. All other relief, in law and in equity, to which Plaintiff may be entitled.

Respectfully submitted,



Ahmad Keshavarz
Attorney for Plaintiffs

State of Texas Bar Number: 24012957

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