

Paydays 2
Class Filings

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MONTGOMERY COUNTY, OHIO

IN MONTGOMERY COUNTY COMMON PLEAS COURT, OHIO

SHERRY ASHE
805 WESTWOOD AVENUE
DAYTON, OH 45407

CASE NO. 02 -r-002

AND

DONALD BARNES
1653 DEWITT DRIVE
DAYTON, OH 45406

AND

ANGELA CROWLEY
528 GREENWALD AVENUE
DAYTON, OH 45410

CLASS ACTION COMPLAINT
AND JURY DEMAND

(Consumer Act)

PLAINTIFFS

- VS. -

P.A. DAYS, INC.,
DBA PAYDAYS OF DAYTON
2811 WILMINGTON PIKE
KETTERING, OH 45429

AND

CENTRAL OHIO CREDIT CORPORATION
2040 BRICE ROAD, SUITE 200
REYNOLDSBURG, OH 43068

AND

**ALEXICO CORPORATION
C/O JOHN W. KARR S/A
6201 COLLEGE PARK BOULEVARD STE 300
OVERLAND PARK, KS 66211-0000**

AND

**NATIONAL THEFT DETERRENT SYSTEMS, INC.
C/O UNITED CORPORATE SERVICES S/A
9200 SOUTH DADELAND BOULEVARD, SUITE 508
MIAMI, FL 33156**

DEFENDANTS

INTRODUCTION

1. This case involves a "price gouging" scheme by Defendants to engage in the sale of motor vehicles to Ohio consumers for prices that are typically between two and four times what the vehicles are really worth, and a predatory consumer sales and financing scheme jointly and severally implemented by the Defendants Paydays and the Financier during the course of which they unfairly and deceptively "pack" into the sales price the purchase of property damage insurance from the Dealer by not properly disclosing this insurance on either the sales or finance contract, as required by law.
2. Each of the named Plaintiffs went to a Paydays dealership in response to advertisements that promised help with establishing and re-establishing their credit, but each of the Plaintiffs ended up worse off than if they had not gone there at all.

IDENTIFICATION OF PARTIES

3. P.A.Days, Inc.¹ does business as Paydays of Dayton, among other names, and is a business operating in Montgomery County, Ohio and elsewhere and which

¹Hereafter referred to as the Dealer.

engaged in selling motor vehicle sales and services to the public and engaged further in business activities with the other Defendants in this case.

4. Central Ohio Credit Corporation² is a business operating in Montgomery County, Ohio and elsewhere and which engaged in selling financial services and motor vehicles to the public and engaged further in business activities with the other Defendants in this case.
5. Alexico Corporation³ is a corporation operating in Overland Park, Kansas and elsewhere and which markets and sells property damage insurance which it calls "Theft Gard" to car dealers like the Dealer in this case and engaged in business activities with the Dealer and consequently engaged in business activities with Plaintiffs Sherry Ashe and Donald Barnes.
6. Theft Deterrent Systems Inc.⁴ is a corporation operating in Ft. Lauderdale, Florida and elsewhere and which markets and sells property damage insurance which it calls "Theft Deterrent" to car dealers like the Dealer in this case and engaged in business activities with the Dealer and consequently with Plaintiff Angelia Crowley.

²Hereafter referred to as the Financier.

³Hereafter referred to as Ins. Co. 1.

⁴Hereafter referred to as Ins. Co. 2.

STATEMENT OF FACTS & SPECIFIC ALLEGATIONS

7. **(The Ashe Transaction)** On August 20, 2002, Sherry Ashe entered into an agreement with Paydays whereby she would purchase what the Dealer and Financier described as a 1995 Chrysler Concorde with over 120,000 miles on it, at a total cost of over \$12,400 when the vehicle was only worth about \$4,450 at best, unbeknownst to her; as part of the transaction she paid \$500 down and she had a trade in vehicle, a 1986 Buick Electra and received a trade in allowance of \$500 and agreed to pay the purchase price in installments with bi-weekly payments of \$159.32; since getting the vehicle she has problems with the tire rods, and extensive problems with the vehicle's engine; at times the vehicle's engine literally just shuts off; a copy of the Sherry Ashe Purchase Agreement is attached as Exhibit 1.
8. **(The Barnes Transaction)** On August 31, 2001, Donald Barnes entered into a contract with Paydays whereby he would purchase what the Dealer and Financier described as a 1993 Ford Econoline Van, with over 98,000 miles on it, at a total cost of over \$13,000 when the vehicle was only worth about \$6,000 at best, unbeknownst to him; as part of the transaction he paid \$500 down and he had a trade in vehicle, a 1978 Ford Econoline van and received

a trade in allowance of \$1,000, and agreed to pay the purchase price in installments in bi-weekly payments of \$146.38; since getting the vehicle, he has had problems that include a gas leak, oil pan leak, radiator leak, break problems and a tire that just literally fell off one day right after the brakes failed; a copy of the Donald Barnes Purchase Agreement is attached as Exhibit 2.

9. **(The Crowley Transaction)** Angelia Crowley entered into a contract with Paydays whereby she would purchase what the Defendants Dealer and Financier described as a 1995 Dodge Caravan, with over 103,000 miles on it, at a total cost of over \$12,500 when the vehicle was only worth about \$6,700 at best, unbeknownst to her; as part of the transaction she paid \$600 down and she had a trade-in vehicle, a 1994 Mercury Sable, and received a trade-in allowance of \$900 and agreed to pay the purchase price in installments in monthly payments of \$306.80; since getting the vehicle, she has had problems with the transmission, a leaking windshield, brakes that squeak, and malfunctioning interior lights and rear wipers; a copy of the Angelia Crowley Purchase Agreement is attached as Exhibit 3.

10. The Dealer used a standard form sales contract in its transactions with these and other consumers, which it has enumerated as form PD01 and Exhibits 1, 2, and 3 are samples of that form sales contract.
11. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer financed the sale of its goods and services under the terms of a retail installment sales agreement at an interest rate of 24.85%, a number which is just slightly under the maximum legal interest rate allowed to be charged in Ohio.
12. In each named Plaintiff's transaction, and as part of their standard business practice, the Dealer and the Financier each used a standard form Retail Installment Contract in their transactions with these and other consumers, which they have enumerated as form COC006 and Exhibit 4 is a sample of that finance contract.
13. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer provided a Limited Warranty from itself to the consumer-purchaser.
14. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer used a standard form Limited Warranty in its transactions

with consumers, which it has enumerated as form PD28 and Exhibit 5 is a sample of that form warranty.

15. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer "packed" into the transaction, on behalf of itself, a \$193 or \$200 charge for property damage insurance which is really nothing more than insignificant "window etching".
16. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer used a standard "Registration Form" in its transactions with customers, attached as Exhibits 6 and 7 are samples of that form.
17. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer and either Ins. Co. 1 or Ins. Co. 2 presented and marketed their property damage insurance under the name of either "Theft Gard" or "NTDS" and falsely represented to these and other consumers that it was a product which had benefits for the consumer which they each knew at the time the product did not in fact have.
18. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer delivered the vehicle to the consumer and represented that financing was already approved and used a "Spot Delivery Agreement" which

purported to control the obligations of the parties in the event that financing was not actually subsequently approved.

19. In each named Plaintiff's transaction, and as part of its standard business practice, the Dealer used a standard form "Spot Delivery Agreement" in its transactions with customers, which is enumerated as Form PD03 and Exhibit 8 is a sample of that form.

FIRST (Class Action) CLAIM: CONSUMER ACT

20. This claim is for Price Gouging and engaging in Unfair and Deceptive and Unconscionable Sales practices in violation of the Consumer Act¹ by both the Dealer and Financier jointly and/or severally.
21. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
22. This claim is for wide-scale, numerous violations of the Consumer Act by the Dealer and Financier, and involves, among other things, the price being charged for high mileage, poorly maintained and poorly running vehicles which lasted only days before requiring significant, expensive repairs.

¹Specifically, R.C. 1345.03(B)(2) and (B)(3).

23. It also involves the knowing sale of goods or services which the consumer purchaser is unable to receive a substantial benefit from, in violation of the law.
24. At all times relevant, Plaintiffs were each a consumer.⁶
25. At all times relevant, the Dealer was a corporation and a supplier⁷ and merchant⁸, engaged in the business of selling motor vehicles to Ohio consumers for said consumers' personal use, and arranging for the financing of such agreements, and rendering advice and counsel to consumers with regard to same, and the Dealer was a corporation licensed to do business in Ohio, and all Defendants acted within the jurisdiction of this Court.
26. At all times relevant, the Financier was and is a financing agency⁹, engaged in the business of financing the sale of motor vehicles, and co-operating in the financing of such agreements, within the jurisdiction of this Court, and was engaged in the business of financing the sale of motor vehicles by Ohio consumers for said consumers' personal use, and was a creditor.

⁶Within the meaning of R.C. 1345.01(D).

⁷Within the meaning of R.C. 1345.01(C).

⁸Within the meaning of R.C. 1302.01(A)(5).

⁹Within the meaning of R.C. 1302.01(A)(6).

27. Plaintiffs' obligations to pay the Financier under the various contracts between them is subject to all claims and defenses which Plaintiffs each have against the Dealer, as are alleged more specifically below, and the Dealer and Financier are each not a holder in due course of any instrument signed by Plaintiffs.
28. Each of the Plaintiffs saw or heard advertisements which the Dealer caused to be published and which promoted its claimed ability to help Ohio consumers establish and re-establish their credit.
29. Responding to the published ads they had each seen and/or heard, each of the Plaintiffs went to the Dealer in search of help in establishing and/or re-establishing their credit.
30. On various dates in 2001 the Plaintiffs and the Dealer and the Financier each entered into consumer transactions¹⁰ with each other, and each consisting of a combined and inseparable "package" of goods and services, in that Plaintiffs each agreed to acquire an interest in, and finance, a certain motor vehicle from the Dealer, and the Dealer and the Financier each agreed to enter into said contract regarding said vehicle, and as part of the deal the Dealer agreed to

¹⁰Within the meaning of R.C. 1345.01(A).

extend credit to each Plaintiff and to arrange, and did so arrange, for the Financier to extend credit to each Plaintiff and to finance the transaction.

31. The goods¹¹ which were the subjects of the purchases included the motor vehicles described herein.
32. As part of the consideration for the transactions, each named Plaintiff agreed to make payments on the purchase price to the Dealer, at various amounts for various time lengths, and the Dealer routinely assigned or transferred such agreements to the Financier.
33. As an example of the price-gouging by the Dealer, by the time Plaintiff Ashe has reached the end of making payments, the effective cost of the vehicle would have been \$12,400 for a vehicle that was already seven years old when sold to her with 120,000 miles on it and in need of significant repairs.
34. Into each consumer's transaction, the Dealer "packed" what it called theft insurance into the deal at an additional cost to the consumer of \$193.00. or \$200.
35. At the time it sold the theft insurance to each Plaintiff, each defendant knew or should have known of the inability of the consumer to receive a substantial benefit from the insurance.

¹¹Within the meaning of R.C. 1310.01(A)(8).

41. Upon information and belief, Plaintiffs state that the Dealer knew or should have known at, or prior to, the time it entered into the purchase agreements, that the transactions with the Plaintiffs and/or the terms of the agreements were unconscionable¹⁴.
42. Upon information and belief, Plaintiffs state that the Financier knew or should have known at, or prior to, the time it financed the purchase, the transactions with Plaintiffs and/or the terms of the agreements were unconscionable.
43. Upon information and belief, Plaintiffs state that the Dealer knew or should have known at, or prior to, the time it entered into the purchase agreements, the transaction with Plaintiffs and/or the terms of the agreements were unfair or deceptive¹⁵.
44. Upon information and belief, Plaintiffs state that the Financier knew or should have known at, or prior to, the time it entered into the purchase agreements, that the transactions with Plaintiffs and/or the terms of the agreements were unfair or deceptive¹⁶.

¹⁴In violation of R.C. 1345.03(A).

¹⁵In violation of R.C. 1345.02(A).

¹⁶In violation of R.C. 1345.02(A).

45. Upon information and belief, Plaintiffs state that the Dealer knew or should have known at, or prior to, the time it entered into the purchase agreements, that the transactions with the Plaintiffs and/or the terms of the agreements and/or the prices of the goods was substantially in excess of the prices at which similar property or services were readily obtainable in similar consumer transactions by like consumers¹⁷.
46. Upon information and belief, Plaintiffs state that the Financier knew or should have known at, or prior to, the time it entered into the purchase agreements, that the transactions with the Plaintiffs and/or the terms of the agreements and/or the prices were each substantially in excess of the prices at which similar property or services were readily obtainable in similar consumer transactions by like consumers¹⁸.
47. Upon information and belief, Plaintiffs state that the Defendants knew or should have known at, or prior to, the time they arranged for and/or entered into the purchase agreements, of the inability of the Plaintiffs to receive a substantial benefit from the subject of the consumer transactions¹⁹.

¹⁷In violation of R.C. 1345.03(B).

¹⁸In violation of R.C. 1345.03(B).

¹⁹In violation of R.C. 1345.03(B)(3).

48. Upon information and belief, Plaintiffs state that the Dealer knew or should have known at, or prior to, the time it arranged for and/or entered into the agreements, and the Financier knew or should have known at, or prior to, the time it approved the purchase agreements, of the inability of the Plaintiffs to receive a substantial benefit from the subject of the consumer transactions²⁰.
49. Upon information and belief, Plaintiffs state that the Dealer knew or should have known at, or prior to, the time it arranged for and/or entered into the purchase agreements, that the Dealer required the consumers in each to enter into a consumer transactions on terms the supplier knew were substantially one-sided in favor of the supplier²¹.
50. Upon information and belief, Plaintiffs state that the Financier knew or should have known at, or prior to, the time it entered into the purchase agreements, that the Dealer required the consumers to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier²².
51. As a result of the above facts, among other things that took place by wilful act or omission, the Defendants Dealer and Financier each committed one or more

²⁰In violation of R.C. 1345.03(B)(3).

²¹In violation of R.C. 1345.03(B)(5).

²²In violation of R.C. 1345.03(B)(5).

unfair, deceptive or unconscionable acts or practices in violation of the Consumer Act.

52. Each of the Defendants conspired to separately and, by common act and design, with knowledge of each other's role in the conspiracy, to engage in one or more unfair, deceptive and/or unconscionable acts or practices in concert with each other.
53. Plaintiffs each suffered and shall continue to suffer actual, incidental and consequential damages as a direct and proximate result of the inability or other failure of the Defendants' joint and several actions and omissions.

SECOND (Class Action) CLAIM: TRUTH IN LENDING ACT

54. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
55. This claim is for wide-scale, numerous violations of the Truth In Lending Act²³ and the Consumer Act, by Defendants Dealer and Financier, and involves the Theft-Gard²⁴ or NTDS insurance policy which the Dealer added to all purchase

²³15 U.S.C. 1601 *et seq.*, hereafter referred to as "the Act" or "TILA", requires, among other things, accurate and timely written disclosure of credit terms and information.

²⁴The Theft-Gard insurance contract promises to pay purchaser the ~~lesser~~ of \$2,500 or the NADA wholesale value of the vehicle if the vehicle is stolen, subject to certain terms and

contracts, and which is denoted as "theft guard" or "NTDS" on the contract itself. Dealer's TILA disclosures do not comply with the law. On the face of the documents, The Financier knew or should have known that the Dealer's TILA disclosures did not comply with the law.

56. This claim is for additional violations of the Consumer Act and the Truth In Lending Act and Regulation Z by the Dealer and the Financier.
57. At all times relevant, the Dealer was a creditor and the Financier was a creditor and each of them entered into a consumer credit transaction with the Plaintiffs that was subject to TILA.
58. The theft insurance product sold by the Dealer to the Plaintiffs is property damage insurance.
59. Property damage insurance charges, written in connection with any consumer credit transaction, against loss or damage to property arising out of the ownership or use of property, is required to be included in the finance charge²⁵ in the transaction and the Dealer did not do so and such failure was obvious on the face of the contract to the Financier.

exclusions.

²⁵15 U.S.C. 1605(c); see also 12 C.F.R. 226.4(b)(8).

60. The Financier knew or should have known that the product was property damage insurance; alternatively, the Financier knew that, in fact, the products were property damage insurance.
61. As property damage insurance, the charge for it may only be excluded from the finance charge disclosure requirements of TILA if it is "clearly and conspicuously"²⁶ disclosed to the consumer by informing the consumer (1) that the insurance may be obtained from a person of the consumer's choice; and, for insurance obtained through the creditor, the consumer is notified of (2) the amount of the premium, and (3) the term of the insurance.²⁷
62. As a result of the above, among other things, the Dealer failed to make the disclosures clearly and conspicuously and in a timely manner, thereby violating TILA, and when it received the assignment or other transfer of the finance contract, the TILA violation was apparent on the face of the contract and the Financier either knew or should have known of the violation at that time.
63. The Plaintiffs have each suffered actual damages as a direct and proximate result of the Dealer's violation of the disclosure requirements of TILA.

²⁶12 C.F.R. 226.17.

²⁷12 C.F.R. 226.4(d)(2).

THIRD (Class Action) CLAIM: MAGNUSON MOSS WARRANTY ACT

64. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
65. This claim is for violation of the Magnuson-Moss Warranty Act²⁸ and the Consumer Act, by the Dealer.
66. During the course of each Plaintiff's transaction, the Dealer disclaimed any warranty at all and simultaneously provided a warranty to each Plaintiff, thereby providing inconsistent warranty disclosures to each and every Plaintiff which would mislead a reasonable, average consumer as to the nature or scope of their warranty rights, in violation of the Warranty Act.²⁹
67. Under the Dealer's warranty to each Plaintiff, the Dealer agrees to pay for half the labor and parts and the warranty *requires* that Plaintiffs have all warranty work done at the dealership. This is referred to as a "tying arrangement" where the performance under the warranty is "tied" to the requirement to have the warranty work done only by the warrantor. Such a warranty is perfectly legal if it says that the warranty work is done for free; such a warranty is illegal

²⁸ 15 U.S.C. 2301, *et seq.*, hereafter referred to as "the Warranty Act".

²⁹15 U.S.C. 2301(a).

(and in violation of the Magnuson Moss Warranty Act) when any part of the warranty work is charged to the consumer.³⁰

68. In addition, the warranty each Plaintiff was given by the Dealer failed to conform with the warranty disclosure requirements of the Warranty Act in one or more ways.
69. As a result of the above, inter alia, the Dealer violated the Warranty Act in one or many ways and each Plaintiff was directly and proximately damaged thereby.

**FOURTH (Class Action) CLAIM:
FTC USED CAR WINDOW STICKER RULE**

70. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

*15 U.S.C. 2302(c) states: "Prohibition on conditions for written or implied warranty: waiver by Commission. No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; ***" 16 CFR 700.10(a) clarifies the prohibition further: "Section 102(c) prohibits tying arrangements that condition coverage under a written warranty on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer." Of course, since we are dealing with standard dealership forms in this case, it is reasonable to presume that the identical violation occurs in literally hundreds of other consumer transactions.

71. This claim is for violation of the FTC Used Car Window Sticker Rule¹¹ and the Consumer Act by the Dealer.
72. The Dealer uses a standard form sales contract in its transactions with consumers, which it has enumerated as form PD01 R 1/00.
73. That form has language on it that says it "constitutes the entire Agreement between Dealer and Buyer."
74. The FTC Used Car Window Sticker Rule requires that the sales contract must conspicuously state that the information on the FTC window sticker form overrides any contrary provision in the contract, but the Dealers' sales contract form does not do so, instead including such disclosure is merely included in the fine print "boilerplate" portion of the contract, in violation of the law.¹²
75. A violation of the FTC Used Car Window Sticker Rule has been held to be a per se violation of the Consumer Act.¹³
76. As a result of the above, the Dealer committed an unfair and/or deceptive act in violation of the Consumer Act.

¹¹16 C.F.R. 455.1 et seq.

¹²16 C.F.R. 455.3(b). Also, see, *Lawhorn v Joseph Toyota* (2nd Dist. CA, 2001), 141 O.App.3d 153, at 159.

¹³*Cummins v Dave Fillmore Car Co., Inc.* (10th Dist. CA, 11-27-87), Unreported, Case No. 87-AP-71, 87 LW 3808; PIF 641.

CLASS ALLEGATIONS

77. Whenever in this complaint reference is made to any act, deed or transaction of any corporation, such allegation shall be deemed to mean that said corporation engaged in such act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were engaged in the management, direction, control or transaction of its business or affairs.
78. Plaintiffs are bringing this action on behalf of themselves and other members of a class of persons, believed to number in excess of 1,000 persons consisting of those persons who are similarly situated, such as will be further defined by in Plaintiffs' motion to certify the class, to be filed later.
79. This is a class action under the provisions of Rule 23(A), Rule 23(B)(1), Rule 23(B)(2), and Rule 23(B)(3), for damages, injunction, and relief consistent and subordinate thereto, including costs, expenses of investigation and litigation, and attorney fees.
80. The class so represented by Plaintiffs in this action, and of which Plaintiffs are each a member, consists of those persons identified above.

81. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class and the relief sought is common to the entire class.
82. The claims of the Plaintiffs, who are each a representative of the class herein, are typical of the claims of the class, in that the claims of all members of the class, including Plaintiffs', depend on a showing of the acts, omissions, and admissions of the Defendant giving rise to the rights of the plaintiff to the reliefs sought herein.
83. There is no conflict between Plaintiffs and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.
84. The named Plaintiffs are each the representative party for the class, and able to, and will, fairly and adequately protect the interests of the class.
85. Further, this action is properly maintained as a class action inasmuch as the questions of law and fact common to the class members predominate over any questions affecting only individual members.
86. A class action in this case is superior to other methods available for the fair and efficient adjudication of the controversy between these parties.
87. The identity of each individual member of the class can be ascertained from the books and records maintained by one or more of the Defendants.

FIFTH CLAIM: FRAUD AND DECEIT

88. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
89. This claim is for common law fraud and deceit committed by Defendants Dealer and Financier upon each Plaintiff.
90. Before and during its transaction with each Plaintiff, the Dealer made the actual or implied representations and/or concealments discussed in detail above, of one or more matters of fact relating to the then-present agreement being entered into between the parties and the goods and services it would provide each plaintiff, those representations were material to the transaction and were made falsely and with express or implied knowledge by said Defendants of said falsity, or with such utter disregard and recklessness as to the truth or falsity that knowledge may be inferred, and with the intent of misleading each Plaintiff into reliance, which each Plaintiff did so do and which each Plaintiff had a right to so rely.
91. Before and during its transaction with each Plaintiff, the Dealer made a false representation, actual or implied, or concealed a matter of fact, material to the transaction, made falsely, to wit: prior to or on the date of the transaction

Defendants Dealer and Financier each *falsely represented* to each Plaintiff the value of the vehicle involved in each Plaintiff's transaction

92. Before and during its transaction with each Plaintiff, the Dealer made a false representation, actual or implied, or concealed a matter of fact, material to the transaction, made falsely, to wit: prior to or on the date of the transaction Defendants Dealer and Financier each *fraudulently concealed* from each Plaintiff the true value of the vehicle involved in each Plaintiff's transaction and it was material to the transaction.
93. Defendants Dealer and Financier each had knowledge of the falsity or each made statements and representations and concealments with such disregard and recklessness that knowledge should be inferred, to wit: since both the Dealer and the Financier buy and sell motor vehicles and arrange for same, both the Dealer and the Financier were in a superior position of knowledge regarding motor vehicle values and prices, but, having that knowledge, both the Dealer and the Financier *falsely represented* to each Plaintiff a false and inaccurate and untrue value of the vehicle involved in each Plaintiff's transaction.
94. Defendants Dealer and Financier each had knowledge of the falsity or each made statements and representations and concealments with such disregard and recklessness that knowledge should be inferred, to wit: since both the Dealer

and the Financier buy and sell motor vehicles and arrange for same, both the Dealer and the Financier were in a superior position of knowledge regarding motor vehicle values and prices, but, having that knowledge, both the Dealer and the Financier *fraudulently concealed* from each Plaintiff the true value of the vehicle involved in each Plaintiff's transaction, and it was material to the transaction.

95. The actions and omissions of Defendants Dealer and Financier were done with the purpose and *intent to mislead* each Plaintiff into reliance upon both the Dealer's and Financier's actions as being truthful and honest and without fraudulent omission.
96. Each Plaintiff did *rely*, and had a right to rely, upon the actions of the Dealer and the Financier as being truthful and honest and without fraudulent omission.
97. As a result of that reliance, each Plaintiff suffered *injury* by the fraudulent actions and omissions of Defendants Dealer and Financier.
98. The silence and nondisclosure by the Defendants Dealer and Financier of these material facts were used as an inducement to each Plaintiff.
99. The affirmative representations made to each Plaintiff by the Defendants Dealer and Financier were known by each of them to be materially misleading because of the failure by each of them to state qualifying matter.

100. As a direct and proximate result of the above, each Plaintiff was injured and suffered economic damages.

SIXTH CLAIM: CONSUMER ACT

101. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
102. This claim is for additional violations of the Consumer Act³⁴ by the Dealer and involves the purchase agreement form distributed and used by Defendants Dealer and Financier.
103. Before, during or after a consumer transaction with each Plaintiff, the Dealer did represent that the subject of a consumer transaction had performance characteristics, uses or benefits that it did not have, in violation of the Consumer Act.³⁵
104. Before, during or after a consumer transaction with each Plaintiff, the Dealer did represent that the transaction involved or did not involve a warranty, a

³⁴R.C. 1345.02(C) requires the Court to give "due consideration and great weight" to certain federal laws and administrative rules, orders, guides, and federal courts' decisions dealing with certain acts and practices interpreted as being "unfair" or "deceptive".

³⁵R.C. 1345.02(B)(1).

disclaimer of warranties or other rights, remedies, or obligations and the representation was false, in violation of the Consumer Act.³⁶

105. During the course of a consumer transaction with each Plaintiff, the Dealer did use a statement, layout, or illustration in an advertisement or sales presentation which could create in the mind of a reasonable consumer a false impression as to one or more material aspect of the vehicle being offered to each Plaintiff, in violation of the Consumer Act.³⁷

106. During the course of a consumer transaction with each Plaintiff, the Dealer did fail to integrate into a written sales contract all material statements, representations or promises, oral and written, made prior to obtaining the Plaintiff-consumer's signature on the written contract, in violation of the Consumer Act.³⁸

107. As a result of the above, among other things, Defendants Dealer and Financier did commit one or more unfair or deceptive acts or practices in violation of the Consumer Act.

³⁶R.C. 1345.02(B)(10).

³⁷O.A.C. 109:4-3-16(B)(3).

³⁸O.A.C. 109:4-3-16(B)(22).

substantial benefit from the purchase of "ETCH GARD" or "NTDS", in violation of the Consumer Act⁴¹

112. As a result of the above, among other things, Defendant Dealer and Ins. Co. 1 and Ins. Co. 2 did commit one or more unfair or deceptive or unconscionable acts or practices in violation of the Consumer Act.

PRAYER FOR RELIEF

WHEREFORE, judgment is demanded against Defendants, jointly and severally, as applicable according with the allegations above, hereinafter, as deemed proper and lawful by the Court, alternatively as follows:

1. On the First Claim, damages as deemed appropriate by the Court and remedies as determined by the Court, including an appropriate injunction prohibiting Defendants Dealer and Financier from any future violations of the laws set forth above and such damages as allowed by law;

2. On the Second Claim, damages as deemed appropriate by the Court and remedies as determined by the Court, including an appropriate injunction prohibiting Defendants Dealer and Financier from any future violations of the laws set forth above and such damages as allowed by law;

⁴¹R.C. 1345.03(B)(3)

3. On the Third Claim, damages as deemed appropriate by the Court and remedies as determined by the Court, including an appropriate injunction prohibiting Defendants Dealer and Financier from any future violations of the laws set forth above and such damages as allowed by law;

4. On the Fourth Claim, damages as deemed appropriate by the Court and remedies as determined by the Court, including an appropriate injunction prohibiting Defendants Dealer and Financier from any future violations of the laws set forth above and such damages as allowed by law;

5. On the Fifth Claim, actual damages and punitive damages in an amount deemed appropriate and as proven at trial;

6. On the Sixth Claim, triple actual damages or \$200 statutory damages and any and all other legal and equitable remedies and relief deemed appropriate by the Court, for each violation proven at trial;

7. On the Seventh Claim, triple actual damages or \$200 statutory damages and any and all other legal and equitable remedies and relief deemed appropriate by the Court, for each violation proven at trial;

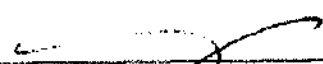
Plus attorney fees and costs of litigation and any and all other legal and equitable relief to which Plaintiffs and their class may be entitled.

Plaintiffs Hereby Demand Trial by Jury on All Issues and Claims.

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