

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Robert L. Violette
4355 Lynn Circle
Grove City, OH 43123

Case No.: C2-01-1254
Judge Sargus
Mag. Judge Kemp

Teresa Courts
4711 Walnut Road
Buckeye Lake, OH 43008

on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

P.A. Days, Inc.
c/o Rhett Ricart
4255 S. Hamilton Road
Columbus, OH 43227

**FIRST AMENDED CLASS
ACTION COMPLAINT
JURY DEMAND ENDORSED**

Defendant.

William Stover
221 Ohio Ave. SW
Pataskala, OH 43062

Carolyn & Kenneth Adkins
11275 Cannon Road
Frazeyburg, OH 43822

Mickey Weaver
6754 Morehampton Court
Reynoldsburg, OH 43068

on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Ricart Properties, Inc.

c/o CWS Agency Inc.
17 S. High St.
Suite 900
Columbus, OH 43215.

Defendant.

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this First Amended Class Action Complaint against two of the most consumer unfriendly car dealers in the state of Ohio: Pay Days, Inc. and Ricart Automotive, two affiliates. As is usually the case, investigation into one illegal pattern and practice normally results in the unearthing of numerous others. Such is the case here. For that reason, Plaintiff Violette is now joined by others alleging numerous claims against Pay Days, Inc. and its affiliate Ricart.

2. Plaintiffs bring this class action against Defendants Pay Days and Ricart for their pattern and practice of engaging in numerous uniform, deceptive, unfair and unconscionable trade practices and for their pattern and practice of making inaccurate disclosures under the Truth In Lending Act and the Ohio Retail Installment Sales Act.

3. The case against Pay Days revolves around Pay Days' entire business model of selling used automobiles on credit to low income and low (and bad) credit customers at prices substantially in excess of the value of those cars and substantially in excess of the amount for which similar cars could be purchased, all in violation of the Ohio Consumer Sales Practices Act. Pay Days similarly engages in unfair and unconscionable acts by automatically imposing on all purchasers a charge for theft-insurance, which is not a registered insurance product in the state of Ohio. To make matters worse, Pay Days finances the entire transaction, many times at amounts above an Annual Percentage Rate of 25%, but it provides inaccurate disclosures under the Truth in

Lending Act to those purchasers, disabling the consumers from being able to determine the true cost of credit to them. Finally, rather than provide the purchasers their title to the vehicles within thirty days of purchase, Pay Days engages in a uniform pattern and practice of holding on to the title for nearly two months, at great inconvenience to customers and in violation of state law.

4. The class complaint currently alleged here against Ricart is narrower, focusing on Ricart's pattern and practice of automatically imposing charges for theft insurance in credit transactions and for its failure to make proper disclosures under the Truth in Lending Act.

5. In short, Plaintiffs institute this Complaint for actual damages, statutory damages, attorney's fees, and the costs of this action against Defendants P.A. Days, Inc., dba Pay Days South, Pay Days North, Pay Days Midtown, Pay Days of Dayton, Pay Days West, etc., and against Ricart Properties, Inc., dba #1 Ricart Automotive, Ricart Ford, Ricart Nissan, Ricart Mitsubishi, Ricart Mazda, Ricart Isuzu, Ricart Hyundai, Ricart Kia, Ricart Imports, etc. for multiple violations of, among others, the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, (hereinafter "TILA"), and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, promulgated pursuant thereto, and Ohio law.

II. JURISDICTION & VENUE

6. This case is brought pursuant to, among others, Ohio law and the TILA, 15 U.S.C. § 1640(e).

7. Jurisdiction is proper under 28 U.S.C. §1331 and §1367. Venue is proper here because the events giving rise to this case occurred in Franklin County, in the Southern District of Ohio.

III. PARTIES

8. Plaintiff Robert Violette is a natural person currently residing in Grove City, Ohio.

9. Plaintiff Teresa Courts is a natural person currently residing in Buckeye Lake, Ohio.

10. Plaintiff William Stover is a natural person currently residing in Pataskala, Ohio.

11. Plaintiffs Kenneth and Carolyn Adkins are natural persons currently residing in Fazeysburg, Ohio.

12. Plaintiff Mickey Weaver is a natural person currently residing in Reynoldsburg, Ohio.

13. Defendant P.A. Days, Inc. is a corporation duly licensed under the laws of the State of Ohio and doing business within this State as a car dealer. Defendant's customer base is principally persons with bad credit histories and persons who have trouble obtaining credit because of their low incomes.

14. Defendant Ricart is a corporation duly licensed under the laws of the State of Ohio and doing business within this State as a car dealer. Ricart holds itself out as one of the world's largest car dealers. Upon information and belief, Ricart sells approximately 37,000 automobiles a year.

IV. FACTS COMMON TO RICART AND PAYDAYS

A. PAY DAYS' AND RICART'S PATTERN AND PRACTICE OF PROMOTING ILLEGAL CONTRACTS BY SELLING UNREGISTERED INSURANCE WITHOUT A LICENSE.

15. During and as part of the purchase and sale transaction for vehicles on credit, it is the common and uniform practice of Pay Days and Ricart to engage in a pattern and practice of knowingly, intentionally and automatically imposing charges on persons for "Theft-Gard."

16. Theft-Gard is theft-insurance for automobiles, administered by the Alexico Corporation and sold by a few automobile dealers throughout Ohio.

17. Theft-Gard insurance is neither registered as insurance with the State of Ohio Department of Insurance, nor are Ricart or Pay Days licensed to sell the unregistered insurance.

18. Dealers, including the Defendant, register consumers for the theft insurance as part of the car purchase transaction by having them sign the "Theft-Gard Registration Form," which is the only written information consumers are given to explain what Theft-Gard insurance is. According to that form, Alexico will pay Theft-Gard policy holders either \$2,500 or \$5,000 (depending on the contract signed) should the consumer's vehicle be stolen within three years of the date of purchase and be either "not recovered within (30) days of the date the theft is reported to the police" or "recovered [but] declared a total loss" by the consumer's automobile liability insurance carrier.

19. As such, the Theft-Gard insurance is only effective if the consumer also carries traditional comprehensive and standard automobile insurance that includes theft-insurance. By requiring the primary, comprehensive insurance, Alexico can pass the

typical costs of investigation into reports of theft off on the primary, comprehensive liability insurance carrier.

20. Theft-Gard insurance is marketed as a "Vehicle Safety System" rather than insurance. Indeed, the Theft-Gard insurance Registration Form explicitly states that it is "not [] insurance", but rather a "Security System." Not surprisingly, therefore, none of the protections associated with insurance and disclosures mandated by the Ohio Department of Insurance are afforded its purchasers. For example, purchasers are not advised of their rights to cancel insurance for a pro rated share of a refund. Indeed, Ricart and Pay Days advise persons who attempt to cancel the insurance that no refund is available.

21. In fact, the Theft-Gard insurance includes no "Security System" at all, as the ordinary consumer would understand that. Instead, the only thing provided with the insurance is the etching of the vehicle identification number ("VIN") on a window of the vehicle. The VIN is already on a consumer's dash, hood, door jams, trunk, quarter panels and numerous other places, placed there by the manufacturer (not the Dealer, as is the case with the Theft-Gard insurance window etching). Of course, the window etching is virtually worthless because of the numerous other places where the VIN number is placed on the car, and accordingly, it can be purchased separately for less than \$30.00. Defendant includes it in the hope that the mixture of this etching into the automobile purchase transaction with Theft-Gard insurance will somehow transform Theft-Gard into something other than insurance.

22. Defendants and others frequently charge unconscionable prices for this theft-insurance. Upon information and belief, Defendant Pay Days automatically

imposes on all credit purchasers a price of \$193 for the insurance, while for the same insurance, Ricart (without explanation for the difference) frequently charges over a \$700.00 premium for this \$2,500 (or \$5,000) of theft-insurance. Indeed, upon information and belief, the insurance premium is virtually pure profit for those involved in the sale, and the payout rates to the insured are believed to be well below those normally required by state departments of insurance for theft-insurance.

23. Whereas Pay Days appears to impose the charge in all credit transactions, Ricart incorporates the sale of the Theft-Gard into the transaction in one of three ways: first, it is the pattern and practice of Defendant to advise consumers that they will receive a Theft-Gard "Vehicle Security System" for free, when in fact Defendant actually intends to and then does charge the consumer for the insurance by adding the charge to the total price of the vehicles, without the knowledge or authorization of such purchasers; second, for other purchasers, Defendant never discusses -- much less advises -- that the purchasers are registering for and paying the premium for the theft insurance as part of the car purchase transaction, but Defendant adds the charge to the Buyer's order; and third, for still others, Defendant advises customers that they were required to purchase the theft insurance because the so-called "Security System" was put on at the factory (which it is not).

24. Defendants are paid a commission by Alexico for the sale of the insurance.

B. PAY DAYS' AND RICART'S ILLEGAL PATTERN AND PRACTICE OF DISCLOSING THE PREMIUM FOR THEFT-GARD AS A PART OF THE AMOUNT FINANCED RATHER THAN A FINANCE CHARGE UNDER TILA.

25. In connection with the sales of automobiles, it is the common and uniform pattern and practice of Defendants to regularly extend consumer credit to motor vehicle purchasers by a written agreement entitled "Retail Installment Contract and Security Agreement."

26. At all times relevant hereto, Defendants regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and Defendants are parties to whom the transaction that is the subject of this action is initially payable, making Defendants creditors within the meaning of the TILA, 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17).

27. Defendants, as part of the uniform custom and practice, disclose to the car purchasers in the TILA disclosure an incorrect Amount Financed and Finance Charge. Upon information and belief, this occurs because it is the uniform custom, pattern and practice of Defendants to include the premium for the theft-insurance in the Amount Financed rather than in the Finance Charge, thereby understating the true cost of credit to the purchaser.

28. Congress enacted the TILA to require that creditors disclose to consumers the true cost of credit to them. In accordance with the TILA, car dealers are required to calculate and disclose the actual APR for each credit transaction and to incorporate in the calculation of APR the sale of certain types of insurance, including theft-insurance, by treating that insurance as part of the finance charge (rather than as part of the amount

financed) to be disclosed under the TILA. Indeed, the United States Court of Appeals for the Seventh Circuit has found that the same insurance at issue here sold as part of a car sale constitutes insurance under TILA and thus must be disclosed as part of the finance charge in all TILA disclosures.

29. It is, therefore, Defendants' custom, policy and uniform practice to violate the TILA in connection with retail installment sales contracts with its debtors in the following and other respects:

- a. By improperly disclosing the "finance charge" in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z § 226.18(d);
- b. By improperly disclosing the "amount financed" in violation of 15 U.S.C. § 1638(a)(2) and Regulation Z § 226.18(b); and
- c. By improperly disclosing the "annual percentage rate," in violation of 15 U.S.C. 1638 *et seq.* and Regulation Z.

V. FACTS COMMON TO PAY DAYS' PATTERN AND PRACTICE OF ENGAGING IN ADDITIONAL IMPROPRIETIES

A. PAY DAYS' UNIFORM PRACTICE OF CHARGING UNCONSCIONABLE AMOUNTS FOR VEHICLES

30. The Ohio Consumer Sales Practices Act provides that consumers not be charged prices well in excess of those charged by others for a similar product.

31. It is the uniform custom and practice of Pay Days to mark up the price of vehicles well in excess of the amount paid for the vehicle and to charge a price substantially in excess of the market value for the vehicle.

B. PAY DAYS' PATTERN AND PRACTICE OF VIOLATING TILA BY INCORRECTLY CALCULATING THE APR.

32. Defendant Pay Days employs a pattern and practice of disclosing to all consumers an annual percentage rate ("APR") of 24.85%. For numerous customers, that APR is not derived and has no connection to the actual APR being charged to that consumer. Indeed, for numerous customers, the actual APR exceeds 25%.

33. It is Defendant's custom, policy and uniform practice to violate the TILA in connection with retail installment sales contracts with its debtors in the following and other respects:

- a. By failing to accurately calculate and disclose the APR in violation of 15 U.S.C. § 1638(a)(4) and Regulation Z § 226.18(c), in so much as Defendant's pattern and practice is to disclose an APR of 24.85%, irrespective of what the actual APR is for that purchaser.

C. PAY DAYS' PATTERN AND PRACTICE OF FAILING TO PROVIDE TITLES TO CONSUMERS WITHIN THIRTY DAYS OF DELIVERY OF THE VEHICLE.

34. Ohio law requires that all purchasers of automobiles be provided a title to their newly purchased vehicle within thirty days of delivery. This assures, among other things, that purchasers be afforded all ownership rights and freedoms within thirty days of purchase. It also assures that purchasers be able to receive the permanent license plates prior to the expiration of their temporary license plates.

35. Upon information and belief, it is the common pattern and practice of Pay Days Inc. to fail to provide titles to purchasers within thirty days of delivery.

VI. CLASS ALLEGATIONS AGAINST PAY DAYS

36. Plaintiffs Violette and Courts bring their claims on their own behalf and on behalf of all others similarly situated pursuant to F.R.C.P. 23(a), 23(b)(2) and 3(b)(3).

The class is defined as follows:

All persons to whom Pay Days sold a vehicle on or after December 18, 1999 primarily for personal, family or household purposes.

37. And, Plaintiffs Violette and Courts assert their claims on behalf of the following first subclass of all similarly situated, pursuant to F.R.C.P. 23(a), 23(b)(2), consisting of the following:

All persons to whom Defendant failed to provide a certificate of title within thirty days of delivery of the vehicle.

38. Plaintiffs Violette and Courts bring their claims on their own behalf and on behalf of a second subclass of others similarly situated pursuant to F.R.C.P. 23(a), 23(b)(2) and 23(b)(3). The second subclass class is defined as follows:

All persons with whom Defendant entered into a retail installment contract on or after December 18, 2000.

39. Plaintiffs Violette and Courts bring their claims on their own behalf and on behalf a second class (not a subclass) of all others similarly situated (called the Second Class) pursuant to F.R.C.P. 23(a), 23(b)(2) and 23(b)(3). The Second Class is defined as follows:

All persons to whom on or after December 18, 1995 Defendant sold Theft-Gard.

40. Joinder of all class members is impracticable. Pay Days, Inc. enters into retail installment sales contracts in its dealerships throughout Ohio, serving thousands of customers each year throughout the State of Ohio. The number of current class

members is not precisely known, but is believed to number in the thousands, as Defendant is placing this theft insurance into the sale of virtually every (if not every) vehicle. These customers are geographically dispersed throughout the State as well. The membership of the class also changes daily as it includes future members who will be adversely affected by the common policies and practices unless injunctive relief is granted.

41. Class members have in common questions of law and questions of fact. Those common questions include but are not limited to:

- Whether Defendant engages in a pattern and practice of charging substantially in excess of the market value for motor vehicles;
- Whether Defendant engages in a pattern and practice of failing to provide purchasers with a certificate of title within thirty days of purchase;
- Whether Theft-Gard insurance must be registered in the State of Ohio with the Department of Insurance and rates filed and approved with the Department of Insurance;
- Whether Defendant had a license to sell Theft-Gard insurance;
- Whether Defendant engages in a pattern and practice of failing to disclose charges for Theft-Gard as part of the Amount Financed rather than a Finance Charge;
- Whether Defendant engages in a pattern and practice of incorrectly calculating and disclosing APR.

42. Common issues predominate over individual issues, and a class action is the superior method for determining these common claims.

43. Plaintiffs are members of the class they seek to represent, and their claims are typical of the claims of absent members of the Plaintiff class.

44. Plaintiffs will fairly and adequately represent the interests of the class, since their interests in obtaining relief parallel those of absent class members. Further, Plaintiffs and the Class are represented by counsel with substantial experience in class action litigation. These attorneys assure the availability of resources necessary to vigorously assert the interests of absent class members.

45. The claims made herein arise from customary business practices or policies generally applicable to the class, making final declaratory and injunctive relief appropriate with respect to the class as a whole. Declaratory and injunctive relief is the only type of relief sought on behalf of future class members (i.e., those who will purchase cars from Pay Days, Inc. after the resolution of this case).

VII. CLASS ALLEGATIONS AGAINST RICART

46. Plaintiffs Stover, Adkins and Weaver bring their claims on their own behalf and on behalf of all others similarly situated pursuant to F.R.C.P. 23(a), 23(b)(2) and 23(b)(3). This First Class against Ricart is defined as follows:

All persons to whom on or after January 19, 1996 Defendant sold Theft-Gard.

47. Plaintiffs Stover and Weaver bring their claims on their own behalf and on behalf of all other similarly situated pursuant to F.R.C.P. 23(a), 23(b)(2) and 23(b)(3).

This Second Class against Ricart is defined as follows:

All persons with whom Defendant entered into a retail installment contract on or after January 19, 2000.

48. Joinder of all class members is impracticable. Ricart enters into retail installment sales contracts in its dealerships throughout Ohio, serving thousands of customers each year throughout the State of Ohio. The number of current class members is not precisely known but is believed to number in the thousands, as Defendant is placing this theft insurance into the sale of virtually every (if not every) vehicle. These customers are geographically dispersed throughout the State as well. The membership of the class also changes daily as it includes future members who will be adversely affected by the common policies and practices unless injunctive relief is granted.

49. Class members have in common questions of law and questions of fact. Those common questions include but are not limited to:

- Whether Defendant engages in a pattern and practice of charging substantially in excess of the market value for motor vehicles;
- Whether Defendant engages in a pattern and practice of failing to provide purchasers with a certificate of title within thirty days of purchase;
- Whether Theft-Gard insurance must be registered in the State of Ohio with the Department of Insurance and rates filed and approved with the Department of Insurance;
- Whether Defendant had a license to sell Theft-Gard insurance;
- Whether Defendant engages in a pattern and practice of failing to disclose charges for Theft-Gard as part of the Amount Financed rather than a Finance Charge; and
- Whether Defendant engages in a pattern and practice of incorrectly calculating and disclosing APR.

50. Common issues predominate over individual issues, and a class action is the superior method for determining these common claims.

51. Plaintiffs Stover and Adkins are members of the class they seek to represent, and their claims are typical of the claims of absent members of the Plaintiff class.

52. Plaintiffs Stover and Adkins will fairly and adequately represent the interests of the class, since their interests in obtaining relief parallel those of absent class members. Further, Plaintiffs and the Class are represented by counsel with substantial experience in class action litigation. These attorneys assure the availability of resources necessary to vigorously assert the interests of absent class members.

53. The claims made herein arise from customary business practices or policies generally applicable to the class, making final declaratory and injunctive relief appropriate with respect to the class as a whole. Declaratory and injunctive relief is the only type of relief sought on behalf of future class members (i.e., those who will purchase cars from Ricart after the resolution of this case).

VIII. THE NAMED PLAINTIFFS' TRANSACTIONS

A. Robert Violette

54. All references to Plaintiff in this section are to Robert Violette. All references to Defendant are to Pay Days.

55. On or about November 16, 2001, Robert Violette began looking to purchase a used automobile for personal, family and household purposes.

56. Violette was one of the unfortunate persons who decided to purchase a vehicle from Defendant. In November of 2001, Plaintiff purchased a 1996 Chevy S-10 pick-up from Paydays South. Pay Days represented the vehicle had approximately 117,000 miles. The sale price marked on the vehicle was \$4,995.00 at the time of purchase, slightly above its retail value in this market.

57. Violette agreed to purchase the vehicle but advised the salesman that he would need financing. As part of that order, Pay Days completed a Retail Buyers Order, in which Defendant automatically imposed a charge for Theft-Gard on Defendant of \$193.00. As is part of Defendant's practice, Defendant imposed this charge on Plaintiff without ever discussing the charge with Plaintiff. Instead, Defendant talked only about total monthly payments for the car transaction -- which is yet another tactic used by car dealers to inflate purchase prices, hide add-ons, and increase the total costs to purchasers.

58. In addition, on the purchase order, Defendant unilaterally changed the base price of the vehicle to \$8,207.81, thousands of dollars above what the vehicle was worth and what a comparable vehicle could be purchased for in the Columbus used car market.

59. As is typically the case, Defendant then presented Plaintiff with numerous papers and hurried Plaintiff through those and directed Plaintiff where to sign.

60. One of those papers included a Retail Installment Contract and Security Agreement with Pay Days as the creditor for the purpose of purchasing the vehicle, which transaction is a consumer credit transaction within the meaning of TILA, 15 U.S.C. § 1602 and Regulation Z § 226.2.

61. The TILA disclosure Statement prepared by Pay Days on that Retail Installment Contract and Security Agreement disclosed an amount financed of \$7,541.08, a finance charge of \$3,309.50, and an APR of 24.85%.

62. Included as part of the amount financed was a \$193.00 charge for Theft-Gard.

63. As a result, charges for the Theft-Gard insurance were not included as a finance charge in calculating APR.

64. Indeed, on the face of the contract, the APR is improperly disclosed at 24.85%. Even if one adopts Defendant's identification of what should and should not be included in APR (which this Court should not), and using the numbers off the face of the retail installment sales contract between Defendant and Plaintiff, the APR should have been disclosed at 25.6806%. The actual APR is even higher.

65. Plaintiff was also advised that in order to purchase the vehicle on credit, he did have to buy an extended warranty for \$273.00, for which he paid cash.

66. This \$273.00 purchase is not reflected in the TILA disclosures in the Retail Installment Contract and Security Agreement or on the Retail Buyers Order, nor did Plaintiff ever receive a copy of the extended warranty. Similarly, the warranty is not set forth on the Retail Buyers Order as a product being purchased by Plaintiff.

67. Plaintiff also executed a Spot Delivery Agreement stating that Plaintiff could -- indeed "shall" -- return the vehicle and then "shall" receive a refund of all deposits if Defendant could not sell the retail installment contract to a third party within six days.

68. Over the next two weeks, Defendant Pay Days called Plaintiff several times to tell him that Defendant could not find a third-party creditor to purchase the financing contract from Defendant. Defendant Pay Days then instructed Plaintiff to return the vehicle. Each time, Defendant Pay Days then called Plaintiff back the same or next day to advise him that another finance company had been found, to whom the credit contract would be assigned.

69. On or about November 29, 2001, after receiving yet another phone call from Defendant advising Plaintiff that he had to return the vehicle because a third party finance company could not be found, Plaintiff made arrangements to bring the vehicle in the next day. Plaintiff was advised that he should call the next morning to find out what time he should bring it in so that his deposit could be returned to him when he arrived.

70. On or about November 30, 2001, Plaintiff's spouse, Melanie Violette, called Defendant and was advised to bring the car in after lunch and that their deposit would be returned at that time.

71. In accordance with the arrangements made by Defendant and Plaintiff and pursuant to the Spot Delivery Agreement, Plaintiff then returned to the Pay Days South dealership on the afternoon of November 30, 2001 to return the vehicle.

72. Plaintiff was advised upon arrival that he would not be receiving his deposit back for at least 10 days. Plaintiff objected, then called the police and asked that they come to the dealership.

73. Plaintiff then waited at the dealership for approximately 1 and 1/2 hours for the Columbus Police to arrive. When they did not arrive, Plaintiff called the police

department, and was advised that no officer would be coming because Defendant had called to advise the police that the dispute had been resolved.

74. Plaintiff reacted to that information by entering the office of Defendant at the dealership and requesting an explanation. Upon entering, Defendant's employee extended his hand, took Plaintiff's hand and said "We got you financing, the car is yours."

75. Plaintiff, however, advised Defendant that -- as he had indicated previously -- he no longer wanted the vehicle and no longer wanted to do business with Defendant and was returning the vehicle. He again demanded his deposit monies be returned. Plaintiff advised Defendant that he would be leaving the car at the dealership.

76. Defendant then instructed Plaintiff to leave the dealership and threatened Plaintiff that if he did not take the car and make the payments under the previously executed retail sales installment contract, the car would be treated as repossession, Plaintiff would be assessed a repossession charge, and his credit would be ruined.

77. Feeling helpless and worried about Defendant's threats, Plaintiff left the dealership with the vehicle.

78. Plaintiff's wife then called Defendant to complain, and she was advised that Plaintiff could not return the vehicle and that if he did, the car would be treated as repossession and their credit would be ruined.

79. By December 18, 2001, over thirty days after the sale of the car, Defendant had failed to provide Plaintiff with a copy of the title to the vehicle or a copy of the extended warranty, as mandated by Ohio law. Plaintiff was, therefore, required to waste his time to go obtain another temporary license plate while he waited for his title.

80. Indeed, Pay Days did not provide the title until mid - January 2002. This delay significantly inconvenienced Plaintiff Violette.

81. Moreover, Pay Days failed to disclose in the “Amounts Paid to Others” TILA disclosure that certain amounts of the charge for Theft-Gard would be paid to a third party, namely Alexico.

B. Teresa Courts

82. Teresa Courts earns a limited income as a bus driver for a local school district. Ms. Courts earns less than \$15,000 per year.

83. As a result, Ms. Courts -- although not having bad credit -- has only limited credit.

84. On November 19, 2001, Courts purchased, primarily for her personal, family, and household purposes, a 1991 Ford F150 from Defendant for \$9,130.00, over \$5,000 more than the retail market value of the vehicle and thus over \$5,000 more than the amount for which the vehicle could have been purchased from another seller in the community.

85. Courts financed that purchase through credit offered by Pay Days under a Retail Installment Contract and Security Agreement with Pay Days as the initial creditor. Pay Days, however, did not give Plaintiff a copy of that contract.

86. As part of the transaction, Defendant automatically imposed a charge on Plaintiff for Theft-Gard in the amount of \$193.

87. Upon information and belief, Defendant incorrectly stated the Amount Financed, Finance Charge and Annual Percentage Rate as part of the TILA disclosures in

that Retail Installment Contract because it incorrectly included the charges for Theft-Gard in the Amount Financed rather than as a Finance Charge.

88. Nearly two months passed before Defendant transmitted to Plaintiff her certificate of title. This delay significantly inconvenienced Plaintiff Courts.

89. To make matters worse, Pay Days disclosed on documents to Plaintiff and to the BMV an odometer reading several hundred miles less than that which was actually on the vehicle at the time of purchase and several hundred miles less than the previous seller had represented to the state was the actual mileage when sold to Pay Days. Upon information and belief, Pay Days also failed to provide Plaintiff with an "Odometer Disclosure Statement."

C. Bill Stover

90. Bill Stover is over the age of sixty and unemployed.

91. On January 28, 2001, Plaintiff Stover purchased a 2001 Mitsubishi Galant from Ricart at 4255 S. Hamilton Road, primarily for his personal, family and household purposes.

92. Stover financed that purchase through credit offered by Ricart under a Retail Installment Contract and Security Agreement with Ricart as the initial creditor.

93. As part of the transaction, Defendant automatically imposed a charge on Plaintiff for Theft-Gard in the amount of \$55, although that charge is not set forth on the Retail Buyers Order as a charge for "Theft-Gard" but instead is represented as the line item charge for "Additional Items."

94. Defendant Ricart incorrectly stated the Amount Financed, Finance Charge and Annual Percentage Rate as part of the TILA disclosures in that Retail Installment Contract because it incorrectly included the charges for Theft-Gard in the Amount Financed rather than as a Finance Charge.

D. Kenny and Carolyn Adkins

95. On April 17, 2001, Kenny and Carolyn Adkins purchased a 1996 Ford F350 from Defendant Ricart primarily for their personal, family and household purposes.

96. Ricart's salesman and Plaintiff Kenny Adkins agreed at the time of purchase that the transmission was failing. Ricart assured Plaintiff Kenny Adkins on April 17, 2001, at the dealership, that the transmission would be repaired as part of the limited warranty provided with the car.

97. As part of the sale, Ricart then provided Plaintiffs with a copy of the limited warranty.

98. Ricart failed to honor that warranty when it refused to repair Plaintiffs' broken transmission within the term of the warranty, after Plaintiffs tendered the vehicle for repair.

99. Plaintiffs Adkins incurred damage by Ricart's failure because they were forced to take the vehicle elsewhere for repair at a significant charge.

100. The Adkins financed that purchase through the Union Acceptance Corp. ("UAC"). Ricart completed the paperwork for the installment contract necessary to finance the transaction.

101. As part of the transaction, Defendant Ricart automatically imposed a charge on Plaintiff for Theft-Gard in the amount of \$695.

102. As is its practice in its own retail installment contracts, Defendant Ricart, when preparing the documents for UAC, incorrectly stated the Amount Financed, Finance Charge and Annual Percentage Rate as part of the TILA disclosures for UAC because it incorrectly included the charges for Theft-Gard in the Amount Financed rather than as a Finance Charge.

103. Moreover, Ricart failed to disclose in the “Amounts Paid to Others” TILA disclosure that certain amounts of the charge for Theft-Gard would be paid to a third party, namely Alexico.

Mickey Weaver

104. Mickey Weaver suffers from lung cancer and, during a time of personal and financial crises relating to her lung cancer, was victimized by Ricart.

105. On or about August 2001, Ms. Weaver was supporting her out-of-work son and her two grandchildren, on a limited income, at a time when she was just recovering from the death of her father and was preparing for surgery to remove a diseased lung.

106. Stricken by the inability to pay mounting bills, she decided to try to lower her monthly financial obligations through, among other things, lowering her car payment.

107. To that end, Ms. Weaver decided to turn in a vehicle she was leasing and purchase a less expensive car.

108. Ms. Weaver then turned to Ricart for help and, during the sales process, poured her soul out to the salesman, describing her current financial and personal problems.

109. Ricart assured Ms. Weaver it would help her out, which is hardly what it did. Instead, it put her in a car at a monthly payment in excess of that which she was previously paying on her lease.

110. In addition, it charged her for items for which she neither needed wanted, including a \$695.00 charge for Theft-Gard.

111. Ms. Weaver, however, did not know that she was purchasing Theft-Gard for \$695.00. Indeed, the Retail Buyer's Order does not clearly and conspicuously state that she was paying \$695.00 for Theft-Gard insurance. Rather, it states in the description of the items purchase "TG 695", but includes no disclosure in the price column on the same line a price for Theft-Gard. Rather, as with Mr. Stover, the price is apparently lumped in to the charge "Additional Items" on a different line in the Buyers Order.

112. Similarly, as with Mr. Stover, Ms. Weaver purchased the car through a retail installment sales contract with Ricart in which Ricart failed to properly disclose the APR, Finance Charge, or Amount Financed to Ms. Weaver. All three of those disclosures are inaccurate because Ricart incorrectly incorporated the \$695.00 charge for Theft-Gard into the Amount Financed, rather than as part of the Finance Charge disclosure.

113. Moreover, Ricart failed to disclose in the "Amounts Paid to Others" TILA disclosure that certain amounts of the charge for Theft-Gard would be paid to a third party, namely Alexico.

IX. FIRST CAUSE OF ACTION--TILA

114. Plaintiffs Violette and Courts bring this claim against Pay Days, Inc. on behalf of all those similarly situated. Plaintiff Stover brings this claim on behalf of all those similarly situated against Ricart.

115. The disclosure statements issued in conjunction with these consumer credit transactions violated the requirements of TILA and Regulation Z in the following and other respects:

a. By failing to include in the finance charge certain charges imposed by Defendant payable by Plaintiff incident to the extension of credit as required by 15 U.S.C. § 1605 and Regulation Z § 226.4, thus improperly disclosing the finance charge in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z § 226.18(d).

b. By improperly including certain charges in the amount financed, which are finance charges, Defendant improperly disclosed the amount financed in violation of 15 U.S.C. § 1638(a)(2) and Regulation Z § 226.18(b).

c. By understating the disclosed APR in violation of 15 U.S.C. § 1638(a)(4) and Regulation Z § 226.18(c).

116. By reason of the aforesaid violations of the Act and Regulation Z, Defendants are liable to Plaintiffs in the amount of twice the finance charge, actual damages to be established at trial, and attorney's fees and costs in accordance with 15 U.S.C. § 1640.

X. SECOND CAUSE OF ACTION--OCSPA

117. Defendants are suppliers subject to and governed by R.C. §1345 *et seq.*

118. Plaintiffs are all consumers as defined by R.C. §1345.01(D).

119. The knowing acts and practices complained of herein by Plaintiffs constitute unfair, deceptive and/or unconscionable sales practices in violation of R.C. § 1345 *et seq.*, and/or interpretive rules promulgated by the Ohio Attorney General, and/or court decisions defining acts and practices prohibited by the OCSA filed with the Ohio Attorney General's office prior to the events in question.

120. Such acts or practices of Pay Days include unfair, deceptive and/or unconscionable advertising, credit, pricing and delivery practices and refund deposit practices. These violations include, among others, intentional and material misrepresentations, the sale of insurance without a license, the violations of TILA set forth above, the failure to incorporate all material terms into the written contract, the failure to fully refund monies, the failure to honor the terms of the Spot Delivery Agreement, the charging of unconscionable prices for motor vehicles above prices being offered by others in the local market, and the failure to provide Plaintiff the title to the vehicle and a copy of the extended warranty within thirty days of purchase of the vehicle

121. Such acts or practices of Ricart include unfair, deceptive and/or unconscionable advertising, credit, pricing and delivery practices and refund deposit practices. These violations include, among others, the intentional and material misrepresentations, the sale of insurance without a license, the violations of TILA set forth above, the failure to incorporate all material terms into the written contract, the failure to honor a warranty.

122. Plaintiffs have been damaged by these actions.

XI. THIRD CAUSE OF ACTION

123. Plaintiff Violette brings this claim on behalf of all others similarly situated against Pay Days, and Stover on behalf of all others similarly situated against Ricart.

124. Plaintiffs are retail buyers under the Ohio Retail Installment Sales Act.

125. Defendants Pay Days and Ricart are retail sellers.

126. Plaintiff and Defendant entered into a retail installment sales contract.

127. In those contracts, Defendants, as part of their uniform policy, custom and practice, improperly disclosed the APR and Finance Charge and failed to disclose amounts charged for insurance.

128. In addition, Defendant Pay Days charged Plaintiff Violette in excess of 25% APR to finance the purchase.

129. Defendants Pay Days and Ricart's actions violated the Ohio Retail Installment Sales Act.

130. Plaintiffs have been damaged.

XII. FOURTH CAUSE OF ACTION -- UNJUST ENRICHMENT

131. Plaintiffs have suffered and continue to suffer substantial monetary loss as a result of Defendants' unlawful practice of selling unregistered insurance without a license.

132. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices because a substantial portion of the premiums charged for the insurance are pocketed by Defendants.

133. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment and harm the public interest.

XIII. FIFTH CAUSE OF ACTION-- BREACH OF CONTRACT

134. Plaintiff Violette executed a Spot Delivery Agreement on November 16, 2001 with Defendant, which stated that if Defendant was unable to obtain financing for Plaintiff's purchase within six (6) days of the date of the agreement, Defendant would refund all deposits made by Plaintiff upon Plaintiff's return of the vehicle.

135. Plaintiff Violette performed under that agreement when he attempted to return the vehicle to Paydays South on or about November 30, 2001.

136. Defendant, Pay Days however, breached that agreement when it failed to accept the vehicle and return Plaintiff's deposits, despite the fact that financing had not been assigned to a third-party within six days.

137. Plaintiff Violette has been damaged by these actions.

XIV. SIXTH CAUSE OF ACTION-- BREACH OF WARRANTY

138. Plaintiffs Adkins presented a vehicle for repair to Ricart.

139. The vehicle and defect needing repair were covered by a limited written warranty.

140. Ricart failed to honor the warranty.

141. Plaintiffs Adkins have been damaged by that failure.

JURY DEMAND

142. Plaintiffs demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Award the Plaintiffs and the class statutory damages of at least \$500,000 against each Defendant under the Truth In Lending Act;
2. Award Plaintiff's treble damages;
3. Award the class actual damages;
4. Award Plaintiffs and the class restitution of all amounts paid for Theft-Gard;
5. Disgorge from Defendants any commission earned on the sale of Theft-Gard;
6. Award Plaintiffs and the class costs and reasonable attorneys' fees;
7. Award Plaintiffs and the class declaratory and injunctive relief;
and
6. Award Plaintiffs such other relief to which he may be entitled to in law or equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the following was served on Defendants this 22nd day of January 2002 as follows:

VIA REGULAR US MAIL

Jay McKirahan

Whann & Associates

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Dublin, OH 43017

Counsel for Defendants Pay Days and Ricart

Geoffrey J. Moul