

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Sandra Gangluff,	:	
	:	
<i>Plaintiff,</i>	:	Case No.
	:	
vs.	:	Judge
	:	
Kasper Toyota Scion, et al.,	:	Magistrate
	:	
<i>Defendants.</i>	:	

NOTICE OF REMOVAL

Defendants, Kasper Toyota Scion, National Warranty Administration Network, LLC, and National Automotive Experts, LLC, respectfully give notice of the removal of this action from the Common Pleas Court of Erie County, Ohio, to the United States District Court for the Northern District of Ohio, Western Division. Defendants remove this case under 28 U.S.C. §1441(a) and (c) on the following grounds:

1. Plaintiff filed a Complaint in the Erie County Court of Common Pleas on or about February 5, 2019. Defendants first received the Complaint on or about February 8, 2019.
2. This Court has original jurisdiction over this case under 28 U.S.C. §1331, and Defendants may remove the case to this Court under 28 U.S.C. §1441, because this case asserts civil claims arising under the laws of the United States, namely, the Magnuson-Moss Warranty Act, 15 U.S.C. § 2304 *et seq.*
3. As 28 U.S.C. §1446(b) requires, Defendants have filed this Notice of Removal within thirty days after receiving service of the Summons and Complaint. As required by 28 U.S.C. §1446(a), defendants are submitting copies of all process, pleadings, and orders served in this case (collectively attached as Exhibit A).

4. Defendants have served, or will promptly serve, written notice of the filing of this Notice of Removal on DCA, and file a copy of this Notice of Removal with the state court.

WHEREFORE, Defendants respectfully give notice of removal of this action to the United States District Court for the Northern District of Ohio.

Respectfully submitted,

/s/ David A. Brown

David A. Brown (0060101)

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Attorneys for Defendant Kasper Toyota Scion

/s/ Andrew J. Seger (per authorization)

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Attorney for Defendants National Warranty
Administration Network, LLC and National
Automotive Experts, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Removal was served on the following counsel of record, by ordinary U.S. mail, this 8th day of March, 2019.

Ronald I. Frederick
Frederick & Berler LLC
767 E. 185th St.
Cleveland, OH 44119

/s/ David A. Brown

COURT OF ERIE COUNTY COMMON PLEAS

COURT JUDGE BINETTE, ERIE COUNTY

323 Columbus Avenue, Second Floor , Sandusky, OH 44870

SUMMONS

RULE 4 1970 OHIO RULES OF CIVIL PROCEDURE

2019 CV 0071

Plaintiff(s):

Sandra Gangluff
525 Liberty Drive, #C
HURON , OH 44389

vs.

SUMMONS ON COMPLAINT

Certified Mail

Defendant(s):

Kasper Toyota Scion
c/o Statutory Agent Kasper T.S., Inc.
904 E. Strub Road
SANDUSKY , OH 44870

National Warranty Administration Network,
LLC
c/o Its Statutory Agent 1600 CNB Corp.
1375 East Ninth Street, 29th Floor
CLEVELAND , OH 44114

National Automotive Experts., LLC
c/o Its Statutory Agent 1600 CNB Corp.
1375 East Ninth Street, 29th Floor
CLEVELAND , OH 44114

Party(s) in Interest:

To the above named defendant(s):

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against you in this court by the plaintiff(s) named herein.

You are required to serve upon the plaintiff's attorney, or upon the plaintiffs if he/she has no attorney of record, a copy of your answer to the complaint within **28 days** after service



of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three days after service on Plaintiff's Attorney.

The name and address of the plaintiff's attorney is as follows:

Ronald I Frederick
Frederick & Berler LLC
767 E 185th St
Cleveland, OH 44119

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

LUVADA S WILSON, Clerk

February 5, 2019

/s/ Hortense Miller-Woods

By Hortense Miller-Woods, Deputy.

E-FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO

2019 Feb-5 PM 12:24

LUVADA S WILSON
CLERK OF COURTS

2019 CV 0071

Roger E Binette

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

Sandra Gangluff
525 Liberty Drive, #C
Huron, Ohio 44839

Plaintiff,

vs.

Kasper Toyota Scion
c/o Its Statutory Agent
Kasper T.S., Inc.
904 E Strub Road
Sandusky Oh 44870

and

National Warranty Administration
Network, LLC.
c/o Its Statutory Agent
1600 CNB Corp.
1375 East Ninth Street,
29th Floor
Cleveland Oh 44114

and

National Automotive Experts., LLC
c/o Its Statutory Agent
1600 CNB Corp.
1375 East Ninth Street,
29th Floor
Cleveland Oh 44114

Defendants.

CASE NO.:

JUDGE

CLASS ACTION COMPLAINT

[Jury Demand Endorsed Hereon]

REFILING

CASE NO. 2016 CV 269

JUDGE TYGH TONE

NOW COMES Plaintiff Sandra Gangluff, by and through the undersigned counsel, and for her complaint against Kasper Toyota Scion ("Kasper"), National Warranty Administration Network, LLC. ("NWAN") and National Automotive Experts, LLC. ("NAE"), collectively "Defendants," alleges and states as follows:

INTRODUCTION

1. This class action, brought by Ms. Gangluff on behalf of herself and all others similarly situated, seeks to redress a persistent pattern and practice of wrongdoing perpetrated by Kasper in conjunction with its sale and financing of consumer automobile sales transactions.

2. Specifically, as part of Kasper's ordinary and customary practice, Kasper raises the price of motor vehicles to consumers (1) over and above the retail cash price and, (2) upon information and belief, over and above the advertised price.

3. In doing so, Kasper violates R.C. § 1345.01 *et seq.*, the Ohio Consumer Sales Practices Act ("CSPA") and consumer protection regulations by materially misrepresenting the price and value of its vehicles.

4. Ms. Gangluff also brings her individual claims against Defendants for breach of warranty, and violations of the CSPA, and the federal Magnusson Moss Warranty Act. 15 U.S.C. § 2301, *et seq.* for refusing to honor the warranty on her vehicle.

5. For the foregoing unlawful conduct and to cause Defendants to reform their deceptive and unconscionable sales practices, Plaintiff seeks legal and equitable relief, including actual (economic and noneconomic) damages, statutory damages, punitive damages, injunctive and declaratory relief, attorneys' fees, and costs.

VENUE AND JURISDICTION

6. Whereas the events and circumstances leading up to and asserted in this Complaint arose in Erie County, Ohio, this Court is the proper venue under Civ. R. 3(B)(3).

7. As Defendants transact business in Ohio and caused tortious injury to Plaintiff in Ohio, Defendants are subject to this Court's personal jurisdiction.

8. Whereas the laws noted above invest Plaintiff with a private cause of action and permit Ohio courts of competent jurisdiction to hear said claims, this Honorable Court has subject matter jurisdiction of these claims.

PARTIES

9. Plaintiff Sandra Gangluff ("Ms. Gangluff") is an individual residing at 525 Liberty Drive, #C, Huron, Ohio 44839.

10. Ms. Gangluff is a "consumer" as defined by R.C. 1345.01(D) of the CSPA, and 15 § USCS 2301(3) of the federal Magnusson-Moss Warranty Act.

11. Kasper Toyota Scion ("Kasper") is an Ohio corporation engaged in the business of selling and financing motor vehicles, with its principal place of business at 904 E Strub Road, Sandusky, Ohio 44870.

12. Kasper is a "supplier" as defined by R.C. 1345.01(C) of the CSPA.

13. National Warranty Administration Network, LLC. ("NWAN") includes its sister company, National Automotive Experts, LLC. ("NAE"), and is engaged in selling products to auto dealerships as described on the website www.naenwan.com.

14. NWAN and NAE are Ohio corporations registered with the Ohio Secretary of State, share the same physical address, and are each a "supplier" as defined by R.C. 1345.01(C) of the CSPA.

15. Ms. Gangluff engaged in a "consumer transaction" R.C. § 1345.01(A), whereby Kasper sold Ms. Gangluff a vehicle for her personal and home use.

16. Kasper sold Ms. Gangluff NAE/NWAN's warranty and related products.

17. Defendants are each a "warrantor" as defined by the Magnusson-Moss Warranty Act, as any person who gives or offers to give a written warranty or who may be obligated under an implied warranty. *See* 15 § USCS 2301(5).

STATEMENT OF FACTS

The Vehicle Sale

18. On April 7, 2014, Ms. Gangluff visited Kasper's dealership to purchase a vehicle.

19. Ms. Gangluff explained to Kasper what monthly payments she could afford.

20. Kasper offered to Ms. Gangluff a used 2011 Toyota Corolla with 19,457 miles on it and VIN# 2T1BU4EE3BC559897 (the "Toyota").

21. Kasper had acquired the Toyota for \$12,000.00 and spent \$166.54 to prepare it for sale.

22. Kasper sold it to Ms. Gangluff for \$22,000.00 *See* Buyer's Order, Ex. 1.

23. The Manufacturer's Suggested Retail Price ("MSRP") for the Toyota brand new was only \$17,175.

24. The National Automobile Dealers Association ("NADA") clean retail value for the Toyota (the price at which the Toyota in clean, good condition would sell for) is \$13,600. *See* NADA valuation for the Toyota, Ex. 2.

25. Thus, Kasper sold the used Toyota to Ms. Gangluff for **\$4,825 more than its price as new, and \$8,400.00 or 162% over its NADA value.**

26. Ms. Gangluff was unaware of the Toyota's MSRP and NADA value.

27. Kasper told Ms. Gangluff the warranty was free as part of the purchase price.

28. Kasper told Ms. Gangluff she was required to pay for what should have been optional features, MVP Direct Maintenance (\$662.00) and Gap Insurance (\$650.00), which made the warranty anything but free.

29. Based on the excessive markup in the sales price for the Toyota, Kasper sold the Toyota to Ms. Gangluff for a price **substantially** in excess of the price at which a similar car would have been readily obtainable from other dealers (Clean Retail Price).

30. Kasper also neglected to show Ms. Gangluff various financing options to help her pay for the excessively priced Toyota, and instead directed her to obtain a loan through Firelands Federal Credit Union ("Firelands").

Defendants' Denial Of The Warranty Claim

31. Defendants' Warranty Forever! guidelines require that "all service must be performed at the selling dealer or a pre-authorized repair facility of your choice." See <https://mywarrantyforever.com>.

32. Pursuant to these guidelines, Ms. Gangluff took the Toyota to Kasper to perform all service and maintenance on the Toyota.

33. The Toyota used synthetic oil, which required an oil change every 10,000 miles.

34. Often, Kasper could not provide Ms. Gangluff an appointment for the Toyota, resulting in a delay of service.

35. Ms. Gangluff relied on Kasper to perform the required maintenance or to alert her to needed maintenance.

36. On or about March 21, 2016, the Toyota's transmission failed.

37. Defendants refused to honor the warranty without justification.

Defendants GAP Protection Did Not Provide The Protection Promised

38. Sometime later, Ms. Gangluff was involved in an accident, resulting in a total loss of the Toyota.

39. GAP insurance is designed to assure that the customer pays nothing in the event of a total loss.

40. However, the Gap insurance Kasper sold to Ms. Gangluff did not cover the loss and Ms. Gangluff was forced to pay the balance owed, and more than the Toyota was worth.

41. Kasper knew this would occur in the event of a “total loss accident” as it sold the Toyota to Ms. Gangluff for a price substantially in excess of the Toyota’s value.

APPLICABLE LAW

42. The CSPA, R.C. § 1345.01 *et seq.* and its implementing regulations prohibit unfair, deceptive, and unconscionable acts in consumer transactions.

43. OAC § 109:4-3-16(B)(3) prohibits the use of “any statement, layout, or illustration in any advertisement or sales presentation which could create in the mind of a reasonable consumer a false impression as to any material aspect of said advertised or offered vehicle, or to convey or permit an erroneous impression as to which vehicles are offered for sale at which prices.”

44. O.A.C § 109:4-3-16(B)(17) prohibits a dealership from “rais[ing] or attempt to raise the actual purchase price of any motor vehicle to a specific consumer.”

45. In addition, R.C. § 1345.03(B)(2) defines as an unconscionable act or practice the selling a product for a price that is “substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers.”

46. Upon information and belief, Kasper regularly advertises motor vehicles for sale to Ohio consumers that offer Kasper's vehicles for sale for a specific price.

47. As part of its regular pattern and practice, Kasper then sells motor vehicles to consumers, at prices above their advertised price.

48. As part of its regular pattern and practice, Kasper sells motor vehicles to consumers substantially in excess of the MSRP and NADA Clean Retail Price for the vehicles.

49. Kasper knowingly takes advantage of unwitting consumers, who end up paying substantially more than they would for similar vehicles in similar transactions in the marketplace, and are prevented from receiving a substantial benefit of their transactions.

50. As a result, Ohio consumers have suffered economic and noneconomic damages, such as, without limitation, loss of monies paid or owed to Kasper and/or its assigns, annoyance, aggravation, irritation, depression, anxiety, and other emotional and associated injury.

51. In connection with the facts, events, and averments herein, Kasper acted willfully and maliciously, with spite and ill will, and/or with reckless disregard for the rights of consumers in general, and the Plaintiffs in particular.

CLASS ALLEGATIONS

52. Pursuant to Civ. R. 23 of the Ohio Rules of Civil Procedure, Ms. Gangluff brings this action on behalf of herself and a class of persons similarly-situated, to remedy the on-going unlawful, unfair, and/or deceptive business practices alleged herein, and to seek redress on behalf of all those persons who have been harmed thereby.

53. The "Excessive Price" Class is defined as all persons of Ohio, who:

- a. Entered in an installment contract with Kasper for the purchase of a motor vehicle for personal, family, or household use;
- b. in the two years preceding the filing of the original complaint until the date the class is certified and; and

c. where Kasper sold the vehicle substantially in excess of its fair market value.

54. The “Raised Price” Class is defined as all persons of Ohio, who:

- a. Entered in an installment contract with Kasper for the purchase of a motor vehicle for personal, family, or household use;
- b. in the two years preceding the filing of the original complaint until the date the class is certified and; and
- c. where Kasper raised the sales price of the vehicle above the advertised price for the vehicle.

55. The class members are so numerous that joinder of all members would be impracticable. The exact size of the proposed class and the identity of the members is believed to be in the hundreds or thousands. Nonetheless, this information is readily ascertainable from Kasper’s business records.

56. There is a community of interest among the members of the proposed classes in that there are questions of law and fact common to the proposed classes that predominate over questions affecting only individual members. These questions include, **but are not** limited, to whether, *inter alia*:

- a. Whether Kasper advertises the vehicle for a specific price;
- b. Whether the vehicle sold for more than the specific price advertised;
- c. Whether the vehicle sold for more than its fair market value;
- d. Whether the conduct of Kasper described herein is deceptive and/or unconscionable;
- e. Whether the conduct of Kasper described herein violates the CSPA.

57. Ms. Gangluff’s claims are typical of those of the class she seeks to represent, and she will fairly and adequately represent the interests of the class. Ms. Gangluff is represented by counsel competent and experienced in both consumer protection and class action litigation.

58. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual class members may be relatively small compared to the expense and burden of litigation, it would be impracticable and economically infeasible for class members to seek redress individually. The prosecution of separate actions by the individual class members, even if possible, would create a risk of inconsistent or varying adjudications with respect to individual class members against Kasper.

CLASS CLAIMS

FIRST CLAIM FOR RELIEF

Violations of the CSPA, R.C. § 1345.03(B)(2) and (3)
(Excessive Price for Vehicle)
(Kasper)

59. Ms. Gangluff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.

60. R.C. § 1345.02(A) prohibits a supplier generally from engaging in unfair and deceptive acts in connection with a consumer transaction, before, during, and after the transaction.

61. R.C. § 1345.03(B)(2) States that a transaction can be considered unconscionable if “the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers.”

62. Upon information and belief, Kasper regularly sells vehicles at prices well above the MSRP and NADA Clean Retail Price for the vehicles.

63. In Ms. Gangluff’s case, Kasper charged \$22,000 for the used Toyota Corolla, despite the fact that the NADA used car guide values the Toyota at \$13,600, after the sizeable dealer markup. See Buyer’s Order, Ex. 1; NADA valuation for the Toyota, Ex. 2.

64. Additionally, the MSRP for the Toyota brand new was only \$17,175.

65. Kasper sold the used Toyota for \$4,825 more than its price as new, and \$8,400.00 or 162% over its NADA value.

66. As such, Kasper's price is clearly "substantially in excess of the price at which similar [vehicles] were readily obtainable in similar consumer transactions by like consumers." R.C. § 1345.03(B)(2).

67. This excessive price level must have been known to a dealership of Kasper's size, duration, and experience.

68. Thus, Kasper violated the CSPA by selling the Toyota to Ms. Gangluff for a price far in excess of the Toyota's value.

69. Defendant violated the CSPA in other ways to be proven at trial.

70. Similarly, Kasper regularly by custom and practice overcharges similarly-situated consumers.

71. Kasper committed these acts and practices knowingly and after courts of this state have found such conduct to violate R.C. § 1345.02 or R.C. § 1345.03, and after such decisions were made available for public inspection under R.C. § 1345.05(A)(3). *See e.g. Mary Walls v. Harry Williams; Butch's Auto Sales*, Case No. 94CVH369 (Jefferson Mun. Ct., May 24, 1995) (PIF 10001524); *State ex rel. Celebrezze v. Stuckert; Bucyrus Motors*, Case No. 86CV043 (C.P., Crawford Cty., November 20, 1987) (PIF 10000910); *Bruner v. Credit Motors, Inc.*, Case No. VI8904637 (Toledo Mun. Ct., January 27, 1990) (PIF 10001185); *State ex rel. Celebrezze v. Fike; Tommy Fike's Used Cars*, Case No. 86CV106398 (C.P., Franklin Cty., June 17, 1987) (PIF 10000863).

72. Kasper's unlawful acts described in this section were done as part of Defendant's ordinary and customary practice, and the members of the respective CSPA Class have been victims of the same unlawful conduct.

73. Therefore, Plaintiff and Class Members are entitled to the remedies provided by statute, R.C. § 1345.09.

SECOND CLAIM FOR RELIEF

Violation of O.A.C § 109:4-3-16(B)(17) (Raising Price to Specific Consumer)
(Kasper)

74. Ms. Gangluff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.

75. O.A.C § 109:4-3-16(B)(17) prohibits a dealership from "rais[ing] or attempt[ing] to raise the actual purchase price of any motor vehicle to a specific consumer."

76. Upon information and belief, Kasper advertises is vehicles for sale at a specific price.

77. Kasper then raises the price of its vehicles to specific consumers, as in Ms. Gangluff's case, without justification.

78. Kasper engages in this conduct knowingly.

79. Defendants committed acts and practices that have been determined by courts of this state to violate R.C. §1345.02 or R.C. 1345.03, and after such decisions were made available for public inspection under R.C. § 1345.05(A)(3). These decisions include but are not limited to *Smalley v. Spitzer Ford*, No. 11262 (11th Dist. Cout of Appeals, Lake County, December 31, 1986); *Renner v. Derin Acquisition Corp.*, No. 69181 (8th District Court of Appeals, Cuyahoga County, May 2, 1996.

80. As a result, Ms. Gangluff and respective class members have suffered actual damages in the amount of the excessive price charged above the advertised price and/or retail price for the vehicle, and they are entitled to the relief set forth in R.C. § 1345.09.

THIRD CLAIM FOR RELIEF
Violation of CSPA/ O.A.C § 109:4-3-02(A)(1)
(Kasper)

81. Ms. Gangluff re-alleges and incorporates by reference each and every preceding paragraph as if fully rewritten herein.

82. Ohio Admin. Code § 109:4-3-02(A)(1) declares it a deceptive act or practice for a supplier to:

“make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer any material exclusions, reservations, limitations, modifications, or conditions. Disclosure shall be easily legible to anyone reading the advertising or promotional literature and shall be sufficiently specific so as to leave no reasonable probability that the terms of the offer might be misunderstood.” (Emphasis Added).

83. Upon information and belief, Kasper advertises its vehicles for sale online on its own websites and third party websites.

84. Upon information and belief, Kasper advertises its vehicles with a specific price.

85. As part of its customary pattern and practice, Kasper then raises the price of its vehicles on consumers.

86. A supplier who violates OAC § 109:4-3-02(A)(1) also violates the Consumer Sales Practices Act, R.C. §1345.02(A) by representing (B)(1) “the subject of a consumer transaction has benefits that it does not have” or (B)(2) that it “is of a particular standard, quality, grade, style, prescription, or model, if it is not”.

87. Kasper committed an unfair and deceptive act or practice as declared by OAC § 109:4-3-02(A)(1), thereby violating Ohio's Consumer Sales Practices Act. R.C. § 1345.03(B)(2).

88. Kasper knowingly committed such acts and practices.

89. As a result, Ms. Gangluff and respective class members have suffered actual damages in the amount of the excessive price charged above the advertised price and/or retail price for the vehicle, and they are entitled to the relief set forth in R.C. § 1345.09.

MS. GANGLUFF'S INDIVIDUAL CLAIMS FOR RELIEF

FIRST CLAIM

Violation Of the Magnusson-Moss Warranty Act, 15 U.S.C. §2304, *et seq.*
(Defendants)

90. Ms. Gangluff hereby incorporates by reference all facts and allegations contained in the previous paragraphs as though fully re-written and re-stated herein.

91. The Magnuson-Moss Warranty Act requires that a warrantor "must as a minimum remedy such consumer product, within a reasonable time and without charge in the case of a defect, malfunction, or failure to conform with such written warranty" and "after a reasonable number of attempts. . .such warrantor must permit the consumer to either a refund for, or replacement without charge". 15 U.S.C. §§ 2304 (a)(1)(4).

92. Defendants offered an express lifetime Warranty Forever! powertrain warranty that states:

"Simply follow the maintenance schedule outlined in your Warranty Forever agreement and you're covered for life. Remember! All service must be performed at the selling dealer or a pre-authorized repair facility of your choice."

93. Ms. Gangluff followed the agreement and brought the Toyota to Kasper for every service and maintenance performed on the Toyota.

94. Kasper could not always schedule a time for the Toyota to be serviced.

95. On or about March 21, 2016, the Toyota's transmission failed.

96. Ms. Gangluff adequately notified Kasper of the Toyota's condition and sought service from Kasper.

97. Defendants' failure to repair, reimburse or replace the Toyota violates the requirements imposed on a warrantor under the Magnuson-Moss Warranty Act.

98. Pursuant to 15 U.S.C. § 2310(d) a consumer may sue for damages, and other legal and equitable relief for a supplier, warrantor or service contractor's failure to comply with any obligation under the Act or under a written or implied warranty.

99. Defendants' failure to honor the Warranty Forever! are the proximate cause of Ms. Gangluff's damages.

SECOND CLAIM
Breach of Warranty
(Defendants)

100. Ms. Gangluff hereby incorporates by reference all facts and allegations contained in the previous paragraphs as though fully re-written and re-stated herein.

101. Ms. Gangluff purchased Defendants' Warranty Forever! and brought the Toyota to Kasper as directed by the agreement.

102. The failure of the Toyota's transmission would be covered by the warranty.

103. Defendants failed to repair the transmission under a lifetime protection.

104. As a direct and proximate result, Ms. Gangluff is entitled to damages for Defendants' breach of warranty.

THIRD CLAIM

Violations of the CSPA

R.C. §§1345.02 (B)(1)(2) and R.C. § 1345.03(B)(3)
(Defendants)

105. Ms. Gangluff hereby incorporates by reference all facts and allegations contained in the previous paragraphs as though fully re-written and re-stated herein.

106. R.C. § 1345.03(B)(3) provides that it is unconscionable for a supplier to engage in a consumer transaction when it “knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction.”

107. Kasper knowingly sold GAP insurance, the purpose of which is to assure that the customer pays nothing in the event of a total loss, to Ms. Gangluff.

108. Due to the excessive price Kasper sold the Toyota to Ms. Gangluff, the GAP insurance did not end up covering the total loss for the Toyota, leaving Ms. Gangluff to pay the balance.

109. Kasper knew this would occur as it sold the Toyota to Ms. Gangluff for a price substantially in excess of the Toyota’s value.

110. R.C. §1345.02(A) provides that it is an unfair or deceptive act or practice for a supplier to represent that (B)(1) “the subject of a consumer transaction has benefits that it does not have” or (B)(2) that it “is of a particular standard, quality, grade, style, prescription, or model, if it is not.”

111. OAC § 109:4-3-16(B)(3) prohibits the use of “any statement, layout, or illustration in any advertisement or sales presentation which could create in the mind of a reasonable consumer a false impression as to any material aspect of said advertised or offered vehicle, or to convey or permit an erroneous impression as to which vehicles are offered for sale at which prices.”

112. Kasper represented to Ms. Gangluff that the Warranty Forever! was free.

113. Kasper then told her she was required to pay for the MVP Direct Maintenance for the warranty, and GAP insurance, which are supposed to be optional features.

114. These additional costs imposed by Kasper made the warranty anything but free.

115. Defendants also represented that by purchasing the Warranty Forever! and having Kasper perform all service on the the Toyota, the Toyota would be covered for a lifetime.

116. Ms. Gangluff brought the Toyota in for all services to Kasper and Defendants denied her claim.

117. Defendants committed acts and practices that have been determined by courts of this state to violate R.C. §1345.02 or R.C. 1345.03, and after such decisions were made available for public inspection under R.C. § 1345.05(A)(3). These decisions include but are not limited to *Shabazz v. Term Auto Sales*, No. 113734 (Court of Common Pleas, Cuyahoga County August 9, 1988); *Cummins v. Dave Fillmore Car Company, Inc.*, No. 87AP-71 (Court of Appeals, Franklin County, October 27, 1987); *Rubin v. Gallery Auto Sales*, No. 303854 (C.P., Cuy.Cty., June 23, 1997).

118. Defendants knowingly committed such misrepresentations.

119. Defendants' unfair, deceptive, unconscionable acts and practices are the direct and proximate result of Ms. Gangluff's damages.

FOURTH CLAIM

Fraud
(Kasper)

120. Ms. Gangluff hereby incorporates by reference all facts and allegations contained in the previous paragraphs as though fully re-written and re-stated herein.

121. Kasper misrepresented to Ms. Gangluff that the GAP coverage, and MVP Direct maintenance were required as part of the deal.

122. Furthermore, Kasper misrepresented to Ms. Gangluff that the financing obtained was at the best rate possible because Kasper was receiving a kickback from Firelands.

123. The actual rate approved by Firelands was 12.74% (Ex. 3, Firelands Approval), but this rate was raised to 13.74% by Kasper (Ex. 4, Settlement Disclosure), with the difference pocketed by them.

124. Defendants' misrepresented to Ms. Gangluff that her claim under the Warranty Forever! was invalid for reasons that were simply made up to avoid paying the claim.

125. Kasper misrepresented to Ms. Gangluff that it was performing required service for the Toyota.

126. Kasper convinced Ms. Gangluff to purchase add-ons for the Toyota that she did not want, to purchase a used vehicle for substantially more than the Toyota's NADA value (Ex. 2, NADA Valuation) and its price brand new, to obtain financing at a rate higher than necessary, and to forego her warranty claim.

127. Kasper made these misrepresentations with the intent to cause Ms. Gangluff to rely on them.

128. Ms. Gangluff relied to her detriment on Kasper's representations.

129. Ms. Gangluff was injured as a direct and proximate result of Kasper's fraud because she purchased a vehicle that was more expensive then should would have but for these misrepresentations, received financing that was at a higher rate than she could have obtained, and did not receive timely repair to the Toyota under the warrantThe aforementioned acts of fraud entitle Ms. Gangluff to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment as follows:

As to all claims for relief:

- (A) An order certifying this matter as a class action;
- (B) An order appointing Frederick & Berler, LLC as counsel on behalf of the named Class;
- (C) Issuance of a declaratory judgment declaring that the acts and practices of Defendants complained of herein are unfair, deceptive and/or unconscionable;
- (D) Judgment against Defendants for the actual (economic and noneconomic) damages suffered by Plaintiff and members of the Class, including, but not limited, to money expended on the purchase of vehicles;
- (E) Judgment against Defendants pursuant to R.C. § 1345.09(B) in an amount equal to three times actual (economic) damages, or Two Hundred (\$200.00) Dollars, whichever is greater, for each applicable unfair, deceptive and/or unconscionable act or practice specified herein;
- (F) issuance of a permanent injunction, pursuant to R.C. §§ 1345.09(F)(2) & 2923.34(B), enjoining Defendant, its agents, servants, representatives, salespeople, employees, successor, assigns, and all persons acting in concert and participation with them, directly or indirectly, from engaging in any of violations of law outlined herein;
- (G) an order enjoining Defendants from engaging as a supplier in any consumer transaction in the State of Ohio until such time as it has satisfied all monetary obligations due hereunder;
- (H) an order granting Plaintiffs their costs and reasonable attorney fees and costs pursuant to R.C. §§ 1345.09, as well as other applicable law.
- (I) an order granting such other and further relief as this Honorable Court deems just, equitable and appropriate.

Respectfully submitted,

/s/Ronald I. Frederick
Ronald Frederick (#0063609)
Michael L. Berler (#0085728)
Michael L. Fine (#0077131)
Frederick & Berler, LLC
767 East 185th Street
Cleveland OH 44119
(216) 502-1055 (phone)
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ronf@clevelandconsumerlaw.com
mikeb@clevelandconsumerlaw.com
michaelf@clevelandconsumerlaw.com
Attorneys for Ms. Gangluff

JURY DEMAND

Plaintiff hereby demands a trial before the maximum number of jurors allowed.

/s/Ronald I. Frederick
Ronald I. Frederick (#0063609)
Frederick & Berler, LLC
Attorneys for Ms. Gangluff

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Ronald I. Frederick
Ronald I. Frederick (#0063609)
Frederick & Berler LLC
Attorney for Ms. Gangluff

**BUYERS
ORDER**

Telephone: (419) 621-6000
(800) 400-7430
STPUB ROAD
SANDUSKY, OH
44870

KASPER TOYOTA SCION

904 E Strub Rd. • SANDUSKY, OH 44870
44870

STOCK NO	KT140534
DEAL NO.	58402

PURCHASER'S NAME SANDRA GANGLIFF

DATE 04/02/2014

STREET ADDRESS 525 LIBERTY DR AC

PHONE (419) 502-8734

CITY HULL COUNTY ERIE STATE OH ZIP 44830 SALESPERSON DANIEL MARE

ENTER MY ORDER FOR ONE ☐ NEW ☒ USED ☐ CAR ☐ TRUCK ☐ DEMONSTRATOR ☐ FACTORY OFFICIAL ☐ RENTAL VEHICLE AS FOLLOWS:

YEAR	MAKE	MODEL	BODY TYPE	COLOR	TRIM
2014	TOYOTA	COROLLA	4DR	STILLER	
VIN <u>4T1B11GK5U0086184</u>			TO BE DELIVERED ON OR ABOUT <u>04/02/2014</u>		STOCK NO <u>KT140534</u>
PRICE OF VEHICLE			\$ <u>22900.00</u>		
OTHER GOODS & SERVICES					
<u>AD-PILOT MAIL</u>			<u>122.00</u>		
<u>ULTIMATE</u>			<u>650.00</u>		
<u>WNAW</u>			<u>1473.00</u>		
DOCUMENTARY FEE			<u>250.00</u>		
TAXABLE PRICE			<u>24995.00</u>		
LESS: TRADE IN ALLOWANCE(S)			<u>5500.00</u>		
TRX BASE \$ <u>24995.00</u>					
SALES TAX <u>1812.14</u>					
TITLE FEE <u>15.00</u>					
REGISTRATION FEE <u>18.50</u>					
CREDIT LIFE AND DISABILITY					
PLUS: PAYOFF ON TRADE VEHICLE(S)					
TOTAL DUE			\$ <u>26400.64</u>		
LESS INITIAL PAYMENT/CASH DOWN			<u>1500.00</u>		
LESS REBATE/FACTORY INCENTIVE			<u>0.00</u>		
OTHER					
BALANCE DUE			\$ <u>24900.64</u>		

ODOMETER MILEAGE STATEMENT
THE ODOMETER OF THE PURCHASED VEHICLE NOW READS
19457 MILES/KILOMETERS AND IS ACCURATE UNLESS CHECKED
BELOW.

☐ ODOMETER MILEAGE IS NOT ACCURATE. REFER TO THE FEDERAL
MILEAGE STATEMENT FOR FULL DISCLOSURE.

TRADE-IN RECORD 1

YEAR	MAKE	MODEL	TYPE
1999	TOYOTA	CAMP	CD
VIN # <u>4T1B122V2X0086184</u>			MILEAGE <u>27500</u>
PAYOFF \$ <u>N/A</u>		Trade In Allowance <u>5500.00</u>	

TRADE-IN RECORD 2

YEAR	MAKE	MODEL	TYPE
N/A	N/A	N/A	N/A
VIN # <u>N/A</u>			MILEAGE <u>N/A</u>
PAYOFF \$ <u>N/A</u>		Trade In Allowance <u>N/A</u>	

NEGATIVE EQUITY DISCLOSURE & CONSENT:

I am aware that the balance owed on my trade-in vehicle(s) or the amount
owed on my lease turn in vehicle(s) exceeds the trade in allowance(s)
from the dealer. As a result, I have requested that the "Total Due" be
increased by the difference. \$ 1812.14 (known as negative equity).

INITIALS:

☐ SEE VEHICLE DELIVERY REPORT ATTACHED
☐ SEE USED VEHICLE LIMITED WARRANTY ATTACHED
☐ LIMITED RIGHT TO CANCEL APPLIES: If you have entered into a Spot
Delivery Agreement-Limited Right to Cancel, the sale of the Vehicle is
conditioned on final approval of financing by, or assignment of the Retail
Installment Sale Contract to a lender. If final financing approval is not obtained
and/or the Contract cannot be assigned, you or the Dealership may cancel the
Contract in accordance with this Agreement, the Spot Delivery Agreement-
Limited Right to Cancel, and the Retail Installment Sale Contract. SEE
ATTACHED DOCUMENT FOR IMPORTANT DETAILS

☐ DEPOSIT RECEIPT: Dealer hereby acknowledges receipt of the sum of
\$ 1500.00 as a deposit or partial payment for the vehicle described above. If
this receipt is for a deposit, Dealer will refrain from selling the described vehicle
for 30 days. This Deposit.

☐ IS ☐ IS NOT REFUNDABLE, subject to the conditions on the reverse side
and the following:

Exhibit 1

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S. AND ONLY SUCH
MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES, UNLESS DEALER FURNISHES
EVIDENCE WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT, MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY
DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A
PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER
HEREBY ASSURES NEW PURCHASERS AND OTHER PERSONS TO ASSUME FOR ANY LIABILITY IN CONNECTION WITH THE SALE OF THE
VEHICLE AND THE RELATED PRODUCTS AND SERVICES.

NEW PURCHASER AND DEALER WAIVE AND RENOUNCE THE RIGHT UNDER FEDERAL AND STATE LAW TO A TRIAL BY JURY

Monday, April 07, 2014

Trade In/Retail Breakdown

NADA

Publication: 04/2014, Region: Central

2011 TOYOTA Corolla-4 Cyl. Sedan 4D LE..... \$11,625 / \$14,100

VIN: 2T1BU4EE3BC559897

Stock #: KTST4053A

MSRP..... 17300
Weight..... 2800

*** Itemized Add/Deducts ***

Cruise Control..... Included
Power Door Locks..... Included
Power Windows..... Included
Power Sunroof..... 450 / 500
Aluminum/Alloy Wheels..... 300 / 350
Certified Pre-Owned-Corolla..... 0 / 875

Condition..... Clean
Total Value without mileage..... \$12,375 / \$15,825
Mileage adjustment (19456) miles..... \$1,350

*** NADA Trade In/Retail Value..... \$13,725 / \$17,175

Exhibit 2

Kasper Toyota Scion - Steve Donahue

NADA publication for Ohio: Publication: 04/2014, Region: Central
Values are subjective opinions. NADA and vAuto, Inc. assume no responsibility for errors or omissions.
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RouteOne Decision Details

Page 1 of 1

Decision:  Approved by Firelands FCU on 04/08/2014 - 12:12 PM

Dealership Name : KASPER TOYOTA SCION

FS App #: 10167317

Dealership Number: 6236

RouteOne App #: 01-1-185426216 0

Submitted by: 34106STEVE on 04/08/2014 - 09:44 AM

Applicant Name: GANGLUFF, SANDRA

Analyst:

Analyst Phone:

Brett D Montague ext. 1304

8002765775

Deal Recap	Decision	Application	Additional Deal Information	Decision	Application
Transaction Type	Retail	Retail	Purchase Price	\$24,266.16	
Vehicle	2011 Toyota Corolla	2011 Toyota Corolla	Sales Price		\$22,000.00
Financed Amount	\$16,898	\$16,898	Doc Fee		\$250.00
Cash Down		\$1,600.00	Rebate		\$0.00
Total Down	\$7,000.00	\$7,000.00	Credit Disability		\$0.00
Total Monthly Payment	\$337.03	\$337.00	Credit Life		\$0.00
Term	72	72	GAP		\$0.00
Wholesale/Invoice		\$13,725	Svc Contract		\$0.00
Customer Rate		12.74%	Trim	4dr Sdn Au	
Buy Rate	12.74%		New/Used	USED	CERTUSED
			VIN	2T1BU4EE3BC559	2T1BU4EE3BC559
				897	897
			Mileage		19,458
			MSRP		\$17,175

Stipulations

\$1145 DEALER FEE
 NADA TRADE = \$13725
 APR Not to Exceed 18%
 Backends limited to 20% of NADA Trade
 Need 2 References
 Proof of Residency
 Provide Proof of Income
 Write on Decision Notification how they qualify for FFCU membership

Comments

NEW MEMBER, C TIER, 3% RSV. THANKS!

Exhibit 3

Kasper Toyota Scion904 East Strub Road
Sandusky, OH 44870**Settlement Disclosure****Deal Number:** 58602

Buyer Name:	SANDRA GANGLUFF	Accessories:	
Co-Buyer Name:	N/A	Deposit:	\$0.00
Vehicle Description:	USED 2011 TOYOTA COROLLA		
Deal Started:	04/07/14 8:42:15pm	Trade-in Amount:	\$5,500.00
Deal Finished:	04/07/14 8:53:46pm	Trade-in Payoff:	\$0.00
		Rebate/Non-cash Credit:	\$0.00
Lender:	FIRELANDS FEDERAL CREDIT UNION	Cash Down:	\$1,500.00
Vehicle Price:	\$22,000.00	Add'l Cash Due:	\$0.00
Vehicle-only Payment:	\$352.82	Term (in months):	72
Interest Rate:	13.74%	Amount Financed:	\$19,951.36

Products Provided at No Charge:**Amount**

Warranty Forever®

Warranty Forever (New and Pre-Owned) (Unlimited / \$0.00 deductible)

Products Selected for Purchase:**Amount**

Mechanical Breakdown Protection

Premier (72 months / 100,000 miles / \$100.00 deductible)

\$1,438.00

GAP Protection

NWAN Gap (Waiver) (Up to 72 months / \$0.00 deductible)

\$695.00

Prepaid Maintenance

\$622.00

Products NOT Selected for Purchase:**Amount**

Theft Protection

\$299.00

Total Surface Protection-PREOWNED

\$699.00

Monthly Payment: \$413.64

* Differences in calculation methods may cause payments to vary slightly from those calculated by other systems.

I affirm that all options presented above have been fully explained to me. I accept the final monthly payment with the options selected and/or declined as indicated above. I understand that the monthly payments and financing terms shown are estimates, and are subject to final lender approval. I am aware that the items shown above are optional, and not required to obtain vehicle-only financing approval.

By declining the biweekly payment option, I understand that I waive the associated equity acceleration of \$2,931.52, interest savings of \$950.18, and automated ACH payment benefits over the course of the loan term.

Buyer Signature

Sandra Gangluff

4/7/2014

Co-Buyer Signature

4/7/2014

Finance Mgr. Signature

[Signature]

4/7/2014

Exhibit 4

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Kasper Toyota Scion Overcharges Customers, Improperly Denies Warranty Claims](#)
