

DON'T KNOW? BETTER KNOW! KNOW BETTER: CONSUMER LAW FOR ALL

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FAILURE TO DISCLOSE VEHICLE DAMAGE OR DISCREPANCY

I. SELLER OR TRANSFEROR OF VEHICLE HAS STATUTORY DUTY TO DISCLOSE, IN WRITING, THE FOLLOWING DAMAGE OR DISCREPANCIES IF KNOWN:

A. Salvage Damage [N.C.G.S. § 20-71.4(a)(2)]

Definition: Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs rendering the vehicle safe for use on public roadways would exceed 75% of its fair market value. (Repairs shall include the cost of parts and labor.)

“Salvage” means the vehicle’s Certificate of Title may have a brand¹)

Signs:

- Frame rattle
- Welded parts

¹ N.C.G.S. § 20-71.3. (h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued as follows:

(1) For motor vehicles up to and including six model years old, a branded title shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

(2) For motor vehicles more than six model years old, a branded title shall be issued if the cost of repairs, including parts and labor and excluding the cost to replace the air bag restraint system, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

(i) Once the Division has issued a branded title for a motor vehicle all subsequent titles for that motor vehicle shall continue to reflect the branding.

- Uneven seams and gaps between doors, trunk, hood, and other panels of vehicle
- Hood or trunk that will not close squarely
- Fresh undercoating of paint on wheel wells, chassis, or engine
- Chipping paint or non-matching paint
- Uneven tread wear pattern on tires
- Vehicle history indicates previous ownership of vehicle by insurance company

B. Flood Damage [N.C.G.S. § 20-71.4(a)(2)]

Definition: A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission or differential has occurred.

Signs:

- Visible signs of water damage or intrusion
- Mildew smell through vents and airways of vehicle
- Feeling of moisture on vehicle upholstery (seats, carpet, trunk)
- Appearance of discoloration or stains on vehicle upholstery
- Rust spots on screws, door hinges, hood springs, trunk latches or brackets under the dashboard
- Brittle wires beneath the dashboard
- Inconsistent operation or non-operation of several of the following vehicle features: power and electronics systems such as interior/exterior lights, windows and door locks, radio, cigarette lighter, heater and air conditioner
- Vehicle was previously owned or titled in a state prone to floods or with a recent flood (ex: Florida, Louisiana, Texas, New Jersey)

C. Reconstructed Vehicle [N.C.G.S. § 20-71.4(a)(2)]

Definition: A motor vehicle required to be registered that has been materially altered from original construction due to the removal, addition or substitution or essential parts. (This includes glider kits and custom assembled vehicles.)

D. “25% Damage Rule” [N.C.G.S. § 20-71.4(a)(1)]

- Applies to vehicles no more than five years old
- If seller knows of damage to vehicle that cost over 25% of the vehicle’s value at time of repairs, this must be disclosed. Note the 25% excludes the cost to replace the air bag restraint system.
- Damage can be collision or “other occurrence”

E. New Car Damage [N.C.G.S. § 20-305.1(e)(1)]

- Dealers are required to disclose in writing any damage and repair that exceeds five percent of the manufacturer's suggested retail price.
- Not required to disclose any damage to glass, tires, or bumpers if the damaged item has been replaced with original or comparable equipment.

F. Odometer Disclosure [N.C.G.S. § 20-347(a)]

- Applies to sales and leases of vehicles less than 10 years old
- Must ID vehicle, state name and address of transferor and transferee, and certification if the odometer reading is accurate or inaccurate

II. WHAT TO DO IF YOU SUSPECT THE VEHICLE HAS AN INTEGRITY ISSUE:

1. Have vehicle inspected by expert (ex: ASE Certified mechanic, vehicle damage expert who has served as witness)
2. Take pictures of and record visible and audible signs of damage
3. Obtain CarFax or AutoCheck report for vehicle
4. Obtain *certified* title history for vehicle
5. Try to obtain accident reports for prior incidents with vehicle
6. Try to locate and obtain vehicle repair invoices, statements

III. TARGET DEFENDANTS:

- Individual owner: could be judgment-proof; think about recoverability of a potential judgment or settlement
- Dealership: could have assets and insurance (ex: commercial general liability)
- Surety: all dealers are required to have a motor vehicle surety bond [N.C.G.S. § 20-288(e)]. Suit can be filed direct versus surety for acts and omissions of dealer. *Bernard v. Ohio Casualty Insurance Company*, 79 N.C. App. 306, 339 S.E.2d 20 (1986). Only certain claims are covered by the bond--dealer's violation of either Article 12 or Article 15 of Chapter 20 of the General Statutes of North Carolina. Auto dealer fraud is a violation of article 12. *Triplett v. James*, 45 N.C. App. 96, 262 S.E.2d 374, *cert. denied*, 300 N.C. 202, 269 S.E.2d 621 (1980). Surety only liable for compensatory damages; no punitive damages or treble damages.
- Prior dealers, sellers, transferors: a consumer will be deemed an indirect purchaser for purposes of Chapter 75 claims and can thus sue previous owners of the vehicle (*Hyde v Abbott Laboratories*, 123 N.C. App. 572, 473 S.E.2d 680 (1996)). Accrual of statute of limitations on claim depends on nature of claim being asserted: fraud (runs from date of discovery of fraud) v contract (runs from the date of the breach). SOL for Chapter 75 claims is four years. N.C.G.S. § 75-16.2.

IV. POTENTIAL CAUSES OF ACTION:

- ▶ Fraud
- ▶ Negligent misrepresentation
- ▶ Breach of contract
- ▶ Breach of warranty
- ▶ N.C.G.S. § 20-71.4 (failure to disclose salvage or flood or reconstructed condition)
 - ▶ N.C.G.S. § 20-348 (odometer disclosure violation)→Allows for the greater of treble damages or \$1,500.00 plus attorney’s fees
 - ▶ Chapter 75/UDAP---if you can show knowledge and some extreme circumstances (ex: prior sale and failure to disclose by same dealer/seller, evidence of efforts to conceal damage, questionable “pass” of NC safety inspection especially when the inspector is employed by dealer/seller). Dealer failure to conduct inspection when dealer knows vehicle was in an accident may support a Chapter 75 claim (especially if the dealer misrepresents the condition of the vehicle to a consumer). *Huff v. Autos Unlimited, Inc.*, 124 N.C. App. 410, 477 S.E.2d 86 (1996).

PLEADING NOTE: “In order to properly plead a cause of action under N.C.G.S. §20-71.4(a) and N.C.G.S. § 20-348(a), a plaintiff must allege fraudulent intent in addition to a violation of the provisions of N.C.G.S. § 20-71.4(a).” *Bowman v Alan Vester Ford Lincoln Mercury*, 151 N.C App. 603, 566 S.E.2d 818 (2002).

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§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.

(a) It shall be unlawful for any transferor of a motor vehicle to do any of the following:

- (1) Transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.
- (2) Transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(a1) For purposes of this section, the term "five model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year. Failure to disclose any of the information required under subsection (a) of this section that is within the knowledge of the transferor will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor vehicle from the State of North Carolina with the intent to conceal damage (or damage which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker that is affixed to the doorjamb of any total loss claim vehicle. It shall be unlawful for any person to reconstruct a total loss claim vehicle and not include or affix a "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker to the doorjamb of the rebuilt vehicle. Violation of this subsection shall constitute a Class I felony, punishable by a fine of not less than five thousand dollars (\$5,000) for each offense.

(d) Violation of subsections (a) and (b) of this section shall constitute a Class 2 misdemeanor.

(e) The provisions of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad. (1987, c. 607, s. 1; 1987 (Reg. Sess., 1988), c. 1105, s. 3; 1989, c. 455, s. 4; 1989 (Reg. Sess., 1990), c. 916, s. 2; 1993, c. 539, s. 337; 1994, Ex. Sess., c. 24, s. 14(c); 1998-212, s. 27.8(b); 2003-258, s. 2; 2009-550, s. 2(a).)

§ 20-347. Disclosure requirements.

(a) In connection with the transfer of a motor vehicle, the transferor shall disclose the mileage to the transferee in writing on the title or on the document used to reassign the title. This written disclosure must be signed by the transferor, including the printed name, and shall contain the following information:

- (1) The odometer reading at the time of the transfer (not to include tenths of miles);

- (2) The date of the transfer;
- (3) The transferor's name and current address;
- (3a) The transferee's printed name, signature and current address;
- (4) The identity of the vehicle, including its make, model, body type, and vehicle identification number, and the license plate number most recently used on the vehicle; and
- (5) Certification by the transferor that to the best of his knowledge the odometer reading
 - a. Reflects the actual mileage; or
 - b. Reflects the amount of mileage in excess of the designed mechanical odometer limit; or
 - c. Does not reflect the actual mileage and should not be relied on.
- (6), (7) Repealed by Session Laws 1989, c. 482, s. 2.

(a1) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide written disclosure to the lessor regarding mileage. In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement signed by the lessee containing the following information:

- (1) The printed name of the person making the disclosure;
- (2) The current odometer reading (not to include tenths of miles);
- (3) The date of the statement;
- (4) The lessee's printed name and current address;
- (5) The lessor's printed name, signature, and current address;
- (6) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number;
- (7) The date that the lessor notified the lessee of the disclosure requirements and the date the lessor received the completed disclosure statement; and
- (8) Certification by the lessee that to the best of his knowledge the odometer reading:
 - a. Reflects the actual mileage;
 - b. Reflects the amount of mileage in excess of the designed mechanical odometer limit; or
 - c. Does not reflect the actual mileage and should not be relied on.

If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under this subsection, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(b) Repealed by Session Laws 1973, c. 1088.

(c) It shall be unlawful for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules.

(d) The provisions of this disclosure statement section shall not apply to the following transfers:

- (1) A vehicle having a gross vehicle weight rating of more than 16,000 pounds.

- (2) A vehicle that is not self-propelled.
- (2a) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.
- (3) A vehicle that is 10 years old or older.
- (4) A new vehicle prior to its first transfer for purposes other than resale.
- (5) A vehicle that is transferred by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad. (1973, c. 679, s. 1; c. 1088; 1983, c. 387; 1989, c. 482, ss. 2-5; 1993, c. 553, s. 11; 2009-550, s. 2(d).)

§ 20-305.1. Automobile dealer warranty obligations.

...(e) Damage/Repair Disclosure. - Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

- (1) A new motor vehicle dealer is not required to disclose to a purchaser that any damage of any nature occurred to a new motor vehicle at any time if the total cost of all repairs fails to exceed five percent (5%) of the manufacturer's suggested retail price as calculated at the time the repairs were made based upon the dealer's authorized warranty rate for labor and parts and the damaged item has been replaced with original or comparable equipment.
- (2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract or have or file any cause of action or claim against the dealer or manufacturer for breach of contract, breach of warranty, fraud, concealment, unfair and deceptive acts or practices, or otherwise due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.
- (3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

§ 20-288. Application for license; license requirements; expiration of license; bond.

(a) A new motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler may obtain a license by filing an application with the Division. An application must be on a form provided by the Division and contain the

information required by the Division. An application for a license must be accompanied by the required fee and by an application for a dealer license plate.

(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

- (1) The required fee.
- (2) Proof that the applicant, within the last 12 months, has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of this subdivision do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers or to a manufactured home dealer licensed under G.S. 143-143.11 who complies with the continuing education requirements of G.S. 143-143.11B. The requirement of this subdivision does not apply to persons age 62 or older as of July 1, 2002, who are seeking a renewal license. This subdivision also does not apply to an applicant who holds a license as a new motor vehicle dealer as defined in G.S. 20-286(13) and operates from an established showroom 20 miles or less from the established showroom for which the applicant seeks a used motor vehicle dealer license. An applicant who also holds a license as a new motor vehicle dealer may designate a representative to complete the licensing course required by this subdivision.
- (3) If the applicant is an individual, proof that the applicant is at least 18 years of age and proof that all salespersons employed by the dealer are at least 18 years of age.
- (4) The application for a dealer license plate.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(b1) The Division shall require in such license application and each application for renewal of license a certification that the applicant is familiar with the North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law and with other North Carolina laws governing the conduct and operation of the business for which the license or license renewal is sought and that the applicant shall comply with the provisions of these laws, with the provisions of Article 12 of Chapter 20 of the General Statutes, and with other lawful regulations of the Division.

(c) All licenses that are granted shall be for a period of one year unless sooner revoked or suspended. The Division shall vary the expiration dates of all licenses that are granted so that an equal number of licenses expire at the end of each month, quarter, or other period consisting of one or more months to coincide with G.S. 20-79(c).

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of more than 2,500 pounds

unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of more than 2,500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is fifty thousand dollars (\$50,000) for one established salesroom of the applicant and twenty-five thousand dollars (\$25,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is fifty thousand dollars (\$50,000) for one place of business of the applicant and twenty-five thousand dollars (\$25,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle, including a motor vehicle dealer, who shall have suffered any loss or damage by the failure of any license holder subject to this subsection to deliver free and clear title to any vehicle purchased from a license holder or any other act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 of this Chapter shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. Except as provided by G.S. 20-288(f) and (g), a corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. That cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12.

(f) A corporate surety bond furnished pursuant to this section or renewal thereof may also be canceled by the surety prior to the next premium anniversary date without the prior written consent of the license holder for the following reasons:

- (1) Nonpayment of premium in accordance with the terms for issuance of the surety bond; or
- (2) An act or omission by the license holder or his representative that constitutes substantial and material misrepresentation or nondisclosure of a material fact in obtaining the surety bond or renewing the bond.

Any cancellation permitted by this subsection is not effective unless written notice of cancellation has been delivered or mailed to the license holder and to the Commissioner not less than 30 days before the proposed effective date of cancellation. The notice must be given or mailed by certified mail to the license holder at its last known address. The notice must state the reason for cancellation. Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date set forth in the notice of cancellation. Cancellation of the surety shall not affect any liability incurred or accrued prior to the termination of the 30-day notice period.

(g) A corporate surety may refuse to renew a surety bond furnished pursuant to this section by giving or mailing written notice of nonrenewal to the license holder and to the Commissioner not less than 30 days prior to the premium anniversary date of the surety bond. The notice must be given or mailed by certified mail to the license holder at its last known address. Nonrenewal of the surety bond shall not affect any liability incurred or accrued prior to the premium anniversary date of the surety bond. (1955, c. 1243, s. 4; 1975, c. 716, s. 5; 1977, c. 560, s. 2; 1979, c. 254; 1981, c. 952, s. 3; 1985, c. 262; 1991, c. 495, s. 1; c. 662, s. 3; 1993, c. 440, s. 3; 1997-429, s. 1; 2001-345, s. 2; 2001-492, s. 4; 2003-254, s. 2; 2004-167, s. 9; 2004-199, s. 59; 2005-99, s. 2; 2006-105, s. 2.3; 2006-191, s. 1; 2006-259, s. 12; 2011-290, ss. 1, 2.)

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF

JUSTICE

COUNTY OF GUILFORD

SUPERIOR COURT DIVISION

File No. 12

MARTHA A. WILLIAMS,

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Plaintiff,

)

)

COMPLAINT
(Jury Trial Demanded)

vs.

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)

WALTER L. BROWER, d/b/a RMG
MOTORSPORTS, and PLATTE RIVER
INSURANCE COMPANY, INC.

)

)

Defendants.

)

)

Now comes Plaintiff Martha A. Williams, by and through her attorney, who complains of Defendants Walter L. Brower d/b/a RMG Motorsports (“Defendant RMG”) and Platte River Insurance Company, Inc. (hereinafter, “Defendant Platte River”) as follows:

Parties

1. Plaintiff Martha A. Williams, formerly known as Martha A. Zelada (hereinafter, "Plaintiff"), is a natural person and is a resident of Greensboro, Guilford County, North Carolina.
2. Upon information and belief, defendant Walter L. Brower is a citizen and resident of the State of North Carolina, and does business in Greensboro, Guilford County, North Carolina under the business name RMG Motorsports (hereinafter, "RMG").

3. At all times relevant to this action, RMG, acted in the ordinary course of business in selling used vehicles, engaged in acts or practices affecting commerce within the meaning of N.C.G.S. § 75-1.1.

4. RMG sells, imports, and distributes used motor vehicles that are sold in the State of North Carolina, including the vehicle that is the subject of this action, a 2007 Honda Accord vehicle which is further described in paragraph 10 below.

5. RMG is a "Seller" as defined in North Carolina General Statute § 25-2-103.

6. Upon information and belief, Defendant Platte River Insurance Company, Inc. ("Platte River") is a foreign corporation registered to do business and doing business in North Carolina.

7. Upon information and belief, in the regular course of its business Platte River extends surety bonds to North Carolina automobile dealers and manufacturers pursuant to N.C. Gen. Stat. § 20-288(e).

8. Defendant Platte River extended a surety bond to RMG in the amount of \$50,000.00, pursuant to N.C. Gen. Stat. §20-288(e).

9. Jurisdiction over Platte River is proper pursuant to N.C. Gen. Stat. §§ 1-75.4(1)(d), 1-75.4(5), and 20-288(e).

Facts

10. On or about June 30, 2009, Plaintiff purchased, for a cash price including all taxes, tag/title fees, and other fees, of \$15,518.00, a 2007 Honda Accord vehicle with a VIN of JHMCN36557C001879 (hereinafter "the vehicle") from RMG. This purchase was documented via a Bill of Sale executed on June 30, 2009 which is attached to this

Complaint as Exhibit A. Plaintiff purchased the Vehicle for her personal, family or household use.

11. Plaintiff's agreement with RMG was for Plaintiff to make a \$4,000.00 cash down payment on the Vehicle, which she did, leaving a remaining balance in the amount of \$11,518.00. Plaintiff agreed to pay this balance via monthly payments of \$400.00 for 36 consecutive months commencing on July 30, 2009. Monthly payments would be due on the last date of each month and there would be a five-day grace period for each monthly payment after which Plaintiff would be responsible for paying a late fee. Upon Plaintiff's payment in full of the \$14,400.00 Defendant RMG would be required to execute all documents necessary to remove its lien from the vehicle's Certificate of Title and title would reside wholly with Plaintiff.

12. The terms recited in paragraphs 10 and 11 of the Complaint comprise the terms of Plaintiff's agreement with RMG to purchase the vehicle and are hereinafter referred to collectively as, "the sales agreement", "Plaintiff's agreement with RMG", or the like unless otherwise stated.

13. The Bill of Sale did not reserve to RMG the right to assess finance charges on the remaining balance of \$11,518.00.

14. The Bill of Sale did not require Plaintiff to pay any finance charges on the remaining balance of \$11,518.00.

15. The Bill of Sale did not reserve to RMG the right to charge late fees or penalty on any past due payments.

16. The Bill of Sale did not require Plaintiff to pay any late fees or penalty on any past due payments.

17. The Bill of Sale did not reserve to RMG the right to charge any repossession fees.

18. The Bill of Sale did not require Plaintiff to pay any repossession fees.

19. The right to receive all vehicle payments was retained by RMG. RMG did not assign its rights to vehicle payments.

20. The only document RMG gave to Plaintiff on June 30, 2009 was the Bill of Sale.

21. Plaintiff does not recall signing any Retail Installment Sales Contract. Plaintiff has never received a copy of any Retail Installment Sales Contract.

22. Plaintiff does not recall signing any document which purports to create a security interest in the Vehicle in favor RMG.

23. Plaintiff did not receive a copy of any document bearing her genuine signature which purports to create a security interest in the Vehicle in favor of RMG.

24. Upon her belief and recollection, Plaintiff avers that she did not sign documents which, independently or combined, create a valid security interest in the vehicle in favor of RMG.

25. Upon her belief and recollection, Plaintiff avers that she did not receive a copy of documents which create a valid security interest in the vehicle in favor of RMG.

26. At the time of the purchase Plaintiff was aware the vehicle had some physical damage. However, Plaintiff had no actual or constructive knowledge that the vehicle was a salvage vehicle or had a Certificate of Title with a salvage brand.

27. Plaintiff has never signed a Damage Disclosure Statement in which RMG disclosed damage to the vehicle.

28. Plaintiff has never signed a Damage Disclosure Statement in which RMG disclosed the vehicle was a salvage vehicle.

29. Plaintiff has never signed a Damage Disclosure Statement in which RMG disclosed the vehicle had a Certificate of Title with a salvage brand.

30. Plaintiff never signed any agreement allowing RMG the right to repossess the vehicle.

31. Before Plaintiff's May 2011 payment was due or to be considered "late", Plaintiff tendered the sum of \$400.00 which represented her May 2011 payment. At the time of this tender Plaintiff was current on her loan obligation.

32. RMG refused to accept Plaintiff's tender of the \$400.00 and demanded Plaintiff pay a \$50.00 late fee or else RMG would repossess the vehicle. On May 2, 2011, in the face of pressure and threat of repossession by RMG, Plaintiff reluctantly paid the \$400.00 payment for May 2011 plus the \$50.00 late fee demanded by RMG despite the fact that she was not late.

33. Plaintiff's May 2, 2011 payment to RMG pursuant to RMG's demand did not serve as a waiver of her rights as the holder of a vehicle without a security interest.

34. Plaintiff's May 2, 2011 payment to RMG pursuant to RMG's demand did not serve as an affirmation of any presumed right by RMG to repossess the vehicle.

35. In March 2012, RMG repossessed the vehicle from Plaintiff. RMG failed to provide Plaintiff any correspondence or written prior notice of intent to repossess the vehicle.

36. Upon RMG's March 2012 repossession of the vehicle Plaintiff complied with RMG's demand that she pay a repossession fee of \$350.00 and Plaintiff made said

payment. RMG failed to provide Plaintiff with any written itemization or invoice of RMG having incurred any expenses related to the repossession.

37. In addition to paying the \$350.00 repossession fee assessed by RMG, Plaintiff paid to RMG a late fee of \$6.00 and a vehicle payment of \$400.00.

38. On several occasions in 2012 Plaintiff requested RMG provide her with a copy of any retail installment sales agreement, finance agreement, or other document purported to create a security interest in the vehicle. RMG failed to provide any documents whatsoever responsive to Plaintiff's requests.

39. On or about May 4, 2012, RMG provided Plaintiff with a "Sales Recap Sheet" purporting to represent the unpaid balance on the vehicle. This "Sales Recap Sheet" cited a finance charge of 28.00% resulting in total finance charges of \$7,808.78. A copy of the "Sales Recap Sheet" is attached to this Complaint as Exhibit B.

40. The balance due of \$7,808.78 stated in this May 4, 2012 "Sales Recap Sheet" did not comport with the terms of Plaintiff's sales agreement of June 30, 2009 when she purchased the vehicle.

41. Plaintiff has been informed by RMG that the finance charge assessed by RMG for her vehicle transaction is 28.00%.

42. Upon information and belief, Iris Fewell ("Fewell") is an operator or manager of Defendant RMG. Her actions and omissions alleged in this Complaint were within the scope of her duties for RMG.

43. In June 2012, Fewell offered to "settle" the vehicle transaction in full if Plaintiff paid RMG the amount of \$3,000.00. Fewell failed to itemize or otherwise the

explain RMG's purported contractual right to receive the payment of \$3,000.00. Plaintiff refused Fewell's offer and did not pay the \$3,000.00.

44. As of August 1, 2012, Plaintiff had paid a total sum of \$14,406.00 in monthly payments and late fees to RMG for the vehicle. This \$14,406.00 paid by Plaintiff is in excess of the \$11,518.00 balance noted on the Bill of Sale. This \$14,406.00 paid by Plaintiff is in excess of \$14,400.00 which represents the amount which is comprised of \$400.00 per month multiplied by 36 months of payments.

45. As of August 1, 2012, Plaintiff was current on her vehicle loan obligation and was not in default.

46. As of August 1, 2012, Plaintiff had paid all monies which she was contractually obligated to pay to RMG to purchase the vehicle.

47. As of August 1, 2012, RMG was contractually obligated to take all appropriate steps and execute all documents necessary to remove its lien from the vehicle's Certificate of Title so that Plaintiff would be the lone titled owner of the vehicle.

48. As of August 8, 2012, RMG had not provided Plaintiff with a copy of any retail installment sales agreement or finance agreement for the vehicle.

49. As of August 8, 2012, RMG did not possess a copy of any retail installment sales agreement or finance agreement signed by Plaintiff.

50. On August 8, 2012, RMG repossessed the vehicle. At the time of the repossession Plaintiff had made all payments required under the terms of her sales agreement with RMG. Additionally, Plaintiff had paid extra-contractual sums and fees as further demanded by RMG.

51. To the extent RMG completed a NCDMV MVR-3 form, "Certificate of Repossession", said form was necessarily invalid as RMG lacked the legal right to repossess Plaintiff's vehicle as of August 8, 2012.

52. Prior to the filing of this civil action Plaintiff requested that RMG return the vehicle to her possession. As of the date of the filing of this civil action, RMG has failed to return possession of the vehicle to Plaintiff. Further, RMG has neither offered to refund or actually refunded any fees or monies illegally collected from Plaintiff. Finally, RMG has failed to remove its lien from the vehicle's Certificate of Title so that Plaintiff would be the lone titled owner of the vehicle.

53. As a result of RMG's repossession of the vehicle Plaintiff has no reliable primary means of transportation.

54. As of August 8, 2012 and continuing through the date of this Complaint Plaintiff is still in need of replacement transportation due to RMG's repossession of the vehicle.

55. Since RMG's repossession of the vehicle Plaintiff has incurred damages including but not limited to having to refuse an offer of full-time employment due to lack of ownership of reliable transportation.

56. Fewell has been charged with a violation of N.C. Gen. Stat. § 20-297 for failing to maintain certain dealer records relating to Plaintiff's purchase of the vehicle from RMG. The criminal charge is stated as Guilford County court file number 2012 CR 723649.

57. Guilford County court file number 2012 CR 723649 is based upon Fewell's inability and failure, in response to a request by Inspector Layton of the North Carolina

Division of Motor Vehicles, to produce a copy of a valid finance agreement or retail installment sales agreement or security agreement between the Plaintiff and RMG as relates to the vehicle. Inspector Layton's request that Fewell and RMG produce said documentation was made on a date in August 2012 *after* RMG had repossessed the vehicle from Plaintiff.

FIRST CLAIM FOR RELIEF
March 2012 Conversion

58. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

59. The Bill of Sale is insufficient to create a valid security interest in favor of Defendant RMG in the vehicle.

60. Defendant RMG has not met the requisites of N.C.G.S. § 25-9-203 and thus possesses no valid, enforceable security interest in the vehicle.

61. By repossessing the vehicle in March 2012 in the absence of any security interest in the vehicle, RMG engaged in an unauthorized assumption and exercise of the right of ownership over the vehicle, which rightfully belonged to Plaintiff.

62. By repossessing the vehicle in March 2012 in the absence of any default by Plaintiff, RMG engaged in an unauthorized assumption and exercise of the right of ownership over the vehicle, which rightfully belonged to Plaintiff.

63. RMG's repossession of the vehicle in March 2012 interfered with Plaintiff's right to possession of the vehicle by depriving her of the use of the vehicle.

64. RMG's wrongful repossession of the vehicle in March 2012, which was willful and/or wanton, constitutes an unlawful conversion of Plaintiff's personal property.

65. Plaintiff is entitled to recover actual damages from RMG for the loss of use of the vehicle, the loss of value of the vehicle, the loss of use of her personal property, and the loss of use of her personal property.

66. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

SECOND CLAIM FOR RELIEF

August 2012 Conversion and Notice of Demand to Retain Possession of Vehicle with Directive Not to Sell or Dispose

67. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

68. The Bill of Sale is insufficient to create a valid security interest in favor of Defendant RMG in the vehicle.

69. Defendant RMG has not met the requisites of N.C.G.S. § 25-9-203 and thus possesses no valid, enforceable security interest in the vehicle.

70. By repossessing the vehicle on August 8, 2012 in the absence of any security interest in the vehicle, RMG engaged in an unauthorized assumption and exercise of the right of ownership over the vehicle, which rightfully belonged to Plaintiff.

71. By repossessing the vehicle on August 8, 2012 in the absence of any default by Plaintiff, RMG engaged in an unauthorized assumption and exercise of the right of ownership over the vehicle, which rightfully belonged to Plaintiff.

72. RMG's repossession of the vehicle on August 8, 2012 interfered with Plaintiff's right to possession of the vehicle by depriving her of the use of the vehicle.

73. RMG's wrongful repossession of the vehicle on August 8, 2012, which was willful and/or wanton, constitutes an unlawful conversion of Plaintiff's personal property.

74. RMG has refused to return to Plaintiff various items of her personal property that were in the Vehicle at the time of the August 8, 2012 wrongful repossession. These possessions include but are not limited to the North Carolina license plate/tag assigned to the vehicle.

75. Plaintiff is entitled to recover actual damages from RMG for the loss of use of the vehicle, the loss of value of the vehicle, the loss of use of her personal property, and the loss of use of her personal property.

76. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

77. Defendants are directed to retain possession of the vehicle for the entirety of the litigation commenced by this Complaint. Defendants are directed not to dispose of the vehicle.

78. Plaintiff formally notifies Defendant of the request for an Order requiring the return of the vehicle to Plaintiff's possession pursuant to N.C.G.S. § 25-9-625(a).

79. Pursuant to N.C.G.S. § 20-58.4, Plaintiff hereby makes formal demand that Defendant RMG release its purported security interest upon the vehicle's Certificate of Title and procure all necessary paperwork for a Certificate of Title to issue solely in Plaintiff's name.

80. Pursuant to N.C.G.S. § 20-59, Plaintiff hereby makes formal demand that Defendant RMG deliver the vehicle's Certificate of Title to Plaintiff.

THIRD CLAIM FOR RELIEF
Breach of Contract

81. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

82. By repossessing the vehicle when Plaintiff was not in default of her obligations to RMG, RMG breached the sales agreement Plaintiff.

83. By repossessing the vehicle without having a valid security agreement with the Plaintiff, RMG breached the sales agreement Plaintiff.

84. RMG has attributed portions of funds paid to RMG by Plaintiff for late fees, finance charges, repossession fees, and other fees that were not agreed upon by Plaintiff and RMG on June 30, 2009. Consequently, RMG has incorrectly calculated the balance due from Plaintiff.

85. Plaintiff has paid all sums due to RMG under the terms of her sales agreement and is legally entitled to possession of the vehicle and the removal of Defendant's lien upon the vehicle's Certificate of Title.

86. RMG's conduct as described in the paragraphs 82 through 84, inclusive, of this Complaint breached the sales agreement between the parties.

87. Plaintiff is entitled to recover actual damages, including consequential damages, from RMG in an amount to be determined by this Court.

88. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

FOURTH CLAIM FOR RELIEF
Fraud

89. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.
90. The following were material facts in Plaintiff's decision to purchase the vehicle: whether the vehicle had been involved in any collision or other occurrence that substantially impaired the vehicle's fair market value or crashworthiness/safety, whether the vehicle was a salvage vehicle, the accurate fair market value of the vehicle, the amount of "equity" Plaintiff would have and retain in the vehicle.
91. Defendant RMG's representation to Plaintiff that the vehicle had not been involved in a collision or other occurrence to the extent that the cost to repair exceeded 25% of the vehicle's value at the time of the collision was false. Plaintiff did not know this representation was false.
92. Defendant RMG's representation to Plaintiff that the vehicle was not a salvage vehicle was false. Plaintiff did not know this representation was false.
93. Plaintiff had no actual or constructive knowledge that Defendant RMG's representations were false or otherwise inaccurate.
94. Defendant RMG knew or should have known Plaintiff was relying upon its promise to deliver to Plaintiff a vehicle that was not a salvage vehicle.
95. Defendant RMG also knew or should have known the significance and consequences of its promise to deliver to Plaintiff a vehicle that was not a salvage vehicle.

96. Defendant RMG knew or should have known Plaintiff was relying upon its promise to deliver to Plaintiff a vehicle that had not been involved in a collision or other occurrence to the extent that the cost to repair exceeded 25% of the vehicle's value at the time of the collision.
97. Defendant RMG also knew or should have known the significance and consequences of its promise to deliver to Plaintiff a vehicle that had not been involved in a collision or other occurrence to the extent that the cost to repair exceeded 25% of the vehicle's value at the time of the collision.
98. Defendant RMG intended its representations referenced in paragraphs 91 and 92 in this Complaint to induce Plaintiff to purchase the vehicle.
99. Plaintiff was induced by Defendant's representations referenced in paragraphs 91 and 92 of this Complaint to purchase the vehicle.
100. Defendant RMG intended for Plaintiff to rely on its representations referenced in paragraphs 91 and 92 of this Complaint.
101. Defendant RMG intended for Plaintiff to act in reliance on its representations referenced in paragraphs 91 and 92 of this Complaint.
102. Plaintiff's purchase of the vehicle was in reasonable reliance on Defendant RMG's representations referenced in paragraphs 91 and 92 of this Complaint.
103. As a direct result of Plaintiff's reliance on Defendant RMG's representations referenced in paragraphs 91 and 92 of this Complaint, Plaintiff acted in a manner different than she would have acted had she known the true facts about the vehicle's condition and history.

104. Plaintiff has suffered damages proximately caused by the conduct of Defendant RMG including, but not limited to, lost value of the vehicle in the amount of at least \$11,000.00, the cost of insurance premiums for the vehicle, expenses directly related to investigation of the history of the vehicle at \$10.00, and costs relating to inconvenience caused by the defendants' conduct at \$1,000.00. At this time the total amount of damages calculated is a minimum of \$12,010.00.

105. Plaintiff is entitled to and hereby demands compensation for the damages stated in the immediately preceding paragraph.

106. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond

FIFTH CLAIM FOR RELIEF
Charging and Receiving Unlawful Late Fees
N.C.G.S. §§25A-29, 25A-44(3)

107. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

108. Plaintiff's purchase of the Vehicle constituted a "consumer credit sale" within the meaning of N.C.G.S. §25A-2, because, at all times relevant to this pleading, Defendant, in the ordinary course of its business, regularly extended or arranged for the extension of credit; and, further, because Plaintiff purchased the vehicle for personal, family and/or household use.

109. RMG charged and collected, from Plaintiff, late fees when there was no agreement for the payment of late fees under the Contract.

110. RMG has collected at least \$50.00 in late fees from Plaintiff.

111. Plaintiff has paid all sums due under the terms of her sales agreement with RMG and is legally entitled to possession of the vehicle and the removal of Defendant's lien upon the vehicle's Certificate of Title.

112. Pursuant to N.C.G.S. §25A-44(3), Plaintiff hereby gives notice that RMG shall have ten days from its receipt of service of this Complaint to refund all late fees unlawfully collected from her. Plaintiff gives notice that if RMG has not provided said refund she is entitled to and thereby seeks three times the sum of all late fees unlawfully collected from her.

113. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

SIXTH CLAIM FOR RELIEF
Charging and Receiving Finance Charges on Contract
N.C.G.S. §§25A-29, 25A-44(3)

114. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

115. RMG charged and collected, from Plaintiff, a finance charge when there was no written agreement for the payment of finance charges.

116. The 28.00% per year finance charge exceeds the maximum of 18.00% per year allowed under N.C.G.S. § 25A-15©.

117. Plaintiff does not know the true amount of finance charges she has paid to RMG as RMG has failed to provide a comprehensible and accurate statement of how RMG has attributed the money she has paid for the vehicle.

118. Plaintiff has paid all sums due under the terms of her sales agreement with RMG and is legally entitled to possession of the vehicle and the removal of Defendant's lien upon the vehicle's Certificate of Title.

119. Pursuant to N.C.G.S. §25A-44(3), Plaintiff hereby gives notice that RMG shall have ten days from its receipt of service of this Complaint to refund all finance charges unlawfully collected from her. Plaintiff gives notice that if RMG has not provided said refund is entitled to and thereby seeks three times the sum of all finance charges unlawfully collected from her.

120. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

121. Pursuant to N.C.G.S. § 25-9-404(a)(2), Plaintiff hereby demands a full and accurate accounting of her account with RMG with said accounting to include but not be limited to all finance charges levied by RMG and all payments made by Plaintiff with an itemized statement as to how RMG attributed each payment. Said accounting is required to be provided within fourteen (14) days of the date Defendant RMG is served with this Complaint and the accompanying Civil Summons.

SEVENTH CLAIM FOR RELIEF
Charging and Receiving Repossession Fees
N.C.G.S. §§25A-29, 25A-44(3)

122. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

123. RMG's March 2012 repossession of the vehicle from Plaintiff was without contractual or legal right to do so.

124. RMG's August 2012 repossession of the vehicle from Plaintiff was without contractual or legal right to do so.

125. RMG charged and collected, from Plaintiff, repossession fees for the March 2012 repossession when RMG had no contractual agreement or legal right requiring the Plaintiff to make payment of repossession fees.

126. RMG has collected at least \$350.00 in repossession fees from Plaintiff.

127. Plaintiff has paid all sums due under the terms of her sales agreement with RMG and is legally entitled to possession of the vehicle and the removal of RMG's lien upon the vehicle title.

128. Pursuant to N.C.G.S. §25A-44(3), Plaintiff hereby gives notice that RMG shall have ten days from its receipt of service of this Complaint to refund all repossession fees unlawfully collected from her. Plaintiff gives notice that if RMG has not provided said refund she is entitled to and thereby seeks three times the sum of all repossession fees unlawfully collected from her.

129. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

EIGHTH CLAIM FOR RELIEF
Violations of Truth in Lending Act
15 U.S.C. 1601 et seq.

130. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

131. RMG constitutes a "creditor" within the meaning of 15 U.S.C. § 1601(f) as it regularly extends, in connection sales of property, consumer credit which is payable

by agreement in more than four installments or for which the payment of a finance charge is or may be required.

132. RMG constitutes a “creditor” within the meaning of 15 U.S.C. § 1601(f) as it is the entity to whom the debt arising from the consumer credit transaction is initially payable by agreement and/or on the face of the evidence of indebtedness.

133. Plaintiff's purchase of the Vehicle constituted a "credit sale" within the meaning of 15 U.S.C. § 1602(g), because RMG was the seller of the vehicle in the ordinary course of its business, regularly extended or arranged for the extension of credit; and, further, because Plaintiff purchased the vehicle for personal, family and/or household use.

134. To the extent RMG asserts and has asserted that it is due finance charges pursuant to the Contract, RMG has failed to provide Plaintiff with a statement of method of determining finance charges.

135. RMG's failure to provide Plaintiff with a statement of method of determining finance charges violates 15 U.S.C. § 1602(u).

136. RMG's provision of the “Sales Recap Sheet” to Plaintiff is neither timely provided nor sufficiently detailed to satisfy the requirements of 15 U.S.C. § 1602(u).

137. RMG has failed to make the following “material disclosures” as required by 15 U.S.C. § 1602(u): annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.

138. Pursuant to 15 U.S.C. § 1640(a)(3), Plaintiff is entitled to recover statutory damages in an amount equal to twice the finance charges collected by Defendant RMG and attorney's fees.

139. Defendant RMG has miscalculated the amount paid by Plaintiff for the vehicle and RMG has used the miscalculation as apparent justification for its repossession of the vehicle.

140. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

141. Plaintiff hereby demands a full and accurate accounting of her account with RMG with said accounting to include but not be limited to all fees and charges levied by RMG and all payments made by Plaintiff with an itemized statement as to how RMG attributed each payment.

NINTH CLAIM FOR RELIEF
Violation of N.C.G.S. §20-71.4(a) and N.C.G.S. §20-348 Failure to Disclose Salvage Condition of Vehicle

142. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

143. Defendant RMG's representation, in writing, to Plaintiff that the vehicle was not a salvage vehicle was false. Defendant RMG knew the representation was false or made the representation recklessly and without regard for its truth.

144. Defendant RMG has substantial experience in acquiring and dealing in vehicles and had ample opportunity and resources to undertake the due

diligence required to provide a truthful representation as to the vehicle's condition.

145. McCray Auto Sales provided Defendant RMG with actual notice that the vehicle had been wrecked and/or was a salvage vehicle.
146. Defendant RMG had reason to know the vehicle was a salvage vehicle prior to its transfer of the vehicle to Plaintiff.
147. Defendant RMG intentionally failed to disclose the vehicle's salvage condition to Plaintiff.
148. Defendant RMG's failure to disclose the salvage condition of the vehicle to Plaintiff was done with the intent to defraud Plaintiff.
149. Defendant RMG's failure to disclose the salvage condition of the vehicle to Plaintiff did actually defraud Plaintiff.
150. Defendant RMG's failure to disclose the salvage condition of the vehicle violates N.C. Gen. Stat. § 20-71.4(a) and N.C. Gen. Stat. § 20-348.
151. Defendant RMG's misrepresentation that the vehicle was not a salvage vehicle violates N.C. Gen. Stat. § 20-71.4(a) and N.C. Gen. Stat. § 20-348.
152. Plaintiff has suffered damages proximately caused by the conduct of Defendant RMG including, but not limited to, lost value of the vehicle in the amount of at least \$11,000.00, the cost of insurance premiums for the vehicle, expenses directly related to investigation of the history of the vehicle at \$10.00, and costs relating to inconvenience caused by the defendants' conduct at \$1,000.00. At this time the total amount of damages calculated is a minimum of \$12,010.00.

153. Based on Defendant RMG's violations of N.C. Gen. Stat. § 20-71.4(a) and N.C. Gen. Stat. § 20-348, Plaintiff is entitled to recover three times the amount of actual damages sustained or a minimum of \$36,030.00. Additionally Plaintiff is entitled to recover the costs of this action together with reasonable attorney fees.

154. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

TENTH CLAIM FOR RELIEF

Violations of Article 9 of the North Carolina Uniform Commercial Code

155. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

156. The 2007 Honda vehicle described in Paragraph 10 of this Complaint is "consumer goods" as defined in N.C.G.S. § 25-9-102(a)(23).

157. Plaintiff is a "debtor" as defined in N.C.G.S. § 25-9-102(a)(28).

158. Defendant RMG purports to be a "secured party" as defined in N.C.G.S. § 25-9-102(a)(75).

159. Defendant RMG has never created a valid enforceable security interest in the vehicle. Consequently, Defendant RMG lacked authority to repossess or otherwise exercise any of the rights conferred by Article 9 of the North Carolina Uniform Commercial Code.

160. To the extent the Court finds Defendant RMG to be a "secured party", under N.C.G.S. § 25-9-625(b), Defendant RMG is liable for damages in the

amount of any loss caused by noncompliance with N.C.G.S. §§ 25-9-601, *et. seq.*

161. Defendant RMG violated the provisions of Article 9, Part 6 of North Carolina General Statutes, Chapter 25 by actions that include, but are not limited to, ordering the repossession of the vehicle without a valid finance agreement, security agreement, or other documentation evidencing Plaintiff's default, in violation of N.C.G.S. § 25-9-609(b)(2).

162. For these failures to comply with Article 9, Part 6 of North Carolina General Statutes, Defendant RMG is liable to Plaintiff for her actual damages, pursuant to N.C.G.S. § 25-9-625(b) and (c)(1), and for statutory damages in an amount not less than the time-price differential plus ten percent (10%) of the cash price of the vehicle.

163. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

ELEVENTH CLAIM FOR RELIEF

Violations of N.C.G.S. §75-50 et seq. the North Carolina Debt Collection Act

164. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

165. Defendant RMG constitutes a "debt collector" under Article 2 of Chapter 75 of the North Carolina General Statutes as interpreted by the courts of North Carolina.

166. Plaintiff's sales agreement evidences an agreement to pay which constitutes a "debt" under Article 2 of Chapter 75 of the North Carolina General Statutes as interpreted by the courts of North Carolina.
167. In violation of N.C.G.S. §75-51(6) Defendant RMG falsely represented to Plaintiff that nonpayment of the debt could result in Defendant RMG legally and contractually repossessing the vehicle.
168. In violation of N.C.G.S. §75-51(8) Defendant RMG falsely represented to Plaintiff that Defendant RMG had the right legally and contractually repossessing the vehicle.
169. In violation of N.C.G.S. §75-54(6) Defendant RMG falsely threatened to Plaintiff that Defendant RMG could take each of the following actions: repossess the vehicle, assess repossession charges, assess finance charges, and assess late charges.
170. In violation of N.C.G.S. §75-55(2) Defendant RMG collected and attempted to collect from Plaintiff interest, late fees, and repossession fees without being legally entitled to collect such fees.
171. Defendant RMG's actions as set forth above are in violation of Article 2 of Chapter 75 of the North Carolina General Statutes and have caused the Plaintiff actual damages in an amount to be determined at trial.
172. Defendant's actions also entitle the Plaintiff to an award of statutory civil penalties and damages pursuant to N.C.G.S. § 75-56.

173. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

TWELTH CLAIM FOR RELIEF
Unfair and Deceptive Trade Practices

174. Plaintiff incorporates by reference the facts and allegations contained in all preceding paragraphs as though fully set forth herein.

175. The North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”) provides that “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce are declared unlawful.” N.C. Gen. Stat. § 75-1.1(a).

176. Defendant RMG’s representations to Plaintiff, acts, omissions, and practices set forth herein are unfair and deceptive and thus violate the UDTPA.

177. Defendant RMG violated the provisions of Chapters 75 and the UDTPA by virtue of the following statements, acts, omissions, and practices:

- a. misrepresenting to Plaintiff that the vehicle was not a salvage vehicle;
- b. failing to disclose to Plaintiff the fact the vehicle was a salvage vehicle;
- c. misrepresenting that the vehicle had not been involved in a collision to the extent that the cost to repair exceeded 25% of the vehicle’s value at the time of the collision;
- d. violating 15 U.S.C. 1231 and 16 C.F.R. Part 455 (FTC Used Car Rule) by failing to provide Plaintiff with a Buyer’s Guide for the vehicle;
- e. violating N.C.G.S. § 25-2-201(1) by failing to have a written security instrument or security agreement pertaining

- f. to the vehicle yet repossessing the vehicle and otherwise representing it had the right to repossess the vehicle;
- f. engaging in deceit, misrepresentation, and lack of good faith and fair dealing in selling the vehicle to Plaintiff;
- g. violating N.C.G.S. § 20-59 by failing to surrender the vehicle's Certificate of Title to Plaintiff;
- h. violating N.C.G.S. § 20-58.4 by failing to release the purported security interest on the vehicle;
- i. violating N.C.G.S. § 20-303 by failing to provide the Plaintiff with a written instrument evidencing a retail installment sale;
- j. repossessing the vehicle without having either a valid, enforceable security interest or other right to do so;
- k. knowingly and willfully failing to identify the Bill of Sale as a consumer credit document or otherwise clearly indicate on its face that it arose out of a consumer credit sale;
- l. knowingly and willfully charging and receiving late fees from Plaintiff which constitutes an unfair trade practice pursuant to N.C.G.S. §25A-44(4);
- m. knowingly and willfully charging and receiving finance charges from Plaintiff which constitutes an unfair trade practice pursuant to N.C.G.S. §25A-44(4);
- n. knowingly and willfully charging and receiving repossession fees from Plaintiff which constitutes an unfair trade practice pursuant to N.C.G.S. §25A-44(4);
- o. Other manners to be solicited in discovery and proven at trial.

178. Defendant RMG has a pattern and practice of not providing consumers with legally required and important transaction-related documents such as finance agreements, retail installment sales agreements, Damage Disclosure Statements, and Buyers Guides.

179. The conduct of the negotiation and sale of motor vehicles is a consumer transaction within the meaning of trade or commerce.

180. Defendant RMG's aforementioned actions and omissions, with respect to Plaintiff, offend established public policy and are unmoral, unethical, oppressive, or unscrupulous.

181. Defendant RMG's representations to Plaintiff and its acts, omissions, and practices set forth herein violate North Carolina law as illegal, unfair or deceptive acts or practices in the conduct of any trade or commerce because they are inherently deceptive.
182. Defendant RMG's representations to Plaintiff and its acts, omissions, and practices set forth herein proximately caused harm to Plaintiff, proximately caused harm to North Carolina consumers, were deceptive in their effect upon an average consumer, and caused damage to the Plaintiff.
183. Defendant RMG's representations to Plaintiff and its acts, omissions, and practices set forth herein had the capacity or tendency to deceive.
184. Plaintiff has suffered damages proximately caused by the conduct of Defendant RMG including, but not limited to, lost value of the vehicle in the amount of at least \$11,000.00, the cost of insurance premiums for the vehicle, expenses directly related to investigation of the history of the vehicle at \$10.00, and costs relating to inconvenience caused by the defendants' conduct at \$1,000.00. At this time the total amount of damages calculated is a minimum of \$12,010.00.
185. Based on Defendant RMG's violations of N.C. Gen. Stat. § 20-71.4(a) and N.C. Gen. Stat. § 20-348, Plaintiff is entitled to recover three times the amount of actual damages sustained or a minimum of \$36,030.00. Additionally Plaintiff is entitled to recover the costs of this action together with reasonable attorney fees.

186. Defendant Platte River is jointly and severally liable for Defendant RMG's actions and omissions pursuant to the terms of RMG's Motor Vehicle Dealer Surety Bond.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment for Plaintiff against Defendants, jointly and severally, for:

1. Award her actual damages based on RMG's conversion of the vehicle; and
2. Award her actual damages based on RMG's breach of contract and fraud; and
3. Pursuant to N.C.G.S. §25A-44(3), award her three times the sum of all late fees unlawfully collected from her by RMG; and
4. Pursuant to N.C.G.S. §25A-44(3), award her three times the sum of all finance charges unlawfully collected from her by RMG; and
5. Pursuant to N.C.G.S. §25A-44(3), award her three times the sum of all repossession fees and other fees unlawfully collected from her by RMG; and
6. Pursuant to N.C.G.S. §75-16, award her treble damages based on RMG's unfair and deceptive trade practices, which violated North Carolina General Statutes §75-1.1; OR
7. Pursuant to N.C.G.S. § 25-9-625(a), issue an Order requiring the immediate return of the vehicle to Plaintiff's possession and that RMG procure the removal of its lien from the Certificate of Title, and provide a full refund of all extra-contractual and illegal payments made by Plaintiff to RMG for the Vehicle; OR
8. In the alternative to Items 1 through 7, inclusive of this Prayer for Relief, that the Court enter judgment against Defendant RMG for:

- a. rescission of the sales contract;
- b. refund of all funds Plaintiff has paid thus far; and
- c. incidental and consequential damages; and
- d. costs and reasonable attorney fees pursuant to N.C.G.S. §§ 75-16.1 and 20-348; and

9. Issue an Order directing RMG to remove any and all negative credit references regarding the vehicle and any financial agreement entered into with Plaintiff regarding the same; and

10. Award Plaintiff the costs of suit, including any discretionary costs as may be allowable; and

11. Award the Plaintiff pre-judgment and post-judgment interest; and

12. Award the Plaintiff attorney's fees; and

13. Award such other and further relief as the Court deems just and proper under the circumstances.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

This the _____ day of August, 2012.

John T. O'Neal--O'Neal Law Office
Attorney for Plaintiff
N.C. State Bar #: 23446
7 Battleground Court
Suite 212
Greensboro, North Carolina 27408
Phone: (336) 510-7904
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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF GUILFORD

MARTHA A. WILLIAMS,

Plaintiff,

v.

WALTER L. BROWER, d/b/a RMG
MOTORSPORTS, and PLATTE RIVER
INSURANCE COMPANY,

Defendants.

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
DEFENDANT RMG MOTORSPORTS**

Plaintiff herewith serves upon you the following written Interrogatories and Requests for Production of Documents pursuant to Rule 33 and 34 of the North Carolina Rules of Civil Procedure. You are required to have these Interrogatories and Requests answered separately and fully in writing under oath and to serve a copy of your answers on the undersigned within 45 days after service hereof.

These Interrogatories and Requests shall be continuing in nature until the date of trial and you are required to serve supplemental answers as additional information may become available to you as required by Rule 26 of the Rules of Civil Procedure.

Definitions

1. "You" as used herein refers to Walter L. Brower d/b/a RMG Motorsports (hereinafter "RMG") the defendant answering these Interrogatories and Requests. "Plaintiff(s)" as used herein refers to Valerie J. Smith, the plaintiff(s) identified in the Complaint.
2. The "Vehicle" as used herein refers to the 2007 Honda Accord motor vehicle identified in the Complaint and ending in vehicle identification number 1879.
3. To "identify" a person, whether a natural person or a business entity, means to state his or its full name and present or last known business and home telephone number, present or last known business and home address, and present and last known business affiliation.

4. As used herein, the terms “document” and “documentation” mean the original or any “hard copy” or electronically stored data in any medium, and any nonidentical copy (which is different from the original or any copy because of notations thereon or attached thereto or otherwise) or any written, recorded, computer input or printout, printed, typewritten, or handwritten matter however produced, reproduced or recorded, which is or was at any time in your possession or custody or subject to your control. This includes electronic mail messages and text messages. Without limitation, as used in this definition, a document is deemed to be or to have been in your “control” if you have or had the right to secure the document or copy thereof from another person or entity having actual physical possession thereof.
5. To “identify” a document means to state with respect thereto: (a) the nature of the document (e.g., letter, contract, etc.); (b) its date, or if it bears no date, the date when it was prepared or received; (c) the name and address of its author, each signatory, or person over whose name it was issued; (d) the names and addresses of all persons and entities (e.g., businesses, governmental agencies, etc.) to whom the document was addressed or distributed; (e) its physical location and address, and the name of its custodian or custodians; (f) the general subject matter of the document with sufficient particularity to enable it to be identified; (g) if the document was, but is no longer, in your possession or subject to your control (e.g., because lost, destroyed, transmitted to another person, etc.), state what disposition was made of it, the date of such disposition, and the reason for such disposition; and (h) whether it will be voluntarily made available to Plaintiff(s) for inspection and copying.
6. “Person” includes a natural person, firm, association, organization, partnership, business, trust, corporation or public entity.
7. “Oral Statement” means and includes any face to face communication, conversation, meeting, conference, or any such communication by telephone, radio, or other means of communication.
8. In any case where you are asked to “identify” an “oral statement” or where your answer to the interrogatory refers to the “identity” of an oral statement, this is a request to give the identity of the person who made the statement and the persons hearing the statement, and the date, time, and place of occurrence, and to briefly describe the content of the statement.
9. “State in full detail” means to set out in the fullest detail possible all knowledge or information available to you on the subject.
10. All references to the “Transaction” refer to the Plaintiff’s June 30, 2009 purchase of the vehicle that is the subject of this action.

INTERROGATORIES

1. State the name, title and, if the person is no longer employed by you, home address and telephone number of each person in your employ who, in any manner, participated in the Transaction. This Interrogatory includes, but not limited to, individuals who notarized any documents pertaining to the Transaction, who assisted in the sale, purchase, or acquisition of the Vehicle that is the subject of the Transaction, and who handled any aspect of the Transaction at any time.

ANSWER:

2. For each person identified in answer to Interrogatory No. 1, explain fully such person's participation in the Transaction.

ANSWER:

3. Identify and describe each document signed by Plaintiff(s) in connection with the Transaction. For each such document, state:
 - a. the substance of the document;
 - b. the name of the person who prepared the document; and
 - c. the date and location at which the document was signed.
 - d. the date on which the document was first provided to Plaintiff(s).

ANSWER:

4. Identify and describe each document signed or prepared by any of your employees in connection with the Transaction including, but not limited to, the "deal recap sheet", "deal summary", "accounting deal checklist", or any other accounting document summarizing the profit or loss generated by the sale of the Vehicle. For each such document, state:

- a. the substance of the document;
- b. the name of the person who prepared the document; and
- c. the date the document was prepared.
- d. the date and location at which the document was signed.
- e. the date one which the document was first provided to Plaintiff(s), if at all.

ANSWER:

5. Was the vehicle inspected by you, your employees or agents prior to or after its sale to Plaintiff(s)? If so:
 - a. state the name of each individual who conducted the inspection(s);
 - b. state the date upon which each inspection occurred; and
 - c. identify each document (by date, substance and author) generated by the inspection.

ANSWER:

6. Identify and describe any and all repairs to the Vehicle performed by your employees or agents, before or after its sale to Plaintiff(s). In your response, please include following:
 - a. the nature of the repair(s) performed;
 - b. the date upon which such repair(s) were performed;

- c. the name and current work address and phone number of the individual(s) who performed the repairs;
- d. the cost to you to have such repairs performed; and
- e. identification of each document (by date, substance and author) generated by the repair(s).

ANSWER:

7. Did you obtain a title history to the Vehicle (from the North Carolina Department of Motor Vehicles or any other state motor vehicle bureau), “Vanguard”, CarFax, Autocheck or similar report (from CCC Information Services, Inc. or any other database provider of insurance claim information) relating to the Vehicle prior to its sale to Plaintiff(s)? If yes, for each such report please state the type of report obtained and the date on which it was obtained.

ANSWER:

8. If you allege that you provided any disclosure relating to the condition and/or accident and/or salvage history of the vehicle to Plaintiff(s) prior to, or upon consummation of, the transaction, state with specificity what was disclosed. For each such disclosure:
- a. state the substance of the disclosure;
 - b. state the name of the individual who made the disclosure and the location at which the disclosure was made; and
 - c. identify each document (by date, substance and author) evidencing such disclosure.

ANSWER:

9. Identify and describe all work sheets, notes, records, memoranda and any other document reflecting your calculations as to retail pricing of the Vehicle for sale. For each such document, state:
- a. the substance of the document;
 - b. the name of the person who prepared the document; and
 - c. the date the document was prepared.

ANSWER:

10. Identify and describe all documents not mentioned above which were included, at one time or another, in your “deal file” in connection with Plaintiff(s)’ purchase of the Vehicle, and which were prepared or signed by any of your employees in connection with the sale of the Vehicle. For each such document state:
- a. the substance of the document;
 - b. the name of the person who prepared the document; and
 - c. the date the document was prepared.

ANSWER:

11. Identify any experts you may call as witnesses in this case, and for each such expert state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

ANSWER:

12. State the name, title and work address of each person who assisted or participated in preparing and/or supplying any of the information given in answer to, or relied upon, in preparing answers to these interrogatories.

ANSWER:

13. Identify any insurance policies which you contend may cover any of the damages sought in the Complaint in this case, and state the date on which each relevant insurer was notified of the claims.

ANSWER:

14. State the date in 2012 that you obtained physical possession of the vehicle and the person or business entity you retained to repossess the vehicle from the Plaintiff.

ANSWER:

15. State the exact physical location of the vehicle as of the date of your answering these interrogatories. To the extent the vehicle is not located on property owned or rented by you, provide the full name, address and phone number of the person(s) on whose property the vehicle is located.

ANSWER:

16. State the full name, physical address and phone number for each person to whom you have given possession of the vehicle since repossessing it from the Plaintiff in August 2012. "Possession" here is defined to including providing another person keys to the vehicle or otherwise providing another person permission, express or implied, to use the vehicle. If the possession was pursuant to a lease or sale of the vehicle, state this.

ANSWER:

17. State the full name, physical address and phone number for the registered owner(s) of the vehicle as of the date of your response to this Interrogatory.

ANSWER:

FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents identified in response to Interrogatory No. 3.

RESPONSE:

2. All documents identified in response to Interrogatory No. 4.

RESPONSE:

3. All documents identified in response to Interrogatory No. 5.

RESPONSE:

4. All documents identified in response to Interrogatory No. 6.

RESPONSE:

5. All documents identified in response to Interrogatory No. 7.

RESPONSE:

6. All documents identified in response to Interrogatory No. 8.

RESPONSE:

7. All documents identified in response to Interrogatory No. 9.

RESPONSE:

8. All documents identified in response to Interrogatory No. 10.

RESPONSE:

9. Produce a copy of all documentation you have filed with the North Carolina Department of Motor Vehicles related to the vehicle since June 30, 2009. This includes but is not limited to all Certificates of Repossession and Certificates of Title.

RESPONSE:

10. Produce a complete certified copy of all insurance policies, surety contracts, bonds, or other agreements that may provide coverage for you regarding any of the causes of action/counts in the Complaint in this civil action. For each such document provided please provide the following: Declarations Page(s), full policy language, addenda, riders, amendments, endorsements, and conditions thereto for insurance which covers or may cover the liability and/or damages for the incident which is the subject of the above-captioned civil action. This request is made pursuant to the authority under NC Civil Procedure Rules 26(b)(2) and 26(e)(3). NOTE: This request seeks information about all applicable policies including but not limited to policies for primary coverage, supplemental coverage, secondary coverage, excess coverage, umbrella policies, general liability, specific liability, and re-insurance.

RESPONSE:

This the ___ day of August, 2012.

Attorney for Plaintiff
John T. O'Neal
O'Neal Law Office
7 Battleground Court, Suite 212
Greensboro, NC 27408
Phone: (336) 510-7904

Fax: (336) 510-7965

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 8697

MARTHA A. WILLIAMS,

Plaintiff,

v.

WALTER L. BROWER, d/b/a RMG
MOTORSPORTS, and PLATTE RIVER
INSURANCE COMPANY,

Defendants.

PLAINTIFF'S FIRST SET OF REQUESTS FOR
ADMISSIONS OF FACT TO DEFENDANT
WALTER L. BROWER d/b/a RMG
MOTORSPORTS

TO: Rufus Farrior, Esq.
Farrior & Associates
P.O. Box 20343
Greensboro, NC 27420
Counsel for Defendant Walter L. Brower d/b/a RMG Motorsports

These Requests for Admissions of Fact are served upon you pursuant to the provisions of Rules 26, 33, and 36 of the North Carolina Rules of Civil Procedure. You are required to respond to these Request for Admissions of Fact in writing and to serve a copy of your responses on the undersigned within 33 days after service hereof. Pursuant to the requirements of Rule 36, Defendant is required to admit, deny, or set forth the reasons why it cannot truthfully admit or deny the following matters. These Request for Admissions of Fact shall be deemed continuing so as to require supplemental production up to the time of trial in accordance with G.S. § 1A-1, Rule 26.

PLEASE TAKE NOTICE that any Request for Admissions of Fact that is not specifically denied shall be deemed admitted. Further, if you fail to admit any of the matters requested herein, the Plaintiff shall apply to the Court for an Order requiring you to pay all of its reasonable expenses incurred in making the proof of matters denied, including its reasonable attorney's fees, pursuant to the provisions of Rules 37(a)(4) and (c) of the North Carolina Rules of Civil Procedure.

DEFINITIONS

For purposes of this request for admissions, the word and phrases listed below shall be denied and construed as follows:

A. The term "Plaintiff" shall mean Martha A. Williams, formerly known as Martha A. Zelada, who is the Plaintiff in the above-captioned civil action.

B. The terms "writing" or "written" are intended to include, without limitation, the following: handwriting, typewriting, printing, photographing, computer printouts and every other means of recording on any tangible thing or media any form of communications, including letters, words, pictures, sounds or symbols or combinations thereof. It further includes any oral communications, not privileged, later reduced to writing or confirmed by letter;

C. The terms "document" or "documents" are intended to include, without limitation, the following: files, notes, memoranda, correspondence or letters of any kind, intradepartment or office communications, written statements or reports, whether signed or unsigned, recorded or taped interviews or statements, maps, plats, photographs, moving or still pictures, diagrams, plans, drawings, specifications, measurements, or other descriptions, agreements, contracts, records, electronic mail messages or computer printouts;

D. "You", "your", "yourself" or "defendant" as used herein refers to Defendant Walter L. Brower d/b/a RMG Motorsports and any agents or representatives thereof including but not limited to Ms. Iris Fewell;

E. When a Request refers to "the vehicle" it is referring to the 2007 Honda Accord motor vehicle bearing vehicle identification number JHMCN36557C001879 that you sold to the Plaintiff on or about June 30, 2009.

F. "Transaction", "vehicle transaction", or "vehicle purchase" means the sales transaction in which Plaintiff paid money and signed documents in exchange for the Defendant's delivery of the motor vehicle identified in the Complaint to this action.

G. To the extent that you claim privilege in response to a Request, you should specifically state the nature of the privilege or objection to the response. The privilege or objection should be specific enough so as to be properly argued in a Motion to Compel or subsequent discovery hearing.

MATTERS REQUESTED TO BE ADMITTED

1. You possess no document signed by the Plaintiff which allows you to assess Plaintiff late fees on vehicle payments.

ANSWER:

2. You possess no document signed by the Plaintiff which allows you to assess interest on vehicle payments.

ANSWER:

3. You possess no document signed by the Plaintiff which allows you to collect repossession fees.

ANSWER:

4. You possess no document signed by the Plaintiff which allows you to collect late fees on vehicle payments.

ANSWER:

5. You possess no document signed by the Plaintiff which allows you to collect finance charges on vehicle payments.

ANSWER:

6. You possess no document signed by the Plaintiff which requires Plaintiff to pay any penalty on any past due payments.

ANSWER:

7. You possess no document signed by the Plaintiff which allows you to assess any penalty on any past due vehicle payments.

ANSWER:

8. You possess no document signed by the Plaintiff which allows you to collect any penalty on any past due payments.

ANSWER:

9. You possess no document showing that on June 30, 2009 you provided the Plaintiff written notice of the annual percentage rate assessed on her purchase of the vehicle.

ANSWER:

10. You possess no document signed by Plaintiff showing that on June 30, 2009 you provided the Plaintiff written notice of the annual percentage rate assessed on her purchase of the vehicle.

ANSWER:

11. You possess no document showing that on June 30, 2009 you provided the Plaintiff written notice of the finance charge assessed on her purchase of the vehicle.

ANSWER:

12. You possess no document signed by Plaintiff showing that on June 30, 2009 you provided the Plaintiff written notice of the finance charge assessed on her purchase of the vehicle.

ANSWER:

13. You possess no document showing that on June 30, 2009 you provided the Plaintiff written notice of the total number of scheduled payments to be made by Plaintiff.

ANSWER:

14. You possess no document signed by Plaintiff showing that on June 30, 2009 you provided the Plaintiff written notice of the scheduled payments to be made by Plaintiff.

ANSWER:

15. You possess no document showing that on June 30, 2009 you provided the Plaintiff written notice of the total amount of money to be paid by Plaintiff to you for the vehicle.

ANSWER:

16. You possess no document signed by Plaintiff showing that on June 30, 2009 you provided the Plaintiff written notice of total amount of money to be paid by Plaintiff to you for the vehicle.

ANSWER:

17. You possess no document showing that on June 30, 2009 you provided the Plaintiff written notice of the total number of scheduled payments to be made by Plaintiff.

ANSWER:

18. You possess no document signed by Plaintiff showing that at any time after June 30, 2009 you provided the Plaintiff written notice of the annual percentage rate assessed on her purchase of the vehicle.

ANSWER:

19. You possess no document signed by Plaintiff showing that at any time after June 30, 2009 you provided the Plaintiff written notice of the finance charge assessed on her purchase of the vehicle.

ANSWER:

20. You possess no document signed by Plaintiff showing that at any time after June 30, 2009 you provided the Plaintiff written notice of the scheduled payments to be made by Plaintiff.

ANSWER:

21. You possess no document signed by Plaintiff showing that at any time after June 30, 2009 you provided the Plaintiff written notice of total amount of money to be paid by Plaintiff to you for the vehicle.

ANSWER:

22. You have never provided Plaintiff any written documentation informing her of a right to rescind the agreement to purchase the vehicle.

ANSWER:

23. In early 2011 one of your employees demanded Plaintiff pay you a \$50 late fee.

ANSWER:

24. Plaintiff paid you a \$50.00 late fee in 2011.

ANSWER:

25. Your collection of the \$50.00 late fee in early 2011 from Plaintiff violated N.C.G.S. § 25A-29.

ANSWER:

26. In March 2012 you repossessed the vehicle from Plaintiff.

ANSWER:

27. In March 2012 you demanded Plaintiff pay you a repossession fee of \$350.00.

ANSWER:

28. In March 2012 Plaintiff paid you the repossession fee of \$350.00 that you had demanded.

ANSWER:

29. Your collection of the \$350.00 repossession fee in March 2012 from Plaintiff violated N.C.G.S. § 25A-29.

ANSWER:

30. In March 2012 you would not have returned the vehicle to Plaintiff if Plaintiff failed to the repossession fee you assessed.

ANSWER:

31. In March 2012 you demanded Plaintiff pay you a late fee of \$6.00.

ANSWER:

32. In March 2012 Plaintiff paid you the late fee of \$6.00 that you had demanded.

ANSWER:

33. Your collection of the late fee of \$6.00 in March 2012 from Plaintiff violated N.C.G.S. § 25A-29.

ANSWER:

34. In March 2012 you would not have returned the vehicle to Plaintiff if Plaintiff failed to pay the \$6.00 late fee you assessed.

ANSWER:

35. In March 2012 you required Plaintiff to sign a Right of Repossession document.

ANSWER:

36. You told Plaintiff if she failed to sign the Right of Repossession document you would not return her vehicle.

ANSWER:

37. Plaintiff demanded a detailed and full written accounting of her vehicle payment

history prior to the filing of the current lawsuit.

ANSWER:

38. You failed to provide Plaintiff with a detailed and full written accounting of her vehicle payment history prior to the filing of the current lawsuit.

ANSWER:

39. You and the Plaintiff failed to enter into any signed agreement stating the number of payments she was to make to you for the vehicle.

ANSWER:

40. You and the Plaintiff failed to enter into any signed agreement regarding the monetary amount of recurring payments she was to make to you for the vehicle.

ANSWER:

41. You and the Plaintiff failed to enter into any signed agreement regarding a method of determining finance charges to be assessed for Plaintiff's purchase of the vehicle.

ANSWER:

42. You and the Plaintiff failed to enter into any signed agreement stating Plaintiff's obligation to make recurring payments on a certain date of the month.

ANSWER:

43. Your taking adverse action against the Plaintiff related to failure to make recurring payments to you for the vehicle violates 15 U.S.C. 1602(u).

ANSWER:

44. Your taking adverse action against the Plaintiff related to failure to pay finance charges to you for the vehicle violates 15 U.S.C. 1602(u).

ANSWER:

45. An officer with the North Carolina Division of Motor Vehicles License and Theft Department demanded a copy of a written finance agreement, between you and the Plaintiff, prior to the filing of the current lawsuit.

ANSWER:

46. You failed to provide the North Carolina Division of Motor Vehicles License and Theft Department with a copy of a written finance agreement, between you and the Plaintiff, prior to the filing of the current lawsuit.

ANSWER:

47. As of the date of your response to this Request for Admission of Fact you have failed to provide the North Carolina Division of Motor Vehicles License and Theft Department with a copy of a written finance agreement, between you and the Plaintiff.

ANSWER:

48. You do not possess a written finance agreement between you and the Plaintiff.

ANSWER:

49. Plaintiff did not execute a Finance Agreement as part of the vehicle transaction.

ANSWER:

50. The Retail Installment Contract regarding the transaction does not bear Plaintiff's signature.

ANSWER:

51. The Retail Installment Contract for the transaction is not dated June 30, 2009.

ANSWER:

52. The Retail Installment Contract for the transaction was not created on June 30, 2009.

ANSWER:

53. Plaintiff did not execute a Retail Installment Sales Contract as part of the vehicle transaction.

ANSWER:

54. The Detailed Customer Listing provided by you during the litigation of this case purports to summarize certain details of the vehicle transaction.

ANSWER:

55. The Detailed Customer Listing provided by you during the litigation of this case does not bear a signature by Plaintiff.

ANSWER:

56. The Detailed Customer Listing provided by you during the litigation of this case does not bear any written endorsement by Plaintiff.

ANSWER:

57. The Detailed Customer Listing provided by you during the litigation of this case is insufficient to meet the disclosure requirements of the Truth in Lending Act.

ANSWER:

58. You provided a warranty on the vehicle purchased by Plaintiff.

ANSWER:

59. The terms of the warranty on the vehicle purchased by Plaintiff are handwritten on the “As Is - Sold Without Warranty” document you had Plaintiff sign.

ANSWER:

60. The Buyers Guide document you provided Plaintiff for the vehicle indicated the vehicle was being sold “As Is – No Warranty.”

ANSWER:

61. You failed to provide Plaintiff with a copy of the Buyers Guide document for the vehicle.

ANSWER:

62. The “window form” you refer to in the Bill of Sale for the vehicle is the Buyers Guide document for the vehicle purchased by Plaintiff.

ANSWER:

63. The Damage Disclosure Statement you contend was signed by the Plaintiff is undated.

ANSWER:

64. The Damage Disclosure Statement you contend was signed by the Plaintiff states the vehicle had been involved in a collision or other occurrence to the extent the cost to repair exceeded 25% of the fair market retail value.

ANSWER:

65. The Damage Disclosure Statement you contend was signed by the Plaintiff states the vehicle had been a salvage vehicle.

ANSWER:

66. You failed to provide the Plaintiff with a copy of a Damage Disclosure Statement for the vehicle.

ANSWER:

67. You completed the MVR-2 "Dealer's Reassignment of Title to a Motor Vehicle" form for the vehicle in conjunction with Plaintiff's transaction.

ANSWER:

68. You signed Plaintiff's name to the MVR-2 "Dealer's Reassignment of Title to a Motor Vehicle" form for the vehicle in conjunction with Plaintiff's transaction.

ANSWER:

69. Plaintiff did not sign the MVR-2 "Dealer's Reassignment of Title to a Motor Vehicle" form for the vehicle in conjunction with Plaintiff's transaction.

ANSWER:

70. On the MVR-2 "Dealer's Reassignment of Title to a Motor Vehicle" form for the vehicle in conjunction with Plaintiff's transaction, you asserted the vehicle had not been involved in a collision or other occurrence to the extent the cost to repair exceeded 25% of the fair market retail value.

ANSWER:

71. At the time you asserted the vehicle had not been involved in a collision or other occurrence to the extent the cost to repair exceeded 25% of the fair market retail value, you knew the assertion was false.

ANSWER:

72. At the time you asserted the vehicle had not been involved in a collision or other occurrence to the extent the cost to repair exceeded 25% of the fair market retail value, you had reason to know the assertion was false.

ANSWER:

73. On the MVR-2 "Dealer's Reassignment of Title to a Motor Vehicle" form for the vehicle in conjunction with Plaintiff's transaction, you asserted the vehicle had not been a salvage vehicle.

ANSWER:

74. At the time you asserted the vehicle sold to the Plaintiff had not been a salvage vehicle, you knew the assertion was false.

ANSWER:

75. At the time you asserted the vehicle sold to the Plaintiff had not been a salvage vehicle, you had reason to know the assertion was false.

ANSWER:

76. At the time you asserted the vehicle sold to the Plaintiff had not been a salvage vehicle, you had reason to know the assertion was false.

ANSWER:

77. You first acquired the vehicle on or about May 14, 2009.

ANSWER:

78. You first acquired the vehicle from McCray's Auto Sales located in Pilot Mountain, North Carolina.

ANSWER:

79. When you acquired the vehicle you had actual knowledge the vehicle possessed a Salvage Certificate of Title.

ANSWER:

80. Walter Brower acquired the vehicle from McCray's Auto Sales.

ANSWER:

81. Your acquisition of the vehicle included Walter Brower signing a Salvage Certificate of Title.

ANSWER:

82. You had reason to know the vehicle was a salvage vehicle prior to your transaction with Plaintiff.

ANSWER:

83. Walter Brower acquired the vehicle from McCray's Auto Sales.

ANSWER:

84. You repossessed the Plaintiff's vehicle on or about August 7, 2012.

ANSWER:

85. At the time you repossessed the Plaintiff's vehicle on or about August 7, 2012 you did not possess a finance contract bearing Plaintiff's signature.

ANSWER:

86. At the time you repossessed the Plaintiff's vehicle on or about August 7, 2012 you did not provide your recovery agent with any finance contract bearing Plaintiff's signature.

ANSWER:

87. At the time you prepared the MVR-4 form, Certificate of Repossession, dated August 7, 2012 you did not have the legal right to repossess the vehicle.

ANSWER:

88. You have not returned the vehicle to the Plaintiff since the August 7, 2012 repossession.

ANSWER:

89. After your August 7, 2012 repossession of the vehicle you failed to provide Plaintiff with any written notice of your intent to sell the vehicle.

ANSWER:

90. After your August 7, 2012 repossession of the vehicle you failed to provide Plaintiff with any written notice of sale of the vehicle.

ANSWER:

91. After your August 7, 2012 repossession of the vehicle you failed to provide Plaintiff with any notice of your intent to sell the vehicle.

ANSWER:

92. After your August 7, 2012 repossession of the vehicle you failed to provide Plaintiff with any notice of sale of the vehicle.

ANSWER:

93. As of the date of your response to this Request for Admission of Fact you have not made any claim against Plaintiff for monetary payment of any vehicle loan

deficiency.

ANSWER:

94. As of the date of your response to this Request for Admission of Fact you have not provided Plaintiff with any written notice of any alleged vehicle loan deficiency.

ANSWER:

95. After your August 7, 2012 repossession of the vehicle you sold the vehicle.

ANSWER:

96. After your August 7, 2012 repossession of the vehicle you sold the vehicle to a Mr. Russell Martin.

ANSWER:

97. As of the date of your response to this Request for Admission of Fact you have not provided Plaintiff with any written information regarding the amount of monetary proceeds recovered by you upon your sale of the vehicle.

ANSWER:

98. As of the date of your response to this Request for Admission of Fact you have not provided Plaintiff with any written information regarding the application of monetary proceeds recovered by you upon your sale of the vehicle.

ANSWER:

99. As of August 1, 2012, Plaintiff had paid a total sum of \$14,406.00 in monthly payments and late fees to RMG for the vehicle.

ANSWER:

100. As of August 1, 2012, Plaintiff was current on her vehicle loan obligation and was not in default.

ANSWER:

101. As of August 1, 2012, Plaintiff had paid all monies which she was contractually obligated to pay to RMG to purchase the vehicle.

ANSWER:

102. As of August 1, 2012, RMG was contractually obligated to take all appropriate steps and execute all documents necessary to remove it's lien from the vehicle's Certificate of Title so that Plaintiff would be the lone titled owner of the vehicle.

ANSWER:

103. As of August 1, 2012, RMG had not provided Plaintiff with a copy of any retail installment sales agreement or finance agreement for the vehicle.

ANSWER:

104. You are a "Seller" as defined in N.C.G.S. § 25-2-103.

ANSWER:

105. As of June 30, 2009, you, in the ordinary course of your business, regularly extended or arranged for the extension of credit.

ANSWER:

106. Plaintiff's purchase of the Vehicle constituted a "consumer credit sale" within the meaning of N.C.G.S. § 25A-2.

ANSWER:

107. As of June 30, 2009, you regularly extended, in connection sales of property, consumer credit which was payable by agreement in more than four installments or for which the payment of a finance charge is or may be required.

ANSWER:

108. With respect to Plaintiff's transaction you were the entity to whom the debt arising from consumer credit transaction was initially payable by agreement.

ANSWER:

109. The vehicle transaction constituted the "sale of goods" under the North Carolina Uniform Commercial Code.

ANSWER:

110. The vehicle constituted a "vehicle" under the Federal Trade Commission Act.

ANSWER:

111. The vehicle transaction constituted "commerce" under the Federal Trade Commission Act.

ANSWER:

112. The vehicle constituted a "used vehicle" under the Federal Trade Commission Act.

ANSWER:

113. You constitute a "dealer" under the Federal Trade Commission Act.

ANSWER:

114. From the period of June 30, 2008 to June 30, 2009, inclusive, you offered for sale at least five used vehicles.

ANSWER:

115. From the period of June 30, 2008 to June 30, 2009, inclusive, you sold at least five used vehicles.

ANSWER:

116. As of the date of your response to this Request for Admission of Fact you possess the license plate Plaintiff obtained for the vehicle.

ANSWER:

117. As of the date of your response to this Request for Admission of Fact you possess Plaintiff's personal belongings she left in the vehicle at the time you had the vehicle repossessed.

ANSWER:

118. You have never filed paperwork with the North Carolina Division of Motor Vehicles to release your purported security interest against a vehicle Certificate of Title bearing Plaintiff's name.

ANSWER:

119. The Bill of Sale you created in conjunction with the transaction with Plaintiff lacked any statement of potential finance charges.

ANSWER:

120. The Bill of Sale you created in conjunction with the transaction with Plaintiff lacked any statement of potential late fees.

ANSWER:

121. The Bill of Sale you created in conjunction with the transaction with Plaintiff lacked any statement of potential repossession fees.

ANSWER:

122. The Bill of Sale you created in conjunction with the transaction with Plaintiff is insufficient to create a security interest in your favor in the vehicle.

ANSWER:

123. The Motor Vehicle Dealer's Surety Bond you had with Defendant Platte River Insurance Company at the time of the transaction with Plaintiff was cancelled by Platte River Insurance Company, effective April 2, 2010.

ANSWER:

124. After Defendant Platte River Insurance Company cancelled its Motor Vehicle Dealer's Surety Bond with you, effective April 2, 2010, you secured a bond with another entity.

ANSWER:

125. Admit that in March 2012 when you repossessed the vehicle from Plaintiff you did not have a corporate surety bond as required by N.C.G.S. § 20-288(e).

ANSWER:

126. Admit that on May 2, 2011 you did not have a corporate surety bond as required by N.C.G.S. § 20-288(e).

ANSWER:

127. Admit that on August 7, 2012 you did not have a corporate surety bond as required by N.C.G.S. § 20-288(e).

ANSWER:

128. Admit that on the date you sold the vehicle to Mr. Russell Martin you did not have a corporate surety bond as required by N.C.G.S. § 20-288(e).

ANSWER:

129. As of the date of your response to this Request for Admission of Fact, you have failed to provide Plaintiff's counsel with any information regarding the existence of any Motor Vehicle Dealer's Surety Bond held by you after April 2, 2010.

ANSWER:

130. As of the date of your response to this Request for Admission of Fact, you have failed to provide Plaintiff's counsel with the document you purport is the sales agreement between you and Plaintiff.

ANSWER:

This the _____ day of December, 2012.

John T. O'Neal-Attorney for Plaintiff
O'Neal Law Office
7 Battleground Court, Suite 212
Greensboro, NC 27408
Phone: (336) 510-7904
Fax: (336) 510-7965

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CvS 8697

MARTHA A. WILLIAMS,

Plaintiff,

v.

WALTER L. BROWER, d/b/a RMG
MOTORSPORTS,

Defendant.

PLAINTIFF'S REQUEST FOR JURY
INSTRUCTIONS

PLAINTIFF requests the Court, pursuant to Rule 51(b) of the North Carolina Rules of Civil Procedure, to instruct the jury as follows from the North Carolina Pattern Jury Instructions for Civil Cases (N.C.P.I. Civil):

101.30---Testimony of Interested Witness
101.35---Impeachment of Witness by Prior Inconsistent Statement
101.40---Illustrative and Substantive Evidence
101.41---Stipulations
101.42---Requests for Admission
101.45---Circumstantial Evidence
101.62---Presumptions
800.00---Fraud
800.07---Fraud--Damages
806.00---Conversion
806.05---Conversion--Damages
813.05--Model Unfair or Deceptive Trade Practice Charge (see Plaintiff's contentions of violations by Defendant)
813.21--Trade Regulation - Violation - Issue of Unfair Methods of Competition and Unfair or Deceptive Acts or Practices
813.62--Trade Regulation - Commerce - Unfair and Deceptive Methods of Competition and Unfair or Deceptive Acts or Practices
813.70--Trade Regulation - Proximate Cause - Issue of Proximate Cause
813.80--Trade Regulation-Damages-Issue of Damages.

Additionally Plaintiff seeks the following specially-requested instructions be provided to the jury:

1. North Carolina Debt Collection Act.

2. North Carolina Retail Installment Sales Act.
3. Duty to disclose salvage condition or brand.
4. Explanation of salvage, total loss, and branding of vehicle Certificate of Title

The proposed language of the specially-requested instruction is attached to this Request for Jury Instructions.

This the 10th day of June, 2013.

Attorney for Plaintiff
John T. O'Neal--O'Neal Law Office
7 Battleground Court, Suite 212
Greensboro, NC 27408
Phone: (336) 510-7904
Fax: (336) 510-7965

N.C.P.I. Civil 813.05. Model Unfair or Deceptive Trade Practice Charge

Did the defendant do at least one of the following:

- (1) conceal the salvage brand on the vehicle's Certificate of Title from Plaintiff;
- (2) fail to inform the plaintiff that the automobile was a salvage vehicle;
- (3) fail to disclose to Plaintiff the fact the vehicle had been involved in a collision to the extent that the cost to repair exceeded 25% of the vehicle's value at the time of the collision;
- (4) engage in deceit, misrepresentation, and lack of good faith and fair dealing in selling the vehicle to Plaintiff;
- (5) violate N.C.G.S. § 20-303 by failing to provide the Plaintiff with a written instrument evidencing a retail installment sale;
- (6) at the time of the June 30, 2009 vehicle transaction fail to deliver to the Plaintiff a written statement describing clearly the cash sale price;
- (7) at the time of the June 30, 2009 vehicle transaction fail to deliver to the Plaintiff a written statement describing the amount of the finance charge;
- (8) at the time of the June 30, 2009 vehicle transaction fail to deliver to the Plaintiff a written statement describing clearly the purpose of any non-finance charges;
- (9) at the time of the June 30, 2009 vehicle transaction fail to deliver to the Plaintiff a written statement describing clearly the terms of the payment of the net balance due from Plaintiff;
- (10) at the time of the June 30, 2009 vehicle transaction between the parties did the Defendant fail to procure Plaintiff's signature on a written statement containing the agreements of the parties regarding the payment and finance terms;
- (11) repossess the vehicle from Plaintiff on August 8, 2012 without having a valid finance agreement pertaining to the vehicle.

North Carolina Debt Collection Act

The (state number) issue reads:

"Did the Defendant violate the North Carolina Debt Collection Act?"

On this issue the burden of proof is on the Plaintiff. This means that the Plaintiff must prove, by the greater weight of the evidence, six things:

First, the obligation owed must be a "debt". Plaintiff contends the debt in question was past due vehicle loan payment(s) Defendant claimed Plaintiff owed and was obligated to pay.

Second, the one owing the obligation must be a "consumer."

Third, the one trying to collect the obligation must be a "debt collector."

Fourth, Defendant engaged in an unfair act. Plaintiff contends Defendant engaged in unfair acts when Defendant repossessed Plaintiff's vehicle in August 2012 without having a valid finance contract or other evidence that Plaintiff was in default.

Fifth, the unfair act(s) by Defendant were in the course of commerce or affected commerce.

Sixth, the unfair act(s) by Defendant proximately caused injury to Plaintiff.

Finally, as to this issue on which the Plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the Defendant failed to comply with the requirements of law for debt collection, then it would be your duty to answer this issue "Yes" in favor of the Plaintiff. For each issue you answer "Yes" in favor of the Plaintiff you are to award damages of a minimum of \$500.00 to a maximum of \$4,000.00.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the Defendant.

N.C.G.S. § 20-303. Installment sales to be evidenced by written instrument; statement to be delivered to buyer.

(a) Every retail installment sale shall be evidenced by one or more instruments in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) For every retail installment sale, prior to or about the time of the delivery of the motor vehicle, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the motor vehicle traded, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protection to be effected. The written statement shall be signed by the buyer.

Duty to disclose salvage condition or brand (based on N.C.G.S. § 20-71.4 § “Failure to disclose damage to a vehicle shall be a misdemeanor)

(a) It shall be unlawful for any transferor of a motor vehicle to do any of the following:

- (1) Transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.
- (2) Transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(a1) For purposes of this section, the term "five model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year.

Explanation of salvage, total loss, and branding of vehicle Certificate of Title (based on N.C.G.S. § 20-71.3. “Salvage and other vehicles – titles and registration cards to be branded”).

(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

(1) Have the title and registration card marked "TOTAL LOSS CLAIM".

(h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued as follows:

(1) For motor vehicles up to and including six model years old, a branded title shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 8697

MARTHA A. WILLIAMS,)
)
 Plaintiff,)
)
 vs.)
)
 WALTER L. BROWER d/b/a RMG)
 MOTORSPORTS,)
)
 Defendant.)
)

JURY ISSUE SHEET

NORTH CAROLINA RETAIL INSTALLMENT SALES ACT

1. Was the retail installment sale that occurred on June 30, 2009 between the parties evidenced by one or more instruments in writing which contained all the agreements of the parties and were signed by the Plaintiff?

ANSWER: _____

2. At the time of the between the parties did the Defendant fail to deliver to the Plaintiff a written statement describing clearly the cash sale price?

ANSWER: _____

3. At the time of the June 30, 2009 vehicle transaction between the parties did the Defendant fail to deliver to the Plaintiff a written statement describing the amount of the finance charge?

ANSWER: _____

4. At the time of the June 30, 2009 vehicle transaction between the parties did the Defendant fail to deliver to the Plaintiff a written statement describing clearly the amount and purpose of any non-finance charges?

ANSWER: _____

5. At the time of the June 30, 2009 vehicle transaction between the parties did the Defendant fail to deliver to the Plaintiff a written statement describing clearly the net balance due from the Plaintiff?

ANSWER: _____

6. At the time of the June 30, 2009 vehicle transaction between the parties did the Defendant fail to deliver to the Plaintiff a written statement describing clearly the terms of the payment of the net balance due from Plaintiff?

ANSWER: _____

7. At the time of the June 30, 2009 vehicle transaction between the parties did the Defendant fail to procure Plaintiff's signature on a written statement containing the agreements of the parties regarding the payment and finance terms?

ANSWER: _____

FRAUD

8. Did the Defendant conceal the salvage brand on the vehicle's Certificate of Title from Plaintiff?

ANSWER: _____

9. Was Defendant's concealment of the salvage brand on the vehicle's Certificate of Title reasonably calculated to deceive the Plaintiff?

ANSWER: _____

11. Was Defendant's concealment of the salvage brand on the vehicle's Certificate of Title done with the intent to deceive the Plaintiff and with the intent that it be acted upon by the Plaintiff?

ANSWER: _____

12. Was the Plaintiff was, in fact, deceived by the Defendant's concealment of the salvage brand on the vehicle's Certificate of Title and did the Plaintiff rely upon it?

ANSWER: _____

13. Did the Plaintiff rely upon the Defendant's concealment of the salvage brand on the vehicle's Certificate of Title?

ANSWER: _____

14. Was the plaintiff's reliance upon Defendant's concealment of the salvage brand on the vehicle's Certificate of Title reasonable?

ANSWER: _____

15. If you answered "Yes" to each of Issues 8 through 14 what amount is the Plaintiff entitled to recover as damages?

ANSWER: _____

FAILURE TO DISCLOSE SALVAGE CONDITION OF VEHICLE

16. Did the Defendant fail to disclose to Plaintiff the existence of a salvage brand on the vehicle's Certificate of Title?

ANSWER: _____

17. If you answered "Yes" to Issue 16, above, what amount is the Plaintiff entitled to recover as damages?

ANSWER: _____

18. Did the Defendant fail to disclose to Plaintiff the fact the vehicle had been involved in a collision to the extent that the cost to repair exceeded 25% of the vehicle's value at the time of the collision?

ANSWER: _____

19. If you answered "Yes" to Issue 18 above, what amount is the Plaintiff entitled to recover as damages?

ANSWER: _____

NORTH CAROLINA DEBT COLLECTION ACT

20. As of August 8, 2012 was the Plaintiff delinquent on vehicle payments thereby allowing the Defendant the right to repossess Plaintiff's vehicle?

ANSWER: _____

21. If you answered "Yes" to Issue 20 what amount is the Plaintiff entitled to recover as damages?

ANSWER: _____

CONVERSION

22. As of August 8, 2012, did the Defendant repossess the vehicle from Plaintiff on August 8, 2012 without having a valid finance agreement pertaining to the vehicle?

ANSWER: _____

23. As of August 8, 2012, was the Plaintiff in default on her payments under a valid finance agreement regarding the vehicle?

ANSWER: _____

24. If you answered "Yes" to Issue 22 and "No" to Issue 23 what amount is the Plaintiff entitled to recover as damages?

ANSWER: _____

UNFAIR AND DECEPTIVE ACTS AND PRACTICES

25. Did the defendant engage in deceit, misrepresentation, and lack of good faith and fair dealing in selling the vehicle to Plaintiff?

ANSWER: _____

26. Was the defendant's conduct regarding the vehicle transaction with Plaintiff in commerce or did it affect commerce?

ANSWER: _____

This the _____ day of June, 2013.

Signature of Jury Foreperson