

PHILADELPHIA MUNICIPAL COURT FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

1339 Chestnut Street, 10th Floor, Philadelphia, PA 19107

Marsha H. Neifield, President Judge Patricia R. McDermott, Deputy Court Administrator

STATEMENT OF CLAIM

Code: Other - (13)

Nada Vance 1335 Hellerman St. Philadelphia, Pa 19111

Karl Boone 1335 Hellerman St. Philadelphia, Pa 19111 BAD USED

S CAR DEALER

Plaintiff(s)

Defendant(s)

Service Address (information) if other than above:

To the Defendant: Plaintiff is seeking a money judgment against the Defendant(s) based on the following claim: 2016 the Plaintiffs Nada Vance and Karl Boone purchased a 2004 Mazda Tribute from On May 4 Sales at a cost of \$5,600.00. Sales Agreement 1. Upon information and Defend belief the owner of Defendant is an adult individual named Defenda time of purchase the Plaintiff was informed by the Defendant the venture was roadworthy and in good working condition. The vehicle was purchased with a Defendant 30 day warranty covering engine, transmission, and axles. At the time of purchase the Defendants paid \$600.00 for a Nationwide vehicle service contract with a third party warranty company. Service Contract 2. Within the 30 day date of purchase the Plaintiff vehicle experienced the following problems in which the vendor who prepared the estimate and/or performed the work including the repair/replacement cost is indicated below: Midas on May 17, 2016 for the engine light on. Receipt 3. a. Firestone on May 23, 2016 at a cost of \$978.38 for bearings and seals, alignment service, and tire package. Exhibit 4 Summit Street Garage on July 13, 2016 at a cost of \$446.95 for engine tuning, 02 (continued...)

Summons to the Defendant

You are hereby ordered to appear at a hearing scheduled as follows:

Citation al Demandado

Por la presenta, Usted esta dirljido a presentarse a la siguiente:

1339 Chestnut Street 6th Floor Philadelphia, PA 19107

Hearing Room: 6

December 22nd, 2016

09:15 AM

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I am an attorney for the plaintiff(s), the plaintiff's authorized representative or have a power of attorney for the plaintiff(s) in this statement of claims action. I hereby verify that I am authorized to make this verification; that I have sufficient knowledge, information and belief to take this verification or have gained sufficient knowledge, information and belief from communications with the plaintiff or the persons listed below and that the facts set forth are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties set forth in 18 Pa. C.S. § 4904, which concerns the making of unsworn falsifications to authorities. If I am an authorized representative or have a power of attorney, I have attached a completed Philadelphia Municipal Court authorized representative form or a completed power of attorney form.

LOUIS S SCHWARTZ

Address & 1500 JOHN F. KENNEDY BOULEVARD SUITE 1825 Phone PHILADELPHIA, PA 19102

Signature Plaintiff/Attorney Atty ID #: 053752

NOTICE TO THE DEFENDANT, YOU HAVE BEEN SUED IN COURT.

PLEASE SEE ATTACHED NOTICES

AVISO AL DEMANDADO LE HAN DEMANDADO EN CORTE. VEA POR FAVOR LOS AVISOS ASOCIADOS.

215.790.1800



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SMALL CLAIMS COMPLAINT

Nada Vance
1335 Hellerman St.
Philadelphia, Pa 19111

Karl Boone
1335 Hellerman St.
Philadelphia, Pa 19111

Plaintiff

Plaintiff

Defendant(s)

DESCRIPTION OR NATURE OF VIOLATION

sensor, reset engine light. Exhibit 5.

- d. Midas on September 16, 2016 at a cost of \$3,920.08 for exhaust, rack & pinion, rear shock absorber, and catalytic converter due to an "excessive amount of rust on the under carriage". Exhibit 6.
- e. Roy's Auto Service on September 27, 2016 at a cost of \$2,074.43 for shock absorbers, catalytic converter, rack assembly, brake shoes, and exhaust pipe. Exhibit 7. f. Affidavit of Repairman. Exhibit 8.

Within the 30 day purchase/warranty period the Plaintiffs experienced mechanical problems with the vehicle including a vehicle unable to pass state inspection and excessive rust. At the time of purchase the engine light was on. Within the 10 day date of purchase and 30 day warranty periods the Plaintiff reported these problems to the dealer. On May 17, 2016 The Defendant dealer allegedly repaired the vehicle after it was returned to the dealer by the Plaintiff and placed inspection stickers on the window shield. Exhibit 9. The vehicle was not repaired. Within 50 miles after picking up the vehicle the engine The actual condition of the vehicle was misrepresented by the light returned on. Defendants as the vehicle was neither in good condition nor road worthy. The Pennsylvania Automotive Industry Trade Practices Regulations, 37 Pa. Code Section 301, regulates automobile dealer unfair and deceptive acts and practices. As such the Defendants made false and misleading representations in contravention of the Pennsylvania Motor Vehicle Dealer and Repair Shop Statute, 37 Pa. Code 301.2(4) through (6) requiring the sale of a motor vehicle as was advertised or otherwise represented. Specifically, the Defendants violated 301.2(5) which requires the seller to disclose to the buyer if a vehicle cannot pass State inspection, the engine or transmission requires replacement, or the vehicle frame is bent or cracked. Commonwealth of Pennsylvania vehicle inspection requires vehicles pass an annual safety inspection in that the vehicle is in such condition operation of the vehicle is not considered hazardous. Motor Vehicle Code Title 75, Section 4701 et. seq., Inspection Of Vehicles. The \$5,600.00 valuation for the vehicle was based upon a vehicle which was safe for driving and would pass inspection. The valuation was not based upon the actual condition of the vehicle. The Defendants allowed the Plaintiffs to drive off Defendant's car lot with the knowledge the Plaintiffs were at risk for potential catastrophe because the vehicle was not safe for driving. The Defendants attempt to be held harmless by the Plaintiffs is therefore void as unconscionable and against public policy. Plaintiffs argue the Defendants negligent and /or intentional misrepresentation for failure to disclose known material defects with regard to the vehicle. This misrepresentation is a violation of UCC Section 1-302(a) requiring seller good faith duty to disclose the true and accurate condition of the vehicle at the time of sale and a breach of the UCC Section 2-315 implied warranty of fitness for a particular purpose when in fact the vehicle proved to be unsound, unfit, and unsuited for its intended purpose of daily commuting. The Plaintiff further argues the purchased vehicle violates the Philadelphia Used Car Lemon Law requiring the Defendants repair the vehicle at their own expense if the vehicle is returned within 10 days of purchase or refund the Plaintiff's money. Plaint



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Plaintiff of the true and accurate condition of the vehicle after it was inspected by Midas and Firestone within the warranty period and unlawfully passing the vehicle for inspection. The Defendants provided the Nationwide third party warranty to the Plaintiff as a guise knowing the warranty would never cover the Plaintiff's vehicle because the vehicle required service at the time of purchase. Nationwide reports "extreme rust" which was preexisting. Exhibit 10. Nationwide pictures Exhibit 11. The Plaintiffs seek actual damages of \$5,600.00 as the cost of the vehicle or \$3,920.08 as the cost to repair the vehicle. Plaintiffs seek 73 P.S. Section 201-9.2(a) statutory treble damages and attorney's fees of \$12,000.00 as a violation of 37 Pa. Code $3\overline{0}1.5$ automobile dealer general provisions is a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law. Plaintiffs allege a violation of the UTPCPL directly pursuant to 73 P.S. Section 201-2 (iii) causing likelihood of confusion as to the certification of goods, (v) goods having characteristics or of a particular standard of which they are not, (ix) advertising goods with intent not to sell them as advertised, (xiv) failure to comply with the terms of any written warranty given to the buyer at the time of sale and (xxi) engaging in fraudulent or deceptive conduct which creates a likelihood of confusion or of ales acted through its Plaintiffs aver the Defendants with misunderstanding. Jr. who was acting in his individual capacity and/or as a duly authorized agent for its principa les. Defendants are principals and agents and alter egos of each other and are jointly and severally liable for Plaintiff's claims asserted herein.