

**COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEA OF
BY ATTORNEY GENERAL : CAMBRIA COUNTY, PENNSYLVANIA
MICHELLE A. HENRY :**

Prothonotary Cambria Co, PA, FILED
OCT 05 '23 AM 10:35

Plaintiff

v.

**DAVID JAMES GAIDA, individually and
d/b/a DAVE'S AUTO SALES**

Defendant

: CIVIL ACTION – EQUITY
: ACTION IN 2023-4028
: FOR TRIAL
: COMPLAINT IN EQUITY
: Paul D. Edger
: Senior Deputy Attorney General
: Pennsylvania Office of Attorney General
: Strawberry Square, 15th Floor
: Harrisburg, Pennsylvania 17120
: Telephone: (717) 857-2084
: Supreme Court I.D. 312713

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you, and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Laurel Legal Services, Inc.
227 Franklin Street
Suite 400
Johnstown, PA 15901
Telephone: (814) 536-8917
Facsimile: (814) 535-3377

THIS IS NOT AN ARBITRATION CASE

This case has been brought by the Commonwealth under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1, *et seq.*,
**AN ASSESSMENT OF DAMAGES
HEARING IS REQUIRED**

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Supreme Court I.D. 312713
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Attorney for Commonwealth

**COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEA OF
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DAVID JAMES GAIDA, individually and :
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Defendant :**

COMPLAINT

AND NOW comes the Commonwealth of Pennsylvania, by Attorney General Michelle A. Henry (“Commonwealth” or “Plaintiff”), and brings this action pursuant to the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1 *et seq.* (“Consumer Protection Law”), to restrain unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of the Consumer Protection Law. The Consumer Protection Law authorizes the Attorney General to bring an action in the name of the Commonwealth of Pennsylvania, to restrain by temporary and/or permanent injunction, unfair methods of competition or unfair or deceptive acts or

practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of the Consumer Protection Law.

The Commonwealth has reason to believe that David James Gaida, individually and doing business as Dave's Auto Sales, is using, has used, or is about to use methods, acts, or practices declared unlawful by Section 201-3 of the Consumer Protection Law; and, that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of are enjoined. The Commonwealth believes that the public interest is served by seeking, before this Honorable Court, a permanent injunction to restrain the methods, acts, and practices of the Defendant, as hereinafter set forth. Further, the Commonwealth requests restitution, civil penalties, costs, and other appropriate equitable relief as redress for the violations of the Consumer Protection Law.

In support of this action, the Commonwealth respectfully represents the following:

JURISDICTION

1. This Court has original jurisdiction over this action pursuant to Section 931 of the Judicial Code, 42 Pa.C.S. § 931(a).

VENUE

2. Venue lies with this Court pursuant to Pa.R.C.P. 1006(a)(1).

PARTIES

3. Plaintiff is the Commonwealth of Pennsylvania, by Attorney General Michelle A. Henry with offices located at Strawberry Square, 15th Floor, Harrisburg, Dauphin County, Pennsylvania 17120.
4. Defendant David James Gaida ("Gaida" or "Defendant"), is an adult individual with a last known address of 484 Gallitzen Road, Cresson, Cambria County, Pennsylvania 16630.

5. Defendant David James Gaida utilizes various aliases, including but not limited to “David Land” and “David Landis.”
6. Defendant manages, owns, and operates a business in the Commonwealth of Pennsylvania under the name Dave’s Auto Sales, with a physical address of 484 Gallitzen Road, Cresson, Cambria County, Pennsylvania 16630.
7. Dave’s Auto Sales is not registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section, as a business association nor as a fictitious name.

BACKGROUND

8. Individuals selling vehicles in the Commonwealth of Pennsylvania are subject to numerous regulations and statutes, including but not limited to the Pennsylvania *Automotive Industry Trade Practices*, the *Board of Vehicles Act*, the Pennsylvania *Vehicle Code*, and the Consumer Protection Law.
9. The Pennsylvania *Automotive Industry Trade Practices*, 37 Pa. Code § 301.1 et seq. (“Auto Regs”) regulates the sale of motor vehicles by imposing a variety of legal requirements on “motor vehicle dealers” in the Commonwealth.
10. The Auto Regs were adopted under the authority provided by Section 201-3.1 of the Consumer Protection Law. 73 P.S. § 201-3.1.
11. The Auto Regs define a “motor vehicle dealer” as “a person who is engaged in the business of selling, offering for sale or negotiating the retail sale of motor vehicles and including the officers, agents and employees of the person and a combination or association of dealers.” 37 Pa. Code § 301.1.

12. The Auto Regs defines “in the business of selling” motors vehicles as “if that person sells or negotiates the sale of five or more motor vehicles in a calendar year or sells or negotiates the sale of a vehicle which is not owned by the person or which is acquired for resale purpose.”

Id.

13. The Auto Regs considers the following unfair methods of competition and unfair or deceptive acts or practices:

- a. Failing to prepare a written contract for the sale of a motor vehicle and failing to provide the purchaser with a copy of the same at the time the purchaser signs the contract, 37 Pa. Code. § 301.4(a)(1);
- b. Using a printed or written contract form agreement, receipt or invoice in connection with the sale of a motor vehicle which is not clearly identified and which does not contain the following:
 - 1) The name and address of the dealer and purchaser.
 - 2) The make, model, year and vehicle identification number of the vehicle purchased and the trade-in vehicle, if any.
 - 3) A description of the purchased vehicle as either “new” or “used” and, if used, a brief description of its prior usage such as “Executive,” “demonstrator,” “reconstructed,” or any prior usage which is required to be noted on a Pennsylvania Certificate of Title or which appears on the title of any state through which the dealer has acquired ownership.
 - 4) The total contract price, including an itemized list of charges for repairs, services, dealer-installed optional accessories and documentary preparation which are not included in the purchase price.

- 5) A list of conditions precedent to the dealer's acceptance of the contract set forth in a clear and conspicuous manner as well as a statement that the purchaser may cancel the contract at any time until the conditions are met.
- 6) A brief statement of an express warranty, such as "Manufacturer's limited warranty" or "Our own 90-day full warranty," and the place where a full copy of the written warranty may be obtained.

37 Pa. Code. § 301.4 (a)(2)

- c. Failing to provide a purchaser, at no additional charge, an exact copy of each document required by law to be provided including, but not limited to the agreement of sale, installment sales contract, odometer statement, and warranty and other documents in which legal obligations are imposed on the buyer. Copies of other documents signed by the purchaser and required by the purchaser shall be made available for a reasonable fee, 37 Pa. Code. § 301.4(a)(3);
- d. Using in a motor vehicle purchase contract a liquidated damage clause or similar clause which requires the forfeiture of a purchaser's deposit or security when the purchaser cancels or breaches the contract unless: the clause contains a specific dollar amount or item to be retained by the dealer' the clause is clear and conspicuous; the purchaser assents to the clause by initialing the same; and the clause is not otherwise unlawful, 37 Pa. Code. § 301.4(a)(4);
- e. Failing to refund the full amount of a purchaser deposit promptly when:
 - 1) The purchaser cancels the contract prior to its acceptance by an authorized dealer representative, 37 Pa. Code. § 301.4(a)(6)(i).

- 2) The dealer fails to deliver to the purchaser a motor vehicle which conforms to the terms of the contract. 37 Pa. Code. § 301.4(a)(6)(iv).
- f. Where no express warranty is given, attempting to exclude the implied warranties or merchantability and fitness for a particular purpose in the sale of a motor vehicle purchased primarily for personal, family or household purposes unless the following notice in at least 20-point bold type is prominently affixed to a window in the motor vehicle so as to be easily read from the outside and is brought to the attention of the prospective purchaser by the seller:

This vehicle is sold *without any warranty*. The purchaser will bear the *entire expense* of repairing or correcting any defects that presently exist and/or may occur in the motor vehicle unless the salesperson promises *in writing* to correct such defect or promises *in writing* that certain defects do not exist.

This paragraph prohibits the use of the term “AS IS” unless the sales contract, receipt, agreement or memorandum contains the following information in a clear, concise and conspicuous manner on the face of the document; the notice shall be in addition to the window statement required by this paragraph and may not contradict an oral or written statement, claim or representation made directly or by implication with regard to the quality, performance, reliability or lack of mechanical defects of a motor vehicle which is offered for sale:

AS IS

THIS MOTOR VEHICLE IS SOLD AS IS *WITHOUT ANY WARRANTY* EITHER EXPRESSED OR IMPLIED. THE PURCHASER WILL BEAR

THE ENTIRE EXPENSE OF REPAIRING OR CORRECTING ANY DEFECTS THAT PRESENTLY EXIST OR THAT MAY OCCUR IN THE VEHICLE.

37 Pa. Code. § 301.4(a)(9)

- g. Failing to forward to the proper Commonwealth agency amounts and forms tendered by a purchaser, such as sales tax and transfer and registration fees, within the time prescribed by law, 37 Pa. Code § 301.4(a)(10).

14. The Pennsylvania *Vehicle Code* (“Vehicle Code”), promulgated at Title 75, also imposes requirements on vehicle sellers, including but not limited to:

- a. No vehicle shall be registered unless a certificate of title has been applied for or issued... 75 Pa.C.S. § 1301(c).
- b. If the application [for certificate of title] refers to a vehicle purchased from a dealer, the dealer shall mail or deliver the application to the department [of transportation] within 20 days of the date of purchase. The application shall contain the names and addresses of any lienholders in order of priority and the amounts and the dates of the security agreements and be assigned by the dealer to the owner and signed by the owner...75 Pa.C.S. § 1103.1(c).

15. The Pennsylvania *Board of Vehicles Act* (“BVA”), 63 P.S. § 818 *et seq.* mandates licensing requirements on vehicle dealers in the Commonwealth.

16. Under the BVA, a “dealer” is defined as “a person required to be licensed under this act who is engaged in the business of buying, selling or exchanging new or used vehicles or an interest in new or used vehicles, regardless of whether the vehicles are owned by that person. 63 P.S. § 818.102.

17. The BVA requires dealers to obtain a license from the Department of State, Board of Vehicle Manufacturers, Dealers, and Salespersons (“State Board”).

18. 63 P.S. § 818.303 specifically states:

a. **License required.** –

- 1) To promote the public safety and welfare, it shall be unlawful for any person to engage in the business as a salesperson, dealer...within this Commonwealth unless the person has secured a license as required under this chapter.
- 2) A person, including, but not limited to, salespersons, shall not engage in the business for his own benefit or profit unless he is licensed in accordance with this chapter.

e. **Facility requirements for dealers.** –

- 2) Dealers engaged in the business of buying, selling or exchanging used vehicles, trailers or semitrailers shall maintain an established place of business with a salesroom devoted principally to the vehicle business which is a building or portion of a building where books and records are kept.

63 P.S. § 818.303(a), (e)(2).

19. The Pennsylvania *Motor Vehicle Sales Finance* (“MVSF”), 69 P.S. §601 *et seq.* defines an “installment sales contract” as “...any contract for the retail sale of a motor vehicle, or which has a similar purpose or effect under which part or all of the price is payable in two or more scheduled payments subsequent to the making of such contract, or as to which the obligor undertakes to make two or more scheduled payments or deposits that can be used to pay part or all of the purchase price, whether or not the seller has retained a security interest in such motor vehicle or has taken collateral security for the buyer’s obligation...” 69 P.S. § 602(10).

20. An “installment seller” under the MVSF is defined as “[a] person engaged in the business of selling, hiring or leasing motor vehicles under installment sales contracts or any legal successor in interest to the person.” 69 P.S. § 602(4).

21. 69 P.S. § 604, which addresses licensing requirements in the Commonwealth, states:

“[N]o person shall engage or continue to engage in this Commonwealth either as principal, employee, agent or broker;

- 1) In the business of an installment seller of motor vehicles under installment sale contracts, except as authorized in this act, under license issued by the department [of banking and securities], or

- 2) In the business of a sales finance company, except as authorized in this act, under license issued by the department, or
- 3) In the business of a collector-repossessor, except as authorized in this act, under license issued by the department.

69 P.S. § 604.

22. 69 P.S. § 635(a) addresses installment sales contracts when an installment seller is not licensed by the Commonwealth:

- a. No obligation of the buyer of a motor vehicle under an installment sale contract which was consummated within the Commonwealth of Pennsylvania shall be enforceable in the Commonwealth of Pennsylvania, wherein the seller was not licensed, as required under the provisions of this act, at the time such seller entered into such installment sale contract, or, wherein the holder was not licensed under the provisions of this act at the time he acquired such contract. The buyer under such contract shall be entitled to cancellation of the contract, release of all liens against the motor vehicle sold under such contract and against any collateral security owned by the buyer or his sureties and guarantors, upon payment or tender of payment to the holder of the principal amount financed as set forth in the contract, less all payments on account of such obligation exclusive of down payment which had been made prior thereto.

69 P.S. § 635(a).

23. The Pennsylvania *Fictitious Names Act* (“FNA”) states that “any entity which either alone or in combination with any other entity conducts any business in the Commonwealth of Pennsylvania under or through any fictitious name shall register the fictitious name with the Pennsylvania Department of State.” 54 Pa.C.S. § 301.

FACTS

24. Defendant has engaged in trade or commerce in the Commonwealth of Pennsylvania, including Cambria County, by engaging in the business of selling, offering for sale, and/or negotiating the sale of used motor vehicles to consumers residing within and outside of the Commonwealth of Pennsylvania.

25. Defendant advertises the sale of used vehicles on online platforms, including but not limited to Facebook. A true and correct copy of Defendant's Facebook Marketplace profile is attached hereto as Exhibit "A."
26. Defendant has been selling used vehicles in the Commonwealth of Pennsylvania since at least 2021 under the fictitious business name "Dave's Auto Sales."
27. Defendant is considered a "motor vehicle dealer" as he has sold or negotiated the sale of at least five (5) motor vehicles in one calendar year, and/or sold or negotiated the sale of a vehicle which was acquired for resale purposes.
28. The Commonwealth of Pennsylvania Office of Attorney General, Bureau of Consumer Protection ("Bureau") has received four (4) consumer complaints since 2022 concerning Defendant's failure to comply with the laws of the Commonwealth of Pennsylvania.
29. Defendant has on several occasions failed to prepare a written contract for the sale of a motor vehicle sold to a consumer.
30. Defendant has on numerous occasions failed to provide the purchaser of a vehicle with a copy of the written contract at the time the purchaser signed the contract, if at all.
31. Defendant has on numerous occasions failed to use a printed or written contract concerning the sale of a motor vehicle which included the following:
 - a. The name and address of the dealer and purchaser,
 - b. The make, model, year and vehicle identification number of the vehicle purchased and the trade-in vehicle, if any,
 - c. A description of the purchased vehicle as either "new" or "used,"
 - d. The total contract price,

- e. A list of conditions precedent to the dealer's acceptance of the contract set forth in a clear and conspicuous manner, including a statement that the purchaser may cancel the contract at any time until the dealer's conditions are met,
32. Defendant has on numerous occasions failed and/or refused to provide a purchaser an exact copy of each document required by law to be provided, including but not limited to the agreement of sale, installment sales contract, odometer statement, and warranty information.
 33. Defendant has on several occasions utilized a contract which includes a liquidated damages clause, but failed to ensure the consumer was aware of the penalties per the requirements under the Auto Regs.
 34. Defendant has on numerous occasions failed to refund the full amount of a purchaser's deposit promptly after the purchaser cancelled the contract and/or the Defendant failed to deliver to the purchaser a motor vehicle that conformed to the terms of the contract.
 35. Defendant frequently failed to include warranty information on the vehicle window, as well as the written contract, including that the vehicle is being sold "as is."
 36. Defendant has constantly failed to forward to the Commonwealth of Pennsylvania sales tax collected during the sale of the motor vehicle, and/or misrepresented to the Commonwealth of Pennsylvania the amount of sale tax collected from the purchaser.
 37. Defendant frequently failed to forward to the Pennsylvania Department of Transportation documents required to issue a Certificate of Title to the purchaser of the vehicle.
 38. Since 2021 and continuing to the date of the filing of this Complaint, Defendant has never secured a license with the State Board to engage as a dealer of motor vehicles in the Commonwealth of Pennsylvania.

39. Since 2021 and continuing to the date of the filing of this Complaint, Defendant has never secured a license with the Pennsylvania Department of Banking and Securities to engage as an installment seller in the Commonwealth of Pennsylvania.
40. At all times, Defendant has been operating the fictitious name “Dave’s Auto Sales” without registering the same with the Pennsylvania Department of State.
41. The Bureau has received consumer complaints that Defendant has engaged in unfair and deceptive acts and practices in violation of the Consumer Protection Law and other relevant regulations and statutes, as described fully herein.
42. A sample of the consumer complaints the Bureau has received include but are not limited to:
- a. Consumer A, a resident of Monroe County, Pennsylvania purchased a Jeep Grand Cherokee from Defendant for \$5,200 in January 2023. According to the complaint, the vehicle was advertised as roadworthy and described by Defendant as only needing the brakes replaced. No warranty was offered nor was there any disclaimer that the vehicle was sold without a warranty. The “contract” also included a liquidated damages clause threatening repossession of the vehicle. Consumer A paid Defendant \$1,200 in cash as a down payment and was to pay \$200 every two weeks for ten (10) months. Following completion of the sale, the vehicle needed a new radiator, and a mechanic identified the vehicle as being unsafe to drive. To date, the vehicle is inoperable and unable to repair in a cost-effective manner. The Defendant has refused to refund Consumer A’s payments or retake possession of the vehicle.
 - b. Consumer B, a resident of Allegheny County, Pennsylvania purchased a Dodge Magnum from Defendant for approximately \$6,000 in August 2021 after viewing an advertisement for Dave’s Auto Sales on Facebook Marketplace. The consumer agreed

to pay \$3,000 down and made payments of \$500 per month until the vehicle was paid in full. Despite repeated demands, Defendant refused to provide Consumer B with any paperwork of the sale until the vehicle was paid off. Defendant asked Consumer B to come to a notary to sign some paperwork after the vehicle was paid off, at which time Defendant repossessed the vehicle from Consumer B. Defendant refused to return Consumer B's money or return the vehicle to Consumer B. Due to Defendant intentionally refusing to provide Consumer B with paperwork of the sale, Consumer B was unable to declare the vehicle stolen.

c. Consumer C, a resident of Blair County, Pennsylvania purchased a 2006 Chrysler 300C from Defendant for \$10,000 in March 2002. Consumer C paid \$7,000 down and agreed to pay \$300 each month until the vehicle was paid in full. Following the sale, Defendant provided Consumer C with the title to a completely different vehicle and has refused to provide Consumer C with the proper title to the vehicle purchased. Defendant later repossessed Consumer C's vehicle after refusing to correct the title, and after Consumer C refused to pay additional money to Defendant until the title was corrected.

43. The Commonwealth alleges that at all times relevant hereto, all of the methods, acts and practices described above were performed willfully by Defendant.

44. The Commonwealth believes and therefore avers that the citizens of the Commonwealth of Pennsylvania are suffering and will continue to suffer harm unless the acts and practices of the Defendant complained of herein are permanently enjoined.

45. The Commonwealth believes and therefore avers the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and

practices of Defendant as set forth herein, as well as seeking restitution, civil penalties, costs, and other equitable relief for violations of the law.

CAUSES OF ACTION

**COUNT I – VIOLATIONS OF THE AUTOMOTIVE INDUSTRY TRADE PRACTICES
AND THE CONSUMER PROTECTION LAW**

**Failing to Provide Purchasers With Written Agreements of Sale and
Other Disclosures Required by the Auto Regs**

46. The preceding paragraphs are incorporated herein as though fully set forth below.
47. Defendant is a “motor vehicle dealer” “in the business of selling” motor vehicles pursuant to the Auto Regs, as he sold or negotiated the sale of at least five (5) or more motor vehicles in one calendar year, and/or sold or negotiated the sale of a vehicle which was acquired for resale purposes.
48. At times when Defendant did provide purchasers with a written contract, said contract failed to comply with the strict requirements of the Auto Regs as previously mentioned above. An example of a contract provided by Defendant to a purchaser is attached hereto as Exhibit “B.”
49. On many occasions, Defendant failed and/or refused to provide a purchaser with a written agreement of sale.
50. Defendant’s sales are in violation of the Auto Regs for the following reasons:
- a. Defendant failed to provide purchaser with a written contract of the sale, or if a contract is prepared, refuses and/or fails to provide it to purchaser at the time purchaser signs the contract, in violation of 37 Pa. Code § 301.4(a)(1);
 - b. Defendants failed to provide clear identifying information as to the condition of the vehicle in the sales agreement, in violation of 37 Pa. Code § 301.4(a)(2);

- c. Defendant failed to include the total contract price of the sale in the sales agreement, in violation of 37 Pa. Code § 301.4(a)(2);
- d. Defendant failed to list conditions precedent to Defendant's acceptance of the contract set forth in clear and conspicuous language, as well as a statement that the purchaser may cancel the contract at any time until the conditions are met, in violation of 37 Pa. Code § 301.4(a)(2);
- e. Defendant failed to provide the purchaser with an exact copy of each document, including but not limited to the agreement of sale, installment sales contract, odometer statement, and warranty statements, in violation of 37 Pa. Code § 301.4(a)(3);
- f. Defendant used a liquidated damages clause by authorizing immediate repossession of the vehicle without requiring the purchaser to initial acknowledging this liquidated damage, in violation of 37 Pa. Code § 301.4(a)(4); and
- g. Defendant failed to provide the required disclaimers on the vehicle window and in the sales agreement concerning the vehicle being sold "AS IS", in violation of 37 Pa. Code. § 301.4(a)(9);

51. The aforesaid methods, acts and practices of the Defendant constitute unfair methods of competition and/or unfair or deceptive acts or practices as prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2 of said Law, including without limitation:

- a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of Section 201-2(4)(ii);

- b. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of Section 201-2(4)(iii);
- c. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, in violation of Section 201-2(4)(v);
- d. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, in violation of Section 201-2(4)(vii);
- e. Advertising goods or services with intent not to sell them as advertised, in violation of Section 201-2(4)(ix); and
- f. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi).

See 73 P.S. § 201-3. See also §§ 201-2(4)(ii), (iii), (v), (vii), (ix) and (xxi).

52. The Commonwealth alleges that at all times relevant hereto, all of the methods, acts and practices described above were performed willfully by Defendant.

53. The Commonwealth believes and therefore avers that the citizens of the Commonwealth of Pennsylvania are suffering and will continue to suffer harm unless the acts and practices of the Defendant complained of herein are permanently enjoined.

54. The Commonwealth believes and therefore avers the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and practices of Defendant as set forth herein, as well as seeking restitution, civil penalties, costs, and other equitable relief for violations of the law.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to issue an Order:

- a. Declaring the Defendant's conduct, as set forth in this Complaint, to be in violation of the Auto Regs and the Consumer Protection Law;
- b. Directing the Defendant to comply with the Auto Regs and the Consumer Protection Law, and any amendments thereto;
- c. Directing the Defendant, pursuant to Section 201-4.1 of the Consumer Protection Law, to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this Complaint and any other acts or practices which violate the Consumer Protection Law;
- d. Directing the Defendant, pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of one thousand dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, and three thousand dollars (\$3,000.00) for each such violation involving a victim age sixty (60) or older;
- e. Permanently enjoining Defendant from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania, including but not limited to the sale of motor vehicles via the internet or e-commerce platforms, other websites, programs, and/or applications;
- f. Directing Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action; and
- g. Granting such other relief as the Court deems necessary and appropriate.

**COUNT II – VIOLATIONS OF THE BOARD OF VEHICLES ACT AND THE
CONSUMER PROTECTION LAW**

Failing to Obtain a Dealer’s License from the State Board

56. The preceding paragraphs are incorporated herein as though fully set forth below.
57. Defendant is a used vehicle “dealer” pursuant to the BVA, as he is engaged in the business of buying, selling, or exchanging used vehicles for commission, compensation, or other consideration. 63 P.S. § 818.102.
58. From 2021 and continuing to the date of the filing of this Complaint, Defendant has failed to obtain a license to engage as a dealer from the State Board, in violation of Section 818.301(a) of BVA. 63 P.S. § 818.301(a).
59. As a result of the aforementioned violation of the BVA, as set forth above, the Defendant has engaged in “unfair methods of competition” and/or “unfair or deceptive acts or practices,” as defined by Section 201-2(4) of the Consumer Protection Law, and prohibited by Section 201-3 of the same:
- a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of Section 201-2(4)(ii);
 - b. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of Section 201-2(4)(iii);
 - c. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, in violation of Section 201-2(4)(v);
 - d. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi).

See 73 P.S. § 201-3. *See also* §§ 201-2(4)(ii), (iii), (v) and (xxi).

60. The Commonwealth alleges that at all times relevant hereto, all of the methods, acts and practices described above were performed willfully by Defendant.

61. The Commonwealth believes and therefore avers that the citizens of the Commonwealth of Pennsylvania are suffering and will continue to suffer harm unless the acts and practices of the Defendant complained of herein are permanently enjoined.

62. The Commonwealth believes and therefore avers the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and practices of Defendant as set forth herein, as well as seeking restitution, civil penalties, costs, and other equitable relief for violations of the law.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to issue an Order:

- a. Declaring the Defendant's conduct, as set forth in this Complaint, to be in violation of the Board of Vehicles Act and the Consumer Protection Law;
- b. Directing the Defendant to comply with the Board of Vehicles Act and the Consumer Protection Law, and any amendments thereto;
- c. Directing the Defendant, pursuant to Section 201-4.1 of the Consumer Protection Law, to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this Complaint and any other acts or practices which violate the Consumer Protection Law;
- d. Directing the Defendant, pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of one thousand dollars (\$1,000.00) for each

- and every violation of the Consumer Protection Law, and three thousand dollars (\$3,000.00) for each such violation involving a victim age sixty (60) or older;
- e. Permanently enjoining Defendant from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania, including but not limited to the sale of motor vehicles via the internet or e-commerce platforms, other websites, programs, and/or applications;
 - f. Directing Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action; and
 - g. Granting such other relief as the Court deems necessary and appropriate.

COUNT III – VIOLATIONS OF THE VEHICLE CODE, THE AUTO REGS, AND THE CONSUMER PROTECTION LAW

Failing to Obtain and Provide Title and Registration for Motor Vehicles Sold

63. The preceding paragraphs are incorporated herein as though fully set forth below.
64. Under the Vehicle Code, no vehicle may be driven on any highway or roadway open to the public unless it is registered in Pennsylvania, or exempt from registration. 75 Pa.C.S. § 1301(a).
65. Before a vehicle can be registered in Pennsylvania, a certificate of title must have been applied for or issued. 75 Pa.C.S. § 1301(c).
66. For vehicles purchased from a dealer, the dealer must mail or deliver applications for certificate of title to the Pennsylvania Department of Transportation (“PennDOT”) within twenty (20) days of date of purchase. 75 Pa.C.S. § 1103.1(d).
67. The Auto Regs state that it is an unfair method of competition and an unfair or deceptive act or practice for a motor vehicle dealer to fail to forward to the proper Commonwealth agency

amounts and forms tendered by a purchaser, such as sales tax and transfer and registration fees, within the time prescribed by the law. 37 Pa. Code § 301.4(a)(10).

68. In at least one instance, Defendant failed to properly provide title or registration for a vehicle sold to a consumer, leaving the consumer without the benefit of the promised, legally mandated, and already paid for title and registration services, and leaving the consumer without the most basic and implicit benefit of the vehicle they had purchased: the ability to legally drive the vehicle on a highway or roadway open to the public.

69. Defendant's failure and/or refusal to mail or deliver timely applications for certificate of title to PennDOT violated Section 1103.1(d) of the Vehicle Code and Section 301.4(a)(10) of the Auto Regs. 75 Pa.C.S. § 1103.1(d); 37 Pa. Code § 301.4(a)(10).

70. As a result of the aforementioned violation of the Vehicle Code and Auto Regs, Defendant has engaged in "unfair methods of competition" and/or "unfair or deceptive acts or practices" in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4) of said Law, including, but not limited to, the following:

- a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of Section 201-2(4)(ii);
- b. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of Section 201-2(4)(iii);
- c. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, in violation of Section 201-2(4)(v);

- d. Advertising goods or services with intent not to sell them as advertised, in violation of Section 201-2(4)(ix); and
- e. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi).

See 73 P.S. § 201-3. *See also* §§ 201-2(4)(ii), (iii), (v), (ix) and (xxi).

71. The Commonwealth alleges that at all times relevant hereto, all of the methods, acts and practices described above were performed willfully by Defendant.

72. The Commonwealth believes and therefore avers that the citizens of the Commonwealth of Pennsylvania are suffering and will continue to suffer harm unless the acts and practices of the Defendant complained of herein are permanently enjoined.

73. The Commonwealth believes and therefore avers the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and practices of Defendant as set forth herein, as well as seeking restitution, civil penalties, costs, and other equitable relief for violations of the law.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to issue an Order:

- a. Declaring the Defendant's conduct, as set forth in this Complaint, to be in violation of the Vehicle Code, the Auto Regs and the Consumer Protection Law;
- b. Directing the Defendant to comply with the Vehicle Code, the Auto Regs and the Consumer Protection Law, and any amendments thereto;
- c. Directing the Defendant, pursuant to Section 201-4.1 of the Consumer Protection Law, to make full restitution to all consumers who have suffered losses as a result of

- the acts and practices alleged in this Complaint and any other acts or practices which violate the Consumer Protection Law;
- d. Directing the Defendant, pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of one thousand dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, and three thousand dollars (\$3,000.00) for each such violation involving a victim age sixty (60) or older;
 - e. Permanently enjoining Defendant from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania, including but not limited to the sale of motor vehicles via the internet or e-commerce platforms, other websites, programs, and/or applications;
 - f. Directing Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action; and
 - g. Granting such other relief as the Court deems necessary and appropriate.

**COUNT IV – VIOLATIONS OF THE MOTOR VEHICLE SALES FINANCE
AND THE CONSUMER PROTECTION LAW**

Failing to Obtain a License as an Installment Sales Seller

- 74. The preceding paragraphs are incorporated herein as though fully set forth below.
- 75. Since 2021, Defendant has engaged in offering vehicles for sale while utilizing an installment sales contract.
- 76. Defendant is an installment seller as defined by the MVSF. *See* 69 P.S. §603(4).
- 77. Installment sellers are required to be licensed by the Pennsylvania Department of Banking and Securities in order to offer installment sales contracts. *See* 69 P.S. § 604.

78. Since 2021 and continuing to the date of the filing of this Complaint, Defendant has never secured a license with the Pennsylvania Department of Banking and Securities to engage as an installment seller in the Commonwealth of Pennsylvania.
79. The MVSF provides that any installment contract consummated during the time an installment seller was unlicensed by the Commonwealth shall be cancelled and all liens released. *See* 69 P.S. § 635(a).
80. As a result of the Defendant failing to obtain a license from the Department of Banking and Securities and offering consumers an installment sales contract, those contracts are deemed null and void and consumers are entitled to all liens dismissed. *Id.*
81. As a result of the aforementioned violation of the MVSF, Defendant has engaged in “unfair methods of competition” and/or “unfair or deceptive acts or practices” in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4) of said Law, including, but not limited to, the following:
- a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of Section 201-2(4)(ii);
 - b. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of Section 201-2(4)(iii);
 - c. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, in violation of Section 201-2(4)(v);
 - d. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi).

See 73 P.S. § 201-3. *See also* §§ 201-2(4)(ii), (iii), (v), and (xxi).

82. The Commonwealth alleges that at all times relevant hereto, all of the methods, acts and practices described above were performed willfully by Defendant.
83. The Commonwealth believes and therefore avers that the citizens of the Commonwealth of Pennsylvania are suffering and will continue to suffer harm unless the acts and practices of the Defendant complained of herein are permanently enjoined.
84. The Commonwealth believes and therefore avers the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and practices of Defendant as set forth herein, as well as seeking restitution, civil penalties, costs, and other equitable relief for violations of the law.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to issue an Order:

- a. Declaring the Defendant's conduct, as set forth in this Complaint, to be in violation of the Consumer Protection Law;
- b. Directing the Defendant to comply with the Consumer Protection Law, and any amendments thereto;
- c. Declaring all contracts provided by Defendant which contain an installment sales contract to be declared null and void, and directing the Defendant to release all liens against the motor vehicle sold under contract and any security owned by the buyer.
- d. Directing the Defendant, pursuant to Section 201-4.1 of the Consumer Protection Law, to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this Complaint and any other acts or practices which violate the Consumer Protection Law;

- e. Directing the Defendant, pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of one thousand dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, and three thousand dollars (\$3,000.00) for each such violation involving a victim age sixty (60) or older;
- f. Permanently enjoining Defendant from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania, including but not limited to the sale of motor vehicles via the internet or e-commerce platforms, other websites, programs, and/or applications;
- g. Directing Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action; and
- h. Granting such other relief as the Court deems necessary and appropriate.

**COUNT V – VIOLATIONS OF THE FICTITIOUS NAMES ACT AND THE
CONSUMER PROTECTION LAW**

Failing to Register a Fictitious Name

85. The preceding paragraphs are incorporated herein as though fully set forth below.
86. Since 2021, Defendant has engaged in business in the Commonwealth of Pennsylvania under the business name “Dave’s Auto Sales.”
87. Defendant has failed to register the fictitious name “Dave’s Auto Sales” with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations, in violation of Section 303(b) of the FNA.
88. As a result of the aforementioned violation of the FNA, as set forth above, the Defendant has engaged in “unfair methods of competition” and/or “unfair or deceptive acts or practices,” as defined by Section 201-2(4) of the Consumer Protection Law, and prohibited by Section 201-3 of the same:

- a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, 73 P.S. § 201-2(4)(ii);
- b. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, 73 P.S. § 201-2(4)(iii);
- c. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

89. The Commonwealth alleges that at all times relevant hereto, all of the methods, acts and practices described above were performed willfully by Defendant.

90. The Commonwealth believes and therefore avers that the citizens of the Commonwealth of Pennsylvania are suffering and will continue to suffer harm unless the acts and practices of the Defendant complained of herein are permanently enjoined.

91. The Commonwealth believes and therefore avers the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and practices of Defendant as set forth herein, as well as seeking restitution, civil penalties, costs, and other equitable relief for violations of the law.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to issue an Order:

- a. Declaring the Defendant's conduct, as set forth in this Complaint, to be in violation of the FNA and the Consumer Protection Law;
- b. Directing the Defendant to comply with the FNA and the Consumer Protection Law, and any amendments thereto;
- c. Directing the Defendant, pursuant to Section 201-4.1 of the Consumer Protection Law, to make full restitution to all consumers who have suffered losses as a result of

the acts and practices alleged in this Complaint and any other acts or practices which violate the Consumer Protection Law;

- d. Directing the Defendant, pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of one thousand dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, and three thousand dollars (\$3,000.00) for each such violation involving a victim age sixty (60) or older;
- e. Permanently enjoining Defendant from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania, including but not limited to the sale of motor vehicles via the internet or e-commerce platforms, other websites, programs, and/or applications;
- f. Directing Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action; and
- g. Granting such other relief as the Court deems necessary and appropriate.

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Signatures to Follow

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MICHELLE A. HENRY
ATTORNEY GENERAL

Date: 10/2/23

By:



Paul D. Edger

Supreme Court I.D. 312713

Senior Deputy Attorney General

Pennsylvania Office of Attorney General

Strawberry Square, 15th Floor

Harrisburg, Pennsylvania 17120

Telephone: (717) 857-2084

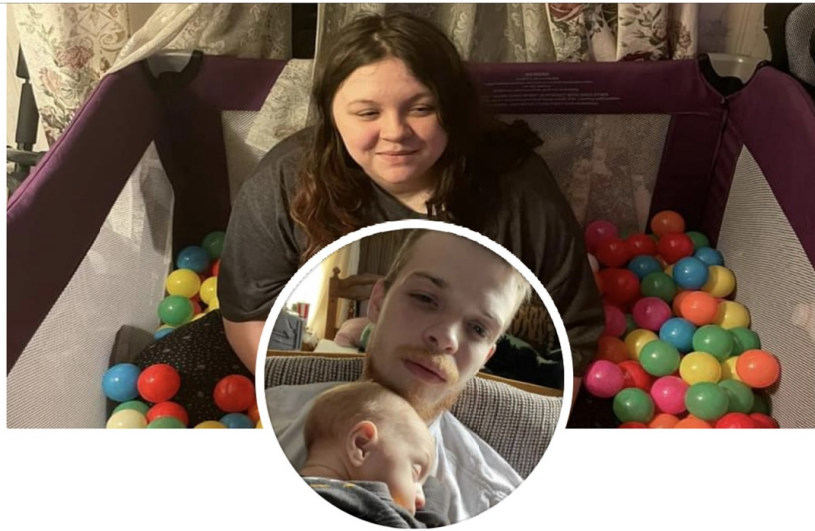
Facsimile: (717) 705-3795

pedger@attorneygeneral.gov

Exhibit “A”



Commerce Profile



David J Gaida

★ 3.6 · 211 followers

Follow

About me

Lives in **New Kensington, Pennsylvania**

Joined Facebook in 2010

Seller Rating



Based on 18 ratings

David's strengths

Here's what buyers appreciate about David:

- Pricing (4)
- Item description (4)



Home



Friends



Reels



Marketplace



Notifications



Menu

2:08



Business Details



This seller says they're listing on behalf of a business.



Dave

[See All Vehicles](#)



PA-36, Altoona

[Get Directions](#)



(412) 251-6448

Business description

Sells reliable vehicles of all types

Products related to this item

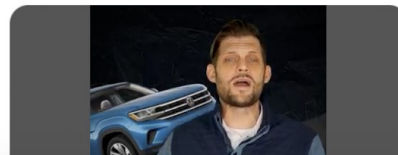
Sponsored



Faulkner Toyota Ha...



Sutliff Volkswagen



Send seller a message

Hi, is this available?

[Send](#)



Commerce Profile

David's Listings

[Share](#)

Search Listings

All listings ▾

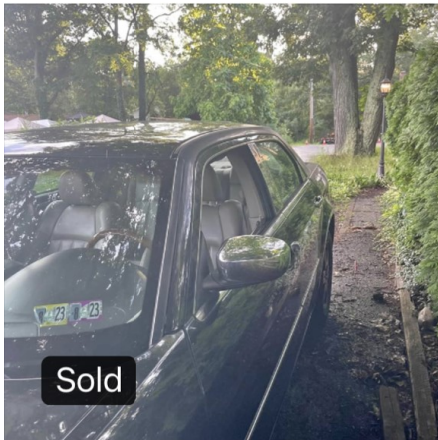
Sort by ▾



\$1,500 · 2006 Chevro...



\$1,500 · 2008 Chevro...



\$2,000 · 2005 Chrysl...



\$1,800 · 2006 Jeep G...



Home



Friends



Reels



Marketplace



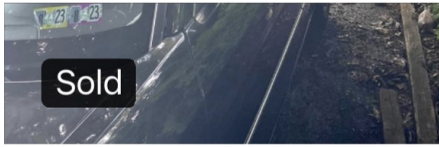
Notifications



Menu



Commerce Profile



\$2,000 · 2005 Chrysl...



\$1,800 · 2006 Jeep G...



\$1,500 · 2008 Infiniti...



\$1,800 · 2009 Yahma...



\$1,200 · 2005 Mercur...



\$2,000 · 2006 Dodge...



Home



Friends



Reels



Marketplace



Notifications



Menu



Commerce Profile



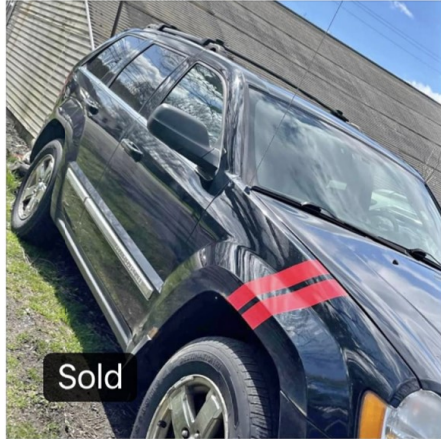
\$1,200 · 2005 Mercur...



\$2,000 · 2006 Dodge...



\$1,500 · 2006 Ford F...



\$2,000 · 2006 Jeep...



\$2,000 · 2006 Dodge...



\$1,800 · 2004 Lincoln...



Home



Friends



Reels



Marketplace



Notifications



Menu

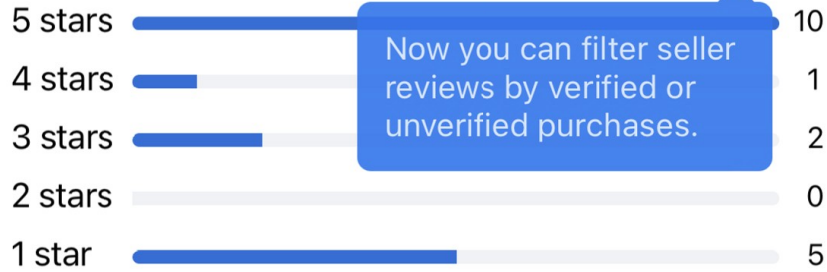


All Reviews

Seller rating

★★★★☆ (18)

🔍 Filters



Now you can filter seller reviews by verified or unverified purchases.

Seller reviews (18)



Hannah
Jul 19, 2023

★★★★★

Notable: Communication • Punctuality • Item Description • Pricing

Like



James
Mar 30, 2023 • 1 review written



★☆☆☆☆

This guy is a scammer wanted me to send money in advance and go god knows where To take a part off a car

Beware

Like

1



Daniel
Nov 7, 2022 • 1 review written



★★★★★



Home



Friends



Reels



Marketplace



Notifications



Menu



All Reviews

Seller rating

★★★★☆ (18)

🔍 Filters

Like

4 🍎



Mason



Sep 23, 2022 • 2 reviews written

★★★★☆

Notable: Communication

Be littled, insulted and acted like all his vehicles are gold and tried to tell me a perfectly good running car is worth \$500

Like

9 🍎



Capalot

Jul 12, 2022

★★★★★

Like



Destiny

Apr 11, 2022

★★★★★

Like

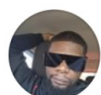


Kevin

Mar 2, 2022

★★★★★

Like



Quinton

Oct 14, 2021



Home



Friends



Reels



Marketplace



Notifications



Menu

Exhibit “B”

I David Gorda agree to sell my [redacted] to [redacted] for [redacted] Down and [redacted] every two weeks for [redacted] month or until the total of \$A is paid

[redacted] also agree to buy the vehicle AS IS and is responsible for all inspections repairs maintenance etc effective [redacted]

[redacted] will also get and maintain Full Coverage Insurance on the vehicle at all times until the vehicle is paid in full.

[redacted] lastly, they agree to adhere to this agreement and make on time payments and pay them in full. Failure to make on time payments or breaking this agreement in any way will result in NO Refunds and the Repo of the vehicle

[redacted]
Buyer

[redacted]
Date

[redacted]
Seller

[redacted]
Date


COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEA OF	:
BY ATTORNEY GENERAL	: CAMBRIA COUNTY, PENNSYLVANIA
MICHELLE A. HENRY	:
	: CIVIL ACTION – EQUITY
Plaintiff	:
	:
v.	:
	: COMPLAINT IN EQUITY
DAVID JAMES GAIDA, individually and	:
d/b/a DAVE’S AUTO SALES	:
	:
Defendant	:

VERIFICATION

I, Hayley Dull, hereby state that I am a Consumer Protection Agent with the Pennsylvania Office of Attorney General, Bureau of Consumer Protection, and am authorized to make this verification on behalf of the Plaintiff in the within action. I hereby verify that the facts set forth in the foregoing Complaint in Equity are true and correct to the best of my knowledge or information and belief.

I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 10/2/23



 Hayley Dull
 Consumer Protection Agent
 Pennsylvania Office of Attorney General
 Strawberry Square, 15th Floor
 Harrisburg, Pennsylvania 17120
 Telephone: (717) 857-2089

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEA OF
BY ATTORNEY GENERAL : CAMBRIA COUNTY, PENNSYLVANIA
MICHELLE A. HENRY :

Plaintiff

v.

DAVID JAMES GAIDA, individually and
d/b/a DAVE'S AUTO SALES

Defendant

:
: CIVIL ACTION – EQUITY
:
:
:
: COMPLAINT IN EQUITY

CERTIFICATE OF COMPLIANCE

I Paul D. Edger certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 10/2/23

By:



Paul D. Edger
Supreme Court I.D. 312713
Senior Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, Pennsylvania 17120
Telephone: (717) 857-2084