

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Delaware

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
 Writ of Summons
 Petition
 Transfer from Another Jurisdiction
 Declaration of Taking

Lead Plaintiff's Name:
Comm. of Pennsylvania by Atty General Michelle Henry

Lead Defendant's Name:
Real McKoy Auto Sales, LLC, et. al.

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Debra Djupman Warring, Senior Deputy Attorney General

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (*does not include mass tort*)
 Slander/Libel/ Defamation
 Other:

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other:

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional:

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute:
 Discrimination
 Employment Dispute: Other

 Other:

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other:

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other

 Zoning Board
 Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations
 Restraining Order
 Quo Warranto
 Replevin
 Other:
 Complaint in Equity pursuant
 to Consumer Protection Law

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.

**Delaware County Bar Association
Lawyer Referral Service
Front & Lemon Streets
Media, Pennsylvania 19063
(610) 566-6625**

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

The Commonwealth believes that the public interest is served by seeking a permanent injunction from this Honorable Court to restrain the methods, acts, and practices of the Defendants. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

The Commonwealth seeks restitution pursuant to Section 201-4.1 of the *Consumer Protection Law* for any consumers who were harmed by Defendants’ violations of the *Consumer Protection Law*. 73 P.S. § 201-4.1. Additionally, the Commonwealth seeks appropriate civil penalties pursuant to Section 201-8(b) of the *Consumer Protection Law* for all willful violations of said law. 73 P.S. § 201-8(b). Finally, the Commonwealth seeks its costs and any other appropriate equitable relief as redress for violations of the *Consumer Protection Law*.

In support thereof, the Commonwealth presents 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(c)(1) and Pa. R.C.P. 2179(a).

THE PARTIES

3. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Michelle A. Henry, with offices located at 1600 Arch Street, Third Floor, Philadelphia, Pennsylvania 19103 and Strawberry Square, 15th Floor, Harrisburg, Pennsylvania 17120.

4. Defendant Real McKoy Auto Sales, LLC d/b/a Real McKoy Auto (hereinafter “RMA” and/or collectively as one of the “Defendants”) is a Pennsylvania limited liability company registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Sections (hereinafter “Corporations Bureau”) with a registered business address of 7112 Marshall Road, Upper Darby, PA 19082.

5. Defendant RMA has conducted and conducts business under the fictitious name “Real McKoy Auto.” Real McKoy Auto is a registered with the Corporations Bureau as owned by Real McKoy Auto Sales LLC and Ervin McKoy.

6. Defendant RMA has conducted and conducts business out of both 6350 Baltimore Avenue, Lansdowne, PA 19050 and 7112 Marshall Road, Upper Darby, PA 19082. Upon information and belief, RMA’s primary business location is currently 6350 Baltimore Avenue, Lansdowne, PA 19050.

7. Defendant Ervin McKoy (hereinafter “McKoy and/or collectively as one of the “Defendants”) is an adult individual who, at all times relevant and material hereto, has conducted and conducts business out of 6350 Baltimore Avenue, Lansdowne, PA 19050.

8. At all times relevant hereto, McKoy was the managing member of RMA. McKoy formed RMA in 2016. As a managing member with authority to act for RMA, McKoy was and is responsible for all conduct done in the name of RMA.

9. McKoy directed, supervised, controlled, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the unlawful acts and practices hereinafter described.

10. Upon information and belief, at all times relevant hereto, McKoy owned the majority of the equity of RMA and, as a result, McKoy personally received the majority of the profits, dividends, and other cash distributions made by RMA.

11. Upon information and belief, at all times relevant hereto, RMA had very few employees. As a result, McKoy, serving as the managing member, was intimately involved in and directed RMA's day to day activities.

12. Upon information and belief, McKoy executed and/or ratified all important business decisions, including what cars to sell and what information to provide consumers about them.

13. Unless otherwise specified, whenever reference is made in this complaint to any act of either of the Defendants, such allegations shall be deemed to mean the act of RMA and McKoy individually, jointly, or severally.

FACTUAL BACKGROUND

14. At all times relevant and material hereto, Defendants engaged in trade or commerce within the Commonwealth of Pennsylvania through the operation of a used motor vehicle dealership, including the advertising for sale and sale of motor vehicles to consumers.

15. As more fully set forth below, Defendants violated the *Consumer Protection Law*,

the *Automotive Industry Trade Practices*, 37 Pa. Code § 301.1, *et seq.* (hereinafter “*Auto Regulations*”), and the *Vehicle Code*, 75 Pa. C.S. § 101, *et seq.* (hereinafter “*Vehicle Code*”).

16. Defendant RMA holds a Pennsylvania Vehicle Dealer License, number VD032344, issued on November 22, 2016, with an expiration date of May 31, 2025. The location listed on this license is 6350 Baltimore Avenue, Lansdowne, PA 19050.

17. Defendant McKoy holds a Pennsylvania Vehicle Salesperson License, number MV245454, issued on May 18, 2015, with an expiration date of May 31, 2025. Defendant RMA is listed as the employment relationship on Defendant McKoy’s license.

18. The Commonwealth of Pennsylvania Office of Attorney General, Bureau of Consumer Protection (hereinafter “Bureau”) has received numerous consumer complaints concerning Defendants’ failure to comply with the laws of the Commonwealth of Pennsylvania.

19. The Commonwealth believes and therefore avers there are additional consumers who were harmed by Defendants’ conduct as described herein who have not filed complaints with the Bureau.

20. 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.

Wrongful Conduct by Defendants

Defendants’ Sale of Unroadworthy Vehicles

21. In certain instances, Defendants advertised vehicles for sale via websites, social media, and through other methods, and sold vehicles to consumers, despite the vehicles not being roadworthy.

22. Defendants RMA and McKoy advertised vehicles for sale on websites including www.cars.com and www.cargurus.com as well as social media platforms like Instagram.

23. In certain instances, Defendants did not disclose the unroadworthy condition of vehicles to consumers prior to sale when Defendants knew or should have known the conditions existed and/or that the motor vehicle needed repairs, in violation of Section 301.2(5) of the *Auto Regulations*. 37 Pa. Code § 301.2(5).

24. The Commonwealth received multiple complaints from consumers regarding the sale of unroadworthy vehicles. The following are examples of what has been alleged in such complaints:

- a. Consumer A purchased a 2007 Chevy Equinox from RMA for \$5,600 plus taxes and fees. The day after she drove the car off RMA's lot, the vehicle began overheating while operating. While Consumer A was driving her children to school two days after purchasing the vehicle, the vehicle began emitting a thick white smoke from the exhaust. Fearing for her children's safety in the smoking vehicle, she removed her family from the car and called RMA. A representative from RMA told her they would send a tow truck to assist, but never did. After unsuccessfully attempting to obtain assistance from RMA, Consumer A took the car to her own mechanic. The mechanic identified a hole in the engine and observed that someone had poured a sealant into the vehicle, likely in an attempt to mask the hole. Concluding the vehicle was unsafe to drive, Consumer A sought a refund of the purchase price from her bank and purchased another vehicle from a different dealer. The vehicle she purchased from RMA remains off the road and sitting outside of her home.
- b. Consumer B purchased a 2005 Kia Sorrento from RMA in March 2021 for \$4,500.00 plus taxes and fees. Approximately two weeks after the purchase, the vehicle broke down on an interstate highway, and Consumer B had it towed to RMA's lot. After the breakdown, RMA's mechanic inspected the car and determined that it needed a major engine repair that would cost \$1,300. Consumer B lacked funds for RMA's proposed repair, so he had the vehicle towed back to his home. The consumer then took the car to an independent mechanic, who observed that the frame of the vehicle was rusted out. After weeks of the vehicle sitting in disrepair near his home, Consumer B sold the car to a junkyard for \$35.
- c. Consumer C purchased a 2002 Ford Taurus from RMA for \$2,500 plus taxes

and fees in May 2021. At the time of purchase, RMA's sales agent told the consumer that the vehicle only needed an oil change and new gasket. Two weeks after purchase, the vehicle broke down. Consumer C had the vehicle towed to RMA and paid RMA an additional \$495.52 for repairs, including the oil change and gasket. After retrieving the vehicle from RMA's shop, Consumer C noticed a strong gas smell in the vehicle. Consumer C took the car to an independent mechanic who told him that the gas tank was leaking and the entire fuel line was rusted and needed to be replaced. Facing additional expensive repairs on the car he purchased from RMA, Consumer C decided to purchase a vehicle from a different dealer.

Defendants' Deceptive Title and Registration Practices

25. In certain instances, Defendants RMA and McKoy failed to properly provide the title and registration for vehicles sold to consumers, leaving the consumers without the benefit of the promised, legally mandated, and already paid for, title and registration services.

26. The Commonwealth has received consumer complaints pertaining to Defendants' deceptive title and registration practices. The following are examples of what has been alleged in such complaints:

- a. Consumer D purchased a Hyundai Tucson from RMA for \$3,000 plus taxes and fees. As part of the sale, Consumer D paid RMA to handle the title and registration of the vehicle. RMA told her that the vehicle was already registered and put a license plate already associated with her name on the vehicle. Months later, when she went to complete her annual vehicle registration, Consumer D still did not have a title certificate for the vehicle. She contacted RMA about the problem and spoke directly with Mr. McKoy about the title issue. He told Consumer D that he previously had an employee who stole from him and likely did not submit the paperwork to PennDOT for processing. Mr. McKoy told Consumer D he would send the paperwork himself. Consumer D contacted PennDOT about the matter and was told that the vehicle was titled to a third-party owner who Consumer D did not know. Lacking proper title, Consumer D has been unable to get her car registered. The vehicle was recently towed by the Philadelphia Parking Authority, and Consumer D is unable to get the vehicle out of impound without proof of valid registration. The vehicle remains in the Parking Authority's custody, causing Consumer D to incur daily storage charges.
- b. Consumer C purchased a 2002 Ford Taurus from Defendant RMA for approximately \$2,500. He experienced extensive mechanical issues with the vehicle and was therefore looking to sell it. However, RMA failed to provide

Consumer C with title to the vehicle for several months after the sale was complete. When Consumer C asked RMA when he would receive the title, he was repeatedly told it would be mailed to him within two weeks, but it was not. Consumer C was stuck holding onto a broken-down car that he wished to sell for over three months because he lacked the title necessary to transfer ownership.

Defendants' Unfair and Deceptive "As Is" Representations

27. When selling a used motor vehicle, Defendants as a matter of practice have buyers complete a "Used Vehicle Order" form. A sample of the Used Vehicle Order form is attached hereto as **Exhibit A**.

28. On the Used Vehicle Order form, Defendants purport to sell vehicles "As-Is" and instruct the buyer to sign a statement that "I hereby make this purchase knowingly without any guarantee, express or implied, by this dealer or his agent." *See Ex. A*.

29. When selling a used motor vehicle, Defendants also as a matter of practice have buyers sign a form entitled "Real McKoy Auto As-Is Disclosure Form." A sample of the As-Is Disclosure Form is attached hereto as **Exhibit B**.

30. On the As-Is Disclosure Form, Defendants purport to sell vehicles "As-Is" and instruct the buyer to sign various statements, including a representation that "I understand the vehicle is 'as is' and I agree not to hold the seller responsible for any repairs that may arise with the vehicle after the purchase." *See Ex. B*.

31. As their routine business practice, Defendants use the term "As Is" when selling motor vehicles, but do not include the following notice in a clear, concise, and conspicuous manner on the face of their vehicle purchase contracts:

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.*

32. Neither Defendants' Used Vehicle Order form nor their As-Is Disclosure form contain the bolded As-Is disclosure language stated in paragraph 31 above.

**COUNT I – VIOLATIONS OF THE *CONSUMER PROTECTION LAW*
AND THE *AUTO REGULATIONS***

DEFENDANTS SOLD UNROADWORTHY MOTOR VEHICLES TO CONSUMERS AND FAILED TO DISCLOSE SUCH CONDITION TO CONSUMERS

33. The averments and allegations of the preceding paragraphs are incorporated as though the same were fully set forth herein.

34. The *Auto Regulations* prohibit the representation in an advertisement or sales presentation that a motor vehicle is of a particular style, model, quality or grade if it is another or if the representation conflicts with a written notice or disclosure required by the *Auto Regulations*. 37 Pa. Code § 301.2(5).

35. Under the *Auto Regulations*, a motor vehicle which is offered for sale is represented to be roadworthy, and the advertiser or seller is required to disclose prior to sale the following conditions if the advertiser or seller knows or should know the conditions exist in the motor vehicle:

- (i) Frame bent, cracked or twisted.
- (ii) Engine block or head cracked.
- (iii) Vehicle unable to pass State inspection.
- (iv) Transmission damaged, defective or so deteriorated as to require replacement.
- (v) Vehicle flood damaged.
- (vi) Differential damaged, defective or so deteriorated as to require replacement.

37 Pa. Code § 301.2(5).

36. In certain instances, Defendants advertised vehicles for sale via websites, social media, and through other methods, and sold vehicles to consumers, without disclosing to consumers the defects that made those motor vehicles unroadworthy, where Defendants knew or should have known the vehicles would not be able to pass state inspection, the transmission or differential was damaged, defective, or so deteriorated as to require replacement, or the vehicle was flood damaged.

37. For example, Consumer A, whose narrative is described in paragraph 24.a above, purchased a vehicle from Defendant RMA and shortly thereafter learned that the vehicle was not safe to be driven on the road due to a hole in the engine causing the car to overheat, and that someone had likely attempted to conceal the hole by pouring sealant into the engine.

38. Upon information and belief, Defendants RMA and McKoy knew, or should have known from any reasonable inspection of the vehicle, that the conditions, including the hole in the engine and the apparent use of a sealant to try to conceal the defect, existed at the time of sale, and failed to disclose these conditions to Consumer A.

39. As another example, Consumer B, whose narrative is described in paragraph 24.b above, purchased a vehicle from Defendant RMA. Shortly after purchase, Consumer B learned that the vehicle required a major engine repair and had extensive rust on the frame.

40. Upon information and belief, Defendants RMA and McKoy knew, or should have known from any reasonable inspection of the vehicle, that the conditions, including the need for a major engine repair and extensive frame rust, existed at the time of sale, and failed to disclose these conditions to Consumer B.

41. As another example, Consumer C, whose narrative is described in paragraph 24.c above, purchased a vehicle from Defendant RMA. Shortly after purchase, Consumer C learned that the vehicle had a leaking gas tank and damaged fuel line.

42. Upon information and belief, Defendants RMA and McKoy knew, or should have known from any reasonable inspection of the vehicle, that the damaged fuel tank and leaking gas line existed at the time of sale, and failed to disclose these conditions to Consumer C.

43. The aforesaid methods, acts, or practices constitute violations of Section 301.2(5) of the *Auto Regulations*. 37 Pa. Code § 301.2(5).

44. A violation of Section 301.2(5) of the *Auto Regulations* is considered an unfair method of competition and an unfair or deceptive act or practice. 37 Pa. Code § 301.2.

45. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair 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. Section 201-2(4)(ii), causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- b. Section 201-2(4)(v), 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;
- c. Section 201-2(4)(vii), 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;

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

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

46. The Commonwealth alleges that all of the methods, acts and practices described above were performed willfully by Defendants.

47. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking restitution for consumers and civil penalties for violations of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests this Honorable Court to issue an order:

A. Declaring Defendants' conduct as described in the Complaint to be in violation of the *Consumer Protection Law* and *Auto Regulations*.

B. Permanently enjoining the Defendants, and their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from violating the *Consumer Protection Law* and any amendments thereto, including, but not limited to:

- 1. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods and services, as prohibited by Section 201-2(4)(ii) of the *Consumer Protection Law*;

2. 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, as prohibited by Section 201-2(4)(v) of the *Consumer Protection Law*;
3. 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, as prohibited by Section 201-2(4)(vii) of the *Consumer Protection Law*;
4. Advertising goods or services with intent not to sell them as advertised as prohibited by Section 201-2(4)(ix) of the *Consumer Protection Law*; and
5. Engaging in any other fraudulent or deceptive conduct creating a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the *Consumer Protection Law*.

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

C. Permanently enjoining the Defendants, and their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from violating the *Auto Regulations* and any amendments thereto, including, but not limited to, failing to disclose prior to sale the following conditions if the advertiser or seller knows or should know that certain conditions exist in the motor vehicle, including, the frame is bent, cracked or twisted, engine block or head is cracked, the vehicle is unable to pass State inspection, the transmission or differential is damaged, defective, or so deteriorated as to require replacement, or the vehicle is flood damaged, as prohibited by Section 301.2(5) of the *Auto Regulations*. 37 Pa. Code § 301.2(5).

D. Directing Defendants to make full restitution pursuant to Section 201-4.1 of the *Consumer Protection Law* 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 Defendants to pay to the Commonwealth civil penalties of One Thousand and 00/100 Dollars (\$1,000.00) for each instance of a past or present violation of the *Consumer Protection Law* and Three Thousand and 00/100 Dollars (\$3,000.00) for each instance of a past or present violation of the *Consumer Protection Law* involving consumers age sixty (60) or older as victims.

F. Permanently enjoining the Defendants, in any capacity, from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania and/or to consumers residing within the Commonwealth of Pennsylvania.

H. Requiring Defendants to pay the Commonwealth's court costs in this matter.

I. Granting such other and further relief as this Court may deem just, proper, and equitable under the circumstances.

**COUNT II – VIOLATIONS OF THE *CONSUMER PROTECTION LAW*,
THE *VEHICLE CODE*, AND THE *AUTO REGULATIONS***

***DEFENDANTS ENGAGED IN UNFAIR AND DECEPTIVE ACTS OR PRACTICES BY
FAILING TO PROVIDE VEHICLE TITLE AND REGISTRATION***

48. The averments and allegations of the preceding paragraphs are incorporated as though the same were fully set forth herein.

49. 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 (*i.e.*, exemptions for non-residents). 75 Pa. C.S. § 1301(a).

50. 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).

51. For vehicles purchased from a dealer, the dealer must mail or deliver applications for certificate of title to the Department of Transportation of the Commonwealth (hereinafter “PennDOT”) within twenty (20) days of date of purchase. 75 Pa. C.S. § 1103.1(d).

52. 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 law. 37 Pa. Code § 301.4(a)(10).

53. In at least once instance, Defendants failed to mail or deliver applications for certificate of title to PennDOT within twenty (20) days of purchase.

54. In at least one instance, Defendants 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.

55. For example, Consumer D, whose narrative is described in paragraph 26.a above, has never received title to the vehicle she purchased from RMA. RMA was responsible for correctly transferring the title and has failed to do so. Indeed, Mr. McKoy admitted to Consumer D that one of his employees may have failed to submit the required documentation to PennDOT. Consumer D contacted PennDOT regarding this issue and was told that title to the vehicle was being held by an unknown third party.

56. As another example, Consumer C, whose narrative is described in paragraph 26.b

above, encountered extensive delays getting title to the vehicle he purchased from RMA. When he asked RMA's representatives about how long it would take to get the title he paid for, Consumer C was told two weeks. However, the process took several months. During this delay, Consumer C was trying to sell the vehicle he purchased from RMA due to extensive mechanical problems, but was unable to do so without his title paperwork.

57. Defendants' failure 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 Regulations*. 75 Pa. C.S. § 1103.1(d); 37 Pa. Code § 301.4(a)(10).

58. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair 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. Section 201-2(4)(v), 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;
- b. Section 201-2(4)(ix), advertising goods or services with intent not to sell them as advertised; and
- c. Section 201-2(4)(xxi), engaging in any other fraudulent or deceptive conduct creating a likelihood of confusion or of misunderstanding.

73 P.S. §§ 201-3 and 201-2(4)(v), (ix), and (xxi).

59. The Commonwealth alleges that all of the methods, acts and practices described above were performed willfully by Defendants.

60. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking restitution for consumers and civil penalties for violation of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests this Honorable Court issue an order:

A. Declaring Defendants' conduct as described in the Complaint to be in violation of the *Consumer Protection Law* and the *Vehicle Code*.

B. Permanently enjoining Defendants and their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from violating the *Consumer Protection Law* and any amendments thereto, including, but not limited to:

1. 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, as prohibited by Section 201-2(4)(v) of the *Consumer Protection Law*;
2. Advertising goods or services with intent not to sell them as advertised, as prohibited by Section 201-2(4)(ix) of the *Consumer Protection Law*; and
3. Engaging in any other fraudulent or deceptive conduct creating a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the *Consumer Protection Law*.

73 P.S. § 201-2(4)(v), (ix), and (xxi).

C. Permanently enjoining Defendants and their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from violating the *Vehicle Code* and any amendments thereto, including, but not limited to, failing to mail or deliver applications for certificate of title to PennDOT within 20 days of date of purchase, as prohibited by Section 1103.1(d) of the *Vehicle Code*. 75 Pa. C.S. § 1103.1(d).

D. Permanently enjoining Defendants and their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from violating the *Auto Regulations* and any amendments thereto, including, but not limited to, 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, as prohibited by 37 Pa. Code § 301.4(a)(10).

E. Directing Defendants to make full restitution pursuant to Section 201-4.1 of the *Consumer Protection Law* 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*.

F. Directing Defendants to pay to the Commonwealth civil penalties of One Thousand and 00/100 Dollars (\$1,000.00) for each instance of a past or present violation of the *Consumer Protection Law* and Three Thousand and 00/100 Dollars (\$3,000.00) for each instance of a past or present violation of the *Consumer Protection Law* involving consumers age sixty (60) or older as victims.

G. Permanently enjoining Defendants, from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania and/or to consumers residing within the

Commonwealth of Pennsylvania.

I. Requiring Defendants to pay the Commonwealth's court costs in this matter.

J. Granting such other and further relief as this Court may deem just, proper, and equitable under the circumstances.

**COUNT III – VIOLATIONS OF
AUTO REGULATIONS AND CONSUMER PROTECTION LAW**

Defendants' Unfair and Deceptive Warranty Representations

61. The preceding paragraphs are incorporated herein as though fully set forth below.

62. Section 301.4(9) of the *Auto Regulations* declares it is an unfair method of competition and unfair or deceptive act or practice to use the term “As Is” in connection with the sale of a motor vehicle 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:

**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(9).

63. In numerous instances, Defendants have used the term “As Is” when selling motor vehicles, but have not included within the vehicle's respective purchase agreement the “As Is” notice language required by Section 301.4(9) of the *Auto Regulations*, 34 Pa. Code § 301.4(9).

64. As a standard business practice, Defendants instruct buyers to sign the Used Vehicle Order form and As-Is Disclosure form attached as Exhibits A and B, respectively. Both of these documents purport to sell vehicles As-Is.

65. Neither the Used Vehicle Order form nor the As-Is Disclosure form contains the notice language required by Section 301.4(9) of the *Auto Regulations*.

66. Defendants have violated Sections 301.4(a)(9) of the *Auto Regulations* by attempting to exclude the implied warranties of merchantability and fitness without including the language in the vehicle's purchase agreement. 37 Pa. Code § 301.4(9).

67. A violation of the *Auto Regulations* constitutes a violation of the *Consumer Protection Law*. 73 P.S. § 201-3.1.

68. The aforesaid acts and practices 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) of the *Consumer Protection Law*, 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, in violation of Section 201-2(4)(iii) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(iii);
- c. Representing that goods or services have a 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) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(v); and

- 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) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(xxi).

69. The above described conduct has been willful and is unlawful under Section 201-3 of the *Consumer Protection Law*, 73 P.S. § 201-3.

70. The Commonwealth believes that the citizens of the Commonwealth are suffering and will continue to suffer unless the acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

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

A. Declaring Defendants' conduct as described in the Complaint to be in violation of the *Consumer Protection Law* and *Auto Regulations*.

B. Permanently enjoining the Defendants, and their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from violating the *Consumer Protection Law* and any amendments thereto, including, but not limited to:

1. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods and services, as prohibited by Section 201-2(4)(ii) of the *Consumer Protection Law*;
2. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, as prohibited by Section 201-2(4)(iii) of the *Consumer Protection Law*;
3. Representing that goods or services have a 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, as prohibited by Section 201-2(4)(v) of the *Consumer Protection Law*; and

4. Engaging in any other fraudulent or deceptive conduct creating a likelihood of confusion or of misunderstanding, as prohibited by Section 201-2(4)(xxi) of the *Consumer Protection Law*.

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

C. Permanently enjoining the Defendants, and their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from violating the *Auto Regulations* and any amendments thereto, including, but not limited to, purporting to sell vehicles “as-is” without stating in its contracts the language mandated by Section 301.4(9) of the *Auto Regulations*. 37 Pa. Code § 301.4(9).

D. Directing Defendants, 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* and the *Auto Regulations*;

E. Directing Defendants, 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 the Defendants, in any capacity, from engaging in business involving the sale of motor vehicles in the Commonwealth of Pennsylvania and/or to consumers residing within the Commonwealth of Pennsylvania;

G. Directing Defendants to pay the Commonwealth for the court costs of this action;
and

H. Granting such other relief as the Court deems necessary.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MICHELLE A. HENRY
ATTORNEY GENERAL

Date: November 15, 2023

By: *Debra Djupman Warring*
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CERTIFICATE OF COMPLIANCE

I 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: November 15, 2023

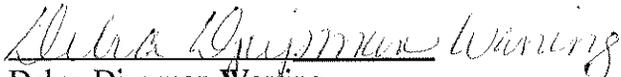
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EXHIBIT A

USED VEHICLE ORDER

Date 6/4/21

Dealer Real Motor Auto

Purchaser [Redacted] Phone: [Redacted]

Address [Redacted]

ENTER MY ORDER FOR ONE CAR TRUCK OR AS FOLLOWS:

YEAR <u>2009</u>	MAKE <u>Volkswagen</u>	MODEL <u>Routan</u>	BODY <u>Sw</u>	LIC. N.P.
ODOMETER <u>104,431</u>	SERIAL NO. <u>2V8HW34179R578240</u>		COLOR <u>SILVER</u>	STOCK NO.

CAR SALES PRICE	\$ <u>5000</u>	TOTAL PURCHASE PRICE	\$
DELIVERY & HANDLING		DEPOSIT	
		USED CAR ALLOWANCE \$	
		LESS LIEN \$	
TAX	<u>400</u>	HELD BY	
FILING	<u>220</u>	EQUITY	
LIC. PLATES		CASH ON DELIVERY	
		TOTAL PAYMENT	\$

The information you see in the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions to the contract of sales.

TRADE IN RECORD Contract to be paid in payments of \$ each, 1st payment due

YEAR	MAKE	MODEL	BODY	COLOR	LIC. N.P.
ODOMETER	SERIAL NO.		TITLE NO.	STOCK NO.	

SOLD AS IS. I hereby make this purchase knowingly without ~~any~~ guarantee, expressed or implied, by this dealer or his agent.
Customer's Signature [Redacted]

SOLD WITH WARRANTY. We the dealer warranty this vehicle for _____ after delivery on a retail basis of parts and labor used. (Owner pays _____ and dealer pays _____ of total retail costs of parts and labor used). All repairs must be made in our service shop or shops authorized by dealer named. We do not warranty tires, battery, glass, clock, heater or radio.
Dealer's Signature _____

I have read the face and back of this order, and I approve all figures, terms and conditions in this purchase contract. I am 18 years of age or older and ACKNOWLEDGE RECEIPT OF A COMPLETE COPY OF THIS ORDER ON THE DATE SHOWN ABOVE. The figures in this order are predicated upon actual cost of insurance and the correct amount of the lien due to the trade in motor vehicle. All transactions are subject to finance company or bank approval. Regardless of the mileage appearing on the speedometer the seller makes no warranty or representation as to the extent of the motor vehicle has been used or driven.

I agree to accept delivery _____ S.S. NO. _____
Buyer's Signature _____ Phone _____
Address _____

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER.
Salesman Leneshia Grier Accepted by [Signature]
FORM 55-E DEALER'S SIGNATURE

EXHIBIT B

REAL MCKOY AUTO

AS IS - DISCLOSURE

- I UNDERSTAND THAT I AM RESPONSIBLE FOR ANY REPAIRS AFTER THE SALE.

Signature: _____

- REAL MCKOY AUTO DOES NOT RETURN OR EXCHANGE VEHICLES AFTER THE SALE.

Signature: _____

- I UNDERSTAND THAT EVEN IF I CHOOSE THE WARRANTY I AM RESPONSIBLE TO PAY FOR ANY REPAIRS THAT THE WARRANTY DOES NOT COVER.

Signature: _____

- I UNDERSTAND THAT THE VEHICLE IS "AS IS" AND I AGREE NOT TO HOLD THE SELLER RESPONSIBLE FOR ANY REPAIRS THAT MAY ARISE WITH THE VEHICLE AFTER THE PURCHASE.

Signature: _____

- I UNDERSTAND THAT THERE WILL BE NO MONEY BACK UNDER ANY CIRCUMSTANCES CASH, CREDIT/DEBIT CARDS, FINANCING DEPOSITS OR WARRANTY CONTRACTS.

Signature: _____

- I UNDERSTAND THAT MY VEHICLE HAS A GPS SHUT OFF MODULE INSTALLED (FINANCE DEALS ONLY)

Signature: _____

I READ AND UNDERSTAND THIS CONTRACT AND AGREE TO THIS CONTRACT

PRINT NAME: _____

SIGN: _____