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SUPERIOR COURT OF NEW JERSEY

JUL 30 2014

PASSAIC COUNTY

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Erin M. Greene (#014512010)
Deputy Attorney General

[REDACTED]
[REDACTED]

JOHN J. HOFFMAN, Acting Attorney
General of the State of New Jersey, and
STEVE C. LEE, Acting Director of the New
Jersey Division of Consumer Affairs,

Plaintiffs,

v.

BERGEN AUTO ENTERPRISES, L.L.C.,
d/b/a WAYNE MAZDA and d/b/a WAYNE
AUTO MALL HYUNDAI; JANE and JOHN
DOES 1-10, individually and as owners,
officers, directors, shareholders, founders,
managers, agents, servants, employees,
representatives and/or independent contractors
of BERGEN AUTO ENTERPRISES, L.L.C.,
d/b/a WAYNE MAZDA and d/b/a WAYNE
AUTO MALL HYUNDAI; and XYZ
CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, PASSIAC COUNTY
DOCKET NO.: PAS-C-

67-14

Civil Action

COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs

("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, (collectively, "Plaintiffs"), by way of this Complaint state:

PRELIMINARY STATEMENT

1. Consumers are particularly vulnerable to deceptive advertising and sales practices when purchasing a new or used motor vehicle. Most do not have independent access to information such as the condition and prior use of used motor vehicles offered for sale. The State of New Jersey ("State") has recognized the dangers of consumers being exploited by deceptive sales practices and has enacted a comprehensive set of statutes and regulations aimed at ensuring that consumers have access to all relevant information when purchasing a new or used motor vehicle.

2. At all relevant times, Bergen Auto Enterprises, L.L.C., d/b/a Wayne Mazda and d/b/a Wayne Auto Mall Hyundai ("Defendant" or "Bergen Auto Enterprises") has been engaged in the retail sale and advertisement of new and used motor vehicles in the State and elsewhere through newspapers, the internet and at its dealership location. In so doing, Defendant has failed to comply with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-1.1. et seq. ("Motor Vehicle Advertising Regulations"), by, among other things: (a) failing to disclose the prior condition and/or prior use of used motor vehicles; (b) failing to disclose that used motor vehicles offered for sale were previously damaged and were subjected to substantial repair and body work; and (c) misrepresenting that certain motor vehicles advertised and/or offered for sale were available for purchase when those motor vehicles had previously been sold or leased. The Attorney General and Director submit this Complaint to halt Defendant's deceptive business practices and to prevent additional consumers from being harmed.

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA and the Motor Vehicle Advertising Regulations. The Director is charged with the responsibility of administering the CFA and the Motor Vehicle Advertising Regulations on behalf of the Attorney General.

4. By this action, Plaintiffs seek injunctive and other relief for violations of the CFA and the Motor Vehicle Advertising Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19. Venue is proper in Passaic County, pursuant to R. 4:3-2, because it is a county in which Defendant has advertised and/or conducted business and in which its maintains a principal place of business.

5. Bergen Auto Enterprises is a Domestic For-Profit Corporation established in the State on July 24, 2000. At all relevant times, Bergen Auto Enterprises has maintained a principal business address of 1244 Route 23 North, Wayne, NJ 07470.

6. As of April 12, 2001, Bergen Auto Enterprises was authorized to conduct business in the State under the alternate name Wayne Mazda (“Wayne Mazda”).

7. As of April 3, 2007, Bergen Auto Enterprises was also authorized to conduct business in the State under the alternate name Wayne Auto Mall Hyundai (“Wayne Hyundai”).

8. The registered agent in the State for Bergen Auto Enterprises is Bergen Auto Enterprises, which maintains a registered office address of 1244 Route 23 North, Wayne, New

Jersey 07470. Bergen Auto Enterprises is owned by Kevin DiPiano, who resides at [REDACTED]

9. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Bergen Auto Enterprises who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

10. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

A. Defendant's Business Generally:

11. At all relevant times, Defendant has operated a motor vehicle dealership in the State and has engaged in the retail sale and/or lease of new and used motor vehicles.

12. At all relevant times, Defendant has maintained a website at www.waynemazda.com ("Wayne Mazda Website") and a website at www.waynehundai.com ("Wayne Hyundai Website").

13. Upon information and belief, Defendant advertises and otherwise offers new and used motor vehicles for sale and for lease to consumers in this State and elsewhere through various media including, but not limited to, the Wayne Mazda Website, the Wayne Hyundai Website, newspapers and other print advertisements.

**B. Wayne Mazda's Advertisement,
Offering for Sale and Sale of New and Used Motor Vehicles:**

14. The Division reviewed the used motor vehicles advertised and offered for sale on the Wayne Mazda Website on August 19, 2011, and performed searches of the advertised vehicles through CARFAX™ (a vehicle history reporting service). The Wayne Mazda Website: (a) advertised used motor vehicles for sale without disclosing their prior use (e.g. rental); (b) advertised used motor vehicles for sale without disclosing their prior damage; and (c) advertised used motor vehicles for sale without including the required statement on the website that “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”

15. The Division reviewed the used motor vehicles advertised and offered for sale by Wayne Mazda in the September 23, 2011 edition of the Newark Star-Ledger newspaper (the “Star-Ledger”) and performed CARFAX™ searches on the advertised vehicles. Wayne Mazda: (a) advertised used motor vehicles for sale without disclosing their prior use (e.g. rental); (b) advertised used motor vehicles for sale without disclosing their prior damage; and (c) advertised used motor vehicles for sale without including the required statement that “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”

16. The Division reviewed the motor vehicles advertised and offered for sale on the Wayne Mazda Website on August 1, 2013, and performed searches through CARFAX™ and/or AutoCheck (another vehicle history reporting service) on the advertised vehicles. The Wayne Mazda Website: (a) advertised used motor vehicles for sale without disclosing their prior use (e.g. rental); (b) advertised used motor vehicles for sale without disclosing their prior damage; and (c) advertised used motor vehicles for sale without including the required statement on the website that

“price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”

17. The Division reviewed the used motor vehicles advertised and offered for sale by Wayne Mazda in the June 14, 2013 edition of the Star-Ledger and performed CARFAX™ searches on the advertised vehicles. Wayne Mazda: (a) advertised used motor vehicles for sale without disclosing their prior use (e.g. rental); (b) advertised used motor vehicles for sale without disclosing their prior damage; and (c) advertised used motor vehicles for sale without disclosing both their prior use and prior damage; and (d) advertised used motor vehicles for sale without including the required statement that “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”

18. Between July 28, 2013 and January 18, 2014, the Division reviewed the new and used motor vehicles advertised and offered for sale and/or lease by Wayne Mazda in forty-nine (49) editions of the Star Ledger.

19. Wayne Mazda advertised new and used motor vehicles without including the required statement that “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes” on the following dates: July 28, 2013; August 15 through August 18, 2013; September 7, 2013; September 8, 2013; September 13 through September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 5, 2013; October 6, 2013; October 11 through October 13, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 8 through November 10, 2013; November 14 through November 17, 2013; November 22 through November 24, 2013; November 28 through

November 30, 2013; December 1, 2013; December 7, 2013; December 8, 2013; December 26, 2013; December 28, 2013; January 11, 2014; January 12, 2014; January 16, 2014; and January 18, 2014.

20. Wayne Mazda advertised prices for new and used motor vehicles that reflected discounts not available to all consumers (e.g. advertising prices of new motor vehicles which reflected owner loyalty rebates available only to individuals who had purchased a new motor vehicle from Wayne Mazda in the previous four months) on the following dates: July 28, 2013; August 15 through August 18, 2013; September 7, 2013; September 8, 2013; September 13 through September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 5, 2013; October 6, 2013; October 11 through October 13, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 8 through November 10, 2013; November 14 through November 17, 2013; November 22 through November 24, 2013; November 28 through November 30, 2013; December 1, 2013; December 7, 2013; December 8, 2013; December 26, 2013; December 28, 2013; January 11, 2014; January 12, 2014; January 16, 2014; and January 18, 2014.

21. Wayne Mazda has required that an advertisement be produced as a coupon when the new or used motor vehicle was not available for purchase (e.g. requiring production of a coupon to secure leasing terms when vehicle had previously been sold) in sixty (60) total instances on the following dates: July 28, 2013; August 15 through August 18, 2013; September 7, 2013; September 8, 2013; September 13 through September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 5, 2013; October 6, 2013; October 11 through October 13, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 8 through November 10, 2013; November 14 through November 17, 2013; November 22

through November 24, 2013; November 28 through November 30, 2013; December 1, 2013; December 7, 2013; December 8, 2013; December 26, 2013; December 28, 2013; January 11, 2014; January 12, 2014; January 16, 2014; and January 18, 2014.

22. Wayne Mazda has failed to properly explain footnotes to newspaper advertisements (e.g. advertised prices containing a footnote which reads “Available to qualified buyers on select vehicles” without specifying the motor vehicle to which the discount applied or the conditions necessary for the consumer to qualify for the discount) on the following dates: July 28, 2013; August 15 through August 18, 2013; September 7, 2013; September 8, 2013; September 13 through September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 5, 2013; October 6, 2013; October 11 through October 13, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 8 through November 10, 2013; November 14 through November 17, 2013; November 22 through November 24, 2013; November 28 through November 30, 2013; December 1, 2013; December 7, 2013; December 8, 2013; December 26, 2013; December 28, 2013; January 11, 2014; January 12, 2014; January 16, 2014; and January 18, 2014.

C. Wayne Mazda’s Advertisement, Offering for Lease and Leasing of New Motor Vehicles:

23. The Division reviewed the new motor vehicles advertised and offered for lease by Wayne Mazda in the Star-Ledger on July 28, 2013. The advertisement offered the following new motor vehicles for lease: (a) a 2013 Mazda 3, Partial VIN#D1747777, advertised lease terms of \$59.00 per month for a period of twenty-four (24) months; (b) a 2013 Mazda CX-5, partial VIN#D0160676, advertised lease terms of \$149.00 per month for a period of twenty-four (24) months; and (c) a 2013 Mazda CX-9, partial VIN#D0402612, advertised lease terms of \$159.00 per

month for a period of twenty-four (24) months. These vehicles were continuously advertised from July 28, 2013 through December 28, 2013.

24. On December 28, 2013, the Division performed CARFAX™ and New Jersey Motor Vehicle Commission (“MVC”) searches regarding the 2013 Mazda 3, Partial VIN #D1747777, which revealed the motor vehicle had been sold on September 28, 2013, with the title being issued on October 12, 2013. Wayne Mazda advertised this new motor vehicle for lease for ninety-one (91) days after it had been sold.

25. On December 28, 2013, the Division performed CARFAX™ and MVC searches regarding the 2013 Mazda CX-5, partial VIN#D0160676, which revealed the motor vehicle had been sold on February 5, 2013, with the title being issued on February 15, 2013. Wayne Mazda advertised this new motor vehicle for lease for three hundred twenty-seven days (327) after it had been sold.

26. On December 28, 2013, the Division performed CARFAX™ and MVC searches regarding the 2013 Mazda CX-9, partial VIN#D0402612, which revealed the motor vehicle had previously been sold on March 29, 2013, with the title being issued on April 11, 2013. Wayne Mazda advertised this new motor vehicle for lease for two hundred seventy-five (275) days after it had been sold.

27. Wayne Mazda has advertised and offered new motor vehicles for lease without possessing title for extended periods of time.

**D. Wayne Hyundai’s Advertisement,
Offering for Sale and Sale of New and Used Motor Vehicles:**

28. The Division reviewed the used motor vehicles advertised and offered for sale by Wayne Hyundai in the Star-Ledger on September 13, 2013 and performed CARFAX™ searches on

the advertised vehicles. Wayne Hyundai: (a) advertised used motor vehicles for sale without disclosing their prior use (e.g. rental); (b) advertised used motor vehicles for sale without disclosing their prior damage; (c) advertised used motor vehicles for sale without disclosing both their prior use and prior damage; and (d) advertised used motor vehicles for sale without including the required statement that “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”

29. The Division reviewed the used motor vehicles advertised and offered for sale on the Wayne Hyundai Website on November 11, 2013, and performed CARFAX™ and/or AutoCheck searches on the advertised vehicles. The Wayne Hyundai Website: (a) advertised used motor vehicles for sale without disclosing their prior use; (b) advertised used motor vehicles for sale without disclosing their prior damage; and (c) advertised sixty-four (64) used motor vehicles for sale without including the required statement on the website that “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”

30. Between July 28, 2013 and January 18, 2014, the Division reviewed the new and used motor vehicles advertised and offered for sale and/or lease by Wayne Hyundai in thirty-eight (38) editions of the Star Ledger.

31. Wayne Hyundai advertised used motor vehicles without including the required statement that “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes” on the following dates: July 28, 2013; August 16 through August 18, 2013; September 12, 2013; September 14, 2013; September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 11 through October 14, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 7

through November 10, 2013; November 15, 2013; November 16, 2013; November 21 through November 24, 2013; November 28 through November 30, 2013; December 1, 2013; and January 18, 2014.

32. Wayne Hyundai advertised prices for new and used motor vehicles that reflected discounts not available to all consumers (e.g. advertising prices of new motor vehicles which reflected several rebates in the advertised price which few (if any) individuals would qualify for, including prices reflecting a military rebate, a college rebate and a lease loyalty rebate for trading in a Hyundai Sonata) on the following dates: July 28, 2013; August 16 through August 18, 2013; September 12 through September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 11 through October 14, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 7 through November 10, 2013; November 15, 2013; November 16, 2013; November 21 through November 24, 2013; November 28 through November 30, 2013; December 1, 2013; and January 18, 2014.

33. Wayne Hyundai required that an advertisement be produced as a coupon when the new or used motor vehicle was not available for purchase (e.g. requiring production of a coupon to secure leasing terms when vehicle had previously been sold) in fifty-eight (58) total instances on the following dates: July 28, 2013; August 16 through August 18, 2013; September 12, 2013; September 14, 2013; September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 11 through October 14, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 7 through November 10, 2013; November 15, 2013; November 16, 2013; November 21 through November 24, 2013; November 28 through November 30, 2013; December 1, 2013; and January 18, 2014.

34. Wayne Hyundai has failed to properly explain footnotes to newspaper advertisements (e.g. advertised prices containing a footnote that states: "To qualified buyers with approved credit on select vehicles in lieu of rebates and incentives" without specifying the motor vehicle to which the discount applied and/or the qualifications necessary for the consumer to obtain approved credit) on the following dates: July 28, 2013; August 16 through August 18, 2013; September 12, 2013; September 14, 2013; September 15, 2013; September 20 through September 22, 2013; September 27 through September 29, 2013; October 11 through October 14, 2013; October 18 through October 20, 2013; October 25 through October 27, 2013; November 7 through November 10, 2013; November 15, 2013; November 16, 2013; November 21 through November 24, 2013; November 28 through November 30, 2013; December 1, 2013; and January 18, 2014.

E. Wayne Hyundai's Advertisement, Offering for Lease and Leasing of New Motor Vehicles:

35. The Division reviewed the new motor vehicles advertised and offered for lease by Wayne Hyundai in the Star-Ledger on July 28, 2013. Among the new motor vehicles offered for lease were: (a) a 2013 Hyundai Accent, partial VIN#DU116035, advertised lease terms of \$59.00 per month for a period thirty-six (36) months; and (b) a 2013 Hyundai Genesis, partial VIN#DU228921, advertised lease terms of \$299.00 per month for a period of twenty-four (24) months.

36. On March 3, 2014, the Division performed CARFAX™ and MVC searches regarding the 2013 Hyundai Accent, partial VIN#DU116035, which revealed that the new motor vehicle was not titled in this State.

37. Wayne Hyundai never possessed the title to the 2013 Hyundai Accent, partial VIN#DU116035, which was titled in Pennsylvania. Wayne Hyundai continuously advertised this

and/or independent contractors, has entered into or has attempted to enter into various retail transactions with consumers in this State and elsewhere for the sale and/or lease of new and used motor vehicles through the Wayne Mazda Website, the newspaper and/or their dealership location.

44. In so doing, Defendant, through its owners, officers, director, shareholders, members, founders, managers, agents, servants, employees, representatives and/or independent contractors has engaged in the use of unconscionable commercial practices, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

45. Defendant's conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Offering for sale used motor vehicles without disclosing the prior use of the vehicles (i.e. rental; corporate);
- b. Offering for sale used motor vehicles without disclosing the prior damage to the vehicles;
- c. Advertising new motor vehicles for sale or lease without possessing title to the motor vehicles;
- d. Advertising a price for a new motor vehicle reflecting a dealership loyalty rebate that was only available to consumers who had purchased a new motor vehicle from the dealership within the four months prior to the date of the advertisement;
- e. Advertising prices that reflected discounts not available to all consumers;
- f. Advertising new and used motor vehicles for sale without including the required statement that the "price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes";
- g. Requiring that an advertisement be produced as a coupon to the dealership when the motor vehicle was not available for purchase (e.g. requiring production of a coupon to secure leasing terms when vehicle had previously been sold); and
- h. Failing to properly explain footnotes to newspaper advertisements.

46. Each unconscionable commercial practice by Wayne Mazda constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT II

**VIOLATION OF THE CFA BY WAYNE HYUNDAI
(UNCONSCIONABLE COMMERCIAL PRACTICES)**

47. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 46 above as if more fully set forth herein.

48. The CFA, N.J.S.A. 56:8-2 prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . .

49. Since at least 2011, Defendant d/b/a Wayne Hyundai, through its owners, officers, directors, shareholders, members, founders, managers, agents, servants, employees, representatives and/or independent contractors, has entered into or has attempted to enter into various retail transactions with consumers in this State and elsewhere for the sale and/or lease of new and used motor vehicles through the Wayne Hyundai Website, the newspaper and/or their dealership location.

50. In so doing, Defendant, through its owners, officers, director, shareholders, members, founders, managers, agents, servants, employees, representatives and/or independent contractors has engaged in the use of unconscionable commercial practices, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

51. Defendant's conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Offering for sale used motor vehicles without disclosing the prior use of the vehicles (e.g. rental, corporate);
- b. Offering for sale used motor vehicles without disclosing the prior damage to the vehicles;
- c. Advertising new motor vehicles for sale or lease without possessing title to the motor vehicle;
- d. Advertising prices that reflected discounts not available to all consumers;
- e. Advertising new and used motor vehicles for sale without including the required statement that the “price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”;
- f. Requiring that an advertisement be produced as a coupon to the dealership when the motor vehicle was not available for purchase. (e.g. requiring production of a coupon to secure leasing terms when vehicle had previously been sold); and
- g. Failing to properly explain footnotes to newspaper advertisements.

52. Each unconscionable commercial practice by Wayne Hyundai constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF THE CFA BY WAYNE HYUNDAI AND WAYNE MAZDA (MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)

53. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 52 above as if more fully set forth herein.

54. Defendant’s conduct in violation of the CFA includes, but is not limited to, the following misrepresentations:

- a. Misrepresenting to consumers the previous use of a used motor vehicle;
- b. Misrepresenting to consumers the prior damage to a used motor vehicle; and

- c. Misrepresenting the price of a motor vehicle by advertising prices which include discounts not available to all consumers.

55. Defendant's conduct in violation of the CFA includes, but is not limited to, the following knowing omissions of material facts:

- a. Failing to disclose to consumers prior to purchase any prior damage to the used motor vehicle advertised and/or offered for sale;
- b. Failing to disclose to consumers prior to purchase the prior use of the used motor vehicle advertised and/or offered for sale; and
- c. Failing to disclose that the price advertised for new and used motor vehicles offered for sale did not include licensing costs, registration fees and taxes.

56. Each misrepresentation and/or knowing omission of material fact by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT IV

VIOLATION OF THE CFA AND MOTOR VEHICLE ADVERTISING REGULATIONS BY WAYNE HYUNDAI AND WAYNE MAZDA (BAIT AND SWITCH)

57. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 56 above as if more fully set forth at length herein.

58. The CFA and the Motor Vehicle Advertising Regulations prohibit the use of an advertisement of a motor vehicle as part of a plan or scheme not to sell or lease the motor vehicle at the advertised price. N.J.S.A. 56:8-2, N.J.S.A. 56:8-2.2, N.J.A.C. 13:45A-26A.4 and N.J.A.C. 13:45A-26A.10. This practice is commonly known as "bait and switch."

59. Defendant has engaged in unlawful "bait and switch" conduct by advertising a motor vehicle with a low sales and/or lease price that had already been sold or leased.

60. Such unlawful acts, in violation of the CFA and the Motor Vehicle Advertising Regulations, include, but are not limited to, the following plans or schemes:

- a. Advertising that a new motor vehicle was available for sale or lease, when, in fact, the vehicle had already been sold or leased; and
- b. Continuing to advertise a new motor vehicle for sale or lease after it had been sold or leased.

61. Each instance where Defendant advertised a new motor vehicle as part of a plan or scheme not to sell or lease the motor vehicle at the advertised price constitutes a separate violation of the CFA, N.J.S.A., 56:8-2 and N.J.S.A. 56:8-2.2, as well as the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.4(a)(1) and N.J.A.C. 13:45A-26A.10, each of which constitutes a per se violation of the CFA.

COUNT V

VIOLATION OF THE MOTOR VEHICLE ADVERTISING REGULATIONS BY DEFENDANT (FAILURE TO MAKE REQUIRED DISCLOSURES)

62. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 61 above as if more fully set forth at length herein.

63. The Motor Vehicle Advertising Regulations, address, among other things, general advertising practices concerning motor vehicles offered for sale in the State.

64. Defendant is an “Advertiser” within the meaning of the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.3.

65. The Motor Vehicle Advertising Regulations set forth mandatory disclosure requirements for advertisements for the sale of new and used motor vehicles. Specifically, N.J.A.C.

13:45A-26A.5(a) addresses the required disclosures for new motor vehicles and provides, in pertinent part:

- (a) In any advertisement in which the advertiser offers a new motor vehicle for sale at an advertised price, the following information must be included:

.....

- 2. A statement that 'price(s) include(s) all costs to be paid by consumer, except for licensing costs, registration fees, and taxes'. If this statement appears as a footnote, it must be set forth in at least 10 point type. For purposes of this subsection, 'all costs to be paid by a consumer' means manufacturer-installed options, freight, transportation, shipping, dealer preparation, and any other costs to be borne by a consumer except licensing costs, registration fees, and taxes.

[N.J.A.C. 13:45A-26A.5(a)(2).]

66. In addition, N.J.A.C. 13:45A-26A.5(b) of the Motor Vehicle Advertising Regulations addresses the required disclosures for used motor vehicles and provides, in pertinent part:

- (b) In any advertisement offering for sale a used motor vehicle at an advertised price, the information described in (a)1,2,4,5 and 6 above must be included, as well as the following additional information:

.....

- 2. The nature of prior use unless previously and exclusively owned or leased for individuals for their personal use, when such prior use is known or should have been known by the advertiser.

[N.J.A.C. 13:45A-26A.5(b)(2).]

67. The Motor Vehicle Advertising Regulations also prohibit certain advertising practices and provide, in pertinent part:

- (a) In any type of motor vehicle advertising, the following practices shall be unlawful:

.....

7. The failure to disclose that the motor vehicle had been previously damaged and that substantial repair or body work has been performed on it when such prior repair or body work is known or should have been known by the advertiser; for purposes of this subsection, 'substantial repair or body work' shall mean repair or body work having a retail value of \$1,000 or more;

.....

[N.J.A.C. 13:45A-26A.7(a)(7).]

68. Defendant's conduct in violation of the Motor Vehicle Advertising Regulations includes, but is not limited to, the following:

- a. Failing to include, in its internet and newspaper advertisements of new vehicles, the statement that "price(s) include(s) all costs to be paid by consumer, except for licensing costs, registration fees, and taxes."
- b. Failing to disclose, in its internet and newspaper advertisements for used vehicles, the nature of the prior use of the used motor vehicles advertised; and
- c. Failing to disclose that advertised used motor vehicles were previously damaged and were subjected to substantial repair and body work.

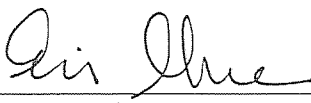
69. Defendant's conduct constitutes multiple violations of the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.5(a)(2), N.J.A.C. 13:45A-26A.5(b)(2) and N.J.A.C. 13:45A-26A.7(a)(7), each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts and omissions of Defendant constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 et seq.;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, members, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 et seq., including, but not limited to, the acts and practices alleged in the Complaint;
- (c) Directing the Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Assessing investigative costs and fees, including attorneys' fees, against Defendant for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

JOHN HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs


By: 
Erin M. Greene
Deputy Attorney General

Dated: July 30, 2014
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Motor Vehicles Advertising Regulations N.J.A.C. 13:45A-26A.1 et seq., is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party that should be joined in this action at this time.

JOHN HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs


By: 
Erin M. Greene
Deputy Attorney General

Dated: July 30, 2014
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JOHN HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs


By: 
Erin M. Greene
Deputy Attorney General

Dated: July 30, 2014
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Erin M. Greene is hereby designated as trial counsel for the Plaintiffs in this action.

JOHN HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Erin M. Greene
Deputy Attorney General

Dated: July 30, 2014
Newark, New Jersey