

SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY
SPECIAL CIVIL PART

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By: Jeffrey Koziar (015131999)
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[REDACTED]

SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY

FEB 26 2015
REC'D & FILED
CIVIL CASE
MANAGEMENT OFFICE

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
CUMBERLAND COUNTY
DOCKET NO.: CUM-C- 2-15

JOHN 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.

AUTOSOURCE GROUP, LLC.; JANE AND
JOHN DOES 1-10, individually and as
owners, officers, directors, shareholders,
founders, managers, agents, servants,
employees, representatives and/or
independent contractors of AUTOSOURCE
GROUP, LLC; and XYZ CORPORATIONS
1-10,

Defendant.

Civil Action

COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey
("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New
Jersey, 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 who purchase used motor vehicles typically need to budget their money carefully. Many do not have the means to purchase more expensive new motor vehicles or to incur the costs of repairing damaged used vehicles. Accordingly, dealerships that offer for sale and sell used motor vehicles have a responsibility to provide accurate and complete information to prospective purchasers and to ensure their vehicles are in good working order. 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 used motor vehicle.

2. At all relevant times, AutoSource Group, LLC ("Defendant" or "AutoSource") has been engaged in the retail sale of used motor vehicles in the State and elsewhere through 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"), the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-26A.1. et seq. ("Motor Vehicle Advertising Regulations"), the Regulations Governing Automotive Sales Practices, N.J.A.C. 13:45A-26B.1 et seq. ("Automotive Sales Regulations"), the Used Car Lemon Law, N.J.S.A. 56:8-67 et seq. ("UCLL"), and the Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.6(a)-(b)(1) ("UCLL Regulations") by, among other things: (a) failing to disclose the prior condition and/or prior use of used motor vehicles; (b) failing to disclose existing mechanical defects in

used motor vehicles; (c) failing to provide the required written warranties; and (d) failing to respond to consumer complaints. The Attorney General and Director submit this Complaint to halt Defendants' 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, the Motor Vehicle Advertising Regulations, the Automotive Sales Regulations, the UCLL and UCLL Regulations. The Director is charged with the responsibility of administering the CFA, the Motor Vehicle Advertising Regulations and the Automotive Sales Regulations, the UCLL and UCLL Regulations on behalf of the Attorney General.

4. By this action, Plaintiffs seek injunctive and other relief for violations of the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Regulations, the UCLL and UCLL 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 Cumberland County, pursuant to R. 4:3-2, because it is a county in which Defendant has advertised and/or conducted business and maintained a principal place of business.

5. AutoSource is a Domestic For-Profit Corporation established in the State on February 20, 2011. At all relevant times, AutoSource has maintained a principal business address of 1327 South Delsea Drive, Vineland, New Jersey 08360.

6. The registered agent in the State for AutoSource is Charles Simpson III, who maintains a registered office address of 1070 Garry Avenue, Vineland, New Jersey 08361.

7. 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 AutoSource 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.

8. 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

9. Upon information and belief, since at least February 2011, Defendant has operated a motor vehicle dealership in the State and has engaged in the retail sale of used motor vehicles.

10. At all relevant times, Defendant has maintained a website at www.autosourze.com ("AutoSource Website").

11. Upon information and belief, Defendant advertises and otherwise offers used motor vehicles for sale to consumers in this State and elsewhere through various media including, but not limited to, the AutoSource Website.

B. Defendant's Advertisement, Offering for Sale and Sale of Used Motor Vehicles

12. The Division reviewed the motor vehicles advertised and offered for sale on the Auto Source Website on January 6, 2014 and performed searches for the advertised vehicles on either Carfax or the National Crime Insurance website. The Division found that the AutoSource Website: (a) advertised seventeen (17) used motor vehicles for sale without disclosing their prior damage; (b) advertised five (5) used motor vehicles for sale without disclosing their prior use; and (c) advertised at least twenty-two (22) used motor vehicles for sale without including a statement on the website that “prices include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes.”

13. Defendant advertised, offered for sale and sold used motor vehicles without disclosing existing mechanical defects.

14. Defendant has failed to respond to complaints from consumers about problems with used motor vehicles purchased at Auto Source.

15. Defendant has sold used motor vehicles without providing the required warranties in accordance with the UCLL.

16. Defendant has sold used motor vehicles and represented that they came with warranties, for which consumers were charged and then failed to honor the warranties when presented with consumers’ complaints.

17. Defendant has failed to itemize all documentary service fees.

COUNT I

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17 above as if more fully set forth herein.

19. 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 . . .

20. Since at least 2011, Defendant, through its owners, officers, directors, shareholders, 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 of used motor vehicles.

21. In so doing, Defendant, through its owners, officers, director, shareholders, 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.

22. 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. Charging consumers for warranty protection, and failing to provide the promised warranty;
- d. Offering for sale used motor vehicles with mechanical defects that rendered the vehicles either inoperable or unsafe;
- e. Failing to respond to consumer complaints.

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

COUNT II

**VIOLATION OF THE CFA BY DEFENDANT
(MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)**

24. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 23 above as if more fully set forth herein.

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

- a. Misrepresenting the condition of used motor vehicles offered for sale; and
- b. Misrepresenting that a used motor vehicle advertised, offered for sale and/or sold had warranty protection.

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

- 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 posted for used motor vehicles offered for sale on the AutoSource Website did not include licensing costs, registration fees and taxes.

27. 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 III

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

28. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 27 above as if more fully set forth at length herein.

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

30. First, the Motor Vehicle Advertising Regulations set forth certain mandatory disclosure requirements for advertisements for the sale of used motor vehicles. Specifically, N.J.A.C. 13:45A-26A.5(b) 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 by 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.]

31. Second, the Motor Vehicle Advertising Regulations 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.]

32. Third, the Motor Vehicle Advertising Regulations provide that an advertisement offering for sale a used motor vehicle include the following:

7. A statement that ‘price(s) include(s) all costs to be paid by a 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]

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

- a. Failing to disclose that a used motor vehicle was previously used as a commercial vehicle;
- b. Failing to disclose that advertised motor vehicles were previously damaged and were subjected to substantial repair and body work; and
- c. In its advertisements for used motor vehicles on the AutoSource Website, failing to disclose the required statement that “price(s) include(s) all costs to be paid by the consumer, except for licensing costs, registration fees, and taxes.”

34. 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.

COUNT IV

**VIOLATION OF THE AUTOMOTIVE
SALES PRACTICE REGULATIONS BY DEFENDANT**

35. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 34 above as if more fully set forth herein.

36. The Automotive Sales Regulations, N.J.A.C. 13:45A-26B.1 et seq., identify unlawful practices involving the sale of motor vehicles.

37. The Automotive Sales Regulations, N.J.A.C. 13:45A-26B.1, define “documentary service fee” as follows:

. . . any monies or other thing of value, which an automotive dealer accepts from a consumer in exchange for a documentary service.

38. With respect to documentary service fees, the Automotive Sales Regulations provide, in pertinent part:

(a) In connection with the sale of a motor vehicle, which includes the assessment of a documentary service fee, automotive dealers shall not:

-
2. Accept, charge, or obtain from a consumer monies, or any other thing of value, in exchange for the performance of any documentary service without first itemizing the actual documentary service, which is being performed and setting forth in writing, in at least 10-point type, on the sale document the price for each specific documentary service.

[N.J.A.C. 13:45A-26B.3(a)2.]

39. Defendant’s conduct in violation of the Automotive Sales Regulations includes, but is not limited to, failing to itemize all documentary service fees.

40. Defendant's conduct constitutes multiple violations of the Automotive Sales Regulations, N.J.A.C. 13:45A-26B.3(a)2, each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT V

VIOLATION OF THE UCLL BY DEFENDANT (FAILURE TO DISCLOSE MECHANICAL DEFECTS)

41. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 40 above as if more fully set forth herein.

42. The UCLL, N.J.S.A. 56:8-67 et seq. applies to the sale of used motor vehicles. Specifically, N.J.S.A. 56:8-68 provides in pertinent part:

It shall be an unlawful practice for a [used motor vehicle] dealer:

- a. To misrepresent the mechanical condition of a used motor vehicle;
- b. To fail to disclose, prior to sale, any material defect in the mechanical condition of the used motor vehicle, which is known to the dealer;
- c. To represent that a used motor vehicle, or any component thereof, is free from material defects in the mechanical condition at the time of sale, unless the dealer has a reasonable basis for this representation at the time it is made . . .

[N.J.S.A. 56:8-68].

43. When entering into transactions in connection with the sale of used motor vehicles, Defendant violated the UCLL by engaging in conduct, including but not limited to, the failure to disclose material mechanical defects.

44. Each failure to disclose a material mechanical defect in a used motor vehicle offered for sale by Defendant constitutes a separate violation of the UCLL, N.J.S.A. 56:8-68.

COUNT VI

**VIOLATION OF THE UCLL BY DEFENDANT
(WARRANTY VIOLATIONS)**

45. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 44 above as if more fully set forth herein.

46. The UCLL, N.J.S.A. 56:8-68, provides, in pertinent part, as follows:

It shall be an unlawful practice for a [used motor vehicle] dealer:

...

- e. To misrepresent the terms of any written warranty ... currently in effect on a used motor vehicle provided by a person other than the dealer, and subject to transfer to a consumer;

...

- h. To represent, prior to sale, that a used motor vehicle is sold with a warranty ... when the vehicle is sold without any warranty ...;
- i. To fail to disclose, prior to sale, that a used motor vehicle is sold without any warranty ...

The UCLL, N.J.S.A. 56:8-69, further provides, in relevant part, that: It shall be an unlawful practice for a dealer to sell a used motor vehicle to a consumer without giving the consumer a written warranty which shall at least have the following durations:

- a. If the used motor vehicle has 24,000 miles or less, the warranty shall be, at a minimum, 90 days or 3,000 miles, whichever comes first;
- b. If the used motor vehicle has more than 24,000 miles but less than 60,000 miles, the warranty shall be, at a minimum, 60 days or 2,000 miles, whichever comes first; or

- c. If the used motor vehicle has 60,000 miles or more, the warranty shall be, at a minimum, 30 days or 1,000 miles, whichever comes first, except that a consumer may waive his right to a warranty as provided under [N.J.S.A. 56:8-73].

47. Defendant violated the UCLL by engaging in conduct including, but not limited to, the following:

- a. Misrepresenting to consumers, prior to purchase, that used motor vehicles offered for sale were covered by warranties, when such was not the case; and
- b. Selling used motor vehicles without including the required written warranties.

48. Each instance of Defendant misrepresenting that a used motor vehicle was covered by a warranty, when such was not the case, constitutes a separate violation of the UCLL, N.J.S.A. 56:8-68. Furthermore, each instance of Defendant failing to provide the appropriate warranty to a consumer in connection with the sale of a used motor vehicle, or to misrepresent, or fail to disclose the terms of a warranty, constitutes a separate violation of the UCLL, N.J.S.A. 56:8-69.

COUNT VII

VIOLATION OF THE UCLL AND UCLL REGULATIONS BY DEFENDANT (FAILURE TO FILE DOCUMENTATION AND REMIT ADMINISTRATIVE FEES)

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 48 above as if more fully set forth at length herein.

50. The UCLL Regulations, N.J.A.C. 13:45A-26F.2, defines a “dealer” as “any person or business which sells, or offers for sale, a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period.

51. The UCLL, provides the Director with the authority to establish certain fees to apply to the administration and enforcement of the UCLL. Specifically, N.J.S.A. 56:8-80 provides:

The director may establish an administrative fee, to be paid by the consumer, in order to implement the provisions of this act, which fee shall be fixed at a level not to exceed the cost for the administration and enforcement of this act.

52. The UCLL Regulations, N.J.A.C. 13:45A-26F.6(a)-(b)(1), established the “Fifty Cent Rule” on February 1, 1999. Specifically, N.J.A.C. 13:45A-26F.6(a)-(b)(1) provides:

- (a) At the time of sale a dealer shall collect an administrative fee of \$0.50 from each consumer who purchases a used motor vehicle in the State of New Jersey.
- (b) On the 15th of every January, a dealer shall mail to the Used Car Lemon Law Unit, the following:
 - 1. A check or money order made payable to the “New Jersey Division of Consumer Affairs,” in an amount equal to the total sum of administrative fees collected during the preceding calendar year....

53. The UCLL Regulations, N.J.A.C. 13:45A-26F.6(b)(2), further establish certain reporting requirements for used motor vehicle dealerships. Specifically, N.J.A.C. 13:45A-26F.6(b)(2) provides:

- (b) On the 15th of every January, a dealer shall mail to the Used Car Lemon Unit, the following:
 - 2. A completed “Certification of Administrative Fees” form ... indicating the number of used cars sold each month by the dealer during the preceding calendar year.

54. From at least 2011, Defendant functioned as a “dealer” within the meaning of the UCLL and UCLL Regulations.

55. Each used motor vehicle that Defendant sold to a consumer was subject to the UCLL and, as such, obligated Defendant to collect and remit administrative fees.

56. From at least 2011 to 2014, Defendant failed to remit the UCLL fees as required by N.J.A.C. 13:45A-26F.6(b)1.

57. From at least 2011 to 2014, Defendant failed to submit the documentation required by N.J.A.C. 13:45A-26F.6(b)2 to the Division's UCLL Unit.

58. Each failure by Defendant to timely remit the administrative fees and/or documentation concerning the used motor vehicles Defendant sold constitutes a separate violation of the UCLL, N.J.S.A. 56:8-80, and the UCLL Regulations, N.J.A.C. 13:45A-26F.6.

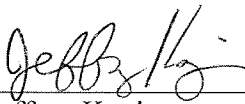
PRAYER FOR RELIEF

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., the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 et seq., the Automotive Sales Regulations, N.J.A.C. 13:45A-26B.1 et seq., the UCLL, N.J.S.A. 56:8-67 et seq., and the UCLL Regulations, N.J.A.C. 13:45A-26F.6;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, 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., the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 et seq., the Automotive Sales Regulations, N.J.A.C. 13:45A-26B.1 et seq., the UCLL, N.J.S.A. 56:8-67 et seq., and the UCLL Regulations, N.J.A.C. 13:45A-26F.6 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 J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

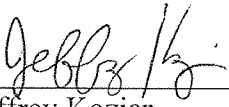
Jeffrey Koziar
Deputy Attorney General

Dated: February 26, 2015
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 CFA, 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 J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Jeffrey Koziar
Deputy Attorney General

Dated: February 26, 2015
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 J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General

Dated: February 26, 2015
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

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

JOHN HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General

Dated: February 26, 2015
Newark, New Jersey