

Michael F. Niznik, Esquire – NJ Attorney ID 084942013
 Law Offices of Michael F. Niznik
 1500 Walnut Street, Suite 900
 Philadelphia, PA 19102
 Ph: 267-589-0601
 Fx: 215-839-1223
Attorney for Plaintiff

TRINITY WIXNER	:	SUPERIOR COURT OF NEW JERSEY
	:	OCEAN COUNTY - LAW DIVISION
v.	:	
LESTER GLENN BUICK, INC. d/b/a	:	CIVIL ACTION
LESTER GLENN CHRYSLER DODGE	:	DOCKET NO: OCN-L-_____ -18
JEEP RAM	:	
386 Route 37	:	
Toms River, NJ 08753	:	
and	:	COMPLAINT AND JURY DEMAND
MICHAEL SA	:	
101 Route 37 E	:	
Toms River, NJ 08753	:	
and	:	
FCA US LLC	:	
1000 Chrysler Drive	:	
Auburn Hills, MI 48326	:	
and	:	
SANTANDER CONSUMER USA, INC.	:	
d/b/a CHRYSLER CAPITAL	:	
1601 Elm St. Ste. 800	:	
Dallas, TX 75201	:	

PARTIES

1. Plaintiff, TRINITY WIXNER, is an adult individual presently residing in Toms River, NJ.
2. Defendant, LESTER GLENN BUICK, INC. d/b/a LESTER GLENN CHRYSLER DODGE JEEP RAM (“LESTER”) is a corporation licensed to do business in the State of New Jersey, regularly conducting business at 101 NJ-37, Toms River, NJ 08753 in Ocean County, New Jersey and having a principal place of business located at 386 Route 37, Toms River, NJ 08753; at all times relevant, acting alone or in concert with others, formulated, directed, controlled, conspired, substantially assisted, enabled and/or participated in the acts and practices set-forth in this Complaint.
3. Defendant, MICHAEL SA (“SA”) is a finance manager and/or employee of Defendant LESTER and holds a management position at and/or with said Defendant, and at all times relevant,

acting alone or in concert with others, formulated, directed, controlled, conspired, substantially assisted, enabled and/or participated in the acts and practices set forth in this Complaint.

4. Defendant, FCA US LLC (“FCA”) is a corporation licensed to do business in the State of New Jersey, that regularly does business in Ocean County, and that has headquarters located 1000 Chrysler Drive, Auburn Hills, MI 48326; and at all times relevant, acting alone or in concert with others, formulated, directed, controlled, conspired, substantially assisted, enabled and/or participated in the acts and practices set-forth in this Complaint.

5. Defendant, SANTANDER CONSUMER USA, INC. d/b/a CHRYSLER CAPITAL (“SANTANDER”) is a corporation licensed to do business in the State of New Jersey, that regularly does business in Ocean County, and that has headquarters located at 1601 Elm St. Ste. 800 Dallas, TX 75201; and at all times relevant, acting alone or in concert with others, formulated, directed, controlled, conspired, substantially assisted, enabled and/or participated in the acts and practices set-forth in this Complaint.

VENUE

6. Venue in this action properly lies in Ocean County, New Jersey because Defendant LESTER’s principal place of business is in Ocean County and the transaction at issue took place in Ocean County.

FACTS AND ALLEGATIONS

7. At all times relevant hereto, defendants acted by and through their agents, servants, and employees who acted within the scope of their authority and within the course of their employment.

8. Prior to the execution of any contracts, and at all times relevant, LESTER’s agents, including but not limited to defendant SA and/or those identified on the attached documents, made the following representations expressly and/or impliedly about the subject vehicle:

- a. that all recall service had been performed.
- b. the subject vehicle had not been in any accidents or been damaged;
- c. the subject vehicle was in good, safe and operable condition;
- d. the subject vehicle was free of defects;
- e. Defendants were charging a lawful documentary fee;
- f. Defendants would transfer lawfully Title and registration.
- g. the sale was conducted and the paperwork was completed lawfully;
- h. the subject vehicle was carefully inspected.

- i. the subject vehicle qualified for CHRYSLER CERTIFIED;
- j. the subject vehicle was sold in accordance with the CHRYSLER CERTIFIED PREOWNED PROGRAM (“CCPO”).

9. Prior to the execution of any agreements, and at all times relevant, the Defendant LESTER’S agents, including defendant SA, and/or those identified on the attached sales documents, concealed the following facts from the Plaintiff:

- a) Defendants charged unlawfully for a documentary fee;
- b) Defendants did not conduct the sale and/or financing or complete the paperwork lawfully;
- c) the vehicle was not carefully inspected;
- d) the vehicle was in one or more severe accidents and was severely damaged;
- e) the vehicle had damage and/or repairs the total retail value of which was in excess of \$1000.00.
- f) the subject vehicle did not qualify for CHRYSLER CERTIFIED;
- g) the subject vehicle was not sold in accordance with the CHRYSLER CERTIFIED PROGRAM.
- h) the subject vehicle had a defect known to Defendants that materially affected its operation, safety, and value, and which resulted in a recall.

10. By Retail Installment Sales Contract (RISC) and Buyer’s Order (BO) dated July 1, 2017, Plaintiff and Defendants ostensibly and apparently agreed to the terms for the financed purchase/sale of a 2013 Dodge Challenger (VIN: 2C3CDYBT1DH734269). (Exhibits A and B). LESTER’s representatives failed to sign the RISC.

11. Plaintiff visited LESTER on June 30, 2017 and met with Defendant SA, a sales manager and/or sales person with Defendant LESTER.

12. SA showed Plaintiff a Dodge Charger.

13. Defendant SA called Plaintiff the following day and told Plaintiff that she was not eligible for financing on the Charger. However, Defendant SA told Plaintiff that he had a similar vehicle that she would qualify for.

14. Defendant went back to LESTER’s facility the following day, July 1, 2017.

15. At that time, Defendant SA showed Plaintiff the subject vehicle, a Certified Pre-Owned 2013 Dodge Challenger.

16. Plaintiff walked around the vehicle, and asked defendant if it was mechanically sound and if it had been in any accidents or been damaged.

17. Defendant SA told plaintiff that the vehicle mechanically sound and was only in a minor accident and told Plaintiff that she could be assured of the vehicle's good condition and that the accident was only minor because the vehicle qualified for the CCPO program.

18. At that time, on July 1, 2017, Defendant SA gave Plaintiff a Carfax which was dated May 31, 2017 which falsely indicated that the subject vehicle qualified for the CHRYSLER CERTIFIED PRE-OWNED PROGRAM and was not the subject of any recalls. (Exhibit C).

19. The Carfax which Defendant gave to Plaintiff specifically states "No Recalls Reported." (Exhibit C, page 2).

20. The Carfax which Defendant gave to Plaintiff also specifies that the Carfax was generated by Defendant LESTER (Exhibit C, page 1).

21. Plaintiff inquired why the Carfax was not up to date.

22. Defendant SA told Plaintiff not to worry that the Carfax was not up to date because all of the information was correct.

23. It is well-known in the industry that Carfax reports cannot be relied upon to exclude any pre-sale accidents, damage, or recalls.

24. It is well-known in the industry that Carfax reports only catch a small percentage of accidents, damage and recall events, and even when they are caught, there is more often than not a long delay.

25. The CHRYSLER CERTIFIED PRE-OWNED PROGRAM advertises that every vehicle certified under the CCPO program comes with a Carfax.

26. Defendants never gave Plaintiff an up-to-date Carfax.

27. The CHRYSLER CERTIFIED PRE-OWNED PROGRAM advertises that every vehicle certified under the CCPO program comes with a 125-point inspection by factory-trained technicians. (Exhibit D).

28. Defendants never gave Plaintiff a copy of the CHRYSLER CERTIFIED PRE-OWNED PROGRAM 125-point inspection checklist.

29. The CHRYSLER CERTIFIED PRE-OWNED PROGRAM advertises that "Before a Certified Pre-Owned vehicle is listed or sold, [defendant] FCA US requires dealers to complete all safety recalls." (Exhibit D).

30. Defendants never completed safety recalls prior to certifying the vehicle and selling the vehicle to Plaintiff.

31. The Carfax report and/or CCPO INSPECTION CHECKLIST REPORT are either considered part of the contract, and/or the misrepresentation that the vehicle had not been in any accidents or been damaged was a material part of the transaction, which was fraudulently omitted from the contract.

32. The aforementioned representations and/or omissions were part of the agreement, were intended to be a part of the agreement, and are either contained in the contract, or omitted from the contract as part of the fraud and/or as a result of a clerical error.

33. Shortly after purchasing the vehicle, Plaintiff began experiencing issues with the vehicle; including, grinding, clicking noises when she depressed the brakes, difficulty steering the vehicle, intermittent loss of power steering, and rough idling of the vehicle.

34. Plaintiff took the vehicle back to defendant LESTER to correct the issues on August 25, 2017 – less than 2 months after she purchased the vehicle.

35. Defendant LESTER preformed a multi-point inspection on the vehicle, found the rear brakes to be work and replaced the pads and rotors, and rotated and balanced all four tires.

36. Despite preforming a multi-point inspection and completing the above-mentioned service on the vehicle, LESTER still did not notify Plaintiff of the factor recall on the vehicle.

37. Plaintiff continued to experience problems with the vehicle after August 2017.

38. After continuing the experience problems with the vehicle, and worry about the vehicle safety, Plaintiff met with a sales manager from Cherry Hill Chevrolet to explore trading in the vehicle. The sales manager ran the VIN on the subject vehicle, and informed Plaintiff of the recall and also informed Plaintiff that the value had a significantly diminished value due to the recall.

39. At this time, Plaintiff was informed that the subject vehicle had a factory recall that did not currently have a remedy.

40. Plaintiff was further told that she could not trade the vehicle in for any substantial monetary amount, and that the vehicle would have to be auctioned or salvaged.

41. Plaintiff was further informed that the recall event was sent by Chrysler to its dealerships in June 2017, before Plaintiff purchased the vehicle.

42. The out-of-date Carfax that Plaintiff was given when she purchased the vehicle in July was dated May 31, 2017 – before the factory recall would have appeared on the Carfax. (Exhibit ?)

43. Plaintiff confronted defendant LESTER about being sold a vehicle that had an active recall and was initially told that the recall was issued in June.

44. Plaintiff then informed LESTER that she purchased her vehicle in July, and that the recall should have been disclosed.

45. LESTER then changed their position and told Plaintiff that the recall did not issue until August 2, 2017, Plaintiff then inquired why she wasn't advised of the recall when she had her vehicle in LESTER's repair facility on August 25, 2017.

46. LESTER's representatives then told Plaintiff that the matter was a legal matter, and they could no longer reply to her questions.

47. Plaintiff demanded that the deal be cancelled and her money returned, but defendant LESTER refused.

48. In truth, the manufacturer's recall was issued on June 9, 2017. (Exhibit E, page 2).

49. There was one post-sale accident which only affected the rear of the vehicle. The vehicle was hit in the rear bumper by a snowplow. After being hit by a snowplow, Plaintiff contacted her insurance company believing her insurance coverage would cover the collision. Plaintiff was then informed that, due to LESTER's failure to send the insurance company the certification inspection report, collision was removed from her policy and she would need to repair the vehicle with her own funds.

50. Plaintiff also hit a pothole after purchasing the vehicle and LESTER repaired a damaged clip on the vehicle at no cost.

51. The vehicle was involved in one or more pre-sale accidents and/or non-remedy recall events, and was severely damaged, unmerchantable, and unfit for sale.

52. It is not possible that a competent technician could have performed a standard pre-sale inspection, without recognizing the numerous classic indications of presale damage and/or factory recall events.

53. It is not possible that a competent car dealership could leave a recalled vehicle on the lot for one month and then sell that vehicle to a customer without being aware of a recall event.

54. LESTER's service technicians completed maintenance on the vehicle in August 2017, yet again failed to notify Plaintiff of the active recall. It is not possible that a competent technician could conduct work on the vehicle without being aware of a recall event - such as was completed at LESTER in August 2017 after Plaintiff had purchased the vehicle.

55. The subject vehicle was sold to Plaintiff in a defective and damaged condition, which made it defective, unfit, unmerchantable, and unsafe.

56. Defendants represented the subject vehicle to be CHRYSLER CERTIFIED.

57. Defendant never disclosed to Plaintiffs that there was any pre-sale damage and/or recall events on the vehicle.

58. Defendants never disclosed to Plaintiffs the nature or extent of any pre-sale damage or repairs.

59. Defendants never disclosed to Plaintiffs which parts were repaired or replaced pre-sale.

60. Defendants never disclosed to Plaintiffs any recall information.

61. The subject vehicle did not qualify for the CHRYSLER Certified Pre-Owned Program (CCPO).

62. The subject vehicle was not properly entered into the CCPO program.

63. The subject vehicle was not properly sold as a CCPO vehicle.

64. The subject vehicle did not qualify for, was not properly entered into, and was not properly sold as CHRYSLER Certified Pre-Owned, because:

- a. It was the subject of a factory recall;
- b. It sustained frame/structural damage;
- c. It was sold with dings, dents and scratches;
- d. Defendant did not disclose to Plaintiffs all of the repairs or replaced parts;
- e. The body repairs exceeded 10% of the then current market value;
- f. Plaintiffs were not provided with a copy of the Certified Inspection Check List;
- g. Plaintiffs were not provided with a copy of the up-to-date CARFAX vehicle history report;
- h. The vehicle had extensive body and frame/structural damage;
- i. Defendant did not disclose to Plaintiffs all of the body repairs, and these repairs were not made part of the customer copy of the CPO inspection record.

65. Upon being confronted with the vehicle's disqualifying history and condition, Defendants never decertified the subject vehicle pursuant to and as required by the CHRYSLER Certified Pre-Owned program.

66. If Plaintiffs had known that the vehicle had been in a presale accident and/or was the subject of a factor recall event; did not qualify as a CCPO vehicle; that any charges or fees were unlawful, false or inaccurate; that any paperwork was completed unlawfully; that the Defendants had

misrepresented anything; that the title was transferred unlawfully; or that the Defendants would not honor their agreements, then Plaintiffs would not have purchased the vehicle.

67. The reasonable retail cost of the repairs of the damage in question exceeded and exceeds \$1000.00.

68. The RISC stated a specific “amount financed” in connection with the transaction.

69. The RISC stated a specific “finance charge”.

70. The RISC stated a specific Annual Percentage Rate (APR).

71. Defendants did not give Plaintiff a copy of the written disclosures in a form for Plaintiff to keep before Plaintiff had actually signed the RISC.

72. Although Defendants began charging Plaintiff interest on the amount financed shown in the RISC on the date of sale, pursuant to its established business practice, it did not provide Plaintiff with actual use of that amount financed on that date.

73. The only way for Defendants to provide actual use of the amount financed to Plaintiff was for them to give up that amount of value to Plaintiff; after it gave up that value, it could then charge her interest on that amount.

74. As a seller-creditor, the only way for Defendants to give up that amount of value to Plaintiff was for Defendants to provide the vehicle as represented and promised, sign Title of the car in the promised condition over to Plaintiff and to refrain from interfering with her quiet enjoyment and possession of the vehicle.

75. Defendants represented that they were signing the Title Certificate of the car over to Plaintiff by representing that it would process the Title with the Department of Motor Vehicles, by acting as an agent of the Department of Motor Vehicles to provide her with a temporary tag and a temporary registration, and by using various contract documents that asserted that she was the owner of the car and was giving up a security interest in the car.

76. Although Defendants gave Plaintiff possession of the car on the date of sale, Defendants did not provide the vehicle as represented and promised, did not sign Title of the car over to her on the date of sale, did not recognize Plaintiff as the owner, and/or did not forward to the State the necessary documents or money to transfer Title to plaintiff and/or to register the agreed-upon vehicle in the plaintiff’s name.

77. Defendants never alleged that Plaintiff supplied any false or unverifiable information in connection with the transaction or that she failed to supply any requested information or records.

78. Defendants never alleged that Plaintiff was to blame for any of defendants’ actions or omissions as set forth in this Complaint.

79. Defendants never alleged that any of Defendants actions were taken as a result of any false or unverifiable information supplied by the Plaintiff.

80. The Plaintiff has no experience in or specialized knowledge related to the automotive industry, and/or related to motor vehicles, motor vehicle sales, motor vehicle repair, and/or consumer finance.

81. At all times relevant, Defendants promised to take good care of the Plaintiff.

82. Defendants stood in a position of trust and confidence.

83. Plaintiff surrendered substantial control over the financing of the subject purchase.

84. By virtue of their position of trust and confidence, their unequal sophistication and expertise, Defendants had the means to take advantage and exercise undue influence over Plaintiff.

85. The purchase of a motor vehicle is one of the largest investments that many, if not most, consumers make.

86. At the time of purchase, Plaintiff was 20 years old.

87. The subject purchase was the Plaintiff's largest investment.

88. The Defendants stood in a fiduciary relationship with the Plaintiff.

89. The Defendants exploited their fiduciary relationship by deceiving the Plaintiff regarding the party's respective rights and duties under the RISCs, and concealing the nature of Defendants' conduct (misconduct).

90. The established business practices discussed in the preceding paragraphs caused Plaintiff to misunderstand how Defendants were treating the Credit Contract, caused a delay in receiving Title ownership of the vehicle as promised, deprived plaintiff of the use and quiet enjoyment of the vehicle, caused Plaintiff to suffer, by their dealings with Defendants, annoyance, embarrassment, fear, and other general distress damages, and caused Plaintiff to be denied the benefits of the consumer protection statutes specifically designed to protect Plaintiff.

91. The Defendants are in the business of, and regularly extend credit to, consumers in the manner described above.

92. The subject vehicle was purchased by the Plaintiff primarily for personal use.

93. The Defendants induced and entered into the subject purchase-sale agreements with a then present and conscious intention to breach, reject, and/or refuse to honor their obligations under said agreement.

94. The established business practices discussed in the preceding paragraphs were created, implemented, approved, and/or supervised by the Defendants.

95. As a result of the Defendants' unlawful actions, the Plaintiff has been deprived of the use and quiet enjoyment of the vehicle, has incurred financial loss, has suffered damage to her credit rating and credit reputation, and has suffered extreme emotional distress, frustration, humiliation, and/or embarrassment.

96. Plaintiff has been and will continue to be financially damaged due to Defendants' intentional, reckless, wanton, and/or negligent failure to honor their contractual obligations and the damage to their credit rating and reputation.

97. During all times relevant, the Defendants deceived the Plaintiff into believing Defendants' actions were lawful, and/or concealed their actions' unlawful nature.

98. At all times relevant, the Plaintiff relied on Defendants' apparent and claimed experience, sophistication and expertise in inspecting, repairing, selling and/or financing motor vehicles.

CERTIFICATION

99. During all times relevant, Defendants LESTER, SA, and FCA promoted their Certified Preowned Program as a way to induce consumers to buy vehicles and/or to do so at an increased price (Exhibit D).

100. Defendants LESTER, SA and FCA heavily promote the CCPO program advertising that a vehicle purchased with a CCPO warranty gives the buyer "confidence, pride and a vehicle that you can trust." (Exhibit D).

101. Defendants LESTER, SA and FCA heavily promote the CCPO program advertising that a vehicle purchased with a CCPO warranty "can be counted on to go the distance." (Exhibit D).

102. Defendants LESTER, SA and FCA heavily promote the CCPO program advertising that a vehicle purchased with a CCPO warranty "must pass a stringent certification process that guarantees only the finest late model vehicles get certified. Every vehicle that passes is then subjected a comprehensive 125-point inspection and a thorough reconditioning process using Authentic Mopar Parts." (Exhibit D).

103. Defendants LESTER, SA and FCA heavily promote the CCPO program advertising that "Every certified vehicle comes with a Carfax vehicle history report." (Exhibit D).

104. Defendants LESTER, SA and FCA heavily promote the CCPO program advertising that "Before a Certified Pre-Owned vehicle is listed or sold, FCA US requires dealers to complete all safety recalls." (Exhibit D).

105. Upon information and belief, FCA does not impose any and/or sufficient supervision and/or accountability related to its CCPO program.

106. Without careful supervision and accountability, any claim standards are illusory and fraudulent.

107. Consumers are misled to believe that FCA stands behind its CPO program and vehicles.

108. FCA promotes its CPO program by promising that it delivers consumers “confidence” related to the history and condition of the certified vehicles. (Exhibit D).

109. Defendant LESTER posts signs throughout its dealership promoting the sale and value of CHRYSLER Certified Used Vehicles.

FCA US LLC – RECALL REQUIREMENTS

110. Lester Glenn Chrysler Dodge Jeep Ram is a franchise dealership of FCA US LLC.

111. FCA’s maintains a Dealer Policy Manual with its franchise dealerships.

112. FCA US LLC requires franchise dealerships to perform safety recall repairs prior to offering used cars for sale to consumers through the Dealer Policy Manual and franchise agreement. (See Exhibit F, answer to question 2, Chrysler’s response to the Senate Committee on Commerce, Science and Transportation, Questions for the Records).

113. LESTER failed to perform the safety recall repair on Plaintiff’s prior to selling the vehicle to Plaintiff.

FCA US LLC – CERTIFICATION REQUIREMENTS

114. FCA developed, implemented, administers, and supervises the CCPO program (Exhibit D).

115. FCA developed a manual by which the CPO is to be implemented and administered, and, in particular, by what standards the qualification inspections are required to be performed.

116. FCA requires participating dealers to sign a CCPO dealer agreement.

117. The aforementioned manual and/or CCPO program includes rules and standards dictating how the dealers must promote the CCPO program.

118. The aforementioned manual and/or CCPO program includes rules that require that dealers promote the CCPO program as referenced above, including having high standards, providing high value, guaranteeing safety, involving strict standards, providing “confidence,” and requiring careful inspections.

119. The aforementioned manual and/or CCPO program includes rules and standards according to which a vehicle must be certified.

120. The aforementioned manual and/or CCPO program includes rules that dealers disclose to consumers if a certified vehicle has been involved in an accident or has incurred damage and/or been the subject of a recall event.

121. The aforementioned manual and/or CCPO program requires that dealers provide consumers with a written disclosure of the inspection results.

122. The aforementioned manual and/or CCPO program requires that dealers provide consumers with a written disclosure of all of the damage, repairs, and recalls completed on the vehicle.

123. The aforementioned manual and/or CCPO program prohibits vehicles with frame or structural damage from being entered in to the program.

124. The aforementioned manual and/or CCPO program prohibits vehicles non-remedy recalls from being entered in to the program.

125. FCA's CPO program is a scam used to increase vehicle sale prices and to obtain unearned profits.

126. FCA does not meaningfully supervise its CPO program, including but limited to meaningfully auditing participating dealers.

127. FCA's CPO program does not include meaningful accountability so there are no meaningful standards.

128. Upon information and belief, FCA has not meaningfully disciplined any participating dealers, including terminating said dealers, for violating the CPO program for selling non-qualifying vehicles, defective vehicles, dangerous vehicles, frame damaged vehicles, recalled vehicles, and/or selling vehicles in violation of federal, state and/or local laws.

129. Because there is no meaningful oversight, no meaningful accountability and thus no meaningful standards, the Defendants' promotion of the CCPO program is entirely fraudulent, misleading and/or deceptive.

130. FCA's CCPO program was an essential element of the subject fraudulent transaction and played a substantial contributing role in its perpetration.

131. In promoting the CCPO program and selling the subject vehicle as CHRYSLER Certified, Defendants FCA, LESTER and SA acted pursuant to a common design.

132. In promoting the CCPO program and selling the subject vehicle as CHRYSLER Certified, Defendants FCA, LESTER and SA knew that they were breaching their duty of good faith and fair dealing to consumers in general and to Plaintiff in particular, and lent each other substantial assistance in the fraudulent and other misconduct described more fully above and below.

SANTANDER CONSUMER USA, INC. d/b/a CHRYSLER CAPITAL

133. Pursuant to the express terms of the RISC, State common law of assignments, and Statutory law, SANTANDER “stepped into the same shoes” as the Dealer Defendants and became derivatively, jointly, severally and fully liable for all of the Dealer Defendants’ misconduct.

134. LESTER sold and assigned the subject RISC to SANTANDER.

135. Plaintiff advised defendant SANTANDER of the dealer’s misconduct as alleged herein and defendant SANTANDER refused to acknowledge its potential derivative liability.

136. Defendant SANTANDER denied that the dealer’s misconduct could in any way affect the parties’ respective rights and duties under the RISC.

137. Plaintiff fulfilled all of her duties and obligations under the subject contract and/or was prevented from performing by one or more of the defendants.

138. The defendants’ individual and collective acts and/or omissions were substantial contributing factors and causes to plaintiff’s indivisible harm and damages more fully described above and below, and render the defendants joint and severally liable to the plaintiff.

COUNT I
FRAUD
PLAINTIFF v. ALL DEFENDANTS

139. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

140. As the assignee of the RISC attached hereto, SANTANDER is subject to all of the same claims as the dealer defendants.

141. Prior to the execution of any contracts, and at all times relevant, LESTER’s agents, including but not limited to defendants SA and/or those identified on the attached documents, made the following representations expressly and/or impliedly about the subject vehicle:

- a. that all recall service had been performed.
- b. the subject vehicle had not been in any accidents or been damaged;
- c. the subject vehicle was in good, safe and operable condition;
- d. the subject vehicle was free of defects;
- e. Defendants were charging a lawful documentary fee;
- f. Defendants would transfer lawfully Title and registration.
- g. the sale was conducted and the paperwork was completed lawfully;

- h. the subject vehicle was carefully inspected.
- i. the subject vehicle qualified for CHRYSLER CERTIFIED;
- j. the subject vehicle was sold in accordance with the CHRYSLER CERTIFIED PREOWNED PROGRAM (“CCPO”).

142. Prior to the execution of any agreements, and at all times relevant, the Defendant LESTER’s agents, including but not limited to defendants SA, and/or those identified on the attached sales document, concealed the following facts from the Plaintiff:

- a) Defendants charged unlawfully for a documentary fee;
- b) Defendants did not conduct the sale and/or financing or complete the paperwork lawfully;
- c) the vehicle was not carefully inspected;
- d) the vehicle was in one or more severe accidents and was severely damaged;
- e) the vehicle had damage and/or repairs the total retail value of which was in excess of \$1000.00.
- f) the subject vehicle did not qualify for CHRYSLER CERTIFIED;
- g) the subject vehicle was not sold in accordance with the CHRYSLER CERTIFIED PROGRAM.
- h) the subject vehicle had a defect known to Defendants that materially affected its operation, safety, and value, and which resulted in a recall.

143. The misrepresentations and omissions identified in the immediately preceding paragraphs, were known or should have been known to Defendants to be false when made, were material in nature, and were made with the intent to deceive, defraud and/or induce the Plaintiff, and in fact, induced her to purchase the automobile at the inflated price listed in the purchase agreement.

144. The Defendants knew that the Plaintiff had no special knowledge in the purchase, financing and condition of automobiles and would rely on their representations.

145. The Plaintiff relied on the Defendants’ misrepresentations and was induced to sign the RISC and other documents related to which she apparently and ostensibly purchased and financed the aforementioned automobile at the inflated amount listed in the purchase agreement.

146. As a result of the aforementioned conduct, the Plaintiff suffered the damages outlined above and below.

147. The Defendants' actions as hereinbefore described were reckless, outrageous, willful, and wanton, thereby justifying the imposition of exemplary, treble and/or punitive damages.

148. The defendants' individual and collective acts and/or omissions were substantial contributing factors and causes of violations of the duties as set forth in this Count and to plaintiff's indivisible harm and damages more fully described above and below, and render the defendants joint and severally liable to the plaintiff.

WHEREFORE, Plaintiff demands judgment against the defendants jointly and/or severally, together with attorney's fees, interest, costs, and treble damages and such equitable relief as the Court may find appropriate.

COUNT II
BREACH OF CONTRACT
PLAINTIFF v. ALL DEFENDANTS

149. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

150. This and all subsequent causes of action are pleaded in the alternative and/or in addition to Plaintiff's cause of action for fraud.

151. As the assignee of the subject RISCs, SANTANDER is subject to all of the same claims as the dealer defendants.

152. In the alternative, Plaintiff apparently and/or ostensibly was misled to believe that she had contracted with Defendants for the purchase of the subject vehicle as well as taxes, registration, tags, service contract, and transfer of title, which agreement was final and included all payment and financing terms.

153. Plaintiff performed or satisfied all of his obligations under the aforementioned finance purchase agreement.

154. The plaintiff was at no time relevant in default.

155. Defendants are in breach of the aforementioned contract in that they have in the past and continue without justification to negligently, intentionally, willfully, fraudulently, and/or recklessly failed and/or refused to deliver to Plaintiff(s) the car for which Plaintiff(s) contracted under the agreed terms and/or demanded the return of the vehicle or deprived plaintiff(s) of the quiet enjoyment of the vehicle or the amount of credit promised.

156. As a result of Defendants' breach, the Plaintiff suffered the damages outlined above and in the following additional ways:

- a. increased purchase costs;

- b. damaged credit rating and reputation;
- c. deprived of the use and enjoyment of the vehicles;
- d. incurred cost of replacement vehicles;
- e. spent time resolving problems created by Defendants' breach;
- f. incurred other incidental and consequential damages, including emotional distress; and,
- g. incurred increased interest and other expenses for financing the purchase of the vehicle.

157. The Defendants' actions as hereinbefore described were reckless, outrageous, willful, and wanton, thereby justifying the imposition of exemplary, treble and/or punitive damages.

158. The defendants' individual and collective acts and/or omissions were substantial contributing factors and causes of violations of the duties as set forth in this Count and to plaintiff's indivisible harm and damages more fully described above and below, and render the defendants joint and severally liable to the plaintiff.

WHEREFORE, Plaintiff demands judgment against the defendants jointly and/or severally, together with attorney's fees, interest, costs, and treble damages and such equitable relief as the Court may find appropriate.

**COUNT III
NEGLIGENCE
PLAINTIFF v. ALL DEFENDANTS**

159. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

160. As the assignee of the subject RISCs, SANTANDER is subject to all of the same claims as the dealer defendants.

161. The Defendants were negligent in the following respects:

- a. failing to institute appropriate policies and procedures to comply with the applicable laws;
- b. failing to institute policies, train personnel, and supervise personnel regarding lawful financing and/or sales presentations;

- c. failing to institute policies, train personnel, and supervise personnel regarding proper pre-sale inspections of vehicles;
- d. failing to institute policies, train personnel, and supervise personnel regarding Title transfers;
- e. failing to institute policies, train personnel, and supervise personnel regarding financing agreements;
- f. failing to institute policies, train personnel, and supervise personnel regarding sales of and performance obligations related to service contracts.
- g. failing to hire competent and/or honest personnel, such as mechanics and salespeople;
- h. failing to properly train and/or supervise its personnel;
- i. failing to honor RISCs and their other promises and representations described more fully above and below.
- j. failing to properly inspect the vehicle, detect defects therein, and/or report said defects to the Plaintiff.

162. Plaintiff suffered actual damages proximately caused by Defendants' negligence as alleged above.

163. The defendants' individual and collective acts and/or omissions were substantial contributing factors and causes of violations of the duties as set forth in this Count and to plaintiff's indivisible harm and damages more fully described above and below, and render the defendants joint and severally liable to the plaintiff.

WHEREFORE, Plaintiff demands judgment against the defendants jointly and/or severally, together with attorney's fees, interest, costs, and treble damages and such equitable relief as the Court may find appropriate.

COUNT IV
NEGLIGENT MISREPRESENTATION
PLAINTIFF v. ALL DEFENDANTS

164. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

165. As the assignee of the subject RISCs, SANTANDER is subject to all of the same claims as the dealer defendants.

166. The conduct of the Defendants as alleged in addition to and in the alternative constituted separate negligent misrepresentations that were false because of the failure to exercise reasonable care or competence in obtaining or communicating the information, including but not limited to misrepresentations about the terms and conditions of the financing and sale, and the history, condition and safety of the vehicle.

167. The Defendants supplied information including but not limited to that financing was final and approved, that defendants were giving plaintiff a specified amount of credit, that defendants lawfully were charging a documentary fee, that the vehicle was not in any accidents, damaged, or the subject of any recall, and that the vehicle was in good, safe and operable condition, intending to and in fact causing the Plaintiff to buy the vehicle, or taking or refraining from taking action with respect to the vehicle, such as returning the vehicle or rescinding the purchase contract and/or filing suit.

168. As a direct and proximate result of these negligent misrepresentations, the Plaintiff suffered damages as alleged.

169. The defendants' individual and collective acts and/or omissions were substantial contributing factors and causes of violations of the duties as set forth in this Count and to plaintiff's indivisible harm and damages more fully described above and below, and render the defendants joint and severally liable to the plaintiff.

WHEREFORE, Plaintiff demands judgment against the defendants jointly and/or severally, together with attorney's fees, interest, costs, and treble damages and such equitable relief as the Court may find appropriate.

COUNT V
BREACH OF FIDUCIARY DUTY
PLAINTIFF v. ALL DEFENDANTS

170. Plaintiff incorporates all facts and allegations set forth in this Complaint.

171. As the assignee of the subject RISCs, SANTANDER is subject to all of the same claims as the dealer defendants.

172. At the Defendants' request and inducement, the Plaintiff surrendered substantial control over their financing of the subject purchase.

173. At all times relevant, Defendants promised to take good care of the Plaintiff and take care of all matters related to the purchase, financing, and titling of the subject vehicle.

174. Plaintiff financed purchase of the subject vehicles was one of Plaintiff's single greatest investment.

175. Defendants stood in a position of trust and confidence.

176. By virtue of their position of trust and confidence, their unequal sophistication and expertise, Defendants had the means to take advantage and exercise undue influence over Plaintiff.

177. The Defendants stood in a fiduciary relationship with the Plaintiff.

178. The Defendants exploited their fiduciary relationship by deceiving the Plaintiff regarding the parties' respective rights and duties under the subject RISCs, and concealing the nature of Defendants' conduct (misconduct).

179. The Defendants exploited their fiduciary relationship in causing the Plaintiff's delay in bringing this action.

180. The Defendants breached their duty of good faith and fair dealing as follows:

- a) Unlawfully, arbitrarily, capriciously, and, in bad faith, denying the binding nature of RISCs and their duties and responsibilities under the RISC;
- b) Denying the binding nature of the RISCs to deny Plaintiff the benefits to which she was entitled under RISCs;
- c) Concealing the unlawful nature of their conduct;
- d) In general, by self-dealing to the substantial detriment of Plaintiff and in violation of the provisions of the agreement and the parties' agreements, understandings.

181. By its aforesaid conduct, breaches, violations and failures, Defendants failed to discharge their professional and fiduciary duties with the care, skill, prudence and diligence under the circumstances then prevailing as required by a prudent person or entity acting in a like capacity and familiar with such matters.

182. By its aforesaid conduct, breaches, violations and failures, Defendant violated and failed to discharge adequately their professional and fiduciary duties.

183. Defendants' aforesaid breaches of its duty of good faith and fair dealing and violations of their professional and fiduciary responsibilities caused Plaintiff to suffer the damages outlined above and below.

184. The defendants' individual and collective acts and/or omissions were substantial contributing factors and causes of violations of the duties as set forth in this Count and to plaintiff's indivisible harm and damages more fully described above and below, and render the defendants joint and severally liable to the plaintiff.

WHEREFORE, Plaintiff demands judgment against the defendants jointly and/or severally, together with attorney's fees, interest, costs, and treble damages and such equitable relief as the Court may find appropriate.

COUNT VI
BREACHES OF EXPRESS AND IMPLIED WARRANTIES
PLAINTIFF v. ALL DEFENDANTS

185. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

186. As the assignee of the RISC, SANTANDER is subject to all of the same claims as the dealer defendants.

187. The representations of the Defendants regarding the condition of the subject vehicle and the terms of sale constituted express warranties and implied warranties under the laws in the State of New Jersey.

188. The vehicle was not merchantable, in breach of the implied warranty of merchantability, and it was not fit for the ordinary purposes for which such goods are sold.

189. Plaintiff suffered actual damages proximately caused by these breaches of warranties as alleged above.

190. The defendants' individual and collective acts and/or omissions were substantial contributing factors and causes of violations of the duties as set forth in this Count and to plaintiff's indivisible harm and damages more fully described above and below, and render the defendants joint and severally liable to the plaintiff.

WHEREFORE, Plaintiff demands judgment against the Defendants jointly and/or severally in excess of Fifty Thousand Dollars (\$50,000), together with interest, costs, and punitive damages, and such equitable and other relief that the court may find appropriate.

COUNT VII
NEW JERSEY CONSUMER FRAUD ACT ("NJCF")
PLAINTIFF v. ALL DEFENDANTS

191. Plaintiff incorporates all of the facts and allegations set forth in this Complaint.

192. The Consumer Fraud Act, at N.J.S.A. 56:8-2, prohibits the use 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."

193. Defendants are subject to the Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq.

194. Defendants are new and used motor vehicle "Dealers" as defined by the CFA at N.J.S.A. 56:8-67.

195. As the assignee of the subject RISCs, SANTANDER is subject to all of the same claims as the dealer defendants.

196. Defendants' violations of the CFA include, but are not limited to, the following

- a. Concealing that the vehicle was the subject of an active recall, for which no remedy was available at the time of sale;
- b. Misrepresenting through words, and use of the outdated Carfax, that the vehicle was carefully inspected, had never been in an accident or been damaged, and was free of defects and undamaged,
- c. Concealing that the vehicle had damage and/or repairs the total retail value of which was in excess of \$1000.00, when, in fact, it had been damaged and was defective, and was the subject of a recall,
- d. Enforcing an unenforceable RISC, misrepresenting the parties rights and conditions thereunder, misrepresenting the credit and financing terms and conditions,
- e. Concealing that the subject vehicle did not qualify for CHRYSLER CERTIFIED, concealing that the subject vehicle was not sold in accordance with the CHRYSLER CERTIFIED PROGRAM,
- f. Deceiving plaintiff and inducing her to purchase the subject vehicle and to suffer the injuries and damages set forth above and below.

197. Plaintiff suffered an ascertainable loss as a result of Defendants' violations of the CFA.

198. As a result of Defendants' violations of the CFA, Plaintiff suffered an ascertainable loss.

199. Defendants' aforesaid acts constituted unconscionable commercial practices, deception, and fraud.

200. The reasonable cost of repair and/or value of the aforementioned undisclosed and concealed pre-sale damage and repair exceeded \$1000.00.

201. Defendants intended for Plaintiff to rely on the aforementioned acts including the unconscionable commercial practices, deception, fraud, false pretense, false promise and misrepresentation, and Plaintiff did reasonably rely on the same.

202. The foregoing acts by Defendants constitute violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-2 at seq., as a result of which plaintiff suffered ascertainable loss, including being substantially overcharged for the vehicle.

203. At all times material, the actions above described, constituted a violation of the New Jersey Consumer Fraud Act, N.J. Stat. § 56:8-1, et seq. (herein “NJCFA”), which Defendant is in violation and liable therefore to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. For actual damages;
- b. For treble damages under the Consumer Fraud Act (N.J.S.A.56:8-19);
- c. For reasonable attorneys' fees and costs under the CFA at N.J.S.A.56:8-19, and all other applicable statutes;
- d. For prejudgment interest and post-judgment interest; and
- e. For any other relief the Court deems just and proper.

LAW OFFICE OF MICHAEL F. NIZNIK

Date: 8/17/18

BY: s/ Michael F. Niznik
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury of six (6) jurors as to all issues raised in these pleadings.

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, of full age, hereby certifies:

1. I am an attorney in the State of New Jersey with the Law Office of Michael F. Niznik and the attorney principally charged with handling this matter.
2. To the best of my knowledge and information, the within action is not the subject of any other action pending in court, or any arbitration proceedings contemplated.
3. To the best of my knowledge and information, there are no other parties who should be joined in this action.
4. This Certification is provided pursuant to the requirements of Rule 4:5-1

I hereby certify that the foregoing statements by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

NOTICE TO ATTORNEY GENERAL OF ACTION

A copy of the Complaint will be mailed to the Attorney General of the State of New Jersey within ten days after the filing with the Court, pursuant to N.J.S.A. 56:8-20.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is advised that MICHAEL F. NIZNIK, ESQ, is hereby designated trial counsel.

Date: 8/17/18

BY: s/ Michael F. Niznik
Attorney for Plaintiff