

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

**BRANDY LINDY, JENNIFER DUMOND, DORIS REYNOLDS
SALTKILL, TABATHA CALDWELL, MICHAEL NIXON &
MELANIE TAYLOR, DENNIS & CONNIE MEADORS, JASON
RUNYON, GARY WHITTINGTON, HAROLD SLUSHER, SHERRY
COBB, SAMUEL CROSS, GARY GRAVER, SUZELL
GILLOOLEY, HANH VAN NGUYEN, MARY GATTIS, SHIRLEY
ANN NICHOLS, LISA McGEE, HEATHER SHELBY, MARY
WILSON, JIMMY WEST, AARON & LANNA RICE, LaDONNA
BROWN & HAVEN PLASTER, WENDY JO BAXTER, J.D.
SWAFFORD & PAMELA WISDOM, ARNULFO & MARIA
MANJARREZ, BREANNA WIBBING & CHERRY WIBBING,
JENNIFER McDANIEL & TIMMY ADAMS, MELISSA PITTMAN
f/k/a MELISSA ANDERSON, CHRISTINE REDFORD, BILL &
LAURA FRANKLIN, CLAYTON & LISA MATTHEWS,
LeANNETTE SIMPSON, PONCIANO FLORES, REBECCA
HARRIS, DONNIE KENDRICK, DONNIE JO & PHILLIP
SANDERS, DANIEL BAHR, VICKEY SIMMONS, ROY (CHRIS)
BURKHART, KELLY ANN RAY, TINA McNEIL, FONDA
CALDWELL, ALISHA SHEPARD & ROSIE CRAVENS, DANIEL
& TRINA GARNES, BILL & MARY MEREDITH WARREN,
FLOYD EVERLEY, KARA BELT, JAMES DARROHN, BRANDON
& JACQUELINE PIERCY, STEPHEN CROSS, JOHN (JAY) &
LORI GREER, KEVIN & DELTA JACOBS, DeANNE BREWER &
BETTY KERSCHNER, MANUAL HINOJOSA & JOE FISHER,
MICHAEL ARREDONDO, PATRICK McGUIRE, SARA NORTON,
CHERYL GWALTNEY f/k/a CHERYL WILLIAMS, and E.B.
“CHAD” LOWE, III & SHARON LOWE**

PLAINTIFFS

vs.

Case No. 2:05-cv-02171-JLH

**JIM RAY, INC., an Arkansas corporation, d/b/a JIM RAY NISSAN
of Fort Smith, Arkansas, and these individuals: BILLY COOPER,
MARK VANDERMOLEN, and JIM RAY**

DEFENDANTS

THIRD AMENDED AND SUBSTITUTED COMPLAINT

Come the Plaintiffs, through their attorneys, C. Brian Meadors and Kevin L. Hickey, and
state:

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as several federal causes of action (15 U.S.C. § 2301 *et seq.*, 18 U.S.C.A. § 1961 *et seq.*, 18 U.S.C.A. § 2520 *et seq.*) are being asserted by the plaintiffs. This Court has supplemental jurisdiction over the state law causes of action under 28 U.S.C. § 1367. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), as the acts and omissions which form the basis for plaintiffs' claims took place within this District of the State of Arkansas and/or the several defendants reside in this District of the State of Arkansas. A jury trial is demanded.

Introduction and Discussion of Amendment

2. This Third Amended and Substituted Complaint is being filed pursuant to this Court's recent order allowing the filing of an amended complaint. It brings claims for breach of contract, fraud, Arkansas Deceptive Trade Practices Act, Racketeer Influenced and Corrupt Organizations Act (RICO), Federal Wiretap statute, and other violations.

3. The initial complaint in this case was filed in state court and included just Brandy Lindy as a plaintiff against defendant Jim Ray, Inc. Later, seven other plaintiffs joined Ms. Lindy in the first amended complaint. This was also filed in state court. The *Southwest Times Record* then ran an article about this lawsuit. Since then, undersigned counsels' offices have been inundated with phone calls from people who had read the article and had, similarly, been victims of the defendants' harmful, tortious, and criminal activities. The second amended complaint added several dozen additional plaintiffs who became aware of this lawsuit from that article.

That second amended complaint also added several individual defendants to the lawsuit.

Subsequently, the defendants removed to this federal court.

4. As the local media continued to report on the lawsuit against the defendants, even more victims of the defendants' harmful, tortious, and criminal activities contacted undersigned counsel. This Third Amended and Substituted Complaint adds the additional plaintiffs arising from those contacts.

5. Separate Defendant Jim Ray, Inc., d/b/a Jim Ray Nissan is an Arkansas corporation that owns and operates a car dealership called Jim Ray Nissan in Fort Smith, Arkansas. Separate Defendant Billy Cooper is an Arkansas resident and is the sales manager at Jim Ray Nissan. He is one of the key people who orchestrated and directed the harmful, tortious, and criminal activities perpetrated against the plaintiffs. Separate Defendant Mark Vandermolen is an Arkansas resident and is the manager of Jim Ray Nissan in Fort Smith. He is also involved in, has directed, or knew or should have known of the harmful, tortious, and criminal activities perpetrated against the plaintiffs. The owner of Jim Ray, Inc., d/b/a Jim Ray Nissan, Jim Ray, is, upon information and belief, an Arkansas resident. He also knew of and directed or knew or should have known of the harmful, tortious, and criminal activities perpetrated against the plaintiffs; undersigned counsels' investigation has also learned that Jim Ray was present at a meeting with salesmen in which the salesmen were instructed to carry out harmful, tortious, and criminal activities against customers like the plaintiffs. Separate Defendant Jim Ray, Inc., d/b/a Jim Ray Nissan is also liable for all individuals' actions under theories of RICO co-conspirator, joint and several liability, and *respondeat superior*. All defendants who are individuals also have

liability due to A.C.A. § 4-88-113(d), which extends liability under the Arkansas Deceptive Trade Practices Act to the individual defendants in this lawsuit.

6. Jim Ray, Inc. is liable for the acts of all the other (individual) defendants on the theory of agency, joint and several liability, and RICO co-conspirator.

7. Joinder of these plaintiffs is appropriate in that the plaintiffs' causes of action arise from the same "series of transactions or occurrences," *i.e.*, the defendants' regular and systemic practice of defrauding, deceiving, and tricking customers like the plaintiffs through highly similar methods, using similar tactics and chicanery, and relying on the same form documents to perpetuate and defend their fraud. These methods include:

- a. inducing customers to sign blank forms, which Jim Ray Nissan agents later fill in with information different than what the parties agreed to;
- b. inducing customers to sign documents while actively misrepresenting the contents of those documents;
- c. hiding and obscuring parts of documents that are being signed so that customers are deceived as to their true nature;
- d. forging customers' signatures and initials on documents;
- e. creating bogus sales documents and then falsely claiming that the customer approved those documents;
- f. refusing to allow customers to have copies of sales documents;
- g. inserting unauthorized and undisclosed additional charges into sales documents without alerting the customer;

- h. using unfair and coercive high pressure sales tactics that utilize verbal and emotional abuse of customers;
- i. withholding customers' car keys until they agree to buy a vehicle;
- j. threatening to call the police on those customers that challenge these tactics; and
- k. eavesdropping on customers' private conversations: when a customer would come in to the dealership with a family member or friend, the defendants and/or their agents would eavesdrop on the customers' private conversations by leaving them in a room and then listening to their conversations via a hidden listening device.

8. In addition to the same "series of transactions or occurrences," permissive joinder is also appropriate because there are "question[s] of law or fact common" to the parties. Each plaintiff's Deceptive Trade Practices and RICO claim relies on, and will use as evidence, the other plaintiffs' Deceptive Trade Practices and RICO claims. A significant portion of the plaintiffs have virtually identical federal warranty disclosure claims, as well as federal wiretap and invasion of privacy claims. Each plaintiff signed the same types of form documents used by defendants. Each plaintiff's individual claims (*e.g.*, breach of contract, fraud) are parallel to the other plaintiffs' individual claims because in many instances the Defendants used the same fraudulent tactics. Use of fraudulent practices used against other plaintiffs is admissible as evidence in each plaintiff's case as it goes to show the defendants' general plan and motive to commit fraud.

Categorizing the Fraud

9. Virtually all of the defendants' fraud techniques fall into one (or more) of the following eight categories, A-1, A-2, B-1, B-2, B-3, C-1, C-2, C-3:

	Category A — lies about the old car	Category B — lies on the paperwork	Category C — lies about the new car
1	<p><u>“Coached Repo”:</u> Plaintiff is fraudulently told that a repossession of his/her old car will have minimal effect on plaintiff's credit.</p>	<p><u>“Changing Paperwork”:</u> The paperwork does not reflect what the plaintiff and defendants agreed to, often with higher numbers or additional numbers being added. This occurs due to active fraud on the part of the defendants, <i>e.g.</i>, obscured documents at the time of signing, blank documents being signed by the plaintiff which the defendant promises to fill out later, or outright forgeries by the defendants.</p>	<p><u>“Car Features”:</u> Plaintiff is fraudulently told that certain features or extras or attributes exist on the car being bought, when in fact they do not.</p>
2	<p><u>“Bogus Sale”:</u> Plaintiff is fraudulently told that plaintiff's old car will be traded-in, sold on e-Bay, Autotrader, or some other similar market or sale.</p>	<p><u>“You Can Bring It Back”:</u> The paperwork is filled out, usually partially, but the defendants fraudulently promise to “hold” the paperwork for some period of time pending a final approval by the plaintiff. Rather than wait for that approval, the defendants immediately process the paperwork and then insist that an irrevocable contract has occurred.</p>	<p><u>“You'll Get That”:</u> Plaintiff is promised that certain items will be delivered, payments made, or services performed in conjunction with the sale, but once defendants get plaintiff's money, the promised items, money, or services are not provided.</p>
3		<p><u>“Straw Man”:</u> Plaintiff is promised that a person will only be a co-signer, but instead that person is made to be the actual owner of the car, despite the fact that such person never agreed to be an owner.</p>	<p><u>“Delayed Payment”:</u> Plaintiff is promised that initial payments on the new car will be delayed and not due for some period of time, but in fact this is not true and they are due sooner.</p>

10. As part of their ongoing fraud technique, the defendants have generated several different forms that they use to attempt to immunize their fraud. The forms, if taken at face value, purport to provide a defense to defendants for the particular fraud scheme at issue. The defendant, through the use of obscuring documents, affirmative misrepresentations, and/or forgeries, obtain what purports to be voluntary signatures on these various forms.

a. For example, customers victimized by Fraud A-1, “Coached Repo,” are sometimes tricked into signing a form that purports to warn the customer of the negative credit effect of a repossession. There is, of course, no valid reason for a car dealership to even have such a form unless it were in the business of trying to convince people to breach their contracts with their current vehicle lender.

b. Customers victimized by Fraud A-2, “Bogus Sale,” are sometimes tricked into signing a form that purports to tell the customer that their old car is not being traded-in or sold. There is, of course, no valid reason for a car dealership to even have such a form unless it were in the business of fooling people into believing that their old car would be traded-in or sold.

c. Plaintiffs victimized by Fraud B-1, “Changing Paperwork,” are often confronted with various sales documents that appear to bear their signature, but the plaintiff does not remember signing such a document. Jim Ray Nissan has either forged the document, altered the document, or the document was signed by the plaintiff without the plaintiff being alerted to its contents and instead relying on the oral (mis)representations of defendants.

d. Plaintiffs victimized by Fraud B-2, “You Can Bring It Back,” are sometimes tricked into signing a form that purports to tell the customer that the sale is final and

cannot be undone. There is, of course, no valid reason for a car dealership to even have such a form unless it were in the business of telling people that they could bring the car back within a certain time frame, when in fact the dealership has no intention of honoring such an agreement.

e. Plaintiffs victimized by Fraud B-3, “Straw Man,” are sometimes tricked into signing a form that purports to tell the customer that straw purchases are illegal and that a person may not sign for a loan for a car that someone else would drive. There is, of course, no valid reason for a car dealership to even have such a form unless it were in the business of conducting straw man purchases. Indeed, defendants’ use of the straw man form is particularly ironic, as there is, in fact, nothing illegal about an individual taking a loan on a car so that someone else can drive it. What is illegal is Jim Ray Nissan’s practice of doctoring loan paperwork to create a straw man purchase, which is not only a violation of Jim Ray Nissan’s contracts with the various financing companies, but is also a violation of federal law, such as mail and wire fraud and probably runs afoul of the Truth in Lending Act and some federal banking laws, too.

f. Plaintiffs victimized by Fraud C-1, “Car Features,” are sometimes tricked into signing documents that claim that the vehicle is sold “As Is.” Yet, it was defendants’ representations about the vehicle that induced the plaintiffs to buy the car “as is,” because the plaintiffs were led to believe that “as is” included the promised feature.

g. Plaintiffs victimized by Fraud C-2, “You’ll Get That,” are sometimes tricked into signing a form that is called a “We Owe” form. This is a form generated by the defendants that purports to tell the plaintiff that he or she cannot rely on any oral representations

by the salesmen unless the promise is written on the “We Owe” form and signed by the manager. There is, of course, no valid reason for a car dealership to even have such a form unless it were in the business of having its salesmen make oral representations to customers that they have no intention of honoring.

h. Plaintiffs victimized by Fraud C-3, “Delayed Payment,” are, when they try to enforce such promises, often confronted with “We Owe” forms and financing forms. Jim Ray Nissan personnel point to the absence of delayed payment terms in these documents to defend their failure to live up to that promise.

I. Separate Plaintiff Brandy Lindy

11. Brandy Lindy is a young woman who lives in rural Arkansas, near Mena. On or about June 25, 2005, Ms. Lindy purchased a truck from Jim Ray Nissan.

12. To buy the vehicle, a Blue Nissan Frontier Pickup, VIN # 1N6DD26T43C411047, Ms. Lindy borrowed \$16,797.95 from Nissan Motor Acceptance Corporation, which she then paid to Jim Ray Nissan in return for the vehicle.

13. Prior to and concurrently with selling her the vehicle, Jim Ray Nissan made several material misrepresentations of fact, to-wit:

a. The salesman told Ms. Lindy that the vehicle had two fold-down seats; in fact, it had only one;

b. The salesman told Ms. Lindy that the vehicle was a trade-in; in fact, it was not a trade-in, but was a repo that was bought at auction;

c. The salesman told Ms. Lindy that the air conditioner would be fixed. The air conditioner remained unfixed for months and months;

d. The salesman told Ms. Lindy that the paint near the former location of the toolbox would be fixed. The paint remained unfixed for months and months;

e. The salesman told Ms. Lindy that the exhaust leak noise would be fixed. The exhaust leak noise remained unfixed for months and months;

f. The salesman told Ms. Lindy that the vehicle had passed a multi-point inspection and was “certified”; in fact, it was not so inspected nor was it “certified”;

g. The salesman told Ms. Lindy that the vehicle was still subject to the original factory warranty of 100,000 miles. In fact, the vehicle did not enjoy such a warranty.

14. Ms. Lindy reasonably relied on the representations made to her.

15. Those representations were false, and Jim Ray Nissan and its agents knew or should have known that they were false when the representations were made.

16. Jim Ray Nissan also failed to have the warranty disclosure form required by Section 455.2, Title 16, C.F.R., visible on the vehicle purchased by Ms. Lindy.

17. In selling her the truck, Jim Ray Nissan charged Ms. Lindy \$800 for a “warranty.” However, the disclosures required by 15 U.S.C.A. §§ 2301 *et seq.* for that warranty / service agreement were not made.

18. Ms. Lindy attempted, for over a month, to get Jim Ray Nissan to fix and return the truck, but to no avail. She has been required to drive to Fort Smith from her home in Mena on at least three occasions under the belief that the trip would resolve her issues with the vehicle.

These trips were wasted, though, as Jim Ray Nissan continued to hold the truck and not fix it. Points of contact at Jim Ray Nissan had either quit, been fired, or would not return calls. Indeed, the truck remained unrepaired for more than three months.

19. In submitting her loan and purchase papers, Jim Ray Nissan used the U.S. Mail and/or made transmissions by means of wire communications. These actions affected interstate commerce, as they, *inter alia*, involved economic activity with an out-of-state lender.

Plaintiff Lindy's Count I(A) — Breach of Contract against Jim Ray Nissan

20. All paragraphs are incorporated herein.

21. Jim Ray Nissan breached its contract with Ms. Lindy when it sold her a truck that was different than the one promised. Jim Ray Nissan breached its contract by not fixing the vehicle in a timely or commercially reasonable manner. Jim Ray Nissan breached the contract by failing to comply with federal regulations.

22. These breaches of contract proximately caused Ms. Lindy damages.

23. For her remedy on this Count I(A), Ms. Lindy elects the remedy of rescission and demands the return of her nearly \$17,000. In the alternative, Ms. Lindy pleads that the contract is void or voidable based on Jim Ray Nissan's failure to comply with the applicable federal disclosure laws and demands the return of the nearly \$17,000 she paid to Jim Ray Nissan. Ms. Lindy is entitled to damages in an amount of money to make her whole plus attorney's fees and costs and other damages allowed by law.

II. Separate Plaintiff Jennifer Dumond

24. Jennifer Dumond is a young woman of 22 years who teaches at Cook Elementary School in Fort Smith.

25. On Sunday, September 11, 2005, Ms. Dumond and her husband shopped for a car. They went to Jim Ray Nissan to shop. While there, they expressed interest in a 2005 Nissan Xterra.

26. While Ms. Dumond expressed interest in the vehicle, she was hesitant about finalizing the purchase. Defendant Jim Ray Nissan's agents told Ms. Dumond that she did not have to buy the vehicle that day. They told her that she would have 48 hours to think about the purchase of the vehicle.

27. Specifically, Defendant Jim Ray Nissan's agents told her that she could test drive and possess the car for 48 hours and, if she wanted to purchase the car, then she should keep the car and come in that Tuesday morning to finalize the paperwork. These agents also told her that if she did not want to purchase the car that she could bring the car back to Jim Ray Nissan and there would be no purchase. Jim Ray Nissan also promised that it would pay the gas that she used test driving the vehicle. Ms. Dumond agreed with this.

28. The Jim Ray Nissan finance officer told Ms. Dumond to fill out some "rough draft" paperwork to, *inter alia*, give her an idea of what her monthly payments would be. He told her that if she returned the vehicle before Tuesday then he would shred the paperwork.

29. Ms. Dumond believed him.

30. It is reasonable for a potential customer like Ms. Dumond to believe things that Jim Ray Nissan's finance officer tells her.

31. Included in that paperwork to be shredded was a document that noted that Ms. Dumond would have the right to test drive the vehicle for 48 hours and not be required to purchase it. Also included in that paperwork was the No Cooling Off form that purports to instruct consumers that all sales are final. Ms. Dumond signed both documents, reasonably believing that the No Cooling Off form applied only if she kept the car past Tuesday as she had earlier signed a document giving her the right to not purchase if she so chose within 48 hours. In any event, Ms. Dumond had been told that all paperwork would be shredded if she returned the car prior to Tuesday. On that Sunday, Jim Ray Nissan did not give Ms. Dumond copies of these documents. It later produced the No Cooling Off document, but it has yet to produce the 48-hour document.

32. Ms. Dumond drove the vehicle off the lot. Within a day, she decided that she did not want to purchase the vehicle. She returned the vehicle to Jim Ray Nissan and gave Jim Ray Nissan back the keys. Ms. Dumond left a note to the finance officer informing him that she did not want the vehicle.

33. Instead of honoring the test-it-out-for-48-hours agreement that it had made with Ms. Dumond, Jim Ray Nissan had already processed the paperwork it had promised to shred. Jim Ray Nissan submitted loan application papers to Defendant NMAC and caused NMAC to believe that Ms. Dumond was applying for a loan from NMAC.

34. In submitting those papers, Jim Ray Nissan used the U.S. Mail and/or made transmissions by means of wire communications. These actions affected interstate commerce, as they, *inter alia*, involved economic activity with an out-of-state lender.

35. Ms. Dumond subsequently received correspondence from NMAC indicating that it believed that she had borrowed a substantial sum of money from NMAC, which she had not. NMAC apparently set up an account bearing Ms. Dumond's name, paid money to Jim Ray Nissan, and is claiming that Ms. Dumond owes that money. Of course, she does not owe anything to either Jim Ray Nissan or to NMAC. To the extent that any loan paperwork exists, it was fraudulently obtained and any alleged contract for a loan is void.

36. Jim Ray Nissan has also refused to reimburse Ms. Dumond for the gas she used test driving the vehicle.

Plaintiff Dumond's Count II(A) — Breach of Contract against Jim Ray Nissan

37. All paragraphs are incorporated herein

38. Ms. Dumond and Jim Ray Nissan had this agreement:
that Ms. Dumond would test drive the vehicle, and Jim Ray Nissan would so allow; and that Ms. Dumond would purchase the vehicle if she continued to hold it after 48 hours, but if she brought it in before then, there would be no vehicle sale.

39. By processing her paperwork and making her liable on a loan to NMAC after expressly telling her it would not, Jim Ray Nissan breached its test-driving agreement with Ms. Dumond, and this breach has proximately caused Ms. Dumond damages.

40. For her remedy on this Count II, Ms. Dumond's damages consist of an amount of money to make her whole plus attorney's fees and costs and other damages allowed by law. If shown by the evidence and so awarded by the fact finder, this amount may exceed the amount required for federal diversity jurisdiction.

III. Separate Plaintiff Doris Reynolds

41. On Saturday afternoon, March 26, 2005, Plaintiff Doris Reynolds went window-shopping at Jim Ray Nissan in Fort Smith, Arkansas.

42. She was approached by a salesman, who encouraged her to test drive a new Sentra, asked what monthly payments she could make, and told her he needed her key to test drive her vehicle and check the odometer.

43. Ms. Reynolds explained that she thought she might be able to trade in her car as a down payment and get similar monthly payments of about \$300. The salesman asked what she still owed on her car and then told her she was \$4,000 in the red and could not use her car as a trade-in, but if she could make \$400 a month payments, he would give her \$1,000 cash. She said she could not do that and that she could only afford one car payment a month.

44. Then Ms. Reynolds was shown a 2003 Nissan Altima, VIN # 1N4AL11D93C341246. There was no Buyer's Guide on the vehicle window, and the salesman told her it was a trade-in and there was a "10,000 mile warranty."

45. The salesman told Ms. Reynolds she should buy this car for payments of about \$350 per month and "let her car go back." Recently divorced, Ms. Reynolds was unfamiliar with used car sales, but this alarmed her and she feared for her credit. However, the salesman assured

her that if she would make payments on the Nissan, her credit would recover within a year. He told her that he had two repos and it had made a mark on his credit but that he had paid somebody to fix it.

46. Ms. Reynolds had been at the dealership more than two hours and, being diabetic, her blood sugar was low. She told the salesman she had to go home and think about it and asked for her keys back. The salesman refused to give the keys to her. The sales manager joined the discussion and told her that letting her car “go back” would only hurt her credit for a year and would not hurt her ability to buy a house.

47. The salesman told Ms. Reynolds they could not make the same deal the next day and offered to pay the sales tax on the Nissan.

48. The finance manager also assured Ms. Reynolds that her credit would only be hurt for a year and said that she would need to sign a waiver that she was not trading her car in and that she could not bring the new car back if the dealership had a sale and she could get a better deal a week later. He had her sign two loan applications in case one didn't go through, and had a large stack of paperwork for her to sign. He told her that the payments would be less than \$350 per month but did not go over the invoice with her. Ms. Reynolds drove the Nissan home and parked it until she could get in touch with her insurance company.

49. The next morning, Easter Sunday, March 27, 2005, Ms. Reynolds' former husband learned what she had done and told her that his name was also on the contract for her old car and that if she let it be repossessed, it would ruin his credit as well as hers, which would be disastrous since he was preparing to close on the purchase of a new house.

50. Ms. Reynolds called the salesman on Easter Sunday and explained that her ex-husband had co-signed on her car and she could not let his credit be ruined too and that she wanted to return the vehicle. The salesman suggested that since Mr. Reynolds was an ex-husband, that she “get even.” He said he would talk to the sales manager and call her back. He did not call.

51. On Monday morning, March 28, 2005, Ms. Reynolds learned from a loan officer at her credit union that a repossession would affect her credit, and her former husband’s, for seven years. When she again contacted the salesman, he told her that the financing was already done and the loan had gone through, and there was nothing she could do.

52. On Monday, March 28, 2005, Ms. Reynolds returned the 2003 Nissan Altima to Jim Ray Nissan. The salesman threatened to call the police if she used her cell phone to call her lawyer and told her he would have the vehicle towed to her home at her expense.

53. Ms. Reynolds drove the Nissan home on Saturday, March 26, 2005, and back to the dealership on Monday, March 28, 2005, and did not drive it at any other time.

54. The only paperwork provided to Ms. Reynolds on March 26, 2005, was a “Car Invoice” No. 114714, showing a total delivery price of \$25,733.25, and that price was higher than what she had been promised.

55. On April 4, 2005, Ms. Reynolds received documents from Jim Ray Nissan including an Oklahoma Title assigned by Jim Ray Nissan as Oklahoma Dealer No. F232 to Doris Reynolds and a check in the amount of \$1,140 to the Arkansas Department of Finance and Administration.

56. Among the documents received by Ms. Reynolds on April 4, 2005, was a “Retail Installment Contract and Security Agreement” which, by its conditions, should have been delivered to her at the time it was signed and would not take effect until accepted by Compass Bank in Alabama.

57. Although Ms. Reynolds signed numerous documents on Saturday afternoon, March 26, 2005, at the Jim Ray Nissan dealership, Jim Ray Nissan did not provide her with copies.

58. When she called to stop the deal the next day, Easter Sunday, March 27, 2005, the contract had not yet been accepted by Compass Bank; however, Defendant dealership continued with the financing through Compass Bank despite being on notice of Ms. Reynolds’ intent to return the car.

59. Ms. Reynolds received a letter from Compass Bank stating that they would sell the repossessed vehicle. After the sale, Compass Bank informed Ms. Reynolds that she owed \$8,644.96. The vehicle’s value was \$8,644.96 less than the purchase price charged by Jim Ray Nissan, and Ms. Reynolds had only drive it home and back to the dealership.

60. Prior to and concurrently with selling her the vehicle, Defendant Jim Ray Nissan made several material misrepresentations of fact, to-wit:

a. The salesman told Ms. Reynolds that the dealership would pay the sales tax on the vehicle; in fact, the “Car Invoice” shows that \$1,140 for sales tax was not paid by the dealership but was charged to Ms. Reynolds as part of her loan, and for which she was charged by Compass Bank although she received no benefit because she never completed the purchase;

b. The salesman told Ms. Reynolds that the vehicle was an individually-owned trade-in; in fact, there was no Buyer's Guide on the window of the car and it was subsequently sold at auction as a fleet vehicle;

c. The salesman told Ms. Reynolds that the vehicle was still under warranty; in fact, they charged her \$1,500 for a "warranty," from which she received no benefit from Jim Ray Nissan although that amount was charged to her loan by Compass Bank;

d. The salesman, service manager, and finance manager told Ms. Reynolds to stop making payments to U.S. Bank for her old car because a repossession would not damage her credit; in fact, the repossession that has occurred has damaged her credit;

61. Ms. Reynolds reasonably relied on the representations made to her.

62. In fact, those representations were false, and Jim Ray Nissan knew or should have known that they were false when the representations were made.

63. Jim Ray Nissan also failed to have the Buyer's Guide warranty disclosure form required by Section 455.2, Title 16, C.F.R., visible on the vehicle purchased by Ms. Reynolds.

64. In selling the car, Jim Ray Nissan charged Ms. Reynolds \$1,500 for a "warranty." However, the disclosures required by 15 U.S.C.A. §§ 2301 *et seq.* for that warranty / service agreement were not made.

65. In furtherance and as part of all these activities, Jim Ray Nissan used the U.S. Mail and/or made transmissions by means of wire communications. These actions affected interstate commerce, as they, *inter alia*, involved economic activity with an out-of-state lender.

Plaintiff Reynold's Count III(A) — Breach of Contract against Jim Ray Nissan

66. All paragraphs are incorporated herein.

67. Jim Ray Nissan breached its contract with Ms. Reynolds by failing to comply with federal disclosure regulations and by failing to provide a vehicle that was promised.

68. This breach of contract proximately caused Ms. Reynolds damages.

69. For her remedy on this Count III(A) Ms. Reynolds elects the remedy of rescission, and demands the return of approximately \$22,000. In the alternative, Ms. Reynolds pleads that the contract is void or voidable based on, *inter alia*, Jim Ray Nissan's failure to comply with the applicable federal disclosure laws, and demands the return of the approximately \$22,000 she paid to Jim Ray Nissan. Ms. Reynolds also asks for attorney's fees, costs, and other damages and awards as allowed by law.

IV. Separate Plaintiff Tabatha Caldwell

70. Tabatha Caldwell is a single mother.

71. On or about July 14, 2005, Tabatha Caldwell and her daughter went to Jim Ray Nissan to shop for a car. Ms. Caldwell informed the salesman that she wanted a smaller car than the van she had now, and she asked for a car with better gas mileage and lower payments. Ms. Caldwell suggested that she trade in her van to help purchase a car.

72. The salesman told her that she did not need to trade in her van, but could sell it instead. The salesman told her that Jim Ray Nissan would put her van in a program called "Auto-Trader." The salesman told her that this program was done for many of Jim Ray Nissan's customers and that he handled a dozen of these "Auto-Trader" sales every month.

73. Ms. Caldwell asked for some references from prior clients. The salesman said he would like to provide her with references, but couldn't, because of privacy requirements. But he again assured her that the "Auto-Trader" program had good results and satisfied customers. He told Ms. Caldwell that her van would be listed on eBay. The salesman told Ms. Caldwell to simply leave her van with him, Jim Ray Nissan would sell it for her, and that she had nothing to worry about.

74. The salesman told Ms. Caldwell that if she could put \$2,000 down on the purchase of the car, then he could arrange a \$2,500 rebate such that her payments would be less than \$300 per month. The salesman told her that the payments would be about \$240 per month.

75. Ms. Caldwell again asked about her van, and specifically wanted to ensure that she would not have two car payments to make, as she could only afford one. Jim Ray Nissan agents again assured her that her old van would be sold and she would only have one car payment, which would be the new car, and its payments would be about \$240 per month.

76. After receiving and relying on these and other assurances, Ms. Caldwell allowed Jim Ray Nissan to charge the \$2,000 down payment on her credit card, and she gave them the keys to her van, which Jim Ray Nissan again promised to sell for her. Ms. Caldwell then purchased the new car, and in so doing signed several documents that Jim Ray Nissan agents misrepresented, had unfilled blanks, or had portions purposely obscured and hidden.

77. A few weeks later Ms. Caldwell received her contract paperwork from Jim Ray Nissan via the U.S. Mail. The payment amount was \$350 per month, rather than the \$240 she

had been promised. The total sales amount was much higher than what Ms. Caldwell had been told. Also, there was nothing in the paperwork about her van being sold on “Auto-Trader.”

78. When Ms. Caldwell confronted Jim Ray Nissan agents about these lies, they told her “too bad.”

79. Because the entire “Auto-Trader” story was a complete fabrication, Ms. Caldwell’s van was not sold. She is now stuck with two vehicle payments which she cannot afford.

80. Jim Ray Nissan also failed to have the Buyer’s Guide warranty disclosure form required by Section 455.2, Title 16, C.F.R., visible on the vehicle purchased by Ms. Caldwell.

81. In furtherance and as part of all these activities, Jim Ray Nissan used the U.S. Mail and/or made transmissions by means of wire communications. These actions affected interstate commerce, as they, *inter alia*, involved economic activity with an out-of-state lender.

Plaintiff Caldwell’s Count IV(A) — Breach of Contract against Jim Ray Nissan

82. All paragraphs are incorporated herein.

83. Jim Ray Nissan breached its contract with Ms. Caldwell by failing to comply with federal disclosure regulations and by failing to sell her van as promised.

84. This breach of contract proximately caused Ms. Caldwell damages.

85. For her remedy on this Count IV(A) Ms. Caldwell asks for attorney’s fees, costs, compensatory damages and other damages and awards as allowed by law.

V. Separate Plaintiffs Melanie Taylor and Michael Nixon

86. On or about July 19, 2005, Melanie Taylor, and her son, Michael Nixon, went to Jim Ray Nissan to test drive a car. Jim Ray Nissan agents asked them to fill out two separate credit applications. Ms. Taylor told Jim Ray Nissan agents that she was going to co-sign for Michael, but that she would not be responsible for the vehicle because she could not afford it. Ms. Taylor and Michael told Jim Ray Nissan agents that they would need to check on insurance rates before committing to any purchase.

87. The salesman said that would be fine, and if the insurance rates were too high that it could be brought back. When Ms. Taylor and Michael explained that they needed to leave to check insurance rates, Jim Ray Nissan agents told them that the car had to be bought that day under Jim Ray Nissan's "first time buyers program." If Ms. Taylor and Michael were to leave, Jim Ray Nissan agents explained, then the deal would be gone.

88. Therefore, Michael agreed to purchase the car with the understanding that he could bring it back and rescind the agreement if the insurance rates were too high. It was also made clear that Ms. Taylor would only be a co-signer, not a buyer. Ms. Taylor and Michael went over this several times with the salesman, and the salesman repeatedly assured them that this was the case.

89. The salesman then presented a great deal of paperwork to Ms. Talyor and Michael, calling it "just a formality." He showed them where to sign. Many of the forms had blank spaces, but the salesman told Ms. Taylor and Michael that he would he fill in these blanks later. While they filled out these forms, the salesman hid and obscured certain portions of the documents and instead "explained" what the documents said.

90. Ms. Taylor and Michael trusted the salesman and took him at his word. It was reasonable for them to do so.

91. Jim Ray Nissan personnel filled out some of the blanks on the forms after Ms. Taylor signed them and had left the dealership.

92. After signing the paperwork, Ms. Taylor and Michael drove the car off the lot and checked on insurance rates. The cheapest rate available was much higher than could be afforded, so they returned the car to Jim Ray Nissan.

93. Jim Ray Nissan refused to accept the car. Jim Ray Nissan provided paperwork purporting to sell the car to Michael, but the terms of the paperwork were different than what the parties had agreed to.

94. In selling the car, Jim Ray Nissan charged \$1,500 for a “warranty.” However, the disclosures required by 15 U.S.C.A. §§ 2301 *et seq.* for that warranty / service agreement were not made.

95. Jim Ray Nissan also failed to have the Buyer’s Guide warranty disclosure form required by Section 455.2, Title 16, C.F.R., visible on the vehicle purchased.

96. In furtherance and as part of all these activities, Jim Ray Nissan used the U.S. Mail and/or made transmissions by means of wire communications. These actions affected interstate commerce because they, *inter alia*, involved financing with an out-of-state lender.

Plaintiffs Taylor & Son’s Count V(A) — Breach of Contract against Jim Ray Nissan

97. All paragraphs are incorporated herein.

98. Jim Ray Nissan breached its contract with Ms. Taylor and Michael by failing to comply with federal disclosure regulations and by failing to provide the vehicle on the terms promised, *i.e.*, the right to rescind if the insurance rates were too high. Also, Jim Ray Nissan breached its contract by, after the parties had parted, filling out the forms in such a way to make Ms. Taylor the sole, legal owner of the car when she had only agreed to be a co-signer on the note for her son.

99. This breach of contract proximately caused Ms. Taylor and Michael damages.

100. For their remedy under this Count V(A), Ms. Taylor and Michael ask for attorney's fees, costs, compensatory damages, and other damages and awards as allowed by law.

VI. Separate Plaintiffs Dennis and Connie Meadors¹

101. One evening in July of 2005, Dennis and Connie Meadors went to Jim Ray Nissan to shop for a truck. A salesman approached them. He said it had been a bad sales month and Jim Ray Nissan really needed to sell some trucks. The salesman identified some trucks on a hill and suggested that they look at those. They test drove a 2005 Nissan Frontier. Dennis and Connie Meadors explained that they had been shopping for trucks for some time and were considering buying one from Crawford County Ford.

102. After some talking with salesmen, a Jim Ray Nissan salesman offered to sell the truck for less than the one at Crawford County Ford. He also promised to put both Dennis and Connie's name on the title, give the truck a complete detailing, tint the windows, fill it with gasoline, and when it was brought in for service, they could have their choice of loaner vehicles.

¹ No relation to undersigned counsel.

103. After hearing these representations, Dennis agreed to the deal and they went inside the dealership to fill out the paperwork.

104. At this point it was late in the day — approximately 9:30 p.m. The Jim Ray Nissan salesmen rushed them through the paperwork, explained little, if anything, as to what the paperwork said, and several of the lights were out in the office. As for the price of the truck, the salesmen simply flashed a computer screen to the Meadorses with the alleged sales price.

105. Jim Ray Nissan did not give the Meadorses the paperwork that time. Instead, Jim Ray Nissan later mailed it, through the U.S. Mail, to the Meadorses. When they received the papers, they discovered that the sales price on the papers did not match what was told to them, nor was it the price shown to them on the computer screen. Indeed, the sales price of the truck exceeded the truck's sticker price. The vehicle was not titled correctly, either.

106. The Meadorses also discovered that many of the representations made about the truck were not true. It had numerous scratches on the inside console; a rusted out chip on the back of the cab; a yellow paint drip in the back; there were numerous scratches on the inside of the tailgate. The sticker price for the truck showed \$80 for floor mats, but there were no floor mats provided. The truck also did not come with a full tank of gas as promised.

107. In selling the car, Jim Ray Nissan charged \$1,500 for a "warranty." However, the disclosures required by 15 U.S.C.A. §§ 2301 *et seq.* for that warranty / service agreement were not made, nor did the Meadorses even agree to purchase a warranty.

108. Jim Ray Nissan also failed to have the Buyer's Guide warranty disclosure form required by Section 455.2, Title 16, C.F.R., visible on the vehicle purchased.

109. In furtherance and as part of all these activities, Jim Ray Nissan used the U.S. Mail and/or made transmissions by means of wire communications. These actions affected interstate commerce because they, *inter alia*, involved financing with an out-of-state lender.

Plaintiff Meadorses' Count VI(A) — Breach of Contract against Jim Ray Nissan

110. All paragraphs are incorporated herein.

111. Jim Ray Nissan breached its contract with the Meadorses by failing to comply with federal disclosure regulations and by failing to provide the vehicle on the terms promised. Also, the contract is voidable because it is unconscionable, as it charges more than the posted sticker price.

112. These breaches of contract proximately caused the Meadorses damages.

113. For their remedy under this Count VI(A), the Meadorses ask for attorney's fees, costs, compensatory damages, and other damages and awards as allowed by law.

VII. Separate Plaintiff Jason Runyon

114. On or about May 26, 2005, Jason Runyon and his wife shopped at Jim Ray Nissan for a new vehicle. They were interested in purchasing a 2005 Altima. Mr. Runyon was also interested in getting a cheaper monthly car payment.

115. Mr. Runyon wanted to trade-in his current car, an Envoy. He could not afford two car payments. He told the Jim Ray Nissan salesmen this.

116. Mr. Runyon and his wife test drove the 2005 Altima. They were quoted a price of about \$18,000. Jim Ray Nissan personnel suggested they try to work out what to do about the

Envoy. They told the Runyons that the Envoy would sell for an amount close to what was owed on the car.

117. The salesman, Dustin Domerese, said he would give a \$400 allowance to the Runyons for them to put the Envoy up for sale. He suggested e-Bay and classified ads. The salesman also told the Runyons that he would detail the Envoy and would defer the first two payments on the Altima so that there would be time to sell the Envoy. Finally, the salesman told the Runyons that if the Envoy did not sell that Jim Ray Nissan would take it as a trade-in so that the Runyons would not have to make two car payments.

118. At that point, the Runyons wanted to go home and think about the offer. But the salesman persisted. He told the Runyons that Jim Ray Nissan had not sold a car all day. He reassured the Runyons that their Envoy would either be sold or if not sold, traded in so that the Runyons would not have to make two car payments and that in the event of a trade in the payment would be one that the Runyons could afford.

119. The Runyons believed these representations.

120. It is reasonable for the Runyons to believe things told to them by Jim Ray Nissan personnel.

121. In reliance on these representations, the Runyons signed the paperwork relating to the 2005 Altima.

122. The Runyons subsequently learned that the Envoy would likely not sell for the amount that the salesman had told them it would sell for. When they tried to discuss this concern with the salesman, he avoided them and fabricated excuses as to why he could not speak with

them. He refused to reconsider or to disallow the sale of the 2005 Altima. Eventually, the salesman told the Runyons to come back the following weekend to finalize getting the Envoy sold.

123. The Runyons made efforts to sell the Envoy, but they could not sell it for anything close to the amount that the Jim Ray Nissan personnel had led them to believe it would sell for.

124. When the Runyons returned to Jim Ray Nissan to try to get the Envoy sold, Jim Ray Nissan was unhelpful. Jim Ray Nissan personnel demanded that the Runyons pay another \$10,000 to Jim Ray Nissan for trying to sell the Envoy. The Runyons told Jim Ray Nissan that they did not have that kind of money. Then Jim Ray Nissan personnel told them they could not help them and that whatever they thought the salesman had said must have been a mistake. Jim Ray Nissan refused to accept the Envoy as a trade-in. Jim Ray Nissan personnel told the Runyons to make sure the Envoy was not on the Jim Ray Nissan lot.

125. Also, contrary to the salesman's representations, only one Altima payment (not two) was deferred.

126. The Runyons are now stuck with two car payments, which they cannot afford. This may adversely affect their credit.

127. Jim Ray Nissan sold a warranty / service agreement to Mr. Runyon, but failed to make the required federal disclosures.

128. In doing these actions related to Mr. Runyon, the Defendants utilized fax machines, telephones, and/or the U.S. Mail.

Plaintiff Runyon's Count VII(A) — Breach of Contract against Jim Ray Nissan

129. All paragraphs are incorporated herein.

130. Jim Ray Nissan breached its contract with Mr. Runyon by failing to comply with federal disclosure regulations and by failing to sell or accept as a trade-in the Envoy as promised.

131. This breach of contract proximately caused Mr. Runyon damages.

132. For his remedy on this Count VII(A) Mr. Runyon asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

VIII. Separate Plaintiff Gary Whittington

133. On or about July 30, 2005, Gary Whittington and his wife Nancy went to Jim Ray Nissan to shop for a car and ultimately purchased a 2005 Nissan Sentra.

134. They had wanted to trade-in their 1999 Ford Taurus, but Jim Ray Nissan would not allow this. Instead, the salesman suggested, Jim Ray Nissan would sell the Taurus on e-Bay and Auto-Trader for Mr. Whittington. He said that Jim Ray Nissan would detail the Taurus for free. He told Mr. Whittington to make one more payment on the Taurus, but then to start making payments on the new Sentra because by that time the Taurus would be sold.

135. The salesman told Mr. Whittington that of the last 316 cars that Jim Ray Nissan had listed on e-Bay or Auto-Trader, 312 had sold.

136. The Whittingtons left the lot in the 2005 Sentra. They had been given no paperwork by Jim Ray Nissan except for a bill of sale. Later, the Whittingtons received papers in the U.S. Mail from Jim Ray Nissan. Many of the papers had been changed from when Mr. Whittington had first agreed to them.

137. Mr. Whittington looked on e-Bay and Auto-Trader for two weeks to try to confirm that his Taurus was for sale. He did not see it. Therefore, he went back to Jim Ray Nissan and asked about the Taurus being sold. The salesman admitted that it was not on e-Bay or Auto-Trader, but that he would get it on there and promised it would be sold.

138. The salesman then gave the Taurus keys to Mr. Whittington and asked him to take it off the lot and back to Mr. Whittington's house. When Mr. Whittington asked why, the salesman told him that if any damage happened to the Taurus while it was on Jim Ray Nissan's lot that the insurance would not cover it. The salesman told Mr. Whittington that when the Taurus sold he would be called so that it could be delivered. Mr. Whittington took the Taurus home.

139. A week passed. The Taurus was still not listed on e-Bay or Auto-Trader. Therefore, Mr. Whittington went back to Jim Ray Nissan and inquired about the sale of the Taurus.

140. Jim Ray Nissan personnel told Mr. Whittington that they did not want to deal with him anymore. They told him to get off of the lot. Mr. Whittington gave Jim Ray Nissan the new Sentra he had bought, along with the keys, and left.

141. Capital One, which had financed the Sentra, began calling Mr. Whittington. Mr. Whittington explained what had happened and that the Sentra had been returned to Jim Ray Nissan. This continued for about two months. Finally, Capital One threatened to repo the Sentra and sell it at auction.

142. Therefore, Mr. Whittington went back to Jim Ray Nissan and got the Sentra. By this point he was almost three payments behind.

143. Upon information and belief, Jim Ray Nissan sold a warranty / service agreement to Mr. Whittington, but failed to make the required federal disclosures.

144. In doing these actions related to Mr. Whittington, the Defendants utilized fax machines, telephones, and/or the U.S. Mail.

Plaintiff Whittington's Count VIII(A) — Breach of Contract against Jim Ray Nissan

145. All paragraphs are incorporated herein.

146. Jim Ray Nissan breached its contract with Mr. Whittington by failing to comply with federal disclosure regulations and by failing to sell the Taurus as promised. In addition, Jim Ray Nissan breached the contract by changing the papers after they were signed.

147. This breach of contract proximately caused Mr. Whittington damages.

148. For his remedy on this Count VIII(A) Mr. Whittington asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

IX. Separate Plaintiff Harold Slusher

149. On or about July 31, 2005, Harold Slusher went to Jim Ray Nissan to shop for a car. He was interested in buying a new pickup truck and trading in his old 1999 Ford.

150. Mr. Slusher test drove a 2005 Nissan Frontier, two-wheel drive.

151. Mr. Slusher was told by the salesman that the Frontier he was buying was new with only 6 miles on it. He was told that the truck would be sold for about \$20,500. He was told

that Jim Ray Nissan would write him a \$1,500 check for license fees and taxes. Mr. Slusher relied on these representations, and it was reasonable for him to do so.

152. In fact, the representations in the above paragraph were false, and Jim Ray Nissan agents knew them to be false. The truck was not new with only 6 miles on it, but was instead used and had 1,376 miles on it. The truck was not a four wheel drive as was written on the pink copy of the short contract, but was instead a two-wheel drive. The truck was not sold for about \$20,500, but instead was sold for about \$2,000 more, and this amount was above the sticker price. And, also contrary to its representations, Jim Ray Nissan, did not write Mr. Slusher a check for \$1,500 for license fees and taxes. Jim Ray Nissan changed the pricing information on Mr. Slusher, and did it without his knowledge or permission.

153. Jim Ray Nissan told Mr. Slusher they would pay for the license and sales tax on the vehicle. However, Jim Ray Nissan did not pay the sales tax. In financing the vehicle, Jim Ray Nissan added the sales tax amount to the principal of the loan. Therefore, he is not only paying the sales tax that was promised by Jim Ray Nissan, he is also having to pay interest on that amount because it was added to his loan. Furthermore, the amount added for sales tax was insufficient, and he had to pay the difference.

154. In doing these actions related to Mr. Slusher, the Defendants utilized fax machines, telephones, and/or the U.S. Mail.

Plaintiff Slusher's Count IX(A) — Breach of Contract against Jim Ray Nissan

155. All paragraphs are incorporated herein.

156. Jim Ray Nissan breached its contract with Mr. Slusher by failing to comply with federal disclosure regulations and by failing to sell the Frontier to Mr. Slusher upon the terms agreed.

157. This breach of contract proximately caused Mr. Slusher damages.

158. For his remedy on this Count IX(A) Mr. Slusher asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

X. Separate Plaintiff Sherry Cobb

159. In June of 2005, Sherry Cobb went to Jim Ray Nissan to look around at new sports cars.

160. The salesman, noticing that she was looking at a 350Z, said, "would you like to drive that 350Z?" She told the salesman that she was not interested in buying, but was just looking.

161. Then a new salesman comes out. He said, "Is this the one you want," pointing toward the 350Z. The salesman said, "it's yours, come in and we'll run some numbers."

162. Ms. Cobb told the salesman that she was upside down on her current car and would have to trade it in. The salesman said, "don't worry, I'm going to help you. Obviously, the last car dealer did not. I am going to sell your car for you. I can have it sold in a month. I will have it detailed, take pictures and then put it on the Internet. Millions of people will see it and it will sell. I do this all the time."

163. Ms. Cobb was excited at the idea of being able to sell her old car so that she could buy the new 350Z. The salesman left the room and came back with several papers. He told her the payment would be \$692 per month.

164. Ms. Cobb told the salesman that he would have to sell her old car because she did not have a computer, nor did she know anything about e-Bay or the Internet. The salesman said, “don’t worry – I will do it for you. I will defer your payments for three months, and I will have your car sold by then.”

165. Ms. Cobb believed the salesman. She left her old car there to be sold.

166. However, Jim Ray Nissan did not sell her car. When Ms. Cobb returned the next day to get her new car detailed, Jim Ray Nissan personnel asked her to take her old car home. Jim Ray Nissan personnel refused to honor the agreement to sell her old car. As she was leaving, another Jim Ray Nissan employee said to her, “he did you wrong. He does this all the time. Get an attorney. You’re too nice a person to be done this way.”

167. Ms. Cobb tried to leave her new 350Z at the dealership so she wouldn’t have to make two car payments. But her attempts to have Jim Ray Nissan voluntarily rescind the contract failed. Therefore, Ms. Cobb, in order to protect her credit, took the 350Z and is trying her best to make two car payments. She has to now work three jobs to accomplish this.

168. In doing these actions related to Ms. Cobb, the Defendants utilized fax machines, telephones, and/or the U.S. Mail.

Plaintiff Cobb’s Count X(A) — Breach of Contract against Jim Ray Nissan

169. All paragraphs are incorporated herein.

170. Jim Ray Nissan breached its contract with Ms. Cobb by failing to sell her old car as promised.

171. This breach of contract proximately caused Ms. Cobb damages.

172. For her remedy on this Count X(A) Ms. Cobb asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XI. Separate Plaintiff Sam Cross

173. In September of 2003, Sam Cross went to Jim Ray Nissan and expressed interest in a 2003 Nissan Frontier truck, model 4WCC.

174. Mr. Cross test drove the vehicle with a Jim Ray Nissan salesman riding along. Mr. Cross told him that he would not buy it without his wife, Rebecca Cross, agreeing to the purchase. The salesman insisted that Mr. Cross drive it home to show her, and then come back and talk about it.

175. After taking the truck home and returning, Mr. Cross informed the salesman that he would not buy the truck unless he could get a really good price. The price quoted to Mr. Cross by Jim Ray Nissan at that time was \$24,000.00. Mr. Cross also told Jim Ray Nissan personnel that the dealership would have to pay the sales tax. The salesman told Mr. Cross that he would see what he could do.

176. The salesman asked Mr. Cross how much of a payment he "could handle," and Mr. Cross told the salesman that he did not care that much about the payment; his selling points were the purchase price and the interest rate. Mr. Cross also told him that he was hesitant about purchasing the vehicle without his wife present.

177. The salesman seemed very anxious to sell the vehicle, and he left and came back with Mr. Travis Fields. Mr. Fields and the salesman both sat down in front of Mr. Cross, and Mr. Fields said, "What can I do to get you to buy the truck tonight?"

178. Mr. Cross told the Jim Ray Nissan personnel that he would rather have his wife present. The Jim Ray Nissan personnel then told Mr. Cross that he would get the truck for \$24,000.00, the sales tax would be paid, the principal would be financed at .09%, he would not need to provide a trade-in or a down-payment, and he would not have a payment due until January 30, 2004.

179. Mr. Cross called his wife. All of these conditions were repeated again, over the phone, for her to hear. Then the Jim Ray Nissan personnel stated that Jim Ray Nissan was going to give Mr. Cross four months without a payment to drive the truck, and he could shop around in that four months. The Jim Ray Nissan agent said, verbatim, that Mr. Cross could bring the truck back and "we can void the contract." The Jim Ray Nissan agent said that Mr. Cross should "just go ahead and buy the truck so we can all go home," because it was 8:30 p.m. on a Monday night.

180. Mr. Cross relied on the statement that he could bring the truck back and void the contract when he decided to sign the contracting papers. After that Monday night, Mr. Cross further evidenced his belief in this condition by communicating to several people that he would be able to take the truck back, and he also continued to look for other vehicles at other lots.

181. Mr. Cross attempted to bring the truck back on Saturday, September 27. At that time he was informed by an alleged "floor manager" that Jim Ray Nissan would not allow Mr. Cross to return the truck. When Mr. Cross tried to explain to the alleged "floor manager"

that he had an oral contract with Jim Ray Nissan, the alleged “floor manager” told Mr. Cross that the contract was signed, and Mr. Cross could not prove that Jim Ray Nissan salesmen had said that Mr. Cross could bring the truck back and void the purchase contract. The “floor manager” told Mr. Cross that if he attempted to leave the truck on the Jim Ray Nissan lot, it would be towed and Mr. Cross would be charged.

182. After leaving the dealership that Saturday, Mr. Cross looked through the truck to see if he could find any paperwork to review. He had been out of town all week and had had very little time to consider what to do about the truck. Mr. Cross found a pink paper in an envelope in the glove box of the truck. He had not been informed that it was placed there.

183. Mr. Cross opened the envelope and saw a car invoice. He discovered that Jim Ray Nissan had priced the car at \$30,159.88, had added a “doc fee” of \$299.95, had added the cost of the sales tax (\$1,670) into the amount to be financed, and had charged \$398.00 for a warranty. In all, the dealership had charged \$33,359.40 for the vehicle, when in fact the parties had agreed that the price would be \$24,000.

184. Mr. Cross did not sign a piece of paper with that number on it. He did sign a piece of paper with \$24,000 as the purchase price (principal only). The \$33,359.40 amount was even more than the sticker price. The sticker price was about \$28,700.00.

185. Mr. Cross then remembered that the sticker was taken off of the vehicle before it was given to him. Mr. Cross does not know if the inflated price was printed on the car invoice after he signed it, or if his signature was superimposed, or if the numbers were somehow

covered-up under another piece of paper when he signed, but he does know for certain that he never willingly signed a contract to purchase any vehicle and finance the amount of \$33,359.40.

186. In making the alleged and fraudulent sale of the warranty / service agreement to Mr. Cross, Jim Ray Nissan failed to make the required federal disclosures.

187. In doing these actions related to Mr. Cross, the Defendants utilized fax machines, telephones, and/or the U.S. Mail.

Plaintiff Cross's Count XI(A) — Breach of Contract against Jim Ray Nissan

188. All paragraphs are incorporated herein.

189. Jim Ray Nissan breached its contract with Mr. Cross by failing to charge the price agreed upon, failing to allow him to rescind the contract within the time that the parties agreed that the contract could be rescinded, and failing to comply with federal disclosure regulations. In addition to the breach of contract, even if the \$33,359.40 amount weren't obtained through fraud, that price is unconscionable as it exceeds the sticker price.

190. This breach of contract proximately caused Mr. Cross damages.

191. For his remedy on this Count XI(A), Mr. Cross asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law. Mr. Cross reserves the right to rescind the alleged contract.

XII. Separate Plaintiff Gary Graver

192. On or about June 6, 2004, Gary Graver went to Jim Ray Nissan to shop for a car. He identified a 2004 Nissan Maxima that he was interested in.

193. As part of his examination of the 2004 Nissan Maxima, Mr. Graver asked several questions of the salesman. The salesman told Mr. Graver:

- a. That the car had a multiple CD rack;
- b. It was set up and ready for Satellite Radio;
- c. He would receive more than one set of keys;
- d. The after-market rims and tires would be replaced with stock rims;
- e. The car would be detailed prior to delivery to Mr. Graver;
- f. Jim Ray Nissan would pay the sales tax; and
- g. The car was new and had no previous owners.

194. In fact, none of the representations in the above paragraph were true; all the representations made by Jim Ray Nissan personnel in the above paragraphs were lies.

195. Mr. Graver relied on Jim Ray Nissan's representations when he agreed to purchase the car.

196. There was no sticker on the car as required by federal law, nor were the requisite warranty disclosures made by Jim Ray Nissan.

197. In its dealings with Mr. Graver, Jim Ray Nissan utilized the U.S. Mail and/or the telephone, fax machine, or other wire communications.

Plaintiff Graver's Count XII(A) — Breach of Contract against Jim Ray Nissan

198. All paragraphs are incorporated herein.

199. Jim Ray Nissan breached its contract with Mr. Graver by failing to charge the price agreed upon and failing to comply with federal disclosure regulations. In addition, the vehicle price is unconscionable as it exceeds the sticker price.

200. This breach of contract proximately caused Mr. Graver damages.

201. For his remedy on this Count XII(A), Mr. Graver asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XIII. Separate Plaintiff Suzell Gillooley

202. On or about Sunday, August 14, 2005, Suzell Gillooley went with her son to Jim Ray Nissan. She was going to co-sign his loan so that he could buy a 2001 Xterra. She told the Jim Ray Nissan personnel that she only wanted to be a co-signer.

203. Ms. Gillooley filled out paperwork and signed where the Jim Ray Nissan personnel told her to sign, all the while under the belief that she was a co-signer. The Jim Ray Nissan personnel told Ms. Gillooley that even though the paperwork said "buyer," that was really the same thing as co-signer. Ms. Gillooley later learned that this was false; Jim Ray Nissan processed the vehicle's paperwork as though Ms. Gillooley was the buyer.

204. Ms. Gillooley wanted to wait until Monday to make a final decision, but the salesman said that the price would go up and that she and her son needed to make a decision immediately. To further induce a sale, the Jim Ray Nissan salesman said that Jim Ray Nissan would pay the sales tax on the vehicle. In fact, this was false; Jim Ray Nissan surreptitiously charged the sales tax to Ms. Gillooley.

205. While the paperwork was being filled out, the salesman importuned Ms. Gillooley and her son to purchase GAP insurance. He said that it would only raise the payment by a couple of dollars. Ms. Gillooley agreed to GAP insurance, but she never received confirmation that the insurance had actually been paid. Upon information and belief, Jim Ray Nissan simply pocketed the premium and never procured the GAP insurance for her.

206. The Jim Ray Nissan salesman assured Ms. Gillooley that the auto insurance on the Xterra would be less than \$100 per month and “guaranteed” this. Ms. Gillooley later learned that this assurance was false; the insurance on the Xterra was \$174.

207. Jim Ray Nissan personnel promised Ms. Gillooley and her son two \$50 gas vouchers and two free oil changes. When Ms. Gillooley’s son tried to get these benefits from Jim Ray Nissan, its agents reneged on the deal. Jim Ray Nissan agents then told him that if he did not leave the lot, then they would call the police.

208. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Gillooley’s Count XIII(A) — Breach of Contract against Jim Ray Nissan

209. All paragraphs are incorporated herein.

210. Jim Ray Nissan breached its contract with Ms. Gillooley by failing to make her the co-signer of the vehicle instead of the owner. Further, even if Ms. Gillooley were considered the owner, Jim Ray Nissan breached its contract by failing to provide the GAP insurance, the sales tax, payment, the gas vouchers, and the oil changes.

211. This breach of contract proximately caused Ms. Gillooley damages.

212. For her remedy on this Count XIII(A), Ms. Gillooley asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XIV. Separate Plaintiff Hanh Van Nguyen

213. On or about January 22, 2005, Hanh Van Nguyen went to Jim Ray Nissan to look at Titan trucks. He told the salesman he wanted to buy a brand new truck. Jim Ray Nissan salesmen told Mr. Nguyen they would give him a \$2,500 rebate since he had such good credit.

214. Mr. Nguyen signed papers presented to him by Jim Ray Nissan agents. The papers did not have the mileage of the truck listed on them. Mr. Nguyen assumed this was because he was buying a brand new truck.

215. After Mr. Nguyen arrived home, he noticed that the truck had over 4,000 miles on it. He then returned to Jim Ray Nissan and demanded a new truck as he had been promised.

216. The salesman told Mr. Nguyen that there was nothing that he could do. Mr. Nguyen asked to speak to the manager and asked for copies of the papers he had signed. But the manager did not speak with Mr. Nguyen, nor did Jim Ray Nissan provide Mr. Nguyen copies of the papers he had signed.

217. A salesman then came out with a document for Mr. Nguyen to sign. The salesman told Mr. Nguyen that if he signed this new document, Jim Ray Nissan would take the truck back. As it turns out, the document was a "vehicle repossession document" that purportedly operates to immunize Jim Ray Nissan for coaching a customer to allow repossession of a recently financed vehicle. Mr. Nguyen refused to sign the document.

218. Jim Ray Nissan then told Mr. Nguyen to take the truck and wait for a replacement new truck.

219. Mr. Nguyen's daughter later went to Jim Ray Nissan on Mr. Nguyen's behalf. A salesman at Jim Ray Nissan told her that he was sorry about what had been done to Mr. Nguyen, but that there was nothing he could do about it.

220. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Nguyen's Count XIV(A) — Breach of Contract against Jim Ray Nissan

221. All paragraphs are incorporated herein.

222. Jim Ray Nissan breached its contract with Mr. Nguyen by failing to provide him with a new truck as promised.

223. This breach of contract proximately caused Mr. Nguyen damages.

224. For his remedy on this Count XIV(A), Mr. Nguyen asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XV: Separate Plaintiff Mary Gattis

225. On or about September 17, 2004, Mary Gattis and her sixteen year-old son went to Jim Ray Nissan to look at cars. When approached by a salesman, Ms. Gattis told him that they were there just to look.

226. The salesman asked them what it would take to sell them a car that day. Ms. Gattis asked about the sticker price of one of the cars. The salesman responded, "well, it doesn't have a sticker, but it is in the mid-teens."

227. Ms. Gattis said that she was still making payments on her old car and owed about \$4,500. The salesman said, “what if I could get that car paid off? Would we have a deal?”

228. Ms. Gattis took a car for a test drive. She then told the salesman that she would like to go home and think about it. But the salesman said he wanted Ms. Gattis to go inside and look at some numbers. The salesman said, “You know you want it. Nothing will change. If you think about it, the car could very well be sold by tomorrow afternoon.”

229. Ms. Gattis told the salesman that if Jim Ray Nissan would pay off her old car, pay the sales tax, and put four new tires on the new car, then they would have a deal.

230. The salesman took out a pad of paper and wrote down what Ms. Gattis had told him. He said he had to check with his manager. The salesman left; he came back later. “You drive a hard bargain,” he said, “but you have a deal.” The salesman then presented some paperwork to Ms. Gattis, which she signed, believing that the paperwork represented the parties’ deal.

231. Later after she got home, Ms. Gattis looked over the paperwork and discovered that it did not reflect what she and Jim Ray Nissan had agreed to. Instead of paying her sales tax, Jim Ray Nissan added her sales tax. New tires had not (nor were they ever) provided. Ms. Gattis’s old car had not been paid off.

232. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Gattis’s Count XV(A) — Breach of Contract against Jim Ray Nissan

233. All paragraphs are incorporated herein.

234. Jim Ray Nissan breached its contract with Ms. Gattis by failing to pay her sales tax, failing to pay off her old car, and failing to provide new tires as promised.

235. This breach of contract proximately caused Ms. Gattis damages.

236. For her remedy on this Count XV(A), Ms. Gattis asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XVI: Separate Plaintiff Shirley Ann Nichols

237. On or about July 26, 2004, Ms. Nichols went to Jim Ray Nissan to inquire about trading her 2003 Dodge Ram for something with more seating.

238. The Jim Ray Nissan salesmen told Ms. Nichols that they could not take her Dodge Ram as a trade-in because she owed too much on it. Disappointed, Ms. Nichols left the Jim Ray Nissan lot.

239. For days afterwards, Jim Ray Nissan personnel called Ms. Nichols, encouraging her to come back to the lot. Finally, on July 29, 2004, a salesman told her that he could work something out with her. Encouraged, Ms. Nichols went back to the Jim Ray Nissan lot.

240. When Ms. Nichols arrived at the Jim Ray Nissan lot, a salesman told her that he still could not take her Dodge Ram as a trade-in, but that Jim Ray Nissan would advertise it for sale. The salesman said he was confident that the Dodge Ram would sell because, he said, its resale value was better than its trade-in value.

241. Ms. Nichols initially had reservations about this proposal. She said that she really could not afford two car payments, and she was concerned about a repossession occurring if she did have to make two car payments.

242. But the Jim Ray Nissan salesman assured her that a repossession would not hurt her credit. The salesman told her that having Nissan financing on her new car would be a positive credit reporting that would “cancel out” any negative credit resulting from a Dodge Ram repossession. The salesman said that he had two repossessions on his credit report and still had good credit. In fact, the salesman, said, in spite of his two repossessions, he had such good credit that he had just bought a house full of furniture from Ashley Furniture.

243. When Ms. Nichols continued to be hesitant, the salesman persisted. He began asking questions along the lines of “What’s more important – your credit or the safety of your son and grandchild in the vehicle?” The salesman then offered Ms. Nichols free gas until January 2005 if she were to buy to the car. He also promised to pay her sales tax.

244. The salesman’s assurances about the probable sale of the old car, the negligible credit impact, the free gas, and the payment of the sales tax ultimately persuaded Ms. Nichols to buy the new car. She agreed to buy the new car; Jim Ray Nissan personnel began to show her paperwork to sign.

245. Many of these terms were on the papers that Ms. Nichols signed. In fact, she required Jim Ray Nissan personnel to write the “free gas” terms onto the sales documents.

246. Later, Jim Ray Nissan personnel told Ms. Nichols that they had made a mistake in the paperwork, and that they were not allowed to use white-out on the paperwork. They presented her with blank paperwork and told her that they would re-do the papers exactly like the ones that she had signed. Relying on these promises, Ms. Nichols signed the blank documents.

247. Ms. Nichols later received some sales documents in the mail, but the blanks on the documents had been filled in with different information than what had been agreed to. Illustrative of this was the fact that the free gas was not included in the paperwork. Further the sales tax amount was also included as part of her loan rather than being paid by Jim Ray Nissan.

248. Further, Jim Ray Nissan did not advertise Ms. Nichols's old Dodge Ram for sale as promised. As a result, Ms. Nichols's old car was repossessed. This adversely affected Ms. Nichols's credit.

249. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Nichols's Count XVI(A) — Breach of Contract against Jim Ray Nissan

250. All paragraphs are incorporated herein.

251. Jim Ray Nissan breached its contract with Ms. Nichols by failing to sell her old car and failing to pay the sales tax on her new car as promised.

252. This breach of contract proximately caused Ms. Nichols damages.

253. For her remedy on this Count XVI(A), Ms. Nichols asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XVII. Separate Plaintiff Lisa McGee

254. On or about May 24, 2004, Ms. McGee and her husband went to Jim Ray Nissan to look at vehicles. As they were looking, a salesman came out and showed them some Altimas and X-Terras.

255. Mr. McGee was very interested in a used black X-Terra. Ms. McGee was interested in a new silver Altima. The salesman told the McGees he could give them a great deal if they were to purchase both cars together.

256. This was not the first time that Lisa McGee had shopped at Jim Ray Nissan. She had been there earlier. On that earlier visit, Lisa McGee had purchased a car for her niece. She had bought her niece's car without her husband's knowledge or permission, and the Jim Ray Nissan salespeople knew that. After the Jim Ray Nissan personnel ran the McGees' credit reports, one of the salesmen drew Ms. McGee aside and said, "If you don't talk your husband into buying one of the vehicles, my supervisor will come out and tell your husband about the vehicle in your name that he doesn't know anything about."

257. This scared Ms. McGee, and she wanted to keep the purchase of her niece's car secret from her husband. As a result, she convinced her husband to buy both cars.

258. At the time of the sale, the McGees were given a particular figure for what the price would be. Incredibly, in what can only be regarded as a gross and unusual oversight within Jim Ray Nissan's well-oiled fraud machine, Lisa McGee was actually able — on the same day — to get a copy of the invoice document with the sales numbers she was orally promised.

259. Several weeks later, Jim Ray Nissan finally sent her what purported to be her sales documents. Included within those documents was something purporting to be an "invoice." It had the same "invoice number" as Lisa McGee's original invoice, but it had totally different prices. The prices and the second "invoice" were substantially higher than those on the first.

Ms. McGee's car payments reflect that she was actually charged the higher numbers on the second invoice.

260. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff McGee's Count XVII(A) — Breach of Contract against Jim Ray Nissan

261. All paragraphs are incorporated herein.

262. Jim Ray Nissan and Lisa McGee had a contract to purchase a vehicle at one price, but in fact was charged another. This was a material breach of contract that proximately caused the McGees damages.

263. This breach of contract proximately caused Ms. McGee damages.

264. For her remedy on this Count XVII(A), Ms. McGee asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XVIII. Separate Plaintiff Heather Shelby

265. On or about February 25, 2003, Heather Shelby purchased a 2002 Nissan Pathfinder from Jim Ray Nissan. While purchasing it, the salesman asked her if she wanted an extended warranty on the car.

266. Ms. Shelby indicated that she did, provided that the warranty would "cover everything." The salesman assured her that it would.

267. Ms. Shelby purchased the warranty. Ms. Shelby did not receive the federally required disclosures relating to car warranties. Later, when her car broke, Jim Ray Nissan

refused to fix it under the warranty. Ms. Shelby was told that the problem was not covered under the warranty.

268. Ms. Shelby later learned, after taking her car to Superior Nissan in Fayetteville, that she had not gotten the warranty that had been promised to her.

269. As a result, Ms. Shelby has had repair bills that she should not have had. Ms. Shelby later sold her car at a loss.

270. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Shelby's Count XVIII(A) — Breach of Contract against Jim Ray Nissan

271. All paragraphs are incorporated herein.

272. Jim Ray Nissan and Heather Shelby had a contract to have a warranty that “covered everything.” But she did not receive such a warranty. This was a material breach of contract.

273. This breach of contract proximately caused Ms. Shelby damages.

274. For her remedy on this Count XVIII(A), Ms. Shelby asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XIX. Separate Plaintiff Mary Wilson

275. On or about March 17, 2005, Mary Wilson went to Jim Ray Nissan to check prices on new cars. She was approached by Jim Ray Nissan personnel, but being unimpressed with their aggressive sales tactics, she started to leave.

276. A salesman caught them as they were about to leave and begged them to come inside – for just five minutes.

277. Ms. Wilson was there for over two hours. The salesman told her that Nissan wanted to sell one million cars nationwide. The salesman asked, “What would it take to get you to buy a car?”

278. The salesman repeatedly and consistently tried to talk to Ms. Wilson about the financing of the car, but Ms. Wilson repeatedly told the salesman that she would not be financing the car, but would be paying cash, since she is retired.

279. Ms. Wilson finally agreed to buy a car, provided that Jim Ray Nissan pay the taxes and at the orally agreed price.

280. Ms. Wilson did not actually receive her purported sales paperwork until a month later. Those papers were not signed by Ms. Wilson. Further, there was no check for the sales tax.

281. Ms. Wilson repeatedly tried to resolve the situation with Jim Ray Nissan, but to no avail. When she told Jim Ray Nissan personnel that she was going to consult a lawyer, Jim Ray Nissan said that if she were talking to lawyers, then they had nothing else to say.

282. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Wilson’s Count XIX(A) — Breach of Contract against Jim Ray Nissan

283. All paragraphs are incorporated herein.

284. Jim Ray Nissan and Mary Wilson had a contract to have Jim Ray Nissan pay her sales tax. But Jim Ray Nissan refused to do this. Instead, after the parties signed the contract, Jim Ray Nissan wrote “sales tax paid, if financed” without the approval or consent of Ms. Wilson. Because Ms. Wilson paid cash for the vehicle, Jim Ray then claimed that it did not have to pay sales tax for Ms. Wilson's vehicle. These actions on the part of Jim Ray Nissan were a material breach of contract.

285. This breach of contract proximately caused Ms. Wilson damages.

286. For her remedy on this Count XIX(A), Ms. Wilson asks for attorney’s fees, costs, compensatory damages and other damages and awards as allowed by law.

XX. Separate Plaintiff Jimmy West

287. On or about May 8, 2005, Mr. West went to Jim Ray Nissan to look at Titan trucks. A salesman showed him a 2004 Titan King Cab demo with 3,200 miles. The salesman told him that the price was \$28,000.

288. The salesman told Mr. West that if Mr. West were to buy the new Titan, then Jim Ray Nissan would pay off his 2003 Chevy Avalanche. Mr. West agreed to the deal.

289. The salesman told Mr. West that because it was Sunday, Mother’s Day, he was unable to run or print the paperwork. The salesman asked Mr. West to sign the papers, and the salesman said that he would print the papers later, mail them to Mr. West later, and Mr. West could take the truck immediately.

290. Mr. West believed and trusted the salesman. He signed the blank papers.

291. About a month later Mr. West received papers from Jim Ray Nissan in the mail. The papers were totally different than what had been agreed to. The price on the papers was for \$39,211.92 less \$3,500 rebate, *i.e.*, \$35,711.92. In other words, Jim Ray Nissan added \$7,711.92 to the agreed upon price, and now Mr. West owes that money to the finance company.

292. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff West's Count XX(A) — Breach of Contract against Jim Ray Nissan

293. All paragraphs are incorporated herein.

294. Jim Ray Nissan and Mr. West had a contract to buy the truck for one price, but instead Jim Ray Nissan charged him another. These actions on the part of Jim Ray Nissan were a material breach of contract.

295. This breach of contract proximately caused Mr. West damages.

296. For his remedy on this Count XX(A), Mr. West asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXI. Separate Plaintiffs Aaron and Lanna Rice

297. On or about May 21, 2005, Lanna Rice and her sister went from their home in Mena to Jim Ray Nissan to shop for a car and, as part of the purchase process, trade in her old car.

298. The car that was going to be bought by Lanna Rice was going to be bought in her husband's name and with her husband's permission. At all times relevant to this case, Lanna Rice was acting as her husband's agent.

299. Ms. Rice expressed interest in a Nissan Altima. A Jim Ray Nissan salesman told her that he knew a better Altima that was a better deal, new, and was loaded down with many desirable options.

300. At this point it was dusk. Ms. Rice took the Altima for a test drive. At that time she noticed that the Altima she was test driving had less than 300 miles on it. There was also no sticker in any of the windows. Ms. Rice informed the salesman that she did not want to buy a used car. The salesman assured her that the car was new and that the miles on the car were only from test driving. As for the lack of a sticker, the salesman simply waved his hand and said, “oh, it’s a good deal, don’t worry.” Ms. Rice inquired about a crack in the windshield. The salesman told her it was a “pressure crack” arising from delivery. He promised that the windshield would be fixed.

301. Ms. Rice asked about trading in her old car, as she owed \$15,000, but the blue book value was roughly \$9,500. She was concerned about the large difference in those values. The salesman told her that he was going to give her \$11,500 for her old car so that she would only be upside down in the old car by \$3,500.

302. Once Ms. Rice was satisfied with the car and the terms, she called her husband and got his permission to make the purchase on his behalf.

303. At this point, it was late in the night and after dark. While Ms. Rice was waiting for Jim Ray Nissan personnel to draw up the papers, she began to empty her belongings out of the old car so that she could put them in the new one. As she was doing this, the salesman came out and said that it was very late and so Ms. Rice would have to go home in a rental car for the

night since the new car had to have the windshield fixed. The salesman offered to put the personal effects taken from the old car into the new car once it was ready. Ms. Rice was told that because of the late hour, the lot had to be closed. The salesman drove with her (in the rental car) to a nearby gas station and asked her to sign the paperwork. She did so, in the dark, and on the back of the rental car.

304. Ms. Rice returned on the following Monday, May 23, 2005, seeking her new car. No one at Jim Ray Nissan claimed to have any knowledge of her recent purchase. She was told that her salesman was not there. No one claimed to have any knowledge of where Ms. Rice's old car was. She was told to come back on Saturday, May 28, 2005.

305. Ms. Rice arrived again on May 28, 2005, after making the trip from Mena. Again, no one at Jim Ray Nissan claimed any knowledge about her situation. She returned to Mena, disappointed and having accomplished nothing. She made a third trip, to no avail.

306. Ms. Rice made repeated phone calls to the dealership trying to figure out when she could pick up her new car. The salesman that sold her car was never available; he never returned her calls.

307. On June 15, 2005, Ms. Rice was having to make her first car payment on the new car that she still had not received from Jim Ray Nissan. She became extremely irate and called Jim Ray Nissan. She yelled until someone claiming to be a manager spoke with her on the phone. The alleged manager said he would locate her new car and that Ms. Rice could come pick it up. Ms. Rice demanded that her new car be delivered to her in Mena with a full tank of gas, her personal items within, and the windshield replaced.

308. Four days later, on June 19, 2005, Jim Ray Nissan called and told Ms. Rice that it would only deliver her car as far as Waldron. Ms. Rice was tired of fighting with Jim Ray Nissan; she just wanted her car. She and her husband drove to Waldron to meet them.

309. A very young man drove up in the car. The car was so low on gas that the fuel light was on. Contrary to Jim Ray Nissan's earlier promises, Ms. Rice received no money for gas. Also, the car did not have floor mats, cup holders, keyless entries, or an extra key as promised. Her personal belongings were not there, either.

310. Ms. Rice called the manager at Jim Ray Nissan to inquire about these deficiencies. He said he would try to get the missing items for Ms. Rice.

311. On the drive home, Ms. Rice's husband, Aaron, said, "I thought you bought a new car." Ms. Rice replied that she did. Aaron Rice then pointed out that this car was obviously used. He questioned that 300 miles could be put on a car only from test driving. Mr. Rice pulled the car over and began inspecting it. He discovered sequins and glitter in the trunk. The car was dirty.

312. The next day the Jim Ray Nissan manager called Ms. Rice and told her that her personal belongings had accidentally been thrown away.

313. Ms. Rice subsequently noticed that the bill of sale sent to her by Jim Ray Nissan had dollar amounts that differed from what she had discussed and agreed upon with Jim Ray Nissan personnel. Rather than make her only \$3,500 upside down on her trade in, she was \$6,000+ upside down instead. Jim Ray Nissan had overcharged her by at least \$2,500.

314. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Rices' Count XXI(A) — Breach of Contract against Jim Ray Nissan

315. All paragraphs are incorporated herein.

316. Jim Ray Nissan and the Rices had a contract to trade in her old car and buy a new (not used) car. Further, on the trade-in, the deal was that the Rices would only be upside down by \$3,500. Jim Ray Nissan also agreed to replace her windshield. Jim Ray failed to properly credit them on the trade-in. It also gave them a used car instead of a new one. These actions on the part of Jim Ray Nissan were a material breach of contract.

317. This breach of contract proximately caused the Rices damages.

318. For their remedy on this Count XXI(A), the Rices asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXII. Separate Plaintiffs LaDonna Brown & Haven Plaster

319. On or about August 19, 2005, LaDonna Brown went to Jim Ray Nissan to shop for a car.

320. She located a 2005 Nissan Altima that she wanted to buy. However, a Jim Ray Nissan salesman told her that her credit score was not high enough to put the car in her name, so she would have to put the car in her father's name (Haven Plaster). The salesman also told her that if she were to make the first twelve monthly payments on time then she could come back to Jim Ray Nissan and the car would be transferred to her name.

321. Ms. Brown's old car was a 2002 Chevrolet Tracker. She owed \$9,000 on it, and could not afford to make payments on two cars.

322. Jim Ray Nissan personnel told Ms. Brown that she should quit making payments on her old car and allow it to be repossessed. When she expressed concern about how this would affect her credit, the Jim Ray Nissan salesman told her that it would only be on her credit for three years, and no more. The salesman also led Ms. Brown to believe that when her old car was repossessed she would not owe anything more on the old car.

323. Ms. Brown believed the salesman, and based on these representations, she purchased the new Altima.

324. Later, when Ms. Brown's old car was repossessed, it was sold at auction for an amount less than what she owed on it, exposing her to a deficiency claim. Her credit has been adversely affected, too. Finally, Jim Ray Nissan's promises that she would be able to put the new car into her name were lies; she was not able to do that as promised by Jim Ray Nissan.

325. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Brown & Plaster's Count XXII(A) — Breach of Contract against Jim Ray Nissan

326. All paragraphs are incorporated herein.

327. Jim Ray Nissan and Ms. Brown had a contract that she would be able to move the new car into her name after twelve months. In fact, this was not true. Their contract also included the promises that the repossession would be on her credit for only three years. That was

also not true. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

328. This breach of contract proximately caused Ms. Brown & Mr. Plaster damages.

329. For their remedy on this Count XXII(A), Ms. Brown & Mr. Plaster ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXIII. **Separate Plaintiff Wendy Jo Baxter**

330. On or about July 29, 2005, Wendy Jo Baxter and her father went to Jim Ray Nissan to shop for a car.

331. While shopping, she expressed interest in a 2004 Nissan Maxima. She was told by the salesman that the price was twenty-three thousand something and that they would fill it with gas for her. Ms. Baxter was also told that after a year she could refinance the Maxima so that her payments would be lower.

332. These conversations took place late at night, and the Maxima was being viewed while it was dark outside.

333. Ms. Baxter agreed to the deal. The Jim Ray Nissan salesman told her that because it was late (sometime between 11:30 p.m. to midnight) he was unable to fill out the paperwork on the computer. He presented Ms. Baxter blank paperwork and asked her to sign it. He told Ms. Baxter that he would complete the paperwork to reflect the deal that they had made.

334. Ms. Baxter believed him and signed the paperwork.

335. The next morning, Ms. Baxter saw her Maxima in the sunlight. It had several dents, scratches, dig marks, burn holes, missing buttons, broken gas gauge, intermittently

operational headlight, and a pull to the right. Ms. Baxter called Jim Ray Nissan to complain about the condition of the car. Jim Ray Nissan personnel told her to bring the car in and that they would fix it.

336. Ms. Baxter took her car in to be fixed so that it could be put into the condition that it should have been in at the time of purchase. Jim Ray Nissan personnel told her that it would only take two or three days to fix.

337. After a few days, Ms. Baxter called to find out what the status of her car was. With each call, she got the run-around. Sometimes she was told that her car wasn't there. Sometimes she was told that someone would have to call her back, but she never received return calls. On at least one occasion, she called and was told that a particular person was not available, but she knew that to be a lie since she had actually seen that person working that day.

338. Finally, after a month, the Defendants assured the Plaintiffs that the Maxima was repaired. The car still had dents, scratches, burn holes, and a missing button. The gas gauge and headlights did not work properly, and the vehicle continued to pull to the right.

339. As discussed above, Ms. Baxter did not receive her paperwork at the time of purchase, as Jim Ray Nissan agents told her that it was unable to be completed at that time. When the paperwork later arrived in the mail, it contained very different numbers than what Ms. Baxter and the salesman had agreed upon. The price of the car was at least \$5,000 higher than agreed; there were also many additional charges on the paperwork to which Ms. Baxter had not agreed.

340. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Baxter's Count XXIII(A) — Breach of Contract against Jim Ray Nissan

341. All paragraphs are incorporated herein.

342. Jim Ray Nissan and Ms. Baxter had a contract that she would buy the Maxima in good condition and for about \$23,000. In fact, she was charged substantially more, and the delivery of the Maxima was delayed by one month. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

343. This breach of contract proximately caused Ms. Baxter damages.

344. For her remedy on this Count XXIII(A), Ms. Baxter asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXIV. Separate Plaintiffs J.D. Swafford and Pam Wisdom

345. On or about August 28, 2005, Mr. Swafford, his wife, and his daughter (Pam Wisdom) went to buy his daughter a car at Jim Ray Nissan.

346. Ms. Wisdom was looking for a vehicle with better gas mileage. During the discussions with the Jim Ray Nissan personnel, it was made clear that Ms. Wisdom would be the purchaser of the car and Mr. Swafford would be the co-signer.

347. Ms. Wisdom identified a vehicle that she wanted to purchase. She and her father again emphasized to the Jim Ray Nissan salesman that Mr. Swafford would just be a co-signer, and the salesman assured them that the paperwork was to that effect.

348. Ms. Wisdom explained that she owned a Dodge Caravan that she was making payments on, and that she could not afford to make two payments. The salesman told Ms. Wisdom that if she were to purchase a car from Jim Ray Nissan that her old car would be sold for her by Jim Ray Nissan on e-Bay. The salesman told Ms. Wisdom that Jim Ray Nissan would make two more payments on her old car to give it time to sell.

349. Ms. Wisdom and Mr. Swafford believed the salesman and accepted the deal. The salesman generated some paperwork, one set for Ms. Wisdom and one set for Mr. Swafford.

350. When the final paperwork was later received in the U.S. Mail from Jim Ray Nissan, it showed that the title to the vehicle was in Mr. Swafford's name and not Ms. Wisdom's name. Further, Jim Ray Nissan never listed the old Dodge Caravan for sale, and as a result, Ms. Wisdom and Mr. Swafford are in financial trouble because collectively they're responsible for two car payments, not one.

351. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Swafford & Wisdom's Count XXIV(A): Breach of Contract vs. Jim Ray Nissan

352. All paragraphs are incorporated herein.

353. Jim Ray Nissan, Mr. Swafford, and Ms. Wisdom had a contract that Ms. Wisdom would buy a car from Jim Ray Nissan, Mr. Swafford would co-sign for the loan, and Jim Ray Nissan would sell Ms. Wisdom's old car. In fact, this car was put in Mr. Swafford's name only and the old car was never sold. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

354. This breach of contract proximately caused Ms. Wisdom and Mr. Swafford damages.

355. For their remedy on this Count XXIV(A), Ms. Wisdom and Mr. Swafford ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXV. Separate Plaintiffs Arnulfo and Maria Manjarrez

356. On or about March 19, 2005, Arnulfo and Maria Manjarrez went to Jim Ray Nissan to look for an Xterra. They were approached by a Jim Ray Nissan salesman. The Manjarrezes looked at several Xterras and liked one that had a listed price on the window of a little more than \$26,000.

357. Mr. Manjarrez liked this Xterra and, while driving it with the salesman on the passenger side, asked the salesman if \$26,000 was the price or if there was a way it could be bought for less. The salesman told Mr. Manjarrez that that was the price, and it could not be reduced.

358. After the test drive, the salesman took the Manjarrezes into the office and told them that he could check their credit to see if the Manjarrezes could get a good interest rate for a loan.

359. The salesman left the room and later came back with an offer, which was, approximately: \$3000 down, \$560 per month for 60 months; or \$0 down, \$560 per month for 72 months.

360. The Manjarrezes told the salesman that they would like to go home and think about it. But the salesman told the Manjarrezes to wait. The salesman then returned with

another person, Mike Salgado. Mr. Salgado continued to talk to the Manjarrezes about possible deals that they might be interested in. Finally, the salesman offered 63 months, \$510.00 per month, with \$0 down.

361. The salesman told the Manjarrezes that Jim Ray Nissan would make the first payment and delay the payments for 45 days plus a 10 day grace period.

362. The Manjarrezes were still a little unsure about whether they should accept this offer, but Mr. Salgado left and brought the first salesman back. He asked for some information from the Manjarrezes such as driver's licenses, insurance proof, and so forth.

363. The Manjarrezes were taken into Mr. Cauthron's office and were told that this person was the finance manager. The finance manager printed some forms and talked to the Manjarrezes about GAP insurance and warranties. In pitching the warranty to the Manjarrezes, the finance manager told them that the extended warranty was cheaper than its normal price because of a Nissan promotional called the "\$1 million car deal."

364. The price for the extended warranty was \$1,110.57 for 100,000 miles. The Manjarrezes decided to purchase that extended warranty. The finance manager then gave the Manjarrezes some papers to sign.

365. When the Manjarrezes asked the finance manager if it was going to be much longer — because the Manjarrezes were tired and hungry — the finance manager handed the Manjarrezes the document containing the pricing information and told the Manjarrezes where to sign.

366. The finance manager did not go over the contract at all. On one place, the Manjarrezes asked about the “N/A”; the finance manager told them not to worry about that. Although the finance manager went over most papers, he did not go over the document that contained the pricing information. The finance manager told one of the salesman to put the bill of sale in the glove compartment for the Manjarrezes.

367. When the Manjarrezes asked if they could get copies of all the papers they were signing that day, they were told that they would be getting copies of all the papers in the mail.

368. As the Manjarrezes left the finance manager’s office, a salesman walked with them and tore down from the car the paper that had the price on the Xterra. The salesman told the Manjarrezes to come back some other day so he could clean the Xterra for them.

369. About one week later, the Manjarrezes were looking at the bill of sale and noticed the “price of car” listed as \$28,178.03. They became concerned because the price the Xterra had listed on the window was not \$28,178.03, but was instead somewhere around \$26,000.

370. Mr. Manjarrez called the salesman, who then connected him with some other person at Jim Ray Nissan. That person said that he couldn’t do anything about that, that it might be a computer problem and that he needed to talk to the manager. Mr. Manjarrez made repeated phone calls to the manager, but was always told that the manager was not there.

371. On one occasion, Mr. Manjarrez showed up at the Jim Ray Nissan lot and asked to speak to the finance manager. But the receptionist told Mr. Manjarrez that the finance manager was busy, and that he needed to come some other day.

372. The Manjarrezes made other attempts to contact Jim Ray Nissan and speak with someone about the problem. They never were able to talk with anyone who claimed that they had knowledge of the problem or an ability to assist with the problem.

373. Eventually, after repeated and persistent tries, Mrs. Manjarrez was able to get the finance manager on the phone. She asked him about the discrepancy in the price of the car. The finance manager told her that he always told his customers to wait until they received the contracts in the mail and then to call him. When Mrs. Manjarrez told him that the contracts had not yet arrived, the finance manager said they would be receiving them in about one or two days. The finance manager told Mrs. Manjarrez not to worry about the bill of sale, because it was not itemized correctly. The bill of sale, the finance manager said, was just proof that the Manjarrezes had just bought the vehicle just in case we got pulled over by the police.

374. That same afternoon, the paperwork arrived in the mail. It had the same price of \$28,178.03 listed. The Manjarrezes called the finance manager again, but were told that he was in a meeting and would be out until 1:00 p.m. When they called again at 2:30, they were told that the finance manager was busy. The person answering that call asked what the problem was. Mrs. Manjarrez told him that they had received the contract and that it had the same erroneous price was listed as in the bill of sale.

375. The person on the phone told Mrs. Manjarrez that the price listed on the window is only the suggested manufacturer's price and that it was not necessarily the price that the Manjarrezes were going to be paying for the Xterra. He said that buying a vehicle wasn't like going to Wal-Mart and seeing something priced at \$1.38 and paying \$1.38 for it. He said that

many factors made the price go up and that that \$28,178.03 was what Nissan thought the price of the vehicle was. He went on and on about how many Xterras were sold and many things that had to do with the price going up.

376. When Mrs. Manjarrez asked him if he was saying that there was no mistake made or a computer problem, he responded, “no.” When Mrs. Manjarrez asked him if he was trying to tell her that Nissan would decide how much to sell it for even if it was above the price listed on the window and he said yes. He then said something like “that’s the way things work here.”

377. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Manjarrezes’ Count XXV(A): Breach of Contract vs. Jim Ray Nissan

378. All paragraphs are incorporated herein.

379. Jim Ray Nissan and the Manjarrezes had a contract to buy a car for one price, but Jim Ray Nissan actually charged a different, higher price. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

380. This breach of contract proximately caused the Manjarrezes damages.

381. For their remedy on this Count XXV(A), the Manjarrezes ask for attorney’s fees, costs, compensatory damages and other damages and awards as allowed by law.

XXVI: Separate Plaintiffs Cherry and Breanna Wibbing

382. On or about July 29, 2005, Breanna Wibbing and her mother, Cherry Wibbing, went to Jim Ray Nissan to shop for a car. They had been induced to shop there by ads offering free gas for three months and zero money down.

383. They told the salesman that they wanted a cheap car that had payments of only \$200 to \$250 per month. They located a Nissan Sentra that was priced at \$17,000. It was one of the cheapest cars on the lot. The salesmen told them that the payments would be about \$230 per month for them to buy the car.

384. The Wibblings wanted to buy this car, so they went inside with the salesman. After they got inside, the salesman said that his figures were wrong, but he could get them into a even better car that was more money. The Wibblings were somewhat confused by this — it was their first time to buy a car, and the \$23,000 price being offered to the Wibblings was more than they wanted to pay.

385. As the Wibblings started to leave, the salesman stopped them and encouraged them to work something out. He kept the Wibblings there for another five hours. He ultimately told them that he could sell them a car for payments of \$250 per month as well as the free gas for three months. He then presented some paperwork to the Wibblings that he indicated reflected this agreement.

386. Later, the Wibblings received paperwork in the mail that purportedly arose from the purchase of the car, however it did not reflect the price that they had agreed upon. Further, there were several additional charges on the invoice. Curiously, there are two different versions of the invoice (both with the same invoice number and for the same VIN), one for a total of \$29,642 and another for \$27,765. Neither invoice is correct. The actual sticker price of the car was \$17,630, and that's what was actually agreed upon by the parties.

387. Charles Wibbing, the husband and father to Cherry and Breanna Wibbing, went to Jim Ray Nissan on their behalf to try to resolve the problem. Jim Ray Nissan refused to correct the matter and told Mr. Wibbing that if he did not leave that Jim Ray Nissan would call the police.

388. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Wibblings' Count XXVI(A): Breach of Contract vs. Jim Ray Nissan

389. All paragraphs are incorporated herein.

390. Jim Ray Nissan and the Wibblings had a contract to buy a car for one price, but Jim Ray Nissan actually charged a different, higher price. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

391. This breach of contract proximately caused the Wibblings damages.

392. For their remedy on this Count XXVI(A), the Wibblings ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXVII. Separate Plaintiffs Jennifer McDaniel & Timmy Adams

393. On or about January 18, 2004, Jennifer McDaniel went to Jim Ray Nissan to shop for a car.

394. She test drove a four wheel drive 1999 Nissan Frontier. She then asked about a newer model, and the Jim Ray Nissan salesman brought up a silver-colored truck. Ms. McDaniel asked if the truck was a four wheel drive. The salesman told her that it was. Ms. McDaniel asked the salesman how Jim Ray Nissan got the truck; he told her that it was a trade-in.

395. Relying on these representations, Ms. McDaniel bought the truck and signed the paperwork. Mr. Adams, who is Ms. McDaniel's father, also signed some of the paperwork. All the documentation said that the truck being purchased was a four wheel drive.

396. Later, Ms. McDaniel discovered that the truck was not a trade-in, but had instead been repossessed. Also, she discovered that the truck was not a four wheel drive, but was instead a two wheel drive. If she had known that information, she would not have bought the truck.

397. Ms. McDaniel made a complaint to the Attorney General's office. In responding to the Attorney General's inquiry, the lawyer for Jim Ray Nissan said, *inter alia*, that "Jim Ray Nissan invites Ms. McDaniel to contact.... the dealership... to attempt to work out an acceptable resolution of this matter."

398. After receiving a copy of that letter from Jim Ray Nissan's lawyer, Ms. McDaniel contacted Jim Ray Nissan. She asked to have a four wheel drive vehicle as promised and as contracted for. Jim Ray Nissan refused.

399. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs McDaniel & Adams's Count XXVII(A): Breach of Contract vs. Jim Ray Nissan

400. All paragraphs are incorporated herein.

401. Jim Ray Nissan and Ms. McDaniel had a contract to buy a four wheel drive that had been previously traded-in. Instead, Jim Ray Nissan sold her a two wheel drive that had been repossessed. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

402. This breach of contract proximately caused Ms. McDaniel & Mr. Adams damages.

403. For their remedy on this Count XXVII(A), they ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXVIII. Separate Plaintiff Melissa Pittman

404. On or about January 29, 2005, Melissa Pittman (then Melissa Anderson), went to Jim Ray Nissan to shop for a car.

405. Ms. Pittman had, at that time, a 2001 Ford Contour that she still owed money on. She wanted to trade it in and buy a 2003 Nissan Altima.

406. The Jim Ray Nissan salesman told her that she owed too much money on the old car for him to be able to take it as a trade-in, but he suggested that Ms. Pittman could simply allow it to be repossessed. The salesman told her that a repossession would only affect her credit for one year. The salesman told her that he had done the same thing and his credit score had returned to its same value after a year. The salesman told her that if she were to make all her new car payments on time for a year her credit score would return to 720. Ms. Pittman was not familiar with how credit scoring works, and she believed the salesman.

407. Ms. Pittman also asked the salesman how much the taxes would be on the vehicle. He told her they would be no more than \$500 to \$600. Relying on this, Ms. Pittman decided not to finance the taxes as she would simply pay them in cash with the State.

408. After Ms. Pittman bought the car, she learned that she had been lied to. She discovered that a repossession stays on a person's credit for at least seven years, not just one.

She also learned that the taxes on the new car were over \$1,300, not the \$500 to \$600 promised to her.

409. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Pittman's Count XXVIII(A): Breach of Contract vs. Jim Ray Nissan

410. All paragraphs are incorporated herein.

411. Jim Ray Nissan and Ms. Pittman had a contract to buy a car such that the taxes would only be \$500 to \$600 and a repo of her old car would only result in a one year adverse credit reporting. In fact, neither of the representations were true. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

412. This breach of contract proximately caused Ms. Pittman damages.

413. For her remedy on this Count XXVIII(A), Ms. Pittman asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXIX: Separate Plaintiff Christine Redford

414. On or about May 1, 2004, Christine Redford went to Jim Ray Nissan to shop for a car.

415. Ms. Redford purchased a 2003 Nissan Altima. As part of her purchase, she was promised by the Jim Ray Nissan salesman that she would receive tinted windows, have scratches in the hood repaired, receive an extra key, and a detailing of the car.

416. Ms. Redford was also assured that her car loan could be pre-paid without penalty.

417. In fact, none of these representations were true, and Jim Ray Nissan failed to live up to its end of the bargain. Further, the car loan document with U.S. Bank that purportedly bears Ms. Redford's signature is a forgery.

418. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Redford's Count XXVIII(A): Breach of Contract vs. Jim Ray Nissan

419. All paragraphs are incorporated herein.

420. Jim Ray Nissan promised that Ms. Redford would get tinted windows, have scratches in the hood repaired, receive an extra key, and that they would detail the car.

421. Ms. Redford was also assured that her car loan with U.S. Bank could be pre-paid without penalty. In fact, none of these representations were true. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

422. This breach of contract proximately caused Ms. Redford damages.

423. For her remedy on this Count XXIX(A), Ms. Redford asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXX. Separate Plaintiffs Bill and Laura Franklin

424. On or about February 26, 2005, Bill and Laura Franklin went to Jim Ray Nissan to trade in their Ford Explorer, which needed major repairs, for a newer and better vehicle.

425. They found a 2002 Nissan Pathfinder that they liked and sat down with Billy Cooper of Jim Ray Nissan to work out a deal. It should be noted that Bill Franklin is deaf and requires the assistance of his wife on a consistent basis to be able to communicate to others.

426. Billy Cooper advised the Franklins that they could not trade in their Ford Explorer because they owed too much on it. He suggested that they allow the vehicle to be repossessed voluntarily because this would not hurt their credit much and that the Franklins would not be responsible for any of the debts associated with the Ford Explorer. This last fact was especially important to the Franklins as there were repairs needing to be done to the Explorer.

427. Billy Cooper advised the Franklins that they had a credit score of 780 and that the voluntary repossession would only lower their score to 700 which was still above average for most people in Arkansas. He also advised the Franklins that he personally had let two vehicles be repossessed and nothing ever happened to him. Billy Cooper also promised the Franklins that they would not have a payment on the Pathfinder for 90 days, or until approximately May 26, 2005. The Franklins finally agreed and finished the sale.

428. A few days later, Laura Franklin discovered that a repossession would in fact seriously damage her credit rating and that the lender could potentially obtain a deficiency judgment against her and her husband for damages after the Ford Explorer was sold. Mrs. Franklin took the Pathfinder back to Jim Ray Nissan and demanded that the deal be cancelled because of the lies she had been told by Billy Cooper. Jim Ray Nissan refused.

429. Mrs. Franklin telephoned her attorney while at Jim Ray Nissan and her attorney advised her to obtain copies of the contract she signed. Jim Ray Nissan refused to provide her a copy of the contract she signed, however they provided her with a blank form contract which she had never seen before.

430. Her attorney also advised her to call the Nissan Corporate Office. Mrs. Franklin called the Nissan Corporate Office and was advised that what Billy Cooper had told her was a misrepresentation and that she should be allowed to see her contract. At that time Billy Cooper threatened to have Mrs. Franklin escorted off of the premises by the police. Mrs. Franklin advised Billy Cooper to go ahead and call the police because she wanted to let the police know what was going on. The police arrived and advised Mrs. Franklin that they could not force Jim Ray Nissan to turn over the contract, but that she would have to leave the premises because Jim Ray Nissan had requested that she leave.

431. When the Franklins eventually received their “paperwork” in the mail, they noticed that several documents contained the initials and signature of Bill Franklin. Bill Franklin did not initial or sign these documents.

432. The Franklins now have the Nissan Pathfinder, and the payment that goes with it, as well as the Ford Explorer and the payment that goes with it. The Ford Explorer was kept by the Franklins once they discovered the damage that would be done to their credit rating if they had followed the advice of Billy Cooper.

433. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Franklins’ Count XXX(A): Breach of Contract vs. Jim Ray Nissan

434. All paragraphs are incorporated herein.

435. Jim Ray Nissan and the Franklins had a contract that was premised on the statement that a repossession would not seriously affect their credit. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

436. This breach of contract proximately caused the Franklins damages.

437. For their remedy on this Count XXX(A), the Franklins ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXXI: Separate Plaintiffs Clayton and Lisa Matthews

438. On or about June 18, 2005 Lisa Matthews and her husband, Clayton Matthews, went to Jim Ray Nissan to shop for an automobile.

439. They found a 2002 Nissan Xterra that they liked and talked with Dustin Domerese about purchasing it. She intended to trade in her 2002 Pontiac Grand Am, but was told by Dustin Domerese that she owed too much money on it so he advised that she list the Grand Am for sale on eBay and that Jim Ray Nissan would pay the bill for the listing. He also advised that 90% of the time he had customers put their cars on eBay, and the cars would sell.

440. This sounded very good to Mrs. Matthews; however, she was concerned about ending up with two car payments if the Grand Am did not sell on eBay. Dustin Domerese promised her that she would not have to make a payment on the Xterra for 2 months, which would be more than enough time for the Grand Am to sell. Mr. Domerese also promised that Mrs. Matthews had a ten-day grace period wherein she could return the Xterra if need be. Relying on these representations, Mrs. Matthews agreed to purchase the Nissan Xterra.

441. Mrs. Matthews listed the Grand Am on eBay for one week and was not able to sell it. She and her husband elected to exercise the promise made to her by Dustin Domerese that she could return the Xterra before 10 days had expired. They were told by Dustin Domerese at that time that it was a done deal and that they could not return the Xterra. Mr. and Mrs. Matthews were left with two vehicles and two payments – one for the Grand Am and one for the Xterra.

442. About three weeks later the Matthews received their final “paperwork” in the mail. Upon reviewing the paperwork they noticed two forms that contained their signatures but that they had no recollection of signing. Upon a closer review they realized that their names were misspelled on the forms and at that point knew for a certainty that they had not completed those forms. They do not know how their signatures came to be on those forms.

443. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Matthews’ Count XXXI(A): Breach of Contract vs. Jim Ray Nissan

444. All paragraphs are incorporated herein.

445. Jim Ray Nissan and Mr. and Mrs. Matthews had a contract that was premised on the statement that her old vehicle would sell and that she could return the new car within ten days. These statements were not true. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

446. This breach of contract proximately caused the Matthews damages.

447. For their remedy on this Count XXXI(A), Clayton and Lisa Matthews ask for attorney’s fees, costs, compensatory damages and other damages and awards as allowed by law.

XXXII: Separate Plaintiff LeAnnette Simpson

448. In May of 2003, Ms. Simpson and her mother, Virginia Hudson, went to Jim Ray Nissan to shop for a car.

449. Ms. Simpson and her mother looked at cars. The Jim Ray Nissan salesman was very persistent and spoke constantly. He badgered Ms. Simpson and her mother about buying one particular car, even though she had an interest in some others. Ms. Simpson informed the salesman that she would be the one buying the car, and that her mother would only be a co-signer.

450. Eventually, the salesman said that he would sell her the 2003 Sentra for \$15,500. When Ms. Simpson told him that she wanted to think about it, the salesman said that she could take the car home for the weekend and if she didn't like it, she could bring it back in before Monday, since the paperwork wouldn't go out until Monday.

451. Ms. Simpson believed these statements and agreed to this deal.

452. After driving the car, Ms. Simpson decided that she did not want it. That weekend — prior to Monday — she returned the car to Jim Ray Nissan.

453. But the Jim Ray Nissan personnel refused to honor the deal and would not take the car back as promised.

454. Instead, Jim Ray Nissan went ahead and processed the paperwork that weekend, rather than waiting until Monday as promised. In processing the paperwork, they titled the car in Ms. Simpson's mother's name, rather than having her as simply a co-signer. This caused all

sorts of inconvenience, hassle, and expense to Ms. Simpson when she tried to get tags, taxes, and insurance on the car.

455. During her dealings with Jim Ray Nissan, Ms. Simpson noticed a microphone in the negotiating room at the dealership. A Jim Ray Nissan salesman admitted to Ms. Simpson that Jim Ray Nissan agents eavesdropped on customers' conversations through the microphone.

456. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Simpson's Count XXXII(A): Breach of Contract vs. Jim Ray Nissan

457. All paragraphs are incorporated herein.

458. Jim Ray Nissan and Ms. Simpson had an agreement that she could test drive the car over the weekend, and that if she did not like the car she could return it and her paperwork would not be processed. Jim Ray Nissan, however, processed her paperwork anyway. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

459. This breach of contract proximately caused Ms. Simpson damages.

460. For her remedy on this Count XXXII(A), Ms. Simpson asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law. She also reserves the right to seek rescission of the contract.

XXXIII: Separate Plaintiff Ponciano Flores

461. On or about April 27, 2004, Mr. Flores and his now-wife were shopping for a car at Jim Ray Nissan. Mr. Flores wanted to get a car and trade in a paid-for 1994 Century Buick.

462. A salesman approached them. They told him that they wanted to buy a car provided that the payments were \$300 per month or less. The salesman told them that he could get them into a car for that amount.

463. The salesman showed Mr. Flores a Nissan Altima, and he decided to buy it. The salesman agreed to take the 1994 Century Buick as a trade-in for \$1,100.

464. When Mr. Flores was presented the paperwork, he noticed that the trade in amount was only \$100, not \$1,100. He protested and pointed this out to the salesman.

465. The salesman tried to convince Mr. Flores that he really was getting the full \$1,100 for the trade-in, but Mr. Flores was insistent on this point, as the paperwork did not reflect what the parties had agreed to. Finally, the salesman told Mr. Flores to go ahead and sign the paperwork, and the salesman promised that he would fix the invoice to make up for this one thousand dollar error.

466. Later, when trying to tag Mr. Flores's car, the people at the revenue office noted that the lien contract did not match the Jim Ray Nissan paperwork as to the trade-in amount. What had happened was, that in "fixing" the error, Jim Ray Nissan changed the trade in amount to be \$1,100, but at the same time Jim Ray Nissan added \$1,000 to the price of the car, which made the final price unchanged. In other words, Jim Ray Nissan never did truly fix the \$1,000 like it was supposed to and it altered the paperwork to cover that fact.

467. Mr. Flores tried several times to get Jim Ray Nissan to live up to its end of the bargain, but it refused. When Mr. Flores threatened to get a lawyer, Jim Ray Nissan personnel refused to speak with him further.

468. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Ponciano Flores's Count XXXIII(A): Breach of Contract vs. Jim Ray Nissan

469. All paragraphs are incorporated herein.

470. Jim Ray Nissan and Ponciano Flores had an agreement that he would receive \$1,100 for his trade-in. But Jim Ray Nissan reneged on the deal. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

471. This breach of contract proximately caused Ponciano Flores damages.

472. For his remedy on this Count XXXIII(A), Ponciano Flores asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law. He also reserves the right to seek rescission of the contract.

XXXIV: Separate Plaintiff Rebecca Harris

473. In February of 2004, Ms. Harris and her husband went to Jim Ray Nissan to look at a 2004 Altima. They test drove the car with a salesman named Jason and spoke with him about the price of the car, payments, and so forth.

474. Ms. Harris agreed to purchase the vehicle and talked about financing for 48 months with a payment of \$465.99/month, a down payment of \$3500 and a \$1500 rebate. Further, Jim Ray Nissan would add leather and a sunroof, since these were options she had been looking for in a vehicle.

475. Ms. Harris went to the finance office and spoke with Billy Cooper. After what seemed like hours, Jim Ray Nissan brought Ms. Harris and her husband out to the garage area, showed them where the vehicle would be serviced and scheduled the first service appointment.

476. When Ms. Harris opened the door to the car that Jim Ray Nissan personnel claimed that she had bought, she immediately noticed that it was not the same car that she had test driven. The car she had test-driven and thought she was purchasing was a brand new car with less than 600 miles. Instead, the car that had been brought to her was obviously an older model and a used vehicle. The vehicle brought to Ms. Harris also had light gray interior, whereas the vehicle she thought she was purchasing had charcoal gray interior.

477. Ms. Harris immediately told Jason (the salesman) that this was not the vehicle she test drove. Jason got a confused look on his face and went inside. Ms. Harris and her husband stood outside in the garage area for 30 minutes or so before going back in to see what the problem was.

478. At that time Billy Cooper, who claimed he was the “finance manager,” came to the HARRISES and apologized saying that Jason was a new salesman and that Jason had made a mistake. All they had to do, said Mr. Cooper, was re-sign the paperwork with the correct VIN on it. Mr. Cooper ripped up the original paperwork in front of the HARRISES, asked them to sign the new paperwork that had the correct VIN. While he was doing this, Mr. Cooper told the HARRISES what a hurry he was in to get home because the “GRAMMY’S” were on that Sunday night. At this point the HARRISES had been at the Jim Ray Nissan lot for at least five hours.

479. Relying on Mr. Cooper's representations, Ms. Harris signed the new paperwork presented by Mr. Cooper. Jim Ray Nissan personnel presented the correct car to the Harrises. The Harrises then drove that car home.

480. Later, when calling to add the car to her insurance, Ms. Harris started looking over the new paperwork she had signed and noticed that it showed her payments at 62 months for \$465.99 instead of the agreed to 48 months with a payment of \$465.99/month.

481. The new paperwork also showed the total sale price at \$34,357.37. Upon seeing this, Ms. Harris went to the car and got out the window sticker which the salesman had taken off and put in the glovebox. The window sticker was cut with scissors, but Ms. Harris could see that it was showing the total sticker price as \$24,250. The price that Jim Ray Nissan was charging to Ms. Harris on the new paperwork was almost \$10,000 more than the sticker price.

482. Ms. Harris immediately contacted Jim Ray Nissan and tried to speak with Mr. Cooper. After several attempts she was finally able to speak with him.

483. At first, Ms. Harris thought the price difference and lengthened payment period was just a mistake, and she wanted to give Mr. Cooper an opportunity to correct the mistake. But Mr. Cooper did not correct the mistake; he told Ms. Harris that she had "buyer's remorse," and there was nothing he could do for her. Such a statement by Mr. Cooper was, of course, false, just like the false statements that Mr. Cooper had told Ms. Harris earlier in order to trick her into signing the papers.

484. Ms. Harris tried for two weeks to get something done, but her requests fell on deaf ears. She sent a survey to Nissan North America to report this situation to them. She got a

response back from Keith Gayle, Nissan North America's Consumer Affairs Representative. But all that Nissan North America did was tell her that it was sorry that Ms. Harris had had an "unpleasant" experience with Jim Ray Nissan, and nothing was done by Nissan North America to correct the problem.

485. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Rebecca Harris's Count XXXIV(A): Breach of Contract vs. Jim Ray Nissan

486. All paragraphs are incorporated herein.

487. Jim Ray Nissan and Rebecca Harris had an agreement that she would pay a particular price for her car. Instead, Jim Ray Nissan charged her more for the car and made her financing documents reflect this higher amount without Ms. Harris's knowledge or permission. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

488. This breach of contract proximately caused Ms. Harris damages.

489. For her remedy on this Count XXXIV(A), Ms. Harris asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXXV: Separate Plaintiff Donnie Kendrick

490. In the summer of 2005, Donnie Kendrick went to Jim Ray Nissan to shop for a car. He met with a salesman and agreed to pay \$27,000 for a vehicle, provided that Jim Ray Nissan would install leather seats. Mr. Kendrick agreed to put \$3,000 down on the purchase.

491. At this point the salesman, Dustin, claimed that he had to leave. Billy Cooper took over the sale. Mr. Cooper told Mr. Kendrick that a six year loan was not possible, but a five

year loan would be. In order to keep his payments at about \$500 per month, Mr. Kendrick was told that his down payment would have to increase to \$6,000. Mr. Kendrick agreed to do this and paid \$6,000 to Jim Ray Nissan. Some paperwork was presented by Jim Ray Nissan, and Mr. Kendrick was led to believe that the paperwork matched the deal he had made with Jim Ray Nissan, i.e., to buy the vehicle for \$27,000 with \$6,000 down. Mr. Kendrick signed the paperwork and Jim Ray Nissan took the paperwork from Mr. Kendrick and told him that he would get his copies in the U.S. Mail.

492. When Mr. Kendrick received the paperwork in the mail, he noticed that the price of the vehicle was \$33,000 instead of \$27,000. This amount — \$33,000 — was \$3,000 over the sticker price and \$6,000 above the price to which Mr. Kendrick and Jim Ray Nissan had agreed.

493. Mr. Kendrick called Jim Ray Nissan four times trying to talk to someone about the problem. Nobody would talk to him. He then traveled to the Jim Ray Nissan location. Again, nobody would talk to him. Mr. Kendrick and his wife sat in the show room for more than two hours. Mr. Kendrick stated that he would not leave until someone would talk to him about the \$6,000 overcharge.

494. Eventually, Dustin looked at the paperwork and went to talk to Billy Cooper. Mr. Cooper then talked to Mr. Kendrick and told him that since he had signed the paperwork, that was it; nothing could be done.

495. These acts and omissions caused Mr. Kendrick such distress that it resulted in documented medical problems for Mr. Kendrick.

496. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Donnie Kendrick's Count XXXV(A): Breach of Contract vs. Jim Ray Nissan

497. All paragraphs are incorporated herein.

498. Jim Ray Nissan and Donnie Kendrick had an agreement that he would buy a vehicle for \$27,000, yet \$33,000 was charged to him. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

499. This breach of contract proximately caused Donnie Kendrick damages.

500. For his remedy on this Count XXXV(A), Donnie Kendrick asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXXVI: Separate Plaintiffs Phillip and Donnie Jo Sanders

501. On September 2, 2005, Donnie Jo and Phillip Sanders went to Jim Ray Nissan to shop for a car.

502. They looked at several cars and found a Nissan Maxima that they liked. They also informed the salesman that they would need two keys. The salesman, Chris Kopp, went to get some sales numbers from the manager. Mr. Kopp told them that he would give them a price according to how much of a payment the Sanderses could afford. The Sanderses told him that they could afford \$300 per month. Mr. Kopp said he could sell them the car for a payment in the upper three hundred dollar range. The Sanderses agreed.

503. The Sanderses were taken to Austin Cauthron's office and were presented with several documents to sign. As part of the paperwork, the Sanderses were sold a service

agreement for 60 months / 100,000 miles, and the paperwork they have reflects that, as the “60 months / 100,000 miles” box is check-marked.

504. Afterwards, the Sanderses tried to get the second key they were promised, but Jim Ray Nissan refused to give them the key without charging them extra, so the Sanderses had to pay \$131.28 for a second key.

505. Also, the Sanderses did not get the service agreement they contracted for. Documentation from Nissan North America shows that the service agreement that was provided to the Sanderses was only a 40 month / 48,000 miles agreement, even though at the time of purchase the documents show they were buying a 60 months / 100,000 miles agreement.

506. The Sanderses called Jim Ray Nissan, but they were told to call NMAC. The Sanderses did so, and spoke with a Monica at 1-800-456-6622, extension 3884. Monica told the Sanderses that Jim Ray Nissan’s finance manager needed to fix the problem.

507. Therefore, on October 20, 2005, Ms. Sanders went back to Jim Ray Nissan to try to get the problem fixed. She spoke with Adam Putman, showed him the papers, and told him about her conversation with Monica. Mr. Putnam made photocopies of her paperwork, said that he would see what he could do, and promised to take care of the situation.

508. Later, on November 15, 2005, Ms. Sanders tried to follow-up by calling Mr. Putnam. He refused to take her call. Ms. Sanders then called Nissan North America’s Consumer Affairs at 1-800-647-7261, and spoke with Marlis at extension 3861. Marlis said that she would turn the matter over to the regional manager and that the regional manager would call her back. She assigned file number 5140536 to Ms. Sanders’s complaint.

509. No one from Nissan North America called Ms. Sanders back. Adam Putnam continued his refusal to take Ms. Sanders's phone calls.

510. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Sanderses' Count XXXVI(A): Breach of Contract vs. Jim Ray Nissan

511. All paragraphs are incorporated herein.

512. Jim Ray Nissan and the Sanderses had an agreement that they would buy a vehicle with a 60 month / 100,000 mile warranty, yet Jim Ray Nissan only provided them with a 48 month / 48,000 mile warranty. Also, Jim Ray Nissan promised them two keys as part of the purchase, but only gave them one key. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

513. This breach of contract proximately caused the Sanderses damages.

514. For their remedy on this Count XXXVI(A), the Sanderses ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXXVII: Separate Plaintiff Daniel Bahr

515. On or about April 19, 2005, Daniel Bahr and his wife went to Jim Ray Nissan to purchase a new truck.

516. After looking at several vehicles, he picked out a 2005 Nissan truck that he was interested in and began talking to the salesman. The salesman offered to take Mr. Bahr's old vehicle as a trade-in for about the same amount that Mr. Bahr owed on the old vehicle. The salesman told him that as part of the deal Jim Ray Nissan would pay off the old vehicle and

would use the rebate for the down payment on the new truck. Agreeing to this deal, Mr. Bahr saw a purported Jim Ray Nissan finance manager and signed some paperwork that he was led to believe reflected the deal. The next day, per the agreement he had made with Jim Ray Nissan, Mr. Bahr arrived at the lot with the old vehicle to be traded in, and he left it there.

517. About a month later, on May 16, 2005, Mr. Bahr received a call from a Jim Ray Nissan agent telling him that he needed to come get his old vehicle. Mr. Bahr asked what the Jim Ray Nissan agent was talking about, since he had traded in his old vehicle. The Jim Ray Nissan agent told him that the finance manager had not done the trade-in correctly, that Mr. Bahr would have to come pick up the old vehicle, and then threatened to charge Mr. Bahr for storage if he failed to comply with Jim Ray Nissan's demands.

518. Mr. Bahr and his wife immediately went to Jim Ray Nissan. While there, Mr. Bahr spoke with the purported finance manager. The finance manager told Mr. Bahr that the trade-in was not done properly, that Jim Ray Nissan could not make any money on the deal, and that Mr. Bahr had to take the truck back. The purported finance manager began shoving the keys to the old vehicle into Mr. Bahr's face.

519. At that point, Mr. Bahr took the keys to the new vehicle and offered them to the purported finance manager. The finance manager asked Mr. Bahr what he was doing, and Mr. Bahr explained that he could neither afford, nor did he need, two trucks. In response, the finance manager laughed and said "you bought the new truck, and we can't take it back because now it's used. Looks like you're stuck with two trucks and two payments."

520. Mr. Bahr asked to speak with the general manager. The purported finance manager pointed to an office, laughed again, and said, “Good luck. You’re going to need it.”

521. Mr. Bahr went to the office that had been pointed out to him and spoke with Adam Putnam. Mr. Putnam was very hostile towards Mr. Bahr. When Mr. Bahr tried to point out that Jim Ray Nissan had taken the old vehicle in on trade, Mr. Putnam tried to grab the contract out of his hand. The contract paperwork that had been generated by Jim Ray Nissan was fraudulent in that it did not reflect the deal that Mr. Bahr and Jim Ray Nissan had, and which Mr. Bahr had been led to believe was reflected in the paperwork.

522. Interestingly, in generating the paperwork used in its attempts to defraud Mr. Bahr, Jim Ray Nissan made an error that it normally does not make when defrauding people in this manner. Jim Ray Nissan accidentally left the word “Chrysler” on paragraph 8B (“trade-in paid to”). Of course, this just shows that Jim Ray Nissan really did agree to a trade-in with Mr. Bahr, otherwise, it could not have known that Chrysler was the lienholder on the old vehicle. However, Jim Ray Nissan did manage to remember to put “n/a” in the amount block and, as stated above, this action was done surreptitiously in conjunction with affirmative misrepresentations being made to Mr. Bahr.

523. While Mr. Bahr was trying to explain the situation to Mr. Putnam, Mr. Putnam became very agitated and began yelling at Mr. Bahr. Mr. Putnam threatened to kick Mr. Bahr’s ass and made an announcement on the P.A. system that all employees should “come to the tower.”

524. Mr. Bahr left Mr. Putnam's office. Mr. Putnam followed him out the door, yelling at him. Mr. Putnam again shoved the old vehicle's keys into Mr. Bahr's face and said, "you really do have two trucks and two payments now." Mr. Bahr told Mr. Putnam that he would "have his job." Mr. Putnam then called Mr. Bahr a "low life," to which Mr. Bahr responded, "at least I don't sell used cars for a living." This infuriated Mr. Putnam, and he began screaming more at the Bahrs.

525. Mr. Bahr left the dealership and filed a police report with the Fort Smith Police Department. He tried to remedy the situation in various ways, but to no avail. He also contacted Nissan North America, but it has done nothing to assist Mr. Bahr.

526. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Daniel Bahr's Count XXXVII(A): Breach of Contract vs. Jim Ray Nissan

527. All paragraphs are incorporated herein.

528. Jim Ray Nissan and Daniel Bahr had an agreement that Jim Ray Nissan would buy his old vehicle for the amount owed on the vehicle, yet Jim Ray Nissan did not do this. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

529. This breach of contract proximately caused Mr. Bahr damages.

530. For his remedy on this Count XXXVII(A), Mr. Bahr asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXXVIII: Separate Plaintiff Vickey Simmons

531. In the summer of 2005, Vickey Simmons went to Jim Ray Nissan to buy a car. The salesman quoted her a price of \$17,834.82 for a Nissan Altima, told her that her payments would be \$300.99 per month, and that she would be trading in her 1995 Dodge Ram Van.

532. The salesman, when asked about the trade-in amount or what the percentage rate would be on the loan, was vague and evasive. But, Ms. Simmons was agreeable to a \$17,834.82 price, a trade-in, and a resulting payment of \$300.99 per month.

533. Jim Ray Nissan personnel then presented Ms. Simmons with a blank contract that had a \$300.99 payment at the bottom. They asked her to sign it. Believing that Jim Ray Nissan was going to live up to its end of the bargain, she signed.

534. Thirteen business days later, Ms. Simmons received paperwork from Jim Ray Nissan in the mail. The paperwork did not reflect her agreement with Jim Ray Nissan. Instead of charging her \$17,834.82 for the Altima, she was charged \$19,134.87. She was also charged a \$199.95 "Doc Fee" which she did not agree to. Jim Ray Nissan overcharged her by \$1,500.

535. When Ms. Simmons tried to talk to Jim Ray Nissan personnel about the error, a person purporting to be the finance manager told her that she did not seem like the type of person who would be stupid enough to sign a blank contract. He then said that Jim Ray Nissan would not ask someone to sign a blank contract because that would be fraud.

536. Ms. Simmons was also told that her car would get 30 miles to the gallon, but in fact it only gets 14 mpg.

537. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Vickey Simmons's Count XXXVIII(A): Breach of Contract vs. Jim Ray Nissan

538. All paragraphs are incorporated herein.

539. Jim Ray Nissan and Ms. Simmons had an agreement that she would be charged a particular price for her car and that it would get 30 miles to the gallon. In fact, she was charged a higher price and the car does not get 30 miles per gallon. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

540. This breach of contract proximately caused Ms. Simmons damages.

541. For her remedy on this Count XXXVIII(A), Ms. Simmons asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XXXIX: Separate Plaintiff Roy (Chris) Burkhart

542. On or about October 27, 2004, Roy (Chris) Burkhart went to Jim Ray Nissan to shop for a car. He wanted a car that had better gas mileage and cheaper insurance than the Dodge Durango that he had been driving. Mr. Burkhart was interested in the Altimas.

543. A Jim Ray Nissan salesman, Dustin Domorese, told Mr. Burkhart that "he had a deal" for Mr. Burkhart. The deal was that Mr. Burkhart would take possession of an Altima for ninety days. In the meantime, Jim Ray Nissan would try to sell Mr. Burkhart's Dodge Durango (for top dollar, guaranteed) on the internet and by advertising on the lot.

544. Mr. Burkhart voiced his concern that he would not be able to afford two car payments. But the Jim Ray Nissan salesman assured Mr. Burkhart that would not be a problem

because Jim Ray Nissan would make the car payment and insurance payments on the Dodge Durango for three months. The salesman told Mr Burkhart that if, after the ninety days that Jim Ray Nissan was trying to sell the Dodge Durango, it did not sell, then Mr. Burkhart could come back in, do the financing on the Altima at that time and trade-in the Durango. The salesman said that this deal had been offered to other customers.

545. Mr. Burkhart, his wife, and his infant children were taken to a tiny office in the dealership, where Jim Ray Nissan personnel left them alone. Jim Ray Nissan personnel surreptitiously listened in on Mr. Burkhart's and his wife's conversation.

546. Mr. Burkhart was presented some paperwork that he was led to believe reflected the deal he had made with Jim Ray Nissan. As he was completing it, he overheard a salesman say, "he does not have a trade in." Mr. Burkhart became alarmed and confronted the Jim Ray Nissan agent that had presented the paperwork to him. He told the agent that he was not going to be put in the position of having to make two car payments.

547. Mr. Burkhart got up to leave the dealership. As he was walking out, Dustin Domorese followed him and said that there was a misunderstanding. Mr. Domorese told Mr. Burkhart that he was going to sell the Durango, but for insurance purposes the Durango could not be kept on the Jim Ray Nissan lot. Mr. Domorese worked hard to smooth things over with Mr. Burkhart, and eventually succeeded in re-assuring Mr. Burkhart that the Durango would be sold and that Mr. Burkhart would not be faced with two vehicle payments.

548. Relying on these representations, Mr. Burkhart completed the paperwork presented to him by Jim Ray Nissan.

549. Jim Ray Nissan personnel set up an appointment for two days later for Mr. Burkhart to take the Durango to the Jim Ray Nissan lot so that it could be detailed and pictures taken for the internet.

550. About a week later, Mr. Burkhart started receiving correspondence in the mail showing that he had been rejected for certain loans. One of the rejections was from Regions Bank, which was confusing to Mr. Burkhart since he had not authorized anyone to finance through Regions Bank. Mr. Burkhart did receive a letter from NMAC telling him that he had qualified for financing, and was reassured that Jim Ray Nissan was living up to its end of the bargain because Jim Ray Nissan sent Mr. Burkhart a check for that first Altima payment, insurance, tags, and registration (although Jim Ray Nissan did short this amount by about \$200).

551. In the meantime, Mr. Burkhart was checking the website address given to him by Mr. Domorese, but he never saw the Durango listed. Then Mr. Burkhart received the next month's Altima bill. He waited for Jim Ray Nissan to send that second payment to him as well. But it never came.

552. Therefore, Mr. Burkhart went back to Jim Ray Nissan to try to talk to Mr. Domorese. He was told that Mr. Domorese no longer worked there. Mr. Burkhart spoke with Billy Cooper. He told Mr. Cooper about his deal with Jim Ray Nissan. Mr. Cooper responded that it was a bogus deal and "they would never make a deal like that." Mr. Cooper promised to investigate the matter and get back to Mr. Burkhart.

553. About an hour later, Mr. Cooper contacted Mr. Burkhart, who then came back to the dealership. Mr. Cooper presented Mr. Burkhart a document that Mr. Burkhart had never

before seen. On the document were the words “I do not have a trade in” and “I did not want internet sales.” At the bottom of the document was a signature that is purportedly Mr. Burkhart’s signature, but it is, in fact, a forgery.

554. Mr. Cooper claimed that Mr. Burkhart had signed this document, and also claimed that Mr. Burkhart was responsible for both the Durango payment and the new Altima payment. Mr. Cooper suggested that Mr. Burkhart let the Durango be repossessed since it had a higher payment than the Altima.

555. Mr. Burkhart declined to have the Durango repossessed. Instead, he cleaned out the Altima, took pictures to document its condition, and returned it to Jim Ray Nissan.

556. Since then, Mr. Burkhart has been hounded by creditors seeking payments on the Altima. That financing has been turned over to a collection agency which claims that he owes \$11,138.81. This has also adversely affected Mr. Burkhart’s credit rating.

557. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Roy (Chris) Burkhart’s Count XXXIX(A): Breach of Contract vs. Jim Ray Nissan

558. All paragraphs are incorporated herein.

559. Jim Ray Nissan and Mr. Burkhart had an agreement that Jim Ray Nissan would sell his old vehicle, and that under no circumstances would he have to make two car payments. But Jim Ray Nissan did not do this. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

560. This breach of contract proximately caused Mr. Burkhart damages.

561. For his remedy on this Count XXXIX(A), Mr. Burkhart asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law. He also seeks the remedy of rescission.

XL: Separate Plaintiff Kelly Ann Ray²

562. On or about May 26, 2005, Kelly Ann Ray was returning a Nissan Quest which her husband, Russell Ray, had test-driven for the day. She had her three daughters, ages 11, 8, and 4, with her. Ms. Ray's intentions were to drop off the Quest and then leave in her own car, which had been left on the Jim Ray Nissan lot. She needed to get her children to a tumbling class that was starting soon.

563. Ms. Ray went into the building to get her car keys. She was approached by a salesman, Oscar Velasquez, who claimed that he was there to assist her.

564. Ms. Ray explained that she was not ready to buy a new vehicle and wanted her keys back. The salesman left, but later came back with a second salesman.

565. The second salesman told her that he wanted to sit down with Ms. Ray and "crunch some numbers." Ms. Ray again informed them that she did not want to buy the Quest, that she wanted her keys, and she needed to get to her children's tumbling class.

566. Rather than give Ms. Ray her keys after this second request, the Jim Ray Nissan salesman again pressured her to buy the Quest. He suggested that she go another test drive while someone else appraised her old car, a Caravan. This made no sense to Ms. Ray, as Jim Ray

² No relation to Jim Ray.

Nissan had been in possession of the old car for the last several hours. Ms. Ray refused to go on a test drive.

567. The tumbling class was now only ten minutes from starting. Ms. Ray became increasingly agitated at not getting her keys. She frequently checked on her children to make sure that they were ok as they waited.

568. Yet again, Ms. Ray asked for her car keys. Yet again, Jim Ray Nissan refused to provide them to her. Ms. Ray then walked across the sales floor to the manager's office where her keys were located. She was going to go and search for her keys. As she reached the doorway, a Jim Ray Nissan salesman forcefully grabbed Ms. Ray by the arm without her consent. He told her that she was not allowed in the office. Ms. Ray responded that her personal property (her keys) were in that office and she was entitled to get them.

569. Ms. Ray made more requests for her keys, but the salesman would not give them to her. Instead, they made remarks about her persistent behavior. Ms. Ray, frustrated and angry, walked back to the Nissan Quest, got in the car, got her children situated, and began to drive away. A salesman hurriedly approached her and asked her where she was going.

570. Ms. Ray explained that she was going to take her daughters to tumbling class. The Jim Ray Nissan salesman told Ms. Ray that if she drove off the lot with the Quest then he would call the police and report her for theft. She responded by telling him that if the police were called, she would report him for his criminal activities against her. At this point, Jim Ray Nissan agents finally brought her the keys to her car.

Plaintiff Kelly Ray's Count XL(A): Battery vs. Jim Ray Nissan

571. All paragraphs are incorporated herein.

572. Jim Ray Nissan agents committed battery against Kelly Ray and proximately caused Ms. Ray compensatory damages in the amount of one hundred dollars.³

573. For her remedy on this Count XL(A), Ms. Ray asks for attorney's fees, costs, compensatory damages, punitive damages, and other damages and awards as allowed by law.

XLI: Separate Plaintiff Tina McNeil

574. On or about July 27, 2004, Tina McNeil bought a new car from Jim Ray Nissan.

575. As part of her purchase, Ms. McNeil was promised a window louver, along with free gasoline through the end of the year. Although the promised window louver was put in writing, and Ms. McNeil tried on numerous occasions to get Jim Ray Nissan to honor that promise, Jim Ray Nissan never intended to honor the promise and they have failed and refused to do so. Ms. McNeil still had four gas vouchers when the gas station designated by Jim Ray Nissan refused to accept Jim Ray vouchers, effective October 1, 2004.

576. When Jim Ray Nissan agents were attaching her license plate, they installed it incorrectly and screwed it directly to the bumper. This has damaged the bumper and the paint. Because the paint is peeling where the license plate was wrongfully attached, rust is occurring. However, Nissan North America has told Ms. McNeil that she cannot repaint the bumper as that would void the warranty. Jim Ray Nissan refuses to fix the problem.

³ Jim Ray Nissan's conduct against her was, under the criminal code, Assault in the Third Degree, A.C.A. § 5-13-207. This is a Class C Misdemeanor, which normally carries a fine of up to \$100. See A.C.A. § 5-4-201. In this civil proceeding, Ms. Ray asks for this amount as her compensatory damages.

577. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Tina McNeil's Count XLI(A): Breach of Contract vs. Jim Ray Nissan

578. All paragraphs are incorporated herein.

579. Jim Ray Nissan and Ms. McNeil had an agreement that Jim Ray Nissan would, inter alia, provide gas through the end of the year and install a window louver on her vehicle. Jim Ray Nissan reneged on the deal. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

580. This breach of contract proximately caused Ms. McNeil damages.

581. For her remedy on this Count XLI(A), Ms. McNeil asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLII: Separate Plaintiff Fonda Caldwell

582. On or about April 28, 2004, Fonda Caldwell went to Jim Ray Nissan and test drove cars.

583. She looked at a 2001 Nissan Pathfinder, and a Jim Ray Nissan salesman, Dustin Domorese, told her, in the presence of her sister, that she could drive it to her optometrist appointment. She was told that she could simply return it if she did not want to keep it.

584. Believing those representations, she signed paperwork, having been led to believe that the paperwork related to liability in case something happened while she was in control of the Pathfinder. Both Billy Cooper and Dustin knew that Ms. Caldwell was in a hurry to get to her

appointment, and that she did not have the appropriate time to read the paperwork. They assured her that she could return the vehicle with no problem. Ms. Caldwell believed them.

585. As a form of security, Ms. Caldwell left her credit card with Jim Ray Nissan personnel. She was told that her credit card would be refunded if she decided not to keep the Pathfinder.

586. Ms. Caldwell returned the Pathfinder within two hours. But Billy Cooper told her that she could not return the vehicle, and that she had signed away rights to her 1995 Nissan Sentra, which she did not even drive to Jim Ray Nissan that day. Billy Cooper told her that she could only trade down for something less expensive.

587. Ms. Caldwell told them that she did not want the Pathfinder, and she refused to take it. Billy Cooper told her that Jim Ray Nissan would have it towed to her address, and that she would be billed for the towing service.

588. Ms. Caldwell drove it off of the Jim Ray Nissan lot, and then returned to get the vehicle that she was driving that day. She told Billy Cooper that Jim Ray Nissan could not have her 1995 Nissan Sentra, and Billy Cooper then threatened to arrange for the Nissan Sentra to be towed from her house to Jim Ray Nissan, and she would be charged for the towing service.

589. Not knowing what to do, Ms. Caldwell drove to her address, followed by Billy Cooper. He forced her to remove her personal effects from her Sentra and to provide him with the keys. She watched as Billy Cooper of Jim Ray Nissan drove off in her Sentra.

590. Ms. Caldwell then called her father, who then called police to request the police to meet Ms. Caldwell at Jim Ray Nissan. Ms. Caldwell and her father arrived at Jim Ray Nissan,

demanding her Sentra and credit card. Jim Ray Nissan personnel refused, and banned Ms. Caldwell and her sister and father from the parking lot unless accompanied by police officers. Ms. Caldwell then left Jim Ray Nissan.

591. On or about April 30, 2004, Ms. Caldwell returned with the police to Jim Ray Nissan so that she could get the tags from her Sentra, get the paperwork that she signed, and to attempt to return the Pathfinder. She was unsuccessful with all attempts. Adam Putnam, an employee of Jim Ray Nissan, would not release the paperwork to her.

592. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiff Fonda Caldwell's Count XLII(A): Breach of Contract vs. Jim Ray Nissan

593. All paragraphs are incorporated herein.

594. Jim Ray Nissan and Ms. Caldwell had an agreement that she would be able to test drive the Pathfinder to her appointment and that she would be able to return it if she did not want to buy it. Jim Ray Nissan reneged on the deal, though, and wrongfully insisted that Ms. Caldwell had bought the car. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

595. This breach of contract proximately caused Ms. Caldwell damages.

596. For her remedy on this Count XLII(A), Ms. Caldwell asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLIII: Separate Plaintiffs Alisha Shepard & Rosie Cravens

597. On or about May 24, 2005, Alisha Shepard went to Jim Ray Nissan. Her aunt, Rosie Lee Craven, had promised to co-sign for her if she found a suitable car at an appropriate price.

598. Ms. Shepard arrived at Jim Ray Nissan alone, and a Jim Ray Nissan sales representative, Darlene Jarrot, came out to assist her. She decided on a black Nissan Altima. Ms. Shepard told Jim Ray Nissan personnel that she would talk to her aunt and then would return to Jim Ray Nissan. Jim Ray Nissan asked her for Ms. Craven's credit information, which Ms. Shepard did not have.

599. Jim Ray Nissan allowed Ms. Shepard to drive the Altima to her aunt's house so that her aunt could view the car. Darlene Jarrot rode with Ms. Shepard to obtain Ms. Craven's credit information.

600. Because the Altima was approximately \$23,000, Ms. Cravens told Ms. Shepard and Ms. Jarrot that the amount was too high. Ms. Cravens would not provide her credit information to Darlene Jarrot, and instead traveled with Ms. Shepard and Darlene Jarrot back to Jim Ray Nissan.

601. Back at Jim Ray Nissan, Ms. Shepard found a 2004 Honda Civic for approximately \$10,000, and she wanted to buy it. However, the payments of \$536 / month, would be too high. Jim Ray Nissan personnel then showed Ms. Shepard a 2003 Mitsubishi Montero Sport for about \$10,000, and it was agreed that Ms. Cravens would co-sign on that vehicle for Ms. Shepard.

602. Billy Cooper of Jim Ray Nissan, Ms. Cravens, and Ms. Shepard then signed separate forms that contained both of their names. Throughout the processing they were led to believe that Ms. Cravens would only be a co-signer. Before signing the last form, Ms. Shepard asked Jim Ray Nissan personnel exactly how much the vehicle was after everything, and she was told \$15,449.95. Shocked by the \$5,000 difference, Ms. Shepard and Ms. Cravens questioned such a large discrepancy. They were told that GAP insurance is required (\$500) and sales tax had to be paid (\$960). They asked about the monthly payments, and Jim Ray Nissan assured them they were still \$326 / month. Ms. Cravens and Ms. Shepard took the Jim Ray Nissan personnel at their word.

603. When paperwork arrived via the U.S. Mail, the contract price for the vehicle was \$19,597.20. Furthermore, the car was only in the name of Rosie Cravens, and the name of Alisha Shepard was nowhere in the paperwork.

604. Ms. Shepard and Ms. Cravens went back to Jim Ray Nissan. Billy Cooper explained that the amount was due to the taxes and payments over the five-year period. However, Ms. Shepard asked why the amount was more than \$4,000 less when she asked the same question during the paperwork signing. Billy Cooper never completely answered Ms. Shepard's questions or addressed her concerns.

605. Ms. Shepard wanted to just leave the Montero at Jim Ray Nissan, but was told it would then be a repo. Darlene Jarrot saw Ms. Shepard as she was leaving Jim Ray Nissan and asked if there was a problem. After Ms. Shepard explained, Darlene Jarrot said, "I'm sorry. I didn't know he was going to do you like that."

606. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Shepard & Cravens's Count XLIII(A): Breach of Contract vs. Jim Ray Nissan

607. All paragraphs are incorporated herein.

608. Jim Ray Nissan and Mses. Shepard & Cravens had an agreement that Ms. Cravens would only be a co-signer and that the vehicle would sell for a particular price. Jim Ray Nissan reneged on the deal, though, and wrongfully made Ms. Cravens the owner of the car. Jim Ray Nissan also charged them more money than what had been agreed upon. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

609. This breach of contract proximately caused Mses. Shepard & Cravens damages.

610. For their remedy on this Count XLIII(A), Mses. Shepard & Cravens ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLIV: Separate Plaintiffs Daniel & Trina Garnes

611. In October 2004, Daniel and Trina Garnes went to Jim Ray Nissan to shop for a vehicle. They found a 2005 Nissan Altima, and decided to purchase it.

612. While negotiating with the Garneses, Jim Ray Nissan asked for their signature and social security number on a blank piece of paper. Jim Ray Nissan told them it was to "secure" the negotiations. The Garneses signed, not expecting Jim Ray Nissan personnel to use the signed document for improper purposes.

613. The Garneses and Jim Ray Nissan agreed that the monthly car payment would be \$400 for 60 months. But after the contract was signed, Jim Ray Nissan changed the payment to \$425.99 / month without the Garneses knowledge or permission.

614. Jim Ray Nissan promised to pay the sales tax on the vehicle, but it did not. Because the sales tax (\$1,477.00) was added to the contract, the monthly car payment increased to \$452.23.

615. Because of problems surrounding the paperwork, Mr. and Mrs. Garnes incurred late fees from the Revenue Office. Jim Ray Nissan promised to pay the late fees, but never did and still have not done so as promised.

616. Jim Ray Nissan did not provide the Garneses with a copy of the original contract when they requested said contract.

617. Multiple promises made by Jim Ray Nissan were not kept. Jim Ray Nissan promised to fix a dent in the front right fender that existed prior to the purchase, but never did. Jim Ray Nissan promised to provide the Garneses with free gas cards, but these have never been received. Jim Ray Nissan promised free oil changes. However, the Garneses only received one free oil change at the time of the promise. When they took the vehicle for a subsequent oil change, they were told, "Sorry, we have to charge you the full price for the oil change." Also, Jim Ray Nissan promised to provide a full detail cleaning of the vehicle, but this was never done.

618. Jim Ray Nissan promised to discuss the trade-in value of the Garnes's vehicle, but it was never discussed, and Jim Ray Nissan put in their own value without disclosing the value to the Garneses.

619. The Garneses were given documents with blank spaces, and were told that after signing, Jim Ray Nissan would supply the agreed-upon terms with a typewriter. In fact, Jim Ray Nissan filled in different numbers later that the Garneses had not agreed to.

620. When the Garneses went to Jim Ray Nissan to complain about these fraudulent activities, Jim Ray Nissan personnel told the Garneses that there was nothing that could be done about the paperwork because it contained their signatures.

621. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Garneses Count XLIV(A): Breach of Contract vs. Jim Ray Nissan

622. All paragraphs are incorporated herein.

623. Jim Ray Nissan and the Garneses had an agreement that they would buy the car for one price, but instead they were charged another. Further, the Garneses were entitled to other benefits such oil changes, fixing dents, and so forth, that were part of the deal, but these were also not honored by Jim Ray Nissan. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

624. This breach of contract proximately caused the Garneses damages.

625. For their remedy on this Count XLIV(A), the Garneses ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLV: Separate Plaintiffs Bill & Mary Warren

626. On or about July 24, 2004, Bill and Mary Meredith Warren went to Jim Ray Nissan to look at a Murano. They had done Internet research to ensure that they would get a good deal on a Murano.

627. A Jim Ray Nissan salesman brought a black Murano for them to test drive. The Warrens were led to believe that the vehicle was a 2004 model. The Warrens asked what Jim Ray Nissan would take for the black Murano. Mrs. Warren told Mr. Warren, in the presence of the Jim Ray Nissan salesman, that the Murano had 500 miles on it. The Jim Ray Nissan salesman said nothing after hearing this statement.

628. Mr Warren questioned the Jim Ray Nissan salesman why the mileage was so high, and the Jim Ray Nissan salesman said that it was due to test drives and salesman use. He told the Warrens that the vehicle had never been sold. The Warrens believed them.

629. Jim Ray Nissan personnel told them a price for the Murano, and the Warrens agreed to the purchase if Jim Ray Nissan would reduce the price by \$1,500. Jim Ray Nissan agreed. Jim Ray Nissan presented them paperwork that the Warrens were led to believe reflected their oral agreement. The paperwork was signed, and the Warrens took the Murano.

630. After arriving home, the Warrens discovered that the Murano had 5077 miles on it, and was a 2003 model instead of the presumed 2004 model. The Warrens then questioned Jim Ray Nissan personnel about this, but a Jim Ray Nissan salesman told Mr. Warren, “You’ve already signed the papers, it’s a done deal.”

631. After looking over the papers, the Warrens realized that Jim Ray Nissan had not taken \$1,500 of the purchase price of the vehicle as was agreed to by the parties.

632. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Plaintiffs Bill & Mary Warren's Count XLV(A): Breach of Contract vs. Jim Ray Nissan

633. All paragraphs are incorporated herein.

634. Jim Ray Nissan and the Warrens had an agreement that they would buy the car for one price, but instead they were charged another. Further, the Warrens had agreed to buy a 2004 car with only 500 miles on it, but instead got a 2003 car with thousands of miles on it. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

635. This breach of contract proximately caused the Warrens damages.

636. For their remedy on this Count XLV(A), the Warrens ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLVI: Separate Plaintiff Floyd Everly

637. In August of 2003, Floyd Everly went to Jim Ray Nissan to purchase a vehicle. He test drove vehicles and wanted to buy a 2003 Nissan Frontier.

638. The Frontier that Mr. Everly was interested in, however, had a shimmy and some damage to parts of the paint. The salesman assured Mr. Everly that these defects would be taken care of by the dealership's maintenance department.

639. Based on these assurances, Mr. Everly ultimately purchased the Frontier.

640. Jim Ray Nissan, when it presented the paperwork to Mr. Everly, led him to believe that the paperwork matched what the parties had discussed as to price. In fact, the paperwork did not match what the parties had agreed upon, and Jim Ray Nissan sneaked higher prices into the paperwork that Mr. Everly signed.

641. After the Frontier was purchased, Jim Ray Nissan refused to fix the shimmy and the paint.

642. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiff Floyd Everly's Count XLVI(A): Breach of Contract vs. Jim Ray Nissan

643. All paragraphs are incorporated herein.

644. Jim Ray Nissan and Mr. Everly had an agreement that he would buy the car for one price, but instead he was charged another, higher price. Further, Jim Ray Nissan failed to fix the shimmy or the paint. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

645. This breach of contract proximately caused Mr. Everly damages.

646. For his remedy on this Count XLVI(A), Mr. Everly asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLVII: Separate Plaintiff Kara Belt

647. On or about June 17, 2005, Kara Belt went to Jim Ray Nissan to buy a car.

648. She test drove some cars and worked with Jim Ray Nissan salesman Stephen Peters. She explained to Mr. Peters that she owed \$5,000 on her old car, and this amount would

have to be paid off before she could purchase a new vehicle. Ms. Belt told the salesman that her old car had about 79,000 miles on it and was a 2000 or 2001 model. The salesman assured her that he could work with that.

649. She came back the next day to continue to shop. Ms. Belt again made it clear to the salesman that she could not remember the exact model year of her old car that would be traded-in. Ms. Belt expressed interest in an Xterra and an Altima. Mr. Peters advised that the Altima was more in her price range. Ms. Belt and the salesman agreed that should would pay \$265 per month for the Altima, and Jim Ray Nissan would give her a \$5,000 check to pay off the amount owed on her old vehicle, which would be traded-in. This happened on Saturday, June 18, 2005. It was agreed that Ms. Belt would bring her trade-in on the following Monday or Tuesday. Based on this agreement, Ms. Belt signed the paperwork prepared by Jim Ray Nissan and left with her new car.

650. That Tuesday, Ms. Belt arrived at Jim Ray Nissan with her trade-in and title. She showed her old vehicle to Mr. Peters. He told her that all she had to do was sign the back of the title and that she was free to go. She did so.

651. Two hours later, Mr. Peters called Ms. Belt and told her that there were some discrepancies and she needed to return to the dealership to correct the paperwork.

652. When Ms. Belt arrived at Jim Ray Nissan, she was told that the papers that had been signed earlier showed her trading in a 2001 model when she actually traded-in a 2000 model. Jim Ray Nissan personnel then told her that she would not be receiving the \$5,000 check she was promised, unless she agreed to pay \$69 more per month. Ms. Belt disagreed with this;

the model year of her trade-in had been a non-issue when she had negotiated her deal with Jim Ray Nissan, and she had never represented to Jim Ray Nissan that the old car was a 2001 model. She had let Jim Ray Nissan know — on more than one occasion — that she was uncertain of the model year, and Jim Ray Nissan had accepted that ambiguity when making the deal with her.

653. Because Jim Ray Nissan was trying to renege on the deal, Ms. Belt asked for her old truck back. Jim Ray Nissan personnel refused to give it to her and told her that it was Jim Ray Nissan's truck since she had signed over the title. Jim Ray Nissan personnel insisted that Ms. Belt had to re-do the paperwork.

654. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiff Kara Belt's Count XLVII(A): Breach of Contract vs. Jim Ray Nissan

655. All paragraphs are incorporated herein.

656. Jim Ray Nissan and Ms. Belt had an agreement that she would receive \$5,000 for her trade-in. But Jim Ray refused to pay this amount after she signed over her trade-in. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

657. This breach of contract proximately caused Ms. Belt damages. To the extent that Ms. Belt may have signed subsequent paperwork relating to this transaction that purports to modify the original deal, that paperwork is not binding due to Jim Ray Nissan's unclean hands, fraud, misrepresentation, duress, and failure of consideration.

658. For her remedy on this Count XLVII(A), Ms. Belt asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLVIII: Separate Plaintiff James Darrohn

659. On or about October 29, 2005, James Darrohn and his wife went to Jim Ray Nissan to look at new pick-up trucks.

660. They were met on the lot by a Jim Ray Nissan salesman named James Patterson. After the Darrohns described what they were looking for to Mr. Patterson, he showed them a 2006 Nissan Frontier. Mr. Darrohn liked it and after a test drive decided to buy it. The sticker price was \$19,725.

661. Mr. Darrohn sat down with a Jim Ray Nissan finance manager. Much of the paperwork was verbally explained to Mr. Darrohn by the finance manager, and Mr. Darrohn took the finance manager at his word and did not read all the myriad documents himself.

662. Mr. Darrohn signed the papers where indicated by the Jim Ray Nissan agent. Jim Ray Nissan, as it does in virtually all these cases, kept all copies of the paperwork and promised to mail Mr. Darrohn copies later.

663. About ten days later Mr. Darrohn received his paperwork in the mail. He noticed that the price listed on the top line of the contract was not the price he had agreed to, i.e., it was not the sticker price but was instead \$1,383 higher. Also, he was being charged a “doc fee” of \$199.95 that he never agreed to. The excess finance charges resulting from these overcharge are at least an additional \$1,610. Mr. Darrohn was also promised \$500 in free gas which was never provided to him.

664. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiff Darrohn's Count XLVIII(A): Breach of Contract vs. Jim Ray Nissan

665. All paragraphs are incorporated herein.

666. Jim Ray Nissan and Mr. Darrohn had an agreement that he would buy the vehicle for \$19,725 plus \$500 of free gas. Instead, Jim Ray Nissan gypped him on the gas and charged him an additional \$199.95 in "doc fee" and upped the list price to \$21,108. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

667. This breach of contract proximately caused Mr. Darrohn damages.

668. For his remedy on this Count XLVIII(A), Mr. Darrohn asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLIX: Separate Plaintiffs Brandon & Jacqueline Piercy

669. On or about May 4, 2004, Brandon and Jacqueline Piercy went to Jim Ray Nissan to purchase a new vehicle. At that time they owned a 2001 Nissan Pathfinder.

670. After looking around, the Piercys decided to trade in their Pathfinder for a 2004 Maxima. The Jim Ray Nissan salesman, Adam Putnam, agreed.

671. As the Piercys were signing the paperwork that Jim Ray Nissan agents had prepared, the Piercys asked them to structure the payments on the new car such that the old car would be paid off prior to the new car payment becoming due, so that they could avoid having to make two car payments in one month. Not a problem, replied the Jim Ray Nissan agents, and they promised to arrange that. After the papers were signed, the Jim Ray Nissan agents told the Piercys that they would receive their copies in the mail in about ten days. The Piercys left their old car (the Pathfinder) at Jim Ray Nissan since it was being traded-in.

672. As they had discussed, the Piercys made their last Pathfinder payment that June.

673. When Ms. Piercy went to the DMV to tag the new Maxima and pay the sales tax, she noticed that the sales tax was substantially higher than what she had anticipated. The DMV clerk explained to Ms. Piercy that according to the bill of sale there was no trade-in.

674. This information, understandably, concerned Ms. Piercy, and she and her husband made several attempts to contact Jim Ray Nissan. However, none of their calls were put through to anyone who would could help them, and the messages they left were ignored.

675. Because they were getting nowhere by trying to call the dealership, Mr. Piercy went to the Jim Ray Nissan dealership personally. While there, he received conflicting explanations from various Jim Ray Nissan agents, and was ultimately told that his Pathfinder was not a “trade-in,” but was treated as a “turn-in.”

676. The next month, July 2004, the Piercys received a late notice from the Bank of America informing them that the Pathfinder payment had not been made. Ms. Piercy called the Bank of America to explain that she no longer owned the Pathfinder because it had been traded-in. Bank of America disagreed and said that in fact the Piercys still owned the Pathfinder and nobody had done anything to clear the lien from the Pathfinder. By this time, the Pathfinder was no longer in the Piercys’ possession, was no longer registered in their name, and they had stopped the insurance on the Pathfinder since they had been led to believe that Jim Ray Nissan had bought it as part of the trade-in.

677. After several attempts to contact Jim Ray Nissan about the matter, the Piercys were told that the Pathfinder had not been traded in and was sitting on Jim Ray Nissan’s back lot.

They were told to go pick up the Pathfinder. When the Piercys explained that Jim Ray Nissan had agreed to take the Pathfinder as a trade-in, Jim Ray Nissan agents denied this. The Piercys ultimately sold their Pathfinder in order to mitigate their damages, but they did so at a loss.

678. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiffs Piercy's Count XLIX(A): Breach of Contract vs. Jim Ray Nissan

679. All paragraphs are incorporated herein.

680. Jim Ray Nissan and the Piercys had an agreement that as part of the purchase of the Maxima the Pathfinder would be traded in for the amount owed. But Jim Ray Nissan reneged on this deal and did not take the Pathfinder as a trade-in as promised. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

681. This breach of contract proximately caused the Piercys damages.

682. For their remedy on this Count XLIX(A), the Piercys ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

XLIX: Separate Plaintiff Stephen Cross

683. On or about August 21, 2005, Stephen Cross and his wife went to Jim Ray Nissan to look at cars. He identified a 2005 Nissan Sentra that he was interested in. The salesman, Jason Davis, told Mr. Cross that the Sentra was a demonstration car that had been purchased at auction in Texas. The salesman told Mr. Cross that the price of the car was \$13,500. He also told Mr. Cross that his old car would be sold and that Jim Ray Nissan would advertise it for sale in national and local papers.

684. Mr. Cross believed the salesman and agreed with that price; Jim Ray Nissan agents began generating the paperwork, and Mr. Cross was led to believe that the paperwork matched the deal he had made with the salesman. Also during the negotiation process, Jim Ray Nissan agent Adam Putnam told Mr. Cross that Jim Ray Nissan would pay the GAP Insurance, life insurance, and for an extended warranty.

685. In fact, none of these things happened. The old car was neither advertised nor sold, and the GAP insurance, life insurance, and extended warranty were not paid by Jim Ray Nissan but were instead charged to Mr. Cross.

686. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiff Stephen Cross's Count L(A): Breach of Contract vs. Jim Ray Nissan

687. All paragraphs are incorporated herein.

688. Jim Ray Nissan and Mr. Cross had an agreement that his old car would be advertised and sold. He was also promised that GAP Insurance, life insurance, and an extended warranty would be paid for by Jim Ray Nissan. None of these things happened, though. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

689. This breach of contract proximately caused Mr. Cross damages.

690. For their remedy on this Count L(A), Mr. Cross asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LI: Separate Plaintiffs John & Lori Greer

691. On or about January 2, 2004, John and Lori Greer went to Jim Ray Nissan to consider buying a truck.

692. The Greers ultimately decided to buy a Nissan Titan, and as part of that deal it was agreed that Jim Ray Nissan would take the Greers' jeep as a trade-in for \$15,000, the Greers would pay \$279/month for five years, Jim Ray Nissan would pay all of the Greers' sales tax, and Jim Ray Nissan would install a Type III trailer hitch on the vehicle.

693. Jim Ray Nissan agents began preparing the paperwork and led the Greers to believe that the paperwork reflected this agreement. When the Jim Ray Nissan agents asked the Greers to sign the paperwork, they rushed them through it and surrounded the Greers with four salesman to intensify the high-pressure sale and intimidation. Of course, the Greers did not receive their paperwork then — Jim Ray Nissan said that it would be mailed to them later.

694. Weeks later the Greers received paperwork from Jim Ray Nissan in the mail. When they reviewed the paperwork they realized that only \$10,500 had been given for the trade-in, not \$15,000 as promised. The \$279/month payments were for six years, not the five as agreed upon. Finally, the sales tax had not been paid by Jim Ray Nissan as promised, but had instead been charged to the Greers. Interestingly on this point, the "We Owe" form originally said that all of the sales tax would be paid when Mr. Greer signed it. But later, after Mr. Greer signed the "We Owe" form, Jim Ray Nissan agents doctored the form and changed the word "all" to "1/2." Even then, Jim Ray Nissan didn't pay the one-half. They charged that amount to

the Greers and added it to the amount financed. Jim Ray Nissan has refused to remedy the situation.

695. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Sep. Plaintiffs John & Lori Greer's Count LI(A): Breach of Contract vs. Jim Ray Nissan

696. All paragraphs are incorporated herein.

697. Jim Ray Nissan and the Greers had an agreement, but Jim Ray Nissan failed to live up to its end of the bargain. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

698. This breach of contract proximately caused the Greers damages.

699. For their remedy on this Count LI(A), the Greers ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LII: Separate Plaintiffs Kevin & Delta Jacobs

700. At some point in the year 2004, Kevin and Delta Jacobs purchased a 2005 Nissan Altima from Jim Ray Nissan.

701. As part of the purchase, the Jacobses had an agreement that they would put \$5,000 down and finance the balance of the purchase. Jim Ray Nissan agents agreed with this and began to prepare the paperwork for the Jacobses to sign. The Jacobses were led to believe that the paperwork matched the parties' agreement, and they signed it. As is usual with Jim Ray Nissan, the Jacobses did not receive copies of their paperwork right away; it was mailed to them later.

702. When the Jacobses later received paperwork in the mail they noticed some errors.

703. On the paperwork the purchase price was \$25,670.90 from which sum the \$5,000.00 cash payment should have been deducted, leaving a new balance of \$20,670.90. Additionally, document prep charges of \$299.95 and GAP insurance of \$500.00 were financed and should have been added to the \$20,670.90 balance of the purchase price for a final total of \$21,470.85.

704. Instead, the amount of \$29,870.95 is the ostensible price of the vehicle (see the Car Invoice No. 113257), to which sum finance charges of \$4,205.59 are added, then the \$5,000.00 cash down payment is deducted. The amount financed is then reflected to be \$29,876.49 as opposed to the \$21,470.85 mentioned earlier. Jim Ray Nissan is including Mr. Jacobs' cash payment in the amount financed rather than deducting the same.

705. The Jacobses tried to resolve this with Jim Ray Nissan, but Jim Ray Nissan has refused to fix it.

706. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Kevin & Delta Jacobs's Count LII(A): Breach of Contract vs. Jim Ray Nissan

707. All paragraphs are incorporated herein.

708. Jim Ray Nissan and the Jacobses had an agreement to purchase a car at a particular price, but Jim Ray Nissan charged them a different, higher amount. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

709. This breach of contract proximately caused the Jacobses damages.

710. For their remedy on this Count LII(A), the Jacobses ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LIII: Separate Plaintiffs DeAnna Brewer & Betty Kerschner

711. In November 2004, DeAnna Brewer began looking for a car to buy. The vehicle she had then had high interest rate payments and she wanted to trade it in. Ms. Brewer's grandmother, Ms. Kerschner, was going to co-sign for the loan since she had good credit and could therefore reduce Ms. Brewer's interest rate.

712. Ms. Brewer visited Jim Ray Nissan. The salesman told her that he needed to "pre-qualify" Ms. Brewer and her grandmother, and so he ran a credit report on each of them, even though Ms. Kerschner wasn't even there.

713. After running their credit, the salesman told Ms. Brewer that he could get her into any vehicle that she chose. Ms. Brewer looked around a bit, but then decided to look elsewhere. She left the lot.

714. Other car lots visited by Ms. Brewer would not give her the financing that had been promised by Jim Ray Nissan. Ms. Brewer returned to Jim Ray Nissan. The salesman again did a credit check on Ms. Brewer.

715. The salesman showed Ms. Brewer a 2003 Chevy Tahoe. Ms. Brewer was told that it was a "one owner vehicle" and was led to believe that the Tahoe was not a prior rental vehicle. In trying to sell Ms. Brewer the 2003 Tahoe, the salesman was very pushy, kept her car keys, and kept her ID. At times during the negotiations, Ms. Brewer was left in a room that was

bugged by Jim Ray Nissan and her private conversations with her sister and fiancé were surreptitiously monitored.

716. When Jim Ray Nissan applied for the grandmother's financing, it falsified her income statements to the financing company.

717. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Mses. Brewer & Kerschner's Count LIII(A): Breach of Contract vs. Jim Ray Nissan

718. All paragraphs are incorporated herein.

719. Jim Ray Nissan and Mses. Brewer & Kerschner had an agreement to purchase a "one-owner car" that was not a prior rental car. But Jim Ray Nissan sold them a prior rental car instead. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

720. This breach of contract proximately caused Mses. Brewer & Kerschner damages.

721. For their remedy on this Count LIII(A), Mses. Brewer & Kerschner ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LIV: Separate Plaintiffs Manuel Hinojosa & Joe Fisher

722. On or about June 7, 2005, Manuel Hinojosa went to Jim Ray Nissan to buy a car.

723. Mr. Hinojosa expressed interest in a 2003 Nissan Altima. However, in order to finance it, he needed a co-signer. His father-in-law, Joe Fisher, agreed to be a co-signer.

724. Mr. Hinojosa and a Jim Ray Nissan agent agreed to a deal. Joe Fisher would co-sign for the car, but Mr. Hinojosa would buy the car. There would be \$0 down, Jim Ray Nissan

would pay the sales tax, and the payment on the Altima would be deferred by 45 days. The parties then signed a contract to this effect.

725. As is usual for Jim Ray Nissan, Mr. Hinojosa did not get copies of the paperwork after signing.

726. Two weeks later, Joe Fisher received a letter from NMAC congratulating him on the purchase of a new Altima. This was confusing to Mr. Fisher, because he was supposed to be a co-signer, not a buyer. When Mr. Fisher tried to get a copy of the signed papers, Jim Ray Nissan refused to allow him to have copies.

727. After substantial delay, Messrs. Hinojosa and Fisher finally received what was purported to be the paperwork arising from this transaction. However, the paperwork that was sent to them was not the same as the paperwork that they had signed. Jim Ray Nissan agents had doctored and/or forged the paperwork, eliminating the 45 day deferral, charging the sales to the purchaser, and inflating the sales price by an additional \$800.

728. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Messrs. Hinojosa & Fischer's Count LIV(A): Breach of Contract vs. Jim Ray Nissan

729. All paragraphs are incorporated herein.

730. Jim Ray Nissan and Messrs. Hinojosa & Fischer had an agreement to have Mr. Hinojosa buy the Altima at a particular price with a 45 day deferral. Jim Ray Nissan reneged on this deal, made Joe Fisher the purchaser, and changed the contract pricing. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

731. This breach of contract proximately caused Messrs. Hinojosa & Fischer damages.

732.e For their remedy on this Count LIV(A), Messrs. Hinojosa & Fischer ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LV: Separate Plaintiffs Terri & Michael Arredondo

733. On or about April 26, 2004, Terri and Michael Arredondo went to shop for a car. They wanted to, as part of any purchase, trade in their 2002 Dodge Durango.

734. The Arredondos were upside down in their Durango, and this caused them some concern about their ability to buy another car while trading in the Durango. But the Jim Ray Nissan salesman told them that Chase Bank — which had the loan and lien on the Durango — had a “Buy Back Program.” Under the program, explained the Jim Ray Nissan salesman, Chase would take the Durango back and any difference would be added to the price of the new car.

735. The Arredondos questioned the salesman about this, and the salesman said this was perfectly normal and that he had talked to Chase. The Arredondos took the Jim Ray Nissan salesman at his word.

736. With this understanding, the Arredondos then bought a new 2005 Altima and signed the paperwork generated by Jim Ray Nissan. They cleaned out their Durango and left it at the lot along with the Durango's keys. The Arredondos then drove the Altima home.

737. Two weeks later, Mr. Arredondo was at home. He was at home during the normal workday, as he was on the second shift at that time. He was sitting in his yard with his mother. It was about noon.

738. Mr. Arredondo saw his old Durango drive up the road. A new Nissan truck was following behind it. The Durango pulled into Mr. Arredondo's driveway; the new truck stayed on the main road. Mr. Arredondo recognized the two drivers as salesmen from Jim Ray Nissan.

739. Mr. Arredondo approached them and asked them what was going on. The salesman said that Chase would have to pick up the Durango from Mr. Arredondo's house, since that was the address that Chase had on file. Mr. Arredondo became suspicious and questioned the salesman further. The salesman insisted that this was normal procedure. He then got into the new Nissan truck being driven by the other salesman and left.

740. Mr. Arredondo went into the house and called Chase. He learned that no one had contacted Chase, and as far as Chase was concerned Mr. Arredondo owned the Durango and owed the full balance of the loan on the Durango.

741. Mr. Arredondo tried to call Jim Ray Nissan about the situation, but nobody would take his call. Mrs. Arredondo went to the dealership itself, but Jim Ray Nissan agents called the police on her. The next day, Mr. Arredondo went to Jim Ray Nissan. He spoke to the purported finance manager. This person told Mr. Arredondo that the Durango was not being traded-in and that Mr. Arredondo was stuck with the Altima. The Arredondos tried to get help from Nissan North America, but to no avail.

742. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiffs Arredondos' Count LV(A): Breach of Contract vs. Jim Ray Nissan

743. All paragraphs are incorporated herein.

744. Jim Ray Nissan and the Arredondos had an agreement that their Durango would be traded-in or sold and the difference would be financed into their purchase of the new Altima. Jim Ray Nissan reneged on this deal. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

745. This breach of contract proximately caused the Arredondos damages.

746. For their remedy on this Count LV(A), the Arredondos ask for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LVI: Separate Plaintiff Patrick McGuire

747. On or about October 16, 2005, Patrick McGuire negotiated the price of a new 2005 Nissan Armada with salesman Chris Copp of Jim Ray Nissan. The two had been at a standstill because they were over \$1,000 apart on price.

748. The salesman then made an offer of Mr. McGuire paying \$1,000 cash and Jim Ray Nissan would pay Mr. McGuire back \$2,500 for sales tax (plus an additional \$30.00 for gas) after financing was approved. Mr. McGuire agreed, signed the paperwork presented to him by Jim Ray Nissan agents, and told the Jim Ray Nissan agent in charge of financing that he would bring a check tomorrow. When the parties were signing the "We Owe" form, the salesman said, "we owe you 'excellent service,'" and he wrote those words on the form.

749. That night, Mr. McGuire tried to recall where in the paperwork the \$2,500 was shown. Since he could not recall that being in the paperwork, he decided to withhold his \$1,000 check until he was assured of getting his sales tax paid.

750. Jim Ray Nissan called Mr. McGuire numerous times asking for the \$1000. Mr. McGuire met with Chris Copp at the Jim Ray Nissan dealership on Thursday, October 20, 2005 with the \$1,000 check. Mr. Copp assured Mr. McGuire that Jim Ray Nissan's check for sales tax was in the mail. Based on the assurance, Mr. McGuire gave his \$1,000 check to Jim Ray Nissan agents.

751. However, the check that Mr. McGuire received one week later was only for \$30.00 worth of gas.

752. Mr. McGuire called the Jim Ray Nissan dealership to straighten out the problem. But he was told that this salesman had recently quit. The dealership management beyond Customer Service refused to speak with Mr. McGuire about the issue. Brittany, the purported Customer Service Manager, said to him, "It is for reasons like this that he does not work here any more." Brittany made this precise statement twice during her conversation with Mr. McGuire.

753. The conversation that Mr. McGuire had had while purchasing the car was recorded, but Brittany refused to let Mr. McGuire listen to that taped conversation of the original car deal. She also refused to allow Mr. McGuire to take into consideration the original papers upon which the sales price was negotiated. Instead, Brittany pointed to the "We Owe" form as justification for not honoring the promise of paying \$2,500 towards sales tax. Apparently, at Jim Ray Nissan, even a person who is entitled to "excellent service" is still subject to being defrauded.

754. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiff McGuire's Count LVI(A): Breach of Contract vs. Jim Ray Nissan

755. All paragraphs are incorporated herein.

756. Jim Ray Nissan and Mr. McGuire had an agreement that he would receive a \$2,500 payment toward his sales tax. Jim Ray Nissan reneged on the deal. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

757. This breach of contract proximately caused Mr. McGuire damages.

758. For his remedy on this Count LVI(A), Mr. McGuire asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LVII: Separate Plaintiff Sara Norton

759. On April 6, 2005, Sara Norton and her husband, Chesley Norton, went to Jim Ray Nissan to look at cars. Sara Norton had just turned 22 years old, and this was her first major purchase. It was almost closing time, and they were subjected to fast talk and high pressure sales tactics.

760. They found a 2004 Nissan with almost 30,000 miles on it and a window sticker price of \$10,500. They agreed to the purchase for that price and after Jim Ray Nissan agent Billy Cooper told them that sales tax and tags would cost \$500 to \$600, which they had saved up and would be able to pay.

761. Jim Ray Nissan personnel generated the paperwork for the sale and showed Sara Norton where to sign. She was led to believe that the paperwork matched the parties' agreement.

762. While signing the documents everywhere she was told to sign, Sara Norton signed for Credit Life Insurance at a cost of \$744.20 and GAP insurance at a cost of \$600. Sara Norton

was told by Jim Ray Nissan personnel that these were a required part of the purchase. If she had known she had a choice, she would not have agreed to the purchase of these items, which were included in her NMAC loan.

763. When the Nortons went to pay the sales tax, they discovered that Jim Ray Nissan had surreptitiously made the paperwork reflect that the cost of the car was \$12,048. Also, the sales tax being charged was higher than what Billy Cooper had represented it would be. The sales tax would be more than \$1,000. The Nortons did not have \$1,000, so they went back to Jim Ray Nissan to try to get Jim Ray Nissan to live up to its end of the bargain.

764. Billy Cooper told the Nortons to wait six months and come back and he would take care of everything and arrange for licensing. He assured them that he had done that before and everything would be okay. The Nortons believed him.

765. For the next six months, the Nortons parked the car and rarely drove it. When they went back to Jim Ray Nissan at the end of six months, Billy Cooper told them there was nothing he could do about getting the car licensed. He refused to assist the Nortons.

_____766. In all these acts and omissions, Jim Ray Nissan utilized the U.S. Mail and/or wire communications affecting interstate commerce.

Separate Plaintiff Norton's Count LVII(A): Breach of Contract vs. Jim Ray Nissan

767. All paragraphs are incorporated herein.

768. Jim Ray Nissan and Ms. Norton had an agreement that she would buy the car for \$10,500 and that the sales tax on the car would only be \$500 to \$600. Jim Ray Nissan reneged

on the deal. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

769. This breach of contract proximately caused Ms. Norton damages.

770. For her remedy on this Count LVII(A), Ms. Norton asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LVIII: Separate Plaintiff Cheryl Gwaltney (formerly Williams)

771. On July 22, 2003 Cheryl Gwaltney ("Williams" at the time of the purchase of the vehicle) was at the Jim Ray Nissan Service Department with her XTerra when she was approached by a salesman about trading for a new vehicle. She eventually decided on a 2003 XTerra when it was agreed that the purchase price would be \$21,000. Ms. Gwaltney owed approximately \$12,500 on her 2000 XTerra, and Jim Ray Nissan personnel agreed to take her 2000 XTerra as a trade-in and pay off her two loans on the vehicle – one to First Bank for \$1,455 and the other to First National Bank of Mena for approximately \$10,500.

772. Upon reviewing the paperwork with the salesman she advised him that the sales price of the vehicle was listed as \$31,892.21 and that this was incorrect. He assured her that was the way it needed to be listed and then directed her to the bottom line of the financing document and showed her that the amount to be financed was \$22,499.08,, which was in line with what the agreed purchase price with some of the added fees due to financing. Mrs. Gwaltney told him that could not be right because she would have to pay tax on everything – even on her trade-in, on which she had already paid tax. The salesman assured her that it was done correctly, and Ms. Gwaltney was persuaded.

773. Some time after the sale, Mrs. Gwaltney discovered that her bank was still withholding payments from her account for the 2000 XTerra. She advised the bank that the vehicle had been traded-in and that Jim Ray Nissan was to pay off the loan. The bank advised her that the loan had not been paid off. Mrs. Gwaltney immediately contacted Jim Ray Nissan and informed them of the problem. Jim Ray Nissan said that the paperwork did not back up what Mrs. Gwaltney was saying. This was despite the fact that Jim Ray Nissan had taken the 2000 XTerra and sold it. Mrs. Gwaltney was further told that many people trade and finance all the time and make payments on two vehicles, one of which they no longer own. Mrs. Gwaltney advised that she considered this to be fraud. Mrs. Gwaltney made numerous attempts to talk to other salespeople, and even sent a letter to Jim Ray personally by certified mail, but to no avail. Mrs. Gwaltney also called the national office for Nissan Corporate but received no relief.

Separate Plaintiff Gwaltney's Count LVIII(A): Breach of Contract vs. Jim Ray Nissan

774. All paragraphs are incorporated herein.

775. Jim Ray Nissan and Mrs. Gwaltney had an agreement that the sale price of the 2003 XTerra would be \$21,000 and that the loans on her trade-in vehicle would be paid off. Jim Ray Nissan reneged on the deal. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

776. This breach of contract proximately caused Mrs. Gwaltney damages.

777. For her remedy on this Count LVIII(A), Mrs. Gwaltney asks for attorney's fees, costs, compensatory damages and other damages and awards as allowed by law.

LIX: Separate Plaintiffs E.B. “Chad” Lowe, III and Sharon Lowe

778. On June 30, 2004, E.B. “Chad” Lowe, III, went to Jim Ray Nissan with his wife, Sharon Lowe, and two children to look at vehicles. After several hours at the dealership, and several discussions with more than one salesman, they decided on a 2004 Nissan XTerra. The sticker on the vehicle listed the price as \$26,500.00 and this was to be the sale price for the vehicle. Mr. Lowe owned a 1994 GMC Suburban. The Suburban was driven by another salesman, and afterwards, sales manager Ben Hewes offered Mr. Lowe \$5,000.00 as a trade-in for the Suburban. Mr. Lowe agreed with that amount and then began to sign paperwork.

779. Mr. Hewes gave Mr. Lowe two sets of paperwork to fill out – one had the trade-in value of \$5,000.00 and the other had the trade-in value left blank. Mr. Lowe asked Mr. Hewes about this and Mr. Hewes explained that this was in case Mr. Lowe did not provide the title to the Suburban to Jim Ray Nissan the next day.

780. The next day Mr. Lowe took the title to the Suburban to Jim Ray Nissan and asked to have copies of the paperwork he had completed. He was told that the paperwork was not ready yet.

781. The next day after that Mr. Lowe and his wife went back to the dealership again to obtain the paperwork he had completed. He and his wife were provided only with a Bill of Sale, and they were both shocked to see the prices listed on it. The sale price for the vehicle they were purchasing was listed as \$31,500.00 and the trade-in value of the Suburban was listed as \$2,500.00. They asked the man that provided them with the Bill of Sale to speak with Ben Hewes and they were told he was in a meeting. They requested to talk with a manager and were

told that he was in the same meeting as Ben Hewes. The man that provided them with the Bill of Sale then said that he would go talk to someone that would call Jim Ray directly. After about ten minutes, the man returned and told them that Jim Ray said there was nothing he could, or would, do for them.

782. They then told the man that they would just return the XTerra to Jim Ray Nissan. The man informed them that Arkansas does not have a “3 Day Law” that would provide for a return of a vehicle within 3 business days.

Separate Plaintiff Lowe’s Count LIX(A): Breach of Contract vs. Jim Ray Nissan

783. All paragraphs are incorporated herein.

784. Jim Ray Nissan and Mr. Lowe had an agreement that the sticker price of \$26,500 would be the purchase price for the vehicle; there was also an agreement that the trade-in value of the Suburban would be \$5,000. Jim Ray Nissan reneged on the deal. These broken promises on the part of Jim Ray Nissan were a material breach of contract.

785. This breach of contract proximately caused Mr. Lowe damages.

786. For his remedy on this Count LIX(A), Mr. Lowe asks for attorney’s fees, costs, compensatory damages and other damages and awards as allowed by law.

Damages

787. Plaintiffs have suffered the following damages, including but not limited to:

a. For those plaintiffs that received a vehicle or other items different than what was promised, their damages include the difference in the value of the promised item and the value of the item actually conveyed;

b. For those plaintiffs that were stuck with two car payments, their damages include not only the difference between what they were promised and what they received, but also the interest paid on the old car, the insurance paid on the old car, plus the reduced value of the old car due to it aging from the time of the defendants' wrongful act and the entry of judgment in this case;

c. For those plaintiffs who had a vehicle repossessed due to the defendants' actions, their damages include the deficiency judgment entered or deficiency claim made due to the repossession;

d. For those plaintiffs whose credit rating has been adversely affected due to the defendants' actions, their damages are the loss of credit, and they seek an amount of money that will adequately compensate them for having bad credit;

e. For those plaintiffs who were victimized by a "straw man" scam, *i.e.*, Jim Ray Nissan told them they would only be co-signers, but were instead made out to be buyers, their remedy includes rescission of the contract, plus any damages arising from the altered and wrongful credit history created by the "straw man" scam;

f. For those plaintiffs who were charged more money than what was agreed upon, their damages include that additional money charged;

g. At least one plaintiff, Donnie Kendrick, suffered documented medical problems proximately caused by the defendants, and he is entitled to his medical bills as well as damages arising from his physical injuries and emotional distress. Some other plaintiffs, while not suffering from conditions so serious that they resulted in documented medical problems,

became so distressed at what had happened to them that they lay awake at night, angry, worried, and concerned. They, too, are entitled to damages for their physical and emotional suffering;

h. For those plaintiffs whose conversations were spied upon by the defendants, their damages include compensatory damages to be set by a jury plus statutory damages under the Federal Wiretap Act in the amount of \$10,000 per occurrence;

i. For those plaintiffs who have claims under the Magnus-Moss Warranty Act, their allowed damages are set forth at 15 U.S.C. § 2301 *et seq.*;

j. All plaintiffs have a claim under the RICO Act and are entitled to recover threefold the damages sustained;

k. All plaintiffs have a claim under the Arkansas Deceptive Trade Practices Act, and the defendants are liable for statutory damages under A.C.A. § 4-88-113(f);

l. All plaintiffs are entitled to punitive damages due to the defendants' reckless disregard and/or willful and malicious actions;

m. All plaintiffs are entitled to attorney's fees, costs, and reasonable litigation expenses under A.C.A. § 4-88-113(f), A.C.A. § 16-22-308, 15 U.S.C. § 2301 *et seq.*,

18 U.S.C.A. § 1961 *et seq.*, and 18 U.S.C.A. § 2520 *et seq.*; and

n. All plaintiffs are entitled to compensatory, statutory, and other damages as allowed by law.

**ALL PLAINTIFFS' (except #40) Count I(B), II(B), etc.:
Fraud & Fraud in the Inducement vs. Jim Ray Nissan**

788. All paragraphs are incorporated herein.

789. For each and every plaintiff, Jim Ray Nissan made representations to that plaintiff; it knew or should have known the representations to be false; it intended for that plaintiff to rely on the representations; that plaintiff reasonably did rely on the representations; and as a direct and proximate result that plaintiff suffered damages.

790. The fraud and fraud in the inducement that was committed against the plaintiffs can be broken down into these categories:

- A. Misrepresentations about the old car
 - (i) Plaintiff is told that a repossession will have minimal effect on plaintiff's credit.
 - (ii) Plaintiff is told that plaintiff's old car will be sold on e-Bay, Autotrader, or some other similar automobile market.
- B. Misrepresentations on the paperwork
 - (i) The paperwork does not reflect what the plaintiff and defendants agreed to, often with higher numbers or additional numbers being added, *e.g.*, sales tax added when it was not supposed to be, or the trade-in amount was added rather than subtracted on the invoice. This occurs due to active fraud on the part of the defendants, *i.e.*, obscured documents at the time of signing, blank documents being signed by the plaintiff which the defendant promises to fill out later, or outright forgeries by the defendants.

- (ii) the paperwork is filled out, usually partially, but the defendants promise to “hold” the paperwork for some period of time pending a final approval by the plaintiff. Rather than wait for that approval, the defendants immediately process the paperwork and then insist that an irrevocable contract has occurred.
- (iii) Plaintiff is promised that a person will only be a co-signer, but instead that person is made to be the actual owner of the car, despite the fact that such person never agreed to be an owner.

C. Misrepresentations about the new car.

- (i) Plaintiff is told that certain features or extras or attributes exist on the car being bought, when in fact they do not.
- (ii) Plaintiff is promised that certain items will be delivered, payments made, or services performed in conjunction with the sale, but once defendants get plaintiff’s money or signature on loan documents, the promised items, money, or services are not provided.
- (iii) Plaintiff is promised that initial payments on the new car will be delayed for some period of time, but in fact this is not true and they are due sooner.

791. For their remedy on this count, each plaintiff asks this Court to hold Jim Ray Nissan liable for special, compensatory, and punitive damages. This amount will exceed the amount required for federal diversity jurisdiction.

CERTAIN PLAINTIFFS' Count I(C), II(C), etc:
Violation of the Magnus-Moss Warranty Act, 15 U.S.C. § 2301 et seq., vs. Jim Ray Nissan

792. All paragraphs are incorporated herein.

793. Upon information and belief, most plaintiffs failed to receive the federal disclosures required under the Magnus-Moss Warranty Act and its implementing regulations. Plaintiffs reserve the right to amend this count as it applies to about 90% of the plaintiffs herein, and will do so once discovery has appropriately progressed.

794. Jim Ray Nissan's failure to comply with 15 U.S.C. § 2301 *et seq.* is an independent cause of action pursuant to 15 U.S.C. § 2310. That failure proximately caused plaintiffs damages. They are entitled to attorney's fees, costs, and other damages allowed by law.

ALL PLAINTIFFS' Count I(D), II(D), etc:
Racketeer Influenced and Corrupt Organizations Act (RICO),
18 U.S.C.A. § 1961 et seq. against all Defendants

795. All paragraphs are incorporated herein.

796. Under 18 U.S.C.A. § 1962(a):

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt... to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

797. Under 18 U.S.C.A. § 1962(b):

It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

798. Under 18 U.S.C.A. § 1962(c):

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

799. In this case,

a. The “person[s]” under § 1962 are the defendants.

b. The “enterprise” is an association-in-fact of the various individuals and entities involved in the buying, selling, and financing of new and used automobiles at Jim Ray Nissan. Nissan North America manufactures vehicles and then transfers them to its dealerships like Jim Ray Nissan for sale. Jim Ray Nissan also obtains used cars from auto auctions and other customers. Jim Ray Nissan sells these cars using its Sales Manager, Billy Cooper, and his staff (*e.g.*, Messrs. Peters, Domorese, Davis, and Cauthron). These cars are sold to various people. The sale of these cars is accomplished by financing with institutional lenders such as NMAC and Compass Bank. These relationships constitute an ongoing, formal or informal organization; its associates function as a continuing unit, and this enterprise of selling used and new cars is

separate and apart from the pattern of racketeering activity described in this complaint. This enterprise affects interstate commerce.

c. The “pattern of racketeering activity” is predicated upon the crimes of Mail Fraud, 18 U.S.C.A. § 1341, and Wire Fraud, 18 U.S.C.A. § 1343. As discussed in the facts above, the Defendants regularly and continuously used the U.S. Mail and wire communications as part of their scheme or artifice to defraud and obtain money through false representations. This pattern of activity has numerous victims, is not composed of isolated incidents, includes multiple criminal acts, and has similar purposes, results, participants, victims, and methods.

800. Defendants have conducted and are associated with the enterprise. They have used income, directly or indirectly, from their pattern of racketeering in the operation of the enterprise and/or to have control of the enterprise. They are in violation of 18 U.S.C.A. §§ 1962(a), 1962(b), 1962(c). These violations injured the plaintiffs in their property.

801. For their remedy under these counts, plaintiffs ask to recover threefold the damages sustained, plus the cost of the suit and reasonable attorney’s fees. Plaintiffs ask for other remedies as allowed by law. This amount will exceed the amount required for federal diversity jurisdiction.

ALL PLAINTIFFS’ (except #40) Count I(E), II(E), ... etc.:
Arkansas Deceptive Trade Practices Act, A.C.A. § 4-88-101 et seq vs. all Defendants

802. All paragraphs are incorporated herein.

803. Defendants’ actions described above, and in particular the facts giving rise to the fraud and RICO claims, show a continuing practice and pattern that violate A.C.A. § 4-88-107 and A.C.A. § 4-88-108. As a direct and proximate result, all plaintiffs suffered damages.

804. Defendants are liable for statutory damages under A.C.A. § 4-88-113(f), namely compensatory damages and reasonable attorney's fees, plus other awards and damages as allowed by law. Defendants are jointly and severally liable under A.C.A. § 4-88-113(d).

CERTAIN PLAINTIFFS' Count I(F), II(F), etc. :
Tort of Invasion of Privacy, Violation of 18 U.S.C.A. § 2520 et seq. Against all Defendants

805. All paragraphs are incorporated herein.

806. Upon information and belief, all plaintiffs who shopped for a car at Jim Ray Nissan with someone else had their private conversations surreptitiously listened to. Plaintiffs reserve the right to amend this count as it applies to only about 70% of the plaintiffs herein, and will do so once discovery has appropriately progressed.

807. These actions constitute the tort of invasion of privacy, as well as statutory violations of the Federal Wiretap law. They are entitled to attorney's fees, costs, and other damages allowed by law.

CERTAIN PLAINTIFFS' Count I(G), II(G), etc.:
Tortious Interference with Contract Against Jim Ray Nissan

808. All paragraphs are incorporated herein.

809. Upon information and belief, certain plaintiffs were advised by defendants to allow their currently owned vehicles to be voluntarily repossessed instead of trading them in on new vehicles. Plaintiffs were advised by Defendants that this act would have minimal, if any, detrimental impact in regards to plaintiffs' agreement with their financing institution or to plaintiffs' credit rating. Defendants therefore knew of the contractual relationship between each plaintiff and the financial institution handling the loan on each plaintiff's vehicle. This act on the

part of the defendants amounts to an intentional interference inducing plaintiffs to breach their valid and binding contractual relationship with their individual financial institutions, resulting in various damages sustained by plaintiffs as well as the individual financial institutions involved.

810. These actions constitute the tort of tortious interference with a contract. Plaintiffs are entitled to compensatory damages, punitive damages, attorney's fees, costs, and other damages allowed by law.

JURY TRIAL DEMANDED

WHEREFORE, the Plaintiffs pray that this Court find in their favor and order the relief sought herein. We certify that we have served a copy of this pleading on opposing counsel, Doug Carson of Daily & Woods.

Respectfully submitted,

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