

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CUMBERLAND

JED FAULKNER	)	
and	)	
MICHAEL ALAN FAULKNER,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. _____
	)	
HALEY CHEVROLET, OLDSMOBILE,	)	
BUICK, INC.,	)	
	)	
SERVE:	)	
Barbara S. Picard	)	
Registered Agent	)	
8310 Midlothian Turnpike	)	
Richmond, VA 23235	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**

COME NOW, JED FAULKNER and MICHAEL FAULKNER ("the Faulkners"), by counsel, and move for judgment against HALEY CHEVROLET, OLDSMOBILE, BUICK, INC. ("Haley"), on the grounds and in the amount as hereinafter set forth:

**PARTIES**

1. The Faulkners reside in Farmville, Virginia.
2. Haley is a Virginia corporation engaged, inter alia, in the business of selling used vehicles to the public on a retail basis and has its principle place of business in Farmville, Virginia.

## **FACTUAL BACKGROUND**

### **Haley Knowingly Buys the Vehicle with Wreck Damage**

3. Prior to March 3, 2003, a 1999 Ford F-150 Ranger, VIN: 1FTZR15X7XTA33630 (“the vehicle”), was involved in at least one collision, requiring extensive repairs to its left front and leaving unrepaired damage.

4. After this accident the vehicle was purchased by Haley.

5. When deciding whether to purchase the vehicle, Haley inspected it and thereby knew or should have known that portions of the vehicle had been damaged and repaired.

6. After its purchase of the vehicle, and after becoming aware that portions of the vehicle had been damaged and repainted, Haley decided to put the vehicle on its car lot for retail sale.

### **Haley Sells the Vehicle to Jed Faulkner and Michael Alan Faulkner and Misrepresents and Deliberately Conceals the Vehicle's Repair History**

7. On or about March 3, 2003, the Faulkners began negotiations with a salesman for Haley, Michael Aubin, for the purchase of a 1999 Ford F-150 Ranger.

8. During the negotiations for the vehicle, the Faulkners noticed some damage to the vehicle and asked about it. The salesman told that a new windshield was installed because the old one was damaged on the lot.

9. In reliance on the warranties, representations, and promises of Haley and Michael Aubin, on March 3, 2003, the Faulkners purchased the vehicle from Haley for their personal use, for a price of Eighteen Thousand Four Hundred Two Dollars and Thirty-two Cents (\$18,402.32) See

**Exhibit A.**

10. On March 4, 2003, Haley told the Faulkners that the deal they had agreed on was not acceptable to the finance company, so Haley needed more money down, resulting in a new Buyer's Order with a price of Eighteen Thousand One Hundred Dollars and Seven Cents (\$18,100.07).

**Exhibit B.**

*The Faulkners Discover the Vehicle had been Salvaged*

11. In June, 2005, the Faulkners were investigating changing automobile insurance carriers and discovered the salvage brand on the vehicle's title.

12. Subsequently, the Faulkners took the vehicle to CarCoupe in Farmville, Virginia, to trade in, describing the problems with the vehicle, and CarCoupe ran a vehicle check which showed the vehicle had previously been wrecked. See **Exhibit C**.

13. Damages and repairs to the vehicle were known by Haley, or in the exercise of the reasonable diligence should have been known by Haley, prior to the selling of the vehicle, but were never disclosed to the Faulkners prior to their purchase of the vehicle.

14. At the time the Faulkners took delivery of and accepted the vehicle, they were not aware of the salvage record or of the extent of the damage and repairs made to the vehicle prior to their purchase of it.

15. The Faulkners would not have purchased the vehicle if they had known the truth regarding the salvage brand or the facts regarding the prior damage and repairs or the remaining problems with the vehicle resulting from the prior damaging event.

16. At this time, with the exception of the repairs the Faulkners have made and their repainting of the vehicle, the vehicle is substantially in the same condition as it was when delivered to them.

17. The fraudulent acts of the Defendant have caused damage to the Plaintiffs in that they were induced to purchase the vehicle at a price in excess of its fair market value. Also, the vehicle is not and cannot be that which it was represented to be, namely a motor vehicle undamaged, with a clean title, and not in need of extensive repairs.

18. The Defendant's misrepresentations, silence, and concealment of the damage and repairs were intentional and material, were intended to mislead, and to induce the Plaintiffs or people like them to purchase the vehicle, or the Defendant should have reasonably known its misrepresentations, silence, and concealment of the prior damage and repairs were material, would mislead, and would be likely to induce such action by the Plaintiffs or people like them, and as such were unconscionable, constituted actual malice or a reckless and conscious disregard of Plaintiffs' rights, and therefore constituted actual fraud, or were done negligently and therefore constituted constructive fraud.

19. The actions and statements of the salesman were within the scope of his actual or apparent authority as an agent, officer, or employee of Haley.

20. Defendant benefitted from Plaintiffs' reliance on its misrepresentations by causing Plaintiffs to enter into the transaction and by gaining the additional profits resulting from Plaintiffs' reliance on Defendant's acts and omissions.

21. As a direct and proximate result of Defendant's acts and omissions, Plaintiffs have suffered damages, past, present, and future, including but not limited to, the loss of the benefit of the bargain, paying an excessive price for the vehicle, excessive finance charges, inconvenience, embarrassment and aggravation, together with costs and attorney fees incurred in obtaining relief from Defendant's wrongful acts and omissions.

**COUNT I**  
**ACTUAL AND CONSTRUCTIVE FRAUD**

22. The Plaintiffs incorporate the allegations of paragraphs 1 through 21 as if alleged herein.

23. Haley fraudulently represented the vehicle to the Plaintiffs as having a clean title.

24. Haley sold the vehicle to Plaintiffs without disclosing that the vehicle is a rebuilt vehicle, in violation of Section 46.2-1602 of the Code of Virginia.

25. The salesman deceptively “explained away” any problems the Plaintiffs noticed, intentionally misrepresenting the condition of the vehicle.

26. Haley’s misrepresentations, silence, and concealment of the status of the vehicle being rebuilt were intentional and material, were intended to mislead, and to induce the Plaintiffs or people like them to purchase the vehicle, or Defendant Haley should have reasonably known its misrepresentations, silence and concealment were material, would mislead, and would be likely to induce such action by the Plaintiffs or people like them, as such were unconscionable, constituted actual malice or a reckless and conscious disregard of the Plaintiffs’ rights, and therefore was actual fraud, or were done negligently and therefore was constructive fraud.

**COUNT II**  
**BREACH OF THE VIRGINIA CONSUMER PROTECTION ACT**

27. Plaintiffs incorporate the allegations of paragraphs 1 through 26 as if alleged herein.

28. The sale of the vehicle by Haley, and to the Faulkners was a "consumer transaction" as defined in Section 59.1-198 of the Code of Virginia; the vehicle constitutes "goods" as defined

in Section 59.1-198 of the Code of Virginia; Haley is a "supplier" as defined in Section 59.1-198 of the Code of Virginia; and the Faulkners are "persons" as defined in Section 59.1-198 of the Code of Virginia.

29. In the course of the transactions involving the vehicle, Haley has engaged in the following unfair and/or deceptive practices in violation of Section 59.1-200A. of the Code of Virginia:

- a. Haley failed to disclose to the Faulkners the material fact that the vehicle had been salvaged and rebuilt during negotiations with the Plaintiffs for the purchase of the vehicle, in violation of Sections 59.1-200 A.6 and 7.
- b. Haley misrepresented that repairs, alterations, modifications, or services have been performed or parts installed, in violation of Section 59.1-200 A.10.
- c. Haley violated the prohibition under Va. Code § 59.1-200 A.14. against using any deception, fraud, false pretense, false promise, or misrepresentation by intentionally not making the odometer disclosure on the title to the car as required by law.

30. On information and belief Haley intended that the Faulkners rely upon the above-described misrepresentations and omissions.

31. The above-described actions were committed by Haley willfully, wantonly and with reckless disregard of the rights of the Faulkners, and as such violate Sections 59.1-200A. 5., 6., 7., 14., and entitle Plaintiffs to seek recovery of three times the actual damages, plus attorney fees and court costs, pursuant to Section 59.1-204 of the Code of Virginia.

### COUNT III

#### BREACH OF EXPRESS AND IMPLIED WARRANTIES UNDER THE MAGNUSON-MOSS WARRANTY ACT

32. Plaintiffs incorporate the allegations of paragraphs 1 through 31 as if alleged herein.

33. Plaintiffs are "consumers" as defined in 15 U.S.C. §2301 (3); Haley fits the definition of "supplier" and "warrantor" as defined in 15 U.S.C. §2301 (4) and (5); and the vehicle is a "consumer product" as defined in 15 U.S.C. §2301 (1).

34. The vehicle was manufactured after July 4, 1975, and an express Limited Warranty and an implied warranty of merchantability were given to the Plaintiffs as a part of the purchase, warranties which meet the definition of "written warranty" and "implied warranty" contained in 15 U.S.C. §2301 (6) and (7).

35. The Limited Warranty has failed of its essential purpose and the Defendant has violated the Act due to its inability and/or refusal to repair or replace the nonconformities within a reasonable time, and due to its refusal to provide the Plaintiffs a refund. 15 U.S.C. §2304 (a)(1) and (4).

36. The Defendant has also breached the implied warranty of merchantability since the vehicle, in view of the salvage history and the nonconformities and the Defendant's inability to correct them, was not fit for the ordinary purpose for which the vehicle was used. 15 U.S.C. §§2308, 2310 (d).

37. As a proximate result of Defendant's violations of "the Act" and breach of warranties, the Plaintiffs have been damaged for which the Defendants are responsible. 15 U.S.C. §§2304(a) and 2310(d).

**COUNT IV**  
**BREACH OF CONTRACT**

38. Plaintiffs incorporate the allegations of paragraphs 1 through 37 as if alleged herein.

39. By selling the vehicle with the representation that it was undamaged and not rebuilt, Haley breached its contract with the Plaintiffs to sell them the vehicle they believed they were buying. Thus there was no “meeting of the minds,” and no contract was ever formed for the vehicle delivered to Plaintiffs. Alternately, there was a contract formed, and Haley breached it by delivering a vehicle that did not have a clean title and that had undisclosed damage, and so did not have essential qualities reasonably expected by someone buying a vehicle.

40. As result of the Breach, Plaintiffs have suffered substantial actual damages in the value of the vehicle, its loss of use, and other benefits of the ownership of the vehicle.

**Request for Punitive Damages for Fraud**

41. Defendant Haley’s actions show willful and malicious conduct in conscious disregard to the Plaintiffs’ rights sufficient to justify an award of punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully pray that this Court:

1. Award actual damages under the Virginia Consumer Protection Act and fraud claims against Haley;
2. Award three times the actual damages or \$1,000.00, whichever is greater, for each willful violation of the Virginia Consumer Protection Act pursuant to Va. Code § 59.1-204 against Haley;
3. Award Plaintiffs punitive damages against Haley in the amount of ONE HUNDRED THOUSAND DOLLARS and ZERO cents (\$100,000.00).
4. Award Plaintiffs’ costs, pre-judgment interest, and reasonable attorney's fees in accordance with the Virginia Consumer Protection Act; and

5. Award such other relief as the Court deems appropriate against Defendant.

**TRIAL BY JURY IS DEMANDED**

**JED FAULKNER  
and  
MICHAEL FAULKNER,**

By: \_\_\_\_\_  
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