

Used Car Auto Sales and Violations of the Maine Unfair Trade Practice Act

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The Coming Auto Loan Defaults

In the towns, on the edges of towns, in fields, in vacant lots, the used-car yards, the wreckers' yards, garages with blazoned signs—Used Cars, Good Used Cars. Cheap transportation, three trailers. '27 Ford, clean. Checked cars, guaranteed cars. Free radio. Car with 100 gallons of gas free. Come in and look. Used cars. No overhead.

-John Steinbeck, *The Grapes of Wrath* (1939)

1. Since the 1970s “real income” in the United States—income adjusted for inflation—has been nearly flat. But the costs of major purchases (houses, cars, education) have increased ahead of inflation. Low income shoppers for a used car, desperate for transportation, are always at a serious disadvantage when negotiating price.
2. An expected result of the Covid 19 Recession will be an increase in credit contract defaults, especially for crucial purchases, such as a car needed to drive to your job. If the used car quickly breaks down, the low income buyer must decide whether to pay for the necessary repair or pay the monthly finance charge.

Maine's Two Basic Protections for Used Car Buyers

How do you buy a car? What does it cost? Watch the children, now. I wonder how much for this one? We'll ask. It don't cost money to ask. We can ask, can't we? Can't pay a nickel over seventy-five, or there won't be enough to get to California.

-John Steinbeck, *The Grapes of Wrath* (1939)

1. *The Maine Unfair Trade Practices Act* (5 MRSA §§207, 213) (UTPA) prohibits dealer **deception** and dealer **unfairness**. A typical example of dealer deception is failure to state a **material fact**. As to unfairness, Maine's Law Court has adopted the Federal Trade Commission's (FTC) policy statement on unfairness:

The injury must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not have avoided. *See Suminski v. Maine Appliance Warehouse, Inc.*, 602 A.2d 1173 (Me. 1992).

Section 213 of the UTPA allows the injured consumer to claim a violation of the UTPA and seek either restitution or damages. And attorney fees! *See Beaulieu v. Dorsey*, 562 A. 2d 678 (Me. 1989) (the court awarded attorney fees of more than \$18,000 in a dispute over a \$610 down payment on defective dining room table and chairs). *See VanVoorhes v. Dodge*, 679 A.2d 1077(1996) (only attorney fees incurred pursuing UTPA violations can be awarded). In order to be awarded UTPA attorney fees you must make a written demand for relief at least 30 days before filing an action for damages. *See* 5 M.R.S. §213 (1), Settlement Offer. *See also* Maine Attorney General's Consumer Law Guide (MAGCLG) Chapter 3 at www.maine.gov/ag/consumer. §3.10 is a Sample UTPA Request for Damages from Seller.

2. *The Used Car Information Act* (10 M.R.S. §§1471-1477) sets forth specific requirements for licensed dealers selling used cars. Much of the trickery allowed when Depression era dealers were selling used cars to desperate consumers are not allowed. Pursuant to 10 M.R.S. §1477 (1) you can argue that *any* violation of this statute is also a *per se* violation of the Maine UTPA, which makes possible the UTPA remedies of restitution, damages and attorney fees.

Basic Documents Needed to Evaluate Whether Consumer Was Treated Illegally

"You don't want no LaSalle. Bearing shot. Uses too much oil. Got a Lincoln '24. There's a car. Run forever. Make her into a truck."

-John Steinbeck, *The Grapes of Wrath* (1939)

1. *The Dealer's Buyer's Order*: this is the basic dealer contract the consumer signs. It will reveal the cash price charged the consumer; the amount of any trade-in; whether the consumer was sold a service contract (extended warranty) or gap insurance policy. It is a UTPA violation to require a consumer to purchase a service contract.

2. *State Inspection Sticker*: must be current within 60 days of sale. the Maine State Police Motor Vehicle Inspection Unit (1-800-452-4664) will examine a used car that was sold within the last thirty days and determine whether it could have past State Inspection standards when sold.

3. *Used Vehicle Buyer's Guide Window Sticker*: this sticker is required by the Used Car Information Act and if it was not posted or not properly filled out it is a *per se* UTPA violation.

4. *Retail Installment Finance Contract*: typically, the dealer offers the consumer financing and then immediately assigns the contract to a finance company.

The standard Buyer's Order used by many Maine dealers for new and used cars has some questionable provisions that certainly can be argued about. Especially given that consumers cannot waive their rights under the Maine Unfair Trade Practices Act. See 5 MRS §214: "Any waiver by a consumer of the provisions of this chapter is contrary to public policy and shall be unenforceable and void."

Here are several questionable Buyer's Order clauses:

1. "Verbal promises by the salesperson or purchaser are not valid. Any promises or understandings not herein specified in writing are expressly waived."
2. "[T]o the extent permitted by law, all implied warranties are disclaimed by the dealer herein, and the vehicle is sold 'as is'. To the extent permitted by law the dealer herein disclaims any responsibility for consequential and incidental damages."
3. "All parties agree that the arbitrator's or small claim's court's decision is not subject to appeal except on the narrow grounds for court review of an arbitration award in accordance with Maine and federal law."

The Requirements of the Maine Used Car Information Act (10 M.R.S. §§1471-1477)

"Get 'em under obligation. Make 'em take up your time. Don't let 'em forget they're taking up your time. People are nice, mostly. They hate to put you out."

-John Steinbeck, *The Grapes of Wrath* (1939)

1. Was the State Inspection sticker current within 60 days? *See Thurber v. Bill Martin Chevrolet, Inc.*, 487 A.2d 631 (Me. 1985) (when a car was sold for transportation in violation of the Used Car Information Act, the consumer received back his purchase price, a civil penalty and his attorney fees, even though the contract specifically stated that the car was sold "as is/no state inspection/no warranty"); *see* MAGCLG Section 9.4.
2. Did the dealer post on the car the Used Vehicle Buyer's Guide window sticker? Was it properly filled out? For example, if the dealer had made significant repairs to the car, they must be disclosed on the window sticker. *See* MAGCLG Section 9.13.

3. Dealers must provide the buyer a copy of the windows sticker and keep its own copy for two years after the sale.

4. Did the dealer write on the window sticker the amount of any document preparation fee? *See* 9A M.R.S. §953-A, Document Fees.

Document #2: Buyer's Guide window sticker

USED CAR INFORMATION ACT WINDOW STICKERS (Front Side)

USED VEHICLE BUYER'S GUIDE
IMPORTANT:
Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

Chevrolet	Camaro	2005	C11W33JK23433W9
Vehicle Make	Model	Year	Vin Number
GHI 8902345SS890			

Dealer Stock Number (Optional)

PRIOR USE: PERSONAL: OTHER: RENTAL

HOW ACQUIRED: TRADE IN: OTHER: AUCTION

MECHANICAL DEFECTS IF ANY KNOWN: NEW CLUTCH INSTALLED 1/12/2008

PRIOR SUBSTANTIAL DAMAGE TO BODY OR ENGINE IF ANY KNOWN: NONE KNOWN

Important: these are the only problems known to the dealer. Ask if you may get an independent inspection before purchase.

WARRANTY OF INSPECTABILITY
STATE LAW REQUIRES THAT THIS VEHICLE MEETS STATE INSPECTION STANDARDS AND HAS A VALID INSPECTION STICKER ISSUED WITHIN 60 DAYS OF THE SALE OF THIS VEHICLE.

NO EXPRESS WARRANTY EXCEPT THAT VEHICLE MEETS STATE INSPECTION STANDARDS
You will pay all costs for any repairs not related to meeting state inspections standards. Regardless of any oral statements about the vehicle, the dealer accepts no responsibility for repairs except those necessary to pass state inspection.

DEALER EXPRESS WARRANTY
 FULL **LIMITED WARRANTY:** The dealer will pay 100% of the labor and 100% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under Maine law, "implied warranties" may give you even more rights and cannot be limited by the dealer while this express warranty is still in effect. For each repair the buyer will pay a deductible of \$_____

SYSTEMS COVERED:	DURATION:
<u>MANUAL TRANSMISSION</u>	<u>1 MONTH (30 DAYS) OR</u>
	<u>1,000 MILES.</u>
	<u>WHICHEVER OCCURS FIRST</u>

SERVICE CONTRACT: A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale Maine "implied warranties" cannot be limited by the dealer and may give you additional rights.

IMPLIED WARRANTY
 YES NO **LIMITED TO DURATION OF EXPRESS WARRANTY**

Maine's implied warranty law may give you additional rights. If the vehicle is still within its useful life and has not been abused, you may have the right to have the dealer repair defects in materials or workmanship that were not apparent when you bought the vehicle. Or you may be able to return the car if the dealer promised you it was fit for a particular use and it was not.

IMPORTANT INFORMATION

* PRIOR OWNER'S NAME AND ADDRESS IS AVAILABLE FROM THE DEALER UPON REQUEST.
** SEE THE BACK OF THIS FORM FOR ADDITIONAL INFORMATION, INCLUDING A LIST OF SOME MAJOR DEFECTS THAT MAY OCCUR IN USED MOTOR VEHICLES.

Dealers must disclose this information even if they have fully repaired the damage.

"Substantial collision damage" must be disclosed if it cost \$2,000 or more to repair; non-collision damages or defects must be disclosed if they were so significant they would cause the buyer to not purchase the vehicle or pay less.

Your best protection in buying a used car: have an independent evaluation!

Cars sold for transportation must be able to pass state inspection. And they must have new inspection stickers not more than 60 days old.

Remember: state inspection standards do not cover engine problems. Consider bargaining with the dealer for an express warranty that provides protection if the engine breaks down.

If the dealer provides you with a limited Express Warranty, then the dealer must also provide you with an Implied Warranty that lasts as long as the Express Warranty.

Defenses to a Retail Installment Finance Contract Collection Action

“I don’t give a damn if you don’t make payments. We ain’t got your paper. We turn that over to the finance company. They’ll get after you, not us. We don’t hold no paper.”

-John Steinbeck, *The Grapes of Wrath* (1939)

Pursuant to the Federal Trade Commission (“FTC”) Holder Rule, 16 C.F.R pt. 433, and 9-A M.R.S. §3-403, Assignee subject to defenses, consumers may raise seller related claims and defenses against the holder of the consumer’s credit obligation. The FTC Holder Rule reads as follows:

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Document #4: example of retail installment contract

the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
USED	2018	CHEVROLET COLORADO	1GCGTCENXJ1123750	Personal, family, or household unless otherwise indicated below <input type="checkbox"/> business <input type="checkbox"/> agricultural <input type="checkbox"/> N/A

TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate. 10.09 %	The dollar amount the credit will cost you. \$ 11909.05	The amount of credit provided to you or on your behalf. \$ 33266.45	The amount you will have paid after you have made all payments as scheduled. \$ 45175.50	The total cost of your purchase on credit, including your down payment of \$ 0.00 is \$ 45175.50

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
75	602.34	Monthly beginning 03/08/2020
N/A	N/A	N/A

Or As Follows: N/A

Late Charge. If a payment is not received in full within 15 days after it is due, you will pay a late charge of 5% of the part of the payment that is late. The charge will not exceed \$10 if you bought the vehicle primarily for personal, family, or household use.
Prepayment. If you pay early, you will not have to pay a penalty.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

ITEMIZATION OF AMOUNT FINANCED

- Cash Price (including \$ 2500.00 vehicle service contract and \$ 1732.45 sales tax) \$ 32732.45 (1)
- Total Downpayment =

Trade-In	N/A	
(Year)	(Make)	(Model)
Gross Trade-In Allowance	\$	N/A
Less Pay Off Made By Seller	\$	N/A
Equals Net Trade In	\$	N/A
+ Cash	\$	N/A
+ Other	\$	N/A
(If total downpayment is negative, enter "0" and see 4l below)	\$	N/A (2)
- Unpaid Balance of Cash Price (1 minus 2) \$ 32732.45 (3)
- Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):
 - A Cost of Optional Credit Insurance Paid to Insurance

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit unless the box indicating Vendor's Single Interest Insurance is required is checked below. If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

Credit Life: Buyer Co-Buyer Both
Term: N/A

Credit Disability: Buyer Co-Buyer Both
Term: N/A

Premium:
 Credit Life \$ N/A
 Credit Disability \$ N/A
 Insurance Company Name N/A
 N/A
 Home Office Address N/A
 N/A

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose this insurance, the cost is shown in Item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments.

Other Optional Insurance

N/A N/A
 Type of Insurance Term
 Premium \$ N/A
 Insurance Company Name N/A
 N/A

Here is a sample UTPA Used Car Complaint against both the finance company and the used car dealer:

Consumer Purchaser,	*	
Plaintiff,	*	
	*	
v.	*	Complaint
	*	(Maine Unfair Trade Practices Act,
Finance Company	*	5 MRS §§207, 213)
and Used Car Dealer,	*	
Defendants		

Introduction

1. This is an action under the Maine Unfair Trade Practices Act, 5 M.R.S. §§205-A – 214, seeking permanent injunctive relief, restitution, civil penalties, costs and attorney fees; the Maine Used Car Information Act, 10 M.R.S. §§1471-1478; the Maine Secretary of State Used Car Information Act Rules (1987); the Maine Consumer Credit Code, the Maine Motor Vehicle Dealers’ statutory obligations; the Maine Uniform Commercial Code, 11 M.R.S. §2-302, Unconscionable Contracts.

Jurisdiction and Venue

- 2. Jurisdiction is properly before this Court pursuant to 4 M.R.S. §105, 10 M.R.S. §1477, and 5 M.R.S. §213.
- 3. Venue is appropriate by virtue of 4 M.R.S. §155.

Statutory Background

Maine Unfair Trade Practices Act

4. The Maine Unfair Trade Practices Act (UTPA) at 5 M.R.S. § 207, renders it unlawful to engage in any unfair or deceptive act or practices in the conduct of any trade or commerce. The UTPA authorizes a private action pursuant to 5 M.R.S § 213 if the plaintiff has purchased “goods, services or property, real or personal, primarily for personal family or household purposes and thereby suffers any loss of money or property, real or personal as a result” of unfair or deceptive

trade practices. The UTPA allows injured consumers both equitable remedies (revocation, restitution, injunction) and damages as well as litigation costs, including court costs, and reasonable attorney fees.

Maine Used Car Information Act

5. The Maine Used Car Information Act, 10 M.R.S §1475 and the promulgated Rules for the Used Car Information Act, 29-250 C. M. R. ch. 104, §1 (C), prohibit a dealer from offering for sale a used motor vehicle unless the dealer has affixed to the vehicle a properly completed *Used Vehicle Buyer's Guide* (“*Buyer's Guide*”) that provides potential buyers certain information about the vehicle’s history and condition.

6. Pursuant to 10 M.R.S. §1477, any violation of the Used Car Information Act §1475 (e.g., required window sticker Buyer’s Guide) constitutes a *per se* violation of the Maine Unfair Trade Practices Act, 5 M.R.S. §207.

Maine Consumer Credit Code

7. Pursuant to 9-A M.R.S §5-115, a creditor or a person acting for the creditor cannot induce a customer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions of the extension of credit.

8. Pursuant to 9-A M.R.S. §5-117, a seller may not use misrepresentations, false impressions of false promises when making a financed sale.

Maine Motor Vehicle Dealers Obligation to be Fair

9. Pursuant to 10 M.R.S. §1174 (1), it is an unfair and deceptive practice for a motor vehicle dealer to engage in “any action which is arbitrary, in bad faith or unconscionable and which causes damage to the public.”

Maine Uniform Commercial Code

10. Pursuant to the Maine Uniform Commercial Code (UCC), 11 M.R.S §2-302, commercial sellers cannot use an unconscionable contract that injures consumers.

Motor Vehicle Dealers Licensing and Document Preparation Fees

11. Pursuant to 29A M.R.S. §953-A dealers must post on the vehicle being sold any document preparation fee that will be added to the vehicle’s sale price.

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FTC Holder Rule

12. Pursuant to the Federal Trade Commission (“FTC”) Holder Rule, 16 C.F.R pt. 433, and 9-A M.R.S. §3-403, Assignee subject to defenses, consumers may raise seller related claims and defenses against the holder of the consumer’s credit obligation. The FTC Holder Rule reads as follows:

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Parties

13. Plaintiff is a resident of _____, ME.

14. Defendant Used Car Dealer [Dealer] is a Maine corporation, a Maine licensed used car dealership in _____, and a supervised lender pursuant to the Maine Consumer Credit Code

15. Defendant Finance Company [Finance Company] a Maine Foreign Business Corporation in good standing.

Facts

16. On January 23, 2020 Plaintiff responded to Dealer’s written announcement of a special sale that he received in his mail.

17. Dealer’s announcement of a special sale promised consumers:

Win Big!

Don’t Pay a Penny Until April 2020!

Don’t Miss the Biggest Savings of the Season at this Don’t Pay a Penny Until April 2020 Event!

The Biggest Deals of the Year at the All New _____!

We Will Buy Your Trade, Even if You Don’t Buy Ours at This Event!

Trade Assistance—Receive: \$3,500.00

HUGE SAVINGS on Select 2019 Chevy Trucks!

18. To staff this special sale Dealer employed a crew of salespeople who were not members of its regular sales personnel.
19. Plaintiff responded to Dealer's mailed solicitation and visited the dealership.
20. Plaintiff is 67 years old. His monthly income totals just under \$800 a month, which he receives from Social Security and Social Security Disability Insurance.
21. Plaintiff currently owns a 2007 GMC Sierra which at the time of Dealer's special sale was running well and had mileage of 160,000.
22. Plaintiff at the time of Dealer's special sale owed \$8,600 for his 2007 GMC Sierra and was making payments of \$381.57 each month.
23. When Plaintiff visited the dealership on January 23, 2020 in order to collect the "big" prize promised by Dealer's mailed solicitation, he was given only a \$2.00 bill.
24. Dealer's salesperson then attempted to sell Plaintiff a 2018 Chevrolet Colorado truck with mileage of 30, 283. Its cash price was \$28,500.00.
25. The price \$28, 500 for the Chevrolet Colorado does not meet Dealer's advertised promises of "biggest savings of the season" or "huge savings".
26. Dealer's salesperson managed to persuade Plaintiff to buy the 2018 Chevrolet Colorado at the price of \$28,500. Plaintiff did not receive the advertised "TRADE ASSISTANCE" of \$3,500.
27. To facilitate the sale Dealer's salesperson told Plaintiff he could arrange a part time job for him, working for Dealer and driving motor vehicles from Maine to other states that Dealer needed to have a motor vehicle delivered to.
28. Dealer salesperson told Plaintiff that income from the Dealer job would make it possible for him to afford the Chevrolet Colorado.
29. In addition to the Colorado Chevrolet cash price of \$28,500, Plaintiff was charged \$2,500 for a Service Contract.
30. Plaintiff was not aware of what this Service Contract was for.
31. Dealer also charged Plaintiff a \$499 "doc fee" without first advising him of the fee.
32. Dealer sold the Chevrolet Colorado without affixing a Used Car Information Act window sticker to the car.

33. The monthly finance payment for the Chevrolet Colorado is \$602.34. At the same time Plaintiff's monthly total income is slightly less than \$800 and comes from Social Security and Social Security Disability payments.
34. Dealer unsuccessfully tried numerous times to assign Plaintiff's finance application to different finance companies.
35. Finally, Finance Company agreed to purchase Plaintiff's finance contract without recourse.
36. Finance Company agreed to the assignment of Plaintiff's financing contract for the Chevrolet Colorado even though it knew or should have known that Plaintiff could not afford to make the required payments.
37. Four days after purchasing the Chevrolet Colorado Plaintiff realized he could not afford to make the required payments. He took the Chevrolet Colorado back to the Dealer's sales lot and left it with the keys.
38. Plaintiff told Dealer he could not afford to purchase the Chevrolet Colorado.
39. The next day Dealer drove the Chevrolet Colorado back to Plaintiff's residence and left it there. It did not inform Plaintiff that it was doing so.
40. Once the Chevrolet Colorado was returned to him, Plaintiff parked the Chevrolet Colorado in a safe place as is not using it.

Count One
(Deceptive Advertising)

41. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 through 40.
42. Dealer when selling Plaintiff the Chevrolet Colorado used deceptive advertising representations.
43. Plaintiff visited Dealer because of the dealer's special sale being offered January 21, 2020 through January 27, 2020.
44. Dealer's deceptive and unfair sale practices as described in this Count were in violation of the Maine Unfair Trade Practices Act, 5 M.R.S. §207 and the Maine Consumer Credit Code 9-A M.R.S. §3-201 (1).

45. Pursuant to the FTC Holder Rule, Finance Company is also subject to all claims asserted in this Count.

Count Two
(Unfair Trade Practice Act Violation)

46. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 through 45.
47. Dealer deceptively promised Plaintiff employment so that he could afford to purchase the Chevrolet Colorado.
48. Dealer's deceptive and unfair sale practices as described in this Count were in violation of the Maine Unfair Trade Practices Act, 5 M.R.S. §207.
49. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

Count Three
(Unfair Trade Practice Act Violation)

50. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 thorough 49.
51. Dealer deceptively and unfairly sold Plaintiff to an expensive Service Contract (Extended Warranty) costing \$2, 500.
52. Dealer's unfair and deceptive sale practices as described in this Count were in violation of the Maine Unfair Trade Practices Act, 5 M.R.S. §207.
53. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

Count Four
(Unfair Trade Practice Act Violation)

54. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 thorough 53.

55. Dealer unfairly and deceptively required Plaintiff to pay a \$499 "Document Fee"
56. Dealer's unfair and deceptive sale practices as described in this Count were in violation of 9A M.R.S. §953-A, Document Fees, and the Maine Unfair Trade Practices Act, 5 M.R.S. §207.
57. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

**Count Five
(Used Car Information Act Violation)**

58. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 thorough 57.
59. Dealer failed to affix to the Chevrolet Colorado the Used Car Information Act Window Sticker, as required by 10 M.R.S. §1475.
60. Dealer attempted to disclaim all implied warranties even though it sold plaintiff an expensive Service Contract (Extended Warranty).
61. Dealer's failure to affix the Used Car Information Act window sticker and its attempt to disclaim implied warranties were in violation of the Maine Used Car Information Act, 10 M.R.S. §§1471-1478 and the related Rules promulgated by the Maine Secretary of State.
62. Dealer's actions as described in this Count were in violation of the Maine Unfair Trade Practices Act, 5 M.R.S. §207.
63. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

**Count Six
(Consumer Credit Code Violations)**

64. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 thorough 63.
65. Dealer's practices as described in this Count are also violations of the Maine Consumer Credit Code, 9-A M.R.S. §5-108, Unconscionability, and 9-A M.R.S. §5-115, Misrepresentations and 9-A M.R.S. §117, which prohibits misrepresentations, false impressions and false promises.

66. Dealer's practices as described in this Count are also violations of the Maine Unfair Trade Practices Act, 5 M.R.S. §207.
67. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

**Count Seven
(Fraud)**

68. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 through 67.
69. Dealer's misrepresentations and deceptive sale tactics were intentional.
70. Plaintiff relied on Dealer's deceptions.
71. This deceptive conduct benefited not only Dealer but also Finance Company.
72. Dealer engaged in fraud against Plaintiff.
73. Dealer's conduct was deliberate, knowing, intentional, and so egregious as to constitute malice or at least to imply malice.
74. As such, Plaintiff is entitled to actual, compensatory, and punitive damages and to any other relief this Court finds just and appropriate.
75. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

**Count Eight
(UCC Unconscionable Contract)**

76. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 through 75.
77. The contract that Dealer required Plaintiff to enter into was unconscionable, in violation of the Maine UCC, 11 MRS §2-302.
78. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

**Count Nine
(Dealer Bad Faith)**

79. Plaintiff repeats, re-alleges and incorporates herein paragraphs 1 through 84.
80. Dealer's treatment of Plaintiff was in violation of 10 M.R.S. §1174 (1), which prohibits a motor vehicle dealer from engaging in "any action which is arbitrary, in bad faith or unconscionable and which causes damage to the public."
81. Due to Dealer's actions Plaintiff was denied the benefit of his bargain.
82. Pursuant to the FTC Holder Rule, Defendant Finance Company is also subject to all claims asserted in this Count.

**Count Ten
(Violation of the Maine Consumer Credit Code)**

83. Plaintiff repeats, re-alleges, and incorporates herein paragraphs 1 through 82.
84. Finance Company's agreement to accept assignment of Plaintiff's financing agreement with Dealer was illegal, fraudulent and unconscionable conduct in violation of 9-A M.R.S. §§5-115, and 5-117.

**Count Eleven
(Improvident Granting of Credit)**

85. Plaintiff repeats, re-alleges, and incorporates herein paragraphs 1 through 84.
86. Plaintiff's monthly income was entirely from Social Security and SSDI and totaled less than \$800 per month.
87. Dealer and Finance Company financed Plaintiff's purchase of the Chevrolet Colorado and required him to pay \$602.34 each month, leaving Plaintiff with less than \$200 income for all his other monthly expenses.
88. Dealer's financing contract was an unconscionable and improvident extension of credit.
89. Finance Company's financing contract was an unconscionable and improvident extension of credit.

90. Defendants finance contract with Plaintiff was in violation of the Maine Consumer Credit Code, 9-A M.R.S. §5-108, Unconscionability.

Wherefore, Plaintiff respectfully asks that this Court:

1. Declare that as a result of Defendants' actions Plaintiff has been the victim of violations of the Maine Unfair Trade Practices Act, 5 M.R.S. §207.
2. Declare that as a result of Defendants' actions Plaintiff has been the victim of violations of the Maine Consumer Credit Code, 9-A M.R.S. §§ 2-201, 3-201, 5-108, and 5-115.
3. Declare that as a result of Defendants' actions Plaintiff has been the victim of intentional fraud.
4. Declare that as a result of Defendants' actions Plaintiff has been the victim of unfair and deceptive used car dealer practices, in violation of 10 M.R.S. §1174 (1).
5. Declare that as a result of Defendants' actions the contract Plaintiff entered into was unconscionable and in violation of 11 M.R.S. §2-302.
6. Order Defendants return to Plaintiff complete restitution of any money paid to Defendants.
7. Declare void Plaintiff's Retail Installment Contract and any obligations thereunder.
8. Order Defendants to modify accordingly any credit reporting either has made concerning Plaintiff's payment history.

9. Order Defendants to pay reasonable attorney fees, as authorized by the Maine Unfair Trade Practices Act, 5 M. R. S. §207 and the Maine Consumer Credit Code.
10. Declare void the Service Contract Plaintiff was charged for by Dealer.
11. Order Defendants to pay Plaintiff actual damages and any civil fines authorized for violations of the Maine Used Car Information Act and the Maine Consumer Credit Code.
12. Order such other relief as the Court may deem necessary to remedy the effects of the practices set forth in this complaint, including actual, compensatory, punitive and statutory damages.

Additional Possible Consumer Remedies

“Sure we sold it. Guarantee? We guarantee it to be an automobile. We didn’t guarantee to wet nurse it. Now listen here—you bought a car, an’ now you’re squawking.”

-John Steinbeck, *The Grapes of Wrath* (1939)

1. *Immediate Rejection Pursuant to Maine Uniform Commercial Code (UCC)*: 11 M.R.S. §2-602 allows a consumer sold a seriously defective used car to immediately reject it and receive back the purchase price and incidental and consequential damages. *See e.g., Don’s Marine, Inc. v. Halderman*, 23 U.C.C. Rep. 78 (Tex. Civ. App. 1977). However, if the defect is minor the dealer may have the right to “cure” the defect. *See Zabriskie Chevrolet, Inc. v. Smith*, 240 A.2d 1205 (NJ 1968) (seller’s attempted replacement of a defective transmission in a new car with a transmission of unknown lineage was held an inadequate cure).

2. *Maine Bureau of Motor Vehicles*: used car dealers are licensed by the Maine Bureau of Motor Vehicles. Contact the BMV’s Dealer Licensing section if you have a dealer complaint. The BMV will assign an investigator to determine the facts.

3. *Add Car Dealer as a Third Party Defendant.* If the consumer's car has been repossessed and a District Court collection action has commenced, investigate whether the car dealer violated the consumer's rights. If so, pursuant to the FTC Holder Rule, raise defenses and possible counterclaims. If necessary you can consider adding the car dealer as a third party defendant. Here is a Defendant's Motion to Amend Answer and to add the car dealer as a third party defendant.

Now comes Defendant and seeks permission to amend her Answer by replacing it with the attached "Defendant's Amended Answer with Counterclaims and Third-Party Complaint.

Memorandum of Law

1. Pursuant to M. R. Civ. P. 15, permission to amend pleadings should be granted if the moving party is not acting in bad faith or for delay and if the opponent will not suffer undue prejudice. *See Holden v. Weinschenk*, 715 A.2d 915 (Me. 1998).

2. Based on Defendant's counsel's investigation of the facts underlying this debt collection action and relevant law, the court would be justified in allowing Defendant to timely amend her Answer so that she can include counterclaims and a third party defendant.

3. Defendant's motion to amend will allow her to seek from Plaintiff Finance Company and Third-Party Defendant Used Car Dealer the remedies provided by the FTC Holder Rule. Pursuant to the Federal Trade Commission's Holder Rule, 16 C.F.R. §433.2, as the alleged assignee of a debt owed by Defendant, Plaintiff Finance Company is subject to the claims and possible defenses which Defendant also seeks to assert against proposed Third Party Defendant Used Car Dealer. The FTC Holder Rule, which was included in the Defendant Lobozzo's Retail Installment Contract, reads as follows:

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

4. Granting this motion will not unduly delay this matter.

5. The dominant policy of the Maine Rules of Civil procedure is to promote substantial justice. M.R. Civ. P. 1. Moreover, it is the obligation of a court sitting in equity to satisfy itself that it will not “be lending its assistance to the carrying out of an unjust and inequitable arrangement.” *Fortin v. Wilensky*, 142 Me. 372, 379, 53 A.2d 266,269 (Me. 1947).

6. Allowing Defendant to amend her Answer will not in any way unfairly prejudice Plaintiff Finance Company and will allow the issues raised by this litigation to be properly tried. *See Clarke v. DiPietro*, 525 A.2d 623 (Me. 1987) (plaintiff not prejudiced by affirmative defense of fraud even though defendant had failed to include this defense in its answer).

For the above reasons, Defendant respectfully requests that the court allow her to amend her initial Answer with the attached “Defendant’s Amended Answer with Counterclaims.”