

Not
Used

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

DR. MICHAEL PECK and
TODD MICHAEL PECK,

Defendants

CIVIL ACTION - AT LAW

No. 06-1321-CD

Type of pleading:

COMPLAINT

Filed on behalf of:

Plaintiff

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
3 S. Brady St., Suite 300
P. O. Box 487
DuBois, PA 15801

814-371-7768

Date: August 17, 2006

FILED
0/12:05pm
AUG 17 2006
pd \$85.00 Att
1cc Att Bowers
2cc Shff.

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

No. _____

DR. MICHAEL PECK and
TODD MICHAEL PECK,

Defendants

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

No. _____

DR. MICHAEL PECK and
TODD MICHAEL PECK,

Defendants

COMPLAINT

AND NOW, comes the Plaintiff, Philip P. Tabone, Jr., by and through his Attorneys, Hanak, Guido and Taladay, and hereby brings this Complaint against the Defendants averring as follows:

1. Plaintiff, Philip P. Tabone, Jr., is an adult individual, and resident of DuBois, Clearfield County, Pennsylvania, with a business address of 723 S. Brady Street, DuBois, Clearfield County, Pennsylvania 15801.

2. Defendant, Dr. Michael Peck, is an adult individual, with who resides at 3858 Hamme Road, Glenville, York County, Pennsylvania, 17329.

3. Defendant, Todd Michael Peck, is an adult individual, who resides at 3854 Hamme Road, Glenville, York County, Pennsylvania 17329.

4. At all times pertinent hereto, Defendants have acted as partners with each other in the buying and selling of race cars and race car components.

5. On or about July 10, 2006, in Clearfield County, Pennsylvania, the parties entered an oral agreement whereby Defendants agreed to sell and Plaintiff agreed to purchase two Pro Cup Hooters Cars.

6. The specific cars subject to the agreement are:

(a) One LRP 8063 Laughlin 2003 Pro Cup Hooters Car with 2004 Update;

(b) One Predator 0060 - 2006 Pro Cup Hooters Car;

7. The 2006 Predator Car was to include a Tiger rear gear differential and axle tubes and a Turn One eight to one ratio steering box.

8. Under the terms of the subject agreement, Plaintiff was to make payment to Defendants in the amount of \$10,000.00 upon delivery of the subject cars.

COUNT I - BREACH OF EXPRESS WARRANTY

9. Plaintiff incorporates all prior paragraphs herein.

10. As a basis of the bargain, and to induce Plaintiff to purchase the subject cars, Defendants made representations to Plaintiff that the 2006 Predator Car was in excellent condition and was free from latent defect. Specifically, Defendants made representations to Plaintiff

that the 2006 Predator car was not bent or twisted in any appreciable way.

11. Relying on Defendants' representations, Plaintiff purchased the cars and made payment to the Defendants in the amount of \$10,000.00 when Defendants delivered the subject cars to Plaintiff's facility in Clearfield County, Pennsylvania. A copy of the invoice dated July 10, 2006 evidencing said payment is attached hereto and marked as Exhibit A.

12. On July 12, 2006, just two days after taking delivery of the subject cars, Plaintiff put the 2006 Predator car on the alignment rack. At that time, Plaintiff discovered that the Predator chassis was bent and twisted to the extent that the car is undriveable. Plaintiff believes and, therefore, avers that the cost to repair the bent chassis greatly exceeds the purchase price of both vehicles.

13. This latent defect is not detectable by the naked eye.

14. Despite Plaintiff's repeated requests to refund his money and offer to reimburse Defendants for their transportation costs, Defendants have continually refused to refund Plaintiff the purchase price of the vehicles.

15. Defendants' actions set forth above constitute a breach of the express warranty set forth in Paragraph 10 herein.

16. As a direct result of Defendants' breach of express warranty, Plaintiff will suffer damages in excess of \$25,000.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in an amount in excess of \$25,000.00, together with interest, costs of suit, and any further relief this Court deems just and equitable.

COUNT II - BREACH OF CONTRACT

17. Plaintiff incorporates all prior paragraphs herein.

18. Under the terms of the oral agreement between the parties to purchase the subject cars, the 2006 Predator Car was to include the following components:

- (a) A Tiger rear gear differential and axle tubes; and
- (b) A Turn One eight to one ratio steering box.

The values of these components are \$3,780.00 and \$2,200.00 respectively.

19. After taking delivery of the subject cars, the Plaintiff discovered that the aforementioned components were not included in the 2006 Predator Car.

20. The Defendants' failure to include the aforementioned components constitutes a breach of the oral agreement between the parties.

21. As a direct or proximate result of Defendants' breach of contract, Plaintiff has suffered damages in excess of \$5,980.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in the amount of \$5,980.00, together with interest, costs of suit and any further relief this Court deems just and equitable.

COUNT III - FRAUD/FRAUDULENT MISREPRESENTATION

22. Plaintiff incorporates all prior paragraphs herein.

23. At all times pertinent hereto, Defendants intended to deceive and defraud Plaintiff out of the sales price of the cars by falsely and fraudulently representing that the 2006 Predator Car was free from defect.

24. Plaintiff justifiably relied on Defendants' representations which were intended to induce, and did induce Plaintiff to purchase the subject cars.

25. At the time that Defendants delivered the subject cars to Plaintiff, the 2006 Predator Car was bent and twisted such that it was undriveable and unrepairable.

26. Defendants knew, or had reason to know that the 2006 Predator Car was bent and twisted to the extent set forth above.

27. Upon taking delivery of the subject cars, Plaintiff did not know, nor did he have reasonable cause to know, that the 2006 Predator Car was bent and twisted as set forth above.

28. As a result of Defendants' fraudulent conduct, Plaintiff sustained substantial monetary losses including, but not limited to, the loss of the \$10,000.00 purchase price and interest.

29. Defendants' actions as set forth herein, constitute outrageous conduct. Therefore, Plaintiff is entitled to punitive damages and attorney fees.

WHEREFORE, Plaintiff demands judgment be entered in his favor and against the Defendants, jointly and severally, for compensatory damages and punitive damages in an amount in excess of \$25,000.00, together with interest, costs of suit, attorney fees and any further relief this Court deems just and equitable.

Respectfully submitted,

HANAK, GUIDO AND TALADAY

By: S. Casey Bowers
S. Casey Bowers
Attorney for Plaintiff

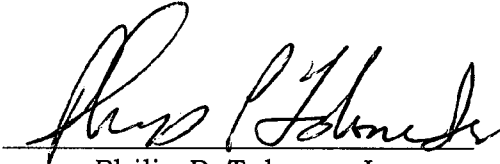
VERIFICATION

I, **PHILIP P. TABONE, JR.**, do hereby verify that I have read the foregoing Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: _____

8/1/06

A handwritten signature in cursive script, appearing to read "Philip P. Tabone, Jr.", written over a horizontal line.

Philip P. Tabone, Jr.

SOLD To-

Philip P TaBONE

SNOW KING

MOBILE HOME ROOFS & WINDOWS

723 S. BRADY STREET

DuBOIS, PA 15801

STATEMENT

DATE 7/10/06

NUMBER 717-235-7713

BUYER

(814) 371-9099

SELER
OF
CARs

Todd & Michael Peck

3854 Hamme Road

Glenville, PA 17329

TERMS:

CASH.

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

\$ 10,000

DATE	CHARGES AND CREDITS	BALANCE
	BALANCE FORWARD	
	Philip P TaBONE	
	INVOICE FOR LRP 8063 Laughlin	
	2003 Pro Cup Hooters Car with 2004 Update	
	Predator 0060 Car	
	2006 Pro Cup Hooters Car	10000.00
	LESS PAID DOWN PAYMENT	10000.00
	BALANCE DUE	00.00
	TODD PECK JR.	
	To be picked up at Radford, VA race 7/15/2006	
	12:1 Steering Box in Good Condition	
	If not picked up will be shipped UPS - payment	
	due on pick up	

Per D.D.
Full

SNOW KING
(814) 371-9099

Thank You

PAY LAST AMOUNT
IN THIS COLUMN

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an
Individual,
PLAINTIFF

vs.

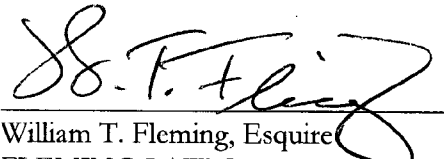
DR. MICHAEL PECK, and
TODD MICHAEL PECK,
DEFENDANTS

: CIVIL ACTION- AT LAW
:
: No. 06-1321-CD
:
:
: Counsel for Defendants
: FLEMING LAW OFFICES
: WILLIAM T. FLEMING, ESQ.
: 204 Calder Way, Suite 304
: State College, PA 16801
: 814.278.5280
: wtfleming@fleminglaw.info
: S.Ct. I.D. No. 39563

PRAECIPE FOR ENTRY OF APPEARANCE

To the Prothonotary:

Please enter my appearance on behalf of the above named Defendants.


William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
814.278.5280
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

Date: September 18, 2006

FILED
SEP 19 2006
M/11:50/W
William A. Shaw
Prothonotary/Clerk of Courts
no y/c copy to C/A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

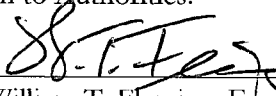
PHILIP P. TABONE, JR., an	:	CIVIL ACTION- AT LAW
Individual,	:	No. 06-1321-CD
PLAINTIFF	:	
	:	
vs.	:	Counsel of Record for Defendants:
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	<u>wtfleming@fleminglaw.info</u>
	:	S.Ct. I.D. No. 39563

CERTIFICATE OF SERVICE

I, William T. Fleming, Esquire, hereby certify that a true and correct copy of the
attached document/pleading, was sent to the following:

S. Casey Bowers, Esquire
Law Offices
3 South Brady Street, Suite 300
P.O. Box 487
DuBois, PA 15801

This certificate is given pursuant to the penalties contained in 18 Pa.C.S.A
Section 4904 pertaining to Unsworn Falsification to Authorities.



William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
814.278.5280
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

Date: September 18, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101834
NO: 06-1321-CD
SERVICE # 1 OF 2
COMPLAINT

PLAINTIFF: PHILIP P. TABONE JR.

vs.

DEFENDANT: DR. MICHAEL PECK and TODD MICHAEL PECK

SHERIFF RETURN

NOW, August 17, 2006, SHERIFF OF YORK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON DR. MICHAEL PECK.

NOW, September 06, 2006 AT 1:40 PM SERVED THE WITHIN COMPLAINT ON DR. MICHAEL PECK, DEFENDANT. THE RETURN OF YORK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
0/4:00 um
SEP 26 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101834
NO: 06-1321-CD
SERVICE # 2 OF 2
COMPLAINT

PLAINTIFF: PHILIP P. TABONE JR.

vs.

DEFENDANT: DR. MICHAEL PECK and TODD MICHAEL PECK

SHERIFF RETURN

NOW, August 17, 2006, SHERIFF OF YORK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON TODD MICHAEL PECK.

NOW, September 06, 2006 AT 1:40 PM SERVED THE WITHIN COMPLAINT ON TODD MICHAEL PECK, DEFENDANT. THE RETURN OF YORK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101834
NO: 06-1321-CD
SERVICES 2
COMPLAINT

PLAINTIFF: PHILIP P. TABONE JR.
vs.
DEFENDANT: DR. MICHAEL PECK and TODD MICHAEL PECK

SHERIFF RETURN

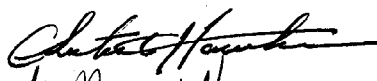
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HANAK	14975	20.00
SHERIFF HAWKINS	HANAK	14975	21.00
YORK CO.	HANAK	14970	75.50

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,


by Mautz-Harr
Chester A. Hawkins
Sheriff

OFFICE OF THE SHERIFF

45 N. GEORGE ST., YORK, PA 17401

SERVICE CALL
(717) 771-9601

SHERIFF SERVICE PROCESS RECEIPT and AFFIDAVIT OF RETURN

INSTRUCTIONS PLEASE TYPE ONLY LINE 1 THRU 12 DO NOT DETACH ANY COPIES

1. PLAINTIFF/S/ <i>Philip P. Tabone Jr.</i>		2. COURT NUMBER <i>06-1321-CD</i>
3. DEFENDANT/S/ <i>Dr. Michael Peck et</i>		4. TYPE OF WRIT OR COMPLAINT <i>CICA</i>
SERVE → AT	5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED, OR SOLD <i>Todd Michael Peck</i>	
	6. ADDRESS (STREET OR RFO WITH BOX NUMBER, APT. NO., CITY, BORO, TWP., STATE AND ZIP CODE) <i>3854 Hamme Rd Glenville Pa 17329</i>	
7. INDICATE SERVICE: <input type="checkbox"/> PERSONAL <input type="checkbox"/> PERSON IN CHARGE <input checked="" type="checkbox"/> DEPUTIZE <input type="checkbox"/> CERT. MAIL <input type="checkbox"/> 1ST CLASS MAIL <input type="checkbox"/> POSTED <input type="checkbox"/> OTHER		
NOW <i>Aug 17</i> , 2006, I, SHERIFF OF YORK COUNTY, PA, do hereby deputize the sheriff of <i>York</i> COUNTY to execute this Writ and make return thereof according to law. This deputization being made at the request and risk of the plaintiff.		
8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE: <i>OUT OF COUNTY CLEARFIELD</i>		

ADVANCE FEE PAID BY ATTY.

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction, or removal of any property before sheriff's sale thereof.

9. TYPE NAME and ADDRESS of ATTORNEY / ORIGINATOR and SIGNATURE <i>S. CASEY BOWERS, ESQ.</i>	10. TELEPHONE NUMBER <i>814-371-7768</i>	11. DATE FILED <i>8/17/2006</i>
3. SOUTH BRADY ST., STE., 300, PO BOX 487, DUBOIS, PA 15801		
12. SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: (This area must be completed if notice is to be mailed).		

CLEARFIELD CO. SHERIFF

SPACE BELOW FOR USE OF THE SHERIFF - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above. <i>MJMC GILL, YCSO</i>										14. DATE RECEIVED <i>8/21/2006</i>					15. Expiration/Hearing Date <i>9/16/2006</i>									
16. HOW SERVED: PERSONAL () RESIDENCE <input checked="" type="checkbox"/> POSTED () POE () SHERIFF'S OFFICE () OTHER () SEE REMARKS BELOW																								
17. <input type="checkbox"/> Thereby certify and return NOT FOUND because I am unable to locate the individual, company, etc. named above. (See remarks below.)																								
18. NAME AND TITLE OF INDIVIDUAL SERVED / LIST ADDRESS HERE IF NOT SHOWN ABOVE (Relationship to Defendant) <i>Robert L. Bowman, Friend</i>															19. Date of Service <i>9-6-06</i>					20. Time of Service <i>1:40 PM</i>				
21. ATTEMPTS																								
Date	Time	Miles	Int.	Date	Time	Miles	Int.	Date	Time	Miles	Int.	Date	Time	Miles	Int.	Date	Time	Miles	Int.					
<i>8/28</i>	<i>12:45</i>	<i>50</i>	<i>DDM</i>			<i>50</i>																		
22. REMARKS:																								

23. Advance Costs	24. Service Costs	25. N/F	26. Mileage	27. Postage	28. Sub Total	29. Pound	30. Notary	31. Surchg.	32. Tot. Costs	33. Costs Due or Refund	Check No.
34. Foreign County Costs		35. Advance Costs	36. Service Costs	37. Notary Cert.	38. Mileage/Postage/Not Found	39. Total Costs		40. Costs Due or Refund			
41. AFFIRMED and subscribed to before me this <i>12-17</i> day of <i>SEP</i> , 2006, at <i>YORK, PA</i> <i>LISA L. BOWMAN, NOTARY PUBLIC</i> CITY OF YORK, YORK COUNTY MY COMMISSION EXPIRES AUG. 12, 2009											
42. day of											
43. Signature of Dep. Sheriff <i>James L. Vangre</i>											
44. Signature of York County Sheriff <i>FOR WILLIAM M HOSE, SHERIFF</i>											
45. DATE <i>9-6-06</i>											
46. Signature of Foreign County Sheriff											
47. DATE <i>9/8/06</i>											
48. Signature of Foreign County Sheriff											
49. DATE											
50. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED ISSUING AUTHORITY AND TITLE										51. DATE RECEIVED	

COUNTY OF YORK

OFFICE OF THE SHERIFF

45 N. GEORGE ST., YORK, PA 17401

SERVICE CALL
(717) 771-9601

SHERIFF SERVICE PROCESS RECEIPT and AFFIDAVIT OF RETURN

INSTRUCTIONS PLEASE TYPE ONLY LINE 1 THRU 12 DO NOT DETACH ANY COPIES

1. PLAINTIFF/S/ <i>Philip P. Tadone Jr.</i>		2. COURT NUMBER <i>06-1321-CD</i> 06-1321-CD	
3. DEFENDANT/S/ <i>Dr. Michael Peck a1</i>		4. TYPE OF WRIT OR COMPLAINT <i>Complaint CICA</i>	
SERVE AT	5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED, OR SOLD <i>Dr. Michael Peck</i>		
	6. ADDRESS (STREET OR RFO WITH BOX NUMBER, APT. NO., CITY, BORO, TWP., STATE AND ZIP CODE) <i>3858 Hamme Road, Glenville PA. 17329</i>		
7. INDICATE SERVICE: <input type="checkbox"/> PERSONAL <input type="checkbox"/> PERSON IN CHARGE <input checked="" type="checkbox"/> DEPUTIZE <input type="checkbox"/> CERT. MAIL <input type="checkbox"/> 1ST CLASS MAIL <input type="checkbox"/> POSTED <input type="checkbox"/> OTHER			
NOW <i>Aug 17</i> , 2006, I, SHERIFF OF YORK COUNTY, PA, do hereby deputize the sheriff of <i>York</i> COUNTY to execute this Writ and make return thereof according to law. This deputization being made at the request and risk of the plaintiff.			
SHERIFF OF YORK COUNTY			
8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE: <div style="text-align: right;">OUT OF COUNTY CLEARFIELD</div>			

ADVANCE FEE PAID BY ATTY.

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction, or removal of any property before sheriff's sale thereof.

9. TYPE NAME and ADDRESS of ATTORNEY / ORIGINATOR and SIGNATURE <i>S. CASEY BOWERS, ESQ.</i>		10. TELEPHONE NUMBER <i>814-371-7768</i>		11. DATE FILED <i>8/17/2006</i>	
3 <i>S. BRADY ST., STE., 300, PO BOX 487, DUBOIS, PA 15801</i>					
12. SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: (This area must be completed if notice is to be mailed). <div style="text-align: center;">CLEARFIELD CO. SHERIFF</div>					

SPACE BELOW FOR USE OF THE SHERIFF - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above. <i>MJ MCGILL, YCSO</i>										14. DATE RECEIVED <i>8/21/2006</i>					15. Expiration/Hearing Date <i>9/16/2006</i>																																												
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18. NAME AND TITLE OF INDIVIDUAL SERVED / LIST ADDRESS HERE IF NOT SHOWN ABOVE (Relationship to Defendant) <i>Robert B. Bowman Robert L. Bowman TRUCK</i>															19. Date of Service <i>9-6-06</i>					20. Time of Service <i>1400h</i>																																							
21. ATTEMPTS																																																											
<table border="1" style="width: 100%; border-collapse: collapse; font-size: small;"> <thead> <tr> <th>Date</th><th>Time</th><th>Miles</th><th>Int.</th> <th>Date</th><th>Time</th><th>Miles</th><th>Int.</th> <th>Date</th><th>Time</th><th>Miles</th><th>Int.</th> <th>Date</th><th>Time</th><th>Miles</th><th>Int.</th> <th>Date</th><th>Time</th><th>Miles</th><th>Int.</th> </tr> </thead> <tbody> <tr> <td><i>9/8</i></td><td><i>1214</i></td><td><i>50</i></td><td><i>JDM</i></td> <td></td><td></td><td><i>50</i></td><td></td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> </tr> </tbody> </table>																				Date	Time	Miles	Int.	Date	Time	Miles	Int.	Date	Time	Miles	Int.	Date	Time	Miles	Int.	Date	Time	Miles	Int.	<i>9/8</i>	<i>1214</i>	<i>50</i>	<i>JDM</i>			<i>50</i>													
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22. REMARKS:																																																											

23. Advance Costs <i>\$100.00</i>		24. Service Costs <i>24.00</i>		25. N/F		26. Mileage <i>44.50</i>		27. Postage		28. Sub Total <i>68.50</i>		29. Pound		30. Notary <i>7.00</i>		31. Surchg.		32. Tot. Costs <i>75.50</i>		33. Costs Due or Refund <i>24.50</i>		Check No. <i>10460</i>	
34. Foreign County Costs		35. Advance Costs		36. Service Costs		37. Notary Cert.		38. Mileage/Postage/Not Found		39. Total Costs		40. Costs Due or Refund											
41. AFFIRMED and sworn to before me this <i>8TH</i> day of <i>SEPT.</i> 20 <i>06</i> at <i>YORK</i> PA.										SO ANSWERS													
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> NOTARIAL SEAL LISA L. BOWMAN, NOTARY PUBLIC CITY OF YORK, YORK COUNTY MY COMMISSION EXPIRES AUG. 12, 2009 </div>										44. Signature of Dep. Sheriff <i>[Signature]</i>					45. DATE <i>9-6-06</i>								
										46. Signature of York County Sheriff <i>[Signature]</i>					47. DATE <i>9/8/06</i>								
										48. Signature of Foreign County Sheriff					49. DATE								
50. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED ISSUING AUTHORITY AND TITLE															51. DATE RECEIVED								



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986
FAX (814) 765-5915
ROBERT SNYDER
CHIEF DEPUTY
MARILYN HAMM
DEPT. CLERK
CYNTHIA AUGHENBAUGH
OFFICE MANAGER
KAREN BAUGHMAN
CLERK TYPIST
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 101834

PHILIP P. TABONE JR.

VS.

DR. MICHAEL PECK and TODD MICHAEL PECK

TERM & NO. 06-1321-CD

COMPLAINT

SERVE BY: 09/16/06

MAKE REFUND PAYABLE TO HANAK, GUIDO & TALADAY, ESQ.

SERVE: DR. MICHAEL PECK

ADDRESS: 3858 HAMME ROAD, GLENVILLE, PA 17329

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF YORK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, August 17, 2006.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

RECEIVED
OFFICE OF THE SHERIFF
YORK, PA
2006 AUG 21 P 2:02



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

FAX (814) 765-5915

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

KAREN BAUGHMAN
CLERK TYPIST

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 101834

TERM & NO. 06-1321-CD

PHILIP P. TABONE JR.

COMPLAINT

vs.

DR. MICHAEL PECK and TODD MICHAEL PECK

SERVE BY: 09/16/06

MAKE REFUND PAYABLE TO HANAK, GUIDO & TALADAY, ESQ.

SERVE: TODD MICHAEL PECK

ADDRESS: 3854 HAMME ROAD, GLENVILLE, PA 17329

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF YORK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, August 17, 2006.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an
Individual,

PLAINTIFF

vs.

DR. MICHAEL PECK, and
TODD MICHAEL PECK,
DEFENDANTS

CIVIL ACTION- AT LAW
No. 06-1321-CD

PRELIMINARY OBJECTIONS

Counsel for Defendants
FLEMING LAW OFFICES
WILLIAM T. FLEMING, ESQ.
204 Calder Way, Suite 304
State College, PA 16801
814.278.5280
wtfleming@fleminglaw.info
S.Ct. I.D. No. 39563

RULE TO SHOW CAUSE

AND NOW, this 23 day of October, 2006, upon consideration of
the Defendant's Preliminary Objections, a Rule is hereby issued to show cause as to why the
relief claimed therein should not be granted. Rule returnable on the 15th day of
December, 2006, at 9:00 o'clock A.m. in Courtroom 1 of the
Clearfield County Courthouse.

By the Court:



FILED 3cc
019:45/01
OCT 24 2006
W. Fleming
GK

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/24/06

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

FILED

OCT 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an
Individual,

PLAINTIFF

vs.

DR. MICHAEL PECK, and
TODD MICHAEL PECK,
DEFENDANTS

CIVIL ACTION- AT LAW
No. 06-1321-CD

PRELIMINARY OBJECTIONS

Counsel for Defendants
FLEMING LAW OFFICES
WILLIAM T. FLEMING, ESQ.
204 Calder Way, Suite 304
State College, PA 16801
814.278.5280
wtfleming@fleminglaw.info
S.Ct. I.D. No. 39563

NOTICE TO PLEAD

To: Philip P. Tabone, Jr.

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE
ENCLOSED PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM
SERVICE HEREOF OR JUDGEMENT MAY BE ENTERED AGAINST YOU.

William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
Attorney for Defendants
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

DATE: October 19, 2006

FILED 3cc
MTI:5037 Atty W. Fleming
OCT 20 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an
Individual,

PLAINTIFF

vs.

DR. MICHAEL PECK, and
TODD MICHAEL PECK,
DEFENDANTS

: CIVIL ACTION- AT LAW
: No. 06-1321-CD
:
:
:

: PRELIMINARY OBJECTIONS
:

: Counsel for Defendants
: FLEMING LAW OFFICES
: WILLIAM T. FLEMING, ESQ.
: 204 Calder Way, Suite 304
: State College, PA 16801
: 814.278.5280
: wtfleming@fleminglaw.info
: S.Ct. I.D. No. 39563

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION- AT LAW
Individual,	:	No. 06-1321-CD
	:	
	:	
PLAINTIFF	:	PRELIMINARY OBJECTIONS
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	wtfleming@fleminglaw.info
	:	S.Ct. I.D. No. 39563

PRELIMINARY OBJECTIONS

AND NOW comes the Defendants, Michael Peck and Todd Michael Peck, by and through their attorney, William T. Fleming, Esquire, pursuant to Pa.R.C.P. 1028 (a)(2)(3) and (4), and presents the within Preliminary Objections:

I. FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT-

PA.R.C.P. 1028 (a)(2)

1. Plaintiff has filed a complaint against the above named defendants, alleging three counts in this contract action- to wit: Count 1- Breach of Express Warranty; Count 2- Breach of Contract; Count 3- Fraud/Fraudulent Misrepresentation.

2. All counts of this action are an action specifically framed in an action at law.

3. In all three counts, Plaintiff has included a prayer for relief, requesting an award of monetary damages, but also a claim for “any other relief this court deems just and equitable.”

4. Claims for equitable relief in actions at law are not in conformity with law and/or rules of court.

Wherefore, Defendants request that this Court dismiss Plaintiff's complaint for failure to comply with law and/or rule of court.

II. INSUFFICIENCY SPECIFICITY IN PLEADING – PA.R.C.P. 1028 (a)(3)

5. Plaintiff has filed a claim for Breach of Express Warranty (Count 1), and a claim for Fraud/Fraudulent Misrepresentation (Count 3).

6. Both counts assert allegations of compensatory damages in excess of \$25,000.00.

7. Plaintiff's complaint fails to state, with specificity how Plaintiff's damages accrued to the levels claimed, and as such, Defendant cannot prepare an adequate defense to such claims of damages without more particularized information as to the calculation of damages.

Wherefore, Defendants request that this Court dismiss Plaintiff's complaint for failure to provide specificity in damages claimed.

III. LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER) – PA.R.C.P.

1028 (a)(3)

8. Plaintiff's Count 3- Fraud/Fraudulent Misrepresentation- alleges in paragraph 29 that Defendants conduct constitutes "outrageous" conduct, and further alleges that Plaintiff is entitled to punitive damages, and attorney's fees.

9. Plaintiff's complaint fails to state sufficient grounds for an award of punitive damages, in that Plaintiff has not alleged facts or made allegations that Defendant's conduct rises to the level of a claim for punitive damages.

10. A claim for punitive damages is not a valid claim for damages in a contract/fraud/misrepresentation action.

11. Plaintiff's complaint also fails to allege facts sufficient to support a claim for attorneys' fees, and also, such fees are not recoverable in an action as filed by Plaintiff.

Wherefore, Defendant's demur to Plaintiff's allegations as aforesated, and requests this Honorable Court to dismiss Plaintiff's complaint.

Respectfully Submitted,



By: William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
Attorney for Defendants
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

DATE: October 19, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION- AT LAW
Individual,	:	No. 06-1321-CD
	:	
	:	
	:	
PLAINTIFF	:	PRELIMINARY OBJECTIONS
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	wtfleming@fleminglaw.info
	:	S.Ct. I.D. No. 39563

CERTIFICATE OF SERVICE

I, William T. Fleming, Esquire, attorney for Defendants in the above entitled action, hereby certify that an original copy of the within Preliminary Objections has been filed of record in the office of the Prothonotary of Clearfield County, and that a true and correct copy of the same was served on counsel for Plaintiff at the following address, by United States Mail on October 19, 2006:

S. Casey Bowers, Esquire
Hanak, Guido and Taladay
3 South Brady Street- Suite 300
P.O. Box 487
DuBois, PA 15801

William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
Attorney for Defendants
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

DR. MICHAEL PECK and
TODD MICHAEL PECK,

Defendants

CIVIL ACTION - AT LAW

No. 06-1321-CD

Type of pleading:

AMENDED COMPLAINT

Filed on behalf of:

Philip P. Tabone, Jr.,
Plaintiff

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
3 S. Brady St., Suite 300
P. O. Box 487
DuBois, PA 15801

814-371-7768

Date: November ____, 2006

FILED

01/11/19/2011
NOV 09 2006

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Amy

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

PHILIP P. TABONE, JR., an	:	
individual,	:	
Plaintiff	:	
	:	
vs.	:	No. _____
	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

PHILIP P. TABONE, JR., an	:	
individual,	:	
Plaintiff	:	
	:	
vs.	:	No. 06-1321-CD
	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Philip P. Tabone, Jr., by and through his Attorneys, Hanak, Guido and Taladay, and hereby brings this Amended Complaint against the Defendants averring as follows:

1. Plaintiff, Philip P. Tabone, Jr., is an adult individual, and resident of DuBois, Clearfield County, Pennsylvania, with a business address of 723 S. Brady Street, DuBois, Clearfield County, Pennsylvania 15801.

2. Defendant, Dr. Michael Peck, is an adult individual, with who resides at 3858 Hamme Road, Glenville, York County, Pennsylvania, 17329.

3. Defendant, Todd Michael Peck, is an adult individual, who resides at 3854 Hamme Road, Glenville, York County, Pennsylvania 17329.

4. At all times pertinent hereto, Defendants have acted as partners with each other in the buying and selling of race cars and race car components.

5. On or about July 10, 2006, in Clearfield County, Pennsylvania, the parties entered an oral agreement whereby Defendants agreed to sell and Plaintiff agreed to purchase two Pro Cup Hooters Cars.

6. The specific cars subject to the agreement are:

(a) One LRP 8063 Laughlin 2003 Pro Cup Hooters
Car with 2004 Update;

(b) One Predator 0060 - 2006 Pro Cup Hooters Car;

7. The 2006 Predator Car was to include a Tiger rear gear differential and axle tubes and a Turn One eight to one ratio steering box.

8. Under the terms of the subject agreement, Plaintiff was to make payment to Defendants in the amount of \$10,000.00 upon delivery of the subject cars.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in an amount in excess of \$10,000.00, together with interest, costs of suit, and any further relief this Court deems just.

COUNT I - BREACH OF EXPRESS WARRANTY

9. Plaintiff incorporates all prior paragraphs herein.

10. As a basis of the bargain, and to induce Plaintiff to purchase the subject cars, Defendants made representations to Plaintiff that the 2006 Predator Car was in excellent condition and was free from latent defect. Specifically, Defendants made representations to Plaintiff that the 2006 Predator car was not bent or twisted in any appreciable way.

11. Relying on Defendants' representations, Plaintiff purchased the cars and made payment to the Defendants in the amount of \$10,000.00 when Defendants delivered the subject cars to Plaintiff's facility in Clearfield County, Pennsylvania. A copy of the invoice dated July 10, 2006 evidencing said payment is attached hereto and marked as Exhibit A.

12. On July 12, 2006, just two days after taking delivery of the subject cars, Plaintiff put the 2006 Predator car on the alignment rack. At that time, Plaintiff discovered that the Predator chassis was bent and twisted to the extent that the car is undriveable. Plaintiff believes and, therefore, avers that the cost to repair the bent chassis greatly exceeds the purchase price of both vehicles.

13. This latent defect is not detectable by the naked eye.

14. Despite Plaintiff's repeated requests to refund his money and offer to reimburse Defendants for their transportation costs, Defendants have continually refused to refund Plaintiff the purchase price of the vehicles.

15. Defendants' actions set forth above constitute a breach of the express warranty set forth in Paragraph 10 herein.

16. As a direct result of Defendants' breach of express warranty, Plaintiff will suffer damages in excess of \$10,000.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in an amount in excess of \$10,000.00, together with interest, costs of suit, and any further relief this Court deems just.

COUNT II - BREACH OF CONTRACT

17. Plaintiff incorporates all prior paragraphs herein.

18. Under the terms of the oral agreement between the parties to purchase the subject cars, the 2006 Predator Car was to include the following components:

- (a) A Tiger rear gear differential and axle tubes; and
- (b) A Turn One eight to one ratio steering box.

The values of these components are \$3,780.00 and \$2,200.00 respectively.

19. After taking delivery of the subject cars, the Plaintiff discovered that the aforementioned components were not included in the 2006 Predator Car.

20. The Defendants' failure to include the aforementioned components constitutes a breach of the oral agreement between the parties.

21. As a direct or proximate result of Defendants' breach of contract, Plaintiff has suffered damages in excess of \$5,980.00.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, in the amount of \$5,980.00, together with interest, costs of suit and any further relief this Court deems just.

COUNT III - FRAUD/FRAUDULENT MISREPRESENTATION

22. Plaintiff incorporates all prior paragraphs herein.

23. At all times pertinent hereto, Defendants intended to deceive and defraud Plaintiff out of the sales price of the cars by falsely and fraudulently representing that the 2006 Predator Car was free from defect.

24. Plaintiff justifiably relied on Defendants' representations which were intended to induce, and did induce Plaintiff to purchase the subject cars.

25. At the time that Defendants delivered the subject cars to Plaintiff, the 2006 Predator Car was bent and twisted such that it was undriveable and unrepairable.

26. Defendants knew, or had reason to know that the 2006 Predator Car was bent and twisted to the extent set forth above.

27. Upon taking delivery of the subject cars, Plaintiff did not know, nor did he have reasonable cause to know, that the 2006 Predator Car was bent and twisted as set forth above.

28. As a result of Defendants' fraudulent conduct, Plaintiff sustained substantial monetary losses including, but not limited to, the loss of the \$10,000.00 purchase price and interest.

29. Defendants' actions as set forth herein, constitute outrageous conduct. Therefore, Plaintiff is entitled to punitive damages and attorney fees.

WHEREFORE, Plaintiff demands judgment be entered in his favor and against the Defendants, jointly and severally, for compensatory damages and punitive damages in an amount in excess of \$10,000.00, together with interest, costs of suit, attorney fees and any further relief this Court deems just.

Respectfully submitted,
HANAK, GUIDO AND TALADAY


A handwritten signature in black ink, appearing to read 'S. Casey Bowers', written over a horizontal line.

By S. Casey Bowers,
Attorney for Plaintiff

VERIFICATION

I, S. CASEY BOWERS, of HANAK, GUIDO and TALADAY, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiff and is authorized to make this Verification on behalf of the Plaintiff; that the facts set forth in the foregoing Amended Complaint in Civil Action at Law are true and correct, not of his own knowledge, but from information supplied to him by the Plaintiff; that the purpose of this Verification is to expedite the litigation and that a Verification of the Plaintiff will be supplied, if demanded; and that this Verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities.

Date: 11-8-06



S. Casey Bowers, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

DR. MICHAEL PECK and
TODD MICHAEL PECK,
Defendants

CIVIL ACTION - AT LAW

No. 06-1321-CD

Type of pleading:
RESPONSE TO
DEFENDANT'S PRELIMINARY
OBJECTIONS

Filed on behalf of: Plaintiff

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
3 S. Brady St., Suite 300
P. O. Box 487
DuBois, PA 15801

814-371-7768

Date: November ____, 2006

FILED ^{ice}
2011:19/21
NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

PHILIP P. TABONE, JR., an	:	
individual,	:	
Plaintiff	:	
	:	
vs.	:	No. 06-1321-CD
	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

NOTICE

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

PHILIP P. TABONE, JR., an	:	
individual,	:	
Plaintiff	:	
	:	
vs.	:	No. 06-1321-CD
	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

**RESPONSE TO DEFENDANT'S PRELIMINARY
OBJECTIONS**

AND NOW, comes the Plaintiff, Philip P. Tabone, Jr., by and through his Attorneys, Hanak, Guido and Taladay, and hereby responds to Defendant's Preliminary Objections as follows:

I. FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT
PA.R.C.P. 1028(a)(2) and II. INSUFFICIENCY SPECIFICITY IN PLEADING
- PA.R.C.P. 1028(a)(3)

1 - 7. Plaintiff has filed an Amended Complaint of even date herewith addressing the concerns set forth under these subsections of Defendant's Preliminary Objections. Therefore, said Preliminary Objections are moot.

III. LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER) - PA.R.C.P.

1028 (a)(4)


8-11. Plaintiff's complaint pleads sufficient facts to support Plaintiff's fraudulent misrepresentation claim.

Pennsylvania law is clear that punitive damages are available in claims of fraudulent misrepresentation. See McClellan, 413 Pa Super 128, 144, 604 A2d 1053, 1061 (1992). Further, the jury may consider Plaintiff's costs of litigation in determining the amount of punitive damages. See Pennsylvania Standard Jury Instruction (Civil) Section 14.02 (3rd Edition, 2005).

WHEREFORE, for reasons stated herein, Plaintiff respectfully requests that this Honorable Court dismiss Defendant's Preliminary Objections.

Respectfully submitted,

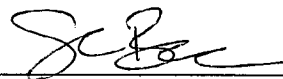
HANAK, GUIDO AND TALADAY

By: 
S. Casey Bowers
Attorney for Plaintiff

VERIFICATION

I, S. CASEY BOWERS, of HANAK, GUIDO and TALADAY, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiff and is authorized to make this Verification on behalf of the Plaintiff; that the facts set forth in the foregoing Response to Defendant's Preliminary Objections in Civil Action at Law are true and correct, not of his own knowledge, but from information supplied to him by the Plaintiff; that the purpose of this Verification is to expedite the litigation and that a Verification of the Plaintiff will be supplied, if demanded; and that this Verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities.

Date: 11-8-06



S. Casey Bowers, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

DR. MICHAEL PECK and
TODD MICHAEL PECK,
Defendants

CIVIL ACTION - AT LAW

No. 06-1321-CD

Type of pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:

Philip P. Tabone, Jr.,
Plaintiff

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
3 S. Brady St., Suite 300
P. O. Box 487
DuBois, PA 15801

814-371-7768

Date: November ____, 2006

FILED

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NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION - AT LAW
individual,	:	
Plaintiff	:	No. 06-1321-CD
	:	
vs.	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 8th day of November, 2006,
a copy of the Response to Defendant's Preliminary Objections was forwarded
via first class certified mail, return receipt requested, addressed as follows:

William T. Fleming, Esquire
Fleming Law Offices
204 Calder Way, Suite 304
State College, PA 16801



S. Casey Bowers, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

DR. MICHAEL PECK and
TODD MICHAEL PECK,

Defendants

CIVIL ACTION - AT LAW

No. 06-1321-CD

Type of pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:

Philip P. Tabone, Jr.,
Plaintiff

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
3 S. Brady St., Suite 300
P. O. Box 487
DuBois, PA 15801

814-371-7768

Date: November ____, 2006

FILED 100
07/11/09/24 Amy
NOV 09 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION - AT LAW
individual,	:	
Plaintiff	:	No. 06-1321-CD
	:	
vs.	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 8th day of November, 2006,
a copy of the Amended Complaint was forwarded via first class certified mail,
return receipt requested, addressed as follows:

William T. Fleming, Esquire
Fleming Law Offices
204 Calder Way, Suite 304
State College, PA 16801



S. Casey Bowers, Esquire
Attorney for Plaintiff

CH

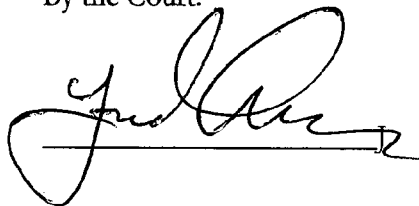
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION- AT LAW
Individual,	:	No. 06-1321-CD
PLAINTIFF	:	
	:	
	:	
	:	
	:	PRELIMINARY OBJECTIONS TO
	:	AMENDED COMPLAINT
	:	
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	wtfleming@fleminglaw.info
	:	S.Ct. I.D. No. 39563

RULE TO SHOW CAUSE

AND NOW, this 4 day of Dec, 2006, upon consideration of the Defendant's Preliminary Objections to Amended Complaint, a Rule is hereby issued to show cause as to why the relief claimed therein should not be granted. Rule returnable on the 3rd day of January, 2007, at 1:30 o'clock P.m. in Courtroom 1 of the Clearfield County Courthouse.

By the Court:



FILED 3cc
019:23/01 Atty Fleming
DEC 05 2006

William A. Shaw
Prothonotary/Clerk of Courts

CR

FILED

DEC 05 2006

William A. Shaw
Clerk of Courts

Special Instructions:

Plaintiff(s) _____ Defendant(s) _____ Attorney

Plaintiff(s) _____ Defendant(s) _____ Other

The Probationary's office has provided service to the following parties:

☒ You are responsible for serving all appropriate parties.

DATE: 07/15/06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an
Individual,
PLAINTIFF

CIVIL ACTION- AT LAW

No. 06-1321-CD

PRELIMINARY OBJECTIONS TO
AMENDED COMPLAINT

vs.

DR. MICHAEL PECK, and
TODD MICHAEL PECK,
DEFENDANTS

Counsel for Defendants
FLEMING LAW OFFICES
WILLIAM T. FLEMING, ESQ.
204 Calder Way, Suite 304
State College, PA 16801
814.278.5280
wtfleming@fleminglaw.info
S.Ct. I.D. No. 39563

FILED

NOV 29 2006

W.A. Shaw
William A. Shaw

Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION- AT LAW
Individual,	:	No. 06-1321-CD
PLAINTIFF	:	
	:	
	:	
	:	PRELIMINARY OBJECTIONS TO
	:	AMENDED COMPLAINT
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	wtfleming@fleminglaw.info
	:	S.Ct. I.D. No. 39563

NOTICE TO PLEAD

To: Philip P. Tabone, Jr.

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE
ENCLOSED PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM
SERVICE HEREOF OR JUDGEMENT MAY BE ENTERED AGAINST YOU.

William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
Attorney for Defendants
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

DATE: November 28, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION- AT LAW
Individual,	:	No. 06-1321-CD
PLAINTIFF	:	
	:	
	:	
	:	PRELIMINARY OBJECTIONS TO
	:	AMENDED COMPLAINT
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	wtfleming@fleminglaw.info
	:	S.Ct. I.D. No. 39563

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

AND NOW comes the Defendants, Michael Peck and Todd Michael Peck, by and through their attorney, William T. Fleming, Esquire, pursuant to Pa.R.C.P. 1028 (a)(3), and presents the within Preliminary Objections to Plaintiff's Amended Complaint:

I. LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER) – PA.R.C.P.

1028 (a)(3)

1. Plaintiff's Count 3- Fraud/Fraudulent Misrepresentation- alleges in paragraph 29 that Defendants conduct constitutes "outrageous" conduct, and further alleges that Plaintiff is entitled to punitive damages, and attorney's fees.

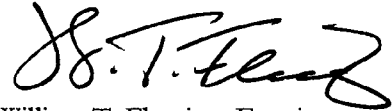
2. Plaintiff's complaint fails to state sufficient grounds for an award of punitive damages, in that Plaintiff has not alleged facts or made allegations that Defendant's conduct rises to the level of a claim for punitive damages.

3. A claim for punitive damages is not a valid claim for damages in a contract/fraud/misrepresentation action.

4. Plaintiff's complaint also fails to allege facts sufficient to support a claim for attorneys' fees, and also, such fees are not recoverable in an action as filed by Plaintiff.

Wherefore, Defendant's demur to Plaintiff's allegations as aforesated, and requests this Honorable Court to dismiss Plaintiff's complaint.

Respectfully Submitted,



By: William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
Attorney for Defendants
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

DATE: November 28, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION- AT LAW
Individual,	:	No. 06-1321-CD
PLAINTIFF	:	:
	:	
	:	
	:	PRELIMINARY OBJECTIONS TO
	:	AMENDED COMPLAINT
	:	
vs.	:	Counsel for Defendants
	:	FLEMING LAW OFFICES
DR. MICHAEL PECK, and	:	WILLIAM T. FLEMING, ESQ.
TODD MICHAEL PECK,	:	204 Calder Way, Suite 304
DEFENDANTS	:	State College, PA 16801
	:	814.278.5280
	:	wtfleming@fleminglaw.info
	:	S.Ct. I.D. No. 39563

CERTIFICATE OF SERVICE

I, William T. Fleming, Esquire, attorney for Defendants in the above entitled action, hereby certify that an original copy of the within Preliminary Objections has been filed of record in the office of the Prothonotary of Clearfield County, and that a true and correct copy of the same was served on counsel for Plaintiff at the following address, by United States Mail on November 28, 2006:

S. Casey Bowers, Esquire
Hanak, Guido and Taladay
3 South Brady Street- Suite 300
P.O. Box 487
DuBois, PA 15801

William T. Fleming, Esquire
FLEMING LAW OFFICES
204 Calder Way, Suite 304
State College, PA 16801
Attorney for Defendants
S.Ct. I.D. No. 39563
wtfleming@fleminglaw.info

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
(Civil Division)

PHILIP P. TABONE, JR., an
individual,

Plaintiff

vs.

DR. MICHAEL PECK and
TODD MICHAEL PECK,

Defendants

CIVIL ACTION - AT LAW

No. 06-1321-CD

Type of pleading:

**PRAECIPE TO MARK MATTER
SETTLED, DISCONTINUED AND
ENDED**

Filed on behalf of:

Philip P. Tabone, Jr.,
Plaintiff

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
3 S. Brady St., Suite 300
P. O. Box 487
DuBois, PA 15801

814-371-7768

FILED 30003
018-59304
MAR 06 2007
Certificates to
Atty
CW

William A. Shaw
Prothonotary/Clerk of Courts

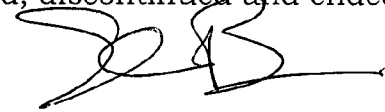
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PHILIP P. TABONE, JR., an	:	CIVIL ACTION - AT LAW
individual,	:	
Plaintiff	:	No. 06-1321-CD
	:	
vs.	:	
	:	
DR. MICHAEL PECK and	:	
TODD MICHAEL PECK,	:	
Defendants	:	

PRAECIPE TO MARK MATTER SETTLED, DISCONTINUED AND ENDED

TO THE PROTHONOTARY:

Kindly mark this matter settled, discontinued and ended.



S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
P. O. Box 487
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Philip P. Tabone Jr.

Vs.

No. 2006-01321-CD

**Michael Peck Dr.
Todd Michael Peck**

CERTIFICATE OF DISCONTINUATION

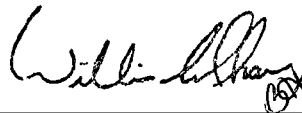
Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on March 6, 2007, marked:

Settled, Discontinued and Ended

Record costs in the sum of \$85.00 have been paid in full by S. Casey Bowers, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of March A.D. 2007.



William A. Shaw, Prothonotary