

07-1262-CD
R. Kitchen vs Daimlerchrysler al

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

ROBERT B. KITCHEN,

CIVIL DIVISION

Plaintiff,

vs.

NO.: 07-1262-C

**DAIMLERCHRYSLER MOTOR
COMPANY, LLC,**

Defendant.

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff:
Robert B. Kitchen

COUNSEL OF RECORD FOR THIS PARTY:

Craig Thor Kimmel, Esquire
Identification No. 57100

Robert A. Rapkin, Esquire
Identification No. 61628

KIMMEL & SILVERMAN, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

WRIT WAIVED

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WM 85.00
William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION**

ROBERT B. KITCHEN,

Plaintiff,

vs.

No.:

**DAIMLERCHRYSLER MOTOR
COMPANY, LLC,**

Defendant.

NOTICE TO DEFEND

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 defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court 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
Clearfield, PA 16830
(814) 765-2641, ext. 51

Lawyer Referral Service:
Pennsylvania Lawyer Referral Service
(800) 692-7375

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

ROBERT B. KITCHEN,

Plaintiff,

vs.

No.:

**DAIMLERCHRYSLER MOTOR
COMPANY, LLC,**

Defendant.

COMPLAINT

1. Plaintiff, Robert B. Kitchen, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, 832 Ansonville Road, Irvona, PA 16656.

2. Defendant, DaimlerChrysler Motor Company, LLC, is a corporation qualified to do and regularly conduct business in the Commonwealth of Pennsylvania, with its address and principal place of business located at 12000 Chrysler Drive, Highland Park, Michigan 48288-1919, and can be served at c/o CT Corporation, 1515 Market Street, Suite 1210, Philadelphia, PA 19103.

BACKGROUND

3. On or about May 17, 2005, Plaintiff purchased a new 2005 Dodge Ram, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 3D7KS26C65G735199.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than \$35,325.00.

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: abnormal, defective, and dangerous transmission, engine, injectors, and cylinders. True and correct copies of the repair invoices are not in Plaintiff possession, however they can be obtained from Defendant's authorized dealership.

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

11. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

12. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

13. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

14. TriStar Chrysler Motors is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

15. On or about May 17, 2005, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S. §1951 *et seq.*, which substantially impair the use, value and/or safety of the vehicle.

16. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

17. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding \$.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

18. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

(1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or

(2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

19. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

20. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

21. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

22. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

23. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

24. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

26. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

27. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

28. Plaintiff may or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

29. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997).

30. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiff avers that Defendant's warranty was not provided to Plaintiff until after the vehicle was delivered, making any and all limitations, disclaimers and/or alternative dispute provisions ineffective for a failure of consideration.

42. Plaintiff avers Defendant's Dispute Resolution Program was not in compliance with 16 CFR 703 for the model year of the subject vehicle.

43. Plaintiff avers that Defendant's warranty did not require Plaintiff to first resort to a Dispute Resolution Program before filing suit.

44. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE
PRACTICES AND CONSUMER PROTECTION LAW

45. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

46. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

47. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

48. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

49. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

50. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

- (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
- (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
- (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
- (xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

51. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

52. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

53. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

54. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of , together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

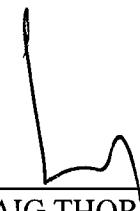
By: _____

Craig Thor Kimmel, Esquire
Robert A. Rapkin, Esquire

Attorney for Plaintiff
30 E. Butler Pike
Ambler, PA 19002

V E R I F I C A T I O N

Craig Thor Kimmel, states that he is the attorney for the Plaintiff herein; that he is acquainted with the facts set forth in the foregoing Complaint; that same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the Penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsifications to authorities.



CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT KITCHEN

CIVIL DIVISION

Plaintiff,

vs.

DAIMLERCHRYSLER MOTOR
COMPANY, LLC

Defendant.

NO.: 07-1262-CD

FILED

AUG 29 2007

William A. Shaw
Prothonotary/Clerk of Court

1 copy to [initials]
[initials]

AFFIDAVIT OF SERVICE

I, Lori Lee Harrison, an employee of Kimmel & Silverman, P.C., and a competent adult, being duly sworn according to law, depose and say that at 1:00 P.M., on 8/9/07, I personally handed to NANCY ARMSTRONG, on behalf of DaimlerChrysler Motor Company, LLC, c/o CT Corporation, 1515 Market Street, Suite 1210, Philadelphia, PA 19103.

_____ Adult family member with whom said Defendant(s) reside(s). Relationship is _____.

_____ Adult in charge of Defendant's residence who refused to give name or relationship.

_____ Manager/Clerk of place of lodging in which Defendant(s) reside(s).

X

Agent or person in charge of Defendant's office or usual place of business.

_____ and officer of
said Defendant's company.

_____ Other _____.

a true and correct copy of complaint issued in the above-captioned matter.

(Signature of Server)

Sworn to and subscribed
before me this 29 day
of August 2007

NOTARY PUBLIC PATRICIA ANN MINTON NO. 74154

2007-08-22, 2007

TO PLAINTIFF:
YOU ARE HEREBY NOTIFIED TO
PLEAD TO THE ENCLOSED
NEW MATTER WITHIN (20) DAYS
FROM THE SERVICE HEREOF OR A
DEFAULT JUDGMENT MAY BE ENTERED
AGAINST YOU.

Attofney for Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC)

THE ROSE LAW FIRM, PLLC

By: Keith B. Rose, Esquire
Identification No.: 202676
501 New Karner Road
Albany, New York 12205
(518) 869-9200

Attorney for Defendant:
Chrysler Motors LLC (formerly known as
DaimlerChrysler Motors Company LLC)

ROBERT B. KITCHEN : COURT OF COMMON PLEAS
CLEARFIELD COUNTY
:
vs.
:
DAIMLERCHRYSLER MOTOR : NO.: 07-1262-CD
COMPANY, LLC

**DEFENDANT CHRYSLER MOTORS LLC'S (FORMERLY DAIMLERCHRYSLER
MOTORS COMPANY LLC), S/H/A DAIMLERCHRYSLER MOTOR COMPANY, LLC,
ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT**

Defendant Chrysler Motors LLC (formerly DaimlerChrysler Motors Company LLC),
s/h/a DaimlerChrysler Motor Company, LLC, by and through its attorneys, The Rose Law Firm,
PLLC, hereby answers Plaintiff's Complaint and asserts new matter defenses as follows:

1. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

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AUG 29 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

2. Admitted in part; denied in part. Chrysler Motors LLC is a limited liability company authorized to transact business in the Commonwealth of Pennsylvania with a principle place of business in Michigan. In addition, it can be served process in care of CT Corporation. The remaining averments are denied.

WHEREFORE, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

BACKGROUND

3. Admitted in part; denied in part. It is admitted that Chrysler Motors LLC is the warrantor of a vehicle commonly known as the 2005 Dodge Ram. After reasonable investigation, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and the same therefore, are denied.

4. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

5. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

6. Denied. Because Plaintiff has failed to define the specifics of the alleged warranties, guarantees, affirmations or undertakings, after reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

7. Denied. Because Plaintiff has failed to define the specifics of the alleged warranties, guarantees, affirmations or undertakings, after reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

8. Denied. It is denied that Answering Defendant entered into a contract or "bargain" with Plaintiff. On the contrary, no contract was negotiated or completed between the parties. Inasmuch as Plaintiff fails to define the specifics of the alleged guarantees, affirmations and undertakings, after reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

9. Denied. It is denied that the vehicle experienced nonconformities or conditions that were not corrected within the terms of the express written limited warranties issued by Chrysler Motors LLC. It is denied repair attempts were ineffective. It is further denied that the subject vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and worthless to Plaintiff.

10. Denied. The Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

WHEREFORE, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

COUNT I

PENNSYLVANIA AUTOMOBILE LEMON LAW

11. Defendant, Chrysler Motors LLC hereby incorporates its previous answers to Plaintiff's Complaint as though the same was set forth herein at length.

12. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

13. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

14. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

15. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

16. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

17. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

18. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

19. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

20. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining averments and the same therefore, are denied.

21. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining averments and the same therefore, are denied.

22. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

23. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

24. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

25. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

26. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

27. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

COUNT II

MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

28. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

29. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

30. Defendant, Chrysler Motors LLC, hereby incorporates its previous answers to Plaintiff's Complaint as though the same were set forth herein at length.

31. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

32. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

33. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

34. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

35. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

36. Denied. It is denied that Answering Defendant's independently owned and operated authorized dealerships have performed ineffective repairs. It is further denied that Answering Defendant has breached any warranty or is otherwise liable to Plaintiff as a result of any action or inaction on the part of Answering Defendant.

37. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

38. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

39. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

40. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

41. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

42. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

43. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

44. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

COUNT III

PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

45. Defendant, Chrysler Motors LLC, hereby incorporates its previous answers to Plaintiff's Complaint as though the same were set forth herein at length.

46. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

47. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

48. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

49. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

50. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

51. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

52. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

53. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

54. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

NEW MATTER

55. Plaintiff's Complaint fails to state a claim for which relief may be granted against Chrysler Motors LLC.

56. Plaintiff's claims are barred and/or limited by the applicable disclaimers of warranty and limitations of damage provision.

57. Plaintiff's claims are barred and/or limited by his neglect, misuse, abuse, modification, and/or alteration of the vehicle which is the subject of this litigation.

58. Plaintiff's claims are barred and/or limited by his failure to mitigate damages.

59. If Plaintiff sustained any alleged injuries, damages or losses, the injuries, damages or losses were caused by persons and/or entities over whom Answering Defendant has no control and for whom Answering Defendant is not responsible.

60. Plaintiff's alleged claims of nonconformity do not substantially impair the use, value, or safety of the vehicle.

61. Plaintiff's claims are, or may be, barred by the applicable doctrine of laches, estoppels or waiver or by any applicable contracts, releases, and/or agreements.

62. Plaintiff's Complaint fails to state a claim for which any attorney fees may be awarded.

63. Plaintiff's claims may be barred and/or limited by the Lemon Law, Unfair Trade Practices and Consumer Protection Law, Uniform Commercial Code and the Magnuson-Moss Warranty Act.

64. If it is determined that Plaintiff did not obtain or use the vehicle primarily or normally for personal use, family or household purposes, Plaintiff is not entitled to recovery under the Lemon Law, Magnuson-Moss Warranty Act, or the Pennsylvania Unfair Trade Practices Act.

65. Plaintiff's Complaint may be barred by the applicable statute of limitations.

66. Plaintiff may have failed to provide timely and adequate notice of Plaintiff's claims to Chrysler Motors LLC.

67. Plaintiff's damages if any, were caused by the intervening and/or superseding acts and/or omissions of persons and/or entities for whose conduct Chrysler Motors LLC cannot be held liable.

68. The vehicle referred to in Plaintiff's Complaint was fit for its intended uses, did not contain any nonconformities or defects, and complied with all applicable express limited written warranties.

69. Some or all of the damages claimed in Plaintiff's Complaint are not recoverable under applicable law.

70. Plaintiff's claims may be barred and/or limited as a result of his failure to fulfill the conditions precedent of, and/or failure to, comply with the terms and conditions of any express limited warranty under which Plaintiff asserts causes of action.

71. No act, conduct or omission of Chrysler Motors LLC caused any injury/damage or loss to Plaintiff.

72. Plaintiff accepted the vehicle; failed to or improperly revoked his acceptance; and/or improperly revoked his acceptance; and/or improperly rejected or failed to reject the vehicle.

73. Plaintiff may have failed to join an indispensable party to this matter, including but not limited to, the selling and servicing dealership requiring that this matter be dismissed.

74. There is no privity of contract between Plaintiff and Chrysler Motors LLC. Therefore, as a matter of law, Plaintiff's Complaint to the extent it seeks revocation of acceptance fails to state a cause of action.

75. Under the terms of Chrysler Motors LLC's written limited warranty, Chrysler Motors LLC has disclaimed all implied warranties of merchantability and fitness for a specific use or has limited the duration of any implied warranty to the terms of the written limited warranty.

76. Under the terms of Chrysler Motors LLC's written limited warranty, Chrysler Motors LLC's sole obligation to Plaintiff is to pay for repairs and/or the performance of repairs and needed adjustments to correct defects related to factory material and workmanship. Chrysler Motors LLC has paid for or performed all such repairs and needed adjustments and therefore, there has been no breach of the written limited warranty.

77. Under the terms of Chrysler Motors LLC's written limited warranty, the payment for and/or the performance of repairs and needed adjustments to correct defects related to factory material or workmanship is Plaintiff's exclusive remedy.

78. Under the terms of Chrysler Motors LLC's written limited warranty, the payment for and/or the performance of repairs and needed adjustments to correct defects related to factory material or workmanship is Plaintiff's exclusive remedy. Chrysler Motors LLC has paid for and/or performed all repairs and needed adjustments and therefore, there has been no breach of the written limited warranty.

79. Under the terms of Chrysler Motors LLC's written limited warranty, Chrysler Motors LLC is not liable for incidental or consequential damages resulting from breach of the written limited warranty.

80. Chrysler Motors LLC has no obligation to modify or alter the vehicle to address a design characteristic of the vehicle which is not to the liking of Plaintiff.

81. Plaintiff failed to inspect the vehicle within a reasonable period of time and therefore, is barred by the doctrine of laches from rescinding the contract or revoking acceptance.

82. Plaintiff has accepted the vehicle and is not entitled to rescission or to revoke acceptance because Plaintiff has performed acts inconsistent with the Answering Defendant's ownership, and exercised dominion and control over the vehicle. Should the court determine that Plaintiff's alleged revocation was proper, Answering Defendant is entitled to an offset for Plaintiff's use of the vehicle.

83. Plaintiff failed to offer to tender the vehicle to Answering Defendant. Thus, as a matter of law, Plaintiff fails to state a cause of action for rescission, rejection and/or revocation of acceptance.

84. Plaintiff examined the vehicle as fully as Plaintiff desired or refused to examine it. Thus, there is no implied warranty with regard to defects to which an examination ought in the circumstances to have revealed.

85. The vehicle was not non-conforming at the time of purchase. Therefore, Plaintiff fails to state a cause of action for rescission, rejection, breach of implied warranty and/or revocation of acceptance.

86. Plaintiff has failed to mitigate Plaintiff's damages.

87. Upon information and belief, Plaintiff no longer is in possession of the vehicle. Therefore, as a matter of law, Plaintiff fails to state a cause of action for rescission, rejection, revocation of acceptance or pursuant to the Lemon Law.

88. Plaintiff has failed and/or has refused to allow the Answering Defendant a reasonable opportunity to cure the alleged defect or the alleged breach of warranty. Therefore, Plaintiff fails to state a cause of action for revocation of acceptance.

89. Plaintiff failed and/or refused to allow the vehicle's warrantor a reasonable opportunity to repair the vehicle's alleged defects or cure the alleged breach of warranty. Therefore, Plaintiff has failed to satisfy a condition prerequisite to a Magnuson-Moss claim.

90. Any attempted revocation of acceptance of the vehicle which is the subject of this matter was not undertaken prior to a substantial change in condition of the vehicle which was not caused by any alleged defect.

91. Plaintiff has reaccepted the vehicle following the alleged revocation and therefore, is not entitled to the revocation remedy.

92. Plaintiff's second count fails to state a cause of action as a matter of law. It does not allege that Answering Defendant was provided with a reasonable opportunity to cure its alleged breach of warranty, which is a prerequisite to a claim under the Federal Magnuson-Moss Warranty Act.

93. Venue is improper.

WHEREFORE, Defendant Chrysler Motors LLC (formerly DaimlerChrysler Motors Company LLC), s/h/a DaimlerChrysler Motor Company, LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

Respectfully submitted,

THE ROSE LAW FIRM, PLLC

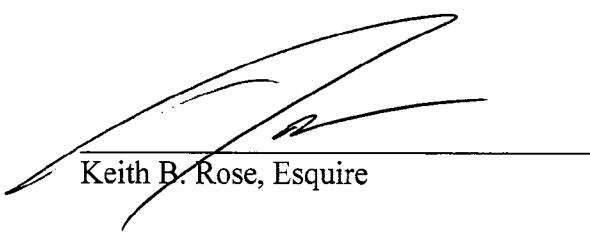
By:

Keith B. Rose, Esq.
Attorney for Defendant:
Chrysler Motors LLC (formerly
DaimlerChrysler Motors Company LLC),
s/h/a DaimlerChrysler Motor Company,
LLC

Dated: August 28, 2007

VERIFICATION

I, Keith B. Rose, Esquire, hereby state that I am the attorney for Defendant Chrysler Motors LLC (formerly DaimlerChrysler Motors Company LLC), s/h/a DaimlerChrysler Motor Company, LLC, and I verify that the statements made in the foregoing Answer with New Matter of Defendant Chrysler Motors LLC (formerly DaimlerChrysler Motors Company LLC), s/h/a DaimlerChrysler Motor Company, LLC, to Plaintiff's Complaint, are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C. S. §4904, relating to unsworn falsification to authorities.



Keith B. Rose, Esquire

CERTIFICATE OF SERVICE

I, Keith B. Rose, Esquire, do hereby certify that I am the attorney for Defendant Chrysler Motors LLC (formerly DaimlerChrysler Motors Company LLC), s/h/a DaimlerChrysler Motor Company, LLC, in the within action; that I am duly authorized to make this certification, and that on this 28th day of August, 2007, I did cause a true and correct copy of the Entry of Appearance, Answer and New Matter of Defendant Chrysler Motors LLC (formerly DaimlerChrysler Motors Company LLC), s/h/a DaimlerChrysler Motor Company, LLC, to Plaintiff's Complaint, to be forwarded via First Class Mail, to counsel below as follows:

Craig Thor Kimmel, Esq.
Kimmel & Silverman, P.C.
30 East Butler Pike
Ambler, Pennsylvania 19002

Keith B. Rose, Esquire

J:\Data\Chrysler PA Lit\matter\14422\Pleadings\Answer.doc

THE ROSE LAW FIRM, PLLC

By: Keith B. Rose, Esquire
Identification No.: 202676
501 New Karner Road
Albany, New York 12205
(518) 869-9200

Attorney for Defendant:
Chrysler Motors LLC (formerly known as
DaimlerChrysler Motors Company LLC)

ROBERT B. KITCHEN	:	COURT OF COMMON PLEAS CLEARFIELD COUNTY
	:	
VS.	:	
	:	
DAIMLERCHRYSLER MOTOR COMPANY, LLC	:	NO.: 07-1262-CD

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of the Defendant Chrysler Motors LLC (formerly DaimlerChrysler Motors Company LLC), s/h/a DaimlerChrysler Motor Company, LLC, in connection with the above-captioned matter.

Respectfully submitted,

THE ROSE LAW FIRM, PLLC

By:

KEITH B. ROSE, ESQUIRE

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FILED
AUG 29 2007
NO CC
GK

William A. Shaw
Prothonotary/Clerk of Courts

Craig Thor Kimmel, Esquire
Identification No. 57100
Robert A. Rapkin, Esquire
Identification No. 61628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ROBERT KITCHEN

v.

DAIMLERCHRYSLER COMPANY LLC

ATTORNEYS FOR
PLAINTIFF

FILED
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CC
William A. Shaw
Prothonotary/Clerk of Courts
GK

COURT OF COMMON PLEAS
Clearfield County

NO. 07-1262-CD

PLAINTIFF'S ANSWER TO NEW MATTER OF
DEFENDANT, DAIMLERCHRYSLER COMPANY LLC

38. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

39. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

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41. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations

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42. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

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48. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

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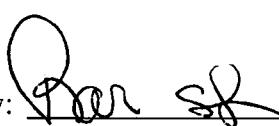
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KIMMEL & SILVERMAN, P.C.

By:


Robert A. Rapkin, Esquire
Identification No. 61628
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

VERIFICATION

Robert A. Rapkin, Esquire, states that he/she is the attorney for the Plaintiff herein; that he/she is acquainted with the facts set forth in the foregoing Answer to New Matter; and that same are true to the best of his/her knowledge, information and belief. This statement is being made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

By: Bob Sk
Robert A. Rapkin, Esquire
Identification No. 61628
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

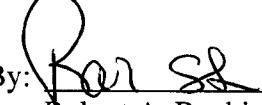
CERTIFICATE OF SERVICE

I, Robert A. Rapkin, Esquire, counsel for Plaintiff, do hereby certify that I served all parties with true and correct copies of the foregoing Answer to New Matter, by placing same in the United States Mail, First Class, Postage Paid addressed as follows:

Keith B. Rose
The Rose Law Firm, PLLC
501 New Karner Rd.
Albany, NY 12205

KIMMEL & SILVERMAN, P.C.

By:



Robert A. Rapkin, Esquire
Identification No. 61628
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

Date: 12th day of September, 2007

Robert A. Rapkin, Esquire
Identification No. 61628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEY FOR PLAINTIFF

ROBERT KITCHEN

v.

CHRYSLER LLC

COURT OF COMMON PLEAS
Clearfield County

07-1262-Cd

ORDER TO SETTLE, DISCONTINUE AND END

TO THE PROTHONOTARY:

Kindly mark the above matter as settled, discontinued and ended.

KIMMEL & SILVERMAN, P.C.

By:

ROBERT A. RAPKIN, ESQUIRE
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

FILED 1cc & 1 cert of
m 11:40 am disc issued to
DEC 03 2007 Atty Rapkin

WM
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Robert B. Kitchen

Vs. **No. 2007-01262-CD**
Daimlerchrysler Motor Company, LLC

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 December 3, 2007, marked:

Settled, discontinued and ended

Record costs in the sum of \$85.00 have been paid in full by Craig Thor Kimmel Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 3rd day of December A.D. 2007.

William A. Shaw LM
William A. Shaw, Prothonotary