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Attorneys for Plaintiff and those similarly situated

FABIAN ARKLISS, for himself and all
others similarly situated,

Plaintiffs,

v.

NISSAN EXTENDED SERVICES NORTH
AMERICA, INC.; and DIFEO NISSAN
PARTNERSHIP d/b/a HUDSON NISSAN

Defendants.

**COURT OF NEW JERSEY
DIVISION: BERGEN COUNTY**

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

INDEX: _____

Plaintiff alleges:

NATURE OF THIS ACTION

1. Defendants entered into deceptive vehicle service contracts, and violated the terms thereof, in violation of the Moss-Magnusson Warranty Act, 15 U.S.C. §§ 2301 *et seq.*
2. Plaintiff brings claims for himself, and those similarly situated, seeking damages, declaratory and equitable relief, attorneys' fees and costs.

PARTIES AND JURISDICTION

3. Named plaintiff is a natural person and resident of Bergen County, New Jersey.
4. Defendant NISSAN EXTENDED SERVICES OF NORTH AMERICA, INC. (hereinafter: "NESNA") is a Delaware corporation with a principal place of business located at One Nissan Way, Franklin, TN 37067-6367.
5. Defendant DIFEO NISSAN PARTNERSHIP (hereinafter: "Difeo"), operates under the name Hudson Nissan at a car dealership located at 585 Route 440, Jersey City, New Jersey 07305 (such dealership referred to hereinafter as: "Hudson Nissan").

FACTS

6. On or about April 28, 2015, Plaintiff purchased a used Nissan Altima (the, "Vehicle") at Hudson Nissan, in Jersey City, New Jersey.
7. Plaintiff purchased the Vehicle on credit, as documented in a Retail Installment Contract ("RIC"), by and between Plaintiff and Difeo. See Exhibit A attached hereto.
8. A RIC is a common and customary means to finance a vehicle purchase.
9. Contemporaneous with the execution of the RIC, the dealer's interest therein was assigned to Westlake Financial Service ("Westlake"). The RIC states on page 1: "Seller assigns its interest in this contract to Westlake Financial Services."
10. Plaintiff received monthly statements for the RIC solely from Westlake.
11. Plaintiff made all payments on the RIC solely to Westlake.
12. All credit extended to Plaintiff under the RIC accrued interest at the annual rate of 23.99%.
13. Plaintiff was invoiced by Westlake for the RIC and all amounts owed thereunder at the interest rate of 23.99% annually.

14. Plaintiff paid interest on the RIC and all amounts owed thereunder to Westlake, and did so at the rate of 23.99% annually.
15. At the time he purchased the Vehicle, Plaintiff also purchased a "Vehicle Service Agreement," for \$1,500. See **Exhibit B**.
16. NESNA is the service contractor for the Vehicle Service Agreement purchased by Plaintiff.
17. The Vehicle Service Agreement provides, subject to the terms therein, for coverage of mechanical breakdown of covered parts.
18. Plaintiff purchased the Vehicle Service Agreement on credit from Difeo.
19. Plaintiff was told the Vehicle Service Agreement would be subject to 0% financing.
20. The Vehicle Service Agreement contains the following language:

LIENHOLDER OR SERVICE PAYMENT PLAN (0% FINANCING)
NAME WESTLAKE FINANCIAL SERVICES

21. The representation to Plaintiff that the \$1,500 Vehicle Service Contract was subject to 0% financing was false.
22. In fact, the \$1,500 Vehicle Service Contract was financed in the same RIC as the Vehicle, and subject to the same 23.99% annual interest rate.

CLASS ACTION ALLEGATIONS

23. **"NESNA" Class definition:** Count I of this action is brought as a class action on behalf of the following class of individuals (the, "NESNA Class"):
 - a. All persons in the United States;
 - b. who in the four years preceding the filing of this action and through the date of class certification;

- c. entered into a vehicle services agreement in which NESNA was the services contractor;
- d. where such vehicle services agreement was purchased by such consumer on credit;
- e. where such vehicle services agreement falsely represented zero percent financing for the purchase thereof.

24. **Difeo Class Definition**: Count II of this action is brought as a class action on behalf of the following class of individuals (the, "Difeo Class"):

- a. All persons in the United States;
- b. who in the four years preceding the filing of this action and through the date of class certification;
- c. entered into a vehicle services agreement in which NESNA was the services contractor;
- d. where such vehicle services agreement was purchased by such consumer on credit;
- e. where such vehicle services agreement represented zero percent financing for the purchase thereof; and
- f. where Difeo provided financing for such vehicle services contract at greater than zero percent.

25. Counts I and II of this action are properly maintained as a class action.

26. **Numerosity**. Upon information and belief, the class is so numerous that joinder of all parties is not practical. Plaintiff complaints of standard form service agreements stating

“0% FINANCING”; standard from Retail Installment Contracts charging interest for vehicle service agreements; and standard practices and procedures for charging such interest.

27. **The class is ascertainable.** Upon information and belief, Difeo and NESNA maintain records sufficient to identify class members. NESNA must maintain records of persons with whom it has entered into vehicle service contracts, and, upon information and belief, Difeo maintains records of its sales to consumers and copies of contracts relating thereto.
28. **Common Questions Predominate.** The following are questions of law and fact which are common to class members, and predominate over individual questions:
 - a. Whether the vehicle service contract between Plaintiff and NESNA violates the Moss-Magnusson Warranty Act;
 - b. Whether Difeo violated the terms of the vehicle service contract between Plaintiff and NESNA, and thus violated the Moss-Magnusson Warranty Act, by charging Plaintiff interest on the purchase of the vehicle services contract;
 - c. The amount of damages to which Plaintiff and class members may be entitled for the violations alleged herein.
29. **Plaintiff’s claims are typical of class members’.** The legal theories and factual findings that would support Plaintiffs’ claims for relief would apply equally to the claims brought on behalf of the class.
30. **Adequacy.** Plaintiff is prepared to adequately represent the class, and has retained competent counsel to do so. No conflicts are foreseen in named Plaintiff acting on behalf of the class.
31. **Superiority.** A class action is a superior means of pursuing the claims alleged herein, because a class action: eliminates the risk of inconsistent results across various forums;

renders the pursuit of these claims economical, whereas individual claims may not justify the expense of litigation; no difficulties are foreseen in maintain this action as a class action.

COUNT I

MOSS-MAGNUSSON WARRANTY ACT, 15 USC §§ 2301 *et seq.* **AGAINST NISSAN EXTENDED SERVICES NORTH AMERICA, INC.**

32. All preceding paragraphs are re-alleged.
33. Count I is brought by Plaintiff for himself, and on behalf of the NESNA class.
34. NESNA entered into a vehicle services agreement with Plaintiff.
35. NESNA entered into a vehicle services agreement with each NESNA Class member.
36. Plaintiff and each NESNA Class member purchased each such vehicle services agreement on credit.
37. Each such vehicle services agreement was false or misleading in stating, in sum or substance, “0% FINANCING.”
38. Plaintiff did not purchase a vehicle service contract from NESNA at 0% financing, but rather, at 23.99% annual interest.
39. Each NESNA class member did not purchase a vehicle services agreement at 0% financing, but rather, at financing of some greater cost.
40. NESNA violated 15 USC §2306(b) of the Moss-Magnusson Warranty Act, which requires that a services contract, “fully, clearly and conspicuously discloses its terms and conditions in simple and readily understood language.”
41. NESNA failed to comply with the terms of its own vehicle services contract, because it did not finance the purchase thereof at 0% financing.

42. Pursuant to 15 USC §2310(d)(1) of the Moss-Magnusson Warranty Act, NESNA is liable to Plaintiff and NESNA class members for its violations of the Act and its violations of each vehicle services contract it entered into with Plaintiff and NESNA class members.
43. NESNA's violations of the law and violations of its contractual obligations caused damage to Plaintiff and class members for which it is liable.

COUNT II

MOSS-MAGNUSSON WARRANTY ACT, 15 USC §§ 2301 *et seq.* AGAINST DIFEIO NISSAN PARTNERSHIP

44. All preceding paragraphs are re-alleged.
45. Count II is brought by Plaintiff for himself, and on behalf of the Difeo class.
46. NESNA entered into a vehicle services agreement with Plaintiff.
47. NESNA entered into a vehicle services agreement with each NESNA Class member.
48. Plaintiff and each NESNA Class member purchased each such vehicle services agreement on credit.
49. Each such vehicle services agreement provided for financing at zero percent.
50. Difeo provided financing to Plaintiff for the purchase of the vehicle services contract not at zero percent, but rather, at 23.99%.
51. Difeo provided financing to each class member for the purchase of each vehicle services contract purchased by such class member at an amount greater than zero percent.
52. Difeo violated the terms of each vehicle services contract entered into between each Difeo class member and NESNA.

53. Difeo violated the terms of Difeo Class members' vehicle services contracts, because it charged interest for such contracts, when the terms of such contracts provided for financing at zero percent.
54. Pursuant to 15 USC §2310(d)(1) of the Moss-Magnusson Warranty Act, Difeo is liable to Plaintiff and NESNA class members for its violations of each vehicle services contract it entered into with Plaintiff and NESNA class members.
55. Difeo's violations of the law and violations of its contractual obligations caused damage to Plaintiff and class members for which it is liable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands relief against all defendants as follows:

For each of the Classes Alleged herein:

- A. An order certifying the classes alleged herein and providing notice to each of the Classes;
- B. An order appointing named Plaintiff and undersigned counsel to represent the Classes alleged herein;
- C. Damages for an amount to be shown at trial, but not less than financing paid by class members for NESNA vehicle service contracts in excess of zero percent;
- D. Declaratory and equitable relief barring defendants from charging financing in excess of zero percent on NESNA vehicle service contracts;

For Name Plaintiff:

- E. Damages for an amount to be shown at trial, but not less than financing paid by Plaintiff for NESNA vehicle service contracts in excess of zero percent;
- F. Declaratory and equitable relief barring defendants from charging financing in excess of zero percent on NESNA vehicle service contracts;

For all Claims:

G. Attorneys' fees and costs of this action, interest as allowed by law, and all such other relief as this court deems just and proper.

Jury Demand

Plaintiff demands a trial by jury on all issues subject to trial by jury.

Designation of Trial Counsel

Pursuant to Rule 4:25-4, Gabriel Posner, Ari H. Marcus, and Yitzchak Zelman are designated as trial counsel for Plaintiff.

Certification

Pursuant to Rule 4:5-1, I hereby certify to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I further certify that I know of no party who should be joined in this action at this time.

Dated: February 15, 2018

/s/Gabriel Posner
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