

RETURN DATE: SEPTEMBER 20, 2022 : SUPERIOR COURT

ARKADIUSZ JOZEF GASKA AND : FAIRFIELD JUDICIAL DISTRICT  
KATARZYNA GASKA, : AT BRIDGEPORT  
Individually and on Behalf of a Class  
of Others Similarly Situated

v. :

DARCARS OF RAILROAD AVENUE, INC. : AUGUST 17, 2022

**CLASS ACTION COMPLAINT**

**INTRODUCTION**

1. Arkadiusz Jozef Gaska and Katarzyna Gaska (collectively “Plaintiffs”) bring this consumer class action on behalf of themselves and others similarly situated who purchased a motor vehicle from the defendant, DARCARS of Railroad Avenue, Inc. d/b/a Lexus of Greenwich (“DARCARS”), and who have either paid a “commission” that was added on to the sales price of the vehicle, have paid more than the price advertised by DARCARS for the vehicle that they purchased, or both.

2. Plaintiffs bring this action as a class action proceeding in accordance with Conn. Gen. Stat. § 42-110g(b) and Practice Book § 9-7 *et seq.* They allege that DARCARS violated the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.* (“CUTPA”), in connection with hundreds and possibly thousands of sales

of motor vehicles by adding a “commission” to the sales price and by selling vehicles for more than the advertised price. Plaintiffs seek monetary damages, punitive damages, and injunctive relief.

### **PARTIES**

3. Plaintiffs are over the age of 18 and reside in New Britain, Connecticut.

4. Plaintiffs bring this action on their individual behalf and on behalf of two classes of others (the “Class”) similarly situated to them (the “Commission Class” and the “Advertised Price Class”).

5. DARCARS is a Connecticut corporation that does business as DARCARS Lexus of Greenwich and is licensed to operate an automobile dealership in Greenwich, Connecticut.

### **DARCARS IMPROPER IMPOSITION OF A “COMMISSION” TO THE SALES PRICE**

6. DARCARS sells new vehicles manufactured by Lexus, and it also sells used vehicles manufactured by a variety of companies.

7. DARCARS has a business practice of adding a commission of approximately two percent (2%) (the “Commission”) to the price of new and used vehicles sold on a retail basis.

8. DARCAR utilizes a form of purchase order (“Purchase Order”) as required by Conn. Gen. Stat. § 14-62, and the Purchase Order includes a pre-printed line item for the Commission, which reads “SALES COMMISSION (not required by law)”.

9. The Commission is added to the price of each vehicle sold by DARCARS.

10. Car dealerships in Connecticut do not commonly include a commission to cover the costs of paying commissions to employees or for the internal costs of acquiring vehicles and preparing them for sale or for purposes of ensuring an acceptable profit. Those costs and objectives are incorporated into the cash selling prices charged by car dealerships for motor vehicles.

11. By charging a Commission in addition to the stated price, DARCARS has a competitive advantage over other dealerships, because consumers engaged in price comparison can easily reach the false conclusion that DARCARS vehicles are relatively less expensive compared to vehicles offered by its competitors.

12. Retail buyer of vehicles sold by DARCARS do not receive anything of value in return for the Commission, and consumers pay this Commission in addition to the cash selling prices of the vehicles.

13. The Commission charged by DARCARS is separate from and in addition to the “dealer conveyance fee” or “processing fee” (the “Conveyance Fee”) that DARCARS charges retail buyers.

14. Car dealerships such as DARCARS are permitted to add a Conveyance Fee to the selling price of motor vehicles subject to the disclosure requirements of Conn. Gen. Stat. § 14-62 and Conn. Gen. Stat. § 14-62a. The Conveyance Fee is defined by Conn. Gen. Stat. § 14-62(a) as “a fee charged by a dealer to recover reasonable costs for processing all documentation and performing services related to

the closing of a sale, including, but not limited to, the registration and transfer of ownership of the motor vehicle which is the subject of the sale.”

15. By contrast, Conn. Gen. Stat. § 14-62 does not permit the addition of the Commission, and Conn. Gen. Stat § 14-62(b)(2) explicitly prohibits dealerships from “includ[ing] in the selling price a dealer preparation charge for any item or service for which the dealer is reimbursed by the manufacturer or any item or service not specifically ordered by the buyer and itemized on the invoice.”

16. DARCARS includes the Commission to the sale price of vehicles, even though there is no additional service performed or ordered by the retail buyers.

#### **DARCARS’ SALE OF VEHICLES FOR MORE THAN THE ADVERTISED PRICE**

17. During all relevant times, DARCARS maintains an inventory of dozens of new and used vehicles.

18. DARCARS maintains the website, [www.lexusofgreenwich.com](http://www.lexusofgreenwich.com), that includes a listing of vehicles in DARCARS inventory, and it includes advertised prices for many of those vehicles.

19. DARCARS also advertises or has advertised new and used vehicles for specified prices in other publications and on various websites such as [www.cargurus.com](http://www.cargurus.com).

20. The prices advertised by DARCARS are competitive in the market place and are consistent with the prices advertised by other car dealerships for similar

vehicles, and DARCARS' intent in advertising competitive prices is to attract purchasers who research vehicle prices before visiting dealerships.

21. DARCARS has a business practice of selling vehicles for prices that are higher than those advertised by it.

22. DARCARS utilizes a form of purchase order ("Purchase Order") as required by Conn. Gen. Stat. § 14-62, and the Purchase Order includes a pre-printed line item for the cash price of the Vehicle which reads "PRICE OF VEHICLE WITH ACCESSORIES" (the "Price of Vehicle").

23. The Price of Vehicle line item comports with the requirement in Conn. Gen. Stat. § 14-62(a)(4) that the Purchase Order disclose the "cash selling price" of a vehicle.

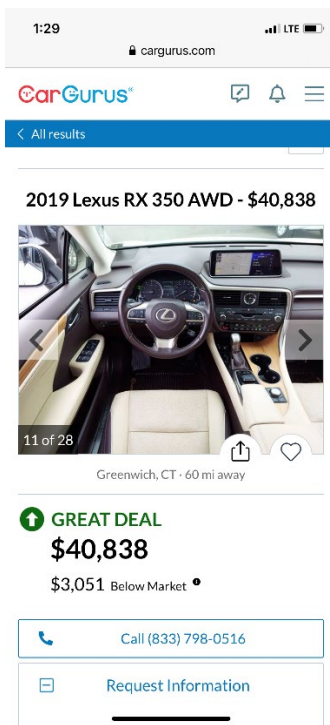
24. DARCARS' practice of selling motor vehicles for a Price of Vehicle that is greater than the advertised price violates Conn. Agency. Reg. § 42-110b-28(b)(1), which provides:

It shall be an unfair or deceptive act or practice for a new car dealer or used car dealer to fail to sell or lease, or refuse to sell or lease, a motor vehicle in accordance with any terms or conditions which the dealer has advertised, including, but not limited to, the advertised price.

### **PLAINTIFFS' TRANSACTION**

25. Prior to January 11, 2022, Plaintiffs saw a used 2019 Lexus RX 350 (the "Lexus") listed by DARCARS on www.cargurus.com for a cash selling price of \$40,838.

26. A copy of the CarGurus advertisement is duplicated below:



27. On or about January 11, 2022, Plaintiffs went to DARCARS and was shown the Lexus by DARCARS' sales personnel.

28. DARCARS told Plaintiffs that the price of the Lexus was \$40,838.

29. Plaintiffs agreed to purchase the Lexus.

30. DARCARS presented Plaintiffs with purchase documents to execute, including a Purchase Order, and Plaintiffs purchased the Lexus pursuant to a retail installment sales contract.

31. The relevant portion of Plaintiffs' Purchase Order is duplicated below:

PRICE OF VEHICLE WITH ACCESSORIES	(1)	<b>42238</b>	<b>00</b>
DEALER CONVEYANCE FEE (NEGOTIABLE)	(2)	<b>795</b>	<b>00</b>
SALES TAX	(3)	<b>2786</b>	<b>24</b>
SALES COMMISSION (not required by law)	(3A)	<b>844</b>	<b>76</b>
CASH PRICE (1 + 2 + 3 + 3A)	(4)	<b>46664</b>	<b>00</b>
REGISTRATION AND TITLE FEES	(5)	<b>265</b>	<b>00</b>
TOTAL CASH DELIVERED PRICE (4 + 5)	(6)	<b>46929</b>	<b>00</b>

32. The Purchase Order reflects a Price of Vehicle of \$42,238 for the Lexus, which is \$1,400 more than the price advertised on CarGurus and communicated to Plaintiffs.

33. DARCARS also charged Plaintiffs a Commission of \$844.76 in addition to the Price of Vehicle, which Commission was equal to two (2%) percent of the Price of Vehicle.

### **CLASS ALLEGATIONS**

34. Plaintiffs bring this action as a class action. There are two classes asserted: the “Commission Class” and the “Advertised Price Class”.

35. The Commission Class is comprised of individuals who are similarly situated to the Plaintiffs in that, during the period commencing three years prior to the commencement of this action and continuing until such time as there is an order certifying this case as a class action, they:

- a. purchased a new or used motor vehicle from DARCARS; and
- b. DARCARS charged them a Commission in addition to the Price of Vehicle as reflected in the Purchase Order.

36. The Advertised Price Class is comprised of individuals who are similarly situated to the Plaintiffs in that, during the period commencing three years prior to the commencement of this action and continuing until such time as there is an order certifying this case as a class action, they:

- a. purchased a new or used motor vehicle from DARCARS;
- b. DARCARS had advertised the vehicle on its website or on a third-party website for a specific price (the “Advertised Price”); and
- c. the Price of Vehicle charged to them as reflected in the Purchase Order was greater than the Advertised Price.



37. The following categories of individuals are excluded from the scope of the Commission Class and the Advertised Price Class: (a) individuals other than the Plaintiffs who have, prior to the certification of any class in this action, asserted claims in court or arbitration against DARCARS under the Connecticut Unfair Trade Practices Act; (b) car dealerships, automobile wholesalers, or other buyers who did not purchase their motor vehicles on a retail basis; and (c) former and current employees of DARCARS.

38. Plaintiffs are unable to state the precise number of individuals in the Commission Class or the Advertised Price Class, because that information is exclusively in the possession of DARCARS and is ascertainable through discovery. Plaintiffs believe, and on that basis allege, that both the Commission Class consists of more than 1,000 individuals and that the Advertised Price Class consists of more than 100 individuals. Plaintiffs base this allegation upon DARCARS' business practices, the size of its inventory, and its advertising practices.

39. There is a community of interest among the members of the classes in that there are questions of law and fact common to the classes that predominate over questions affecting only individual members. Specifically, all of the Commission Class members' claims all involve the question of whether DARCARS violated CUTPA by charging a Commission in addition to the Price of Vehicle, the Advertised Price Class members' claims all involve the question of whether DARCARS has violated CUTPA by selling vehicles for more than the Advertised Price.

40. Plaintiffs and each of the members of the classes have suffered an ascertainable loss. Members of the Commission Class have suffered an ascertainable loss because they paid a commission in addition to the Price of Vehicle. Members of the Advertised Price Class have suffered an ascertainable loss because they have paid an amount that is greater than the advertised price at which their vehicles should have been sold.

41. Plaintiffs' claims are typical of those of the classes that they seek to represent.

42. Plaintiffs are adequate class representatives, and they are represented by counsel competent and experienced in both auto dealer claims and class action litigation.

**FIRST CAUSE OF ACTION: CUTPA CLAIM FOR DAMAGES –  
COMMISSION CLASS**

1-42. Plaintiffs incorporate paragraphs 1-42 of the Introductory Paragraphs and Class Allegations.

43. This is a class claim for damages brought pursuant to Connecticut Practice Book § 9-7 and § 9-8(3) and Conn. Gen. Stat. § 42-110g(b) on behalf of the Commission Class.

44. DARCARS charging of the Commission in addition to the Price of Vehicle is a violation of Conn. Gen. Stat. § 14-62 and, consequently, is also a violation of CUTPA pursuant to Conn. Agency Reg. § 42-110b-28(b)(23).

45. The Commission charge is also in violation of CUTPA pursuant to Conn. Agency Reg. § 42-110b-28(b)(1), because DARCARS' communication of the Price of Vehicle to the Plaintiffs on the Purchase Order constituted an advertisement to sell the Vehicle for that price within the meaning of Conn. Agency Reg. § 42-110b-28(a)(3), and DARCARS violated Conn. Agency Reg. § 42-110b-28(b)(1) by adding the Commission to the Price of Vehicle.

46. The common questions of law and fact predominate over any individual questions in that the determination of whether DARCARS' imposition of the Commission is a CUTPA violation will be determinative of liability with respect to the Commission Class claims.

47. Additionally, the common questions of law and fact predominate over any individual questions in that the determination of whether DARCARS has engaged in deceptive and fraudulent sales practices can be readily ascertained by an examination of the Purchase Orders for the Commission Class members' transactions, and the only individual questions involve a determination of damage, which can be readily calculated by reference to DARCARS' records.

48. The identity of the Class can be readily ascertained by reference to DARCARS records, and any individual questions are subordinate to the common questions of whether DARCARS practices violate CUTPA.

49. A class action is superior to other methods for the fair and efficient adjudication of the controversy. Because the damages suffered by individual members of the Commission Class are relatively small compared to the expense and burden of litigation, it would be impracticable and economically unfeasible for the Commission Class members to seek redress individually. The prosecution of separate actions by the individual members of the Commission Class, even if possible or likely, would create a risk of inconsistent or varying adjudications and could create incompatible standards of conduct for DARCARS.

50. DARCARS is liable to the Plaintiffs and the Commission Class for their damages in the amount of the Commission plus the additional sales tax and finance charges attributable to the Commission.

51. DARCARS is also liable, in the discretion of the Court, for punitive damages and attorney's fees.

**SECOND CAUSE OF ACTION: CUTPA CLAIM FOR INJUNCTIVE RELIEF –  
COMMISSION CLASS**

1-44. Plaintiffs incorporate paragraphs 1-42 of the Introductory Paragraphs and Class Allegations and paragraphs 44-45 of the First Count.

46. This is a class claim brought for injunctive relief pursuant to Connecticut Practice Book § 9-7 and § 9-8(2) on behalf of the Commission Class.

47. DARCARS directs advertising towards the Commission Class because, as former customers of DARCARS, they are more likely than the general public to purchase another vehicle from DARCARS.

48. It is highly probable that many members of the Commission Class will purchase additional vehicles from DARCARS and that they will be charged the Commission due to DARCARS continuing unfair trade practices that violate CUTPA.

49. Other consumers have asserted claims against DARCARS in which they have claimed that the charging of the Commission was in violation of CUTPA.

50. DARCARS continued to charge the Commission even after becoming aware of these claims and, on information and belief, it continues to charge the Commission as of the date of this complaint.

51. DARCARS has acted or refuses to act on grounds generally applicable to the Commission Class, thereby making appropriate final injunctive relief under Conn. Gen. Stat. § 42-110g(d).

52. Plaintiffs seek an order enjoining DARCARS from charging the Commission in future retail sales.

53. DARCARS is also liable, in the discretion of the Court, for punitive damages and attorney's fees.

**THIRD CAUSE OF ACTION: CUTPA CLAIM FOR DAMAGES –  
ADVERTISED PRICE CLASS**

1-42. Plaintiffs incorporate paragraphs 1-42 of the Introductory Paragraphs and Class Allegations.

43. This is a class claim for damages brought pursuant to Connecticut Practice Book § 9-7 and § 9-8(3) and Conn. Gen. Stat. § 42-110g(b) on behalf of the Advertised Price Class.

44. DARCARS has violated CUTPA by selling motor vehicles to Plaintiffs and the Advertised Price Class members for prices higher than the prices at which it had advertised the vehicles, a violation of Conn. Agency Reg. §42-110b-28(b)(1).

45. The common questions of law and fact predominate over any individual questions in that the determination of whether DARCARS has engaged in deceptive and fraudulent advertising and sales practices can be readily ascertained by examination of its advertisements and the Purchase Orders of the Advertised Price Class members, and the only individual questions involve a determination of damages, which can be readily calculated by reference to those records.

46. The identity of the Advertised Price Class can be readily ascertained by reviewing the Purchase Orders of the Advertised Price Class members and comparing them to the prices at which DARCARS had advertised the Vehicles, and any individual questions are subordinate to the common questions of whether DARCARS' practices violate CUTPA.

47. A class action is superior to other methods for the fair and efficient adjudication of the controversy. Because the damages suffered by individual members of the Advertised Price Class are relatively small compared to the expense and burden of litigation, it would be impracticable and economically unfeasible for the Advertised Price Class members to seek redress individually. The prosecution of separate actions by the individual members of the Advertised Price Class, even if possible or likely, would create a risk of inconsistent or varying adjudications and could create incompatible standards of conduct for DARCARS.

48. DARCARS is liable to the Plaintiffs and the Advertised Price Class for their damages in the amount of the difference between the Advertised Price and the Price of Vehicle as reflected in the Purchase Orders, plus the additional sales tax and finance charges attributable to the amounts that they were overcharged.

49. DARCARS is also liable, in the discretion of the Court, for punitive damages and attorney's fees.

**FOURTH CAUSE OF ACTION: CUTPA CLAIM FOR INJUNCTIVE RELIEF –  
ADVERTISED PRICE CLASS**

1-42. Plaintiffs incorporate paragraphs 1-42 of the Introductory Paragraphs and Class Allegations and paragraph 44 of the Third Count.

43. This is a class claim brought for injunctive relief pursuant to Connecticut Practice Book § 9-7 and § 9-8(2) on behalf of the Advertised Price Class.

44. DARCARS has violated CUTPA by failing to sell motor vehicles to Plaintiffs and the Advertised Price Class members for the prices at which it advertised the vehicles, a violation under applicable case law and a *per se* violation under Conn. Agency Reg. §42-110b-28(b)(1).

45. DARCARS continues to sell motor vehicles for more than the Advertised Price.

46. DARCARS directs advertising towards the Advertised Price Class members because, as former customers of DARCARS, they are more likely than the general public to purchase another vehicle from DARCARS.

47. It is highly probable that many members of the Advertised Price Class will purchase additional vehicles from DARCARS and that DARCARS will overcharge them on future transactions due to DARCARS continuing unfair advertising and sales practices that are in violation of CUTPA.



48. Other consumers have asserted claims against DARCARS in which they have claimed that the sale of vehicles for more than the advertised price is a violation of CUTPA.

49. DARCARS continued to sell vehicles for more than the advertised price even after becoming aware of these claims and, on information and belief, it continues to sell vehicles for more than the advertised price as of the date of this complaint.

50. DARCARS has acted or refuses to act on grounds generally applicable to the Advertised Price Class, thereby making appropriate final injunctive relief under Conn. Gen. Stat. § 42-110g(d).

51. Plaintiffs seek an order enjoining DARCARS from charging more than the Advertised Price of vehicles in future retail sales.

52. DARCARS is also liable, in the discretion of the Court, for punitive damages and attorney's fees.

**FIFTH CAUSE OF ACTION: CUTPA CLAIM FOR DAMAGES – PLAINTIFFS ONLY**

1-33. Plaintiffs incorporate paragraphs 1-33 of the Introductory Paragraphs.

34. This claim is asserted by the Plaintiffs on an individual basis in the alternative to their claims asserted on behalf of the classes.

35. DARCARS has violated CUTPA by charging Plaintiffs the Commission.

36. DARCARS has further violated CUTPA by failing to sell the vehicle to Plaintiffs for the price at which it had advertised the Lexus.

37. DARCARS is liable to the Plaintiffs for their damages, including without limitation, the cost of the Commission and/or the difference between the Advertised Price and the cash price charged, the sales tax charged on those amounts, and finance charges incurred on the amounts that they were overcharged.

38. DARCARS is also liable, in the discretion of the Court, for punitive damages and attorney's fees.

**WHEREFORE**, Plaintiffs seek the following relief for themselves and the

Classes:

- (1) On behalf of themselves and the Classes, damages pursuant to Conn. Gen. Stat. § 42-110g(a) in excess of \$15,000;
- (2) On behalf of themselves and the Classes, punitive damages pursuant to Conn. Gen. Stat. § 42-110g(a);
- (3) On behalf of themselves and the Classes, injunctive relief pursuant to Conn. Gen. Stat. § 42-110g(d);
- (4) Attorney's fees pursuant to Conn. Gen. Stat. § 42-110g(d); and
- (5) Costs pursuant to Conn. Gen. Stat. § 42-110g(d).

PLAINTIFFS, ARKADIUSZ JOZEF GASKA  
and KATARZYNA GASKA, individually and on  
behalf of a Class of Others Similarly Situated

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