

State of Minnesota  
Scott County

District Court  
First Judicial District

Court File Number:	<b>70-CV-08-7457</b>
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Case Type:	Contract
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**Notice of Filing of Order**

THOMAS JOHN LYONS, JR.  
367 COMMERCE COURT  
VADNAIS HEIGHTS MN 55127

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**Alicia Gonzalez vs Shakopee Chrysler Jeep Dodge, d/b/a SHAKOPEE DODGE, INC.**

You are notified that an order was filed on this date.

Dated: December 10, 2008

Gregory M. Ess  
Court Administrator  
Scott County District Court  
200 4th Avenue West JC 115  
Shakopee MN 55379  
952-496-8200

cc: GREGORY J JOHNSON

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

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Alicia Gonzalez,

FILED

File No.70-CV-08-7457

Plaintiff,

DEC 10 2008 A

vs.

SCOTT COUNTY COURTS

ORDER

Shakopee Chrysler Jeep Dodge  
d/b/a Shakopee Dodge, Inc.,

Defendant.

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The above-entitled matter came before the Honorable Caroline H. Lennon, Judge of District Court, on November 19, 2008, at the Scott County Courthouse, Shakopee, Minnesota.

Trista Roy, Attorney at Law, appeared as counsel for and on behalf of the Plaintiff. Daniel Gallatin, Attorney at Law, appeared as counsel for and on behalf of the Defendant.

Plaintiff filed a summons and complaint against Defendant on March 31, 2008. In the complaint, Plaintiff alleges that Defendant violated the Minnesota Motor Vehicle Retail Installment Sales Act (Minn. Stat. § 53C.01 *et. seq.*), the Minnesota Prevention of Consumer Fraud Act (Minn. Stat. §§ 325F.68-.69), and Minn. Stat. § 8.31 *et. seq.* On November 6, 2008, Plaintiff filed a Notice of Motion and Motion to Amend the Complaint to Add a Claim for Punitive Damages and Motion to Modify the Scheduling Order. Defendant agreed to the modification in scheduling but opposes the addition of punitive damages.

Based upon the proceedings, this Court makes the following:

**ORDER**

1. That the Plaintiff's motion to amend the complaint to add a claim for punitive damages and motion to modify the scheduling order is GRANTED.
2. That the scheduling order will be amended as agreed by the parties. The deadline for dispositive motions set for November 21, 2008 is extended to January 6, 2009. The attached Memorandum of Law is incorporated by reference.

Dated: December 9, 2008

**BY THE COURT:**

  
\_\_\_\_\_  
Caroline H. Lennon  
Judge of District Court

## MEMORANDUM OF LAW

On or about October 16, 2006, Plaintiff went to Defendant dealership with her mother, Ms. Lisa Rose, with the intent to purchase a vehicle. Plaintiff states that she was unable to find a vehicle in her price range. Her mother found a 2006 Pontiac G6 she was interested in purchasing but did not qualify for financing. Plaintiff states that an agent of Defendant suggested Plaintiff apply for a loan for the 2006 Pontiac G6 that her mother wanted to purchase. Plaintiff qualified for the financing and Defendant completed a Retail Installment Contract. Plaintiff states it was a "straw man purchase" designed to deceive the lender. Plaintiff states Defendant used Plaintiff's credit to secure financing for the 2006 Pontiac G6 that Defendant knew Plaintiff's mother would be driving. The 2006 Pontiac G6 was at all relevant times insured by Ms. Rose. Plaintiff states that Defendant's agent, Scott Smith, orally promised her and Ms. Rose that after one year, Defendant would straighten out the insurance and title problems via some sort of refinancing package at no cost to them. Plaintiff relied on this oral agreement. A year later when Plaintiff and Ms. Rose attempted to get Defendant to resolve the title and insurance issues as promised, Defendant's agents Scott Smith and Ralph Jones demanded \$4,000.00 to correct the errors.

Documentation indicates that Plaintiff paid \$1000.00 cash down payment and a \$1000.00 trade-in credit for a 1990 Toyota Camry. Plaintiff states she did not actually pay \$1000.00 cash and did not trade in a 1990 Toyota Camry. Plaintiff inquired about the reference to the 1990 Toyota Camry. Plaintiff states Defendant told her it was a vehicle the dealership used to wheel and deal and to make financing work. Title to the

1990 Toyota Camry was subsequently mailed to Plaintiff who returned it to Defendant upon their demand of it. Plaintiff states she has never owned the 1990 Toyota Camry referenced as a trade in on the Retail Installment Contract. Defendant titled the vehicle to Plaintiff and then had Plaintiff title it back to Defendant. However, Plaintiff noted in the motion at issue that the 1990 Toyota Camry is still titled in Plaintiff's name but that Plaintiff has never owned the 1990 Toyota Camry. There is a discrepancy between Plaintiff's gross monthly income and length of time at the job on the printed Route One credit application and the handwritten application submitted by Plaintiff. The Route One credit application states her income as \$6,800.00 per month and length of employment as two years and seven months while Plaintiff handwrote her income at \$512.00 per month and length at three months.

Plaintiff states that when she returned to Defendant dealership with her boyfriend and Ms. Rose about one year after the purchase, Defendant's agent Business Manager Scott Smith described the falsification procedure as standard operation to complete financing. Defendant states that it cannot admit or deny many of Plaintiff's allegations stated in the Complaint because they are without sufficient information or knowledge. Defendant denies engaging in any wrongdoing in regard to the completion of the Retail Installment Contract or breaching the terms of any contract. Defendant denies having knowledge that the 2006 Pontiac G6 financed by Plaintiff would be driven by Ms. Rose and not Plaintiff. Defendant has no knowledge as to who has and does insure the 2006 Pontiac G6. Defendant denies titling the 1990 Toyota Camry to Plaintiff, having Plaintiff title it back to Defendant and engaging in any wrongdoing or breaching any terms of any contract. Defendant denies that after one year Plaintiff and Ms. Rose attempted to get

them to resolve the title and insurance issues of the 2006 Pontiac G6 and/or denies demanding \$4000.00 remuneration to resolve the issue and/or denies agents Scott Smith and Ralph Jones made the demand or are agents of Defendant.

A plaintiff cannot seek punitive damages in the civil complaint. Minn. Stat. § 549.191. A plaintiff can move to amend the pleadings to claim punitive damages. *Id.* The court shall grant permission to amend the pleadings to claim punitive damages if the court finds prima facie evidence in support of the motion. Minn. Stat. § 549.191. Prima facie evidence is evidence which, if unrebutted, would support judgment in the moving party's favor. *McKenzie v. Northern States Power Company*, 440 N.W.2d 183, 184 (Minn. App. 1989). "Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20. A motion to amend a pleading to assert a claim for punitive damages will be granted only "if it is supported by prima facie clear and convincing evidence that the defendant engaged in conduct demonstrating deliberate disregard for the rights of others." *Northwest Airlines, Inc. v. American Airlines, Inc.*, 870 F.Supp. 1499, 1502 (D.Minn. 1994). Clear and convincing evidence is "more than a preponderance of the evidence but less than proof beyond a reasonable doubt." *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). It is where the truth of the facts asserted is "highly probable." *Id.*

The Minnesota Motor Vehicle Retail Installment Sales Act requires the entire Retail Installment Contract to be in writing. Minn. Stat. § 53C.08, Subd. 1(a). A finance company license holder cannot intentionally fail to comply with the Minnesota Motor Vehicle Retail Installment Sales Act, defraud any retail buyer to the buyer's damage, or

fraudulently misrepresent, circumvent or conceal through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this Act. The Minnesota Prevention of Consumer Fraud Act definition of “person” includes any natural person, corporation, company, business entity, agent, employee, salesperson, partner, officer director, or associate. Minn. Stat. § 325F.68. “Sale” includes any sale, offer for sale, or attempt to sell. *Id.* The Minnesota Prevention of Consumer Fraud Act prohibits the “act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70. Minn. Stat. § 325F.69.

Plaintiff has made a prima facie showing of Defendant’s deliberate disregard for the rights or safety of others. The allegations of falsified loan documents coupled with a fictitious trade-in and down payment all would support a claim of deliberate disregard for the rights of others. This Plaintiff also has the proof of three wrongly titled vehicles as evidence of her claim.