IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THOMAS RANDLE, 9527 PLYMOUTH AVE. CLEVELAND, OH 44125, Plaintiff, v. EXETER FINANCE, LLC, c/o ITS STATUTORY AGENT CORPORATION SERVICE COMPANY 1160 DUBLIN ROAD, SUITE 400 COLUMBUS OH 43215, Defendant.	))))))))))))))))	CASE NO. JUDGE **CLASS ACTION COMPLAINT**

NOW COMES Plaintiff Thomas Randle, by and through counsel, and files this Class Action Complaint and states the following:

PARTIES

1. Thomas Randle ("**Mr. Randle**" or "**Plaintiff**") is an individual residing in Maple Heights, OH.

2. Mr. Randle is a "Buyer" and a "Retail Buyer" as defined by § 1317.01(F) and (G) respectively,

3. Mr. Randle entered into a Retail Installment Contract ("**RISC**") as defined by § 1317.01(L) Bedford Auto Wholesale ("**Bedford Auto**").

4. Mr. Randle is also a "consumer obligor" and a "debtor" as defined by the O.U.C.C., R.C. § 1309.102(25) & (28).

5. Defendant Exeter Finance LLC ("**Exeter**") is a Delaware Company registered to do business in this state and is in the business of accepting assignments of retail installment sales agreements from sellers of motor vehicles, and Exeter took assignment of the Mr. Randle's RISC.

6. Exeter is a "secured party" defined by the O.U.C.C., R.C. §1309.102(73).

INTRODUCTION

7. This class action, brought by Mr. Randle on behalf of himself and all others similarly situated, seeks to recover actual damages, statutory damages, reasonable attorney's fees and costs, injunctive relief, and declaratory relief, to redress a deceptive pattern and practice of wrongdoing perpetrated by Exeter in conjunction with their sale, financing, and repossession of consumers' automobiles.

8. Exeter routinely finances high-rate auto loans for Ohio consumers by taking assignment of RISC's from Ohio car dealers.

9. As a condition of accepting financing, Exeter charges a discount fee – which is a cost incident to the extension of credit.

10. The discount fee is deducted from the amount of money transferred by Exeter to the dealership from whom it is accepting assignment of an agreement.

11. To accommodate this fee, Exeter and its dealers conspire to raise the sales price of vehicles that they sell above the cash price.

12. Then, without informing the consumer of the discount fee, the dealer includes the fee in the Amount Financed (less the down payment) section of the Truth-In-Lending Act ("**TILA**") disclosures of their respective retail installment sales agreements.

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13. Thus, the discount fee is really a hidden finance charge, which if properly disclosed would increase the disclosed annual percentage rate ("**APR**") and in many cases make the interest rate terms usurious.

14. Then, to add insult to injury, upon repossession, Exeter sends its borrowers form notices which expressly misstate and violate their statutory rights.

15. This class action seeks equitable and monetary relief to remedy Exeter's violations of the Retail Installment Sales Act ("**RISA**") and the Ohio Uniform Commercial Code ("**O.U.C.C.**") in abrogating consumers' statutory rights in financing and repossessing of their vehicles. RISA and the O.U.C.C. form a complementary statutory scheme which mandates certain disclosures of consumer rights and requires creditors to follow specified procedures when repossessing and disposing of consumers' vehicles.

16. Mr. Randle seeks injunctive and other equitable relief, including an order directing Exeter to repurchase the claimed deficiency debts of class members and to indemnify class members, repair of the credit of all class members, as well as an award of appropriate damages including return of all improperly collected deficiencies pursuant to R.C. §§1317.12/16, R.C. §§1309.611/614, compensatory and statutory damages, as provided by R.C. § 1309.625(C)(2).

STATEMENT OF FACTS

17. On or around May 21, 2013, Mr. Randle purchased a 2011 Hyundai Accent from Bedford Auto Wholesale ("**Bedford Auto**") in Bedford Ohio. *See* Ex. 1, Retail Installment Sales Contract.

18. Mr. Randle paid a cash price for the vehicle of $12,939.34, plus $1664.00 for a Warranty, and traded in his current vehicle for $700.00. With taxes, license and registration fees

and a document fee, the total unpaid cash price was $14,186.84, all of which Mr. Randle sought to finance.

19. As stated in the TILA disclosures of the RISC, the APR for the loan was 24.95%, the "Finance Charge" was $12,654.16, the "Amount Financed" was $14,186.84, and the "Total Sales Price" was $27,541.00.

20. Subsequently, Bedford Auto assigned its interest in the RISC to Exeter.

21. Upon information and belief, after approving the amount financed of $14,186.84, Exeter transferred a net check to Bedford Auto and kept the difference as its fee to finance Mr. Randle's transaction. *See* Ex. 2, Exeter Cure Checklist.

22. Thus, Exeter charged the discount as a transaction fee to Bedford Auto to agree to finance the deal.

23. Mr. Randle was also required to pay sales tax on the fee, which resulted in him paying extra sales tax, which should have been classified as a finance charge.

24. Bedford Auto passed the cost of this discount (including the extra sales tax) onto Mr. Randle without informing him, by raising the price of his vehicle to recoup the discount.

25. This fee would not have been charged to Mr. Randle had he paid cash, or had he had good credit so that he could obtain prime financing for his purchase.

26. As such, an additional part of the amount paid by Mr. Randle was a charge incident to the extension of the credit, which was not disclosed to him, and was, thus, a hidden finance charge.

27. In fact, the discount fee was hidden in the Amount Financed, which **should have been decreased by the amount of the discount fee**.

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28. Correspondingly, the Finance Charge **should have been increased by the amount of the discount**. *See* Ex. 1, Retail Installment Sales Contract.

29. Had Exeter disclosed the fee as a finance charge, the APR on the contract would have substantially exceeded the 24.95% represented and the 25% allowable by law, **making the disclosures on the contract false and the contract itself usurious**.

30. On or around June 27, 2016, Exeter repossessed Mr. Randle's vehicle.

31. Subsequent to the repossession, Exeter sent Mr. Randle a Notice of Reinstatement ("**Reinstatement Notice**"). *See* Ex. 3, Notice of Reinstatement.

32. The Reinstatement Notice improperly includes a line for the total repossession costs ($450.00) and **includes this amount in the "Total Reinstatement Amount" ($1,789.00) for the consumer to reinstate the loan**.

33. This is in violation of R.C. § 1317.12(C) which requires that **only $25.00 of the repossession costs need be paid to reinstate a loan**, with the remainder added to the balance of the loan.

34. Exeter drops a footnote on the Notice which states that:

> *You are required to pay all actual and reasonable costs we incur in retaking the Vehicle. The dollar amount above is an estimate because any storage costs will continue to accrue on a daily basis until you reinstate your Agreement and get your Vehicle back. Any portion of those costs that exceed $25 will be added to your account. At your option, you pay all Repossession Costs at the time of reinstatement.

35. Nevertheless, this confusing footnote to a debtor who had recently had his vehicle taken and may want to reinstate the loan, states the wrong, inflated amount that must be paid in order to reinstate the loan.

36. The **actual amount necessary to reinstate Mr. Randle's loan is $1,364.00** (including only $25.00 of the repossession Costs), **not $1,789.00** (which includes the full $450.00

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in repossession costs), *making it harder to reinstate the loan*, plainly something R.C. 1317.12(C) aimed to avoid.

37. In addition, on June 27, 2016, Mr. Randle was sent a "Notice of Sale," as required by R.C. § 1317.16 and R.C. § 1309.614. *See* Ex. 4, Notice of Sale.

38. The Notice of Sale stated that the Mr. Randle's car would be sold at a "public sale" for a minimum bid price of $3,421.84 on July 26, 2016. *Id.*

39. However, the vehicle was in fact sold on July 26, 2016, for $2,200.00, **$1,221.84 less than the minimum bid price stated on the Notice of Sale**. *See* Ex. 5, Deficiency Notice.

40. The notice also failed to state **the day of the week** on which the sale was to occur which is required by R.C. 1309.614.

41. The the overstatement of the amount required to reinstate Mr. Randle's loan, the failure to sell Mr. Randle's vehicle at or above the minimum bid price and the failure to state the day of the week on which the auction would occur are violations of R.C. § 1317.12/1317.16. and R.C. 1309.614.

42. Mr. Randle purchased the vehicle for his personal, family or household use.

APPLICABLE LAW

A. The Retail Installment Sales Act ("RISA") - Usury

43. As part of its regular practice and course of business, Exeter conspires with dealers and requires dealers to raise the prices of the vehicles, where Exeter takes assignments of Retail Installment Sales Agreements, to accommodate the discount it charges.

44. As part of its regular practice and course of business, Exeter has knowledge that its dealers add its discount to the purchase price of automobile consumer transactions, as opposed to properly disclosing the discount as a finance charge.

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45. As such, Exeter creates a system, whereby the vehicles, which it accepts for assignment and financing, are over-priced and priced substantially in excess of the price that similar vehicles are available from other dealers.

46. These types of excessive charges in violation of R.C. § 1345.03(B)(2) have been determined by courts of this state to constitute unfair, deceptive and unconscionable acts or practices. *See e.g. Mary Walls v. Harry Williams; Butch's Auto Sales*, Case No. 94CVH369 (Jefferson Mun. Ct., May 24, 1995) (PIF 10001524); *State ex rel. Celebrezze v. Stuckert; Bucyrus Motors*, Case No. 86CV043 (C.P., Crawford Cty., November 20, 1987) (PIF 10000910); *Bruner v. Credit Motors, Inc.*, Case No. VI8904637 (Toledo Mun. Ct., January 27, 1990) (PIF 10001185); *State ex rel. Celebrezze v. Fike; Tommy Fike's Used Cars*, Case No. 86CV106398 (C.P, Franklin Cty., June 17, 1987) (PIF 10000863).

47. This increase in the price of a vehicle is a charge that cash purchasers would not pay and is accordingly a finance charge pursuant to RISA and TILA.

48. Pursuant to RISA, all amounts considered components of the finance charge and APR under TILA must be properly disclosed to consumers.

49. Exeter, by practice and design, fails to disclose, and in fact hides, this information from consumers.

50. The failure of Exeter and its dealers to disclose to consumers the existence of the discount and their resulting increase of the sales price of vehicles is materially deceptive and misleading.

51. This type of conduct in violation of RISA and TILA (and Regulation Z thereof) has been determined by courts of Ohio to constitute unfair, deceptive, and unconscionable acts or practices, in violation of R.C. § 1345.02 or R.C. § 1345.03. *See e.g. Buckeye Federal Savings &*

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Loan v. Cunningham, No. 82CVF9492 (Dayton Mun. Ct., February 25, 1985); *Sun American Finance Corp v. Williams*, No. 79-CVF-40957 (Cleveland Mun, Ct., July 23, 1985); *State ex rel Montgomery v. Convoy Family Market, Inc.,* No. CV9901007 (Court of Common Pleas, Van Wert County, February 2, 2001); *Patton v. Jeff Wyler Eastgate,* No. 06CV010 (S.D. Ohio, March 16, 2007).

52. If the excess mark-ups/financing discounts on vehicles sold and assigned to Exeter were properly included as a finance charge, the actual APR would far-exceed the amount stated and, for a significant number of their transactions, far-exceed the 25% APR limit set as usurious by Ohio law.

B. Retail Installment Sales Act ("RISA")

53. R.C. § 1317.12 requires a secured party to send a notice of reinstatement to debtors subsequent to repossession, and it states in pertinent part:

> . . . the secured party shall . . . send to the debtor a notice setting forth specifically the circumstances constituting the default and the amount by itemization that the debtor is required to pay to cure the default . . . by delivering to the secured party the following:
>
> (A) **All installments due or past due** at the time of such delivery;
>
> (B) Any **unpaid delinquency or deferred charges**;
>
> (C) The **actual and reasonable expenses incurred by the secured party in retaking possession of the collateral provided** that any portion of such expenses which exceeds twenty-five dollars **need not be delivered to the secured party pursuant to this division, but shall be added to the time balance;**
>
> (D) **A deposit by cash or bond in the amount of two installments** . . .
>
> [Emphasis Added].

54. Upon information and belief, Exeter sent Mr. Randle and other similarly situated class members a notice in substantially similar form to the Notice of Reinstatement.

55. The Notice of Reinstatement includes the full amount of the repossession charges in the amount required to reinstate the loan in violation of RISA, R.C. § 1317.12, **which requires that only $25 of the repossession costs need be paid to reinstate a loan**, with the remainder added to the balance of the loan. *See* Ex. 3, Notice or Reinstatement.

56. Exeter dropped a footnote stating that "Any portion of those costs that exceed $25.00 will be added to the balance on your account. At your option, you may pay all Repossession Costs at the time of reinstatement."

57. This would not prevent a consumer from believing that the full amount of the repossession charges was required to reinstate the vehicle loan.

58. Indeed, a footnote would not cure the violation as R.C. § 1317.12 which requires that the secured party state the amount "the debtor is required to pay to cure the default," and the debtor is not required to pay the full amount of repossession costs as part of the reinstatement amount.

59. Nevertheless, Exeter included the full amount of the repossession costs in the amount demanded from the Mr. Randle and labelled it: "**Total Reinstatement Amount**".

60. Exeter thus violated R.C. § 1317.12(C) by including the full amount of the repossession costs in the amount demanded to reinstate Mr. Randle's loan.

61. Upon information and belief, subsequent to repossession, Exeter also sent Mr. Randle and similarly situated class members a notice in substantially similar form to the Notice of Sale.

62. The Notice of Sale sent to Mr. Randle stated his vehicle would be sold at a "public sale" for a minimum bid price of $3,421.84 on July 26, 2016. *See* Ex. 4, Notice of Sale.

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63. However, the vehicle was in fact sold on July 26, 2016, for $2,200.00, **$1,221.84 less than the minimum bid price stated on the Notice of Sale**, in violation of RISA, R.C. § 1317.16(B). *See* Ex. 5, Deficiency Notice.

64. In addition, the Notice of Sale also failed to state the day of the week on which the public sales would occur in violation of the O.U.C.C., R.C. § 1309.614(B).

CLASS ALLEGATIONS

65. Pursuant to Civ. R. 23 of the Ohio Rules of Civil Procedure Mr. Randle brings this action on behalf of himself and four classes of other persons similarly situated, to remedy the on-going unlawful, unfair and/or deceptive and willful business practices alleged herein, and to seek redress on behalf of all those persons who have been harmed thereby.

66. The "**Usuriously Charged Class**" is defined as all persons of Ohio who:

a. purchased a motor vehicle primarily for personal, family and/or household use from the date of filing of this complaint until the date this class is certified;

b. as part of that purchase transaction entered into a retail installment sales agreement with an Ohio dealership where the retail installment sales agreement was assigned to Exeter, and;

c. where Exeter charged a discount or loan fee, and/or where the selling dealer raised the sales price of a vehicle to accommodate a discount or loan fee charged by Exeter, and;

d. had the discount or loan fee been disclosed as a finance charge, the resulting APR would exceed 25%.

67. The "**Notice of Reinstatement Class**" composed of all Ohio residents who:

a. purchased a motor vehicle primarily for personal, family and/or household use from the date of filing of this complaint until the date this class is certified;

b. as part of that purchase transaction entered into a retail installment sales agreement with an Ohio dealership where the retail installment sales agreement was assigned to Exeter;

c. where Exeter repossessed their vehicles and sent the vehicle owner a Notice of Reinstatement; and,

d. the Notice of Reinstatement included the full amount of the repossession charges in the amount demanded to reinstate the loan.

68. The "**RISA Notice of Sale Class**" class is composed of all Ohio residents who:

a. purchased a motor vehicle primarily for personal, family and/or household use from the date of filing of this complaint until the date this class is certified;

b. as part of that purchase transaction entered into a retail installment sales agreement with an Ohio dealership where the retail installment sales agreement was assigned to Exeter;

c. where Exeter sent the debtor a Notice of Sale stating a minimum bid price;

d. and subsequently sold the vehicle for less than that price.

69. The "**UCC Notice of Sale Class**" class is composed of all Ohio residents who:

a. purchased a motor vehicle primarily for personal, family and/or household use from the date of filing of this complaint until the date this class is certified;

b. as part of that purchase transaction entered into a retail installment sales agreement with an Ohio dealership where the retail installment sales agreement was assigned to Exeter;

c. where Exeter repossessed their vehicles and sent, subsequent to the repossession and disposition, a Notice of Sale;

d. where the Notice failed to state the **day of the week** of the sale.

70. On information and belief, the proposed class size is in the hundreds, if not thousands, and is so numerous that joinder of all members would be impracticable. The exact size of the proposed class and the identity of the members thereof, are readily ascertainable from Exeter's business records.

71. There is a community of interest among the members of the proposed class in that there are questions of law and fact common to the proposed class that predominate over questions affecting only individual members. These questions include, inter alia:

a. Whether the discount/loan fee charged by Exeter is a hidden finance charge;

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b. Whether Exeter and/or its dealers disclosed or caused the failure to disclose the discount or loan fee as a finance charge and included it instead in the total amount financed;

c. Whether after the discount or loan fee is added into the finance charge the resulting APR is higher than stated on the on the respective retail installment sales agreement;

d. Whether after the discount or loan fee is added to the price of the vehicle, the vehicle is over-priced;

e. Whether after the discount or loan fee is added to the price of the vehicle, the resulting APR is usurious;

f. Whether the Notices of Reinstatement sent by Exeter included the full amount of the repossession charges in the amount needed to reinstate, and/or;

g. Whether debtors' vehicles were sold at auction below the minimum bid price stated on the Notice of Sale:

h. Whether the Notices of Sale stated day of the week the sale was to take place.

72. Proof of a common set of facts will establish the liability of Exeter, and the right of each member of the six classes to recover.

73. Mr. Randle's claims are typical of the four classes he seeks to represent, and he will fairly and adequately represent the interests of the classes.

74. Mr. Randle is represented by counsel competent and experienced in both consumer protection and class action litigation.

75. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Because the damages suffered by the individual class members may be relatively small compared to the expense and burden of litigation, it would be impracticable and economically infeasible for class members to seek redress individually. The prosecution of separate actions by the individual class members, even, if possible, would create a risk of inconsistent or varying adjudications with respect to individual class members against Exeter and would establish incompatible standards of conduct for Exeter.

FIRST CLAIM FOR RELIEF

Violation of RISA, R.C. § 1317.061 (Usury)

76. Mr. Randle realleges and incorporates by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

77. As noted, the TILA disclosure provided to Mr. Randle failed to include a hidden finance charge, which resulted in substantially understating the APR.

78. 15 U.S.C. § 1638 and 12 C.F.R. § 226.17(b) require that every creditor provide each consumer a complete and accurate truth in lending disclosure statement prior to the commencement of the contract, disclosing the amount that will be financed as well as a statement of the consumer's right to obtain a written itemization of the amount financed.

79. Further, 15 U.S.C. § 1638(b) requires that lenders accurately disclose APR, and other terms, so consumers know the true cost of the credit provided.

80. 15 U.S.C. § 1605 defines finance charges as all charges "imposed directly or indirectly by the creditor as an incident to the extension of credit . . ." in order to prevent hidden, undisclosed costs whereby the credit buyer is unable to know the identity of the credit items.

81. In order to obtain financing for Mr. Randle, the dealership paid a discount fee to Exeter, which was passed on to Mr. Randle in the price of the vehicle.

82. **The dealership passed the cost onto Mr. Randle without informing him, by raising the price of his vehicle to recoup the discount.**

83. This fee would not have been charged to Mr. Randle had he paid cash, or if he had good credit so that he could obtain non-subprime financing for their purchases.

84. As such, an additional part of the amount paid by Mr. Randle (including the additional sales tax) was a charge incident to the extension of the credit, which was not disclosed to him, and was, thus, **a hidden finance charge.**

85. By failing to disclose the discount it imposes and include the discount in the amount financed, and then by calculating APR based upon an improperly stated amount financed, as required by 15 U.S.C. § 1606 and Regulation Z § 226.22, Exeter regularly understates the disclosed APR in violation 15 U.S.C. § 1638(a)(4) and Regulation Z § 226.18(c).

86. Pursuant to RISA all amounts considered components of the finance charge and APR under TILA must be considered interest for purposes of calculating usury limitation compliance.

87. R.C. § 1317.061 further sets the maximum interest rate under a retail installment sales agreement at twenty-five (25%) percent per annum.

88. When these hidden finance charges are properly included, the APR for Mr. Randle's loan exceed the 25% maximum.

89. Thus, Exeter charged a usurious rate of interest to Mr. Randle in violation of R.C. § 1317.061.

90. As a result, Mr. Randle has suffered actual damages in the amount of the excessive interest charges as measured and are entitled to relief.

91. Furthermore, Exeter is prohibited from collecting more than 8% interest on its usurious agreements.

SECOND CLAIM FOR RELIEF
(Violation of R.C. § 2923.31 *et seq.* – Civil Racketeering)

92. Mr. Randle realleges and incorporates by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

93. Exeter's criminally usurious conduct and theft by deception, as described above, constitute "corrupt activities" as defined in R.C. § 2923.31(I)(a) & (c) respectively.

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94. Because Exeter engaged in this conduct as part of its ordinary custom and practice, Exeter engages in a "pattern of corrupt activity" as that term is defined in R.C. 2923.31(E).

95. R.C. § 2923.32(A)(1) prohibits engaging in a "pattern of corrupt activity."

96. R.C. § 2923.34 provides that anyone injured by a violation of R.C. § 2923.32 may bring a civil action for injunctive and monetary relief, as well as attorney fees and costs.

97. Therefore, Mr. Randle hereby asserts a claim for civil racketeering against Exeter to redress their pattern of corrupt activity by charging usurious interest and engaging in theft by deception.

THIRD CLAIM FOR RELIEF
(Civil Conspiracy)

98. Mr. Randle realleges and incorporates by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

99. Exeter manages, directs, participates in, and/or cooperates in part or all of the operations of various dealerships with which they do business, and in the creation, design, and/or implementation of their retail installment sales agreements, policies, and procedures for selling and financing vehicles.

100. In fact, due to the economics of how dealerships operate and finance their floor plans, the dealerships could not continue to operate without the participation of these finance companies financing the sales of their motor vehicles. Therefore, the creation, design, and/or implementation of retail installment sales agreements, policies, and procedures for selling and financing vehicles is done with the active collaboration between these finance companies and their dealership to their mutual end and profit. Moreover, neither side could continue to operate without this collaboration.

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101. Exeter facilitated the sale of the motor vehicles as described herein to Mr. Randle and members of the various classes.

102. In addition, Exeter participated and required the excessive markup of motor vehicles and participated in providing an inaccurate disclosure of financing terms and APR in violation of TILA, thereby charging excessive rates of interest.

103. Thus, the Exeter works in unison with their dealerships to overcharge and deceive similarly situated consumers in Ohio.

104. The combination of these practices and policies, the sale of the vehicles at an excessive price and undisclosed/deceptive and usurious terms, could not have been accomplished if these parties did not act in concert.

105. As a consequence of this concerted action, Mr. Randle, and the classes he seeks to represent have suffered damages and are entitled to the relief prayed for below.

FOURTH CLAIM FOR RELIEF
(FTC Holder Rule-Derivative Liability)

106. Mr. Randle realleges and incorporates by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

107. Mr. Randle executed the RISC with the dealer to finance the purchase of his vehicle, and the dealer then assigned the RISC to Exeter.

108. Upon information and belief, the RISC (as well as the various financing agreements of the members of the various classes) contains a clause which states:

NOTICE

> ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY

HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

109. As such, Exeter has derivative liability to Mr. Randle and members of the various classes to the degree that any act in violation of law as described herein was not committed by Exeter, but by the dealer of a consumer transaction assigned to Exeter.

FIFTH CLAIM FOR RELIEF

(Fraud)

110. Mr. Randle realleges and incorporates by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

111. Exeter misrepresented, caused to be misrepresented, omitted, and/or caused to be omitted (where they had a duty to disclose) aspects of consumer transactions of Mr. Randle and class members, by, without limitation, (a) misstating the financing terms, (b) materially misstating the true APR, and (c) misrepresenting the true price of the respective vehicle.

112. This misconduct was material to the purchase of vehicle as described above.

113. Exeter's actions in making or causing to be made misrepresentations and concealing facts were done intentionally and/or with such utter disregard or recklessness as to the truth or falsity such that knowledge may be inferred.

114. Exeter engaged in this conduct with the intent of misleading Mr. Randle and class members into reliance for the purpose of making the purchases at issue.

115. Mr. Randle and class members were justified in relying upon Exeter's advertisements, representations, and/or concealments as described herein.

116. As a result, Mr. Randle and class members have been proximately injured as caused by this reliance in the amounts invested to purchase vehicles and related consequential damages.

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SIXTH CLAIM FOR RELIEF
Violation of R.C. § 1317.12
(Inclusion of Full Repossession Charges in Reinstatement Amount)

117. Mr. Randle realleges and incorporates by reference all facts, statements and allegations contained in the preceding paragraphs as though expressly re-stated and re-written herein.

118. R.C. § 1317.12, in pertinent part provides that:

> . . . the secured party shall. . . send to the debtor a notice setting forth specifically the circumstances constituting the default and the amount by itemization that the debtor is required to pay to cure the default . . . by delivering to the secured party the following:
>
> * * *
>
> (C) **The actual and reasonable expenses incurred by the secured party in retaking possession of the collateral** provided that *any portion of such expenses which exceeds twenty-five dollars need not be delivered to the secured party pursuant to this division, but* ***shall be added*** *to the time balance . . .*

[Emphasis Added].

119. Nevertheless, the Reinstatement Notices sent to Mr. Randle included the full amount of the repossession charges, in the amount required to reinstate the loan, in violation of RISA, R.C. § 1317.12, which requires that **only $25.00 of the repossession costs need be paid to reinstate a loan**, with the remainder added to the balance of the loan. *See* Ex. 3, Notice of Reinstatement.

120. Exeter dropped a footnote stating that "Any of the Repossession costs shown above, which exceed $25.00 need not be delivered to Exeter to reinstate; if these fees are not paid, they will be added to the balance of your account and remain payable."

121. However, this would not prevent a consumer from believing that the full amount of the repossession charges was required to reinstate the vehicle loan.

122. Indeed, a footnote would not cure the violation as R.C. § 1317.12 which requires that the secured party state the amount "the debtor is required to pay to cure the default," and the

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debtor is not required to pay full amount of the repossession costs as part of the reinstatement amount.

123. Nevertheless, Exeter included the full amount of the repossession costs in the amount demanded from the debtor and labelled it: "Total Reinstatement Amount."

124. Exeter thus violated R.C. § 1317.12(C) by including the full amount of the repossession costs.

125. A holder's failure to comply with the mandatory requirements of the above precludes it from lawfully collecting any deficiency from the borrower following disposition of the repossessed vehicle.

SEVENTH CLAIM FOR RELIEF
Violation of the O.U.C.C. R.C. 1309.610
(Sale Not Commercially Reasonable)

126. Mr. Randle hereby incorporates by reference all facts, statements and allegations contained in the preceding paragraphs as though expressly re-stated and re-written herein.

127. R.C. 1309.610 requires that "every aspect of the disposition [of a debtor's collateral by a secured creditor] including the method, manner, time, place, and terms must be commercially reasonable." *Huntington Nat. Bank v. Elkins*, 53 Ohio St. 3d 79, 80, 559 N.E.2d 456, 458 (1990).

128. The secured party has the burden of proving that the sale of collateral was commercially reasonable pursuant to R.C. 1309.47. See *Huntington Bank v. Freeman*, 53 Ohio App. 3d 127, 129–30, 560 N.E.2d 251, 255 (1989).

129. The Official Comment 10 to R.C. 1309.610 states regarding price:

> **. . . a low price suggests that a court should scrutinize carefully all aspects of a disposition to ensure that each aspect was commercially reasonable.**
>
> [Emphasis Added].

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130. Courts have considered the price obtained by the sale of collateral among the factors in determining the commercial reasonableness of a sale. See *Bank One, Cleveland, N.A. v. Hicks*, 1990 WL 50025 (Ohio Ct. App. 9th Dist. Medina County 1990) (reasonableness questions for vehicle sold for $99 that was purchased just 19 months earlier for $3,791); *Piper Acceptance Corp. v. Bischoff, No.* C-890329, 1990 WL 88758, at *3 (Ohio Ct. App. June 27, 1990) (collateral's marginal wholesale price and secured party's failure to solicit all potential buyers called reasonableness of sale into question).

131. Exeter stated the minimum bid for the sale of Mr. Randle's vehicle would be $3,421.84 and then sold the vehicle for only for $2,200.00, **$1,221.84 less than the minimum bid price stated on the Notice of Sale**.

132. Exeter's routine practice of failing of selling vehicles for well below the minimum price stated or otherwise reasonable price for the collateral has deprived debtors of their rights to have a commercially reasonable sale of their vehicles.

133. A secured party's failure to comply with the mandatory notice requirements of R.C. §§ 1309.613 & 1309.614, renders it liable to the borrower who financed consumer goods for statutory damages in the amount of the entire finance charge plus ten (10%) percent of the principal amount borrowed, pursuant to R.C. § 1309.625(C)(2).

EIGHTH CLAIM FOR RELIEF

Violation of the O.U.C.C., R.C. §§ 1309.610/1309.614
(Notice of Sale fails to State Day of Sale)

134. Mr. Randle hereby incorporates by reference all facts and allegations contained in the previous paragraphs as though fully re-written and re-stated herein.

135. R.C. § 1309.614(B) states that:

> The following form of notification of disposition, when completed, provides sufficient information:

> * * *
>
> **(For a public disposition)**
> We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:
>
> **Day** and date: ....
>
> Time: ....
>
> Place: ....
>
> You may attend the sale and bring bidders if you want.
>
> [Emphasis Added].

136. The notices that Exeter sent to Mr. Randle failed to state the time of sale as required by statute.

137. The notices also **failed to state the day of the week** on which the "public sale" would occur.

138. Consequently, Exeter's Notices of Sale violated the requirements of R.C. 1309.614(B).

139. A secured party's failure to comply with the mandatory notice requirements of R.C. §§ 1309.613 & 1309.614, renders it liable to the borrower who financed consumer goods for statutory damages in the amount of the entire finance charge plus ten (10%) percent of the principal amount borrowed, pursuant to R.C. § 1309.625(C)(2).

PRAYER FOR RELIEF

WHEREFORE, Mr. Randle prays for judgment against Exeter and more specifically for:

A. An order certifying this case as a class action, and certifying the proposed four classes as defined herein;

B. an order appointing Frederick & Berler, LLC as class counsel;

C. a judgment for the actual damages suffered by Mr. Randle and each class;

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D. an order finding and declaring that Exeter's acts and practices as challenged herein are unlawful;

E. an order preliminarily and permanently enjoining Exeter from engaging in the practices challenged herein;

F. an order directing Exeter to repurchase any claimed deficiency debts;

G. an order of restitution and/or disgorgement in an amount to be determined at trial which is at least equal to all sums collected by Exeter in excess of what is legally permitted;

H. or order prohibiting Exeter from collecting more than 8% APR on usurious contracts;

I. statutory damages, pursuant to R.C. § 1309.625(C)(2), in an amount to be determined at trial, which amount is at least equal to the total amount of finance charges and ten (10%) percent of the principal amount borrowed;

J. an order requiring Exeter and any of its agents to remove any adverse credit information that they previously reported to credit reporting organizations regarding debtors' account;

K. Costs and reasonable attorney's fees, pursuant R.C. § 1345.09, and other applicable law;

L. pre-judgment interest and post-judgment interest to the extent permitted by law;

M. rescission of the transactions at issue and an order directing Exeter to restore to Debtors all money received; and

N. an order granting such other and further relief as this Honorable Court deems just, equitable and appropriate.

Respectfully submitted,

/s/Ronald I. Frederick
Ronald I. Frederick (0063609)
Michael L. Berler (0085728)
Frederick & Berler, LLC
767 East 185th Street
Cleveland, Ohio 44119
Telephone: (216) 502-1055
Fax: (216) 609-0750
ronf@clevelandconsumerlaw.com
mikeb@clevelandconsumerlaw.com

Attorneys for Mr. Randle

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