

## **PETITION FOR REHEARING FOR PLAINTIFF-APPELLANT**

### **I. Clarification of Several Material Facts Which Were Misstated by Defendant in Its Attempt to Mislead Or Defraud This Court**

As stated in Plaintiff's Reply at page 1 and 2, Defendant's contention in its Brief is rife with outright falsehood and it sheds new light on the continuing effort of the Defendant (the "Dealer") to conceal genuine issues. Here, with this opportunity, Plaintiff would like to clarify several material facts, which were misstated by Defendant in its Brief. After receiving the September 30, 2008 Order (the "Order") from this Court, Plaintiff believes that some detail analysis became necessary as some fraudulent statements from the Dealer indeed could bring our judicial system into disrepute.

#### **1. Defendant Shall Not Be Allowed to Create Another Version of Plaintiff's Issues for Review**

Contrary to Defendant's incorrect and misleading contentions in its Brief at page 2, Plaintiff presented 11 issues for the instant review (Plaintiff's Brief at page 2 and 3): It is important to note that Defendant failed to submit any meaningful argument in support of its one-sentence contention alleging some of Plaintiff's issues for review were not addressed in her Brief. Also it is important to note that on the face of the text, Defendant misinterpreted Plaintiff's issues for review. (Defendant's Brief at page 2). After reading the Order, Plaintiff realized that Defendant's attempt to mislead this Court had been succeeded. (Order at page 1). As a result, Defendant can evade, avoid and ignore several essential issues raised by Plaintiff in her Brief. Without question, how to evaluate and resolve each of

the major issues in dispute is determinative for the review process. As this Court can see, at the very least, whether Plaintiff's constitutional and statutory rights had been deprived at the trial court should be addressed. And for the sake of fairness and justice, Plaintiff believes that as long as the Defendant failed in responding any issue, which was properly raised by Plaintiff, she shall prevail on the specific issue because Defendant has waived its right to argue in its Brief.

## **2. Defendant Shall Not Be Allowed to Create Another Version of Plaintiff 's Allegations**

At page 7 and 8 of its Brief, in an attempt to create a different version of "Statement of Facts", Defendant provided an incorrect list of Plaintiff's allegations (Defendant's Brief at pp 7-8). The plain text of Plaintiff' Second Amended Complaint shows that Count I – Count IV are distinct cause of actions under the Federal Magnuson-Moss Act and Illinois UCC (A 006-007)<sup>1</sup>. And "Breach of Contract" for Count IV is Defendant's assertion (S 554-555; Defendant's Brief p.7). It is amazing that Defendant prolongs a clear-cut case for several years already, but it still pretends not knowing what Plaintiff's allegations are and what Federal or state law governs each Count in the Complaint. Under such circumstances, no one would expect Defendant and its counsel had offered any meaningful defense at the trial court. Indeed, they did not. It is extraordinary enough that there are two sets of Bystander's Reports for review. Plaintiff's proposed Bystander's Report was filed on January 5, 2007. At the trial court,

---

<sup>1</sup> As in Plaintiff's Brief and Reply, the following abbreviations are used herein in referring evidence in the record: "A" for separate Appendix; "C" for Common Law Record and "S" for the Supplemental Record.

Defendant did not comply Illinois Supreme Court Rule (“Rule”) 323 (c), and it failed to file a timely response to Plaintiff’s proposed Bystander’s Report, further, Defendant also failed to follow the July 10, 2007 Order from this Court, and it failed to submit its purport Bystander’s Report on time. More strange things happened when the Defendant drafted a Plaintiff’s Issues for Review of its own version, while Defendant failed to explain why and how Rule 341(i) permitted such a practice. The situation became more complicated when Defendant played the same game and violated the same Rule by creating a different set of “Statement of Facts.” And a more serious problem appeared when Defendant was successful to created its own version of Plaintiff’s allegations in order to mislead this Court. (Defendant’s Brief, pp.7-8; Order p2; Plaintiff’s Complaint at A 006).

As this Court can see, contrary to the Dealer’s argument in its motion to dismiss (S 113-116), Counts I - IV are viable causes of action under 15 U. S. C. § 2310(d)(1). In Plaintiff’s Complaint, Counts I and IV alleged Defendant failed to comply with “**any obligation under this chapter**” in the statute, Count II addressed violation of “**written warranty**” (and expressed warranty under Illinois UCC), Count III alleged violation of “**implied warranty.**” In the process of evaluating Count I, as to the dispute on different versions of a Buyer’s Guide, **obligation under this chapter** stated in 15 U. S. C. § 2310(d)(1) does include those under FTC, State law and common law. As to Count IV, revocation of acceptance is a viable cause of action under the Magnuson-Moss Act and Illinois UCC. All Judges at the trial court had already rejected Defendant’s practice of misstating and misinterpreting Plaintiff’s allegations, and no Judge therein agreed

Defendant's contention in law as to Counts I - IV. Therefore, as a preliminary matter, Defendant shall not be allowed to repeat the same practice, provide misleading information to a Reviewing Court. Furthermore, Defendant failed to respond Count IV, and failed to argue why Plaintiff should not prevail on revocation of acceptance under the Illinois UCC. This is not an inadvertent error. As this Court can see, fatal flaws, like this one, exist in Defendant's Brief.

**3. Contrary to Defendant's Fraudulent Contention, Plaintiff's Motion for Substitution of Judge Had Been Granted on December 8, 2005**

In its Brief at page 6, as part of "Statement of Facts," Defendant argued that "[F]or reasons that are unclear from the record, on December 8, 2005, Judge Ronald Davis transferred the matter back to the presiding judge for reassignment to another judge **for hearing on Plaintiff's motion.** (S00220)." (Emphasis added). Since Defendant's counsel knew very well what happened on that day in the courtroom, it would not be an overstatement that lawyer Vorberg provided a fraudulent contention on a material fact in order to defraud the Reviewing Court. At page 16 of Defendant's Brief, lawyer Vorberg provided another deliberate misleading statement as such "Plaintiff's withholding of presentment until the dismissed was entered \*\*\*." Here, lawyer Vorberg knew that, in the Circuit Court of Cook County, a hearing date normally was set 2-3 weeks later after the filing date. On this issue, this Court, in its September 30, 2008, Order at pp 3-4, wisely assessed that "Judge Davis transferred the matter back to the presiding judge for reassignment to another judge '**on Plaintiff's motion.**'" (Emphasis added). The record shows that it is the Plaintiff who requested the December 8, 2005 hearing

on her “Plaintiff’s Motion for Reconsideration on November 17, 2005 Order“ (S 210-213). And on December 8, 2005, Judge Davis eventually granted Plaintiff’s motion for substitution of judge professionally. As a direct result, all orders entered in November of 2005 were void as a matter of law. That is exactly the oral explanation of the ruling from Judge Davis. After rendering the December 8, 2005 Order, Judge Davis and Plaintiff had a happy and friendly talk at Defendant’s counsel presence. No one attending the hearing will ever forget that occasion. Further, in 2006, Plaintiff filed several motions based on the December 8, 2005 decision (S 190-196; S 223-232; S 239—247; S 404-422). At every hearing in 2006, at trial court, Defendant did not and could not argue the content or implication of the December 8, 2005 order, not even once. Also it can be imagined what Judge Rhine’s response would be, if Plaintiff’s November 3, 2005 motion had not been granted. Judge Rhine would certainly dismiss the case on the spot, and sanction would have had been imposed upon Plaintiff. But this did not happen. Notably and most importantly, the December 8, 2005 decision from Judge Davis is supported, as a matter of law, by a line of precedents in Illinois.

#### **4. Defendant Did Not “Re-file” Its Motion to Dismiss After It was Stricken – The Dealer Became at Default for Failure to Plead After October 20, 2005**

At page 5 of Defendant’s Brief in its “Statement of Facts,” it contended “Defendant’s Motion to Strike And Dismiss Plaintiff’s Amended Complaint was stricken, without prejudice, **in order to allow the trial judge to decide the motion.**” (Emphasis added). Here, Defendant is insulting Judge Healy who issued the specific order, since every judge knows the difference between continuing a

motion and striking it. In deed, Judge Healy had very good reasons to strike Defendant's motion; as Defendant's counsel Vorberg knows that very well. Plaintiff does not have to repeatedly point out that it is lawyer Vorberg who drafted the order, and added a phrase "without prejudice" in the October 20, 2005 Order (S 206 at ¶5). Defendant certainly realizes that it can not fool any distinguished law professionals with this, therefore, at page 6 of its Brief, it took one step further down the road, by providing deliberate false statement that "[T]he matter was continued to November 8, 2005, Judge Ronald Davis entered rulings on Defendant's **re-filed** Motion to Strike \*\*\*." (Emphasis added). The fact is that on November 8, 2005, Plaintiff submitted a set of courtesy copies of her four pending motions, including a Motion for Substitution of Judge, pursuant to a November 2, 2005 order (C023; S 205 at ¶1). On the other hand, at the November 8, 2005 hearing, Defendant **re-filed** nothing but drafting a court order (S 203-209). Further, there is no remote possibility that Defendant can provide a Notice of Filing and an official copy of the so-called "**re-filed**" motion, because Defendant did not create them in the first place

### **5. When the "Judge Shopping" Occurred**

In its Brief at page 4, as part of its version of "Statement of Facts," Defendant argued that it filed an appearance and jury demand, thus "'reassigning' the case to the jury (Mandatory Arbitration) call of the Cook County Municipal Department." Here, the statement is incorrect since no "reassigning" took place at that time. Defendant Ford Motor Company already filed a jury demand. On September 23, 2005, the case was assigned to Courtroom 1304 normally (C 660). **Jury Trial**

**Judge** Lewis was presiding the October 11, 2005 hearing. Lawyer Vorberg wanted a trial date, Judge Lewis asserted Plaintiff was entitled to have an Answer, then, Vorberg talked back and wrote that the case had been assigned to Courtroom 1307, not 1304. (Plaintiff' Reply at page 2; S 179; S 210; C 022). Here, it is important to note that **Non-Jury Judge** Davis was the only judge who presided in Courtroom 1307, whereas the instant suit was then a **jury trial case**. There is no possibility that, in the Circuit Court of Cook County, a jury trial case was transferred to a non-jury-trial Judge. As a result, Judge Lewis needed a certification of the case status from Courtroom 1501 (S 181-184). On October 20, 2005, at a hearing in Courtrooms 1304 first and in Courtroom 1501 later, lawyer Vorberg wanted to withdraw the jury demand, then, the case was reassigned to Courtroom 1307 presided by Judge Davis as Defendant's counsel preferred.

In its Brief, Defendant contended that "On October 11. 2005, the trial judge declined to hear the case \*\*\*." (Defendant's Brief p. 5. ). If that were true, the case would be transferred to another **Jury-Trial Judge** on the same day. But that did not happen. Also if that were true, Ms Vorberg needed not clarify anything from Judge Healy who was on vacation, as Judge Maria Johnson at Courtroom 1501 had the same authority to arrange a case transfer (S 178). Further, when Judge Healy came back, what Defendant really demanded was a courtroom transfer. As this Court can see, on October 11, 2005, Ms Vorberg provided false statements to two Judges in one day. Defendant's false statements in its Brief cannot cover up the fact that it is not Judge Lewis decline to hear the case, but it is

Defendant who wanted to choose Judge Davis or avoid Judge Lewis in October of 2005.

**6. Lawyer Vorberg Did Not File A Written Appearance Form for Herself**

In its Brief at page 8, as part of “Statement of Fact,” Defendant argued that “On that date, Attorney Elaine S. Vorberg was granted leave to appear as counsel for Defendant, in lieu of Childress Duffy Golblast, Ltd., withdrawn. (C00515) sic.” As pointed out in Plaintiff’s Brief at page 10-11, the record shows that Childress Duffy Golblast, Ltd., did not file a written motion for that. Additionally, on August 7, 2006, Lawyer Vorberg failed to submit a written substitution or appearance form, which was our Supreme Court Rule 13 (c) (1)-(5) required as a mandate, not a suggestion. Illinois Supreme Court Rule 13 (c) (1)-(5).

**7. Plaintiff Did Not Wave the Issue of Illegality of The Sale at Trial**

In its Brief at page 25, Defendant devoted almost one whole page to argue: “Plaintiff did not raise the issue of illegality of the transfers of the subject vehicle at trial.” Apparently, such false statements had misled this Court. (Order at page 18). In Plaintiff’s Bystander’s Report at page 11 and page 12 (S 16-17; A 066-67), ¶83 provides “At trial, Mr. Early stated Defendant-Appellee owned the subject car at the time of the sale, but it did not have the title of the subject car at that time yet.” ¶85 says “At trial, Plaintiff-Appellant’s counsel Mr. Carcelli asked Mr. Early why the odometer reading on October 6, 2003 was lower [than] that of September 4, 2003. Mr. Early answered that was the way it was. ¶86 states “At trial, when Plaintiff-Appellant’s counsel Mr. Carcelli asked again, ‘Why you sold the car on September 4, 2003, but got a odometer statement form from Precision Motors Inc.

one month later on October 6, 2003? And why the odometer reading on October 6, 2003 is lower than that on September 4, 2003?” ¶87 shows “Mr. Early stated: ‘the reading on October 6, 2003 reflected that before we bought the car.’” Here, it is important to note that in Defendant’s Brief at page 25, the Dealer cited one paragraph of text from its own so-called Bystander’s Report, contending that its witness testified “Secretary of State issued license plate to Plaintiff for the subject vehicle and would not have done so if there had been any problem with Plaintiff’s title.” As this Court can see, even according to Defendant’s account, Plaintiff had never waived the specific issue at trial.

Further, two odometer forms (S 036 and S 037) were entered into evidence at trial, which would convince any reasonable person that, with a single used vehicle, on the face of the text, Defendant identified itself as a transferor on September 4, 2003, but acted as a transferee one month later on October 6, 2003. Without question, Defendant did not have a title on the subject car at hand when selling it. As such, the car was not a trade-in at the dealership. According to 49 U. S. C. §32702 (7), the Dealer did not own the vehicle at the time of the subject sale. As a result, the transfers from and to the Dealer were both illegal as a matter of law. Defendant cannot expect to legalize an illegal sale in a court of law.

**8. Defendant’s Lawyer, Acting as a Witness, Submitted Four Letters of Her Own at Trial, Which Contain Numerous Fraudulent Statements**

In Plaintiff’s motion to strike Defendant’s Bystander’s Report, which was taken with this case, and in Plaintiff’s Brief, she had pointed out that Defendant’s counsel should not be allowed to play multiple roles as advocate/witness. At trial,

over Plaintiff's objection, lawyer Vorberg provided false statements of her own, based on her four letters sent to Plaintiff. Notably, in order to cover-up such misconducts, Defendant did not submit these letters in its so-called Bystander's Report. And unfortunately, the Order did not reject lawyer Vorberg's impermissible practice, instead, adopted her false story about the case as a fact. (The September 30, 2008 Order at page 14; S040-45).

There are underlying reasons for Defendant who needed those letters at trial. (1) Without them, without the Defendant's version of a so-called Bystander's Report, the Dealer cannot offer any possible defense. It is in the record that the Defendant failed to cite any of its court filings, which had a remote potential to be admissible at trial in support of its position stated in its Brief; (2) All two witnesses for Defendant were not at the scene or had no communication with Plaintiff, at the time of the sale, or, at the time of engine stall, or at the time of towing back the car (A 065 at ¶69 and S 057 at ¶53). Therefore, testimony from any of Defendant's witnesses on what happened then would be irrelevant or impermissible as hearsay. Therefore, it was necessary for Defendant to use these four letters from its lawyer, to create confusion and chaos at trial; (3) The Dealer preferred to have a third-party witness to testify for it, but no one would do it; (4) At arbitration, without prior notice to Plaintiff, Defendant presented the same set of "evidence." At trial, Defendant and its counsel wanted to do the same thing.

As to the February 28, 2005 letter from the Dealer's lawyer, it contains outright falsehoods for the following reasons: (1) On the record Defendant had never used the word of "**inspection**" before litigation. Actually, Defendant did not

need any “inspection” of the subject car, because Defendant had never considered revocation of acceptance as one kind of cause of action or one kind of remedy under Magnuson-Moss Act and Illinois UCC. This is evidenced further by the dealer’s testimony, in which Defendant president, Mr. D’Andea admitted that in his whole career, he had never refunded money on purchase made, except once when he sold a car to a minor. (A 064-065 at ¶ 68 and S 061-062 at ¶ 79). (2) When anyone became serious and asked why a dealer possessed a car, then it needed car keys before a “joint inspection,” as Judge Davis did in November of 2005, Defendant could not answer; (3) In the record Defendant did not and could not submit any permissible evidence in support of its contention that the Dealer had contacted Plaintiff and asked for car keys before Defendant filed a response to the inquiry from the Illinois Attorney General Office. (4) On October 17, 2003, Defendant sent a “Thank you” note to Plaintiff. (S 031). After the warranty of any terms, if any, had expired and Defendant considered the transaction had been completed, the Dealer did not need car keys for any purpose; (5) In August of 2004, Defendant sent an ad to Plaintiff, inviting Plaintiff to submit car keys for **TRADE-IN**, not for “inspection” (S 030). On this matter, during discovery, Defendant’s president D’Andrea and counsel Vorberg denied this fact in a response to Request for Admission. (C 142 at ¶45). At trial, they kept silence and the ad was entered into evidence without any objection; (6) Further, the record shows that, from April of 2005 to this day, the car keys has been held or lost by Ms. Vorberg on the pretext of continuing “investigation”. (7) The truth is that, Defendant changed the car condition during its so-called inspection, after that, the

vehicle was vandalized at Defendant's premise. On December 6, 2006, Defendant smashed the car further and dumped it in front of Plaintiff's door (S 526-529). A sequence of connected events happened, which demonstrated what Defendant's real motive was when asking car keys after the suit was filed – To create confusion, to destroy physical evidence and to deprive Plaintiff right of conducting further inspection on the subject car. This is exactly what Plaintiff suspected to happen, when receiving the February 28, 2005 letter from lawyer Vorberg

As to the May 17, 2005 letter (Order at page 15; S 044), it contained fraudulent statements also for the following reasons. (1) There is no "expert mechanic" testified for the Defendant; (2) During discovery, Defendant failed to identify any expert witness(C 232). On Defendant's witness list, there was a name Bob Caridi, but Defendant failed to show how a secretary of a mechanic shop could be qualified as an expert witness; (3) During the purported joint inspection, D'Andrea, Bob Caridi and Vorberg showed up for Defendant. But Mr. Caridi failed or refused to testify for Defendant.

As this Court can see, (1) Lawyer Vorberg had been suggesting Caridi was a mechanic expert, but after the appeal started, she implied Mr. D'Andrea might be the expert named in her letter (S 058). No defendant can wear two hats as expert witness/defendant in any case. (2) Beyond dispute, driving a car without gas at highway speed facing a risk of a tragic accident is one form of misuse of the car. No one would put his or her life by doing that. Defendant already rejected such an outright false suggestion from its counsel on April 14, 2006 in its response to Interrogatory No. 10. (C 234); (3) It is in the record that Defendant related

affirmative defense “Misuse of the car” was stricken by the trial court, and it was the Defendant’s counsel who drafted the Court Order (A 133 at ¶1). (4) It is in the record that the Dealer failed to solicit a witness to contest Plaintiff’s related testimony at trial, and Defendant failed to assert any objection to Plaintiff’s Statement of Facts, but drafted Defendant’s own version by fraudulently stating “The inspection revealed that there was no gas in the subject vehicle’s gas tank.” Notably, such a deliberate false statement only started reappearing in 2007 after the reviewing process began; (5) Most importantly, even in its own so-called Bystander’s Report, the Dealer admitted: “Plaintiff testified that the day after purchasing the subject vehicle, she purchased gas and insurance” (S 052 at ¶26, p.4). And in the same document (S 058, ¶58, p. 10) Defendant’s president further admitted: “he had no information concerning the cause of the subject vehicle stalling on the highway from any source.” Here, the Dealer’s testimony on the same issue defeated any false statements from its counsel, and a Dealer can not expect a consumer to pin-point the defect of a car, while it failed to do so after one-and-half-year “investigation”; (6) The record also shows that, even at the time Defendant dumped the subject car in front Plaintiff’s door, on December 6, 2006, there was still more than half tank of gas in it. (S 467-468 at ¶31). Therefore, it would be an accurate assessment that lawyer Vorberg’s letters do contain fraudulent statements on material facts. And it would be in obvious error to admit any of her letters into evidence at trial.