

1 involving both the Defendants, Walters initially acts as both a seller and creditor who executes
2 retail installment sale contracts [hereinafter "Riscs"] with each buyer and then sells or assigns each
3 Risc to CAC through a prearranged process or agreement. In such transactions CAC requires that
4 all documentation, including the Risc, be electronically signed by each buyer as part of this
5 process. Each of these described transactions must comply with the federal E-Sign Act, 15 U.S.C.
6 §7001, et seq. and Ky's version of the Uniform Electronic Transactions Act (UETA) K.R.S.
7 §369.101, et seq. In order to use an electronic signature both of these statutes require the consent of
8 the consumer be first obtained and, most importantly, full disclosure of the consequences, rights,
9 duties and obligations involving the use of an electronic signature to consummate each of these
10 transactions. As alleged and described herein Defendant Walters does not fully disclose all of this
11 information to consumers or follow the process required by these statutes. The allegations herein
12 specifically apply to the sale and financing of GAP to its customers where consent is not properly
13 obtained. When assigned to CAC, these defects are apparent on the face of documents it receives
14 from Walters.

15 Additionally, in connection with each transaction Defendant Walters, in each of its car
16 sales, whether in cash or whether financed, assesses every consumer a "processing fee" of \$799.
17 Named plaintiffs do not challenge the right of Walters to charge a processing fee. Named
18 Plaintiffs, however, challenge the \$799 fee as being unfair and unreasonable and, therefore,
19 unconscionable in violation of Ky's Consumer Protection Act as an amount which far exceeds
20 what other reputable dealerships charge for the same services and which is an amount which can't
21 be justified by any of the services which Walters claims it performs for consumers in connection
22 with each sale. As such this is nothing more than additional cost and profit that Walters builds into
23 each transaction undisclosed to the consumer and violates the Ky Consumer Protection Act.

24 Further, in connection with many of these same sales which Walters finances it sells
25 something called GAP Protection which is a debt cancellation product which provides for
26 cancellation of all or part of an obligation of the buyer or obligor upon the occurrence of certain
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1 specified events. The product purports to protect the consumer under limited circumstances where
2 a vehicle is damaged or destroyed as a result of circumstances beyond the control of
3 or unforeseen by the consumer such as fire, theft and collision. The GAP product is supposed to
4 pay the difference between the value of the vehicle at the time of the event and the amount of the
5 note for which the consumer is obligated to pay at the time. Walters sold this product to the Named
6 Plaintiffs at the cost of \$976.00. This same GAP coverage is readily available and is easily
7 obtained by any consumer from his or her own insurance agent for a fraction of the cost charged by
8 Walters. For its sale of the GAP product Walters receives a significant commission which it retains
9 as concealed profit in the deal which is an additional unconscionable cost to the consumer.

10 Further, GAP is not required to be purchased by the consumer in order to obtain the credit
11 sought. To that end the seller, Walters, is required to inform each consumer of that fact and to
12 obtain his or her signed written consent to purchase the GAP product. Walters, in using Named
13 Plaintiffs' and others electronic signature to obtain such consent failed to comply with the federal
14 E-sign statute and Ky's UETA version of that statute and, therefore, did not properly obtain Named
15 Plaintiffs' consent as required under the statute. Consequently, Walters violated the federal
16 truth-in-lending act where, absent proper consent, the cost of the GAP product was required to be
17 disclosed as part of the amount financed which it was not. Therefore, Walters' disclosures were
18 inaccurate in violation of the requirements of the federal truth-in-lending act.

19 Plaintiffs plead additional individual claims herein under the Ky's Consumer Protection
20 Act, the Uniform Commercial Code and at common law.

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JURISDICTION AND VENUE

2. This Court has jurisdiction under the federal Truth-in-Lending Act, 15 U.S.C. §1640(e) and 28 U.S.C. §§ 1331 and 1337.

Further, the Court may exercise its supplemental jurisdiction of all state law claims pled herein by virtue of its constitutional authority under Article III and 28 U.S.C. 1367 in that Plaintiffs' state law claims are so related to their federal claim that they form part of the same case or controversy. Venue is proper because the events that took place occurred entirely in this Division.

Additionally, jurisdiction is invoked pursuant to 28 U.S.C. §1332 as the Plaintiffs and each of the Defendants referenced herein are citizens of different states and the amount in controversy exceeds the appropriate jurisdictional amount.

PARTIES

3. Named Plaintiffs, David Mounts (“David”) and Bonnie Mounts (“Bonnie”), mother and son, are individual consumers who reside in the state of West Virginia, Mingo County, are “consumers” as defined in TILA, 15 U.S.C. §1602(i), “persons” as defined in both the Ky Motor Vehicle Sales Act, KRS 190.010(2) and in the Ky Consumer Protection Act, KRS §367.110(1), “retail buyers” as defined in the Ky Installment Sales Act, KRS §371.210(4).

4. Defendant, Bruce Walters Ford Sales, Inc. [hereinafter “Walters” or “Defendant”] is a domestic corporation and a creditor as it is defined in TILA, 15 U.S.C. §1602(g) who, in the ordinary course of business, extends or arranges for the extension of credit, a “motor vehicle dealer” as the term is defined in the Ky Motor Vehicle Sales Act, KRS §190.010(2), a “retail seller” as the term is defined in the Ky Installment Sales Act, KRS §371.210(5) engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used vehicles, or possessing motor vehicle for purposes of resale, either on its own account, or on behalf of another, either as its primary business or incidental thereto, doing business in Pike County, Ky. and a “person” as the

1 term is defined in the Ky Consumer Protection Act (KCPA) at KRS §367.110 and a creditor as
2 defined in the at KRS §367.610(3).

3 5. Defendant, Credit Acceptance Corp. [hereinafter “CAC” or “Defendant”] is a
4 corporation transacting business principally from 25505 W. Twelve Mile Rd., Southfield,
5 Michigan, whose business it is to purchase and/or accept for assignment, retail installment sales
6 obligations or contracts as they are defined in the Ky Retail Installment Sales Act, KRS
7 §371.210(7). It, by virtue of contract, has agreed to be subject to all claims and defenses which
8 may be asserted by the Plaintiffs against Walters.

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10 **SPECIFIC FACTUAL ALLEGATIONS**

11 6. In early to mid-July, 2019 Named Plaintiff, David Mounts [hereinafter “David”]
12 decided that he wanted to purchase a new vehicle for his mother, Named Plaintiff, Bonnie Mounts
13 [“hereinafter “Bonnie”]. Based on a recommendation of a friend, David sent a message to
14 salesman, Josh Harvey [Harvey”], expressing interest in purchasing a vehicle. Thereafter, on July
15 13, 2019 Plaintiffs drove from West Virginia to Walters with the intent to purchase and finance a
16 new motor vehicle.

17 7. When Named Plaintiffs arrived they were greeted by Harvey and, after some small talk,
18 Harvey asked what they “were trying to do.” David responded that they had \$1700 to put down on
19 a vehicle and that they liked the Mitsubishi Outlander and the Eclipse Cross. When asked about
20 their credit David confessed that it was not very good. Harvey then suggested that they confine
21 their search to a used vehicle because he wasn’t going to be able to get Named Plaintiffs financed
22 for new vehicle. Instead, in spite of Named Plaintiffs’ request, Harvey mentioned that he had a
23 2016 Chevy Malibu available. While Named Plaintiffs initially expressed little interest, Harvey
24 kept insisting that they look at it all the while describing it as a wonderful vehicle. Bonnie told
25 David that it wouldn’t hurt to look and Harvey brought the vehicle around.

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1 8. Named Plaintiffs then took the vehicle for a test drive and, afterwards, expressed interest
2 in buying the vehicle. Harvey told Named Plaintiffs that the purchase and financing would require
3 a down payment from them of \$1700.

4 9. Named Plaintiffs were then directed to another location at Walters to execute the
5 paperwork where they were introduced to George Hadly [hereinafter Hadly"], Walters' finance &
6 insurance ("f & i) person." Hadly led the named Plaintiffs into a small dimly lit room where he sat
7 behind a desk with named Plaintiffs sitting directly in front of him. On Hadly's desk there was a
8 computer monitor which sat on the side which was tilted at a slight angle toward the Named
9 Plaintiffs but not sufficiently toward them in order for them to make out what was on the screen.

10 10. At that point Hadly announced that he was going to conduct the signing of the
11 paperwork in two stages. The first stage would be conducted manually while the second would be
12 electronic. In the 1st stage, according to Hadly, there would be a discussion concerning the
13 components that went into the cost of the vehicle. That consisted of placing a "retail buyers order"
14 in front of Named Plaintiffs far enough away from them where they couldn't read it. That specific
15 document indicated a fee of \$799 which was not given a name but generally described as for
16 "customer services" and further designated as a "processing fee" on the Risc. That cost was later
17 included in the cash price of the vehicle and the amount financed.

18 11. The retail buyers order further included the cost of GAP, a debt cancellation product, in
19 the amount of \$976. Hadly, before inquiring whether Named Plaintiffs wished to purchase this
20 product or its cost, stated that he had "already included its cost" in the amount financed " because it
21 only changes your [Named Plaintiffs] monthly payment a few dollars." This cost was also included
22 in the cash price of the vehicle and the amount financed.

23 12. The second stage announced by Hadly was to be conducted electronically which
24 involved the execution of the remaining financing documents by the Named Plaintiffs using their
25 electronic signature. Hadly placed a stack of paper documents in front of him and generally
26 described each one to the Named Plaintiffs, placing a mouse over each location requiring their
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1 signature and signing them himself on behalf of the Named Plaintiffs without allowing them to
2 read or review.

3 13. This electronic process required the consent of the Named Plaintiffs along with certain
4 disclosures made to them concerning their rights and obligations thereunder at the time and
5 thereafter surrounding the utilization of their electronic signatures to transact these electronic
6 documents. Only **after** Hadly signed all of the documents for the Named Plaintiffs did he printout
7 a document entitled “Declaration Acknowledging Electronic Signature Process” and request the
8 Named Plaintiffs to sign it using their actual handwritten signatures supposedly representing
9 consent to the use of their electronic signature for the execution of each of the finance documents

10 14. Critically, this “Declaration,” used supposedly to gain the consent of the Named
11 Plaintiffs to utilize their electronic signature, was abbreviated and did not contain the disclosures
12 required by law.

13 CLASS ACTION CLAIMS

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15 CLAIM ONE
16 [TILA]

17 15. This is a class action claim made pursuant to the federal truth-in-lending act, 15 U.S.C.
18 §1601, et seq. [hereinafter referred to as the “Act”] and Rule 23, Fed. R. Civ. P., against both
19 Defendants named in this action.

20 16. Named Plaintiffs incorporate each and every factual allegation contained in paras 6-14
21 as if fully rewritten herein.

22 17. Named Plaintiffs are “consumers” as defined in 15 U.S.C. §1602(h) who were subjects
23 of a transaction which was primarily for personal, family or household purposes.

24 18. Defendants are creditors as defined in the Act at 15 U.S.C. §1602(f) in that each
25 Defendant regularly extends credit in connection with a consumer credit transaction which is
26 payable by agreement in more than four installments or for which the payment of a finance charge
27 is or may be required.

1 19. The parties referenced herein entered into a closed end consumer transaction in the
2 form of a credit sale as it is defined herein at 15 U.S.C. §1602(g) for the sale and financing of a
3 2016 Chevrolet Malibu [hereinafter the “vehicle”].

4 20. In connection with that transaction certain material credit disclosures were required to
5 be made to Named Plaintiffs specified at 15 U.S.C. §1638(a). Among which were the “amount
6 financed”, the “finance charge” and the “annual percentage rate (APR)”.

7 21. In connection with this sale Defendant Walters sold Named Plaintiffs a product known
8 as GAP for the amount of \$976. Walters included the cost of GAP in the amount financed upon
9 which finance charge and other charges were calculated .

10 22. GAP is not required to be purchased in order to obtain credit which must be disclosed
11 and written consent must be obtained from any consumer. Unless this disclosure is made and
12 consent is obtained, the cost of GAP can't be included in the amount financed but must be included
13 in the finance charge.

14 23. Named Plaintiffs' written consent was purportedly obtained through their electronic
15 signatures on a form provided by Defendants.

16 24. As described hereinabove, the manner in which the written consent of Named Plaintiffs
17 was obtained in order to use their electronic signature was not in accordance with the law and,
18 therefore, it could not have been effective in order to form a knowing and voluntary consent.

19 25. Specifically, the federal E-sign Act, 15 U.S.C. §7001, et seq. and K.R.S. §369.101, et
20 seq. (UETA) setup specific procedures that must be followed for an electronic signature to be
21 effective including, among other things, obtaining the consent of the Named Plaintiffs to use the
22 electronic signature procedure.

23 26. Defendants, in every way possible, failed to properly use those procedures and,
24 therefore, the electronic signatures of the Named Plaintiffs consenting to the purchase of GAP
25 could not have possibly been effective and could not have constituted consent.

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1 27. Consequently, Walters inclusion of the cost of GAP in the disclosure of the amount
2 financed made to the Named Plaintiffs was inaccurate because it belonged in the finance charge
3 making the disclosure of the amount financed inaccurate in violation 15 U.S.C. §1638(a)(2)(A) as
4 well as the finance charge under 15 U.S.C. §1638(a)(3) and the APR under 15 U.S.C. §1638(a)(4).

5 28. Immediately thereafter, Walters assigned and/or sold this transaction to CAC through a
6 prearranged agreement using documents provided to it by CAC as well as a process designed by
7 CAC.

8 29. Under the Act the GAP charge is part of a finance charge unless an exemption is met,
9 and since the documents assigned to CAC do not show that there was an exemption, they show a
10 violation. Furthermore, the documents assigned must affirmatively show compliance with Reg Z.,
11 12 cfr §1026.4(d)(3). Under 15 USC§1641, the face of the documents assigned clearly show that
12 E-Sign had not been complied with, therefore, the documents do not show the consumer signed for
13 the GAP after receiving the required written disclosures about it, and absent such proof the GAP
14 charge is presumptively a finance charge.

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Class Action Allegations

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2 30. Named Plaintiffs bring this claim on behalf of a class of consumer consisting of all
3 persons who:

4 (a) Purchased and financed the sale of an auto (new or used) from Defendant Walters
5 through the use of a retail installment sales contract or through other instrument of
6 indebtedness;

7 (b) In connection with each sale purchased GAP coverage;

8 (c) Where the consent to the purchase of GAP was obtained from the consumer through
9 the use of an electronic signature process;

10 (d) Where the process of obtaining consent to purchase was defective as a result of
11 the failure to fully disclose all information required for the consent to use of electronic
signature process pursuant to 15 U.S.C. 7001, et seq.;

12 (e) Where in each case the cost of GAP was included in the amount financed or in the
13 cash price of the vehicle and not in the finance charge; and,

14 (f) Where in each case the transaction was purchased and/or assigned to the Defendant
CAC.

15 31. The Class so defined is limited to those consumers defined above on or after a date
16 which is one year before the filing of this lawsuit.

17 32. The class represented by Named Plaintiffs in this action, of which they are themselves
18 members, is so numerous that joinder of individual members is impracticable, since Defendants
19 finance many vehicles in the manner described.

20 33. The action presents common questions of law and fact under the Truth in Lending Act,
21 including but not limited to (a) the compliance of Defendant's electronic signature procedures with
22 the federal statute, that relate to and affect the rights of each member of the class. Also, the relief
23 sought is common to the entire class.

24 34. The claims of Named Plaintiffs are typical of the claims of the class, in that the claims
25 of all members of the class depend on a showing of the same acts and omissions of Defendants
26 which give rise to the rights of the class to the relief sought herein.

1 35. There is no known conflict between either Named Plaintiff and other members of the
2 class with respect to this action, or with respect to the claims for relief herein set forth.

3 36. Named Plaintiffs are representative parties for the class and are able to, and will, fairly
4 and adequately protect the interests of the class.

5 37. The attorney for Named Plaintiffs is experienced and capable in litigation in the field of
6 consumer rights and has successfully represented claimants in similar litigation, including cases
7 that have been concluded with trial and without trial.

8 38. This action is properly maintained as a class action in that the prosecution of separate
9 actions by individual class members would create the risk of individual inconsistent adjudications
10 which would, as a practical matter, be dispositive of the interests of the other members not parties
11 to the adjudication, or would substantially impair or impede their ability to protect their interests.

12 39. The identity of each individual member of the class can be ascertained from the books
13 and records maintained by Defendants, and the appearance of the Named Plaintiffs will fairly
14 ensure the adequate representation of all members of the class and protect their interests.

15 40. Because many of the persons with whom Defendants have dealt, or who were affected
16 by their activities, may not be aware of their rights, or are not in a financial position to assert such
17 rights readily, and because relegation of their claims to individual actions would result in a
18 unreasonable multiplicity of suits and a corresponding burden on this and other courts, a class
19 action is superior to all other methods for a fair and efficient adjudication of this controversy

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CLAIM TWO
[The KENTUCKY CONSUMER PROTECTION ACT]

41. This is a class action claim made pursuant to the Ky Consumer Protection Act, K.R.S. §367.110, et seq. [hereinafter referred to as the “Act”].

42. This claim is made solely against Defendant, Walters, named in this action and alleges that it engaged in unfair, deceptive or unconscionable behavior pursuant to K.R.S. §367.170.

43. Named Plaintiffs incorporate each and every factual allegation contained in paras 6-14 as if fully rewritten herein.

44. Named Plaintiffs, on July 13, 2019, entered into a sales transaction with the Defendant Walters for the purchase of a 2016 Chevrolet Malibu automobile.

Count 1

45. A “retail buyers order” was executed between the parties in which the final cash price was listed for the vehicle which ultimately became part of the “amount financed” disclosed in a retail installment sales agreement [“risc”].

46. Preprinted on each retail buyers order was a \$799 fee which was described vaguely therein by Walters for “customer services” which figure was eventually transferred onto a Risc and designated by Walters as a “processing fee” which was included in the amount financed [hereinafter the “fee”]. This fee, as described by Walters itself, was assessed in all sales whether for cash or financed.

47. This processing fee supposedly covered certain services that Walters allegedly performs in connection with preparing vehicles, both new and used, on behalf of customers such as titling, securing license plates, registration of motor vehicles, etc. These services are worth far less than the \$799 fee Walters charges and are far in excess of what other auto dealers throughout the Commonwealth charge for the same services. As such they are unconscionable and therefore violate the Kentucky Consumer Protection Act referred to above.

1 48. The fee referenced herein is simply hidden excess profit collected by Walters which it
2 includes in the cash price and upon which it assesses finance charge.

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CLASS ALLEGATIONS

5 49. This is a class action claim made pursuant to the Kentucky Consumer Protection Act
6 and Rule 23, Fed. R. Civ. P.

7 50. Named Plaintiffs bring this action on behalf of themselves and a class of consumers
8 similarly situated consisting of all persons who:

9 (a) purchased a vehicle from Defendant Walters; and,

10 (b) were charged a fee for “customer services” in the amount of \$799.

11 51. The Class is limited to those consumers who purchased a vehicle on or after a date
12 which is two years before the filing of this lawsuit.

13 52. The class represented by Named Plaintiffs in this action, of which they are themselves
14 members, is so numerous that joinder of individual members is impracticable, since Defendants
15 charge such a fee in many vehicle sales.

16 53. The action presents common questions of law and fact under the Kentucky Consumer
17 Protection Act, including but not limited to the unconscionability of the fee in question, that relate
18 to and affect the rights of each member of the class. Also, the relief sought is common to the entire
19 class.

20 54. The claims of Named Plaintiffs are typical of the claims of the class, in that the claims
21 of all members of the class depend on a showing of the same acts and omissions of Defendants
22 which give rise to the rights of the class to the relief sought herein.

23 55. There is no known conflict between either Named Plaintiff and other members of the
24 class with respect to this action, or with respect to the claims for relief herein set forth.

25 56. Named Plaintiffs are representative parties for the class and are able to, and will, fairly
26 and adequately protect the interests of the class.

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1 57. The attorney for Named Plaintiffs is experienced and capable in litigation in the field of
2 consumer rights and has successfully represented claimants in similar litigation, including cases
3 that have been concluded with trial and without trial.

4 58. This action is properly maintained as a class action in that the prosecution of separate
5 actions by individual class members would create the risk of individual inconsistent adjudications
6 which would, as a practical matter, be dispositive of the interests of the other members not parties
7 to the adjudication, or would substantially impair or impede their ability to protect their interests.

8 59. The identity of each individual member of the class can be ascertained from the books
9 and records maintained by Defendants, and the appearance of the Named Plaintiffs will fairly
10 ensure the adequate representation of all members of the class and protect their interests.

11 60. Because many of the persons with whom Defendants have dealt, or who were affected
12 by their activities, may not be aware of their rights, or are not in a financial position to assert such
13 rights readily, and because relegation of their claims to individual actions would result in a
14 unreasonable multiplicity of suits and a corresponding burden on this and other courts, a class
15 action is superior to all other methods for a fair and efficient adjudication of this controversy

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Count 2

19 61. Named Plaintiffs hereby incorporate paragraphs 6-14 as if fully rewritten.

20 62. In connection with the transaction Walters sold the Named Plaintiffs GAP which cost
21 was included the cash price of the vehicle and ultimately included in the amount financed.

22 63. GAP is a product which takes effect upon the happening of certain unanticipated and
23 uncontrolled events such as theft, collision and fire caused to a vehicle which will cancel any
24 obligation of the debtor on the note at the time of these events. Many consider it a type of insurance
25 but, in the case at bar, it was not so as to be regulated by the Kentucky Department of Insurance.

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64. The amount charged by Walters for the GAP product was \$976. GAP or an equivalent product can be obtained at a fraction of the cost charged by Walters through one's own insurance carrier or agent.

65. The amount charged by Walters for the GAP product was unconscionable.

CLASS ALLEGATIONS

66. This is a class action claim made pursuant to the Kentucky Consumer Protection Act and Rule 23, Fed. R. Civ. P., against both Defendants named in this action.

67. Named Plaintiffs bring this action on behalf of themselves and a class of consumers similarly situated consisting of all persons who (a) purchased a vehicle from Defendant Walters; (b) were charged for GAP Protection in excess of \$900

68. The Class is limited to those consumers who purchased a vehicle on or after a date which is two years before the filing of this lawsuit.

69. The class represented by Named Plaintiffs in this action, of which they are themselves members, is so numerous that joinder of individual members is impracticable, since Defendants charge such an amount for this product in many vehicle sales.

70. The action presents common questions of law and fact under the Kentucky Consumer Protection Act, including but not limited to the unconscionability of the charge in question, that relate to and affect the rights of each member of the class. Also, the relief sought is common to the entire class.

71. The claims of Named Plaintiffs are typical of the claims of the class, in that the claims of all members of the class depend on a showing of the same acts and omissions of Defendants which give rise to the rights of the class to the relief sought herein.

72. There is no known conflict between either Named Plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

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73. Named Plaintiffs are representative parties for the class and are able to, and will, fairly and adequately protect the interests of the class.

74. The attorney for Named Plaintiffs is experienced and capable in litigation in the field of consumer rights and has successfully represented claimants in similar litigation, including cases that have been concluded with trial and without trial.

75. This action is properly maintained as a class action in that the prosecution of separate actions by individual class members would create the risk of individual inconsistent adjudications which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

76. The identity of each individual member of the class can be ascertained from the books and records maintained by Defendants, and the appearance of the Named Plaintiffs will fairly ensure the adequate representation of all members of the class and protect their interests.

77. Because many of the persons with whom Defendants have dealt, or who were affected by their activities, may not be aware of their rights, or are not in a financial position to assert such rights readily, and because relegation of their claims to individual actions would result in a unreasonable multiplicity of suits and a corresponding burden on this and other courts, a class action is superior to all other methods for a fair and efficient adjudication of this controversy

INDIVIDUAL CLAIMS

**CLAIM THREE
[THE KENTUCKY CONSUMER PROTECTION ACT]**

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4 **78.** This is an individual claim made pursuant to the Ky Consumer Protection Act, K.R.S.
5 §367.110, et seq. [hereinafter referred to as the “Act”].

6 **79.** This claim is made solely against Defendant Walters, and alleges that it engaged in
7 unfair, deceptive or unconscionable behavior pursuant to K.R.S. §367.170. Defendant CAC is, of
8 course, subject to all claims and defenses which Named Plaintiffs could assert against the seller,
9 Walters.

10 **80.** Plaintiffs incorporate each and every factual allegation contained in paras 6-14 as if
11 fully rewritten herein.

12 **81.** Plaintiffs, on July 13, 2019, negotiated for the sale and financing of a 2016 Chevrolet
13 Malibu automobile with Defendant Walters.

14 **82.** In connection with the sale David Mounts specifically asked the salesman Josh Harvey
15 about the condition of the vehicle. Harvey responded that the vehicle “runs great” and was a “great
16 car. “The only problem was that the former owner “hit a coyote” which caused some minor front
17 damage which “we fully repaired”.

18 **83.** Based on this and other representations concerning the condition of the vehicle
19 Plaintiffs agreed to purchase the vehicle and entered into a retail installment sales contract which
20 was assigned to CAC.

21 **84.** About? No more than? 3 days thereafter, while being driven by Bonnie Mounts, the
22 vehicle lost power and could not be driven above 15 mph. Bonnie pulled over and called her son,
23 David, who came with a friend to assist in getting the vehicle home. By the time David arrived he
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1 was able to restart the vehicle which, at that time, drove normally. However, this incident repeated
2 itself several time over the course of the next week and thereafter Plaintiffs never felt safe enough
3 to drive the vehicle.

4 85. Furthermore, within a few days of the sale Plaintiffs were also informed by the former
5 owner that the engine had been replaced very early on in the life of the vehicle. This fact was not
6 disclosed during the sale and, in fact, was concealed. Plaintiffs would not have purchased the
7 vehicle had they been so informed.
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9 86. Plaintiffs agreed to purchase the vehicle “as is”. However, Walters failed to attach to
10 the vehicle or to provide Plaintiffs with a buyer’s guide as required by law and, as a consequence,
11 is precluded or estopped from claiming and relying on the defense that this was an “as is” sale of
12 the vehicle.

13 87. As a consequence, Walters’ false representations and concealments constituted
14 deceptive, unfair and unconscionable sales practices in violation of the Act.
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17 **CLAM FOUR**
18 **[THE UNIFORM COMMERCIAL CODE]**

19 **88.** This is an individual claim made pursuant to the Ky Uniform Commercial Code
20 [hereinafter referred to as the “Act” or the “UCC”].

21 89. This claim is made solely against Defendant CAC [hereinafter the “secured party”] and
22 alleges that it violated the Ky Uniform Commercial Code, K.R.S. §355.9-101, et seq. in
23 connection with its failure to repossess, sell and to disburse the proceeds from the sale of
24 Plaintiffs’ vehicle in a commercially reasonable manner.
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1 90. Plaintiffs incorporate each and every factual allegation contained in paras 6-14 as if
2 fully rewritten herein.

3 91. On or about October 16, 2019 CAC repossessed Plaintiffs' vehicle.

4 92. Under Article 9 of the UCC each and every aspect of the taking, sale and disposition of
5 the vehicle must be commercially reasonable.

6 93. Notice sent to each Plaintiff only vaguely referenced the date of sale to be "sometime
7 after Feb, 2, 2020". The Sale did not take place until February 17, 2020.

8 94. A Notice of Sale sent to each Plaintiff did not disclose the place of the sale until after
9 the sale.

10 95. When finally disclosed only after the sale, the location was in St. Albans, West Va.
11 which is a 3 hour drive from where Plaintiffs reside.

12 96. The price realized for the secured property was unreasonably low considering what
13 Plaintiffs paid for the vehicle only a short time before the sale

14 97. The delay between repossession and the date of the sale of the secured property was
15 unreasonably long.

16 98. The secured property was sold at an unreasonable location.

17 99. The secured party failed to repair the secured property or otherwise prepare the property
18 for resale so that it could be sold at a reasonable price.

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2 **CLAM FIVE**
3 **[COMMON LAW BREACH OF PEACE]**

4 100. This claim is made solely against Defendant CAC [hereinafter the “secured party”]
5 and alleges a claim under common law for breach of peace in connection with its repossession of
6 Plaintiffs’ vehicle.

7 101. Plaintiffs incorporate each and every factual allegation contained in paras 6-14 as if
8 fully rewritten herein.

9 102. CAC retained an entity as its agent for repossession of Plaintiffs vehicle. The agent is
10 currently unidentified and unknown because it appeared at Plaintiffs’ residence unannounced and
11 thereafter refused to identify itself stating only it was acting on behalf of CAC.

12 103. As CAC’s agent this entity trespassed onto real estate belonging to Plaintiffs by
13 crossing over a public roadway and then onto and over a bridge located on Plaintiffs’ property
14 which bridge allowed access to Plaintiffs’ residence and then further all the way up to Plaintiffs’
15 driveway where the vehicle was parked directly in front of Plaintiffs’ garage where, without
16 notifying Plaintiffs, they began to hook-up Plaintiffs’ vehicle to their tow truck. Plaintiff David
17 Mounts upon hearing barking from his dog came out of his residence and demanded to know what
18 was going on. Upon observing that CAC’s agent had begun hooking up his vehicle he demanded
19 that they immediately cease and leave his property or he would call the police. He further
20 explained that his vehicle would be the subject of litigation and its status would be determined in a
21 court of law. The repossession agent then falsely claimed that it had a “Court Order” expressly
22 allowing it to repossess the vehicle.
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104. Throughout this incident there was yelling and screaming back and forth between the parties with Plaintiff David Mounts continuing to demand that the repossession agent cease its activity and leave his property and the agent refusing to do so.

105. Finally, and only as a result of the agent's false representation, Plaintiff David Mounts allowed the agent to finish hooking up the vehicle and to drive off with it without providing Plaintiffs with any documentation of their authority to do so.

106. The vehicle was repossessed as a direct result of criminal trespass, along with the inherent threat of physical violence and by deception, all against the will of Plaintiffs, and therefore constituted a common law breach of peace.

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PRAYER FOR RELIEF

Plaintiffs pray that this Honorable Court rule as follows:

- (a) in claims one and two for a ruling that this matter is appropriate for class treatment and relief;
- (b) in claim one for statutory damages of \$ 1,000,000,00 or 1% of the net assets of each Defendant;
- (c) in claim one for actual damages in the form of a refund distributed to all eligible class members consisting of all monies collected for GAP for which there was no consent for its purchase;
- (d) in claim two for actual damages distributed to each eligible class member in counts one and two for any overcharges in an amount deemed fair and reasonable by the Court;
- (e) in claim three for actual and punitive damages, for declaratory and equitable relief;
- (f) in claim four for statutory damages calculated pursuant to KRS 355.9-625;
- (g) in claim five for punitive damages for willful, wanton and malicious misconduct;
- (h) for reimbursement of and reasonable attorney fees, costs and expenses in all appropriate claims;
- (i) for a trial by jury; and,
- (j) for any further relief this Court deems just and proper.

Respectfully submitted

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