

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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DONALDSON TWYMAN,	)	
Plaintiff,	)	
	)	No. 16-cv-04182
v.	)	
	)	Honorable Virginia Kendall
S&M AUTO BROKERS, INC., SAED	)	
IHMOUD and MOHAMMED IHMOUD,	)	Magistrate Judge Sheila Finnegan
Defendants.	)	

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**PLAINTIFF’S MOTION TO DEEM ARGUMENT ON ACTUAL DAMAGES WAIVED  
OR IN THE ALTERNATIVE TO TREAT THIS MOTION AS A SUR-REPLY  
WHICH PLAINTIFF IS GRANTED LEAVE *INSTANTER* TO FILE**

Plaintiff Donaldson Twyman, by his undersigned counsel, moves for entry of an order deeming Defendants’ arguments that Plaintiff cannot prove in excess of \$30,000 in actual damages in support of federal jurisdiction waived since Defendants conceded that actual damages amount for purposes of their motion to dismiss, or in the alternative, that the Court allow this Motion to be treated as a sur-reply which Plaintiff receives leave *instanter* to file. In support of this Motion, Plaintiff states:

1. Defendants moved to dismiss the Complaint for lack of federal jurisdiction, contesting Plaintiff’s right to obtain any punitive damages. Defendants’ motion to dismiss did not challenge or contest Plaintiff’s actual damages claims just under \$28,000 stating they accepted those allegations because “that is what is plead.” (Dkt. No. 20 at paragraph 9).

2. Having failed to contest the actual damages amount in its initial motion to dismiss pleading, Defendants have waived that issue, and are not permitted to sandbag Plaintiff and raise it for the first time in their reply brief. *Griffin v. Bell*, 694 F.3d 817, 822 (7th Cir. 2012) (“More precisely, Griffin did not raise this argument until his reply brief, and arguments raised for the first time in a reply brief are deemed waived. *Mendez v. Perla Dental*, 646 F.3d 420, 423–24 (7th

Cir. 2011); *United States v. Wescott*, 576 F.3d 347, 354 (7th Cir. 2009), *cert. denied*, 559 U.S. 940, 130 S.Ct. 1546, 176 L.Ed.2d 116 (2010).

3. Because Defendants did not contest the Complaint's actual damages allegations of just under \$28,000 for purposes of their motion to dismiss, and only challenged Plaintiff's entitlement to punitive damages, Plaintiff was only required to put on evidence of his entitlement to punitive damages in excess of \$45,000 to defeat Defendants' motion to dismiss for lack of diversity jurisdiction. As the Court in *Rexford Rand Corp. v. Ancel*, 58 F.3d 1215, 1218 (7th Cir. 1995) held:

If uncontested, the courts will accept the plaintiff's good faith allegation of the amount in controversy unless it "appear[s] to a legal certainty that the claim is really for less than the jurisdictional amount." *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289, 58 S.Ct. 586, 590, 82 L.Ed. 845 (1938); see also *NLFC*, 45 F.3d at 237.

4. If this Court does not deem the actual damages issue waived by Defendants for failing to raise it in their initial pleading as would be required under the holding in *Griffin*, Plaintiff submits herewith as Exhibit 1 hereto, as part the sur-reply he seeks leave to file *instanter*, the declaration of his valuation expert which demonstrates that: (a) Plaintiff could obtain just under \$28,000 in actual damages, excluding aggravation and inconvenience damages; and (b) the car has frame damage, just as the body shop estimate also concludes, which makes it dangerous to drive.<sup>1</sup>

5. The issue of the amount of actual damages Plaintiff could obtain is not a matter that this Court should determine on the pending motion to dismiss as if it is deciding a trial on

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<sup>1</sup> Expert discovery has not yet been scheduled in this case, and Plaintiff had intended his expert to inspect the car one more time before submitting his valuation report. Plaintiff planned such inspection to occur on or about October 20, 2016 when Defendants have arranged to inspect the car. Plaintiff is only seeking leave to file an expert valuation declaration now because Defendants are now belatedly attempting to claim that Plaintiff cannot prove in excess of \$30,000 in damages at trial.

that issue, as Defendants appear to argue. A good-faith damages estimate is acceptable if it is plausible and adequately supported by the evidence. *Blomberg v. Serv. Corp. Int'l*, 639 F.3d 761, 763 (7th Cir. 2011).<sup>2</sup> Plaintiff's expert's declaration, attached as Exhibit 1, provides a more than sufficient basis for the good faith estimate and ends the matter.

6. Defendant's reply brief also fails to address the new *Tate* opinion on the punitive damages and fails to address undisputed evidence which was obtained by Plaintiff in discovery after Plaintiff filed his response to the motion to dismiss. *Tate* and the new undisputed evidence further support that Plaintiff can obtain punitive damages. In the memorandum opinion and judgment in the *Tate* case attached as Exhibit 2 hereto, the Circuit Court of Cook County entered punitive damages against Defendant S&M Auto Brokers, Inc. on a consumer fraud claim for the identical conduct at issue here (concealing accident and frame damage) and rejected "as is" as a defense to such a claim based on well-established Illinois law. The Court also concluded based on hearing expert testimony that frame damage makes a car dangerous to drive. This finding is directly contrary to the unsupported claims S&M improperly seeks to re-litigate here in its reply brief having already lost on that factual issue. As explained in Plaintiff's motion for partial summary judgment, S&M is barred from re-litigating that issue here under the doctrines of issue preclusion and collateral estoppel. Dkt No. 54 at p. 2. Defendants also improperly ignore

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<sup>2</sup> As the Court in *Tremback v. MONY Life Ins. Co.*, No. 12 C 5901, 2013 WL 1849517, at \*2 (N.D. Ill. May 1, 2013) held: "Jurisdiction itself is a legal conclusion, a consequence of facts rather than a provable 'fact.'" *Meridian*, 441 F.3d at 541. The plaintiff does not have to establish that it is likely that he will prevail or, if he does, that he will obtain a judgment exceeding the amount-in-controversy requirement. *Back Doctors*, 637 F.3d at 829. The burden, rather, is to show what the plaintiff hopes to get out of the litigation; if this amount exceeds the jurisdictional threshold, the case proceeds in federal court unless a rule of law will keep the award under the threshold. *Rising-Moore v. Red Roof Inns, Inc.*, 435 F.3d 813, 816 (7th Cir. 2006); see also *Johnson v. Wattenbarger*, 361 F.3d 991, 994 (7th Cir. 2004) ("A demand is legally impossible for jurisdictional purposes when it runs up against a statutory or contractual cap on damages or when the theories of damages employ double counting." (citations omitted)).

addressing undisputed evidence obtained in third party discovery and in their own admissions to Plaintiff's requests to admit. Plaintiff could not discuss this evidence in his response in opposition to the motion to dismiss because it had not yet been obtained. This undisputed evidence which Defendant does not address demonstrates that Plaintiff would be entitled to summary judgment as to liability for his consumer fraud claim against S&M. This same undisputed evidence provides the same basis for awarding punitive damages against Defendants as against S&M in *Tate*.

7. Plaintiff has now moved for partial summary judgment on liability on the consumer fraud count against S&M. (Dkt. No. 54). This Court should take into account the undisputed evidence submitted on the motion for partial summary judgment and the reasoning of the Court in *Tate* in denying S&M's motion to dismiss for lack of jurisdiction. This new undisputed evidence and the reasoning of the *Tate* decision and the factual issues it already decided on precludes S&M from re-litigating further support Plaintiff's entitlement to a substantial punitive damages award in excess of \$45,000.

8. Plaintiff's entitlement to punitive damages is now based on an undisputed evidentiary record, including admissions by Defendants that Manheim auto auction notified them that the car at issue had a grade of "1.9, Rough" which, if disclosed, would have caused Plaintiff or any other consumer not to buy the car. *Id.* As such, Plaintiff incorporates his motion for partial summary judgment into this sur-reply which he requests leave *instantly* to file.

9. None of the key undisputed evidence contained in Plaintiff's motion for partial summary judgment, which he seeks to make part of this sur-reply, existed at the time Plaintiff filed his response brief on the motion to dismiss. Also, the opinion in *Tate* had not been issued when Plaintiff filed his response brief on the motion to dismiss.



10. Here, where the claimed punitive damages, to which Plaintiff has demonstrated an entitlement herein and in his response brief, are far less than 80% of the \$75,000 jurisdictional amount, then federal jurisdiction is proper. *Keeling v. Esurance Ins. Co.*, 660 F.3d 273, 275 (7th Cir. 2011) (upholding jurisdiction based on required multiplier of 5 for punitive damages (i.e. 80% of AOC would come from punitive damages)).

WHEREFORE Plaintiff Donaldson Twyman requests that this Court deem Defendants' arguments that Plaintiff cannot prove in excess of \$30,000 in actual damages in support of federal jurisdiction waived since Defendants conceded that damages amount for purposes of their motion to dismiss, or in the alternative that the Court allow this Motion to be treated as a sur-reply which it grants Plaintiff leave *instanter* to file.

DONALDSON TWYMAN

By: /s/ Peter Lubin  
One of his attorneys

Peter S. Lubin  
Andrew C. Murphy  
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**CERTIFICATE OF SERVICE**

I, Peter S. Lubin, the undersigned attorney, hereby certify that I served a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY AGAINST DEFENDANT S&M ON COUNT I** upon:

Joel A. Brodsky  
Law Office of Joel A. Brodsky  
8 S. Michigan Ave., Suite 3200  
Chicago, IL 60603  
[jbrodsky@joelbrodskylaw.com](mailto:jbrodsky@joelbrodskylaw.com)

via the Court's CM/ECF System.

Dated: October 4, 2016

/s/ Peter Lubin

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DONALDSON TWYMAN,	)	
Plaintiff,	)	
	)	
v.	)	No. 16-cv-04182
	)	
S&M AUTO BROKERS, INC., SAED	)	
IHMOUD and MOHAMMED IHMOUD	)	Honorable Virginia M. Kendall
	)	
Defendants.	)	

**DECLARATION OF DONALD SZCZESNIAK**

DONALD SZCZESNIAK, being duly sworn under oath, deposes and states that if called to testify in this matter I would competently testify to the following based on personal knowledge:

1. I am an expert witness for the Plaintiff in this case.
2. Attached hereto as Exhibit A is a true and accurate copy of my curriculum vitae (“CV”).

**Education and Background**

3. I am an expert in automotive technology, engineering, remarketing, condition inspection and valuation with 26 years of experience in the automotive industry working for manufacturers, new and used dealerships and as an owner of used vehicle dealerships. I regularly inspect and value used vehicles and buy them at auctions such as Manheim automobile auctions. As an expert witness who values used cars, I have regularly been retained by both plaintiffs and defendants including consumers, Chrysler-Fiat (in a number of proceedings), and new and used vehicle dealers.

4. I have been retained to offer my expert opinions regarding certain valuation and other issues presented in this case and to opine on valuation, condition and used car dealer custom and practices. All of the opinions detailed herein are to a reasonable degree of certainty

in my field based on my education, experience, background, training, and knowledge of used vehicle dealer customs and practices.

5. I graduated from Kettering University (previously General Motors Institute “GMI” of Engineering and Management) with a Bachelor of Science in Mechanical Engineering in 1988. GMI trains engineers to work in the automobile industry. I studied engineering, automobile design and manufacturing. I worked at General Motors while attending GMI and after graduation. During my time at General Motors, I first worked in the Hydro-Matic Division in Ypsilanti, Michigan as a transmission failure testing technician, systematic shifting data recorder, and as an assembly statistical quality control technician. I then worked for the Electro-Motive Division as a Co-op engineering student and wrote a fifth year thesis on the production of a locomotive diesel engine piston carrier machining process, with a total project cost of \$11 million dollars.

6. After leaving GM in late 1988, I became a partner in Diversified Auto Services (Diversified) which made and installed after-market parts on new and used vehicles. Diversified had a sales department, mechanical service and body shop that I oversaw as General Manager. Both new and used vehicles had after-market parts installed. Occasionally, a vehicle, to which Diversified had applied aftermarket parts, needed warranty repair, service repair, or repairs due to accident damage. During the period of 1994-1996, Diversified had over 20 employees in its service department and body shop facility. I sold Diversified’s different assets and divisions over time to different purchasers. After these sales, I closed the remainder of the company in 1999.

7. From 2000-2002, I worked for new and used car dealerships as a manager, trainer, and problem solver. In 2002, I purchased Lombard Car Co., a used car dealership which I ran until 2008 when I closed the business. At Lombard, I increased sales from 50 vehicles to 300

vehicles per year at \$1,000 per unit profit. I currently own Phoenix Motor Cars LLC of Everett, Washington (formerly Dyer, Indiana), which wholesales vehicles between area dealerships and auctions nationwide.

8. In my capacity working for new and used vehicle dealers, I have inspected and appraised thousands of vehicles to purchase or potentially purchase; and purchased thousands of used vehicles at auction, through trade-ins, or by other means. Through numerous inspections, valuations and appraisals of new and used automobiles I am able to spot mechanical, condition, frame, and structural damage and determine and estimate the nature and cost of needed repairs.

9. In forming my opinions in this case, I inspected the subject 2013 Infiniti FX37 in October 2015 and June 2016. I also formed my opinion from my interview of and discussions with Plaintiff, Donaldson Twyman. Further, I relied upon my review of all relevant documents regarding the subject vehicle which Twyman purchased from S&M Auto Brokers, Inc. described below. I intend to update my opinion after a follow up inspection which I have scheduled for the later part of October 2016.

#### **Valuation Opinion and Basis**

10. In my opinion the total damage suffered by Twyman is \$27,809.21. I calculated this damages figure as follows: (a) \$23,249.42 which Twyman paid above the true retail value of the FX37 at the time of sale (“overpayment”); (b) \$1,627.45 in the sales tax paid on that overpayment; and (c) \$2,932.34 in interest paid on that overpayment. I calculated the interest and sales tax damages by reviewing Twyman’s finance documents showing an interest rate of 3.99% for a period of 72 months as reflected in Exhibit B hereto and by reviewing the purchase documents showing sales tax at 7%.

11. It is my opinion that the FX37 had a retail value \$11,745.58 at the time of sale to Twyman. Based on the \$11,745.58 retail value at the time of purchase, the FX37 had a diminished value of \$23,249.42 less than the \$34,995.00 purchase price Twyman paid to S&M. In forming my opinions, I relied on the Manheim Market Report (“MMR”), Dreyer & Reinbold and Moorehouse estimates, two Manheim condition reports for the FX37, and my own inspections.

12. To calculate the vehicle’s retail value in the “Rough”<sup>1</sup> condition it was in at the time of sale, I had to first determine the vehicle’s “Below Average” condition retail value as a baseline. I was required to determine the vehicle’s “Below Average” condition retail value because the MMR, which I used to calculate the retail value, does not publish prices for vehicles that receive a “Rough” rating, which is the rating the subject FX37 received.

13. To calculate the vehicle’s “Below Average” retail value, I used the wholesale price for a 2013 FX37 obtained from the MMR and then added a \$3,000 expected profit, which based on my experience is the customary margin earned by used car dealers on vehicles with similar wholesale prices.

14. The MMR contains wholesale vehicle prices calculated from data collected by Manheim from the weekly sales results of its worldwide auctions. Manheim conducts over 13 million transactions per year worldwide. The MMR only publishes prices for vehicles that receive the grades of “Above Average,” “Average,” and “Below Average.” There are no

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<sup>1</sup> “Rough” refers to the rating on the Manheim Vehicle Condition Grading Scale assigned to a vehicle by Manheim. Vehicles inspected by Manheim receive a numeric rating which corresponds to a condition descriptor (e.g. “Rough”). The ratings on this scale from best to worst are: “Extra Clean (5.0-5.9),” “Clean (4.0-4.9),” “Average (3.0-3.9),” “Below Average (2.0-2.9),” “Rough (1.0-1.9),” an “Extra Rough (0.0-0.9).” See Exhibit C, which is a true and accurate copy of the Manheim condition grading scale.

published MMR prices for “Extra Clean,” “Rough,” or “Extra Rough” vehicles. The MMR for a “Below Average” 2013 FX37 is \$23,500. Exhibit D hereto is a truthful and accurate copy of the MMR price information for a “Below Average” 2013 FX37 from the week of October 22, 2015. With the customary \$3,000 mark-up, the retail value for a properly repaired “Below Average” 2013 FX37 would be \$26,500.

15. I then used this \$26,500 baseline to calculate the vehicle’s “Rough” retail value. To do this, I first deducted the cost of the repairs needed to make the vehicle a saleable “Below Average” vehicle from the \$26,500 baseline.<sup>2</sup> The FX37 needed repairs on the frame, body, steering column, hub bearing, and replacing the tires. The costs for these repairs are listed in Dreyer & Reinbold and Moorehouse Body Shop estimates and are as follows: \$964.87 (tires), \$1,991 (steering column per Dreyer & Reinbold estimate), \$668 (hub bearing per Dreyer & Reinbold estimate), and the \$9,130.55 in body and frame repair work (Moorehouse Body Shop estimate). Attached as Exhibits E-F are true and accurate copies of the Dreyer & Reinbold and Moorehouse Body Shop estimates respectively.

16. I also deducted \$2,000 of the dealer’s expected profit which represents the increased in value as a result of making the repairs. In other words, without making the repairs the expected profit on the vehicle would only be \$1,000 whereas it would be \$3,000 after making the needed repairs. In my experience, there is a minute retail consumer market for vehicles in as poor a condition as the FX37 was in at the time of sale. If consumers are informed that a car like the FX37 needs extensive work and has permanent frame damage, the pool of interested buyers shrinks tremendously. A dealer will not be able to make much more than a \$1,000 margin,

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<sup>2</sup> Even with all possible repairs, the FX37 purchased by Twyman could never have received a grade higher than “Below Average” on the Manheim scale, as vehicles with a grade of “Average” and above cannot have prior frame damage even if repaired. Exhibit C.



which is the customary profit dealers make on a car in this “Rough” condition. If the repairs had been made, bringing the vehicle up to “Below Average,” the dealer could make another \$2,000 in profit for incurring the costs and associated financial risks relating to supervising such repairs.

17. Deducting from the \$26,500 baseline the cost of needed repairs and \$2,000 of the expected profit, I calculated a retail value of \$11,745.58 for the “Rough” FX37.

18. It is important to note that even the \$11,745.58 number may be too high as the Moorehouse Body Shop estimate indicates that there may be additional body and frame work needed beyond that noted in the estimate. I agree with that conclusion based on my own inspections. However, the \$11,745.58 valuation does not include that risk.

**History of the Subject Vehicle, Sale to Plaintiff, and Inspections of the Vehicle**

19. On October 16, 2015, Twyman purchased a 2013 Infiniti FX37 that, according to Twyman, S&M represented to be accident free. No collision or accident damage was disclosed on the S&M purchase documents I reviewed. Upon returning to his home in Fisher Indiana, Twyman stated that he experienced several drivability issues and the check engine light turned on. Since the FX37 was still covered under manufacturer’s warranty, Twyman presented the FX37 to Dreyer & Reinbold Infiniti, for inspection and warranty repair. However, Twyman was informed that the majority of the repairs necessary would not be covered under the manufacturer’s warranty. Twyman was told that the Infiniti Warranty does not cover damage from a collision, and that substantial body related repairs were needed for the FX37. Upon receipt of an estimate for mechanical work, Twyman then presented the FX37 to Moorehouse Body Shop to address body and frame related collision damage.

20. Dreyer & Reinbold Infiniti provided an estimate of \$7,709.28 to address the mechanical issues that are uncharacteristic of a vehicle with less than 20,000 miles. Moorehouse Auto Body presented an open ended estimate for \$9,130.55 that notes “FRAME TIME WAS BY VISUAL INSPECTION ONLY AND MAY REQUIRE MORE REPAIR TIME AFTER MEASURING,” which is characteristic of a vehicle with substantial *frame damage*.

21. Manheim’s 1.9 “Rough” pre-sale condition report which was available to S&M at the time it bought the FX37 contained the following information: eleven substandard repair notations, four wheels damaged with curb rash, three panel misalignments, two dents, one rear bumper replacement required, and burned carpet. Exhibit G hereto is a truthful and accurate copy of the Manheim Condition Report for the FX37 for the S&M purchase. Three panels being misaligned is a tell-tale sign of substantial frame damage which is expected on a vehicle with a Manheim grade of “Rough” according to Manheim’s definition of that grade. Exhibit C.

22. I inspected the FX37 on October 23, 2015 and again on September 29, 2016, and confirmed the Dreyer & Reinbold Infiniti and Moorehouse Auto Body findings. The collision damage I observed is as follows: 1) inconsistent gaps in the hood; 2) front fender’s poor alignment with relationship to the header; 3) front door gap alignment; 4) missing and damaged parts under the hood; 5) bent parts attached to the front header; 6) driver’s door misalignment; and 7) driver’s door frame modified to cause substandard/dangerous latching. The FX37 is approximately 80% repainted and the finish is defective throughout due to the presence of: 1) non-factory clear coat; 2) obvious paint blends; and 3) overspray on the whole vehicle. During my test drive of the vehicle on October 23, 2015, I observed that the vehicle pulls to the right and has vibrations caused by tension or compression of the drivetrain mounts. All of the above mentioned defects are consistent with a vehicle that has sustained severe frame damage that was

improperly repaired in a substandard manner and has parts that are improperly fastened in various portions of the vehicle. This is clearly the result of a serious collision. From the body damage I observed, I deduced that the FX37 was in an impact severe enough to cause front frame damage resulting in a bent front frame, front frame alignment problems, dangerous driver's door misalignment, and uni-body damage.

23. If S&M or any other experienced used car dealer had inspected the FX37 before selling it to Twyman, S&M or any other dealer would have seen the collision damage noted above. A test drive would have further made clear to S&M or any other experienced used car dealer that the vehicle had serious structural mechanical interface problems as the FX37 pulls to the right and has vibrations caused by tension or compression in the drive train mounts.

24. Warranty covered and non-warranty mechanical work with an estimated value of just over \$7,700 was performed by Dreyer & Reinbold and by a tire shop. This included replacing bearings and the steering column knuckle by Dreyer & Reinbold at Infiniti's cost. Twyman also purchased tires, paid for other repairs and for an inspection with a total cost of just over \$2,500 to him.

25. Even after the warranty covered and non-warranty covered work done by Dreyer & Reinhold and the tire shop, the FX37 is still dangerous to drive because the driver's door does not properly latch due to frame damage from the collision. The door does not stay closed as designed due to the latch, but rather due to frame damage causing interference of the door with its surrounding frame. The door could come open while driving even if it were locked because it isn't properly latched.

26. The currently bent front frame is pushing the header panel rearward. The header panel supports the hood latch, which is being pushed rearward due to the bent frame. The hood is

then being torqued, resulting in it being mis-shaped, deviating from its intended design. Over time, the deviation in design will cause the two hood components to separate, resulting in the top panel flipping up, obscuring the driver's vision. The frame damage that occurred to the front right of the FX37 caused permanent deformation of the frame extension. The air bag sensors rely on the integrity of the frame extensions to properly signal deployment of the FX37's air bags in a crash. The non-deployment of an air bag in a crash can result in injury or death.

27. The presence of this frame damage has long term effects on the FX37's mechanical components due to the misalignment of the powertrain with relationship to the body. The long term effects are confirmed by the vibrations that I felt when operating the FX37 in a test drive. Twyman and Infiniti's replacement of mechanical parts and tires (that failed well before industry life expectancy) did not correct this problem.

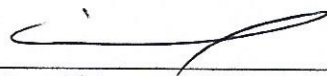
28. The worn out tires which Twyman had not yet replaced on my first inspection presented a danger as the treads on two of the tires (one was newer) were below Illinois safety standards for tire treads. Twyman had to replace all of the tires at a cost of \$964.87 to make the FX37 safer to drive. In addition, the collision damaged steering column cost \$1,991 to repair and the damaged hub bearing cost \$668 to replace per the Dryer & Reinbold estimate for a total of \$2,659. Exhibit E. These costs were covered by Infiniti under the warranty. At the time of purchase, it would have been expected that Infiniti would not have covered this work. Voiding warranties for collision damaged vehicles or parts therein is standard in all manufacturer warranties including Infiniti/Nissan warranties that I have reviewed in the ordinary course of business and which can be reviewed on the internet. Without disclosure of such risk by S&M at the time of sale to Twyman, Twyman took on the substantial risk that Infiniti would have denied

29. In my opinion based on my first inspection, which occurred before the warranty work was performed, the hub bearings and steering column knuckle work was a result of collision, and thus should not have been covered under warranty. The hub bearings had to be replaced well before their expected life expectancy because of collision damage, not manufacturer defect. Also the steering column tilt joint was damaged in the collision and thus needed to be replaced. Absent a collision, a steering column doesn't break, and it is highly abnormal to replace a steering column or hub bearings on an undamaged FX37, or any other car, with mileage as low as the FX37, which had just over 17,000 miles when Twyman purchased it.

Under penalties as provided by law, the undersigned certifies and swears under oath that the statements set forth in this instrument are true and correct.

FURTHER DECLARANT SAYETH NOT.

Date: October 3, 2016

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Donald Szczesniak

# **EXHIBIT A**

# DONALD SZCZESNIAK

POB 125 LAGRANGE, IL 60525  
708-837-0001 • donsezz@att.net

## OBJECTIVE

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To provide consulting and expertise in business transactions with regard to marketing, financing, registration, warranty services, and financial mismanagement. My expertise is based on 25 years' experience in the automotive and transportation fields, and assisting clients in over one hundred fraud, tort, and product misrepresentation cases. I have provided financial and engineering analysis to county, state, and federal courts on subjects ranging from: consumer's expected value, diminished product value, statue violations, business practices, identity theft, and lost business opportunity.

## RECENT EXPERT WITNESS TOPICS

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- Vehicle Acquisitions: History of use, service, previously damaged, and source
- Title or Certificate of Origin: Used or new, branded, or previous use
- Financing: Participation accounts, floor plans, GAP (guaranteed asset protection), credit life, and interest points for profit
- Service Contracts: Validity verification of coverage and company existence
- Warranty: Manufacturer's training inadequacy
- Vehicle Code: Inadequate follow through after the sale and registration
- Mechanics' Liens: Improper documentation and state violations
- Repossession: Invalid security interest, and wrongful use of hold harmless
- Automotive Repair & Collision Act: Violations of non-compliance
- Indirect Lending: Abuse by new franchisees over used dealers
- Manufacturer's: Expected value of a consumer

## EDUCATION

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**Bachelor of Science Mechanical Engineering**.....June 1988 Kettering University (Previously GMI Engineering & Management Institute) Flint, Michigan

## ENGINEERING EXPERIENCE

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**Electro-Motive Division, General Motors, McCook, IL**.....1984-1988  
Student Engineer.

Used statistical analysis to improve quality and lower costs in several product lines. Wrote graduate thesis about new machining process for locomotive engine piston carrier assembly; which resulted in General Motors adopting my recommendations.

**Hydro-Matic Division, General Motors, Ypsilanti MI**.....1983-1984  
Student engineer.

Laboratory tested and road tested the developmental transmission, THM 440T4. Used continuous fail cycle and statistical analysis for reliability tests.

## BUSINESS EXPERIENCE

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**Phoenix Motor Cars, Everett, WA..... 2015-Current**

**Owner:**

- Successor of Indiana Corporation, for licensing purposes only.

**Phoenix Motor Cars, Dyer, IN.....2009-2015**

**Owner:**

- Wholesale variety of vehicle types including autos, recreational, all-terrain, boats, trailers, and motor homes.
- Evaluate the vehicle's remarket value and properly estimate reconditioning expenses.

**Lombard Car Co, Lombard, IL.....2002-2008**

**Owner:**

- Purchased this small existing operation from retiring owner/operator.
- Raised sales volume from 50 to 300 vehicles per year with an average per unit net profit of \$1,000.
- Maintained profit levels in competitive market by selling financing, insurance, and service contracts.

**Prestige Motors, Broadview, IL.....2001-2002**

**General Sales Manager:**

- Grew company from 2 vehicles to 40 units per month with a per unit net profit of \$1,400.
- Selected correct inventory to match local consumer needs.
- Provided appropriate consumer financing through a variety of relationships with financial institutions.

**Limo Emporium, Roselle, IL.....2000-2001**

**Retail Sales Manager:**

- Increased sales volume from 8 units to 34 units per month, with a per unit net profit of \$2,210.
- Advertised, staffed, and networked with finance companies for consumers.

**Diversified Auto Services, Maywood, IL.....1988-1999**

**Owner:**

- Transformed company of five employees and \$400,000 in annual sales to a high of twenty-two employees and \$4 million in sales.
- Implemented engineering and marketing strategies to position Diversified Auto as a Midwest automotive aftermarket power house.
- Developed and designed new products focusing on the luxury auto market.
- Worked collaboratively with Chicagoland new car dealers to increase their profits.



# **EXHIBIT B**

**SIMPLE LOAN CALCULATOR****LOAN VALUES**

Loan amount	\$23,249.42
Annual interest rate	3.99%
Loan period in years	6
Start date of loan	11/16/2015

**LOAN SUMMARY**


Monthly payment	\$363.64
Number of payments	72
Total interest	\$2,932.34
Total cost of loan	\$26,181.76


PMT NO	PAYMENT DATE	BEGINNING BALANCE	PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE
1	12/16/2015	\$23,249.42	\$363.64	\$286.33	\$77.30	\$22,963.09
2	1/16/2016	\$22,963.09	\$363.64	\$287.28	\$76.35	\$22,675.81
3	2/16/2016	\$22,675.81	\$363.64	\$288.24	\$75.40	\$22,387.57
4	3/16/2016	\$22,387.57	\$363.64	\$289.20	\$74.44	\$22,098.37
5	4/16/2016	\$22,098.37	\$363.64	\$290.16	\$73.48	\$21,808.21
6	5/16/2016	\$21,808.21	\$363.64	\$291.12	\$72.51	\$21,517.09
7	6/16/2016	\$21,517.09	\$363.64	\$292.09	\$71.54	\$21,225.00
8	7/16/2016	\$21,225.00	\$363.64	\$293.06	\$70.57	\$20,931.94
9	8/16/2016	\$20,931.94	\$363.64	\$294.04	\$69.60	\$20,637.90
10	9/16/2016	\$20,637.90	\$363.64	\$295.01	\$68.62	\$20,342.88
11	10/16/2016	\$20,342.88	\$363.64	\$296.00	\$67.64	\$20,046.89
12	11/16/2016	\$20,046.89	\$363.64	\$296.98	\$66.66	\$19,749.91
13	12/16/2016	\$19,749.91	\$363.64	\$297.97	\$65.67	\$19,451.94
14	1/16/2017	\$19,451.94	\$363.64	\$298.96	\$64.68	\$19,152.98
15	2/16/2017	\$19,152.98	\$363.64	\$299.95	\$63.68	\$18,853.03
16	3/16/2017	\$18,853.03	\$363.64	\$300.95	\$62.69	\$18,552.08
17	4/16/2017	\$18,552.08	\$363.64	\$301.95	\$61.69	\$18,250.13
18	5/16/2017	\$18,250.13	\$363.64	\$302.95	\$60.68	\$17,947.18
19	6/16/2017	\$17,947.18	\$363.64	\$303.96	\$59.67	\$17,643.22
20	7/16/2017	\$17,643.22	\$363.64	\$304.97	\$58.66	\$17,338.25
21	8/16/2017	\$17,338.25	\$363.64	\$305.99	\$57.65	\$17,032.26
22	9/16/2017	\$17,032.26	\$363.64	\$307.00	\$56.63	\$16,725.26
23	10/16/2017	\$16,725.26	\$363.64	\$308.02	\$55.61	\$16,417.23
24	11/16/2017	\$16,417.23	\$363.64	\$309.05	\$54.59	\$16,108.18
25	12/16/2017	\$16,108.18	\$363.64	\$310.08	\$53.56	\$15,798.11
26	1/16/2018	\$15,798.11	\$363.64	\$311.11	\$52.53	\$15,487.00
27	2/16/2018	\$15,487.00	\$363.64	\$312.14	\$51.49	\$15,174.86
28	3/16/2018	\$15,174.86	\$363.64	\$313.18	\$50.46	\$14,861.68
29	4/16/2018	\$14,861.68	\$363.64	\$314.22	\$49.42	\$14,547.46
30	5/16/2018	\$14,547.46	\$363.64	\$315.27	\$48.37	\$14,232.20
31	6/16/2018	\$14,232.20	\$363.64	\$316.31	\$47.32	\$13,915.88
32	7/16/2018	\$13,915.88	\$363.64	\$317.37	\$46.27	\$13,598.52
33	8/16/2018	\$13,598.52	\$363.64	\$318.42	\$45.22	\$13,280.10
34	9/16/2018	\$13,280.10	\$363.64	\$319.48	\$44.16	\$12,960.62
35	10/16/2018	\$12,960.62	\$363.64	\$320.54	\$43.09	\$12,640.08
36	11/16/2018	\$12,640.08	\$363.64	\$321.61	\$42.03	\$12,318.47
37	12/16/2018	\$12,318.47	\$363.64	\$322.68	\$40.96	\$11,995.79
38	1/16/2019	\$11,995.79	\$363.64	\$323.75	\$39.89	\$11,672.04
39	2/16/2019	\$11,672.04	\$363.64	\$324.83	\$38.81	\$11,347.22
40	3/16/2019	\$11,347.22	\$363.64	\$325.91	\$37.73	\$11,021.31
41	4/16/2019	\$11,021.31	\$363.64	\$326.99	\$36.65	\$10,694.32
42	5/16/2019	\$10,694.32	\$363.64	\$328.08	\$35.56	\$10,366.24
43	6/16/2019	\$10,366.24	\$363.64	\$329.17	\$34.47	\$10,037.08
44	7/16/2019	\$10,037.08	\$363.64	\$330.26	\$33.37	\$9,706.81
45	8/16/2019	\$9,706.81	\$363.64	\$331.36	\$32.28	\$9,375.45
46	9/16/2019	\$9,375.45	\$363.64	\$332.46	\$31.17	\$9,042.99
47	10/16/2019	\$9,042.99	\$363.64	\$333.57	\$30.07	\$8,709.42

PMT NO.	PAYMENT DATE	BEGINNING BALANCE	PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE
48	11/16/2019	\$8,709.42	\$363.64	\$334.68	\$28.96	\$8,374.75
49	12/16/2019	\$8,374.75	\$363.64	\$335.79	\$27.85	\$8,038.96
50	1/16/2020	\$8,038.96	\$363.64	\$336.91	\$26.73	\$7,702.05
51	2/16/2020	\$7,702.05	\$363.64	\$338.03	\$25.61	\$7,364.03
52	3/16/2020	\$7,364.03	\$363.64	\$339.15	\$24.49	\$7,024.88
53	4/16/2020	\$7,024.88	\$363.64	\$340.28	\$23.36	\$6,684.60
54	5/16/2020	\$6,684.60	\$363.64	\$341.41	\$22.23	\$6,343.19
55	6/16/2020	\$6,343.19	\$363.64	\$342.54	\$21.09	\$6,000.64
56	7/16/2020	\$6,000.64	\$363.64	\$343.68	\$19.95	\$5,656.96
57	8/16/2020	\$5,656.96	\$363.64	\$344.83	\$18.81	\$5,312.14
58	9/16/2020	\$5,312.14	\$363.64	\$345.97	\$17.66	\$4,966.16
59	10/16/2020	\$4,966.16	\$363.64	\$347.12	\$16.51	\$4,619.04
60	11/16/2020	\$4,619.04	\$363.64	\$348.28	\$15.36	\$4,270.76
61	12/16/2020	\$4,270.76	\$363.64	\$349.44	\$14.20	\$3,921.33
62	1/16/2021	\$3,921.33	\$363.64	\$350.60	\$13.04	\$3,570.73
63	2/16/2021	\$3,570.73	\$363.64	\$351.76	\$11.87	\$3,218.97
64	3/16/2021	\$3,218.97	\$363.64	\$352.93	\$10.70	\$2,866.03
65	4/16/2021	\$2,866.03	\$363.64	\$354.11	\$9.53	\$2,511.93
66	5/16/2021	\$2,511.93	\$363.64	\$355.28	\$8.35	\$2,156.65
67	6/16/2021	\$2,156.65	\$363.64	\$356.46	\$7.17	\$1,800.18
68	7/16/2021	\$1,800.18	\$363.64	\$357.65	\$5.99	\$1,442.53
69	8/16/2021	\$1,442.53	\$363.64	\$358.84	\$4.80	\$1,083.69
70	9/16/2021	\$1,083.69	\$363.64	\$360.03	\$3.60	\$723.66
71	10/16/2021	\$723.66	\$363.64	\$361.23	\$2.41	\$362.43
72	11/16/2021	\$362.43	\$363.64	\$362.43	\$1.21	\$0.00

# **EXHIBIT C**



<div> <div>Manheim</div> <div>Vehicle Condition Grading Scale</div>  </div>									
Grade	Body Defects	Previous Repairs	Parts	Interior	Frame	Powertrain	Acces.	Fluids	Tires
5 Extra Clean	PDR Only	High Quality	Ok	No Damage	Ok (No Previous)	Ok	Ok	Full/Clean	Near New
4 Clean	Minor Defects	High Quality	Minor Missing	Minimal Wear	Ok (No Previous)	Ok	Ok	May Need Service	Good
3 Average	Some Repairs	Acceptable Quality	Missing Broken	Normal Wear	Ok (No Previous)	Ok	Minor Repairs	May Need Service	Average
2 Below Average	Substantial Repairs	Substandard	Missing Broken	Worn, Burns, Cuts, Stains	Possible Previous Substandard Repair	Operable, Poor Condition	Some Inoperable	Low/Dirty	Worn
1 Rough	Existing Collision Damage	Poor	Missing Broken	Worn, Burns, Cuts, Stains	Probable Damage	Runs Under Own Power	Many Inoperable	Low/Dirty	Worn
0 Extra Rough	Scrap-Parts?	Poor	Missing Broken	Severe Damage	Bent	Inoperable	Inoperable	Low/Dirty	Flat


**Manheim Inspections**  
 CONSISTENCY. ACCURACY. DELIVERED.

# MANHEIM

## VEHICLE CONDITION GRADING SCALE

**Grade 5, Extra Clean** – Vehicle is in excellent condition, with only minor defects in panel surfaces as noted in the condition information for each vehicle. The body panels require no conventional body or paint work, but may have had limited high quality repairs performed. There are no missing, broken, or damaged parts that require replacement. The interior compartment has no cuts, tears or burns that require repair and does not show signs of wear. The vehicle's frame/structure has not been repaired or altered, and is expected to measure to published specifications. Vehicle is mechanically sound and all accessories are operable. All fluid levels are full and clean; all tires will be near new or better.

**Grade 4, Clean** – A better than average unit with minor chips or scratches in panel surfaces as noted in the condition information for each vehicle. This vehicle may require minor conventional body and paint work or removal of small dents that have not broken the paint using Paintless Dent Repair. The body of the vehicle may have had high quality conventional repairs. A minor missing or broken part may require replacement as noted. The interior is clean and will show minimal wear. The vehicle may have sustained cosmetic or light collision damage and been repaired to collision industry standards. The frame/structure has not been damaged or repaired and is expected to measure to published specifications. Vehicle is mechanically sound, and all accessories are operable. Vehicle may need fluids serviced, or tires rotated. Only scheduled maintenance will be necessary. Tires will be good or better.

**Grade 3, Average** – The average vehicle will have normal wear and tear (for example, parking lot dings, small scratches, chips and/or minor broken parts). It may require some conventional body and paint work or replacement of parts as noted in the condition information for each vehicle. The interior will show signs of normal wear and usage, requiring repair or replacement of parts as noted. Prior repairs may have been performed on this vehicle at an acceptable quality level. The vehicle may have sustained cosmetic or light collision damage and been repaired to collision industry standards. The frame/structure has not been damaged or repaired and is expected to measure to published specifications. Vehicle is mechanically sound, but may require maintenance or minor repair accessories. The fluid level may be low or require replacement. Tires will be average or better.

**Grade 2, Below Average** – Vehicle shows signs of abnormal wear and tear. The body has dents, scratches, and body panels that may require replacement as noted in the condition information for each vehicle. Broken and missing parts are to be expected. The interior shows signs of excess wear with burns, cuts or tears, and non-removable stains as noted. This vehicle may have multiple prior repairs performed at substandard levels, which may include repaired or unrepaired collision and/or frame/structure damage. The frame/structure is not expected to measure to published specifications. Vehicle may have mechanical damage that prohibits vehicle from operating properly. Repairs can be made, but engine and/or transmission may be in poor condition. Operability of accessories is questionable. Fluids are low or require replacement. Worn tires are to be expected.

**Grade 1, Rough** – This vehicle has been severely abused or has sustained major collision damage, but may be drivable. It is cost prohibitive to extensively recondition this vehicle by automotive industry standards. The frame/structure is not expected to measure to published specifications. Although operable, this vehicle is near the end of its useful life. Operability of accessories is doubtful.

**Grade 0, Extra Rough** – Vehicle is inoperative. Unit is good for parts only. Mechanical and body parts may be inoperable, disconnected, damage or missing.

# **EXHIBIT D**

## Vehicle Identification

Search:		Select Country:	US
Year:	2013	Select Region:	National
Make:	INFINITI	Seasonal Adjustment:	No
Model:	FX37 AWD		
Style:	4D SUV		

## Auction Averages

*Zeros indicate No Recent Auction Sales. See "Transactions"*

For Week Ending Oct 26

	Above	Average	Below	Aug 2015	Apr 2015	Oct 2014
Sale Price	\$33,841	\$27,617	\$21,393	\$29,346	\$30,320	\$34,636
Odometer	16,296	32,592	48,888	26,765	25,722	19,819
Total Sold All		85		89	120	83

Average Auction Odometer 33501

*Prices are based on more transactions than shown under 'Transactions', above.*

Oct 31 - Nov 07 2015

	Above	Average	Below	Nov 2015	Oct 2016
Auction	\$31,700	\$27,600	\$23,500	\$27,600	\$26,000
Est. Retail	\$38,200	\$33,700	\$29,100	\$33,600	\$31,800

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# **EXHIBIT E**



**OUR VALUED CUSTOMER**

**Zoya Gornopolsky**

4113 OCTOBER RD  
RICHMOND, VA 23234-3668  
9174 (996) 383-x000  
noemailonfile@aol.com

**Jerry Brown**  
*Service Consultant*

**K. Roydes**  
*Certified Technician*

**YOUR VEHICLE**

<b>Year</b> 2013	<b>Make</b> Infiniti	<b>Model</b> FX37	<b>Engine Type</b> 3.7L V6 DOHC (MFI)
<b>Odometer</b> 17,426	<b>VIN #</b> JN8CS1MW8DM170265	<b>License #</b>	<b>Date</b> 10/20/2015



## Original Customer Requests

The following is what you requested we perform or investigate regarding your vehicle:

- ✓ 01. \*\* EXCLUDING OIL & FILTER SERVICE \*\*
- ✓ 02. Multi-Point Inspection



## Package Results

Dreyer and Reinbold Infiniti Courtesy Inspection

Failed Task	Observation	Recommendation	Done
Inspect engine oil level, condition and check for leaks	Found engine oil leak		
Inspect automatic transmission fluid level, condition and check for leaks	Found automatic transmission fluid level low		
Inspect overall tire wear and condition	Found punctured tire		
Measure rear brake lining thickness	3 mm or less (disc brakes)	Replace rear brake pads and resurface rear brake rotors	
Measure front brake lining thickness	2 mm brake pad remaining	Replace front brake pads and resurface brake rotors	
Other brake system observations	Brakes have pulsation when applied		
Inspect instrument cluster warning lamps	<ul style="list-style-type: none"> <li>• Found check engine light illuminated</li> <li>• Found tire pressure monitor lamp illuminated</li> </ul>		
Inspect in-cabin micro filter (if equipped)	Based on known vehicle history	Replace cabin micro filter	

Cautioned Task	Observation	Recommendation	Done
Measure right front tire tread depth	4/32" : Will need tires soon		
Measure right rear tire tread depth	4/32" : Will need tires soon		

Passed Task	Observation	Recommendation	Done
Check and adjust front tire pressure	Set tire pressures to 36 psi - Check tire pressures monthly		

Passed Task	Observation	Recommendation	Done
Fill windshield washer fluid	Found washer fluid level low: Filled to proper level		
Check and adjust rear tire pressure	Set tire pressures to 36 psi - Check tire pressures monthly		
Measure left front tire tread depth	8/32" or greater: Inspect tire next service		
Measure left rear tire tread depth	8/32" or greater: Inspect tire next service		

Passed Tasks		
✓ Inspect exhaust system for leaks, damage, and loose parts	✓ Check and adjust front tire pressure	✓ Inspect axles, driveshaft(s) U-joints and CV joints/boots
✓ Inspect engine mounts	✓ Inspect transmission mount(s)	✓ Inspect transfer case for leaks
✓ Inspect rear differential for leaks	✓ Inspect fuel tank, lines, and connections	✓ Inspect air cleaner element
✓ Fill windshield washer fluid	✓ Inspect power steering fluid level, condition and check for leaks	✓ Inspect engine coolant level, condition and check for leaks
✓ Inspect brake fluid level, condition and check for leaks	✓ Inspect hazard light operation	✓ Inspect brake light operation
✓ Inspect back-up light operation	✓ Inspect taillight, turn signal, side marker, and license plate lights	✓ Inspect taillight, turn signal, and side marker assemblies for cracks and damage
✓ Inspect fog lights and headlight low and bright beam operation	✓ Inspect windshield wiper and washer operation	✓ Check horn operation
✓ Inspect dash and interior lights	✓ Check and adjust rear tire pressure	✓ Inspect all vehicle wiper blades
✓ Perform battery performance test	✓ Inspect battery terminals and cables	✓ Inspect ignition wires and spark plugs
✓ Inspect accessory drive belts	✓ Inspect all hoses and clamps	✓ Measure left front tire tread depth
✓ Inspect front differential for leaks	✓ Inspect steering and sway bar components	✓ Inspect suspension components
✓ Measure left rear tire tread depth		

Additional Observations	Recommendation
tilt joint in steering column loose	<ul style="list-style-type: none"> <li>• replace steering column</li> <li>• alignment</li> </ul>
right rear almost flat, odd brand tires.	<ul style="list-style-type: none"> <li>• alignment</li> <li>• 4 x 265/50r20</li> <li>• inspect wheels for out of round</li> </ul>
Shifting feels abnormal. FFluid level low and black	<ul style="list-style-type: none"> <li>• Transmission serv.</li> <li>• Engine and TCM reprogram</li> </ul>
left front wheel bearing noise	replace left front hub/bearing assy
red X on front camera image. Sonar codes stored for rear sensors	Reintialize cameras, plug in rear sonar sensor harness

Additional Observations	Recommendation
Check engine light on , p0420-catalyst below eff. bank 1. Car has sludge engine in history with oil in number one cyl. Engine oil consumption leads to premature catalyst failure. Bank 2 may fail in the near future.	replace bank 1 catalyst
oil pan leaking, been off and resealed	reseal oil pan
washer nozzle clips broken, hose from fender missing	replace washer nozzles and run new hose
ccolant resevoir cap and overflow hose missing	install resevoir cap and overflow hose
rear hatch misaligned, rear bumper reworked, front bumper replaced, front crash bar new, l.f. and r.f. wheel arches creased, hood alignment, door gaps, entire left side repainted, only r.f. door not worked on right side.	Crash damage and paint all over . Right front door has some blend work, but appears to be only part not heavily reworked.



## Additional Information

Below is information we feel would help you better understand some of the reasons for taking preventive maintenance steps -- steps that help to ensure the reliability and safety of your vehicle for you and your family.

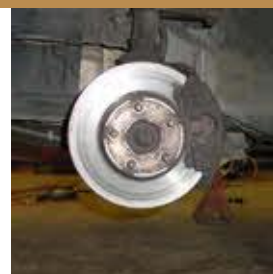
\*\* The following section may contain instructions for servicing various components of your vehicle. These are an overview of the process that will be performed by a skilled technician in our shop. They are not intended to be a guide for a “do-it-yourself” operation.

### Brake pad/shoe replacement

AI-21

#### Operation Description:

Remove the wheels. For disc brakes, remove the brake caliper and then remove the brake pads. Inspect the rotors for signs of damage or excessive wear. Replace or resurface the rotor as necessary. Inspect the brake caliper and brake hoses for damage and leaks. Replace the brake pads. For drum brakes, remove the brake drum. Remove the brake shoes. Inspect the brake hardware, wheel cylinders and hoses for damage. Inspect the brake drum for damage, or excessive wear. Replace or resurface the drum as necessary. Clean the brake drum and backing plate. Replace the brake shoes. Reinstall the brake drum. Adjust the brakes as necessary. Reinstall the wheels and torque the lug nuts to the vehicle manufacturer's specifications.



*Damaged brake rotor from metal-to-metal contact*

#### Significance:

This repair is all about safety. Your vehicle's brake system is only as good as your brake pads and/or brake shoes. The safety of you and your family depends on your brake system working properly and stopping your vehicle - every time. Aside from the obvious safety issues, neglecting the maintenance of your brake pads and shoes can cause the friction material on your brake pads and shoes to completely wear out. This can cause the steel backing on your brake pads or shoes to contact the rotors or drums and will destroy the rotors or drums, leaving you with an expensive repair bill.



*New brake pads*

**Advantage:**

There are no shortcuts when it comes to your vehicle's brakes. Having a professional automotive technician check and service brakes on a regular basis is essential to your safety behind the wheel. Maintaining your brake system by replacing your brake pads and shoes before they are completely worn out will help keep your brakes working properly and save you money by avoiding unexpected damage to your brake components caused by metal to metal contact.

**Cabin filter replacement**

AI-27

**Operation Description:**

Access the cabin or pollen filter according to the vehicle manufacturer's service information. This usually involves opening the glove box and removing the bolt to lower the door. Remove the old cabin air filter from its housing. Replace with new cabin air filter. Replace the bolt to attach the glove box door. Close the glove box door. Clean the housing of all dust and debris. Install the new pollen filter into its housing.

**Significance:**

The cabin or pollen filter is designed to filter out dust, pollen and other particles that would normally make their way into your vehicle through the heating, ventilation and air conditioning (HVAC) systems. Pollen filters work very well, but need to be replaced as part of a scheduled maintenance program. Restricted and dirty pollen filters put a strain on the blower motor, which can cause it to be excessively noisy and even fail prematurely. This kind of strain on a blower motor can also cause problems with the vehicle wiring and electrical system, due to the excessive amperage required for the blower motor to function. Replacing the blower motor can be very expensive on some vehicles.



*A dirty and clogged cabin air filter*



*A clean cabin air filter*

**Advantage:**



A clean cabin or pollen filter can be very effective at keeping dust, pollen, and other unwanted particles from entering the interior of your car. Also, your blower motor will generate a higher volume of airflow, boosting the efficiency and effectiveness of your HVAC systems.

**Recommended Services**

Our technicians recommend the following services for your vehicle.

Original Customer Requests		Status	Cost	Deferred	Approved	
01. ** EXCLUDING OIL & FILTER SERVICE **			\$181.80		X	
02. Multi-Point Inspection			\$0.00		X	
Subtotal			\$181.80		\$181.80	
Inspection & Additional Recommendations		Insp	Status	Cost	Deferred	Approved
Replace rear brake pads and resurface rear brake rotors (3 mm or less (disc brakes))		x	Fail	\$524.93		See AI-21

Inspection & Additional Recommendations	Insp	Status	Cost	Deferred	Approved
Replace front brake pads and resurface brake rotors (2 mm brake pad remaining)	x	Fail	\$553.06		See AI-21
Replace cabin micro filter (Based on known vehicle history)	x	Fail	\$113.45		See AI-27
replace steering column (tilt joint in steering column loose)		Fail	\$1,991.31		
alignment (tilt joint in steering column loose, right rear almost flat, odd brand tires., tilt joint in steering column loose, right rear almost flat, odd brand tires.)		Fail	\$109.81		
4 x 265/50r20 (right rear almost flat, odd brand tires.)		Fail	\$974.51		
inspect wheels for out of round (right rear almost flat, odd brand tires.)		Fail	\$0.00		
Transmission serv. (Shifting feels abnormal. FFluid level low and black)		Fail	\$204.09		
Engine and TCM reprogram (Shifting feels abnormal. FFluid level low and black)		Fail	\$165.10		
replace left front hub/bearing assy (left front wheel bearing noise)		Fail	\$663.03		
Reintialize cameras, plug in rear sonar sensor harness (red X on froint camera image. Sonar codes stored for rear sensors)		Fail	\$0.00		
replace bank 1 catalyst (Check engine light on , p0420-catalyst below eff. bank 1. Car has sludge engine in history with oil in number one cyl. Engine oil consumption leads to premature catalyst failure. Bank 2 may fail in the near future.)		Fail	\$1,343.35		
reseal oil pan (oil pan leaking, been off and resealed)		Fail	\$161.48		
replace washer nozzles and run new hose (washer nozzle clips broken, hose from fender missing)		Fail	\$312.49		
install resevoir cap and overflow hose (ccolant resevoir cap and overflow hose missing)		Fail	\$67.66		
Crash damage and paint all over . Right front door has some blend work, but appears to be only part not heavily reworked. (rear hatch misaligned, rear bumper reworked, front bumper replaced, front crash bar new, l.f. and r.f. wheel arches creased, hood alignment, door gaps, entire left side repainted, only r.f. door not worked on right side.)		Fail	\$0.00		
Subtotal			\$7,184.27		
Totals, Taxes and Fees			Cost	Deferred	Approved

Totals, Taxes and Fees		Cost	Deferred	Approved
Estimate Subtotal		\$7,366.07	\$0.00	\$181.80
Shop Fee		\$27.00		\$12.73
Tax		\$316.21		\$0.00
<b>Estimate Total</b>		<b>\$7,709.28</b>		<b>\$194.53</b>
For "See AI-" items  see the "Additional Information" section 				



# **EXHIBIT F**

**MOOREHOUSE BODY SHOP, INC.**

939 E TROY AVE, INDIANAPOLIS, IN 46203

Phone: (317) 780-1860

FAX: (317) 780-1865

Workfile ID: 0801b64a

Federal ID: 351933111

State ID: 351933111

**Preliminary Estimate****Customer: TWYMAN, DONALDSON****Job Number:**

Insured: TWYMAN, DONALDSON

Policy #:

Claim #:

Type of Loss:

Date of Loss:

Days to Repair: 0

Point of Impact:

**Owner:**

TWYMAN, DONALDSON

9057 MERCER DR

FISHER, IN 46038

(317) 315-7371 Business

**Inspection Location:**

MOOREHOUSE BODY SHOP, INC.

939 E TROY AVE

INDIANAPOLIS, IN 46203

Repair Facility

(317) 780-1860 Day

**Insurance Company:****VEHICLE**

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

VIN: JN8CS1MW8DM170265

Interior Color:

Mileage In: 18,634

Vehicle Out:

License: PAPERPLATE

Exterior Color: WHITE

Mileage Out:

State:

Production Date: 6/2012

Condition:

Job #:

**TRANSMISSION**

Automatic Transmission

Overdrive

4 Wheel Drive

**POWER**

Power Steering

Power Brakes

Power Windows

Power Locks

Power Mirrors

Heated Mirrors

Power Driver Seat

Power Passenger Seat

**DECOR**

Dual Mirrors

Privacy Glass

Console/Storage

Overhead Console

**CONVENIENCE**

Air Conditioning

Intermittent Wipers

Tilt Wheel

Cruise Control

Rear Defogger

Keyless Entry

Alarm

Message Center

Steering Wheel Touch Controls

Rear Window Wiper

Telescopic Wheel

Climate Control

Backup Camera w/Parking Sensors

Home Link

**RADIO**

AM Radio

FM Radio

Stereo

Search/Seek

CD Player

Auxiliary Audio Connection

Premium Radio

Satellite Radio

**SAFETY**

Drivers Side Air Bag

Passenger Air Bag

Anti-Lock Brakes (4)

4 Wheel Disc Brakes

Traction Control

Stability Control

Front Side Impact Air Bags

Head/Curtain Air Bags

Rear Side Impact Air Bags

Hands Free Device

Xenon Headlamps

**ROOF**

Electric Glass Sunroof

**SEATS**

Bucket Seats

Leather Seats

Heated Seats

**WHEELS**

Aluminum/Alloy Wheels

**PAINT**

Three Stage Paint

**OTHER**

Fog Lamps

**TRUCK**

Power Trunk/Gate Release

Customer: TWYMAN, DONALDSON

Job Number:

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1		<b>FRONT BUMPER &amp; GRILLE</b>					
2		O/H front bumper				3.0	
3	Repl	Upper cover w/park sens.	FBM223EV1H	1	546.33	Incl.	2.3
4		Add for Three Stage					1.6
5		Add for park sensor				0.4	
6	R&I	Grille assy w/o "Around View"				Incl.	
7	Repl	Prep unprimed bumper		1			0.6
8		<b>FRONT LAMPS</b>					
9	R&I	RT Headlamp assy w/o adaptive				0.3	
10	R&I	LT Headlamp assy w/o adaptive				Incl.	
11		<b>HOOD</b>					
12	Repl	Hood (ALU)	FEA0M1CAMA	1	1,116.04	1.7	2.8
13		Add for Three Stage					2.0
14		Add for Underside(Complete)					1.4
15	Repl	Insulator clip	658464Z000	6	11.58	Incl.	
16	Repl	Rubber strip	658101CA0A	1	43.96	Incl.	
17	Repl	Front seal	658201CA1A	1	32.47	Incl.	
18		<b>FENDER</b>					
19	Refn	RT Fender					2.2
20		Overlap Major Adj. Panel					-0.4
21		Add for Three Stage					0.7
22	R&I	RT Fender liner front				0.2	
23	R&I	RT Fender liner rear				0.2	
24	R&I	RT Air vent grille FX37				0.2	
25	R&I	RT Wheel opng mldg				0.3	
26	Repl	LT Fender	FCA011CAMA	1	480.40	3.0	2.2
27		Overlap Major Adj. Panel					-0.4
28		Add for Three Stage					0.7
29		Add for Edging					0.5
30	R&I	LT Fender liner front				Incl.	
31	R&I	LT Air vent grille FX37				Incl.	
32	R&I	LT Wheel opng mldg				0.3	
33		<b>FRONT DOOR</b>					
34	Repl	LT Door shell	HMA0A3WYMA	1	883.04	5.1	3.2
35		Overlap Major Adj. Panel					-0.4
36		Add for Three Stage					1.1
37	Repl	LT Applique	802D31CA0A	1	66.00	Incl.	
38	Repl	LT Belt molding	808211CA0A	1	115.37	Incl.	
39	Repl	LT Upper molding	802831CA0C	1	146.21	0.2	
40	R&I	LT R&I mirror				Incl.	
41	R&I	LT Door glass Infiniti				Incl.	
42	R&I	LT Handle, outside				Incl.	

Customer: TWYMAN, DONALDSON

Job Number:

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

43	R&I	LT R&I trim panel				Incl.	
44	#	Refn	UPPER DOOR RAME BLACK OUT				1.0
45	<b>REAR DOOR</b>						
46		Repl	LT Door shell (ALU)	HBA0A1CAMA	1	798.09	4.5 3.2
47			Overlap Major Adj. Panel				-0.4
48			Add for Three Stage				1.1
49		Repl	LT Upper molding	822831CA0B	1	129.54	0.2
50		Repl	LT Front w'strip	828391CA1C	1	47.57	Incl.
51	<b>QUARTER PANEL</b>						
52		Refn	LT Quarter panel				2.2
53			Overlap Major Adj. Panel				-0.4
54			Add for Three Stage				0.7
55		R&I	LT Wheel opng mldg			0.3	
56		R&I	LT Quarter glass Infiniti			1.5	
57	#	R&I	INTERIOR FOR GLASS ACCESS			1.5	
58	<b>REAR LAMPS</b>						
59		R&I	LT Tail lamp assy			0.3	
60	<b>REAR BUMPER</b>						
61		R&I	R&I bumper cover			1.4	
62	<b>ROOF</b>						
63		R&I	LT Roof molding			0.3	
64	#	Rpr	ROPE W/S MLDG				0.2
65	#	Refn	MASK JAMS				0.5
66	#	Repl	MISC-CLIPS AND RETAINERS		1	40.00	
67	#		SETUP AND MEASURE		1		2.0 F
68	#	Rpr	RT & LEFT RAILS				4.0 F
			Note: FRAME TIME WAS BY VISUAL INSPECTION ONLY AND MAY REQUIRE MORE REPAIR TIME AFTER MEASURING.				
69	#		RESTORE RUST PROTECTION		1	20.00 X	
70	#	Algn	CORE SUPPORT AND SHEET METAL				6.0
71	#		COVER CAR		1	T	0.2
72	#		THIS IS AN ESTIMATE BASED ON VISUAL INSPECTION ONLY.		1		
73	#		MAY HAVE ADDITIONAL DAMAGE AND REQUIRE ADDITIONAL		1		
74	#		PARTS AND MATERIALS.		1		
75	#		VEHICLE HAS HAD INCORRECT PRIOR REPAIRS.		1		
<b>SUBTOTALS</b>						<b>4,476.60</b>	<b>36.9 28.4</b>

**Customer: TWYMAN, DONALDSON**

**Job Number:**

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

**ESTIMATE TOTALS**

<b>Category</b>	<b>Basis</b>	<b>Rate</b>	<b>Cost \$</b>
Parts			4,456.60
Body Labor	30.9 hrs @	\$ 46.00 /hr	1,421.40
Paint Labor	28.4 hrs @	\$ 46.00 /hr	1,306.40
Frame Labor	6.0 hrs @	\$ 65.00 /hr	390.00
Paint Supplies	28.4 hrs @	\$ 34.00 /hr	965.60
Body Supplies	25.5 hrs @	\$ 7.00 /hr	178.50
Miscellaneous			20.00
Subtotal			8,738.50
Sales Tax	\$ 5,600.70 @	7.0000 %	392.05
<b>Grand Total</b>			<b>9,130.55</b>
Deductible			0.00
<b>CUSTOMER PAY</b>			<b>0.00</b>
<b>INSURANCE PAY</b>			<b>9,130.55</b>

A PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURER FILES A STATEMENT OF CLAIM CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION COMMITS A FELONY.

**Customer: TWYMAN, DONALDSON**

**Job Number:**

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide ARA3851, CCC Data Date 8/1/2016, and potentially other third party sources of data; and (b) the parts presented are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (\*) or Double Asterisk (\*\*) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2017 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

**SYMBOLS FOLLOWING PART PRICE:**

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

**SYMBOLS FOLLOWING LABOR:**

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

**OTHER SYMBOLS AND ABBREVIATIONS:**

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

# **EXHIBIT G**

 		<a href="#">Learn More</a>		<b>MANHEIM ARENA ILLINOIS</b> 200 W. OLD CHICAGO DRIVE BOLINGBROOK, IL 60440 (630)759-3800	
POWERED BY  <b>Manheim</b>					
<b>VEHICLE DETAILS - 2013 INFINITI FX37 AWD</b>					
VIN:	JN8CS1MW8DM170265	Body Style:	SUV	Top Type:	Moon Roof
Ext Color:	WHITE- QAA	Int Color:	BLK- G	Odometer:	17,137
Work Order:	1589331	Seller:	TDAF REMARKETING	Received Date:	07/27/2015
Sale Number:	32	Lane Number:	7	Run Number:	92
Inspector:	JBANKS2 07/28/2015	InService Date:	N/A		

	<div style="text-align: center;"> <b>GRADING</b> </div> <div style="text-align: center;">  </div> <div style="text-align: center;"> <b>Auto Grade</b> </div> <div style="text-align: center;"> <b>Grade 1.9 Rough</b> </div> <div style="text-align: center;"> <a href="#">More About Auto Grade</a> </div> <ul style="list-style-type: none"> <li>• <b>MSRP</b>-Not Available</li> <li>• <b>Engine Starts</b>-Yes</li> <li>• <b>Drivable</b>-Yes</li> </ul> <p style="text-align: center; font-size: small;">*Process protected under U.S. Patent No. 8,320,362</p>
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<b>VALUE ADDED OPTIONS</b>			
<ul style="list-style-type: none"> <li>• Back-Up Camera</li> <li>• Bluetooth Connection</li> <li>• Cooled Front Seat(s)</li> </ul>	<ul style="list-style-type: none"> <li>• Dual Zone A/C</li> <li>• HID Headlights</li> <li>• Heated Seats-Front(s)</li> </ul>	<ul style="list-style-type: none"> <li>• Leather Seats</li> <li>• Moonroof</li> <li>• Navigation System</li> </ul>	<ul style="list-style-type: none"> <li>• Rear Parking Aid</li> <li>• Satellite Radio - XM</li> <li>• Seat Memory</li> </ul>

<b>VEHICLE INFORMATION</b>			
<b>OPTIONS</b>			
<ul style="list-style-type: none"> <li>• 50 State Emissions</li> <li>• A/C</li> <li>• ABS Brakes</li> <li>• Automatic Headlights</li> <li>• Auxiliary Pwr Outlet</li> <li>• CD Player</li> <li>• Child Safety Locks</li> <li>• Cruise Control</li> <li>• Daytime Running Lights</li> <li>• Dual Air Bags</li> <li>• Fog Lamps</li> <li>• Front Floor Mats</li> </ul>	<ul style="list-style-type: none"> <li>• Front Reading Lamps</li> <li>• Intermittent Wipers</li> <li>• Keyless Entry</li> <li>• Keyless Start</li> <li>• Leather Steering Wheel</li> <li>• Park Assist</li> <li>• Power Folding Mirrors</li> <li>• Power Locks</li> <li>• Power Mirrors</li> <li>• Power Telescopic Steering</li> <li>• Power Tilt Steering</li> <li>• Power Trunk Release</li> </ul>	<ul style="list-style-type: none"> <li>• Power Windows</li> <li>• Privacy Glass</li> <li>• Push Button Start</li> <li>• Pwr Seats - Both</li> <li>• Pwr Steering</li> <li>• Rear Defrost</li> <li>• Rear Floor Mats</li> <li>• Rear Reading Lamps</li> <li>• Remote Trunk Release</li> <li>• Security System</li> <li>• Side Air Bags</li> <li>• Steering Wheel Audio Control</li> </ul>	<ul style="list-style-type: none"> <li>• Tire Pressure Monitor System</li> <li>• Traction Control</li> <li>• Trip Computer</li> <li>• Trip Counter</li> <li>• US EPA Label</li> <li>• Universal Garage Door Opener</li> </ul>
<b>MECHANICAL</b>		<b>INTERIOR</b>	
<ul style="list-style-type: none"> <li>• 6 Cylinder Gas</li> <li>• Automatic</li> <li>• AWD</li> <li>• Pwr Brakes</li> <li>• Automatic Transmission</li> <li>• 3.7 L</li> </ul>		<ul style="list-style-type: none"> <li>• Odometer - 6 Digits Digital -Operable</li> <li>• Regular Dash</li> <li>• Leather - G</li> <li>• Int Odor: OK</li> </ul>	
<b>TIRES AND WHEELS</b>		<b>KEYS</b>	
Tire Condition:	Wheels: Alloy	<ul style="list-style-type: none"> <li>• Remote Key/Fob - 1</li> </ul>	
Tire	Tread Depth	Brand	Size
<b>OTHER</b>			











Left Front:	9/32"	IOTA	265/50R20	• Title State: VA
Left Rear:	9/32"	IOTA	265/50R20	• Title Received Date: 08/05/2015
Right Front:	6/32"	BRIDGESTONE	265/50R20	• Org Mfg Basic Warranty: 4 Years/60,000 Miles
Right Rear:	5/32"	BRIDGESTONE	265/50R20	• Org Mfg Powertrain Warranty: 6 Years/70,000 Miles
Spare:	N/A	(Mini)	N/A	*Manheim is not responsible for voided warranties
ADDITIONAL INFORMATION				
BRIAN SCOTT AUTOS/GL/TA,,				

CHARGEABLES		ITEM DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
HIDE	PIC LINE							
<input type="checkbox"/>	<input type="checkbox"/>	0021 Front Bumper Cover	Misaligned	Repair Required	Align/Adjust	1.00	\$40.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0021 Front Bumper Cover	Prev Repair	SubStd Sand Marks	Repair	7.90	\$316.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0050 Hood	Misaligned	Repair Required	Align/Adjust	1.00	\$40.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0050 Hood	Prev Repair	SubStd Sand Marks	Repair	7.80	\$312.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0060 Roof	Dent/No Paint Dmg	GR 12"	Repair	13.30	\$532.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0060 Right Drip Rail	Dent/No Paint Dmg	PDR/2	PDR	.00	\$45.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0110 LF Fender	Prev Repair	SubStd Dirt	Repair	6.90	\$276.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0110 LF Fender Molding	Loose	Repair Required	Align/Adjust	1.00	\$40.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0120 LF Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0120 LF Tire	Cut	Replacement Required	Replace	.00	\$261.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0130 LF Door	Prev Repair	SubStd Dirt	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0160 LR Door	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0180 L Qtr Panel	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0190 LR Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0241 Rear Bumper Cover	Prev Repair	SubStd Sand Marks	Repair	7.90	\$316.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0241 R Bumper Cover Lower	Scratch Heavy	8" to 9"	Replace	.10	\$282.17	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0310 RF Fender	Prev Repair	SubStd Wavy	Repair	6.90	\$276.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0320 RF Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0330 RF Door	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0360 RR Door	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0380 R Qtr Panel	Prev Repair	SubStd Sand Marks	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0390 RR Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0450 LF Carpet	Burn Hole	3" to 4"	Replace	.00	\$100.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0480 Warranty Books	Missing	Replacement Required	Replace	.00	\$15.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0480 Owners manuals	Missing		Replace	.00	\$15.00	<input type="checkbox"/>

<input type="checkbox"/>	<input type="checkbox"/>			Replacement Required				<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0480 Maintenance Book	Missing	Replacement Required	Replace	.00	\$15.00	<input type="checkbox"/>
						<b>TOTALS</b>	96.40	\$4,845.17

NON-CHARGEABLES AND ADDITIONAL IMAGES									
HIDE PIC LINE	ITEM DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED		
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture-FRONT/LFT FRNT	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture-REAR/RGT REAR	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture - Wheel	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture - Interior	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture - Dash	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture - Odometer	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture VIN/ID Sticker	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0000 Overall Picture - Cargo Area	Overall Picture		.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		0010 Windshield	Chipped	< 1/8"	No Action Required	.00	\$0.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>		0125 L "B" Pillar	Dent/No Paint Dmg SEATBELT	< 1/8"	No Action Required	.00	\$0.00	<input type="checkbox"/>
						<b>TOTALS</b>	.00	\$0.00	

REPAIRED								
HIDE PIC LINE	ITEM DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED	
						<b>TOTALS</b>	.00	\$0.00

RECON CHARGES				
DATE	QTY	PART	DESCRIPTION	RETAIL
07/28/2015			INSPECTION FEE	\$35.00
<b>TOTAL CHARGES</b>				
Chargeables				\$4,845.17
Non-Chargeables				\$0.00
Repaired				\$0.00
Deductibles				\$0.00
Recon Charges				\$35.00



**Total Charges****\$4,880.17****MANUFACTURER PACKAGE INFORMATION**

INFORMATION SET FORTH HEREIN IS BASED SOLELY ON INFORMATION PROVIDED BY THE VEHICLE MANUFACTURER AT THE TIME OF MANUFACTURE AND MAY NOT BE ACCURATE OR COMPLETE. MANHEIM HAS NOT UNDERTAKEN STEPS TO CONFIRM THE ACCURACY OF ANY SUCH INFORMATION, AND ANY INFORMATION DISCLOSED HEREIN IS PROVIDED "AS IS".

Open All PackagesClose All Packages**Premium Pkg - P01**

- Reverse Tilt-Down Feature For Exterior Mirrors
- Voice Recognition For Audio & Navigation Controls
- XM NavTraffic
- Hard Drive-Based Navigation System
- Front/Rear Sonar System
- Exterior Mirrors w/memory
- XM NavWeather
- 2-Position Driver Seat Memory
- 8" Color Touch Screen w/compass
- Bluetooth Streaming Audio
- Zagat Restaurant Guide
- Pwr Tilt/Telescopic Steering Column w/memory
- in-Dash DVD Player
- Aluminum Roof Rails
- Around View Monitor

**Deluxe Touring Pkg - K01**

- Quilted Leather-Appointed Seat Trim
- 20" 5-Spoke Aluminum-Alloy Wheels
- Climate-Controlled Front Seats
- Maple Wood Trim
- Tonneau Cover
- Aluminum Pedals
- P265/50VR20 All-Season Performance Tires

**OTHER OPTIONS**

- Splash Guards
- 50 State Emissions
- Cargo Net & First Aid Kit
- HomeLink Universal Garage Door Opener
- Pwr Folding Pwr Body Color Heated Mirrors w/Courtesy Lights
- 10-Way Pwr Driver Seat w/Pwr Lumbar
- ATTESA E-TS All-Wheel Drive w/Snow Mode
- Heated Front Bucket Seats w/Active Head Restraints
- 3.7L DOHC SMPI V6 Engine
- Leather Seat Trim
- 8-Way Pwr Passenger Seat
- Vehicle Speed-Sensitive Variable Pwr Rack & Pinion Steering
- Bluetooth Hands-Free Phone System -inc: Bluetooth Streaming Audio
- Dual Level Center Console w/12V Pwr Outlet, (2) Cup Holders
- 4-Wheel Pwr Vented Disc Brakes
- Rear Privacy Glass
- Stainless Steel Rear Bumper Protector
- Stainless Steel Illuminated Kick Plates
- Dual-Stage Driver/Front Passenger Airbags w/Passenger Occupancy Sensor
- (4) Aux 12V Pwr Outlets
- Auto On/Off High Intensity Discharge (Hid) bi-Xenon Headlamps
- Integrated Front Fog Lights
- 60/40 Split Remote-Folding Reclining Rear Bench Seat
- Speed-Sensitive Variable Intermittent Front Wipers
- Bose Sound System -inc: AM/FM Stereo w/CD/MP3 Player, (9) Speakers, (2) subwoofers, Radio Data System (RDS), Speed-Sensitive Volume Control, Aux Audio Input Jack
- USB Connection Port w/Infiniti iPod Interface System
- Front Tow Hook
- P265/60VR18 All-Season Tires
- T175/90D18 Temporary Use Spare Tire
- Front/Rear Carpeted Floor Mats
- 18" x 8" Split 10-Spoke Silver-Painted Aluminum Alloy Wheels
- XM Satellite Radio

7-Speed Automatic Transmission w/OD -inc: Manual Shift Mode, Down Shift Rev-matching, Adaptive Shift Control (ASC)

- Vehicle Dynamic Control (VDC)
- Driver/Front Passenger Seat-Mounted Side-Impact Airbags
- Roof Mounted Front/Rear Curtain Side-Impact Airbags w/Rollover Sensor
- Auto-Dimming rearview Mirror w/Compass
- RearView Monitor
- Child Safety Rear Door Locks
- Tire Pressure Monitoring System
- Dual-Zone Auto Climate Control System
- Electric Rear Window Defroster w/Timer
- Dual Front Map Lights & Rear Reading Lights
- Manual Tilt/Telescoping Steering Wheel
- Leather-Wrapped Steering Wheel w/Cruise & Audio Controls

- Pwr Tilt/Sliding Tinted Glass Sunroof w/One-Touch Open/Close & Safety Reverse
- Vehicle Info System -inc: 7" LCD Screen w/Infiniti Controller, Trip Computer, Exterior Temp Display, Vehicle Maintenance Information
- Pwr Windows w/Front Auto up/Down & Safety Reverse
- Pwr Door Locks w/Selective Unlocking
- Intelligent Key System w/Remote Keyless Entry, Push Button Ignition
- Cruise Control
- Pwr Cargo Door Release w/Electric Closure Assist
- Vehicle Security System w/Vehicle Immobilizer
- Rear Seat HVAC Vents
- Dual Illuminated Visor Vanity Mirrors w/Sunshade Extensions
- 4-Wheel Anti-Lock Braking System (ABS)
- Electric Brake Force Distribution (EBD) w/Brake Assist
- Traction Control System (TCS)

VIN: JN8CS1MW8DM170265, Work Order: 1589331



















# **EXHIBIT 2**



IN THE CIRCUIT COURT OF COOK COUNTY  
FIRST MUNICIPAL DISTRICT

MARY M. TATE,	)	
	)	
Plaintiff,	)	
v.	)	No. 2014 M1 132291
	)	
S&M AUTO BROKERS INC.,	)	
	)	
Defendant.	)	

**Memorandum Opinion and Order**

Plaintiff Mary M. Tate (Tate) brought this action against S&M Auto Brokers Inc. (S&M), alleging that S&M sold her a car with frame damage. In addition to alleging common law fraud, Tate claimed a violation of the Consumer Fraud Act (CFA) (815 ILCS 505/2). After a jury trial, the jury returned a verdict for \$46,000 in favor of Tate on common law fraud (fraudulent concealment), assessing \$4,000 in actual damages, \$2,000 for aggravation and inconvenience, and \$40,000 in punitive damages. S&M moved the court to enter judgment notwithstanding the verdict. The court denied the JNOV motion. S&M moves the court to reconsider its denial. It argues that Tate failed to establish a duty to disclose.

Additionally, the CFA count must be decided by the court. Tate asks the court to enter judgement on the CFA count in the amounts duplicating the amounts entered by the jury: \$4,000 actual damages, \$2,000 for aggravation and inconvenience, and \$40,000 punitive damages.

***Facts***

S&M bought a 2011 Chevrolet Malibu (Malibu) at an auto auction on November 1, 2012, at Mannheim Auto Auction for \$8,000. In the upper left hand portion of the single-page sales contract, Mannheim disclosed to S &M that the car had "frame/unibody damage." This statement appears just below the year and model name and almost directly above the signature



lines. However, S&M's manager Mohamed Imoud claimed he had never seen the disclosure and did not know that the Malibu had frame damage.

Tim Reynolds, assistant manager of Mannheim Auto Auction, testified regarding frame damaged vehicles. Frame damage can never be repaired. Because the frame will always be imperfect and bent, it raises safety concerns for the integrity of the frame's unibody construction. John DeMort, general manager of Webb Chevrolet, also testified. Webb never sells frame damaged cars at their retail stores. Such structural damage creates a safety issue because the car will not track straight. Additionally, Phillip Grismer, an independent inspector testified. He agreed that frame damage creates a significant safety issue and lowers the value of the Malibu to \$3,000.

Tate bought this car "AS IS" from S&M November 21, 2012, for \$11,995. S&M never told her that the car had frame damage. Close to a year after she bought the car, she began experiencing problems. First, she complained to S&M, but they told her that they would not take the car back. When she took it to a Chevrolet dealer, they obtained a CARFAX report regarding the car's history. The dealer gave her the CARFAX that revealed that the car had been in a prior accident where it had sustained frame damage. S&M sold another car with undisclosed frame damage in 2014. S&M sells 700-800 cars each year.

***Motion to Reconsider Denial of JNOV***

S&M moves the court to reconsider its denial of its motion for judgment notwithstanding the jury's verdict on common law fraud. Its sole argument is that Tate failed to establish a duty to disclose. Motions to reconsider bring to the court's attention newly discovered evidence, changes in existing law, or errors in the court's application of the law. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 36.

Generally, common law fraud requires a false statement of material fact. *Connick v. Suzuki Motor Company, Ltd.*, 174 Ill. 2d 482, 496 (1996). However, in certain instances fraudulent concealment suffices. To prove fraudulent concealment, defendant must conceal a material fact when he was under a duty to disclose that fact to plaintiff. *Id.* at 500. Such a duty arises when the parties are in a fiduciary or confidential relationship, or where plaintiff places trust and confidence in defendant, thereby placing defendant in a position of influence and superiority over plaintiff. *Id.* This position of superiority arises only where buyer places trust and confidence in seller because of their friendship, agency, or experience, so that the seller gains influence and superiority over the former. *Kurti v. Fox Valley Radiologists, Ltd.*, 124 Ill. App. 3d 933, 938 (1984).

S&M made no false statement. No fiduciary relationship exists between Tate and S&M. Lastly, no evidence suggests that S&M established a relationship of trust and confidence with Tate. Before the purchase, she test drove the Malibu and had a conversation with a “gentleman.” She did not even recall his name. Because no fiduciary relationship or relationship of trust or confidence existed, no duty to disclose the frame damage existed.

While Tate argues that a duty to disclose arises from other law, her arguments are groundless. She makes seven arguments. First, she claims that such a duty to disclose arises pursuant to statute. She claims that the statute requiring motorists to maintain their vehicles in safe condition (625 ILCS 5/12-101(a)) causes a duty to disclose to arise for S&M, but cites no authority for this proposition. She also alleges that a federal regulation that forbids used car dealers from misrepresenting “the mechanical condition of a used vehicle” gives rise to a duty. 16 C.F.R. § 455.1(a)(1). Again, she cites no authority for how this gives rise to a duty to disclose. She also claims the implied warranty of merchantability gives rise to a duty to speak.

810 ILCS 5/2-314. But she again gives no authority showing this gives rise to a duty. She claims the CFA also gives rise to a common law duty to disclose without citing any cases that support this paradoxical assertion. Second, she claims superior knowledge gives rise to a duty. She relies on precedent involving active concealment by the seller in a home sale. *Illinois Central Gulf Railroad Company v. the Department Of Local Government Affairs*, 169 Ill. App. 3d 683, 690, (1988) citing *Posner v. Davis*, 76 Ill. App. 3d 638, 642, 644 (1<sup>st</sup> Dist. 1979) (heightened duty in home sales and defendants actively concealed the defects). No active concealment was proven here.

Third, she argues that certain misrepresentations may give rise to a duty to disclose more facts. *Buechin v. Ogden Chrysler-Plymouth*, 159 Ill. App. 3d 237, 247 (2<sup>nd</sup> Dist. 1987) (telling buyer that a used car was “new” amounted to a misrepresentation of a material fact). However, she concedes there were no misrepresentations by S&M. Fourth, she argues that suppressing material facts by active concealment may constitute a fraudulent concealment. *Mitchell v. Skubiak*, 248 Ill. 100, 1005 (1<sup>st</sup> Dist. 1993). Again, no evidence of active concealment was offered at trial. Fifth, she argues that in the negligence context the failure to warn of a defective product gives rise to a negligence action. (*Kirk v. Stineway Drug Store Co.* 38 Ill. App. 2d 415, 428-29 (1<sup>st</sup> Dist. 1963). Tate fails to explain how this applies to a fraud case. Sixth, she argues non-disclosure of basic facts may give rise to contractual cause of action under Wisconsin law. *Harley-Davidson Motor Co. v. Powersports, Inc.*, 319 F.3d 973, 991 (7<sup>th</sup> Cir. 2003) (citing Wisconsin “tort misrepresentation law”). She cites no Illinois case adopting this in the fraud context. Seventh, she again claims that Wisconsin law of contracts requires such disclosure. *Id.* Tate cites no Illinois case applying this rule in the fraud context.

Absent evidence of a fraudulent misrepresentation or evidence establishing a special duty, no common law fraud verdict may stand. *Connick v. Suzuki Motor Company, Ltd*, 174 Ill. 2d 482, 496, 500 (1996). Because Tate failed to establish either a misrepresentation or a special duty, the court must grant the motion for reconsideration and enter a judgment notwithstanding the verdict as to common law fraud.

### ***Consumer Fraud***

To sustain a cause of action under the CFA, Tate must prove: (1) a deceptive act or practice by defendant; (2) defendant's intent that plaintiff rely on the deception; and (3) that the deception occurred in the course of conduct involving trade and commerce. *Connick v. Suzuki Motor Company, Ltd*, 174 Ill. 2d 482, 501 (1996). An omission of a material fact in the conduct of trade or commerce constitutes consumer fraud. *815 ILCS 505/2*. Failing to disclose frame damage may constitute deceptive conduct under the CFA. *Crowder v. Bob Oberling Enterprises, Inc.*, 148 Ill. App. 3d 313, 315-17 (seller concealed water damage, frame damage, and salvage history).

A fact is material if the buyer would have acted differently if she had known it. *Totz v. Continental DuPage Acura*, 236 Ill. App. 3d 891, 902 (2<sup>nd</sup> Dist. 1992). A used car dealer that conceals, suppresses or fails to disclose a material fact commits consumer fraud, if the seller intends the buyer to rely on the fraud. *Id.* at 902-03. The seller need not have intended to deceive buyer; innocent misrepresentations or material omissions intended to induce the plaintiff's reliance are actionable. *Miller v. William Chevrolet/Geo, Inc.*, 326 Ill. App. 3d 642, 655 (1<sup>st</sup> Dist. 2001). In addition to actual damages, the court may award damages for inconvenience and aggravation. *Roche v. Fireside Chrysler-Plymouth, Mazda Inc.*, 235 Ill. App. 3d 70, 86 (2<sup>nd</sup> Dist. 1992) (upholding an award for \$750).

Punitive damages may properly be awarded in an action for fraud. *Black v. Iovino*, 219 Ill. App. 3d 378, 393 (1st Dist. 1991). The nature and the enormity of the wrong, the financial status of the defendant and the potential liability of the defendant must be considered in imposing punitive damages. *Id.* Where plaintiff fails to elicit evidence of defendant's financial status, however, any punitive damage award must be limited to what would be imposed on a defendant with no money: \$ 1,000. *Id.* at 395.

Imoud incredibly denies he knew the Malibu had frame damage. Mannheim conspicuously disclosed the frame damage. Such damage is clearly material, affecting both the safety and the value of the car. There was no disclosure to Tate. By not telling Tate about the frame damage, S&M intended to induce her reliance. Telling her about the damaged frame would have likely lost S&M this sale. Frame damage matters. Not telling Tate made the sale possible. The omission occurred in the course of trade and commerce. Consequently, Tate has established S&M's liability under the CFA.

While Grismer testified that the Malibu's value with the damaged frame was \$3,000, S&M bought it for \$8,000 with knowledge of the frame damage. Grismer arrived at his figure by reducing the sale price by 70 percent, but did not state the basis for such a reduction in value. It seemed more of a guess, than a calculation based on data. The actual sale price with full disclosure strongly indicates the fair market value of the car. Consequently, Tate's damages are properly calculated by subtracting the \$8,000 S&M paid from the cash price she paid, \$11,995. Hence, her actual damages amount to \$3,995.

Tate asks for a damage award for aggravation and inconvenience. The court finds that the failure of S&M to accept the return of the car caused Tate aggravation and inconvenience and



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awards her \$750. *See Roche v. Fireside Chrysler-Plymouth, Mazda Inc.*, 235 Ill. App. 3d 70, 86 (2nd Dist. 1992).

The bent frame imperiled Tate's safety. It also appears that S&M may have sold frame damaged cars without disclosure on other occasions. Punitive damages are appropriate. However, Tate introduced no evidence of S&M's financial status. While Imoud admitted S&M sells 700-800 cars a year, sales data alone fails to establish S&M's financial status. Thus, the punitive damage award must be limited to what would be imposed on a defendant with no money: \$ 1,000. *Black v. Iovino*, 219 Ill. App. 3d 378, 395 (1<sup>st</sup> Dist. 1991).

### ***Conclusion***

The court grants S&M's motion to reconsider and enters judgment in favor of S&M as to common law fraud. Under the CFA, however, the court enters judgment in favor of Tate in the amount of \$5,745 plus costs.

**Entered the 26th of September 2016**

**Chicago, Illinois**

**Associate Judge Thomas More Donnelly**

**SEP 26 2016**  
**Thomas More Donnelly**  
**Associate Judge**  
**Circuit Court - 1803**  
**Circuit Court of Cook County**