

D.1 Sample Answer and Counterclaims to Deficiency Action

[plaintiff]CAR CREDITOR, INC. a corporation,
Plaintiff

[vs.]

[defendant]JANE CONSUMER,
Defendant

ANSWER AND COUNTERCLAIMS

1. The Defendant [*admits*] [*lacks sufficient information or knowledge to be able to answer and therefore denies*] the allegations contained in paragraph of the Complaint that Plaintiff (hereafter called “Creditor”) is a corporation organized under the laws of _____, with offices for doing business in _____ County, State of _____.

2. The Defendant denies the allegations contained in paragraph of the Complaint except that on or about [*date*] the Defendant (hereafter called “Consumer”) and [*name of car dealer*] (hereafter called “Dealer”) entered into a retail installment sales agreement (hereafter called “Agreement”) for the purchase and sale of a [*describe the year and model of the vehicle*], vehicle identification number [*123456789*] (hereafter called “Vehicle”).

3. The Defendant lacks sufficient information or knowledge to answer the allegations of paragraphs [3, 4, and 7] of the Plaintiff’s complaint and therefore denies all allegations in these paragraphs.¹

4. The Defendant denies all allegations contained in paragraphs [5 and 6] of the complaint, and denies all other allegations contained in the Complaint not specifically responded to in the preceding paragraphs.

DEFENSES AND COUNTERCLAIMS

Statement of Facts²

General

1 The consumer will typically lack information or knowledge concerning allegations such as whether the Agreement was in fact assigned to the Plaintiff by the Dealer or what information was provided to the Plaintiff at the time of the alleged assignment.

2 The statement of facts in this sample has been organized to highlight the issues this sample considers. Consumer attorneys will want to reorganize the statement of facts to fit local practice and the facts of their case.

5. The acts of the Plaintiff and Dealer alleged hereinafter were performed by its agents, officers, and employees within the scope of their actual or apparent authority.

6. The Vehicle was purchased primarily for personal, household, or family use.

7. The Agreement disclosed a purchase price of \$_____ plus finance charges of \$_____, to be paid by means of a down payment of \$_____, and subsequent monthly installments of \$_____, payable on [*the first day of each month*] for a term of [*thirty (30)*] months. A copy of the agreement is annexed to and incorporated in this Answer as Appendix A [*Editor's note: not reprinted herein*].

8. Consumer paid the agreed down payment and made timely monthly installment payments for a period of [*six (6)*] months.

Facts Relating to Sales Transaction and Plaintiff's Liability for Sales Related Claims

9. Consumer's purchase of the Vehicle from the Dealer was a transaction in trade or commerce as defined by [*the state UDAP statute*].³

10. In connection with said transaction, the Dealer concealed from Consumer that the Vehicle had been previously "totaled" in an accident. [*In the alternative, specify other deceptive, unfair, or illegal aspects of the sales transaction, breaches of warranty or other facts relating to consumer's claims against the seller.*]

11. The Agreement has a provision that states the holder of the Agreement is subject to all claims and defenses the consumer has against the seller and the Plaintiff has alleged that it is the holder of the Agreement.

Facts Relating to Defective Security Agreement

12. Neither in signing the Agreement nor in any other document did Consumer grant a security interest in the Vehicle.

13. The Agreement refers to a security interest in a vehicle, described as a [*describe year and model of vehicle*], with vehicle identification number [*987654321*]. Consumer has never had an interest in such vehicle, but instead purchased from Dealer a [*describe year and model of Vehicle*] with an identification number [*123456789*].

Facts Relating to Improper Acceleration

³ Here allege that the transaction meets any coverage requirements under the state deceptive acts or practices (UDAP) statute. Many UDAP statutes cover transactions in trade or commerce, but others have different coverage requirements. Some UDAP statutes also require that the plaintiff allege notice to the defendant, an ascertainable loss of money or property, or an impact on the public interest. See National Consumer Law Center, Unfair and Deceptive Acts and Practices § 11.4.4 (8th ed. 2012 and Supp.).

14. On or about [date] Consumer was laid off from her job and was unable to continue making payments to the dealer under the schedule provided in the Agreement.

15. On or about [date] Consumer telephoned Creditor to inform Creditor about her financial distress and spoke to an employee of Creditor.

16. In this conversation, the employee of Creditor assured Consumer that the Vehicle would not be repossessed if she kept the Dealer informed of her situation and made what payments she could.

17. Consumer subsequently made partial and late payments of [list amounts] to Creditor on [list dates].

18. Creditor accepted all of these payments.

19. Consumer subsequently contacted Creditor on [list dates] to update Creditor on her situation. At those times employees of Creditor again assured her they would not repossess the Vehicle if she continued to make what payments she could.

20. At no time did Creditor inform Consumer that she was in default on her obligations, or that continued late payments would lead to default.

21. At no time did Creditor inform Consumer that the note would be accelerated or that the Vehicle would be repossessed if she failed to bring payments up to date or if she continued to be slow in making payments.

22. Creditor did not inform Consumer that it was accelerating the debt nor did it send the consumer a notice of Consumer's right to cure the default.

Facts Relating to Breach of Peace During Repossession

23. At or about [time and date], Consumer noticed a stranger attempting to enter her Vehicle, which was parked in her driveway.

24. Consumer ordered the stranger away from the Vehicle and off her property, and objected to the repossession of the Vehicle.

25. The stranger displayed a badge to Consumer, ordered her to stay out of his way "or else," and in other ways intimidated and threatened Consumer, enabling him to take the vehicle.

26. The repossession and Consumer's objection to the repossession were witnessed by Consumer's neighbors and caused her serious embarrassment, humiliation, and distress.

Facts Relating to Conversion of Personal Property In Car

27. At the time of repossession, Consumer's Vehicle contained Consumer's personal property including *[describe]* valued at \$____.

28. Despite Consumer's requests, Creditor has not returned certain of this property and returned other items in a damaged condition after depriving consumer of the right to use this property for _____ days.

Facts Relating to Improper Notice of Sale

29. On or about *[date]* Consumer received a notice from Creditor that Vehicle had been repossessed and would be sold at a public sale at *[time]* on *[date]* at *[location]*. The notice also provided her with a telephone number to call to find out the amount she had to pay to redeem the vehicle. A copy of this notice is annexed to and incorporated into this Answer and Counterclaims as Appendix B *[not attached herein]*.

30. Consumer called the telephone number listed in the notice and was told that she would have to pay *[amount]*, representing the full balance allegedly due on the note plus expenses, and that the payment had to be made no later than three days before the sale date stated in the notice.

31. The amount required to redeem the Vehicle was excessive in that the claimed expenses were unreasonable and Creditor did not credit Consumer with unearned interest, insurance and other rebates.

32. On or about *[date]*, approximately two weeks after the Vehicle was repossessed, Consumer found new employment and resumed full-time work. Nevertheless, Consumer did not subsequently attempt to raise the money needed to redeem the Vehicle because she believed Creditor's overstatement of the amount necessary for redemption and Creditor's statement that the time in which she could redeem the Vehicle had expired.

33. The collateral was not actually sold on *[date]*, but was sold on *[date]*.

34. The sale of the collateral was not actually a public sale, but was a private sale in that *[here allege facts that made the sale a private sale, for example that the public was not allowed to attend or that attendance was restricted to motor vehicle dealers]*.

[In the alternative, if the Creditor sent a notice of private sale but actually held a public sale, the Consumer should allege that the Creditor failed to give notice of the date, time, location, and nature of the sale.]

Facts Relating To Commercially Unreasonable Sale and Strict Foreclosure⁴

⁴ Note that in some jurisdictions the creditor has the burden of proving commercial reasonableness even if the consumer does not raise the issue. In these jurisdictions, the following allegations will be unnecessary. See §§ 12.6.1.1-12.6.1.3, *supra*.

[Allege any fact known about sale of repossessed vehicle which suggests that it was commercially unreasonable. Many if not all of these allegations may become known only after discovery and may be included in an Amended Answer and Counterclaims. The following paragraphs are examples.]

35. Creditor's disposition of the Vehicle was commercially unreasonable.
36. On or about [*date*], approximately six months after the Vehicle was repossessed, Creditor sold the Vehicle at a private sale for [*price*].
37. On several occasions [*specify dates*] subsequent to Creditor's repossession of the Vehicle but prior to its resale, Consumer observed her Vehicle being driven by employees of Creditor in the vicinity of Creditor's premises.
38. On these occasions, Consumer noticed that the Vehicle had sustained significant damage since its repossession, including a large dent and scratches on the right front fender.
39. At the time of repossession, the Vehicle was in good running condition, had no exterior damage, had an odometer reading of approximately _____ miles, and was in better-than-average overall condition for a vehicle of that model and year.
40. The odometer on the Vehicle read _____ at the time of resale, approximately 1,500 miles higher than its reading at the time of repossession.
41. Creditor advertised the sale of the Vehicle only once, in only one publication.
42. The Vehicle was not displayed for resale at Creditor's premises.
43. The Vehicle was purchased at a private sale by the brother of Creditor's manager.⁵
44. The disposition of the Vehicle was not conducted in good faith.
45. The resale price which Creditor obtained for the Vehicle was significantly below the fair market value of the Vehicle at the time of its repossession and sale.⁶
46. Creditor is claiming repossession, reconditioning, storage, and sales expenses that exceed the expenses actually incurred by Creditor.

Facts Relating to Explanation of Deficiency or Surplus

⁵ The brother of the creditor's manager will be considered an insider, making the sale potentially subject to the special rules of U.C.C. § 9-615(f), only if he lives in the same home as the manager. If he does, or if the purchaser at the repossession sale otherwise meets the definition of an insider, the counterclaim in Appx. D.2, *infra*, should be consulted. See generally § 11.3.5, *supra*.

⁶ If the consumer asserts a claim under U.C.C. § 9-615(f) based on a sale to an insider as defined under Article 9, more specific allegations will be necessary. See the model counterclaim under U.C.C. § 9-615(f) set forth in Appx. D.2, *infra*.

47. The transaction in question was a consumer-goods transaction as defined by [*state codification of U.C.C. § 9-102(a)(24)*] in that Consumer incurred the obligation primarily for personal, family or household purposes, and the collateral was consumer goods.

48. On [*date*], after having sold the collateral, Creditor sent Consumer a written demand for a deficiency of \$_____.

49. Neither prior to nor at the time of sending the written demand to Consumer did Creditor send Consumer an explanation of the calculation of the deficiency as required by [*state codification of U.C.C. § 9-616*].

[In the alternative to the preceding two paragraphs, the Consumer should allege any request for an explanation of the deficiency or surplus and any defects in the Creditor's response, in which case the following allegation of a pattern or practice may be unnecessary.]

50. Creditor's failure to send Consumer an explanation of the calculation of the deficiency was part of a pattern, and consistent with a practice, of failure to comply with this requirement.

First Defense

Commercially Unreasonable Sale

51. Consumer realleges and incorporates herein the allegations of paragraphs 1 through 50.

52. Creditor's sale of the Vehicle was not conducted in a commercially reasonable manner within the meaning of [*state codification of U.C.C. § 9-610(b)*].

53. The following specific actions of Creditor, among others not specified here, were commercially unreasonable:

(a) delivery of a notice stating that the collateral would be sold at public sale, when it was actually sold at private sale;

(b) notifying Consumer of an incorrect sale date;

(c) interference with Consumer's right to redeem the Vehicle by informing her that her right to redeem only lasted until three days before the sale date stated in the notice, when she actually had a legal right to redeem the Vehicle at any time before sale;

(d) interference with Consumer's right to redeem the Vehicle by overstating the amount necessary to redeem;

(e) failing to use reasonable care in the custody and preservation of the Vehicle prior to its resale;

(f) unjustifiably retaining the Vehicle for six months prior to its resale;

(g) failing to take reasonable steps to advertise the Vehicle or to locate potential purchasers;

(h) making a de facto sale of the Vehicle to itself at the private sale in violation of [*state codification of U.C.C. § 9-610(c)(2)*];

[*If the notice specified a private sale, other possible allegations are:*

(a) *delivery of an notice of private sale to Consumer and then holding a public sale, and failing to notify consumer of the time or place of the public sale.*]

54. Creditor's commercially unreasonable sale bars any deficiency [*or, in the alternative, Consumer is entitled to the presumption that the fair market value of the Vehicle is equal to and satisfies any debts claimed by Creditor*].

Second Defense

Application of Election of Remedies or Anti-Deficiency Judgment Statute

55. Consumer realleges and incorporates the allegations of paragraphs 1 through 50.

56. Creditor's sale of the Vehicle to the Consumer constituted a "consumer credit sale" within the meaning of [*election-of-remedies statute*]. [*Insert any other allegations regarding the nature of dealer as a "seller," the sale price, and so forth which may be needed to bring the transaction within the scope of the election-of-remedies statute.*]

57. Creditor, by taking possession of the Vehicle, has exercised its option under [*cite election-of-remedies or anti-deficiency judgment statute*] and is therefore barred from seeking any deficiency.

Third Defense

Absence of Valid Default and Acceleration

58. Consumer realleges and incorporates herein the allegations of paragraphs 1 through 50.

59. By accepting late payments and partial payments, Creditor has amended the Agreement, has waived its rights to demand strict compliance with the Agreement, or is estopped from declaring default, so that it may not accelerate the note and declare Consumer in default without first supplying Consumer with reasonable notice of its future intention to require strict compliance with the original payment schedule.

60. The failure to supply such reasonable notice made Creditor's alleged acceleration and Creditor's alleged declaration of default wrongful and without effect.

61. Creditor is not entitled to any amount exceeding the total of [*monthly*] payments scheduled by the terms of the Agreement to be due and owing at the time of [*filing its complaint of filing its judgment*] less all credits, set-offs, and other amounts claimed herein by Consumer.

Fourth Defense

Strict Foreclosure

62. Consumer realleges and incorporates herein the allegations of paragraphs 1 through 50.

63. Creditor's conduct, including its excessive delay in the resale of the Vehicle, its use of the Vehicle for the personal or business purposes of its employees, and its purported sale of the Vehicle to a relative of its manager should be treated as an exercise of the Creditor's option of strict foreclosure under [*state codification of U.C.C. § 9-620*].⁷

64. Creditor's strict foreclosure satisfies in full any debt which consumer may otherwise have owed to Creditor.

Fifth Defense

Failure to Comply with State Right to Cure Law

65. Consumer realleges and incorporates the allegations of paragraphs 1 through 50.

66. The agreement on which Creditor relies is a retail installment sales contract as defined by [*the state right to cure law*].⁸

67. Creditor failed to provide a right to cure as required by such statute.

68. As a result of Creditor's violations of [*the state right to cure law*] set forth above, Creditor is barred from recovering a deficiency judgment against Consumer.

Sixth Defense

Incorrect Calculation of Deficiency

69. Consumer realleges and incorporates the allegations of paragraphs 1 through 50.

⁷ Note that the comments to revised Article 9 indicate that constructive strict foreclosure should no longer be a viable claim when the creditor has merely delayed in disposing of collateral, but it may still be available for acts that go beyond mere delay. See § 12.5, *supra*.

⁸ Some right to cure laws cover retail installment sales, while others cover only certain types of transactions, such as manufactured home financing. The appropriate coverage allegations should be made here.

70. Even if Consumer owes a deficiency, which she expressly denies, Creditor's deficiency claim overstates the amount owing, in that:

- (a) Creditor failed to credit Consumer with the full resale value of the Vehicle;
- (b) Creditor failed to credit Consumer for all payments made by Consumer to Creditor and to the Dealer;
- (c) Creditor failed to credit Consumer for all unearned insurance premiums;
- (d) Creditor failed to credit Consumer for all unearned interest;
- (e) the repossession, storage, reconditioning and sale expenses claimed by Creditor are in excess of fees incurred by Creditor, and are excessive and unreasonable;
- (f) the attorney fees claimed by Creditor are in excess of fees incurred by Creditor, are excessive and unreasonable, and are in violation of state law.

Seventh Defense

[Insert all other defenses including: revocation of acceptance, cancellation, fraud in the inducement, and voiding or rescinding the contract under motor vehicle installment sales act or other state law.]

First Counterclaim

Conversion in the Absence of Security Interest and in Violation of State Right to Cure Law

71. Consumer realleges and incorporates herein the allegations of paragraphs 1 through 50.

72. There is no valid security interest in the Vehicle because Consumer has never granted a security interest to Dealer or to Creditor.

73. The reference to a security interest in the agreement identifies a vehicle with a different make and model and vehicle identification number than the vehicle delivered to Consumer and repossessed by dealer. Such a description is legally insufficient to create a valid security interest in the vehicle repossessed by Creditor.

74. Absent a valid security interest, Creditor had no legal right to possession of the Vehicle and Creditor's repossession and subsequent resale of the Vehicle constituted a wrongful taking and conversion of the Vehicle.

75. Creditor's assertion of dominion over the Vehicle, and its sale of the Vehicle, without complying with *[state right to cure law]*, constituted conversion.

76. Consumer was damaged by Creditor's wrongful repossession and sale of the Vehicle in that she suffered loss of value of the Vehicle and the total loss of its use, possession and enjoyment.

77. This wrongful behavior was conducted intentionally, maliciously, or with reckless disregard for Consumer's rights and interests.

Second Counterclaim

Personal Property Left in Vehicle

78. Consumer realleges and incorporates herein the allegations of paragraphs 1 through 50.

79. Creditor's taking and refusal to return Consumer's unsecured personal property left in the Vehicle at the time of repossession constituted a wrongful taking and conversion of this personal property.

80. Creditor's unlawful use and retention for _____ days of those items of consumer's unsecured personal property that Creditor returned is a wrongful trespass upon such property.

81. Creditor was negligent in its custody of Consumer's unsecured personal property while in Creditor's possession, resulting in damage thereto.

82. Consumer was damaged by the wrongful taking of her unsecured personal property left in the Vehicle in that she suffered the loss of the value of the property, damage to the property, as well as loss of its use, possession and enjoyment.

83. Creditor's wrongful taking and retention of consumer's personal property was conducted intentionally, maliciously, or with reckless disregard for Consumer's rights and interests.

Third Counterclaim

Breach of the Peace in Seizing the Vehicle

84. Consumer realleges and incorporates herein the allegations of paragraphs 1 through 50.

85. The conduct of Creditor's agents in seizing the Vehicle despite Consumer's objections, and by entering Consumer's property, threatening Consumer, and misrepresenting their own authority, constitute trespass, assault, conversion, fraud, intentional infliction of emotional distress, and invasion of privacy.

86. This wrongful conduct damaged Consumer in that she suffered the loss of the value of the Vehicle and personal property left in the Vehicle; damage to the Vehicle and personal

property; loss of use, possession and enjoyment of the Vehicle and her personal property; and the infliction of severe emotional and psychological distress as well as humiliation in front of her neighbors.

87. This wrongful behavior was conducted intentionally, maliciously, or with reckless disregard for Consumer's rights and interests.

Fourth Counterclaim

Violation of U.C.C.

88. Consumer realleges and incorporates herein the allegations of paragraphs 1 through 50.

89. The Vehicle falls within the definition of "consumer goods" contained in [*state codification of U.C.C. § 9-102(a)(23)*].

90. In the course of the transaction with Consumer, Creditor violated the provisions of Article 9, Part 6 of [*state codification of the U.C.C.*] including but not limited to the following violations:

- (a) improper notice of sale;
- (b) failing to sell the Vehicle in a commercially reasonable manner;
- (c) repossessing the Vehicle even though Creditor had no security interest in the Vehicle;
- (d) committing a breach of the peace in repossessing the Vehicle;
- (e) repossessing the Vehicle even though Consumer was not in default;
- (f) misleading Consumer regarding her rights of redemption;
- (g) failing to calculate properly the deficiency or surplus.

91. These U.C.C. violations caused Consumer actual damages of [*amount and nature*]⁹ or, in the alternative, statutory damages equal to the time-price differential or service charge plus ten percent (10%) of the cash price pursuant to [*state codification of U.C.C. § 9-625(c)(2)*].

Fifth Counterclaim

Breach of Duty of Good Faith

⁹ Note that actual damages are available for any violation of Article 9, not just for violations of Part 6, but statutory damages are only available for violations of Part 6. See U.C.C. § 9-625(b), (c)(1).

50. 92. Consumer realleges and incorporates herein the allegations in paragraphs 1 through

93. *[State codification of U.C.C. § 1-304]* requires that Creditor act in good faith.

94. Creditor breached its duty to act in good faith by repossessing the Vehicle without notice or warning after promising Consumer the Vehicle would not be repossessed if she made what payment she could.

95. Creditor's breach of its duty of good faith in violation of *[state codification of U.C.C. § 1-304]* is wrongful.

96. This wrongful conduct damaged Consumer in that she suffered the loss of the value of the Vehicle and personal property left in the Vehicle; damage to the Vehicle and personal property; loss of use, possession, and enjoyment of the Vehicle and her personal property; and infliction of severe emotional and psychological distress as well as humiliation in front of her neighbors.

97. This wrongful behavior was conducted intentionally, maliciously, or with reckless disregard for Consumer's rights and interests.

Sixth Counterclaim

Unfair and Deceptive Acts and Practices Relating to the Repossession

97. 98. Consumer realleges and incorporates herein the allegations in paragraphs 1 through

99. Consumer is a consumer within the meaning of *[state unfair and deceptive acts and practices (UDAP) statute]*. *[Include here or in the general factual allegations any other necessary allegations for a UDAP claim, such as that dealer is a supplier, that the transaction occurred in trade or commerce, that the transaction involves goods or services, that the proper notice letter was sent, that the attorney general's office was notified, or that the action is in the public interest.]*

100. Creditor engaged in deceptive *[or unfair and deceptive or deceptive and unconscionable]* practices by misrepresenting to Consumer:

- (a) that there was a valid security interest in the Vehicle;
- (b) that the Vehicle would not be repossessed if she made what payments she could;
- (c) that Creditor's agent repossessing the Vehicle was a governmental official;
- (d) that Creditor had right to seize the Vehicle despite Consumer's objection;

(e) that Creditor had no knowledge of personal property left in Consumer's Vehicle;

(f) that Consumer only had a limited amount of time to redeem the Vehicle and that the Vehicle could only be redeemed for \$_____;

(g) the time, place and nature of the repossession sale;

(h) the existence and amount of the resulting deficiency.

101. Creditor engaged in unfair and deceptive [*or unconscionable or deceptive*] practices by:

(a) wrongfully taking the Vehicle without a valid security interest;

(b) wrongfully accelerating the note;

(c) wrongfully repossessing and selling the Vehicle without having provided proper notice of the right to cure and without having waited _____ days after sending a notice;

(d) wrongfully retaining and damaging Consumer's personal property left in the Vehicle when it was seized;

(e) breaching the peace in seizing the Vehicle;

(f) violating the [*state codification of U.C.C.*], including but not limited to providing consumer improper notice of sale, selling the Vehicle in a commercially unreasonable manner, and failing to properly calculate the deficiency or surplus;

(g) breaching Creditor's duty of good faith;

(h) selling the Vehicle to an insider at a private sale;

(i) failing to send Consumer the explanation of the alleged deficiency required by [*state codification of U.C.C. § 9-616*];

(j) demanding amounts in its notice of redemption and in its deficiency action which it had no right to demand.

102. This wrongful conduct damaged Consumer in that she suffered the loss of the value of the Vehicle and personal property left in the Vehicle; damage to the Vehicle and personal property; loss of use, possessions and enjoyment of the Vehicle and her personal property; and infliction of severe emotional and psychological distress as well as humiliation in front of her neighbors.

103. This wrongful behavior was conducted intentionally, maliciously, or with reckless disregard for Consumer's rights and interests.¹⁰

Seventh Counterclaim

Statutory Damages

104. Consumer realleges and incorporates herein the allegations of paragraphs 47 through 50.

105. Pursuant to [state codification of U.C.C. § 9-625(e)(5)], Consumer is entitled to statutory damages of \$500 for Creditor's failure to comply with the requirement to send an explanation of the calculation of the deficiency.¹¹

Eighth Counterclaim

State Consumer Credit Legislation

[State here any violations of the state motor vehicle installment sales act, Uniform Consumer Credit Code (UCCC), or other state consumer credit legislation, including any usurious demand by Creditor for unearned interest or insurance.]

Ninth Counterclaim

Truth in Lending

[State here any violation of federal or state truth in lending laws.]

Tenth Counterclaim

Claims Relating to Underlying Sales Transaction

106. Consumer realleges and incorporates herein the allegations in paragraphs 1 through 105.

107. By virtue of a clause in the Agreement on which Creditor bases its suit, Creditor is subject to all claims and defenses that Consumer may have against the Dealer.

[Here insert allegations relating to deceptive, unfair, or other illegal aspects of the sales transaction, breaches of warranty or other claims against the seller.]

10 Allegations such as these should be included if necessary for treble damages, statutory damages, punitive damages, attorney fees, or other relief under the UDAP statute.

11 The \$500 award is a supplemental award, in addition to any actual damages sustained. If the consumer suffered any actual damages as a result of this violation, they should be alleged.

108. As a result of said acts and practices, Consumer suffered damage in the amount of \$_____, representing the difference between the actual value of the Vehicle and its value as represented.

Eleventh Counterclaim

Debt Collection Harassment

[State here any violations of common law or state debt collection statute. The federal Fair Debt Collection Practices Act will usually apply only to independent repossession and collection agencies. A cross-complaint may be appropriate against such agencies.]

WHEREFORE, Consumer prays:

- A. That the Complaint be dismissed in its entirety;
- B. That upon Consumer's First Counterclaim consumer be awarded judgment against Creditor in the amount of \$_____ actual damages and \$_____ punitive damages;
- C. That upon Consumer's Second Counterclaim, consumer be awarded judgment against Creditor in the amount of \$_____ actual damages and \$_____ punitive damages;
- D. That upon Consumer's Third Counterclaim, consumer be awarded judgment against Creditor in the amount of \$_____ actual damages and \$_____ punitive damages;
- E. That upon Consumer's Fourth Counterclaim, consumer be awarded judgment against Creditor in the amount of Consumer's actual damages or \$_____ statutory damages, whichever is greater;
- F. That upon Consumer's Fifth Counterclaim, consumer be awarded judgment against Creditor in the amount of \$_____ actual damages and \$_____ punitive damages;
- G. That upon Consumer's Sixth Counterclaim, Consumer be awarded judgment against Creditor in the amount of \$_____ treble damages *[or other applicable UDAP damages]* or \$_____ statutory damages *[or other applicable UDAP damages]*, whichever is greater;
- H. That upon Consumer's Seventh Counterclaim, Consumer be awarded judgment in the amount of *[any actual damages, if alleged, plus]* \$500;
- I-L. *[State all appropriate relief under applicable statutes under other counterclaims];*
- M. That Consumer be awarded reasonable attorney's fees and costs *[as provided by applicable law, including state UDAP statute, state consumer credit legislation, truth in lending, and so forth];*

N. For such other legal and equitable relief as the Court deems proper.

Attorney for Defendant Jane Consumer