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CHICAGO LEMON LAW.COM, P.C.  
404 Fourth Avenue West  
Lyndon, IL 61261

February 24, 2013

BBB  
330 N. Wabash, Suite 3120  
Chicago, IL 60611

Re: ██████████ v. Oak Lawn Mazda

VIA FACSIMILE to 1-708-233-7701 and via regular mail

Dear BBB:

Please initiate arbitration proceedings in the above-referenced case.

1. Defendant's name: Oak Lawn Mazda, 6750 W 95th Street, Oak Lawn, IL, 60453, c/o Joseph Ghaben, President, (708) 233-7700;
2. Statement of issues to be arbitrated: Defendant Oak Lawn Mazda gave Plaintiff a warranty as part of a car sale, which was a "We Owe" form, stating "ADJUST THE CLUTCH." This constitutes a Magnuson-Moss warranty. See Hamilton v O'Connor Chevrolet 399 F.Supp.2d 860 (N.D. Ill. 2005). Additional reasons why Defendant's attempted disclaimer of implied warranties was ineffective: Defendant (a) modified or waived its disclaimer by performing post-sale repairs on the car without charge, or, (b) engaged in the common law fraud and fraudulent concealment of the car's condition (failing to disclose a prior accident, and using a Carfax report as a prop for its fraud), thus bringing the "circumstances indicat[ing] otherwise" exception of 810 ILCS 5/2-316(3)(a); or, (c) violated its duty of good faith (810 ILCS 5/1-304, 810 ILCS 5/1-201(19), 810 ILCS 5/1-201(20), 810 ILCS 1-204, 810 ILCS 5/2-103(b)), or, (d) engaged in unconscionable conduct (810 ILCS 5/2-302), or, (e) deprived Plaintiff of substantial value of his bargain (Official Comment 1 to 810 ILCS 5/2-719).

Plaintiff asserts the following claims: **Count I:** breach of express warranty under the Magnuson-Moss Warranty Act (MMWA), 15 U.S.C. 2310(d). Defendant failed to repair the clutch within reasonable time (it took over three months). **Count II:** breach of implied warranty of merchantability under MMWA, 15 U.S.C. 2310(d). The car was not merchantable, in that: it (1) was not fit for ordinary purposes, and (2) would not pass in

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the trade under its contract description. **Count III:** common law fraud. **Who:** salesman in the transaction, Roman; **What:** (1) failure to disclose/concealment of prior accident of the car; (2) use of the Carfax report to falsely affirmatively represent that the car had no prior accident history; **When:** August 22, 2012; **Where:** 6750 W. 95th Street, Oak Lawn, Illinois; **How:** by lying. Plaintiff relied. **Count IV:** Consumer Fraud Act. Same facts as Count III. **Count V:** Revocation of acceptance under Section 2-608 of the Commercial Code (810 ILCS 5/2-608) as an alternative to revocation as a remedy for breaches of warranty, in that the value of the car was substantially impaired to Plaintiff, and he revoked his acceptance and cancelled his contract with Defendant, his revocation was justified and now he is entitled to his money back.

3. A statement of the remedies: revocation of acceptance as a remedy for warranty breach, or, in the alternative, revocation of acceptance as a cause of action under Section 2-608 of the Commercial Code, under which Plaintiff is entitled to return the car and get his money back; diminished value of 80% of the purchase price as warranty damages, other damages as are allowed, including incidental and consequential damages, aggravation and inconvenience, and punitive damages (the limitation of punitive damages in the arbitration agreement being unconscionable), costs and expenses, and attorney fees.

4. Copy of the arbitration agreement: attached.

A check for \$100.00 is enclosed. Please contact me with a hearing date as soon as possible.

Very truly yours,

CHICAGOLEMONLAW.COM, P.C.



Dmitry N. Feofanov

cc: Oak Lawn Mazda (by facsimile)

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this \_\_\_\_ day of September 2013, between Ghaben Auto Group d/b/a Oak Lawn Mazda, LLC ("Oak Lawn") and [REDACTED] (" [REDACTED] ") (collectively, the "Parties," and each a "Party").

NOW, THEREFORE, in consideration of the mutual promises herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and intend to be legally bound as follows:

1. Upon execution hereof and contingent upon full performance by each Party:

(i) [REDACTED] shall deliver to Oak Lawn the 2006 Mitsubishi Lancer, VIN [REDACTED], he purchased from Oak Lawn on or about August 22, 2012 ("Vehicle"); and

(ii) Oak Lawn shall:

(a) pay in full the loan balance owed on the Vehicle to Ally Financial;

and

(b) pay to [REDACTED] the sum of Sixteen Thousand Five Hundred Dollars (\$16,500) by a check made payable to "ChicagoLemonLaw.com Trust Account" (collectively, the "Settlement Payment").

2. [REDACTED] represents and warrants to Oak Lawn that:

(i) he has not pledged or assigned any interest in the Vehicle to any third party, other than Ally Financial; and

(ii) the Vehicle has not been involved in an accident or collision or required any repair at any time after August 22, 2012 and that the Vehicle is being returned to Oak Lawn in the same condition as it was on the date of purchase, ordinary wear and tear excepted.

3. In consideration for the Settlement Payment and other good and valuable consideration described herein, [REDACTED] on his own and on behalf of his heirs, beneficiaries, executors, administrators, agents, representatives, attorneys, successors and assigns hereby releases and forever discharges Oak Lawn and its managers, members, officers, agents, representatives, employees, lenders, including but not limited to, Ally Financial, insurers, attorneys, successors, and assigns, from any and all claims, demands, rights, obligations, debts, liabilities, damages, or causes of action, known or unknown, related, directly or indirectly, to the sale and purchase of the Vehicle, any and all documents or agreements entered into between the Parties concerning the Vehicle, and the facts that form the basis of his claims pending before the Better Business Bureau of Chicago ("BBB").

4. Upon receipt of the Settlement Payment, [REDACTED] shall dismiss with prejudice and without costs his claims pending before the BBB within three business (3) days.

5. The terms and conditions of this Agreement are absolutely confidential between the parties and shall not be disclosed to anyone, except as *shall* be necessary to effectuate its terms. Any disclosure in violation of this section shall be deemed a material breach of this Agreement. The Parties, their managers, members, officers, employees, principals, agents, successors, heirs, executors, administrators, assigns, attorneys, and legal representatives, will not disclose any of the terms of this Agreement except to accountants, legal advisors, insurance companies, limited liability company members, corporate executives or a manager as necessary, unless compelled to do so pursuant to legal process, and then only after providing the other Party with notice of legal process so that the other Party may, at their expense, intercede to do so as deemed appropriate. In the event any inquiry is made of the Parties concerning this matter, they shall indicate only that "the litigation has been dismissed," and shall give no other indication of the outcome.

6. Each Party represents that they have read this Agreement and fully understands and accepts the terms of this Agreement and that this Agreement may only be modified by a writing signed by the Parties.

7. The Parties agree to cooperate with each other in the furtherance of the actions reasonably necessary and required, if any, to effectuate the intent of this Agreement.

8. If any term or provision or any part of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, successors, and assigns.

10. This Agreement shall be governed by Illinois law, and the Parties submit to the jurisdiction of any court of competent jurisdiction in Cook County, Illinois, as the venue to resolve any disputes related to this Agreement.

GHABEN AUTO GROUP D/B/A  
OAK LAWN MAZDA, LLC

**[REDACTED]**

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_