

CAUSE NO. _____

**STEVEN PAUL PARKER and
ABIGAIL NICOLE PARKER,**
Plaintiffs,

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

**MAC HAIK CHEVROLET, LTD.
d/b/a MAC HAIK CHEVROLET
and HOUSTON MAC HAIK
AUTOMOTIVE, LLC,**

Defendants.

JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs **STEVEN PAUL PARKER** and **ABIGAIL NICOLE PARKER** (the "Parkers"), and file this, their Original Petition complaining of Defendants **MAC HAIK CHEVROLET, LTD. d/b/a MAC HAIK CHEVROLET** and **HOUSTON MAC HAIK AUTOMOTIVE, LLC** (collectively the "Dealership"), and for cause would show the Court the following:

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.1 of the TEX. R. CIV. P., Plaintiffs intend to conduct discovery under Level 2 of Rule 190.3 of the TEX. R. CIV. P.

RELIEF SOUGHT

2. Pursuant to Rule 47(c) of the TEX. R. CIV. P., Plaintiffs affirmatively plead that they seek monetary relief less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

PARTIES AND SERVICE

3. Plaintiff **STEVEN PARKER** is an individual who resides in Harris County, Texas.

4. Plaintiff **ABIGAIL PARKER** is an individual who resides in Harris County, Texas.

5. Defendant **MAC HAIK CHEVROLET, LTD. d/b/a MAC HAIK CHEVROLET** is a Texas Limited Partnership with its principal place of business located at 11757 KATY FREEWAY, SUITE 1500, HOUSTON, TEXAS 77079. Defendant may be served with process by serving **MAC HAIK**, its Registered Agent, at 11757 KATY FREEWAY, SUITE 1500, HOUSTON, TEXAS 77079.

6. Defendant **HOUSTON MAC HAIK AUTOMOTIVE, LLC** is a Texas Limited Liability Company with its principal place of business located at 11757 KATY FREEWAY, SUITE 1500, HOUSTON, TEXAS 77079. Defendant may be served with process by serving **MAC HAIK**, its Registered Agent, at 11757 KATY FREEWAY, SUITE 1500, HOUSTON, TEXAS 77079.

JURISDICTION AND VENUE

7. Venue is proper in Harris County, Texas pursuant to TEX. CIV. PRAC. AND REM. CODE, ANN., § 15.002(a)(1) because all of the events or omissions giving rise to the claim occurred in Harris County, Texas, and pursuant to TEX. CIV. PRAC. AND REM. CODE, ANN., § 15.002(a)(3) because Defendants have their principal offices located in Harris County, Texas.

8. The damages in this case far exceed the minimal jurisdictional requirements of this Court. Plaintiffs are seeking damages less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. This Court has subject matter jurisdiction over the claims and has personal jurisdiction over the Defendants.

FACTS

9. The Parkers shopped for a used vehicle and found a 2013 Audi A6, VIN WAUJGAFCDN131269 (the "Vehicle") the Dealership that they wished to purchase. The vehicle appeared to have 71,790 miles at the time of purchase. On or about January 30, 2017, Plaintiffs entered into a Motor Vehicle Retail Installment Sales Contract (the "Contract") for the

purchase of the Vehicle with "MAC HAIK CHEVROLET". A true and correct copy of the Contract is attached hereto as Exhibit "A" and is incorporated herein for all purposes.

10. As part of the purchase, the Parkers wanted a 48-month, 100,000-mile extended warranty. The Dealership initially told the Parkers they could not give this kind of warranty on a vehicle with this kind of mileage. However, the Parkers stood their ground and were eventually granted a MasterTech Vehicle Protection Program contract (the "Warranty") for 48 months and 100,000 miles, for which they paid \$3,500.00. A true and correct copy of the MasterTech Vehicle Protection Program contract is attached hereto as Exhibit "B" and is incorporated herein for all purposes.

11. In mid-2018, the Vehicle had approximately 109,000 miles on it, and mechanical problems began to arise. Upon taking the car to the shop to be repaired, MasterTech declined to cover the repair costs, citing that the warranty had run at 107,000 miles instead of the expected 171,000 miles.

12. As it turned out, the Dealership had misrepresented the Vehicle's eligibility for the warranty by changing the mileage on the Warranty. Instead of listing the correct mileage of 71,790 miles, the Dealership represented that the Vehicle had only 7,179 miles on it. See Exhibit "B", "Odometer Mileage." The Parkers were therefore cheated out of the benefit of the Warranty by what the Dealership refers to as a "scrivener's error."

13. The Vehicle has been sitting idle since mid-2018, as its mechanical issues have rendered it undrivable. The Parkers have been forced to share a car and rely on Uber for transportation.

CAUSE OF ACTION: FRAUD

14. Plaintiffs incorporate all preceding paragraphs by reference as though they were set forth fully herein.

15. The Dealership made a material representation to the Parkers. Specifically, they represented that the Vehicle would be covered for 48 months and 100,000 miles under the Warranty. This representation was clearly false. According to MasterTech, the Vehicle was only

covered for approximately 36,000 miles after the Parkers purchased it. The Dealership knew that this representation was false, and went so far as to falsify the Vehicle's mileage on the Warranty. The Dealership made the representation and sold the Warranty to the Parkers with the intent that the Parkers would use it for any necessary repairs. The Warranty was an enticement to purchase the Vehicle. In fact, the Warranty was what sold the Parkers on the Vehicle in the first place. The Parkers relied on the Dealership's representation that they had a 48-month, 100,000-mile extended warranty and went ahead with the purchase of the Vehicle. As a result of the Dealership's fraud, the Parkers have suffered, and will continue to suffer, pecuniary harm.

16. Plaintiffs seek all of their damages caused by the fraud, including actual, general, consequential, special, direct and indirect damages, mental anguish, exemplary damages, and reformation of the Warranty so that the Vehicle receives the promised 48 months/100,000 miles of warranty coverage.

CAUSE OF ACTION: DECEPTIVE TRADE PRACTICES ACT

17. Plaintiffs incorporate all preceding paragraphs by reference as though they were set forth fully herein.

18. Plaintiffs are consumers under the Texas Deceptive Trade Practices Act (DTPA), and the Dealership can be sued under the DTPA. The Dealership committed multiple violations of the DTPA, including but not limited to misrepresentations in violation of §17.50 and laundry list violations of §17.46(b). The Dealership committed false, misleading, or deceptive acts or practices when it sold the Warranty to the Parkers and falsified the Vehicle's mileage. The Dealership represented that the Warranty confers rights that it does not. The Dealership's actions were a producing cause of the Plaintiffs' damages.

19. Plaintiffs seek all of their damages caused by the Dealership's violations of the DTPA, including actual, general, consequential, special, direct and indirect damages, mental anguish, plus trebled damages because this was a knowing violation.

CONDITIONS PRECEDENT

20. All conditions precedent to Plaintiffs' right to recover from the Defendants have occurred, have been performed, or have been waived by Defendants.

ATTORNEY'S FEES

21. As a result of Defendant's actions, Plaintiffs were required to employ the services of RANDY L. WOOTEN, P.C., a duly-licensed Texas attorney, to prosecute this matter. Plaintiffs are entitled to reasonable and necessary attorney's fees pursuant to Chapter 27 of the Texas Business & Commerce Code and Chapter 38 of the Texas Civil Practice & Remedies Code.

DAMAGES

22. Defendant is liable to Plaintiffs for damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees in an amount less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

RIGHT TO AMEND

23. Plaintiffs specifically reserve the right to amend and/or supplement the allegations in this petition concerning the facts, the liability of the Defendant, and damages in order to conform with the evidence as it is discovered prior to trial and introduced at the trial of this cause, in accordance with the evidence, the Texas Rules of Civil Procedure, and this Court's orders to amend.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs **STEVEN PAUL PARKER** and **ABIGAIL NICOLE PARKER** pray that Defendants **MAC HAIK CHEVROLET, LTD. d/b/a MAC HAIK CHEVROLET** and **HOUSTON MAC HAIK AUTOMOTIVE, LLC** be cited to appear and answer herein, and that, after a trial on the merits of this case, Plaintiffs shall have and recover final judgment against Defendant for the following:

- a. Judgment against Defendant for actual damages, consequential damages, and economic damages;

- b. Pre-judgment interest at the maximum rate permitted by law;
- c. Post-judgment interest at the maximum rate permitted by law until paid in full;
- d. Attorney's fees
- e. Costs of court; and
- f. Such other and further relief, both general and special, legal and equitable, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

RANDY L. WOOTEN, P.C.

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