

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

NEMET CHEVROLET LTD. 153-12 Hillside Avenue Jamaica, NY 11423)	
)	
and)	
)	
THOMAS NEMET, d/b/a NEMET MOTORS,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:08cv254 (GBL) (TCB)
)	
CONSUMERAFFAIRS.COM, INC.,)	
11350 Random Hills Road)	
Suite 800)	
Fairfax, VA 22030)	
)	
Defendant.)	
)	

PLAINTIFFS' AMENDED COMPLAINT

Plaintiffs, NEMET CHEVROLET LTD. and THOMAS NEMET d/b/a NEMET MOTORS (collectively, "Plaintiffs" or "Nemet") by and through their undersigned counsel, hereby bring this action against Defendant CONSUMERAFFAIRS.COM, INC. (the "Defendant" or "ConsumerAffairs.com") for defamation, tortious interference with a business expectancy, and violations of the Lanham Act.¹

¹ Plaintiffs recognize that this Court dismissed the Lanham Act claims from the original Complaint and repeat such allegations in this Amended Complaint to preserve their right to appeal.

The Parties

1. This is an action for injunctive and monetary relief based upon Defendant's defamatory and deceptive practices of preparing and publishing false, malicious and libelous statements of and concerning Plaintiffs' business, and for publishing other false, malicious and libelous statements for which Defendant is responsible. Since at least January 20, 2000, including several times since April 2007, Defendant has published over the World Wide Web false, malicious and libelous statements about Plaintiffs' business, causing irreparable and continuous damage to Plaintiffs.

Jurisdiction

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1332 and 1338(a). This Court further has supplemental jurisdiction over the state law causes of action pursuant to 28 U.S.C. § 1367(a) in that the parties are citizens of different states and the amount of controversy exceeds \$75,000, exclusive of interest and costs.

3. Personal jurisdiction exists pursuant to Va. Code §§ 8.01-328 to -330, Virginia's long-arm statute. Defendant engages in business related to this matter in Virginia; Defendant maintains an office in Virginia; and, through its website, Defendant advertises specifically to Virginia residents.

4. Defendant conducts a significant amount of commercial activity in the Commonwealth and derives significant profit from the Commonwealth, including, but not limited to, posting advertisements by Virginia attorneys on its website and obtaining advertising revenue from Virginia residents.

5. Defendant is also affiliated with a Virginia attorney whose offices are in Fairfax, Virginia.

Venue

6. Venue is proper pursuant to 28 U.S.C. § 1391(a)—a substantial part of the events or omissions giving rise to the claims occurred in this District.

7. At all material times, Plaintiff NEMET CHEVROLET LTD. was and remains a corporation duly organized under the laws of the State of New York, with its principal place of business at 153-12 Hillside Avenue, Jamaica, New York 11423.

8. At all material times, Plaintiff THOMAS NEMET, d/b/a NEMET MOTORS was and remains a sole proprietorship doing business at 153-12 Hillside Avenue, Jamaica, New York 11423.

9. At all material times, Defendant CONSUMERAFFAIRS.COM, INC., is a corporation duly organized in the state of California, doing business in Virginia, with its principal place of business in the County of Fairfax at 11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030.

FACTS COMMON TO ALL COUNTS

Plaintiffs' reputation

10. Plaintiffs are a group of franchised automotive dealers that have been selling cars in the New York area for over 90 years. They have an excellent reputation in the community for fair dealing and truthfulness.

11. Plaintiffs practice a policy of full disclosure, using menu selling. When buying an automobile, every customer receives three documents: a customer re-cap sheet; a menu selling disclosure form; and, an invoice. Additionally, to complete the sale, every customer is required to sign a written contract, describing every term of the transaction in black and white.

12. The consumers whose alleged complaints are posted on Defendant's website are actually confused about the nature and purpose of Defendant's website. None of the alleged complaints about Plaintiffs posted on Defendant's website have been reported to or acted upon by the state agency actually responsible for addressing legitimate consumer complaints, the New York City Department of Consumer Affairs ("New York DCA" or "Department").

13. The New York DCA is the agency responsible for policing consumer matters in the New York City area. The Department recently held public hearings regarding its "ongoing investigation into deceptive and predatory tactics within the secondhand auto dealer industry." *See* Exhibit A. Acting on consumer complaints, the Department has initiated litigation against numerous other automobile dealers in recent months, collecting hundreds of thousands of dollars in fines and restitution for consumers. For example, in November 2007, one automobile dealer (Baron Auto City of Queens) paid more than \$140,000 in fines to the City and restitution to 23 individual car buyers. *See* Exhibit B.

14. In April 2007, the New York DCA announced that it was "pursuing maximum fines and penalties against eight car dealerships for an egregious pattern of deceptive sales violations" that victimized more than 150 consumers: Stadium Motors, Eurasian Motors and Omni Auto Group, Vanguard Auto Group, Baron Auto Mall and Tri-County Motors, all of Brooklyn; and, Baron Auto City of Queens. *See* Exhibit C. Kings Plaza Jeep Chrysler once "paid a total of \$45,000 to settle charges of deceptive and misleading advertisements." *See* Exhibit D. Four Queens auto dealerships—Star Nissan, Star Mitsubishi, Star Toyota, and Metro Chrysler Plymouth—paid \$60,000 to settle charges of deceptive and misleading advertisements. *See* Exhibit E. Bronx Automobile Group and H.B. Automotive Group (also of the Bronx) paid \$100,000 to settle charge of deceptive and misleading advertising. *See* Exhibit F. On another occasion, the Department cited 19 car dealerships with more than 2,800 total counts of false

advertising, false prices, failing to disclose required information, and misleading credit claims. See Exhibit G.

15. Every automobile dealer in New York City must be licensed by the New York DCA. If a dealer does not respond to a complaint, the dealer is subject to cancellation of his license, which is forwarded to the DMV. The DMV can suspend the dealer pending a hearing; recently they have suspended a number of dealerships. Plaintiffs have not been mentioned in connection with any of the foregoing major investigations by the Department.

16. Plaintiffs engaged in more than 10,000 customer transactions last year, including automobile sales and service. The “consumer” complaints described in paragraphs 37 to 106 *infra* represent a tiny fraction Plaintiffs’ total customers.

17. When a customer files a complaint against Plaintiffs with the New York DCA, Plaintiffs provide the Department with all of the documents described in paragraph 11.

18. Unlike Defendant, the New York DCA contacts businesses when it receives consumer complaints. By doing so, the Department attempts to help consumers resolve or satisfy complaints and gives businesses an opportunity to explain or refute the complaint. If complaints cannot be resolved, the Department initiates litigation, holds hearings, and imposes fines and sanctions on businesses that engage in deceptive or misleading consumer practices. Plaintiffs have been able to resolve virtually every consumer complaint filed with the Department favorably because virtually all consumer complaints filed against the Plaintiffs have proved to be false. In other words, the Department actually advocates the cause of aggrieved consumers and actually makes the effort to determine both sides of the story behind each consumer complaint it receives.

19. Defendant actively solicits consumer complaints about the Plaintiffs but makes no effort to contact Plaintiffs or other businesses to learn all the facts. Defendant makes no effort to

verify the truth or falsity of the complaints it solicits. Instead, Defendant offers potential recovery in the form of class action lawsuits and steers complaints into specific categories designed to attract the attention of class action lawyers.

20. Unlike the legitimate New York Department of Consumer Affairs, Defendant makes no effort to determine whether complaints are accurate or false. Unlike the Department, Defendant refuses to consider both sides of the story. In the case of Plaintiffs, Defendant has openly refused to post any of Plaintiffs' responses to the false complaints posted on the Defendant's website.

Defendant's website: source of revenue

21. Defendant profits by defaming Plaintiffs. Defendant operates in commerce under the guise of "consumer affairs" for the purpose of unlawfully diverting consumers and deriving a profit from misdirecting consumers. Upon information and belief, Defendant's website is not a "consumer affairs" website dedicated to helping consumers, as the website's name suggests, but is a ploy to sell online advertising and assist members of the plaintiffs' bar with soliciting potential clients.

22. Indeed, Defendant's founder and president, in sworn written testimony, admitted that ConsumerAffairs.com's "sole source of income is advertising on the Website." According to the sworn Affidavit of James R. Hood, the Website accepts advertising from "Google, TribalFusion, BURSTMedia, DoubleClick, FastClicks, and 24/7 RealMedia, among others." This advertising is sold by placing lines of code on each website that correspond to the webpage content. Thus "a page that mentions 'Ford' may get ads for Fords, other kinds of cars, and auto-related goods." A true and correct copy of the Affidavit of James R. Hood is attached as Exhibit H.

23. Moreover, according to the ConsumerAffairs.com website, “[a]ll of the complaints submitted through our complaint form are reviewed by class action attorneys and hundreds of cases have been filed as a result.” Upon information and belief, Defendant previously forwarded complaints about the Plaintiffs to class action lawyers.

24. Indeed, one of Defendant’s editors is a practicing plaintiffs’ attorney from Fairfax, Virginia.

25. Consumers are actually misled into thinking that Defendant’s website will somehow intervene on their behalf. Actually, Defendant’s website does nothing to resolve complaints, but instead collects advertising revenue and funnels the complaints to consumer class action lawyers so the lawyers can make money filing groundless class actions and earn legal fees.

26. Defendant does not allow the businesses that it defames to explain, rebut, or otherwise respond to the libelous statements featured on Defendant’s website. In addition, Defendant never contacted Plaintiffs prior to publishing these defamatory and false statements, and rebuffed Plaintiffs’ efforts to share the accurate facts related to several complaints. Defendant refuses to post any responses submitted by Nemet Motors that disprove the false and defamatory complaints that get posted to this website, and it does not remove complaints, even if Nemet Motors finds out about a complaint and resolves it with the customer.

Defendant’s website: structure and format

27. According to Mr. Hood’s sworn affidavit, Defendant’s website solicits consumers to complete “complaint forms” in order to publish alleged complaints against a business on the website.

28. Defendant's website has been, until recently, heavily biased against businesses by featuring a very overt and visible "complaint button" on its website. By contrast, Defendant's website has, until recently, made it much more difficult for consumers to post positive comments about businesses.

29. Defendant solicits and shapes statements appearing on its website by enticing visitors with the possibility of participating in a class-action lawsuit, with the potential for a monetary recovery. For example, Defendant's website states:

'Let's all get together and file a class action,' is the battle cry heard regularly throughout the land. Sounds good, but it's a lot more complicated than that.

What generally sounds like a class action just waiting to happen often turns out to be a lot of individual suits just waiting to run up some big legal bills for consumers. Congress and the conservative judges appointed by recent Republican administrations have made it very difficult for consumers to sue companies that do them wrong. Sad but true.

For a more detailed explanation, see attorney Joan Lisante's [Plaintiff Power: Not Dead Yet](#).

Long story short, the first step in filing a class action is to [find an attorney](#) who's willing to take the risk of spending time and money prosecuting the case. This is not nearly as easy as it used to be.

ConsumerAffairs.com tries to help. All of the complaints submitted through our [complaint form](#) are reviewed by class action attorneys and hundreds of cases have been filed as a result. There is no charge to the consumer for this review.

Please note that ConsumerAffairs.com is not a party to the lawsuits. We can't give you status reports.

See Exhibit I.

30. Defendant actually advises visitors to the website on how to craft their complaint to better support a lawsuit. In an article on Defendant's website entitled "Plaintiff Power Not Dead Yet," Joan E. Lisante, a Virginia lawyer who is a contributing editor to Defendant's

website, advises readers that complaints need to be organized into categories similar to other complaints if they want to join a class action lawsuit—a clear purpose of Defendant’s website:

To qualify as a class action, a lawsuit must affect a broad class of individuals, all similarly harmed by the defendant’s action or inaction.

The article then emphasizes the class action lawsuit “carrot” for would-be complainers:

Joan E. Lisante is an attorney who writes frequently on consumer issues.

Immediately below Lisante’s article, Defendant’s website directs visitors to a link and encourages readers to file a complaint:

If you’ve had a bad experience -- or a good one -- with a consumer product or service, we’d like to hear about it. All complaints are reviewed by class action attorneys and are considered for publication on our site. Knowledge is power! Help spread the word. [File your consumer report now.](#)

See Exhibit J.

31. There are other parts of Defendant’s website that have content created by the Defendant, written material that is specifically designed and intended to steer complaints toward categories that might be appealing for class action lawyers.

32. For example, in the section about Nemet Motors, Defendant has created several categories of complaints. By creating specific headings or categories, Defendant is helping consumers write complaints by steering and shaping the content of their complaints into specific categories to organize them for class action lawyers.

33. Defendant’s website says the following in the section about Nemet Motors:

Here's what Nemet says about itself on its Web site: "The Nemet Auto Group is an automotive marketing organization led by the Nemet family since 1916. For 86 years, the Nemet family has represented many of the world's largest and most prestigious

automobile manufacturers selling well over half a million cars internationally."

Sounds great, but some of Nemet's customers aren't so impressed, as the complaints in this section indicate. A selection of assorted recent complaints appears below, while categorized beefs are listed to the right.

...

[Nemet Automotive](#)

- [Changing prices](#)
- [Lease terminations](#)
- [Extended warranties](#)
- [Advertising](#)
- [Honoring court judgments](#)

See Exhibit K.

34. Other parts of Defendant's website also instruct readers on how to structure complaints so they fit neatly into groups for class action lawyers. Under the headline "ALL UNDER ONE ROOF," Defendant's website contains the following false, malicious and libelous statements about Nemet Motors:

Not too long ago, our Stephanie Moore labored long and hard to summarize everything that can go wrong when buying a car (see [How Not To Buy a Car](#)). If we had paid more attention to the complaints about [Nemet Automotive Group](#) of the airport-rich borough of Queens, she might not have had to bother. The Nemet complaints pretty well cover the territory -- everything from [prices](#) engraved in sand to [advertising](#) that overlooks certain crucial elements. It's also interesting to see how Nemet responds when consumers take the trouble to drag them into [court](#).

See Exhibit L.

35. Elsewhere on Defendant's website, beneath the headline "Nemet - Advertising Claims," are the following false, malicious and libelous statements:

Buying a [used car](#) is always tricky business and it's not unusual for [cars](#) to be a bit less perfect than one expects. If the car is bought "as-is," there's not much recourse.

However, if a dealer advertises a car at a certain price, it is obligated to honor that price unless it has clearly disclosed that the price applies only under certain conditions. Does Nemet know this?

See Exhibit M.

“Consumer” complaints

36. Defendant’s website features numerous false, malicious and libelous statements against Plaintiffs’ business, attributed to “consumers,” causing Plaintiffs’ business reputation harm and causing loss of customers. In light of the structure and design of Defendant’s website, described in paragraphs 27 through 35, Defendant is responsible for these false, malicious and libelous statements.

37. On or about the April 3, 2007, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Louella of New York NY (04/03/07)

We were trying to lease a car. Unfortunately, we got too excited so they took advantage by adding a lot of extras to the car without informing us. These extras had my initials though they were not my handwriting. We were surprised when we first got the statement which states that we are PURCHASING it at \$431.00 for 6 yrs which amounts the car to be \$30K when it was originally only \$16,800.00. When we received it, we went back to tell them that we don't want to buy it, just lease. They passed us from one person to another then eventually said that they will do something about it. True enough, up to this day it still states the same amount. We tried to return the car as it is costing us too much but they don't want to and they were treating us without respect at all. They are very rude and we feel that we are so aggravated.

38. This post was made by Nemet customer Louella E. Espinal of Richmond Hills, New York. These statements were false. Plaintiffs' records demonstrate that Ms. Espinal signed a valid, binding Retail Agreement with the Plaintiffs, and then attempted to back out of the contract. In addition, Ms. Espinal's allegations of forgery are untrue and defamatory. *See* Exhibit N.

39. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting Ms. Espinal to ask her questions about her complaint and to help her draft or revise her complaint, and promising Ms. Espinal that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of Ms. Espinal's false complaint about the Plaintiffs.

40. On or about the April 11, 2007, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Svetlana of Brooklyn NY (04/11/07)

I went to purchase a car from Nemet Motors after I saw what appeared to be a good deal in the Newspaper, boy was I wrong! I purchased a 2003 altima from them thinking I was getting a good deal. It took them a very long time to get the paper work ready. By the time they were done I was restless and my head hurt.

I sat down with the finance manager Sid and this is when he started making all kinds of promises. He rushed me through a whole bunch of paper saying that since it was so late (9:30 PM) I had to have extra warranties added on the car for me to be able to drive off that same day. He told me to call him the next day to get all the

figures. I called the next day all the way until the night. This guy seems to never get a break because he was never able to answer my calls (ya right). He was avoiding me that whole day, so I was starting to get a little nervous because from the looks of the contract I would owe 25,000 for a 14,000 dollar car.

That night my father and me decided to drive to the dealership, Sid told me that everything was fine all the warranties will be taken off when I sign the final contact. He said my final contract was locked away and that I could come back the next day to sign it. When I got there the next day he typed up the contract in my face, which meant that he lied about it being locked away.

All the extras were still in the new contact, so I told him that I wasn't going to sign it and I didn't want the car. He told me I had no choice and that I had to keep all the warranties. I started crying in the office, so the GM Scott was called in. They promised to take off one of the many extended warranties that were added, but I knew that all they was take away some money from the amount owed and added it to the finance fee.

They made me feel like I had no choice but to take that offer because it was for a few more months which made my monthly payments more affordable, so I left with the new contract. Come to find out they never cancelled the first contract, so I'm being billed from both Nissan and M & T bank.

They have been telling me now for the past few weeks that they are fixing the problem and not to worry, but I am still showing an outstanding balance for both banks.

Not only that, I took my car to my mechanic to find out that the car was in a serious accident which the car appeared to have frame and bumper guard damage. Once again I had to make another trip to this dealership. When I got there the GM Scott told me that they would fix anything and then told his mechanics to put everything back together. He then told me that I can get a lawyer and in five years he will see if I ever get anything. I started crying again I front of my one and a half year old son.

Till this day nothing has been fixed with the car nor was the other loan voided. I don't know what to do; there is no way I can pay for two loans and if I don't my excellent credit will be destroyed. Emotionally this situation has taken a huge toll on me. I can not eat, sleep, or think straight. These people have ruined my life.

41. This post was made by Nemet customer Svetlana Yusupova of Brooklyn, New York. These statements are false. As Plaintiffs' records demonstrate Ms. Yusupova re-contracted with the Plaintiffs and voided her previous contract to lower her monthly payments. In addition, Plaintiffs agreed to purchase Ms. Yusupova's trade-in vehicle after three months for the full purchase price. Ms. Yusupova, however, never traded in her vehicle and instead sold the vehicle to another car dealership. *See Exhibit O.*

42. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting Ms. Yusupova to ask her questions about her complaint and to help her draft or revise her complaint, and promising Ms. Yusupova that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of Ms. Yusupova's false complaint about the Plaintiffs.

43. On or about the April 30, 2007, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Thomas of Oakland Gardens NY (04/30/07)

04/28/2007 11:56 AM To Whom It May Concern This is a copy of email I sent to Nemet motors and Hyundai. I would like to inform why I feel as a NYC Fire Fighter I was burned by one of your dealerships,Nemet Motors of Jamaica Queens NY..I have already filed a complaint with the local Better Business Bureau but see that Nemet has not responded to any of the other numerous complaints filed against them.

I had just bought a new 2007 Scion tc 6 months ago but decided I needed a bigger vehicle because of personal reasons. After doing extensive research I decided the Hyundai Tucson was what I wanted to buy. My wife and I both feel the salesman made promises he did not keep. My deal with him was that I was to receive a trade-in amount of \$16500.00 towards the purchase of the Tucson and the price quoted was to include the \$440.00 delivery charge. I knew this was a great deal for me so I went over it several times with the salesman. I put down a \$1000.00 deposit to secure the deal and order the car. I left the dealership happy with the deal and looked forward to getting the car.

All of the good karma I felt disappeared when I went to pick up the new car.

The salesman informed me I was only going to get \$15250.00 for my trade-in saying you still are getting great sales tax savings and also failed on his promised to include the \$440.00 delivery charge in the price. When I balked at this I was told if I did not complete the deal I would lose my \$1000.00 deposit. I feel I had no choice but to take the car costing me \$1830.00 more than it should have. I complained of the treatment to a manager(Carlos) but he said their is nothing he could do.

I know its only my word against theirs since I have nothing in writing to prove my case, except the salesman's business card writing out \$16500.00 for trade-in. Me and my wife know what was said.

As my wife said they are not like you when you promised to protect life and property as a firefighter your word was good and you for filled your promise. I just wanted you to know how Nemet motors treats firefighters in your name.

44. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements were untrue and defamatory. In addition, Defendant did not, and would not, provide Plaintiffs with enough information to determine the author of the post.

45. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions

about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 43 about the Plaintiffs.

46. Because Plaintiffs cannot confirm that the complaint in paragraph 43 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 43 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 43, the Defendant was therefore responsible for the substance and content of the complaint.

47. On or about the May 4, 2007, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Arthur of Melville NY (05/04/07)

We are offered a 2007 Nissan Murano Leather interior for 31,000 by Elway the sales manager. Offered was excepted, then we transfer insurance policy to the new Murano. They asked a \$200.00 as downpayment and I was told that this downpayment fully refundable. At this point, I already spent there 8 hours.

However, with this great deal everything seemed fine at first until we start going over the finance paper until the person Seth who is the finance manager put some unwanted item on the invoice Such as Insurance ETCH PRO For \$2999, Protection Plan \$1999.00 which was never asked for nor told during the sale stage.

The price of the car goes up from 31000 to 38000 (without taxes yet). I still did not receive my downpayment of \$200.00.

48. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements are untrue and defamatory. In addition, Defendant did not, and would not, provide Plaintiffs with enough information to determine the author of the post.

49. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 47 about the Plaintiffs.

50. Because Plaintiffs cannot confirm that the complaint in paragraph 47 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 47 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 47, the Defendant was therefore responsible for the substance and content of the complaint.

51. On or about the October 26, 2007, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Esther of Jamaica NY (10/26/07)

I went to buy a car. I was told that I had to get an extended warranty that is optional that cost \$2500 along with a passive alarm system that is not installed on the vehicle for \$1195. The

price of the car was inflated and now I am stuck with a car loan for \$28,500 for a car that is worth about 23,500.

I have not started the payments yet but I am now legally bound to a loan of \$28,500 with monthly payments of close to \$600.

52. Upon information and belief, these posts were made by Nemet customer Esther Sauveur of Jamaica, New York. These statements are false. Plaintiffs' records demonstrate that Ms. Sauveur originally signed a valid, binding Retail Agreement with Plaintiffs and now suffers from "buyer's remorse." Plaintiffs' sales contracts clearly state that all sales are final. *See Exhibit P.*

53. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 51 about the Plaintiffs.

54. On or about October 29, 2007, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

William of Richmond Hill NY (10/29/07)

On Oct. 30, 2001 purchased a 2002 Nissan Altima (new) from NEMET a NISSAN dealer. I also Purchased a Premier Ultra protective plan (Warrantee) This warrantee was sold to me by the NEMET and was included in my car payment. Terms of service 84 months or 100,000 miles. My car presently has 74,000 miles.

On September 24, 2007, I took my car to NEMET Repair Center to check the car because it was making a rattling noise and black smoke was coming from the exhaust. On that day I was informed that my care engine problems and they were going to check to see what my warrantee covered. Later that day a representative from NEMET Repairs informed me that the company that held the warrantee had gone bankrupt and I was not covered.

I have called NISSAN Customer Service for the last six week with no result. I received a document from US Bankruptcy Court for the Northern District of Illinois on October 15th, which indicates that I am covered, however on Friday October 26th, I was informed that my policy was cancelled. I requested proof and they ask me call a number which has a recording regarding the bankrutcy.

I have been gettin the run around for approssimately 8 weeks. NEMET Repairs call me to remove my car otherwise they were going to charge me for storage. NEMET repairs quoted 8,000 dollars worth repairs.

55. This post was made by Nemet customer William Casas Jr., of Richmond Hill, New York. These statements are false. Plaintiffs' records demonstrate that Mr. Casas' insurance policy was cancelled at his request. *See Exhibit Q.*

56. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help him draft or revise his complaint, and promising the consumer that he could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 54 about the Plaintiffs.

57. On or about November 10, 2007, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Renee of Woodside NY (11/10/07)

I bought a 2004 Nissan Quest at NEMET last year. I actually saw the vehicle for \$18,900 on the Internet. They claimed that the price was incorrect. I was there all day with my husband and my 3-year old son, mind you I was 9 months pregnant! When we finally saw the financial person, Lou, he was in a rush and so were we.

We went through the paperwork quickly because we were the only ones around. When seeing the bill, the price of the car was different \$20000 and change, they added some Tires4Life and Drivecare both for thousands of dollars. This of course brought the price now to almost \$27000. Lou told us we needed this so that the bank would accept me for a low interest rate. The monthly payment for about \$500.

We told him we did not want it so he told us he would help subsidize for the first three months \$100 per month and then bring down our monthly payments after the three months. He also told us that after the three months he would take off the Tires4Life and DriveCare because we wont need it.

It is now a year later. When we go to NEMET, we are told that Lou NO LONGER works there due to things like this. Why should we suffer for his lies ad misleading information? Because we paid over \$1000 for Tires4Life, we tried getting new tires because the two right tires were damaged. It took 4 weeks of going back and forth physically and on the phone. Everyone gives you the run around there.

Now I am stuck with a monthly payment of \$500 and a car with plenty of negative equity. They sold me an overpriced car with lots of unnecessary extras. They verbally promised things that did not take place and the man who did no longer works there. NEMET does not want to take responsibility for Lou's actions. Instead they make it seem like they did not know what he was doing. This is a major burden in my finances which I did not plan or want.

58. This post was made by Nemet customer Renee P. Williams of Woodside, New York. Several statements in his post are false. Plaintiffs' records demonstrate that the "Tires for Life" program does not cover physical damage to tires, such as the damage caused by a nail. Although the damage to Ms. Williams' tires was not covered by the "Tires for Life" program, in the interest of customer satisfaction, Ms. Williams' tires were replaced by the Plaintiffs at no charge. Finally, in her post, Ms. Williams states that the Plaintiffs were supposed to reduce her monthly payment for the first three months of her loan. However, she did not make this claim until a year after purchasing her vehicle and her statement about this was false. *See Exhibit R.*

59. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 57 about the Plaintiffs.

60. On April 25, 2008, Plaintiffs prepared Attachment D to its Response to Defendant's Motion to Dismiss or Strike Complaint, filed with this Court on April 28. *See Exhibit S.* Attached hereto true and correct copy of Defendant's website as it appeared on June 27, 2008. *See Exhibit K.* Since April 25, Defendant has added at least 13 new posts to the website, each of which contains false, malicious and libelous statements about Plaintiffs. Eleven of these 13 posts are "dated" prior to April 25. The false, malicious and libelous statements from these 13 new posts are related in paragraphs 61 to 106 *infra*.

61. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Millie of Providence RI (06/22/07)

NEMET MOTORS DON'T LISTEN, THEY JUST WANT A SELL. I live in RI, and found 2007 Altima fully loaded for a good price at Nemet motors, 5/24/07. My sale man Victor who was very nice. Before everything I told Victor that I will be tranfering my old plates to the new car. Was told that I should be receiving the new register and title in the mail. Called a few times to follow up and just kept on getting voicemail, from Victor and Jean (store manager). A months has passed and was told that my new PLATES was ready. WHAT part of the word plate transfer didn't they understand. My boyfriend was told in his face that old car plates can not be tranfer to new lease plates. Now am going to have to pay forthy buck to fix something that's quote can't be done. They made they're sale and don't care about the problems they make. I would NEVER shop there again and neither should you!!!!

62. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements were untrue and defamatory.

63. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 61 about the Plaintiffs.

64. Because Plaintiffs cannot confirm that the complaint in paragraph 61 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 61 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 61, the Defendant was therefore responsible for the substance and content of the complaint.

65. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Arin of Brooklyn NY (08/18/07)

Bought a 2007 Impala from Nemet Motors April 24,2007. After negotiation with price we decided to buy the car. Then they made me and my wife wait from 2pm to 9pm to see the sales manager named Sid. At that time they start adding all theses extended warranty and service contract a cost of \$2648, to the cost and the contract. We then told them that that was not the deal negotiated. After detaining us till 12:30am, they told us that if we change our mind we could cancel the extended warranty and service contract latter. When I contacted them to cancel the warranty, they refuse to refund our money. I have contacted Better Business Bureau, and the Department of Consumer Affairs.

\$2648 before tax.

66. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements were untrue and defamatory.

67. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions

about the complaint and to help draft or revise the complaint, and promising the consumer that the consumer could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 65 about the Plaintiffs.

68. Because Plaintiffs cannot confirm that the complaint in paragraph 65 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 65 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 65, the Defendant was therefore responsible for the substance and content of the complaint.

69. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Naipaul of South Ozone Park NY (11/08/07)

Today I went to the Nemet Auto Service Center for a Synthetic Oil change and to fix a squeek I heard in my brakes of my 2007 Nissan Altima. After claiming he had run a disgnostic on the car the mechanic told me that I would need to replace my brake pads and cut the rotors. He also told me that I will need to do my 15,000 mile service on the car.

He gave me an estimate of the cost which he said totaled \$775. Nothing was signed and I told him to go ahead. After he gave me a booklet about what was going to be done on the car, I called him back (exactly five minutes after he gave me the price quote) and I told him I did not want to do the 15,000 mile service on my car. This alone cost me \$550. He told me he could not do it because they had already ordered parts for the car. The parts were **air filters** and pollen filters which it turned out were never replaced in my car.

I was lied to about the actual cost of the servicing. The labor alone cost me \$475. Actual parts cost only \$235. After doing a test drive on the car they claimed that they had fixed the brakes in my car and there was no squeaking. However immediately after driving off I realized that the brakes were still squeaking. No air filters were replaced in my car, which was part of a standard 15,000 mile service for the car. He claimed he had ordered this for my car.

I took the car back and road tested it with a mechanic from Nemet (this was supposed to be done in the first place since it was a part of the 15,000 mile service that I paid for). They were actually supposed to do two road tests. One before and one after servicing the car. He found where the squeek was coming from, which was the rear back tire however the brake pads they had originally worked on were the front. I was told that I would have to pay again in order to have the back brakes now fixed. I have to wait until next week when I can take another day off to go back and fix the same problem yet again.

I feel like I was ripped off really badly. I should have been able to cancel my servicing after five minutes. I should not have been told that parts were ordered when they were obviously never ordered because they were not used in my car. I dont know what else I can do except not return to the dealership for further servicing of my car. I hope this gets reported and something gets done to stop Nemet from doing this to other people.

70. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements were untrue and defamatory.

71. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help him draft or revise his complaint, and promising the consumer that he could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 69 about the Plaintiffs.

72. Because Plaintiffs cannot confirm that the complaint in paragraph 69 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 69 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 69, the Defendant was therefore responsible for the substance and content of the complaint.

73. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Andrew of Astoria NY (12/28/07)

Agreed to buy a new 07 Nissan Xterra for \$20,000 on Fri. eve. 11/09/07. Returned Sat. am 11/10/07 to seal the deal.

Had to go thru financing as that was the only way Nemet would sell me the car, even though I wanted to pay cash. The price was now raised to \$23,365. Another sales-mgr. came in the finance office and told me to sign and initial various items. Nothing was explained to my satisfaction but the finance man, Jean said all items were included in the price so like an idiot I complied.

When I arrived home, upon reading the contract I saw that I had purchased

1. \$2500 an extended Nissan warranty
2. \$2000 Gap insurance
3. \$1500 Tire and Wheel insurance
4. \$2000 Various Nissan goodies I had requested - but not at these prices interior bike rack (\$600) rain deflectors (\$400) remote starter (\$1000)

I immediately returned to Nemet motors to cancel the above \$8000 worth of items that were added to my contract price. My pleas fell on deaf ears. I returned to Nemet on two more occasions and was given the run-around.

I overpaid \$5000 for the vehicle!!!Hard-earned dollars that could be used elsewhere.

74. This post was written by Nemet customer Andrew Nadler of Astoria, New York. Client fails to mention he received a rebate of \$2,750. Client makes statements that all items were included in the price—yet the contracts signed by this client clearly show that client was well aware of all aspects. *See* Exhibit T.

75. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 73 about the Plaintiffs.

76. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Esther of Jamaica NY (12/30/07)

I filed a complaint earlier, as it turns out Nemet managed to have me spend over \$42,000 on a 2008 Altima Coupe. I recently looked the numerous complaints filed against them and I can relate to all of the other customer's stories. My question is, what can we do about Nemet and thei unfair practices?!

77. Please see paragraph 52 *supra*.

78. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraphs 51 and 76 about the Plaintiffs.

79. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Jai of Queens Village NY (02/05/08)

On Monday, January 28, 2008 there was an ad on page 67 of the New York Post for used cars. This ad was posted by Nemet Nissan located at the corner of 153rd St. and Hillside Av. in Jamaica, Queens. This ad included a 2007 Nissan Sentra, stk#613533 for the price of \$8,750. The next day, 1/29/08, I went to Nemet with the intention of purchasing this car for my niece. I met with a salesman named Ali and we were ready to make the deal. At this time the salesman pulled out the forms on which there was preprinted cost. These costs were as follows: 1. Delivery \$495 2. Dealer Prep \$349 3. Processing (Dealer Opt) \$ 45

This was in effect adding \$889 to the cost of the car. I questioned these additions and was told that the numbers on the forms could not be changed. I pointed out that the price of the car in being increased by more than 10%. The Manager came over and I was basically told no one will come in if they show the real price. I argued that these fees are for a new car which this was not. They started reading the fine print on the ad for the exclusions. These items were not part of the exclusions, meaning it should have been included in the ad price.

I had no problem paying tax, title & MV fees, but the additional \$889 was a big problem. At this time the Manager read in the ad Prices do not reflect certification fees? and he said that these were certification fees. Again, I did not have an issue with a reasonable fee, but this invoice was saying something else. I felt that their ad was deceptive and misleading. I said that to them, thanked them for their time and left.

The entire experience just did not feel right. Later that day I called Nemet's toll free line 1 800 608 8426 to ask about the ad. I called twice and spoke to two different people, Valerie and Shanise, about the ad. They both confirmed on the phone that there are no additional charges. Taxes, Title, DMV, and certification, which is about \$200 is the price, not just for this car, but all the cars in their ad.

Yesterday, 1/31/08, armed with this new information, my niece went to Nemet and asked for Shanise. Guess what? She only answers the phones and is not a salesperson, basically she does not know what she is talking about. My niece does speak to a salesperson who says that the car is sold, but they do have other cars available. The fees are as above and certification can add up to \$1200 to the price. Needless to say no deal was made.

I did not put out any money so I was not damaged economically, but I strongly feel that this is standard operating procedure at Nemet. I want to know if their tactics are legal, and what can be done about it.

80. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements are untrue and defamatory.

81. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is

therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 79 about the Plaintiffs.

82. Because Plaintiffs cannot confirm that the complaint in paragraph 79 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 79 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 79, the Defendant was therefore responsible for the substance and content of the complaint.

83. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Peter of Jamaica NY (02/14/08)

i bought a nissan sentra 2005 & was baited in w/ a good deal but was tricked into signing an extende warranty this haitian guy gene from the finance dept said it was some paper work i neglected to sign.

84. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements are untrue and defamatory.

85. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help him draft or revise his complaint, and promising the consumer that he could obtain some financial recovery by joining a class action lawsuit. Defendant is

therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 83 about the Plaintiffs.

86. Because Plaintiffs cannot confirm that the complaint in paragraph 83 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 83 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 83, the Defendant was therefore responsible for the substance and content of the complaint.

87. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Raymond of Ozone Park, NY (02/23/08)

I feel Nemet motors have cheated me out of the auto repairs cost. They charged me 2000 to replace the oil, oil filter, leaking intake manifold, and struts. The labor costs 1174.33 while only the parts cost 813.57.

I have contacted Cynthia Ambrose multiple times and she gave me the run around. She never answers nor returns my phone calls. The resale value of the car isn't even 2000. I feel they were disrespectful and unscrupulous. After speaking to the service manager (Marcus Hill) today, he too feels that the cost of the auto repair is a bit too high. I also feel that I am unfairly targeted because of my race. I hear her giggling during the first phone call that I made on 2/11. After being more assertive, she instead avoids me. I will NEVER take my car or buy one again from Nemet Motors.

After the repair, I still hear noises from the struts. At times it is even more pronounced than before. If I take my car back, I don't even know if they would even service it, much less damage it. They appear to be dishonest and untrustworthy.

Basically, I feel like I went to the cleaners. Nothing appears to be fixed. I want a refund or they need a lesson from the law.

88. Client has a 1998 Chevy Malibu that was bought from, and serviced by, Plaintiffs. Client neglects to mention that Plaintiffs also rotated his tires and preformed a fuel injection service for a clogged throttle body. Client was told if he was still hearing a noise he should bring the vehicle back but he has refused. It seems that client is trying to blame Plaintiffs for performing \$2000 worth of work on a vehicle that was not worth that amount. Unfortunately, this is a decision that client should have made before he authorized the repairs. After ten years of servicing client's vehicle, Plaintiffs somehow have become "dishonest and untrustworthy."

89. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 87 about the Plaintiffs.

90. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Michael of Douglaston NY (02/29/08)

While my mother was driving, she got hit by a car that failed to look both ways before popping out. The car ended up being beyond repair, so we were in the market for a new car. My parents

were looking for a car that wasn't too expensive because of our recent other new vehicle.

They ended up buying a Hyundai Sonata from Nemets on Hillside Avenue. They negotiated and did all the calculations and agreed to pay around 19000 - 20000. The price calculations were all on paper.

After we picked up the car, we received some trouble. We apparently got charged a lot more than what we agreed upon. When we went back to sort it out, Nemet did not have the papers we saw with the initial deal and it seems they have switched the numbers on the papers that my parents had to sign.

I am very disappointed and angry about how dealers like these are still in business and allowed to operate in such shady manners.

My parents are honest and hard-working and do not need this unnecessary stress and burden of these scam artists. Financial strains because of Nemets.

91. This post refers to a transaction with Nemet customer Sung Pae Choi of Douglaston, New York; Michael is a third party to the transaction. Client has copies of same contracts signed by them yet they allege differently. There are no other contracts or any other price except as appears on the attached contract. *See Exhibit U.*

92. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 90 about the Plaintiffs.

93. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief,

Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of —the following false, malicious and libelous statements of and concerning Plaintiffs:

David of Bayside NY (03/27/08)

I took delivery on a BRAND NEW 2008 Elantra last night. one block from the dealership, the airbag light went on. Took it back to the shop and they said oh drive it home- it's nothing. Just bring it in tommorow. Brand new car in the shop now and they won't say how long before I get it back. I went online and discovered that Hyundai has a history of airbag problems. I wonder if I am covered under NY's lemon law.

94. Based upon the information provided in the post, Plaintiffs could not determine which customer, if any, this post pertained to. However, upon information and belief, these statements were untrue and defamatory.

95. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help him draft or revise his complaint, and promising the consumer that he could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 93 about the Plaintiffs.

96. Because Plaintiffs cannot confirm that the complaint in paragraph 93 was even created by a Nemet Motors Customer based on the date, model of car, and first name, Plaintiffs believe that the complaint in paragraph 93 was fabricated by the Defendant for the purpose of attracting other consumer complaints. By authoring the complaint in paragraph 93, the Defendant was therefore responsible for the substance and content of the complaint.

97. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Chandravica of Jamaica NY (03/29/08)

I bought a 2005 Nissan at NEMET last year. I actually saw the vehicle for \$11,900 on the lot. . I was there all day with my husband and When we finally saw the financial person, Lou, he was in a rush and so were we.

We went through the paperwork quickly because we were the only ones around. When seeing the bill, the price of the car was different \$6500 and change, they added some Tires4Life and Drivecare both for thousands of dollars. This of course brought the price now to almost \$18,5000.

We told him we did not want it so he told us he would help subsidize for the first three months \$100 per month and then bring down our monthly payments after the three months. He also told us that after the three months he would take off the Tires4Life and DriveCare because we wont need it.

It is now a year later. When we go to NEMET, we are told that Lou NO LONGER works there due to things like this. Why should we suffer for his lies ad misleading information? Because we paid over \$1000 for Tires4Life, we tried getting new tires because the two right tires were damaged. It took 4 weeks of going back and forth physically and on the phone. Everyone gives you the run around there.

Now I am stuck with a monthly payment of \$310 and a car with plenty of negative equity. They sold me an overpriced car with lots of unnecessary extras. They verbally promised things that did not take place and the man who did no longer works there. NEMET does not want to take responsibility for Lou's actions. Instead they make it seem like they did not know what he was doing. This is a major burden in my finances which I did not plan or want.

98. This vehicle was bought by Asgar Khan with Chandravica Khan as the co-buyer. This purchase took place two years ago—on April 10, 2006—not last year as stated by the client. In addition, there is no record of these clients asking for new tires at anytime. The contract clearly states, there are no oral agreements. As to the statement that Lou is no longer working here “due to things like this” this is certainly no true, and although Lou was not working for Plaintiffs for a period of time he is now employed by Plaintiffs once again. *See* Exhibit V.

99. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 97 about the Plaintiffs.

100. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Shujana of South Richmond Hill NY (05/11/08)

Rushed me through the signing process and told me that my payments were going to be completely different than they actually were. Don't sign anything unless you've had time to read the paperwork thoroughly!!!

101. This post was made by Nemet customer Shujana Dhar of South Richmond Hill, New York. Client sought to renegotiate after delivery. Unfortunately, the special interest rate

offered by Nissan was 1.9%; however, a clerical error was made and the contract was printed and signed by the client with an interest rate of 2.9%. Plaintiffs offered to cancel all aftersale items and recontract at 1.9%, but client refused. Client is an opportunist who wanted Plaintiffs to cancel all aftersales, reduce the price of the vehicle *and* give her the 1.9%. Since we did not have a cashable contract we elected to take back the vehicle and refund the cash down. Plaintiffs and client signed general releases. *See* Exhibit W.

102. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 100 about the Plaintiffs.

103. On or after April 25, 2008, and continuing to date, Defendant published and disseminated on the website ConsumerAffairs.com—and, upon information and belief, Defendant participated in the preparation of, and so is responsible, in whole or in part, for the creation or development of—the following false, malicious and libelous statements of and concerning Plaintiffs:

Maura of Richmond Hill NY (05/30/08)

I went to Nemet in search of a **car** and was interested in a 2007 Hyundai Santa Fe. After negotiating a price of \$21,500, I was told that in order to hold the car, I could leave \$1,000. I left the deposit and went the next day to finance part of the loan. I originally went down with \$13,000.00 more (in certified check form), so that my loan would be only for 7,000. I was declined the loan, but they refused to give me back my money right away. The general manager, Scott said that it would take 14 days for me to get the money back (the money that I had just given him the day before).

This policy is only true when you are approved for a loan but decide not to go through with it. I however, was not approved for the loan. In addition, I was told by the manager that Nemet was not a welfare office, possibly a comment made because I am a hispanic and he believes hispanic people must be on welfare.

I've been calling everyday and going in person for my money, but to no avail. Finally today, Scott the manager told me if I don't leave Nemet (and keep asking for MY money)HE WOULD CALL THE POLICE ON ME!! Could you believe it? He would call the police because I am asking for MY MONEY? Shouldn't it be the other way around? Anyone doing business with Nemet should seriously consider checking all the negative reatings they have from the better business bureau.

I am desperately awaiting my \$13,000 because as of now, I don't have any form of transportation or any money to purchase a car.

104. This post was made by Nemet customer Maura Ona-Morales of Richmond Hill, New York. Customer left a bank check for \$13,000.00 and \$1000 on a credit card. Plaintiffs could not get loan approved and as per Plaintiffs' posted policy, customer's credit card was refunded on May 27. Customer did not want to wait the 20 business days required as to our posted policy and kept disrupting our business by getting loud in our showrooms. Customer was asked to leave but refused and harassed Plaintiffs' General Manager by following him and refusing to leave his office at that point client was informed she was trespassing and if she did not leave the police would be called. At no time was she treated any differently or statements made because of her ethic background. Customer bought a vehicle from Plaintiffs before and because of this Plaintiff issued the check within nine business days. Plaintiffs have a general release. *See Exhibit X.*

105. Upon information and belief, Defendant participated in the preparation of this complaint by soliciting the complaint, steering the complaint into a specific category designed to attract attention by consumer class action lawyers, contacting the consumer to ask questions

about the complaint and to help her draft or revise her complaint, and promising the consumer that she could obtain some financial recovery by joining a class action lawsuit. Defendant is therefore responsible, in whole or in part, for developing the substance and content of the false complaint in paragraph 103 about the Plaintiffs.

106. As a result of the publications and the acts of Defendant, Plaintiffs have suffered public contempt, ridicule, disgrace and prejudice; have suffered great mental pain and anguish; and have suffered irreparable injury to their good name, business reputation, and social standing, and have lost the esteem and respect of their friends, acquaintances, business associates, and of the public generally.

COUNT I
(Defamation)

107. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 106.

108. Through the publication of false and misleading statements on its website, specifically including, but not limited to, the statements alleged in paragraphs 33, 34, 35, 37, 40, 43, 47, 51, 54, 57, 61, 65, 69, 73, 76, 79, 83, 87, 90, 93, 97, 100, and 103, Defendant maliciously discredited the Plaintiffs' honesty, credit and business reputation.

109. As discussed above, Defendant knew, or was reckless in not knowing, that the published statements about Plaintiffs' business were false.

110. Defendant's false and misleading comments thus defamed Plaintiffs *per se* and caused harm to Plaintiffs' reputation and business.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and, against Defendant, issue injunctive relief and monetary relief in the amount of \$500,000.00, or in such greater amount to be proven at trial, punitive damages in the amount of

\$1,500,000.00, and pre-judgment interest, and grant such other and further relief that the Court may deem appropriate.

COUNT II
(Tortious Interference With A Business Expectancy)

111. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 106.

112. Defendant knew, or should have known that prospective Nemet customers, when searching for information on the Plaintiffs' business, would view Defendant's false statements relating to the Plaintiffs' business on Defendant's Consumeraffairs.com website.

113. Defendant intentionally and/or recklessly disregarded this knowledge and improperly posted false and misleading information about the Plaintiffs on its website.

114. Defendant's false and misleading articles caused potential Nemet customers not to contract with Plaintiffs, resulting in monetary damages to Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and, against the Defendant, issue injunctive relief and monetary relief in the amount of \$500,000.00, or in such greater amount to be proven at trial, punitive damages in the amount of \$1,500,000.00, and pre-judgment interest, and grant such other and further relief that the Court may deem appropriate.

COUNT III²
(Violation of Section 43(a)(1)(A) of the Lanham Act)

115. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 106.

² See footnote 1 *supra*.

116. Defendant operates in commerce under the guise of “consumer affairs” for the purpose of unlawfully diverting consumers and deriving a profit from misdirecting said consumers.

117. Defendant’s practice of using in commerce the name “consumer affairs” cause or are likely to cause confusion, to cause mistake, or to deceive as to its affiliation, connection, or association with a State, Federal, or other organization. Defendant’s practices of using in commerce the name “consumer affairs” cause or are likely to cause confusion, to cause mistake or to deceive as to the origin, sponsorship, or approval of Defendant’s services or commercial activities.

118. As a result of the foregoing, Plaintiffs are or are likely to be damaged by such acts.

119. Therefore, Defendant’s acts or practices, as set out above, are confusing, deceptive, or misleading and violate section 43 (a) (1) (A) of the Lanham Act, 15 U.S.C. § 1125 (a) (1) (A).

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and, against the Defendant, issue injunctive relief and monetary relief in the amount of \$500,000.00, or in such greater amount to be proven at trial, punitive damages in the amount of \$1,500,000.00, and pre-judgment interest, and grant such other and further relief that the Court may deem appropriate.

COUNT IV³
(Violation of Section 43(a)(1)(B) of the Lanham Act)

³ See footnote 1 *supra*.

120. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 106.

121. Defendant's practices of using in commercial advertising or promoting the name "consumer affairs" misrepresent or are likely to misrepresent the nature, characteristics, or quality of its services or commercial activities.

122. Defendant's misleading promotion of the "consumer affairs" name is likely to influence the purchasing decision and deceive consumers, including Plaintiffs' customers.

123. Defendant placed its false and misleading statements into interstate commerce by publishing on the World Wide Web.

124. As a result of the foregoing, Plaintiffs are likely to be damaged by the misrepresentation.

125. Therefore, Defendant's acts or practices, as set out above, are confusing, deceptive, or misleading and violate section 43 (a) (1) (B) of the Lanham Act, 15 U.S.C. § 1125 (a) (1) (B).

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and, against Defendant, issue injunctive relief and monetary relief in the amount of \$500,000.00, or in such greater amount to be proven at trial, punitive damages in the amount of \$1,500,000.00, and pre-judgment interest, and grant such other and further relief that the Court may deem appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, by and through their undersigned counsel, respectfully prays that judgment be entered in their favor of the foregoing Complaint against Defendant, and that this Court in addition:

a. Award Plaintiffs such monetary relief monetary relief in the amount of \$500,000.00, or in such greater amount to be proven at trial, punitive damages in the amount of \$1,500,000.00, and pre-judgment interest and costs, and grant such other and further relief that the Court may deem appropriate.

b. Permanently enjoin Defendant from violating Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

c. Permanently enjoin Defendant from defaming the Plaintiffs by causing untrue and misleading articles to be posted on its website;

d. Award all relief that the Court finds necessary to remedy Defendant's continuing violation of Section 43(a) of the Lanham Act 15 U.S.C. § 1125(a), and common law defamation and tortious interference with a business expectancy claims, including, but not limited to, redress and disgorgement of Defendant's unjust gains;

e. Award Plaintiffs their costs and attorneys' fees incurred in this matter.

JURY DEMAND

Plaintiffs respectfully request a trial by jury.

Respectfully submitted,

/s

Benjamin G. Chew, Esquire

Virginia bar number 29113

Andrew M. Friedman, Esquire (admitted *pro hac vice*)

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Dated: June 27, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of June, 2008, I served the foregoing PLAINTIFFS' AMENDED COMPLAINT was sent by hand and via the Court's electronic system to Defendant's counsel, as follows:

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