

**IN THE CIRCUIT COURT OF DUPAGE COUNTY
MUNICIPAL DEPARTMENT**

CHRISTOPHER STOLLER)
)
 Plaintiff,)
)
 v.)
)
 NISSAN MOTOR CO, LTD., CARLOS)
 GHOSN, CEO, NISSAN NORTH AMERICA,)
 INC., NOBAO ARAKI, PRESIDENT, NISSAN)
 INFINITI, LTD, ROLAND KRUEGER,)
 PRESIDENT, HIGHLAND PARK MOTOR)
 CARS, INC., MULLER, NISSAN, MICHAEL)
 MUELLER, CEO, MULLER AUTO GROUP,)
 MARK MUELLE, PRESIDENT, RAFAL)
 CHUDOBA, NISSAN MOTOR ACCEPTANCE)
 CORP., MARK KACZYNSKI, PRESIDENT,)
 JAMS, Swanson Martin & Bell, Estate of Bruce)
 Terlet, Robert McNamara, Ross Bartolotta,)
 Christian A. Sullivan, Burke, Warren, MacKay &)
 Serritella, Ira Levin, Allen S. Goldberg, Kent)
 Bowersock, Michael McCants, Jeffery Harris,)
 BIANCA ROBERTS, Agents, Assigns, Attorneys
 and
 John Does 1-10,) et al,)
)
 Defendants)

JURY DEMAND

**COMPLAINT TO VACATE ARBITRATION AWARD AND FOR DECLARATORY
JUDGMENT AGAINST THE DEFENDANTS**

Plaintiff, Christopher Stoller, 68, a disabled person, a protected person under the Americans for Disability Act (ADA), for his Petition to Vacate Arbitration Award (**Exhibit 1**) pursuant to 710 ILCS 5/12 and Complaint for Declaratory Judgment against the Defendants, allege and states as follows.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Christopher Stoller is a resident of Cook County.

2. Defendants do business in Cook County Illinois.
3. Count I of this Petition concerns an arbitration award (**Exhibit 1**) served on the Plaintiff on September 15, 2017. Pursuant to arbitration preceding that was held in Chicago on August 15, 16 and 17, 2017. Accordingly, venue before this court is proper pursuant to 710 ILCS 5/12 as the Parties' underlying contract did not call for litigation such as this to be brought in any other county.

4. THE ARBITRATION HEARING AND ERRONEOUS AWARD

5. On September 15, 2017, the Plaintiff was served with an arbitration award entered by JAMS pursuant to an arbitration hearing that was held on August 15, 16th and 17th, 2017. The hearing proceeded in Chicago, Illinois. A true and correct copy of the Award is attached and incorporated as Exhibit 1. The erroneous award was in favor of the defendants.

1. The underlying arbitration was between the Defendants as Respondents and the Plaintiff as Claimant.

2. The Claimant, Christopher Stoller responded to a ad in the newspaper, advertising a 2015 Nissan Sentra for \$149.00 per month for a car rental agreement. Christopher Stoller went to the Defendant Muller Nissan after receiving an email confirming the monthly rental lease fee of \$149.00, on October 17, 2017 in order to consummate the transaction. Christopher Stoller was a victim of a "switch and bait" transaction in that he was coned into signing a Nissan Sentra rental agreement for \$255.86 a month. See Exhibit 3 see attached Muller Nissan Sentra Rental Lease Agreement.

3. Pursuant to the terms and conditions of the Nissan Motor Acceptance Rental Agreement (Exhibit 3), it contained an arbitration clause which the Plaintiff utilized in bringing an arbitration action at Jams in Chicago, against the defendants for fraudulent mis representation, " bait and switch, deceptive trade practices, conversion, fraud, willful and wanton misconduct,

negligence, negligent hiring and supervision, conspiracy, aiding and abetting, breach of contract, promissory estoppel, unjust enrichment and equitable estoppel see a true and correct copy of the Plaintiff's Arbitration Complaint. **Exhibit 4**

4 Evidence was presented at the hearing by the Plaintiff that the defendants engaged in the unlawful practice of "switch and bait". See transcript of the Plaintiff's closing arguments marked as **Exhibit 5**.

5 The President of Defendant, Highland Park Motor Company/ Muller Nissan, **Mark Muller**, who was charged with engaging in the unlawful practice of "switch and bait" during the trial, (**Exhibit 5**) committed perjury,

6 Plaintiff attempted to introduce evidence in a post trial motion, prior to entry of the award that the President of Highland Park Motor Company/ Muller Nissan, Mark Muller, who was charged with engaging in the unlawful practice of "switch and bait" during the trial did in fact commit perjury, lied to the arbitrator See **Exhibit 5**. Stoller's Post trial Motion for Evidentiary Hearing. The arbitrator relied on the perjured testimony of Mark Muller in his arbitration award for the defendants and against the plaintiff.

7. Notwithstanding, the Plaintiff's prima facie and irrefutable evidence that the President of the Respondents Highland Park Motor Company, Mark Muller lied and committed perjury during the arbitration, was not a credible witness, the Arbitrator denied Stoller's Motion for a evidentiary hearing (**Exhibit 5**) regarding the perjury charge of the Claimant, and relied on the perjured evidence that Mark Muller presented during the trial in order to grant it's arbitration award in favor of Mark Muller Highland Park Motor Co, the Defendants and against the Plaintiff.

8 The Arbitrator committed clear error and reversible error, violated Jams Rule 16, by failing to conduct an evidentiary hearing of Stoller dispositive motion relating the his

allegation of perjury against the president of Highland Park Motor Co., Mark Muller. Instead, the Jams Arbitrator on page 11 ¶ 3 of the Arbitration Award (**Exhibit 1**) erroneously stated: Stoller has asked for a hearing on his allegation that Mark Muller lied when testifying he did not see Stoller at the dealership at the time Stoller leased the Sentra. Stoller claims his son, Max, would testify that Mark Muller was not truthful. The arbitrator denies the request for a hearing as it is irrelevant to the arbitrator's decision.”.

9. The arbitration award (Exhibit 1) should be vacated by this court on the grounds that the Jams Arbitrator violated 710 ILCS 5/129(a)(4) The arbitrator...refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provision's of Section 5, as to prejudice substantially the rights of the Plaintiff.

10. The Jams Arbitrator also violated Jams Rule 17(b) Exchange of Information “Each Party may take one deposition of an opposing party or of one individual under the control of the opposing Party.” Plaintiff was entitled to take the Depositions of the following Defendant\Respondents: Nissan Motor Company LTD., Carlos Ghosn, Nissan North America Inc., Nobao Araki, Nissan Infinite LTD., Roland Krueger. The JAMS arbitrator refused to allow the Plaintiff to take the said depositions of any of the above parties of which he was entitled to under Jams Rule 17(b).

11. Attorney for the Defendant, Nissan Motor Acceptance Corporation Bruce Terlep agreed to pay for have of the stenographic record, which has cost the Plaintiff over \$15,000,00, pursuant to Jams rule 22(k)(i) however after demand, the Mr. Terlep's law firm Swanson Martin Bell refused to pay for their portion of the stenographic record. (\$7500.00)

12. The Plaintiff filed a Motion for Default on March 13, 2017 (Exhibit 6) against all parties who had failed to answer the complaint and were properly served: Namely NISSAN MOTOR CO, LTD., CARLOS GHOSN, CEO, NISSAN NORTH AMERICA,INC., NOBAO ARAKI, PRESIDENT, NISSAN INFINITI, LTD, ROLAND KRUEGER, PRESIDENT,

HIGHLAND PARK MOTOR , CARS, INC., MULLER, NISSAN, MICHAEL e
MUELLER, CEO, MUELLER AUTO GROUP, MARK MUELLER, PRESIDENT, RAFAL
CHUDOBA, NISSAN MOTOR ACCEPTANCE CORP., MARK KACZYNSKI,
PRESIDENT.

13. The Arbitrator issued a scheduling Order No. 2 on April 27, 2017 (**Exhibit 7**) at ¶ 3 “Motion for Default responses to be filed by May 20, 2017.

14. Defendants never filed their responses to the complaint. At the close of the Defendant’s case on page 6 of the official transcript incorporated herein by reference. Plaintiff’s counsel make the following request to default the Defendants:

PHILIP KISS: What I would like to argue is that your Honor. I think that we are entitled to a default...

ARBITRATOR: I appreciate that. Okay. So I thought I—I’ve ruled on already and I think I did that at the motion phase of this case. I indicated that no default would be allowed...

PHILIP KISS: I’m asking for a default against NMARC. And in addition to that, whether or not they filed a response to that, we’re under—we all agreed that we are acting under the rules of circuit court. And under the rules of the circuit court an answer is required , and we’re entitled to –we’re entitled to a default. They never answered.

THE ARBITRATOR: JAMS require a response that’s what the demand for arbitration says, and it gives the other party a period of time, which I don’t recall the exact period of time to file a response. ..I don’t remember, but apparently they did not file a response...

15. The Arbitrator committed clear error and reversible error by failing to grant the Plaintiff’s Motions for Default (**Exhibit 6**).

16. In the arbitrator’s scheduling Order No. 1 Exhibit 8 The Arbitrator stated on page 2 of his Order:

APPLICABLE LAW:

- a. The arbitration shall be administered in accordance with the JAMS Comprehensive Arbitration rules.
- b. Applicable procedural law shall be Illinois.
- c. Applicable substantive law shall be Illinois.

According to the Applicable Illinois procedural law **Rule 181. Appearances--Answers--Motions**

(a) When Summons Requires Appearance Within 30 Days After Service. When the summons requires appearance within 30 days after service, exclusive of the day of service (see Rule 101(d)), the 30-day period shall be computed from the day the copy of the summons is left with the person designated by law and not from the day a copy is mailed, in case mailing is also required. The defendant may make his or her appearance by filing a motion within the 30-day period, in which instance an answer or another appropriate motion shall be filed within the time the court directs in the order disposing of the motion. If the defendant's appearance is made in some other manner, nevertheless his or her answer or appropriate motion shall be filed on or before the last day on which he or she was required to appear.

11. The plaintiff was entitled to a default judgment entered against all of the named parties who were served and failed to answer Plaintiff's complaint: **NISSAN MOTOR CO, LTD., CARLOS GHOSN, CEO, NISSAN NORTH AMERICA, INC., NOBAO ARAKI, PRESIDENT, NISSAN) INFINITI, LTD, ROLAND KRUEGER, PRESIDENT, HIGHLAND PARK MOTOR) CARS, INC., MULLER, NISSAN, MICHAEL MUELLER, CEO, MULLER AUTO GROUP, MARK MUELLE, PRESIDENT, RAFAL CHUDOBA, NISSAN MOTOR ACCEPTANCE CORP., MARK KACZYNSKI, PRESIDENT.**

12. The Arbitrator committed clear error and reversible error by failing to grant the Plaintiff his default judgments and failing to following Illinois Supreme Court Rule Applicable Illinois procedural law.

13. The Arbitrator committed clear error and reversible error by disregarding NISSAN MOTOR ACCEPTANCE CORP (herein after referred to as "Nissan" and/or "NMAC")

misrepresentation(s) of material fact to the Arbitrator in direct violation of ARDC Rule 3.3(a)¹. “NMAC’S involvement in this matter arises by virtue of the fact that it was the assignee of the lease contract entered into between Claimant and Muller Nissan”² when in fact NMAC was the servicer of the loan _

17. The Arbitrator committed clear error and reversible error by permitting Nissan to violate Rule 3.3(a), by relying on an Illinois Decision, which Nissan proffered, that has no precedent value here *Jarvis v. South Oak Dodge Inc .*, 201., Ill. 2d 81 (2002), which held that “under Illinois Law, the assignee of a lease contract is not liable for such misrepresentation,” When Nissan Affiniti LT, a California Corporation that is unlicensed within the State of Illinois, is the Assignee and NMAC is the servicer for the monthly payments of the lease.

18. NMAC was not the assignee of the lease³, they are a loan servicer. See ¶24 of the lease which is attached as (“**Exhibit 1**”).⁴ The holdings in *Javis, as well known to the arbitrator were not* not applicable here, but the arbitrator relied upon them anyway.

19. The Arbitrator committed clear error and reversible error by completely ignoring the fact that the following defendant companies were not licensed to do business in Illinois : **NISSAN MOTOR CO, LTD., NISSAN NORTH AMERICA, INC., INFINITI, LTD,** and thus had no standing to sue or maintain the litigation under the provisions of the Illinois Business Corporation Act §3.05 13.05 see also

1 ARDC Rule 3.3(a) making false or misleading statements of fact and/or law to a tribunal.

2 At page 2 ¶2 of NISSAN's Motion to Dismiss.

3 NMAC does not provide any affidavit supporting what legal status NMAC has or has not in this proceeding.

4 It is important that the portion of the lease that the Petitioner is citing to is conspicuously absent from the copy of the lease that NISSAN provided and attached to their motion marked as **Exhibit 1**, the Motor Vehicle Lease Agreement with Arbitration Clause. Such duplicity is sufficient for this court to grant a Rule 137 Sanction against NMAC and to issue a Judgment in favor of the Petitioner for committing a fraud on the court. Whenever any officer of the court commits fraud during a proceeding in the court, he is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function, thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶60.23.

First Mortgage Company LLC v. Daniel Dina and Gratiela Dina 2014 IL __, App (2d) 130567, No 2-13-0567

Opinion filed on March 31, 2014. see Exhibit 9

17. Relief sought by Claimant: (a) compensatory damages in the amount that will deter the Respondents conduct of \$100,000; (b) punitive damages for the maximum amount allowed by law; (c) all costs and legal fees incurred; (d) to terminate the current Motor Vehicle Lease Agreement with Arbitration Clause; (e) to credit the Claimant \$156.00 per month from October 2015 to current date; and (f) for the Respondents to issue a new Lease Agreement with Arbitration Clause containing a total monthly payment of \$99.00.
18. Amount in controversy is over \$250,000.00
19. Response: Respondents may file a Response and Counter-Claim to the above stated claim according to the applicable Arbitration rules. Send the original Response and Counter-Claim to the Claimant at the following address: JAMS 71 S. Wacker Drive, Suite 3090, Chicago, IL 60606 (312) 655-0555; Attention: Christi.
20. Request for Hearing: JAMS is requested to set this matter for a hearing in Chicago.

PARTIES

Claimant

21. Christopher Stoller, 67, is a disabled protected person under the Americans for Disability Act (ADA). Address: P.O. Box 4195, Oak Park, Illinois 60303 (773) 746-3163; ldms4@hotmail.com

Respondents

22. Highland Park Motor Cars, Inc., 1340 Park Avenue West, Highland Park, Illinois, 60035; (847) 433-7900.
23. Michael Mueller, Ceo and Mark Mueller, President, Highland Park Motor Cars, Inc., 1340 Park Avenue West, Highland Park, Illinois, 60035; (847) 433-7900.

24. Mueller Auto Group, 1350 Park Avenue West, Highland Park, Illinois 60035; (847) 433-7900.
25. Mueller Nissan, 1350 Park Avenue West, Highland Park, Illinois 60035; (847) 433-7900.
26. Rafal Chudoba, Muller Auto Group, Sales and Leasing Consultant, 1350 Park Avenue West, Highland Park, Illinois 60035; (847) 433-7900.
27. Nissan Infinite, Ltd, P.O. Box 254648, Sacramento, California 95865.
28. Roland Krueger, President, Nissan Infinite, Ltd, P.O. Box 254648, Sacramento, California 95865.
29. Nissan Motor Acceptance Corporation, 8900 Freeport Pkwy Rear Dock, Irving Texas, 75063-2441; (214) 596-4000.
30. Mark Kaczynski, President, Nissan Motor Acceptance Corporation, 8900 Freeport Pkwy Rear Dock, Irving Texas, 75063-2441; (214) 596-4000.
31. Nissan North America, Inc., One Nissan Way, Franklin, Tennessee 37067; (615) 725-1000.
32. Nobao Araki, President, Nissan North America, Inc., Nissan North America, Inc., One Nissan Way, Franklin, Tennessee 37067; (615) 725-1000.
33. Nissan Motor Co, LTD., 2 Takara-Cho Kanagawa-Ku, Yokohama-shi Kanagawa, 220-8623 Japan, 81(0)45-523-5523.
34. Nabao Araki, President, Nissan Motor Co, LTD., 2 Takara-Cho Kanagawa-Ku, Yokohama-shi Kanagawa, 220-8623 Japan, 81(0)45-523-5523.

RESPONDENTS CHARGED

35. Highland Park Motor Cars, Inc is a car dealership, a corporation organized under the laws of the United States, doing business in Cook County, Illinois. The corporation is used by the Respondents as a criminal enterprise which included repeated acts of consumer fraud, misrepresentation, bait and switch, false advertising, deceptive trade practices and deception.
36. Respondent Mark Mueller, President, of Highland Park Motor Cars, Inc, (HPMI), individually and in his official capacity is the chief executive officer of HPMI, and is in charge of all its officers, agents, servants, employees who are under his control. Mark Mueller participated in and encouraged, sanctioned, condoned and ratified the deceptive trade practices and the bait and switch policy into his auto dealership which was directly employed to defraud the Claimant Christopher Stoller. Mark Mueller acted with malice, fraud, gross negligence, oppressiveness which was not a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other failing, but that Mark Mueller acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the business of HPMI. Mark Mueller is directly liable under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability¹.
37. Respondent Michael Mueller, CEO of Highland Park Motor Cars, Inc., (HPMI), Mueller Auto Group, Mueller Nissan, individually and in his official capacity and in charge of all of the officers, agents, servants and employees under his control. Michael Mueller participated in and encouraged, sanctioned, condoned and ratified the deceptive trade practices and the bait and switch policy into his auto dealership which was directly employed to defraud

¹Under the Pinkerton Theory of Liability, a Defendant may be found guilty of a substantive offense committed by a co-conspirator if the offense was committed in furtherance of the conspiracy at the time the Defendant was a member of the conspiracy; this is true even if the Defendant neither participated in nor had knowledge of the substantive offense.

the Claimant Christopher Stoller. Michael Mueller acted with malice, fraud, gross negligence, oppressiveness which was not a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other failing, but that Michael Mueller acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the business of HPMI. Michael Mueller is directly liable under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

38. Mueller Auto Group is a car dealership organized under the laws of the United States and is doing business in Cook County, Illinois. The company is used by the Respondents as an unlawful enterprise to defraud the Claimant through their deceptive trade practices and their bait and switch scheme of their partners and co-conspirators, agent, customer Respondent Highland Park Motor Cars, Inc., when they conspired and colluded with Highland Park Motor Cars, Inc., and participated in and encouraged, sanctioned, condoned and ratified HPMI's deceptive trade practices and unlawful conduct under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

39. Muller is a car dealership organized under the laws of the United States and is doing business in Cook County, Illinois. The company is used by the Respondents as an unlawful enterprise to defraud the Claimant through their deceptive trade practices and their bait and switch scheme of their partners and co-conspirators, agent, customer Respondent Highland Park Motor Cars, Inc., when they conspired and colluded with Highland Park Motor Cars, Inc., and participated in and encouraged, sanctioned, condoned and ratified HPMI's deceptive trade practices and unlawful conduct under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

40. Rafal Chudoba, individually and in his official capacity as a Sales and Leasing Consultant acted with acted with malice, fraud, gross negligence, oppressiveness which was not a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other failing, but that Mark Mueller acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the business of his employer HPMI. Rafal Chudoba used the bait and switch deceptive trade practice on Claimant Christopher Stoller when he told Mr. Stoller that he would be able to lease a 2016 Nissan Sentra for the advertised price of

\$149.00 per month, which they had agreed upon, in order to get Mr. Stoller to come into the dealership. When Claimant Stoller, who is a Social Security Dependant came into the dealership Rafal Chudoba coerced Stoller into a payment of \$255.86 per month for a 2015 Nissan Sentra. This price is a staggering 30% increase of what the advertised cost of the vehicle was and what the parties had already agreed to. Respondent Chudoba also defrauded Claimant Stoller once again when he told him he was getting a 2015 Sentra instead of the 2016 they had previously agreed to.

41. Nissan Infiniti is a car dealership organized under the laws of the United States and is doing business in Cook County, Illinois. The company is used by the Respondents as an unlawful enterprise to defraud the Claimant through their deceptive trade practices and their bait and switch scheme of their partners and co-conspirators, agent, customer Respondent Highland Park Motor Cars, Inc., when they conspired and colluded with Highland Park Motor Cars, Inc., and participated in and encouraged, sanctioned, condoned and ratified HPMI's deceptive trade practices and unlawful conduct under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

42. Roland Kruejer, President of Nissan Infiniti, individually and in his official capacity and is in charge of all its officers, agents, servants, employees who are under his control. Roland Kruejer participated in and encouraged, sanctioned, condoned and ratified the deceptive trade practices and the bait and switch policy into his auto dealership which was directly employed to defraud the Claimant Christopher Stoller. Roland Kruejer acted with malice, fraud, gross negligence, oppressiveness which was not a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other failing, but that Roland Kruejer acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the business of Nissan Infiniti. Roland Kruejer is directly liable under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.
43. Infiniti Motor Company is a car dealership organized under the laws of the United States and is doing business in Cook County, Illinois. The company is used by the Respondents as an unlawful enterprise to defraud the Claimant through their deceptive trade practices and their bait and switch scheme of their partners and co-conspirators, agent, customer Respondent Highland Park Motor Cars, Inc., when they conspired and colluded with Highland Park Motor Cars, Inc., and participated in and encouraged, sanctioned, condoned and ratified HPMI's deceptive trade practices and unlawful conduct under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.
44. Nissan Motor Acceptance Corp is a car dealership and financial company organized under the laws of the United States and is doing business in Cook County, Illinois. The company is used by the Respondents as an unlawful enterprise to defraud the Claimant through their deceptive trade practices and their bait and switch scheme of their partners and co-conspirators, agent, customer Respondent Highland Park Motor Cars, Inc., when they conspired

and colluded with Highland Park Motor Cars, Inc., and participated in and encouraged, sanctioned, condoned and ratified HPMI's deceptive trade practices and unlawful conduct under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

45. Mark Kaczynski, President of Nissan Motor Acceptance Corp, individually and in his official capacity is in charge of all its officers, agents, servants, employees who are under his control. Mark Kaczynski participated in and encouraged, sanctioned, condoned and ratified the deceptive trade practices and the bait and switch policy into his auto dealership which was directly employed to defraud the Claimant Christopher Stoller. Mark Kaczynski acted with malice, fraud, gross negligence, oppressiveness which was not a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other failing, but that Mark Kaczynski acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the business of Nissan Motor Acceptance Corp. Mark Kaczynski is directly liable under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

46. Nissan North America, Inc is an automotive manufacturer, car dealership and finance company that is organized under the laws of the United States and is doing business in Cook County, Illinois. The company is used by the Respondents as an unlawful enterprise to defraud the Claimant through their deceptive trade practices and their bait and switch scheme of their partners and co-conspirators, agent, customer Respondent Highland Park Motor Cars, Inc., when they conspired and colluded with Highland Park Motor Cars, Inc., and participated in and encouraged, sanctioned, condoned and ratified HPMI's deceptive trade practices and unlawful conduct under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

47. Nobao Araki, President of Nissan North America, Inc is liable individually and in his official

capacity is in charge of all its officers, agents, servants, employees who are under his control. Nobao Araki participated in and encouraged, sanctioned, condoned and ratified the deceptive trade practices and the bait and switch policy into his auto dealership which was directly employed to defraud the Claimant Christopher Stoller. Nobao Araki acted with malice, fraud, gross negligence, oppressiveness which was not a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other failing, but that Nobao Araki acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the business of Nissan North America, Inc. Nobao Araki is directly liable under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

48. Nissan Motor Co, Ltd. is an automobile manufacturing corporation that is organized under the laws of the United States and is doing business in Cook County, Illinois. The corporation is used by the Respondents as an unlawful enterprise to defraud the Claimant through their deceptive trade practices and their bait and switch scheme of their partners and co-conspirators, agent, customer Respondent Highland Park Motor Cars, Inc., when they conspired and colluded with Highland Park Motor Cars, Inc., and participated in and encouraged, sanctioned, condoned and ratified HPMI's deceptive trade practices and unlawful conduct under the Doctrine of Respondent Superior and the Pinkerton Theory of Liability.

49. This action is also brought against John Does 1-10 which include lawyers, predecessors, partners, associates, agents, employees, affiliates, and subsidiaries which hereinafter are also included in the term Respondents. Claimant is ignorant to the true identities and capacities of these Respondents and therefore sues them by such fictitious names. Claimant will add their names to the Complaint to allege their true identities when this information is ascertained.

50. Claimant believes and thereon alleges that at all times mentioned herein each of the remaining Respondents were acting in the course and scope of such relationship or alternatively while purporting to act within the purpose and scope of such relationship exceeded said authority or alternatively while purporting to act to further instead engage in self dealing and acted to harm said relationship or alternatively colluded and conspired with the other Respondents in the harm caused to the Claimant.

JURISDICTION

51. Claimant hereby demands that the following dispute be submitted to final and binding Arbitration pursuant to the Arbitration Clause in the attached Lease (Paragraph 29 of “**Exhibit 1**”).

52. The Claimant has demanded the Arbitration before JAMS.

FACTUAL BACKGROUND

53. Christopher Stoller, 67, is a disabled senior citizen who is a protected person under the Americans for Disability Act (ADA) who saw an ad in the newspaper which stated that the Respondents Muller Nissan, Muller Auto Group, Nissan Infiniti, Nissan Motor Acceptance, Nissan North America and Nissan Motor Company were offering a 2016 Nissan for a monthly lease amount of \$159.00 (“**Exhibit 2**”).

54. Mr. Stoller called the company listed on the ad on or about October 9, 2016, and spoke with Respondent Rafal Chudoba, Sales and Leasing Agent for said Respondents.

55. Mr. Stoller requested that Respondent Chudoba provide a written email conformation of the terms and conditions of the 2016 Nissan Sentra which was advertised in the newspaper.

56. Respondent Chudoba sent a confirmation email to Claimant Stoller on October 10, 2015 (“**Exhibit 3**”) which stated, “I spoke with my manager about how much would be due at signing and your total amount due would be \$1,224.64 to reach the \$149.00 payment for 3 years 36,000 miles. The total taxes that you are paying are \$667.14. Please let me know if this works so we can possibly schedule a time to come in for a test drive.”
57. Claimant Stoller called Respondent Chudoba after receiving his confirmation email for the terms and conditions for the Sentra Lease. Respondent Chudoba told Stoller that if he came in immediately Muller Nissan would give him a 2016 Nissan Sentra on the same terms and conditions as the 2015 Sentra.
58. On October 17, 2015, Claimant Stoller went to Respondents’ Highland Park Motor Cars, Inc., located at 1340 Park Avenue West, Highland Park, Illinois, to consummate the 2016 Sentra Lease pursuant to the terms and conditions discussed with Respondent Chudoba.
59. Upon arriving at Highland Park Motor Cars, Inc., Respondent used the bait and switch deceptive trade practice changing the terms and conditions. Claimant Stoller paid \$1,275.00 down and his monthly payment would be \$255.86 plus .10 cents a mile for mileage in excess of 12,000 miles per year.
60. Respondent Chudoba told Claimant Stoller there would be no charge for mileage during the term of the 3 year lease (see Exhibit 3; email from Respondent Chudoba which does not state anywhere in the email about additional mileage charges).
61. The Claimant was not given a 2016 Sentra as promised but was given a 2015 Sentra.
62. Respondent Chudoba made the following misstatements of material facts to Claimant Stoller in order to induce him to enter into the Sentra Lease:

- i. Respondent Chudoba confirmed in writing that the monthly payment of the Sentra would be \$149.00 for 3 years;
- ii. When Claimant Stoller arrived at Respondent Muller Nissan in Highland Park the Respondents baited and switched Stoller's monthly payments for the Lease from \$149.00 to \$255.86 which is a 30% increase than what was advertised and what was promised and confirmed in writing in an email from Respondent Chudoba.
- iii. Rafal Chudoba told Christopher Stoller that there would be no extra mileage charges. Again, Claimant Stoller was baited and switched on the mileage issue in the Lease. There is a .10 cent mileage charge for miles driven in excess of 12,000 miles per year.
- iv. Respondent Chudoba promised Claimant Stoller that if he came in immediately and executed a Sentra lease that Respondent Muller Nissan would give Claimant Stoller a 2016 Sentra; after Stoller executed the lease he was presented with a 2015 Sentra.

63. Respondent Chudoba lied to Claimant Stoller in order to get him to sign the lease for the Sentra.

64. Respondents used false advertising promoting a Sentra Lease for only \$149.00 per month when in fact the Respondents charged Claimant Stoller, a Social Security Dependent over 30% more than what was advertised.

COUNT I

Consumer Fraud² and Deceptive Business Practices Act

² Count I sounds in violation of the Consumer Fraud Act. A violation of the Consumer Fraud Act must be plead with the same particularity and specificity required in common law fraud claims. *Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App.3d 1139, 1145 (1st Dist 2001). Count I pleads with sufficient particularity facts

(815 Ill. Comp. Stat. 505/1 ET SEQ - applies to all Respondents)

65. The allegations contained in Paragraphs 1 through 49 are incorporated by reference in this count as if fully restated herein.
66. The Respondents used false and deceptive advertising in a general circulation news paper to induce the Claimant into entering into a car lease.
67. Respondents Nissan Motor Co. Nissan North American, Inc. Nissan Infiniti, Lt, Highland Park Motor Cars, Inc., Muller Nissan, Muller Auto Group, Carlos Ghosn, Nobao Araki, Roland Krueger, Michael Muller, Mark Muller, Rafal Chudoba et al used false and deceptive advertising to fraudulently induce Claimant into entering into a Sentra Car Lease.
68. Said Respondents used their advertisement along with a written email confirmation of false terms and conditions to bait and switch the Claimant into entering into a false lease.
69. In the advertisement at bar, Respondents knew that it was false and the Respondents did not honor the rental price in the advertisement and which was fully discussed with Respondent Chudoba.
70. Said Respondents falsely represented to Claimant Stoller that they would abide by the terms and conditions and backed it up with a confirming email.
71. Respondent Chudoba made false statements to Claimant Stoller that there would be no additional charges for miles and that the monthly lease rate would be \$149.00 and Claimant Stoller would be given a 2016 Sentra instead of a 2015 if he came into the dealership immediately which he did.

including what misrepresentations were made, when they were made and who made the misrepresentations and to whom they were made. *Merriless v. Merriless*, 2013 Ill. App. (1st Dist. 2013) 121897 Paragraph 15.

72. Respondent Chudoba knew when he made the above statements to the Claimant that they were false.

73. As a result of Respondent Chudoba's fraudulent conduct and misrepresentations to Claimant Stoller it renders the advertisement to be a false advertisement and a clear violation of ILCFA.

74. Claimant Stoller is defined under the Statute as a consumer; 815 Ill. Comp. Stat. 505/1.

75. Respondents advertise that they are an authorized Nissan Sentra car dealership.

76. Respondents used deceptive advertising to lure the disabled claimant into entering into a lease agreement under false terms and conditions and took unfair advantage of a disabled senior citizen.

77. Claimant Stoller was damaged by the Respondents' deceptive advertisement and their fraudulent conduct.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT II

Promissory Estoppel³

³An action for promissory estoppel, like an action for breach of contract "when the Respondent fails to fulfill its promise. *Weiss v. Smulders*, 313 Conn. 227, 245, 96A 3d. 1175 (2014); Count II adequately states a claim against

78. The allegations contained in Paragraphs 1 through 62 are incorporated by reference in this count as if fully restated herein.
79. Respondents breached their promise to provide the Claimant with a 2016 Nissan Sentra for \$149.00 per month.
80. Respondents breached their promise to the Claimant to provide him with a 2016 Sentra instead of the 2015 Sentra if Claimant came immediate into the Muller Nissan dealership and executed the lease.
81. Respondents breached their promise to the Claimant that if the Claimant came immediate into the Muller Nissan dealership and executed the lease they would waive any charges for miles driven in excess of 12,000 per year.
82. Claimant Stoller relied on the promises of the Respondents Nissan Motor Co. Nissan North American, Inc. Nissan Infiniti, Lt, Highland Park Motor Cars, Inc., Muller Nissan, Muller Auto Group, Carlos Ghosn, Nobao Araki, Roland Krueger, Michael Muller, Mark Muller, Rafal Chudoba in the course and scope of their employment and in furtherance of Nissan to Claimant Stoller's detriment.
83. Based upon the unlawful actions and false promises of Respondent Chudoba the Claimant was damaged as a direct and proximate result of Respondents breach of their promises.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from

Respondents for relief under a promissory estoppel claim. The Claimant alleges that (1) Respondents made an unambiguous promise(s) to the Plaintiffs; (2) Claimant relied on such promise(s) to the Claimant; (3) Claimant reliance was expected and foreseeable by Respondents; and (4) Claimant relied on the promise to its detriment. *Chatham Surgicore, Ltd. V. Health Care Serv. Corp.*, 356 Ill. App.3d 795, 800 (1st Dist. 2005). *Mitchell*, 291 Ill.

App.3d at 932-33

continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT III

Equitable Estoppel⁴

84. The allegations contained in Paragraphs 1 through 68 are incorporated by reference in this count as if fully restated herein.

85. The Sales and Leasing Agent, Rafal Chudoba on behalf of all of the Respondents concealed the fact that the Respondents did not intend to offer the Claimant a Sentra Lease for the cost of \$149.00 as advertised in the news paper.

86. Claimant relied upon the admissions and statements of Respondent Chudoba who was the Sales and Leasing Agent, that Claimant would not be charged for any mileage and that he would receive a 2016 Sentra instead of the 2015 model.

87. Respondents had actual and constructive knowledge of the true facts regarding the actual terms and conditions that they were seeking from Stoller's Sentra Lease which were entirely different from those Respondent Chudoba represented to Stoller in their correspondence.

88. Claimant Stoller relied upon the said misrepresentations of the Respondents which caused Claimant Stoller to enter into a lease agreement to his detriment.

89. Claimant was damaged by the conduct of the Respondents.

⁴ Under the law "equitable estoppel" is a doctrine that will assist a party by precluding the opposing party from asserting or denying the existence of a particular fact. *AFSCME v. Bank One*, 267 Mich. App. 281,293, 705 N.W. 2d, 355, 363 (Mich. App. CT. 2005). Equitable Estoppel may be raised when "(1) a party, by representations admissions, or silence intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on that belief; and (3) the other party is prejudiced if the first party is allowed to deny the

existence of those facts." *AFSCME*, 267 Mich. App. at 293, 705 N.W. 2d. at 363.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT IV

Breach of Fiduciary Duty⁵

90. The allegations contained in Paragraphs 1 through 74 are incorporated by reference in this count as if fully restated herein.

91. Respondent Chudoba the Sales and Leasing Agent for Respondents Nissan Motor Co. Nissan North American, Inc. Nissan Infiniti, Lt, Highland Park Motor Cars, Inc., Muller Nissan, Muller Auto Group, Carlos Ghosn, Nobao Araki, Roland Krueger, Michael Muller, Mark Muller, in the course and scope of his employment and in furtherance of the Nissan car business all of the Respondents and their employees agreed to exercise their judgment on behalf of the disabled Claimant Christopher Stoller.

92. Respondent Chudoba gained influence and superiority over Christopher Stoller by creating a fiduciary relationship as well known to the Respondents.

93. Claimant Stoller trusted and had confidence in the Respondents Nissan Motor Co.

Nissan North American, Inc. Nissan Infiniti, Lt, Highland Park Motor Cars, Inc., Muller Nissan,

⁵ Count VI adequately states a claim against Respondents for relief under a promissory estoppel claim. The Claimant alleges that (1) Respondents made an unambiguous promise(s) to the Claimant; (2) Claimant relied on

such promise(s) to the Claimant; (3) Claimant reliance was expected and foreseeable by Respondents; and (4) Claimant relied on the promise to its detriment. *Chatham Surgicore, Ltd. V. Health Care Serv. Corp.*, 356 Ill. App.3d 795, 800 (1st Dist. 2005). *Mitchell*, 291 Ill. App.3d at 932-33

Muller Auto Group, Carlos Ghosn, Nobao Araki, Roland Krueger, Michael Muller, Mark Muller, Rafal Chudoba and did not believe that such trusted automobile firms, with their good reputation, would try and defraud the Claimant like they did.

94. Respondents breached their fiduciary duty⁶ to the Claimant by failing to abide by the representation of the Sales and Leasing agent Rafal Chudoba when Claimant Stoller entered into a Lease on October 17, 2015.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT V

Common Law Fraud⁷

95. The allegations contained in Paragraphs 1 through 79 are incorporated by reference in this count as if fully restated herein.

⁶ The Respondents' owed a fiduciary duty to the Claimant. *Ward Enters v. Banc & Olufsen Am.*, 2003 U.S. Dist. Lexis 21610, 2003 WL 22859793 at 2 (N.D. ILL. 2003) (citing *Bixby's Food Systems, Inc., v. McKay*, 985 F. supp. 802, 808 (N.D. ILL., 1997); *McGowan v. Pillsbury Co.*, 723 F. Supp. 530, 536 (W.D. Wash. 1989)). Special circumstances for the Claimant which created the breach of fiduciary duty because the Claimant reposed trust and confidence in the Respondents who thereby gained a resulting influence and superiority over the Claimant. *Humana Health Plan, Inc. v. Heritage Ind. Med. Group P.C.*, 2001 U.S. Dist. Lexis 78, 2001 WL 8878 at 2 (N.D. ILL. 2001) (quoting *Oil Express National, Inc. v. Latos*, 966 F. Supp. 650, 651 (N.D. ILL. 1997).

⁷Count V sounds in violation of the Consumer Fraud Act. A violation of the Consumer Fraud Act must be plead with the same particularity and specificity required in common law fraud claims. *Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App.3d 1139, 1145 (1st Dist 2001). Count V pleads with sufficient particularity facts including what misrepresentations were made, when they were made and who made the misrepresentations and to whom they were made. *Merriless v. Merriless*, 2013 Ill. App. (1st Dist. 2013) 121897 Paragraph 15.

96. Respondent Chudoba, the Sales and Leasing Agent for Respondents knew or should have known that the oral statements made to Claimant Stoller in his email of October 10, 2015, were knowingly false.

97. Respondent Chudoba made false statements to Claimant Stoller was material and were made with the intent to induce Claimant Stoller to act and to lease a Sentra from the Respondents and to defraud the Claimant. Claimant Stoller had a right to rely Respondent Chudoba's statements in which he did and the whole time Respondent Chudoba knew they were false statements which he made with the intent to get Claimant Stoller into leasing a vehicle.

98. Claimant Stoller was damaged by the Respondent's conduct.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT VI

Unjust Enrichment⁸

99. The allegations contained in Paragraphs 1 through 83 are incorporated by reference in this count as if fully restated herein.

⁸ The Claimant has stated a valid claim for unjust enrichment under Illinois law. Claimant has established that Defendant (1) received a benefit; (2) to Claimant's detriment; and (3) Respondents retention of the benefit would be unjust. *American Hardware Manufacturers v. Elsevier*, 2004 U.S. Dist. Lexis 28007.

100. Respondents' unjustified over charge of the Sentra Lease by over 30% of the advertised cost of the \$149.00 per month to over \$255.00 per month which represents unjust enrichment under Illinois Law.

101. Claimant Stoller was damaged by the conduct of the Respondents which caused injury to the Claimant.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT VII

Negligent Hiring and Supervision⁹

102. The allegations contained in Paragraphs 1 through 86 are incorporated by reference in this count as if fully restated herein.

103. The Respondents' employer Highland Park Motor Cars, Inc, Muller Nissan and Muller Auto Group knew or should have known that employee Rafal Chudoba and his unknown manager mentioned in Respondent Chudoba's email dated October 10, 2015, were unfit for the positions that they were hired for as to create a danger of harm to the Claimant.

⁹ Count VIII pleads a cause of action for negligent hiring and negligent supervision. (1) Employer knew or should have known that he employee had a particular unfitness for the position so as to create a danger of harm to a third person; (2) that such particular unfitness was known or should have been known a the time of the employee's hiring

or retention; and (3) that this particular unfitness proximately cause the Claimant injury. *Skywalker Outdoors, Inc. v. Van Wagner Communications, LLC*, 2011 WK 10068650, at 8 (1st Dist Apr. 2010); the tort of neglect and supervision see *Zahl v. Krupa*, 339, Ill. App. 3d. 993.

104. That such unfitness was known or should have been known at the time of hiring or retention and that Respondent Chudoba and Respondent John Doe 1 (Chudoba's manager) unfitness proximately caused the Claimant injury.

105. Said Respondents include Michael Muller, CEO and Mark Mueller, President who lacked control over their employees and supervision related to the Sentra vehicle car leasing program.

106. Said Respondents knew or should have known that their employees Rafal Chudoba and his manager engaged in misrepresentation to the Claimant regarding the 2015 Sentra lease.

107. Respondents' lack of supervision allowed their employees and in fact, encouraged their employees Respondent Chudoba and his manager to lie to the Claimant regarding the said lease.

108. Respondents' lack of supervision in management and control failed to ensure Respondents' said employees would comply with applicable laws and regulations.

109. Respondents' deficiencies in management control and supervision lead to their employees over charging the Claimant over 30% more that what was quoted in writing by Respondent Chudoba.

110. All of the Respondents conspired together to aid and abet each other in order to conduct their RICO enterprise.

111. Christopher Stoller, a disabled senior citizen was damaged and injured by the Respondents.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of

compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT VIII

Violation of the Racketeering Influenced and Corrupt Organization Act (RICO)¹⁰ 18 U.S.C. 1961-1968

112. The allegations contained in Paragraphs 1 through 83 are incorporated by reference in this count as if fully restated herein.

The Enterprise

113. Respondents Nissan Motor Co. Nissan North American, Inc. Nissan Infiniti, Lt, Highland Park Motor Cars, Inc., Muller Nissan, Muller Auto Group, Carlos Ghosn, Nobao Araki, Roland Krueger, Michael Muller, Mark Muller, Rafal Chudoba et al at all relevant times are in violation of the Racketeering and Corrupt Organization Act.

114. Respondents, their employees including their directors, lawyers, agents and vendors conducted the affairs associated in fact enterprise, as the term is defined. The Nissan Motor Co/Highland Park Motor Cars, Inc's enterprise and the affairs of the Respondents affect commerce.

115. The Nissan Motor Co/Highland Park Motor Cars, Inc's enterprise is an ongoing and continuing group or unit of people and entities which are associated together for the common purpose of limiting costs and maximizing profits by engaging in deceptive trade practices, false

¹⁰ Claimant's Count VIII sounds in RICO. The Eleventh Circuit Court has interpreted RICO to reach any group of

individuals whose associations, however loose or informal, furnishes the vehicle for the commission of two or more predicate crimes; *U.C. v. Cagnina*, 697, F. 2d 915, 920 (11th Cir. 1983).

advertising, and unlawful activity known as bait and switch to promote a low price car rental lease to induce customers to come into their offices where racketeers switch the car lease to a higher price.

Racketeering Activity

(The predicate acts mail and wire fraud)

116. The Nissan Motor Co/Highland Park Motor Cars enterprise is engaged in repeated acts of wire fraud which is prohibited by 18 U.S.C. 1343 and mail fraud which is prohibited by 18 U.S.C. 1341¹¹.

117. The Nissan Motor Co/Highland Park Motor Cars, Inc. enterprise had created (1) a scheme of bait and switch to defraud its customers; (2) all of the Respondents knowingly participated in the bait and switch scheme and (3) all of the Respondents use mail and/or wire in furtherance of the scheme.

118. The predicate acts specified above constitute a pattern of racketeering within the meaning of the RICO Act in which the Nissan Motor Co/Highland Park Motor Cars, Inc. enterprise has engaged in for years.

119. The racketeering acts committed by Nissan Motor Co/Highland Park Motor Cars, Inc. enterprise, employed a similar method and were related with a similar participation with a similar impact on the Claimant.

The Nissan Motor Co/Highland Park Motor Cars, Inc's Scheme

120. Respondents have been able to capitalize on disabled customers i.e. Christopher Stoller, who are protected persons under the Americans for Disability Act, by deceptive trade

¹¹ The elements of mail fraud and wire fraud are identical (1) the existence of a scheme to defraud ; (2) Respondents' knowing participations in that scheme; and (3) the use of mail or wire in furtherance of that scheme; *South Atlantic, Ltd. V. Riese*, 284 F. 3d 518 (4th Dist. 2002).

advertisements and using the well known deceptive con of bait and switch, in which older disabled senior citizens are susceptible.

121. The Nissan Motor Co/Highland Park Motor Cars, Inc's scheme is simple; the car dealers for the Sentra brand automobiles that are manufactured by Nissan Motor Co, since 1981 and sold to U.S. car dealers throughout the United States. The said enterprise offers Sentra automobiles for a low price in newspapers throughout Chicago and the entire country. The enterprise promotes the Sentra lease for a very low promotional cost in order to attract customers to Sentra dealerships then the dealership uses the bait and switch which results in the customers paying up to 30% more for a car lease than what was offered in the deceptive newspaper ads.

122. Respondents are nothing more that 21st Century racketeers and highway bandits who are preying on defenseless disabled senior citizens like Claimant Stoller and who Respondents believe are unable to defend themselves.

123. As a direct and proximate result of these RICO violations, Claimant Stoller has suffered substantial damages.

124. Respondents are liable to Christopher Stoller for treble damages together with all costs of this action.

125. Claimant Stoller was damaged and injured by Respondents.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive

damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT IX

Negligence¹²

126. The allegations contained in Paragraphs 1 through 110 are incorporated by reference in this count as if fully restated herein.

127. Respondents had a duty of care owed by the Respondents to the Claimant, when Christopher Stoller contacted the Respondents to lease an automobile after seeing an advertisement in the newspaper.

128. Respondents breached that duty when they made a promise to lease the Claimant a 2016 Sentra for \$149.00 a month then baited and switched Claimant Stoller into paying \$255.86 which is a 30% increase in the monthly fee.

129. There is an actual causal connection between the Respondents' conduct and the resulting harm that Claimant Stoller experienced by having to pay 30% more for a 2015 Sentra than what was discussed and promised by the Respondents.

130. The proximate cause of the harm to Claimant Stoller was foreseeable.

131. The Claimant was damaged as a result of the Respondents' conduct.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of

¹² In tort law, negligence is a distinct cause of action. The restatement (second) of torts defines negligence as "conduct that falls below the standard established by law for the protection of other against unreasonable harm. Negligence generally consists of five elements, including the following: (1) a duty of care owed by the Respondents to the Claimant; (2) a breach of that duty; (3) an actual causal connection between the Respondents' conduct and the resulting harm; (4) proximate cause, which relates to whether the harm was foreseeable; and (5) damages resulting from the Respondents' conduct.

¹²The economic loss doctrine applies to service contracts. See *Congregation of the Passion, Holy Cross Province v. Touche Ross and Co.*, 159, Ill.2d 137, 162 (Ill. 1999).

compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT X

Aiding, Abetting and Conspiracy

132. The allegations contained in Paragraphs 1 through 117 are incorporated by reference in this count as if fully restated herein.
133. Respondents' attorneys (to be added) owe a duty to the Claimant not to counsel the Respondents to engage in fraud, misrepresentation, objection of justice, lying and perjury.
134. Respondents' attorneys owe a duty not to subordinate perjury.
135. Respondents' attorneys owe a duty to the Claimant not to assist their clients in criminal and fraudulent conduct.
136. Respondents' attorneys are aware of their clients' breach of their duty owed to the Claimant.
137. Respondents' attorneys are alleged to have assisted their clients in committing the tort and/or breach.
138. The Claimant has suffered damages on account of the Respondents' breach of their duty owed to Christopher Stoller as well known to Respondents' counsel.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from

continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT XI

Intentional and Emotional Distress¹³

139. The allegations contained in Paragraphs 1 through 123 are incorporated by reference in this count as if fully restated herein.

140. Christopher Stoller, a severely disabled person designated as such by Social Security, has experienced anxiety, great stress and panic attacks as a result of Respondents' bait and switch of his car lease which is now costing him 30% more than what the Respondents initially stated.

141. This cause of action for intentional infliction of emotional distress is premised on the outrageous conduct of the Respondent on a severely disabled person Claimant Christopher Stoller.

142. The Respondents increasing the monthly payment of the Nissan Sentra by 30% is the difference between a severely disabled senior citizen who is immobile being able to purchase fuel for his vehicle and food for his substance

143. Respondents' bait and switch deceptive trade practice when employed upon the Claimant goes beyond all possible boards of decency.

¹³ This Count XI sounds in intentional infliction of emotional distress. The Count states a claim and pleads (1) Respondents' conduct was extreme and outrageous; (2) Respondents either intended to inflict severe emotional distress of disabled Claimant Christopher Stoller or knew that there was a high probability that his conduct would do so; and (3) defendants' conduct actually caused severe emotional distress. *Cangemi v. Advocate South Suburban Hosp.*, 364 Ill. App.3d446, 470 (1st Dist. 2006); and *Public Finance Corp. v. Davis*, 66 Ill. 2d 85, 90 (1976).

144. Respondents intended to cause or recklessly or consciously disregarded the probability of causing the disabled senior citizen Christopher Stoller to suffer emotional distress by Respondents' bait and switch scheme.

145. The disabled Claimant suffers extreme emotional distress and continues to suffer and endure it due to the unlawful conduct of the Respondents' overt acts.

WHEREFORE, Christopher Stoller prays for a judgment against each of the Respondents individually and in their official capacity. Claimant is requesting an award of compensatory damages of \$20,000 from each Respondent in order to deter the Respondents from continuing to engage in their unlawful and deceptive conduct. Plaintiff requests punitive damages in the amount of \$10,000 from each Respondent and for any and all costs associated with this cause of action and reasonable attorney fees and for all other such relief as the judge may deem appropriate and proper.

COUNT XII

Civil Conspiracy

146. The allegations contained in Paragraphs 1 through 130 are incorporated by reference in this count as if fully restated herein.

147. Respondents Carlos Ghosn, Nissan Motor Co, Nissan North American, Inc., Nobao Araki, Nissan Infinite and Roland Krueger, in the course and scope of their employment and in furtherance of their business conspired together with their customers Mark Muller, Michael Muller, Muller Nissan, Muller Auto Group, Highland Park Motor Cars, Inc. and Rafal Chudoba, their unnamed attorneys and agents to conceal the wrong doing of their said customers on an ongoing basis in furtherance of which said conspirators committed their overt acts.

148. None of the Respondents can escape, evade or avoid the exposure to be held jointly and severally liable as partners and/or co-conspirators¹⁴ as a result of the other Respondents engaging in fraudulent maneuvers to avoid liability.

WHEREFORE, Christopher Stoller prays for an Arbitration award in favor of the Claimant and against the Respondents. Claimant prays for an award of compensatory damages which would be the maximum amount allowed by law of an amount not less than \$200,000 assessed against each Respondent individually and in their official capacity in order to deter the Respondents from continuing to engage in unlawful, willful and wanton misconduct. Claimant also prays for punitive damages in the amount of \$500,000 for the Respondents to be held jointly and severally liable as partners and/or co-conspirators, for recovery of all costs and legal fees incurred and for any other just relief that the Arbitrator may deem appropriate and just.

Respectfully submitted,

/s/**Christopher Stoller**, Claimant

P.O. Box 4195

Oak Park, IL

(773) 746-3163

Ldms4@hotmail.com

¹⁴ Conspirators need not participate in all activities of a conspiracy nor become a member of its inception. It is only necessary that they knowingly contribute their efforts in furtherance of it; *Smith v. Lily & Co.*, 137 Ill. 2d 222 (1990); *Vance v. Chandler*, 231 Ill. App. 3d 747, (1992). Under the Pinkerton Theory of Liability, a Respondent may be found guilty of a substantive offense committed by a co-conspirator in the offense was committed in furtherance of the conspiracy at the time the Respondent was a member of the conspiracy. This is true even if the Respondent neither participated nor had knowledge of the substance offense.

SERVICE LIST

1. Highland Park Motor Cars, Inc.
1340 Park Avenue West
Highland Park, Illinois, 60035
(847) 433-7900
2. Michael Mueller, Ceo
Highland Park Motor Cars, Inc.
1340 Park Avenue West
Highland Park, Illinois, 60035
(847) 433-7900
3. Mark Mueller, President
Highland Park Motor Cars, Inc.
1340 Park Avenue West
Highland Park, Illinois, 60035
(847) 433-7900
4. Mueller Auto Group
1350 Park Avenue West
Highland Park, Illinois 60035
(847) 433-7900
5. Mueller Nissan
1350 Park Avenue West
Highland Park, Illinois 60035
(847) 433-7900
6. Rafal Chudoba, Sales and Leasing Consultant,
Muller Auto Group
1350 Park Avenue West
Highland Park, Illinois 60035
(847) 433-7900
7. Nissan Infinite, Ltd
P.O. Box 254648
Sacramento, California 95865
8. Roland Krueger, President
Nissan Infinite, Ltd,
P.O. Box 254648
Sacramento, California 95865

9. Nissan Motor Acceptance Corporation
8900 Freeport Pkwy Rear Dock
Irving Texas, 75063-2441
(214) 596-4000
10. Mark Kaczynski, President
Nissan Motor Acceptance Corporation
8900 Freeport Pkwy Rear Dock
Irving Texas, 75063-2441
(214) 596-4000
11. Nissan North America, Inc.
One Nissan Way
Franklin, Tennessee 37067
(615) 725-1000
12. Nobao Araki, President
Nissan North America, Inc.
Nissan North America, Inc.
One Nissan Way
Franklin, Tennessee 37067
(615) 725-1000
13. Nissan Motor Co, LTD.
2 Takara-Cho Kanagawa-Ku, Yokohama-shi Kanagawa
220-8623 Japan
81(0)45-523-5523
14. Nabao Araki, President
Nissan Motor Co, LTD.
2 Takara-Cho Kanagawa-Ku, Yokohama-shi Kanagawa
220-8623 Japan
81(0)45-523-5523.

EXHIBIT 1

LEASE

EXHIBIT 2

NEWSPAPER AD

EXHIBIT 3

10/15/15 EMAIL