

**ENDORSED**

FILED  
SUPERIOR COURT, METROPOLITAN DIVISION  
COUNTY OF KERN

JUL 2 - 2010

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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF KERN**

12 BARBARA VARGAS, individually and  
13 on behalf of herself and all others  
similarly situated,

14 Plaintiff,

15 v.

16 THREE-WAY CHEVROLET CO., a  
17 California corporation;  
18 GMAC FINANCIAL SERVICES, INC.,  
a Delaware corporation; and  
DOES 1 through 10, inclusive,

19 Defendants.  
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CASE NO. S-1500-CV-270482

**CLASS ACTION**

FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF, RESTITUTION,  
AND DAMAGES:

1. VIOLATION OF THE  
AUTOMOBILE SALES FINANCE  
ACT - CLASS CLAIM;
2. UNLAWFUL, UNFAIR,  
FRAUDULENT BUSINESS ACTS  
& PRACTICES - CLASS CLAIM;
3. VIOLATION OF THE CONSUMER  
LEGAL REMEDIES ACT - CLASS  
CLAIM;

1 Plaintiff BARBARA VARGAS, individually as to all causes of action, and on  
2 behalf of all others similarly-situated as to the First through Third Causes of Action,  
3 alleges as follows against Defendants Three-Way Chevrolet Co. (hereinafter referred  
4 to as "Three-Way"), and GMAC Financial Services, Inc. (hereinafter "GMAC"), on  
5 information and belief, formed after an inquiry reasonable under the circumstances:

#### 6 INTRODUCTION

7 1. Defendant Three Way is an automobile dealership in Bakersfield,  
8 California, that engages in various unlawful and deceptive business practices. In this  
9 action Plaintiff seeks to put an end to these unlawful and deceptive practices and  
10 provide remedies for hundreds of affected consumers. The unlawful and deceptive  
11 practice engaged in by Three Way for which Plaintiff seeks class-wide redress relates  
12 to Three Way's systematic violation of California's financial disclosure laws.

13 2. Plaintiff is one of many customers, who during the past four years,  
14 purchased a vehicle from Defendant Three Way and who entered into a Retail  
15 Installment Sale Contract ("RISC") prepared by Three Way, that failed to properly and  
16 separately itemize and disclose registration/transfer/titling fees, separate from the  
17 license fees, for the vehicles sold. Regarding new and used vehicles alike, Three Way  
18 misstated the amount of license, registration, transfer, and titling fees due and owing  
19 on the vehicles it sells its customers.

20 3. The conduct herein described violates, *inter alia*, the Automobile Sales  
21 Finance Act ("ASFA") (Civil Code §2981, *et seq.*), the Consumers Legal Remedies Act  
22 ("CLRA") (Civil Code §1750, *et seq.*), and the Unfair Competition Law ("UCL") (Bus. &  
23 Prof. Code §17200, *et seq.*).

24 4. After the date of purchase, Plaintiff's RISC was assigned by Three Way  
25 to GMAC. Three Way's violations of the ASFA with respect to the improper disclosure  
26 of registration/transfer/titling fees were willful and appear on the face of the RISC. In  
27 light of GMAC's acceptance of the RISC despite the illegal disclosures on the face of the  
28 contract, Plaintiff believes that GMAC fails to review contracts assigned to it for

1 compliance with the ASFA. As the assignee and holder of Plaintiff's RISC, GMAC is  
2 subject to all equities and defenses of Plaintiff against Three Way.

3 **JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over all causes of action asserted herein  
5 pursuant to the California Constitution, Article VI, Section 10, because this case is a  
6 cause not given by statute to other trial courts.

7 6. This Court has jurisdiction over Defendants because each are  
8 individuals, associations, or corporations that are either authorized to conduct or, in  
9 fact, do conduct substantial business in the State of California, County of Kern.

10 7. Venue is proper in this County pursuant to Code of Civil Procedure  
11 § 395(b) because the acts upon which this action is based occurred in this County. The  
12 contract for products and services at issue in this case was entered into in this County  
13 and communications from Defendants were received in this County. Thereby, Plaintiff  
14 and Class members were injured and/or subjected to irreparable harm in this venue.  
15 Defendants received substantial compensation and profits from its products and  
16 services in this County, caused misrepresentations to be disseminated, entered into  
17 agreements and transactions, and breached agreements in this County. Thus,  
18 Defendants' liability arose primarily in this County.

19 **PARTIES**

20 8. Plaintiff Barbara Vargas is an individual who, at all times material,  
21 resided in the City of Bakersfield, County of Kern, State of California.

22 9. Defendant Three-Way Chevrolet Co. is a California corporation, doing  
23 business as a new and used car dealership in the City of Bakersfield, County of Kern,  
24 State of California.

25 10. Defendant GMAC, is a Delaware corporation, and is registered to and  
26 doing business in the County of Kern, State of California.

27 11. Plaintiff does not know the true names and capacities, whether  
28 corporate, partnership, associate, individual, or otherwise of Defendants sued

1 herein as Does 1 through 10, inclusive, under the provisions of Section 474 of the  
2 California Code of Civil Procedure. Defendants Does 1 through 10, inclusive, are in  
3 some manner responsible for the acts, occurrences, and transactions set forth herein,  
4 and are legally liable to Plaintiff and the class. Plaintiff will set forth the true names  
5 and capacities of the fictitiously-named Defendants together with appropriate charging  
6 allegations when ascertained.

7 12. All acts of corporate employees as alleged were authorized or ratified by  
8 an officer, director, or managing agent of the corporate employer.

9 13. Each Defendant, whether actually or fictitiously-named herein, was the  
10 principal, agent (actual or ostensible), or employee of each other Defendant and in  
11 acting as such principal or within the course and scope of such employment or agency,  
12 took some part in the acts and omissions hereinafter set forth by reason of which each  
13 Defendant is liable to Plaintiff for the relief prayed for herein.

#### 14 CLASS ALLEGATIONS

15 14. This action is brought, and may properly be maintained, as a class action  
16 pursuant to the provisions of California Code of Civil Procedure Section 382 and Civil  
17 Code Section 1781(a).

18 15. Plaintiff brings this action on behalf of herself and all others similarly-  
19 situated as a representative member of the following proposed class:

20 All persons who, in the four years prior to the filing of this complaint,  
21 (1) purchased a vehicle from Three Way for personal use, and (2) signed  
22 a RISC that failed to accurately disclose, on the RISC, the amounts paid  
23 for license fees and the amounts paid for registration/transfer/titling fees.

24 Plaintiff proposes a subclass of all class members whose contracts are held by GMAC.

25 16. In this lawsuit, Plaintiff and the Class seek both equitable relief,  
26 including declaratory, injunctive, restitutionary, and other equitable monetary relief  
27 and economic and statutory damages as set forth more fully below, including, but not  
28

1 limited to, full restitution and/or rescission of any RISC entered into by any Class  
2 Member.

3 17. Specifically excluded from the proposed Class are the Court and its staff,  
4 Defendants, any entity in which any of the Defendants has a controlling interest, and  
5 the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries,  
6 and/or assigns of any such individual or entity.

7 **A. NUMEROSITY OF THE CLASS**

8 18. The proposed Class is so numerous that the individual joinder of the Class  
9 Members in one action is impracticable. The exact number and the identities of the  
10 Members of the Class are unknown at this time and can only be ascertained through  
11 appropriate investigation and discovery.

12 **B. EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS**  
13 **OF LAW AND FACT**

14 19. Common questions of law and fact arising out of the claims here at issue  
15 exist as to all members of the Class and predominate over any individual issue. These  
16 common legal and factual questions include, but are not limited to, the following:

- 17 a. whether Three Way's failure to separately itemize and disclose license  
18 fees from registration/transfer/titling fees on customers' RISCs  
19 constitutes a violation of the ASFA, the CLRA, and/or the UCL;
- 20 b. the amount of revenues and profits Three Way received, and/or the  
21 amount of monies or other obligations imposed on, or lost by, Class  
22 Members as a result of such wrongdoing;
- 23 c. whether Class Members are threatened with irreparable harm and are  
24 entitled to injunctive and other equitable relief and, if so, what is the  
25 nature of such relief;
- 26 d. whether Class Members are entitled to rescission, payment of actual,  
27 incidental, consequential, exemplary, punitive, and/or statutory damages  
28 plus interest thereon, and, if so, what is the nature of such relief.

1           **C.     TYPICALITY OF CLAIMS**

2           20.     Plaintiff's claims are typical of the claims of members of the Class. Three  
3     Way engaged in the standard practice or procedure of failing to separately itemize and  
4     disclose any registration, transfer, or titling fees paid by Plaintiff and Class members  
5     on Line 2.B. of the Itemization of the Amount Financed on their RISCs, instead  
6     presumably including those fees in the amount listed as "license fees" on Line 2.A. of  
7     the Itemization of the Amount Financed section of the RISCs. Plaintiff's RISC failed  
8     to list any amount for registration/transfer/titling fees on Line 2.B. Rather, Plaintiff's  
9     RISCs contains the notation "N/A" on Line 2.B. and lists a dollar amount as the  
10    amount paid for "license fees" on Line 2.A.

11          21.     The RISCs of the members of the proposed Subclass were all assigned to,  
12    or held by, GMAC, and failed to separately itemize on their face the license fees from  
13    the registration/transfer/titling fees.

14          22.     Accordingly, Plaintiff and all Class members had their legal rights  
15    infringed upon, sustained injuries, losses, and damages as described herein, and/or are  
16    facing irreparable harm arising out of Three Way's common course of conduct. The  
17    right of Plaintiff and each Class member to payment of any actual, incidental,  
18    consequential, exemplary, and/or statutory damages or restitution resulting therefrom  
19    were proximately caused by Defendant's wrongful conduct, in violation of state law as  
20    alleged herein.

21           **D.     ADEQUATE REPRESENTATION**

22          23.     Plaintiff will fairly and adequately protect the interests of the Class  
23    members in that she does not have irreconcilable conflicts with or interests materially  
24    antagonistic to those of other Class Members.

25          24.     Plaintiff has retained attorneys experienced in the prosecution of class  
26    actions, including consumer class actions.

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1           **E.    SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS**  
2                           **LITIGATION**

3           25.    To the extent it is an element for establishing class certification for  
4 certain causes of action, a class action is superior to other available methods for the  
5 fair and efficient group-wide adjudication of this controversy and, as applicable,  
6 possesses substantial benefits. Individual joinder of all Class Members is  
7 impracticable, and no other group method of adjudication of all claims asserted herein  
8 is more efficient and manageable while at the same time provides all the remedies  
9 available to ensure the full purpose of this State's consumer protection laws are  
10 effectuated. Furthermore, as the actual damages suffered by each individual Class  
11 Member may be relatively small and the relief sought discrete, the expense and burden  
12 of individual Class Members to redress the wrongs done to them, and the cost to the  
13 court system of adjudicating such litigation on an individual basis, would be  
14 substantial. To counsel's knowledge there has not been any substantial litigation  
15 concerning this controversy commenced against the parties. It is not anticipated that  
16 there will be any difficulties in the management of this litigation due to the focus of the  
17 wrongdoing on Three Way's conduct and its knowledge of the true facts. Individualized  
18 litigation would also present the potential for varying, inconsistent, or contradictory  
19 judgments and would magnify the delay and expenses of all parties and the court  
20 system resulting from multiple trials asserting the same factual issues. The conduct  
21 of this action as a class action presents fewer management difficulties, conserves the  
22 resources of the parties and the court system, and protects the rights of each Class  
23 Member as compared to other methods for the group-wide adjudication of this  
24 controversy. Thus, the Class and the court system achieve substantial benefits by the  
25 prosecution of this action on a class-wide basis by avoiding the burden of multiple  
26 litigation involving identical claims, as well as by aiding legitimate business  
27 enterprises in curtailing illegitimate competition and ensuring a therapeutic effect on  
28 those companies such as Three Way that indulge in fraudulent practices.

1           26. Notice of the pendency of any resolution of this action can be provided to  
2 the Class Members by publication and/or individual mailed notice, as appropriate  
3 under California law, and the costs of such notice are properly imposed on Three Way.

4           27. This action should be certified to proceed on a class-wide basis because:

5           a. the prosecution of separate actions by the individual Class Members  
6 would create a risk of inconsistent or varying adjudications with respect  
7 to individual Class Members, thus establishing incompatible standards  
8 of conduct for Three Way;

9           b. due to the nature of the relief sought, the prosecution of separate actions  
10 by individual Class Members would create a risk of adjudication with  
11 respect to them that would, as a practical matter, be dispositive of the  
12 interests of the other Class Members not parties to such adjudications or  
13 could substantially impair or impede the ability of such Class Members  
14 to protect their interests; and

15           c. Three Way has acted or refuses to act in respects generally applicable to  
16 the Class, thereby making appropriate final injunctive relief with regard  
17 to the Class Members as a whole in terms of the equitable relief sought.

18                           **SUMMARY OF FACTS COMMON TO THE CLASS**

19           28. During the Class period, it was Three Way's practice to fail to disclose any  
20 amounts due and owing to the California DMV for registration/transfer/titling fees.  
21 Those amounts appear to have been added together with the amount due and owing  
22 to the DMV for license fees. Rather than separately itemize the registration, transfer,  
23 and/or titling fees on Line 2.B. of the Itemization of the Amount Financed Section on  
24 its customers' RISCs, Three Way appears to have included the registration, transfer,  
25 and/or titling fees due together with the license fees, and disclosed the total fees paid  
26 to the DMV on Line 2.A. of the Itemization of the Amount Financed Section of the  
27 RISC, which is designated solely as "License Fees." Thus, Three Way overstated the  
28 license fees due on a transaction, and incorrectly stated that registration, transfer, and

1 titling fees were not applicable to the transaction, even though such fees are always  
2 applicable.

3       29. Each Class Member purchased a vehicle from Three Way for personal  
4 use. Each Class Member executed a RISC with Three Way. Each Class Member's  
5 RISC failed to separately itemize and disclose the registration/transfer/titling fees on  
6 Line 2.B., as required by law. Rather, each Class Member's registration/transfer/  
7 titling fees appear to be included in the amount disclosed as "license fees" due on Line  
8 2.A. of the Itemization of Amount Financed Section of the RISC. Each Class Member's  
9 RISC states that the registration, transfer, and titling fees are "not applicable" to the  
10 transaction.

11       30. Each member of the Subclass had their contract assigned to GMAC, or  
12 has had their contract acquired by GMAC such that GMAC is the holder of their  
13 contract.

14           **SUMMARY OF FACTS RELATIVE TO PLAINTIFF'S INDIVIDUAL**  
15                                   **PURCHASE**

16       31. On May 26, 2006, Ms. Vargas' son, Robert Vargas, went to Three Way  
17 looking for a new car for him to drive to and from school. At the time, Robert Vargas  
18 was only seventeen years of age. Robert Vargas went to Three Way to look for a car  
19 because his mother had recently purchased another car from Three Way for Robert's  
20 brother.

21       32. Once on the dealership's lot, Robert Vargas was approached by one of  
22 Three Way's salesmen. Mr. Vargas told the salesman that he was interested in  
23 purchase a new car and that he could afford to pay between \$250-\$300 a month for the  
24 car. Mr. Vargas told Three Way's salesman that he liked his brother's Chevrolet  
25 Cobalt and was interested in a car that got similar mileage.

26       33. Three Way's salesman proceeded to show Mr. Vargas a number of new  
27 Chevrolet Cobalt vehicles on their lot. Mr. Vargas saw a 2006 Chevrolet Cobalt (VIN:  
28 1G1AK15F367805405) (the "Vehicle") that he liked. Mr. Vargas told the salesman that

1 he wanted to purchase certain accessories for the Vehicle – namely, a spoiler and  
2 window tinting. Three Way told Mr. Vargas that the spoiler and window tinting would  
3 cost an additional \$500 but that it would include that cost in the contract for the  
4 Vehicle.

5 34. The salesman told Mr. Vargas that he could probably get him into the  
6 Vehicle for a monthly payment around \$300. During the negotiations, Mr. Vargas had  
7 been speaking to his mother, Plaintiff Barbara Vargas, by telephone.

8 35. Three Way then took Robert Vargas' information and allegedly proceeded  
9 to run his credit to see if they could obtain financing for him to purchase the Vehicle.  
10 Three Way's salesman returned, telling Mr. Vargas that he would need to get a co-  
11 signer to purchase the Vehicle. Robert Vargas stated that he believed his mother,  
12 Barbara Vargas, would be able to obtain financing for the Vehicle since she had  
13 recently purchased another vehicle.

14 36. Accordingly, Mr. Vargas telephoned his mother, who was at work, and  
15 asked her to come down to Three Way's dealership, which she did.

16 37. When Barbara Vargas arrived, Three Way's salesman took her credit  
17 information and left to allegedly run her credit and speak to a sales manager about the  
18 transaction. When the salesman returned, he told Mrs. Vargas and Robert Vargas that  
19 they could get them into the Vehicle for monthly payments in Robert's stated range.

20 38. The Vargases were then introduced to a Three Way finance manager. The  
21 finance manager talked to the Vargases about GAP Insurance and they agreed to  
22 purchase it. Additionally, the Vargases were told that they could use a \$500  
23 manufacturer's rebate as their downpayment on the Vehicle.

24 39. Eventually, Three Way's finance manager presented Mrs. Vargas with the  
25 purchase documents for the Vehicle, including a Retail Installment Sale Contract  
26 ("RISC"). Mrs. Vargas was simply instructed where to sign and initial each document.  
27 Believing the RISC and other documents accurately reflected the terms of the deal the  
28 parties had reached, Mrs. Vargas signed the RISC with Three Way for the Vehicle.

1 Attached hereto as Exhibit 1 is a true and correct copy of the RISC between  
2 Mrs. Vargas and Three Way.

3 40. The "cash price" of the Vehicle is listed on the RISC as \$13,020.00 on line  
4 1.A.1. There is no amount listed as the "cash price" for the accessories – the spoiler  
5 and window tinting – on line 1.A.2 of the RISC. Rather, the "Cash Price Vehicle" on  
6 line 1.A.1 of the RISC was inflated to cover the cost of these accessories.

7 41. The amount financed on the RISC was \$14,263.93, the monthly payments  
8 are \$296.41, for a term of 60 months, and the Annual Percentage Rate ("APR") was  
9 8.90%. The RISC contained a \$148 charge for "license fees" on Line 2.A. of the  
10 Itemization of the Amount Financed and contained the notation "N/A" on Line 2.B. for  
11 registration/transfer/titling fees.

12 42. At some point after May 26, 2006, the RISC for the sale of the Vehicle to  
13 Mrs. Vargas was assigned by Three Way to GMAC. The improper disclosure of the  
14 registration/transfer/titling fees appears on the face of the RISC. The monthly  
15 payments for the Vehicle have been made to GMAC in accordance with the RISC.

16 43. The RISC for the Vehicle included the language required by the FTC  
17 Holder Rule, 16 C.F.R. §433.1 et seq. :

18 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS  
19 SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD  
20 ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED  
21 PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY  
22 HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY  
23 THE DEBTOR HEREUNDER.

24 44. This "Holder Clause" in the RISC makes GMAC liable for all claims and  
25 defenses that could be raised against Three Way, with respect to the sale of the  
26 Vehicle. Furthermore, Three Way took a security interest in the Vehicle, creating  
27 liability under the Holder Rule.

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1           50. Plaintiff, on her own behalf and on behalf of the Class Members,  
2 incorporates by reference each and every allegation set forth in Paragraphs 1 through  
3 49, inclusive, of this Complaint and further alleges as follows.

4           51. The RISCs executed by Plaintiff and each Class Member for their vehicles  
5 are “conditional sale contracts” pursuant to Civil Code Section 2981(a).

6           52. Three Way is a “seller” pursuant to Civil Code Section 2981(b).

7           53. Plaintiff and each Class Member are “buyers” pursuant to Civil Code  
8 Section 2981(c).

9           54. The vehicles purchased by Plaintiff and each Class Member are “motor  
10 vehicles” pursuant to Civil Code Section 2981(k).

11           55. Civil Code Section 2982 requires that “every conditional sale contract  
12 subject to this chapter shall contain the disclosures required by Regulation Z, whether  
13 or not Regulation Z applies to the transaction.” Three Way failed to provide the  
14 disclosures required by Regulation Z.

15           56. Civil Code Section 2982(a) provides a list of the disclosures which a  
16 conditional sale contract for the sale of a motor vehicle shall contain.

17           57. When Three Way disclosed, on Line 2.A. of Plaintiff’s and Class Members’  
18 RISCs an amount for “license fees,” it violated Civil Code Section 2982(a)(2)(A) because  
19 the amount listed included more than just license fees and was substantially inflated.

20           58. When Three Way disclosed, on Line 2.B. of Plaintiff’s and Class Members’  
21 RISCs, the amount due for registration/transfer/titling fees was “N/A”, it violated Civil  
22 Code Section 2982(a)(2)(B) by making a false statement since such fees were applicable  
23 to the sales.

24           59. The “Single Document Rule” in Civil Code § 2981.9 requires that all of the  
25 agreements between the buyer and seller with respect to the total cost and the terms  
26 of payment for the motor vehicle be contained in a single document. The contracts of  
27 Plaintiff and the Class Members do not show the true and correct cost of the license  
28 and registration fees due, and therefore violate the Single Document Rule because not

1 all of the terms of cost are set forth in the RISCs. That amount can only be learned by  
2 resorting to other documents.

3 60. Three Way assigned Plaintiff's RISC, and the RISCs of members of the  
4 Subclass, to GMAC. The improper disclosures of the license fees and  
5 registration/transfer/titling fees appear on the face of these RISCs.

6 61. The RISCs for vehicles sold to Plaintiff and members of the Subclass  
7 included the language required by the FTC Holder Rule, 16 C.F.R. §433.1 *et seq.*:

8 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS  
9 SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD  
10 ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED  
11 PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY  
12 HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY  
13 THE DEBTOR HEREUNDER.

14 62. This "Holder Clause" in the RISCs makes GMAC liable for all claims and  
15 defenses that could be raised against Three Way, with respect to the sale of the  
16 vehicles to Plaintiff and to members of the Subclass. It is on this basis that GMAC is  
17 included in this cause of action.

18 63. Since the violations include violations of Civil Code Sections 2981.9 and  
19 2982(a), Plaintiff and each Class Member are entitled to return of all monies paid  
20 under the contracts pursuant to Civil Code Section 2983 and/or rescission of their  
21 purchase contracts pursuant to Civil Code Section 2983.1. Plaintiff also seeks her  
22 attorneys' fees and costs pursuant to Civil Code Section 2983.4.

23 **SECOND CAUSE OF ACTION**

24 **Commission of Unlawful and/or Unfair Business Acts and Practices, Bus.**  
25 **& Prof. Code Section 17200, *et seq.* - Individual and Class Claim - As**  
26 **Against Defendants Three Way, GMAC, and Does 1-10**

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1           64. Plaintiff, on her own behalf and on behalf of the Class Members,  
2 incorporates by reference each and every allegation set forth in Paragraphs 1 through  
3 63, inclusive, of this Complaint and further alleges as follows.

4           65. Three Way's acts, omissions, misrepresentations, practices, and/or non-  
5 disclosures constituted unlawful and/or unfair business acts and/or practices within the  
6 meaning of California Business & Professions Code Sections 17200, *et seq.*

7           66. Plaintiff and the Class Members have suffered injury in fact and have lost  
8 money as a result of Three Way's unfair competition, including, but not limited to,  
9 their statutory damages under the ASFA caused by Three Way's acts and overpaying  
10 license fees due to the California DMV.

11           67. Three Way has engaged in "unlawful" business acts and practices by:  
12 (1) failing to properly and separately itemize, on RISCs, the registration, transfer or  
13 titling fees from the license fees owing on the vehicles it sells; and (2) failing to disclose  
14 in a single document all of the agreements as to the terms of payment for the vehicles  
15 purchased by Plaintiff and the Class Members. These business policies, acts, and/or  
16 practices were intended to and did violate, *inter alia*, California Civil Code  
17 Section 1709, *et seq.*, the CLRA, and the ASFA. Accordingly, Three Way has violated  
18 Business & Professions Code Section 17200's proscription against engaging in an  
19 "unlawful" business act or practice. Plaintiff seeks an order enjoining Three Way from  
20 engaging in the acts, methods, and/or practices as set forth in this Complaint and for  
21 payment of restitution.

22           68. Three Way has also engaged in an "unfair" business act or practice in that  
23 the justification for selling vehicles based on the misrepresentations and omissions of  
24 material fact delineated above is outweighed by the gravity of the resulting harm,  
25 particularly considering the available alternatives, and offends public policy, is  
26 immoral, unscrupulous, unethical, and offensive, or causes substantial injury to  
27 consumers.

28 ///

1           69. The above-described unlawful or unfair business acts and practices  
2 conducted by Three Way may continue to this day and present a threat to Plaintiff and  
3 the Class Members, and the general public in that Three Way has failed to publicly  
4 acknowledge the wrongfulness of its actions and provide full equitable injunctive and  
5 monetary relief as required by the statute.

6           70. Three Way assigned Plaintiff's RISC and the RISCs of members of the  
7 Subclass to GMAC. The improper disclosure of the registration/transfer/titling fees  
8 appears on the face of the RISCs.

9           71. The RISCs for the vehicles sold to Plaintiff and members of the Subclass  
10 included the language required by the FTC Holder Rule, 16 C.F.R. §433.1 *et seq.*:

11           NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS  
12           SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD  
13           ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED  
14           PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY  
15           HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY  
16           THE DEBTOR HEREUNDER.

17           72. This "Holder Clause" in the RISC makes GMAC liable for all claims and  
18 defenses that could be raised against Three Way, with respect to the sale of the  
19 vehicles to Plaintiff and members of the Subclass. It is on this basis that GMAC is  
20 included in this cause of action.

21           73. Pursuant to California Business & Professions Code Section 17203,  
22 Plaintiff seeks an order of this Court requiring Three Way to immediately cease such  
23 acts of unfair competition and enjoining Three Way from continuing to conduct  
24 business via the unlawful and/or unfair business acts and practices set forth in this  
25 Complaint and from failing to fully disclose the true nature of their  
26 misrepresentations, and ordering Three Way to engage in a corrective notice and  
27 advertising campaign. Plaintiff additionally requests an order from the Court  
28 requiring Three Way to provide complete equitable monetary relief so as to prevent

1 Three Way from benefitting from the practices that constitute unfair competition or the  
2 use or employment of any monies resulting from the sale of these vehicles, including  
3 requiring the payment of restitution of any monies as may be necessary to restore any  
4 money or property which may have been acquired by means of such acts of unfair  
5 competition.

6 **THIRD CAUSE OF ACTION**

7 **Violation of Consumers Legal Remedies Act, Civil Code Section 1750, et**  
8 **seq. – Individual and Class Claim – Injunctive Relief Only – As Against**  
9 **Defendants Three Way, GMAC, and Does 1-10**

10 74. Plaintiff, on her own behalf and on behalf of the Class Members,  
11 incorporates by reference each and every allegation set forth in Paragraphs 1 through  
12 73, inclusive, of this Complaint and further alleges as follows.

13 75. The vehicles sold to Plaintiff and each Class member constitute “goods”  
14 purchased for use primarily for personal, family, or household purposes pursuant to  
15 Civil Code Section 1761(a).

16 76. Plaintiff and each Class member are “consumers” pursuant to Civil Code  
17 Section 1761(d).

18 77. Defendants are “persons” pursuant to Civil Code Section 1761(c).

19 78. The advertisement and sale of the vehicles to Plaintiff and each Class  
20 member are “transactions” pursuant to Civil Code Section 1761(e).

21 79. The acts and/or practices engaged in by Defendant Three Way and alleged  
22 herein were intended to, and did, result in the sale of the vehicles Plaintiff and each  
23 Class member primarily for personal, family, or household purposes, and violated and  
24 continued to violate the CLRA in at least the following respects:

25 (a) Three Way represented that the transaction had been supplied in  
26 accordance with previous representations when it had not; and

27 ///

28 ///

1 (b) Three Way represented that the transaction conferred or involved rights,  
2 remedies, or obligations which it did not have or involve, or which were  
3 prohibited by law.

4 80. On May 17, 2010, Plaintiff served Defendants via certified mail, return  
5 receipt requested, a Consumers Legal Remedies Act notification and demand letter  
6 seeking both individual relief and relief on behalf of Class identified above.

7 81. The letter referred to in Paragraph 80, above, was received by Three Way  
8 Chevrolet on June 2, 2010, and GMAC on May 24, 2010.

9 82. The Consumers Legal Remedies Act provides that a complaint for  
10 violation of the Act may be amended without leave of court should the violation not be  
11 remedied within thirty (30) days of notification. Plaintiff will amend this Complaint  
12 to add a claim for damages against Three Way Chevrolet under the Consumers Legal  
13 Remedies Act for violation of Civil Code Sections 1770(a)(14) and (16), including  
14 statutory damages of up to \$1,000 per consumer and/or up to \$5,000 per consumer who  
15 qualifies as a "senior citizen" under the CLRA, should the statutory thirty-day period  
16 expire without a complete cure of Defendants' violations.

17 83. Civil Code Section 1780(a)(2) provides that a consumer is entitled to an  
18 injunction prohibiting acts or practices which violate the CLRA. Plaintiff alleges that  
19 Three Way has established a pattern and practice of failing to properly and separately  
20 itemize, on RISCs, the registration, transfer or titling fees from the license fees owing  
21 on the vehicles it sells.

22 84. The purchase contracts for Plaintiff and members of the Subclass were  
23 assigned to GMAC. The violations of the ASFA appear on the face of these purchase  
24 contracts.

25 85. The purchase contracts for the vehicles sold to Plaintiff and members of  
26 the Subclass included the language required by the FTC Holder Rule, 16 C.F.R. §433.1  
27 *et seq.*:  
28

1 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS  
2 SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD  
3 ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED  
4 PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY  
5 HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY  
6 THE DEBTOR HEREUNDER.

7 86. This "Holder Clause" in the contract makes GMAC liable for all claims  
8 and defenses that could be raised against Three Way, with respect to the sale of the  
9 vehicles to Plaintiff and members of the Subclass. It is on this basis that GMAC is  
10 included in this cause of action.

11 87. Pursuant to Civil Code Section 1780, Plaintiff seeks all available relief,  
12 except for damages at this time as to Three Way Chevrolet (but does seek damages  
13 from GMAC), including an order enjoining Three Way and GMAC from the acts,  
14 methods, and practices as set forth in this Complaint, and attorneys' fees and costs  
15 according to proof at time of trial.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment as follows, on behalf of herself, and  
18 the members of the Class, as appropriate for the particular causes of action:

- 19 1. An Order certifying the Class (and Subclass) under the appropriate  
20 provisions of California law, and appointing Plaintiff and her counsel to  
21 represent the Class.
- 22 2. For the declaratory, equitable, and/or injunctive relief requested as  
23 permitted under the Consumers Legal Remedies Act and Business &  
24 Professions Code Section 17203.
- 25 3. For general, special, and actual damages according to proof at trial.
- 26 4. For rescission and/or restitution of all monies required to be expended.
- 27 5. For incidental and consequential damages according to proof at trial.
- 28 6. For the specified causes of action, punitive and/or statutory damages.

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- 7. For pre-judgment interest at the legal rate.
- 8. For reasonable attorneys' fees and costs of suit as specified under, *inter alia*, Code of Civil Procedure Section 1021.5, and Civil Code Sections 1717, 1780(d), and 2983.4.
- 9. For such other and further relief as the Court deems just and proper under the circumstances.

Dated: June 30, 2010

ROSNER, BARRY & BABBITT, LLP

By:   
CHRISTOPHER P. BARRY  
Attorneys for Plaintiff

# **EXHIBIT 1**

Buyer (and Co-Buyer) Name and Address (Including County and Zip Code) <b>BARBARA VARGAS</b> <b>1921 KELLIE MARIE ST</b> <b>BAKERSFIELD KERN CA 93314</b>	Creditor - Seller (Name and Address) <b>THREE WAY CHEVROLET</b> <b>3800 CALIFORNIA AVE</b> <b>BAKERSFIELD CA 93309</b>
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The Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the terms and conditions on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
2006	CHEVROLET COBALT	4	1G1AK15F367805405	<input checked="" type="checkbox"/> personal, family or household <input type="checkbox"/> business or commercial

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of
8.90 %	\$ 3,520.64(e)	\$ 14,263.96	\$ 17,784.60(e)	\$ 500.00 is \$ 18,284.60(e)
(e) means an estimate				

OUR PAYMENT SCHEDULE WILL BE:		
Number of Payments:	Amount of Payments:	When Payments Are Due:
1st Payment of	N/A	
2nd Payment of	N/A	
59 Payments	296.41	Monthly, Beginning 07/09/2006
Payments	N/A	Monthly, Beginning
Final Payment	296.41	06/09/2011

Late Charge: If payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late.  
 Prepayment: If you pay off all your debt early, you may be charged a minimum finance charge.  
 Security Interest: You are giving a security interest in the vehicle being purchased.  
 Additional Information: See this contract for more information including information about nonpayment, default, any required payment in full before the scheduled date, minimum finance charges, and security interest.

**STATEMENT OF INSURANCE**

NOTICE: No person is required as a condition of financing the purchase of a motor vehicle to purchase or negotiate any insurance through a particular insurance company, agent or broker. You are not required to buy any other insurance to obtain credit. Your decision to buy or not buy other insurance will not be a factor in the credit approval process.

**Vehicle Insurance**

	Term	Premium
\$ N/A Ded. Comp., Fire & Theft	N/A Mos.	\$ N/A
\$ N/A Ded. Collision	N/A Mos.	\$ N/A
Bodily Injury \$ N/A Limits	N/A Mos.	\$ N/A
Property Damage \$ N/A Limits	N/A Mos.	\$ N/A
Medical \$ N/A	N/A Mos.	\$ N/A
Total Vehicle Insurance Premiums		\$ N/A(e)

UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.  
 You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit.

Buyer: [Signature]  
 Co-Buyer: \_\_\_\_\_  
 Seller: [Signature]

**ITEMIZATION OF THE AMOUNT FINANCED**

1. Total Cash Price

A. Cash Price of Motor Vehicle and Accessories	\$ 13020.00 (A)
1. Cash Price Vehicle	\$ 13020.00
2. Cash Price Accessories	\$ N/A
3. Other (Nontaxable)	\$ N/A
Describe N/A	\$ N/A
Describe N/A	\$ N/A
B. Document Preparation Fee (not a governmental fee)	\$ 45.00 (B)
C. Smog Fee Paid to Seller	\$ N/A (C)
D. Sales Tax (on taxable items in A+B+C)	\$ 947.21 (D)
E. Optional DMV Electronic Filing Fee*	\$ N/A (E)
F. (Optional) Service Contract*	\$ N/A (F)
G. (Optional) Service Contract*	\$ N/A (G)
H. Prior Credit or Lease Balance paid by Seller to	\$ N/A (H)
(see downpayment and trade-in calculation)	
I. (Optional) Gap Contract (to whom paid)* THREE WAY	\$ 595.00 (I)
J. Other (to whom paid)*	\$ N/A (J)
For	
<b>Total Cash Price (A through J)</b>	<b>\$ 14607.21 (1)</b>

2. Amounts Paid to Public Officials

A. License Fees ESTIMATED	\$ 148.00 (A)
B. Registration/Transfer/Titling Fees	\$ N/A (B)
C. California Tire Fees*	\$ 8.75 (C)
D. Other	\$ N/A (D)
E. Other	\$ N/A (E)
<b>Total Official Fees (A through E)</b>	<b>\$ 156.75 (2)</b>

3. Amount Paid to Insurance Companies  
 (Total premiums from Statement of Insurance column a + b)\*

\$ N/A (3)	\$ N/A (3)
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4. Smog Certification or Exemption Fee Paid to State

\$ N/A (4)	\$ N/A (4)
------------	------------

5. Subtotal (1 through 4)

\$ 14763.96 (5)	\$ 14763.96 (5)
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6. Total Downpayment

A. Agreed Trade-In Value Yr _____ Make _____	\$ N/A (A)
Model _____ Odor _____	
VIN _____	

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

**Application for Optional Credit Insurance**

Credit Life:  Buyer  Co-Buyer  Both  
 Credit Disability (Buyer Only)

	Term	Exp.	Premium
Credit Life N/A Mos.	N/A	\$	N/A
Credit Disability N/A Mos.	N/A	\$	N/A
Total Credit Insurance Premiums		\$	N/A (b)
Insurance Company Name _____			
Home Office Address _____			
N/A			

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not buy credit life and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown above.

You are applying for the credit insurance marked above. Your signature below means that you agree that: (1) You are not eligible for insurance if you have reached your 65th birthday. (2) You are eligible for disability insurance only if you are working for wages or profit 30 hours a week or more on the Effective Date. (3) Only the Primary Buyer is eligible for disability insurance. **DISABILITY INSURANCE MAY NOT COVER CONDITIONS FOR WHICH YOU HAVE SEEN A DOCTOR OR CHIROPRACTOR IN THE LAST 6 MONTHS (Refer to "Total Disabilities Not Covered" in your policy for details).**

You want to buy life credit insurance.

Date: \_\_\_\_\_ Buyer Signature: [Signature] Age: \_\_\_\_\_

D. Deferred Downpayment \$ N/A (U)  
 E. Manufacturer's Rebate \$ 1.00 (E)  
 F. Other \$ N/A (F)  
 G. Cash \$ N/A (G)  
 Total Downpayment (C through G) \$ 500.00 (6)  
 (If negative, enter zero on line 6 and enter the amount less than zero as a positive number on line 1H above)  
 Amount Financed (5 less 6) \$ 14263.96 (7)  
 Seller may keep part of these amounts.

**SELLER ASSISTED LOAN**  
 BUYER MAY BE REQUIRED TO PLEDGE SECURITY FOR THE LOAN, AND BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THIS LOAN AND THE ORIGINAL SALES CONTRACT AND THE LOAN.  
 Source of Loan From: N/A  
 Amount \$ N/A Finance Charge \$ N/A  
 Due \$ N/A Payable in \_\_\_\_\_  
 Installments of \$ N/A \$ N/A  
 This Loan is shown in item 6D.

**AUTO BROKER FEE DISCLOSURE**  
 If this contract reflects the retail sale of a new motor vehicle, the sale is not subject to a fee received by an autobroker from us unless the following box is checked:  
 Name of autobroker, receiving fee, if applicable:  
N/A

**NOTICE OF RESCISSION RIGHTS**  
 Buyer and Co-Buyer sign here, the provisions of the Rescission Rights section on back giving the Seller the right to rescind if Seller is unable to assign this contract to a financial institution will apply.  
 Buyer X \_\_\_\_\_ Co-Buyer X \_\_\_\_\_

FINANCING:  You pay no finance charge if the Amount Financed, item 7, is paid in full on or before \_\_\_\_\_ Year \_\_\_\_\_ SELLER'S INITIALS \_\_\_\_\_

provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in item 1I. See your gap contract for details. The protection it provides. It is a part of this contract.  
 Term 60 Mos. FZCARE GAP  
 Name of Gap Contract  
 You want to buy a gap contract?   
 Buyer X \_\_\_\_\_

**OPTIONAL SERVICE CONTRACT(S)** You want to purchase the service contract(s) written with the following company(ies) for the term(s) shown below for the charge(s) shown in item 1.F and/or 1.G above.  
 1.F Company N/A  
 Term \_\_\_\_\_ Mos. or \_\_\_\_\_ Miles  
 1.G Company N/A  
 Term \_\_\_\_\_ Mos. or \_\_\_\_\_ Miles  
 Buyer X \_\_\_\_\_

**HOW THIS CONTRACT CAN BE CHANGED.** This contract contains the entire agreement between you and us relating to this contract. Any change to the contract must be in writing and both you and we must sign it. No oral changes are binding.  
 Buyer Signs \_\_\_\_\_  
 Co-Buyer Signs \_\_\_\_\_

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

**WARNING:**  
 YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.  
 FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.  
 THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.  
 X \_\_\_\_\_ X \_\_\_\_\_

**representations of Buyer:** Seller has relied on the truth and accuracy of the information provided by you in connection with the Trade-In Vehicle. You represent that you have given a true payoff amount on the vehicle traded in. If the payoff amount is more than the amount shown above in item 3 as "Prior Credit or Lease Balance," you must pay Seller the excess on demand. If the payoff amount is less than the amount shown above in item 6.B as "Prior Credit or Lease Balance," Seller will refund the difference to you.  
 Buyer X N/A Co-Buyer X N/A

**Advice to buyer:**  
 Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

If you have a complaint concerning this sale, you should try to resolve it with the seller. Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.  
 If this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, but if it is an unfair or deceptive practice for the seller to make a unilateral change.  
 Buyer Signature X \_\_\_\_\_ Co-Buyer Signature X \_\_\_\_\_

**The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.**

**THERE IS NO COOLING OFF PERIOD**  
 California law does not provide for a "cooling off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

**YOU AGREE TO THE TERMS OF THIS CONTRACT. YOU CONFIRM THAT BEFORE YOU SIGNED THIS CONTRACT, WE GAVE IT TO YOU, AND YOU WERE FREE TO TAKE IT AND REVIEW IT. YOU CONFIRM THAT YOU RECEIVED A COMPLETELY FILLED-IN COPY WHEN YOU SIGNED IT.**

Buyer Signature X \_\_\_\_\_ Date 05/26/2006 Co-Buyer Signature X \_\_\_\_\_ Date \_\_\_\_\_  
 -Buyers and Other Owners - A Co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

**GUARANTY**  
 To induce us to sell the vehicle to Buyer, each person who signs as a Guarantor individually guarantees the payment of this contract. If Buyer fails to pay any money owing on this contract, each Guarantor must pay it when asked. Each Guarantor will be liable for the total amount owing even if other persons also sign as Guarantor, and even if Buyer has a complete defense to Guarantor's demand for reimbursement. Each Guarantor agrees to be liable even if we do one or more of the following: (1) give the Buyer more time to pay one or more payments; (2) give a full or partial release to any other Guarantor; (3) release any security; (4) accept less from the Buyer than the total amount owing; or (5) otherwise reach a settlement relating to this contract or extend the contract. Each Guarantor acknowledges receipt of a completed copy of this contract and guaranty at the time of signing.  
 Guarantor waives notice of acceptance of this Guaranty, notice of the Buyer's non-payment, non-performance, and default; and notices of the amount owing at any time, and of any demands upon the Buyer.  
 Guarantor X \_\_\_\_\_ Date \_\_\_\_\_ Guarantor X \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ Address \_\_\_\_\_

Seller Signs THREE WAY CHEVROLET Date 05/26/2006 By X [Signature] Title \_\_\_\_\_

FORM NO. 553-CA (REV. 1/05) U.S. PATENT NO. 0460,782  
 ©2005 Reynolds and Reynolds. TO ORDER: www.reynolds.com 1-800-343-0996; fax 1-800-531-9055  
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CUSTOMER / TRUTH IN LENDING COPY

the finance charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed. Creditor - Seller may receive part of the Finance Charge.

- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment. As of the date of your payment, if the minimum finance charge is greater than the earned Finance Charge, you may be charged the difference; the minimum finance charge is as follows: (1) \$25 if the original Amount Financed does not exceed \$1,000, (2) \$50 if the original Amount Financed is more than \$1,000 but not more than \$2,000, or (3) \$75 if the original Amount Financed is more than \$2,000.

#### YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.

#### GAP LIABILITY NOTICE

In the event of theft or damage to your vehicle that results in a total loss, there may be a gap between the amount you owe under this contract and the proceeds of your insurance settlement and deductible. THIS CONTRACT PROVIDES THAT YOU ARE LIABLE FOR THE GAP AMOUNT. An optional gap contract (debt cancellation contract) for coverage of the gap amount may be offered for an additional charge.

- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.** You give us a security interest in:
  - The vehicle and all parts or goods installed on it;
  - All money or goods received (proceeds) for the vehicle;
  - All insurance, maintenance, service, or other contracts we finance for you; and
  - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract as the law allows. You will make sure the title shows our security interest (lien) in the vehicle.

- d. **Insurance you must have on the vehicle.** You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that

written notice of sale before selling the vehicle.

We will apply the money from the sale as allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at the Annual Percentage Rate shown on the face of this contract, not to exceed the highest rate permitted by law, until you pay.

- g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

#### 4. WARRANTIES SELLER DISCLAIMS

If you do not get a written warranty, and the Seller does not enter into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.

This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. **Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

#### 6. Applicable Law

Federal law and California law apply to this contract. If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

7. **Warranties of Buyer.** You promise you have given true and correct information in your application for credit, and you have no knowledge that will make that information untrue in the future. We have relied on the truth and accuracy of that information in entering into this contract. Upon request, you will provide us with documents and other information necessary to verify any item contained in your credit application.

You waive the provisions of Calif. Vehicle Code Section 1808.21 and authorize the California Department of Motor Vehicles to furnish your residence address to us.

#### CREDIT DISABILITY INSURANCE NOTICE CLAIM PROCEDURE

If you become disabled, you must tell us right away. (You are advised to send this information to the same address to which you are normally required to send your payments, unless a different address or telephone number is given to you in writing by us as the location where we would like to be notified.) We will tell you where to get claim forms. You must send in the completed form to the insurance company as soon as possible and tell us as soon as you do.

If your disability insurance covers all of your missed payment(s), WE CANNOT TRY TO COLLECT WHAT YOU OWE OR FORECLOSE UPON OR REPOSSESS ANY COLLATERAL UNTIL THREE CALENDAR MONTHS AFTER your first missed payment is due or until the insurance company pays or rejects your claim, whichever comes first. We can, however, try to collect, foreclose, or repossess if you have any money

either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge equal to the Annual Percentage Rate shown on the front of this contract or, at our option, the highest rate the law permits. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

- e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

**3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES**

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments. If you pay late, we may also take the steps described below.

- b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once, subject to any right the law gives you to reinstate this contract. Default means:

- You do not pay any payment on time;
- You start a proceeding in bankruptcy or one is started against you or your property; or
- The vehicle is lost, damaged or destroyed.
- You break any agreements in this contract.

The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

- c. **You may have to pay collection costs.** You will pay our reasonable costs to collect what you owe, including attorney fees, court costs, collection agency fees, and fees paid for other reasonable collection efforts. You agree to pay a charge not to exceed \$15 if any check you give to us is dishonored.

- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.

- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). You may redeem the vehicle by paying all you owe, or you may have the right to reinstate this contract and redeem the vehicle by paying past due payments and any late charges, providing proof of insurance, and/or taking other action to cure the default. We will provide you all notices required by law to tell you when and how much to pay and/or what action you must take to redeem the vehicle.

or rejects your claim, whichever comes first. We can, however, try to collect, foreclose, or repossess if you have any money due and owing us or are otherwise in default when your disability claim is made or if a senior mortgage or lien holder is foreclosing.

If the insurance company pays the claim within the three calendar months, we must accept the money as though you paid on time. If the insurance company rejects the claim within the three calendar months or accepts the claim within the three calendar months on a partial disability and pays less than for a total disability, you will have 35 days from the date that the rejection or the acceptance of the partial disability claim is sent to pay past due payments, or the difference between the past due payments and what the insurance company pays for the partial disability, plus late charges. You can contact us, and we will tell you how much you owe. After that time, we can take action to collect or foreclose or repossess any collateral you may have given.

If the insurance company accepts your claim but requires that you send in additional forms to remain eligible for continued payments, you should send in these completed additional forms no later than required. If you do not send in these forms on time, the insurance company may stop paying, and we will then be able to take action to collect or foreclose or repossess any collateral you may have given.

**Rescission Rights**

- a. Seller agrees to deliver the vehicle to you on the date this contract is signed by Seller and you. You understand that it may take a few days for Seller to verify your credit and assign the contract. You agree that if Seller is unable to assign the contract to any one of the financial institutions with whom Seller regularly does business under an assignment acceptable to Seller, Seller may rescind (cancel) the contract.
- b. Seller shall give you written notice (or in any other manner in which actual notice is given to you) within 10 days of the date this contract is signed if Seller elects to rescind. Upon receipt of such notice, you must immediately return the vehicle to Seller in the same condition as when sold, reasonable wear and tear excepted. Seller must give back to you all consideration received by Seller, including any trade-in vehicle.
- c. If you do not immediately return the vehicle, you shall be liable for all expenses incurred by Seller in taking the vehicle from you, including reasonable attorney's fees.
- d. While the vehicle is in your possession, all terms of the contract, including those relating to use of the vehicle and insurance for the vehicle, shall be in full force and you shall assume all risk of loss or damage to the vehicle. You must pay all reasonable costs for repair of any damage to the vehicle until the vehicle is returned to Seller.

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

The preceding NOTICE applies only if the "personal, family or household" box in the "Primary Use for Which Purchased" section of this contract is checked. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

Seller assigns its interest in this contract to	(Assignee) at (address)
under the terms of Seller's agreement(s) with Assignee.	
<input type="checkbox"/> Assigned with recourse <input type="checkbox"/> Assigned without recourse <input type="checkbox"/> Assigned with limited recourse	
Seller	By _____ Title _____

1 PROOF OF SERVICE

2 *Vargas v. Three-Way Chevrolet*  
3 Superior Court of California County of Kern, Case No. S-1500-CV-270482  
4 WDP

5 I am employed in the County of San Diego, State of California. I am over the  
6 age of 18 and not a party to the within action. My business address is: 10085 Carroll  
7 Canyon Road, Suite 100, San Diego, California 92131.

8 On July 1, 2010, I served the foregoing document(s) described as:

9 **FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF,  
10 RESTITUTION, AND DAMAGES**

11 on the interested parties in this action at San Diego, California as follows:

12 Nicholas J. Street 13 CLIFFORD & BROWN 14 1430 Truxtun Avenue 15 Suite 900 16 Bakersfield, California 93301-5230 17 Tel: (661) 322-6023 18 Fax: (661) 322-3508 19 Attorneys for THREE-WAY CHEVROLET	20 Steve Mikhov 21 ROMANO STANCROFF & 22 MIKHOV, PC 23 640 S. San Vicente, Suite 230 24 Los Angeles, CA 90048 25 Tel: (323) 936-2274 26 Fax: (323) 939-7973 27 Co-Counsel for Plaintiff
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28  **BY U.S. MAIL:** I enclosed the documents in a sealed envelope or package  
addressed to the persons at the addresses listed above and:

(1)  deposited the sealed envelope with the United States Postal Service, with  
the postage fully prepaid.

(2)  placed the envelope for collection and mailing, following our ordinary  
business practices. I am readily familiar with the business's practice for  
collecting and processing correspondence for mailing. Under that practice, on  
the same day that correspondence is placed for collection and mailing, it is  
deposited in the ordinary course of business with the United States Postal  
Service, in a sealed envelope with postage thereon fully prepaid, at San Diego,  
California. I am aware that on motion of the party served, service is presumed  
invalid if postal cancellation date or postage meter date is more than one day  
after date of deposit for mailing in affidavit.

**BY FACSIMILE:** On the date below, the document(s) were transmitted by  
facsimile transmission to each of the parties at the facsimile number(s) listed  
above and the transmission(s) reported as complete and without error. A true  
and correct copy of the said transmission report is attached hereto and  
incorporated herein by reference.  
**[attach copy of fax transmission]**

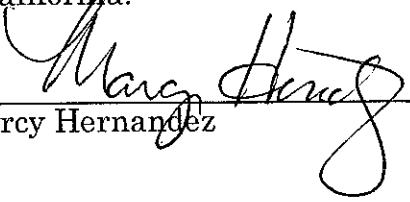
**(BY ELECTRONIC MAIL, CRC 2.260 and CCP §2015.5):** The documents  
were transmitted via email to each of the parties at the email address(s) listed  
above and the transmission(s) reported complete and without error.

1  **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or  
2 package provided by an overnight delivery carrier and addressed to the persons  
3 at the above addressed. I caused such envelope or package to be deposited in a  
regularly utilized drop box of the overnight delivery carrier.

4  **BY PERSONAL SERVICE:** I caused to be personally delivered the documents  
5 listed above to the addressee(s) named above.

6  **(STATE)** I declare under penalty of perjury under the laws of the State of  
7 California that the above is true and correct.

8 Executed on **July 1, 2010** at San Diego, California.

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11 Marcy Hernandez

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60236-000203-V10

Morning Overnite -- A

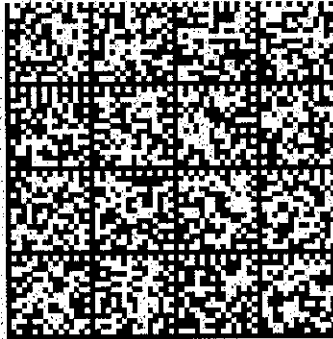
Zone:605

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Bill To:60236 Date: 7/1/2010  
 From:Marcy Hernandez  
 Rosner & Mansfield, LLP  
 10085 Carroll Canyon Rd.  
 Ste:1st Flr  
 San Diego , CA 92131  
 8583481005

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Billing Reference:1589



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Number of Pieces: 1

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 Ste:  
 Bakersfield , CA 93301  
 8583481005

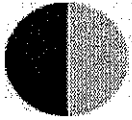


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<b>Shipper Name:</b> Marcy Hernandez	<b>City:</b> Bakersfield <b>ZIP:</b>
	<b>Delivery Service:</b> A
<b>Delivery Scan:</b> Bakersfield 11:37 AM 7/2/2010	<b>Recipient Signature:</b> williams
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*Signature*  
*Williams*  
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