IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARGUERITE M. PARMER,	:	DOCKET NO. 16-744
Plaintiffs,	:	
	:	CIVIL ACTION
vs.	:	
	:	
FAIRFIELD TOYOTA, et. al.,	:	
Defendants	:	PRELIMINARY OBJECTIONS

OPINION AND ORDER

Before the Court are a total of eleven preliminary objections to Plaintiff's First Amended Complaint, ten filed by Defendants Fairfield Toyota (Fairfield) and David D. Mather and five filed by Pennsylvania State Employees Credit Union (PSECU), with four of PSECU's objections overlapping with the other Defendants and only one objection filed by PSECU being independent from those filed by Fairfield and Mather.[1] The following opinion is provided in support of this Court's rulings.

BACKGROUND

Plaintiff's First Amended Complaint contains the eight counts: count 1 (fraud) count 2 (breach of contract), count 3 (negligence), count 4 (negligent misrepresentation), count 5 (breaches of express and implied warranties), count 6 (civil conspiracy), count 7 (violation of the professions and occupations act) and count 8 (violation of unfair trade practices and consumer protection law). Except for count 7, all counts are against all defendants. Count 7 is against all defendants except Toyota Motor North America, Inc. (TM).

[1] Plaintiff commenced this matter by complaint filed February 8, 2016 in Allegheny County. Defendants filed preliminary objections and a petition to transfer venue. On April 6, 2016, the Court of Common Pleas of Allegheny County granted defendants' petition to transfer due to forum non convenience. On April 11, 2016, Plaintiff filed its First Amended Complaint. Allegheny County transferred this case to Lycoming County on May 19, 2016. The preliminary objections were filed by Defendants Fairfield Toyota (Fairfield) and David D. Mather on June 9, 2016 and by Pennsylvania State Employees Credit Union (PSECU) on June 14, 2016. On July 25, 2016, Defendant Toyota Motor North America, Inc. (TM) filed an answer and new matter to the first amended complaint. The remaining defendants filed preliminary objections which are currently before the Court. Argument was held on August 17, 2016.

This matter arises from the purchase of a 2010 Toyota 4Runner from Fairfield Toyota on or about April 30, 2011. Plaintiff essentially alleges that Defendants (PSECU by stepping into the shoes of other Defendants) made false statements about the vehicle's condition and history to induce Plaintiff to purchase the vehicle at an inflated price. Plaintiff further alleges the following. Defendant Mather told Plaintiff that the vehicle had not been in any accidents and had not been damaged when in fact the vehicle had been in an accident and had been damaged. Defendant Mather told Plaintiff the vehicle was Toyota Certified when the condition and history of the vehicle did not in fact meet the certification standards as provided and advertised. As an inducement to purchase at the contract price, Plaintiff received a 160-Point Quality Assurance Inspection Check Sheet signed by a Toyota Trained Technician, a service manager, a Used Car Manager and Plaintiff. That checklist essentially indicated that the vehicle met the standards for the program which were in part that the vehicle had not been in any accidents and had not been damaged. Defendant Mather gave Plaintiff a Carfax report that falsely indicated that the vehicle had not been in any accidents or had not been damaged. Defendants employed the Toyota Certification Program as a scam to induce customers such as Plaintiff to purchase vehicles at inflated prices.

Plaintiff itemized the following false representations fraudulently made:

a) The subject vehicle had 55,200 miles on it at the time of ownership was transferred to Plaintiff;
b) the odometer reading and disclosure statement reflected the actual mileage,
c) the odometer reading and disclosure statement was reliable and accurate;
d) the subject vehicle had not been damaged or been involved in any accidents;
e) the vehicle was in good, safe and operable condition;
f) the subject vehicle was free of defects;
g) Defendants were charging a lawful documentary fee; the sale was conducted and the paperwork was completed lawfully;
h) Defendants were charging lawfully for notary fees; financing was approved and complete;

i) the subject vehicle was carefully and comprehensive inspected in accordance with exacting and meaningful standards;
j) the subject vehicle was certified in accordance with high standards;
k) the subject vehicle was in an almost like new condition;
l) the subject vehicle was put through an exhaustive 160 point inspection.

Despite making those representations, Defendants concealed the following contrary facts from Plaintiff:

a) Defendants charged unlawfully for a documentary fee;
b) Defendants did not conduct the sale and/or financing or complete the paperwork lawfully;
c) the vehicle was not certified properly in accordance with the TM certified used car program;
d) the vehicle was in an accident and/or damaged;
e) the vehicle was in a frame-damaged, unfit, unmerchantable and dangerous condition.

Finally, within months after purchasing the vehicle, the vehicle experienced a "parade of problems." Plaintiff received a vehicle with an actual value far below the misrepresented value and suffered inflated financing obligations. PSECU ratified the underlying misconduct. Despite being notified of misconduct, PSECU advised Plaintiff if she stopped making payments, it would damage Plaintiff's credit rating and it would take the vehicle.

The transaction involved the following documents: a Buyers Order (BO) (Exhibit 2), Retail Installment Sales Contract (RISC/MVISC)(Exhibit 3) and a Buyer Guide window form sticker. The Buyers Guide window sticker overrides any contrary provisions of the BO or RISC. The "As IS" box was not checked on the Buyers Guide window sticker and the required AS IS disclosure appeared nowhere on the sticker. *Plaintiff's First Amended Complaint,* ¶ 162. A copy of the Buyers Guide window sticker form was not attached to the First Amended Complaint. Defendants did not give plaintiff a copy but it is a standardized form and a copy typically remains within the deal file ("DealJacket"). *Plaintiff's First Amended Complaint,* ¶ 163. The

"AS IS" box was not checked on the BO. Similarly, no warranty disclaimer appears on the face or front of the RISC. However, a disclaimer in fine print appeared in ¶19 on the back of the RISC. It states that there are no warranties by seller, expressed or implied, including the warranties of merchantability and fitness for a particular purpose, unless a separate written warranty was provided or unless seller enters into a service contract with buyer within 90 days from the date of this contract. The RISC assignee was Pennsylvania State Employees Credit Union. The amount financed was $24,822. Contract price for the vehicle was $32,105.81. The RISC contains a notice in all caps that:

> 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.

DISCUSSION

A party may file preliminary objections based on the legal sufficiency or insufficiency of a pleading (demurrer) pursuant to Pa. R.C.P. 1028(a)(4). A demurrer tests the legal sufficiency of the complaint. Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 714 (Pa.Super. 2005). When reviewing preliminary objections in the nature of a demurrer, the court must "accept as true all well-pleaded material facts set forth in the complaint and all inferences fairly deducible from those facts." Thierfelder v. Wolfert, 52 A.3d 1251, 1253 (Pa. 2012), *citing*, Stilp v. Commonwealth, 940 A.2d 1227, 1232 n.9 (Pa. 2007). In deciding a demurrer "it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer." Melon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. 1994) (citations omitted). "Preliminary objections, the end result of which would be dismissal of a cause of action, should

be sustained only in cases that are **clear and free from doubt**." Bower v. Bower, 611 A.2d 181, 182 (Pa. 1992)(emphasis added).

With this background in mind, the Court will discuss the preliminary objections and standards of law applied to them. Four of Defendant PSECU's objections are the same as Defendants Fairfield Toyota and Mather's objections and are discussed together. The Court will discuss the objections in the order set forth by Defendants Fairfield Toyota and Mather followed by PSECU's sole independent objection.

1. Defendants Fairfield Toyota and Mather's First Objection - Gist of the Action.

Defendants Fairfield and Mather demur to counts 1 (fraud), 3 (negligence), 4 (negligent misrepresentation) and 6 (civil conspiracy) on grounds that those counts are barred by the gist of the action doctrine. The gist of the action doctrine precludes the recasting of ordinary breach of contract claims into tort claims. *See, e.g.,* Bruno v. Erie Insurance Co., 106 A.3d 48 (Pa. 2014); Knight v. Springfield Hyundai, 81 A.3d 940 (Pa. Super. 2013); Reardon v.Allegheny College, 926 A.2d 477 (Pa. Super. 2007); Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10 (Pa. Super. 2002)(gist-of-the action doctrine barred fraud claim that arose from the performance of a contract). "The gist of the action doctrine forecloses tort claims (1) arising solely from the contractual relationship between the parties; (2) when the alleged duties breached were grounded in the contract itself; (3) where any liability stems from the contract; and (4) when the tort claim essentially duplicates the breach of contract claim or where the success of the tort claim is dependent on the success of the breach of contract claim." Reardon, supra. at 486. (citations omitted). Pennsylvania courts have recognized that tort claims for fraudulent inducement of contractual relations is not necessarily barred by the gist of the action doctrine. *See, e.g.*, Bruno, supra, *citing*, Mendelsohn Drucker v. Titan Atlas Mfg., 885 F. Supp. 2d 767, 790 (E.D. Pa.

2012); Etoll, supra, J.J. Deluca Co. v. Toll Naval Assocs., 2012 PA Super 222, 56 A.3d 402 (Pa. 2012).

Fairfield and Mather contend that counts 1 (fraud), 3 (negligence), 4 (negligent misrepresentation) and 6 (civil conspiracy) are essentially breach of contract (BO and RISC) claims re-casted as tort claims. This Court disagrees, with the exception of the negligence count.

As to the fraud, negligent misrepresentation and conspiracy counts, Plaintiff averred that Defendants either intentionally or negligently misrepresented facts material to the transaction intending for plaintiff to rely on those misrepresentations to induce her to purchase the vehicle for the contract price. Those claims fall outside the obligations of the contract itself. Such claims are in the nature of fraudulent inducement and not barred by the gist of the action doctrine.

As to the negligence claims the Court concludes that the negligence count is indeed an attempt to recast the breach of contract claims into a tort claim. Therefore the negligence count is barred by the gist of the action doctrine. While some of the averments in the negligence count pertain to negligent failure to hire, supervise or develop policies, the facts underlying such claims were absent and the essence of that count as a whole pertains to the manner of performance of the contract, including negligent performance by unsupervised or untrained individuals unguided by appropriate policies.

Accordingly, the objections based upon the gist of the action doctrine are overruled as to fraud, negligent misrepresentation and conspiracy but sustained as to negligence.

2. Defendants Fairfield Toyota and Mather's Second Objection - Motion to Strike Scandalous Or Impertinent Material - ¶¶ 63-89.

Defendants Fairfield and Mather contend that paragraphs 63-89 are averred for the purpose of providing a factual basis to include Exhibit 9 which is a scandalous and impertinent

matter. Exhibit 9 is the deposition transcript of an individual identified as Jamie Fox-Pettit in the lawsuit of Edward Canales, Jr., v. Auto Direct, LLC d/b/a Toyota Direct, et. al. in Franklin County, Ohio. The deposition transcript of an individual arising from a lawsuit in a different state involving different individuals is scandalous and impertinent to the operative complaint in this case. Paragraphs 63-89 appear to serve no purpose other than to form a factual basis to include exhibit 9, and are therefore scandalous and impertinent matter as well as duplicative and repetitive of other allegations in the complaint. As such, the motion to strike is sustained. It is noted that this ruling does not preclude the admissibility at trial of evidence as to the TCUV program simply because it was stricken from the complaint at this juncture.

3. Defendants Fairfield Toyota and Mather's Third Objection – Motion to Strike Paragraph 60.

Defendants Fairfield and Mather contend that paragraph 60 of the complaint should be stricken for lack of the averment of a factual basis to substantiate it as required by 1019 (a) and that the averment pertains to breach of contract to which state of mind is irrelevant. The Court disagrees. Paragraph 60 appears in the factual background of the complaint, not the breach of contract count. Paragraph 60 states: "Plaintiff has been and will continue to be financially damaged due to Defendants' intentional, reckless, wanton, and/or negligent misconduct." While the averment is immaterial to the breach of contract claim, it is material to count 1 (fraud), count 4 (negligent misrepresentation) and 6 (civil conspiracy).

Plaintiff averred sufficient facts, if believed, to support a claim that Defendants acted in an intentional, reckless or wanton manner with respect to the misrepresentations of the vehicle. Among other averments, Defendants allegedly misrepresented that the vehicle had not been in any accidents, had not been damaged and provided Toyota Certified documentation and a Carfax report to that effect despite Fairfield's own computer system indicating that the vehicle had been

in a pre-sale accident and had been damaged and repaired at Fairfield Toyota's body shop. *Complaint*, ¶ 33. The motion to strike paragraph 60 is overruled because the paragraph is pertinent to all claims except the breach of contract claim.

4. Defendants Fairfield Toyota and Mather's Fourth Objection – Motion to Strike Claim for Emotional Damages Arising from the Breach of Contract.

Plaintiff did not oppose Defendants Fairfield Toyota and Mather's Motion to Strike Claim for Emotional Damages. *See*, Plaintiff's Response in Opposition to the Preliminary Objections of defendants Fairfield Toyota David A. Mathur ¶¶ 44-48. Accordingly, the motion to strike the claim for emotional damages arising from breach of contract is sustained.

5. Defendants Fairfield Toyota and Mather's Fifth Objection – Demurrer to Fraud Claim.

"In determining whether the complaint avers fraud with sufficient specificity, this Court must look to the complaint as a whole and ascertain whether it adequately explains the nature of the claim to the defendants so that they may prepare a defense, and whether it is sufficiently specific to convince the court that the averments therein are not merely a subterfuge." Maleski by Taylor v. DP Realty Trust, 653 A.2d 54, 65 (Pa. Comwlth.1994), *citing*, Martin v. Lancaster Battery Co., Inc., 530 Pa. 11, 606 A.2d 444 (1992). "However, a plaintiff is not required to plead evidence in his or her complaint, and therefore, need not allege all of the factual details underlying the claim of fraud." Maleski by Taylor v. DP Realty Trust, 653 A.2d 54, 65 (Pa. Comwlth.1994), *citing* 3 STANDARD PENNSYLVANIA PRACTICE 2d 16:34, at 514 (1981).

Viewing the First Amended Complaint as a whole in this case, the Court concludes it is sufficiently specific to allow the defendants to prepare a response. It avers the documents and misrepresentations alleged to be false, the backdrop as to the intentionality and purpose of the misrepresentations, and reliance on the misrepresentations. Plaintiffs alleged Defendants

intended to sell the vehicle to Plaintiff at the agreed upon price and made false statements and provided documents with false statements in order to induce the Plaintiff to purchase the vehicle for an inflated price. Accordingly, the demurrer to the fraud claim is overruled.

6. Defendants Fairfield Toyota and Mather's Sixth Objection, and PSECU's first objection, – Demurrer to Negligence Count as Being Barred by Economic Loss Doctrine.

"The economic loss doctrine generally precludes recovery in negligence actions for injuries which are solely economic." Excavation Techs., Inc. v. Columbia Gas Co., 604 Pa. 50, 985 A.2d 840, 841 (Pa. 2009). Our Pennsylvania Supreme Court noted that there is an exception to the economic loss doctrine for negligent misrepresentation. Id, *citing*, Bilt-Rite Contractors, Inc. v. Architectural Studio, 581 Pa. 454, 866 A.2d 270 (Pa. 2005). This Court concludes that the present claim of fraud and negligent misrepresentation in the inducement of the contract fall within the exception to the economic loss doctrine. In the absence of a Pennsylvania Appellate Court decision applying the economic loss doctrine to these types of claims, this Court will not apply the economic loss doctrine to bar the claim as to fraud and misrepresentation in the inducement of a contract at issue in the present case. The demurrer on the economic loss doctrine as to the fraud, negligent misrepresentation and conspiracy as to the TCUV program being a scam, is overruled. The negligence count is dismissed under the gist of the action doctrine and therefore the demurrer as to that count based upon the economic loss doctrine is moot.

7. Defendants Fairfield Toyota and Mather's Seventh Objection, and PSECU's Second Objection - Demurrer to Count 5 Breach of Warranties As Barred by Contract Terms

Defendants demur to count 5, breach of warranties, as barred by the express terms of the written contracts at issue in this case. Initially, this Court notes that the sale of used automobiles

is highly regulated by Pennsylvania and Federal laws. There are strict requirements for selling a used vehicle without any warranties. Significantly, a warranty disclaimer must appear on the face of the document in a clear, concise and conspicuous manner. Moreover, warranty disclaimer "**may not contradict an oral or written statement, claim or representation made directly or by implication** with regard to the quality, performance, reliability or lack of mechanical defects of a motor vehicle which is offered for sale[.]" 37 Pa. Code § 301.4 (9) (emphasis added) [2] The Federal Trade Commission's Used Motor Vehicle Trade Regulation Rule prohibits selling a vehicle "AS IS" unless the box is checked on the window form.

In the present case, Plaintiff alleges that the "AS IS" box was not checked and appeared nowhere on the Buyers Guide (window form-sticker). In addition, the "AS IS" box was not checked on the BO. Defendants rely on the language in the RISC to exclude express and implied warranties. While the RISC contains the required warranty disclaimer language, it appears in fine print on the back of the document and contradicts the oral representations allegedly made

[2] Chapter 301, entitled Automotive Industry Trade Practices, of the Pennsylvania Code provides the following.

> (9) Where no express warranty is given, attempting to exclude the implied warranties of merchantability and fitness for a particular purpose in the sale of a motor vehicle purchased primarily for personal, family or household purposes unless the following notice in at least 20-point bold type is prominently affixed to a window in the motor vehicle so as to be easily read from the outside and is brought to the attention of the prospective purchaser by the seller:
> This vehicle is sold without any warranty. The purchaser will bear the entire expense of repairing or correcting any defects that presently exist and/or may occur in the motor vehicle unless the salesperson promises in writing to correct such defect or promises in writing that certain defects do not exist.
> This paragraph prohibits the use of the term "AS IS" unless the sales contract, receipt, agreement or memorandum contains the following information in a clear, concise and conspicuous manner on the face of the document; the notice shall be in addition to the window statement required by this paragraph and may not contradict an oral or written statement, claim or representation made directly or by implication with regard to the quality, performance, reliability or lack of mechanical defects of a motor vehicle which is offered for sale:
>
> AS IS
> THIS MOTOR VEHICLE IS SOLD AS IS WITHOUT ANY WARRANTY EITHER EXPRESSED OR IMPLIED. THE PURCHASER WILL BEAR THE ENTIRE EXPENSE OF REPAIRING OR CORRECTING ANY DEFECTS THAT PRESENTLY EXIST OR THAT MAY OCCUR IN THE VEHICLE.

about the vehicle's condition and history.[3] The Toyota Certified Used Vehicle Warranty warranted that the vehicle met the standards of the program which Plaintiff alleges were similar to and further assurance of the oral representations allegedly made about the vehicle's history and condition at the time of sale. Accordingly, the Court concludes that Plaintiff has alleged sufficient facts, if proven, to support a count for breach of warranty.

8. Defendants Fairfield Toyota and Mather's Eighth Objection, and PSECU's Fourth Objection – that Damages Are Limited to the Amount Paid.

Defendants contend that Plaintiff may only recover the amount she paid for the vehicle pursuant to the notice in the contract that the holder is subject to claims and defenses which debtor could assert against seller but recovery thereunder is limited to the amount paid thereunder.

A financing company that has been assigned an installment contract for the purchase of a car can be liable for the car dealer's violations of the Motor Vehicle Sales Finance Act, 69 P.S. §§ 601-637 ("MVSFA"), by virtue of the Federal Trade Commission regulation 16 CFR 433.3(a) (FTC Holder Rule) which requires such notice be included in consumer credit contracts involving the sale of goods and services. *See*, Knight v. Springfield Hyundai, 81 A.3d 940, 952 (Pa. Super. 2013); Beemus v. Interstate Nat'l Dealer Servs., 823 A.2d 979 (Pa. Super. 2003). The FTC Holder Rule requires notice that "recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder." Knight, supra; 16 CFR 433.3(a). Therefore, it is proper for the trial court to limit recovery against an assignee to that extent. Knight, supra.

The present case involves an installment contract for the purchase of a vehicle. Defendants Fairfield Toyota and David D. Mather, are the seller and agent of the seller. PSECU

[3] The Court notes it is difficult to locate the language even when one knows in advance that the language appears somewhere on that page of the document.

is the assignee and holder in due course of the RISC. In accordance with the FTC Holder Rule, the RISC in the present case contains the following language.

> 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. (emphasis added).

Since Defendants Fairfield Toyota and David D. Mather are the seller and agent of the seller, and not the holder, the notice does not limit their damages. Accordingly, the Court overrules Defendants' eighth objection to cap their damages as lacking any merit.

By contrast, PSECU has been sued as the holder in due course pursuant to the RISC. Pursuant to the FTC Holder rule, recovery is limited against PSECU to the amount Plaintiff paid. 16 CFR 433.3(a); Knight, supra; Beemus, supra. Plaintiff contends that recovery is not limited against PSECU because of PSECU's own misconduct and ratification. Plaintiff further contends that the cap only applies to claims under the contract and does not apply to counsel fees. The Court disagrees. Plaintiff's allegations against PSECU are based upon PSECU being an assignee of the RISC. *See*, First Amended Complaint, ¶ 109; Count 1 - ¶ 117; Count 2 – ¶ 134; Count 4- ¶ 150; Count 5- ¶ 156; Count 6- ¶ 172; Count 7 – ¶ 183. As all of the claims against PSECU are brought against PSECU as holder under the FTC Holder Rule only, they are all subject to the limitation on damages.

9. Defendants Fairfield Toyota and Mather's Ninth Objection, and PSECU's Fifth Objection – Failure to Comply with PRCP 1019(i).

Defendants contend that Plaintiff failed to attach the Buyer's Guide Window Sticker to her First Amended Complaint or to state that it is not accessible to her. Rule 1019(i) of the Pennsylvania Rules of Civil Procedure provides the following.

> When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing. Pa. R.C.P. No. 1019(i).

In ¶ 163 Plaintiff avers that Defendants did not give the Buyers Guide window sticker to Plaintiff which conforms to Pa. R.C.P. No. 1019(i). Therefore, the objection is overruled.

10. Defendants Fairfield Toyota and Mather's Tenth Objection to Count 7 – Violation of the professions and Occupations Act for Lack of Specificity.

Plaintiffs averred that the misconduct alleged in her First Amended Complaint constitute violations of 63 P.S. § 818.19 (2), (3), (5), (6), (7), (21), (23), (24), and (26).[4] Those sections are restated here.

> (2) Make any substantial misrepresentation of material facts.
>
> (3) Make any false promise of a character likely to influence, persuade or induce the sale of a vehicle.
>
> (5) Having failed or refused to account for moneys or other valuables belonging to others which have come into his possession arising out of the sale of vehicles.
>
> (6) Having engaged in false, deceptive or misleading advertising of vehicles.
>
> (7) Having committed any act or engaged in conduct in connection with the sale of vehicles which clearly demonstrates unprofessional conduct or incompetency to operate as a licensee under this act.
>
> (21) Willfully having made any false statement as to a material matter in any oath or affidavit which is required by this act.
>
> (23) Collecting a tax or fee and failing to issue a true copy of the tax report to the purchaser as required by law.

[4] 63 P.S. § 818.19 provides grounds for disciplinary proceedings for conduct set forth in the statute.

> (24) Issuing a false or fraudulent tax report or copy thereof.
>
> and
>
> (26) Violating any provision of this act.

Except for 63 P.S. § 818.19 (26), all of the violations are sufficiently specific and sufficiently plead. The Court will strike the reference to a violation of 63 P.S. § 818.19 (26) as lacking sufficient specificity to prepare a defense but OVERRULES the objection as to the remainder of the count.

11. PSECU's sixth objection – Demurrer to Count 6 - Civil Conspiracy.

PSECU demurs to count 6 (civil conspiracy) on the grounds that Plaintiff failed to plead facts that PSECU engaged in a conspiracy. The Court disagrees. PSECU was sued as a holder of the RISC pursuant to the FTC Holder Rule which was included in the RISC. That rule and contract provision provide that any holder of the consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods and services obtained pursuant thereto or with the proceeds thereof. Plaintiff could and did assert a claim of civil conspiracy against the seller of the vehicle obtained with the proceeds of the RISC. Plaintiff need not allege that PSECU engage in a conspiracy; it need only allege that PSECU was a holder of the RISC, which it did. Therefore, PSECU'S sixth objection is overruled.

Accordingly, the Court enters the following Order.

ORDER

AND NOW this , it is ORDERED and DIRECTED as follows.

1. Defendants Fairfield Toyota and David D. Mather's Preliminary Objections based on the gist of the action doctrine are SUSTAINED in part and DENIED in part as follows:

a. SUSTAINED as to negligence; the negligence claim is DISMISSED and STRICKEN from the First Amended Complaint.
b. OVERRULED as to fraud, negligent misrepresentation and civil conspiracy.

2. Defendants Fairfield Toyota and David D. Mather's Motion to Strike Scandalous Or Impertinent Material is SUSTAINED; paragraphs 63 through 89, titled "Certification" are STRICKEN from the First Amended Complaint as immaterial and/or duplicative.
3. Defendants Fairfield Toyota and David D. Mather's Motion to Strike ¶ 60 is OVERRULED; ¶ 60 is relevant to all claims except the breach of contract claim and does not appear in the breach of contract count. However, the Plaintiff is precluded from amplifying the words "intentional, reckless, wanton, and/or negligent misconduct" beyond the specific allegations set forth elsewhere in the First Amended Complaint.
4. Defendants Fairfield Toyota and David D. Mather's Motion to Strike claim for emotional damages allegedly resulting from breach of the contract is SUSTAINED; such claims are STRICKEN.
5. Defendants Fairfield Toyota and David D. Mather's Demurrer to the Fraud Claim is OVERRULED.
6. The demurrers based on the economic loss doctrine as to the fraud, negligent misrepresentation and conspiracy as to the TCUV program being a scam, are OVERRULED. The negligence count is dismissed under the gist of the action doctrine and therefore the demurrer as to that count based upon the economic loss doctrine is MOOT.
7. The demurrer to Breach of Warranties claim is OVERRULED.
8. The demurrer to limit damages based upon the holder in due course language is OVERRULED as to Defendants Fairfield and Mather and SUSTAINED as to PSECU. The recovery against PSECU is limited to the amount paid under the contract.
9. Defendants Fairfield Toyota and David D. Mather and PSECU's objection based upon the failure to comply with Failure to comply with Pa. R.C.P. 1019(i) as to the Buyer's Guide Window Sticker is OVERRULED.
10. Defendants' Fairfield Toyota and Mather's objections to Count 7 as lacking specificity is OVERRULED as to violations of 63 P.S. § 818.19 (2), (3), (5), (6), (7), (21), (23), (24) and SUSTAINED as to an alleged violation of 63 P.S. § 818.19 (26) (violating any

provision of this act). Accordingly "and (26)" is stricken from ¶ 184 of the First Amended Complaint.

11. PSECU's sixth objection, a demurrer to Count 6, Civil Conspiracy, is OVERRULED.
12. Defendants Fairfield Toyota, David D. Mather and PSECU shall file an Answer within 20 days.
13. This matter is placed on the Court's September 2017 Trial Term. A separate scheduling Order will be issued this date.

BY THE COURT,

December 6, 2016
Date

Richard A. Gray, J.

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