The Order of Court is stated below:

03:57:10 PM

**Dated:** May 22, 2014 /s/ John Paul Kennedy District Court Judge

Jon H. Rogers #6434 Attorney for Plaintiffs 825 North 300 West, Suite N144 Northgate Park Business Center Salt Lake City, Utah 84103 Telephone: (801) 532-6272 Telefacsimile: (801) 532-4192

E-Mail:

THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH SALT LAKE COUNTY, SALT LAKE DEPARTMENT

JACOB THRONDSEN and

CARIE THRONDSEN,

Plaintiff, PARTIAL SUMMARY JUDGMENT

VS.

LARRY H. MILLER USED CAR Civil No. 120904980 SUPERMARKET, INC; and JOHN DOES 1-10, Judge: John Paul Kennedy

Defendants.

Pursuant to Plaintiff's "Motion for Partial Summary Judgment" and supporting filings and for good cause appearing, this Court hereby GRANTS Plaintiff's Motion for Partial Summary Judgment," as follows:

## PARTIAL SUMMARY JUDGMENT

PARTIAL SUMMARY JUDGMENT is therefore awarded against Defendant Larry H. Miller Used Car Supermarket, Inc., and in favor of Plaintiffs as follows:

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**AMENDED ORDER** 

**GRANTING MOTION FOR** 

- 1. On October 23, 2010, Defendant Larry H. Miller Used Car Supermarket, Inc. (hereinafter "Defendant Supermarket") entered into a "*Motor Vehicle Contract of Sale*" with Plaintiffs regarding a Black, 2007 GMC Acadia 4D Sport Utility SLT, V.I.N. # 1GKEV23797J100392 (hereinafter "Subject Vehicle").
- 2. The Subject Vehicle at issue in this litigation, prior to being sold to Plaintiffs by Defendant Larry H. Miller Used Car Supermarket, Inc., was a "Motor Vehicle," as defined in Utah Code § 41-3-407(4) and as used throughout the Utah Motor Vehicle Buyback Disclosure Act, Utah Code §§ 41-3-406, *et seq*.
- 3. The Subject Vehicle at issue in this litigation, prior to being sold to Plaintiffs by Defendant Larry H. Miller Used Car Supermarket, Inc., was a "Buyback Vehicle," as defined in Utah Code § 41-3-407(1) and as used throughout the Utah Motor Vehicle Buyback Disclosure Act, Utah Code §§ 41-3-406, *et seq*.
- 4. In all dealings with Plaintiffs, Defendant Supermarket was a "dealer," as identified in Utah Code § 41-3-102(8)(a) of the Utah Motor Vehicle Business Regulation Act and Utah Code § 41-1a-102(13) of the Utah Motor Vehicle Act.
- 5. In all dealings with Plaintiffs, Defendant Supermarket was a "seller," as identified in Utah Code § 41-3-407(7) of the Utah Motor Vehicle Buyback Disclosure Act.
- 6. In dealing with Defendant Supermarket, each of the Plaintiffs was a "Consumer" as identified in Utah Code § 41-3-407(2) of the Utah Motor Vehicle Buyback Disclosure Act.
- 7. In connection with its sale of the Subject Vehicle to Plaintiffs, Defendant Supermarket violated Utah Code § 41-3-408(1)(a) of the Utah Motor Vehicle Buyback Disclosure Act.

- 8. In connection with its sale of the Subject Vehicle to Plaintiffs, Defendant Supermarket violated Utah Code § 41-3-408(2) of the Utah Motor Vehicle Buyback Disclosure Act by failing to make the required "Disclosure Statement."
- 9. In connection with its sale of the Subject Vehicle to Plaintiffs, Defendant Supermarket violated Utah Code § 41-3-408(3) of the Utah Motor Vehicle Buyback Disclosure Act by failing to make the required "Disclosure Statement."
- The alleged "Nonconformity or noncomformities" as defined in Utah Code § 41-3-407(1) and as used throughout the Utah Motor Vehicle Buyback Disclosure Act, Utah Code §§ 41-3-406, *et seq.*, which resulted in the Subject Vehicle becoming a a "Buyback Vehicle," as defined in Utah Code § 41-3-407(1) and as used throughout the Utah Motor Vehicle Buyback Disclosure Act, Utah Code §§ 41-3-406, *et seq.*, included the statement that the repurchase was based upon the following alleged or determined defects or conditions: a "Thermal Event under hood."
- 11. Prior to being sold to Plaintiffs by Defendant Supermarket, the Subject Vehicle had been issued an Ohio Certificate of Title with a "Buyback Vehicle" Brand.
- 12. Prior to being sold to Plaintiffs by Defendant Supermarket, the Subject Vehicle had been issued a Wisconsin Certificate of Title with a "Manufacturer Buyback" Brand.
- The Utah Motor Vehicle Buyback Disclosure Act, Utah Code §41-3-411 provides a private remedy so that, "Any seller who violates Sections 41-3-406 through 41-3-409 is liable to the purchaser for . . . actual damages if the purchaser elects to retain the buyback vehicle . . . the costs of the action and reasonable attorney fees . . . up to three times the value of the actual damages or the consideration as exemplary damages; and . . . other equitable relief . . . the court determines to be proper in addition to damages and costs."

Dated this	day of	, 2014.	
		JOHN PAUL KENNEDY	
		DISTRICT COURT JUDGE	

Approval as to Form:

/s/ Aida Neimarlia
Ms. Aida Neimarlia
Burbidge Mitchell & Gross
Attorney for Defendant
Larry H. Miller Used Car Supermarket

Date: May 19, 2014

## **CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2014, a true and correct copy of the foregoing, proposed "AMENDED ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT" and this "CERTIFICATE OF SERVICE" are being filed through a court-approved Electronic Filing Service with electronic service/noticing to:

Ms. Aida Neimarlia
Burbidge Mitchell & Gross
Attorneys for Defendant
Larry H. Miller Used Car Supermarket
215 South State Street, Suite 920
Salt Lake City, UT 84111

/s/ Jon H. Rogers
JON H. ROGERS
Attorney for Plaintiffs