

Cause No. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiff,	§	TRAVIS COUNTY, TEXAS
	§	
	§	
FORD MOTOR CREDIT COMPANY,	§	
A Delaware Corporation; and	§	
{FORD DEALERS}[As hereinafter	§	
defined in Paragraph 3]	§	
	§	
Defendants	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION FOR INJUNCTIVE AND OTHER RELIEF**

COMES NOW plaintiff, THE STATE OF TEXAS, by and through GREG ABBOTT Attorney General of Texas, and in the public interest under the authority granted to him by section 17.47, TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE ANN., § 17.41, *et seq.* (VERNON 1987 and Supp.2002) (“DTPA”) files this Petition naming Defendants FORD MOTOR CREDIT COMPANY, a Delaware corporation (hereinafter “FORD CREDIT”), and [FORD DEALERS], as follows:

1. GREG ABBOTT is the duly elected Attorney General of Texas and, as such, is authorized to enforce the DTPA.
2. Defendant FORD CREDIT is, and was at all times mentioned herein, a corporation duly organized pursuant to the laws of the State of Delaware, and conducting business at various locations in and throughout the State of Texas. Defendant FORD CREDIT is headquartered at One American Road, Dearborn, Michigan 48121.
3. Defendant FORD DEALERS (see Appendix A, which is incorporated herein as if set forth in its entirety) are Texas dealers of Ford and Lincoln-Mercury vehicles supplied to them by Ford Motor Company.

4. Defendant FORD CREDIT is engaged in trade or commerce in that it provides financing for the purchase and lease of automobiles and trucks at Ford and Lincoln-Mercury dealerships throughout the State of Texas and elsewhere.

5. Defendant FORD DEALERS, at all times mentioned herein, are engaged in the trade or commerce of selling and/or leasing new and used automobiles and trucks in the State of Texas.

6. Whenever reference is made in this Petition to any representation, act, or transaction of Defendants FORD CREDIT and FORD DEALERS, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents and representatives of said Defendants, while actively engaged in the course and scope of their employment, did or authorized such representations, acts, or transactions on behalf of said Defendants.

#### **NATURE OF BUSINESS INVOLVED**

7. Defendant FORD DEALERS lease vehicles to consumers through a comprehensive lease program called the Red Carpet Lease (hereinafter "RCL") plan directed by Defendant FORD CREDIT. The RCL plan is specifically designed to promote leasing and promote return business to participating dealers. Upon the lease of a vehicle under the RCL plan, Defendant FORD DEALERS assign leases to FORD CREDIT, which becomes the owner of the vehicle. The customer's copy of the lease states that the dealer assigns, sells and transfers all of the dealer's "right, title and interest" in the leased vehicle to FORD CREDIT. Thereafter, the lessee deals exclusively with FORD CREDIT to make payment on the lease until the termination of the lease. However, the RCL plan requires lessees to return to the leasing dealership at the termination of the lease to surrender the vehicle or to exercise the option to purchase the vehicle.

8. While the purchase price is set forth in the RCL contract when a lessee completes the full lease term, the price to complete the lease and purchase the vehicle prior to the full scheduled lease term is subject to calculation pursuant to a formula, and is commonly referred to as the "pay-off" amount. At all times relevant herein, FORD CREDIT knew the pay-off amounts for all of its leased vehicles. However, when lessees contacted FORD CREDIT to ascertain their

pay-off amounts, FORD CREDIT representatives declined to inform the lessees of said amounts, instead directing them to contact their original leasing dealerships "for lease pay-offs."

9. When the lessees contacted Defendant FORD DEALERS for their pay-off amounts, the FORD DEALERS gave quotations that were often much greater than the actual pay-off amounts. In many instances, the FORD DEALERS made undisclosed profits, in excess of the \$200 early termination fee specified in the RCL lease contract, by inflating the pay-off amount charged to the lessees above the actual pay-off amount owed by the lessees. The Defendant FORD DEALERS then routinely forwarded the accurate pay-off amounts of FORD CREDIT and kept the excess.

### **FIRST CAUSE OF ACTION FORD DEALERS**

10. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 9 herein above, inclusive, as paragraphs 1 through 9 of this First Cause of Action as though fully set forth herein.

11. In the course of the aforementioned trade or commerce from and including 1991 through 1994, Defendant FORD DEALERS made untrue or misleading statements in violation of the DTPA, including, but not limited to, the following:

a. Defendant FORD DEALERS represented to consumers that only the FORD DEALERS, and not Defendant FORD CREDIT, maintained pay-off calculations, when in fact the FORD DEALERS obtained the pay-off calculations from FORD CREDIT.

b. Defendant FORD DEALERS provided untrue or inaccurate pay-off quotations that exceeded the actual pay-off amounts owed to Defendant FORD CREDIT;

12. The statements made by Defendant FORD DEALERS as set forth in paragraph 11 above were untrue or misleading when made, and were known, or by the exercise of reasonable care should have been known, to be untrue or misleading.

WHEREFORE, Plaintiff prays for the following relief:

- A. A finding that Defendant FORD DEALERS have engaged in trade or commerce;
- B. A finding that Defendant FORD DEALERS have engaged in deceptive acts or practices in the course of trade or commerce which constitute violations of the DTPA;
- C. An order preliminarily and permanently enjoining Defendant FORD DEALERS from the use of acts or practices that violate the DTPA, including but not limited to, the unlawful acts and practices specified herein above;
- D. An order requiring Defendant FORD DEALERS to pay civil violations of the DTPA;
- E. An order requiring Defendant FORD DEALERS to pay the costs for the investigation and prosecution of this action; and
- F. An order granting such further and different relief as this Honorable Court deems just and proper in this matter.

**SECOND CAUSE OF ACTION  
FORD DEALERS**

13. Plaintiff realleges and incorporates herein by reference the preceding paragraphs 1 through 9, inclusive, as though fully set forth in this Second Cause of Action.

14. In the course of the aforementioned trade or commerce from and including 1991 through 1994, Defendant FORD DEALERS engaged in deceptive acts or practices in violation of the DTPA, including, but not limited to, the following:

- a. Defendant FORD DEALERS withheld accurate pay-off information from consumers who requested it;
- b. Defendant FORD DEALERS charged consumers an amount not specified in the lease contract;

c. Defendant FORD DEALERS collected pay-off amounts that exceeded the actual pay-off amounts owed and paid to Defendant FORD CREDIT, thus unfairly obtaining an undisclosed profit at the consumers' expense.

WHEREFORE, Plaintiff prays for the following relief:

- A. A finding that Defendant FORD DEALERS have engaged in trade or commerce;
- B. A finding that Defendant FORD DEALERS have engaged in unfair or deceptive acts or practices in the course of trade or commerce which constitute violations of the DTPA;
- C. An order preliminarily and permanently enjoining Defendant FORD DEALERS from the use of acts or practices that violate the DTPA, including but not limited to, the unlawful acts and practices specified herein above;
- D. An order requiring Defendant FORD DEALERS to pay a civil penalty for violations of the DTPA;
- E. An order requiring Defendant FORD DEALERS to pay the costs for the investigation and prosecution of this action; and
- F. An order granting such further and different relief as this Honorable Court deems just and proper in this matter.

**THIRD CAUSE OF ACTION  
FORD CREDIT**

15. Plaintiff realleges and incorporates herein by reference the preceding paragraphs 1 through 9, inclusive, as though fully set forth in this Third Cause of Action.

16. In the course of the aforementioned trade or commerce from and including 1991 through 1994, Defendant FORD CREDIT engaged in acts or practices in violation of the DTPA, including, but not limited to, the following:

a. When asked by FORD leasing customers for relevant early termination pay-off information, representatives of Defendant FORD CREDIT affirmatively represented that FORD CREDIT did not maintain the requested pay-off information, when in fact FORD CREDIT did maintain such information;

b. Representatives of Defendant FORD CREDIT made statements regarding early termination and pay-offs to FORD leasing consumers without disclosing the material fact that FORD CREDIT maintained the relevant pay-off information.

c. Upon information and belief, representatives of Defendant FORD CREDIT directed consumers to the originating FORD DEALERS indicating that such dealers would respond to consumer questions.

d. Upon information and belief, Defendant FORD CREDIT told consumers that the dealer had all the necessary information to respond to consumer questions.

17. The statements made by Defendant FORD CREDIT as set forth in paragraph 16 above were untrue or misleading when made, and were known, or by the exercise of reasonable care should have been known, to be untrue or misleading.

WHEREFORE, Plaintiff prays for the following relief:

- A. A finding that Defendant FORD CREDIT has engaged in trade or commerce;
- B. A finding that Defendant FORD CREDIT has engaged in deceptive acts or practices in the course of trade or commerce which constitute violations of the DTPA;
- C. An order preliminarily and permanently enjoining Defendants FORD CREDIT from the use of acts or practices that violate the DTPA, including but not limited to, the unlawful acts and practices specified herein above;
- D. An order requiring Defendant FORD CREDIT to pay a civil penalty for each violation of the DTPA;
- E. An order requiring Defendant FORD CREDIT to pay the costs for the investigation and prosecution of this action; and

- F. An order granting such further and different relief as this Honorable Court deems just and proper in this matter.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. MCBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection & Public  
Health Division

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Health Division  
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P. O. Box 12548  
Austin, Texas 78711  
(512) 475 4628  
FAX (512) 473-8301

APPENDIX A

A. C. COLLINS FORD INC.  
4242 E SAM HOUSTON PKWY SO.  
PASADENA, TX 77505

AL MEYER FORD, INC.  
800 NORTH MEDFORD DR  
LUFKIN, TX 75901

AMARILLO MOTORS – F, LTD  
3400 SONCY  
AMARILLO, TX 79119

AUTOTAINMENT LTD DBA PLANET FORD  
20403 IH 45 NORTH  
SPRING, TX 77388

BAY CITY AUTO & SALES (FREEDOM FORD L-M)  
6600 7<sup>TH</sup> ST  
BAY CITY, TX 77414

BAYWAY LINCOLN MERCURY, INC.  
12333 GULF FREEWAY  
HOUSTON, TX 77034

BOB TOMES FORD, INC.  
950 CENTRAL EXPRESSWAY  
MCKINNEY, TX 75069

BOGGUS MOTOR CO LLP  
2521 S EXPRESSWAY 83  
HARLINGEN, TX 78550

BOGGUS MOTOR SALES, L.P.  
1400 E HIGHWAY 83  
MC ALLEN, TX 78501

BOWDEN FORD LINCOLN MERCURY CO.  
PO BOX 2218  
ALICE, TX 78333

BRASADA FORD LTD DBA NORTHSIDE FORD  
9800 SAN PEDRO  
SAN ANTONIO, TX 78216

CASA FORD, INC.  
5815 MONTANA  
EL PASO, TX 79925

CECIL ATKISSON FORD  
109 19<sup>TH</sup> ST  
HONDO, TX 78861

CENTRAL FORD, INC.  
4410 WESTHEIMER  
HOUSTON, TX 77256

CHAPARRAL FORD, INC.  
102 COUNTY RD 773 IH-35@EXIT 124  
DEVINE, TX 78016

DON DAVIS FORD, INC. (PREVIOUSLY ARENDALE FORD SALES, INC.)  
PO BOX 1587  
ARLINGTON, TX 76004

DON DAVIS LINCOLN MERCURY, INC.  
PO BOX 1587  
ARLINGTON, TX 76004

DUB MILLER FORD, INC.  
5015 AVE H  
ROSENBERG, TX 77471

DUSTY RHODES FORD SALES INC.  
1615 HWY 259N  
KILGORE, TX 75662

ENERGY COUNTY FORD LINCOLN MERCURY  
4545 TWIN CITY HWY  
PORT ARTHUR, TX 77641

FIESTA LINCOLN MERCURY  
6320 BANDERA ROAD  
SAN ANTONIO, TX ;78238

FIVE STAR FORD OF TEXAS, LTD  
6618 NE LOOP 820  
N. RICHLAND HILLS, TX 76180

GILLISPIE MOTOR COMPANY DBA GILLESPIE FORD  
7111 NW LOOP 410  
SAN ANTONIO, TX 78238

GOLDING MOTORS, INC.  
PO BOX 695  
SAN SABA, TX 76877

GRAF FORD, LINCOLN, MERCURY, INC.  
2700 HWY 90 WEST  
DEL RIO, TX 78841

GRAND PRAIRIE FORD  
701 E. SAFARI  
GRAND PRAIRIE, TX 75050

GREENVILLE FORD-LINCOLN-MERCURY, INC.  
4001 INTERSTATE 30  
GREENVILLE, TX 75401

HELFMAN FORD, INC.  
12220 SOUTHWEST FREEWAY  
STAFFORD, TX 77477

HILLCREST FORD  
540 IH 45 SOUTH  
HUNTSVILLE, TX 77340

JACK ROACH FORD, INC.  
6445 SOUTHWEST FREEWAY  
HOUSTON, TX 77265

JOE MYERS FORD  
16634 NORTHWEST FREEWAY  
HOUSTON, TX 77040

JORDAN FORD LTD.  
13010 IH 35 N  
SAN ANTONIO, TX 78233

KAHLIG MOTOR, LTD DBA BLUEBONNET MOTORS  
315 N SEGUIN  
NEW BRAUNFELS, TX 78130

KARL KLEMENT FORD  
PO BOX 505  
DECATUR, TX 76234

KEN STOEPEL FORD, INC.  
400 SIDNEY BAKER  
KERRVILLE, TX 78028

KINSEL FORD, INC.  
3355 EASTEX FWY  
BEAUMONT, TX 77704

KLEMENT FORD OF MUENSTER  
HWY 82 – PO BOX 40  
MUENSTER, TX 76252

LEADERSHIP FORD  
10510 N CENTRAL  
DALLAS, TX 75231

LEIF JOHNSON FORD II  
501 E KOENIG LANE  
AUSTIN, TX 78751

LUBBOCK MOTORS – F, LTD (GENE MESSER FORD)  
6000 W 19<sup>TH</sup>  
LUBBOCK, TX 79490

MAC HAIK FORD LTD  
10333 KATY FREEWAY  
HOUSTON, TX 77024

MAXWELL FORD  
5000 S IH 35  
AUSTIN, TX 78745

MCCOMBS HFC LTD DBA RED MCCOMBS FORD  
8333 IH 10 WEST  
SAN ANTONIO, TX 78201

MCREE FORD, INC.  
PO BOX 577  
DICKINSON, TX 77539

MID-VALLEY FORD, LLP (F/K/A MID-VALLEY FORD, INC.)  
MILE 1 EAST EXPRESSWAY 83  
MERCEDDES, TX 78570

NORTH HILLS LINCOLN MERCURY  
401 N.E. LOOP 820  
HURST, TX 76053

NORTH PARK LOINCOLN-MERCURY, LTD.  
9207 SAN PEDRO  
SAN ANTONIO, TX 78279

ORANGE FORD LINCOLN MERCURY INC.  
1601 GREEN AVE  
ORANGE, TX 77630

PARIS FORD LINCOLN MERCURY, INC.  
3411 NORTHEAST LOOP 286  
PARIS, TX 75460

PARK CITIES LIMITED PARTNERSHIP  
3333 INWOOD RD  
DALLAS, TX 75235

PAVILION LINCOLN-MERCURY, INC.  
PO BOX 201930  
AUSTIN, TX 78720

PHILPOTT MOTORS, LTD DBA PHILPOTT FORD  
1400 HWY 69 NEDERLAND  
PORT NECHES, TX 77651

PLANO LINCOLN MERCURY, INC. DBA  
DAVID MCDAVID'S PLANO LINCOLN MERCURY  
3333 W PLANO PARKWAY  
PLANO, TX 75093

PRESTIGE FORD GARLAND LIMITED PARTNERSHIP (PRESTIGE FORD)  
3401 S GARLAND AVE  
GARLAND, TX 75041

PRETIGE FORD, LTD DBA TEAM FORD  
19000 EASTEX FREEWAY  
HUMBLE, TX 77338

PRICE FORD SALES  
1040 GILMER ST, PO 916  
SULPHUR SPRINGS, TX 75482

RAMIREZ FORD MOTOR SALES  
5353 E US HWY 83  
RIO GRANDE CITY, TX 78582

REGENCY LINCOLN MERCURY INC.  
1919 OATES DR  
MESQUITE, TX 75150

RIVER OAKS LINCOLN-MERCURY, INC.  
11666 OLD KATY RD  
HOUSTON, TX 77043

RON CARTER FORD, INC.  
PO BOX 1759  
ALVIN, TX 77512

RUSSELL & SMITH FORD, INC.  
3440 S LOOP W  
HOUSTON, TX 77025

SAM PACK'S FIVE STAR FORD LTD (FORMERLY LEE JARMON FORD)  
PO BOX 110098  
CARROLLTON, TX 75011

SAMES MOTOR CO  
PO BOX 879  
LAREDO, TX 78042

SHAMALEY FORD I.L.P.  
11301 GATEWAY WEST  
EL PASO, TX 79936

SKYLINE FORD SALES, INC.  
8630 EAST RL THORNTON FRWY  
DALLAS, TX 75228

SONIC AUTOMOTIVE – 4701 I-10 EAST TX, L.P. AND CASA FORD OF HOUSTON, INC.  
DBA BAYTOWN FORD (FORMERLY DBA CASA FORD)  
4110 I-10 EAST  
BAYTOWN, TX 77522

SONIC AUTOMOTIVE OF TEXAS, L.P. AND LONE STAR FORD, INC.L DBA LONE  
STAR FORD  
8477 NORTH FREEWAY  
HOUSTON, TX 77037

SONIC-CAMP FORD, L.P. DBA LAPORTE FORD  
621 NEW HWY 146 SOUTH  
LAPORTE, TX 77571

SONIC-RICHARDSON F.L.P. DBA NORTH CENTRAL FORD  
1819 N CENTRAL EXPRESSWAY  
RICHARDSON, TX 75080

SOUTHWAY FORD, INC.  
7979 IH-35 SOUTH  
SAN ANTONIO, TX 78214

SOUTHWEST FORD INC.  
PO BOX 234  
WEATHERFORD, TX 76086

SOUTHWEST LINCOLN-MERCURY, INC.  
10025 SW FREEWAY  
HOUSTON, TX 77074

SUPERIOR FORD L-M  
4200 E END BLVD  
MARSHALL, TX 75670

SUPERIOR LINCOLN MERCURY, INC.  
4411 I-10 EAST  
BAYTOWN, TX 77521

TEXAS MOTORS, INC.  
2020 S CHERRY LN  
FORT WORTH, TX 76108

TEXOMA FORD, INC.  
215 HIGHWAY 75 NORTH  
DENISON, TX 75021

TIPTON FORD INC.  
PO BOX 630868  
NACOGDOCHIES, TX 75963

TIPTON MOTORS, INC.  
3840 N EXPRESSWAY  
B ROWNSVILLE, TX 78523

TOMMIE VAUGHN MOTORS, INC.  
1145 N SHEPHERD  
HOUSTON, TX 77008

TOWN EAST FORD  
18411 LBJ FREEWAY  
MESQUITE, TX 75150

VAN BURKLEO MOTORS, INC.  
320 N TENTH ST  
MC ALLEN, TX 78501

VARSITY FORD LINCOLN MERCURY, INC.  
1351 EARL RUDDER  
COLLEGE STATION, TX 77845

WICHITA FALLS FORD LINCOLN-MERCURY  
5401 KELL BLVD  
WICHITA FALLS, TX 76308