

1 **ANS**

2 _____
(NAME)

3 _____
(ADDRESS)

4 _____
(CITY, STATE, ZIP)

5 _____
(TELEPHONE)

Defendant *Pro Se*

6 **JUSTICE COURT**

7 **CLARK COUNTY, NEVADA**

8
9)
10) Plaintiff,

Case No.:

Dept. No.:

11 vs.)

12) **ANSWER**

13) (Auto Deficiency)

14) Defendant.
15)
16)

15 Defendant, _____, *pro se*, hereby responds to the Complaint
16 filed herein as follows. Defendant denies all allegations of the Complaint except as expressly
17 admitted below.

18 1. Defendant admits to having acquired an interest in the vehicle described in
19 the Complaint.

20 2. Defendant admits the contract concerning the vehicle alleged in the Complaint
21 was not paid in full.

22 3. Any defense good against the seller (car dealer) is good against Plaintiff by the
23 express terms of the contract as required by federal law, the FTC Preservation of Claims and
24 Defenses Rule, 16 C.F.R. § 433, and state law, NRS 97.299, NRS 97.301, and NAC 97.050.

25 4. Defendant has defenses to payment which either reduce or eliminate the amounts
26 claimed by Plaintiff: [check all that apply]

27 [] A. Plaintiff never gave notice of intended disposition of the vehicle as required
28 by NRS 104.9614, NRS 482.516(1) and (2), and is therefore precluded from recovery of any

1 deficiency by NRS 482.516(3), providing in pertinent part that Defendants “are liable for any
2 deficiency after the sale of the repossessed vehicle only if the notice prescribed by this section is
3 given within 60 days of repossession.” *See Las Vegas Auto Leasing, Inc. v. Davis*, 98 Nev. 169,
4 643 P.2d 1217 (1982).

5 B. Plaintiff failed to allege it disposed of the vehicle in a commercially
6 reasonable manner as required by NRS 104.9610(2) and NRS 482.5163(1) which is a
7 prerequisite to recovery of a deficiency. *See U C Leasing, Inc. v. Laughlin*, 96 Nev. 157, 606
8 P.2d 167 (1980).

9 C. Even if the car was sold “As Is,” Plaintiff breached an express written
10 warranty, which cannot be disclaimed, in failing to honor:

11 (i) I was charged for but never received a service contract;

12 (ii) A written warranty to _____
13

14
15 D. Plaintiff breached the implied warranty of merchantability (NRS 104.2314).
16 If the car was sold “As Is,” then disclaimer of the implied warranty of merchantability is invalid
17 because: [check all that apply]

18 (i) Since a limited written warranty was provided and/or a service contract
19 was entered into, Federal law [15 U.S.C. § 2308(a)], prohibits “As Is” sales.

20 (ii) The sale was conducted in Spanish but the written disclaimer was only
21 in English, in violation of Federal law (16 C.F.R. § 455.5). Therefore, the disclaimer was not
22 “conspicuous” as required by NRS 104.2316(2) and a deceptive trade practice was committed in
23 violation of NRS 598.0923(3).

24 (iii) The “As Is” disclaimer is invalid because it is ambiguous (the contract
25 can be read to reach two or more possible meanings).

26 (iv) The “As Is” disclaimer is invalid because it was first presented after
27 the contract was signed.

28 (v) The “As Is” disclaimer is invalid because it is not “conspicuous.”

1 NRS 104.2316.

2 [] E. Even if the vehicle was validly sold “As Is,” Plaintiff failed to inspect and/or
3 disclose defects in the drivetrain of which it knew or should have known as required by Nevada
4 law. (NRS 482.3666 *et seq.*)

5 [] F. Even if the vehicle was validly sold “As Is,” Plaintiff committed and is liable
6 for a deceptive trade practice (NRS 598.0903 *et seq.*) in having _____
7 _____
8 _____.

9 *See, e.g., Havas v. Alger*, 85 Nev. 627, 461 P.2d 857 (1969) (when car buyer was sued by dealer
10 for deficiency on contract after repossession and re-sale, statements *inter alia* by dealer that car
11 was in “good condition” when it broke down day after sale held to support trial court’s
12 decision granting rescission for failure of consideration and misrepresentation).

13 [] G. Even if the vehicle was validly sold “As Is,” such does not limit my right to
14 revoke acceptance for nonconformities of the vehicle with the contract or other express
15 warranties which may be oral and became part of the basis of the bargain. Revocation of
16 acceptance may be based upon a breach of warranty but does not require it. I was entitled to and
17 did in fact revoke my acceptance on _____ (date) because there existed non-
18 conformities of the vehicle with the contract which substantially impaired the value of the
19 vehicle to me (NRS 104.2608) in that _____
20 _____,

21 and/or the seller breached a warranty of _____
22 made to me.

23 [] H. The seller, in making the odometer disclosure to defendant, did not accurately
24 disclose the actual mileage of the vehicle. As such, the seller:

25 (i) gave false statements to a transferee in violation of 49 U.S.C. § 32705(a)
26 and 49 C.F.R. § 580.4;

27 (ii) the representations made by the figures on the odometer itself and by the
28 disclosure statement that the odometer reading reflected the actual mileage

1 of the vehicle were each affirmations of fact or promises which became
2 part of the basis of the bargain, thus creating an express warranty under
3 NRS 104.2313(1)(a); and

4 (iii) the odometer disclosure statement that the odometer reading reflected the
5 actual mileage of the vehicle is a description of the goods made part of the
6 basis of the bargain, thus creating an express warranty under NRS
7 104.2313(1)(b).

8 [] I. The seller concealed the vehicle's prior history as a wrecked, salvaged and
9 rebuilt, stolen, water-damaged, or lemon vehicle, thereby breaching warranties and/or
10 committing Deceptive Trade Practices (NRS Ch. 598) and/or violating NRS 487.830.

11 [] J. The seller failed to display on the vehicle a "Buyers Guide" as required by 16
12 C.F.R. § 455, and as a result:

13 [] (i) Misrepresented the mechanical condition of a used vehicle;

14 [] (ii) Misrepresented the terms of a warranty offered in connection with the
15 sale of a used vehicle;

16 [] (iii) Represented that the used vehicle was sold with a warranty when the
17 vehicle was sold without any warranty;

18 [] (iv) Failed to disclose, prior to the sale, that the used vehicle was sold
19 without any warranty;

20 [] (v) Failed to make available, prior to the sale, the terms of any written
21 warranty offered in connection with the sale of the used vehicle.

22 The seller's conduct and actions described above are a deceptive trade practice in
23 violation of NRS 598.0903 *et seq.*

24 [] K. The seller never provided Defendant with a completed sales agreement which
25 complies with the Federal Truth in Lending Act, 15 U.S.C § 1601 *et seq.* ("TILA") and
26 Regulation Z, 12 C.F.R. Part 226, and never provided Defendant with any of the disclosures
27 required by the TILA and Regulation Z. For example, the seller violated the requirements of the
28 TILA and Regulation Z in the following and other respects:

1 [] (i) By failing to provide the required disclosures before consummation of
2 the transaction in violation of 15 U.S.C. ' 1638(b) and Regulation Z §
3 26.17(b);

4 [] (ii) By failing to make required disclosures clearly and conspicuously in
5 writing in violation of 15 U.S.C. § 1632(a) and Regulation Z §
6 226.17(a);

7 [] (iii) By failing to disclose the finance charge as required by 15 U.S.C. §
8 1605 and Regulation Z § 226.4, thus improperly disclosing the finance
9 charge in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z §
10 226.18(d);

11 [] (iv) By failing to disclose the amount financed in violation of 15 U.S.C. §
12 1638(a)(2) and Regulation Z § 226.18(b);

13 [] (v) By failing to disclose the annual percentage rate in violation of 15
14 U.S.C. § 1638(a)(4) and Regulation Z § 226.18(c).

15 [] L. The seller failed to enter into a contract for the sale of a vehicle which
16 complies with: NRS 97.299, NRS 97.301 and NAC 97.050, and as a result is barred from the
17 recovery of any finance charge, official fees, or any charge for delinquency or collection
18 pursuant to NRS 97.305.

19 [] M. Defendant is without sufficient information so as to enable him/her to admit
20 or deny that Plaintiff was assigned the contract and security agreement for the vehicle in question
21 and was the holder of a security interest giving it the right to repossess the vehicle, sell it, and to
22 sue Defendant for a deficiency and accordingly denies same. Defendant is of information that
23 the holder of security interests in tens of thousands of vehicles in the United States is actually a
24 trust and not entities such as Plaintiff. Defendant accordingly requests that Plaintiff be put on
25 strict proof that it is the holder of the debt sued upon.

26 [] N. Affirmative Defenses: Defendant(s) hereby incorporate(s) by reference those
27 affirmative defenses enumerated in JCRCP 8 as though fully set forth herein, as applicable upon
28 discovery. In the event further investigation or discovery reveals the applicability of any such

1 defenses, Defendant(s) reserve(s) the right to seek leave of court to amend this Answer to more
2 specifically assert any such defense. Such defenses are herein incorporated by reference for the
3 specific purposes of not waiving any such defenses.

4 Accord and satisfaction.

5 Arbitration and award.

6 Assumption of risk.

7 Contributory negligence.

8 Discharge in bankruptcy.

9 Duress.

10 Estoppel.

11 Failure of consideration.

12 Fraud.

13 Illegality.

14 Injury by fellow servant.

15 Laches.

16 License.

17 Payment.

18 Release.

19 Res judicata.

20 Statute of frauds.

21 Statute of limitations (An action for breach of any contract for sale of
22 goods must be commenced within 4 years after the cause of action has accrued. *See* NRS
23 104.2725 and *Mobile Discount Corp. v. Price*, 99 Nev. 19, 656 P.2d 851 (1983). This
24 statute applies to any sale of goods to which NRS Chapter 104, Article 2 (UCC Article 2)
25 applies such as an automobile. *See* NRS 104.2102.)

26 Unclean hands.

27 Waiver.

28

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of _____, 20____, I placed a true and correct copy of the foregoing **ANSWER** in the United States Mail at Las Vegas, Nevada, with first-class postage prepaid, addressed to the following:

Per NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

Defendant *Pro Se*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28