

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FIRST DISTRICT

Yuling Zhan, )  
Plaintiff )  
V. ) No: 04 M1 23226  
Napleton Buick Inc, )  
Defendant )

**RENEWED MOTION TO COMPEL DEFENDANT TO ANSWER  
INTERROGATORIES AND PRODUCE DOCUMENTS**

NOW COMES the Plaintiff, YULING ZHAN, in support of her Renewed Motion to Compel Defendant to Answer Interrogatories and Produce Documents, states as follows:

**Procedural Background**

1. On March 17, 2006, Plaintiff served Defendant the First Set of Interrogatories (“Interrogatories”), attached herein as Exhibit A; and First Set of Request for Production of Documents (“Request”), attached herein as Exhibit B. Plaintiff also served Defendant Instruction and Definition for her discovery request, where Plaintiff explicitly pointed out “person(s)” should include natural persons and governmental agencies, etc.
2. On May 11, 2006, the Honorable Judge ordered Defendant to answer Interrogatories Nos. 5, 6, 7, 8, 9, 10, 12, 13, 15, 17; and produce documents responsive to Requests Nos. 4, 7, 9, 10, 11, 12, 13, 20, 21, 29, on or before June 1, 2006.

3. On June 13, 2006, thirteen days after the deadline, Defendant filed its response in the Court as an Exhibit of a combined motion, and requested the motion to be heard the next day.
4. On June 14, 2006, Defendant's counsel wrote a Notice of Filing and Proof of Service in open court, and handed over all of the papers to Plaintiff during the hearing. As the Honorable Court can see, Defendant's such filing violates the Illinois Supreme Court Rules and Rule 2.1 of this Court.
5. Defendant's response to discovery request is a complete failure, not only because Defendant did not follow the proper procedure and Rules, but also because Defendant fails to attach a complete set of documents it refers to. Defendant cannot expect any Honorable Judge to search a pile of records filed by Defendant and Plaintiff, then guess what Defendant meant.
6. As the Honorable Court can see, most of documents D000013-000042 Defendant submitted in its combined motion are not responsive to any specific Interrogatory or Request. Defendant and its counsel are trying to waste everybody's invaluable time and resources.
7. Plaintiff will address other fatal flaws in Defendant's responses, and renews her motion to compel Defendant to comply with the Court Order issued on May 11, 2006, and answer Plaintiff's interrogatories and Requests.

### **Renewed Motion to Compel Defendant to Answer Interrogatories**

8. Plaintiff attaches Defendant's Supplemental Answer and Supplemental Response to Request for Production as Exhibits C and D, respectively. For reasons stated above, Documents D000013-000042 have not been included, whereas Defendant's D000001-0000012 had already been incorporated in Plaintiff's Motion to Compel Defendant to Produce filed on May 3, 2006 as Exhibit therein.
9. In its response to Interrogatories No. 5, Defendant conceals crucial information when it asserts "Defendant is not aware of all persons present

at the scene and/or all persons who communicated with Plaintiff during her purchase of the vehicle”; and when it further states “Defendant does not know \*\*\* who specifically, handed papers to Plaintiff, if anyone.” As the Honorable Court can see, Defendant certainly knows the names of all salesmen who were on duty in the specific afternoon of September 4, 2003. Further, outsiders could not recognize all the signatures on those sale papers, but Defendant definitely does.

10. Also in its response to Interrogatories No. 5, Defendant states: “Any written communications \*\*\* were produced in accordance with Defendant’s First Response to Plaintiff’s Request to Produce Documents.” This should be stricken because Defendant failed to indicate which document(s) it referred to. Here, Defendant not only fails to provide a responsive answer, but also repeats its false statement when it writes: “Additional statements by Defendant can be found previously produced at D000007 and D000012. ” Here, Defendant pretends it does not know that D000007 and D000012 were not created on September 4, 2003.
11. In response to Interrogatories No. 6, Defendant provides fraudulent statement again, by arguing “The Buyer’s Guide was removed and provided to Plaintiff after sale.” During discovery, Defendant already provides two versions of a Buyer’s Guides with different contents written by different persons. With one version of a Buyer’s Guide, Defendant suggests Mr. Charles Rollins prepared the front side, and Henn Horton created the reverse side, that is absurd. Defendant fails to answer when different versions of a Buyer’s Guide were created and who created them. Further, when Defendant argues this is its “custom and practice,” Plaintiff has a good reason to request Defendant to produce copies of different versions of Buyer’s Guides for other used cars.
12. In response to Interrogatories No. 7, Defendant refers to D00016, in which all spaces are left blank, and Plaintiff has never seen such document. Furthermore, Defendant fails to answer the most important part of the Interrogatory: “ Identify the person who received phone cal from plaintiff in

- the afternoon of September 4, 2003, regarding the warranty paper \*\*\*, describe in detail what that person did afterwards” Here, Defendant certainly knows who had access to its fax machine and faxed the front page of a content-changed Buyer’s Guide, but it chooses not to disclose.
13. In response to Interrogatories No. 8, Defendant fails to produce inspection record of its own; Defendant fails to produce records on mechanical check-up during the sale; instead, Defendant states “ An inspection of the subject vehicle was conducted on or about April 11, 2005, \*\*\* Defendant is not in possession of any documents related to that inspection.” The whole paragraph should be stricken because, as Defendant and its counsel are clearly aware of, April 11, 2005 is not the date Plaintiff made a purchase on September 4, 2003, as such, Defendant is providing deliberate false statement, while failing to respond the specific interrogatory.
14. In response to Interrogatories No. 9, Defendant and its counsel assert: “Defendant specifically denies that the subject vehicle stalled at highway speed on September 8, 2003.” This should be stricken as well, because, they contradict their own previous contention. When answering Amended Complaint ¶¶ 21-23 on the same issue, Defendant, its counsel Ms. Elaine S Vorber, and Mr. Ryan Haas stated: “Napleton lacks information.” As the Honorable Court can see, Defendant provides a perfect example of deception and concealment when it argues “Defendant is not aware of the person, if any, who received calls”: no reasonable person would believe Defendant does not know who its employee was on late evening shift on September 8, 2003, and who its employee was to tow back the car.
15. In response to Interrogatories No. 10, Defendant and its counsel provide wanton and false statement as they always did. Defendant asserted affirmative defense “misuse the car” in its Answer filed on November 28, 2005, which was stricken by Honorable Judge Rhine on March 28, 2006, Defendant had the opportunity to re-plead within seven days but it failed. As such, Defendant has waived its right to raise the same issue again as either affirmative defense or defense. On April 14, 2006, in its answer to

interrogatories, when responding to the same interrogatory, Defendant asserted “Unknown at present time.” Therefore, Defendant and its counsel should be sanctioned for presenting self-conflicting arguments repeatedly in Court filings.

16. In response to Interrogatories No. 12, Defendant repeats its years-long false statement. Further, Defendant fails to provide the date of the letter responding to the inquiry from the Illinois Attorney General’s Office; and even at this moment, Defendant is still concealing the name of the person who fabricated a September 10, 2003 letter, which was allegedly addressed to Plaintiff. Since defense or argument from Defendant and its counsel relies heavily or solely on this single piece of paper, they have the obligation to provide a printed name of the person who created it.
17. In response to Interrogatories No. 13, Defendant evades the question, provides vague and false statement, and fails to provide a responsive answer. Defendant fails to name a person to control the “day-to-day access to the subject car,” and fails to provide “step-by-step procedure” for any “inspection.” Further, Defendant fails to submit any records and documents for each occasion when the subject car was “accessed”, “inspected” and/or its condition was “altered.”
18. In response to Interrogatories 17, Defendant defies the Court Order issued by Honorable Judge Rhine. Defendant fails to submit any expert testimony as required. When Defendant refers D000012, it fails to answer what the date was when D000012 was created. Further, Defendant withholds or conceals crucial information on its communication with the Office of Secretary of State.
19. As well known, the major objective of interrogatories is to pin point key witnesses to depose, when necessary. Plaintiff will be prejudiced if Defendant’s concealment were tolerated. Plaintiff has the fundamental right to conduct a meaningful discovery in order to have a fair trial.

WHEREFORE, Plaintiff request that the Court issue an Order

- a. Compelling defendant to provide complete and straightforward answer to the interrogatories Nos. 5, 6, 7, 8, 9, 10, 12, 13, 15, 17;
- b. Striking all text in Defendant's Answer, which is not responsive to a specific interrogatory, or which is without support of any fact;
- c. And granting Plaintiff additional relief that this Court deems just and proper.

### **Renewed Motion to Compel Defendant to Produce Documents**

20. In response to Request No. 4, Defendant fails to produce repair records for the subject car; also Defendant fails to submit an invoice of any kind. The documents Defendant provides or refers to are not responsive to Plaintiff's Request.
21. In response to Request No. 9, when referring to D0000007 and D000012, Defendant pretends not to know Mr. Nicholas J. D'Andrea is not Mr. Ed Earley, or someone else, who concealed his/her printed name on an alleged September 10, 2003 letter. If Mr. D'Andrea did not have any communication with anybody related to the sale of the subject car, as Defendant suggests, then, he is not qualified to testify on any issue in the instant suit.
22. In response to Request No. 10, Defendant fails to produce copies of a complete set of documents Mr. Earley sent to the Illinois Attorney General Office, which are crucial to the instant case; Defendant fails to produce copies of financial transaction records when Defendant acquired the subject car; Defendant fails to produce a complete set of documentation of communication with the Office of Secretary of State during title transfer; Defendant fails to produce all "Thank You" notes and advertisement sent to Plaintiff. Further, Defendant fails to produce records of communication between Mr. Earley and other employees at Defendant, as such; Defendant conceals vital information regarding who created the alleged

September 10, 2003 letter as D0000007 and how Mr. Earley collaborated with him/her and others on this important issue.

23. In response to Request No. 11, Defendant defies the Court Order issued on May 11, 2006, by Honorable Judge Rhine, which requires Defendant to submit its expert's testimony. When Defendant claims it is not "in possession of any such document," Mr. Bob Caridi has no personal knowledge on anything in the instant suit, except spoliation of evidence.
24. In response to Request No. 12, Defendant fails to include the information "regarding the dates and documents were created and the author(s) of the documents." For a specific version of Buyer's Guide, Defendant fails to provide such information related to its front side and reverse side of the document. During discovery, although three versions of a Buyer's Guide existed for a single car, Defendant submitted only two of them, and Defendant fails to provide when they were created and by whom. Further, in response to Interrogatories No. 6, Defendant states more than one version of the Buyer's Guide may be available, "consistent with Defendant's custom and practice." As such, it is reasonable to require Defendant to submit different versions of Buyer's Guides for some other cars as proof of the existence of "custom and practice" at Defendant
25. In response to Request No. 13, Defendant and its counsel provide a perfect example of deception and concealment. They know the existence of such transaction records in Defendant's possession, and they know such documents are crucial for the instant suit, but choose to withhold them. Defendant is a car dealer, not a private consumer. When it claims there is no financial transaction record when it acquires a vehicle, it is patently fraudulent.
26. In response to Request No. 20, Defendant submits 21 pages of documents at D000020 through D000041, but they are not responsive to the specific Request.

27. In response to Request No. 21, Defendant submits D000042, as Defendant and its counsel know that very well, D000042 is neither a notice of hearing, nor is it a motion, nor is it a certificate of service,
28. Illinois Supreme Court Rule 214 explicitly states, in part, “[T]he party producing documents shall furnish an affidavit stating whether the production is complete in accordance with the request.” As the Honorable Court can see, Defendant, once again, fails to comply with the Rules.

WHEREFORE, Plaintiff requests that the Court issue an Order

- a. Compelling defendant to produce documents responsive to Requests Nos. 4, 7, 9, 10, 11, 12, 13, 20, 21, 29, and
- b. Granting plaintiff additional relief that this Court deems just and proper.

Respectfully submitted,

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(Plaintiff’s Signature)

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( Date )