

CAUSE NO. 2015-73882

MARK OBERHOLTZER AND MARK-1 PLUMBING, INC.	§	IN THE DISTRICT COURT OF
	§	
Plaintiffs,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
CHARLIE THOMAS FORD, LTD. D/B/A AUTONATION FORD GULF FREEWAY	§	
	§	
Defendant.	§	113th JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, MARK OBERHOLTZER and MARK-1 PLUMBING, INC., Plaintiffs in the above-styled cause, hereby complaining of CHARLIE THOMAS FORD, LTD. D/B/A AUTONATION FORD GULF FREEWAY, Defendant, and for this cause of action would respectfully show the Court as follows:

**I.
DISCOVERY CONTROL PLAN**

1. Plaintiffs intend to conduct this cause under a Level Two (2) discovery control plan, pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
PARTIES AND SERVICE**

2. Plaintiff, MARK OBERHOLTZER (hereinafter referred to as "Plaintiff" or "Mark"), is an individual residing in Galveston County, Texas and may be contacted through his undersigned attorneys at 2211 Strand, Suite 201, Galveston, Texas 77550.

3. Plaintiff, MARK-1 PLUMBING, INC. (hereinafter referred to as "Plaintiff" or "Corporation"), is a for-profit corporation incorporated under the laws of the State of

Texas and may be contacted through its undersigned attorneys at 2211 Strand, Suite 201, Galveston, Texas 77550.

4. Defendant, CHARLIE THOMAS FORD, LTD. D/B/A/ AUTONATION FORD GULF FREEWAY (hereinafter referred to as “Defendant”), is a Texas limited partnership with its principal office address as 12227 Gulf Freeway, Houston, Texas, 77034 and may be served with process by serving its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 211 E. 7th St. Ste. 620, Austin, Texas 78701-3218.

III. JURISDICTION AND VENUE

5. The exercise of this Court’s jurisdiction over the Defendant is proper. This Court has personal jurisdiction over Defendant because it avails itself of the privilege of doing business in the State of Texas, and the subject matter of this action arises under the common law and statutes of the State of Texas. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

6. Venue is proper in Harris County, Texas because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1)

IV. BACKGROUND

7. On October 23, 2013. Plaintiff, Mark-1 Plumbing, Inc. (“Mark-1”) entered into a transaction with Defendant involving the trade-in of a 2005 Ford F-250 pickup truck, VIN 1FTSX21P15EC91985, in exchange for a 2012 Ford F-250 pickup truck, VIN 1FT7W2BT2CEA10391, plus an installment sales contract. This was Plaintiff’s first and only transaction with Defendant.

8. The transactional documents between Mark-1 and the Defendant included a “Retail Purchase Agreement,” on its face applicable to a “Seller’ or ‘Dealer’ Retail Purchase Agreement for a Motor Vehicle,” which contained an “Arbitration Agreement,” and a “Conditional Delivery Agreement.” While such written documents admittedly applied to the sale of the new vehicle Mark-1 purchased, they do not apply to the traded-in vehicle and/or they are wholly and completely silent as to subsequent, intervening, superseding torts committed by the Defendant which breached common law duties owed to Plaintiffs, such breaches causing severe permanent injury to Plaintiffs and consequential and punitive damages. Moreover, the Arbitration Clause in particular and the total documents generally give no indication, nor do they evidence the exchange of consideration which would reasonably support any contention that such Clause would limit claims assertable for the Defendant’s *subsequent* sale, lease, loan or transfer of the traded-in vehicle with clearly identifiable markings of Plaintiffs upon it to criminals, terrorists, jihadists or others of obviously ill-motive.

9. While waiting for the paperwork to be processed, Plaintiff began peeling off the “Mark-1 Plumbing, Inc.” decal located on the truck’s doors when Defendant’s salesman, Edgar Velasquez, instructed Plaintiff to stop. Mr. Velasquez told Plaintiff not to worry about the decal and that peeling the decal off would blemish the vehicle paint. Consistent with Defendant’s advertising to potential customers to “let them handle it” (see Exhibit A), Mr. Velasquez further stated that the dealership had something that works better for removal and they would use it to remove the decal. In relying on Mr. Velasquez’s statements, Plaintiff ceased peeling off the decal and trusted that the decals would be removed prior to resale. At no time did Velasquez or any other agent, servant or employee of the Defendant tell Plaintiff that Defendant would leave the decals on the

truck, which would be transferred in some fashion to international jihadists conducting warfare upon innocents in Syria; and, Plaintiff was not in any conceivable way told, informed or placed on notice that precisely such an incomprehensible and horrific eventuality would actually occur.

10. Over the years, Plaintiffs have sold as many as five to ten trucks to different dealers in Texas. Through these transactions, Plaintiffs found it to be common practice for dealerships to remove the decals on vehicles prior to reselling them. On *none* of those occasions have any of those dealers transferred to international jihadists the traded-in vehicle with Plaintiffs' identifying markings still upon them.

11. According to a CARFAX Vehicle History Report (see Exhibit B), the vehicle was listed as a dealer vehicle sold at a Texas auto auction on November 11, 2013. On December 18, 2013 the vehicle was exported from Houston, Texas and imported to Mersin, Turkey.

12. On December 15, 2014, Caleb Weiss of The Long War Journal tweeted the following propaganda image of Plaintiffs' Ford F-250 with an anti-aircraft gun mounted on it fighting on the front lines in Syria for Ansar al-Deen, a jihadist group operating near Aleppo in Syria. Plaintiffs' logo and phone number were still on the vehicle door.



Within 48 hours, the photograph had gone viral via the Internet and multiple news outlets.

13. On December 17, 2014, while travelling to Corpus Christi, Mark received a phone call from his secretary, Juli Hammonds. Ms. Hammonds explained to him the breaking news stories. His initial reactions were of utter shock and sheer disbelief.

14. By the end of the day, Mark-1's office, Mark-1's business phone, and Mark's personal cell phone had received over 1,000 phone calls from around the nation. These phone calls were in large part harassing and contained countless threats of violence, property harm, injury and even death. These phone calls included, but were not limited to, individuals who were:

- (a) irate and yelling expletives at whomever answered the phone;
- (b) degrading to whomever answered the phone regarding their stupidity;
- (c) singing in Arabic for the duration of the phone call or voice message recording;
- (d) making threats of injury or death against Mark-1's employees, family, children, and grandchildren in violent, lurid and grossly specific terms; and,
- (e) directing expletive-laced death threats to whomever answered the phone.

Only a precious few of the calls contained support for the Plaintiffs knowing that Plaintiffs did not support terrorists. However, that scant number of positive calls in no way

mitigated or eliminated the shock, fear, anxiety, mental anguish, humiliation and degradation Plaintiffs and their employees, family members and relatives experienced and continue to experience.

15. Plaintiffs' secretary, Juli Hammonds, refused to return to the office as she feared for her life and well-being. Mark himself was fearful. Mark's entire family was terrified. As a result, Mark was forced to shut Mark-1's office and all business operations down for seven days, costing substantial lost revenues and business good will.

16. During this forced shutdown, Mark left Texas City, Texas and travelled to McAllen, Texas as to avoid having to deal with this uncontrollable and terrifying situation. He had initially planned to be out of town for only two days. However, due to the magnitude and growing hostility of the situation, he remained out of town for nine days. All this while, Mark-1's revenues were lost and the company's reputation and standing in the business and local community was irretrievably damaged.

17. While in McAllen, Texas, Mark called the Defendant to discuss the situation. Defendant stated that they "never touched the truck," but instead sent it to Dallas, Texas. Defendant stated that it was not their responsibility to remove the decal prior to sending it to Dallas, Texas and it expressed not the slightest regret, concern or even compassion with Mark's horrific situation. Then, the employee of Defendant with whom Mark was talking hung up on Mark. Callously putting its own profit and convenience entirely over the needs of its customer, Defendant has made no effort whatever to contact Mark, attempt in any way to mitigate or resolve his threatening situation or take any responsibility whatever in causing this appalling situation and no additional contact has occurred between Plaintiffs and Defendant.

18. On or about December 17, 2015, four agents from the United States Department of Homeland Security arrived at Plaintiff's office in Texas City, Texas. The Homeland Security Agents met with Vice President of Mark-1 for approximately one to two hours. During this time period, he was not allowed to leave the premises. After concluding their investigation, the Homeland Security Agents left him with the sinister admonition that "there are crazy people out there" and to "protect himself at all times."

19. In early January 2015, Mark was met by FBI agents at his office. The FBI Agents conducted a very brief and cordial investigation. After concluding their investigation, the FBI Agents once again reiterated that Mark must "protect himself."

20. In relying on the advice from both the Homeland Security and FBI Agents, Mark began carrying around a handgun for personal protection. Additionally, local police made it routine to include his home and office on its routes. But, these steps in no way diminish or mitigate the fear, anxiety, mental anguish, and apprehension Mark feels for his family or that of his family members.

21. Throughout the duration of this situation, TV stations and news agencies, both local and national, have constantly contacted Plaintiffs for an interview. Camera crews were found videotaping Mark-1's and its employee's personal automobiles. Camera crews went to Mark's house in an attempt to cover the story. One news crew even went as far as arriving at Mark-1's secretary, Juli Hammond's, daughter's apartment requesting an interview.

22. Demonstrating the breadth and depth of the dissemination, Mark has been contacted by a vast number of news agencies regarding this situation, including, but not limited to USA Today, CBS, NBC, and Inside Edition.

23. On December 18, 2014, the final episode of the late-night comedy television series, *The Colbert Report*, began with the segment “Texan’s Truck in Syria” which was a news story about a Mark-1 Plumbing truck now being used as an anti-aircraft gun in Syria. This episode was watched by 2.481 *million* viewers, making it the most watched episode ever in the show’s history. As of December 7, 2015, the segment “Texan’s Truck in Syria” has an additional 67,557 views on Comedy Central’s website. The widespread viewing of the segment increased the volume of the harassing and threatening phone calls and has immeasurably added to the suffering of Mark, his family, his employees and their families.

24. The harassing and threatening phone calls continued for at least three weeks from when the news story was officially reported. Plaintiffs experienced at least 100-200 phone calls per day over this span of time. Since that time, Plaintiffs continue to receive one or two phone calls per week. However, whenever ISIS commits an atrocity that is reported nationally, which occurs with distressing frequency, Plaintiffs receive more phone calls than normal all over again.

25. On September 20, 2015, the 67th Primetime Emmy Awards were held. The *Colbert Report* was nominated for “Outstanding Directing for a Variety Series.” As part of its show time nomination, *The Colbert Report* included a bit of “Texan’s Truck in Syria.” The 67th Primetime Emmy Awards was watched by 11.9 *million* viewers. As a result, Plaintiffs suffered yet another period of non-stop phone calls, averaging 100-200 phone calls per day. Plaintiff continues to receive threatening and harassing phone calls practically each day. Nearly one year has passed since the initial news story broke and Plaintiffs still receive harassing phone calls and threats to this day.

26. Through absolutely no fault of their own, Plaintiffs have suffered and continue to suffer damages directly resulting from Defendant’s failure to remove the decal

prior to resale as promised. Plaintiffs' plumbing repair work and all other sources of its revenues have been substantially impacted and its reputation damaged beyond rehabilitation. As a direct result of the damage to Plaintiffs' reputation, Plaintiffs have lost an excess of \$1,000,000.00.

V. CAUSES OF ACTION

A. RESPONDEAT SUPERIOR

27. Plaintiffs incorporate, as if set forth verbatim, the preceding paragraphs of this Petition. At all times material to this Petition, Defendant's salesman was an employee or agent of Defendant. The acts of the employee were performed while in the employment of Defendant and were within the course and scope of that employment or within the authority delegated to the employee. Employee was acting in furtherance of Defendant's business, the accomplishment for which the employee was hired.

28. Defendant is liable for the negligent acts and omissions of its employees under the doctrine of vicarious liability, or *respondeat superior*.

29. As a result of Defendant's negligent acts and omissions, Plaintiffs have suffered pecuniary harm and request compensatory and punitive damages in an amount to be determined at trial.

B. JOINT AND SEVERAL LIABILITY

30. Additionally, Defendant is directly liable for the acts and omissions of its agents, servants and employees in allowing a traded-in vehicle with clearly identifiable marking of its previous business owner to be placed into the stream of commerce without first removing said identifying markings, such that the truck could fall into the hands of

criminals, terrorists or jihadists and be photographed in circumstances which could and did bring about Plaintiff's severe injury and their incurring of consequent damages.

C. LIABILITY FOR NEGLIGENCE, GROSS NEGLIGENCE AND COMMON LAW TORTS

31. As hereinafter set out in detail, Defendant is liable to Plaintiffs for its negligence and common law torts and for all economic and/or compensatory damages which have been suffered in the past and which, in reasonable probability will be suffered in the future. Moreover, Defendant's conduct has been so outrageous, malicious and consciously indifferent to the overwhelmingly likely severe harm of the Plaintiffs as to constitute gross negligence as that term is understood in Texas law, for which Plaintiffs herein seek punitive damages, as permitted by common law and/or Texas Civil Practice & Remedies Code § 41.002.

D. COMMON-LAW FRAUD

32. Plaintiffs incorporate, as set forth verbatim, the preceding paragraphs of this Petition. Defendant made a material representation regarding removal of the decals to Plaintiff to induce him into the transaction. Defendant either knew its material representation regarding removal of the decals was false when stated or Defendant recklessly stated its material representations as positive assertions without knowledge of their truth. Defendant made these representations with the intent that Plaintiff rely on them. Plaintiff did rely on the representations to his detriment.

33. Defendant's false representations directly and proximately caused Plaintiffs to suffer substantial past damages and in reasonable probability will cause Plaintiffs to continue to suffer damages into the future.

34. Defendant's actions were fraudulent, malicious, and/or grossly negligent and subject it to exemplary damages in an amount to be determined by the jury.

E. NEGLIGENT MISREPRESENTATION

35. In the alternative, or in supplement thereto, Defendant committed negligent misrepresentation. In the course of Defendant's business and in transactions involving its own pecuniary interest, Defendants made representations to Plaintiffs that the Defendants would remove Plaintiffs' decals from Plaintiffs' truck prior to resale. Defendants had an interest in Plaintiffs selling their truck to Defendant. Plaintiffs released their truck to Defendant under the pretense that the decals would be removed prior to resale. Defendant negligently supplied false, misleading and deceptive information to Plaintiffs regarding the transaction, to induce that very transaction. Defendant wholly failed to exercise that reasonable care and competence of a vehicle dealership in same or similar circumstances in ensuring the decals were removed prior to resale. Plaintiffs justifiably relied on the representations made by Defendant during the transaction, to their enormous and continuing injury and damage.

36. Defendant's misrepresentations proximately caused Plaintiffs to suffer substantial damages in the past and will, in reasonable probability, continue to do so into the future.

37. Defendant's actions were negligent, malicious, and/or grossly negligent and subject it to exemplary damages in an amount to be determined by the jury.

F. LIBEL PER SE

38. Plaintiffs incorporate, as if set forth verbatim, the preceding paragraphs of this Petition. Defendant's failure to remove the decals from Plaintiff's truck amounted to

Defendant implicitly accepting Mark-1 Plumbing, Inc.'s decals as its own statement which was subsequently published nationally. Defendant's failure to remove the decal makes the statement defamatory per se under the common law because, when taken as a whole and as would have been perceived by a reasonable viewer, Defendant imputed terroristic and/or jihadist ties and support to the Plaintiffs. As a result, Plaintiffs were injured in their profession and occupation and, in reasonable probability, will continue to be so injured into the future. Such tortious conduct makes the Defendant strictly liable to Plaintiff under Texas law because it is libelous per se.

39. Defendant's statement severely and irretrievably injured Plaintiffs' reputation and exposed Plaintiffs to national public hatred, contempt, ridicule, and financial injury and, in reasonable probability, will continue to do so into the future.

40. Plaintiffs have suffered substantial injury as a result of Defendant's defamatory statements, including but not limited to injury to character and reputation, mental anguish, loss of past and future income and loss of earning capacity and, in reasonable probability, will continue to do so into the future.

G. INVASION OF PRIVACY BY APPROPRIATION OF NAME

41. Plaintiffs incorporate, as set forth verbatim, the preceding paragraphs of this Petition. Defendant appropriated Plaintiffs' name when it failed to remove the traded-in truck's decals prior to resale. Plaintiff can be identified from the publication through the plethora of news articles that include the propaganda photograph. Defendant received advantage in cutting costs by not removing the decals prior to resale.

42. As a result of Defendant's appropriation, Plaintiff suffered injury to its reputation, prestige, social or commercial standing, and public interest and, in reasonable probability, will continue to do so into the future.

43. Plaintiff has suffered substantial injury as a result of Defendant's invasion of privacy by appropriation of Plaintiff's name, including but not limited to injury to character and reputation, mental anguish, loss of past and future income and loss of earning capacity.

H. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT, BUSINESS & COMMERCE CODE § 17.46

44. Plaintiffs incorporate, as set forth *verbatim*, the preceding paragraphs of this Petition. Defendant violated Texas Business & Commerce Code § 17.46, in the following particulars: (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods; (3) causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by another; (4) using deceptive representations or designations of geographic origin in connection with goods; (5) representing that goods have sponsorship, approval, which they do not have, for all of which violations, Defendant is liable per se.

45. Regarding such violations Plaintiffs herein seek damages for past and future mental anguish, all past and future proximately caused economic damages, taxable costs of court and reasonable attorney's fees, together with interest as provided by law, all in conformity with Texas Business & Commerce Code § 17.50.

**VI.
REQUEST FOR DISCLOSURE**

46. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request that Defendant disclose, within the time provided by the Rules, the information or material described in Rule 194.2.

**VII.
STATEMENT OF RELIEF**

47. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiffs seek monetary relief over \$1,000,000.00.

48. Plaintiffs seek damages that are within the jurisdictional limits of this Court.

**VIII.
JURY DEMAND**

49. Plaintiffs demand a jury trial and tender the appropriate fee with this Petition.

**IX.
RESERVATION OF RIGHTS**

50. Plaintiffs reserve the right to amend their complaint to assert such additional causes of action as may be revealed during discovery.

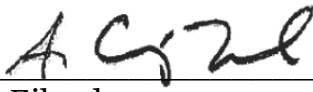
**X.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, MARK OBERHOLTZER and MARK-1 PLUMBING, INC., pray that Defendant be cited to appear and answer herein and, upon final hearing, that Plaintiffs be awarded a judgment and all relief sought herein against Defendant as follows:

- a. all economic and compensatory damages proved by a preponderance of evidence;
- b. punitive damages as proved by clear and convincing evidence;
- c. reasonable and necessary attorneys' fees;
- d. pre-judgment and post-judgment interest as provided by law;
- e. court costs; and,
- f. all other relief, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

LAW OFFICES OF A. CRAIG EILAND

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