

<p>DISTRICT COURT, 21ST JUDICIAL DISTRICT Mesa County, Colorado</p> <p>Mesa County Justice Center 125 N. Space Street Grand Junction , CO 81501 (970)257-3640</p> <hr/> <p>JESSIE McNEELY; and,</p> <p>ERIC GIRTEN</p> <p>v.</p> <p>RED ROCK AUTO GROUP, INC. d/b/a RED ROCK HYUNDAI</p>	<p>DATE FILED: January 20, 2023 11:13 AM FILING ID: 41212E385BE42 CASE NUMBER: 2022CV30498</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Eric R. Coakley, CO Bar 34238 COAKLEY, LLC 2373 Central Park Blvd. - Suite 100 Denver, CO 80238 Tel. (303)500-1778 coakley@coakleylaw.com</p>	<p>Case Number: 22cv_____</p> <p>Courtroom: __</p>
<p>COMPLAINT AND JURY DEMAND</p>	

Plaintiffs Jessie McNeely and Eric Girtten, through their counsel Eric R. Coakley, hereby submit their Complaint and Jury Demand as follows:

PARTIES

1. Plaintiff Jessie McNeely is an individual and consumer residing in Grand Junction, Colorado.
2. Plaintiff Eric Girtten is an individual and consumer residing in Grand Junction, Colorado.
3. Defendant Red Rock Auto Group, Inc. d/b/a Red Rock Hyundai is a Utah Corporation (“Red Rock Hyundai” or the “Dealer”) authorized to do business in Colorado that sells new and used automobiles at 2162 HWY 6 AND 50, Grand

Junction, CO 81505. Its principal office is at 4528 State Street, Murray, UT 84107, its registered agent Steven T. Dahle at 741 N 1st Street, Grand Junction, CO 81501.

JURISDICTION

4. Jurisdiction is proper in this Court because all acts and omissions described herein occurred in the State of Colorado.

5. Venue is proper in the 21st Judicial District Court for Mesa County pursuant to C.R.C.P. 98(c)(2) because this is an action for goods sold and delivered in Mesa County and C.R.C.P. 98(c)(3)(B)(i) the contract was signed or entered into by Defendant in Mesa County.

GENERAL ALLEGATIONS

6. The allegations in this complaint relate to and arise out of a deceptive trade practice referred to as an automobile “yo yo” sale or “spot delivery scam”.

7. Ms. McNeely is a 24 year old pre-school teacher.

8. On July 25, 2022, Ms. McNeely visited Red Rock Hyundai with the intention of purchasing a used Jeep Cherokee Laredo she had seen advertised.

9. Ms. McNeely brought Mr. Girten with her to help her select a car.

10. In its regular course of business, Red Rock Hyundai demands customers sign an electronic tablet that does not show the actual content of the documents that customers are signing.

11. In its regular course of business, Red Rocks Hyundai tells consumers that they will receive copies of the documents they are signing at a later time.

12. In an entry on AnneLandmanBog.com on November 1, 2022, Ms. Landman described Red Rock Hyundai’s practice of having consumers sign a tablet without providing copies of text of the documents being signed and identified other consumers affected by that practice.

13. In this transaction, Ms. McNeely and Mr. Girten likewise had to rely on representations by the dealer sales associate, Joshua Roden, about the documents they were signing.

14. On July 25, 2022, Ms. McNeely and Mr. Girten were presented an electronic tablet by Mr. Roden and told Ms. McNeely was executing a credit application

and Mr. Girten was signing as a guarantor for a loan to purchase a 2012 Jeep Grand Cherokee.

15. Ms. McNeely was subsequently told by Red Rock Hyundai that the loan application for the 2012 Grand Cherokee was denied because the 2012 Grand Cherokee was too old and had too much mileage.

16. Red Rock Hyundai did not notify Ms. McNeely or Mr. Girten of their right to obtain a copy of the credit report that was used in the denial and her right to appeal.

17. After Ms. McNeely was informed the credit application for the 2012 Grand Cherokee was denied, Red Rock Hyundai encouraged her to consider a 2017 Hyundai Elantra , VIN No. 5NPD84LF2HH045652 with 77,229 Miles (the “2017 Elantra”).

18. Ms. McNeely was told that financing on the Hyundai 2017 Elantra was approved and she could purchase the car that day, July 25, 2022, with Mr. Girten as guarantor.

19. Red Rock Hyundai told Ms. McNeely her monthly payment would be \$475 per month and her first installment payment would be due September 27, 2022.

20. In order to make a downpayment for the 2017 Elantra, Ms. McNeely traded in her existing car, a 2011 Hyundai Sonata (the “Trade-In Sonata”) in exchange for a \$500 credit.

21. On July 30, 2022 Ms. McNeely and Mr. Girten were instructed to call a number for a “welcome call” with Defendant Consumer Portfolio Services.

22. Consumer Portfolio Services asked about features on the car, where Ms. McNeely and Mr. Girten lived and worked.

23. Consumer Portfolio Services told Mr. Girten that the aftermarket equipment - including new rims and high performance headlights - on the 2017 Elantra did not match the description provided to it by Red Rock Hyundai.

24. In order to make a downpayment for the 2017 Elantra, Ms. McNeely made a cash downpayment of \$750 in two installments, \$400 on August 3, 2022, and \$350 on August 30, 2022.

25. When Ms. McNeely made her second downpayment for \$350 in person on August 30, 2022, Marty Marquez, the Finance Manager for Red Rock Hyundai, told Ms. McNeely that everything is “all set” and that her first installment payment would be due September 27, 2022.

26. Ms. McNeely’s total downpayment including trade-in credit was \$1,150.

27. Ms. McNeely and Mr. Girten signed the electronic tablet in reliance on the representations made by Red Rock Hyundai believing Ms. McNeely was the purchaser, and Mr. Girten the guarantor.

28. Ms. McNeely did not receive copies of the sale documents at the time of sale.

29. Ms. McNeely and Mr. Girten saw the documents Red Rock Hyundai claims she and Mr. Girten signed for the first time only on or about November 29, 2022, after the events described herein when Ms. McNeely was collecting documents with the intent of hiring a lawyer and requested copies of all documents from Red Rock Hyundai.

30. One of the documents Ms. McNeely received from Red Rock Hyundai on or about November 29, 2022 was a copy of an XCEL bill that was not Ms. McNeely's account but appears to have been submitted with her credit application. Her name and address on that bill are not the same font or format that XCEL uses for its bills, and it is not Ms. McNeely's account number on the bill, indicating the document was fabricated by someone at Red Rock Hyundai.

31. Another document Ms. McNeely received from Red Rock Hyundai on or about November 29, 2022 was a copy of an AT&T bill that appears to have been submitted with Ms. McNeely's credit application. Ms. McNeely does not have an AT&T account. Ms. McNeely's name and address on the AT&T bill are not the same font that AT&T uses for its bills and is misaligned from the other text, indicating it was fabricated by someone at Red Rock Hyundai.

32. Ms. McNeely received a copy of the Retail Installment Sale Contract ("RISC") for this transaction from Red Rock Hyundai for the first time on or about November 29, 2022.

33. When Ms. McNeely received a copy of the RISC from Red Rock Hyundai on or about November 29, 2022 she discovered that Mr. Girten had been listed as the purchaser, and she was listed as a co-signer. There was also an old, incorrect address for Mr. Girten on the RISC that neither Ms. McNeely nor Mr. Girten had provided to Red Rock Hyundai.

34. When Ms. McNeely received a copy of the RISC from Red Rock Hyundai on or about November 29, 2022, she was able to view for the first time the Federal Truth and Lending Act ("FTLA") Disclosures for this transaction.

35. The FTLA Disclosure indicated the first payment was due on September 8, 2022, not September 27, 2022 as Ms. McNeely had been told by Red Rock Hyundai.

36. The FTLA Disclosures indicated Red Rock Hyundai had charged an APR of 21%, which had not been previously communicated to Ms. McNeely or Mr. Girten.

37. The FTLA Disclosures indicated that the finance charge was \$14,913.76, which had not been previously communicated to Ms. McNeely or Mr. Girten.

38. When Ms. McNeely received a copy of the RISC from Red Rock Hyundai on or about November 29, 2022, she discovered that Red Rock Hyundai added a “worry free maintenance plan” for \$149.95 that she did not know about or agree to.

39. The documents received by Ms. McNeely from Red Rock Hyundai on or about November 29, 2022 also contained a copy of a “Worry Free Maintenance” contract that showed it was for one year of oil changes, tire rotation, and vehicle inspections.

40. When Ms. McNeely received a copy of the RISC from Red Rock Hyundai on or about November 29, 2022, she discovered that Red Rock Hyundai had added a “documentation fee” for \$579 that she was not aware of and had not agreed to.

41. On the RISC sent to Ms. McNeely, Red Rock Hyundai had indicated that the sale was final by indicating that the Seller’s Right to Cancel in the event the RISC could not be signed was not applicable, and the RISC indicated it had been assigned to Consumer Portfolio Services.

42. Upon information and belief, on or about August 11, 2022, Red Rock Hyundai sold the Trade-In Sonata to a third party for \$6,059.00.

43. Despite informing Ms. McNeely that her credit application had been approved, Red Rock Hyundai proceeded to make a number of unauthorized “hard pulls” of Ms. McNeely’s credit reports and cause other financial institutions to make unauthorized “hard pulls” in an effort to assign the RISC.

44. The unauthorized “hard pulls” against Ms. McNeely’s credit included nine on July 25, 2022; seven on October 3, 2022; and, seven on November 14, 2022.

45. The unauthorized hard pulls caused damage to Ms. McNeely’s credit and hinders her ability to finance a replacement vehicle or to use credit.

46. Ms. McNeely called Red Rock Hyundai numerous times, and left numerous voicemails for Marty Marquez, Finance Manger, in August through October of 2022 to ask where her first payment should be sent. Her voicemails were not returned.

47. On or about September 27, 2022, Ms. McNeely visited Red Rock Hyundai to inquire about where to make her first payment and brought her credit card with the intention of making a first payment.

48. On or about September 27, 2022 Jesse (last-name-unknown), a salesperson with Red Rock Hyundai met with Ms. McNeely and told Ms. her that she “does not have a bank yet.”

49. On or about September 27, 2022, Ms. McNeely offered to make her first payment to Red Rock Hyundai, but Jesse (last-name-unknown) told her she could not make her first payment at the dealership.

50. On or about September 27, 2022 Jesse (last-name-unknown) issued Ms. McNeely temporary license plates and told her Red Rock Hyundai would keep trying to find a bank to make payments to.

51. On November 26, 2022, Ms. McNeely received a phone call from Mr. Roden with Red Rock Hyundai who informed Ms. McNeely that the 2017 Elantra would have to be returned and Red Rock Hyundai would return only \$500 to her.

52. On November 26, 2022, Ms. McNeely spoke with Mr. Roden with Red Rock Hyundai on the telephone..

53. Mr. Roden told Ms. McNeely she couldn’t “legally” keep the car and if she did not return it, Red Rock Hyundai would come take it.

54. Mr. Roden’s representation was false because Ms. McNeely had a final binding contract for purchase of the car and was ready to make all payments as promised but Red Rock Hyundai would not accept payments.

55. Ms. McNeely asked Mr. Roden to return the Trade-in Sonata and all the money she paid down. Mr. Roden responded by laughing at Ms. McNeely and saying they already sold the Trade-in Sonata four months ago.

56. Mr. Roden told Ms. McNeely that Red Rock Hyundai would return only \$500 of what she paid.

57. In order to avoid trouble with the law, and in reliance on Mr. Roden’s unlawful and misleading threats, Ms. McNeely returned the 2017 Elantra to Red Rock Hyundai on or about December 7, 2022.

58. To date, Red Rock Hyundai has refused to return all of the money Ms. McNeely put down on the 2017 Elantra, or return her Trade-In Sonata.

59. Ms. McNeely has not had a personal vehicle to use to travel to work, for groceries or medical care, to transport her or her children, or for any other uses a family car may be needed for since December 7, 2022.

60. As a result, Ms. McNeely suffered damages.

FIRST CLAIM FOR RELIEF

(Colorado Consumer Protection Act - C.R.S. § 6-1-101 *et. seq.*)

61. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.
62. Plaintiffs were actual or potential consumers of Red Rock Hyundai's goods.
63. Red Rock Hyundai engaged in deceptive trade practices by, *inter alia*:
 - a. Guaranteeing to Plaintiffs that they had been approved for a consumer credit transaction when the approval was not final. C.R.S. § 6-1-708(1)(a)(I);
 - b. Accepting Ms. McNeely's Trade-In Sonata and selling it before the borrowers had been approved for the consumer sale transaction. C.R.S. § 6-1-708(1)(a)(II);
 - c. Failing or refusing to promptly return Ms. McNeely's \$750 downpayment following the unlawful cancellation of the RISC. C.R.S. § 6-1-708(1)(a)(III);
 - d. Retaining all or a portion of Ms. McNeely's downpayment after guaranteeing Ms. McNeely had been approved for financing. C.R.S. § 6-1-708(2);
 - e. Failing to deliver to the purchasers at the time of the sale of the 2017 Elantra a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization the seller represented, and all of the terms and conditions of the sale, in readable, clear and unambiguous language. C.R.S. § 6-1-105(1)(m);
 - f. Failing to disclose to Plaintiffs at the time of sale of the 2017 Elantra that financing was not approved with the intent to induce Ms. McNeely to enter into the transaction. C.R.S. § 6-1-105(1)(u);
 - g. Selling a motor vehicle service contract that does not conspicuously state that the services are guaranteed under a service contract reimbursement policy as required by provisions of with C.R.S. 42.11.104. C.R.S. § 6-1-105(1)(aa);
 - h. Misrepresenting to Ms. McNeely that she was not entitled to a refund of her downpayment or the Trade-In Sonata when, in fact, it was required by law. C.R.S. § 6-1-105(1)(r); and,

i. Using an electronic pad to obtain signatures of Ms. McNeely and Mr. Girten and misleading them about the contents, purpose, and effect of the documents they were purportedly signing. C.R.S. § 6-1-105(3).

64. The General Assembly has declared a violation of C.R.S. § 6-1-708 as a *per se* violation of the CCPA because the “sale and distribution of motor vehicles affects the public interest” C.R.S. § 44-20-101(1)(a).

65. Plaintiffs are entitled to recover from Defendants actual damages, treble damages, punitive reasonable attorney fees, and costs of this action.

SECOND CLAIM FOR RELIEF

(Colorado Uniform Consumer Credit Code (“UCCC”) - C.R.S. § 5-5-101 *et. seq.*)

66. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

67. Plaintiffs are “Consumers” as that term is defined by C.R.S. § 5-1-301(10).

68. Defendant Red Rock Hyundai is a “Creditor” as defined by C.R.S. § 5-1-301(17).

69. The sale of the 2017 Elantra was a “Consumer Credit Sale” as defined by C.R.S. § 5-1-301(11)(a) and a “Consumer credit transaction” as defined by C.R.S. § 5-1-301(12).

70. The UCCC requires a creditor to disclose information, disclosures, and notices required by the FTLA. C.R.S. § 5-3-101(2).

71. By requiring Plaintiffs to sign on an electronic pad and not providing her a copy of the disclosures required by the FTLA, Red Rock Hyundai violated the UCCC.

72. Red Rock Hyundai is liable to Plaintiffs in an amount of twice the finance charge up to one thousand dollars, costs, and attorney fees.

THIRD CLAIM FOR RELIEF

(UCCC Unconscionable Actions -C.R.S. § 5-5-101 *et. seq.*)

73. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

74. Red Rock Hyundai acted unconscionably by failing to give notice of cure or give opportunity to cure as required by C.R.S. § 5-5-110 before taking actions to repossess the 2017 Elantra.

75. Red Rock Hyundai acted unconscionably by misrepresenting its legal authority to repossess the 2017 Elantra.

76. Red Rock Hyundai acted unconscionably in wrongfully repossessing the 2017 Elantra when it had no legal right to do so.

77. As a result, Plaintiffs are entitled under the Consumer Credit Code to damages attorney fees and costs as set forth at C.R.S. § 5-5-109(5).

FOURTH CLAIM FOR RELIEF

(Equal Credit Opportunity Act - 15 U.S.C. § 1691 *et. seq.*)

78. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

79. Defendant Red Rock Hyundai is a “Creditor” as that term is defined by 15 U.S.C. § 1691a(e) because it regularly extends, renews, continues or arranges credit for consumers.

80. The ECOA requires creditors and their assignees to provide a written notice of the reasons for taking any adverse action on a consumer’s credit application.

81. Red Rock Hyundai’s denial or revocation of credit was an “adverse action” as defined by 15 U.S.C. § 1691(d).

82. Red Rock Hyundai failed to give written notice of the denial or revocation of credit within 30 days of the date they received Plaintiffs’ credit application, and failed to provide any notice containing the borrowers’ right to a statement of reasons for the denial of credit as required by 15 U.S.C. § 1691(d).

83. As a result Plaintiffs suffered substantial and actual damages including loss of the subject vehicle, loss of equity in the subject vehicle as well as non-economic damages including stress, anxiety, humiliation, and loss of sleep.

84. Plaintiffs are entitled to recover from Red Rock Hyundai damages up to \$10,000 per violation in addition to actual damages, reasonable attorney fees, and costs of this action.

FOURTH CLAIM FOR RELIEF
Uniform Consumer Credit Code

85. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

86. Red Rock Hyundai acted unconscionably by failing to give notice of cure or give opportunity to cure as required by C.R.S. § 5-5-110 before taking actions to repossess the 2017 Elantra.

87. Red Rock Hyundai acted unconscionably by misrepresenting its legal authority to repossess the 2017 Elantra.

88. Red Rock Hyundai acted unconscionably in wrongful repossessing the 2017 Elantra when it had no legal right to do so.

89. As a result, Plaintiffs are entitled under the Consumer Credit Code to damages attorney fees and costs as set forth at C.R.S. § 5-1-109(5).

FIFTH CLAIM FOR RELIEF
Conversion

90. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

91. Plaintiffs had a right to possess the 2017 Elantra.

92. Red Rock Hyundai intentionally and substantially interfered with Plaintiffs' ownership and right to possess the 2017 Elantra by misrepresenting its authority to take possession of the 2017 Elantra in order to induce Ms. McNeely to return the 2017 Elantra.

93. Plaintiffs did not consent.

94. As a result, Plaintiffs suffered damages.

SIXTH CLAIM FOR RELIEF
Civil Theft

95. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

96. Plaintiffs had a right to possess the 2017 Elantra.

97. Red Rock Hyundai knowingly, without authorization, and by deception obtained the 2017 Elantra.

98. Red Rock Hyundai did so with the intent of permanently depriving Plaintiffs of the use or benefit of the 2017 Elantra.

99. Plaintiffs are entitled to economic and non-economic damages as well as treble damages and attorney fees pursuant to C.R.S. § 18-4-405.

SEVENTH CLAIM FOR RELIEF

Fraud - 1st Count

100. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

101. Red Rock Hyundai intentionally misrepresented to Plaintiffs that the transaction for the 2017 Elantra was final and credit had been approved.

102. Those facts were material to Plaintiffs in making their decision to purchase the 2017 Elantra from Red Rock Hyundai.

103. At the time the misrepresentation was made, Red Rock Hyundai knew the representations were false or were aware that it did not know if the representations were false.

104. Plaintiffs justifiably relied on the misrepresentations by Red Rock Hyundai in deciding to purchase the 2017 Elantra.

105. As a result, Plaintiffs suffered damages.

EIGHTH CLAIM FOR RELIEF

Fraud - 2nd Count

106. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

107. Red Rock Hyundai intentionally misrepresented to Plaintiffs that they could not lawfully possess the 2017 Hyundai Elantra.

108. At the time the misrepresentation was made, Red Rock Hyundai knew the representations were false or were aware that it did not know if the representations were false.

109. Plaintiffs justifiably relied on the misrepresentations by Red Rock Hyundai in deciding to return the 2017 Elantra to Red Rock Hyundai.

110. As a result, Ms. McNeely suffered damages.

NINTH CLAIM FOR RELIEF
Breach of Contract

111. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

112. Red Rock Hyundai and Plaintiffs had a contract for purchase of the 2017 Elantra (the First RISC and Buyer's Order).

113. The agreement was not contingent, and the sale and financing terms were final.

114. Red Rock Hyundai had no contractual right to cancel the Agreement.

115. Plaintiffs substantially complied with her obligations under the Agreement by paying the downpayment and trying to make payments to Red Rock Hyundai.

116. Red Rock Hyundai breached the agreement by unlawfully cancelling the agreement and taking possession of the 2017 Elantra.

117. As a result of Red Rock Hyundai's breach, Ms. McNeely suffered damages.

JURY DEMAND

Plaintiffs demand a jury on all claims so triable.

WHEREFORE, Plaintiffs respectfully request a monetary judgment entered in their favor against Defendant, for civil penalties, punitive or treble damages if so warranted on claims so applicable, for costs and attorneys fees, and any other relief the Court deems just under the circumstances.

Dated this 29th day of December, 2022.

COAKLEY LLC

s/Eric R. Coakley

Eric R. Coakley