

Cause No. 067-309719-19

Cherish Arnold, Individually; as	§	In the District Court
Next Friend to M.D.A., Minor Child;	§	
And as Next Friend to Daniel	§	
Todd Arnold, an Incapacitated Adult;	§	
Madisyn Arnold, Individually,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
vs.	§	Tarrant County, Texas
	§	
Don Davis Auto Group, Inc., d/b/a and	§	
F/K/A Don Davis Toyota;	§	
Don Davis Auto, Inc. d/b/a and	§	
F/K/A Don Davis Toyota,	§	
	§	
<i>Defendants.</i>	§	67 th District Court

PLAINTIFFS' SECOND AMENDED PETITION

To the Honorable Judge of Said Court:

COME NOW, Cherish Arnold, both individually and as Next Friend to M.D.A., Minor Child, as well as Next Friend to Daniel Todd Arnold, an Incapacitated Adult Madisyn Arnold, Individually (hereinafter referred to as "Plaintiffs"), and respectfully file this Second Amended Petition against Don Davis Auto Group, Inc, d/b/a and f/k/a as Don Davis Toyota, Don Davis Auto, Inc. d/b/a and f/k/a Don Davis Toyota (hereinafter referred to as "Defendants").

In support hereof, Plaintiffs would state and show unto this Honorable Court the following:

I. Discovery Control Plan

1. Plaintiffs intend to conduct discovery under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II. Parties

2. Plaintiff Cherish Arnold is married to Plaintiff Daniel Todd Arnold, an incapacitated adult. She resides in and is a citizen of Hurst, Tarrant County, Texas.

3. Plaintiff Todd Arnold is an incapacitated adult and is a citizen of Hurst, Tarrant County, Texas.

4. Plaintiff M.D.A. is a minor child. He makes an appearance in this action by and through his biological mother and next friend, Cherish Arnold. He resides in and is a citizen of Hurst, Tarrant County, Texas.

5. Plaintiff Madisyn Arnold is the biological daughter of Daniel Todd Arnold, an incapacitated adult and Cherish Arnold. She resides in and is a citizen of Tarrant County, Texas.

6. Defendant Don Davis Auto Group, Inc, d/b/a and f/k/a as Don Davis Toyota is a Texas corporation with its principal place of business in Tarrant County, Texas, and service of process upon this Defendant is not necessary as this Defendant has previously filed an Answer.

7. Defendant Don Davis Auto, Inc. d/b/a and f/k/a Don Davis Toyota is a Texas corporation with its principal place of business in Tarrant County, Texas, and service of process upon this Defendant is not necessary as this Defendant has previously filed an Answer.

III. Tex. R. Civ. P. 47

8. As a general matter, Plaintiffs' counsel believes that the amount of the damages to be awarded to a claimant is strictly within the province of the jury. Indeed, the jury will be reminded that it is solely up to them to award intangible damages for all applicable non-economic damages. The jury will also be reminded of the value that we as free Americans place on human life and our right to be free from pain and suffering and to pursue happiness however we see fit.

9. Despite all of the foregoing, the rules now provide that a plaintiff must state how much money a plaintiff is seeking in a given suit. Therefore, due to the new rules put in place in 2013, and pursuant to Texas Rule of Civil Procedure 47(c)(5), Plaintiffs hereby state that Plaintiffs are seeking monetary relief of over \$1,000,000.

10. Indeed, Plaintiffs seek more than \$70,000,000 in damages.

IV. Assumed and Common Names

11. Pursuant to the Texas Rules of Civil Procedure, Plaintiffs hereby give notice that all Defendants are being sued in all of their business or common names regardless of whether such businesses are partnerships, unincorporated associations, individuals, entities, or private corporations.

V. Facts

12. On or about September 16, 2017, Daniel Todd Arnold was riding in a 2011 Toyota Tundra (VIN# 5TFRM5F15BX027133) ("subject vehicle") traveling southbound on Highway 75 in Grayson County, Texas.

13. Plaintiff Cherish Arnold was driving the subject vehicle.

14. Plaintiff Madisyn Arnold was riding in the rear right seat of the subject vehicle with a friend.

15. The subject vehicle was previously purchased from Don Davis Toyota in Arlington, Texas.

16. Unfortunately for the Arnolds, the purchase event of the Toyota from Don Davis in Arlington was the beginning of their harms and losses which ultimately culminated in an accident that left Mr. Arnold catastrophically brain injured.

17. Indeed, a salesman for the Don Davis Auto Group made a Faustian bargain by trading honesty for a sales commission. The deceitful sale and lies about purported safety features in the Don Davis Toyota truck started a chain reaction that led to the Arnold Family's harms and losses from a catastrophic brain injury to Mr. Arnold.

18. Mr. Arnold suffered catastrophic brain damage when the roof of his 2011 Toyota Tundra Truck crushed his head and face during a minor single vehicle accident because his roof peeled back like a cheap tomato can.

19. Mr. Arnold had previously purchased the vehicle for an employee to use in his pesticide business. At the time of the sale, a Don Davis' salesman lied and misrepresented that the Toyota Tundra was built with revolutionary new "super steel".

20. The salesman lied and misrepresented that the super steel "made the truck super strong, especially in the area where people sat".

21. Moreover, the Don Davis' salesman told a whopper of a lie stating that the Toyota Tundra was "the safest truck ever built", and he fabricated a story that the Tundra was safer and tougher than any Chevrolet, Ford, or Ram truck.

22. Sadly, an expert engineering analysis conducted by automotive engineers, at least one of whom helped design the Dodge Viper and Ford GT super car, found that there was no "super steel" in the Toyota truck to protect Mr. Arnold from catastrophic brain damage. Additionally, testing revealed that the Toyota Tundra was very, very far from "the safest truck ever built".

23. On that fateful day of September 16, 2017, Todd Arnold was riding in the front passenger seat of his Toyota Tundra when it struck a wood post on a barbed-wire fence.

24. The roof peeled back like a cheap tomato can and into Mr. Arnold's face and head. His wife, who was driving, sustained a minor injury. His teenage daughter and her friend seated in the back seat slept thru the accident.

25. When comparison testing was conducted, the strength rating of the steel in the Tundra was *less* than that of the Ford F-150, Chevrolet Silverado, and the Dodge Ram.

26. The tests which were conducted prove that the salesman lied because the Toyota Tundra truck performed worse than trucks made by Chevy, Ford, and Dodge.

27. Words really do matter.

28. The cock and bull lies used by the Don Davis Auto Group to entice Mr. Arnold confirms the sleazy reputation of car dealers behaving like 'snake oil salesmen'.

29. Below is a picture of the subject vehicle which shows the roof panel and wind-shield header separated from the cant rail, and how the structural integrity of the joint was not maintained:



30. Below are pictures of the subject vehicle which show how the roof panel assembly encroached into the occupant survival space of Daniel Todd Arnold:



31. Below is an illustration showing the deformation of the roof windshield header. The maximum intrusion was 44” and the intrusion in the vicinity of Daniel Todd Arnold's head was 41”:



32. At the time of the accident, Daniel Todd Arnold was properly seated and properly wearing the available seat belt.

33. However, despite being properly seated and properly wearing the available seat belt, Daniel Todd Arnold sustained catastrophic and incapacitating brain injuries when the vehicle failed to protect him.

VI. Testing Shows How Weak the Toyota Tundra Really Is

34. As indicated herein, testing has been performed by automotive engineers in this case demonstrating how weak the Toyota Tundra really is compared to other manufacturers.

35. Below is a picture of a tested Toyota roof which is substantially similar to the damage that occurred during the subject accident back on September of 2017. Again, this is a **2011 Toyota Tundra roof** which was tested in accordance with automotive industry practices:



36. Below is a picture of another vehicle that was subjected to the exact same roof test, this time a **2003** vehicle (in this case a Volvo). The difference in roof strength between the two vehicles is instantly noticeable—and remarkable—and dispels the Don Davis salesman’s lies about how supposedly strong the 2011 Tundra really is:



VII. Cause(s) of Action as to Defendants

37. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Petition.

38. The Defendants were in the business of selling vehicles, particularly Toyota vehicles.

39. To sell Toyota vehicles, the Defendants participated in independent regional marketing campaigns where they independently touted the safety, quality, and reliability of Toyota vehicles.

40. The Defendants also conducted their own, independent marketing campaigns whereby they specifically targeted prospective buyers to buy a vehicle from their Toyota dealership.

41. The Defendants also paid a salary and commission to its sales employees as well as bonuses if certain sales targets were met.

42. The subject vehicle was sold by Don Davis Toyota in Arlington, Texas.

43. Under Section 82.003 of the Texas Civil Practice and Remedies Code, non-manufacturing sellers are liable for harm caused by a defective product if the seller made an express factual representation about an aspect of the product, the representation was incorrect, the representations were relied upon in obtaining or using the product, and if the aspect of the product had been as represented, there would not have been harm caused by the product or the same degree of harm suffered from the product. All of these factors exist in this case.

44. The bottom line is simple—the Defendants made bold faced lies about the safety and safety aspects of the vehicle to make a commission and increase profits.

45. Indeed, Plaintiff Todd Arnold and his employee Mr. Pittman went to Don Davis Toyota in Arlington, Texas so that Todd could buy a work truck for Mr. Pittman as part of Mr. Pittman's employment with Mr. Arnold's pesticide company.

46. Mr. Arnold told Mr. Pittman that he could get any Toyota truck or van at the Don Davis Toyota dealership.

47. Mr. Pittman chose the Toyota Tundra because the salesman at the Don Davis Toyota dealership made the independent representation that the Tundra was the safest truck ever built. The salesman at the Don Davis Toyota dealership also independently, acting on behalf of the Defendants, lied about how the Tundra was safer and tougher than any Chevrolet, Ford, or Ram truck. Further, the Don Davis Toyota salesman independently, acting on behalf of the Defendants, lied to Mr. Pittman and Mr. Arnold that the Toyota Tundra was safe and it was engineered to be safer than all other trucks. Lastly, the Don Davis Toyota salesman independently, acting on behalf of the Defendants, lied and told Mr. Pittman and Mr. Arnold that the Tundra used a new, revolutionary super steel that made it super strong, especially in the area where people sat.

48. This salesman's independent representations and sales pitch on behalf of Defendants, alone, convinced Mr. Pittman and Mr. Arnold to buy the Toyota Tundra truck over the Toyota Tacoma and Toyota work vans.

49. The salesman lied to make a commission.

50. The dealership encouraged its salesman to lie to make sales and increase profits.

51. Mr. Arnold and Mr. Pittman relied on the salesman, acting on behalf of the Defendants, to tell them the truth, to not deceive them, to not lie, and to not independently misrepresent the safety quality of the Toyota Tundra.

52. Plaintiff Todd Arnold and Mr. Pittman relied upon the Don Davis Toyota salesman's independent representations and bought the Toyota Tundra.

53. The Don Davis Toyota salesman, acting on behalf of the Defendants, repeatedly lied, made independently false, misleading, deceptive, fraudulent, and/or untrue statements about the Toyota Tundra truck, and these were done independently, on behalf of the Defendants, in an effort to sell a vehicle so as to make a commission and profit.

54. The Don Davis Toyota salesman's statements were done with malice, willful and wanton, and conscious disregard for the truth, which entitles the Plaintiffs to punitive and exemplary damages as to the Defendants named herein.

VIII. Damages to Plaintiffs

55. As a result of the independent acts and/or omissions of the Defendants, Plaintiff, Daniel Todd Arnold, has endured pain and suffering, emotional distress, mental anguish, impairment, and disfigurement, interference with his daily activities and a reduced capacity to enjoy life as a result of his injuries.

56. As a result of the independent acts and/or omissions of the Defendants, Plaintiffs, Cherish Arnold and Daniel Todd Arnold, have become obligated to pay extensive medical expenses in the past and future as a result of Plaintiff, Daniel Todd Arnold's injuries.

57. As a result of the independent acts and/or omissions of the Defendants, Plaintiff, Daniel Todd Arnold, has suffered lost wages in the past and future lost wages; diminished earning capacity in the future as result of his injuries.

58. As a result of the independent acts and/or omissions of the Defendants, Plaintiff, Daniel Todd Arnold, is entitled to recover punitive/exemplary damages.

59. As a result of the independent acts and/or omissions of the Defendants, M.D.A. and Madisyn Arnold, have suffered past and future loss of care, maintenance, support, service, advice, counsel, reasonable contributions of pecuniary value, loss of companionship and society, loss of consortium, mental anguish and emotional distress as a result of the injuries to their father Daniel Todd Arnold.

60. As a result of the independent acts and/or omissions of the Defendants, Plaintiffs M.D.A. and Madisyn Arnold are entitled to recover punitive/exemplary damages.

61. As a result of the independent acts and/or omissions of the Defendants, Cherish Arnold has suffered past and future loss of household services, loss of spousal consortium, mental anguish and emotional distress as a result of the injuries to her husband, Daniel Todd Arnold.

62. As a result of the independent acts and/or omissions of the Defendants, Plaintiff Cherish Arnold is entitled to recover punitive/exemplary damages.

63. The above and foregoing independent acts and/or omissions of the Defendants, resulting in the serious injuries to Plaintiff, Daniel Todd Arnold, have caused actual damages to Plaintiffs in excess of the minimum jurisdictional limits of this Court.

IX. Conclusion and Prayer

64. For the reasons presented herein, Plaintiffs pray that upon a final trial of this cause, Plaintiffs recover judgment against one or more of the Defendants for:

- a. actual damages;
- b. exemplary damages;
- c. prejudgment and post-judgment interest at the maximum rate allowable by law beginning September 16, 2017;
- d. costs of suit; and
- e. all other relief, general and special, to which Plaintiffs are entitled to at law and/or in equity, and/or which the Court deems proper.

Respectfully submitted,

The TRACY firm

/s E. Todd Tracy

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2020, a true and correct copy of the foregoing document was caused to be served on all counsel of record in accordance with a manner authorized by the Texas Rules of Civil Procedure.

/s E. Todd Tracy

E. Todd Tracy

Andrew G. Counts

Wendell P. "Chip" Martens, Jr.