

**IN THE FIRST JUDICIAL DISTRICT OF THE
CIRCUIT COURT OF JASPER COUNTY, MISSISSIPPI**

<p>TOBIE and KENYANA STENSON, Individually and as Parents and Next Friends of JASON COOPER, JR., a Minor;</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>KIM'S AUTOMOTIVE, INC. f/k/a CHRIS POSEY CHEVROLET-NISSAN, INC.; CHRIS POSEY, INC.; CHRIS POSEY CHEVROLET-NISSAN, INC.; and, DOES 1-10;</p> <p style="text-align: right;">Defendants.</p>	<p>Civil Action No. <u>21-CV-00039</u></p>
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AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

COME NOW, the Plaintiffs, TOBIE and KENYANA STENSON, Individually and as Parents and Next Friends of JASON COOPER, JR., a Minor, who file this Amended Complaint against Kim's Automotive, Inc. f/k/a Chris Posey Chevrolet-Nissan, Inc., Chris Posey, Inc., Chris Posey Chevrolet-Nissan, Inc. and Does 1-10 and in support state the following:

PARTIES

1. Plaintiffs Tobie and Kenyana Stenson are adult resident citizens of Laurel, Mississippi. They are the lawful parents and next friends of Jason Cooper, Jr., a Minor.
2. Plaintiff Jason Cooper, Jr., a Minor, was a citizen and resident of Heidelberg, Mississippi, at the time of the subject incident. Plaintiff Cooper now resides with his parents in Laurel, Mississippi.
3. Defendant Kim's Automotive, Inc. f/k/a Chris Posey Chevrolet-Nissan, Inc. (hereinafter "*Kim's Auto*") is a Mississippi corporation with its principal office address listed at

2516 Hwy 15 North, Laurel, Mississippi 39440. Kim's Automotive, Inc.'s agent for service of process is listed as Kimberly S. Hobbs, 20 Summer Trace Boulevard, Laurel, Mississippi 39440.

4. Defendant Chris Posey, Inc. is a Mississippi corporation with its principal office address listed at 1312 Homewood Drive, Laurel, Mississippi 39440. Defendant Chris Posey, Inc.'s agent for service of process is listed as Christopher G. Posey, 1312 Homewood Drive, Laurel, Mississippi 39440.

5. Defendant Chris Posey Chevrolet-Nissan, Inc. is a Mississippi corporation with its principal office address listed at 2516 Hwy 15 North, Laurel, Mississippi 39440. Defendant Chris Posey Chevrolet-Nissan, Inc.'s agent for service of process is listed as Chris Posey, 2516 Hwy 15 North, Laurel, Mississippi 39440.

JURISDICTION AND VENUE

6. Venue is proper in the Circuit Court of Jasper County, Mississippi pursuant to Miss. Code Ann. § 11-11-3.

7. The damages sustained by the Plaintiffs occurred in Jasper County, Mississippi.

8. The Court has personal jurisdiction over Defendants because the subject Nissan Titan which Plaintiffs owned and were operating at the time of the subject incident, was obtained from Defendants in Jasper County, Mississippi.

FACTUAL BACKGROUND

9. This is a breach of warranty and negligence action stemming from a single vehicle rollover crash that occurred on Saturday, October 3, 2019, on Highway 528 near Milepost 22.939 in Jasper County, Mississippi. Plaintiff Cooper was traveling west bound on East Main Street as the driver of the subject vehicle, a 2008 Nissan Titan, when he entered a curve, hydroplaned, departed the paved surface, entered a ditch, and overturned.

10. Mississippi law applies because the subject vehicle (2008 Nissan Titan SE, VIN 1N6BA07D18N310796) was manufactured in Mississippi, distributed in Mississippi, placed into the chain of commerce in Mississippi and the accident occurred in Mississippi involving Mississippi residents. Plaintiffs seek damages for catastrophic personal injuries.

FACTS COMMON TO ALL CLAIMS

11. The subject single-vehicle rollover incident occurred on October 3, 2019, at approximately 5:00 p.m. on Highway 528, westbound, in Jasper County, MS.

12. The subject 2008 Nissan Titan was traveling west bound on East Main Street when it entered a curve, hydroplaned, left the paved road surface, and overturned.

13. Plaintiff Jason Cooper, Jr., a Minor, was driving the subject vehicle at the time of the crash and Kordarious R. Barnett was a right front passenger. Plaintiff Cooper was properly belted at the time of the crash.

14. The subject defective vehicle is a 2008 Nissan Titan crew cab (VIN 1N6BA07D18N310796), manufactured and assembled at the Nissan plant in Canton, Mississippi.



15. The subject 2008 Nissan Titan was purchased by Tobie and Tracie Stenson on October 16, 2007, from the Defendants in Laurel, Mississippi and Defendants' employee and sales representative, Frank "Turk" Cooley. The title to the vehicle was later transferred to Plaintiffs Tobie and Kenya Stenson.

16. Defendants are currently known as Kim's Automotive, Inc., but were owned by Chris Posey, Individually and/or Defendant Chris Posey, Inc. at the time of purchase. The facts surrounding that transfer are currently unknown but it is known that Defendant Kim's Automotive, Inc. operates at the same location, with some of the same employees, and essentially is carrying out the same business. The Plaintiffs reserve the right to allege and prove successor liability under applicable Mississippi law.

17. At all times relevant to the Complaint, and upon information and belief, Defendants were an authorized dealer of Nissan products and provided sales and servicing of Nissan products in a manner that served the interests of both itself and Nissan.

18. The standard Sales and Service Agreement between Nissan and the Defendants placed the responsibility of actively promoting the retail sale of Nissan products upon Defendants, using aggressive, sound, and ethical selling practices and a conscientious regard for customer service, and was forbidden from misleading or unethical practices and activities.

19. Under the standard Nissan Sales and Service Agreement, Nissan retained the right to evaluate and monitor the performance of Defendants' employees, using sales objectives and criteria established by Nissan.

20. Under the standard Nissan Sales and Service Agreement, Nissan retained the right to establish sales objectives for Defendants.

21. Under the standard Nissan Sales and Service Agreement, Defendants had the obligation to organize and maintain a sales force that included qualified and trained sales managers and salespeople who were educated and trained in, among other things, all standard and optional safety features associated with Nissan products.

22. Under the standard Nissan Sales and Service Agreement, Nissan retained the right to monitor, observe, and advise Defendants concerning the qualifications, performance, and ability of the sales force as it related to Nissan products.

23. Under the standard Nissan Sales and Service Agreement, Nissan offered sales training courses for sales personnel, which included information regarding product and safety features and components of Nissan products, while also retaining the right to monitor, observe and advise Defendants regarding its sales force training and management.

24. Under the standard Nissan Sales and Service Agreement, Defendants were required to organize and maintain, using Nissan resources, a complete service organization with competent, trained managers and staff where were trained and educated about the Nissan product features.

25. Under the standard Nissan Sales and Service Agreement, the representatives of Defendants were charged with the responsibility of fully and accurately disclosing to all customers the material information about Nissan's products and services, including, but not limited to, features associated with the problem, both standard and optional.

26. Under the standard Nissan Sales and Service Agreement, Nissan made available to Defendants a "Datonet" system, which included an electronic data communication and processing system designed to facilitate the accurate and prompt communication between Defendants and Nissan, including sales and operations information.

27. According to published literature for the VIN of the subject vehicle, the subject Nissan Titan was a Class D truck equipped with 4-wheel ABS, driver and passenger frontal air bags, 3-point manual seat belts, side air bags and curtain side air bags.

28. According to Nissan sales and marketing literature for the 2008 Titan, the truck was represented as having a fully boxed steel frame, rather than a conventional 3-sided C-rail design,

for added strength and safety, as well as a steel-reinforced ladder frame with eight welded cross-members for increased durability.

29. The 2008 Titan was also marketed and represented as having 4-wheel limited slip (ABLS), which Nissan represented would help keep the wheels from spinning by automatically sensing wheel slippage and then applying the brakes to the slipping wheel and directing power to the wheels with the best traction.

30. The 2008 Titan was also marketed and represented as having Vehicle Dynamic Control (VDC) for handling control, a feature that Nissan represented was designed to reduce engine output and/or brake pressure application to specific wheels to help compensate for sudden moves and to avoid loss of control.

31. The 2008 Titan was also marketed and represented by Defendants as “one of the safest trucks on the road,” coming equipped with Nissan’s “Safety Shield,” a comprehensive approach to safety, which Nissan represented to include rigorous crash testing, over 50 standard safety features, available advanced technologies, an advanced air bag system, roof-mounted curtain air bags, front active head restraints, and a “first-in-class rollover sensor” that senses an impending rollover, and deployment of a roof-mounted curtain air bag to provide “enhanced head protection.”

32. Defendants advertised and branded themselves as a professional Nissan dealer, providing high quality products, treating customers with high quality sales staff, and aiming to be recognized by customers as a top-level Nissan dealer.

33. The Nissan Titan is a full-size pickup truck manufactured in the U.S. for the North American market. It was first produced in 2003, as a 2004 model.

34. From the time of the subject incident to present, Plaintiff Jason Cooper, a Minor, has been under the care of Plaintiffs Tobie and Kenya Stenson. Plaintiffs provide all care for Plaintiff Cooper, both physically and financially.

COUNT I
NEGLIGENCE OF DEFENDANTS

35. Plaintiffs incorporate paragraphs 1-34 as if repeated and restated word for word.

36. At all times relevant to the Amended Complaint, Defendants were an authorized dealer of Nissan vehicles pursuant to a Dealer Sales & Service Agreement (“Agreement”) with Nissan.

37. The Agreement established Defendants as an authorized dealer of Nissan products and allowed them to provide sales and servicing of Nissan products.

38. Defendants employed Frank “Turk” Cooley as an authorized salesperson of the dealership who was knowledgeable and trained by Nissan. At all times relevant to the Complaint, Defendants were vicariously responsible for the conduct of Cooley.

39. As an authorized dealer, Defendants assumed certain responsibilities and duties, including (a) the duty to deal fairly with the consuming public; (b) to actively promote the retail sale of Nissan products; (b) to provide efficient service of Nissan products; (c) to provide aggressive, sound, and ethical selling practices and conscientious regard for customers; (d) to engage in not deceptive, misleading or unethical practices or activities with customers; (e) to display Nissan trademarks; (f) to actively and effectively promote the sale of Nissan vehicles; (g) to build and maintain consumer confidence in Nissan; (h) the retention of qualified management; (i) to make decisions concerning the hiring and firing of employees with due regard to Nissan standards and procedures for evaluating their performance; and (j) to maintain qualified and trained

sales people and sale management to enable the dealer to fulfill its responsibilities with regard to the sales and marketing of Nissan vehicles to consumers.

40. At all times relevant to the Amended Complaint, the Agreement between Nissan and Defendants required that Nissan provide sales training courses for Defendants' sales personnel, including Cooley, and Defendants were required to have members of the sales organization attend such training courses so that they would be educated and knowledgeable about all features, especially safety features. The purpose of which was to equip them with the ability to educate consumers on the importance of safety features that may be optional.

41. Having undertaken these obligations on behalf of Nissan, Defendants had a legal duty to consumers to do so using reasonable care and in a non-negligent fashion.

42. As a distributor of consumer vehicles that provided certain safety features as optional safety features, Defendants likewise undertook the responsibility and the legal duty to educate its sales force, including Cooley, on the risks and benefits of said features and to ensure that consumers, including the Plaintiffs, were provided with sufficient information to make an intelligent and informed decision about whether to purchase the options or, if waived, have sufficient information to knowingly waive the options.

43. Defendants, alone and through Cooley, breached the foregoing duties by (a) negligently hiring, educating and training its sales force, including Cooley, so the sales force could properly carry out their duty to the consuming public, and (b) negligently failing to disclose to Plaintiffs facts necessary to make an informed decision about whether to purchase the vehicle or to purchase the vehicle with optional safety features, including electronic stability control, side air bags, rollover sensing, rollover air bags, and rollover pretensioners.

44. Defendants knew, or should have known, that the risks involved, including the dangers inherent in the product when not equipped with these safety features, posed a high degree of risks to consumers, like the Plaintiffs, who were not equipped with the knowledge to knowingly waive the protection of these optional components.

45. The negligence of Defendants and their employee was a proximate cause of Plaintiffs' damages and injuries.

COUNT II
BREACH OF WARRANTY

46. Plaintiffs incorporate paragraphs 1-34 as if repeated and restated word for word.

47. At all times relevant to the Complaint, Defendants were selling consumer products for consumer use as those terms are used and defined under applicable law.

48. The subject vehicle was defective and unreasonably dangerous as marketed and sold because it was not as safe as it was represented to be and was not equipped with the safety features which it was represented to be equipped with.

49. Defendants breached the warranties of merchantability, fitness for a particular purpose, and express warranties made about the durability and safety of the subject vehicle because the vehicle was not in a merchantable condition, was not fit for its intended use, and it did not have the level of safety or safety features represented by Frank "Turk" Cooley.

50. At all times relevant to the Complaint, Plaintiffs relied on Defendants, by and through its agent and employee, Frank "Turk" Cooley, representations about the vehicle.

51. The foregoing described breaches of warranty were a proximate cause of Plaintiffs' damages and injuries.

PUNITIVE/EXEMPLARY DAMAGES

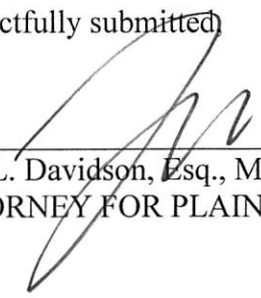
52. In addition to compensatory damages, Plaintiffs are seeking punitive damages from

the Defendants because their conduct constitutes reckless, grossly negligent, willful, wanton, malicious behavior that needs to be punished in order to deter others from participating in similar future misconduct. The Defendants took the steps set forth herein in conscious disregard for the potential consequences and under circumstances for which a jury could determine that they willfully, wantonly, recklessly, maliciously, and consciously indifferent to the consequences, endangered human life. The amount of punitive damages to be awarded is within the discretion of the jury.

WHEREFORE PREMISES CONSIDERED, Plaintiffs demand a jury trial in Jasper County, Mississippi and seek an award of damages to be determined by the jury for all damages of whatever kind and type available under Mississippi law including punitive damages. Plaintiffs also request such general and equitable relief as this Court sees fit.

Dated this the 1st day of September, 2021.

Respectfully submitted



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