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PLAINT

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IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC of 2025

**BETWEEN:**

John Andrew William Gracey

Plaintiff

**AND:**

Matthew Brian Smith

Defendant

**To the Defendant**

(Last known address from 14 June 2022)

19 Zeedah Crescent

P.O. Box 30924

George Town, Grand Cayman

Cayman Islands

**THIS PLAINT** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

**Within 14 days** after service of this Plaintiff on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495 GT, George Town, Grand Cayman, the accompanying **Acknowledgment of Service** form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgement of Service form.

**If you fail** to satisfy the claim or fail to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgement** without any further notice to you.

Issued this 14<sup>th</sup> day of March 2025

See overleaf for particulars of the Plaintiff's claim

### PARTICULARS OF CLAIM

The Plaintiff purchased a vehicle from the Defendant in a sale by description, relying on the Defendant's advertised and verbal representations that the vehicle was in good condition with no mechanical issues. Ten days after purchase, the vehicle was confirmed to be a "lemon" and was deemed unroadworthy and beyond economic repair by a licensed Master Technician, due to having severe structural rust and significant mechanical defects. This finding was confirmed again by a second independent opinion. The Plaintiff alleges the Defendant's representation of the vehicle constitutes misrepresentation (whether fraudulent, negligent, or innocent) or those remarks constitute breach of contract. The Plaintiff attempted a good faith resolution providing a combined letter of "Notice of Rescission" and pre-action "Letter before Action", which the Defendant rejected stating, "*Please do not contact me again*". The Plaintiff now seeks rescission of the contract, return of the purchase price, and damages.

### **FACTS**

#### **Parties**

1. The Plaintiff is a resident of the Cayman Islands who purchased the Defendant's vehicle.
2. The Defendant was at all material times a resident in the Cayman Islands employed at Personnel 2000 and was the owner and seller of a 2009 Jeep Wrangler motor vehicle bearing registration number 203726, hereinafter referred to as "the Vehicle".

#### **Vehicle**

3. The Defendant owned the car from on or about 14 June 2022 to 15 October 2024.
4. On 26 September 2024, the Defendant advertised in writing the Vehicle on eCayTrade stating:
  - 4.1. "*Car in good condition with excellent AC, no mechanical issues. Selling as I am looking for something smaller. Licensing up to date and inspected through to Dec 2024*".
5. The Plaintiff and the Plaintiff's wife first met the Defendant on 8 October 2024 to view the Vehicle. Defendant made in-person verbal remarks to the Plaintiff and or the Plaintiff's wife, including but not limited to:
  - 5.1. The Defendant wanted a faster vehicle so was selling the Vehicle.
  - 5.2. There were no major issues with the vehicle.
  - 5.3. The rust was only cosmetic and not structural.
6. The written and verbal statements as to the state of the Vehicle outlined in the above paragraphs 4 and 5 are hereinafter referred to as the "Descriptions".

7. The Plaintiff or the Plaintiff's wife also asked about the backseat of the Vehicle and the Defendant explained he had removed it to install a large after-market speaker.
8. The Plaintiff engaged Jonathan Vernito Webster T/A AutoShield as a converge service to handle the transaction logistics which included a mobile review and valuation of the car and handling of DVDL licensing and registration. Jonathan subsequently reported no concerning issues with the Vehicle and concluded that the asking price was fair. No mechanical logbook was made available.
9. On 11 October 2024, Mr. Webster drove the Vehicle as part of his engagement. On the same day, Mr. Webster drove the Vehicle to the DVDL which issued a Certificate of Road Worthiness.

#### **Purchase**

10. On 11 October 2024, the Defendant sent the Plaintiff a document and asked the Plaintiff to sign it to complete the transfer of the Vehicle. The document materially consisted of only:
  - 10.1. The title "Bill of Sale";
  - 10.2. One paragraph written out as *"I Matthew Brian Smith (seller) do sell the vehicle 2009 Jeep Wrangler registration number 203726 to John Andrew Willaim Gracey (buyer) in the amount of KYD \$9750.00. The Car is sold as is and the sale is final."*; and
  - 10.3. The signature blocks;(the "Bill of Sale")
11. There was no other document drafted, such as a sale and purchase agreement.
12. On 15 October 2024 the Defendant and Plaintiff met in person at which point the Plaintiff signed the Bill of Sale, paid the Defendant the amount of CI\$9,750 by Bankers Draft, and took possession of the Vehicle.
13. The Vehicle remains registered by the DVDL to the Defendant.

#### **Defects**

14. On 15 October 2024, the day of purchase, the Vehicle failed to start in the parking lot of Cost U Less on West Bay Road. A Good Samaritan attempted to jump-start it, without success. Jonathan Webster was then called out under his roadside assistance program. Upon Mr. Webster's investigation with the assistance of yet another Good Samaritan who owned a similar Jeep, they learned that the issue was not a dead battery, but that the Vehicle would generally only start when shifted into neutral first due to a common mechanical issue.
15. On or around the evening of 21 October 2024, while the Plaintiff was vacuuming dirt, sand, and rust from on top and under the carpets of the Vehicle, it became apparent that a significant and concerning portion of the interior had corroded away, including a hole approximately one or two square feet in size rusted through the front right passenger side floor. The latent rust holes were

up to that point unknown to the Plaintiff as they were covered by the carpets and a large and heavy external audio device.

16. On 22 October 2024, as a result of this discovery, the Plaintiff called Performance Automotive to book a comprehensive inspection of the car.
17. On 25 October 2024, the Plaintiff dropped off the vehicle at Performance Automotive at 69 Barnes Drive in George Town, pointing out the rust holes he had discovered. Master Technicians Jamie Love and Johnathon Balmer inspected the Vehicle and noted serious and significant safety and mechanical defects. In their written report, among other disturbing statements, the technicians provided professional opinion:
  - 17.1. *“Please be advised. If you need to retrieve this vehicle, please use a tow truck/wrecker service as it is not roadworthy. I would advise you that the vehicle should not be driven until the safety aspects of the vehicle have been addressed at minimum”.*
  - 17.2. *“I believe this vehicle was sold to you in a malicious manner. I have spoken to the DVDL and they agree that there is some misconduct done here. The vehicle is unfit for purpose. It is beyond being roadworthy and I really do feel that someone has led you to purchase this vehicle under false pretenses”.*
  - 17.3. *“I would advise you that the vehicle should not be driven until the safety aspects of the vehicle have been addressed at minimum. But I really do believe that you would be putting good money into bad with this situation. The vehicle is uneconomical to repair. The repairs will exceed the value of the vehicle”.*
  - 17.4. Mr. Love estimated that the cost of repairs would be above CI\$15,000.
18. Immediately after receiving Performance Automotive’s findings on 25 October 2024, the Plaintiff ceased driving the Vehicle. To the Plaintiff’s knowledge, no one has driven the Vehicle since then, and it has neither been at the Plaintiff’s residence nor insured. It remained at Performance Automotive’s parking lot until on or about 27 February 2025, when it was towed — at Performance Automotive’s request — to another location.
19. In a follow up via email from the mechanic report between the Plaintiff and Master Technician Jamie Love on Monday 28 October 2024, Mr. Love made further written remarks:
  - 19.1. *“I have been doing this for 25 years and I have yet to see a Jeep that is worse than this one”.*
  - 19.2. *“Passenger floor is completely rusted through the floor/ under the carpet front and rear. The passenger seat is extremely close to falling through the floor of the car”.*
  - 19.3. *“[I]dentification of the rust in the seat areas is so obvious that I cannot see how anyone with mechanical experience would not have mentioned it to any owner”.*

- 19.4. In reference to the question of whether these were mechanical issues: *“All major concerns are mechanical. Under the heading ‘We inspected the vehicle and found the following major concerns:’. The fact that the structure that holds the seat down is no longer there, that makes all those items mechanical. A small hole would be considered cosmetic, these are beyond small holes and affect the structure. The other items are blatant mechanical failures.”*
- 19.5. *“This is fraud based on your statement ‘The Seller in writing represented the Vehicle as being in good condition with no mechanical issues’, there are no two ways about it. Blatant and obvious in all terms of the words. This was told to deceive and swindle you into buying this vehicle.”*
20. On November 8th a second independent inspection was carried out on the Vehicle this time by Superior Auto. Being that Superior Auto is approximately 610 feet from Performance Automotive, the Vehicle stayed in-place and was not towed. The Superior Auto confirmed by way of written letter that the Vehicle:
- 20.1. *“In reference to the above vehicle mentioned, this letter serves to notify you that upon inspection of [the] vehicle, we have found serious damage to its structural integrity. As such, this vehicle is dangerously defective and unsafe to be on the public road. In conclusion it is not cost effective to consider repairing”.*

#### **Pre-Action Conduct**

21. Promptly as the Plaintiff discovered the true state of the Vehicle, the Plaintiff gave initial notice that the sale shall be rescinded, sent on 28 October 2024 at 2:02 PM via WhatsApp, being the established medium of communication between the parties.
22. On 29 October 2024 at 8:59 PM the Plaintiff sent the Defendant a formal letter via WhatsApp giving notice of rescission, while explaining the situation, the relevant law, and including a fair settlement offer. The letter had a read receipt for the same day at 10:07 PM.
23. On Friday 8 November 2024 at 8:15am, the Defendant responded with a letter denying rescission and any responsibility, and rejected the Plaintiff’s settlement offer. The letter closed with *“I will not be entering any further communications with you regarding this matter. Please do not contact me again”*.

#### **CAUSE OF ACTION**

##### **Misrepresentation**

24. The Defendant posted and stated the Descriptions to make the Vehicle marketable for sale.
25. The Descriptions formed a real and substantial influence on the Plaintiff — reliance upon these representations — in entering the agreement for the purchase of the vehicle believing that the representations which had been made were in fact and continued to be true.

26. The Descriptions proved to be false as a matter of fact.
27. The Plaintiff did not at any time consider the Defendant's simple Bill of Sale to constitute the entire contract for the purchase of the Vehicle and never intended to waive reliance on the Defendant's Descriptions nor the Defendant's liability for reliance on those Descriptions.
28. The Bill of Sale did not express any language of "No Representation" or "Entire Agreement", nor any clear words of the same, and therefore could not be held to be a waiver against misrepresentation.
29. The Bill of Sale could not have waived liability for misrepresentation as s.15 of Contracts Act (1996 Revision) provides that "*that provision shall be of no effect except to the extent, if any, that, in any proceedings arising out of the contract, the court may allow reliance on it as being fair and reasonable in the circumstances of the case*".
30. By common law, clear and unambiguous words are needed to exclude or limit liability for misrepresentation.<sup>1</sup> Further, a term which excludes or restricts liability for fraudulent misrepresentation is wholly ineffective as a matter of public policy.<sup>2</sup>

#### **i) Fraudulent Misrepresentations**

31. The Defendant represented the Vehicle fraudulently in that the Defendant knew his Descriptions were false, or did not believe them to be true, or was reckless as to the truth thereof.
32. The Plaintiff pleads that, because the damage to the Vehicle was of a nature to make itself known through prolonged use of the Vehicle, and because the Defendant owned the Vehicle for several years and performed after-market alterations that involved ripping up key areas of the Vehicle's carpets, the Defendant could not have been ignorant to the Vehicle's true state or was careless to the truth of his Descriptions.
33. The Defendant verbally claimed to have installed an aftermarket external audio system into the Vehicle, which was part of the Vehicle during the sale to the Plaintiff. The installation involved running audio cables along the left hand side of the front right passenger seat being near and over the rust compromised areas, indicating the Defendant knew or ought to have known about the rust affected areas, whether or not the rust amounted to a structural concern at the time the audio cables were installed.
34. The Descriptions induced the Plaintiff to enter the agreement and proved to be false. The Defendant made these misrepresentations fraudulently. That fraudulence resulted in the Plaintiff incurring loss and damage. The Plaintiff is therefore entitled to both rescission and damages.

#### **ii) Negligent Misrepresentation**

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<sup>1</sup> Al-Hasawi v Nottingham Forest Football Club Ltd [2018] EWHC 2884

<sup>2</sup> Practical Law Dispute Resolution, "Misrepresentation" (Thomson Reuters Practical Law, accessed 28 Oct 2024)

35. If the Defendant did not know his Descriptions were false or was not careless to their truth, which is not admitted but specifically denied, then the Plaintiff pleads that the Defendant was negligent in making them.
36. Negligent Misrepresentation is covered under s.14(1) of Contracts Act (1996 Revision), the Defendant “...that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made the facts represented were true”.
37. The Defendant has not to date provided any statement or material to support that the Defendant had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.
38. The Descriptions induced the Plaintiff to enter the contract and proved to be false. The Defendant was negligent in making these misrepresentations. That negligence resulted in the Plaintiff incurring loss and damage. The Plaintiff is therefore entitled to both rescission and damages.

### **iii) Innocent Misrepresentation**

39. If the Defendant was not negligent in his Descriptions, which is not admitted but specifically denied, then the Plaintiff pleads innocent misrepresentation.
40. The Descriptions induced the Plaintiff to enter the contract and proved to be false. The misrepresentations resulted in the Plaintiff incurring loss and damage. The Plaintiff is therefore entitled to rescission of the contract

### **Breach of Contract**

41. If the Defendant's actions or Descriptions did not amount to Misrepresentation, which is not admitted but specifically denied, then they constituted breach of contract.
42. At the time of sale, the Vehicle did not conform to the Defendant's Descriptions.
43. The Defendant's Descriptions constituted an express term of the Plaintiff's agreement to purchase the Vehicle from the Defendant.
44. If those Descriptions were not an express term of the Contract, which is not admitted but specifically denied, then “there [was] an implied condition that the goods shall correspond with the description” under s.14 of the Sale of Goods Act as the sale was a “sale by description”.
  - 44.1. In *Beale v. Taylor* [1967] 3 All ER 253 (England and Wales) the purchase of a second-hand car was fully examined by the buyer but it was held to be a sale by description because the buyer had relied on the newspaper advertisement issued by the seller.
45. The Defendant's drafted Bill of Sale included “as is” language that is of no effect in the context of this Breach of Condition or Warranty.

45.1. Section 55 of the Sale of Goods Act restricts exclusions of implied and express terms, namely:

45.1.1. Subsection 2 provides “*An express condition or warranty does not negative a condition or warranty implied by this Law unless inconsistent therewith.*”

45.1.2. Subsection 4 provides “*In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of sections 14, 15 or 16 shall be void in the case of a consumer sale and shall, in any other case, not be enforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance on the term.*”

46. In selling the Plaintiff a Vehicle that did not fit the Descriptions, the Defendant’s actions constitute a breach of contract which has resulted in the Plaintiff incurring loss and damage.

### **Rescission**

47. As the Vehicle is beyond economic repair, rescission is the most appropriate remedy in lieu of contractual damages.

48. If, which is denied, the Plaintiff has not validly rescinded the purchase agreement or if the court orders that the Defendants pay the Plaintiff damages in lieu of rescission or if the Defendant fails to comply with any order of the court regarding the repayment of the purchase price and the re-transfer of title so that rescission be impossible, the Plaintiff claims damages for all and any losses suffered as a consequence of the misrepresentation and of entering into the contract.

### **Financial Breakdown**

49. Damages of CI\$1,169.85; alternatively, to be assessed by the Court. These include the following:

49.1. Car insurance for one month for CI\$79.43.

49.2. Pre-purchase review and transaction logistics by AutoShield for CI\$300.

49.3. Towing from the premises of Performance Automotive at a cost of CI\$125.00.

49.4. Three car rentals, at CI\$327.77, CI\$146.98, and CI\$140.67 from Andy's Rent-A-Car.

49.5. Sundry interior and exterior cleanup products of approximately CI\$50.

50. Fixed Costs; alternatively, costs to be assessed. These include the following:

50.1. Post-purchase inspection by Performance Automotive for CI\$251.86.

50.2. Post-purchase inspection by Superior Auto for CI\$164.00 as a second opinion.

**LAW**

51. Common Law
52. Contracts Act (1996 Revision)
53. Sale of Goods Act (1997 Revision)

**AND THE PLAINTIFF CLAIMS:**

54. Declaration of rescission of the contract and repayment of the purchase price of the Vehicle in the amount of CI\$9,750.
55. Damages in the sum of CI\$1,169.85; alternatively, damages to be assessed.
56. Fixed Costs of CI\$440.86; alternatively, costs to be assessed.
57. Pre-judgement and post-judgement interest calculated in accordance with the Judicature Act (2021 Revision) at the prescribed rate from October 25, 2024 to the date of this claim amounting to \$95.00 and continuing at the rate of \$0.73 per day until judgement or earlier payment; alternatively at such rate and for such period as the court things fit.
58. Such further or other relief as the Court deems just and equitable.

**DATED** this 14<sup>th</sup> day of **March 2025**.

  
\_\_\_\_\_  
John Graeey

Plaintiff's address for service

1453 West Bay Rd PO Box 31761 West Bay Cayman Islands, KY1-1203
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IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC of 2025

**BETWEEN:**

John Andrew William Gracey

Plaintiff

**AND:**

Matthew Brian Smith

Defendant

\_\_\_\_\_  
**ACKNOWLEDGEMENT OF SERVICE**  
\_\_\_\_\_

1. State Defendant's name and address-

2. State whether the Defendant intends to contest the action.

Yes  No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes  No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

**Service of the Plaintiff is acknowledged accordingly.**

\_\_\_\_\_  
Defendant's Signature

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025

Please see overleaf

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**PARTICULARS OF DEFENCE**

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*(Here set out in numbered paragraphs the ground upon which the Defendant says that he is not liable to the Plaintiff, or is not liable for the full amount claimed)*

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Defendant's Signature

**REMINDER** — This form must be taken or sent to the Court Office, P.O. Box 495GT, George Town, Grand Cayman, Cayman Islands, within 14 days of receipt; otherwise a default Judgement may be entered against you.