

No. 64258-8-1

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

PRINS AUTOGASSYSTEMEN B.V.; AND
AMERICAN ALTERNATIVE FUEL, LLC.

Appellants,

v.

CARL COOK

Respondent

APPELLANTS' OPENING BRIEF

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COURT OF APPEALS
DIVISION I

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I. STATEMENT OF THE CASE

A. The Parties

American Alternative Fuel, LLC (“American Alternative”) is a New York limited liability company in the business of selling and installing Prins propane conversion systems for automobiles since January, 2008. Prins Autogassystemen B.V. (“Prins”) is a Netherlands based company that is a global supplier of systems and components of alternative fuel systems for automobiles. American Alternative and Prins are collectively referred to herein as “defendants” or “Appellants”.

Respondent Carl Cook (“Cook”) is an individual with a place of business at 4311 NE 123rd Street, Seattle, Washington 98125.

B. Procedural Background

Although this is not a complete¹ and accurate representation of the underlying facts of Cook’s purchase, based on the procedural history set forth below, the facts are as follows:

This case arose out of the Cook’s October 2005 purchase of a propane conversion system for his vehicle from a Canadian company that is not a party to the case. The conversion system allows Cook’s vehicle to run

¹In the Superior Court action, defendants’ pleadings were stricken, and their Responses to Requests for Admission were stricken and deemed admitted. Therefore, the facts presented on the record are limited to the Requests for Admissions and Cook’s Declaration dated July 7, 2009, filed in support of his motion for summary judgment.

both propane and gasoline. VR 3:9-11.² Apparently, Cook's system developed a problem around July 2007. VR 3:11-14. After several unsuccessful arrangements to have the vehicle repaired, Cook filed a lawsuit against American Alternative and Prins.

In September of 2008, Cook served his Summons and Complaint³ upon defendants American Alternative and Prins, alleging actual damages in the amount of \$5,366.00. Thereafter, defendants filed Answers denying the allegations set forth in the Complaint and asserting several affirmative defenses, including lack of personal jurisdiction.

On March 10, 2009 the trial court entered an Order striking all defendants' pleadings and defenses. VR 4:16-18, VR 20:7-8. In May 2009, Cook propounded Requests for Admission to both Appellants, which were answered on June 11, 2009. However, on July 2, 2009, the trial court struck the defendants' Response to Requests for Admission and ordered that Cook's requests for admissions were deemed admitted as a sanction. VR 4:19-25, VR 5:1-4; Cook's Requests for Admissions.⁴ The Requests for Admission related solely to the issue of defendants' liability for alleged defects in the conversion system and warranty claims. However, the

² VR" refers to the Verbatim Report of Proceedings on September 4, 2009, attached hereto as Appendix A.

³ Cook's Complaint is attached as Appendix B.

⁴ The Requests for Admission are attached as Appendix C.

Requests for Admission do not address the nature, extent or amount of Cook's alleged damages in any way.

On July 7, 2009, Cook filed his Motion for Summary Judgment and included a supporting Declaration.⁵ Cook's Declaration contains mostly conclusory statements in narrative form, but it fails to provide any actual statements of fact to support his request for summary judgment.

Consequently, Cook failed to demonstrate that there are no material facts in dispute. The Declaration has no attached exhibits to establish the legal elements of his claims. Thus, Cook submitted no evidence support his request for summary judgment to defendants or the court. VR 6:25-VR 7:1.

On September 2, 2009, defendants filed a Motion to Strike or Shorten Time in response to the summary judgment motion. The Motion to Strike was denied as untimely. VR 2:20-22. After the hearing on September 4, 2009, the trial court granted Cook's Motion for Summary Judgment based on Cook's Declaration and the Requests for Admissions. VR 18:19-23.

The trial court further determined that the Respondent was entitled to recover judgment in the amount of \$12,541.00 based solely upon unauthenticated receipts allegedly attached to Cook's Declaration, but not provided to defendants. VR 19:19-21. The Declaration contained no reference to the receipts being offered as an exhibit, nor were any other

⁵ See Declaration in support of Motion for Summary Judgment attached as Appendix D.

affidavits submitted Cook to authenticate such receipts. Due to the complete lack of credible evidence regarding actual damages, the trial court's entry of summary judgment in favor of Cook for \$12,541.00 was improper.

II. ISSUES PRESENTED ON REVIEW

1. Was it error for the trial court to enter summary judgment, rather than default judgment, due to the Court's prior order striking the defendants' pleadings and defenses?
2. Was it error for the trial court to not hold a separate damages hearing based upon competent evidence?
3. If summary judgment was procedurally appropriate, was it error for the trial court to grant Cook's motion notwithstanding the failure to serve attached exhibits?
4. Was it error for the trial court to assess damages based on Cook's unauthenticated evidence?
5. Was it error for the trial court to assess damages based on hearsay evidence submitted by Cook?
6. Was it error for the trial court to grant summary judgment despite failure of Cook to sign the Declaration under penalty of perjury as required under the Superior Court Civil Rules?

III. ARGUMENT

A. Summary of Argument

The trial court's September 4, 2009 Order granting summary judgment and awarding Cook damages of \$12,541.00, plus interest, should be reversed. Cook failed to present any facts to the trial court to meet his burden and establish his entitlement for summary judgment in the amount of \$12,541.00 or any other amount. Specifically, the trial court lacked sufficient facts to establish a proper amount of damages, and its ruling is wholly unsupported by the evidence presented by Cook and applicable law.

As an initial matter, the trial court should have entered default judgment against Appellants after the March 10, 2009 Order striking their pleadings, and then held a subsequent hearing on damages.

Additionally, with respect to the entry of summary judgment, the trial court lacked the evidentiary foundation to grant the summary judgment motion in so far as damages are concerned. Under Washington law, Cook has an obligation to submit admissible evidence to support a motion. In this case, Cook failed to submit any admissible evidence regarding damages, and the Respondent's Declaration and the record of the hearing on the Motion for Summary Judgment are wholly devoid of credible evidence to support a finding of damages in this case. Therefore, the trial court erred in granting summary judgment in favor of the Respondent.

In this appeal, Appellants assert five assignments of error to challenge the trial court's decision to grant summary judgment based on the record presented by Cook in support of said motion: (a) the court erred procedurally in granting summary judgment rather than entering a default judgment; (b) the court erred in considering evidence neither served nor noticed to Appellants; (c) the court erred in considering evidence that was unauthenticated, (d) the court erred in considering evidence that was inadmissible hearsay; and (e) the court erred in relying upon a procedurally defective Declaration in support of Cook's Motion for Summary Judgment.

B. The Court Erred In Entering Summary Judgment Rather Than Default Judgment

Default judgment is generally appropriate in cases in which the defendant has not answered or filed pleadings, or in cases in which pleadings have been struck. CR 55; CR 37 (b)(2)(C); See also: *Lloyd Enters., Inc. v. Longview Plumbing & Heating Co.*, 91 Wn.App. 697, 700-701, 958 P.2d 1035 (1998) (trial court entered default judgment against a corporation where the corporation filed pleadings signed by a non-attorney and the court struck pleadings). Summary judgment, however, is generally appropriate where the pleadings, depositions, answers, and admissions, together with the affidavits, show that there is no genuine issue as to any

material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).

In this case, the trial court struck Appellants' responsive pleadings on March 10, 2009, and therefore should have handled this matter as a default. The pleadings and defenses were struck on March 10, 2009 as a sanction, (VR 4:16-18, VR 20:7-8), which procedurally should have resulted in a default judgment entering against Appellants. The trial court should have then scheduled an assessment of damages hearing to address the only remaining material issue of dispute: damages. CR 55. CR55(b)(2) further provides that such hearing on damages be based on admissible evidence and not merely unsupported declarations or unsubstantiated assertions by Cook.

Additionally, CR 54(c) provides, in part, "A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." Therefore, the trial court should have entered a default judgment rather than summary judgment, and then assessed damages at no more than the \$5,366.00 originally demanded in the Complaint, provided that Cook could substantiate that amount with competent evidence, which was not done here.

C. The Trial Court Erred in Granting Summary Judgment

1. The Court Of Appeals Reviews Summary Judgments De Novo, As A Pure Question Of Law

When reviewing an order granting summary judgment, the Court of Appeals engages in the same inquiry as the Trial Court. *See Failor's Pharmacy v. DSHS*, 125 Wn.2d 488, 493, 886 P.2d 147 (1994). The Court of Appeals will affirm the summary judgment only if there are no genuine issues of material fact between the parties and only if, on the undisputed facts, the moving party is entitled to judgment as a matter of law. *See Failor's Pharmacy*, 125 Wn.2d at 493. All facts and all reasonable inferences from those facts are considered in the light most favorable to the party resisting summary judgment. *Failor's Pharmacy*, 125 Wn.2d at 493. The burden is on the party moving for summary judgment to demonstrate that there is no genuine dispute as to any material fact. *See Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974). Summary judgment is appropriate only if reasonable minds could reach but one conclusion from the evidence, and only if the conclusion thus reached entitles the moving party to a judgment in its favor. *Morris*, 83 Wn.2d at 493.

Although the trial court has discretion to rule on a motion to strike, a “court may not consider inadmissible evidence when ruling on a motion for summary judgment.” *Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*,

122 Wn.App. 736, 744, 87 P.3d 774 (2004); *see also Jones v. State*, 140 Wn.App. 476, 166 P.3d 1219 (2007). In this case, notwithstanding the denial of Appellants' untimely motion to strike Respondent's motion or to short time to respond, Respondent's motion was so lacking in competent evidence that the Court erred in granting summary judgment in favor of the Respondent. Specifically, the Respondent (a) failed to attach the exhibits to the motion served upon Appellants; (b) failed to authenticate the exhibits; (c) submitted exhibits to the trial court that contained inadmissible hearsay; and (d) submitted a declaration in support of his motion which failed to comply with procedural rules.

In the present case, before the nonmoving party has any burden in a summary judgment motion, the moving party must first submit adequate affidavits to establish a prima facie case. *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986). Based upon the limited facts contained in the record, a trial could enter a judgment regarding liability due to the prior order declaring that the Requests for Admission are deemed admitted. However, since the admissions relate only to issues of liability, they cannot be used to establish damages. Moreover, Cook's Declaration contains only conclusory statements without credible evidence pertaining to damages. Such statements, without credible evidence, do not support an award of \$12,541.00 on summary judgment.

2. Respondent Failed to Attach, Serve, or Notice Any Exhibits to His Declaration

Cook still not served Appellants with copies of the estimates apparently submitted to the trial court with his Declaration in support of summary judgment. Washington law states that, “sworn or certified copies of all papers or parts thereof referred to in an affidavit *shall be attached thereto or served therewith.*” CR 56(e) (emphasis added). CR 56(c) further requires that the summary judgment “motion and any supporting affidavits, memoranda of law, or other documentation shall be filed *and served* not later than 28 calendar days before the hearing.” (emphasis added).

In this case, Cook only served Appellants with his Declaration, which contained no reference to an exhibit or attached estimates. Further, Cook failed to serve these estimates upon Appellants either together with or separate from the Declaration. Appellants had no notice of the Respondent’s intention to submit, use, or rely upon these estimates.

Upon reading the Declaration, the Court will notice the complete lack of any reference to any attachments or how such attachment would relate to elements of Cook’s legal claims. Cook failed to attach or even refer to the Requests for Admission in his Declaration, which the trial court relied upon in its ruling. The trial court, in granting summary judgment, expressly

incorporated these “estimates” into its Order and expressly stated that, “I am determining that the damages as set out by [Respondent] in his declaration, which included attached receipts which totaled \$12,541, were, in fact, his damages.” VR 19:19-21. These receipts, which allegedly contain information relating to damages, were submitted without foundation to establish their relevancy or authenticity and should have been disregarded by the trial court. Therefore, the trial court erred in accepting these “estimates” and granting summary judgment as to damages.

3. *Respondent’s Attachments Were Not Authenticated*

Even assuming that the “receipts” attached to the Respondent’s Declaration somehow met the notice requirement of Rule 56(e), the trial court nevertheless should not have considered the estimates as evidence of damages because they were not authenticated and were therefore inadmissible. “Underlying CR 56(e) is the requirement that documents the parties submit must be authenticated to be admissible.” *Int’l Ultimate*, 122 Wn.App. at 745.

Authentication is a threshold requirement designed to assure that evidence is what it purports to be. ER 901. Admittedly, this rule does not limit the type of evidence allowed to authenticate a document; it merely requires some evidence sufficient to support a finding that the evidence in

question is what its proponent claims it to be. *Int'l Ultimate*, 122 Wn.App. at 746; ER 901.

There are a number of ways evidence may be authenticated, including testimony of witnesses with personal knowledge of the document or distinctive characteristics surrounding the document guaranteeing authenticity. *Int'l Ultimate*, 122 Wn.App. at 746. ER 904 also allows for the admissibility of certain documents, including a bill or estimate of property damage. ER 904(a)(3). However, if a party is relying upon ER 904 to authenticate a document, he must provide:

a bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward a copy to the adverse party with a statement indicating whether or not the property was repaired, and if it was, whether the estimate repairs were made in full or in part and attach a copy of the receipted bill showing the items or repair and amounts paid.

ER 904(a)(3). ER 904(b) also requires that the party seeking to authenticate the documents provide the other party with at least thirty (30) days notice that any such documents are being offered under ER 904. Such notice shall be accompanied by (1) numbered copies of the documents and (2) an index, which shall be organized by document number and which shall contain a brief description of the document along with the name, address and telephone number of the document's author or maker. ER 904(b). Such notice and copies of documents must also be filed with the court. ER

904(b). None of these procedures were followed by Cok. In fact, Appellants have never even received these documents.

In the present case, Cook failed to offer *any* evidence as to the authenticity of the exhibits. Cook is not the author of these “receipts”; therefore he cannot authenticate them based upon his personal knowledge. *Burmeister v. State Farm Ins. Co.*, 92 Wn.App. 359, 365, 966 P.2d 921 (Div. 2, 1998) (exhibit certification improper because lack of personal knowledge to authenticate the documents). Further, Cook failed to offer any other type of supporting documentation that could have authenticated the “receipts” and the documents fail to satisfy the requirements of ER 901.

Finally, Cook failed to comply with ER 904, which requires both notice and a description of whether or not any repairs were actually made. The record is devoid of any notice or documents submitted to either Appellants or the trial court pursuant to ER 904. Here again, Cook’s Declaration does not even make reference to these “receipts”; he apparently just submitted them to the Court *ex parte* with his motion as unattached, unreferenced documents. As a result, the submission of these documents fails to qualify for authentication, even under ER 904. The trial court therefore erred in considering these unauthenticated receipt documents in assessing the damages for summary judgment.

4. *The Exhibits Contain Inadmissible Hearsay*⁶

Again, even assuming that the documents attached to the Declaration could be properly admitted and considered ex parte and that they could be found authenticated, the “receipts” contain inadmissible hearsay.

Hearsay is an out-of-court statement offered “to prove the truth of the matter asserted.” ER 801(c). ER 802 further provides that hearsay is inadmissible unless it falls into one of the recognized exceptions, such as in ER 803. In this case, the “receipts” at issue do not fall into any of these exceptions or exclusions.

The Washington Supreme Court has also previously found that repair bills are inadmissible hearsay. *Anderson v. Dobro*, 63 Wn.2d 923, 389 P.2d 885 (1964). The *Anderson* case is analogous and on point in dealing with such repair bills. When considering the repair bill in *Anderson*, the Court stated that there, “was no evidence or explanation offered by appellant as to why the person who made the repairs could not have been produced in court to testify as to these matters. Nor did appellant make any showing that the repair bill was admissible under one of the recognized exceptions to the hearsay rule.” *Id.* at 927.

⁶ Admittedly, Appellants have not seen these repair estimates because, as discussed supra, Appellants were never served copies of them with Respondent’s Declaration.

The receipts attached to Cook's Declaration are entirely hearsay. They contain out of court written statements by a person offered to prove the fact asserted – that plaintiff's damages amounted to \$12,541.04. These receipts were not made under oath in court, at a deposition, or even in an affidavit. Cook had an obligation to submit admissible evidence with his motion and failed to do so. At minimum, Cook should have submitted affidavits by the creators of the receipts stating their name, background, expertise, the facts surrounding their diagnosis, and cost estimates relating to any repair of the damages allegedly caused by the Respondent's propane system. *See Anderson, supra.*

Cook has not established himself on the record as an expert in engine or vehicle repair, and as a result, he was not qualified to offer his opinion as to the elements of damage that may or may not be evidenced by the receipts. Expert testimony is admissible if the witness's expertise is supported by the evidence, his opinion is based on material reasonably relied on in his professional community, and his testimony is helpful to the trier of fact. *Reese v. Stroh*, 128 Wn.2d 300, 306, 907 P.2d 282 (1995); ER 702; ER 703⁷.

As set forth above in *Int'l Ultimate* and *Jones*, a court cannot consider inadmissible evidence and therefore the Court erred in considering

⁷ Respondent failed to take any procedural steps to introduce expert testimony to establish his damages.

these receipts in its summary judgment ruling; the receipts are simply irrelevant to the Respondent's motion for summary judgment.

5. Respondent Cook's Declaration Failed to Comply With Statutory Requirements

Cook also failed to comply with statutory requirements for the submission of his Declaration in the superior court proceedings. GR 13(a) states that, "...whenever a matter is required or permitted to be supported or proved by affidavit, the matter may be supported or proven by an unsworn written statement, declaration, verification, or certificate executed in accordance with RCW 9A.72.085." Under RCW 9A.72.085, the Cook Declaration is only admissible if it "(1) recites that it is certified or declared by the person to be true under penalty of perjury; (2) is subscribed by the person; (3) states the date and place of its execution; and (4) states that it is so certified or declared under the laws of the state of Washington."

Cook's Declaration failed to satisfy three of these four requirements. The Declaration does not recite that it is declared by Cook "to be true under the penalty of perjury"; the Declaration is not subscribed by the plaintiff; and the Declaration does not state "that it is so certified or declared under the laws of the state of Washington." These legal nonconformities render the Declaration inadmissible; further proof that Cook's Motion for Summary Judgment lacked any evidentiary support.

In an attempt to cure these deficiencies, the trial court placed Cook under oath to attest to his three-page Declaration. VR 15:1-19. Even if the trial court's attempt to cure Respondent's legal deficiencies was appropriate, the Declaration still lacks sufficient admissible evidence for the trial court to have granted summary judgment on damages.⁸ CR 56(d) provides that:

If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. *It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just.*" (emphasis added).

As of March 10, 2009, the trial court's Order striking all pleading and deeming the requests for admission to be admitted provide a basis for liability. However, as more fully set forth above, there was no competent evidence presented Cook to support his request for damages. As such, there were still genuine issues of fact in dispute regarding the amount of damages at the time of the summary judgment hearing. It was error for the trial court to resolve these disputes of fact through inadmissible evidence.

⁸ It is also curious that the trial court struck Appellants' legally sufficient Motion to Strike or for a Continuance, yet attempted to cure Cook's legally deficient Declaration at the September 4 hearing.

IV. CONCLUSION

For the reasons stated, the trial court's decisions are unsupported by any admissible evidence and applicable law. Appellants request that the Court of Appeals reverse and remand the September 4, 2009 Summary Judgment Order awarding Respondent damages of \$12,541.00, plus interest. Appellants also request that Court award it attorney's fees on appeal.

Respectfully submitted this 30th day of April, 2010.

LAW OFFICE OF RICHARD A. BERSIN

Richard A. Bersin, WSBA # 7178
Attorney for Appellants

APPENDIX A

PRINS

1

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF KING

3 -----
4 CARL COOK,)
5 Plaintiff,)
6 v.) COA NO. 64258-8-I
7 PRINS AUTOGASSYSTEMEN B.V.;) NO. 08-2-32431-1 SEA
8 AMERICAN ALTERNATIVE FUELS,)
9 Defendants.)
10 -----

11 VERBATIM REPORT OF PROCEEDINGS

12 -----

13
14 Heard Before: The Honorable LAURA C. INVEEN
15 September 4, 2009
16 10:10 a.m.
17 W864, KING COUNTY COURTHOUSE
18 SEATTLE, WASHINGTON

19 APPEARANCES: CARL COOK, representing himself, Pro Se;
20 RICHARD A. BERSIN, representing the
21 Defendants.

22 REPORTED BY: TaraLynn A. Bates
23 CSR #2464

24 WHEREUPON, the following proceedings were had,
25 to wit:

TaraLynn A. Bates, CSR (206) 296-9176

PRINS

Court's Ruling Re Motion for Continuance 2

1 THE COURT: Please be seated.

2 We are here on a motion for summary judgment in the
3 matter of Carl Cook versus Prins Autogassystemen and
4 American Alternative Fuels. And I'll ask the parties to
5 identify themselves.

6 MR. COOK: Carl Cook, Your Honor.

7 THE COURT: Mr. Cook is not an attorney, I
8 understand, and is representing himself pro se.

9 MR. BERSIN: Richard Bersin, representing the
10 defendants.

11 THE COURT: And, Mr. Bersin, you are very new to
12 this case.

13 MR. BERSIN: I am.

14 THE COURT: And I have, in addition to the motion
15 for summary judgment filed by Mr. Cook, I have a motion for
16 an order shortening time to request a continuance, or in
17 the alternative, to strike, or maybe it's vice versa, the
18 summary judgment.

19 Mr. Bersin, you're the messenger, I'm afraid, but
20 I'm going to kill the messenger and indicate I'm going to
21 decline the motion for order shortening time and the motion
22 to continue or strike. I find this untimely. I find from
23 the pleadings in the case and the history of the case that
24 there is no good cause to grant the order to shorten time,
25 nor is there good cause to strike or continue the motion.

Taralynn A. Bates, CSR (206) 296-9176

1 So we're going to proceed to Mr. Cook's motion.

2 And you're welcome to argue from the bar or from
3 the table, whatever your comfort level.

4 MR. COOK: Thank you, Your Honor.

5 This is an issue about a propane conversion system
6 for my car, which --

7 THE COURT: I'm going to actually invite you to come
8 up a little closer, because your voice is a little soft.

9 MR. COOK: Yes. This is an issue about the propane
10 system for conversion of my car to run on propane and
11 gasoline. In July of 2008, it failed. And I've been
12 pursuing a warranty claim against Prins Autogassystemen and
13 American Alternative Fuels for almost two years. Actually,
14 2007, sorry.

15 American Alternative Fuels was appointed by Prins
16 Autogassystemen, which is a Dutch company, to represent
17 them in the United States for this warranty claim. I have
18 been working with American Alternative Fuels all this time
19 trying to get just a few parts to repair problems with my
20 car, which is causing misfiring, check engine, excessive
21 emissions. American Alternative Fuels has made repeated
22 promises to send me the parts and make the repairs. And
23 the latest time was in January of this year, they failed to
24 do this. I got a call from Mr. Sanda, of Sgambettera and
25 Associates, who was the attorney for Prins and AFF,

TaraLynn A. Bates, CSR (206) 296-9176

1 offering to have my vehicle repaired by a company in Canada
2 that specializes in this. I told them that would be okay,
3 I just wanted to get this resolved. So he, um, he said,
4 "when would you like it repaired?" I told him, "whenever
5 it's convenient for Magna Fuels." He said, "No, you tell
6 me a date." So I told him February 10th. And February
7 10th came and went and no word from him. He didn't return
8 my calls.

9 This is the fourth time they've done this.

10 So at that point, I just wrote them off, decided to
11 not accept any offers of repair and pursue the legal
12 action. This is consistent with their behavior over all
13 this time.

14 Now, thus far in this case, I've made several
15 filings. And in one filing, I requested that defendants'
16 pleadings be struck by the Court for cause. And the
17 Court's order, dated March 10th, 2009, all pleadings of
18 each defendant in this action have been stricken for cause.

19 I then propounded requests for admissions to each
20 defendant, asking them to admit various significant aspects
21 of the case. And they were answered by Mr. Sanda, of
22 Sgambettera and Associates, after the Court had ordered him
23 to no longer represent the defendants in this case, as he's
24 not licensed in the State of Washington. So I complained
25 to the Court and the Court granted me an order which

1 stated, plaintiff's requests for admission have been deemed
2 admitted in total and conclusively in this Court's order,
3 dated July 2nd, 2009. So all my requests for admissions to
4 each defendant have been deemed admitted.

5 Mr. Sanda continued to attempt to represent the
6 defendants, in contravention of the Court's direct order,
7 up until the 2nd, and Mr. Bersin was appointed as local
8 counsel for the defendants.

9 As the defendants' pleadings have been struck in
10 their entirety and as all matters have been deemed admitted
11 in total and conclusively, there are no genuine issues as
12 to any material fact remaining in this action and I'm
13 entitled to a judgment as a matter of law under CR 56.

14 THE COURT: Go ahead.

15 MR. COOK: I'm asking for damages in the amount of
16 the original cost of the propane system, plus the cost to
17 replace any engine damage by such propane injection system
18 over a long period of time, their denial of my warranty
19 claim and all costs.

20 In defendant Prins Autogassystemen's admission
21 number fifteen and American Alternative Fuels' admission
22 number one, it's been conclusively established that they
23 repeatedly delayed and stalled my claim. Reasonable
24 justification is allowed in provisions of state law with
25 respect to cases of breach of property contract, bad faith

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1 dealing and RICO. I'm requesting penalties in addition to
2 any award of damages in the amount of treble the amount of
3 damages deemed by this Court to be awarded, assessed on
4 defendants jointly and severally. I've been working long
5 hours lately and I haven't had time to research the law in
6 this respect, however, so I can't quote that at the moment.

7 THE COURT: Okay.

8 Mr. Bersin?

9 MR. BERSIN: Yes, Your Honor?

10 THE COURT: I will allow you to argue.

11 MR. BERSIN: I'm sorry?

12 THE COURT: I will allow you to argue.

13 BERSIN: Well, Your Honor, I may be the messenger
14 and I understand you struck the motion to strike, but
15 without the motion to strike, coming in here to argue the
16 issue of summary judgment, we have a motion that totally
17 fails to comply both from the procedural side and on the
18 substantive side.

19 The burden on any summary judgment motion is for the
20 plaintiff to come in with affidavits, declarations and
21 basically evidence to support the claims. Not to support
22 arguments that, for example, he's been trying to get
23 something accomplished for a long period of time, but to
24 establish the legal elements of a claim. And that would be
25 all claims and all elements. There is no evidence that's

1 been submitted with this motion.

2 Now, one might say or argue that it's a
3 technicality, but there's a requirement that there be a
4 signed declaration, for example. There's a stamped
5 declaration. It doesn't comply with the rule.

6 THE COURT: And did you look at the original in ECR?
7 Because when I did, it appeared to me it was a signed
8 declaration.

9 MR. BERSIN: No, I have to say, but I took the copy
10 that was also submitted to New York counsel. And, by the
11 way, it seems like a lot of this motion is based upon
12 discussions between the plaintiff and an attorney in New
13 York, without documentation of those conversations. I'm
14 hearing things about the conversation in argument that
15 don't appear anywhere in the declaration, for example.
16 There are statements that, "I tried several times to get
17 this resolved." Those sound like settlement discussions.
18 And I don't think anyone can come into court and say there
19 were settlement discussions without documenting all of
20 those discussions and probably being required to provide
21 some form of confirmation that there was settlement and
22 agreement.

23 There are other issues that have to be resolved
24 if someone is asking for repairs. And, by the way, he
25 wasn't asking for \$15,000 worth of repairs. This is a very

1 small case in terms of the amount. So I don't know the
2 specifics of any discussions, but I think they're also
3 subject to Rule 408. It's not admissible evidence.

4 So we have an unsigned declaration --

5 THE COURT: Actually, I'm looking at ECR, and it is
6 signed.

7 MR. BERSIN: Okay. So I don't have a copy of the
8 signed declaration, but if you look carefully at the
9 declaration, there's no evidence in the declaration.

10 Again, the plaintiff has the burden of coming in on
11 a case and, again, I'm coming in late in the game here, but
12 I've argued many summary judgment motions, has to come in
13 with the evidence. And, in fact, if he's going to argue
14 based upon things like requests for admissions, et cetera,
15 it's incumbent on the plaintiff to bring those in with his
16 motion. And also lay out what this admitted item is and
17 then prove the other elements of the claim, as well.

18 There's no evidence here that there was a contract
19 between the plaintiff and the defendants of any kind.
20 There's no case law cited that would support an imposition
21 of liability against out of state companies in the absence
22 of a contract. There's no warranty submitted.

23 Now, we submitted declarations as part of the motion
24 to strike. And if the Court looks carefully at the
25 declarations, they say we don't do business in Washington,

1 we didn't have a contract with him, we didn't give him a
2 warranty. And, by the way, he purchased this from a
3 Canadian corporation, with whom we don't deal, at least
4 deal with respect to this party.

5 So in a motion for summary judgment, you can't just
6 say, "I had a failure of a vehicle." In fact, usually what
7 happens is the plaintiff would come in with his independent
8 expert's evaluation or some inspection. One could even
9 challenge whether this witness is competent to testify
10 about anything other than what his symptoms were, meaning
11 the car's symptoms, as opposed to what the underlying cause
12 was. But he has to go far beyond that. He has to
13 establish a basis for imposing liability against the two
14 defendants. And he hasn't submitted anything.

15 So while there's a declaration, the rule requires
16 that you establish via declaration with evidence, not
17 statements that, "I'm entitled to recover," each of the
18 elements of a claim. And that has not been done here.

19 Even with respect to what he argued this morning,
20 that he had conversations with somebody, he's saying, "Greg
21 told me this," that's not in any declarations. He just
22 said he tried and he thought he was stalled. That's not a
23 summary judgment issue. I would respectfully submit
24 somebody might submit that at a trial and say, "Gee, they
25 dealt unfairly with me." That's not a basis for imposing

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1 liability.

2 So it's not just a technicality that we're making
3 here, although that was the first thing I noticed. And
4 I've had situations where I've had Judges say, "You didn't
5 submit that with your motion, Mr. Bersin, I can't consider
6 that."

7 So we have argued references to requests for
8 admission that were deemed admitted long before I was
9 involved. Those don't say we had a contract with this
10 party. They don't say we issued a warranty to this party.
11 They don't say even what these conversations were that he's
12 alleging.

13 So my point is, this is really substantive. When he
14 says there are no general issues of material fact, that has
15 to be with regard to all issues with regard to the claim.

16 Another good example of this is the request for
17 treble damages. Even if the Court concluded that there was
18 a contractual relationship with this party, there are many
19 other requirements for a CPA claim with regard to whether
20 or not this has been repeated in other transactions,
21 whether we're out there advertising. I mean, he hasn't
22 explained how this becomes a CPA claim. But he wants the
23 treble damages because he felt there was something
24 deceptive here. That doesn't even approach what the legal
25 standard is.

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1 No facts submitted regarding who he purchased this
2 from, whether the conversion was done by a Canadian
3 corporation, whether he complied with the EPA regulations.
4 In fact, the indication that I have is that this was, in
5 essence, illegal, what he did. Although our people weren't
6 involved in that. That has not been provided in the way of
7 declarations.

8 The arguments, as I said, really don't go to the
9 merits of the case. They sound like complaints about his
10 dealings with another lawyer, with whom I would have had no
11 contact or involvement so I can't even respond to what he's
12 saying. Or complaints about their waiting too long or they
13 didn't show up at a deposition. Those are discovery
14 issues, those are not issues with regard to summary
15 judgment. In fact, I've never been in a summary judgment
16 proceeding where the issues were those.

17 In essence, what we're saying is, through the
18 declarations, there's no connection with this plaintiff, no
19 sale to the plaintiff. There was no warranty on the
20 product that they gave for this specific product.

21 And then there's the jurisdictional issue. There
22 has been nothing established here that the Long Arm Statute
23 brings these under this scenario, brings these parties
24 legitimately into the case. That is very clear. They've
25 submitted the information. They don't advertise here, they

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1 don't sell here, they don't ship here. Now, we haven't
2 filed yet a personal jurisdiction motion. But again, it's
3 incumbent on the plaintiff, if he's going to ask for
4 judgment as a matter of law, to establish all of these
5 elements.

6 And I appreciate the Court's comment that this is
7 too late on the motion to strike. I would have liked to
8 have submitted it a month ago, but I wasn't in the case.

9 So apart from that, though, the same arguments apply
10 with the substance of the motion.

11 So I don't see how it can be granted. It's not a
12 situation where -- again, the burden is on the plaintiff to
13 prove his case with evidence to establish each of the
14 elements. And it hasn't even been explained, let alone
15 supported by evidence.

16 If he's going to claim it's going to cost this much
17 money to fix it, he's got to come in with the receipts and
18 the evidence. That's another example.

19 So I would respectfully ask, even though I'm coming
20 in late on the scene, as I looked at this, I read the
21 summary judgment motion and I thought, well, where's the
22 evidence.

23 On that basis, I think the motion has to be denied.
24 At least as presented by this plaintiff. Otherwise, we're
25 making a mockery of Rule 56. And believe it, I mean, I

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1 THE COURT: I'm going to ask you to raise your right
2 hand. Do you swear or affirm to give the truth in these
3 proceedings?

4 MR. COOK: I do.

5 THE COURT: And, Mr. Cook, I have in front of me
6 your motion for summary judgment, and attached to that is
7 what's entitled a declaration. And it is a three-page
8 declaration in support of motion for summary judgment. You
9 indicate, and may I assume this has been signed by you?

10 MR. COOK: Yes, ma'am.

11 THE COURT: And you indicate you're certifying the
12 foregoing is true and correct, but you haven't included the
13 magic language. Do you declare under penalty of perjury
14 under the laws of the State of Washington that it is true
15 and correct?

16 MR. COOK: I declare under penalty of perjury under
17 the laws of State of Washington that my declaration in
18 support of motion for summary judgment is true and correct,
19 to the best of my knowledge.

20 THE COURT: Is there anything else you wanted to
21 add?

22 MR. COOK: Yes, ma'am. All issues have been
23 admitted conclusively in this case in the deeming of my
24 request for admissions admitted. That resolves many of the
25 issues Mr. Bersin brought up about whether Prins has

1 liability, whether American Alternative Fuels has
2 liability. It's been admitted they do.

3 And that's my statement. That's all I have. Thank
4 you.

5 THE COURT: This is a case that was filed just about
6 a year ago. And I think at this point, it's time to put it
7 out of its misery.

8 Due to no fault of Mr. Cook's, someone on behalf of
9 the defendants, a lawyer practicing in the State of New
10 York, has continuously been representing to the Court and
11 to Mr. Cook that things would be taken care of, that people
12 authorized to practice law in the State of Washington would
13 get involved in this case. And it only comes down to the
14 last day -- and poor Mr. Bersin is the one that has to face
15 my wrath, and it is due to no fault of his own -- that the
16 defendants have chosen to follow the law in the State of
17 Washington.

18 There have been numbers of depositions set.
19 There has been requests for admissions propounded.
20 Everything I have seen has indicated that Mr. Cook, bless
21 his heart, since he is not a lawyer, has followed all of
22 the rules. With respect, perhaps, to the one thing that he
23 missed was he didn't say the magic words on his
24 declaration. Ordinarily, I might not have gone to the
25 efforts of placing him under oath today to give us that

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1 magic language. But given all of the misconduct on the
2 defendants' side and the delay, I think that it is
3 appropriate to resolve this issue on the merits that are
4 now before me.

5 I understand and I heard Mr. Bersin's argument about
6 making a mockery of Rule 56. But frankly, it has been my
7 concern that the defendants in this case have really been
8 attempting a mockery of the Court and/or Mr. Cook.

9 I am going to grant the motion for summary judgment.
10 I don't find at this point that there is a factual basis or
11 legal authority for me to grant the treble or double
12 damages, whichever is being asked by Mr. Cook.

13 Mr. Cook, you are asking for post-judgment and
14 prejudgment interest in the amount of ten percent. The
15 statute actually authorizes twelve. Are you asking only
16 for ten?

17 MR. COOK: May I request twelve, Your Honor?

18 THE COURT: You may. And I'm curious as to the
19 costs of this action. You've indicated it's \$365 and how
20 that breaks down.

21 MR. COOK: Yes, ma'am. I believe for the filing,
22 it's \$225, if I remember. And then I had several, um,
23 services that I had to do upon the defendants. First of
24 all, for the original summons and complaint, I had to hire
25 a Sheriff's Deputy in their county to have that served.

1 And that was \$125. And there have been several other
2 services that I've done but haven't included in that cost.

3 Let's see. I'm pretty sure I have the Deputy's
4 statement here. Well, this is the original service by the
5 deputy. But it it doesn't say a cost on there,
6 unfortunately. I don't remember how much that was.

7 THE COURT: Actually, let me see --

8 MR. BERSIN: May I see that, please, while you're
9 looking for yours? I have the motion but I don't have
10 everything else attached.

11 THE COURT: The filing fee, it is indicated \$225.
12 So that leaves \$140 remaining that you're requesting for
13 service fees?

14 MR. COOK: Actually, it was a lot more, because I
15 had attorney's costs for the deposition. But my attorney
16 is a business associate and he didn't actually want to get
17 roped into the case. So I'm foregoing his fees. But I'll
18 be happy with whatever the Court decides.

19 THE COURT: I'm also indicating that this decision
20 is being made not only on the declaration but on the
21 requests for admissions, that are fairly extensive, that
22 this Court deemed admitted when they were not properly
23 answered. I don't find that the jurisdictional issue is
24 timely at this point. I am finding that any jurisdictional
25 defects, to the extent they exist, have been waived by the

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1 defendants' misconduct and inaction in this case.

2 And given that the motion requested ten percent
3 prejudgment interest and I can't tell you what twelve
4 percent would be off the top of my head, I'm going to
5 indicate prejudgment interest at ten percent, as requested.

6 MR. COOK: Okay.

7 THE COURT: So I'll just change the post-judgment to
8 the twelve percent, as authorized by statute.

9 I have interlined that in the order. And I'll
10 ask my Bailiff to make copies.

11 MR. BERSIN: Your Honor, may I ask a few questions
12 just so I understand what's been submitted and what the
13 Court's ruling is? So I did not have the attachment to his
14 motion. I had the motion. But I have a letter, and in the
15 complaint, talking about \$5,100 for replacement. And I see
16 invoices attached, which I don't know whether these have
17 been paid or not. But is the Court determining that there
18 was no election of remedies in this situation?

19 THE COURT: I am determining that the damages as set
20 out by Mr. Cook in his declaration, which included attached
21 receipts which totaled \$12,541, were, in fact, his damages.

22 MR. BERSIN: And you're determining that the issues
23 with regard to the Long Arm Statute have been waived?

24 THE COURT: Yes, not having been properly raised.

25 MR. BERSIN: Although I just want to make sure we're

1 clear on this, it looks like it was raised in the
2 affirmative defenses.

3 THE COURT: That affirmative defense may have
4 actually been stricken, I think, because of --

5 MR. COOK: Yes, ma'am, all pleadings have been
6 stricken.

7 THE COURT: Pleadings were stricken given it was
8 filed by someone not authorized to practice law here.

9 MR. COOK: It was in the Court's March 10th order.

10 MR. BERSIN: And is that being imputed to the
11 defendants on jurisdiction?

12 THE COURT: Well, let me refresh my memory.

13 Defenses of both defendants were stricken by way of
14 order on March 10th of 07 for failure to attend
15 depositions, for failure to comply with discovery requests,
16 and -- let's see. To the extent they were ever raised,
17 which appears perhaps -- the answer was filed December
18 15th. Let me see what that says.

19 MR. BERSIN: I suppose my question is --

20 THE COURT: They were raised by someone who is not
21 licensed to practice in the State of Washington.

22 MR. BERSIN: Okay. Is the Court finding that's a
23 basis for imposing jurisdiction on the defendants?

24 THE COURT: I'm not making a finding in that
25 situation.

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1 MR. COOK: That would be in the requests for
2 admissions.

3 MR. BERSIN: Well, I guess I want to understand so I
4 can properly also determine what is done with the decision.
5 So I guess the point that I would make is that if the Judge
6 determined there is some misconduct, which apparently you
7 have, by an attorney --

8 THE COURT: Well, attorney and the defendants. If
9 you look back in those various orders, I think it's already
10 been determined by both the March order and the order
11 finding contempt in July, July 2nd.

12 MR. BERSIN: But there still has to be an underlying
13 basis for jurisdiction to bring them into the case.

14 MR. COOK: The admissions have been deemed admitted
15 and they're included there.

16 MR. BERSIN: I don't know that somebody can admit
17 whether they're subject to the Long Arm Statute.

18 THE COURT: I don't find there's an issue before me.
19 Because, as I said, I find it's been waived by the
20 defendants.

21 MR. BERSIN: Is there something specific in the
22 requests for admissions, since they were not attached to
23 anything submitted on summary judgment, that deals with the
24 issues of who the equipment was sold to, whether there was
25 a written warranty, those issues?

1 THE COURT: They're fairly extensive.

2 MR. BERSIN: This is the problem with, I suppose,
3 not having them with the motion.

4 MR. COOK: Mr. Sanda has everything.

5 MR. BERSIN: I guess that's not the point. I
6 understand what you're saying. I don't know what to say to
7 that. I have to deal with the motion.

8 THE COURT: You have to deal with the motion and the
9 motion references the requests for admission. And I have
10 made my finding. I don't think you're going to do anything
11 at this point today to change my mind.

12 I've signed the order. And you have your copies.
13 So I think that concludes this matter.

14 MR. COOK: Thank you.

15 MR. BERSIN: Thank you.

16 (Court recessed at 10:45 a.m.)

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PRINS

Certificate of Court Reporter

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C E R T I F I C A T E

I, TARALYNN A. BATES, Certified Shorthand Reporter and Official Court Reporter for the King County Superior Court, State of Washington, do hereby certify that I reported the court proceedings annexed hereto in the foregoing cause number while acting in my official capacity;

I FURTHER CERTIFY that the foregoing transcript is a full, true and correct copy of said proceedings ordered to be transcribed, to the best of my ability, reported stenographically and computer transcribed by me;

I FURTHER CERTIFY that I am not related to any of the parties to this cause of action, nor am I interested in the outcome thereof.

WITNESS MY HAND this 3rd day of March, 2010.

TARALYNN A. BATES
Official Court Reporter
King County, Washington

TaraLynn A. Bates, CSR (206) 296-9176

PRINS

Certificate of Court Reporter

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APPENDIX B

2.4 Defendant AAF then stalled and delayed Plaintiff's warranty claim over a succeeding period of eight months, ultimately denying it, costing Plaintiff poor vehicle performance, increased emissions, almost constant faulting of the vehicle propane system, and rendering damage to the Jeep's electronic and combustion systems.

3. DEMAND FOR DAMAGES AND/OR RELIEF

3.1 As a direct and proximate result of the acts alleged herein, Plaintiff has suffered economic damage in the amount of US\$5,366.

3.2 Plaintiff has made numerous and repeated attempts to remedy this with Defendants over an extended period of time, whereas Defendant Prins through its agent AAF have repeatedly failed and refused to honor their written warranty of the system. Because Defendants have allowed Plaintiff's vehicle to remain in violation of EPA regulations for an extended period of time making no attempt whatsoever to remedy; have repeatedly evaded and denied Plaintiff's warranty claim; and have rejected Plaintiff's Demand Letter, served as required under Washington state statutes, Plaintiff invokes provisions in Washington State law applying to deceptive trade practices, and requests that treble damages be assessed against Defendants in addition to the economic damages requested herein.

3.3 Plaintiff has been further damaged by legal and court costs necessitated by the filing of this action.

WHEREFORE, Plaintiff prays:

4. RELIEF SOUGHT

- 4.1 For an award of damages compensating Plaintiff in the amount of \$5,366.
- 4.2 For an award of penalties in the amount of treble the amount of damages awarded.
- 4.3 For an award of damages compensating Plaintiff for all legal and court costs.
- 4.4 For such other and further relief as the Court may deem as just and equitable.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 19 September, 2008

Carl Cook

Carl Cook
4311 NE 129th St.
Seattle, WA 98125 USA

APPENDIX C

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

Carl Cook, Plaintiff	§	No. 08-2-32431-1 SEA
	§	
vs	§	REQUEST FOR ADMISSIONS
	§	DIRECTED TO DEFENDANT
Prins Autogassystemen B.V.	§	PRINS AUTOGASSYSTEMEN
and	§	
American Alternative Fuel, LLC	§	
	§	

To the above-named Prins Autogassystemen B.V. and Gregory Sanda, its Attorney:

Plaintiff requests that you admit the following statements of fact as true within thirty (30) days after service of this request in accordance with Civil Rule 36.

I. DEFINITIONS

1.1. For purposes of these Requests for Admissions, the following definitions are employed:

- a. "You" or "Your" as used herein shall refer to Plaintiff Carl Cook, his agents and attorneys;
- b. When reference is made to "PAS", it shall refer to Defendant Prins Autogassystemen B.V., its officers, directors, partners, agents, employees, attorneys, or other representatives;
- c. "Document" or "documents" as used herein shall refer to all writings and electronic information;
- d. "Evidence" or "evidencing" as used herein shall be defined as including, referring, memorializing, embodying, containing, constituting, identifying, stating or being relevant to all or any portion of a specified fact, contentions, or events;
- e. "Oral communication" shall refer to conversations between two or more persons by telephone or in person;
- f. When reference is made to "the kit" it shall refer to the kit comprised of all the standard parts out of which this action arises and as described in Plaintiff's

complaint filed herein;

g. When reference is made to "anyone acting on your behalf", it includes but is not limited to, your attorney, company employees, and any agents;

h. When reference is made to the "product", it shall refer to that certain Prins VSI system marketed by American Alternative Fuel, LLC and Prins Autogassystemen B.V.

II. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION 1. Admit that PAS had appointed AAF as its U.S. agent during calendar years 2005 through 2008.

Y or N

REQUEST FOR ADMISSION 2. Admit that AAF sold products of Prins Autogassystemen B.V. during calendar years 2005 through 2008, including the VSI system which is the subject of this Action.

Y or N

REQUEST FOR ADMISSION 3. Admit that AAF was a distributor of the product.

Y or N

REQUEST FOR ADMISSION 4. Admit that AAF was a retailer of the product.

Y or N

REQUEST FOR ADMISSION 5. Admit that AAF was responsible for all U.S. warranty claims on all products of Prins Autogassystemen B.V. during calendar years 2005 through 2008, including the VSI system which is the subject of this Action.

Y or N

REQUEST FOR ADMISSION 6. Admit that PAS manufactured the product.

Y or N

REQUEST FOR ADMISSION 7. Admit that employees of PAS designed the product.

Y or N

REQUEST FOR ADMISSION 8. Admit that PAS assembled the product.

Y or N

REQUEST FOR ADMISSION 9. Admit that the product was not manufactured in accordance with manufacturer's specifications.

Y or N

REQUEST FOR ADMISSION 10. Admit that the manufacturer's specifications were issued by PAF.

Y or N

REQUEST FOR ADMISSION 11. Admit that Plaintiff filed a warranty card with PAS, number 51914-3 in October, 2005, to register the product.

Y or N

REQUEST FOR ADMISSION 12. Admit that Plaintiff filed a warranty claim with PAS and AAF in July, 2007.

Y or N

REQUEST FOR ADMISSION 13. Admit that the warranty on Plaintiff's VSI system was valid and that it did cover the defect in the VSI system of Plaintiff's vehicle, including all parts and labor for repair.

Y or N

REQUEST FOR ADMISSION 14. Admit that PAS was legally and financially liable for

correcting such defect in the VSI system of Plaintiff's vehicle, including all parts and labor for repair.

Y or N

REQUEST FOR ADMISSION 15. Admit that PAS recognized its liability for such repair, but repeatedly delayed and stalled Plaintiff's claim for repair without reasonable justification.

Y or N

REQUEST FOR ADMISSION 16. Admit that a defect in the product proximately caused Plaintiff's damages.

Y or N

REQUEST FOR ADMISSION 17. Admit that at the time the product failed it was being used in a manner recommended by the manufacturer.

Y or N

REQUEST FOR ADMISSION 18. Admit that Plaintiff had not caused in any way the defect in the product through any action or inaction.

Y or N

REQUEST FOR ADMISSION 19. Admit that at the time of the failure the product was being used for the purpose for which it was intended.

Y or N

REQUEST FOR ADMISSION 20. Admit that Plaintiff had not at any time modified, altered, or changed the design of the product in any way, nor had his agents or assigns.

Y or N

REQUEST FOR ADMISSION 21. Admit that Plaintiff did not cause or contribute to his damages.

Y or N

REQUEST FOR ADMISSION 22. Admit that the product had not been misused or abused at any time by any person or entity.

Y or N

REQUEST FOR ADMISSION 23. Admit that PAS warrants the product to be of merchantable quality.

Y or N

REQUEST FOR ADMISSION 24. Admit that as a result of the product failure, Plaintiff suffered damages.

Y or N

REQUEST FOR ADMISSION 25. Admit that Plaintiff suffered damages as a result of using the product and that the product was the proximate cause of such damages.

Y or N

Dated: 14 May, 2009

Carl Cook

Carl Cook
4311 NE 123rd St.
Seattle, WA 98125

CERTIFICATION OF COUNSEL

I certify the foregoing answers and responses are true to the best of my knowledge, are made in good faith, and in compliance with the civil rules.

Dated: June 11, 2009

LAW FIRM Gambettera & Associates, P.C.

(signature) [Handwritten Signature]

By: Gregory J. Sanda
Attorney for Defendant Prins Autogassystemen

VERIFICATION

State of _____ §

§

County of _____ §

§

(name), _____ (title)
for Defendant Prins Autogassystemen B.V. being first duly sworn, on oath deposes and says that (s)he is an authorized agent for Prins Autogassystemen B.V. and that (s)he has read the foregoing Answers to Plaintiff's Requests for Admissions Directed to Defendant Prins Autogassystemen, knows the contents thereof, and believes the same to be true.

(signature)

SUBSCRIBED and SWORN to before me this _____ day of _____, 2009.

NOTARY PUBLIC in and for the State of
_____ residing at

My commission expires _____

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

Carl Cook, Plaintiff

vs

Prins Autogassystemen B.V.
and
American Alternative Fuel, LLC

§
§
§
§
§
§
§
§

No. 08-2-32431-1 SEA

**REQUEST FOR ADMISSIONS
DIRECTED TO DEFENDANT
AMERICAN ALTERNATIVE FUEL**

To the above-named American Alternative Fuel, LLC and Gregory Sanda, its Attorney:

Plaintiff requests that you admit the following statements of fact as true within thirty (30) days after service of this request in accordance with Civil Rule 36.

I. DEFINITIONS

1.1. For purposes of these Requests for Admissions, the following definitions are employed:

- a. "You" or "Your" as used herein shall refer to Plaintiff Carl Cook, his agents and attorneys;
- b. When reference is made to "AAF", it shall refer to Defendant American Alternative Fuel, LLC, its officers, directors, partners, agents, employees, attorneys, or other representatives;
- c. "Document" or "documents" as used herein shall refer to all writings and electronic information;
- d. "Evidence" or "evidencing" as used herein shall be defined as including, referring, memorializing, embodying, containing, constituting, identifying, stating or being relevant to all or any portion of a specified fact, contentions, or events;
- e. "Oral communication" shall refer to conversations between two or more persons by telephone or in person;
- f. When reference is made to "the kit" it shall refer to the kit comprised of all the standard parts out of which this action arises and as described in Plaintiff's

complaint filed herein;

g. When reference is made to "anyone acting on your behalf", it includes but is not limited to, your attorney, company employees, and any agents;

h. When reference is made to the "product", it shall refer to that certain Prins VSI system marketed by American Alternative Fuel, LLC and Prins Autogassystemen B.V.

II. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION 1. Admit that AAF is the U.S. agent for Prins Autogassystemen B.V., or was during calendar years 2005 through 2008.

Y or N

REQUEST FOR ADMISSION 2. Admit that AAF sold products of Prins Autogassystemen B.V. during calendar years 2005 through 2008, including the VSI system which is the subject of this Action.

Y or N

REQUEST FOR ADMISSION 3. Admit that AAF was a distributor of the product.

Y or N

REQUEST FOR ADMISSION 4. Admit that AAF was a retailer of the product.

Y or N

REQUEST FOR ADMISSION 5. Admit that AAF was responsible for all U.S. warranty claims on all products of Prins Autogassystemen B.V. during calendar years 2005 through 2008, including the VSI system which is the subject of this Action.

Y or N

REQUEST FOR ADMISSION 6. Admit that Plaintiff filed a warranty claim with AAF in July, 2007.

Y or N

REQUEST FOR ADMISSION 7. Admit that such warranty claim was valid and that it did cover the defect in the VSI system of Plaintiff's vehicle, including all parts and labor for repair.

Y or N

REQUEST FOR ADMISSION 8. Admit that AAF was legally and financially liable for correcting such defect in the VSI system of Plaintiff's vehicle, including all parts and labor for repair.

Y or N

REQUEST FOR ADMISSION 9. Admit that AAF recognized its liability for such repair, but repeatedly delayed and stalled Plaintiff's claim for repair without reasonable justification.

Y or N

REQUEST FOR ADMISSION 10. Admit that a defect in the product proximately caused Plaintiff's damages.

Y or N

REQUEST FOR ADMISSION 11. Admit that at the time the product failed it was being used in a manner recommended by the manufacturer.

Y or N

REQUEST FOR ADMISSION 12. Admit that Plaintiff had not caused in any way the defect in the product through any action or inaction.

Y or N

REQUEST FOR ADMISSION 13. Admit that at the time of the failure the product was being used for the purpose for which it was intended.

Y or N

REQUEST FOR ADMISSION 14. Admit that Plaintiff had not at any time modified, altered, or changed the design of the product in any way, nor had his agents or assigns.

Y or N

REQUEST FOR ADMISSION 15. Admit that Plaintiff did not cause or contribute to his damages.

Y or N

REQUEST FOR ADMISSION 16. Admit that the product had not been misused or abused at any time by any person or entity.

Y or N

REQUEST FOR ADMISSION 17. Admit that AAF warrants the product to be of merchantable quality.

Y or N

REQUEST FOR ADMISSION 18. Admit that as a result of the product failure, Plaintiff suffered damages.

Y or N

REQUEST FOR ADMISSION 19. Admit that Plaintiff suffered damages as a result of using the product and that the product was the proximate cause of such damages.

Y or N

Dated: 14 May, 2009

Carl Cook

Carl Cook
4311 NE 123rd St.
Seattle, WA 98125

CERTIFICATION OF COUNSEL

I certify the foregoing answers and responses are true to the best of my knowledge, are made in good faith, and in compliance with the civil rules.

Dated: June 11, 2009

LAW FIRM Gambettera & Associates, P.C.

(signature) [Handwritten Signature]

By: Gregory J. Sanda
Attorney, Defendant American Alternative Fuel

VERIFICATION

State of _____

§

County of _____

§

§

(name), _____ (title)
for Defendant American Alternative Fuel, LLC being first duly sworn, on oath deposes and says that (s)he is an authorized agent for American Alternative Fuel, LLC and that (s)he has read the foregoing Answers to Plaintiff's Requests for Admissions Directed to Defendant American Alternative Fuel, knows the contents thereof, and believes the same to be true.

(signature)

SUBSCRIBED and SWORN to before me this _____ day of _____, 2009.

NOTARY PUBLIC in and for the State of _____
residing at _____

My commission expires _____



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Registration Number: 4446340

GREGORY JAMES SANDA

SGAMBETTERZ & ASSOCIATES, P.C.

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United States

(518) 877-7800

Year Admitted in NY: 2006

Appellate Division

Department of

Admission: 3

Law School: GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Registration Status: Delinquent

Next Registration: Feb 2010

The Detail Report above contains information that has been provided by the attorney listed, with the exception of REGISTRATION STATUS, which is generated from the OCA database. Every effort is made to insure the information in the database is accurate and up-to-date.

The good standing of an attorney and/or any information regarding disciplinary actions must be confirmed with the appropriate Appellate Division Department. Information on how to contact the **Appellate Divisions** of the Supreme Court in New York is available at www.nycourts.gov/courts.

If the name of the attorney you are searching for does not appear, please try again with a different spelling. In addition, please be advised that attorneys listed in this database are listed by the name that corresponds to their name in the Appellate Division Admissions file. There are attorneys who currently use a name that differs from the name under which they were admitted. If you need additional information, please contact the NYS Office of Court Administration, Attorney Registration Unit at 212-428-2800.



APPENDIX D

RECEIVED

2009 JUL -7 PM 4: 34

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

Carl Cook, Plaintiff

vs

Prins Autogassystemen B.V.
and
American Alternative Fuel, LLC

§
§
§
§
§
§
§
§
§

No. 08-2-32431-1 SEA

**DECLARATION IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Carl Cook declares:

1. **Standing, Venue.** I am Plaintiff in the above-entitled action. The basis for venue is that at all times relevant hereto, the events and transactions complained of herein occurred in King County, WA.
2. **Nature of Action.** This is a breach of contract action alleging that Defendants have failed to honor their warranty on a propane fuel system for Plaintiff's vehicle, after Plaintiff's numerous attempts over a year's time to resolve the issues with Defendants. Defendant American Alternative Fuel is the U.S. agent of Prins Autogassystemen, and was specifically appointed by Prins to respond to Plaintiff's warranty claim.
3. **Two Missed Depositions.** On March 10, 2009 this Court ordered Defendants Prins Autogassystemen and American Alternative Fuel to attend deposition to be conducted by Plaintiff on March 23, 2009 at 9:00am. On March 23rd Plaintiff and counsel waited for Defendants at the place and time noticed by this Court and by Plaintiff, but Defendants did not appear, nor did their counsel attempt to make contact with Plaintiff, nor did Defendants' counsel raise any objection, causing Plaintiff to incur further costs and lost time beyond those incurred when Defendants missed the first noticed deposition on January 26, 2009. Defendants have now failed to appear at two depositions, without cause, the second of which was ordered by this Court. Defendants' counsel had no objection to the scheduled depositions, and did not seek to reschedule them.

4. **False Promises - Intent.** On or about January 29, 2009, Plaintiff received a telephone call from counsel for Defendants, Gregory Sanda, inquiring into Plaintiff's prior agreement to allow repair of Plaintiff's vehicle by a representative of Prins. As Plaintiff had three times before been made false promises of repair by Defendants, he was reluctant but agreed to a repair appointment in Canada on February 10, 2009. February 10th came and went with no word from Defendants nor counsel, and no response to a telephone message. This fourth missed promise is consistent with Defendants' prior body of conduct, and such stalling has resulted in constant and everyday engine system alarms, failures, unreliability, and ultimately serious damage to Plaintiff's vehicle engine, extending over nearly two years as of the date of this Motion.

This was the fourth such occasion that Defendants have offered to repair Plaintiff's vehicle, each of which has proven worthless. Each delay and missed promise on the part of Defendants results in further cumulative damage to Plaintiff's vehicle, further expense in the prosecution of this action, and more valuable time spent by the Court on this matter. Plaintiff has given Defendants countless opportunities and copious time to make this right, but has been consistently met with wasted time, stalling tactics, violation of Plaintiff's trust, and delay, costing Plaintiff almost two years thusfar, and the viability of his engine.

It is Plaintiff's contention that such delays and missed promises on the part of Defendants are intentional, and that if allowed would continue indefinitely. Defendants must be shown that such tactics are not conducive to public trust, and they must be discouraged from acting in bad faith. Plaintiff withdraws any prior offer to allow his vehicle to be repaired, as this has been consistently used by Defendants as a tool for further stalling and delay, and Plaintiff now relies upon the judicial process for relief.

5. **Damages:** Proximately due to such denial of warranty by Defendants, over an extended period of time, Plaintiff's vehicle has sustained permanent damage from misfiring all cylinders for periods; not firing at least one cylinder for extended periods; running with inadequate fuel; running with excessive fuel; faulting to Check Engine at every stop sign and red-light; balking on start and accelerate; chronic predetonation; and Plaintiff's vehicle has been unreliable by failing to start with increasing frequency. Poor engine management due to faulty propane system components over an extended period of time has resulted in excessive wear on internal engine parts as to now exhibit poor compression, low power, and extremely low fuel mileage. Plaintiff has thus suffered damages as follows, and requests these be levied against Defendants jointly and severally:

- Original propane conversion kit: Prins VSI 6 cylinder	\$ 2,449.04
- Additional parts, software & interface for conversion	\$ 607.53
- Installation labor & fuel tank	\$ 2,309.47
- Replacement of damaged engine and full deinstall of propane system including fuel line & tank (middle quote)	\$ 7,175.00
TOTAL DAMAGES	\$ 12,541.04

6. Further, given Defendants' pattern of stalling and effective denial of Plaintiff's warranty claim, their failure to attend two depositions, one of which was Court ordered, and their attempt to use unlicensed counsel in double contravention of State law, and in order to discourage future such patterns of conduct by Defendants, Plaintiff moves that penalties be assessed equal to the above damages to be awarded to Plaintiff, in the amount of \$12,541.04.

7. The requested relief is the most effective, fair, and economical approach to resolve this matter, as it complies with strict Court rules for requests for admissions, encourages Defendants to act in good faith, and reimburses Plaintiff for Defendants' actions.

I certify that the foregoing is true and correct.

Dated: 7 July, 2009

Carl Cook
Carl Cook
4311 NE 123rd St.
Seattle, WA 98125