

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

Shmuel Cohen, <i>et al.</i> , individually and on behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	Case No. 2:20-cv-3411
	)	
v.	)	Judge Graham
	)	
Allegiance Administrators, LLC, et al.,	)	Magistrate Judge Jolson
	)	
Defendants.	)	

**ANSWER OF AUTOGUARD ADVANTAGE CORPORATION**

Defendant Autoguard Advantage Corporation (“Autoguard”) hereby answers the Plaintiffs’ Second Amended Class Action Complaint (ECF No. 45) as follows:

1. In response to Paragraph 1, Autoguard admits that Plaintiffs purport to bring a class action pursuant to the claims brought under New York statutory law and breach of contract on behalf of themselves and a purported nationwide class of individuals. Autoguard denies that Plaintiffs’ claims have any factual or legal basis, and that the Court has already dismissed Plaintiffs’ New York law claims.

2. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and therefore denies the same.

3. In response to Paragraph 3, Autoguard admits that consumers can enter into certain contractual agreements regarding “excess wear and tear” damages for leased vehicles. Autoguard denies the remaining allegations of Paragraph 3.

4. In response to Paragraph 4, Autoguard states terms and requirements of the “Waiver Agreement” speak for themselves. Autoguard denies the remaining allegations of Paragraph 4.

5. In response to Paragraph 5, Autoguard states terms and requirements of the “Waiver Agreement” speak for themselves. Autoguard denies the remaining allegations of Paragraph 5.

6. Autoguard denies the allegations of Paragraph 6.

7. Autoguard denies the allegations of Paragraph 7.

8. In response to Paragraph 8, Autoguard admits that Plaintiffs purport to seek recovery for alleged violations of New York law and breach of contract. Autoguard denies that Plaintiffs have set forth a cognizable claim, are entitled to the relief sought, or can maintain the instant action on a class basis.

9. In response to Paragraph 9, Autoguard denies that Plaintiffs are entitled to the relief sought therein.

10. In response to Paragraph 10, Autoguard admits that subject matter jurisdiction exists insofar as Plaintiffs’ purported allegations regarding class characteristics but denies that Plaintiffs’ claims have any legal or factual basis.

11. In response to Paragraph 11, Autoguard admits that personal jurisdiction is proper pursuant to Autoguard’s principal place of business but denies that Plaintiffs’ claims have any legal or factual basis.

12. In response to Paragraph 12, Autoguard admits that venue is proper pursuant to Autoguard’s principal place of business and that Plaintiffs allege that Autoguard engaged in conduct in the venue, but denies that Plaintiffs’ claims have any legal or factual basis.

13. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore denies the same.

14. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and therefore denies the same.

15. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and therefore denies the same.

16. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16, and therefore denies the same.

17. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17, and therefore denies the same.

18. Autoguard admits the allegations of Paragraph 18.

19. Autoguard admits the allegations of Paragraph 19.

20. Autoguard denies the allegations of Paragraph 20.

21. Autoguard denies the allegations of Paragraph 21.

22. Autoguard denies the allegations of Paragraph 22.

23. Autoguard denies the allegations of Paragraph 23.

24. Autoguard denies the allegations of Paragraph 24.

25. Autoguard lacks information regarding the purported quotation from Jim Henry identified in Paragraph 25 and therefore denies the same.

26. Autoguard lacks information sufficient to form a belief as to the truth of the allegations and characterizations contained in Paragraph 26, and therefore denies the same.

27. In response to Paragraph 27, Autoguard states terms and requirements of the “Waiver Agreement” speak for themselves. Autoguard denies the remaining allegations of Paragraph 27.

28. In response to Paragraph 28, Autoguard states terms and requirements of the “Waiver Agreement” speak for themselves. Autoguard denies the remaining allegations and characterizations of Paragraph 28.

29. In response to Paragraph 29, Autoguard states terms and requirements of the “Waiver Agreement” speak for themselves. Autoguard denies the remaining allegations and characterizations of Paragraph 29.

30. Autoguard denies the allegations of Paragraph 30.

31. Autoguard denies the allegations of Paragraph 31.

32. In response to Paragraph 32, Autoguard states terms and requirements of the “Waiver Agreement” speak for themselves. Autoguard denies the remaining allegations of Paragraph 32.

33. Autoguard denies the allegations of Paragraph 33.

34. Autoguard denies the allegations of Paragraph 34.

35. In response to Paragraph 35, Autoguard states terms and requirements of the “Waiver Agreement” and “Waiver Agreement Brochure” speak for themselves. Autoguard denies the remaining allegations of Paragraph 35.

36. Autoguard denies the allegations of Paragraph 36.

37. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 and therefore denies the same.

38. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 and therefore denies the same.

39. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 and therefore denies the same.

40. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 and therefore denies the same.

41. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 and therefore denies the same.

42. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 and therefore denies the same.

43. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 and therefore denies the same.

44. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 and therefore denies the same.

45. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 and therefore denies the same.

46. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 and therefore denies the same.

47. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 and therefore denies the same.

48. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 and therefore denies the same.

49. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 and therefore denies the same.

50. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 and therefore denies the same.

51. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 and therefore denies the same.

52. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 and therefore denies the same.

53. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 and therefore denies the same.

54. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 and therefore denies the same.

55. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 and therefore denies the same.

56. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 and therefore denies the same.

57. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 and therefore denies the same.

58. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 and therefore denies the same.

59. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 and therefore denies the same.

60. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 and therefore denies the same.

61. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 and therefore denies the same.

62. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 and therefore denies the same.

63. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 and therefore denies the same.

64. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 and therefore denies the same.

65. Autoguard lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 and therefore denies the same.

66. In response to Paragraph 66, Autoguard admits that Plaintiffs purport to bring an action on behalf of a class. Autoguard denies that Plaintiffs' claim may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, that Plaintiffs are proper class representatives, and that Plaintiffs' claim has any factual or legal basis.

67. Autoguard states that no response is required to Paragraph 67, as the Court has dismissed Plaintiffs' New York law claims.

68. Autoguard states that no response is required to Paragraph 68. To the extent a response is required, Autoguard denies the allegations of Paragraph 68.

69. In response to Paragraph 69, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 69.

70. In response to Paragraph 70, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 70.

71. In response to Paragraph 71, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 71.

72. In response to Paragraph 72, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 72.

73. In response to Paragraph 73, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 73.

74. In response to Paragraph 74, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 74.

75. In response to Paragraph 75, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 75.

76. In response to Paragraph 76, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 76.

77. In response to Paragraph 77, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 77.

78. In response to Paragraph 78, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 78.

79. In response to Paragraph 79, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 79.

80. In response to Paragraph 80, Autoguard denies that Plaintiffs' claims may be properly adjudicated as a class action, that Plaintiffs have defined an appropriate class, and the remaining allegations of Paragraph 80.

81. Autoguard reincorporates by reference its responses to each of the foregoing allegations as set forth herein.

82. In response to Paragraph 82, Autoguard states terms and requirements of the "Waiver Agreement" speak for themselves. Autoguard denies the remaining allegations of Paragraph 82.

83. In response to Paragraph 83, Autoguard states terms and requirements of the "Waiver Agreement" speak for themselves. Autoguard denies the remaining allegations of Paragraph 83.

84. Autoguard denies the allegations of Paragraph 84.

85. Autoguard denies the allegations of Paragraph 85 and that Plaintiffs are entitled to the relief sought therein.

86-100. Autoguard states no response is required to Paragraphs 86 through 100 as the Court has dismissed Plaintiffs' New York law claims.

101. Autoguard denies all allegations contained in the Complaint not expressly admitted herein.

#### **AFFIRMATIVE AND OTHER DEFENSES**

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

2. Plaintiffs failed to join necessary and/or indispensable parties.
3. Plaintiffs and members of the purported class have not suffered any injury or damages as a result of the alleged conduct.
4. Plaintiffs lack standing to bring this action because they have not suffered an injury-in-fact as a result of any conduct by Autoguard.
5. Plaintiffs' claims are barred in whole or in part under the equitable doctrines of waiver, estoppel, laches, and consent.
6. Plaintiffs' claims are barred to the extent that any alleged injuries were the result, in whole or in part, of the conduct, negligence, acts, or omissions of parties other than Autoguard.
7. Plaintiffs' damages are precluded or reduced pursuant to setoff.
8. Claims of the putative classes are barred, in whole or part, by the applicable statute of limitations.
9. The putative class should not be certified because Plaintiffs are not adequate class representatives as required by Fed. R. Civ. P. 23(a)(4).
10. The putative class should not be certified because common questions of law and fact do not predominate as required by Fed. R. Civ. P. 23(b)(3).
11. The putative class should not be certified because individual questions of law and fact predominate over issues common to the putative classes.
12. A class action should not be certified because it is not the superior method to adjudicate this controversy because the facts and circumstances of each putative class member differ.
13. A class action should not be certified because the class as defined is an improper fail-safe class requiring individual inquiry regarding each putative class member.

WHEREFORE, Autoguard respectfully requests that the Court dismiss Plaintiffs' Complaint with prejudice, and award Autoguard the costs of this action and expenses, including reasonable attorneys' fees.

**JURY DEMAND**

Autoguard demands a jury trial on all issues triable as such.

Respectfully submitted,

*/s/ Helen Mac Murray* \_\_\_\_\_

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Corporation*

**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of the foregoing was filed electronically via the Court's ECF filing system on April 29, 2022, which will, in turn, electronically serve all counsel and parties of record.

*/s/ Christopher C. Wager*