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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 20 2012

ALAN CARROLL, Clerk of the Court

BY: _____

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

10
11 RICARDO PRECIADO, an individual,
12 Plaintiff

13 v.

14 DAVID ALEMAN, an individual d.b.a.
15 CALIFORNIA MOTORS DIRECT; and
16 DOES 1 through 75,
17 Defendants.

30-2012
Case No.: 00578719
COMPLAINT FOR:

1. BREACH OF IMPLIED WARRANTY UNDER SONG-BEVERLY CONSUMER WARRANTY ACT;
2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY);
3. INTENTIONAL MISREPRESENTATION;
4. NEGLIGENT MISREPRESENTATION;
5. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200)

18
19 JUDGE LUIS A. RODRIGUEZ

20
21 CG

1 SUMMARY

2 1. This lawsuit arises out of Plaintiff's purchase of a used Infiniti G35 from
3 Defendant David Aleman (a used car dealer d.b.a. "California Motors Direct"). The
4 Dealership misrepresented that the Infiniti G35 was in excellent mechanical condition,
5 when in reality the vehicle had been in a severe accident, and was not safe to drive.
6

7 2. The Dealership also forced Plaintiff to sign an unconscionable and illegal
8 arbitration agreement which purported to (1) prevent Plaintiff from recovering his
9 attorney's fees against the Dealership in the event of a dispute, and (2) limit Plaintiff's
10 recovery to the value of the vehicle being sold (even if applicable law permits Plaintiff to
11 recover additional damages or other forms of relief).
12

13 3. The Dealership's conduct amounts to common law fraud, violation of the
14 Consumers Legal Remedies Act, breach of the implied warranty of merchantability, and
15 unfair competition. Plaintiff is entitled to rescind the vehicle purchase, to recover
16 compensatory and punitive damages, and to an injunction preventing the Dealership
17 from engaging in future illegal conduct.
18

19 PARTIES

20 4. Plaintiff Ricardo Preciado is an individual residing in Ramona, California.

21 5. Defendant David Aleman is an individual doing business as the car
22 dealership "California Motors Direct" at 10371 Beach Boulevard, Stanton, California.
23 Defendant David Aleman is hereafter referred to as the "Dealership" or the "Dealer."

24 6. Plaintiff does not know the true names and capacities, whether corporate,
25 partnership, associate, individual, or otherwise, of defendants sued herein as Does 1
26 through 75, inclusive, and thus names them under the provisions of Section 474 of the
27 California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner
28 responsible for the acts set forth herein, and are legally liable to Plaintiff. Plaintiff will

1 set forth the true names of the fictitiously-named defendants together with appropriate
2 charging allegations when ascertained.

3 7. All acts of corporate employees were authorized or ratified by an officer,
4 director, or managing agent of the corporate employer.

5 FACTS

6 8. Plaintiff alleges as follows, on information and belief, formed after an
7 inquiry reasonable under the circumstances:

9 9. At all material times the Dealership advertised to the public (including,
10 but not limited to, on its Web site) that it “does not have any unsatisfied customers” and
11 that it sells “world class automobiles.” In particular, the Dealership advertised for sale
12 that certain 2003 Infiniti G35 with vehicle identification number JNKCV54E53M213779
13 (the “Infiniti G35”). The Dealership represented that the Infiniti G35 was a “dream car”
14 with “no road rash on wheels,” an “immaculate interior,” “no dents,” with a “clean Car
15 Fax,” and that it was “ready to be driven off the lot.” The Dealer’s Web page for the
16 Infiniti G35 further represented that “we guarantee your experience will be pleasant,”
17 and that the Infiniti G35 had been inspected and was safe to drive.

18 10. On or about May 10, 2012, Plaintiff visited the Dealership and viewed the
19 Infiniti G35. Plaintiff asked if the Infiniti G35 was in good mechanical condition, and
20 the Dealership’s salesperson who dealt with Plaintiff assured him that it was in excellent
21 mechanical condition.
22

23 11. Plaintiff noticed that the Infiniti G35’s rims appeared to be scratched, and
24 when he pointed this out to the Dealership it assured him that if he purchased the
25 Infiniti G35 it would re-chrome the rims. Relying upon the Dealership’s
26 representations, Plaintiff agreed to purchase the Infiniti G35.
27
28

1 12. The Dealership (pursuant to its policies and/or standardized procedures)
2 prepared the documents for the Infiniti G35 sale, and presented them to Plaintiff and
3 showed him where to sign each one, but did not give him adequate time to read all of the
4 documents that he was signing.

5 13. In effecting the Infiniti G35's sale, the Dealership (like it does in all vehicle
6 sales) forced Plaintiff to sign (without any opportunity for negotiation) a document
7 entitled "Full Disclosure Arbitration Agreement in case [sic] of Disagreement." The
8 document purported to require that in any arbitration between Plaintiff and the
9 Dealership each party would have to pay their own attorney's fees and costs. This
10 provision is unconscionable, acts as an exculpatory clause, is prohibited by applicable
11 law, and is in direct violation of numerous California consumer protection statutes
12 which permit prevailing consumers to obtain their attorney's fees and costs in lawsuits
13 against car dealerships (including, but not limited to the Song-Beverly Consumer
14 Warranty Act, the Consumers Legal Remedies Act, the Vehicle Leasing Act, and the
15 Automobile Sales Finance Act).

16 14. The "Full Disclosure Arbitration Agreement in case of Disagreement"
17 agreement also purported to limit any consumer's recovery against the dealership to the
18 value of the vehicle being purchased. This provision is unconscionable, acts as an
19 exculpatory clause, is prohibited by applicable law, and is in direct violation of
20 numerous California consumer protection statutes which permit prevailing consumers
21 to obtain consequential damages, punitive damages, injunctive relief, and civil penalties
22 (including, but not limited to the Song-Beverly Consumer Warranty Act, the Consumers
23 Legal Remedies Act, the Vehicle Leasing Act, and the Automobile Sales Finance Act).

24 15. The sales documentation for the Infiniti G35's sale also included a written
25 representation by the Dealership that it would re-chrome the Infiniti G35's rims.
26
27
28

1 16. The Dealership's sale of the Infiniti G35 was accompanied by the
2 Dealership's express warranty, and also by the implied warranty of merchantability.

3 17. After signing the sales documentation and paying the agreed-upon down
4 payment, Plaintiff took delivery of the Infiniti G35.

5 18. Plaintiff subsequently discovered Infiniti G35 had been in a severe
6 collision, had sustained massive structural damage as well as damage to its suspension.
7 The prior accident damage was not properly repaired. Indeed, because of the prior
8 accident and frame and suspension damage the Infiniti G35 is not safe to drive and does
9 not provide reliable transportation.
10

11 19. The Dealership knew about this pre-existing damage, but deliberately
12 concealed it from and did not disclose it to Plaintiff.

13 20. In addition, despite its written and oral promises, the Dealership refused
14 to re-chrome the Infiniti G35's rims.
15

16 21. After Plaintiff discovered the damage, Plaintiff returned to the Dealership
17 to complain, but the Dealership refused to refund Plaintiff's money. The Dealership
18 insisted that it would perform repairs to the vehicle and give it back to Plaintiff.
19 Believing he had no choice, Plaintiff surrendered the Infiniti G35 to the Dealership for it
20 to repair. However, the Dealership returned the Infiniti G35 to Plaintiff without
21 properly repairing the vehicle, and it still suffers from severe structural and suspension
22 damages, and is unsafe to drive.
23

24 22. The Dealership's above-stated conduct was malicious, fraudulent, and
25 oppressive.

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28 ///

1 FIRST CAUSE OF ACTION

2 Breach of Implied Warranty - Song-Beverly Consumer Warranty Act

3 23. Plaintiff incorporates by reference the allegations in paragraphs 1 through
4 22.

5 24. Plaintiff's purchase of the Infiniti G35 was accompanied by the Dealer's
6 implied warranty of merchantability.
7

8 25. The implied warranty of merchantability means and includes that the
9 goods will comply with each of the following requirements: (1) they would pass without
10 objection in the trade under the contract description; (2) they are fit for the ordinary
11 purposes for which such goods are used; (3) they are adequately contained, packaged,
12 and labeled; and (4) they conform to the promises or affirmations of fact made on the
13 container or label.
14

15 26. The fact that the Infiniti G35 was previously involved in a severe accident
16 that caused massive structural and suspension damage, and which rendered the vehicle
17 unsafe, constitutes a breach of the implied warranty of merchantability because the
18 Infiniti G35 (1) would not pass without objection in the trade under the contract
19 description, (2) was not fit for the ordinary purposes for which such goods are used, (3)
20 was not adequately contained, packaged, and labeled, and (4) did not conform to the
21 promises or affirmations of fact made on the container or label.
22

23 27. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of
24 the Infiniti G35, and is entitled to rescind the purchase contract and to restitution of all
25 money paid towards the purchase contract.

26 28. Plaintiff has been proximately damaged by the Dealer's failure to comply
27 with its obligations under the implied warranty.
28

1 29. Plaintiff is entitled to the remedies provided in California Civil Code
2 section 1794, including his attorney's fees, costs, and expenses.

3 SECOND CAUSE OF ACTION

4 Consumers Legal Remedies Act - Injunctive Relief Only

5 30. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
6 through 29.

7 31. The Infiniti G35 is a "good" under the CLRA, that was bought for use
8 primarily for personal, family or household purposes.

9 32. Plaintiff is a "consumer" under the CLRA.

10 33. The advertisement and the sale of the Infiniti G35 to Plaintiff are
11 "transactions" under the CLRA.

12 34. The CLRA prohibits numerous unlawful business acts, including: (i)
13 representing that goods or services have sponsorship, approval, characteristics,
14 ingredients, uses, benefits, or quantities which they do not have or that a person has
15 sponsorship, approval, status, affiliation, or connection which he or she does not have;
16 (ii) representing that goods or services are of a particular standard, quality, or grade, or
17 that goods are of a particular style or model, if they are another; (iii) misrepresenting
18 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or
19 services with intent not to sell them as advertised; (v) representing that a transaction
20 confers or involves rights, remedies, or obligations which it does not have or involve, or
21 which are prohibited by law; (vi) representing that the consumer will receive a rebate,
22 discount, or other economic benefit, if the earning of the benefit is contingent on an
23 event to occur subsequent to the consummation of the transaction; and (vii) inserting an
24 unconscionable provision into a contract. The CLRA also prohibits the omission of
25 statements, where there exists a duty to make a statement or disclosure.
26
27
28

1 35. The Dealership had a duty to disclose the known accident damage because
2 (1) such disclosure was necessary in order to make its other statements not misleading;
3 (2) it was a known material fact; (3) the Dealership knew that it had exclusive
4 knowledge that was not accessible to Plaintiff; and (4) it was reasonable for Plaintiff to
5 expect disclosure of such facts.

6
7 36. The Dealership violated the CLRA by: (1) misrepresenting the mechanical
8 condition of the Infiniti G35; (2) concealing and failing to disclose that it had previously
9 been in a material accident; (3) inserting unconscionable arbitration provisions into
10 Plaintiff's purchase contract documentation; (4) inserting arbitration provisions that are
11 prohibited by applicable law into Plaintiff's purchase contract documentation; and (5)
12 misrepresenting that it would re-chrome the wheels of the Infiniti G35.

13
14 37. Plaintiff is concurrently serving the Dealership with a CLRA notification
15 and demand letter via certified mail, return receipt requested. The notice letter sets
16 forth the relevant facts, notifies the Dealership of its CLRA violations, and requests that
17 the Dealership promptly remedy those violations.

18 38. Under the CLRA, a plaintiff may without prior notification file a complaint
19 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
20 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
21 amend her or his CLRA causes of action without leave of court to add claims for
22 damages. Plaintiff will amend this complaint to add damages claims if the Dealership
23 does not remedy its violations within the statutory period.

24
25 39. Under the CLRA, Plaintiff is entitled to a permanent injunction
26 prohibiting practices that violate the CLRA.

27 40. The Dealership has an illegal pattern and practice of: (1) misrepresenting
28 the mechanical condition of vehicles that it sells to the public; (2) concealing and failing

1 to disclose known accident damage; (3) inserting unconscionable arbitration provisions
2 into consumers' vehicle purchase contracts; and (4) inserting arbitration provisions that
3 are prohibited by applicable law into consumers' vehicle purchase contracts.

4 41. Plaintiff is entitled to a permanent injunction that compels the Dealership
5 to notify all consumers who have been victims of the above-described illegal conduct,
6 and enjoining the Dealership from such further acts of illegal conduct.
7

8 42. Plaintiff is also entitled to recover his attorneys' fees, costs, and expenses.

9 THIRD CAUSE OF ACTION

10 Intentional Misrepresentation

11 43. Plaintiff incorporates by reference the allegations in Paragraphs 1 through
12 42.

13 44. At the time of purchase, and afterwards, the Dealership made the
14 misrepresentations as set forth above. These misrepresentations included, but are not
15 limited to the following: (1) that the Infiniti G35 had been inspected and was in excellent
16 condition; and (2) that the Dealership would re-chrome the Infiniti G35's rims.
17

18 45. The Dealership omitted from the statements it made material facts, the
19 disclosure of which was necessary, (1) in order to make its other statements not
20 misleading; (2) because they were known materials facts; (3) because the Dealership
21 knew that it had exclusive knowledge that was not accessible to Plaintiff; and (4)
22 because it was reasonable for Plaintiff to expect disclosure of such facts. These
23 omissions include, but are not limited to the following: (1) that the Infiniti G35 had
24 previously been in a material accident; and (2) that the Infiniti G35 was not safe to
25 drive.
26

27 46. At all times the Dealership either had actual or constructive notice of the
28 true facts but nonetheless intentionally or recklessly concealed these facts from Plaintiff.

1 47. The Dealership made these representations and omitted material facts
2 with the intent to defraud Plaintiff and to induce Plaintiff to purchase the Infiniti G35
3 and pay an inflated sales price. At the time Plaintiff purchased the Infiniti G35 he did
4 not know, or have reason to know, that the Dealership was making false and misleading
5 representations and had omitted material facts. Plaintiff acted in justifiable reliance
6 upon the truth of the representations which misled him as to the nature and extent of
7 the facts concealed. Plaintiff was justified in his reliance, as the Dealership held itself
8 out as professionals in the automotive sales industry, and Plaintiff had no reason to
9 doubt such representations.
10

11 48. As a direct and proximate result of the Dealer's fraudulent representations
12 and omissions of material facts, Plaintiff suffered damages, including actual, general,
13 consequential and incidental damages according to proof at trial.
14

15 49. Plaintiff is also entitled to punitive damages.

16 50. The Dealership committed fraud in the inducement of the purchase
17 contract for the Infiniti G35, and Plaintiff is therefore entitled to rescission and
18 restitution in an amount according to proof at trial.

19 FOURTH CAUSE OF ACTION

20 Negligent Misrepresentation

21 51. Plaintiff incorporates by reference the allegations in paragraphs 1 through
22 50.
23

24 52. As an alternative to Plaintiff's cause of action for Intentional
25 Misrepresentation, Plaintiff alleges that the Dealer's misrepresentations were made
26 negligently, if not intentionally.

27 53. The representations made by the Dealership were not true.
28

1 54. Regardless of its actual belief, the Dealership made the representations
2 without any reasonable grounds for believing them to be true.

3 55. The Dealership failed to exercise due care in ascertaining the accuracy of
4 the representations made to Plaintiff.

5 56. The Dealership made the representations for the purpose of inducing
6 Plaintiff to rely upon them, and to act or refrain from acting in reliance thereon.
7

8 57. Plaintiff was unaware of the falsity of the representations and acted in
9 reliance upon the truth of those representations, and was justified in relying upon those
10 representations.

11 58. As a direct and proximate result of the Dealer's negligent
12 misrepresentations of material fact, Plaintiff suffered damages, including actual,
13 consequential, and incidental damages according to proof of trial.
14

15 59. Plaintiff is also entitled to punitive damages.

16 60. Plaintiff hereby alleges fraud in the inducement to enter into the sales
17 contract, and therefore is entitled to rescission and restitution in an amount according
18 to proof at trial.

19 FIFTH CAUSE OF ACTION

20 Unfair Competition

21 61. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
22 through 60.
23

24 62. The Dealership's acts, omissions, misrepresentations, practices, and non-
25 disclosures constitute unlawful, unfair, and fraudulent business acts and practices
26 within the meaning of California Business & Professions Code Sections 17200 *et seq.*

27 63. The Dealership has engaged in "unlawful" business acts and practices by:
28 (1) misrepresenting the mechanical condition of vehicles that it sells to the public; (2)

1 concealing and failing to disclose known accident damage; (3) inserting unconscionable
2 arbitration provisions into consumers' vehicle purchase contracts; and (4) inserting
3 arbitration provisions that are prohibited by applicable law into consumers' vehicle
4 purchase contracts. These acts and practices were intended to and did violate California
5 Civil Code Section 1709 *et seq.*, the CLRA, and the Song-Beverly Consumer Warranty
6 Act.
7

8 64. The Dealership has also engaged in "fraudulent" business acts or practices
9 in that the representations and omissions of material fact described above have a
10 tendency and likelihood to deceive lessees of these vehicles and the general public.

11 65. The Dealership has also engaged in "unfair" business acts or practices in
12 that the justification for selling and leasing vehicles based on the misrepresentations
13 and omissions of material fact delineated above is outweighed by the gravity of the
14 resulting harm, particularly considering the available alternatives, and offends public
15 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
16 to consumers.
17

18 66. The above described unlawful, fraudulent, or unfair business acts and
19 practices conducted by the Dealership continue to this day and present a threat to
20 Plaintiff and the general public in that the Dealership has failed to publicly acknowledge
21 the wrongfulness of its actions and provide full equitable injunctive and monetary relief
22 as required by the statute.
23

24 67. Pursuant to California Business & Professions Code Section 17203,
25 Plaintiff seeks an order of this Court requiring the Dealership to immediately cease such
26 acts of unfair competition and enjoining the Dealership from continuing to conduct
27 business via the unlawful, fraudulent, and/or unfair business acts and practices set forth
28 in this Complaint and from failing to fully disclose the true nature of their

1 misrepresentations, and ordering the Dealership to engage in a corrective notice and
2 advertising campaign. Plaintiff additionally requests an order from the Court requiring
3 that the Dealership provide complete equitable monetary relief so as to prevent the
4 Dealership from benefitting from the practices that constitute unfair competition or the
5 use or employment of any monies resulting from the lease of these vehicles, including
6 requiring the payment of restitution of any monies as may be necessary to restore to any
7 member of the general public any money or property which may have been acquired by
8 means of such acts of unfair competition.
9


10 PRAYER FOR RELIEF

11 Plaintiff prays for judgment as follows as appropriate for the particular causes of
12 action:

- 13 1. For the declaratory, equitable, and/or injunctive relief as requested above;
- 14 2. For rescission and restitution of \$24,655.60;
- 15 3. For general damages of \$7,500;
- 16 4. For punitive damages;
- 17 5. For pre judgment interest at the legal rate;
- 18 6. For reasonable attorneys' fees, costs of suit, and out of pocket litigation
19 expenses; and
20
- 21 7. For such other and further relief as the Court deems just and proper under
22 the circumstances.
23

24
25 LAW OFFICE OF MICHAEL R. VACHON, ESQ.
Attorney for Plaintiff Ricardo Preciado

26 Date: June 18, 2012

27 
28 Michael R. Vachon, Esq.