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7 Attorney for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SOLANO – HALL OF JUSTICE

10 PETER MURRAY, an individual; and  
11 AMY WATERBURY, an individual,

12 Plaintiffs,

13 v.

14 MERCEDES-BENZ FAIRFIELD, a  
15 business entity, form unknown; and  
DOES 1 through 75,

16 Defendants.

Case No.: FCS041227

COMPLAINT FOR:

1. VIOLATION OF VEHICLE CODE SECTION 11714;
2. SELLING AUTOMOBILE FOR MORE THAN ADVERTISED PRICE;
3. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY); AND
4. BREACH OF EXPRESS WARRANTY;
5. UNFAIR COMPETITION





1 the Toyota Tundra and that it was in excellent mechanical condition; however, Mr.  
2 Jackson and Mercedes-Benz Fairfield either knew or should have known that these  
3 promises were false.

4           12. Mr. Jackson invited Plaintiffs to immediately purchase the Toyota Tundra  
5 over the phone. When they expressed reluctance, Mr. Jackson offered to drive the  
6 Toyota Tundra to Plaintiffs' home for them look it over. Mercedes-Benz Fairfield  
7 thereafter drove the Toyota Tundra to Plaintiffs' home. While at their home, and relying  
8 on Mercedes-Benz Fairfield's representations, Plaintiffs purchased the Toyota Tundra  
9 for a total price of \$19,055.05 (exclusive of applicable fees and taxes) pursuant to a  
10 conditional sale contract, as that term is defined in Civil Code Section 2981(a).

11           13. Plaintiffs' home is not one of the locations at which Mercedes-Benz  
12 Fairfield is permitted to sell vehicles according to Mercedes-Benz Fairfield's license  
13 from the California Department of Motor Vehicles. Plaintiffs' home was not posted with  
14 Mercedes-Benz Fairfield's license pursuant to Vehicle Code Sections 11709.

15           14. Because Mercedes-Benz Fairfield sold the Toyota Tundra to Plaintiffs at  
16 their home, the Toyota Tundra was sold at a location which was not posted with the  
17 signage required by Vehicle Code Section 11709.1 informing Plaintiffs' of their right to  
18 inspect the Toyota Tundra prior to its purchase.

19           15. Because Mercedes-Benz Fairfield sold the Toyota Tundra to Plaintiffs at  
20 their home, the Toyota Tundra was sold at a location which was not posted with the  
21 signage required by Vehicle Code Section 11709.2 informing Plaintiffs that there would  
22 be no "cooling off" period.

23           16. Plaintiffs' purchase of the Toyota Tundra was accompanied by Mercedes-  
24 Benz Fairfield's express warranty that the vehicle had undergone a through a 119-point  
25 inspection, and was in excellent mechanical condition.



1 SECOND CAUSE OF ACTION

2 Selling Automobile For More Than Advertised Price

3 24. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1  
4 through 23.

5 25. Mercedes-Benz Fairfield is a “dealer” under Vehicle Code Section 11714(b).

6 26. The Toyota Tundra is a “vehicle” that was sold “at retail” under Vehicle  
7 Code Section 11714(b).

8 27. 13 California Code of Regulations 260.04(b) prohibits a dealer from selling  
9 an automobile to a consumer for more than the price at which the dealer previously  
10 advertised that vehicle, regardless of whether or not the consumer saw or mentioned the  
11 advertisement.  
12

13 28. Mercedes-Benz Fairfield sold the Toyota Tundra to Plaintiffs for a price  
14 greater than the price at which Mercedes-Benz Fairfield previously advertised the  
15 Toyota Tundra. Accordingly, Plaintiffs’ purchase of the Toyota Tundra was an illegal  
16 transaction, and the Toyota Tundra’s purchase contract is an illegal and unenforceable  
17 contract.  
18

19 29. Plaintiffs demand, and are entitled to, rescission of the Toyota Tundra’s  
20 purchase contract and restitution of all amounts paid to Mercedes-Benz Fairfield. They  
21 have previously, and again here, request rescission and offer to return the Toyota  
22 Tundra in exchange for return of all amounts paid towards the vehicle.  
23

24 THIRD CAUSE OF ACTION

25 Violation Consumers Legal Remedies Act - Injunctive Relief Only

26 30. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1  
27 through 29.  
28

1           31.    The Toyota Tundra is a “good” under the CLRA that was bought for use  
2 primarily for personal, family or household purposes.

3           32.    Plaintiffs are “consumers” under the CLRA.

4           33.    The advertisement and the sale of the Toyota Tundra, as well as the  
5 subsequent performance of the purchase contract, are “transactions” under the CLRA.

6           34.    The CLRA prohibits numerous unlawful business acts, including (i)  
7 representing that goods or services have sponsorship, approval, characteristics,  
8 ingredients, uses, benefits, or quantities which they do not have or that a person has a  
9 sponsorship, approval, status, affiliation, or connection which he or she does not have;  
10 (ii) representing that goods or services are of a particular standard, quality, or grade, or  
11 that goods are of a particular style or model, if they are of another; (iii) advertising  
12 goods or services with intent not to sell them as advertised; (iv) representing that a  
13 transaction confers or involves rights, remedies, or obligations which it does not have or  
14 involve, or which are prohibited by law; and (v) inserting an unconscionable provision  
15 into a contract. The CLRA also prohibits the omission of facts and/or statements that a  
16 person otherwise has a duty to disclose.  
17  
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19           35.    Mercedes-Benz Fairfield violated the CLRA by: (1) misrepresenting the  
20 mechanical condition of the Toyota Tundra; (2) misrepresenting that Plaintiffs had  
21 entered into a binding contract for the purchase of the Toyota Tundra under which they  
22 were obligated to make payments, when in fact the purchase agreement is illegal and  
23 unenforceable because of Mercedes-Benz Fairfield's violations of Vehicle Code Sections  
24 11714, 11709.1, and 11709.2 and 13 C.C.R. Sections 260.03 and 260.04; and (3)  
25 misrepresenting the price of the Toyota Tundra, and selling it to Plaintiffs for more than  
26 its advertised price.  
27  
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1           36. Plaintiffs are concurrently serving Mercedes-Benz Fairfield with a CLRA  
2 notification and demand letter via certified mail, return receipt requested. The notice  
3 letter sets forth the relevant facts, notifies Mercedes-Benz Fairfield of its CLRA  
4 violations, and requests that Mercedes-Benz Fairfield promptly remedy those violations.

5  
6           37. Under the CLRA, a plaintiff may without prior notification file a complaint  
7 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant  
8 does not remedy the CLRA violations within 30 days of notification, the plaintiff may  
9 amend her or his CLRA causes of action without leave of court to add claims for  
10 damages. Plaintiffs will amend this complaint to add damages claims if Mercedes-Benz  
11 Fairfield does not remedy its violations within the statutory period.

12           38. Under the CLRA, Plaintiffs are entitled to a permanent injunction  
13 prohibiting practices that violate the CLRA.

14           39. Mercedes-Benz Fairfield has an illegal pattern and practice of: (1)  
15 misrepresenting the mechanical condition of used automobiles that it sells to the public;  
16 (2) misrepresenting that consumers have entered into binding automobile purchase  
17 contracts, when in fact such contracts are void because of Mercedes-Benz Fairfield's  
18 violations of Vehicle Code Sections 11714, 11709.1, and 11709.2 and 13 C.C.R. Section  
19 260.03 and 260.04; and (3) selling automobiles to consumers for more than their  
20 advertised price.  
21

22           40. Plaintiffs are entitled to a permanent injunction that compels Mercedes-  
23 Benz Fairfield to notify all consumers who have been victims of the above-described  
24 illegal conduct, and enjoining Mercedes-Benz Fairfield from such further acts of illegal  
25 conduct.  
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1 FOURTH CAUSE OF ACTION

2 Breach of Express Warranty

3 41. Plaintiffs incorporate by reference the allegations in paragraphs 1 through  
4 40.

5 42. Plaintiffs' purchase of the Toyota Tundra was accompanied by Mercedes-  
6 Benz Fairfield's express warranty that the vehicle had been thoroughly inspected and  
7 was in excellent mechanical condition.

8 43. Mercedes-Benz Fairfield breached the express warranty because, at the  
9 time of sale, the Toyota Tundra was in poor mechanical condition with an engine that  
10 was about to fail and render it inoperable.

11 44. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of  
12 the Toyota Tundra, and are entitled to rescind the purchase contract and to restitution  
13 of all money paid towards the vehicle's purchase.

14 45. Plaintiffs have been proximately damaged by Mercedes-Benz Fairfield's  
15 failure to comply with its obligations under express warranty in an amount to be proven  
16 at trial.

17 FIFTH CAUSE OF ACTION

18 Unfair Competition

19 46. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1  
20 through 45.

21 47. Mercedes-Benz Fairfield's acts, omissions, misrepresentations, practices,  
22 and non-disclosures constituted unlawful, unfair, and fraudulent business acts and  
23 practices within the meaning of California Business & Professions Code Sections 17200  
24 *et seq.*

1           48. Mercedes-Benz Fairfield has engaged in “unlawful” business acts and  
2 practices by: (1) misrepresenting the mechanical condition of used automobiles that it  
3 sells to the public; (2) misrepresenting that consumers have entered into binding  
4 automobile purchase contracts, when in fact such contracts are void because of  
5 Mercedes-Benz Fairfield's violations of Vehicle Code Sections 11714, 11709.1, and  
6 11709.2 and 13 C.C.R. Section 260.03 and 260.04; and (3) selling automobiles to  
7 consumers for more than their advertised price. These acts and practices were intended  
8 to and did violate the CLRA, Vehicle Code Sections 11709, 11709.1, 11709.2, 11713.1(e),  
9 11714, California Civil Code Section 1709, and 13 C.C.R. Sections 260.03 and 260.04.  
10

11           49. Mercedes-Benz Fairfield also engaged in “fraudulent” business acts or  
12 practices in that the representations and omissions of material fact described above  
13 have a tendency and likelihood to deceive the general public.  
14

15           50. Mercedes-Benz Fairfield also engaged in “unfair” business acts or practices  
16 in that the justification for selling vehicles based on the misrepresentations and  
17 omissions of material fact delineated above is outweighed by the gravity of the resulting  
18 harm, particularly considering the available alternatives, and offends public policy, is  
19 immoral, unscrupulous, unethical, and offensive, or causes substantial injury to  
20 consumers.  
21

22           51. The above described unlawful, fraudulent, or unfair business acts and  
23 practices conducted by Mercedes-Benz Fairfield continue to this day and present a  
24 threat to Plaintiffs and the general public in that Mercedes-Benz Fairfield has failed to  
25 publicly acknowledge the wrongfulness of its actions and provide full equitable  
26 injunctive and monetary relief as required by law.

27           52. Pursuant to California Business & Professions Code Section 17203,  
28 Plaintiffs are entitled to a permanent injunction from this Court requiring Mercedes-

1 Benz Fairfield to immediately cease such acts of unfair competition and enjoining  
2 Mercedes-Benz Fairfield from continuing to conduct business via the unlawful,  
3 fraudulent, and/or unfair business acts and practices set forth in this Complaint and  
4 from failing to fully disclose the true nature of its misrepresentations, and ordering  
5 Mercedes-Benz Fairfield to engage in a corrective notice and advertising campaign.  
6 Plaintiffs additionally request an order from the Court requiring that Mercedes-Benz  
7 Fairfield provide complete equitable monetary relief so as to prevent Mercedes-Benz  
8 Fairfield from benefitting from the practices that constitute unfair competition,  
9 including requiring the payment of restitution of any monies as may be necessary to  
10 restore to any person any money or property which may have been acquired by means of  
11 such acts of unfair competition.  
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15 PRAYER FOR RELIEF

16 Plaintiffs pray for the following

- 17 1. For injunctive, declaratory, and/or equitable relief as permitted under the  
18 CLRA and Business & Professions Code Section 17203;
- 19 2. For rescission of the vehicle purchase contract for the Toyota Tundra, and  
20 restitution of all monies paid by Plaintiffs toward that contract;
- 21 3. For incidental, consequential, and actual damages of \$23,000;
- 22 4. For punitive damages;
- 23 5. For pre-judgment interest;
- 24 6. For attorney's fees, costs of suit, and out-of-pocket litigation expenses; and  
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7. For such other and further relief as the Court deems just and proper under the circumstances.

LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
for Plaintiffs Peter Murray and Amy Waterbury

Date: February 7, 2013

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Michael R. Vachon, Esq.