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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO – NORTH COUNTY REGIONAL CENTER

10  
11 CARLOS MUNOZ, an individual,

12 Plaintiff,

13 v.

14 CLASSIC CHARIOTS, INC., a California  
15 corporation; and  
16 DOES 1 through 75,

17 Defendants.

Case No.: 37-2013-00039840

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY);
2. INTENTIONAL MISREPRESENTATION;
3. NEGLIGENT MISREPRESENTATION;
4. BREACH OF IMPLIED WARRANTY;
5. SELLING AUTOMOBILES FOR MORE MORE THAN ADVERTISED PRICE; AND
6. UNFAIR COMPETITION

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SUMMARY

1. Defendant Classic Chariots, Inc. (a Vista, California used car dealership) is selling used cars to consumers for prices greater than the prices listed in Classic Chariots’s advertisements – even though California law prohibits dealers from selling automobiles for more than their advertised prices, regardless of whether or not the purchasers ever saw or mentioned the ads. Plaintiff is one of the consumers victimized by this illegal practice, and he seeks injunctive relief and restitution under the Unfair Competition Law (Bus. & Prof. Code § 17200 *et seq.*) (“UCL”) on behalf of all other consumers who have been victims of this practice.

2. In addition, Classic Chariots misrepresented that Plaintiff’s automobile had been thoroughly inspected and was “better than certified,” even though the dealer knew that the vehicle had been in a severe prior collision that caused massive damage to the vehicle’s body, suspension, and frame/unibody structure. Classic Chariots’s misrepresentations amount to common law fraud, violation of the Consumers Legal Remedies Act (Civil Code §1750 *et seq.*), are breaches of the implied warranty of merchantability, and amount to unfair competition under the UCL. Under these statutes, Plaintiff is entitled to rescind the purchase contract, recover damages, and be awarded his attorneys’ fees, costs, and out-of-pocket litigation expenses.

PARTIES

3. Plaintiff Carlos Munoz is an individual residing in Oceanside, California.

4. Defendant Classic Chariots, Inc. is a California corporation that does business as a used-car dealership at 1611 W. Vista Way, Vista, California.

5. Plaintiff does not know the true names and capacities, whether corporate, partnership, associate, individual, or otherwise, of defendants sued herein as Does 1 through 75, inclusive, and thus names them under the provisions of Section 474 of the

1 California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner  
2 responsible for the acts set forth herein, and are legally liable to Plaintiff. Plaintiff will  
3 set forth the true names of the fictitiously-named defendants together with appropriate  
4 charging allegations when ascertained.

5  
6 6. All acts of corporate employees were authorized or ratified by an officer,  
7 director, or managing agent of the corporate employer.

8 FACTS

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

11 8. During and prior to April, 2011, Classic Chariots published ads for that  
12 certain 2006 Chevrolet Malibu with vehicle identification number 1G1ZT61876F186656  
13 (the "Chevy Malibu") in various media, including Classic Chariots's Internet web site  
14 and various other web sites. At least one of these ads stated that the Chevy Malibu had  
15 been thoroughly inspected, and that it was "better than certified." At least two of these  
16 ads listed the Chevy Malibu's price to be \$11,998. These ads did not state anywhere in  
17 their terms that this price was valid for only a limited period of time.

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19 9. On or about April 17, 2011, Plaintiff visited Classic Chariots and while  
20 there was shown the Chevy Malibu. The Classic Chariots employees who dealt with  
21 Plaintiff told him, consistent with Classic Chariots's ads, that the Chevy Malibu had been  
22 thoroughly inspected and was in excellent mechanical condition.

23  
24 10. In reliance upon the above-stated representations by Classic Chariots and  
25 its salesperson, Plaintiff stated that he wished to purchase the Chevy Malibu.

26 11. Classic Chariots offered to sell Plaintiff the Chevy Malibu for a purchase  
27 price of \$12,999 (not including accessories, fees, and taxes), even though this price was  
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1 greater than the Chevy Malibu's advertised price. Plaintiff, being unaware of the Chevy  
2 Malibu's advertised price, agreed to this price and purchased the Chevy Malibu.

3 12. Plaintiff is not the only consumer who has purchased an automobile from  
4 Classic Chariots for more than its advertised price. Classic Chariots has a business  
5 practice of not informing buyers of its automobiles' advertised prices, and charging  
6 more for them whenever it is able to do so.  
7

8 13. Plaintiff subsequently learned that the Chevy Malibu was previously in a  
9 serious collision that caused severe damage, including damage to the vehicle's frame.

10 14. Classic Chariots knew about this pre-existing damage, but deliberately  
11 concealed it from and did not disclose it to Plaintiff.

12 15. The Chevy Malibu's prior accident damage was a material fact that a  
13 reasonable consumer would consider in deciding whether or not to purchase the Chevy  
14 Malibu. The accident damage materially decreases the Chevy Malibu's utility,  
15 performance, safety, and fair market value.  
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17 16. Classic Chariots's above-stated illegal conduct is fraudulent, malicious,  
18 and oppressive under Civil Code Section 3294. Classic Chariots acted with a willful and  
19 conscious disregard of Plaintiff's rights and safety. Classic Chariots's actions were also  
20 fraudulent under Civil Code Section 3294, in that it (1) intentionally misrepresented and  
21 concealed the true condition of the Chevy Malibu, and (2) intentionally sold the Chevy  
22 Malibu to Plaintiff for a price greater than it was allowed to charge under California law.  
23

24 **FIRST CAUSE OF ACTION**

25 **Violation of Consumers Legal Remedies Act - Injunctive Relief Only**

26 17. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1  
27 through 16.  
28

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

3           19.    Plaintiff is a “consumer” under the CLRA.

4           20.    The advertisement and the sale of the Chevy Malibu to Plaintiff are  
5 “transactions” under the CLRA.

6           21.    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  
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 another; (iii) misrepresenting  
12 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or  
13 services with intent not to sell them as advertised; (v) representing that a transaction  
14 confers or involves rights, remedies, or obligations which it does not have or involve, or  
15 which are prohibited by law; (vi) inserting an unconscionable provision into a contract;  
16 and (vii) advertising a motor vehicle for sale as “certified” if either (a) it has sustained  
17 accident damage that substantially impairs the use or safety of the vehicle, or (b) the  
18 dealer knows or should know that it has sustained frame damage. The CLRA also  
19 prohibits the omission of statements, where there exists a duty to make a statement or  
20 disclosure.  
21 disclosure.

22           22.    Classic Chariots had a duty to disclose the Chevy Malibu’s known accident  
23 damage and advertised price because (1) such disclosure was necessary in order to make  
24 its other statements not misleading; (2) it was a known material fact; (3) Classic  
25 Chariots knew that it had exclusive knowledge that was not accessible to Plaintiff; and  
26 (4) it was reasonable for Plaintiff to expect disclosure of such facts.  
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1           23. Classic Chariots violated the CLRA by: (1) representing that the Chevy  
2 Malibu was “better than certified” even though it did not qualify for that designation; (2)  
3 misrepresenting the mechanical condition of the Chevy Malibu, and concealing and  
4 failing to disclose that it had previously been involved in an accident resulting in  
5 material damage, including (but not limited to) damage to the vehicle’s frame; (3)  
6 concealing and failing to disclose that Classic Chariots had never conducted a thorough  
7 inspection showing that the Chevy Malibu was “better than certified;” (4) failing to  
8 disclose the Chevy Malibu’s advertised price; and (5) selling the Chevy Malibu for more  
9 than its advertised price.  
10

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

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

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

25           27. Classic Chariots has an illegal pattern and practice of: (1) failing to disclose  
26 the advertised prices of automobiles it sells to the public; (2) selling automobiles for  
27 more than their advertised prices; (3) representing that automobiles are “better than  
28 certified” when they do not qualify for that designation; (4) misrepresenting the

1 mechanical condition of automobiles, and failing to disclose material accident damage;  
2 and (5) misrepresenting that it conducts thorough inspections of its vehicle to ensure  
3 they are “better than certified.”

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

8 29. Plaintiff is also entitled to recover his attorneys’ fees, costs, and expenses.  
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## 10 SECOND CAUSE OF ACTION

### 11 Intentional Misrepresentation

12 30. Plaintiff incorporates by reference the allegations in Paragraphs 1 through  
13 29.

14 31. At the time of purchase, and afterwards, Classic Chariots made the  
15 misrepresentations as set forth above. These misrepresentations included, but are not  
16 limited to the following: (1) that the Chevy Malibu had been inspected and was in  
17 excellent condition; (2) that the Chevy Malibu met the standards of a certified used  
18 automobile; and (3) that its sale price was \$12,999, and Classic Chariots was permitted  
19 to charge Plaintiff this price.

20 32. Classic Chariots omitted from the statements it made material facts the  
21 disclosure of which was necessary, (1) in order to make its other statements not  
22 misleading; (2) because they were known materials facts; (3) because Classic Chariots  
23 knew that it had exclusive knowledge that was not accessible to Plaintiff; and (4)  
24 because it was reasonable for Plaintiff to expect disclosure of such facts. These  
25 omissions include, but are not limited to the following: (1) that the Chevy Malibu had  
26 previously been in a material accident; (2) that the Chevy Malibu was not in “better than  
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1 certified” condition; (3) that the Chevy Malibu’s frame was damaged; (4) that Classic  
2 Chariots was advertising the Chevy Malibu at a sales price of \$11,998.

3 33. At all times Classic Chariots either had actual or constructive notice of the  
4 true facts but nonetheless intentionally or recklessly concealed these facts from Plaintiff.

5 34. Classic Chariots made these representations and omitted material facts  
6 with the intent to defraud Plaintiff and to induce Plaintiff to purchase the Chevy Malibu  
7 and pay an inflated sales price. At the time Plaintiff purchased the Chevy Malibu he did  
8 not know, or have reason to know, that Classic Chariots was making false and  
9 misleading representations and had omitted material facts. Plaintiff acted in justifiable  
10 reliance upon the truth of the representations which misled him as to the nature and  
11 extent of the facts concealed. Plaintiff was justified in his reliance, as Classic Chariots  
12 held itself out as professionals in the automotive sales industry, and Plaintiff had no  
13 reason to doubt such representations.  
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15 35. As a direct and proximate result of Classic Chariots’s fraudulent  
16 representations and omissions of material facts, Plaintiff suffered damages, including  
17 actual, general, consequential and incidental damages according to proof at trial.  
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19 36. Plaintiff is also entitled to punitive damages.

20 37. Classic Chariots committed fraud in the inducement of the purchase  
21 contract for the Chevy Malibu, and Plaintiff is therefore entitled to rescission and  
22 restitution in an amount according to proof at trial.  
23

24 THIRD CAUSE OF ACTION

25 Negligent Misrepresentation

26 38. Plaintiff incorporates by reference the allegations in paragraphs 1 through  
27 37.  
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1 39. As an alternative to Plaintiff's cause of action for Intentional  
2 Misrepresentation, Plaintiff alleges that Classic Chariots's misrepresentations were  
3 made negligently, if not intentionally.

4 40. The representations made by Classic Chariots were not true.

5 41. Regardless of its actual belief, Classic Chariots made the representations  
6 without any reasonable grounds for believing them to be true.  
7

8 42. Classic Chariots failed to exercise due care in ascertaining the accuracy of  
9 the representations made to Plaintiff.

10 43. Classic Chariots made the representations for the purpose of inducing  
11 Plaintiff to rely upon them, and to act or refrain from acting in reliance thereon.

12 44. Plaintiff was unaware of the falsity of the representations and acted in  
13 reliance upon the truth of those representations, and was justified in relying upon those  
14 representations.  
15

16 45. As a direct and proximate result of Classic Chariots's negligent  
17 misrepresentations of material fact, Plaintiff suffered damages, including actual,  
18 consequential, and incidental damages according to proof of trial.

19 46. Plaintiff is also entitled to punitive damages.

20 47. Plaintiff hereby alleges fraud in the inducement to enter into the sales  
21 contract, and therefore is entitled to rescission and restitution in an amount according  
22 to proof at trial.  
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24 **FOURTH CAUSE OF ACTION**

25 **Breach of Implied Warranty - Song-Beverly Consumer Warranty Act**

26 48. Plaintiff incorporates by reference the allegations in paragraphs 1 through  
27 47.  
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1           49. Plaintiff's purchase of the Chevy Malibu was accompanied by Classic  
2 Chariots's "implied warranty of merchantability" (as that term is defined in California's  
3 Song-Beverly Consumer Warranty Act (Civil Code § 1791 *et seq.*) (the "California Lemon  
4 Law")).

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

12           51. The fact that the Chevy Malibu was previously involved in a severe  
13 accident that caused massive structural damage constitutes a breach of the implied  
14 warranty of merchantability under the California Lemon Law because the Chevy Malibu,  
15 which was described as "better than certified," (1) would not pass without objection in  
16 the trade under the contract description, (2) was not fit for the ordinary purposes for  
17 which such goods are used, (3) was not adequately contained, packaged, and labeled,  
18 and (4) did not conform to the promises or affirmations of fact made on the container or  
19 label.  
20

21           52. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of  
22 the Chevy Malibu, and under the California Lemon Law is entitled to rescind the  
23 purchase contract and to restitution of all money paid towards the purchase contract.  
24

25           53. Plaintiff has been proximately damaged by Classic Chariots's violations of  
26 the California Lemon Law, including its failure to comply with its obligations under the  
27 implied warranty.  
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1 SIXTH CAUSE OF ACTION

2 Unfair Competition

3 62. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1  
4 through 61.

5 63. Classic Chariots's acts, omissions, misrepresentations, practices, and non-  
6 disclosures constitute unlawful, unfair, and fraudulent business acts and practices  
7 within the meaning of California Business & Professions Code Sections 17200 *et seq.*

8 64. Classic Chariots has engaged in "unlawful" business acts and practices by:  
9 (1) failing to disclose the advertised prices of automobiles it sells to the public; (2)  
10 selling automobiles for more than their advertised prices; (3) representing that  
11 automobiles are "better than certified" when they do not qualify for that designation; (4)  
12 misrepresenting the mechanical condition of automobiles, and failing to disclose  
13 material accident damage; and (5) misrepresenting that it conducts thorough  
14 inspections of its vehicle to ensure they are "better than certified." These acts and  
15 practices were intended to and did violate California Civil Code Section 1709 *et seq.*, the  
16 CLRA, Vehicle Code Sections 11713.1 and 11713.18, and the California Lemon Law.  
17

18 65. Classic Chariots has also engaged in "fraudulent" business acts or practices  
19 in that the representations and omissions of material fact described above have a  
20 tendency and likelihood to deceive purchasers of these vehicles and the general public.  
21

22 66. Classic Chariots has also engaged in "unfair" business acts or practices in  
23 that the justification for selling automobiles based on the misrepresentations and  
24 omissions of material fact delineated above is outweighed by the gravity of the resulting  
25 harm, particularly considering the available alternatives, and offends public policy, is  
26 immoral, unscrupulous, unethical, and offensive, or causes substantial injury to  
27 consumers.  
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- 5. For pre judgment interest at the legal rate;
- 6. For reasonable attorneys' fees, costs of suit, and out of pocket litigation expenses; and
- 7. For such other and further relief as the Court deems just and proper under the circumstances.

LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
Attorney for Plaintiff Carlos Munoz

Date: March 18, 2013

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Michael R. Vachon, Esq.