

1 VACHON LAW FIRM
2 Michael R. Vachon, Esq. (SBN 206447)
3 17150 Via del Campo, Suite 204
4 San Diego, California 92127
5 Tel.: (858) 674-4100
6 Fax: (858) 674-4222

7 Attorney for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES – VAN NUYS COURTHOUSE EAST

10
11 MALIHE MANDEGAR, an individual;

12 Plaintiff,

13 v.

14 AUTO NET, a business entity, form
15 unknown; and
16 DOES 1 through 75,

17 Defendants.

Case No.: LC100323

SECOND AMENDED COMPLAINT FOR:

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

1 11. Thereafter, on or about March 27, 2013, Plaintiff visited Auto Net and
2 while there Auto Net showed the BMW to Plaintiff, Plaintiff's daughter, and Plaintiff's
3 daughter's boyfriend. Auto Net's employees who dealt with Plaintiff, including
4 Defendant David Kohanchi, represented that the BMW had been thoroughly inspected
5 and was in immaculate condition. Plaintiff specifically asked if the BMW had been in
6 any prior accidents, and David Kohanchi said that it had not.

8 12. Based on the BMW's age and mileage, as of March 27, 2013 it still qualified
9 under the remainder of the manufacturer's bumper-to-bumper warranty.

10 13. In reliance upon the above-stated representations by Auto Net and David
11 Kohanchi, Plaintiff purchased the BMW.

12 14. Plaintiff's purchase of the BMW was accompanied by Auto Net's implied
13 warranty of merchantability.

14 15. During Auto Net's preparation of the contract and other documents
15 necessary to effect the sale of the BMW to Plaintiff, Defendant David Kohanchi
16 personally, but on Auto Net's behalf, partially prepared a "Statement of Facts" form by
17 filling in the BMW's year, make, model, and its vehicle identification number at the top
18 of the form. However, other than filling in the year, make, model, and vehicle
19 identification number, the Statement of Facts form was otherwise blank. David
20 Kohanchi personally obtained Plaintiff's signature on the partially-blank Statement of
21 Facts form by telling Plaintiff that it was a document necessary to effect the sale and get
22 the BMW registered with the DMV. Auto Net has a business practice, that is directed,
23 authorized, and ratified by David Kohanchi, of obtaining its customers' signatures on
24 partially-blank Statement of Facts forms. 15. Plaintiff subsequently learned

25 that the BMW was previously in a serious collision that caused severe damage, including
26 damage to the vehicle's frame.

1 21. Plaintiff is a “consumer” under the CLRA.

2 22. The sale of the BMW to Plaintiff is a “transaction” under the CLRA.

3 23. The CLRA prohibits numerous unlawful business acts, including: (i)
4 representing that goods or services have sponsorship, approval, characteristics,
5 ingredients, uses, benefits, or quantities which they do not have or that a person has
6 sponsorship, approval, status, affiliation, or connection which he or she does not have;
7 (ii) representing that goods or services are of a particular standard, quality, or grade, or
8 that goods are of a particular style or model, if they are another; (iii) misrepresenting
9 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or
10 services with intent not to sell them as advertised; (v) representing that a transaction
11 confers or involves rights, remedies, or obligations which it does not have or involve, or
12 which are prohibited by law; and (vi) representing a motor vehicle if the vehicle has
13 previously been in an accident where it sustained frame damage. The CLRA also
14 prohibits the omission of statements, where there exists a duty to make a statement or
15 disclosure.
16
17

18 24. Auto Net and David Kohanchi had a duty to disclose the known accident
19 damage because (1) such disclosure was necessary in order to make its other statements
20 not misleading; (2) it was a known material fact; (3) Auto Net knew that it had exclusive
21 knowledge that was not accessible to Plaintiff; and (4) it was reasonable for Plaintiff to
22 expect disclosure of such facts.
23

24 25. Auto Net and David Kohanchi violated the CLRA by (1) misrepresenting
25 the mechanical condition of the BMW, (2) concealing and failing to disclose that it had
26 previously been involved in an accident resulting in material damage, including (but not
27 limited to) damage to the vehicle’s frame, (3) concealing and failing to disclose that the
28 BMW’s remaining factory warranty was no longer a “bumper-to-bumper” warranty

1 because the prior accident damage, in effect, partially voids that warranty, and (4)
2 obtaining Plaintiff's signature on a partially-blank Statement of Facts form and then
3 later forging the document in an attempt to make it look as if Plaintiff had signed a
4 document acknowledging the existence of the accident damage.

5
6 26. Plaintiff sent the Dealership, via regular mail and certified mail, return
7 receipt requested, a Consumer Legal Remedies Act notification and demand letter at
8 least 30 days prior to filing this Complaint. The notice letter set forth the relevant facts,
9 notified Auto Net of CLRA violations Nos. 1 to 3 above, and requests that Auto Net
10 promptly remedy those violations.

11 27. Under the CLRA, a plaintiff may without prior notification file a complaint
12 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
13 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
14 amend her or his CLRA causes of action without leave of court to add claims for
15 damages. The Dealership did not give or agree to give an appropriate correction, repair,
16 replacement, or other remedy without the statutory time period. Accordingly, Plaintiff
17 amended her Complaint to add claims for actual and punitive damages under the
18 Consumer Legal Remedies Act with regard to CLRA violations Nos. 1- 3 listed above.

19
20 28. Under the CLRA, Plaintiff is entitled to a permanent injunction
21 prohibiting practices that violate the CLRA.

22
23 29. Auto Net and David Kohanchi have an illegal pattern and practice of: (1)
24 selling accident-damaged vehicles to the public while misrepresenting their mechanical
25 condition; (2) concealing and failing to disclose known material accident damage; and
26 (3) obtaining its customers' signatures on a partially-blank Statement of Facts forms
27 and then later forging those documents in an attempt to make it look as if its customers
28 had signed documents acknowledging the existence of prior accident damage.

1 41. As an alternative to Plaintiff's cause of action for Intentional
2 Misrepresentation, Plaintiff alleges that Auto Net and David Kohanchi's
3 misrepresentations were made negligently, if not intentionally.

4 42. The representations made by Auto Net and David Kohanchi were not true.

5 43. Regardless of its actual belief, Auto Net and David Kohanchi made the
6 representations without any reasonable grounds for believing them to be true.
7

8 44. Auto Net and David Kohanchi failed to exercise due care in ascertaining
9 the accuracy of the representations made to Plaintiff.

10 45. Auto Net and David Kohanchi made the representations for the purpose of
11 inducing Plaintiff to rely upon them, and to act or refrain from acting in reliance
12 thereon.

13 46. Plaintiff was unaware of the falsity of the representations and acted in
14 reliance upon the truth of those representations, and was justified in relying upon those
15 representations.
16

17 47. As a direct and proximate result of Auto Net and David Kohanchi's
18 negligent misrepresentations of material fact, Plaintiff suffered damages, including
19 actual, consequential, and incidental damages according to proof of trial.

20 48. Plaintiff is also entitled to punitive damages.

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

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

3 (Against Defendant Auto Net)

4 50. Plaintiff incorporates by reference the allegations in paragraphs 1 through
5 49.

6 51. Plaintiff's purchase of the BMW was accompanied by Auto Net's implied
7 warranty of merchantability.

8 52. 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 53. The fact that the BMW was previously involved in a severe accident that
15 caused massive structural damage constitutes a breach of the implied warranty of
16 merchantability because the BMW (1) would not pass without objection in the trade
17 under the contract description, (2) was not fit for the ordinary purposes for which such
18 goods are used, (3) was not adequately contained, packaged, and labeled, and (4) did
19 not conform to the promises or affirmations of fact made on the container or label.

20 54. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of
21 the BMW, and is entitled to rescind the purchase contract and to restitution of all money
22 paid towards the purchase contract.

23 55. Plaintiff has been proximately damaged by Auto Net's failure to comply
24 with its obligations under the implied warranty.

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- 4. For punitive damages;
- 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.

VACHON LAW FIRM
Attorney for Plaintiff Malihe Mandegar

Date: October 10, 2013

Michael R. Vachon, Esq.