1 2 3 4	LAW OFFICE OF MICHAEL R. VACHOR Michael R. Vachon, Esq. (SBN 206447) 17150 Via del Campo, Suite 204 San Diego, California 92127 Tel.: (858) 674-4100 Fax: (858) 674-4222 Attorney for Plaintiffs	N, ESQ.  2012 AUG -9 PM 10: 38  CLERK-SUPERIOR COURT SAN DIEGO, CA
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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF SAN DIEGO – NORTH COUNTY REGIONAL CENTER	
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11	LAZARO CRUZ, an individual; and PAULINA CRUZ, an individual,	Case No.: <b>37-2012-00056167-CU-BT-NC</b>
12	Plaintiffs,	COMPLAINT FOR:
13	v.	1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE
14	CLASSIC CHARIOTS, INC., a California	RELIEF ONLY); 2. INTENTIONAL MISREPRESENTATION;
15	corporation; and DOES 1 through 75,	3. NEGLIGENT MISREPRESENTATION; 4. BREACH OF IMPLIED WARRANTY
16	Defendants.	UNDER SONG-BEVERLY CONSUMER WARRANTY ACT; AND
17	Defendants.	5. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200)
18		TROP. CODE SECTION 1/200)
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**SUMMARY** 

1. This lawsuit arises out of Plaintiffs' purchase of an accident-damaged used automobile. Plaintiffs purchased a used 2010 Nissan Versa from Defendant Classic Chariots, Inc. (a Vista, California used car dealership) in reliance upon the Dealership's promises that the vehicle had been "thoroughly inspected" and was "better than certified." However, notwithstanding the Dealer's claims, the Nissan Versa had actually been in a severe prior collision, in which is sustained frame damaged. The Dealership knew about the accident damage, but concealed it from and failed to disclose it to Plaintiffs. The Dealer's misrepresentations amount to common law fraud, violation of the Consumers Legal Remedies Act (Civil Code §1750 et seq.) (the "CLRA"), are breaches of the implied warranty of merchantability, and amount to unfair competition under Business & Professions Code Section 17200 et seq. (the "UCL"). Under these statutes, Plaintiffs are entitled to rescind the purchase contract, recover damages, and be awarded their attorneys' fees, costs, and out-of-pocket litigation expenses.

## PARTIES

- Plaintiffs Lazaro Cruz and Paulina Cruz are individuals residing in Carlsbad, California.
- 3. Defendant Classic Chariots, Inc. is a California corporation that does business as a used-car dealership at multiple locations, including a location at 1611 W. Vista Way, Vista, California.
- 4. Plaintiffs do 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 California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner responsible for the acts set forth herein, and are legally liable to Plaintiffs. Plaintiffs will

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

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

## **FACTS**

- 6. Plaintiffs allege as follows, on information and belief, formed after an inquiry reasonable under the circumstances:
- 7. On or about February, 2011, the Dealership published ads for that certain 2010 Nissan Versa with vehicle identification number 3N1BC1CP4AL397718 (the "Nissan Versa") stating that this vehicle had been thoroughly inspected and that it was "better than certified."
- 8. On or about February 12, 2011, Plaintiffs visited the Dealership and while there were shown the Nissan Versa. The Dealership's employees who dealt with Plaintiffs represented that the Nissan Versa had been thoroughly inspected and was in excellent mechanical condition.
- 9. In reliance upon the above-stated representations by the Dealer and its salesperson, Plaintiffs purchased the Nissan Versa.
- 10. Plaintiffs' purchase of the Nissan Versa was accompanied by the Dealership's implied warranty of merchantability.
- 11. Plaintiffs subsequently learned that the Nissan Versa was previously in a serious collision that caused severe damage, including damage to the vehicle's frame.
- 11. The Dealership knew about this pre-existing damage, but deliberately concealed it from and did not disclose it to Plaintiffs.
- 12. The prior accident damage of the Nissan Versa was a material fact that a reasonable consumer would consider in deciding whether or not to purchase the Nissan

Versa. The accident damage of the Nissan Versa materially decreases the utility, performance, safety, and fair market value of the Nissan Versa.

13. The Dealer's above-stated illegal conduct is fraudulent, malicious, and oppressive under Civil Code Section 3294. The Dealer acted with a willful and conscious disregard of Plaintiffs' rights and safety. The Dealer's actions were also fraudulent under Civil Code Section 3294, in that it intentionally misrepresented and concealed the true condition of the Nissan Versa.

## SECOND CAUSE OF ACTION

Consumers Legal Remedies Act - Injunctive Relief Only

- 14. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1 through 13.
- 15. The Nissan Versa is a "good" under the CLRA that was bought for use primarily for personal, family or household purposes.
  - 16. Plaintiffs are "consumers" under the CLRA.
- 17. The advertisement and the sale of the Nissan Versa to Plaintiffs are "transactions" under the CLRA.
- 18. The CLRA prohibits numerous unlawful business acts, including: (i) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he or she does not have; (ii) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are another; (iii) misrepresenting the source, sponsorship, approval, or certification of goods; (iv) advertising goods or services with intent not to sell them as advertised; (v) representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or

which are prohibited by law; and (vi) representing a motor vehicle if the vehicle has previously been in an accident where it sustained frame damage. The CLRA also prohibits the omission of statements, where there exists a duty to make a statement or disclosure.

- 19. The Dealership had a duty to disclose the known accident damage because (1) such disclosure was necessary in order to make its other statements not misleading; (2) it was a known material fact; (3) the Dealership knew that it had exclusive knowledge that was not accessible to Plaintiffs; and (4) it was reasonable for Plaintiffs to expect disclosure of such facts.
- 20. The Dealership violated the CLRA by misrepresenting the mechanical condition of the Nissan Versa, concealing and failing to disclose that it had previously been involved in an accident resulting in material damage, including (but not limited to) damage to the vehicle's frame.
- 21. Plaintiffs are concurrently serving the Dealership with a CLRA notification and demand letter via certified mail, return receipt requested. The notice letter sets forth the relevant facts, notifies the Dealership of its CLRA violations, and requests that the Dealership promptly remedy those violations.
- 22. Under the CLRA, a plaintiff may without prior notification file a complaint alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant does not remedy the CLRA violations within 30 days of notification, the plaintiff may amend her or his CLRA causes of action without leave of court to add claims for damages. Plaintiffs will amend this complaint to add damages claims if the Dealership does not remedy its violations within the statutory period.
- 23. Under the CLRA, Plaintiff is entitled to a permanent injunction prohibiting practices that violate the CLRA.

- 24. The Dealership has an illegal pattern and practice of: (1) selling accident-damaged vehicles to the public while misrepresenting their mechanical condition; (2) concealing and failing to disclose known material accident damage; and (3) advertising that accident-damaged vehicles are "better than certified."
- 25. Plaintiffs are entitled to a permanent injunction that compels the Dealership to notify all consumers who have been victims of the above-described illegal conduct, and enjoining the Dealership from such further acts of illegal conduct.
- 26. Plaintiffs are also entitled to recover their attorneys' fees, costs, and expenses.

### SECOND CAUSE OF ACTION

# **Intentional Misrepresentation**

- 27. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 26.
- 28. At the time of purchase, and afterwards, the Dealership made the misrepresentations as set forth above. These misrepresentations included, but are not limited to the following: (1) that the Nissan Versa had been inspected and was in excellent condition; (2) that the Nissan Versa had never been in any accidents; and (3) that the Nissan Versa was "better than certified."
- 29. The Dealership omitted from the statements it made material facts, the disclosure of which was necessary, (1) in order to make its other statements not misleading; (2) because they were known materials facts; (3) because the Dealership knew that it had exclusive knowledge that was not accessible to Plaintiffs; and (4) because it was reasonable for Plaintiffs to expect disclosure of such facts. These omissions include, but are not limited to the following: (1) that the Nissan Versa had

previously been in a material accident; (2) that the Nissan Versa was not in excellent condition; and (3) that the Nissan Versa's frame was damaged.

- 30. At all times the Dealership either had actual or constructive notice of the true facts but nonetheless intentionally or recklessly concealed these facts from Plaintiffs.
- 31. The Dealership made these representations and omitted material facts with the intent to defraud Plaintiffs and to induce Plaintiffs to purchase the Nissan Versa and pay an inflated sales price. At the time Plaintiffs purchased the Nissan Versa they did not know, or have reason to know, that the Dealership was making false and misleading representations and had omitted material facts. Plaintiffs acted in justifiable reliance upon the truth of the representations which misled them as to the nature and extent of the facts concealed. Plaintiffs were justified in their reliance, as the Dealership held itself out as professionals in the automotive sales industry, and Plaintiffs had no reason to doubt such representations.
- 32. As a direct and proximate result of the Dealer's fraudulent representations and omissions of material facts, Plaintiffs suffered damages, including actual, general, consequential and incidental damages according to proof at trial.
  - 33. Plaintiffs are also entitled to punitive damages.
- 34. The Dealership committed fraud in the inducement of the purchase contract for the Nissan Versa, and Plaintiffs are therefore entitled to rescission and restitution in an amount according to proof at trial.

#### THIRD CAUSE OF ACTION

# Negligent Misrepresentation

35. Plaintiffs incorporate by reference the allegations in paragraphs 1 through

- 36. As an alternative to Plaintiffs' cause of action for Intentional Misrepresentation, Plaintiffs allege that the Dealer's misrepresentations were made negligently, if not intentionally.
  - 37. The representations made by the Dealership were not true.
- 38. Regardless of its actual belief, the Dealership made the representations without any reasonable grounds for believing them to be true.
- 39. The Dealership failed to exercise due care in ascertaining the accuracy of the representations made to Plaintiffs.
- 40. The Dealership made the representations for the purpose of inducing Plaintiffs to rely upon them, and to act or refrain from acting in reliance thereon.
- 41. Plaintiffs were unaware of the falsity of the representations and acted in reliance upon the truth of those representations, and were justified in relying upon those representations.
- 42. As a direct and proximate result of the Dealer's negligent misrepresentations of material fact, Plaintiffs suffered damages, including actual, consequential, and incidental damages according to proof of trial.
  - 43. Plaintiffs are also entitled to punitive damages.
- 44. Plaintiffs hereby allege fraud in the inducement to enter into the sales contract, and therefore are entitled to rescission and restitution in an amount according to proof at trial.

### FOURTH CAUSE OF ACTION

Breach of Implied Warranty - Song-Beverly Consumer Warranty Act

45. Plaintiffs incorporate by reference the allegations in paragraphs 1 through

- 46. Plaintiffs' purchase of the Nissan Versa was accompanied by the Dealer's implied warranty of merchantability.
- 47. The implied warranty of merchantability means and includes that the goods will comply with each of the following requirements: (1) they would pass without objection in the trade under the contract description; (2) they are fit for the ordinary purposes for which such goods are used; (3) they are adequately contained, packaged, and labeled; and (4) they conform to the promises or affirmations of fact made on the container or label.
- 48. The fact that the Nissan Versa was previously involved in a severe accident that caused massive structural damage constitutes a breach of the implied warranty of merchantability because the Nissan Versa (1) would not pass without objection in the trade under the contract description, (2) was not fit for the ordinary purposes for which such goods are used, (3) was not adequately contained, packaged, and labeled, and (4) did not conform to the promises or affirmations of fact made on the container or label.
- 49. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of the Nissan Versa, and are entitled to rescind the purchase contract and to restitution of all money paid towards the purchase contract.
- 50. Plaintiffs have been proximately damaged by the Dealer's failure to comply with its obligations under the implied warranty.
- 51. Plaintiffs are entitled to the remedies provided in California Civil Code section 1794, including his attorney's fees, costs, and expenses.

### FIFTH CAUSE OF ACTION

# **Unfair Competition**

52. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1 through 51.

- 53. The Dealership's acts, omissions, misrepresentations, practices, and non-disclosures constitute unlawful, unfair, and fraudulent business acts and practices within the meaning of California Business & Professions Code Sections 17200 et seq.
- 54. The Dealership has engaged in "unlawful" business acts and practices by:
  (1) misrepresenting the mechanical condition of vehicles that it sells to the public; (2) concealing and failing to disclose known accident damage; (3) representing that automobiles are "better than certified" when those vehicle have frame damage; and (4) advertising that vehicles are "better than certified" without providing buyers with copies of such vehicles' inspection reports. These acts and practices were intended to and did violate California Civil Code Section 1709 et seq., the CLRA, Vehicle Code Section 1713.18., and the Song-Beverly Consumer Warranty Act.
- 55. The Dealership has also engaged in "fraudulent" business acts or practices in that the representations and omissions of material fact described above have a tendency and likelihood to deceive lessees of these vehicles and the general public.
- 56. The Dealership has also engaged in "unfair" business acts or practices in that the justification for selling and leasing vehicles based on the misrepresentations and omissions of material fact delineated above is outweighed by the gravity of the resulting harm, particularly considering the available alternatives, and offends public policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury to consumers.
- 57. The above described unlawful, fraudulent, or unfair business acts and practices conducted by the Dealership continue to this day and present a threat to Plaintiffs and the general public in that the Dealership has failed to publicly acknowledge the wrongfulness of its actions and provide full equitable injunctive and monetary relief as required by the statute.

58. Pursuant to California Business & Professions Code Section 17203, Plaintiffs seek an order of this Court requiring the Dealership to immediately cease such acts of unfair competition and enjoining the Dealership from continuing to conduct business via the unlawful, fraudulent, and/or unfair business acts and practices set forth in this Complaint and from failing to fully disclose the true nature of their misrepresentations, and ordering the Dealership to engage in a corrective notice and advertising campaign. Plaintiffs additionally request an order from the Court requiring that the Dealership provide complete equitable monetary relief so as to prevent the Dealership from benefitting from the practices that constitute unfair competition or the use or employment of any monies resulting from the lease of these vehicles, including requiring the payment of restitution of any monies as may be necessary to restore to any member of the general public any money or property which may have been acquired by means of such acts of unfair competition.

## PRAYER FOR RELIEF

Plaintiffs pray for judgment as follows as appropriate for the particular causes of action:

- 1. For the declaratory, equitable, and/or injunctive relief as requested above;
- 2. For rescission and restitution of \$23,061.20;
- 3. For general damages of \$7,500;
- 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

1	7. For such other and	further relief as the Court deems just and proper under
2	the circumstances.	
3	the off-carrier	
4		LAW OFFICE OF MICHAEL R. VACHON, ESQ. Attorney for Plaintiffs Lazaro Cruz & Paulina Cruz
5		Attorney for Plaintiffs Lazaro Cruz & Paulina Cruz
6	Date: August 7, 2012	Michael R. Vachon, Esq.
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