

**ORIGINAL FILED**

FEB 17 2012

**LOS ANGELES  
SUPERIOR COURT**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – EAST DISTRICT  
POMONA COURTHOUSE SOUTH

ENRIQUE CERVANTES, an individual,

Plaintiff,

v.

WEST COVINA TOYOTA, a business  
entity, form unknown;  
TOYOTA MOTOR CREDIT  
CORPORATION, a California  
corporation; and  
DOES 1 through 75,

Defendants.

Case No.: **K C 0 6 3 1 7 2**

COMPLAINT FOR:

1. VIOLATION OF AUTOMOBILE SALES FINANCE ACT;
2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY); AND
3. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200)

**CASE ASSIGNED FOR  
ALL PURPOSES TO  
JUDGE SALVATORE SIRNA  
DEPT. G**

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1           10. The First Purchase Contract contained a provision that gave the  
2 Dealership the option of cancelling the contract if the Dealership was unable to assign  
3 the First Purchase Contract to a suitable lender.

4           11. On or about September 20, 2010, after returning from an out-of-country  
5 trip, Plaintiff discovered that the Dealership had sent him a "Notice of Election to  
6 Cancel" his purchase of the Toyota Tacoma. The Notice of Election to Cancel was  
7 purportedly dated September 14, 2010, and stated that the Dealership was thereby  
8 electing to cancel and rescind the sale of the Toyota Tacoma to Plaintiff due to the  
9 Dealership's inability to assign the First Purchase Contract to a suitable lender. The  
10 Notice of Election to Cancel effectively canceled the First Purchase Contract.

11           12. Because the Dealership canceled the First Purchase Contract and  
12 rescinded his purchase of the Toyota Tacoma, Plaintiff thereafter returned to the  
13 Dealership with the Toyota Tacoma.  
14

15           13. While Plaintiff was at the Dealership, the Dealer and Plaintiff reached a  
16 new agreement for Plaintiff's purchase of the Toyota Tacoma, which involved an  
17 increased annual percentage rate ("APR") of 8.95%. The Dealership prepared a retail  
18 installment sale contract for Plaintiff's purchase of the Toyota Tacoma, and presented it  
19 to Plaintiff for his signature (hereafter the "Second Purchase Contract"). The Dealership  
20 represented to Plaintiff both orally and in writing that the Second Purchase Contract  
21 memorialized their agreement for the sale of the Toyota Tacoma at an APR of 8.95%.  
22 Plaintiff and the Dealership both signed the Second Purchase Contract, and Plaintiff  
23 again took delivery of the Toyota Tacoma.  
24

25           14. In preparing the Second Purchase Contract, the Dealership falsely dated it  
26 as of September 4, 2010, even though that was not the actual date on which the parties  
27 agreed to and signed the Second Purchase Contract.  
28

1           15. The Dealership represented to Plaintiff both orally and in writing (in  
2 Second Purchase Contract) that the Second Purchase Contract was a legally enforceable  
3 agreement that required Plaintiff to make the payments listed therein.

4           16. Under applicable law, the Dealership was required to disclose to Plaintiff  
5 the applicable "APR" and the Finance Charge incurred under the Second Purchase  
6 Contract. The Dealership represented to Plaintiff both orally and in writing (in the  
7 Second Purchase Contract) that: (1) the "APR" for the Second Purchase Contract was  
8 8.95%; and (2) the Finance Charge that Plaintiff would pay under the Second Purchase  
9 Contract was \$8,386.50.

10           17. In reliance upon the Dealership's representations, Plaintiff made  
11 payments required by the Second Purchase Contract towards the Toyota Tacoma.

12           18. As a result of the Dealership's backdating of the Second Purchase  
13 Contract, the Dealership's representations to Plaintiff regarding the APR and Finance  
14 Charge were false.

15           19. The Dealership assigned the Second Purchase Contract to Defendant  
16 Toyota Motor Credit Corporation.

17           20. The Dealership knew that backdating the Second Purchase Contract would  
18 cause Plaintiff to pay illegal, undisclosed pre-consummation interest charges, and  
19 backdated the Second Purchase Contract with the intention of tricking Plaintiff into  
20 paying illegal, undisclosed, pre-consummation interest charges. The Dealership's  
21 deceitful conduct was fraudulent, malicious, and oppressive.

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1 FIRST CAUSE OF ACTION

2 Violation of Automobile Sales Finance Act

3 (Against all Defendants)

4 21. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1  
5 through 20.

6 22. The purchase contract for the Toyota Tacoma is a conditional sale contract  
7 subject to the ASFA.

8 23. The Dealership is a "seller" under the ASFA.

9 24. Plaintiff is a "buyer" under the ASFA.

10 25. The Toyota Tacoma is a "motor vehicle" under the ASFA.

11 26. Civil Code Section 2982 requires all motor vehicle purchase contracts that  
12 are subject to the ASFA to accurately itemize the amount of all finance charges being  
13 paid by the buyer. The Dealership violated Civil Code Section 2982 by backdating the  
14 Second Purchase Contract, thereby causing Plaintiff to be charged for undisclosed, pre-  
15 consummation interest, which amounts to illegal finance charges.

16 27. Civil Code Section 2981.9 requires that all motor vehicle purchase  
17 contracts subject to the ASFA contain in a single document all of the agreements  
18 between the buyer and the seller with respect to the total cost and terms of payment for  
19 the motor vehicle, including any promissory notes or other evidence of indebtedness  
20 (hereafter referred to as the "Single Document Rule"). The Dealership violated the  
21 Single Document Rule by backdating the Second Purchase Contract. Without the Notice  
22 of Election to Cancel form and additional information, anyone reviewing the First  
23 Purchase Contract and the Second Purchase Contract would have no means of  
24 determining: (1) the operative contract; (2) the date the parties consummated the  
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1 transaction, and thus, the correct annual percentage rate; or (3) that Plaintiff  
2 improperly paid finance charges when no contract existed.

3 28. The Dealership's violations of the Single Document Rule and Civil Code  
4 Section 2982 were intentional.

5 29. Because of the Dealership's failure to comply with the Single Document  
6 Rule and Civil Code Section 2982 the purchase contract for the Toyota Tacoma is not  
7 enforceable, and Plaintiff is entitled to rescission of the contract and restitution of all  
8 amounts paid towards the Toyota Tacoma purchase.

9 30. Plaintiff is also entitled to incidental and consequential damages, and his  
10 attorney's fees, costs, and out-of-pocket expenses. The Dealership's conduct was  
11 malicious, oppressive, and fraudulent. Accordingly, Plaintiff is also entitled to punitive  
12 damages.  
13

#### 14 SECOND CAUSE OF ACTION

#### 15 Consumers Legal Remedies Act - Injunctive Relief Only

16 (Against the Dealership and Does 1 through 25)  
17

18 31. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1  
19 through 30.

20 32. The Toyota Tacoma constitutes "goods" bought for use primarily for  
21 personal, family or household purposes.

22 33. Plaintiff is a "consumer" under the CLRA.  
23

24 34. The advertisement and the sale of the Toyota Tacoma to Plaintiff, as well  
25 as the performance of that contract, are "transactions" under the CLRA.

26 35. The CLRA prohibits numerous unlawful business acts, including (i)  
27 representing that a transaction confers or involves rights, remedies, or obligations which  
28 it does not have or involve, or which are prohibited by law; (ii) representing that the

1 subject of a transaction has been supplied in accordance with a previous representation  
2 when it has not; and (iii) inserting an unconscionable provision into a contract. The  
3 CLRA also prohibits omissions where there exists an independent legal requirement to  
4 make a statement or disclosure.

5  
6 36. The Dealership violated the CLRA by: (1) backdating the Second Purchase  
7 Contract and failing to disclose that it required Plaintiff to pay unearned and illegal pre-  
8 consummation interest; (2) misrepresenting the APR and Finance Charge that Plaintiff  
9 was paying under the Second Purchase Contract; (3) misrepresenting that the Second  
10 Purchase Contract memorialized Plaintiff's and the Dealership's prior agreement for the  
11 sale of the Toyota Tacoma at an APR of 8.95%; (4) misrepresenting that Plaintiff had  
12 entered into a binding contract for the purchase of the Toyota Tacoma under which he  
13 was obligated to make payments, when in fact the Second Purchase Contract was and is  
14 unenforceable because of the Dealership's ASFA violations; and (5) failing to comply  
15 with the Single Document Rule and provide Plaintiff with a single purchase contract  
16 accurately stating all of the terms of payment for the Toyota Tacoma.

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

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



1         39. Under the CLRA, Plaintiff is entitled to a permanent injunction  
2 prohibiting practices that violate the CLRA.

3         40. The Dealership has an illegal pattern and practice of: (1) backdating  
4 vehicle purchase contracts and failing to disclose that such contracts require consumers  
5 to pay unearned and illegal pre-consummation interest; (2) misrepresenting the APRs,  
6 Amounts Financed, and Finance Charges that consumers are paying under backdated  
7 vehicle purchase contracts; (3) misrepresenting that backdated vehicle purchase  
8 contracts memorialize the Dealership's and car buyers prior agreements to purchase  
9 vehicles; (4) misrepresenting that consumers have entered into a binding contracts for  
10 the purchase of vehicles under which they are obligated to make payments; and (5)  
11 failing to comply with the Single Document Rule.  
12

13         41. Plaintiff is entitled to a permanent injunction that compels the Dealership  
14 to notify all consumers who have been victims of the above-described illegal conduct,  
15 and enjoining the Dealership from such further acts of illegal conduct.  
16

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

18                                 THIRD CAUSE OF ACTION

19   Unfair Competition

20                                 (Against the Dealership and Does 1 through 25)

21         43. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1  
22 through 42.  
23

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

27         45. The Dealership has engaged in "unlawful" business acts and practices by:  
28 (1) backdating vehicle purchase contracts and failing to disclose that such contracts

1 require consumers to pay unearned and illegal pre-consummation interest; (2)  
2 misrepresenting the APRs, Amounts Financed, and Finance Charges that consumers are  
3 paying under backdated vehicle purchase contracts; (3) misrepresenting that backdated  
4 vehicle purchase contracts memorialize the Dealership's and car buyers prior  
5 agreements to purchase vehicles; (4) misrepresenting that consumers have entered into  
6 a binding contracts for the purchase of vehicles under which they are obligated to make  
7 payments; and (5) failing to comply with the Single Document Rule. These acts and  
8 practices were intended to and did violate the ASFA, the CLRA, and Civil Code Section  
9 1709.  
10

11 46. The Dealership also engaged in "fraudulent" business acts or practices in  
12 that the representations and omissions of material fact described above have a tendency  
13 and likelihood to deceive the general public.  
14

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

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

26 49. Pursuant to California Business & Professions Code Section 17203,  
27 Plaintiff is entitled to and seeks a permanent injunction from this Court requiring the  
28 Dealership to immediately cease such acts of unfair competition and enjoining the

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

13 Plaintiff prays for judgment as follows as appropriate for the particular causes of  
14 action:  
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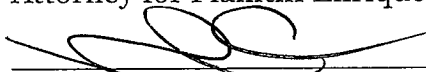
- 16 1. For permanent injunctive relief as requested herein;
- 17 2. For the declaratory and/or equitable relief as requested herein;
- 18 3. For rescission of Plaintiff's purchase contract for the Toyota Tacoma, and  
19 restitution, as requested above;
- 20 4. For general damages of \$42,260.64 as requested herein, or such other  
21 amount as proven at trial;
- 22 5. For punitive damages of \$126,000 as requested herein, or such other  
23 amount as proven at trial;
- 24 6. For pre judgment interest;
- 25 7. For attorney's fees, costs of suit, and out-of-pocket litigation-related  
26 expenses; and  
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8. 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 Enrique Cervantes

Date: February 16, 2012

  
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Michael R. Vachon, Esq.