

1 LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
2 Michael R. Vachon, Esq. (SBN 206447)  
3 16935 West Bernardo Drive, Suite 175  
4 San Diego, California 92127  
5 Tel.: (858) 674-4100  
6 Fax: (858) 674-4222

7  
8 Attorney for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO - EAST COUNTY REGIONAL CENTER

11 ROBERT HANS, an individual; and  
12 MINERVA HANS, an individual;

13 Plaintiffs,

14 v.

15 JKC PALM SPRINGS AUTOMOTIVE,  
16 INC., a California corporation; and  
17 DOES 1 through 75,

18 Defendants.

Case No.: 37-2011-00071395

**FIRST AMENDED COMPLAINT FOR:**

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



1 El Cajon” at 541 North Johnson Avenue, El Cajon, California (hereafter referred to as  
2 the “Dealership” or the “Dealer”).

3 6. Plaintiffs do not know the true names and capacities, whether corporate,  
4 partnership, associate, individual, or otherwise, of defendants sued herein as Does 1  
5 through 75, inclusive, and thus name them under the provisions of Section 474 of the  
6 California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner  
7 responsible for the acts set forth herein, and are legally liable to Plaintiffs. Plaintiffs will  
8 set forth the true names of the fictitiously-named defendants together with appropriate  
9 charging allegations when ascertained.  
10

11 7. All acts of corporate employees were authorized or ratified by an officer,  
12 director, or managing agent of the corporate employer.  
13

14 8. Each defendant (whether actually or fictitiously-named herein) was the  
15 principal, agent, alter-ego, co-conspirator, or employee of each other defendant and in  
16 acting as such principal or within the course and scope of such employment, agency, or  
17 conspiracy, took some part in the acts and omissions hereinafter set forth by reason of  
18 which each defendant is liable to Plaintiffs.

19 FACTS

20 9. Plaintiffs allege as follows, on information and belief, formed after an  
21 inquiry reasonable under the circumstances:  
22

23 10. On or about January 11, 2011, Plaintiffs visited the Dealership shopping for  
24 a vehicle. The Dealership showed them that certain 2011 Kia Sedona with vehicle  
25 identification number KNDMG4C73B6384840 (the “Kia Sedona”).

26 11. Plaintiffs thereafter informed the Dealership that they wished to purchase  
27 the Kia Sedona. However, the Dealership soon discovered that Plaintiffs were unable to  
28 and could not make an immediate down payment in an amount that would have enabled

1 the Dealership to find a lender to finance the transaction. Accordingly, in order to trick  
2 a lender into financing the Kia Sedona's purchase, the Dealership told Plaintiffs that  
3 they could purchase the Kia Sedona and immediately take delivery of that vehicle if they  
4 agreed to make a \$1,500 down payment to the Dealership several weeks later. In  
5 response, Plaintiffs agreed to pay \$1,500 to the Dealership on February 5, 2011. The  
6 effect of this agreement was that Plaintiffs were agreeing to make a deferred down  
7 payment towards the purchases of the Kia Sedona.  
8

9 12. The Dealership required that Plaintiffs write and immediately give to the  
10 Dealership a check for the \$1,500 which Plaintiffs had agreed to pay on February 5,  
11 2011. The Dealership also prepared a document entitled "Hold Check(s) And/Or  
12 Checkwriter Agreement," which stated that the Dealership would hold and not cash  
13 Plaintiffs' \$1,500 check until February 5, 2011. The Dealership and Plaintiffs all signed  
14 this agreement.  
15

16 13. The Dealership prepared the retail installment sale contract for the sale of  
17 the Kia Sedona and presented it to Plaintiffs for them to sign, telling Plaintiffs that it  
18 accurately memorialized their agreement to purchase the Kia Sedona. Relying on these  
19 representations, Plaintiffs signed the contract.  
20

21 14. The Dealership represented that the Kia Sedona's retail installment sale  
22 contract was a legally enforceable agreement, which required Plaintiffs to make the  
23 (undisclosed) deferred down payment and the monthly payments stated therein.  
24 Reasonably relying on this misrepresentation, Plaintiffs made the deferred down  
25 payment and monthly installment payments under the contract.  
26

27 15. In preparing the retail installment sale contract for the Kia Sedona, the  
28 Dealership intentionally and falsely stated therein that Plaintiffs were making an  
immediate down payment of \$1,500, and not making any deferred down payments.





1           33. The CLRA prohibits numerous unlawful business acts, including: (i)  
2 representing that a transaction confers or involves rights, remedies, or obligations which  
3 it does not have or involve, or which are prohibited by law; (ii) representing that the  
4 subject of a transaction has been supplied in accordance with a previous representation  
5 when it has not; and (iii) inserting an unconscionable provision into a contract. The  
6 CLRA also prohibits omissions where there exists an independent legal requirement to  
7 make a statement or disclosure.  
8

9           34. The Dealership violated the CLRA by: (1) misrepresenting the amount of  
10 Plaintiffs' down payment and deferred down payment in the Kia Sedona purchase  
11 contract, and failing to set forth therein the deadline for Plaintiffs' deferred down  
12 payment; (2) violating the Single Document Rule; (3) misrepresenting that the Kia  
13 Sedona's retail installment sale contract accurately memorialized their agreement, when  
14 it did not; (4) misrepresenting that the Kia Sedona's retail installment sale contract was  
15 legally enforceable and that Plaintiffs were required to make the deferred down  
16 payment and the monthly installment payments set forth therein; (5) omitting and  
17 failing to disclose that the retail installment sale contract for the Kia Sedona did not  
18 accurately memorialize Plaintiffs' agreement to purchase that vehicle; and (6) omitting  
19 and failing to disclose that the Kia Sedona's retail installment sale contract was  
20 unenforceable and that Plaintiffs were not required to make any payments thereunder.  
21  
22

23           **35. Plaintiffs sent the Dealership, via regular mail and certified**  
24 **mail, return receipt requested, a Consumer Legal Remedies Act notification**  
25 **and demand letter at least 30 days prior to filing this Complaint.** The notice  
26 letter sets forth the relevant facts, notifies the Dealership of its CLRA violations, and  
27 requests that the Dealership promptly remedy those violations.  
28





1           43.    The Dealership has engaged in “unlawful” business acts and practices by:  
2 (1) misrepresenting the amount and timing of down payments and deferred down  
3 payments; and (2) violating the Single Document Rule. These acts and practices were  
4 intended to and did violate the ASFA and the CLRA.

5           44.    The Dealership also engaged in “fraudulent” business acts or practices in  
6 that the representations and omissions of material fact described above have a tendency  
7 and likelihood to deceive the general public.

8           45.    The Dealership also engaged in “unfair” business acts or practices in that  
9 the justification for selling vehicles based on the misrepresentations and omissions of  
10 material fact delineated above is outweighed by the gravity of the resulting harm,  
11 particularly considering the available alternatives, and offends public policy, is immoral,  
12 unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

13           46.    The above described unlawful, fraudulent, or unfair business acts and  
14 practices conducted by the Dealership continue to this day and present a threat to  
15 Plaintiffs and the general public in that the Dealership has failed to publicly  
16 acknowledge the wrongfulness of its actions and provide full equitable injunctive and  
17 monetary relief as required by law.

18           47.    Pursuant to California Business & Professions Code Section 17203,  
19 Plaintiffs are entitled to and seek a permanent injunction from this Court requiring the  
20 Dealership to immediately cease such acts of unfair competition and enjoining the  
21 Dealership from continuing to conduct business via the unlawful, fraudulent, and/or  
22 unfair business acts and practices set forth in this Complaint and from failing to fully  
23 disclose the true nature of its misrepresentations, and ordering the Dealership to engage  
24 in a corrective notice and advertising campaign. Plaintiffs additionally request an order  
25 from the Court requiring that the Dealership provide complete equitable monetary relief  
26  
27  
28

1 so as to prevent the Dealership from benefitting from the practices that constitute unfair  
2 competition, including requiring the payment of restitution of any monies as may be  
3 necessary to restore to any person any money or property which may have been  
4 acquired by means of such acts of unfair competition.

5  
6 PRAYER FOR RELIEF

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

- 9 1. For permanent injunctive relief as permitted under the ASFA, the CLRA,  
10 and Business & Professions Code Section 17203;
- 11 2. For the declaratory and/or equitable relief under the ASFA, the CLRA, and  
12 Business & Professions Code Section 17203;
- 13 3. For rescission of Plaintiff's purchase contract for the Kia Sedona, and  
14 restitution, as requested above;
- 15 4. For incidental, consequential, and actual damages of \$46,641, or such  
16 other amount as determined at trial;
- 17 5. **For general and punitive damages under the CLRA in an**  
18 **amount to be proven at trial;**
- 19 6. For pre judgment interest;
- 20 7. For attorney's fees, costs of suit, and out-of-pocket litigation expenses; and  
21 8. For such other and further relief as the Court deems just and proper under  
22 the circumstances.
- 23
- 24

25 LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
26 Attorney for Plaintiffs Robert & Minerva Hans

27 Date: January 18, 2012

28 \_\_\_\_\_  
Michael R. Vachon, Esq.