

JUN 13 2012

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By T. Rhodes, Deputy

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CASE ASSIGNED FOR  
ALL PURPOSES TO  
Judge CARY NISHIMOTO  
Dept. E Div. \_\_\_\_\_

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES – SOUTHWEST DISTRICT  
10 TORRANCE COURTHOUSE

11 CARINA MEDINA, an individual,

12 Plaintiff,

13 v.

14 FINANCE AUTO SALES,  
15 INCORPORATED, a California  
16 corporation; and  
17 DOES 1 through 75,

18 Defendants.

Case No.:

YC067285

COMPLAINT FOR:

1. BREACH OF IMPLIED WARRANTY UNDER SONG-BEVERLY CONSUMER WARRANTY ACT;
2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT [INJUNCTIVE RELIEF ONLY];
3. INTENTIONAL MISREPRESENTATION;
4. NEGLIGENT MISREPRESENTATION

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SUMMARY

1. This lawsuit arises out of a consumer's purchase of a used 2006 Jaguar S-Type from Defendant New Cars, Inc. (a used car dealership). The Dealership misrepresented to Plaintiff that the Jaguar S-Type had been inspected, and was in perfect mechanical condition. However, as it turned out, the Jaguar S-Type had several pre-existing defects including (but not limited to) a defect that causes the vehicle's check engine light to illuminate and a defect that prevents the vehicle from properly shifting gears. These defects effectively prevent Plaintiff from being able to depend upon the vehicle for safe, reliable transportation.

2. The Dealership's misrepresentations amounts to common law fraud, and violation of the Consumers Legal Remedies Act (Civil Code § 1750 *et seq.*) (the "CLRA"). The Dealership also breached the applicable implied warranty of merchantability.

PARTIES

3. Plaintiff Carina Medina is an individual residing in Ontario, California.

4. Defendant Finance Auto Sales, Incorporated (hereafter the "Dealership" or the "Dealer") is a California corporation that at all material times has done business as a used-car dealership at 11604 Prairie Avenue, Hawthorne, 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 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 Plaintiff. Plaintiff will set forth the true names of the fictitiously-named defendants together with appropriate charging allegations when ascertained.

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

3 FACTS  
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5 7. Plaintiff alleges as follows, on information and belief, formed after an  
6 inquiry reasonable under the circumstances:

7 8. On or about March 23, 2012, Plaintiff visited the Dealer shopping for a  
8 vehicle. The Dealer showed Plaintiff that certain 2006 Jaguar S-Type with vehicle  
9 identification number SAJWAO1AX6FN69914 (the "Jaguar S-Type").

10 9. Plaintiff asked if the Jaguar S-Type was in good mechanical condition, and  
11 whether or not it had any mechanical problems. The Dealership's representative who  
12 dealt with Plaintiff told her that the Jaguar S-Type was in excellent mechanical  
13 condition, and had no mechanical problems whatsoever.  
14

15 10. Contrary to its representations, the Dealership knew that the Jaguar S-  
16 Type had several material pre-existing defects, including (but not limited to) a defect  
17 that causes its check engine warning light to illuminate and a defect that prevents the  
18 vehicle from properly shifting gears. These defects effectively prevents safe, reliable use  
19 of the Jaguar S-Type.

20 11. Relying upon the Dealership's representations, Plaintiff agreed to  
21 purchase the Jaguar S-Type, and did so, without knowing that it had material pre-  
22 existing defects. Plaintiff would not have purchased the Jaguar S-Type but for the  
23 Dealership's misrepresentations about the vehicle's mechanical condition.  
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25 12. Plaintiff's purchase of the Jaguar S-Type was accompanied by the  
26 Dealership's 30-day express warranty, and also by the implied warranty of  
27 merchantability.  
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1           13.     The Dealership's concealment and failure to disclose the Jaguar S-Type's  
2 pre-existing defects was malicious, fraudulent, and oppressive.

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4    FIRST CAUSE OF ACTION

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

6           14.     Plaintiff incorporates by reference the allegations in paragraphs 1 through  
7 13.

8           15.     Plaintiff's purchase of the Jaguar S-Type was accompanied by the Dealer's  
9 implied warranty of merchantability.

10           16.     The implied warranty of merchantability means and includes that the  
11 goods will comply with each of the following requirements: (1) they would pass without  
12 objection in the trade under the contract description; (2) they are fit for the ordinary  
13 purposes for which such goods are used; (3) they are adequately contained, packaged,  
14 and labeled; and (4) they conform to the promises or affirmations of fact made on the  
15 container or label.  
16

17           17.     The fact that the Jaguar S-Type had several pre-existing material defects  
18 constitute breaches of the implied warranty of merchantability because the Jaguar S-  
19 Type (1) would not pass without objection in the trade under the contract description,  
20 (2) was not fit for the ordinary purposes for which such goods are used, (3) was not  
21 adequately contained, packaged, and labeled, and (4) did not conform to the promises  
22 or affirmations of fact made on the container or label.  
23

24           18.     Plaintiff has rightfully rejected and/or justifiably revoked acceptance of  
25 the Jaguar S-Type, and is entitled to rescind the purchase contract and to restitution of  
26 all money paid towards the purchase contract.

27           19.     Plaintiff has been proximately damaged by the Dealer's failure to comply  
28 with its obligations under the implied warranty.



1           27.    The Dealership violated the CLRA by: (1) misrepresenting the mechanical  
2 condition of the Jaguar S-Type; and (2) concealing and failing to disclose that it had  
3 numerous material mechanical defects.

4           28.    Plaintiff is concurrently serving the Dealership with a CLRA notification  
5 and demand letter via certified mail, return receipt requested. The notice letter sets  
6 forth the relevant facts, notifies the Dealership of its CLRA violations, and requests that  
7 the Dealership promptly remedy those violations.  
8

9           29.    Under the CLRA, a plaintiff may without prior notification file a complaint  
10 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant  
11 does not remedy the CLRA violations within 30 days of notification, the plaintiff may  
12 amend her or his CLRA causes of action without leave of court to add claims for  
13 damages. Plaintiff will amend this complaint to add damages claims if the Dealership  
14 does not remedy its violations within the statutory period.  
15

16           30.    Under the CLRA, Plaintiff is entitled to a permanent injunction  
17 prohibiting practices that violate the CLRA.

18           31.    The Dealership has an illegal pattern and practice of: (1) misrepresenting  
19 that vehicles have been thoroughly inspected and are in excellent mechanical condition  
20 when they are not; and (2) concealing and failing to disclose known mechanical defects  
21 in vehicles that it sells.  
22

23           32.    Plaintiff is entitled to a permanent injunction that compels the Dealership  
24 to notify all consumers who have been victims of the above-described illegal conduct,  
25 and enjoining the Dealership from such further acts of illegal conduct.

26           33.    Plaintiff is also entitled to recover her attorneys' fees, costs, and expenses.  
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1 THIRD CAUSE OF ACTION

2 Intentional Misrepresentation

3 34. Plaintiff incorporates by reference the allegations in Paragraphs 1 through  
4 33.

5 35. At the time of purchase, and afterwards, the Dealership made the  
6 misrepresentations as set forth above. These misrepresentations included, but are not  
7 limited to the following: (1) that the Jaguar S-Type was in excellent condition; and (2)  
8 that the Jaguar S-Type did not have any mechanical defects or problems.

9 36. The Dealership omitted from the statements it made material facts, the  
10 disclosure of which was necessary, (1) in order to make its other statements not  
11 misleading; (2) because they were known materials facts; (3) because the Dealership  
12 knew that it had exclusive knowledge that was not accessible to Plaintiff; and (4)  
13 because it was reasonable for Plaintiff to expect disclosure of such facts. These  
14 omissions include, but are not limited to, that the Jaguar S-Type had several material  
15 mechanical defects.

16 37. At all times the Dealership either had actual or constructive notice of the  
17 true facts but nonetheless intentionally or recklessly concealed these facts from Plaintiff.

18 38. The Dealership made these representations and omitted material facts  
19 with the intent to defraud Plaintiff and to induce Plaintiff to purchase the Jaguar S-Type  
20 and pay an inflated sales price. At the time Plaintiff purchased the Jaguar S-Type she  
21 did not know, or have reason to know, that the Dealership was making false and  
22 misleading representations and had omitted material facts. Plaintiff acted in justifiable  
23 reliance upon the truth of the representations which misled her as to the nature and  
24 extent of the facts concealed. Plaintiff was justified in her reliance, as the Dealership  
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1 held itself out as professionals in the automotive sales industry, and Plaintiff had no  
2 reason to doubt such representations.

3 39. As a direct and proximate result of the Dealer's fraudulent representations  
4 and omissions of material facts, Plaintiff suffered damages, including actual, general,  
5 consequential and incidental damages according to proof at trial.  
6

7 40. Plaintiff is also entitled to punitive damages.

8 41. The Dealership committed fraud in the inducement of the purchase  
9 contract for the Jaguar S-Type, and Plaintiff is therefore entitled to rescission and  
10 restitution in an amount according to proof at trial.

11 FOURTH CAUSE OF ACTION

12 Negligent Misrepresentation

13 42. Plaintiff incorporates by reference the allegations in paragraphs 1 through  
14 41.  
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16 43. As an alternative to Plaintiff's cause of action for Intentional  
17 Misrepresentation, Plaintiff alleges that the Dealer's misrepresentations were made  
18 negligently, if not intentionally.

19 44. The representations made by the Dealership were not true.

20 45. Regardless of its actual belief, the Dealership made the representations  
21 without any reasonable grounds for believing them to be true.  
22

23 46. The Dealership failed to exercise due care in ascertaining the accuracy of  
24 the representations made to Plaintiff.

25 47. The Dealership made the representations for the purpose of inducing  
26 Plaintiff to rely upon them, and to act or refrain from acting in reliance thereon.  
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1 48. Plaintiff was unaware of the falsity of the representations and acted in  
2 reliance upon the truth of those representations, and was justified in relying upon those  
3 representations.

4 49. As a direct and proximate result of the Dealer's negligent  
5 misrepresentations of material fact, Plaintiff suffered damages, including actual,  
6 consequential, and incidental damages according to proof of trial.

7  
8 50. Plaintiff is also entitled to punitive damages.

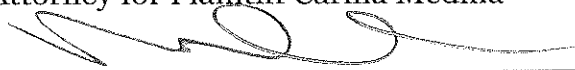
9 51. Plaintiff hereby alleges fraud in the inducement to enter into the sales  
10 contract, and therefore is entitled to rescission and restitution in an amount according  
11 to proof at trial.

12 PRAYER FOR RELIEF

13 Plaintiff prays for the following

- 14 1. For injunctive, declaratory, and/or equitable relief as permitted under the  
15 CLRA and Business & Professions Code Section 17203;
- 16 2. For rescission of the vehicle purchase contract for the Jaguar S-Type, and  
17 restitution in the amount of \$26,383.35;
- 18 3. For general damages of \$7,500;
- 19 4. For punitive damages;
- 20 5. For pre-judgment interest;
- 21 6. For attorney's fees, costs of suit, and out-of-pocket litigation expenses; and
- 22 7. For such other and further relief as the Court deems just and proper under  
23 the circumstances.
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26 LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
27 Attorney for Plaintiff Carina Medina

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Michael R. Vachon, Esq.

Date: June 6, 2012