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CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – CENTRAL DIVISION

10
11 SARAH CASTANEDA, an individual,
12 Plaintiff,

13 v.

14 GMG MOTORS, INC., a California
15 corporation; and
16 DOES 1 through 75,
17 Defendants.

Case No.: 37-2013-00042773-CU-BT-CTL

COMPLAINT FOR:

1. VIOLATION OF AUTOMOBILE SALES FINANCE ACT;
2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY); AND
3. UNFAIR COMPETITION

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SUMMARY

1. This lawsuit arises out of Plaintiff's purchase of a used BMW 325i from Defendant GMG Motors, Inc. (a car dealership that does business under the fictitious business name "BMW of San Diego").

2. BMW of San Diego violated California's Automobile Sales Finance Act (Civil Code § 2981 *et seq.*) (the "ASFA") by falsifying the amounts of Plaintiff's down payment and deferred down payment in Plaintiff's purchase contract for the BMW 325i. BMW of San Diego did this in order (1) to trick a lender into financing Plaintiff's purchase of that vehicle, and (2) to immediately obtain Plaintiff's signature on a vehicle purchase contract (before she changed her mind) and trick her into believing that she had signed a legally-enforceable contract. Plaintiff would not have purchased the BMW 325i but for BMW of San Diego's illegal conduct.

3. BMW of San Diego's falsification of the down payment amounts in the purchase contract violates the ASFA, the Consumers Legal Remedies Act (Civil Code §1750 *et seq.*) (the "CLRA"), and amounts to unfair competition under Business & Professions Code Section 17200 *et seq.* (the "UCL"). Plaintiff is entitled to rescind the purchase of the BMW 325i (which would not have occurred but for BMW of San Diego's illegal conduct), and to obtain restitution of all the money that Plaintiff paid towards that contract.

4. Because BMW of San Diego has an illegal business practice of falsifying down payment amounts in order to trick lenders into financing transactions, and to trick consumers into believing that they signed legally-enforceable contracts, Plaintiff is also entitled, under the CLRA and the UCL, to an injunction prohibiting BMW of San Diego from engaging in this practice in the future.

1 PARTIES

2 5. Plaintiff Sarah Castaneda is an individual residing in San Diego,
3 California.

4 6. Defendant GMG Motors, Inc. is a California corporation that does
5 business as a car dealership under the fictitious business name "BMW of San Diego" at
6 5050 Kearny Mesa Road, San Diego, California.

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

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

18 FACTS

19 9. Plaintiff alleges as follows, on information and belief, formed after an
20 inquiry reasonable under the circumstances:

21 10. On or about March 17, 2011, Plaintiff visited BMW of San Diego's
22 dealership lot, and was shown that certain 2006 BMW 325i with vehicle identification
23 number WBAVB135X6KX67703 (the "BMW 325i"). Plaintiff expressed an interest in
24 purchasing the BMW 325i; however, she was, on March 17, 2011, unable to put down
25 any money at all as a down payment, and she informed BMW of San Diego that this was
26 the case.
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1 11. BMW of San Diego ran Plaintiff's credit report, and discovered that
2 without a down payment Plaintiff would not qualify for financing to purchase the BMW
3 325i.

4 12. Accordingly, in order (1) to trick a lender into financing Plaintiff's
5 purchase of the BMW 325i, and (2) to immediately obtain Plaintiff's signature on a
6 purchase contract before she changed her mind, BMW of San Diego told Plaintiff that
7 she could purchase the BMW 325i and immediately take delivery of that vehicle if,
8 without making an immediate down payment, she agreed to later pay BMW of San
9 Diego a down payment of \$7,000. Plaintiff agreed, and the effect of this agreement was
10 that Plaintiff and BMW of San Diego were agreeing that Plaintiff would make no cash
11 down payment, but would make a deferred down payment in the amount of \$7,000.
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13 13. BMW of San Diego prepared a retail installment sale contract for
14 Plaintiff's purported purchase of the BMW 325i and presented it to Plaintiff for her
15 signature, telling Plaintiff that it accurately memorialized their agreement for the sale of
16 the BMW 325i. Relying on these representations, Plaintiff signed the contract.
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18 14. BMW of San Diego told Plaintiff that the BMW 325i's retail installment
19 sale contract was a legally enforceable agreement, which required Plaintiff to make the
20 payments listed therein, including the \$7,000 deferred down payment, and Plaintiff
21 drove away with the BMW 325i.
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23 15. When BMW of San Diego prepared Plaintiff's retail installment sale
24 contract for the BMW 325i, it intentionally and falsely stated therein that Plaintiff was
25 making a cash down payment of \$7,000, and not making any deferred down payments
26 – when in reality Plaintiff had not made any cash down payment, and had agreed to
27 make a deferred down payment of \$7,000.
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1 16. BMW of San Diego falsified the cash down payment and the deferred
2 down payment amounts in the purchase contract with the intention of (1) tricking a
3 lender into financing a vehicle purchase that it otherwise would not finance, and (2)
4 immediately obtaining Plaintiff's signature on a purchase contract so that it could fool
5 Plaintiff into thinking that she was legally obligated to purchase the BMW 325i, even if
6 she later changed her mind.

8 17. The day after Plaintiff had signed the contract and drove away with the
9 BMW 325i, she had second thoughts about purchasing such an expensive vehicle, but
10 relying on BMW of San Diego's representations believed that she had signed a binding
11 purchase contract, and was therefore legally obligated to make the \$7,000 deferred
12 down payment and the monthly payments listed in the contract. Relying on BMW of
13 San Diego's misrepresentations, Plaintiff later made the \$7,000 down payment and paid
14 other amounts purportedly due under the contract.

16 18. But for (1) BMW of San Diego's falsification of the down payment amounts
17 in the purchase contract, and (2) BMW of San Diego's misrepresentations that the
18 purchase contract was a legally-binding document that required Plaintiff to make the
19 \$7,000 deferred down payment and all of the monthly payments listed therein, Plaintiff
20 would never have qualified for financing, would never have purchased the BMW325i,
21 and would never have paid the \$7,000 deferred down payment or any other amounts
22 purportedly required under the contract.

24 FIRST CAUSE OF ACTION

25 Violation of Automobile Sales Finance Act

26 19. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
27 through 18.

1 20. The purchase contract for the BMW 325i is a conditional sale contract
2 subject to the ASFA.

3 21. BMW of San Diego is a "seller" under the ASFA.

4 22. Plaintiff is a "buyer" under the ASFA.

5 23. The BMW 325i is a "motor vehicle" under the ASFA.

6 24. Civil Code Section 2981.9 requires that all motor vehicle purchase
7 contracts subject to the ASFA contain in a single document all of the agreements
8 between the buyer and the seller with respect to the total cost and terms of payment for
9 the motor vehicle, including any promissory notes or other evidence of indebtedness
10 (hereafter referred to as the "Single Document Rule").

11 25. BMW of San Diego failed to comply with the Single Document Rule. Such
12 failures include, but are not limited to, the fact that the amount and due date for
13 Plaintiff's deferred down payment is not listed in the BMW 325i's purchase contract.
14

15 26. Civil Code Section 2982(a)(6) requires all motor vehicle purchase
16 contracts that are subject to the ASFA to separately and specifically itemize the amount
17 that the buyer is immediately paying as a cash down payment. Civil Code Section
18 2982(a)(6) also requires purchase contracts to separately and specifically itemize the
19 amount of any deferred down payments.
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21 27. BMW of San Diego violated Civil Code Section 2982. Such failures
22 include, but are not limited to, the fact that BMW of San Diego failed to correctly itemize
23 in the purchase contract the amount of Plaintiff's actual cash down payment and the
24 amount and due date of her agreed-upon deferred down payment.
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26 28. BMW of San Diego's violations of the Single Document Rule and Civil
27 Code Section 2982 were intentional.
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1 29. Because of BMW of San Diego's failure to comply with the Single
2 Document Rule and Civil Code Section 2982 the purchase contract for the BMW 325i is
3 not enforceable, and Plaintiff is entitled to rescission of the contract and restitution of
4 all amounts paid towards the BMW 325i purchase.

5 30. Plaintiff is also entitled to incidental and consequential damages, and her
6 attorney's fees, costs, and out-of-pocket expenses.

8 SECOND CAUSE OF ACTION

9 Consumers Legal Remedies Act - Injunctive Relief Only

10 31. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
11 through 30.

12 32. The BMW 325i constitutes "goods" bought for use primarily for personal,
13 family or household purposes.

14 33. Plaintiff is a "consumer" under the CLRA.

15 34. The advertisement and the sale of the BMW 325i to Plaintiff, as well as the
16 performance of that contract, are "transactions" under the CLRA.

17 35. The CLRA prohibits numerous unlawful business acts, including: (1)
18 representing that a transaction confers or involves rights, remedies, or obligations which
19 it does not have or involve, or which are prohibited by law; (2) representing that the
20 subject of a transaction has been supplied in accordance with a previous representation
21 when it has not; and (3) omitting and/or failing to make statements or disclosures that
22 are otherwise required by law.

23 36. BMW of San Diego violated the CLRA by: (1) misrepresenting the amount
24 of Plaintiff's down payment and deferred down payment in the BMW 325i's purchase
25 contract, and failing to set forth therein the amount and deadline for Plaintiff's deferred
26 down payment; (2) violating the Single Document Rule; (3) misrepresenting that the
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1 BMW 325i's retail installment sale contract accurately memorialized BMW of San
2 Diego's agreement with Plaintiff, when it did not; (4) misrepresenting that the BMW
3 325i's retail installment sale contract was legally enforceable and that Plaintiff was
4 required to make the payments listed therein; (5) omitting and failing to disclose that
5 the retail installment sale contract for the BMW 325i did not accurately memorialize
6 Plaintiff's agreement to purchase that vehicle; and (6) omitting and failing to disclose
7 that the BMW 325i's retail installment sale contract was unenforceable and that Plaintiff
8 was not required to make any payments thereunder.

10 37. Plaintiff is concurrently serving BMW of San Diego with a CLRA
11 notification and demand letter via regular mail and certified mail, return receipt
12 requested. The notice letter sets forth the relevant facts, notifies BMW of San Diego of
13 its CLRA violations, and requests that BMW of San Diego promptly remedy those
14 violations.

16 38. Under the CLRA, a plaintiff may without prior notification file a complaint
17 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
18 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
19 amend her or his CLRA causes of action without leave of court to add claims for
20 damages. Plaintiff will amend this complaint to add damages claims if BMW of San
21 Diego does not remedy its violations within the statutory period.

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

25 40. BMW of San Diego has an illegal pattern and practice of: (1)
26 misrepresenting that consumers have entered into legally-binding purchase contracts,
27 when such contracts are actually unenforceable because of the dealer's ASFA violations;

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1 (2) violating the Single Document Rule; and (3) misrepresenting the amount and timing
2 of down payments and deferred down payments.

3 41. Plaintiff is entitled to a permanent injunction that compels BMW of San
4 Diego to notify all consumers who have been victims of the above-described illegal
5 conduct, and enjoining BMW of San Diego from such further acts of illegal conduct.

6 42. Plaintiff is also entitled to recover her attorneys' fees, costs, and expenses.

8 THIRD CAUSE OF ACTION

9 Unfair Competition

10 43. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
11 through 42.

12 44. BMW of San Diego's acts, omissions, misrepresentations, practices, and
13 non-disclosures constituted unlawful, unfair, and fraudulent business acts and practices
14 within the meaning of California Business & Professions Code Sections 17200 *et seq.*

15 45. BMW of San Diego has engaged in "unlawful" business acts and practices
16 by: (1) misrepresenting that consumers have entered into legally-binding purchase
17 contracts, when such contracts are actually unenforceable because of BMW of San
18 Diego's ASFA violations; (2) violating the Single Document Rule; and (3)
19 misrepresenting the amount and timing of down payments and deferred down
20 payments. These acts and practices were intended to and did violate the ASFA, the
21 CLRA, and Civil Code 1709.

22 46. BMW of San Diego also engaged in "fraudulent" business acts or practices
23 in that the representations and omissions of material fact described above have a
24 tendency and likelihood to deceive the general public.

25 47. BMW of San Diego also engaged in "unfair" business acts or practices in
26 that the justification for selling vehicles based on the misrepresentations and omissions
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1 of material fact delineated above is outweighed by the gravity of the resulting harm,
2 particularly considering the available alternatives, and offends public policy, is immoral,
3 unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

4 48. The above described unlawful, fraudulent, or unfair business acts and
5 practices conducted by BMW of San Diego continue to this day and present a threat to
6 Plaintiff and the general public in that BMW of San Diego has failed to publicly
7 acknowledge the wrongfulness of its actions and provide full equitable injunctive and
8 monetary relief as required by law.

9 49. Pursuant to California Business & Professions Code Section 17203,
10 Plaintiff is entitled to and seeks a permanent injunction from this Court requiring BMW
11 of San Diego to immediately cease such acts of unfair competition and enjoining BMW
12 of San Diego from continuing to conduct business via the unlawful, fraudulent, and/or
13 unfair business acts and practices set forth in this Complaint and from failing to fully
14 disclose the true nature of its misrepresentations, and ordering BMW of San Diego to
15 engage in a corrective notice and advertising campaign. Plaintiff additionally requests
16 an order from the Court requiring that BMW of San Diego provide complete equitable
17 monetary relief so as to prevent BMW of San Diego from benefitting from the practices
18 that constitute unfair competition, including requiring the payment of restitution of any
19 monies as may be necessary to restore to any person any money or property which may
20 have been acquired by means of such acts of unfair competition.


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23 PRAYER FOR RELIEF

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25 Plaintiff prays for judgment as follows as appropriate for the particular causes of
26 action:

- 27 1. For permanent injunctive relief as permitted under the CLRA and
28 Business & Professions Code Section 17203;

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2. For the declaratory and/or equitable relief under the ASFA, the CLRA, and Business & Professions Code Section 17203;
3. For rescission of Plaintiff's purchase contract for the BMW 325i, and restitution of \$22,910;
4. For incidental, consequential, and actual damages in an amount to be determined at trial;
5. For pre judgment interest;
6. For attorney's 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.

LAW OFFICE OF MICHAEL R. VACHON, ESQ.
Attorney for Plaintiff Sarah Castaneda


Michael R. Vachon, Esq.

Date: April 3, 2013