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CASE MANAGEMENT CONFERENCE

Hearing Date: 4-8-13
Time: 8:30 am
Department: 10

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

DEC 06 2012

LARAYNE GLEEK, CLERK

BY: _____

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 TULARE COUNTY – COUNTY CIVIC CENTER

10
11 MANUEL CORTEZ, an individual; and
12 MANUEL GABRIEL CORTEZ, an
individual,

13 Plaintiffs

14 v.

15 GENERAL MOTORS LLC, a Delaware
16 corporation; and
DOES 1 through 10,

17 Defendants.

Case No.: VCU 249911

COMPLAINT

1. VIOLATION OF SONG-BEVERLY
CONSUMER WARRANTY ACT

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SUMMARY

1. This is a "lemon law" lawsuit relating to a defective 2007 Chevrolet Avalanche. On at least eight occasions while it was under warranty Plaintiffs took the Chevrolet Avalanche in for repair of a defect that causes the vehicle's warning lights (including the check engine light) to illuminate, and forcing Plaintiffs to immediately take the vehicle in for repair. The defect effectively prevents Plaintiffs from having the safe, reliable use of their vehicle. Defendant General Motors LLC is either unable or unwilling to properly diagnose and repair the Defects, and refuses to voluntarily repurchase the vehicle.

2. Under the lemon law, Plaintiffs are entitled to have their vehicle repurchased by General Motors LLC, to compensatory damages, a civil penalty, and their attorney's fees, costs, and expenses.

PARTIES

3. Plaintiffs Manuel Cortez and Manuel Gabriel Cortez are individuals residing in Napa, California.

4. Defendant General Motors LLC (hereafter "GM"), is Delaware corporation that does business throughout California state, including Tulare County.

5. Plaintiffs do not know the true names and capacities, whether corporate, partnership, associate, individual or otherwise of Defendants sued herein as Does 1 through 10, inclusive, under the provisions of section 474 of the California Code of Civil Procedure. Defendants Does 1 through 10, inclusive, are in some manner responsible for the acts, occurrences and transactions set forth herein, and are legally liable to Plaintiffs. Plaintiffs will seek leave to amend this Complaint to set forth the true names and capacities of the fictitiously named Defendants together with appropriate charging allegations when ascertained.

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

FACTS

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2 7. Plaintiffs are the owners of that certain 2007 Chevrolet Avalanche with
3 vehicle identification number 3GNFK12317G185464 (the "Chevrolet Avalanche").
4 Plaintiff's purchase of the Chevrolet Avalanche was accompanied by GM's express
5 warranty.

6 8. On or about May 30, 2007, while it was still under GM's express warranty,
7 Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized warranty repair
8 facilities for repair of a defect that causes the vehicle's warning lights (including the
9 check engine light) to illuminate (hereafter the "Defect"). GM's authorized repair
10 facility thereafter returned the Chevrolet Avalanche to Plaintiffs without properly
11 repairing the Defect.

12 9. On or about June 1, 2007, while it was still under GM's express warranty,
13 Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized warranty repair
14 facilities for repair of the Defect. However, the authorized repair facility again returned
15 the Chevrolet Avalanche to Plaintiffs without properly repairing the Defect.

16 10. On or about December 30, 2008, while it was still under GM's express
17 warranty, Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized
18 warranty repair facilities for repair of the Defect. However, the authorized repair facility
19 again returned the Chevrolet Avalanche to Plaintiffs without properly repairing the
20 Defect.

21 11. On or about June 5, 2009, while it was still under GM's express warranty,
22 Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized warranty repair
23 facilities for repair of the Defect. However, the authorized repair facility again returned
24 the Chevrolet Avalanche to Plaintiffs without properly repairing the Defect.

25 12. On or about March 2, 2012, while it was still under GM's express warranty,
26 Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized warranty repair
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1 facilities for repair of the Defect. However, the authorized repair facility again returned
2 the Chevrolet Avalanche to Plaintiffs without properly repairing the Defect.

3 13. On or about March 23, 2012, while it was still under GM's express
4 warranty, Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized
5 warranty repair facilities for repair of the Defect. However, the authorized repair facility
6 again returned the Chevrolet Avalanche to Plaintiffs without properly repairing the
7 Defect.

8 14. On or about August 20, 2012, while it was still under GM's express
9 warranty, Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized
10 warranty repair facilities for repair of the Defect. However, the authorized repair facility
11 again returned the Chevrolet Avalanche to Plaintiffs without properly repairing the
12 Defect.

13 15. On or about November 30, 2012, while it was still under GM's express
14 warranty, Plaintiffs returned the Chevrolet Avalanche to one of GM's authorized
15 warranty repair facilities for repair of the Defect. However, the authorized repair facility
16 again returned the Chevrolet Avalanche to Plaintiffs without properly repairing the
17 Defect.

18 FIRST CAUSE OF ACTION

19 Violation of the Song-Beverly Consumer Warranty Act

20 16. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
21 through 15.

22 17. GM is the warrantor of the Chevrolet Avalanche's express warranty.

23 18. Pursuant to the Chevrolet Avalanche's express warranty, GM undertook to
24 preserve or maintain the utility or performance of the Chevrolet Avalanche or provide
25 compensation if there was a failure in such utility or performance.

26 19. The Chevrolet Avalanche has and has had serious defects and
27 nonconformities to warranty including, but not limited to, the Defect described above.
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1 20. Under the Song-Beverly Consumer Warranty Act (the "Warranty Act"), the
2 Chevrolet Avalanche is a "consumer good" leased primarily for family or household
3 purposes and Plaintiffs have used the vehicle primarily for those purposes.

4 21. Plaintiffs are "buyers" of consumer goods under the Warranty Act.

5 22. The foregoing defects and nonconformities to warranty manifested
6 themselves within the applicable express warranty period. The nonconformities
7 substantially impair the use, value and/or safety of the Chevrolet Avalanche.

8 23. Plaintiffs delivered the vehicle to authorized repair facilities for GM
9 vehicles for repair of the nonconformities on numerous occasions.

10 24. Such authorized repair facilities were unable to conform the Chevrolet
11 Avalanche to the applicable express warranties after a reasonable number of attempts.

12 25. By failure of GM to remedy the defects as alleged above, or to issue a
13 refund or replacement, GM is in breach of its obligations under the Act.

14 26. Plaintiffs are entitled to justifiably revoke acceptance of Chevrolet
15 Avalanche under the Warranty Act.

16 27. Under the Warranty Act, Plaintiffs are entitled to reimbursement of all
17 payments made towards the Chevrolet Avalanche (less the amount directly attributable
18 to Plaintiffs' use of the Chevrolet Avalanche prior to discovery of the nonconformities).

19 28. Plaintiffs are entitled to damages resulting from GM's failure to comply
20 with its obligations under the Warranty Act.

21 29. Plaintiffs are entitled under the Warranty Act to recover as part of the
22 judgment a sum equal to the aggregate amount of costs and expenses, including
23 attorney's fees, reasonably incurred in connection with the commencement and
24 prosecution of this action.

25 30. Plaintiffs are entitled, in addition to the other amounts recovered, to a civil
26 penalty of up to two times the amount of actual damages because GM willfully failed to
27 comply with its responsibilities under the Warranty Act. Specifically, under the
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1 Warranty Act GM has an affirmative obligation to offer to repurchase or replace the
2 Chevy Avalanche after GM was unable to repair the defect within a reasonable number
3 of attempts. However, GM failed to offer to repurchase or replace the Chevy Avalanche.


4 PRAYER FOR RELIEF

5 Plaintiffs pray for judgment against Defendants, as follows:

- 6 1. For damages of \$49,958.17, or such other amount as proven at trial, and
7 punitive damages;
- 8 2. For rescission of the purchase contract and restitution of all monies
9 expended;
- 10 3. For a civil penalty of \$99,916.34 as permitted under the Warranty Act;
- 11 4. For prejudgment interest at the legal rate;
- 12 5. For attorney's fees, costs of suit, and out-of-pocket expenses; and
- 13 6. For such other and further relief as the Court deems just and proper under
14 the circumstances.

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16 LAW OFFICE OF MICHAEL R. VACHON, ESQ.
17 Attorney for Plaintiffs Manuel Cortez & Manuel
Gabriel Cortez

18 Date: December 4, 2012

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21 Michael R. Vachon, Esq.