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CLERK OF COURT
SAN DIEGO COUNTY, CA

FEB 5 2012 2:56

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – HALL OF JUSTICE

10
11 TIMOTHY FITZPATRICK, an
12 individual,

13 Plaintiff,

14 v.

15 QUALITY AUTO WHEREHOUSE, INC.,
16 a California corporation; and
17 DOES 1 through 75,

18 Defendants.

Case No.: 37-2012-00086815

FIRST AMENDED COMPLAINT FOR:

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF **AND DAMAGES**);
2. INTENTIONAL MISREPRESENTATION;
3. NEGLIGENT MISREPRESENTATION;
4. BREACH OF IMPLIED WARRANTY UNDER SONG-BEVERLY CONSUMER WARRANTY ACT; AND
5. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200)

1 SUMMARY

2 1. This lawsuit arises out of Plaintiff's purchase of an accident-damaged used
3 car. Plaintiff purchased a used 2000 Lexus RX 300 from Defendant Quality Auto
4 Wherehouse, Inc. (a San Diego, California used car dealership d.b.a. "Del Mar Motor
5 Cars") in reliance upon Del Mar Motor Cars's promises that the vehicle had been
6 thoroughly inspected and was in "pristine" condition. However, notwithstanding Del
7 Mar Motor Cars's claims, the Lexus RX had actually been in a severe prior collision, in
8 which it sustained frame damaged. Del Mar Motor Cars knew about the accident
9 damage, but concealed it from and failed to disclose it to Plaintiff. Del Mar Motor Cars's
10 misrepresentations amount to common law fraud, violation of the Consumers Legal
11 Remedies Act (Civil Code §1750 *et seq.*) (the "CLRA"), are breaches of the implied
12 warranty of merchantability, and amount to unfair competition under Business &
13 Professions Code Section 17200 *et seq.* (the "UCL"). Under these statutes, Plaintiff is
14 entitled to rescind the purchase contract, recover damages, and be awarded his
15 attorney's fees, costs, and out-of-pocket litigation expenses.
16
17

18 PARTIES

19 2. Plaintiff Timothy Fitzpatrick is an individual residing in San Diego,
20 California.

21 3. Defendant Quality Auto Wherehouse, Inc. is a California corporation that
22 does business as the used-car dealership "Del Mar Motor Cars" at 3444 Tripp Ct., Suite
23 A, San Diego, California.

24 4. Plaintiff does not know the true names and capacities, whether corporate,
25 partnership, associate, individual, or otherwise, of defendants sued herein as Does 1
26 through 75, inclusive, and thus names them under the provisions of Section 474 of the
27 California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner
28

1 responsible for the acts set forth herein, and are legally liable to Plaintiff. Plaintiff will
2 set forth the true names of the fictitiously-named defendants together with appropriate
3 charging allegations when ascertained.

4 5. All acts of corporate employees were authorized or ratified by an officer,
5 director, or managing agent of the corporate employer.

6
7 FACTS

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

10 7. In February, 2011, Del Mar Motor Cars advertised (on its Web site and in
11 other publications) for sale that certain Lexus RX 300 with vehicle identification
12 number JT6GF10U2Y0058975 (the "Lexus RX 300"). Del Mar Motor Cars's
13 advertisements stated that the Lexus RX 300 was in "pristine" condition. They also
14 stated that Del Mar Motor Cars sells "only the highest quality" used cars.

15
16 8. On or about February 27, 2011, Plaintiff visited Del Mar Motor Cars and
17 while there was shown the Lexus RX 300. The Del Mar Motor Cars representative who
18 dealt with Plaintiff represented that he was the "owner" of the dealership. He told
19 Plaintiff that the Lexus RX 300 was in pristine condition, had been thoroughly
20 inspected, and was in excellent mechanical condition.

21 9. Plaintiff told Del Mar Motor Cars that if he decided to purchase the Lexus
22 RX 300 he would also want to purchase a service contract (an "extended warranty") that
23 would provide comprehensive coverage for the Lexus RX 300. Del Mar Motor Cars told
24 Plaintiff that if he purchased the Lexus RX 300 Del Mar Motor Cars would also sell him
25 an extended warranty that would provide comprehensive coverage.

26
27 10. In reliance upon the above-stated representations by Del Mar Motor Cars,
28 Plaintiff purchased the Lexus RX 300 along with an extended warranty.

1 11. Plaintiff's purchase of the Lexus RX 300 was accompanied by Del Mar
2 Motor Cars's implied warranty of merchantability.

3 12. Plaintiff subsequently learned that the Lexus RX 300 was previously in a
4 serious collision that caused severe damage, including damage to the vehicle's body and
5 frame.

6 13. Del Mar Motor Cars knew about this pre-existing damage, but deliberately
7 concealed it from and did not disclose it to Plaintiff.

8 14. The prior accident damage of the Lexus RX 300 was a material fact that a
9 reasonable consumer would consider in deciding whether or not to purchase the Lexus
10 RX 300. The accident damage materially decreases the utility, performance, safety, and
11 fair market value of the Lexus RX 300. Further, because of the exclusions in the
12 extended warranty sold to Plaintiff the extended warranty does not provide
13 comprehensive coverage for the Lexus RX 300.

14 15. Del Mar Motor Cars's above-stated illegal conduct is fraudulent, malicious,
15 and oppressive under Civil Code Section 3294. Del Mar Motor Cars acted with a willful
16 and conscious disregard of Plaintiff's rights and safety. Del Mar Motor Cars's actions
17 were also fraudulent under Civil Code Section 3294, in that it intentionally
18 misrepresented and concealed the true condition of the Lexus RX.

19
20
21 FIRST CAUSE OF ACTION

22 Consumers Legal Remedies Act - Injunctive Relief **and Damages**

23 16. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
24 through 15.

25 17. The Lexus RX 300 is a "good" under the CLRA that was bought for use
26 primarily for personal, family or household purposes.

27 18. Plaintiff is a "consumer" under the CLRA.
28

1 19. The advertisement and the sale of the Lexus RX 300 to Plaintiff are
2 “transactions” under the CLRA.

3 20. The CLRA prohibits numerous unlawful business acts, including: (i)
4 representing that goods or services have sponsorship, approval, characteristics,
5 ingredients, uses, benefits, or quantities which they do not have or that a person has
6 sponsorship, approval, status, affiliation, or connection which he or she does not have;
7 (ii) representing that goods or services are of a particular standard, quality, or grade, or
8 that goods are of a particular style or model, if they are another; (iii) misrepresenting
9 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or
10 services with intent not to sell them as advertised; (v) representing that a transaction
11 confers or involves rights, remedies, or obligations which it does not have or involve, or
12 which are prohibited by law; and (vi) representing a motor vehicle if the vehicle has
13 previously been in an accident where it sustained frame damage. The CLRA also
14 prohibits the omission of statements, where there exists a duty to make a statement or
15 disclosure.
16 disclosure.

17
18 21. Del Mar Motor Cars had a duty to disclose the known accident damage
19 because (1) such disclosure was necessary in order to make its other statements not
20 misleading; (2) it was a known material fact; (3) Del Mar Motor Cars knew that it had
21 exclusive knowledge that was not accessible to Plaintiff; and (4) it was reasonable for
22 Plaintiff to expect disclosure of such facts.

23
24 22. Del Mar Motor Cars violated the CLRA by misrepresenting the mechanical
25 condition of the Lexus RX, concealing and failing to disclose that it had previously been
26 involved in an accident resulting in frame damage, and misrepresenting that Plaintiff's
27 extended warranty would provide comprehensive coverage for the Lexus RX 300.
28

1 23. **Plaintiff sent the Dealership, via regular mail and certified mail,**
2 **return receipt requested, a Consumer Legal Remedies Act notification and**
3 **demand letter at least 30 days prior to filing this Complaint.** The notice letter
4 sets forth the relevant facts, notifies Del Mar Motor Cars of its CLRA violations, and
5 requests that Del Mar Motor Cars promptly remedy those violations.
6

7 24. Under the CLRA, a plaintiff may without prior notification file a complaint
8 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
9 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
10 amend her or his CLRA causes of action without leave of court to add claims for
11 damages. **The Dealership did not give or agree to give an appropriate**
12 **correction, repair, replacement, or other remedy without the statutory time**
13 **period. Accordingly, Plaintiff hereby amends this Complaint to add claims**
14 **for actual and punitive damages under the Consumer Legal Remedies Act.**
15

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

18 26. Del Mar Motor Cars has an illegal pattern and practice of: (1) selling
19 accident-damaged vehicles to the public while misrepresenting their mechanical
20 condition; (2) concealing and failing to disclose known material accident damage; and
21 (3) misrepresenting the coverage provided by extended warranties that it sells.
22

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

26 28. Plaintiff is also entitled to recover his attorneys' fees, costs, and expenses.

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1 SECOND CAUSE OF ACTION

2 Intentional Misrepresentation

3 29. Plaintiff incorporates by reference the allegations in Paragraphs 1 through
4 28.

5 30. At the time of purchase, and afterwards, Del Mar Motor Cars made the
6 misrepresentations as set forth above. These misrepresentations include, but are not
7 limited to, Del Mar Motor Cars's statements that: (i) the Lexus RX 300 had been
8 inspected and was in "pristine" condition; and (ii) that the extended warranty sold to
9 Plaintiff would provide comprehensive coverage for the Lexus RX 300.
10

11 31. Del Mar Motor Cars omitted from the statements it made material facts,
12 the disclosure of which was necessary, (1) in order to make its other statements not
13 misleading; (2) because they were known materials facts; (3) because Del Mar Motor
14 Cars knew that it had exclusive knowledge that was not accessible to Plaintiff; and (4)
15 because it was reasonable for Plaintiff to expect disclosure of such facts. These
16 omissions include, but are not limited to the following: (1) that the Lexus RX 300 had
17 previously been in a material accident; (2) that the Lexus RX 300 was not in excellent
18 condition; (3) that the Lexus RX 300's frame was damaged; and (4) that the extended
19 warranty would not provide comprehensive coverage for the Lexus RX 300.
20

21 32. At all times Del Mar Motor Cars either had actual or constructive notice of
22 the true facts but nonetheless intentionally or recklessly concealed these facts from
23 Plaintiff.
24

25 33. Del Mar Motor Cars made these representations and omitted material
26 facts with the intent to defraud Plaintiff, to induce Plaintiff to purchase the Lexus RX
27 300, and to trick Plaintiff into paying an inflated sales price. At the time Plaintiff
28 purchased the Lexus RX 300 he did not know, or have reason to know, that Del Mar

1 Motor Cars was making false and misleading representations and had omitted material
2 facts. Plaintiff acted in justifiable reliance upon the truth of the representations which
3 misled him as to the nature and extent of the facts concealed. Plaintiff was justified in
4 his reliance, as Del Mar Motor Cars held itself out as professionals in the automotive
5 sales industry, and Plaintiff had no reason to doubt such representations.
6

7 34. As a direct and proximate result of Del Mar Motor Cars's fraudulent
8 representations and omissions of material facts, Plaintiff suffered damages, including
9 actual, general, consequential and incidental damages according to proof at trial.

10 35. Plaintiff is also entitled to punitive damages.

11 36. Del Mar Motor Cars committed fraud in the inducement of the purchase
12 contract for the Lexus RX, and Plaintiff is therefore entitled to rescission and restitution
13 in an amount according to proof at trial.
14

15 THIRD CAUSE OF ACTION

16 Negligent Misrepresentation

17 37. Plaintiff incorporates by reference the allegations in paragraphs 1 through
18 36.

19 38. As an alternative to Plaintiff's cause of action for Intentional
20 Misrepresentation, Plaintiff alleges that Del Mar Motor Cars's misrepresentations were
21 made negligently, if not intentionally.
22

23 39. The representations made by Del Mar Motor Cars were not true.

24 40. Regardless of its actual belief, Del Mar Motor Cars made the
25 representations without any reasonable grounds for believing them to be true.

26 41. Del Mar Motor Cars failed to exercise due care in ascertaining the accuracy
27 of the representations made to Plaintiff.
28

1 50. The fact that the Lexus RX was previously involved in a severe accident
2 that caused massive structural damage constitutes a breach of the implied warranty of
3 merchantability because the Lexus RX (1) would not pass without objection in the trade
4 under the contract description, (2) was not fit for the ordinary purposes for which such
5 goods are used, (3) was not adequately contained, packaged, and labeled, and (4) did
6 not conform to the promises or affirmations of fact made on the container or label.
7

8 51. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of
9 the Lexus RX, and is entitled to rescind the purchase contract and to restitution of all
10 money paid towards the purchase contract.

11 52. Plaintiff has been proximately damaged by Del Mar Motor Cars's failure to
12 comply with its obligations under the implied warranty.

13 53. Plaintiff is entitled to the remedies provided in California Civil Code
14 section 1794, including his attorney's fees, costs, and expenses.
15

16 FIFTH CAUSE OF ACTION

17 Unfair Competition

18 54. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
19 through 53.

20 55. Del Mar Motor Cars's acts, omissions, misrepresentations, practices, and
21 non-disclosures constitute unlawful, unfair, and fraudulent business acts and practices
22 within the meaning of California Business & Professions Code Sections 17200 *et seq.*
23

24 56. Del Mar Motor Cars has engaged in "unlawful" business acts and practices
25 by: (1) selling accident-damaged vehicles to the public while misrepresenting their
26 mechanical condition; (2) concealing and failing to disclose known material accident
27 damage; and (3) misrepresenting the coverage provided by extended warranties that it
28 sells. These acts and practices were intended to and did violate California Civil Code

1 Section 1709 *et seq.*, the CLRA, Vehicle Code Section 11713.18., and the Song-Beverly
2 Consumer Warranty Act.

3 57. Del Mar Motor Cars has also engaged in “fraudulent” business acts or
4 practices in that the representations and omissions of material fact described above
5 have a tendency and likelihood to deceive lessees of these vehicles and the general
6 public.
7

8 58. Del Mar Motor Cars has also engaged in “unfair” business acts or practices
9 in that the justification for selling and leasing vehicles based on the misrepresentations
10 and omissions of material fact delineated above is outweighed by the gravity of the
11 resulting harm, particularly considering the available alternatives, and offends public
12 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
13 to consumers.
14

15 59. The above described unlawful, fraudulent, or unfair business acts and
16 practices conducted by Del Mar Motor Cars continue to this day and present a threat to
17 Plaintiff and the general public in that Del Mar Motor Cars has failed to publicly
18 acknowledge the wrongfulness of its actions and provide full equitable injunctive and
19 monetary relief as required by the statute.
20

21 60. Pursuant to California Business & Professions Code Section 17203,
22 Plaintiff seeks an order of this Court requiring Del Mar Motor Cars to immediately cease
23 such acts of unfair competition and enjoining Del Mar Motor Cars from continuing to
24 conduct business via the unlawful, fraudulent, and/or unfair business acts and practices
25 set forth in this Complaint and from failing to fully disclose the true nature of their
26 misrepresentations, and ordering Del Mar Motor Cars to engage in a corrective notice
27 and advertising campaign. Plaintiff additionally requests an order from the Court
28 requiring that Del Mar Motor Cars provide complete equitable monetary relief so as to

1 prevent Del Mar Motor Cars from benefitting from the practices that constitute unfair
2 competition or the use or employment of any monies resulting from the lease of these
3 vehicles, including requiring the payment of restitution of any monies as may be
4 necessary to restore to any member of the general public any money or property which
5 may have been acquired by means of such acts of unfair competition.
6

7
8 PRAYER FOR RELIEF

9 Plaintiff prays for judgment as follows as appropriate for the particular causes of
10 action:

- 11 1. For the declaratory, equitable, and/or injunctive relief as requested above;
- 12 2. For rescission and restitution of \$22,165.68;
- 13 3. For general damages of \$7,500;
- 14 4. For punitive damages;
- 15 5. For pre judgment interest at the legal rate;
- 16 6. For reasonable attorneys' fees, costs of suit, and out of pocket litigation
17 expenses; and
- 18 7. For such other and further relief as the Court deems just and proper under
19 the circumstances.
20

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22 LAW OFFICE OF MICHAEL R. VACHON, ESQ.
23 Attorney for Plaintiff Timothy Fitzpatrick

24 Date: February 4, 2013


25 Michael R. Vachon, Esq.
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