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Superior Court Of California,
Sacramento
08/14/2012
jimora
By _____, Deputy
Case Number:
34-2012-00130048

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO – GORDON D. SCHABER SACRAMENTO COUNTY
10 COURTHOUSE

11
12 EMMA JONES, an individual,
13 Plaintiff

14 v.

15 EZ AUTO SOLUTIONS, INC., a
16 California corporation; and
17 DOES 1 through 75,
18 Defendants.

Case No.:

COMPLAINT FOR:

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY);
2. INTENTIONAL MISREPRESENTATION;
3. NEGLIGENT MISREPRESENTATION;
4. VIOLATION OF VEHICLE CODE SECTION 11714; AND
5. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200)

19 DEPARTMENT
20 ASSIGNMENTS

21 Case Management 35
22 Law and Motion 54
23 Minors Compromise 40

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SUMMARY

1. This lawsuit arises out of an elderly consumer's purchase of a used car. Specifically, Defendant EZ Auto Solutions, Inc. (a used car dealership) tricked Plaintiff into buying a used 2004 Ford Explorer by concealing and failing to disclose to her that the vehicle had previously been registered as a rental car. In addition, EZ Auto Solutions fraudulently misrepresented that the Ford Explorer had been thoroughly inspected and was in excellent mechanical condition – when, in reality, EZ Auto Solutions knew that the Ford Explorer had been in multiple severe accidents, which resulted in damage to the vehicle's frame. EZ Auto Solutions's concealment of the Ford Explorer's accident damage and rental history amounts to common law fraud, violates the Consumers Legal Remedies Act, and constitutes unfair competition.

2. EZ Auto Solutions also sold the Ford Explorer to Plaintiff at Plaintiff's home (rather than the Dealership's lot) in violation of Vehicle Code Section 11714, which prohibits dealers from selling vehicles at locations other than their licensed places of business.

3. Plaintiff is entitled to rescind the purchase contract for the Ford Explorer, to restitution of all money paid towards that vehicle, to compensatory and punitive damages, and to an injunction preventing similar unlawful conduct in future transactions.

PARTIES

4. Plaintiff Emma Jones is an individual residing in Daly City, California.

5. Defendant EZ Auto Solutions, Inc. is a California corporation that does business as a used-car dealership at 2330 Fulton Avenue, Sacramento, California.

6. Plaintiff does not know the true names and capacities, whether corporate, partnership, associate, individual, or otherwise, of defendants sued herein as Does 1

1 through 75, inclusive, and thus name them under the provisions of Section 474 of the
2 California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner
3 responsible for the acts set forth herein, and are legally liable to Plaintiff. Plaintiff will
4 set forth the true names of the fictitiously-named defendants together with appropriate
5 charging allegations when ascertained.
6

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

9 FACTS

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

12 9. On or about August 29, 2008, Plaintiff's son, Delano Jones, visited EZ
13 Auto Solutions at its dealership lot. Plaintiff looked at and viewed that certain 2004
14 Ford Explorer with vehicle identification number 1FMZU62K84ZA01035 (the "Ford
15 Explorer"). The EZ Auto Solutions salesperson who dealt with Mr. Jones told him that
16 the Ford Explorer had been thoroughly inspected, that its vehicle history had been
17 checked, and that it was in excellent mechanical condition. EZ Auto Solutions explicitly
18 and specifically represented that the Ford Explorer had not previously been in any
19 serious accident and that it did not have frame damage.
20

21 10. Reasonably relying on EZ Auto Solutions's representations, Mr. Jones
22 decided to attempt to purchase the Ford Explorer; however, because of an inability to
23 obtain financing he was unable to do so.
24

25 11. Thereafter EZ Auto Solutions proposed that Mr. Jones use a straw buyer to
26 purchase the Ford Explorer. Accordingly, on or about September 27, 2008, an EZ Auto
27 Solutions employee went to Plaintiff's residence with a purchase contract for the Ford
28 Explorer. Reasonably relying upon the statements that EZ Auto Solutions made to Mr.

1 Jones about the condition and history of the car, Plaintiff signed the purchase contract
2 at her home. Plaintiff never visited the EZ Auto Solutions dealership lot.

3 12. In 2012, Plaintiff and Mr. Jones learned for the first time that, contrary to
4 EZ Auto Solutions's representations, the Ford Explorer had previously been in multiple
5 severe accidents, with resulted in the vehicle sustaining frame damage. EZ Auto
6 Solutions knew about the Ford Explorer's accident history and frame damage, but
7 deliberately concealed it from and did not disclose it to either Plaintiff or Mr. Jones.
8

9 13. In 2012, Plaintiff and Mr. Jones also learned for the first time that the
10 Ford Explorer had previously been registered as a rental vehicle. EZ Auto Solutions
11 knew this fact, but concealed it from Plaintiff and failed to disclose it to either her or Mr.
12 Jones.

13 14. EZ Auto Solutions's above-stated conduct was malicious, fraudulent, and
14 oppressive.
15

16 FIRST CAUSE OF ACTION

17 Consumers Legal Remedies Act - Injunctive Relief Only

18 15. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
19 through 14.

20 16. The Ford Explorer is a "good" under the CLRA, that was bought for use
21 primarily for personal, family, or household purposes.
22

23 17. Plaintiff and Mr. Jones are "consumers" under the CLRA.

24 18. The advertisement and the sale of the Ford Explorer to Plaintiff are
25 "transactions" under the CLRA.

26 19. The CLRA prohibits numerous unlawful business acts, including: (i)
27 misrepresenting the source, sponsorship, approval, or certification of goods or services;
28 (ii) representing that goods or services have sponsorship, approval, characteristics,

1 ingredients, uses, benefits, or quantities which they do not have or that a person has
2 sponsorship, approval, status, affiliation, or connection which he or she does not have;
3 (iii) representing that goods or services are of a particular standard, quality, or grade, or
4 that goods are of a particular style or model, if they are another; (iv) misrepresenting the
5 source, sponsorship, approval, or certification of goods; (v) advertising goods or services
6 with intent not to sell them as advertised; (vi) representing that a transaction confers or
7 involves rights, remedies, or obligations which it does not have or involve, or which are
8 prohibited by law; and (vii) inserting an unconscionable provision into a contract. The
9 CLRA also prohibits the omission of statements where there exists a duty to make such
10 statements or disclosures.
11

12 20. EZ Auto Solutions had a duty to disclose the known accident damage
13 because (1) such disclosure was necessary in order to make its other statements not
14 misleading; (2) it was a known material fact; (3) EZ Auto Solutions knew that it had
15 exclusive knowledge that was not accessible to Plaintiff; and (4) it was reasonable for
16 Plaintiff to expect disclosure of such facts.
17

18 21. EZ Auto Solutions had a duty to disclose the Ford Explorer's known rental
19 car because (1) such disclosure was necessary in order to make its other statements not
20 misleading; (2) it was a known material fact; (3) EZ Auto Solutions knew that it had
21 exclusive knowledge that was not accessible to Plaintiff; (4) it was reasonable for
22 Plaintiff to expect disclosure of such facts; and (5) EZ Auto Solutions was required to
23 disclose this fact under 13 California Code of Regulations Section 260.02.
24

25 22. EZ Auto Solutions violated the CLRA by: (1) misrepresenting the
26 mechanical condition of the Ford Explorer; (2) concealing and failing to disclose that
27 the Ford Explorer was previously registered as a rental vehicle; (3) concealing and
28

1 failing to disclose that the Ford Explorer had previously been in material accidents; and
2 (4) concealing and failing to disclose that the Ford Explorer had frame damage.

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

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

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

17 26. EZ Auto Solutions has an illegal pattern and practice of: (1)
18 misrepresenting the mechanical condition of vehicles that it sells to the public; (2)
19 concealing and failing to disclose that the known rental histories of vehicles that it sells
20 to the public; and (3) concealing and failing to disclose known accident damage.

21 27. Plaintiff is entitled to a permanent injunction that compels EZ Auto
22 Solutions to notify all consumers who have been victims of the above-described illegal
23 conduct, and enjoining EZ Auto Solutions from such further acts of illegal conduct.
24

25 28. Plaintiff is also entitled to recover her 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
6 30. At the time of purchase, and afterwards, EZ Auto Solutions made the
7 misrepresentations to Mr. Jones as set forth above, with the intent that such
8 representations would be relied upon by Plaintiff. These misrepresentations included,
9 but are not limited to the following: (1) that the Ford Explorer had been inspected and
10 was in excellent condition; and (2) that the Ford Explorer had not previously sustained
11 serious accident or frame damage.

12 31. EZ Auto Solutions omitted from the statements it made material facts, the
13 disclosure of which was necessary, (1) in order to make its other statements not
14 misleading; (2) because they were known materials facts; (3) because EZ Auto Solutions
15 knew that it had exclusive knowledge that was not accessible to Plaintiff; and (4)
16 because it was reasonable for Plaintiff to expect disclosure of such facts. These
17 omissions include, but are not limited to the following: (1) that the Ford Explorer was
18 previously registered as a rental vehicle; (2) that the Ford Explorer had previously been
19 in multiple material accidents; and (3) that the Ford Explorer had sustained frame
20 damage.
21

22
23 32. At all times EZ Auto Solutions either had actual or constructive notice of
24 the true facts but nonetheless intentionally or recklessly concealed these facts from Mr.
25 Jones and Plaintiff.

26 33. EZ Auto Solutions made these representations and omitted material facts
27 with the intent to defraud Mr. Jones and Plaintiff and to induce them to purchase the
28 Ford Explorer and pay an inflated sales price. At the time Plaintiff purchased the Ford

1 Explorer she did not know, or have reason to know, that EZ Auto Solutions was making
2 false and misleading representations and had omitted material facts. Plaintiff acted in
3 justifiable reliance upon the truth of the representations which misled her and Mr.
4 Jones as to the nature and extent of the facts concealed. Plaintiff and Mr. Jones were
5 justified in their reliance, as EZ Auto Solutions held itself out as professionals in the
6 automotive sales industry, and Plaintiff and Mr. Jones had no reason to doubt such
7 representations.
8

9 34. As a direct and proximate result of the Dealer's fraudulent representations
10 and omissions of material facts, Plaintiff suffered damages, including actual, general,
11 consequential and incidental damages according to proof at trial.

12 35. Plaintiff is also entitled to punitive damages.

13 36. EZ Auto Solutions committed fraud in the inducement of the purchase
14 contract for the Ford Explorer, and Plaintiff is therefore entitled to rescission and
15 restitution in an amount according to proof at trial.
16

17 THIRD CAUSE OF ACTION

18 Negligent Misrepresentation

19 37. Plaintiff incorporates by reference the allegations in paragraphs 1 through
20 36.

21 38. As an alternative to Plaintiff's cause of action for Intentional
22 Misrepresentation, Plaintiff alleges that the Dealer's misrepresentations were made
23 negligently, if not intentionally.
24

25 39. The representations made by EZ Auto Solutions were not true.

26 40. Regardless of its actual belief, EZ Auto Solutions made the representations
27 without any reasonable grounds for believing them to be true.
28

1 41. EZ Auto Solutions failed to exercise due care in ascertaining the accuracy
2 of the representations made to Plaintiff and Mr. Jones.

3 42. EZ Auto Solutions made the representations to Mr. Jones for the purpose
4 of inducing Plaintiff and Mr. Jones to rely upon them, and to act or refrain from acting
5 in reliance thereon.

6 43. Plaintiff and Mr. Jones were unaware of the falsity of the representations
7 and acted in reliance upon the truth of those representations, and were justified in
8 relying upon those representations.

9 44. As a direct and proximate result of the Dealer's negligent
10 misrepresentations of material fact, Plaintiff suffered damages, including actual,
11 consequential, and incidental damages according to proof of trial.

12 45. Plaintiff is also entitled to punitive damages.

13 46. Plaintiff hereby alleges fraud in the inducement to enter into the sales
14 contract, and therefore is entitled to rescission and restitution in an amount according
15 to proof at trial.

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18 FOURTH CAUSE OF ACTION

19 Violation of Vehicle Code Section 11714

20 47. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
21 through 46.

22 48. EZ Auto Solutions is a "dealer" under Vehicle Code Section 11714(b).

23 49. The Ford Explorer is a "vehicle" that was sold "at retail" under Vehicle
24 Code Section 11714(b).

25 50. Plaintiff's residence is not a location at which EZ Auto Solutions is licensed
26 by the California Department of Motor Vehicles to sell vehicles. Plaintiff's residence
27 also was not posted pursuant to Vehicle Code Section 11709.
28

1 51. EZ Auto Solutions is and was legally prohibited from selling any vehicle at
2 retail at any location that is not posted pursuant to Vehicle Code Section 11709.
3 Accordingly, Plaintiff's purchase of the Ford Explorer was an illegal transaction, and the
4 Ford Explorer's purchase contract is an illegal and unenforceable contract.

5 52. Plaintiff is entitled to rescission of the Ford Explorer's purchase contract,
6 and restitution of all amounts paid to EZ Auto Solutions.
7

8 FIFTH CAUSE OF ACTION

9 Unfair Competition

10 53. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
11 through 52.

12 54. EZ Auto Solutions's acts, omissions, misrepresentations, practices, and
13 non-disclosures constitute unlawful, unfair, and fraudulent business acts and practices
14 within the meaning of California Business & Professions Code Sections 17200 *et seq.*
15

16 55. EZ Auto Solutions has engaged in "unlawful" business acts and practices
17 by: (1) concealing and failing to the known rental histories of vehicles it sells to the
18 public; (2) misrepresenting the mechanical condition of vehicles that it sells to the
19 public; (3) concealing and failing to disclose known accident and frame damage; and (4)
20 selling vehicles at locations other than those where it is permitted to do so. These acts
21 and practices were intended to and did violate California Civil Code Section 1709 *et seq.*,
22 the CLRA, Vehicle Code Sections 11713.18 and 11714, and 13 California Code of
23 Regulations Section 260.02.
24

25 56. EZ Auto Solutions has also engaged in "fraudulent" business acts or
26 practices in that the representations and omissions of material fact described above
27 have a tendency and likelihood to deceive purchasers of these vehicles and the general
28 public.

1 57. EZ Auto Solutions has also engaged in “unfair” business acts or practices
2 in that the justification for selling and leasing vehicles based on the misrepresentations
3 and omissions of material fact delineated above is outweighed by the gravity of the
4 resulting harm, particularly considering the available alternatives, and offends public
5 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
6 to consumers.
7

8 58. The above described unlawful, fraudulent, or unfair business acts and
9 practices conducted by EZ Auto Solutions continue to this day and present a threat to
10 Plaintiff and the general public in that EZ Auto Solutions has failed to publicly
11 acknowledge the wrongfulness of its actions and provide full equitable injunctive and
12 monetary relief as required by the statute.
13

14 59. Pursuant to California Business & Professions Code Section 17203,
15 Plaintiff seeks an order of this Court requiring EZ Auto Solutions to immediately cease
16 such acts of unfair competition and enjoining EZ Auto Solutions from continuing to
17 conduct business via the unlawful, fraudulent, and/or unfair business acts and practices
18 set forth in this Complaint and from failing to fully disclose the true nature of its
19 misrepresentations, and ordering EZ Auto Solutions to engage in a corrective notice and
20 advertising campaign. Plaintiff additionally requests an order from the Court requiring
21 that EZ Auto Solutions provide complete equitable monetary relief so as to prevent EZ
22 Auto Solutions from benefitting from the practices that constitute unfair competition or
23 the use or employment of any monies resulting from the lease of these vehicles,
24 including requiring the payment of restitution of any monies as may be necessary to
25 restore to any member of the general public any money or property which may have
26 been acquired by means of such acts of unfair competition.
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PRAYER FOR RELIEF

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

1. For the declaratory, equitable, and/or injunctive relief as requested above;
2. For rescission and restitution of \$19,907.92;
3. For general damages of \$7,500;
4. For punitive damages;
5. For pre judgment interest at the legal rate;
6. For reasonable attorneys' 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 Emma Jones



Michael R. Vachon, Esq.

Date: August 13, 2012