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ENDORSED
FILED
ALAMEDA COUNTY

AUG 10 2012

CLERK OF THE SUPERIOR COURT
By ALICIA ESPINOZA
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA – HAYWARD HALL OF JUSTICE

DESTYNE WATERS, an individual Plaintiff v. TOYOTA MOTOR SALES, U.S.A., INC., a California corporation; HAMCOR, INC., a California corporation; and DOES 1 through 10, Defendants.	Case No.: HG12643400 COMPLAINT FOR: 1. BREACH OF EXPRESS WARRANTY; AND 2. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

SUMMARY

1. This is a "lemon law" lawsuit regarding a 2012 Toyota Tacoma that has a dangerous and life-threatening defect that causes the vehicle's steering to lock up while the vehicle is being driven, and which the defendants are either unable or unwilling to fix.

2. Because the Toyota Tacoma does not provide safe transportation, the selling dealership (Hamcor, Inc. d.b.a. "Dublin Toyota") breached the implied warranty of merchantability that accompanied the sale of this vehicle. Because the manufacturer and warrantor (Defendant Toyota Motor Sales, U.S.A., Inc.) was unable to fix the Toyota Tacoma's defect within a reasonable number of attempts the vehicle qualifies as a "lemon" under the Song-Beverly Consumer Warranty Act. Plaintiff is entitled to return the Toyota Tacoma to the manufacturer and to be reimbursed the money that she spent on the vehicle. She is also entitled to a civil penalty based on Toyota's refusal to promptly repurchase this dangerous vehicle.

PARTIES

3. Plaintiff Destyne Waters is an individual residing in Tracy, California.

4. Defendant Toyota Motor Sales, U.S.A., Inc. (hereafter "Toyota"), is California corporation that does business throughout this State, including Alameda County.

5. Defendant Hamcor, Inc. (hereafter "Dublin Toyota") is a California corporation that does business as a car dealership under the fictitious business name "Dublin Toyota" at 4321 Toyota Drive, Dublin, 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

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 Plaintiff. Plaintiff 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.

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

FACTS

8. On or about January 10, 2012, Plaintiff purchased that certain 2012 Toyota Tacoma with vehicle identification number 3TMKU4HN8CM031874 (the "Toyota Tacoma") from Dublin Toyota.

9. Plaintiff's purchase of the Toyota Tacoma was accompanied by Toyota's express warranty and the Dublin Toyota's implied warranty of merchantability.

10. While the applicable express and implied warranties were in effect, the Toyota Tacoma manifested a life-threatening defect that causes the steering and/or breaking systems to malfunction (the "Defect").

11. On multiple occasions, Plaintiff returned the Toyota Tacoma to Dublin Toyota (which is one of Toyota's authorized repair facilities in this State) for repair of the Defect; however, on each of these occasions Dublin Toyota returned the Toyota Tacoma to Plaintiff without properly diagnosing and repairing the defect.

12. As a result of Dublin Toyota's and Toyota's failure to repair the Defect, the Toyota Tacoma is, and at all times has been, unsafe to drive.

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FIRST CAUSE OF ACTION

Breach of Express Warranty

(Song-Beverly Consumer Warranty Act)

13. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 12.

14. Toyota is the warrantor of the Toyota Tacoma's express warranty.

15. Pursuant to the Toyota's express warranty, Toyota undertook to preserve or maintain the utility or performance of the Toyota Tacoma or provide compensation if there was a failure in such utility or performance.

16. The Toyota Tacoma has and has had serious defects and nonconformities to warranty including, but not limited to, the Defect.

17. Under the Song-Beverly Consumer Warranty Act (the "Warranty Act"), the Toyota Tacoma is a "consumer good" leased primarily for family or household purposes and Plaintiff has used the vehicle primarily for those purposes.

18. Plaintiff is a "buyer" of consumer goods under the Warranty Act.

19. Toyota is a "manufacturer" and/or "distributor" under the Warranty Act.

20. The foregoing defects and nonconformities to warranty manifested themselves within the applicable express warranty period. The nonconformities substantially impair the use, value and/or safety of the Toyota Tacoma.

21. Plaintiff delivered the vehicle to authorized repair facilities for Toyota vehicles for repair of the nonconformities on numerous occasions.

22. Such authorized repair facilities were unable to conform the Toyota Tacoma to the applicable express warranties after a reasonable number of attempts.

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

24. Plaintiff is entitled to justifiably revoke acceptance of Toyota Tacoma under the Warranty Act.

25. Under the Warranty Act, Plaintiff is entitled to reimbursement of all payments made towards the Toyota Tacoma (less the amount directly attributable to Plaintiff's use of the Toyota Tacoma prior to discovery of the nonconformities).

26. Plaintiff is entitled to damages resulting from Toyota's failure to comply with its obligations under the Warranty Act.

27. Plaintiff is entitled under the Warranty Act to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees, reasonably incurred in connection with the commencement and prosecution of this action.

28. Plaintiff is entitled, in addition to the other amounts recovered, to a civil penalty of up to two times the amount of actual damages because Toyota willfully failed to comply with its responsibilities under the Warranty Act.

SECOND CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

(Song-Beverly Consumer Warranty Act)

29. Plaintiff incorporates by reference the allegations in paragraphs 1 through 28.

30. Plaintiff's purchase of the Toyota Tacoma was accompanied by Dublin Toyota's implied warranty of merchantability.

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

32. Because the Toyota Tacoma was sold to Plaintiff with a life-threatening defect that manifested itself within the period of the implied warranty, it (1) would not pass without objection in the trade under the contract description, (2) was and is not fit for the ordinary purposes for which such goods are used, (3) was not adequately contained, packaged, and labeled, and (4) did not conform to the promises or affirmations of fact made on the container or label.

33. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of the Toyota Tacoma, and is entitled to rescind the purchase contract and to restitution of all money paid towards the purchase contract.

34. Plaintiff has been proximately damaged by Dublin Toyota's failure to comply with its obligations under the implied warranty.

Plaintiff is entitled to the remedies provided in California Civil Code section 1794, including her attorney's fees, costs, and expenses.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants, as follows:

1. For general damages in an amount to be proven at trial;
2. For rescission of the purchase contract and restitution from Dublin Toyota of $43,471.92;

3. For a civil penalty of $86,943.84 under the Warranty Act;

4. For an award of punitive damages against Dublin Toyota, in an amount to be proven at trial;

5. For prejudgment interest at the legal rate;

6. For attorney's fees, costs of suit, and out-of-pocket 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 Destyne Waters

Date: August 9, 2012

Michael R. Vachon, Esq.