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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF RIVERSIDE – SOUTHWEST JUSTICE CENTER

10
11 LYDIA HERNANDEZ, an individual,

12 Plaintiff

13 v.

14 LAKE BUICK PONTIAC GMC, INC., a
15 California corporation; and
16 DOES 1 through 75,

17 Defendants.

Case No.: MCC 1301520

COMPLAINT

1. CONVERSION;
2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT [INJUNCTIVE RELIEF ONLY];
3. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200); AND
4. DECLARATORY RELIEF

SUMMARY

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2 1. Defendant Lake Buick Pontiac GMC, Inc., a Lake Elsinore, California new
3 and used car dealership, unilaterally canceled Plaintiff's purchase contract for a used
4 2012 Ford Fusion by sending Plaintiff a "Notice of Election to Cancel." The cancelation
5 was pursuant to a provision in the Ford Fusion's purchase contract that allows the
6 dealership to cancel automobile purchase contracts anytime up to 10 days after they are
7 signed if Lake Buick Pontiac GMC is unable to find a lender that will accept assignment
8 of the contract. However, when Plaintiff attempted to give back the Ford Fusion and
9 demanded her down payment back, Lake Buick Pontiac GMC refused to do so -
10 notwithstanding the fact that Plaintiff no longer wanted the car and desired to unwind
11 the transaction and get her money back. Lake Buick Pontiac GMC misrepresented to
12 Plaintiff that the Notice of Election to Cancel had no legal effect whatsoever and that she
13 was still bound by the contract, when in fact no binding contract exists due to Lake
14 Buick Pontiac GMC's unilateral cancelation of the agreement. Accordingly, Lake Buick
15 Pontiac GMC's retention of the Ford Fusion's down payment is in illegal conversion.
16 Plaintiff is also entitled to declaratory relief deeming the Ford Fusion's contract
17 cancelled and that she is owed a refund of her entire down payment amount

18 2. Lake Buick Pontiac GMC has a fraudulent and unfair business practice of
19 sending out Notices of Election to Cancel to all of its customers on the 10th day after
20 their contracts were signed if the dealership has not yet found financing for those
21 contracts, and then *orally telling* the recipients of these Notices that they mean nothing
22 whatsoever, that they are just a technicality, and that their contracts are still in force.
23 Lake Buick Pontiac GMC does this in order to evade the 10-day cancelation deadline.
24 That is, if the dealership finds financing after the 10th day it asserts that the contract is
25 valid, and if it is unable to find financing then it later claims that the agreement was
26 canceled on the 10th day knowing that the purchasers have no written proof of Lake
27 Buick Pontiac GMC's statements to the contrary.

1 3. Lake Buick Pontiac GMC's conduct amounts to illegal, unfair, and
2 fraudulent business acts and practices under the Unfair Competition Law (Bus. & Prof.
3 Code § 17200 *et seq.*) and its misrepresentations regarding the legal effect of its Notices
4 of Election to Cancel and its purchase contracts amount to violation of the Consumers
5 Legal Remedies Act (Civil Code § 1750 *et seq.*). Plaintiff is entitled to compensatory
6 damages, as well as an injunction ordering Lake Buick Pontiac GMC to cease its
7 unlawful, unfair, and fraudulent acts and practices.

8 PARTIES

9 4. Plaintiff Lydia Hernandez is an individual residing in Huntington Beach,
10 California.

11 5. Defendant Lake Buick Pontiac GMC, Inc. is a California corporation that
12 does business as a car dealership at 31400 Auto Center Drive, Lake Elsinore, California.

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

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

22 FACTS

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

25 9. On September 2, 2013, Plaintiff visited Lake Buick Pontiac GMC where she
26 was shown and test drove that certain used 2012 Ford Fusion with vehicle identification
27 number 3FAHPOJAXCR194441 (hereafter the "Ford Fusion").
28

1 10. That same day Plaintiff purchased the Ford Fusion pursuant to retail
2 installment sale contract prepared by Lake Buick Pontiac GMC (the "Contract").

3 11. The Contract requires that Plaintiff pay a total amount of \$25,893.28
4 during the term of the Contract towards the Ford Fusion's purchase. As a part of
5 Plaintiff's purchase of the Ford Fusion, and pursuant to the terms of the Contract, on
6 September 2, 2013 Plaintiff made a down payment of \$1,000 to Lake Buick Pontiac
7 GMC.

8 12. The Contract contains a provision that allows Lake Buick Pontiac GMC to
9 cancel the agreement in its entirety if it is unable to assign the Contract to a suitable
10 lender (the "Cancellation Provision"). However, in order to avail itself of its right to
11 cancel the contract, the Cancellation Provision requires that Lake Buick Pontiac GMC
12 provide notice of the cancellation ***within ten days*** of the date that the parties signed
13 the agreement.

14 13. The Cancellation Provision also states that if Lake Buick Pontiac GMC
15 cancels the agreement, then it must return Plaintiff's down payment in its entirety.

16 14. In mid-September 2013, Plaintiff received a Notice of Election to Cancel in
17 the mail from Lake Buick Pontiac GMC. The Notice of Election to Cancel was dated
18 September 12, 2013. The Notice of Election to Cancel states, in part, that "[p]ursuant to
19 the provisions of the retail installment sale contract executed between you and our
20 dealership, we are hereby electing to cancel the transaction" and that "[i]t is requested
21 that you comply with the contract and immediately return the vehicle to us."

22 15. Plaintiff thereafter attempted to return the Ford Fusion to Lake Buick
23 Pontiac GMC and obtain a refund of her down payment; however, when she tried to do
24 so Lake Buick Pontiac GMC misrepresented to her that the Notice of Election to Cancel
25 had no legal effect and that it was just a formality that Lake Buick Pontiac GMC is
26 required to send out on the 10th day in all of its transactions. Lake Buick Pontiac GMC
27 also misrepresented that Plaintiff's contract was still valid. In response, Plaintiff
28

1 demanded that the Contract cancelation be effected and that Lake Buick Pontiac GMC
2 take back the Ford Fusion and refund her \$1,000 down payment. However, Lake Buick
3 Pontiac GMC refused to do so, and continued to assert that the Notice of Cancelation
4 had no legal effect.

5 16. Lake Buick Pontiac GMC later assigned the Contract to a lender,
6 misrepresenting to the lender that it was a valid contract and accepting consideration
7 for that assignment.

8 17. Lake Buick Pontiac GMC conduct of refusing to refund Plaintiff's down
9 payment and misrepresenting that the Notice of Election to Cancel had no legal effect
10 was and is malicious, fraudulent, and oppressive.

11 FIRST CAUSE OF ACTION

12 Conversion

13 18. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
14 through 17.

15 19. On the day that Lake Buick Pontiac GMC mailed the Notice of Cancelation
16 (*i.e.*, September 12, 2013), and afterwards, Plaintiff had a legal right of ownership and a
17 legal right to possess the \$1,000 that she paid Lake Buick Pontiac GMC as a down
18 payment.

19 20. Lake Buick Pontiac GMC intended to and actually interfered with
20 Plaintiff's dominion over Plaintiff's \$1,000 down payment amount by retaining and
21 converting it for itself.

22 21. Plaintiff was damaged by Lake Buick Pontiac GMC's conversion of her
23 down payment for the Ford Fusion.

24 22. Lake Buick Pontiac GMC's conversion of the down payment was done
25 intentionally, maliciously, and oppressively, with the specific intent to injure Plaintiff
26 and in conscious disregard of Plaintiff's rights. Accordingly, Plaintiff is entitled to both
27 compensatory and punitive damages.
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SECOND CAUSE OF ACTION

Consumers Legal Remedies Act - Injunctive Relief Only

23. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1 through 22.

24. The Ford Fusion constitutes “goods” bought for use primarily for personal, family or household purposes.

25. Plaintiff is a “consumer” under the CLRA.

26. The advertisements and sale of the Ford Fusion, as well as the cancelation of the Ford Fusion’s Contract, are “transactions” under the CLRA.

27. The CLRA prohibits numerous unlawful business acts, including: (i) representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; (ii) representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; (iii) representing that a consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction; and (iv) failing to make a statement that it is otherwise required by law.

28. Lake Buick Pontiac GMC violated the CLRA by: (1) misrepresenting that the Notice of Cancelation had no legal effect; (2) misrepresenting that Plaintiff was obligated to make all of the payments under the Ford Fusion’s purchase Contract; (3) refusing to return Plaintiff’s down payment; and (4) failing to disclose that the Contract was canceled and that Lake Buick Pontiac GMC had no legal right to retain Plaintiff’s down payment.

29. Plaintiff is concurrently serving Lake Buick Pontiac GMC with a CLRA notification and demand letter via certified mail, return receipt requested. The notice letter sets forth the relevant facts, notifies Lake Buick Pontiac GMC of its CLRA

1 violations, and requests that Lake Buick Pontiac GMC promptly remedy those
2 violations.

3 30. Under the CLRA, a plaintiff may without prior notification file a complaint
4 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
5 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
6 amend her or her CLRA causes of action without leave of court to add claims for
7 damages. Plaintiff will amend this complaint to add damages claims if Lake Buick
8 Pontiac GMC does not remedy its violations within 30 days of notification.

9 31. Under the CLRA, Plaintiff is entitled to a permanent injunction
10 prohibiting practices that violate the CLRA.

11 32. Lake Buick Pontiac GMC has an illegal pattern and practice of: (1)
12 misrepresenting that its Notices of Cancellation have no legal effect; (2) refusing to
13 return down payments in transactions that it has canceled; (3) failing to disclose that its
14 purchase contracts have no legal effect after a Notice of Cancellation has been sent and
15 that it is not entitled to retain purchasers' down payments; and (4) evading its contracts'
16 10-day cancellation period by misrepresenting that its Notices of Cancellation have no
17 legal effect.

18 33. Plaintiff is entitled to a permanent injunction that compels Lake Buick
19 Pontiac GMC to notify all consumers who have been victims of the above-described
20 illegal conduct, and enjoining Lake Buick Pontiac GMC from such further acts of illegal
21 conduct.

22 34. Plaintiff is also entitled to recover her attorneys' fees, costs, and expenses.
23

24 THIRD CAUSE OF ACTION

25 Business & Professions Code Section 17200 *et seq.*

26 35. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
27 through 34.
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1 36. Lake Buick Pontiac GMC's acts, omissions, misrepresentations, practices,
2 and non-disclosures constituted unlawful, unfair, and fraudulent business acts and
3 practices within the meaning of California Business & Professions Code Sections 17200
4 *et seq.*

5 37. Lake Buick Pontiac GMC has engaged in "unlawful" business acts and
6 practices by: (1) misrepresenting that the Notice of Cancellation had no legal effect; (2)
7 misrepresenting that Plaintiff was obligated to make all of the payments under the Ford
8 Fusion's purchase Contract; (3) refusing to return Plaintiff's down payment; and (4)
9 failing to disclose that the Contract was canceled and that Lake Buick Pontiac GMC had
10 no legal right to retain Plaintiff's down payment. These acts and practices were
11 intended to and did violate the CLRA, California Civil Code Sections 1709, and
12 constitute the common law tort of conversion.

13 38. Lake Buick Pontiac GMC has also engaged in "fraudulent" business acts or
14 practices in that the representations and omissions of material fact described above
15 have a tendency and likelihood to deceive the general public.

16 39. Lake Buick Pontiac GMC has also engaged in "unfair" business acts or
17 practices in that the justification for selling vehicles and repossessing vehicles based on
18 the misrepresentations and omissions of material fact delineated above is outweighed by
19 the gravity of the resulting harm, particularly considering the available alternatives, and
20 offends public policy, is immoral, unscrupulous, unethical, and offensive, or causes
21 substantial injury to consumers.

22 40. The above described unlawful, fraudulent, or unfair business acts and
23 practices conducted by Lake Buick Pontiac GMC continue to this day and present a
24 threat to Plaintiff and the general public in that Lake Buick Pontiac GMC has failed to
25 publicly acknowledge the wrongfulness of its actions and provide full equitable
26 injunctive and monetary relief as required by the statute.
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PRAYER FOR RELIEF

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

1. For cancelation and/or rescission of the Ford Fusion's \$25,893.28 purchase contract;
2. For permanent injunctive relief as permitted under the CLRA and Business & Professions Code Section 17203;
3. For the declaratory and/or equitable relief under the CLRA and Business & Professions Code Section 17203;
4. For general damages of \$1,000, or such other amount as determined at trial;
5. For punitive damages;
6. For pre judgment interest;
7. For attorney's fees, costs of suit, and out-of-pocket litigation expenses pursuant to Civil Code Sections 1780 and 2983.4 and Code of Civil Procedure Section 1021.5; and
8. For such other and further relief as the Court deems just and proper under the circumstances.

VACHON LAW FIRM
Attorney for Plaintiff Lydia Hernandez

Date: October 11, 2013

Michael R. Vachon, Esq.