

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

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Clerk of the Superior Court  
By Candice Nguyen, Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

Judge Linda Marks

11 YOLANDA VIZCARRA, an individual;

12 Plaintiff,

13 v.

14 DCH RIVERSIDE-S, INC., a California  
15 corporation; and  
16 DOES 1 through 75,

17 Defendants.

Case No.: 30-2017-00932907-CU-BC-CJC

**COMPLAINT**

1. **BREACH OF EXPRESS WARRANTY;**
2. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;**
3. **MAGNUSON-MOSS WARRANTY ACT;**
4. **ENFORCEMENT OF RESCISSION OF WRITTEN CONTRACT; AND**
5. **UNFAIR COMPETITION**

1 **I. SUMMARY**

2 1. Defendant DCH Riverside-S, Inc. (which does business as a car dealership under  
3 the name "DCH Subaru of Riverside") sold Plaintiff a defective used 2014 Nissan Rogue. Plaintiff  
4 has returned the Nissan Rogue to DCH Subaru of Riverside on at least eight occasions for repair  
5 of the defect, but the dealer refuses to properly repair the problem – even though the sale of the  
6 Nissan Rogue was accompanied by DCH Subaru of Riverside's express and implied warranties.  
7 DCH Subaru of Riverside has breached the express and implied warranties that accompanied  
8 the sale of the Nissan Rogue, and Plaintiff brings this action under the Song-Beverly Consumer  
9 Warranty Act (Civ. Code § 1790 *et seq.*) and Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et*  
10 *seq.*) for restitution and/or a refund of the amount that Plaintiff paid for the Nissan Rogue.  
11 Plaintiff is also entitled to rescission of the Nissan Rogue's purchase contract under Civil Code  
12 section 1689.

13 2. In addition, DCH Subaru of Riverside has an unlawful practice of failing to provide  
14 consumers (including Plaintiff) with repair invoices whenever they take their vehicles to the  
15 dealer for repair under DCH Subaru of Riverside's written warranties. This practice violates the  
16 Song-Beverly Consumer Warranty Act (Civ. Code § 1790 *et seq.*). Accordingly, under the Unfair  
17 Competition Law (Bus. & Prof. Code § 17200 *et seq.*), Plaintiff is entitled to an injunction that  
18 compels DCH Subaru of Riverside to cease this unlawful practice.

19 **II. PARTIES**

20 3. Plaintiff Yolanda Vizcarra (hereafter "Plaintiff") is an individual residing in  
21 Orange, California.

22 4. Defendant DCH Riverside-S, Inc. is a California corporation that does business as  
23 a car dealership at 8069 Avenue, Riverside, California under the fictitious name "DCH Subaru  
24 of Riverside." Defendant DCH Riverside-S, Inc. is hereafter referred to as "DCH Subaru of  
25 Riverside."

26 5. Plaintiff does not know the true names and capacities, whether corporate,  
27 partnership, associate, individual or otherwise of Defendants sued herein as Does 1 through 75,  
28 inclusive, under the provisions of section 474 of the California Code of Civil Procedure.

1 Defendants Does 1 through 75, inclusive, are in some manner responsible for the acts,  
2 occurrences and transactions set forth herein, and are legally liable to Plaintiff. Plaintiff will seek  
3 leave to amend this Complaint to set forth the true names and capacities of the fictitiously named  
4 Defendants together with appropriate charging allegations when ascertained.

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

7 **III. FACTS**

8 7. On or about September 12, 2016, Plaintiff purchased that certain used 2014 Nissan  
9 Rogue with vehicle identification number 5N1AT2MK6EC801018 (the "Nissan Rogue") from  
10 DCH Subaru of Riverside.

11 8. Plaintiff' purchase of the Nissan Rogue was accompanied by DCH Subaru of  
12 Riverside's express warranty and implied warranty of merchantability.

13 9. The Nissan Rogue was sold and suffers from a nonconformity to warranty (the  
14 "Defect") that causes the vehicle's check-engine light to illuminate. Plaintiff noticed this defect  
15 the day after she purchased the Nissan Rogue, when the vehicle's check-engine light came on.  
16 Plaintiff immediately returned the Nissan Rogue to DCH Subaru of Riverside for repair of the  
17 Defect. However, after claiming that it had fixed the vehicle, DCH Subaru of Riverside returned  
18 the Nissan Rogue to Plaintiff without properly diagnosing and repairing the Defect.

19 10. On at least eight occasions, Plaintiff has returned the Nissan Rogue to DCH Subaru  
20 of Riverside, notified it of the Defect, and requested that DCH Subaru of Riverside repair the  
21 problem. But on each occasion DCH Subaru of Riverside was either unwilling or unable to repair  
22 the Defect, and returned the vehicle back to Plaintiff unrepaired.

23 11. DCH Subaru of Riverside has intentionally refused to repair the Defect in an  
24 attempt to save money, with the hope that Plaintiff will eventually give up.

25 12. On each occasion that Plaintiff returned the Nissan Rogue to DCH Subaru of  
26 Riverside for repair of the Defect, DCH Subaru of Riverside failed to provide Plaintiff with a work  
27 order or receipt that was issued by DCH Subaru of Riverside and which stated the date on which  
28

1 Plaintiff returned the vehicle and the date on which Plaintiff was notified that the vehicle had  
2 been repaired and was ready to be picked up.

3 13. DCH Subaru of Riverside has, at all material times, been aware of the Defect and  
4 the fact that it has been unable and/or unwilling to properly diagnose and repair the Defect. But  
5 DCH Subaru of Riverside has not offered to either repurchase or replace the Nissan Rogue or to  
6 make restitution to Plaintiff consistent with the terms of the Song-Beverly Consumer Warranty  
7 Act.

8 FIRST CAUSE OF ACTION

9 Breach of Express Warranty

10 (Song-Beverly Consumer Warranty Act)

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

13 15. DCH Subaru of Riverside is a "retail seller," "seller," and "retailer" under Civil Code  
14 section 1791(*I*).

15 16. Plaintiff is a "buyer" and a "retail buyer" under Civil Code section 1791(b).

16 17. Pursuant to the Nissan Rogue's express warranty, DCH Subaru of Riverside  
17 undertook to preserve or maintain the utility or performance of the Nissan Rogue or provide  
18 compensation if there was a failure in such utility or performance.

19 18. Plaintiff purchased the Nissan Rogue primarily for personal, family, and  
20 household purposes.

21 19. The Nissan Rogue has and has had serious defects and nonconformities to  
22 warranty including, but not limited to, the Defect described above.

23 20. The foregoing defects and nonconformities to warranty manifested themselves  
24 within the applicable express and implied warranty periods. The defects and nonconformities  
25 substantially impair the use, value and/or safety of the Nissan Rogue.

26 21. Plaintiff delivered the Nissan Rogue to DCH Subaru of Riverside for repair of the  
27 Defect on numerous occasions.

1 22. DCH Subaru of Riverside failed to conform the Nissan Rogue to the applicable  
2 express warranties after a reasonable number of repair attempts.

3 23. By failure of DCH Subaru of Riverside to remedy the Nissan Rogue's Defect, or to  
4 issue a refund or replacement, DCH Subaru of Riverside is in breach of its obligations under the  
5 Song-Beverly Consumer Warranty Act.

6 24. Plaintiff is entitled to justifiably revoke acceptance of Nissan Rogue under the  
7 Song-Beverly Consumer Warranty Act, and does so.

8 25. Under the Song-Beverly Consumer Warranty Act, Plaintiff is entitled to  
9 reimbursement of all payments made towards the Nissan Rogue.

10 26. Plaintiff is also entitled to damages resulting from DCH Subaru of Riverside's  
11 failure to comply with its obligations under the Song-Beverly Consumer Warranty Act.

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

16 28. In addition to the other amounts recovered, Plaintiff is also entitled to a civil  
17 penalty of up to two times the amount of her actual damages because DCH Subaru of Riverside  
18 willfully failed to comply with its responsibilities under the Song-Beverly Consumer Warranty  
19 Act.

20 SECOND CAUSE OF ACTION

21 Breach of Implied Warranty of Merchantability

22 (Song-Beverly Consumer Warranty Act)

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

24 30. Plaintiff's purchase of the Nissan Rogue was accompanied by DCH Subaru of  
25 Riverside's implied warranty of merchantability.

26 31. The implied warranty of merchantability means and includes that the Nissan  
27 Rogue will comply with each of the following requirements: (1) it would pass without objection  
28 in the trade under the contract description; (2) it is fit for the ordinary purposes for which such

1 goods are used; (3) it was adequately contained, packaged, and labeled; and (4) it conforms to  
2 the promises or affirmations of fact made on the container or label.

3 32. The Nissan Rogue's defects and nonconformities to warranty amount to a breach  
4 of the implied warranty of merchantability because the Nissan Rogue (1) would not pass without  
5 objection in the trade under the contract description, (2) is not fit for the ordinary purposes for  
6 which such goods are used, (3) was not adequately contained, packaged, and labeled, and (4)  
7 does not conform to the promises or affirmations of fact made on the container or label.

8 33. Plaintiff has notified DCH Subaru of Riverside of the Nissan Rogue's defects and  
9 nonconformities to warranty.

10 34. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of the Nissan  
11 Rogue, and she is entitled to and hereby does rescind the Nissan Rogue's purchase contract.  
12 Plaintiff is further entitled to restitution of all money paid towards the Nissan Rogue's purchase  
13 contract.

14 35. Plaintiff has been proximately damaged by DCH Subaru of Riverside's failure to  
15 comply with their obligations under the implied warranty or merchantability.

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

18 THIRD CAUSE OF ACTION

19 Violation of Magnuson-Moss Warranty Act

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

21 38. Plaintiff is a "consumer" under 15 U.S.C. § 2301(3).

22 39. DCH Subaru of Riverside is a "supplier" under 15 U.S.C. § 2301(4)

23 40. DCH Subaru of Riverside is a "warrantor" under 15 U.S.C. § 2301(5)

24 41. The Nissan Rogue is a "consumer product" under 15 U.S.C. § 2301(1).

25 42. The Magnuson-Moss Warranty Act, at 15 U.S.C. § 2310(d)(1), provides a cause of  
26 action for any consumer who is damaged by the failure of a warrantor to comply with a written  
27 or implied warranty.  
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1 43. DCH Subaru of Riverside's express warranty for the Nissan Rogue is a "written  
2 warranty" under 15 U.S.C. § 2301(6).

3 44. DCH Subaru of Riverside's implied warranty of merchantability for the Nissan  
4 Rogue is an "implied warranty" under 15 U.S.C. § 2301(7).

5 45. DCH Subaru of Riverside has not established an informal dispute settlement  
6 procedure that meets the requirements 16 C.F.R. §§ 703.1-703.8.

7 46. DCH Subaru of Riverside did not incorporate into its written warranty for the  
8 Nissan Rogue a requirement that Plaintiff resort to an informal dispute settlement procedure  
9 before pursuing any legal remedy with respect to such written warranty.

10 47. The Nissan Rogue has and has had serious defects and nonconformities to  
11 warranty, including but not limited to the Defect described above.

12 48. Plaintiff delivered the Nissan Rogue to DCH Subaru of Riverside for repair of the  
13 Defect on numerous occasions.

14 49. DCH Subaru of Riverside failed to conform the Nissan Rogue to the applicable  
15 express warranties after a reasonable number of repair attempts.

16 50. DCH Subaru of Riverside intentionally breached the Nissan Rogue's express and  
17 implied warranties by intentionally refusing to properly repair the Nissan Rogue pursuant to its  
18 express warranty.

19 51. Plaintiff has been damaged by DCH Subaru of Riverside's failure to comply with  
20 its obligations under its express and implied warranties, and therefore brings this claim under  
21 15 U.S.C. § 2310(d).

22 FOURTH CAUSE OF ACTION

23 Enforcement of Rescission of Written Contract

24 52. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 51.

25 53. Plaintiff is entitled to, and has, rescinded the Nissan Rogue's purchase contract  
26 pursuant to Civil Code sections 1689 and 1691.

27 54. Plaintiff is entitled to and hereby brings this action for relief under Civil Code  
28 section 1692 based upon her rescission of the Nissan Rogue's purchase contract.







1           7.       For such other and further relief as the Court deems just and proper under the  
2 circumstances.

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5 Date: July 19, 2017

VACHON LAW FIRM



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Michael R. Vachon, Esq.  
Attorney for Plaintiff Yolanda Vizcarra

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