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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – NORTH COUNTY REGIONAL CENTER

10 RICHARD CLAUSEN, an individual;
11 and
12 DEANNA CLAUSEN, an individual,

13 Plaintiffs,

14 v.

15 SAN CLEMENTE AUTO RENTAL AND
16 SALES, INC., a California corporation;
17 and
18 DOES 1 through 75,

19 Defendants.

Case No.:

COMPLAINT FOR:

1. BREACH OF IMPLIED WARRANTY;
2. BREACH OF EXPRESS WARRANTY; AND
3. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY)

1
2 SUMMARY

3 1. This lawsuit arises out of Plaintiffs' purchase of a used Toyota 4Runner
4 from Defendant San Clemente Auto Rental and Sales, Inc. (an Escondido, California
5 used car dealership that does business under the fictitious business name "Escondido
6 Auto Super Center"). Escondido Auto Super Center sold to Plaintiffs and promised
7 them a "like new" paint job on the Toyota 4Runner. However, when Escondido Auto
8 Super Center delivered the vehicle, its paint job was so poorly done that the wind
9 generated by merely driving the vehicle causes the paint to peel off in large strips.
10

11 2. When Plaintiff Richard Clausen went back to complain, Escondido Auto
12 Super Center preyed upon and took advantage of Mr. Clausen's previously-sustained
13 brain injury by talking in circles, constantly changing the subject, telling him the matter
14 had been resolved, and telling him that Escondido Auto Super Center was not liable for
15 the defective paint job. Because Escondido Auto Super Center refused to informally
16 resolve this dispute, Plaintiffs had no choice but to file this lawsuit.
17

18 3. Escondido Auto Super Center's conduct amounts to breaches of the
19 express and implied warranties that accompanied the sale of the Toyota 4Runner.
20 Accordingly, Plaintiffs are entitled to rescind the purchase contract, and to restitution of
21 all amounts paid. Escondido Auto Super Center also violated the Consumers Legal
22 Remedies Act (Civil Code §1750 *et seq.*) by preying on Mr. Clausen's brain injury and
23 misrepresenting to him that it was not responsible for fixing the paint defect.
24

25 PARTIES

26 4. Plaintiff Richard Clausen is an individual residing in San Marcos,
27 California.
28

1 Super Center's representatives that this was the case, and Escondido Auto Super Center
2 was aware of Mr. Clausen's condition at all material times.

3 12. Plaintiffs expressed an interest in the Toyota 4Runner, but stated that they
4 did not like its paint job. Escondido Auto Super Center then agreed to repaint the
5 Toyota 4Runner for Plaintiffs, so that it would have a "like new" paint job.
6

7 13. Relying on Escondido Auto Super Center's promises regarding the new
8 paint, Plaintiffs agreed to purchase the Toyota 4Runner, and then did so pursuant to a
9 contract that included a charge for repainting.

10 14. Escondido Auto Super Center's promise that it would repaint the Toyota
11 4Runner so that it looked "like new" was a part of the basis of the bargain struck by the
12 parties.
13

14 15. Escondido Auto Super Center's sale of the Toyota 4Runner to Plaintiffs
15 was accompanied by Escondido Auto Super Center's express 30 day/1,000 mile
16 warranty. Escondido Auto Super Center's sale of the Toyota 4Runner to Plaintiffs was
17 also accompanied by Escondido Auto Super Center's implied warranty of
18 merchantability.

19 16. Escondido Auto Super Center caused the Toyota 4Runner to be repainted,
20 and then Plaintiffs took possession of it.

21 17. On or about October 20, 2012, Plaintiff Richard Clausen notified
22 Escondido Auto Super Center that the Toyota 4Runner's paint job was defective, and
23 that as a result large strips of the paint were being peeled off by wind while Plaintiffs
24 were driving. Plaintiff Richard Clausen took the Toyota 4Runner back to Escondido
25 Auto Super Center for repair of this problem, with the applicable warranty periods, on
26 or about October 27, 2012.
27
28

1 that term is defined in California's Song-Beverly Consumer Warranty Act (Civil Code S
2 1791 *et seq.*) (the "California Lemon Law").

3 24. Under the California Lemon Law, the implied warranty of merchantability
4 means and includes that the goods will comply with each of the following requirements:
5 (1) they would pass without objection in the trade under the contract description; (2)
6 they are fit for the ordinary purposes for which such goods are used; (3) they are
7 adequately contained, packaged, and labeled; and (4) they conform to the promises or
8 affirmations of fact made on the container or label.
9

10 25. The facts that the Toyota 4Runner's paint is peeling off in large strips
11 solely as a result of the wind created from driving the vehicle constitutes a breach of the
12 implied warranty of merchantability under the California Lemon Law because the
13 Toyota 4Runner (i) would not pass without objection in the trade as a vehicle with a
14 "like new" paint job; and (ii) was not fit for the ordinary purposes for which such goods
15 are used.
16

17 26. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of
18 the Toyota 4Runner, and are entitled under the California Lemon Law to rescind the
19 purchase contract and to restitution of all money paid towards the purchase contract.
20 This Complaint also, again, hereby rejects and revokes acceptance of the Toyota
21 4Runner.
22

23 27. Plaintiffs have been proximately damaged by Escondido Auto Super
24 Center's violations of the California Lemon Law, including its failure to comply with its
25 obligations under the implied warranty of merchantability.

26 28. Plaintiffs are entitled to the remedies provided by the California Lemon
27 Law, including the remedies set forth in Civil Code Section 1794, and including their
28 attorney's fees, costs, and expenses.

1 SECOND CAUSE OF ACTION

2 Breach of Express Warranty

3 29. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
4 through 28.

5 30. Escondido Auto Super Center's statement that it would give the Toyota
6 4Runner a "like new" paint job was an affirmation of fact that became a part of the basis
7 of the bargain for Plaintiffs' purchase of that automobile.
8

9 31. Escondido Auto Super Center breached the express warranty because the
10 Toyota 4Runner's paint job is defective, and not "like new."

11 32. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of
12 the Toyota 4Runner, and are entitled under California Law to rescind the purchase
13 contract and to restitution of all money paid towards the purchase contract.
14

15 33. Plaintiffs have been proximately damaged by Escondido Auto Super
16 Center's breaches of its express warranty.

17 THIRD CAUSE OF ACTION

18 Consumers Legal Remedies Act - Injunctive Relief Only

19 34. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
20 through 33.

21 35. The Toyota 4Runner is a "good" under the CLRA that was bought for use
22 primarily for personal, family or household purposes.
23

24 36. Plaintiffs are "consumers" under the CLRA.

25 37. The advertisement and the sale of the Toyota 4Runner to Plaintiffs are
26 "transactions" under the CLRA.

27 38. The CLRA prohibits numerous unlawful business acts, including: (i)
28 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 (ii) 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; (iii) representing that a
5 transaction confers or involves rights, remedies, or obligations which it does not have or
6 involve, or which are prohibited by law; and (iv) representing that the consumer will
7 receive an economic benefit, if the earning of the benefit is contingent on an event to
8 occur subsequent to the consummation of the transaction.
9

10 39. Escondido Auto Super Center violated the CLRA by: (i) misrepresenting
11 that the Toyota 4Runner would receive a “like new” paint job; and (ii) attempting to
12 convince Mr. Clausen (by preying upon his disability) that it was not legally obligated
13 and responsible for fixing the Toyota 4Runner’s defective paint job.
14

15 40. Plaintiffs are concurrently serving Escondido Auto Super Center with a
16 CLRA notification and demand letter via certified mail, return receipt requested. The
17 notice letter sets forth the relevant facts, notifies Escondido Auto Super Center of its
18 CLRA violations, and requests that Escondido Auto Super Center promptly remedy
19 those violations.
20

21 41. Under the CLRA, a plaintiff may without prior notification file a complaint
22 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
23 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
24 amend her or his CLRA causes of action without leave of court to add claims for
25 damages. Plaintiffs will amend this complaint to add damages claims if Escondido Auto
26 Super Center does not remedy its violations within the statutory period.
27

28 42. Under the CLRA, Plaintiffs are entitled to a permanent injunction
prohibiting practices that violate the CLRA.

