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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 SAN BERNARDINO COUNTY – CIVIL DIVISION

10 MARIA GODINEZ, an individual,

11 Plaintiff

12 v.

13 SUNRISE FORD, a California  
14 corporation; and  
DOES 1 through 10,

15 Defendants.  
16

Case No.: CIVDS1308764

COMPLAINT FOR:

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

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2 SUMMARY

3 1. This is a "lemon law" lawsuit relating to a defective 2008 Ford F250 that  
4 Plaintiff purchased from Defendant Sunrise Ford, a Fontana, California new and used  
5 car dealership. On at least four occasions while it was under Sunrise Ford's warranties,  
6 Plaintiff took the Ford F250 in for repair of a defect that causes it to suddenly lose power  
7 and overheat, and which makes it unsafe to drive. Sunrise Ford is either unable or  
8 unwilling to properly diagnose and repair the defect, and notwithstanding its failure to  
9 make good on its warranty, refuses to voluntarily repurchase the Ford F250.  
10

11 2. Under California's "lemon law" statute (the Song-Beverly Consumer  
12 Warranty Act, Civil Code § 1790 *et seq.*), Plaintiff is entitled to have her vehicle  
13 repurchased by Sunrise Ford, to compensatory damages, to a civil penalty because of  
14 Sunrise Ford's willful failure to comply its obligations under California's lemon law. She  
15 is also entitled to her attorney's fees, costs, and litigation-related expenses.  
16

17 PARTIES

18 3. Plaintiff Maria Godinez is an individual residing in San Bernardino,  
19 California.

20 4. Defendant Sunrise Ford is California corporation that does business at  
21 16005 Valley Boulevard, Fontana, California.

22 5. Plaintiff does not know the true names and capacities, whether corporate,  
23 partnership, associate, individual or otherwise of Defendants sued herein as Does 1  
24 through 10, inclusive, under the provisions of section 474 of the California Code of Civil  
25 Procedure. Defendants Does 1 through 10, inclusive, are in some manner responsible  
26 for the acts, occurrences and transactions set forth herein, and are legally liable to  
27 Plaintiff. Plaintiff will seek leave to amend this Complaint to set forth the true names  
28

1 and capacities of the fictitiously named Defendants together with appropriate charging  
2 allegations when ascertained.

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

6 FACTS

7 7. On or about February 3, 2013, Plaintiff purchased that certain 2008 Ford  
8 F250 with vehicle identification number 1FTSW21R48EB84888 (the "Ford F250") from  
9 Sunrise Ford.

10 8. Plaintiff's purchase of the Ford F250 was accompanied by Sunrise Ford's  
11 express warranty and implied warranty of merchantability.

12 9. On at least four occasions, while it was still under Sunrise Ford's express  
13 and implied warranties, Plaintiff returned the Ford F250 Sunrise Ford for repair of a  
14 defect that causes the vehicle to lose power and overheat, and which renders the vehicle  
15 unsafe to drive (hereafter the "Defect"). However, on each such occasion Sunrise Ford  
16 thereafter returned the Ford F250 to Plaintiff without properly repairing the Defect.  
17

18 10. Because of Sunrise Ford's repeated inability to repair the Ford F250's  
19 defect, Plaintiff contacted Sunrise Ford and requested that it repurchase the Ford F250  
20 under California's lemon law.

21 11. Sunrise Ford responded to Plaintiff's lemon law buyback request by  
22 intentionally misrepresenting to Plaintiff that Sunrise Ford does not repurchase  
23 automobiles, when in fact, as a warrantor of the automobiles it sells, it is legally  
24 obligated to repurchase such automobiles under California's lemon law when it is  
25 unable to repair substantial defects within a reasonable number of repair attempts.  
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1 FIRST CAUSE OF ACTION

2 Breach of Express Warranty

3 12. Plaintiff incorporates by reference the allegations set forth in paragraphs 1  
4 through 11.

5 13. Sunrise Ford is the warrantor of the Ford F250's express warranty.

6 14. Pursuant to the Ford F250's express warranty, Sunrise Ford undertook to  
7 preserve or maintain the utility or performance of the Ford F250 or provide  
8 compensation if there was a failure in such utility or performance.  
9

10 15. The Ford F250 has and has had serious defects and nonconformities to  
11 warranty including, but not limited to, the Defect described above.

12 16. Under the Song-Beverly Consumer Warranty Act (the "California Lemon  
13 Law"), the Ford F250 is a "consumer good" purchased primarily for family or household  
14 purposes and Plaintiff has used the vehicle primarily for those purposes.  
15

16 17. Plaintiff is a "buyer" of consumer goods under the California Lemon Law.

17 18. The foregoing defects and nonconformities to warranty manifested  
18 themselves within the applicable express warranty period. The defects and  
19 nonconformities substantially impair the use, value and/or safety of the Ford F250.

20 19. Plaintiff delivered the vehicle to authorized repair facilities for Sunrise  
21 Ford vehicles for repair of the nonconformities on numerous occasions.  
22

23 20. Such authorized repair facilities were unable to conform the Ford F250 to  
24 the applicable express warranties after a reasonable number of attempts.

25 21. By failure of Sunrise Ford to remedy the defects as alleged above, or to  
26 issue a refund or replacement, Sunrise Ford is in breach of its obligations under the Act..

27 22. Plaintiff is entitled to justifiably revoke acceptance of Ford F250 under the  
28 California Lemon Law.

1 23. Under the California Lemon Law, Plaintiff is entitled to reimbursement of  
2 all payments made towards the Ford F250 (less the amount directly attributable to  
3 Plaintiff's use of the Ford F250 prior to discovery of the nonconformities).

4 24. Plaintiff is entitled to damages resulting from Sunrise Ford's failure to  
5 comply with its obligations under the California Lemon Law.  
6

7 25. Plaintiff is entitled under the California Lemon Law to recover as part of  
8 the judgment a sum equal to the aggregate amount of costs and litigation-related  
9 expenses, including attorney's fees, reasonably incurred in connection with the  
10 commencement and prosecution of this action.

11 26. Plaintiff is entitled, in addition to the other amounts recovered, to a civil  
12 penalty of up to two times the amount of actual damages because Sunrise Ford willfully  
13 failed to comply with its responsibilities under the California Lemon Law. Specifically,  
14 under the California Lemon Law Sunrise Ford has an affirmative obligation to offer to  
15 repurchase or replace the Ford F250 after Sunrise Ford was unable to repair the defect  
16 within a reasonable number of attempts. However, Sunrise Ford failed to offer to  
17 repurchase or replace the Ford F250, and misrepresented to Plaintiff that it had no such  
18 obligation.  
19

20 **SECOND CAUSE OF ACTION**

21 **Breach of Implied Warranty**

22 27. Plaintiff incorporates by reference the allegations in paragraphs 1 through

23 26.

24 28. Plaintiff's purchase of the Ford F250 was accompanied by an express  
25 warranty and Sunrise Ford's "implied warranty of merchantability" (as that term is  
26 defined in California's Lemon Law statute.  
27  
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1           29. Under the California Lemon Law, the implied warranty of merchantability  
2 means and includes that the goods will comply with each of the following requirements:  
3 (1) they would pass without objection in the trade under the contract description; (2)  
4 they are fit for the ordinary purposes for which such goods are used; (3) they are  
5 adequately contained, packaged, and labeled; and (4) they conform to the promises or  
6 affirmations of fact made on the container or label.  
7

8           30. The facts that the Ford F250 suffers from a dangerous defect that causes it  
9 to suddenly lose power and overheat constitutes a breach of the implied warranty of  
10 merchantability under the California Lemon Law because the Ford F250 (1) would pass  
11 without objection in the trade under the contract description; (2) is not fit for the  
12 ordinary purposes for which such goods are used; (3) was not adequately contained,  
13 packaged, and labeled; and (4) does not conform to the promises or affirmations of fact  
14 made on the container or label.  
15

16           31. Plaintiff notified Sunrise Ford of its breach of the warranty, and requested  
17 that it repurchase the Ford F250, but Sunrise Ford refused to do so.

18           32. Plaintiff is entitled under the California Lemon Law to rescind the  
19 purchase contract and to restitution of all money paid towards the purchase contract.  
20

21           33. Plaintiff has been proximately damaged by Sunrise Ford's violations of the  
22 California Lemon Law, including its failure to comply with its obligations under the  
23 implied warranty of merchantability.

24           34. Plaintiff is entitled to the remedies provided by the California Lemon Law,  
25 including the remedies set forth in Civil Code Section 1794, and including her attorney's  
26 fees, costs, and expenses.

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1 THIRD CAUSE OF ACTION

2 Consumers Legal Remedies Act - Injunctive Relief Only

3 35. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1  
4 through 34.

5 36. The Ford F250 is a “good” under the CLRA that was bought for use  
6 primarily for personal, family or household purposes.

7 37. Plaintiff is a “consumer” under the CLRA.

8 38. The advertisement and the sale of the Ford F250 to Plaintiff are  
9 “transactions” under the CLRA.  
10

11 39. The CLRA prohibits numerous unlawful business acts, including: (i)  
12 representing that goods or services have sponsorship, approval, characteristics,  
13 ingredients, uses, benefits, or quantities which they do not have or that a person has  
14 sponsorship, approval, status, affiliation, or connection which he or she does not have;  
15 (ii) representing that goods or services are of a particular standard, quality, or grade, or  
16 that goods are of a particular style or model, if they are another; (iii) representing that a  
17 transaction confers or involves rights, remedies, or obligations which it does not have or  
18 involve, or which are prohibited by law; (iv) representing that the consumer will receive  
19 an economic benefit, if the earning of the benefit is contingent on an event to occur  
20 subsequent to the consummation of the transaction; (v) advertising goods or services  
21 with intent not to sell them as advertised; (vi) Representing that a transaction confers or  
22 involves rights, remedies, or obligations which it does not have or involve, or which are  
23 prohibited by law. The CLRA also prohibits the omission or failure to make a statement  
24 where there exists an independent legal duty to do so.  
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27 40. Sunrise Ford violated the CLRA by (1) misrepresenting that Sunrise Ford  
28 does not repurchase automobiles; and (2) misrepresenting that Sunrise Ford is not

1 legally obligated to repurchase automobiles when it is unable to repair defects that  
2 manifest during the periods of express and implies warranties offered by Sunrise Ford.

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

8 42. 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 Sunrise Ford  
13 does not remedy its violations within the statutory period.  
14

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

17 44. Sunrise Ford has an illegal pattern and practice of (1) misrepresenting that  
18 Sunrise Ford does not repurchase automobiles; and (2) misrepresenting that Sunrise  
19 Ford is not legally obligated to repurchase automobiles when it is unable to repair  
20 defects that manifest during the periods of express and implies warranties offered by  
21 Sunrise Ford.  
22

23 45. Plaintiff is entitled to a permanent injunction that compels Sunrise Ford to  
24 notify all consumers who have been victims of the above-described illegal conduct, and  
25 enjoining Sunrise Ford from such further acts of illegal conduct.

26 46. Plaintiff is also entitled to recover her attorneys' fees, costs, and expenses.

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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 of the \$53,676.08 purchase contract for the Ford F250, and restitution of all amounts paid by Plaintiff under that contract;
3. For pre judgment interest at the legal rate;
4. For general damages as requested above;
5. For reasonable attorneys' fees, costs of suit, and out of pocket litigation expenses; and
6. For such other and further relief as the Court deems just and proper under the circumstances.

VACHON LAW FIRM  
Attorney for Plaintiff Maria Godinez

Date: July 25, 2013

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Michael R. Vachon, Esq.