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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – SOUTH COUNTY REGIONAL CENTER
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11 CORNEL WILLIAMS, an individual;
MYRIAM ARAGON, an individual;

12 Plaintiffs,

13 v.

14 VALUE CARS, INC., a California
15 corporation; and
DOES 1 through 75,

16 Defendants.
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Case No.:

COMPLAINT FOR:

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY);
2. INTENTIONAL MISREPRESENTATION;
3. NEGLIGENT MISREPRESENTATION;
4. BREACH OF IMPLIED WARRANTY UNDER SONG-BEVERLY CONSUMER WARRANTY ACT; AND
5. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200)

1 set forth the true names of the fictitiously-named defendants together with appropriate
2 charging allegations when ascertained.

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

5 FACTS

6 6. Plaintiffs allege as follows, on information and belief, formed after an
7 inquiry reasonable under the circumstances:

8 7. On or about November 20, 2011, Plaintiffs visited Value Cars, Inc. and
9 while there were shown the 2005 BMW 330ci with vehicle identification number
10 WBABW53425PL52561 (the "BMW 330ci") Value Cars, Inc.'s employees who dealt with
11 Plaintiffs represented that the BMW 330ci had been thoroughly inspected and was in
12 excellent mechanical condition. Value Cars, Inc. represented to Plaintiffs, orally and in
13 writing, that the BMW330ci had a clean Carfax vehicle history report.

14 8. Value Cars, Inc. also represented to Plaintiffs that if they purchased the
15 BMW 33ci Value Cares, Inc. could sell them a service contract that would provide
16 comprehensive "bumper-to-bumper" coverage for any repairs it needed in the future.

17 9. In reliance upon the above-stated representations by Value Cars, Inc. and
18 its salesperson, Plaintiffs purchased the BMW 330ci along with a service contract.

19 10. Plaintiffs' purchase of the BMW 330ci was accompanied by Value Cars,
20 Inc.'s express warranty and implied warranty of merchantability.

21 11. Plaintiffs subsequently learned that the BMW 330ci was previously in a
22 serious collision that caused severe damage, including damage to the vehicle's frame.

23 12. Value Cars, Inc. knew about this pre-existing damage, but deliberately
24 concealed it from and did not disclose it to Plaintiffs.

1 13. Because of the BMW 330ci's serious accident damage, the service contract
2 purchased by Plaintiffs from Value Cars, Inc. does and will not provide comprehensive
3 coverage for the BMW 330ci because of the accident-damage exclusion in the service
4 contract's terms.

5 14. The prior accident damage of the BMW 330ci was a material fact that a
6 reasonable consumer would consider in deciding whether or not to purchase the BMW
7 330ci. The accident damage of the BMW 330ci materially decreases the utility,
8 performance, safety, and fair market value of the BMW 330ci.

9 15. Value Cars, Inc.'s above-stated illegal conduct is fraudulent, malicious, and
10 oppressive under Civil Code Section 3294. Value Cars, Inc. acted with a willful and
11 conscious disregard of Plaintiffs' rights and safety. Value Cars, Inc.'s actions were also
12 fraudulent under Civil Code Section 3294, in that it intentionally misrepresented and
13 concealed the true condition of the BMW 330ci.

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16 FIRST CAUSE OF ACTION

17 Consumers Legal Remedies Act - Injunctive Relief Only

18 16. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
19 through 15.

20 17. The BMW 330ci is a "good" under the CLRA that was bought for use
21 primarily for personal, family or household purposes.

22 18. Plaintiffs are "consumers" under the CLRA.

23 19. The advertisement and the sale of the BMW 330ci to Plaintiffs are
24 "transactions" under the CLRA.

25 20. The CLRA prohibits numerous unlawful business acts, including: (i)
26 representing that goods or services have sponsorship, approval, characteristics,
27 ingredients, uses, benefits, or quantities which they do not have or that a person has
28

1 sponsorship, approval, status, affiliation, or connection which he or she does not have;
2 (ii) representing that goods or services are of a particular standard, quality, or grade, or
3 that goods are of a particular style or model, if they are another; (iii) misrepresenting
4 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or
5 services with intent not to sell them as advertised; and (v) representing that a
6 transaction confers or involves rights, remedies, or obligations which it does not have or
7 involve, or which are prohibited by law. The CLRA also prohibits the omission of
8 statements, where there exists a duty to make a statement or disclosure.
9

10 21. Value Cars, Inc. had a duty to disclose the known accident damage because
11 (1) such disclosure was necessary in order to make its other statements not misleading;
12 (2) it was a known material fact; (3) Value Cars, Inc. knew that it had exclusive
13 knowledge that was not accessible to Plaintiffs; and (4) it was reasonable for Plaintiffs to
14 expect disclosure of such facts.
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16 22. Value Cars, Inc. violated the CLRA by: (1) misrepresenting that the BMW
17 330ci had a clean vehicle history report; (2) misrepresenting that the BMW 330ci had
18 been thoroughly inspected and was in excellent mechanical condition; (3) concealing
19 and failing to disclose that it had previously been involved in an accident resulting in
20 material damage, including (but not limited to) damage to the vehicle's frame; and (4)
21 misrepresenting the service contract Value Cars, Inc. sold to Plaintiffs would provide
22 comprehensive coverage for the BMW 330ci.
23

24 23. Plaintiffs are concurrently serving Value Cars, Inc. with a CLRA
25 notification and demand letter via certified mail, return receipt requested. The notice
26 letter sets forth the relevant facts, notifies Value Cars, Inc. of its CLRA violations, and
27 requests that Value Cars, Inc. promptly remedy those violations.
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1 excellent condition; (2) that the BMW 330ci had never been in any accidents; (3) the
2 BMW 330ci had a clean vehicle history report; and (4) the service contract that Value
3 Cars, Inc. sold to Plaintiffs would provide comprehensive coverage for the BMW 330ci.

4 31. Value Cars, Inc. omitted from the statements it made material facts, the
5 disclosure of which was necessary, (1) in order to make its other statements not
6 misleading; (2) because they were known materials facts; (3) because Value Cars, Inc.
7 knew that it had exclusive knowledge that was not accessible to Plaintiffs; and (4)
8 because it was reasonable for Plaintiffs to expect disclosure of such facts. These
9 omissions include, but are not limited to the following: (1) that the BMW 330ci had
10 previously been in a material accident; (2) that the BMW 330ci was not in excellent
11 condition; (3) that the BMW 330ci's frame was damaged; (4) the BMW 330ci did not
12 have a clean vehicle history report; and (5) the service contract that Value Cars, Inc. sold
13 to Plaintiffs would not provide comprehensive coverage for the BMW 330ci.
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15 32. At all times Value Cars, Inc. either had actual or constructive notice of the
16 true facts but nonetheless intentionally or recklessly concealed these facts from
17 Plaintiffs.
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19 33. Value Cars, Inc. made these representations and omitted material facts
20 with the intent to defraud Plaintiffs and to induce Plaintiffs to purchase the BMW 330ci
21 and pay an inflated sales price. At the time Plaintiffs purchased the BMW 330ci they
22 did not know, or have reason to know, that Value Cars, Inc. was making false and
23 misleading representations and had omitted material facts. Plaintiffs acted in justifiable
24 reliance upon the truth of the representations which misled them as to the nature and
25 extent of the facts concealed. Plaintiffs were justified in their reliance, as Value Cars,
26 Inc. held itself out as professionals in the automotive sales industry, and Plaintiffs had
27 no reason to doubt such representations.
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1 34. As a direct and proximate result of Value Cars, Inc.'s fraudulent
2 representations and omissions of material facts, Plaintiffs suffered damages, including
3 actual, general, consequential and incidental damages according to proof at trial.

4 35. Plaintiffs are also entitled to punitive damages.

5 36. Value Cars, Inc. committed fraud in the inducement of the purchase
6 contract for the BMW 330ci, and Plaintiffs are therefore entitled to rescission and
7 restitution in an amount according to proof at trial.
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9 THIRD CAUSE OF ACTION

10 Negligent Misrepresentation

11 37. Plaintiffs incorporate by reference the allegations in paragraphs 1 through
12 36.

13 38. As an alternative to Plaintiffs' cause of action for Intentional
14 Misrepresentation, Plaintiffs allege that Value Cars, Inc.'s misrepresentations were
15 made negligently, if not intentionally.
16

17 39. The representations made by Value Cars, Inc. were not true.

18 40. Regardless of its actual belief, Value Cars, Inc. made the representations
19 without any reasonable grounds for believing them to be true.

20 41. Value Cars, Inc. failed to exercise due care in ascertaining the accuracy of
21 the representations made to Plaintiffs.

22 42. Value Cars, Inc. made the representations for the purpose of inducing
23 Plaintiffs to rely upon them, and to act or refrain from acting in reliance thereon.
24

25 43. Plaintiffs were unaware of the falsity of the representations and acted in
26 reliance upon the truth of those representations, and were justified in relying upon
27 those representations.
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1 packaged, and labeled, and (4) did not conform to the promises or affirmations of fact
2 made on the container or label.

3 51. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of
4 the BMW 330ci, and are entitled to rescind the purchase contract and to restitution of
5 all money paid towards the purchase contract.
6

7 52. Plaintiffs have been proximately damaged by Value Cars, Inc.'s failure to
8 comply with its obligations under the implied warranty.

9 53. Plaintiffs are entitled to the remedies provided in California Civil Code
10 section 1794, including their attorney's fees, costs, and expenses.

11 FIFTH CAUSE OF ACTION

12 Unfair Competition

13 54. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
14 through 53.
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16 55. Value Cars, Inc.'s acts, omissions, misrepresentations, practices, and non-
17 disclosures constitute unlawful, unfair, and fraudulent business acts and practices
18 within the meaning of California Business & Professions Code Sections 17200 *et seq.*

19 56. Value Cars, Inc. has engaged in "unlawful" business acts and practices by:
20 (1) selling accident-damaged vehicles to the public while misrepresenting their
21 mechanical condition; (2) concealing and failing to disclose known material accident
22 damage; (3) misrepresenting that vehicles have clean vehicle history reports, when they
23 do not; and (4) representing that service contracts provide comprehensive coverage
24 when they do not. These acts and practices were intended to and did violate California
25 Civil Code Section 1709 *et seq.*, the CLRA, Vehicle Code Section 11713.18., and the
26 California Lemon Law.
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2. For rescission of the \$22,343 contract for the BMW 330ci, and restitution of all amounts paid towards that contract;
3. For general damages of \$2,800;
4. For punitive damages;
5. For pre judgment interest at the legal rate;
6. For reasonable attorneys' fees, costs of suit, and out of pocket litigation expenses; and
7. For such other and further relief as the Court deems just and proper under the circumstances.

VACHON LAW FIRM
Attorney for Plaintiffs Myriam Aragon
& Cornel Williams

Date: July 25, 2013

Michael R. Vachon, Esq.