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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF IMPERIAL – EL CENTRO COURTHOUSE
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11 MONICA TORRES, an individual;
PEDRO DIAZ, an individual;

12 Plaintiffs,

13 v.

14 DIRECT AUTO PLAZA, a business
15 entity form unknown; and
DOES 1 through 75;

16 Defendants.
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Case No.: ECU07861

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;
 5. VIOLATION OF AUTOMOBILE SALES FINANCE ACT;
 6. VIOLATION OF CREDIT SERVICES ACT;
 7. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200)
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1 SUMMARY

2 1. This lawsuit arises out of Plaintiffs' purchase of an accident-damaged used
3 car. Plaintiffs purchased a used 2010 Dodge Charger from Defendant Direct Auto Plaza
4 (an El Centro, California used car dealership) in reliance upon Direct Auto Plaza's
5 promises that the vehicle had been "thoroughly inspected" and was in "excellent
6 mechanical condition." However, notwithstanding the Dealer's claims, the Dodge
7 Charger had actually been in a severe prior collision, in which is sustained frame
8 damage. Direct Auto Plaza knew about the accident damage, but concealed it from and
9 failed to disclose it to Plaintiffs. The Dealer's misrepresentations amount to common
10 law fraud, violation of the Consumers Legal Remedies Act (Civil Code §1750 *et seq.*) (the
11 "CLRA"), are breaches of the implied warranty of merchantability under California's
12 lemon law statute, and amount to unfair competition under Business & Professions
13 Code Section 17200 *et seq.* (the "UCL"). Plaintiffs are entitled to rescind the purchase
14 contract, recover compensatory and punitive damages, and be awarded their attorneys'
15 fees, costs, and out-of-pocket litigation expenses.
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18 2. Direct Auto Plaza also violated California's Automobile Sales Finance Act
19 (Civil Code § 2981 *et seq.*) (the "ASFA") by falsifying the amounts of Plaintiffs' down
20 payment and deferred down payments in the Dodge Charger's purchase contract. Direct
21 Auto Plaza did this in order to get Plaintiffs' signatures on a contract before they
22 changed their mind, to trick a lender into financing Plaintiffs' purchase of the Dodge
23 Charger, and to ensnare Plaintiffs in a loan for which they otherwise would not have
24 qualified. Direct Auto Plaza's falsification of the down payment amounts in the
25 purchase contract also violates the Credit Services Act of 1984 (Civil Code § 1789.10 *et*
26 *seq.*) (the "CSA"), the CLRA, and amounts to unfair competition under the UCL.
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1 PARTIES

2 3. Plaintiffs Monica Torres and Pedro Diaz are individuals residing in Heber,
3 California.

4 4. Defendant Direct Auto Plaza is a business entity, form unknown, that
5 operates as a car dealership under the name "Direct Auto Plaza" at 2351 South 4th Street,
6 El Centro, California.

7 5. Plaintiffs do not know the true names and capacities, whether corporate,
8 partnership, associate, individual, or otherwise, of defendants sued herein as Does 1
9 through 75, inclusive, and thus names them under the provisions of Section 474 of the
10 California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner
11 responsible for the acts set forth herein, and are legally liable to Plaintiffs. Plaintiffs will
12 set forth the true names of the fictitiously-named defendants together with appropriate
13 charging allegations when ascertained.
14

15 6. All acts of corporate employees were authorized or ratified by an officer,
16 director, or managing agent of the corporate employer.
17

18 FACTS

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

21 8. On or about August 28, 2011, Plaintiffs visited Direct Auto Plaza and while
22 there were shown that certain 2010 Dodge Charger with vehicle identification number
23 2B3CA3CV7AH263992 (the "Dodge Charger"). Direct Auto Plaza's employees who dealt
24 with Plaintiffs represented that the Dodge Charger had been thoroughly inspected and
25 was in excellent mechanical condition.
26

27 9. In reliance upon the above-stated representations by Direct Auto Plaza
28 and its salesperson, Plaintiffs expressed an interest in purchasing the Dodge Charger.

1 10. Direct Auto Plaza soon discovered that Plaintiffs were unable to and could
2 not make an immediate down payment in an amount that would have enabled Direct
3 Auto Plaza to find a lender to finance Plaintiffs' purchase of the Dodge Charger.
4 Accordingly, in order to trick a lender into financing the Dodge Charger's purchase,
5 Direct Auto Plaza told Plaintiffs that they could purchase the Dodge Charger and
6 immediately take delivery of that vehicle, without making any immediate down payment
7 at all, if they agreed to make two payments of \$750 each to Direct Auto Plaza within the
8 next three weeks. The effect of this arrangement was that Plaintiffs had agreed to make
9 no cash down payment and two deferred down payments (totaling \$1,500) towards the
10 purchase of the Dodge Charger.
11

12 11. Direct Auto Plaza prepared Plaintiffs' credit applications and the retail
13 installment sale contract for the Dodge Charger. Direct Auto Plaza charged a fee to
14 prepare these documents for Plaintiff, and also received valuable consideration for
15 preparing Plaintiffs' application for credit in the form of the consideration it received
16 under the Dodge Charger's purchase contract.
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18 12. Direct Auto Plaza presented the retail installment sale contract to
19 Plaintiffs for them to sign, telling Plaintiffs that it accurately memorialized their
20 agreement for the purchase of the Dodge Charger. Relying on these representations,
21 Plaintiffs signed the contract.
22

23 13. Direct Auto Plaza represented that the Dodge Charger's retail installment
24 sale contract was a legally enforceable agreement, which required Plaintiffs to make the
25 (undisclosed) deferred down payments and the monthly payments stated therein.

26 14. When it prepared the retail installment sale contract for the Dodge
27 Charger, Direct Auto Plaza intentionally and falsely stated therein that Plaintiffs were
28 making an immediate cash down payment of \$1,500, and not making any deferred down

1 payments – when in reality Plaintiffs were not making any cash down payment at all
2 and had agreed to make two deferred down payments totaling \$1,500.

3 15. Direct Auto Plaza’s standard automobile purchase contract contains a
4 clause permitting it to unilaterally cancel the contract (and demand return of the
5 vehicle) if Direct Auto Plaza is not able to assign the contract to an acceptable lender.
6 Direct Auto Plaza has a pattern and practice of never self-financing automobile
7 purchases, and always electing to cancel purchase contracts that it is unable to assign to
8 a lender.

9
10 16. After Plaintiffs’ purchase of the Dodge Charger, Direct Auto Plaza made an
11 application to and then assigned Plaintiffs’ purchase contract for the Dodge Charger to
12 First Imperial Credit Union.

13 17. Direct Auto Plaza falsified the down payment and the deferred down
14 payment amounts in the purchase contract in order to obtain Plaintiffs’ signatures on a
15 contract before they changed their minds, to trick a lender into financing a vehicle
16 purchase that it otherwise would not finance, and to get Plaintiffs financed for a loan for
17 which they otherwise would not have qualified. But for Direct Auto Plaza's falsification
18 of the purchase documents, Plaintiffs would not have purchased the Dodge Charger.

19
20 18. Plaintiffs’ purchase of the Dodge Charger was accompanied by Direct Auto
21 Plaza’s express warranty and the implied warranty of merchantability.

22 19. Plaintiffs subsequently learned that the Dodge Charger was, prior to their
23 purchase of that automobile, involved in a collision in which it sustained severe damage,
24 including damage to the vehicle’s frame.

25
26 20. Direct Auto Plaza knew about this pre-existing damage, but deliberately
27 concealed it from and did not disclose it to Plaintiffs.

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1 21. The prior accident damage of the Dodge Charger was a material fact that a
2 reasonable consumer would consider in deciding whether or not to purchase the Dodge
3 Charger. The accident damage materially decreases the utility, performance, safety, and
4 fair market value of the Dodge Charger.

5
6 22. The Dealer's above-stated illegal conduct is fraudulent, malicious, and
7 oppressive under Civil Code Section 3294. The Dealer acted with a willful and conscious
8 disregard of Plaintiffs' rights and safety. The Dealer's actions were also fraudulent
9 under Civil Code Section 3294, in that it intentionally misrepresented and concealed the
10 true condition of the Dodge Charger.

11 **FIRST CAUSE OF ACTION**

12 **Consumers Legal Remedies Act - Injunctive Relief Only**

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14 23. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
15 through 22.

16 24. The Dodge Charger is a "good" under the CLRA that was bought for use
17 primarily for personal, family or household purposes.

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

19 26. The advertisement and the sale of the Dodge Charger to Plaintiffs are
20 "transactions" under the CLRA.

21 27. The CLRA prohibits numerous unlawful business acts, including: (i)
22 representing that goods or services have sponsorship, approval, characteristics,
23 ingredients, uses, benefits, or quantities which they do not have or that a person has
24 sponsorship, approval, status, affiliation, or connection which he or she does not have;
25 (ii) representing that goods or services are of a particular standard, quality, or grade, or
26 that goods are of a particular style or model, if they are another; (iii) misrepresenting
27 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or
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1 services with intent not to sell them as advertised; (v) representing that a transaction
2 confers or involves rights, remedies, or obligations which it does not have or involve, or
3 which are prohibited by law; (vi) representing that the subject of a transaction has been
4 supplied in accordance with a previous representation when it has not; and (vii)
5 inserting an unconscionable provision into a contract. The CLRA also prohibits the
6 omission of statements, where there exists a duty to make a statement or disclosure.
7

8 28. Direct Auto Plaza had a duty to disclose the known accident damage
9 because (1) such disclosure was necessary in order to make its other statements not
10 misleading; (2) it was a known material fact; (3) Direct Auto Plaza knew that it had
11 exclusive knowledge that was not accessible to Plaintiffs; and (4) it was reasonable for
12 Plaintiffs to expect disclosure of such facts.

13 29. Direct Auto Plaza violated the CLRA by (1) misrepresenting the amount of
14 Plaintiffs' down payment and deferred down payments in the Dodge Charger's purchase
15 contract, and failing to set forth therein the amounts and due dates for Plaintiffs'
16 deferred down payments; (2) violating the ASFA's Single Document Rule; (3)
17 misrepresenting that the Dodge Charger's retail installment sale contract accurately
18 memorialized their agreement, when it did not; (4) misrepresenting that the Dodge
19 Charger's retail installment sale contract was legally enforceable and that Plaintiffs were
20 required to keep the vehicle and make the payments to which Plaintiffs and Direct Auto
21 Plaza had previously agreed; (5) omitting and failing to disclose that the retail
22 installment sale contract for the Dodge Charger did not accurately memorialize
23 Plaintiffs' agreement to purchase that vehicle; (6) omitting and failing to disclose that
24 the Dodge Charger's retail installment sale contract was unenforceable and that
25 Plaintiffs were not required to make any payments thereunder; (7) misrepresenting the
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1 mechanical condition of the Dodge Charger; and (8) concealing and failing to disclose
2 that it had previously been involved in an accident resulting in material damage.

3 30. Plaintiffs are concurrently serving Direct Auto Plaza with a CLRA
4 notification and demand letter via certified mail, return receipt requested. The notice
5 letter sets forth the relevant facts, notifies Direct Auto Plaza of its CLRA violations, and
6 requests that Direct Auto Plaza promptly remedy those violations.
7

8 31. 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. Plaintiffs will amend this complaint to add damages claims if Direct Auto
13 Plaza does not remedy its violations within the statutory period.
14

15 32. Under the CLRA, Plaintiffs are entitled to a permanent injunction
16 prohibiting practices that violate the CLRA.

17 33. Direct Auto Plaza has an illegal pattern and practice of: (1) selling
18 accident-damaged vehicles to the public while misrepresenting their mechanical
19 condition; (2) concealing and failing to disclose known material accident damage; (3)
20 misrepresenting the amount and timing of down payments and deferred down
21 payments; and (4) violating the Single Document Rule.
22

23 34. Plaintiffs are entitled to a permanent injunction that compels Direct Auto
24 Plaza to notify all consumers who have been victims of the above-described illegal
25 conduct, and enjoining Direct Auto Plaza from such further acts of illegal conduct.

26 35. Plaintiffs are also entitled to recover their attorneys' fees, costs, and
27 expenses.
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1 SECOND CAUSE OF ACTION

2 Intentional Misrepresentation

3 36. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through
4 35.

5 37. Prior to Plaintiffs' purchase of the Dodge Charger, and afterwards, Direct
6 Auto Plaza made the misrepresentations as set forth above. These misrepresentations
7 included, but are not limited to the following: that the Dodge Charger had been
8 inspected and was in excellent condition.

9
10 38. Direct Auto Plaza omitted from the statements it made material facts, the
11 disclosure of which was necessary, (1) in order to make its other statements not
12 misleading; (2) because they were known materials facts; (3) because Direct Auto Plaza
13 knew that it had exclusive knowledge that was not accessible to Plaintiffs; and (4)
14 because it was reasonable for Plaintiffs to expect disclosure of such facts. These
15 omissions include, but are not limited to the following: (1) that the Dodge Charger had
16 previously been in a material accident; (2) that the Dodge Charger was not in excellent
17 condition; and (3) that the Dodge Charger's frame was damaged.

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19 39. At all times Direct Auto Plaza either had actual or constructive notice of
20 the true facts but nonetheless intentionally or recklessly concealed these facts from
21 Plaintiffs.

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23 40. Direct Auto Plaza made these representations and omitted material facts
24 with the intent to defraud Plaintiffs and to induce Plaintiffs to purchase the Dodge
25 Charger and pay an inflated sales price. At the time Plaintiffs purchased the Dodge
26 Charger they did not know, or have reason to know, that Direct Auto Plaza was making
27 false and misleading representations and had omitted material facts. Plaintiffs acted in
28 justifiable reliance upon the truth of the representations which misled them as to the

1 nature and extent of the facts concealed. Plaintiffs were justified in their reliance, as
2 Direct Auto Plaza held itself out as professionals in the automotive sales industry, and
3 Plaintiffs had no reason to doubt such representations.

4 41. As a direct and proximate result of Direct Auto Plaza's fraudulent
5 representations and omissions of material facts, Plaintiffs suffered damages, including
6 actual, general, consequential and incidental damages according to proof at trial.
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8 42. Plaintiffs are also entitled to punitive damages.

9 43. Direct Auto Plaza committed fraud in the inducement of the purchase
10 contract for the Dodge Charger, and Plaintiffs are therefore entitled to rescission and
11 restitution in an amount according to proof at trial.

12 THIRD CAUSE OF ACTION

13 Negligent Misrepresentation

14 44. Plaintiffs incorporate by reference the allegations in paragraphs 1 through
15 43.
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17 45. As an alternative to Plaintiffs' cause of action for Intentional
18 Misrepresentation, Plaintiffs allege that Direct Auto Plaza's misrepresentations were
19 made negligently, if not intentionally.

20 46. The representations made by Direct Auto Plaza were not true.

21 47. Regardless of its actual belief, Direct Auto Plaza made the representations
22 without any reasonable grounds for believing them to be true.
23

24 48. Direct Auto Plaza failed to exercise due care in ascertaining the accuracy of
25 the representations made to Plaintiffs.

26 49. Direct Auto Plaza made the representations for the purpose of inducing
27 Plaintiffs to rely upon them, and to act or refrain from acting in reliance thereon.
28

1 50. Plaintiffs were unaware of the falsity of the representations and acted in
2 reliance upon the truth of those representations, and were justified in relying upon
3 those representations.

4 51. As a direct and proximate result of Direct Auto Plaza's negligent
5 misrepresentations of material fact, Plaintiffs suffered damages, including actual,
6 consequential, and incidental damages according to proof of trial.

7 52. Plaintiffs are also entitled to punitive damages.

8 53. Plaintiffs hereby allege fraud in the inducement to enter into the sales
9 contract, and therefore are entitled to rescission and restitution in an amount according
10 to proof at trial.

11 12 FOURTH CAUSE OF ACTION

13 Breach of Implied Warranty – California Lemon Law

14 54. Plaintiffs incorporate by reference the allegations in paragraphs 1 through
15 53.

16 55. Under the Song-Beverly Consumer Warranty Act (the "Lemon Law")
17 Plaintiffs' purchase of the Dodge Charger was accompanied by Direct Auto Plaza's
18 implied warranty of merchantability.

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

25 57. The fact that the Dodge Charger was previously involved in a severe
26 accident that caused massive structural damage constitutes a breach of the implied
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1 warranty of merchantability under the Lemon Law because the Dodge Charger (1) would
2 not pass without objection in the trade under the contract description, (2) was not fit for
3 the ordinary purposes for which such goods are used, (3) was not adequately contained,
4 packaged, and labeled, and (4) did not conform to the promises or affirmations of fact
5 made on the container or label.

6
7 58. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of
8 the Dodge Charger, and are entitled to rescind the purchase contract and to restitution
9 of all money paid towards the purchase contract.

10 59. Plaintiffs have been proximately damaged by Direct Auto Plaza's failure to
11 comply with its obligations under the implied warranty.

12 60. Under the Lemon Law, Plaintiffs are entitled to the remedies provided in
13 California Civil Code section 1794, including their attorney's fees, costs, and expenses.

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15 FIFTH CAUSE OF ACTION

16 Violation of Automobile Sales Finance Act

17 61. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
18 through 60.

19 62. The purchase contract for the Dodge Charger is a conditional sale contract
20 subject to the ASFA.

21 63. Direct Auto Plaza is a "seller" under the ASFA.

22 64. Plaintiffs are "buyers" under the ASFA.

23 65. The Dodge Charger is a "motor vehicle" under the ASFA.

24 66. Civil Code Section 2981.9 requires that all motor vehicle purchase
25 contracts subject to the ASFA contain in a single document all of the agreements
26 between the buyer and the seller with respect to the total cost and terms of payment for
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1 the motor vehicle, including any promissory notes or other evidence of indebtedness
2 (hereafter referred to as the "Single Document Rule").

3 67. Direct Auto Plaza failed to comply with the Single Document Rule. Such
4 failures include, but are not limited to, the fact that the amounts and due dates for
5 Plaintiffs' deferred down payments are not listed in the Dodge Charger's purchase
6 contract.

7
8 68. Civil Code Section 2982(a)(6) requires all motor vehicle purchase
9 contracts that are subject to the ASFA to separately and specifically itemize the amount
10 that the buyer is immediately paying as a cash down payment. Civil Code Section
11 2982(a)(6) also requires purchase contracts to separately and specifically itemize the
12 amount of any deferred down payments.

13
14 69. Direct Auto Plaza violated Civil Code Section 2982. Such failures include,
15 but are not limited to, the fact that Direct Auto Plaza failed to correctly itemize in the
16 purchase contract the amount of Plaintiffs' actual immediate cash down payment and
17 the amount of their agreed-upon deferred down payments.

18 70. Direct Auto Plaza's violations of the Single Document Rule and Civil Code
19 Section 2982 were intentional.

20 71. Because of Direct Auto Plaza's failure to comply with the Single Document
21 Rule and Civil Code Section 2982 the purchase contract for the Dodge Charger is not
22 enforceable, and Plaintiffs are entitled to rescission of the contract and restitution of all
23 amounts paid towards the Dodge Charger purchase.

24
25 72. Plaintiffs are also entitled to incidental and consequential damages, and
26 their attorney's fees, costs, and out-of-pocket expenses.

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1 SIXTH CAUSE OF ACTION

2 Violation of Credit Services Act

3 73. Plaintiff hereby incorporates by reference paragraphs 1 through 72.

4 74. Direct Auto Plaza is a credit service organization under the Credit Services
5 Act of 1984 (Civil Code § 1789.10 et seq.) (the “CSA”).

6 75. Plaintiff is a Buyer under the CSA.

7 76. First Imperial Credit Union is a person who has extended credit to
8 Plaintiffs and to whom Plaintiffs applied for credit.

9 77. Direct Auto Plaza made untrue and misleading statements concerning
10 Plaintiffs’ creditworthiness, credit standing, and/or credit capacity to First Imperial
11 Credit Union that it knew and/or should have known to be untrue and misleading.

12 78. Plaintiffs are entitled to damages, which shall not in any event be less than
13 the amount paid to Direct Auto Plaza, and their attorney’s fees and costs.

14 SEVENTH CAUSE OF ACTION

15 Unfair Competition

16 79. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
17 through 78.

18 80. Direct Auto Plaza’s acts, omissions, misrepresentations, practices, and
19 non-disclosures constitute unlawful, unfair, and fraudulent business acts and practices
20 within the meaning of California Business & Professions Code Sections 17200 *et seq.*

21 81. Direct Auto Plaza has engaged in “unlawful” business acts and practices
22 by: (1) selling accident-damaged vehicles to the public while misrepresenting their
23 mechanical condition; (2) concealing and failing to disclose known material accident
24 damage; (3) misrepresenting the amount and timing of down payments and deferred
25 down payments; and (4) violating the Single Document Rule. These acts and practices
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1 were intended to and did violate California Civil Code Section 1709 *et seq.*, the CLRA,
2 Vehicle Code Section 11713.18., the CSA, and the Lemon Law.

3 82. Direct Auto Plaza has also engaged in “fraudulent” business acts or
4 practices in that the representations and omissions of material fact described above
5 have a tendency and likelihood to deceive lessees of these vehicles and the general
6 public.
7

8 83. Direct Auto Plaza has also engaged in “unfair” business acts or practices in
9 that the justification for selling and leasing vehicles based on the misrepresentations
10 and omissions of material fact delineated above is outweighed by the gravity of the
11 resulting harm, particularly considering the available alternatives, and offends public
12 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
13 to consumers.
14

15 84. The above described unlawful, fraudulent, or unfair business acts and
16 practices conducted by Direct Auto Plaza continue to this day and present a threat to
17 Plaintiffs and the general public in that Direct Auto Plaza has failed to publicly
18 acknowledge the wrongfulness of its actions and provide full equitable injunctive and
19 monetary relief as required by the statute.
20

21 85. Pursuant to California Business & Professions Code Section 17203,
22 Plaintiffs seek an order of this Court requiring Direct Auto Plaza to immediately cease
23 such acts of unfair competition and enjoining Direct Auto Plaza from continuing to
24 conduct business via the unlawful, fraudulent, and/or unfair business acts and practices
25 set forth in this Complaint and from failing to fully disclose the true nature of their
26 misrepresentations, and ordering Direct Auto Plaza to engage in a corrective notice and
27 advertising campaign.
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PRAYER FOR RELIEF

Plaintiffs pray 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 \$32,293.68 Dodge Charger purchase contract, and restitution of all amounts paid under that contract;
3. For general damages in amount to be proven at trial;
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 Monica Torres & Pedro Diaz

Date: September 20, 2013

Michael R. Vachon, Esq.