

1 VACHON LAW FIRM
Michael R. Vachon, Esq. (SBN 206447)
2 17150 Via del Campo, Suite 204
San Diego, California 92127
3 Tel.: (858) 674-4100
Fax: (858) 674-4222

4 Attorney for Plaintiffs
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE
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11 TIMOTHY TICKNER, an individual;
JESSICA BRIGGMAN, an individual,

12 Plaintiffs,

13 v.

14 EZ AUTO SOLUTIONS, INC., a
15 California 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 that goods are of a particular style or model, if they are another; (iii) misrepresenting
2 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or
3 services with intent not to sell them as advertised; and (v) representing that a
4 transaction confers or involves rights, remedies, or obligations which it does not have or
5 involve, or which are prohibited by law. The CLRA also prohibits the omission of
6 statements, where there exists a duty to make a statement or disclosure.
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8 19. EZ Auto Solutions 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) EZ Auto Solutions 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 20. EZ Auto Solutions violated the CLRA by misrepresenting the mechanical
14 condition of the Toyota Tacoma, concealing and failing to disclose that it had previously
15 been involved in an accident resulting in material damage, including (but not limited to)
16 damage to the vehicle's frame.
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18 21. Plaintiffs are concurrently serving EZ Auto Solutions with a CLRA
19 notification and demand letter via certified mail, return receipt requested. The notice
20 letter sets forth the relevant facts, notifies EZ Auto Solutions of its CLRA violations, and
21 requests that EZ Auto Solutions promptly remedy those violations.
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23 22. Under the CLRA, a plaintiff may without prior notification file a complaint
24 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
25 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
26 amend her or his CLRA causes of action without leave of court to add claims for
27 damages. Plaintiffs will amend this complaint to add damages claims if EZ Auto
28 Solutions does not remedy its violations within the statutory period.

1 previously been in a material accident; (2) that the Toyota Tacoma was not in excellent
2 condition; and (3) that the Toyota Tacoma's frame was damaged.

3 29. At all times EZ Auto Solutions either had actual or constructive notice of
4 the true facts but nonetheless intentionally or recklessly concealed these facts from
5 Plaintiffs.

6 30. EZ Auto Solutions made these representations and omitted material facts
7 with the intent to defraud Plaintiffs and to induce Plaintiffs to purchase the Toyota
8 Tacoma and pay an inflated sales price. At the time Plaintiffs purchased the Toyota
9 Tacoma they did not know, or have reason to know, that EZ Auto Solutions was making
10 false and misleading representations and had omitted material facts. Plaintiffs acted in
11 justifiable reliance upon the truth of the representations which misled them as to the
12 nature and extent of the facts concealed. Plaintiffs were justified in their reliance, as EZ
13 Auto Solutions held itself out as professionals in the automotive sales industry, and
14 Plaintiffs had no reason to doubt such representations.

15 31. As a direct and proximate result of EZ Auto Solutions's fraudulent
16 representations and omissions of material facts, Plaintiffs suffered damages, including
17 actual, general, consequential and incidental damages according to proof at trial.

18 32. Plaintiffs are also entitled to punitive damages.

19 33. EZ Auto Solutions committed fraud in the inducement of the purchase
20 contract for the Toyota Tacoma, and Plaintiffs are therefore entitled to rescission and
21 restitution in an amount according to proof at trial.

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25 THIRD CAUSE OF ACTION

26 Negligent Misrepresentation

27 34. Plaintiffs incorporate by reference the allegations in paragraphs 1 through
28 33.

1 45. Plaintiffs' purchase of the Toyota Tacoma was accompanied by EZ Auto
2 Solutions's implied warranty of merchantability.

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

10 47. The fact that the Toyota Tacoma was previously involved in a severe
11 accident that caused massive structural damage constitutes a breach of the implied
12 warranty of merchantability because the Toyota Tacoma (1) would not pass without
13 objection in the trade under the contract description, (2) was not fit for the ordinary
14 purposes for which such goods are used, (3) was not adequately contained, packaged,
15 and labeled, and (4) did not conform to the promises or affirmations of fact made on the
16 container or label.
17

18 48. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of
19 the Toyota Tacoma, and are entitled to rescind the purchase contract and to restitution
20 of all money paid towards the purchase contract.
21

22 49. Plaintiffs have been proximately damaged by EZ Auto Solutions's failure to
23 comply with its obligations under the implied warranty.

24 50. Plaintiffs are entitled to the remedies provided in California Civil Code
25 section 1794, including his attorney's fees, costs, and expenses.

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1 FIFTH CAUSE OF ACTION

2 Unfair Competition

3 51. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
4 through 50.

5 52. EZ Auto Solutions's acts, omissions, misrepresentations, practices, and
6 non-disclosures constitute unlawful, unfair, and fraudulent business acts and practices
7 within the meaning of California Business & Professions Code Sections 17200 *et seq.*
8

9 53. EZ Auto Solutions has engaged in "unlawful" business acts and practices
10 by: (1) misrepresenting the mechanical condition of vehicles that it sells to the public;
11 and (2) concealing and failing to disclose known accident damage. These acts and
12 practices were intended to and did violate California Civil Code Section 1709 *et seq.*, the
13 CLRA, Vehicle Code Section 11713.18., and the Song-Beverly Consumer Warranty Act.
14

15 54. EZ Auto Solutions has also engaged in "fraudulent" business acts or
16 practices in that the representations and omissions of material fact described above
17 have a tendency and likelihood to deceive lessees of these vehicles and the general
18 public.

19 55. EZ Auto Solutions has also engaged in "unfair" business acts or practices
20 in that the justification for selling and leasing vehicles based on the misrepresentations
21 and omissions of material fact delineated above is outweighed by the gravity of the
22 resulting harm, particularly considering the available alternatives, and offends public
23 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
24 to consumers.
25

26 56. The above described unlawful, fraudulent, or unfair business acts and
27 practices conducted by EZ Auto Solutions continue to this day and present a threat to
28 Plaintiffs and the general public in that EZ Auto Solutions has failed to publicly

1 acknowledge the wrongfulness of its actions and provide full equitable injunctive and
2 monetary relief as required by the statute.

3 57. Pursuant to California Business & Professions Code Section 17203,
4 Plaintiffs seek an order of this Court requiring EZ Auto Solutions to immediately cease
5 such acts of unfair competition and enjoining EZ Auto Solutions from continuing to
6 conduct business via the unlawful, fraudulent, and/or unfair business acts and practices
7 set forth in this Complaint and from failing to fully disclose the true nature of their
8 misrepresentations, and ordering EZ Auto Solutions to engage in a corrective notice and
9 advertising campaign.
10

11 PRAYER FOR RELIEF

12 Plaintiffs pray for judgment as follows as appropriate for the particular causes of
13 action:

- 14 1. For the declaratory, equitable, and/or injunctive relief as requested above;
- 15 2. For rescission of the \$31,547.84 purchase contract for the Toyota Tacoma
16 and restitution of all amounts paid under that contract;
- 17 3. For general and punitive damages;
- 18 4. For pre judgment interest at the legal rate;
- 19 5. For reasonable attorneys' fees, costs of suit, and out of pocket litigation
20 expenses; and
- 21 6. For such other and further relief as the Court deems just and proper under
22 the circumstances.
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26 VACHON LAW FIRM
27 Attorney for Plaintiffs Timothy Tickner & Jessica
28 Briggman

Date: September 20, 2013

Michael R. Vachon, Esq.