

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 Plaintiff  
5  
6  
7

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAR 10 2014

Sherri R. Carter, Executive Officer/Clerk  
By M. Fondon, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES – SOUTHWEST DISTRICT  
10 TORRANCE COURTHOUSE

11 WAYNE CALVELO, an individual;

12 Plaintiff,

13 v.

14 POWER NISSAN OF SOUTH BAY, a  
15 business entity, form unknown; and  
DOES 1 through 75,

16 Defendants.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No.: YCo69605

FIRST AMENDED COMPLAINT FOR:

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF AND DAMAGES);
2. VIOLATION OF AUTOMOBILE SALES FINANCE ACT;
3. VIOLATION OF CREDIT SERVICES ACT OF 1984;
4. INTENTIONAL MISREPRESENTATION;
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 6. All acts of corporate employees were authorized or ratified by an officer,  
4 director, or managing agent of the corporate employer.

5 7. Each defendant (whether actually or fictitiously-named herein) was the  
6 principal, agent, alter-ego, co-conspirator, or employee of each other defendant and in  
7 acting as such principal or within the course and scope of such employment, agency, or  
8 conspiracy, took some part in the acts and omissions hereinafter set forth by reason of  
9 which each defendant is liable to Plaintiff.  
10

11 FACTS

12 8. Plaintiff alleges as follows, on information and belief, formed after an  
13 inquiry reasonable under the circumstances:

14 9. On or about February 8, 2013, Plaintiff visited Power Nissan of South Bay  
15 and while there was shown the Nissan Armada with vehicle identification number  
16 5N1AA0ND4CN611617 (hereafter the "Nissan Armada").  
17

18 10. Power Nissan of South Bay knew that the Nissan Armada had previously  
19 been registered as a rental vehicle; however, Power Nissan of South Bay concealed and  
20 did not disclose this fact to Plaintiff.

21 11. Not knowing that it had previously been registered as a rental vehicle,  
22 Plaintiff expressed an interest in purchasing the Nissan Armada.  
23

24 12. Power Nissan of South Bay then discovered that Plaintiff was unable to  
25 make an immediate down payment. Further, without a substantial down payment  
26 Power Nissan of South Bay would not have been able to find a lender to finance  
27 Plaintiff's purchase of the Nissan Armada. Accordingly, in order to trick a lender into  
28 financing the Nissan Armada's purchase, and in order to get Plaintiff's signature on a

1 contract before he changed his mind, Power Nissan of South Bay told Plaintiff that he  
2 could purchase the Nissan Armada and immediately take delivery of that vehicle,  
3 without making any immediate down payment whatsoever, if he agreed to pay \$5,000  
4 towards the down payment on March 8, 2013. Plaintiff agreed.

5  
6 13. Power Nissan of South Bay prepared Plaintiff's credit application and the  
7 retail installment sale contract for the Nissan Armada. Power Nissan of South Bay  
8 charged a fee to prepare these documents for Plaintiff, and also received valuable  
9 consideration for preparing Plaintiff's application for credit in the form of the  
10 consideration it received under the Nissan Armada's purchase contract.

11  
12 14. When it prepared the retail installment sale contract for the Nissan  
13 Armada, Power Nissan of South Bay intentionally and falsely stated therein that Plaintiff  
14 was making an immediate cash down payment of \$5,000, and not making any deferred  
15 down payment – when in reality the parties agreed that Plaintiff would pay no  
16 immediate cash down payment at all, and make a \$5,000 deferred down payment on  
17 March 8, 2013.

18  
19 15. Power Nissan of South Bay presented the retail installment sale contract to  
20 Plaintiff for him to sign, telling Plaintiff that it accurately memorialized their agreement  
21 for the sale and purchase of the Nissan Armada. Relying on these representations,  
22 Plaintiff signed the contract.

23  
24 16. Power Nissan of South Bay represented that the Nissan Armada's retail  
25 installment sale contract was a legally enforceable agreement binding Plaintiff to all of  
its obligations.

26  
27 17. Power Nissan of South Bay submitted Plaintiff's credit application, along  
28 with the signed purchase contract for the Nissan Armada, to potential lenders, and  
eventually assigned it to a lender who was not aware of the deferred down payment.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

18. The fact that the Nissan Armada was previously registered as a rental vehicle was a material fact that a reasonable consumer would consider in deciding whether or not to purchase it. The fact that the Nissan Armada was previously registered as a rental vehicle materially decreases its fair market value. Indeed, Plaintiff would not have purchased the Nissan Armada for the price he paid had he known that it was previously registered as a rental vehicle

19. Plaintiff's purchase of the Nissan Armada was accompanied by Power Nissan of South Bay's implied warranty of merchantability.

20. Power Nissan of South Bay's concealment and failure to disclose the Nissan Armada's rental history was malicious, fraudulent, and oppressive.

FIRST CAUSE OF ACTION

Consumers Legal Remedies Act - Injunctive Relief and Damages

21. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1 through 20.

22. The Nissan Armada is a "good" under the CLRA that was bought for use primarily for personal, family or household purposes.

23. Plaintiff is a "consumer" under the CLRA.

24. The advertisement and the sale of the Nissan Armada to Plaintiff are "transactions" under the CLRA.

25. The CLRA prohibits numerous unlawful business acts, including: (i) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he or she does not have;

1 (ii) representing that goods or services are of a particular standard, quality, or grade, or  
2 that goods are of a particular style or model, if they are another; (iii) representing that  
3 the subject of a transaction has been supplied in accordance with a previous  
4 representation when it has not, (iv) advertising goods or services with intent not to sell  
5 them as advertised; and (v) inserting an unconscionable provision into a contract. The  
6 CLRA also prohibits the omission of statements, where there exists a duty to make a  
7 statement or disclosure.  
8

9 26. Power Nissan of South Bay had a duty to disclose the known rental history  
10 of the Nissan Armada under 13 California Code of Regulations Section 260.02.

11 27. Power Nissan of South Bay violated the CLRA by: (1) failing to disclose  
12 that the Nissan Armada had previously been registered as a rental vehicle; and (2)  
13 representing that the Nissan Armada's purchase contract was an enforceable contract,  
14 even though it knew that it was unenforceable because of Power Nissan of South Bay's  
15 violations of the ASFA  
16

17 28. Plaintiff sent the Dealership, via certified mail, return receipt requested, a  
18 Consumer Legal Remedies Act notification and demand letter at least 30 days prior to  
19 filing this Complaint. The notice letter sets forth the relevant facts, notifies Power  
20 Nissan of South Bay of its CLRA violations, and requests that Power Nissan of South Bay  
21 promptly remedy those violations.  
22

23 29. 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. Power Nissan of South Bay did not give or agree to give an appropriate  
28 correction, repair, replacement, or other remedy without the statutory time period.

1 Accordingly, Plaintiff hereby amends this Complaint to add claims for actual and  
2 punitive damages under the Consumer Legal Remedies Act.

3 30. Under the CLRA, Plaintiff is entitled to a permanent injunction  
4 prohibiting practices that violate the CLRA.

5 31. Power Nissan of South Bay has an illegal pattern and practice of (1) failing  
6 to disclose the known rental history of vehicles that it sells to the public, (2)  
7 misrepresenting to consumers that automobile purchase contracts are enforceable when  
8 it knows that they are not due to its violations of the ASFA.

9 32. Plaintiff is entitled to a permanent injunction that compels Power Nissan  
10 of South Bay to notify all consumers who have been victims of the above-described  
11 illegal conduct, and enjoining Power Nissan of South Bay from such further acts of  
12 illegal conduct.

13 33. Plaintiff is also entitled to recover his attorneys' fees, costs, and expenses.

14  
15  
16 SECOND CAUSE OF ACTION

17 Violation of Automobile Sales Finance Act

18 34. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1  
19 through 33.

20 35. The purchase contract for the Nissan Armada is a conditional sale contract  
21 subject to the ASFA.

22 36. Power Nissan of South Bay is a "seller" under the ASFA.

23 37. Plaintiff is a "buyer" under the ASFA.

24 38. The Nissan Armada is a "motor vehicle" under the ASFA.

25 39. Civil Code Section 2981.9 requires that all motor vehicle purchase  
26 contracts subject to the ASFA contain in a single document all of the agreements  
27 between the buyer and the seller with respect to the total cost and terms of payment for  
28

1 the motor vehicle, including any promissory notes or other evidence of indebtedness  
2 (hereafter referred to as the "Single Document Rule").

3 40. Power Nissan of South Bay failed to comply with the Single Document  
4 Rule. Such failures include, but are not limited to, the fact that the amount and due date  
5 for Plaintiff's \$5,000 deferred down payment is not listed in the Nissan Armada's  
6 purchase contract.  
7

8 41. 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 42. Power Nissan of South Bay violated Civil Code Section 2982. Such failures  
15 include, but are not limited to, the fact that Power Nissan of South Bay failed to  
16 correctly itemize in the purchase contract the amount of Plaintiff's actual immediate  
17 cash down payment and the amount of his deferred down payment.

18 43. Power Nissan of South Bay's violations of the Single Document Rule and  
19 Civil Code Section 2982 were intentional.

20 44. Because of Power Nissan of South Bay's failure to comply with the Single  
21 Document Rule and Civil Code Section 2982 the purchase contract for the Nissan  
22 Armada is not enforceable, and Plaintiff is entitled to rescission of the contract and  
23 restitution of all amounts paid towards the Nissan Armada purchase.  
24

25 45. Plaintiff is also entitled to incidental and consequential damages, and his  
26 attorney's fees, costs, and out-of-pocket expenses.

27 ///

28 ///



1 THIRD CAUSE OF ACTION

2 Violation of Credit Services Act

3 46. Plaintiff hereby incorporates by reference paragraphs 1 through 45.

4 47. Power Nissan of South Bay is a credit service organization under the  
5 Credit Services Act of 1984 (Civil Code § 1789.10 et seq.) (the "CSA").

6 48. Plaintiff is a Buyer under the CSA.

7 49. Power Nissan of South Bay made untrue and misleading statements  
8 concerning Plaintiff's creditworthiness, credit standing, and/or credit capacity to  
9 lenders that it knew and/or should have known to be untrue and misleading.  
10

11 50. Plaintiff is entitled to damages, which shall not in any event be less than  
12 the amount paid to Power Nissan of South Bay, and his attorney's fees and costs.

13 FOURTH CAUSE OF ACTION

14 Intentional Misrepresentation

15 51. Plaintiff incorporates by reference the allegations in Paragraphs 1 through  
16 50.  
17

18 52. Power Nissan of South Bay omitted from the statements it made material  
19 facts, the disclosure of which was necessary, (1) in order to make its other statements  
20 not misleading; (2) because they were known materials facts; (3) because Power Nissan  
21 of South Bay knew that it had exclusive knowledge that was not accessible to Plaintiff;  
22 and (4) because it was reasonable for Plaintiff to expect disclosure of such facts. These  
23 omissions include, but are not limited to, the fact that the Nissan Armada was  
24 previously registered as a rental vehicle.  
25

26 53. At all times Power Nissan of South Bay either had actual or constructive  
27 notice of the true facts but nonetheless intentionally or recklessly concealed these facts  
28 from Plaintiff.



1           60. Power Nissan of South Bay has engaged in “unlawful” business acts and  
2 practices by: (1) failing to disclose the known rental history of the Nissan Armada; (2)  
3 violating the Single Document Rule; and (3) falsifying the amounts of Plaintiff’s down  
4 payment and deferred down payment in the Nissan Armada’s purchase contract. These  
5 acts and practices were intended to and did violate the CLRA, the ASFA, 13 California  
6 Code of Regulations Sections 260.02, Vehicle Code Sections 11713.1 and 11713.16, and  
7 California Civil Code Section 1709.  
8

9           61. Power Nissan of South Bay also engaged in “fraudulent” business acts or  
10 practices in that the representations and omissions of material fact described above  
11 have a tendency and likelihood to deceive the general public.  
12

13           62. Power Nissan of South Bay also engaged in “unfair” business acts or  
14 practices in that the justification for selling vehicles based on the misrepresentations  
15 and omissions of material fact delineated above is outweighed by the gravity of the  
16 resulting harm, particularly considering the available alternatives, and offends public  
17 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury  
18 to consumers.

19           63. The above described unlawful, fraudulent, or unfair business acts and  
20 practices conducted by Power Nissan of South Bay continue to this day and present a  
21 threat to Plaintiff and the general public in that Power Nissan of South Bay has failed to  
22 publicly acknowledge the wrongfulness of its actions and provide full equitable  
23 injunctive and monetary relief as required by law.  
24

25           64. Pursuant to California Business & Professions Code Section 17203,  
26 Plaintiff is entitled to and seeks a permanent injunction requiring Power Nissan of  
27 South Bay to immediately cease such acts of unfair competition and enjoining Power  
28 Nissan of South Bay from continuing to conduct business via the unlawful, fraudulent,

1 and/or unfair business acts and practices set forth in this Complaint and from failing to  
2 fully disclose the true nature of its misrepresentations, and ordering Power Nissan of  
3 South Bay to engage in a corrective notice and advertising campaign. Plaintiff  
4 additionally requests an order from the Court requiring that Power Nissan of South Bay  
5 provide complete equitable monetary relief so as to prevent Power Nissan of South Bay  
6 from benefitting from the practices that constitute unfair competition.  
7


8 PRAYER FOR RELIEF

9 Plaintiff prays for the following

- 10 1. For injunctive, declaratory, and/or equitable relief as permitted under the  
11 CLRA and Business & Professions Code Section 17203;  
12 2. For rescission of the \$43,450.40 contract for the Nissan Armada, and  
13 restitution of all monies paid by Plaintiff to Power Nissan of South Bay;  
14 3. For incidental, consequential, and actual damages of \$3,500;  
15 4. For punitive damages;  
16 5. For pre-judgment interest;  
17 6. For attorney's fees, costs of suit, and out-of-pocket litigation expenses; and  
18 7. For such other and further relief as the Court deems just and proper under  
19 the circumstances.  
20

21 VACHON LAW FIRM  
22 Attorney for Plaintiff Wayne Calvelo

23 Date: March 4, 2014

  
24 \_\_\_\_\_  
25 Michael R. Vachon, Esq.  
26  
27  
28