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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

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Clerk of the Superior Court
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE – CENTRAL JUSTICE CENTER
10

11 KYLE WALTHERS, an individual; and
ARLEEN PONCE-BARLO, an individual,

12 Plaintiffs
13

14 v.

15 ORANGE COAST AUTO GROUP,
LLC, a California limited liability
company;
16 TALON AUTOMOTIVE GROUP, LLC,
a California limited liability company;
17 JONATHAN GRAY, an individual;
WELLS FARGO BANK, N.A., a national
18 banking association; and
DOES 1 through 75,

19 Defendants.
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Case No.: 30-2015-00773063-CU-BT-CJC

COMPLAINT FOR:

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

Judge Geoffrey T. Glass

1
2 SUMMARY

3 1. This lawsuit arises out of Plaintiffs' purchase of a so-called "certified" used car.
4 Defendant Orange Coast Auto Group, LLC (a car dealership that does business under the
5 fictitious business name "Orange Coast Chrysler Jeep Dodge Costa Mesa") tricked Plaintiffs
6 into buying a used 2014 Jeep Compass by telling them that it was "certified," had been
7 thoroughly inspected, and had not been in any prior accidents. In reality however, the
8 Dealership knew that the Jeep Compass had been in a severe accident and that the damage
9 had not been properly repaired.

10 2. Orange Coast Chrysler Jeep Dodge Costa Mesa's conduct amounts to common
11 law fraud, violation of the Consumers Legal Remedies Act, breach of the implied warranty of
12 merchantability, and unfair competition.

13 PARTIES

14 3. Plaintiffs Kyle Walthers and Arleen Ponce-Barlo are individuals residing in San
15 Jacino, California.

16 4. Defendant Jonathan Gray is an individual who is the licensee and operator of
17 Defendant Orange Coast Auto Group, LLC. Jonathan Gray sells automobiles at various
18 dealerships in Orange County through his controlling interest in Defendants Talon Automotive
19 Group, LLC and Orange Coast Auto Group, LLC.

20 5. Defendant Orange Coast Auto Group, LLC, is a California limited liability
21 company (hereafter "Orange Coast Chrysler Jeep Dodge Costa Mesa") that at all material
22 times has been doing business at 2929 Harbor Boulevard, Costa Mesa, California under the
23 fictitious business name "Orange Coast Chrysler Jeep Dodge Costa Mesa." Orange Coast
24 Chrysler Jeep Dodge Costa Mesa is operates it car dealership business on behalf of Defendants
25 Jonathan Gray and Talon Automotive Group, LLC, and all actions of Orange Coast Chrysler
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1 Jeep Dodge Costa Mesa, as alleged herein, were undertaken on behalf of Defendants Jonathan
2 Gray and Talon Automotive Group, LLC.

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4 6. Defendant Talon Automotive Group, LLC, is a California limited liability
5 company that owns, operates, and controls Defendant Orange coast Auto Group, LLC, and
6 which is controlled by Defendant Jonathan Gray.

7 7. Defendant Talon Automotive Group, LLC, is a California limited liability
8 company that owns, operates, and controls Defendant Orange coast Auto Group, LLC, and
9 which is controlled by Defendant Jonathan Gray.

10 8. Defendant Wells Fargo Bank, N.A. is a national banking association. Wells
11 Fargo Bank, N.A. is the lender to which Orange Coast Chrysler Jeep Dodge Costa Mesa
12 assigned the Jeep Compass's purchase contract. As a result, Wells Fargo Bank, N.A. is liable
13 for all of the claims, equities, and defenses that Plaintiff can assert against Orange Coast
14 Chrysler Jeep Dodge Costa Mesa, including the claims asserted herein.

15 9. Plaintiffs do not know the true names and capacities, whether corporate,
16 partnership, associate, individual, or otherwise, of defendants sued herein as Does 1 through
17 75, inclusive, and thus name them under the provisions of Section 474 of the California Code
18 of Civil Procedure. Defendants Does 1 through 75 are in some manner responsible for the
19 acts set forth herein, and are legally liable to Plaintiffs. Plaintiffs will set forth the true names
20 of the fictitiously-named defendants together with appropriate charging allegations when
21 ascertained.
22

23 10. All acts of corporate employees were authorized or ratified by an officer,
24 director, or managing agent of the corporate employer.

25 FACTS

26 11. Plaintiffs allege as follows, on information and belief, formed after an inquiry
27 reasonable under the circumstances:
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1 12. On or about December 10, 2014, Plaintiffs visited Orange Coast Chrysler Jeep
2 Dodge Costa Mesa at its Costa Mesa dealership lot and viewed that certain used 2014 Jeep
3 Compass with vehicle identification number 1C4NJDBB0ED567768 (the “Jeep Compass”).
4 Orange Coast Chrysler Jeep Dodge Costa Mesa represented both orally and in writing that
5 the Jeep Compass was a “certified” used vehicle, that it had been rigorously inspected, that its
6 vehicle history had been checked, that it was in excellent mechanical condition.
7

8 13. Plaintiffs asked Orange Coast Chrysler Jeep Dodge Costa Mesa if the Jeep
9 Compass had ever been in any accidents and Orange Coast Chrysler Jeep Dodge Costa Mesa
10 responded that it had not been in any prior accidents.

11 14. Relying upon Orange Coast Chrysler Jeep Dodge Costa Mesa’s representations,
12 Plaintiffs purchased the Jeep Compass from Orange Coast Chrysler Jeep Dodge Costa Mesa.
13

14 15. Plaintiffs subsequently discovered that the Jeep Compass had been in a severe
15 collision, which materially decreases the Jeep Compass’s safety, utility, performance, and value.
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17 16. Orange Coast Chrysler Jeep Dodge Costa Mesa knew about this pre-existing
18 damage, but deliberately concealed it from and did not disclose it to Plaintiffs.
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20 17. Orange Coast Chrysler Jeep Dodge Costa Mesa’s above-stated conduct was
21 malicious, fraudulent, and oppressive.

22 **FIRST CAUSE OF ACTION**

23 Consumers Legal Remedies Act - Injunctive Relief Only

24 (Against All Defendants)

25 18. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
26 through 17.

27 19. The Jeep Compass is a “good” under the CLRA that was bought for use
28 primarily for personal, family or household purposes.

20. Plaintiffs are “consumers” under the CLRA.

1 21. The advertisement and the sale of the Jeep Compass to Plaintiffs are
2 “transactions” under the CLRA.

3 22. The CLRA prohibits numerous unlawful business acts, including: (i)
4 misrepresenting the source, sponsorship, approval, or certification of goods or services; (ii)
5 representing that goods or services have sponsorship, approval, characteristics, ingredients,
6 uses, benefits, or quantities which they do not have or that a person has sponsorship, approval,
7 status, affiliation, or connection which he or she does not have; (iii) representing that goods or
8 services are of a particular standard, quality, or grade, or that goods are of a particular style or
9 model, if they are another; (iv) misrepresenting the source, sponsorship, approval, or
10 certification of goods; (v) advertising goods or services with intent not to sell them as advertised;
11 (vi) representing that a transaction confers or involves rights, remedies, or obligations which it
12 does not have or involve, or which are prohibited by law; and (vii) inserting an unconscionable
13 provision into a contract; (viii) representing that a used vehicle is “certified” if a car dealer
14 knows or should know that the vehicle has sustained frame damage. The CLRA also prohibits
15 the omission of statements that a person has a legal duty to make.
16

17 23. Orange Coast Chrysler Jeep Dodge Costa Mesa had a duty to disclose the
18 known accident damage because (1) such disclosure was necessary in order to make its other
19 statements not misleading; (2) it was a known material fact; (3) Orange Coast Chrysler Jeep
20 Dodge Costa Mesa knew that it had exclusive knowledge that was not accessible to Plaintiffs;
21 and (4) it was reasonable for Plaintiffs to expect disclosure of such facts.
22

23 24. Orange Coast Chrysler Jeep Dodge Costa Mesa violated the CLRA by: (1)
24 misrepresenting the mechanical condition and accident history of the Jeep Compass; (2)
25 concealing and failing to disclose that the Jeep Compass had previously been in a material
26 accident; and (3) representing that the Jeep Compass was a “certified” used automobile even
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1 though Orange Coast Chrysler Jeep knew or should have known that it had previously
2 sustained serious accident damage.

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4 25. Plaintiffs are concurrently serving Orange Coast Chrysler Jeep Dodge Costa
5 Mesa with a CLRA notification and demand letter via certified mail, return receipt requested.
6 The notice letter sets forth the relevant facts, notifies Orange Coast Chrysler Jeep Dodge Costa
7 Mesa of its CLRA violations, and requests that Orange Coast Chrysler Jeep Dodge Costa Mesa
8 promptly remedy those violations.

9 26. Under the CLRA, Plaintiffs may without prior notification file a complaint
10 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant does
11 not remedy the CLRA violations within 30 days of notification, the Plaintiffs may amend their
12 CLRA causes of action without leave of court to add claims for damages. Plaintiffs will amend
13 this complaint to add damages claims if Orange Coast Chrysler Jeep Dodge Costa Mesa does
14 not remedy its violations within the statutory period.

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

17 28. Orange Coast Chrysler Jeep Dodge Costa Mesa has an illegal pattern and
18 practice of: (1) misrepresenting the mechanical condition and accident history of vehicles that
19 it sells to the public; (2) concealing and failing to disclose known accident damage; and (3)
20 advertising and selling vehicles as “certified” which it knows or should know do not qualify for
21 that designation.
22

23 29. Plaintiffs are entitled to a permanent injunction that compels Orange Coast
24 Chrysler Jeep Dodge Costa Mesa to notify all consumers who have been victims of the above-
25 described illegal conduct, and enjoining Orange Coast Chrysler Jeep Dodge Costa Mesa from
26 such further acts of illegal conduct.

27 30. Plaintiffs are also entitled to recover their attorney’s fees, costs, and expenses.
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2 SECOND CAUSE OF ACTION

3 Intentional Misrepresentation

4 (Against All Defendants)

5 31. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 30.

6 32. At the time of purchase, and afterwards, Orange Coast Chrysler Jeep Dodge
7 Costa Mesa made the misrepresentations set forth above. These misrepresentations included,
8 but are not limited to the following: (1) that the Jeep Compass had been inspected and was in
9 excellent condition; (2) that the Jeep Compass qualified for the label of a “certified” used
10 vehicle; (3) that the Jeep Compass had not previously been in any accidents; and (4) that the
11 Jeep Compass had a clean history.

12 33. Orange Coast Chrysler Jeep Dodge Costa Mesa omitted from the statements it
13 made material facts, the disclosure of which was necessary, (1) in order to make its other
14 statements not misleading; (2) because they were known materials facts; (3) because Orange
15 Coast Chrysler Jeep Dodge Costa Mesa knew that it had exclusive knowledge that was not
16 accessible to Plaintiffs; and (4) because it was reasonable for Plaintiffs to expect disclosure of
17 such facts. These omissions include, but are not limited to the following: (1) that the Jeep
18 Compass had previously been in a material accident; and (2) that the Jeep Compass does not
19 have a clean history.
20

21 34. At all times Orange Coast Chrysler Jeep Dodge Costa Mesa either had actual
22 or constructive notice of the true facts but nonetheless intentionally or recklessly concealed
23 these facts from Plaintiffs.

24 35. Orange Coast Chrysler Jeep Dodge Costa Mesa made these representations and
25 omitted material facts with the intent to defraud Plaintiffs and to induce Plaintiffs to purchase
26 the Jeep Compass and pay an inflated sales price. At the time Plaintiffs purchased the Jeep
27 Compass they did not know, or have reason to know, that Orange Coast Chrysler Jeep Dodge
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1 Costa Mesa was making false and misleading representations and had omitted material facts.
2 Plaintiffs acted in justifiable reliance upon the truth of the representations which misled them
3 as to the nature and extent of the facts concealed. Plaintiffs were justified in his reliance, as
4 Orange Coast Chrysler Jeep Dodge Costa Mesa held itself out as professionals in the
5 automotive sales industry, and Plaintiffs had no reason to doubt such representations.
6

7 36. As a direct and proximate result of Orange Coast Chrysler Jeep Dodge Costa
8 Mesa's fraudulent representations and omissions of material facts, Plaintiffs suffered damages,
9 including actual, general, consequential and incidental damages according to proof at trial.

10 37. Plaintiffs are also entitled to punitive damages.

11 38. Orange Coast Chrysler Jeep Dodge Costa Mesa committed fraud in the
12 inducement of the purchase contract for the Jeep Compass, and Plaintiffs are therefore entitled
13 to rescission and restitution in an amount according to proof at trial.
14

15 THIRD CAUSE OF ACTION

16 Negligent Misrepresentation

17 39. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 38.

18 40. As an alternative to Plaintiffs' cause of action for Intentional Misrepresentation,
19 Plaintiffs allege that Orange Coast Chrysler Jeep Dodge Costa Mesa's misrepresentations were
20 made negligently, if not intentionally.

21 41. The representations made by Orange Coast Chrysler Jeep Dodge Costa Mesa
22 were not true.

23 42. Regardless of its actual belief, Orange Coast Chrysler Jeep Dodge Costa Mesa
24 made the representations without any reasonable grounds for believing them to be true.

25 43. Orange Coast Chrysler Jeep Dodge Costa Mesa failed to exercise due care in
26 ascertaining the accuracy of the representations made to Plaintiffs.
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1 44. Orange Coast Chrysler Jeep Dodge Costa Mesa made the representations for
2 the purpose of inducing Plaintiffs to rely upon them, and to act or refrain from acting in reliance
3 thereon.
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5 45. Plaintiffs were unaware of the falsity of the representations and acted in reliance
6 upon the truth of those representations, and was justified in relying upon those representations.

7 46. As a direct and proximate result of Orange Coast Chrysler Jeep Dodge Costa
8 Mesa's negligent misrepresentations of material fact, Plaintiffs suffered damages, including
9 actual, consequential, and incidental damages according to proof of trial.

10 47. Plaintiffs are also entitled to punitive damages.

11 48. Plaintiffs hereby allege fraud in the inducement to enter into the sales contract,
12 and therefore are entitled to rescission and restitution in an amount according to proof at trial.
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14 FOURTH CAUSE OF ACTION

15 Breach of Warranty - Song-Beverly Consumer Warranty Act

16 49. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 48.

17 50. Plaintiffs' purchase of the Jeep Compass was accompanied by Orange Coast
18 Chrysler Jeep Dodge Costa Mesa's express warranty and the implied warranty of
19 merchantability.

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

26 52. The fact that the Jeep Compass was previously involved in a severe accident
27 constitutes a breach of the implied warranty of merchantability under the California Lemon
28

1 Law because the Jeep Compass (1) would not pass without objection in the trade under the
2 contract description, (2) was not fit for the ordinary purposes for which such goods are used,
3 (3) was not adequately contained, packaged, and labeled, and (4) did not conform to the
4 promises or affirmations of fact made on the container or label.
5

6 53. During the express warranty period, the Jeep Compass suffered from a defective
7 tie rod and damaged axel. Plaintiffs notified Orange Coast Chrysler Jeep Dodge Costa Mesa
8 of these defects, and requested that Orange Coast Chrysler Jeep Dodge Costa Mesa remedy
9 them to conform to the applicable express and implied warranties.

10 54. Orange Coast Chrysler Jeep Dodge Costa Mesa refused to fix the damaged
11 axel, and continues to refuse to do so.

12 55. By failure of Orange Coast Chrysler Jeep Dodge Costa Mesa to remedy the
13 defects as alleged above, or to issue a refund or replacement, Orange Coast Chrysler Jeep
14 Dodge Costa Mesa is in breach of the lemon law's express warranty requirements.

15 56. Plaintiffs are entitled to revoke acceptance of Jeep Compass under the California
16 lemon law, and has done so.

17 57. Under the California lemon law, Plaintiffs are entitled to reimbursement of all
18 payments made towards the Jeep Compass (less the amount directly attributable to Plaintiffs'
19 use of the Jeep Compass prior to the first attempt to repair the defects).
20

21 58. Plaintiffs are entitled to consequential and incidental damages resulting from
22 Orange Coast Chrysler Jeep Dodge Costa Mesa's failure to comply with its obligations under
23 the lemon law.

24 59. Plaintiffs are entitled, in addition to the other amounts recovered, to a civil
25 penalty of up to two times the amount of actual damages because Orange Coast Chrysler Jeep
26 Dodge Costa Mesa willfully failed to comply with its responsibilities under the lemon law.
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1 60. Plaintiffs are also entitled to recover as part of the judgment a sum equal to the
2 aggregate amount of costs and expenses, including attorney's fees, reasonably incurred in
3 connection with the commencement and prosecution of this action.
4

5 61. Plaintiffs have rightfully rejected and/or justifiably revoked acceptance of the
6 Jeep Compass under the California Lemon Law, and are entitled to rescind the purchase
7 contract and to restitution of all money paid towards the purchase contract.

8 62. Plaintiffs have been proximately damaged by Orange Coast Chrysler Jeep
9 Dodge Costa Mesa's failure to comply with its obligations under the implied warranty of
10 merchantability.

11 63. Plaintiffs are entitled to the remedies provided in California Civil Code section
12 1794, including his attorney's fees, costs, and expenses.

13 FIFTH CAUSE OF ACTION

14 Unfair Competition

15 64. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
16 through 51.

17 65. Orange Coast Chrysler Jeep Dodge Costa Mesa's acts, omissions,
18 misrepresentations, practices, and non-disclosures constitute unlawful, unfair, and fraudulent
19 business acts and practices within the meaning of California Business & Professions Code
20 Sections 17200 *et seq.*

21 66. Orange Coast Chrysler Jeep Dodge Costa Mesa has engaged in "unlawful"
22 business acts and practices by: (1) misrepresenting the mechanical condition of vehicles that it
23 sells to the public; (2) concealing and failing to disclose known accident damage; and (3)
24 advertising and selling vehicles as "certified" which it knows or should know do not qualify for
25 that designation. These acts and practices were intended to and did violate California Civil
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1 Code Section 1709 *et seq.*, the CLRA, the California Lemon Law, and Vehicle Code Section
2 11713.18.

3
4 67. Orange Coast Chrysler Jeep Dodge Costa Mesa has also engaged in
5 “fraudulent” business acts or practices in that the representations and omissions of material fact
6 described above have a tendency and likelihood to deceive purchasers of these vehicles and
7 the general public.

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

14 69. The above described unlawful, fraudulent, or unfair business acts and practices
15 conducted by Orange Coast Chrysler Jeep Dodge Costa Mesa continue to this day and present
16 a threat to Plaintiffs and the general public in that Orange Coast Chrysler Jeep Dodge Costa
17 Mesa has failed to publicly acknowledge the wrongfulness of its actions and provide full
18 equitable injunctive and monetary relief as required by the statute.

19
20 70. Pursuant to California Business & Professions Code Section 17203, Plaintiffs seek
21 an order of this Court requiring Orange Coast Chrysler Jeep Dodge Costa Mesa to
22 immediately cease such acts of unfair competition, requiring Orange Coast Chrysler Jeep to
23 notify previous victims of the unlawful, fraudulent, and/or unfair business acts and practices
24 alleged in this Complaint, enjoining Orange Coast Chrysler Jeep Dodge Costa Mesa from
25 continuing to conduct business via the unlawful, fraudulent, and/or unfair business acts and
26 practices set forth in this Complaint, and ordering Orange Coast Chrysler Jeep Dodge Costa
27 Mesa to engage in a corrective notice and 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 \$37,171.60 purchase contract for the Jeep Compass and restitution of all money paid towards that automobile;
3. For general damages (as to Plaintiffs' non-CLRA causes of action) in an amount to be proven at trial;
4. For punitive damages (as to Plaintiffs' non-CLRA causes of action);
5. For pre judgment interest at the legal rate;
6. For reasonable attorneys' fees, costs of suit, and out of pocket litigation expenses;
7. For such other and further relief as the Court deems just and proper under the

and
circumstances.

VACHON LAW FIRM
Attorney for Plaintiffs Kyle Walthers &
Arleen Ponce-Barlo

Date: February 23, 2015

/s/
Michael R. Vachon, Esq.