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NORTH COUNTY DIVISION
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CLERK-SUPERIOR COURT
SAN DIEGO, CA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – NORTH COUNTY REGIONAL CENTER

LAZARO CRUZ, an individual; and
PAULINA CRUZ, an individual,

Plaintiffs,

v.

CLASSIC CHARIOTS, INC., a California
corporation; and
DOES 1 through 75,

Defendants.

Case No.: 37-2012-00056167-CU-BT-NC

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 February, 2011, the Dealership published ads for that certain
9 2010 Nissan Versa with vehicle identification number 3N1BC1CP4AL397718 (the
10 “Nissan Versa”) stating that this vehicle had been thoroughly inspected and that it was
11 “better than certified.”
12

13 8. On or about February 12, 2011, Plaintiffs visited the Dealership and while
14 there were shown the Nissan Versa. The Dealership’s employees who dealt with
15 Plaintiffs represented that the Nissan Versa had been thoroughly inspected and was in
16 excellent mechanical condition.
17

18 9. In reliance upon the above-stated representations by the Dealer and its
19 salesperson, Plaintiffs purchased the Nissan Versa.

20 10. Plaintiffs’ purchase of the Nissan Versa was accompanied by the
21 Dealership’s implied warranty of merchantability.

22 11. Plaintiffs subsequently learned that the Nissan Versa was previously in a
23 serious collision that caused severe damage, including damage to the vehicle’s frame.
24

25 11. The Dealership knew about this pre-existing damage, but deliberately
26 concealed it from and did not disclose it to Plaintiffs.

27 12. The prior accident damage of the Nissan Versa was a material fact that a
28 reasonable consumer would consider in deciding whether or not to purchase the Nissan

1 Versa. The accident damage of the Nissan Versa materially decreases the utility,
2 performance, safety, and fair market value of the Nissan Versa.

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

9 SECOND CAUSE OF ACTION

10 Consumers Legal Remedies Act - Injunctive Relief Only

11 14. Plaintiffs hereby incorporate by reference the allegations in Paragraphs 1
12 through 13.

13 15. The Nissan Versa is a "good" under the CLRA that was bought for use
14 primarily for personal, family or household purposes.

15 16. Plaintiffs are "consumers" under the CLRA.

16 17. The advertisement and the sale of the Nissan Versa to Plaintiffs are
17 "transactions" under the CLRA.
18

19 18. The CLRA prohibits numerous unlawful business acts, including: (i)
20 representing that goods or services have sponsorship, approval, characteristics,
21 ingredients, uses, benefits, or quantities which they do not have or that a person has
22 sponsorship, approval, status, affiliation, or connection which he or she does not have;
23 (ii) representing that goods or services are of a particular standard, quality, or grade, or
24 that goods are of a particular style or model, if they are another; (iii) misrepresenting
25 the source, sponsorship, approval, or certification of goods; (iv) advertising goods or
26 services with intent not to sell them as advertised; (v) representing that a transaction
27 confers or involves rights, remedies, or obligations which it does not have or involve, or
28

1 which are prohibited by law; and (vi) representing a motor vehicle if the vehicle has
2 previously been in an accident where it sustained frame damage. The CLRA also
3 prohibits the omission of statements, where there exists a duty to make a statement or
4 disclosure.

5 19. The Dealership had a duty to disclose the known accident damage because
6 (1) such disclosure was necessary in order to make its other statements not misleading;
7 (2) it was a known material fact; (3) the Dealership knew that it had exclusive
8 knowledge that was not accessible to Plaintiffs; and (4) it was reasonable for Plaintiffs to
9 expect disclosure of such facts.

10 20. The Dealership violated the CLRA by misrepresenting the mechanical
11 condition of the Nissan Versa, concealing and failing to disclose that it had previously
12 been involved in an accident resulting in material damage, including (but not limited to)
13 damage to the vehicle's frame.

14 21. Plaintiffs are concurrently serving the Dealership with a CLRA notification
15 and demand letter via certified mail, return receipt requested. The notice letter sets
16 forth the relevant facts, notifies the Dealership of its CLRA violations, and requests that
17 the Dealership promptly remedy those violations.

18 22. Under the CLRA, a plaintiff may without prior notification file a complaint
19 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant
20 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
21 amend her or his CLRA causes of action without leave of court to add claims for
22 damages. Plaintiffs will amend this complaint to add damages claims if the Dealership
23 does not remedy its violations within the statutory period.

24 23. Under the CLRA, Plaintiff is entitled to a permanent injunction
25 prohibiting practices that violate the CLRA.

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

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

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

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

18 33. Plaintiffs are also entitled to punitive damages.

19 34. The Dealership committed fraud in the inducement of the purchase
20 contract for the Nissan Versa, 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 35. Plaintiffs incorporate by reference the allegations in paragraphs 1 through

28 34.

1 53. The Dealership's acts, omissions, misrepresentations, practices, and non-
2 disclosures constitute unlawful, unfair, and fraudulent business acts and practices
3 within the meaning of California Business & Professions Code Sections 17200 *et seq.*

4 54. The Dealership has engaged in "unlawful" business acts and practices by:
5 (1) misrepresenting the mechanical condition of vehicles that it sells to the public; (2)
6 concealing and failing to disclose known accident damage; (3) representing that
7 automobiles are "better than certified" when those vehicle have frame damage; and (4)
8 advertising that vehicles are "better than certified" without providing buyers with copies
9 of such vehicles' inspection reports. These acts and practices were intended to and did
10 violate California Civil Code Section 1709 *et seq.*, the CLRA, Vehicle Code Section
11 11713.18., and the Song-Beverly Consumer Warranty Act.

12 55. The Dealership has also engaged in "fraudulent" business acts or practices
13 in that the representations and omissions of material fact described above have a
14 tendency and likelihood to deceive lessees of these vehicles and the general public.
15

16 56. The Dealership has also engaged in "unfair" business acts or practices in
17 that the justification for selling and leasing vehicles based on the misrepresentations
18 and omissions of material fact delineated above is outweighed by the gravity of the
19 resulting harm, particularly considering the available alternatives, and offends public
20 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
21 to consumers.
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23 57. The above described unlawful, fraudulent, or unfair business acts and
24 practices conducted by the Dealership continue to this day and present a threat to
25 Plaintiffs and the general public in that the Dealership has failed to publicly
26 acknowledge the wrongfulness of its actions and provide full equitable injunctive and
27 monetary relief as required by the statute.
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7. For such other and further relief as the Court deems just and proper under the circumstances.

LAW OFFICE OF MICHAEL R. VACHON, ESQ.
Attorney for Plaintiffs Lazaro Cruz & Paulina Cruz

Date: August 7, 2012



Michael R. Vachon, Esq.