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FILED
SAN MATEO COUNTY

SEP 28 2012

Clerk of the Superior Court

By: 
DEPUTY CLERK

6 Attorney for Plaintiff, GENE CONDON

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO - UNLIMITED JURISDICTION**

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11 **GENE CONDON**, an individual, and on behalf of)
himself and all others similarly situated,)

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PLAINTIFF,

vs.

DALAND NISSAN, INC., a California)
corporation; NISSAN MOTOR ACCEPTANCE)
CORPORATION, a California corporation;)
FEDERATED MUTUAL INSURANCE)
COMPANY, a Minnesota corporation; and DOES)
1 through 20, inclusive,)

DEFENDANTS.

Case No.: **CIV 5 1 7 0 0 2**

**UNVERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND:**

1. Breach of Contract;
2. Fraud;
3. Negligent Misrepresentation;
4. Violation of Consumers Legal Remedies Act, Civil Code § 1750 et seq.;
5. Violation of California Business and Professions Code § 17200, et seq., Unlawful Acts or Practices;
6. Violation of California Business and Professions Code § 17500, et seq., Untrue, False and/or Misleading Advertisement; and
7. Declaratory Relief

Plaintiff **GENE CONDON**, an individual, and on behalf of himself and all others similarly situated, ("Plaintiff") alleges the following on information and belief:

PARTIES

1. Plaintiff currently resides, and at all relevant times did reside, in the City of Burlingame, County of San Mateo, State of California.

1 2. Plaintiff is a “Buyer” as defined in Civil Code §§ 2981(c) and 1791(b), a “person” as
2 defined in 15 U.S.C. § 1602 (d), Vehicle Code § 470, and 12 CFR § 226.2(22), and, a “consumer” as
3 defined in 15 U.S.C. § 1602 (h), and 12 CFR § 226.2(11).

4 3. Defendant, DALAND NISSAN, INC., a California corporation, (hereinafter referred to
5 as “SELLER” or “Defendant”) is, and at all relevant times herein was, engaged in the business of
6 buying, repairing and re-selling used vehicles to the general public, and, taking vehicles in trade. As
7 such, SELLER was a “Dealer” as defined in the Vehicle Code § 285, and was therefore required by
8 Vehicle Code § 11800 to be licensed by the California Department of Motor Vehicles (“DMV”).
9 SELLER maintained its principal place of business in the City of Millbrae, County of San Mateo,
10 State of California.

11 4. Defendant, NISSAN MOTOR ACCEPTANCE CORPORATION, California
12 Corporation (hereinafter referred to as “HOLDER” or “Defendant”) is, and at all relevant times herein
13 was, doing business in California, including San Mateo County. HOLDER is, and at all relevant times
14 herein was, a financial institution engaged in the business of holding conditional sale contracts and
15 collecting payments made by consumers pursuant to such contracts.

16 5. Defendant FEDERATED MUTUAL INSURANCE COMPANY, a Minnesota
17 corporation, (hereinafter referred to as “SURETY”) is, and at all relevant times herein was, doing
18 business in California, including San Mateo County. SURETY is, and at all relevant times herein was,
19 the surety on the dealer’s bond #9236828, in the amount of \$50,000.00, which SELLER maintained,
20 as required pursuant to Vehicle Code §11710.

21 6. At all relevant times herein, SELLER was a retail seller as defined in Civil Code §
22 2981(b) and Civil Code § 1791(l).

23 7. Plaintiff is ignorant of the true names and capacities, whether corporate, partnership,
24 associate, individual or otherwise, of Defendants sued herein as DOES 1 through 20, inclusive, and
25 therefore, pursuant to the provisions of CCP § 474, designates them by such fictitious names. Plaintiff
26 is informed and believes, and on that basis alleges, that Defendants DOES 1 through 20 are in some
27 manner responsible for acts, occurrences, and transactions set forth herein and are legally liable to

1 Plaintiff. Plaintiff will seek leave of Court to amend this Complaint to allege the true names and
2 capacities when they become known.

3 **AGENCY**

4 8. At all relevant times herein, each Defendant, whether actually or fictitiously named,
5 was the principal, agent or employee of each other Defendant, and in acting as such principal, or
6 within the course and scope of such employment or agency, took some part in the acts and omissions
7 hereinafter set forth by reason of which each Defendant is liable to Plaintiff for the relief prayed for
8 herein.

9 9. When reference in this complaint is made to any act or omission of a defendant
10 corporation, company, association, business entity, or partnership, such allegation shall be deemed to
11 mean that the defendant and its owners, officers, directors, agents, employees, or representatives did or
12 authorized such act or omission while engaged in the management, direction, or control of the affairs
13 of defendants and while acting within the scope and course of their duties.

14 10. When reference in this complaint is made to any act or omission of defendants, such
15 allegation shall be deemed to mean the act or omission of each defendant acting individually and
16 jointly with the other named defendants.

17 11. At all relevant times, each defendant knew or realized that the other defendants were
18 engaging in, or planned to engage in, the violations of law alleged in this complaint. Knowing or
19 realizing that other defendants were engaging in such unlawful conduct, each defendant nevertheless
20 facilitated the commission of those unlawful acts. Each defendant intended to, and did, encourage,
21 facilitate, or assist in the commission of the unlawful acts, and thereby aided and abetted the other
22 defendants in the unlawful conduct.

23 12. Each Defendant ratified the wrongful conduct of each other, its agents and/or
24 employees, accepted the benefits of their wrongful conduct, and failed to repudiate the misconduct.

25 **JURISDICTION AND VENUE**

26 13. The matter is properly filed within the Unlimited Jurisdiction of the Court in that:
27 (1) Plaintiff seeks Declaratory and Injunctive Relief, which is beyond the jurisdiction of a court

1 of Limited Jurisdiction; and, (2) the amount in controversy, including Plaintiff's statutory claim
2 for an award of reasonable attorney's fees, exceeds \$25,000.00.

3 14. The County of San Mateo is the proper venue for the matter pursuant to Civil Code
4 §2984.4(a) and/or Civil Code § 1780(c).

5 **FACTS RELEVANT TO ALL CAUSES OF ACTION**

6 15. On or about January 27, 2011, Plaintiff went to SELLER'S place of business and
7 purchased a new 2011 Nissan TR 4x2 Crew vehicle, VIN 1N6AD0FR3BC416749 (VEHICLE) and
8 executed a Retail Installment Sale Contract (CONTRACT) for said purchase. A copy of the
9 CONTRACT is attached hereto as **Exhibit 1** and fully incorporated herein.

10 16. The Cash Price for the Vehicle is itemized as \$25,845.46 on Line 1.A.1 of the
11 CONTRACT.

12 17. As part of the CONTRACT, SELLER represented that a Smog Abatement Fee of
13 \$20.00 was due, and SELLER charged \$20.00 for said fee at Line 2.D.

14 18. Plaintiff is informed and believes, and thereon alleges, that SELLER misrepresented the
15 Smog Abatement Fee and overcharged Plaintiff for said fee.

16 19. SELLER never refunded Plaintiff for the overcharge of the Smog Abatement Fee.

17 20. As part of the CONTRACT for the purchase of the VEHICLE, Plaintiff traded in a used
18 2007 Nisan Titan 4x2 vehicle, VIN 1NGAA07N213903 as the down payment toward the purchase of
19 the VEHICLE.

20 21. The trade-in vehicle was subject to a prior credit lien with Nissan Motor Acceptance
21 Corporation.

22 22. The principal balance due to Nissan Motor Acceptance Corporation as of the date of the
23 CONTRACT for the trade-in lien was \$7,988.47.

24 23. SELLER represented a "Less Prior Credit or Lease Balance" to be \$8075.05 at Line 6B
25 of the CONTRACT.

26 24. Plaintiff is informed and believes, and thereon alleges, that SELLER requested a 10-
27 day pay off from Nissan Motor Acceptance Corporation, and was therefore given the amount of

1 \$8,075.05, which includes interest on the trade-in lien after the date of the CONTRACT.

2 25. Plaintiff is informed and believes, and thereon alleges, that SELLER only paid
3 \$7,963.27 toward the prior credit lien for the trade-in vehicle.

4 26. Plaintiff is informed and believes, and thereon alleges, that the payment of \$7,963.27
5 was a short payoff, and left a remainder of \$25.20 due and owing on the prior credit lien for the trade-
6 in vehicle.

7 27. SELLER agreed and was required to pay off the prior credit lien for the trade-in vehicle
8 within twenty-one (21) days of the execution of the CONTRACT.

9 28. SELLER failed to pay off the prior credit lien for the trade-in vehicle within twenty-one
10 (21) days of the execution of the CONTRACT, in violation of Vehicle Code §11709.4.

11 29. Plaintiff is informed and believes, and thereon alleges, that the prior credit lienholder
12 (Nissan Motor Acceptance Corporation) for the trade-in vehicle ultimately agreed to waive the \$25.20
13 deficiency due on the lien and tendered the title for the trade-in vehicle to SELLER.

14 30. SELLER never refunded the \$112.23 difference between the prior credit lien itemized
15 on the CONTRACT of \$8,075.05 and the \$7,963.27 paid by SELLER for the prior credit lien for the
16 trade-in vehicle.

17 31. SELLER kept the \$112.23 difference as profit on the VEHICLE sale.

18 32. By and through the CONTRACT, SELLER charged Plaintiff for Vehicle License Fees
19 and Registration, Transfer and Titling Fees and represented that the amounts charged and financed
20 would be paid to public officials.

21 33. SELLER itemized and charged Plaintiff \$151.00 for Registration/Transfer/Titling Fees
22 on Line 2.B. of the CONTRACT.

23 34. Plaintiff is informed and believes, and thereon alleges, that the \$151.00 charge for
24 Registration/Transfer/Titling Fees represents and overcharge of the amount due and actually paid by
25 SELLER to public officials relative to the purchase of the VEHICLE.

26 35. Plaintiff never received any refund from SELLER of the overcharged amount for
27 Registration/Transfer/Titling Fees as required by Vehicle Code §11713.4.

1 36. Plaintiff is informed and believes, and thereon alleges, that SELLER kept and retained
2 the overcharged amount for Registration/Transfer/Titling Fees as profit on the VEHICLE purchase
3 transaction.

4 37. Shortly after Plaintiff purchased the VEHICLE from SELLER, SELLER assigned and
5 HOLDER accepted assignment of the CONTRACT for the purchase of the subject VEHICLE.

6 38. The CONTRACT accepted by HOLDER contained, in pertinent part, the following
7 terms and provisions in ten point, bold face, type:

8 “NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS
9 SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD
10 ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED
11 PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.”

12 39. The CONTRACT accepted by HOLDER also contained the following terms and
13 provisions at paragraph 3.c.: “You will pay our reasonable costs to collect what you owe, including
14 attorney fees, court costs, collection agency fees, and fees paid for other reasonable collection efforts.”

15 40. All conditions precedent to Defendants’ liability, and to Plaintiff’s right to recover,
16 have occurred or been waived.

17 **FIRST CAUSE OF ACTION**
18 **For Breach of Contract**
19 **Against SELLER, HOLDER, and DOES 1 – 20, Inclusive**

20 41. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth in
21 this cause of action.

22 42. SELLER, HOLDER and DOES 1 – 20, Inclusive, entered into the written CONTRACT
23 with the Plaintiff and Plaintiff accepted delivery of the VEHICLE based upon the terms and conditions
24 of the CONTRACT, as represented by SELLER.

25 43. SELLER, HOLDER and DOES 1 – 20, Inclusive, materially breached the contract by
26 failing to timely pay off the lien on the trade-in vehicle, as agreed and required by the CONTRACT
27 and Vehicle Code §11709.4.

28 44. SELLER, HOLDER and DOES 1 – 20, Inclusive, materially breached the contract by

1 failing to pay off the lien for the trade-in vehicle in full, as agreed and required by the CONTRACT.

2 45. SELLER, HOLDER and DOES 1 – 20, Inclusive, materially breached the contract by
3 overcharging for the Smog Abatement Fee and Registration/Transfer/Titling Fees, and failing to
4 refund the overcharged amounts to Plaintiff.

5 46. As a direct and proximate result of the breach of contract by SELLER, HOLDER, and
6 DOES 1 – 20, Inclusive, Plaintiff suffered harm, and continues to suffer harm, both economic and
7 non-economic, in an amount according to proof at the time of trial, including, but not limited to, all
8 payments for the VEHICLE.

9 47. Plaintiff performed all conditions, covenants and promises required on his part to be
10 performed in accordance with the terms and conditions of the CONTRACT.

11 48. Pursuant to the terms of the CONTRACT, HOLDER is subject to all claims asserted by
12 Plaintiff against SELLER by this Cause of Action.

13 **SECOND CAUSE OF ACTION**
14 **For Fraud**
15 **Against SELLER, HOLDER, SURETY and DOES 1 – 20, Inclusive**

16 49. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth in
17 this cause of action.

18 50. SELLER, HOLDER, and DOES 1 – 20, Inclusive, misrepresented to Plaintiff the
19 existence of and the amount due as a Smog Abatement Fee for the VEHICLE purchase at line 2.D. of
20 the CONTRACT.

21 51. SELLER, HOLDER, and DOES 1 – 20, Inclusive, misrepresented to Plaintiff the
22 amount of Registration/Transfer/Titling Fees due for the VEHICLE purchase at line 2.B. of the
23 CONTRACT.

24 52. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff the amount
25 of overcharge for the Smog Abatement Fee and the Registration/Transfer/Titling Fees as itemized on
26 the CONTRACT.

27 53. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff his right to
28 a refund of the amount of overcharge for the Smog Abatement Fee as itemized on the CONTRACT.

1 54. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff his right to
2 a refund of the amount of overcharge for the Registration/Transfer/Titling Fees as itemized on the
3 CONTRACT.

4 55. SELLER, HOLDER, and DOES 1 – 20, Inclusive, misrepresented to Plaintiff that the
5 lien on the trade-in vehicle was \$8,075.05, based upon SELLER request for a 10-day payoff from the
6 lienholder.

7 56. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff that the
8 trade-in lien represented on the CONTRACT was a 10-day payoff and therefore included interest on
9 the trade-in lien after the date of contract.

10 57. SELLER, HOLDER, and DOES 1 – 20, Inclusive, misrepresented to Plaintiff that the
11 lien on the trade-in vehicle would be timely and completely paid off.

12 58. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff that the lien
13 on the trade-in vehicle was not paid off as agreed.

14 59. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff the fact that
15 the lienholder agreed to waive an unpaid portion of the trade-in lien.

16 60. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff the amount
17 of overcharge on the CONTRACT for the lien on the trade-in vehicle.

18 61. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff the unpaid
19 amount of the lien on the trade-in vehicle.

20 62. SELLER, HOLDER, and DOES 1 – 20, Inclusive, concealed from Plaintiff his right to
21 a refund of the overcharged and unpaid amount of the trade-in lien.

22 63. The intentional misrepresentations of SELLER, HOLDER, and DOES 1 – 20,
23 Inclusive, as alleged in the preceding paragraphs, constitutes actionable fraud as defined in California
24 Civil Code § 1710. Specifically, these misrepresentations constituted:

- 25 a. Suggestions of fact which were not true, where SELLER, HOLDER, and DOES 1 – 20,
26 inclusive, did not believe them to be true (Civil Code § 1710(1));
- 27 b. Assertions of fact which were not true, where SELLER, HOLDER, and DOES 1 – 20,
28

1 inclusive, did not believe them to be true (Civil Code § 1710(2)); and,

2 c. Suppression of fact, by SELLER, HOLDER, and DOES 1 – 20, inclusive, who were
3 bound to disclose them, and suppression of information of other facts, which were
4 likely to mislead for want of communication of the suppressed fact(s) (Civil Code §
5 1710(3)).

6 64. Vehicle Code §§9993, 11705 (a)(14), 11711(a), and 11713(a) impose affirmative duties
7 on SELLER, HOLDER, and DOES 1 – 20, inclusive, not to make representations that are untrue or
8 misleading and, thus, to disclose to Plaintiff the suppressed and concealed facts. Said Defendants
9 were under a further duty of disclosure because said Defendants knew of the concealed and suppressed
10 facts and also knew that those facts were neither known nor readily accessible by Plaintiff.

11 65. It was the objective of SELLER, HOLDER, and DOES 1 – 20, inclusive, to sell the
12 VEHICLE and optional items by whatever means necessary. Thus, said Defendants made the
13 misrepresentations and omissions of fact with the intent to deceive and defraud Plaintiff and for the
14 purpose of inducing Plaintiff to rely upon the representations and to act in reliance thereon by
15 executing the CONTRACT, accepting delivery of the VEHICLE, and continuing to act in compliance
16 with the CONTRACT.

17 66. Plaintiff did not know that the representations of SELLER, HOLDER, and DOES 1 –
18 20, inclusive, were false, and was unaware of the concealed and suppressed facts because said
19 Defendants failed to provide Plaintiff with sufficient information to make an independent
20 determination of the facts.

21 67. Plaintiff acted in reliance on the truth of the representations made by SELLER,
22 HOLDER, and DOES 1 – 20, inclusive, by executing the CONTRACT, accepting delivery of the
23 VEHICLE, and by thereafter making payments. Plaintiff's reliance was justified because said
24 Defendants are licensed vehicle Dealers and Plaintiff had no reason to disbelieve or distrust said
25 Defendants.

26 68. Because of the fraud by intentional misrepresentation and concealment by SELLER,
27 and DOES 1 – 20, inclusive, Plaintiff is entitled to rescind the CONTRACT and obtain restitution.

1 69. As a direct and proximate result of the fraud by SELLER, HOLDER, and DOES 1 – 20,
2 inclusive, Plaintiff suffered harm, and continues to suffer harm, both economic and non-economic, in
3 an amount according to proof at the time of trial, including, but not limited to, all payments for the
4 VEHICLE.

5 70. The fraud of SELLER, HOLDER, and DOES 1 – 20, inclusive, as herein alleged, was
6 on the parts of the officers, directors, and managing agents of said Defendants. Said officers,
7 directors, and managing agents had advance knowledge of the unfitness of the employees who
8 committed the fraud against Plaintiff, employed those employees with a conscious disregard of the
9 rights of others, authorized the conduct if the employees, and ratified their conduct after the fact by
10 accepting the profits and benefits of the CONTRACT, refusing to rescind the CONTRACT, and
11 failing to discharge or discipline the responsible employees.

12 71. The conduct of SELLER, HOLDER, and DOES 1 – 20, inclusive, constitutes fraud
13 within the meaning of Civil Code §3294(c)(3) such that Plaintiff is entitled to punitive damages
14 according to proof.

15 72. Pursuant to the terms of the CONTRACT, HOLDER is subject to all claims asserted by
16 Plaintiff against SELLER by this Cause of Action.

17 73. Pursuant to Vehicle Code section 11711, Plaintiff has been damaged and suffered
18 a loss as a result of the fraud, misrepresentations/failures to disclose, and/or statutory violations
19 of SELLER and its representatives during the course of the sale of the VEHICLE to Plaintiff,
20 entitling Plaintiff a right of action against SURETY as to SELLER's bond.

21 **THIRD CAUSE OF ACTION**
22 **For Negligent Misrepresentation**
23 **SELLER, HOLDER, and DOES 1 – 20, Inclusive**

24 74. Plaintiff incorporates by reference all preceding paragraphs, except allegations of
25 punitive damages, as though fully set forth in this cause of action.

26 75. SELLER, HOLDER, and DOES 1 – 20, Inclusive, had an affirmative duty, pursuant to
27 Vehicle Code §§9993, 11705(a)(14), 11711, and 11713(a) not to make representations that were
28 untrue or misleading.

1 76. SELLER, HOLDER, and DOES 1 – 20, Inclusive, had an affirmative duty to charge
2 Plaintiff only those amounts that were actually due and payable to Public Officials as a result of the
3 VEHICLE purchase transaction.

4 77. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that the
5 existence of and the amount itemized as a Smog Abatement Fee on the CONTRACT was inaccurate
6 and improper.

7 78. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently misrepresented to
8 Plaintiff the existence of and the amount due as a Smog Abatement Fee for the VEHICLE purchase at
9 line 2.D. of the CONTRACT.

10 79. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that the
11 amount of Registration/Transfer/Titling Fees itemized on the CONTRACT was inaccurate and
12 improper.

13 80. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently misrepresented to
14 Plaintiff the amount of Registration/Transfer/Titling Fees due for the VEHICLE purchase at line 2.B.
15 of the CONTRACT.

16 81. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that the
17 amounts charged for the Smog Abatement Fee and the Registration/Transfer/Titling Fees as itemized
18 on the CONTRACT represented an overcharge to Plaintiff.

19 82. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
20 of the amount of overcharge for the Smog Abatement Fee and the Registration/Transfer/Titling Fees
21 as itemized on the CONTRACT.

22 83. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that
23 Plaintiff was entitled to a refund of the overcharge for the Smog Abatement Fee.

24 84. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
25 of his right to a refund of the amount of overcharge for the Smog Abatement Fee as itemized on the
26 CONTRACT.

27 85. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that

1 Plaintiff was entitled to a refund of the overcharge for the Registration/Transfer/Titling Fees.

2 86. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
3 of his right to a refund of the amount of overcharge for the Registration/Transfer/Titling Fees as
4 itemized on the CONTRACT.

5 87. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that the
6 trade-in lien amount itemized on the CONTRACT represented a 10-day payoff amount, rather than the
7 amount of principal due on the trade-in lien as of the date of the CONTRACT.

8 88. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently misrepresented to
9 Plaintiff that the lien on the trade-in vehicle was \$8,075.05, based upon SELLER request for a 10-day
10 payoff from the lienholder.

11 89. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
12 that the trade-in lien represented on the CONTRACT was a 10-day payoff and therefore included
13 interest on the trade-in lien after the date of contract.

14 90. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that
15 Plaintiff was, by the 10-day payoff, being charged interest on the trade-in lien after the date of the
16 CONTRACT.

17 91. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that that
18 the trade-in lien was required to be timely paid off.

19 92. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently misrepresented to
20 Plaintiff that the lien on the trade-in vehicle would be timely and completely paid off.

21 93. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
22 that the lien on the trade-in vehicle was not paid off as agreed.

23 94. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
24 of the fact that the lienholder agreed to waive an unpaid portion of the trade-in lien.

25 95. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
26 of the amount of overcharge on the CONTRACT for the lien on the trade-in vehicle.

27 96. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff

1 of the unpaid amount of the lien on the trade-in vehicle.

2 97. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew or should have known that
3 Plaintiff was entitled to a refund of the overcharge for the trade-in lien.

4 98. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to inform Plaintiff
5 of his right to a refund of the overcharged and unpaid amount of the trade-in lien.

6 99. SELLER, HOLDER, and DOES 1 – 20, Inclusive, negligently failed to refund to
7 Plaintiff the overcharged and unpaid amount of the trade-in lien.

8 100. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew, or should have known, that
9 Plaintiff would rely on the representations of its agents when deciding whether to consummate the
10 transaction for the VEHICLE.

11 101. SELLER and DOES 1 – 20, Inclusive, knew, or should have known, that Plaintiff
12 would rely on its representations when deciding whether to consummate the transaction for the
13 VEHICLE.

14 102. Plaintiff trusted and did rely on the representations of SELLER, HOLDER, and DOES
15 1 – 20, Inclusive, because said Defendants were in a position of superior knowledge; because
16 automobile dealers are prohibited by statute from making false or misleading statements in the course
17 of a transaction; and, because Plaintiff had no reason to distrust said Defendants.

18 103. As a result of the misrepresentations and/or omissions of facts, Plaintiff suffered harm,
19 and continues to suffer harm, both economic and non-economic, in an amount according to proof at
20 the time of trial, including, but not limited to, all payments for the VEHICLE.

21 104. Plaintiff's reliance on the representations of SELLER, HOLDER, and DOES 1 – 20,
22 Inclusive, are substantial factors in causing the harm suffered by Plaintiff.

23 105. Pursuant to the terms of the CONTRACT, HOLDER is subject to all claims asserted by
24 Plaintiff against SELLER by this Cause of Action.

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1 **FOURTH CAUSE OF ACTION**
2 **For Violation of the Consumers Legal Remedies Act,**
3 **California Civil Code § 1750, et seq.**
4 **Against SELLER, HOLDER, SURETY and DOES 1 – 20, Inclusive**

5 106. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth in
6 this cause of action.

7 107. Plaintiff is a “person” as defined at Civil Code §1761(c) and a “consumer as defined at
8 Civil Code §1761(d).

9 108. SELLER and HOLDER are each a “person” as defined at Civil Code §1761(c).

10 109. The VEHICLE is a “good” as defined at Civil Code §1761(a).

11 110. When SELLER, HOLDER, and DOES 1 – 20, Inclusive, failed to properly disclose and
12 itemize the Registration/Transfer/Titling Fees at Line 2B of the CONTRACT, said Defendants
13 violated Civil Code §1770(a)(14) and (19).

14 111. When SELLER, HOLDER, and DOES 1 – 20, Inclusive, failed to properly disclose and
15 itemize the Smog Abatement Fee, said Defendants violated Civil Code §1770(a)(14) and (19).

16 112. When SELLER, HOLDER, and DOES 1 – 20, Inclusive, overcharged Plaintiff for the
17 trade-in lien at Line 6B of the CONTRACT, said Defendants violated Civil Code §1770(a)(13), (14)
18 and (19).

19 113. When SELLER, HOLDER, and DOES 1 – 20, Inclusive, failed to itemize the amount
20 of the trade-in lien which would be paid by SELLER, said Defendants violated Civil Code
21 §1770(a)(13), (14) and (19).

22 114. When SELLER, HOLDER, and DOES 1 – 20, Inclusive, represented to Plaintiff that
23 the lien on the trade-in vehicle would be timely paid off, said Defendants violated Civil Code
24 §1770(a)(13), (14), (16) and (19).

25 115. SELLER, HOLDER, and DOES 1 – 20, Inclusive, knew, or should have known, that
26 Plaintiff would rely on the representations of its agents when deciding whether to consummate the
27 transaction for the VEHICLE.

28 116. Plaintiff seeks an order, pursuant to Civil Code §1780(a)(2), enjoining SELLER,

1 HOLDER, and DOES 1 – 20, Inclusive, from continuing to harm Plaintiff by enforcing the Retail
2 Installment Sales Contract during the time this action is pending.

3 117. Pursuant to the terms of the CONTRACT, HOLDER is subject to all claims asserted by
4 Plaintiff against SELLER by this Cause of Action.

5 **FIFTH CAUSE OF ACTION**
6 **For Violation of the Rees-Levering Motor Vehicle Sales and Finance Act,**
7 **California Civil Code § 2981, et seq.**
8 **Against SELLER, HOLDER, SURETY and DOES 1 – 20, Inclusive**

9 118. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth in
10 this cause of action.

11 119. Plaintiff, SELLER, HOLDER, are each a “Person” within the meaning of Civil
12 Code §2981(d).

13 120. SELLER, a “Seller” within the meaning of Civil Code §2981(b).

14 121. The subject of the CONTRACT is a “Motor Vehicle” within the meaning of Civil
15 Code §2981(k).

16 122. Civil Code §2982(a) provides a list of the disclosures which a conditional sale
17 contract for the sale of a motor vehicle shall contain.

18 123. Civil Code §2982 requires that “[e]very conditional sale contract subject to this
19 chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z
20 applies to the transaction.” SELLER and DOES 1 – 20, Inclusive, failed to provide the
21 disclosures required by Regulation Z.

22 124. When SELLER and DOES 1 – 20, Inclusive, failed to properly disclose and
23 itemize the Registration/Transfer/Titling Fees at Line 2B of the CONTRACT, said Defendants
24 violated Civil Code §2982(a)(2)(B).

25 125. When SELLER and DOES 1 – 20, Inclusive, failed to properly disclose and
26 itemize a Smog Abatement Fee, said Defendants violated Civil Code §2982(a)(4).

27 126. When SELLER and DOES 1 – 20, Inclusive, failed to accurately disclose, at lien
28 6.B. of the CONTRACT, the prior loan balance for the trade-in vehicle, said Defendants violated

1 Civil Code §2982(a)(6)(B).

2 127. When SELLER and DOES 1 – 20, Inclusive, failed to properly itemize and
3 disclose the amount of trade-in lien to be paid for the trade-in vehicle, said Defendants violated
4 Civil Code §2982(a)(6)(B).

5 128. As a result of the failure to provide the disclosures required by Regulation Z the
6 CONTRACT does not disclose “all of the agreements between the buyer and seller with respect
7 to ... the terms of payment for the motor vehicle ...”, in violation of Civil Code §2981.9.

8 129. As a result of the improper itemizations and false disclosures at lines 2B, 2D and
9 6B of the CONTRACT, the true terms of payment for the VEHICLE cannot be ascertained
10 without resorting to one or more unincorporated documents, in violation of Civil Code §2981.9.

11 130. The Rees-Levering Motor Vehicle Sales and Finance Act, Civil Code §2981, et
12 seq. (also known as the Automobile Sales Finance Act – “ASFA”), provides, at §2984, that
13 certain failures to comply with the requirements of the Act may, within specified timeframes, be
14 corrected by a holder. The Act does not provide for correction under any circumstances by a
15 seller.

16 131. HOLDER did not make any correction of any failure to comply with any of the
17 requirements of ASFA within the timeframes specified at §2984.

18 132. Notwithstanding the violations of Civil Code §2981, et seq., the CONTRACT is a
19 valid contract, neither void nor voidable.

20 133. Notwithstanding that the CONTRACT is a valid contract, pursuant to Civil Code
21 §2983, the CONTRACT “shall not be enforceable.”

22 134. As a direct result of the acts and/or omissions of SELLER and DOES 1 – 20,
23 Inclusive, Plaintiff suffered harm, and continues to suffer harm, both economic and non-
24 economic, in an amount according to proof at the time of trial, including, but not limited to, all
25 payments for the VEHICLE, and interest on the monies wrongfully retained by SELLER which
26 were due to be refunded to Plaintiff.

27 135. Pursuant to Civil Code §2983.4, Plaintiff is entitled to an award of reasonable

1 attorney's fees and costs.

2 136. Pursuant to Vehicle Code section 11711, Plaintiff has been damaged and suffered
3 a loss as a result of the fraud, misrepresentations/failures to disclose, and/or statutory violations
4 of SELLER and its representatives during the course of the sale of the VEHICLE to Plaintiff,
5 entitling Plaintiff a right of action against SURETY as to SELLER's bond.

6 137. Pursuant to the terms of the CONTRACT, HOLDER is subject to all claims
7 asserted by Plaintiff against SELLER by this Cause of Action.

8 **SIXTH CAUSE OF ACTION**
9 **For Violation of California Business and Professions Code §17200, et seq.**
10 **Unlawful Acts or Practices.**
11 **Against All Defendants**

12 138. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth in
13 this cause of action.

14 139. Business and Professions Code §17200 provides that "unfair competition shall
15 mean and include any unlawful, unfair or fraudulent business act or practice and unfair,
16 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing
17 with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

18 140. SELLER's conduct, as alleged herein, is unlawful in that it violates statutory and
19 regulatory prescriptions designed to protect consumers, including Plaintiff, including but not
20 limited to Vehicle Code §§ 11713(a), Civil Code §§2981.9 and 2982, Civil Code §§ 1770, 1710,
21 3294.

22 141. As a direct, proximate, and foreseeable result of the wrongful business acts and/or
23 practices of Defendants, and each of them, as alleged herein, Plaintiff has suffered harm, and continues
24 to suffer harm, both economic and non-economic, in an amount according to proof at the time of trial.

25 142. Plaintiff and the public are entitled to relief, including full restitution and/or
26 disgorgement of all revenues, earnings, profits, compensation, and benefits, in an amount subject to
27 proof at the time of trial, which may have been obtained by Defendants, Inclusive, as a result of the
28 wrongful business acts and/or practices of SELLER, HOLDER, and DOES 1 – 20, Inclusive, and each

1 of them, as alleged herein.

2 143. Pursuant to Vehicle Code section 11711, Plaintiff has been damaged and suffered
3 a loss as a result of the fraud, misrepresentations/failures to disclose, and/or statutory violations
4 of SELLER and its representatives during the course of the sale of the VEHICLE to Plaintiff,
5 entitling Plaintiff a right of action against SURETY as to SELLER's bond.

6 144. Plaintiff is informed and believes, and based thereon alleges, that the wrongful acts
7 and/or omissions of Defendants, and each of them, as alleged above, constitute a serious threat and
8 wrong to Plaintiff and the public.

9 145. Plaintiff seeks an order, pursuant to Business and Professions Code §17203, enjoining
10 Defendants from perpetuating and continuing to violate consumer protection statutes, including but not
11 limited to, Vehicle Code § 11713(a), Civil Code §§1750 et seq. § 2981 et seq., and failing to abide by
12 the terms of Retail Installment Sales Contract.

13 146. Plaintiff seeks an order, pursuant to Business and Professions Code §17203, enjoining
14 Defendants from continuing to harm Plaintiff by enforcing the Retail Installment Sales Contract during
15 the time this action is pending.

16 147. Pursuant to the terms of the CONTRACT, HOLDER is subject to all claims
17 asserted by Plaintiff against SELLER by this Cause of Action.

18 **SEVENTH CAUSE OF ACTION**
19 **For Violation of California Business and Professions Code §17500, et seq.**
20 **Untrue, False and/or Misleading Advertisement**
21 **Against SELLER, HOLDER, SURETY and DOES 1 – 20, Inclusive**

22 148. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth in
23 this cause of action.

24 149. Business & Professions Code § 17500 provides that it is unlawful for any corporation
25 to knowingly make, by means of any advertising device or otherwise, any false, untrue or misleading
26 statement with the intent to sell a product or service, or to induce the public to purchase a product or
27 service. Any statement in advertising that is likely to deceive members of the public constitutes false
28 and misleading advertising under Business & Professions Code §17500.

1 150. Vehicle Code §11713(a) defines advertising:

2 No holder of any license issued under this Article shall do any of the following:
3 (a) Make or disseminate, or cause to be made or disseminated, before the public
4 in this state, in any newspaper or other publication, or any advertising device, or
5 by public outcry or proclamation, or in any other manner or means whatever,
6 any statement which is untrue or misleading and which is known, or which by
the exercise of reasonable care should be known, to be untrue or misleading; or
to so make or disseminate, or cause to be so disseminated, any statement as part
of a plan or scheme with the intent not to sell any vehicle or service so
advertised at the price stated therein, or as so advertised.

7 151. SELLER, HOLDER, and DOES 1 – 20, Inclusive, disseminated advertising/made
8 statements that they knew or should reasonably know were false and misleading. This conduct
9 includes, but is not limited to, failure to properly itemize and disclose Smog Abatement Fee and
10 Registration/Transfer/Titling Fees; representing the amount of lien due on trade-in vehicle;
11 representing that the lien on the trade-in vehicle would be timely and completely paid off; and
12 representing the amount SELLER intended to pay off for the trade-in lien.

13 152. Plaintiff has suffered injury in fact and lost money or property as a result of Defendants'
14 acts of false advertising. Defendants know or reasonably should know that this advertising is false and
15 misleading as set forth in detail in the preceding paragraphs.

16 153. SELLER, HOLDER, and DOES 1 – 20, Inclusive, by committing the acts alleged
17 above, the said Defendants have knowingly disseminated false, untrue and/or misleading statements in
18 an advertising or other device with the intent to sell and/or induce members of the public to purchase
19 automobiles, said Defendant violated the Business & Professions Code §17500.

20 154. SELLER, HOLDER, and DOES 1 – 20, Inclusive, by the aforesaid acts, have engaged
21 in false advertising in violation of California Business and Professions Code § 17500, resulting in
22 injury in fact and loss of money and/or property to Plaintiff in an amount to be proven at trial.

23 155. Plaintiff seeks an order, pursuant to Business and Professions Code §17535, enjoining
24 SELLER and DOES 1 – 20, Inclusive, for injunctive relief and restitution is specifically authorized for
25 violations of Business & Professions Code §17500 et seq. As Business & Professions Code §17534.5
26 provides that "the remedies or penalties provided by this chapter are cumulative to each other and to
27 the remedies or penalties available under all other laws of this state."

1 156. Plaintiff seeks an order, pursuant to § 17536, of the Business and Professions Code,
2 enjoining SELLER, HOLDER, and DOES 1 – 20, Inclusive, be assessed to maximum civil penalty for
3 each and every violation of Business and Professions Code § 17500, according to proof at the time of
4 trial.

5 157. Pursuant to Vehicle Code section 11711, Plaintiff has been damaged and suffered
6 a loss as a result of the fraud, misrepresentations/failures to disclose, and/or statutory violations
7 of SELLER and its representatives during the course of the sale of the VEHICLE to Plaintiff,
8 entitling Plaintiff a right of action against SURETY as to SELLER's bond.

9 158. Pursuant to the terms of the CONTRACT, HOLDER is subject to all claims
10 asserted by Plaintiff against SELLER by this Cause of Action.

11 **EIGHTH CAUSE OF ACTION**
12 **Request for Declaratory Relief (C.C.P. § 1060)**
13 **Against SELLER, HOLDER and DOES 1 – 20, Inclusive**

14 159. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth in
15 this cause of action.

16 160. Plaintiff alleges that the various false and misleading representations, failures to
17 provide mandatory disclosures and/or unfair and deceptive practices engaged in by SELLER and
18 DOES 1 – 20, give rise to damages to Plaintiff.

19 161. Plaintiff is informed and believes and thereon alleges that SELLER, HOLDER, and
20 DOES 1 – 20, Inclusive, and each of them, dispute these contentions and contend that the
21 CONTRACT is unenforceable.

22 162. As such, an actual controversy has arisen and now exists between Plaintiff and said
23 Defendants concerning their respective rights and duties under the CONTRACT.

24 163. Plaintiff desires a judicial determination of the rights and duties of all parties to this
25 action under the CONTRACT, including a declaration as to whether the CONTRACT is enforceable,
26 and, a declaration of the liability, if any, including Plaintiff's claim for an award of attorney's fees.

27 164. A judicial declaration is necessary and appropriate at this time under the circumstances
28 in order that Plaintiff may ascertain his rights and duties, if any, under the CONTRACT.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment, as follows:

3 **On the First Cause of Action, for Breach of Contract Against SELLER, HOLDER,**
4 **and DOES 1 – 20, Inclusive, jointly and severally:**

- 5 a. For the award of damages for breach of Contract.
6 b. For consequential damages;
7 c. For interest on the amount of damages at the legal rate from the date each
8 item of damage was incurred;
9 d. For reasonable attorney’s fees, costs and expenses; and,
10 e. For such other and further relief as the court deems appropriate under the
11 circumstances.

12 **On the Second Cause of Action, for Fraud, against SELLER, HOLDER, SURETY**
13 **and DOES 1 – 20, Inclusive, jointly and severally:**

- 14 a. For special and general damages in an amount in excess of \$25,000.00,
15 according to proof;
16 b. For interest on the amount of damages at the legal rate from the date each
17 item of damage was incurred;
18 c. For punitive or exemplary damages;
19 d. For injunctive relief precluding Defendants from engaging in further
20 unlawful acts;
21 e. For reasonable attorney’s fees, costs and expenses; and
22 f. For such other and further relief as the court deems appropriate under the
23 circumstances.

24 **On the Third Cause of Action, for Negligent Misrepresentation, against SELLER,**
25 **HOLDER, and DOES 1 – 20, Inclusive, jointly and severally:**

- 26 a. For special and general damages in an amount in excess of \$25,000.00,
27 according to proof;

- 1 b. For interest on the amount of damages at the legal rate from the date each
2 item of damage was incurred; and,
3 c. For such other and further relief as the court deems appropriate under the
4 circumstances.

5 **On the Fourth Cause of Action, for Violation of the Consumers Legal Remedies**
6 **Act, against SELLER, HOLDER, SURETY and DOES 1 – 20, Inclusive, jointly and**
7 **severally:**

- 8 a. For a determination by the court that the conduct of Defendants
9 constitutes a violation of the CLRA;
10 b. For a temporary restraining order, a preliminary injunction, and an order
11 requiring Defendants to show cause why they should not be enjoined, pursuant
12 to §1780(a)(2), from enforcing the subject contract during the time this action
13 is pending;
14 c. For injunctive relief pursuant to §1780(a)(2) prohibiting Defendants from
15 continuing to harm Plaintiff by enforcing the Retail Installment Sales Contract
16 during the time this action is pending;
17 d. For injunctive relief pursuant to §1780(a)(2) precluding Defendants from
18 engaging in further unlawful act; and,
19 e. For an Order declaring that Plaintiff is a prevailing party;
20 f. For such other and further relief as the court deems appropriate under the
21 circumstances.

22 **On the Fifth Cause of Action, for Violation of the Rees-Levering Motor**
23 **Vehicle Sales and Finance Act, against SELLER, HOLDER, SURETY and DOES 1 –**
24 **20, Inclusive, jointly and severally:**

- 25 a. For a determination by the court that the conduct of Defendants
26 constitutes a violation of the Act;
27 b. For a determination by the court that Plaintiff may elect to rescind
28

1 the CONTRACT and return the VEHICLE;

- 2 c. For restitution of all monies paid pursuant to the CONTRACT,
3 according to proof;
- 4 d. For interest on the restitution amount at the legal rate from the date
5 each item of restitution was incurred;
- 6 e. For an Order declaring that Plaintiff is a prevailing party;
- 7 f. For reasonable attorney's fees, costs and expenses; and,
- 8 g. For such other and further relief as the court deems appropriate
9 under the circumstances.

10 **On the Sixth Cause of Action, for Violation of California Business and Professions**
11 **Code §17200, et seq., Unlawful Acts or Practices, against all Defendants, jointly and**
12 **severally:**

- 13 a. For a determination by the court that the conduct of Defendants, as
14 alleged herein, constitutes a violation of Vehicle Code § 11709.4;
- 15 b. For a determination by the court that the conduct of Defendants, as
16 alleged herein, constitutes a violation of the Consumers Legal Remedies
17 Act, California Civil Code §1750, et seq.;
- 18 c. For a determination by the court that the conduct of Defendants, as
19 alleged herein, constitutes a violation of the Automobile Sales Finance
20 Act, California Civil Code §2981, et seq.;
- 21 d. For a temporary restraining order, a preliminary injunction, and an order
22 requiring Defendants to show cause why they should not be enjoined from
23 continuing to harm Plaintiff by enforcing the subject contract during the
24 time this action is pending;
- 25 e. For a temporary restraining order, a preliminary injunction, and a
26 permanent injunction, all enjoining Defendant and their agents, servants,
27 and employees, and all persons acting under, in concert with, or for
28

1 Defendants, from violating Civil Code §§1750, et seq. and 2981, et seq.
2 and the rights of Plaintiff to full and truthful disclosure, as required
3 therein;

- 4 f. For a temporary restraining order, a preliminary injunction, and a
5 permanent injunction, all enjoining Defendant and their agents, servants,
6 and employees, and all persons acting under, in concert with, or for
7 Defendants, from violating the terms of Retail Installment Sale Contracts
8 specifically as to its rescission rights;
- 9 g. For restitution and/or disgorgement of all revenues, earnings, profits,
10 compensation, and benefits which may have been obtained by Defendants
11 as a result of such unlawful business acts or practices;
- 12 h. For a civil penalty for each unlawful violation;
- 13 i. For interest on the restitution amount at the legal rate from the date each
14 item of restitution was incurred;
- 15 j. For reasonable attorney's fees, costs and expenses; and,
- 16 k. For such other and further relief as the court deems appropriate under the
17 circumstances.

18 **On the Seventh Cause of Action, for Violation of California Business and**
19 **Professions Code §17500, et seq., Untrue, False and/or Misleading Advertisement, against**
20 **SELLER, HOLDER, SURETY and DOES 1 – 20, Inclusive, jointly and severally:**

- 21 a. For a permanent injunction, enjoining all Defendants their successors, assigns,
22 agents, representatives, employees and all persons who act in concert with them
23 be permanently enjoined from making any untrue or misleading statements in
24 violation of Business and Professions Code section 17500 and Vehicle Code
25 §11713(a);
- 26 b. For the court to assess maximum civil penalty against each Defendant for
27 each violation of Business and Professions Code section 17500;

- 1 c. For restitution and/or disgorgement of all money, earnings, profits, or other
2 property, which may have been obtained by Defendants as a result of their
3 violations of Business and Professions Code section 17500;
4 d. For costs of suit, including costs of investigation; and,
5 e. For such other and further relief as the nature of the case may require and
6 the court deems appropriate to fully and successfully dissipate the effects
7 of the untrue, false and/or misleading statements complained of herein.

8 **On the Eighth Cause of Action, for Declaratory Relief, against SELLER, HOLDER**
9 **and DOES 1 – 20, Inclusive, jointly and severally:**

- 10 a. For a determination by the court that the CONTRACT is in force;
11 b. For a determination by the court that HOLDER is responsible for all
12 claims and defenses which Plaintiff could bring against SELLER,
13 including claims for attorney's fees and costs;
14 c. For interest on the amount of damages at the legal rate from the date each
15 item of damage was incurred;
16 d. For a determination by the court that Plaintiff is entitled by statute to
17 reimbursement of reasonable attorney's fees, costs and expenses; and,
18 e. For such other and further relief as the court deems appropriate under the
19 circumstances.

20 Dated: September 27, 2012 **LIBERTY & ASSOCIATES, A PLC**

21
22 By: 

23 Louis A. Liberty
24 Michele M. Tuman
25 Attorney for Plaintiff,
26 GENE CONDON
27
28

AFFIDAVIT

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My name is GENE CORDON. I have personal knowledge of the matters set forth herein and am the plaintiff in this action.

ASFA

- 1. At the commencement of this action I resided in SAV MATEO County.
- 2. At the time the contract or purchase order was entered into I resided in SAV MATEO County.
- 3. I signed the contract or purchase order that is the subject of this dispute in SAV MATEO County.
- 4. The motor vehicle purchased pursuant to the contract or purchase order that is subject to this dispute is permanently garaged in SAV MATEO County.

CLRA

- 5. The Defendant resides or its principal place of business is in SAV MATEO County.
- 6. The Defendant is doing business in SAV MATEO County.
- 7. A substantial portion of the transaction occurred in SAV MATEO County.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 7/20/12 Signature: [Handwritten Signature]

RETAIL INSTALLMENT SALE CONTRACT – SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number _____ R.O.S. Number _____ Stock Number 5097

Buyer Name and Address (Including County and Zip Code) BOBIE TORRISON 1000 MILLERS AVE BURLINGAME CA 94010	Co-Buyer Name and Address (Including County and Zip Code)	Creditor-Seller (Name and Address) DALANO NISSAN, INC. 460 EL CAMINO REAL MILLBRAE CA 94030 (510) 697-8397
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New Used	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2011	NISSAN TR 4X2 CREW	145	1N6AD0FR3BC416749	<input checked="" type="checkbox"/> personal, family or household <input type="checkbox"/> business or commercial

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of
0.00 %	\$ 0.00(e)	\$ 27774.00	\$ 27774.00(e)	\$ 1000.00 is \$ 28774.00 (e)
(e) means an estimate				

YOUR PAYMENT SCHEDULE WILL BE:		
Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of	N/A	
One Payment of	N/A	
Payments	N/A	Monthly, Beginning
55 Payments	462.90	Monthly, Beginning Feb 27 2011
One Final Payment	462.90	Jan 27 2016
	N/A	

Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late.
Prepayment. If you pay off all your debt early, you may be charged a minimum finance charge.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, minimum finance charges, and security interest.

ITEMIZATION OF THE AMOUNT FINANCED (Seller may keep part of the amounts paid to others.)	
1. Total Cash Price	
A. Cash Price of Motor Vehicle and Accessories	
	\$ 25845.45 (A)
1. Cash Price Vehicle	\$ 25845.45
2. Cash Price Accessories	\$ N/A
3. Other (Nontaxable)	\$ N/A
Describe	\$ N/A
Describe	\$ N/A
B. Document Preparation Fee (not a governmental fee)	\$ 55.00 (B)
C. Smog Fee Paid to Seller	\$ N/A (C)
D. (Optional) Theft Deterrent Device (to whom paid)	\$ N/A (D)
E. (Optional) Theft Deterrent Device (to whom paid)	\$ N/A (E)
F. (Optional) Theft Deterrent Device (to whom paid)	\$ N/A (F)
G. (Optional) Surface Protection Product (to whom paid)	\$ N/A (G)
H. (Optional) Surface Protection Product (to whom paid)	\$ N/A (H)
I. Sales Tax (on taxable items in A through H)	\$ 2395.79 (I)
J. Optional DMV Electronic Filing Fee	\$ N/A (J)
K. (Optional) Service Contract (to whom paid) NISSAN SECURITY PLUS	\$ N/A (K)
L. (Optional) Service Contract (to whom paid) N/A	\$ N/A (L)
M. (Optional) Service Contract (to whom paid) N/A	\$ N/A (M)
N. (Optional) Service Contract (to whom paid) N/A	\$ N/A (N)
O. (Optional) Service Contract (to whom paid) N/A	\$ N/A (O)
P. Prior Credit or Lease Balance paid by Seller to	\$ N/A (P)
	\$ N/A
(see downpayment and trade-in calculation)	
Q. (Optional) Gap Contract (to whom paid) N/A	\$ N/A (Q)
	\$ N/A

STATEMENT OF INSURANCE
 NOTICE: No person is required as a condition of financing the purchase of a motor vehicle to purchase or negotiate any insurance through a particular insurance company, agent or broker. You are not required to buy any other insurance to obtain credit. Your decision to buy or not buy other insurance will not be a factor in the credit approval process.

Vehicle Insurance		
	Term	Premium
\$ N/A Ded. Comp., Fire & Theft	N/A Mos.	\$ N/A
\$ N/A Ded. Collision	N/A Mos.	\$ N/A
Bodily Injury \$ N/A Limits	N/A Mos.	\$ N/A
Property Damage \$ N/A Limits	N/A Mos.	\$ N/A
Medical N/A	N/A Mos.	\$ N/A
N/A	N/A Mos.	\$ N/A
Total Vehicle Insurance Premiums		\$ N/A

UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.

You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit.

Buyer X
 Co-Buyer X
 Seller X

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Application for Optional Credit Insurance

Credit Life: Buyer Co-Buyer Both
 Credit Disability (Buyer Only)

	Term	Exp.	Premium
Credit Life	N/A Mos.	N/A	\$ N/A
Credit Disability	N/A Mos.	N/A	\$ N/A
Total Credit Insurance Premiums			\$ N/A (b)

Insurance Company Name _____
 N/A

Home Office Address _____
 N/A

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not buy credit life and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown above.

You are applying for the credit insurance marked above. Your signature below means that you agree that: (1) You are not eligible for insurance if you have reached your 65th birthday. (2) You are eligible for disability insurance only if you are working for wages

For N/A

Total Cash Price (A through S) \$ 28296.25 (1)

2. Amounts Paid to Public Officials

A. License Fees \$ 298.00 (A)

B. Registration/Transfer/Titling Fees \$ 151.00 (B)

C. California Tire Fees \$ 8.75 (C)

D. Other Smog Abatement Fee \$ 20.00 (D)

Total Official Fees (A through D) \$ 477.75 (2)

3. Amount Paid to Insurance Companies (Total premiums from Statement of Insurance column a + b) \$ N/A (3)

4. Smog Certification or Exemption Fee Paid to State \$ N/A (4)

5. Subtotal (1 through 4) \$ 28774.00 (5)

6. Total Downpayment

A. Agreed Trade-In Value Yr 2007 Make NISSAN \$ 9875.05 (A)

Model TITAN 4X2 Odom 15993

VIN 1N6HH07A57N213903

B. Less Prior Credit or Lease Balance \$ 8075.05 (B)

C. Net Trade-In (A less B) (indicate if a negative number) \$ 1599.30 (C)

D. Deferred Downpayment \$ N/A (D)

E. Manufacturer's Rebate \$ N/A (E)

F. Other N/A \$ N/A (F)

G. Cash \$ N/A (G)

Total Downpayment (C through G) \$ 1000.00 (6)

(If negative, enter zero on line 6 and enter the amount less than zero as a positive number on line 1P above)

7. Amount Financed (5 less 6) \$ 27774.00 (7)

usability insurance. **DISABILITY INSURANCE MAY NOT COVER CONDITIONS FOR WHICH YOU HAVE SEEN A DOCTOR OR CHIROPRACTOR IN THE LAST 6 MONTHS** (Refer to "Total Disabilities Not Covered" in your policy for details). You want to buy the credit insurance.

Date X Buyer Signature [Signature] Age _____

Date X Co-Buyer Signature _____ Age _____

OPTIONAL GAP CONTRACT A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in item 1Q of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A Name of Gap Contract _____

I want to buy a gap contract. [Signature]

Buyer Signs X _____

OPTIONAL SERVICE CONTRACT(S) You want to purchase the service contract(s) written with the following company(ies) for the term(s) shown below for the charge(s) shown in item 1K, 1L, 1M, 1N, and/or 1O.

NISSAN SECURITY PLUS

1K Company _____ Term _____ Mos. or _____ Miles

1L Company N/A Term N/A Mos. or N/A Miles

1M Company N/A Term N/A Mos. or N/A Miles

1N Company N/A Term N/A Mos. or N/A Miles

1O Company N/A Term N/A Mos. or N/A Miles

Buyer X _____

SELLER ASSISTED LOAN
BUYER MAY BE REQUIRED TO PLEDGE SECURITY FOR THE LOAN, AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THIS RETAIL INSTALLMENT SALE CONTRACT AND THE LOAN.

Proceeds of Loan From: N/A

Amount \$ N/A Finance Charge \$ N/A

Total \$ N/A Payable in N/A installments of \$ N/A

from this Loan is shown in item 6D.

AUTO BROKER FEE DISCLOSURE
If this contract reflects the retail sale of a new motor vehicle, the sale is not subject to a fee received by an autobroker from us unless the following box is checked:

Name of autobroker receiving fee, if applicable: N/A

SELLER'S RIGHT TO CANCEL If Buyer and Co-Buyer sign here, the provisions of the Seller's Right to Cancel section on the back giving the Seller the right to cancel if Seller is unable to assign this contract to a financial institution will apply.

X Buyer [Signature] X Co-Buyer _____

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to the contract must be in writing and both you and we must sign it. No oral changes are binding.

Buyer Signs X _____

Co-Buyer Signs X _____

OPTION: You pay no finance charge if the Amount Financed, item 7, is paid in full on or before N/A, Year _____, SELLER'S INITIALS _____

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

WARNING:
YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT. THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

S/S X [Signature] X _____

Payoff Agreement: Seller relied on information from you and/or the lienholder or lessor of your trade-in vehicle to arrive at the payoff amount shown in item 6B of the Itemization of Amount Financed as the "Prior Credit or Lease Balance." Seller agrees to pay the payoff amount shown in 6B to the lienholder or lessor of the trade-in vehicle, or its designee. If the actual payoff amount is more than the amount shown in 6B, you must pay the Seller the excess on demand. If the actual payoff amount is less than the amount shown in 6B, Seller will refund the difference to you. Except as stated in the "NOTICE" on the back of this contract, any assignee of this contract will not be obligated to pay the Prior Credit or Lease Balance shown in 6B or any refund due from the Seller.

Buyer Signature X [Signature] Co-Buyer Signature X _____

Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

If you have a complaint concerning this sale, you should try to resolve it with the seller. Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof. After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer Signature X [Signature] Co-Buyer Signature X _____

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

(If negative, enter zero on line 6 and enter the amount less

zero as a positive number on line 1P above)

\$ 27774.00 (7)

7. Amount Financed (5 less 6)

1L Company	N/A	Mos. or	N/A	Miles
Term	N/A	Mos. or	N/A	Miles
1M Company	N/A	Mos. or	N/A	Miles
Term	N/A	Mos. or	N/A	Miles
1N Company	N/A	Mos. or	N/A	Miles
Term	N/A	Mos. or	N/A	Miles
1O Company	N/A	Mos. or	N/A	Miles
Term	N/A	Mos. or	N/A	Miles
Buyer X				

SELLER ASSISTED LOAN
 BUYER MAY BE REQUIRED TO PLEDGE SECURITY FOR THE LOAN, AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THIS RETAIL INSTALLMENT SALE CONTRACT AND THE LOAN.

Proceeds of Loan From: N/A
 Amount \$ N/A Finance Charge \$ N/A
 Total \$ N/A Payable in N/A
 installments of \$ N/A \$ N/A
 from this Loan is shown in item 6D.

AUTO BROKER FEE DISCLOSURE
 If this contract reflects the retail sale of a new motor vehicle, the sale is not subject to a fee received by an autobroker from us unless the following box is checked:

Name of autobroker receiving fee, if applicable: N/A

SELLER'S RIGHT TO CANCEL If Buyer and Co-Buyer sign here, the provisions of the Seller's Right to Cancel section on the back giving the Seller the right to cancel if Seller is unable to assign this contract to a financial institution will apply.

X Buyer _____ X Co-Buyer _____

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to the contract must be in writing and both you and we must sign it. No oral changes are binding.

Buyer Signs X _____
 Co-Buyer Signs X _____

OPTION: You pay no finance charge if the Amount Financed, item 7, is paid in full on or before N/A, Year . SELLER'S INITIALS _____

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

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 YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT. THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

S/S X _____ X _____

Payoff Agreement: Seller relied on information from you and/or the lienholder or lessor of your trade-in vehicle to arrive at the payoff amount shown in item 6B of the Itemization of Amount Financed as the "Prior Credit or Lease Balance." Seller agrees to pay the payoff amount shown in 6B to the lienholder or lessor of the trade-in vehicle, or its designee. If the actual payoff amount is more than the amount shown in 6B, you must pay the Seller the excess on demand. If the actual payoff amount is less than the amount shown in 6B, Seller will refund the difference to you. Except as stated in the "NOTICE" on the back of this contract, any assignee of this contract will not be obligated to pay the Prior Credit or Lease Balance shown in 6B or any refund due from the Seller.

Buyer Signature X _____ Co-Buyer Signature X _____

Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

If you have a complaint concerning this sale, you should try to resolve it with the seller. Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer Signature X _____ Co-Buyer Signature X _____

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

THERE IS NO COOLING-OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION
 California law does not provide for a "cooling-off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud. However, California law does require a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than \$40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

YOU AGREE TO THE TERMS OF THIS CONTRACT. YOU CONFIRM THAT BEFORE YOU SIGNED THIS CONTRACT, WE GAVE IT TO YOU, AND YOU WERE FREE TO TAKE IT AND REVIEW IT. YOU ACKNOWLEDGE THAT YOU HAVE READ BOTH SIDES OF THIS CONTRACT, INCLUDING THE ARBITRATION CLAUSE ON THE REVERSE SIDE, BEFORE SIGNING BELOW. YOU CONFIRM THAT YOU RECEIVED A COMPLETELY FILLED-IN COPY WHEN YOU SIGNED IT.

Buyer Signature X _____ Date Jan 27 2011 Co-Buyer Signature X _____ Date _____
 Co-Buyers and Other Owners: A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.
 Other Owner Signature X _____ Address _____

GUARANTY: To induce us to sell the vehicle to Buyer, each person who signs as a Guarantor individually guarantees the payment of this contract. If Buyer fails to pay any money owing on this contract, each Guarantor must pay it when asked. Each Guarantor will be liable for the total amount owing even if other persons also sign as Guarantor, and even if Buyer has a complete defense to Guarantor's demand for reimbursement. Each Guarantor agrees to be liable even if we do one or more of the following: (1) give the Buyer more time to pay one or more payments; (2) give a full or partial release to any other Guarantor; (3) release any security; (4) accept less from the Buyer than the total amount owing; or (5) otherwise reach a settlement relating to this contract or extend the contract. Each Guarantor acknowledges receipt of a completed copy of this contract and guaranty at the time of signing.

Guarantor waives notice of acceptance of this Guaranty, notice of the Buyer's non-payment, non-performance, and default; and notices of the amount owing at any time, and of any demands upon the Buyer.

Guarantor X N/A Date N/A Guarantor X N/A Date N/A
 Address _____ Address _____

Seller Signs _____ Date Jan 27 2011 By X _____ Title _____