

1 ROSNER, BARRY & BABBITT, LLP
Hallen D. Rosner, SBN: 109740
2 Christopher P. Barry, SBN: 179308
Angela Smith, SBN: 216876
3 10085 Carroll Canyon Road, Suite 100
San Diego, California 92131
4 TEL: (858) 348-1005
FAX: (858) 348-1150

5 ROMANO STANCROFF & MIKHOV, PC
6 Steve Mikhov, SBN: 224676
640 S. San Vicente, Suite 230
7 Los Angeles, California 90048
TEL: (323) 936-2274
8 FAX: (323) 939-7973

9 Attorneys for Plaintiff

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SACRAMENTO**
13

14 IRINA ARTEMOVA, individually
and on behalf of all others similarly
15 situated,

16 Plaintiff,

17 v.

18 DAUGHERTY AND DAUGHERTY,
INC., a Delaware corporation, doing
19 business as MIKE DAUGHERTY
CHEVROLET/HUMMER OF
20 SACRAMENTO; WELLS FARGO
DEALER SERVICES, INC., a
21 California corporation; and DOES 1
through 10, inclusive,

22
23 Defendants.
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CASE NO.

CLASS ACTION

COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
DAMAGES:

1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT – CLASS CLAIM;
2. VIOLATION OF THE AUTOMOBILE SALES FINANCE ACT – CLASS CLAIM;
3. UNLAWFUL, UNFAIR, FRAUDULENT BUSINESS ACTS & PRACTICES – CLASS CLAIM; AND
4. VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT – INDIVIDUAL CLAIM.

1 Plaintiff IRINA ARTEMOVA, individually as to all causes of action, and on behalf
2 of all others similarly-situated as to the First through Third Causes of Action, alleges
3 as follows on information and belief, formed after an inquiry reasonable under the
4 circumstances:

5 INTRODUCTION

6 1. Defendant Daugherty and Daugherty, Inc., doing business as Mike
7 Daugherty Chevrolet/Hummer of Sacramento (“Daugherty”) is an automobile
8 dealership in Sacramento, California, that engages in various unlawful and deceptive
9 business practices. These business practices are engaged in for one purpose – to sell
10 vehicles to customers and earn extra profits. In this action Plaintiff seeks to put an
11 end to these unlawful and deceptive practices and provide remedies for hundreds of
12 affected consumers. The unlawful and deceptive practice engaged in by Daugherty for
13 which Plaintiff seeks class-wide redress relates to Daugherty’s systematic violation of
14 California’s financial disclosure laws.

15 2. In every new vehicle sale in California, dealerships – such as Daugherty –
16 submit various fees to the California Department of Motor Vehicles (“DMV”) on behalf
17 of their customers. Dealerships are legally required, under the Automobile Sales
18 Finance Act (Civil Code Section 2981 *et seq.*) (“ASFA”), to disclose fees paid to public
19 officials, including the DMV, on customers’ Retail Installment Sale Contracts (“RISC”).
20 For example, dealerships must disclose license fees paid to the DMV on Line 2.A. and
21 “registration, transfer, and titling fees” paid to the DMV on Line 2.B. of the RISC.

22 3. Moreover, in new vehicle sales, vehicle purchasers will *always* be charged
23 registration and titling fees. (Vehicle Code Section 9250 *et seq.*) In used vehicle sales,
24 purchasers will *always* have to pay a transfer fee to the DMV to transfer registration
25 from the prior owner. (Vehicle Code Section 9255.) Thus, one or more of these fees will
26 be due in *every* vehicle sale in California.

27 4. Plaintiff is one of many customers, who during the past four years,
28 purchased a vehicle from Daugherty and who entered into a Retail Installment Sale

1 Contract ("RISC") prepared by Daugherty, that failed to properly and separately
2 itemize and disclose registration/transfer/titling fees, separate from the license fees,
3 for the vehicles sold. Regarding new and used vehicles alike, Daugherty misstated the
4 amount of license, registration, transfer, and titling fees due and owing on the vehicles
5 it sells its customers.

6 5. The conduct herein described violates, *inter alia*, the Automobile Sales
7 Finance Act ("ASFA") (Civil Code §2981, *et seq.*), the Consumers Legal Remedies Act
8 ("CLRA") (Civil Code §1750, *et seq.*), and the Unfair Competition Law ("UCL") (Bus. &
9 Prof. Code §17200, *et seq.*).

10 6. After the date of purchase, Plaintiff's RISC was assigned by Daugherty
11 to Wachovia Corp., dba Wachovia Dealer Services ("Wachovia"). Plaintiff is informed
12 and believes that Wachovia was, in March 2010, acquired by Defendant Wells Fargo
13 Dealer Services, Inc. ("WFDS"). Daugherty's violations of the Automobile Sales
14 Finance Act with respect to the improper disclosure of registration/transfer/titling fees
15 were willful and appear on the face of the RISC. In light of WFDS's acceptance of the
16 RISC despite the illegal disclosures on the face of the contract, Plaintiff believes that
17 WFDS fails to review contracts assigned to it for compliance with the ASFA. As the
18 assignee and holder of Plaintiff's RISC, WFDS is subject to all equities and defenses
19 of Plaintiff against Daugherty.

20 7. In addition, Daugherty provided express and implied warranties that
21 accompanied the sale of the vehicle to Plaintiff by which Daugherty undertook to
22 preserve or maintain the utility or performance of Plaintiff's vehicle or provide
23 compensation if there was a failure in such utility or performance.

24 8. The vehicle was delivered to Plaintiff with serious defects and
25 nonconformities to warranty and developed other serious defects and nonconformities
26 to warranty including, but not limited to, a loss of power while driving, warning lights
27 that are faulty, an inoperable stereo system, an odor from the air conditioning system,
28 a defective tire sensor monitor, and water leaking into the vehicle. Defendant failed

1 to repair these defects after a reasonable number of repair attempts. As such,
2 Defendants are in breach of the express and implied warranties that accompanied the
3 sale of the vehicle to Plaintiff.

4 **JURISDICTION AND VENUE**

5 9. This Court has jurisdiction over all causes of action asserted herein
6 pursuant to the California Constitution, Article VI, Section 10, because this case is a
7 cause not given by statute to other trial courts.

8 10. This Court has jurisdiction over Defendants because each are individuals,
9 associations, or corporations that are either authorized to conduct or, in fact, do
10 conduct substantial business in the State of California, County of Sacramento.

11 11. Venue is proper in this County pursuant to Code of Civil Procedure
12 § 395(b) because the acts upon which this action is based occurred in this County. The
13 contract for products and services at issue in this case was entered into in this County
14 and communications from Defendants were received in this County. Thereby, Plaintiff
15 and Class members were injured and/or subjected to irreparable harm in this venue.
16 Defendants received substantial compensation and profits from its products and
17 services in this County, caused misrepresentations to be disseminated, entered into
18 agreements and transactions, and breached agreements in this County. Thus,
19 Defendants' liability arose primarily in this County.

20 **PARTIES**

21 12. Plaintiff Irina Artemova is an individual who resides in the City of Citrus
22 Heights, County of Sacramento, State of California.

23 13. Defendant Daugherty and Daugherty, Inc., doing business as Mike
24 Daugherty Chevrolet/Hummer of Sacramento ("Daugherty"), is a Delaware
25 corporation, and a new and used car dealership conducting business in the City of
26 Sacramento, County of Sacramento, State of California.

27 14. Defendant Wells Fargo Dealer Services, Inc. ("WFDS"), is a California
28 corporation, and is registered to and doing business in the County of Sacramento, State

1 of California. Plaintiff is informed and believes that WFDS is the successor-in-interest
2 to Wachovia, the prior assignees of Plaintiff's RISC.

3 15. Plaintiff does not know the true names and capacities, whether corporate,
4 partnership, associate, individual, or otherwise of Defendants sued herein as Does 1
5 through 10, inclusive, under the provisions of Section 474 of the California Code of
6 Civil Procedure. Defendants Does 1 through 10, inclusive, are in some manner
7 responsible for the acts, occurrences, and transactions set forth herein, and are legally
8 liable to Plaintiff and the class. Plaintiff will set forth the true names and capacities
9 of the fictitiously-named Defendants together with appropriate charging allegations
10 when ascertained.

11 16. All acts of corporate employees as alleged were authorized or ratified by
12 an officer, director, or managing agent of the corporate employer.

13 17. Each Defendant, whether actually or fictitiously-named herein, was the
14 principal, agent (actual or ostensible), or employee of each other Defendant and in
15 acting as such principal or within the course and scope of such employment or agency,
16 took some part in the acts and omissions hereinafter set forth by reason of which each
17 Defendant is liable to Plaintiffs for the relief prayed for herein.

18 **CLASS ALLEGATIONS**

19 18. This action is brought, and may properly be maintained, as a class action
20 pursuant to the provisions of California Code of Civil Procedure Section 382 and Civil
21 Code Section 1781(a).

22 19. Plaintiff brings this action on behalf of herself and all others similarly-
23 situated as a representative member of the following proposed class:

- 24 (a) All persons who, in the four years prior to the filing of this
25 complaint, (1) purchased a vehicle from Daugherty for
26 personal use, and (2) signed a RISC that failed to disclose on
27 the RISC the amount paid for registration/transfer/titling
28 fees.

1 Plaintiff proposes a subclass of all Class Members whose contracts are held by WFDS.

2 20. In this lawsuit, Plaintiff and the Class seek both equitable relief,
3 including declaratory, injunctive, restitutionary, and other equitable monetary relief
4 and economic and statutory damages as set forth more fully below, including, but not
5 limited to, full restitution and/or rescission of any RISC entered into by any Class
6 Member.

7 21. Specifically excluded from the proposed Class are the Court and its staff,
8 Defendants, any entity in which any of the Defendants has a controlling interest, and
9 the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries,
10 and/or assigns of any such individual or entity.

11 **A. NUMEROSITY OF THE CLASS**

12 22. The proposed Class is so numerous that the individual joinder of the Class
13 Members in one action is impracticable. The exact number and the identities of the
14 Members of the Class are unknown at this time and can only be ascertained through
15 appropriate investigation and discovery.

16 **B. EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS**
17 **OF LAW AND FACT**

18 23. Common questions of law and fact arising out of the claims here at issue
19 exist as to all Class Members and predominate over any individual issue. These
20 common legal and factual questions include, but are not limited to, the following:

- 21 a. whether Daugherty and/or WFDS violated the state's consumer
22 protection statutes;
- 23 b. whether Daugherty's failure to separately itemize and disclose
24 registration/transfer/titling fees on customers' RISCs constitutes a
25 violation of the ASFA, CLRA, and/or the UCL;
- 26 c. whether WFDS's acceptance of and failure to require RISCs containing
27 proper itemization of the registration/transfer/titling fees constitutes a
28 violation of the ASFA, CLRA, and/or the UCL;

- 1 d. the amount of revenues and profits Daugherty and/or WFDS received,
2 and/or the amount of monies or other obligations imposed on, or lost by,
3 Class Members as a result of such wrongdoing;
- 4 e. whether Class Members are threatened with irreparable harm and are
5 entitled to injunctive and other equitable relief and, if so, what is the
6 nature of such relief; and
- 7 f. whether Class Members are entitled to rescission, payment of actual,
8 incidental, consequential, exemplary, punitive, and/or statutory damages
9 plus interest thereon, and, if so, what is the nature of such relief.

10 **C. TYPICALITY OF CLAIMS**

11 24. Plaintiff's claims are typical of the claims of the Class Members.
12 Daugherty engaged in the standard practice and/or procedure of failing to separately
13 itemize and disclose any registration, transfer, or titling fees paid by Plaintiff and
14 Class members on Line 2.B. of the Itemization of the Amount Financed on their RISCs.
15 Plaintiff's RISC failed to list any amount for registration/transfer/titling fees on
16 Line 2.B. Rather, Plaintiff's RISC contains the notation "N/A" or "not applicable" on
17 Line 2.B. Since vehicle sales always involve registration, transfer, and/or titling fees,
18 Plaintiff's and Class Members' RISCs falsely state that "registration/transfer/titling
19 fees" are "N/A" or "not applicable."

20 25. The RISCs of Plaintiff and the members of the proposed Subclass were all
21 assigned to, or held by, WFDS, and failed to itemize on their face the
22 registration/transfer/titling fees.

23 26. Accordingly, Plaintiff and all Class Members had their legal rights
24 infringed upon, sustained injuries, losses, and damages as described herein, and/or are
25 facing irreparable harm arising out of Daugherty's and WFDS's common course of
26 conduct. The right of Plaintiff and each Class Member to payment of any actual,
27 incidental, consequential, exemplary, and/or statutory damages or restitution resulting
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1 therefrom were proximately caused by Defendant Daugherty's and WFDS's wrongful
2 conduct, in violation of state law as alleged herein.

3 **D. ADEQUATE REPRESENTATION**

4 27. Plaintiff will fairly and adequately protect the interests of the Class
5 Members in that she does not have irreconcilable conflicts with or interests materially
6 antagonistic to those of other Class Members.

7 28. Plaintiff retained attorneys experienced in the prosecution of class
8 actions, including consumer class actions.

9 **E. SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS**
10 **LITIGATION**

11 29. To the extent it is an element for establishing class certification for
12 certain causes of action, a class action is superior to other available methods for the
13 fair and efficient group-wide adjudication of this controversy and, as applicable,
14 possesses substantial benefits. Individual joinder of all Class Members is
15 impracticable, and no other group method of adjudication of all claims asserted herein
16 is more efficient and manageable while at the same time provides all the remedies
17 available to ensure the full purpose of this State's consumer protection laws are
18 effectuated. Furthermore, as the damages suffered by each individual Class Member
19 may be relatively small and the relief sought discrete, the expense and burden of
20 individual Class Members to redress the wrongs done to them, and the cost to the court
21 system of adjudicating such litigation on an individual basis, would be substantial. To
22 counsel's knowledge there has not been any substantial litigation concerning this
23 controversy commenced against the parties. It is not anticipated that there will be any
24 difficulties in the management of this litigation due to the focus of the wrongdoing on
25 Daugherty's and WFDS's conduct and its knowledge of the true facts. Individualized
26 litigation would also present the potential for varying, inconsistent, or contradictory
27 judgments and would magnify the delay and expenses of all parties and the court
28 system resulting from multiple trials asserting the same factual issues. The conduct

1 of this action as a class action presents fewer management difficulties, conserves the
2 resources of the parties and the court system, and protects the rights of each Class
3 Member as compared to other methods for the group-wide adjudication of this
4 controversy. Thus, the Class and the court system achieve substantial benefits by the
5 prosecution of this action on a class-wide basis by avoiding the burden of multiple
6 litigation involving identical claims, as well as by aiding legitimate business
7 enterprises in curtailing illegitimate competition and ensuring a therapeutic effect on
8 those companies such as Daugherty and WFDS that indulge in fraudulent practices.

9 30. Notice of the pendency of any resolution of this action can be provided to
10 the Class Members by publication and/or individual mailed notice, as appropriate
11 under California law, and the costs of such notice are properly imposed on Daugherty
12 and/or WFDS.

13 31. This action should be certified to proceed on a class-wide basis because:

14 a. the prosecution of separate actions by the individual Class Members
15 would create a risk of inconsistent or varying adjudications with respect
16 to individual Class Members, thus establishing incompatible standards
17 of conduct for Daugherty and WFDS;

18 b. due to the nature of the relief sought, the prosecution of separate actions
19 by individual Class Members would create a risk of adjudication with
20 respect to them that would, as a practical matter, be dispositive of the
21 interests of the other Class Members not parties to such adjudications or
22 could substantially impair or impede the ability of such Class Members
23 to protect their interests; and

24 c. Daugherty and WFDS acted or refuse to act in respects generally
25 applicable to the Class, thereby making appropriate final injunctive relief
26 with regard to the Class Members as a whole in terms of the equitable
27 relief sought.

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1 36. Based on those criteria, the Daugherty salesman showed Ms. Artemova
2 a used 2004 Cadillac SRX (VIN: 1GYEE637740177552) (the "Vehicle"), which had
3 approximately 64,639 miles on the odometer.

4 37. At Daugherty's instructions, Ms. Artemova provided Daugherty with her
5 credit information. Contrary to California law, Ms. Artemova was not provided with
6 a copy of her signed credit application.

7 38. At that time, Ms. Artemova was introduced to another salesman, who took
8 Ms. Daugherty and her husband for a test drive of the Vehicle.

9 39. Upon returning to the dealership, Ms. Artemova was introduced to one
10 of Daugherty's Finance Managers. The Finance Manager prepared all the
11 documentation for Ms. Artemova's purchase of the Vehicle, including a Retail
12 Installment Sale Contract ("RISC"). Ms. Artemova was then presented with the
13 purchase documents and was simply told where to sign and initial the various
14 documents. Daugherty did not review or explain the individual purchase documents
15 or their contents to Ms. Artemova. Ms. Artemova and Daugherty signed the RISC for
16 the Vehicle on September 11, 2009. Attached hereto as Exhibit 1 is a true and correct
17 copy of the RISC between Ms. Artemova and Daugherty.

18 40. The price of the Vehicle listed on the RISC is \$16,500. The amount
19 financed on RISC was \$11,100.19, the monthly payments are \$299.07, for a term of 48
20 months, and the Annual Percentage Rate ("APR") was 12.95%.

21 41. The RISC contained a \$34.00 charge for "license fees" on Line 2.A. of the
22 Itemization of the Amount Financed and contained the notation "N/A" on Line 2.B. for
23 registration/transfer/titling fees.

24 42. At some point after September 11, 2009, the RISC for the sale of the
25 Vehicle to Ms. Artemova was assigned by Daugherty to WFDS (and/or its predecessor-
26 in-interest, Wachovia Dealer Services, Inc.). The improper "N/A" disclosure of the
27 registration/transfer/titling fees appears on the face of the RISC. Ms. Artemova has
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1 made her monthly payments to WFDS (and/or its predecessor-in-interest, Wachovia)
2 in accordance with the RISC.

3 43. The RISC for the Vehicle included the following term:

4 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT
5 IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE
6 DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR
7 SERVICES OBTAINED PURSUANT HERETO OR WITH THE
8 PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR
9 SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR
10 HEREUNDER.

11 44. The above clause in the RISC makes WFDS liable for all claims and
12 defenses that could be raised against Daugherty, with respect to the sale of the Vehicle.

13 45. The sale of the Vehicle to Ms. Artemova was accompanied by Defendants'
14 implied warranty of merchantability, meaning that the Vehicle: (1) would pass without
15 objection in the trade under the contract description; (2) was fit for the ordinary
16 purpose for which such goods are used; (3) was adequately contained, packaged, and
17 labeled; and (4) conformed to the promises or affirmations of fact made on the container
18 or label.

19 46. Within days of purchasing the Vehicle, Ms. Artemova began experiencing
20 significant problems with the Vehicle, most notable of which was that the Vehicle
21 would suddenly, and without warning, lose power and die. This happened while
22 driving at freeway speeds and also when stopped at traffic signals and/or stop signs.
23 When the Vehicle died, sometimes it would restart and other times it would not restart
24 immediately. Additional problems with the Vehicle include, but are not limited to,
25 warning lights that are faulty, an inoperable stereo system, an odor from the air
26 conditioning system, a defective tire sensor monitor, and water leaking into the
27 Vehicle.

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1 47. To date, Defendants have been unable to repair the Vehicle or to conform
2 the Vehicle to the express and implied warranties that accompanied its sale to
3 Ms. Artemova.

4 48. In light of the repeated and significant problems with the Vehicle,
5 Ms. Artemova spoke with various personnel at Daugherty about the Vehicle and asked
6 Daugherty to repurchase the Vehicle. Defendants ignored all of Ms. Artemova's
7 requests for assistance and refused to repurchase the Vehicle.

8 49. At some point after September 11, 2009, the RISC for sale of the Vehicle
9 to Ms. Artemova was assigned by Daugherty to Wachovia Corp. (doing business as
10 Wachovia Dealer Services). Plaintiff is informed and believes that, in or about
11 March 2010, Wachovia Dealer Services was acquired and/or merged into Defendant
12 WFDS. The improper disclosure of the registration/transfer/titling fees appears on the
13 face of the RISC.

14 50. Ms. Artemova made her monthly payments to WFDS (and its predecessor-
15 in-interest, Wachovia Dealer Services) in accordance with the RISC.

16 51. California Vehicle Code §11614(a) provides it is unlawful for a lessor-
17 retailer licensed in this state to "Make or disseminate, or cause to be made or
18 disseminated, before the public in this state, in any newspaper or other publication, or
19 any advertising device, or by oral representation, or in any manner or any means
20 whatsoever, any statement that is untrue or misleading and that is known, or which
21 by the exercise or reasonable care should be known, to be untrue or misleading"

22 52. California Vehicle Code §11713(a) provides it is unlawful for any licensee
23 to "Make or disseminate, or cause to be made or disseminated, before the public in this
24 state, in any newspaper or other publication, or any advertising device, or by public
25 outcry or proclamation, or in any manner or any means whatsoever, any statement
26 that is untrue or misleading and that is known, or which by the exercise or reasonable
27 care should be known, to be untrue or misleading"

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1 demand letter, seeking both individual relief and relief on behalf of the Class identified
2 above.

3 61. Plaintiff and the Class Members relied on Defendant Daugherty to
4 prepare legal and enforceable contracts as a licensed automobile dealership. Plaintiff
5 and the Class Members suffered damages by making payments pursuant to
6 unenforceable contracts.

7 62. Daugherty assigned Plaintiff's RISC and the RISCs of the Subclass
8 Members to WFDS (and/or its predecessor-in-interest, Wachovia Dealer Services, Inc.).
9 The improper disclosures of registration/transfer/titling fees appear on the face of the
10 RISCs.

11 63. The RISCs for the vehicles sold to Plaintiff and members of the Subclass
12 included the following term:

13 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT
14 IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE
15 DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR
16 SERVICES OBTAINED PURSUANT HERETO OR WITH THE
17 PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR
18 SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR
19 HEREUNDER.

20 64. The above clause in the RISCs makes WFDS liable for all claims and
21 defenses that could be raised against Daugherty with respect to the sale of the vehicles
22 to Plaintiff and the Subclass Members. It is on this basis that WFDS is included in this
23 cause of action.

24 65. WFDS knew, or should have known, that the registration, transfer, and/or
25 titling fees were due on the vehicles sold to Plaintiff and the Subclass Members.

26 66. Plaintiff believes that WFDS has a contractual right to reject assignment
27 of contracts from Daugherty that do not comply with California law. By accepting
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1 assignment of the RISCs of Plaintiff and the Subclass Members when it had a right to
2 reject them, WFDS affirmed Daugherty's illegal conduct.

3 67. The Consumers Legal Remedies Act provides that a complaint for
4 violation of the Act may be amended without leave of court should the violation not be
5 remedied within thirty (30) days of notification. Plaintiff will amend this Complaint
6 to add a claim for damages under the Consumers Legal Remedies Act for violation of
7 Civil Code Sections 1770(a), including statutory damages of up to \$1,000 per consumer
8 and/or up to \$5,000 per consumer who qualifies as a "senior citizen" under the CLRA,
9 should the statutory thirty-day period expire without a complete cure of Defendants'
10 violations.

11 68. Civil Code Section 1780(a)(2) provides that a consumer is entitled to an
12 injunction prohibiting acts or practices which violate the CLRA. Plaintiff alleges that
13 Daugherty has a pattern and/or practice of failing to properly and separately itemize,
14 on RISCs, the registration, transfer or titling fees owing on the vehicles it sells.

15 69. Pursuant to Civil Code Section 1780, Plaintiff seeks all available relief,
16 except for damages at this time, including an order enjoining Daugherty and WFDS
17 from the acts, methods, and/or practices as set forth in this Complaint, and attorneys'
18 fees and costs according to proof at time of trial.

19 **SECOND CAUSE OF ACTION**

20 **Violation of the Automobile Sales Finance Act, Civil Code Section 2981, *et***
21 ***seq.* – Individual and Class Claim – As Against Defendants Daugherty,**
22 **WFDS, and Does 1-10**

23 70. Plaintiff, on her own behalf and on behalf of the Class Members,
24 incorporate by reference each and every allegation set forth in Paragraphs 1 through
25 69, inclusive, of this Complaint and further allege as follows.

26 71. The RISCs executed by Plaintiff and each Class Member for their vehicles
27 are "conditional sale contracts" pursuant to Civil Code Section 2981(a).

28

1 72. Daugherty, WFDS, and/or Does 1 to 10 are “sellers” pursuant to Civil
2 Code Section 2981(b).

3 73. Plaintiff and each Class Member are “buyers” pursuant to Civil Code
4 Section 2981(c).

5 74. The vehicles purchased by Plaintiff and each Class Member are “motor
6 vehicles” pursuant to Civil Code Section 2981(k).

7 75. Civil Code Section 2982(a) provides a list of the disclosures which a
8 conditional sale contract for the sale of a motor vehicle shall contain.

9 76. When Daugherty disclosed, on Line 2.A. of the Itemization of the Amount
10 Financed Section of Plaintiff’s and Class Members’ RISCs, a dollar amount, that
11 disclosure was false and improperly inflated, thereby violating Civil Code Section
12 2982(a)(2)(a).

13 77. When Daugherty disclosed, on Line 2.B. of the Itemization of the Amount
14 Financed Section of Plaintiff’s and Class Members’ RISCs, a notation of “N/A” or “not
15 applicable” as the amount paid for registration, transfer, and titling fees, it violated
16 Civil Code Section 2982(a)(2)(B) by failing to disclose the actual amount paid for those
17 fees and instead made a false statement since such fees were not applicable to the
18 sales.

19 78. The “Single Document Rule” in Civil Code § 2981.9 requires that all of the
20 agreements between the buyer and seller with respect to the total cost and the terms
21 of payment for the motor vehicle be contained in a single document. The RISCs of
22 Plaintiff and the Class Members do not show the true and correct cost of the license
23 and registration fees due, and therefore violate the Single Document Rule. Those
24 amounts can only be learned by resorting to other documents in Defendants’
25 possession.

26 79. Additionally, Daugherty violated Civil Code Section 2981.9 by failing to
27 provide Plaintiff with a signed copy of her credit application. This claim is asserted by
28 Plaintiff individually.

1 80. Daugherty assigned Plaintiff's RISC and the RISCs of the Subclass
2 Members to WFDS (and/or its predecessor-in-interest, Wachovia Dealer Services, Inc.).
3 The improper disclosures of registration/transfer/titling fees appear on the face of the
4 RISCs.

5 81. The RISCs for the vehicles sold to Plaintiff and members of the Subclass
6 included the following term:

7 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT
8 IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE
9 DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR
10 SERVICES OBTAINED PURSUANT HERETO OR WITH THE
11 PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR
12 SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR
13 HEREUNDER.

14 82. The above clause in the RISCs makes WFDS liable for all claims and
15 defenses that could be raised against Daugherty with respect to the sale of the vehicles
16 to Plaintiff and the Subclass Members. It is on this basis that WFDS is included in this
17 cause of action.

18 83. WFDS knew, or should have known, that the registration, transfer, and/or
19 titling fees were due on the vehicles sold to Plaintiff and the Subclass Members.

20 84. Plaintiff believes that WFDS has a contractual right to reject assignment
21 of contracts from Daugherty that do not comply with California law. By accepting
22 assignment of the RISCs of Plaintiff and the Subclass Members when it had a right to
23 reject them, WFDS affirmed Daugherty's illegal conduct.

24 85. Defendants failed to provide Plaintiff and the Class Members with
25 corrected RISCs within 30 days of execution or 20 days of assignment to WFDS,
26 whichever was later.

27 86. Since the violations of the ASFA include violations of Civil Code
28 Sections 2981.9 and 2982(a), Plaintiff and each Class Member are entitled to statutory

1 remedies pursuant to Civil Code Sections 2983 and 2983.1, including restitution and
2 rescission.

3 87. Plaintiff also seeks her attorneys' fees and costs pursuant to Civil Code
4 Section 2983.4.

5 **THIRD CAUSE OF ACTION**

6 **Commission of Unlawful and/or Unfair Business Acts and Practices,**
7 **Bus. & Prof. Code Section 17200, *et seq.* – Individual and Class Claim – As**
8 **Against Defendants Daugherty, WFDS, and Does 1-10**

9 88. Plaintiff, on her own behalf and on behalf of the Class Members,
10 incorporate by reference each and every allegation set forth in Paragraphs 1 through
11 87, inclusive, of this Complaint and further allege as follows.

12 89. Daugherty's acts, omissions, misrepresentations, practices, and/or non-
13 disclosures constituted unlawful and/or unfair business acts and/or practices within the
14 meaning of California Business & Professions Code Sections 17200, *et seq.*

15 90. Plaintiff and the Class Members suffered injury in fact and lost money as
16 a result of Daugherty's unfair competition, including, but not limited to, their statutory
17 damages under the ASFA caused by Daugherty's acts.

18 91. Daugherty engaged in "unlawful" business acts and/or practices by:
19 (1) failing to properly and separately itemize, on RISCs, the registration, transfer or
20 titling fees owing on the vehicles it sells; (2) failing to accurately disclose license fees
21 due; (3) failing to disclose in a single document all of the agreements as to the terms
22 of payment for the vehicles purchased by Plaintiff and the Class Members; and
23 (4) failing to provide customers with copies of their signed credit applications. These
24 business policies, acts, and/or practices were intended to and did violate, *inter alia*,
25 California Civil Code Section 1709, *et seq.*, the CLRA, and the ASFA. Accordingly,
26 Daugherty violated Business & Professions Code Section 17200's proscription against
27 engaging in an "unlawful" business act and/or practice. Plaintiff seeks an order
28

1 enjoining Daugherty from engaging in the acts, methods, and/or practices as set forth
2 in this Complaint and for payment of restitution.

3 92. Daugherty also engaged in an “unfair” business act or practice in that the
4 justification for selling vehicles based on the misrepresentations and omissions of
5 material fact delineated above is outweighed by the gravity of the resulting harm,
6 particularly considering the available alternatives, and offends public policy, is
7 immoral, unscrupulous, unethical, and offensive, or causes substantial injury to
8 consumers.

9 93. The above-described unlawful or unfair business acts and/or practices
10 conducted by Daugherty may continue to this day and present a threat to Plaintiff and
11 the Class Members, and the general public in that Daugherty failed to publicly
12 acknowledge the wrongfulness of its actions and provide full equitable injunctive and
13 monetary relief as required by the statute.

14 94. Daugherty assigned Plaintiff’s RISC and the RISCs of the Subclass
15 Members to WFDS (and/or its predecessor-in-interest, Wachovia Dealer Services, Inc.).
16 The improper disclosures of registration/transfer/titling fees appear on the face of the
17 RISCs.

18 95. The RISCs for the vehicles sold to Plaintiff and members of the Subclass
19 included the following term:

20 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT
21 IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE
22 DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR
23 SERVICES OBTAINED PURSUANT HERETO OR WITH THE
24 PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR
25 SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR
26 HEREUNDER.

27 96. The above clause in the RISCs makes WFDS liable for all claims and
28 defenses that could be raised against Daugherty with respect to the sale of the vehicles

1 to Plaintiff and the Subclass Members. It is on this basis that WFDS is included in this
2 cause of action.

3 97. Pursuant to California Business & Professions Code Section 17203,
4 Plaintiff seeks an order of this Court requiring Defendants to immediately cease such
5 acts of unfair competition and enjoining Defendants from continuing to conduct
6 business via the unlawful and/or unfair business acts and/or practices set forth in this
7 Complaint and from failing to fully disclose the true nature of their
8 misrepresentations, and ordering Defendants to engage in a corrective notice and
9 advertising campaign. Plaintiff additionally requests an order from the Court
10 requiring Defendants to provide complete equitable monetary relief so as to prevent
11 Defendants from benefitting from the practices that constitute unfair competition or
12 the use or employment of any monies resulting from the sale of these vehicles,
13 including requiring the payment of restitution of any monies as may be necessary to
14 restore any money or property which may have been acquired by means of such acts
15 of unfair competition.

16 **FOURTH CAUSE OF ACTION**

17 **Violation of the Song-Beverly Consumer Warranty Act (Civil Code §§ 1790**
18 ***et seq.*) – Individual Claim – As Against Defendants Daugherty**
19 **and Does 1-10**

20 98. Plaintiff incorporates by reference each and every allegation set forth in
21 Paragraphs 1 through 97, inclusive, of this Complaint and further alleges as follows.
22 This cause of action is brought by Plaintiff individually.

23 99. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter
24 “Song-Beverly Act”) Civil Code Sections 1790 *et seq.*, the Vehicle constitutes “consumer
25 goods” purchased primarily for family or household purposes and Plaintiff used the
26 vehicle primarily for those purposes.

27 100. Plaintiff is a “buyer” of consumer goods under the Song-Beverly Act.

28 ///

1 101. Defendant Daugherty is a “seller” and/or “retailer” under the Song-
2 Beverly Act.

3 102. The sale of the Vehicle to Plaintiff was accompanied by an implied
4 warranty that the vehicle was merchantable. The sale of the Vehicle to Plaintiff was
5 also accompanied by Defendant’s implied warranty of fitness. The sale of the Vehicle
6 also included express warranties made by Daugherty.

7 103. The sale of the Vehicle to Plaintiff was accompanied by Defendant’s
8 implied warranty that the Vehicle was merchantable, meaning that the Vehicle:
9 (1) would pass without objection in the trade under the contract description; (2) was fit
10 for the ordinary purpose for which such goods are used; (3) was adequately contained,
11 packaged, and labeled; and (4) conformed to the promises or affirmations of fact made
12 on the container or label.

13 104. As the Vehicle suffered from numerous problems including, but not
14 limited to, a loss of power while driving, warning lights that are faulty, an inoperable
15 stereo system, an odor from the air conditioning system, a defective tire sensor
16 monitor, and water leaking into the vehicle, the Vehicle would not pass without
17 objection in the trade, thus violating the implied warranty of merchantability.

18 105. The foregoing defects and nonconformities to warranty manifested
19 themselves within the applicable implied and express warranty periods. The
20 nonconformities substantially impair the use, value and/or safety of the vehicle.

21 106. Notwithstanding Plaintiff’s entitlement, Defendant refused Plaintiff’s
22 demands for a refund or replacement. Plaintiff’s attempts to resolve this issue with
23 Defendant have gone unresolved.

24 107. Plaintiff is entitled to justifiably revoke acceptance of the Vehicle under
25 the Song-Beverly Act.

26 108. Plaintiff is entitled to and does seek damages and other legal and
27 equitable relief, including, but not limited to, all incidental, consequential and general
28

1 damages resulting from Defendant's failure to comply with their obligations under the
2 Song-Beverly Act.

3 109. Plaintiff is entitled under Song-Beverly to recover as part of the judgment
4 a sum equal to the aggregate amount of costs and expenses, including attorneys' fees,
5 reasonably incurred in connection with the commencement and prosecution of this
6 action.

7 110. Plaintiff is entitled to, in addition to the amounts recovered, a civil
8 penalty of up to two times the amount of actual damages in that Defendant has
9 willfully failed to comply with their responsibilities under the Song-Beverly Act.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows, on behalf of herself and
12 the members of the Class, as appropriate for the particular causes of action:

- 13 1. An Order certifying the Class and Subclass under the appropriate
14 provisions of California law, and appointing Plaintiff and her counsel to
15 represent the Class.
- 16 2. For the declaratory, equitable, and/or injunctive relief requested as
17 permitted under the Consumers Legal Remedies Act and Business &
18 Professions Code Section 17203.
- 19 3. For general, special, and actual damages according to proof at trial.
- 20 4. For rescission and/or restitution of all monies required to be expended.
- 21 5. For incidental and consequential damages according to proof at trial.
- 22 6. For the specified causes of action, punitive and/or statutory damages.
- 23 7. For pre-judgment interest at the legal rate.
- 24 8. For reasonable attorneys' fees and costs of suit as specified under, *inter*
25 *alia*, Code of Civil Procedure Section 1021.5, and Civil Code
26 Sections 1717, 1780(d), 1794, and 2983.4.

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9. For such other and further relief as the Court deems just and proper under the circumstances.

DATED: October 25, 2010

ROSNER, BARRY & BABBITT, LLP

By: 
CHRISTOPHER P. BARRY
Attorneys for Plaintiff

EXHIBIT 1

DATE: 09/11/2009 CONTROL # 317851 Salesperson: JIMMY PATZ
 Buyer Name and Address (Including County and Zip Code): IRINA ARTERKOVA, 8245 SUNDERPLACE, CITRUS HEIGHTS, CA 95621, SACRAMENTO
 Co-Buyer Name and Address (Including County and Zip Code):
 Creditor-Buyer (Name and Address): MIKE DAUGHERTY CHEVROLET, 2449 FULTON AVENUE, SACRAMENTO, CA 95825

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
USED	2004	CADILLAC SEV	64639	1QTE637740177552	<input checked="" type="checkbox"/> personal, family or household <input type="checkbox"/> business or commercial

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of \$ 7000.00 in
12.95 %	\$ 3255.17(e)	\$ 11100.19	\$ 14355.36 (e)	\$ 21355.36 (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	N/A
One Payment of	N/A	N/A
47 Payments	299.07	Monthly, Beginning 10/26/2009
N/A Payments	N/A	Monthly, Beginning N/A
One Final Payment	299.07	09/26/2013

STATEMENT OF INSURANCE
 NOTICE: Insurance is required as a condition of financing the purchase of a motor vehicle to purchase or reorganize 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 - Dev Comp, Fire & Theft	N/A Mos \$ N/A
\$ N/A - Dev 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 Mos \$ N/A
	N/A Mos \$ N/A

Total Whole Insurance Premiums \$ N/A (H)

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

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

Buyer: _____
 Co-Buyer: _____
 Seller: MIKE DAUGHERTY CHEVROLET

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. If you pay off all your debt early, you may be charged a prepayment finance charge. Security Interest: You are giving a security interest in the vehicle being purchased. Additional Information: See the contract for more information including information about nonpayment, default, any required repayment in full before the scheduled term, 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 \$ 16500.00 (A)

1. Cash Price Vehicle \$ 16500.00

2. Cash Price Accessories \$ N/A

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

B. Document Preparation Fee (not a governmental fee) \$ 55.00 (B)

C. Smog Fee Paid to Seller \$ 50.00 (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 item in A through H) \$ 1652.94 (I)

J. (Optional) DMV Electronic Filing Fee \$ 0.00 (J)

K. (Optional) Service Contract (to whom paid) N/A \$ 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)

(see development and trade-in calculation)

Q. (Optional) Gap Contract (to whom paid) N/A \$ N/A (Q)

R. (Optional) Used Vehicle Contract Cancellation Option Agreement \$ N/A (R)

S. Other (to whom paid) N/A \$ N/A (S)

For N/A \$ 18057.94 (H)

Total Cash Price (A through S) \$ 18057.94 (H)

2. Amounts Paid to Public Officials

A. License Fee Estimated \$ 35.00 (A)

B. Registration/Transfer/Titling Fees \$ N/A (B)

C. California Title Fees \$ N/A (C)

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

Total Official Fees (A through D) \$ 35.00 (E)

3. Amount Paid to Insurance Companies

(Total premiums from Statement of Insurance column 4 + 5) \$ N/A (3)

4. (Optional) Certification or (Optional) Exemption Fee Paid to State \$ 3.25 (4)

5. Subtotal (1 through 4) \$ 18100.19 (5)

6. Total Downpayment

A. Agreed Trade-In Value Yr N/A Make N/A \$ N/A (A)

Model N/A Odom N/A

VIN N/A

B. Less Prior Credit or Lease Balance \$ N/A (B)

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

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

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

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

G. Cash \$ 7000.00 (G)

Total Downpayment (C through G) \$ 7000.00 (6)

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

7. Amount Financed (5 less 6) \$ 11100.19 (7)

Application for Optional Credit Insurance

Credit Life Buyer Co-Buyer Both

Credit Disability (Buyer Only)

Credit Life	Term	Exp.	Premium
N/A	N/A	3	N/A
Credit Disability	N/A	Mos.	\$ N/A
Total Credit Insurance Premiums	\$ N/A (O)		

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 if 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 or profit 30 hours a week or more on the Effective Date. (3) Only the Primary Buyer is eligible for disability insurance. (4) 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: _____ Buyer Signature: _____ Age: _____

Date: _____ Co-Buyer Signature: _____ Age: _____

OPTIONAL GAP CONTRACT (A gap contract (deficiency contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. 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.

Buyer Signs: X N/A

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.)

1K Company: N/A

Term: N/A Mos. or N/A 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 N/A

SELLER ASSIGNED LOAN
 BUYER MAY BE REQUIRED TO PROVIDE SECURITY FOR THE LOAN AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THE 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 _____

Installments of \$ N/A \$ N/A

from this loan is shown in item 6C.

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.

Buyer: _____

Co-Buyer: X

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: _____

Co-Buyer Signs: X

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

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED BY LAW MUST BE MET BY ANY PERSON WHO PURCHASES A VEHICLE IF YOU ARE INSURED UNDER IT. IF YOU DO NOT HAVE A CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE. IT MAY NOT PROVIDE FOR THE REPAIRMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU WISH