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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JUL 29 2008

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF RIVERSIDE

11 AMBERLEE FISHER, individually and  
12 on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 v.

16 DCH TEMECULA IMPORTS LLC dba  
17 DCH HONDA OF TEMECULA, a  
18 California Limited Liability Company;  
19 and DOES 1 through 10, inclusive,

20 Defendants.

CASE NO.

CLASS ACTION *RIC* 50 5227

COMPLAINT FOR INJUNCTIVE RELIEF,  
RESTITUTION, AND DAMAGES:

1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT- CLASS CLAIM (INJUNCTIVE RELIEF ONLY);
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT - CLASS CLAIM (INJUNCTIVE RELIEF ONLY);
3. VIOLATION OF THE AUTOMOBILE SALES FINANCE ACT - CLASS CLAIM;
4. VIOLATION OF THE AUTOMOBILE SALES FINANCE ACT - CLASS CLAIM;
5. UNLAWFUL, UNFAIR, FRAUDULENT BUSINESS ACTS & PRACTICES - CLASS CLAIM;
6. UNLAWFUL, UNFAIR, FRAUDULENT BUSINESS ACTS & PRACTICES - CLASS CLAIM;
7. NEGLIGENT MISREPRESENTATION - INDIVIDUAL CLAIM;
8. INTENTIONAL MISREPRESENTATION - INDIVIDUAL CLAIM;
9. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT - INDIVIDUAL CLAIM (INJUNCTIVE RELIEF ONLY)
10. VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT- INDIVIDUAL CLAIM.

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1 Plaintiff Amberlee Fisher, individually and on behalf of all others similarly situated  
2 as to the First through Sixth Causes of Action, alleges as follows against Defendant DCH  
3 Temecula Imports, LLC, d.b.a. DCH Honda of Temecula (hereinafter "DCH Honda"), on  
4 information and belief, formed after an inquiry reasonable under the circumstances:

5 **INTRODUCTION**

6 1. DCH Honda is an automobile dealership in Temecula, California, that  
7 engages in a series of unlawful and deceptive business practices. In this action Ms. Fisher  
8 seeks to put an end to these unlawful and deceptive practices and provide remedies for  
9 hundreds of affected consumers.

10 2. The unlawful and deceptive practices engaged in by DCH Honda for which  
11 Ms. Fisher seeks redress are: (1) contract backdating; (2) misrepresenting contractual  
12 rights and duties; (3) failing to properly disclose license and registration fees; (4) failing to  
13 properly disclose vehicles as prior rentals, (5) failing and refusing to honor warranties, and  
14 (6) misrepresenting the inspection and condition of vehicles. Among other things, DCH  
15 Honda violated state and federal financial disclosure laws by backdating purchase  
16 contracts, thereby charging interest before the consummation date, misstating the annual  
17 percentage rate, misstating the finance charge, and causing the holder of the contract to  
18 collect a higher finance charge than permitted. DCH Honda also violated the single  
19 document rule because the subsequent purchase contracts do not state all terms regarding  
20 the costs of and payments for the vehicle, the actual date of consummation, the correct  
21 annual percentage rates, the correct finance charges, or the correct amounts financed.

22 3. DCH Honda also violated mandatory disclosure requirements under state law  
23 by failing to properly disclose rental history, license fees, and registration fees.

24 **JURISDICTION AND VENUE**

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

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1 **CLASS ALLEGATIONS**

2 12. This action is brought, and may properly be maintained, as a class action  
3 pursuant to provisions of the California Code of Civil Procedure Section 382 and Civil Code  
4 Section 1781(a).

5 13. Ms. Fisher brings this action on behalf of herself and all others similarly  
6 situated as a representative member of the following proposed classes:

7 (A) "Class 1:" All persons who, between July 28, 2003, and the present,  
8 purchased a vehicle for personal use from DCH Honda and on a later  
9 date rescinded their original purchase contract and signed a second  
10 or subsequent purchase contract for the same vehicle, which was  
11 dated the date of the original purchase contract and which involved  
12 financing at an annual percentage rate greater than 0.00%.

13 (B) "Class 2:" All persons who, between July 28, 2003, and the present,  
14 executed a Retail Installment Sale Contract for the purchase of a  
15 vehicle for personal use with DCH Honda where registration and  
16 licensing fees were not properly disclosed.

17 14. In this lawsuit, Plaintiff and the Classes seek both equitable relief, including  
18 declaratory, injunctive, restitutionary, and other equitable monetary relief, and economic  
19 and statutory damages as set forth more fully below, including, but not limited to, full  
20 rescission and restitution of any purchase contract entered into by any Class Member.

21 15. Specifically excluded from the proposed Classes are the Court and its staff,  
22 Defendants, any entity in which any of the Defendants has a controlling interest, and the  
23 officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or  
24 assigns of any such individual or entity. Specifically excluded from Class 1 is any person  
25 who paid cash for their vehicle or financed their vehicle with an annual percentage rate of  
26 0.0%.

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1           **A.     NUMEROSITY OF THE CLASS**

2           16.    The proposed Classes are so numerous that the individual joinder of all their  
3 members in one action is impracticable. The exact number and the identities of the  
4 Members of the Classes are unknown at this time and can only be ascertained through  
5 appropriate investigation and discovery.

6           **B.     EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS OF LAW**  
7                   **AND FACT**

8           17.    Common questions of law and fact arising out of the claims here at issue  
9 exist as to all Members of the Classes and predominate over any individual issue. These  
10 common legal and factual questions include, but are not limited to, the following:

- 11           a.     Whether DCH Honda’s practice of dating second or subsequent  
12                   contracts a date prior to the date the customer signed the second or  
13                   subsequent contract violates:
  - 14                   (i)    California’s consumer protection statutes including, *inter alia*,  
15                           the Consumers Legal Remedies Act (“CLRA”) and/or Unfair  
16                           Competition Law (“UCL”); and
  - 17                   (ii)   the Automobile Sales Finance Act (“ASFA”) and/or  
18                           Regulation Z.
- 19           b.     Whether DCH Honda’s practice of failing to properly disclose  
20                   registration and licensing fees violates:
  - 21                   (i)    California’s consumer protection statutes including, *inter alia*,  
22                           the CLRA and/or UCL; and
  - 23                   (ii)   the ASFA, and/or Regulation Z.
- 24           c.     The amount of revenues and profits DCH Honda received, and/or the  
25                   amount of monies or other obligations imposed on, or lost by, Class  
26                   Members as a result of such wrongdoing.

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1 d. Whether Class Members are threatened with irreparable harm and  
2 are entitled to injunctive and other equitable relief and, if so, what is  
3 the nature of such relief.

4 e. Whether Class Members are entitled to rescission, payment of actual,  
5 incidental, consequential, exemplary, punitive and/or statutory  
6 damages plus interest thereon, and if so, what is the nature of such  
7 relief.

8 **C. TYPICALITY OF CLAIMS**

9 18. In regards to Class 1, DCH Honda engaged in the standard practice of having  
10 customers sign second or subsequent Retail Installment Sale Contracts that were dated  
11 with a date prior to the date it was signed by the customer, such as the date of the original  
12 contract.

13 19. Ms. Fisher was asked to and did sign a second Retail Installment Sale  
14 Contract that was backdated to the date of his original contract.

15 20. In regards to Class 2, DCH Honda engaged in the standard practice of failing  
16 to properly disclose registration and licensing fees were not properly disclosed.

17 21. DCH Honda executed a Retail Installment Sale Contract with Ms. Fisher for  
18 the purchase of a vehicle for personal use where registration and licensing fees were not  
19 properly disclosed on Lines 2.A and 2.B of the contract.

20 22. Accordingly, Ms. Fisher's claims are typical of the claims of Members of all  
21 Classes.

22 **D. ADEQUATE REPRESENTATION**

23 23. Ms. Fisher will fairly and adequately protect the interests of the Members of  
24 each Class in that she does not have irreconcilable conflicts with or interests materially  
25 antagonistic to those of other Class Members.

26 24. Ms. Fisher has retained attorneys experienced in the prosecution of class  
27 actions, including consumer class actions.

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1           **E.       SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS LITIGATION**

2           25.     To the extent it is an element for establishing class certification for certain  
3 causes of action, a class action is superior to other available methods for the fair and  
4 efficient group-wide adjudication of this controversy and, as applicable, possesses  
5 substantial benefits. Individual joinder of all Class Members is impracticable, and no other  
6 group method of adjudication of all claims asserted herein is more efficient and  
7 manageable while at the same time provides all the remedies available to ensure the full  
8 purpose of this State's consumer protection laws are effectuated. Furthermore, as the  
9 damages suffered by each individual Class Member may be relatively small and the relief  
10 sought discrete, the expense and burden of individual Class Members to redress the  
11 wrongs done to them, and the cost to the court system of adjudicating such litigation on an  
12 individual basis would be substantial. The Class Members, because of the amounts at  
13 stake, would have little interest in individually controlling the prosecution of separate  
14 actions; to counsel's knowledge there has not been any substantial litigation concerning  
15 this controversy commenced against the parties; and it is not anticipated that there will be  
16 any difficulties in the management of this litigation due to the focus of the wrongdoing on  
17 DCH Honda's conduct and its knowledge of the true facts. Individualized litigation would  
18 also present the potential for varying, inconsistent, or contradictory judgments and would  
19 magnify the delay and expenses of all parties and the court system resulting from multiple  
20 trials asserting the same factual issues. The conduct of this action as a class action  
21 presents fewer management difficulties, conserves the resources of the parties and the  
22 court system, and protects the rights of each Class Member as compared to other methods  
23 for the group-wide adjudication of this controversy. Thus, the Classes and the court  
24 system achieve substantial benefits by the prosecution of this action on a class-wide basis  
25 by avoiding the burden of multiple litigation involving identical claims, as well as by aiding  
26 legitimate business enterprises in curtailing illegitimate competition and ensuring a  
27 therapeutic effect on those companies such as DCH Honda that indulge in fraudulent  
28 practices.

1           26. Notice of the pendency of any resolution of this action can be provided to the  
2 Class Members by publication and/or individual mailed notice, as appropriate under  
3 California law, and the costs of such notice are properly imposed on DCH Honda.

4           27. This action is also properly certified to proceed on a class-wide basis  
5 because:

6           a. The prosecution of separate actions by the individual Class Members  
7 would create a risk of inconsistent or varying adjudications with  
8 respect to individual Class Members, thus establishing incompatible  
9 standards of conduct for DCH Honda.

10           b. Because of the nature of the relief sought, the prosecution of separate  
11 actions by individual Class Members would create a risk of  
12 adjudication with respect to them that would, as a practical matter, be  
13 dispositive of the interests of the other Class Members not parties to  
14 such adjudications or would substantially impair or impede the ability  
15 of such Class Members to protect their interests.

16           c. DCH Honda has acted or refuses to act in respects generally  
17 applicable to the Classes, thereby making appropriate final injunctive  
18 relief with regard to the Class Members as a whole in terms of the  
19 equitable relief sought.

20                           **SUMMARY OF FACTS COMMON TO THE CLASSES**

21           28. During the class period, it was DCH Honda's practice and policy that when  
22 a purchase contract was rescinded, and a subsequent purchase contract was entered into  
23 for the same vehicle with the same customer, the date recorded on the subsequent  
24 purchase contract was not the date the subsequent purchase contract was executed but  
25 some prior date, such as the date the customer signed the original purchase contract.

26           29. During the class period, it was DCH Honda's practice and policy to not  
27 disclose any amount on Line 2.B. of the sales contract, which lists  
28 "Registration/Transfer/Titling Fees," even though these fees were due and/or were being

1 charged. DCH Honda would also disclose incorrect amounts on Line 2.A for license fees  
2 and would overcharge for these fees.

3 30. Each member of Class 1 purchased a vehicle from DCH Honda. Each  
4 member of Class 1 entered into a subsequent purchase contract with DCH Honda that  
5 was backdated to the date of the original purchase contract. Each member of Class 1  
6 financed his or her purchase at an interest rate greater than 0.0%.

7 31. Each member of Class 2 purchased a vehicle from DCH Honda. DCH  
8 provided each member of Class 2 a contract failing to list any amount on Line 2.B. of the  
9 sales contract, which lists "Registration/Transfer/Titling Fees," even though these fees were  
10 due and/or were being charged. DCH Honda also provided each member of Class 2 a  
11 contract that listed incorrect amounts on Line 2.A for license fees.. Accordingly, each  
12 member of Class 2 was overcharged for the license fee.

13 **SUMMARY OF FACTS RELATIVE TO MS. FISHER'S**

14 **INDIVIDUAL PURCHASE**

15 32. In August 2007, Ms. Fisher was pregnant and decided that she wanted to  
16 purchase an affordable and safe vehicle. Ms. Fisher went to DCH Honda on Tuesday,  
17 August 7, 2007, to look at vehicles. The salesman she met with showed her a 2004 Dodge  
18 Neon (VIN:1B3ES26C84D624108)(hereinafter "the Vehicle"), told her it had been through  
19 a thorough inspection and was a safe vehicle for her and her unborn child.

20 33. Based upon the salesman's representations that the Vehicle had been  
21 inspected and was safe, Ms. Fisher agreed to purchase the Vehicle and executed a Retail  
22 Installment Sale Contract. The contract did not separately itemize the license and  
23 registration fees due as required by California law. Additionally, it was not disclosed to Ms.  
24 Fisher that the Vehicle had formerly been a daily rental vehicle.

25 34. The Vehicle immediately began to exhibit problems suggesting that the  
26 salesman's representations that the Vehicle had been thoroughly inspected were false.  
27 DCH Honda contacted Ms. Fisher and stated that she needed to sign a new purchase  
28 contract. She was not told why. Ms. Fisher said she would not sign a new contract until

1 her Vehicle was repaired. DCH Honda then sent an employee to Ms. Fisher's home with  
2 a new contract for her to sign, which she refused to do. The employee stated that if Ms.  
3 Fisher did not sign the new contract then the dealership could and would repossess the  
4 Vehicle.

5 35. Ms. Fisher returned to the dealership on August 14, 2007. Ms. Fisher met  
6 with a finance manager who presented her with a new contract to sign. Ms. Fisher was told  
7 that she needed to sign a new contract because the bank that was supposed to finance  
8 her contract would not finance the deal unless she had a co-signer, and therefore the  
9 dealership was going to use Franklin Capital to finance the deal. Nonetheless, based on  
10 the dealership's representations that she had to sign the new contract, she did. The new  
11 Retail Installment Sale Contract was dated August 7, 2007, even though it was presented  
12 to Ms. Fisher and signed on August 14, 2007. Again, the contract failed to properly  
13 disclose and itemize the license and registration fees.

14 36. The dealership confirmed the salesman's misrepresentations about the  
15 condition of the Vehicle on August 14, 2007, when it prepared an invoice confirming that  
16 the vehicle "pulled" to the right (requiring that the tires be rotated) and that a fan wire was  
17 disconnected. The vehicle has continued to suffer from electrical problems that endanger  
18 Ms. Fisher and her child. Ms. Fisher unsuccessfully attempted to resolve this matter  
19 informally with Shannon, a DCH Honda employee.

20 **FIRST CAUSE OF ACTION**

21 **Violation of Consumers Legal Remedies Act, Civil Code Section 1750, et seq.**  
22 **(Injunctive Relief Only)**  
23 **- Class 1**

24 37. Plaintiff, on her own behalf and on behalf of the Members of Class 1,  
25 incorporates by reference each and every allegation set forth in Paragraphs 1 through 36,  
26 inclusive, of this Complaint.

27 38. The vehicles purchased by Ms. Fisher and each Member of Class 1  
28 constitute "goods" bought for use primarily for personal, family, or household purposes  
pursuant to Civil Code Section 1761(a).

1           39. Ms. Fisher and each of the Members of Class 1 are “consumers” pursuant  
2 to Civil Code Section 1761(c).

3           40. The advertisement and sale of the vehicles to Ms. Fisher and each of the  
4 Members of Class 1 are “transactions” pursuant to Civil Code Section 1761(e).

5           41. Pursuant to the Consumers Legal Remedies Act, Civil Code Section 1770(a),  
6 the following unfair methods of competition and unfair or deceptive acts or practices are  
7 prohibited: (1) Representing that goods or services have characteristics, uses, or benefits  
8 which they do not have; (2) Advertising goods or services with intent not to sell them as  
9 advertised; (3) Making false or misleading statements of fact concerning reasons for,  
10 existence of, or amounts of price reductions; (4) Representing that a transaction confers  
11 or involves rights, remedies, or obligations which it does not have or involve, or which are  
12 prohibited by law; (5) Representing that the subject of a transaction has been supplied in  
13 accordance with a previous representation when it has not; and (6) inserting an  
14 unconscionable provision in the contract.

15           42. Section 1780(a)(2) of the Act provides that a consumer is entitled to an  
16 injunction prohibiting acts or practices which violate the Act. Ms. Fisher alleges that DCH  
17 Honda has established a pattern and practice of: (1) dating second and/or subsequent  
18 purchase contracts a date prior to the date the customer actually signs the second and/or  
19 subsequent purchase contract, such as the date of the original purchase contract; (2)  
20 improperly completing second contracts for the purchase of a vehicle; (3) charging interest  
21 before consummation; (4) collecting or causing to be collected finance charges in excess  
22 of disclosed finance charges; (5) failing to record all agreements as to cost and/or  
23 payments in a single document; and (6) charging compound interest in simple interest  
24 contracts. Ms. Fisher also seeks an order enjoining DCH Honda from the acts, methods,  
25 and practices as set forth in this Complaint and for payment of restitution.

26           43. Concurrently with the filing of this lawsuit, Ms. Fisher served DCH Honda via  
27 certified and regular mail a Consumers Legal Remedies Act notification and demand letter  
28 seeking both individual relief and relief on behalf of Class 1.



1 a previous representation when it has not; and (5) inserting an unconscionable provision  
2 in the contract.

3 51. Section 1780(a)(2) of the Act provides that a consumer is entitled to an  
4 injunction prohibiting acts or practices which violate the Act. Ms. Fisher alleges that DCH  
5 Honda has established a pattern and practice of: (1) improperly completing purchase  
6 contracts; (2) failing to properly disclose license fees and/or misrepresenting the amount  
7 due; (3) overcharging for license fees; and (4) failing to properly disclose registration fees  
8 and/or charging more than the disclosed amount. Ms. Fisher also seeks an order enjoining  
9 DCH Honda from the acts, methods, and practices as set forth in this Complaint and for  
10 payment of restitution.

11 52. Concurrently with the filing of this lawsuit, Ms. Fisher served DCH Honda via  
12 certified and regular mail a Consumers Legal Remedies Act notification and demand letter  
13 seeking both individual relief and relief on behalf of Class 2.

14 53. The Consumers Legal Remedies Act provides that a complaint for violation  
15 of the Act may be amended without leave of court should the violation not be remedied  
16 within thirty (30) days of notification. Ms. Fisher will amend this complaint to add a claim  
17 for damages under the Consumers Legal Remedies Act for violation of Civil Code  
18 Sections 1770(a)(5),(9), (13), (14), (16), and (19) should the statutory thirty-day period  
19 expire without a complete cure of DCH Honda's violations.

20 54. Pursuant to Civil Code section 1780(d), Ms. Fisher may also recover  
21 attorney's fees and costs according to proof at time of trial.

22 **THIRD CAUSE OF ACTION**

23 **Violation of the Automobile Sales Finance Act, Civil Code Section 2981, et seq.**  
24 **- Class 1**

25 55. Plaintiff, on her own behalf and on behalf of the Members of Class 1,  
26 incorporates by reference each and every allegation set forth in Paragraphs 1 through 54,  
27 inclusive, of this Complaint.

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1           56.    The purchase contracts executed by Ms. Fisher and each Member of Class 1  
2 for their vehicles are "conditional sale contracts" pursuant to Civil Code Section 2981(a).

3           57.    DCH Honda is a "seller" pursuant to Civil Code Section 2981(b).

4           58.    Ms. Fisher and each Member of Class 1 are "buyers" pursuant to Civil Code  
5 Section 2981(c).

6           59.    The vehicles purchased by Ms. Fisher and each Member of Class 1 are  
7 "motor vehicles" pursuant to Civil Code Section 2981(k).

8           60.    Vehicle Code Section 5901(c) states that consummation of a sale occurs  
9 when the purchaser has signed a purchase contract and taken physical possession of the  
10 vehicle.

11          61.    DCH Honda and Ms. Fisher, and each Member of Class 1, consummated  
12 their original purchases upon signature of their original purchase contracts and taking  
13 delivery of their respective vehicles. Those transactions were rescinded when Ms. Fisher  
14 and each Member of Class 1 returned to DCH Honda with their vehicles and signed a new  
15 purchase contract.

16          62.    DCH Honda and Ms. Fisher and each Member of Class 1 consummated their  
17 final purchase on the date the second or final purchase contract was signed by Mr. Nelson  
18 and each Class Member, and Ms. Fisher, and each Class Member took delivery of their  
19 vehicles. By backdating the final purchase contract to the date of the now-rescinded  
20 original purchase contract, thereby charging interest before consummation, DCH Honda  
21 violated Civil Code Section 2982(a), which requires all conditional sales contracts to  
22 comply with the disclosure requirements of Regulation Z, and which requires the  
23 itemization of all costs.

24          63.    By backdating the final purchase contract to the date of the original purchase  
25 contract, DCH Honda overstated the payment that was due for the annual percentage rate  
26 shown on the contract. The actual annual percentage rate, based on a contract  
27 consummation date of the final purchase contract, varied from the disclosed annual  
28 percentage rate by more than Regulation Z permits. Likewise, the actual finance charges,

1 based on a contract consummation date of the final purchase contract, varied from the  
2 disclosed finance charge by more than Regulation Z permits.

3 64. By backdating the final purchase contract to the date of the original purchase  
4 contract, DCH Honda violated the ASFA's single document rule. The final purchase  
5 contract does not accurately set forth the terms of payment for the motor vehicle because  
6 it misstates the annual percentage rate, the finance charge, the date that interest should  
7 have begun to be charged, and what the true monthly payment should be based on the  
8 disclosed annual percentage rate. The final purchase contract also fails to disclose the  
9 interest charged prior to consummation as a prepaid finance charge. The only means of  
10 determining the true annual percentage rate, finance charge, and monthly payment is  
11 through review of another document stating the date the final contract was actually signed.  
12 The final purchase contract fails to state any agreements to use an earlier date than the  
13 actual date of the contract for any or all purposes.

14 65. By backdating the final purchase contract, DCH Honda also violated  
15 Civil Code Section 2982(j) by causing the holder to charge, collect, or receive a finance  
16 charge which exceeds the disclosed finance charge.

17 66. Ms. Fisher and each Member of Class 1 have been damaged by DCH  
18 Honda's violations of the ASFA. Since the violations include violations of Civil Code  
19 Sections 2981.9, 2982(a), and 2982(j), Ms. Fisher and each Member of Class 1 are  
20 entitled to rescission of their purchase contracts pursuant to Civil Code Section 2983 and  
21 return of all monies paid under the contracts. Ms. Fisher also seeks his attorneys' fees  
22 and costs pursuant to Civil Code Section 2983.4.

23 **FOURTH CAUSE OF ACTION**

24 **Violation of the Automobile Sales Finance Act, Civil Code Section 2981, et seq.**  
25 **- Class 2**

26 67. Plaintiff, on her own behalf and on behalf of the Members of Class 2,  
27 incorporates by reference each and every allegation set forth in Paragraphs 1 through 66,  
28 inclusive, of this Complaint.



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

4           77. Plaintiff and each member of Class 1 suffered injury in fact and have lost  
5 money or property as a result of the unfair competition described herein.

6           78. DCH Honda has engaged in "unlawful" business acts and practices by the  
7 following: (1) dating second and/or subsequent purchase contracts a date prior to the date  
8 the customer actually signs the second and/or subsequent purchase contract, such as the  
9 date of the original purchase contract; (2) violating the single document rule in Civil Code  
10 Section 2981.9; (3) improperly completing second contracts for the purchase of a vehicle;  
11 (4) charging interest before consummation; (5) collecting or causing to be collected finance  
12 charges in excess of disclosed finance charges; and (6) charging compound interest in  
13 simple interest contracts. These policies, acts, and practices were intended to and did  
14 violate, *inter alia*, California Civil Code Section 1709 *et seq.*, the Consumers Legal  
15 Remedies Act (California Civil Code Section 1750, *et seq.*), and the Automobile Sales  
16 Finance Act (California Civil Code Section 2981, *et seq.*). Accordingly, DCH Honda has  
17 violated Business & Professions Code Section 17200's proscription against engaging in  
18 an "unlawful" business act or practice.

19           79. DCH Honda has also engaged in a "fraudulent" business act or practice in  
20 that the representations and omissions of material fact described above have a tendency  
21 and likelihood to deceive purchasers of these vehicles and has deceived these purchasers.

22           80. DCH Honda has also engaged in an "unfair" business act or practice in that  
23 the justification for selling vehicles based on the misrepresentations and omissions of  
24 material fact delineated above is outweighed by the gravity of the resulting harm,  
25 particularly considering the available alternatives, and offends public policy, is immoral,  
26 unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

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1           86.    DCH Honda has engaged in “unlawful” business acts and practices by the  
2 following: (1) improperly completing purchase contracts; (2) failing to properly disclose  
3 license fees and/or misrepresenting the amount due; (3) overcharging for license fees; and  
4 (4) failing to properly disclose registration fees and/or charging more than the disclosed  
5 amount. These policies, acts, and practices were intended to and did violate, *inter alia*,  
6 California Civil Code Section 1709 *et seq.*, the Consumers Legal Remedies Act (California  
7 Civil Code Section 1750, *et seq.*), and the Automobile Sales Finance Act (California Civil  
8 Code Section 2981, *et seq.*). Accordingly, DCH Honda has violated Business &  
9 Professions Code Section 17200’s proscription against engaging in an “unlawful” business  
10 act or practice.

11           87.    DCH Honda has also engaged in a “fraudulent” business act or practice in  
12 that the representations and omissions of material fact described above have a tendency  
13 and likelihood to deceive purchasers of these vehicles and has deceived these purchasers.

14           88.    DCH Honda has also engaged in an “unfair” business act or practice in that  
15 the justification for selling vehicles based on the misrepresentations and omissions of  
16 material fact delineated above is outweighed by the gravity of the resulting harm,  
17 particularly considering the available alternatives, and offends public policy, is immoral,  
18 unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

19           89.    The above-described unlawful, fraudulent, or unfair business acts and  
20 practices conducted by DCH Honda continue to this day and present a threat to Plaintiff,  
21 and/or the general public in that DCH Honda have failed to publicly acknowledge the  
22 wrongfulness of their actions and provide full equitable injunctive and monetary relief as  
23 required by the statute.

24           90.    Pursuant to California Business & Professions Code Section 17203, Plaintiff  
25 may seek an order of this Court requiring DCH Honda to immediately cease such acts of  
26 unfair competition and enjoining DCH Honda from continuing to conduct business via the  
27 unlawful, fraudulent, and/or unfair business acts and practices set forth in this Complaint  
28 and from failing to fully disclose the true nature of their misrepresentations, and ordering

1 DCH Honda to engage in a corrective notice and advertising campaign. Plaintiff  
2 additionally requests an order from the Court requiring that DCH Honda provide complete  
3 equitable monetary relief so as to prevent DCH Honda from benefitting from the practices  
4 that constitute unfair competition or the use or employment of any monies resulting from  
5 the sale of these vehicles, including requiring the payment of restitution of any monies as  
6 may be necessary to restore to any member of the general public any money or property  
7 which may have been acquired by means of such acts of unfair competition.

8 **SEVENTH CAUSE OF ACTION**

9 **Negligent Misrepresentation**  
10 **– Individual Claim**

11 91. Plaintiff incorporates by reference each and every allegation set forth in  
12 Paragraphs 1 through 90, inclusive, of this Complaint. This cause of action is brought by  
13 Ms. Fisher individually.

14 92. The representations made by DCH Honda as alleged in Paragraphs 32-36  
15 were not true.

16 93. Regardless of its actual belief, DCH Honda made the representations without  
17 any reasonable grounds for believing them to be true.

18 94. DCH Honda failed to exercise due care in ascertaining the accuracy of the  
19 representations made to Plaintiff.

20 95. DCH Honda made the representations for the purpose of inducing Plaintiff  
21 to rely upon them, and to act, or refrain from acting in reliance thereon.

22 96. Plaintiff was unaware of the falsity of the representations and acted in  
23 reliance upon the truth of those representations and were justified in relying upon those  
24 representations.

25 97. As a direct and proximate result of DCH's negligent misrepresentations of  
26 material fact, Plaintiff has suffered damages, including all actual, consequential, and  
27 incidental damages according to proof of trial.

28 ///



1 Honda were making false and misleading representations and had omitted material facts.  
2 Plaintiff acted in justifiable reliance upon the truth of the representations which misled her  
3 as to the nature and extent of the facts concealed. Plaintiff was justified in his reliance as  
4 DCH Honda held themselves out as professionals in the automotive sales and leasing  
5 industry and Plaintiff had no reason to doubt their representations.

6 104. As a direct and proximate result of DCH Honda's fraudulent representations,  
7 omissions of material fact and wrongful conduct, Plaintiff has suffered damages, including  
8 actual, general, consequential, and incidental damages according to proof at trial.

9 105. DCH Honda acted with malice, oppression, and fraud toward Plaintiff within  
10 the meaning of Civil Code Section 3294, and such conduct was ratified by management.  
11 Plaintiff is therefore entitled to punitive damages.

12 106. Plaintiff hereby alleges fraud in the inducement to enter into the purchase  
13 contract, and therefore is entitled to rescission of the purchase contract and restitution in  
14 an amount according to proof at trial.

#### 15 NINTH CAUSE OF ACTION

#### 16 **Violation of Consumers Legal Remedies Act, Civil Code Section 1750, et seq.** 17 **(Injunctive Relief)** 18 **- Individual Claim**

19 107. Plaintiff incorporates by reference each and every allegation set forth in  
20 Paragraphs 1 through 106, inclusive, of this Complaint. This cause of action is brought by  
21 Ms. Fisher individually.

22 108. The vehicle purchased by Ms. Fisher constitutes a "good" bought for use  
23 primarily for personal, family, or household purposes pursuant to Civil Code  
24 Section 1761(a).

25 109. Ms. Fisher is a "consumer" pursuant to Civil Code Section 1761(c).

26 110. The advertisement and sale of the vehicle to Mr. Nelson is a "transaction"  
27 pursuant to Civil Code Section 1761(e).

28 111. Pursuant to the following subsection of the Consumers Legal Remedies Act,  
Civil Code Section 1770(a), the following unfair methods of competition and unfair or

1 deceptive acts or practices are prohibited: (2) misrepresenting the source, sponsorship,  
2 approval, or certification of goods or services; (3) misrepresenting the affiliation,  
3 connection, or association with, or certification by, another; (5) representing that goods or  
4 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
5 quantities which they do not have or that a person has a sponsorship, approval, status,  
6 affiliation, or connection which he or she does not have; (7) representing that goods or  
7 services are of a particular standard, quality, or grade, or that goods are of a particular  
8 style or model, if they are of another; (9) advertising goods or services with intent not to sell  
9 them as advertised; (13) making false or misleading statements of fact concerning reasons  
10 for, existence of, or amounts of price reductions; (14) representing that a transaction  
11 confers or involves rights, remedies, or obligations which it does not have or involve, or  
12 which are prohibited by law; and (16) representing that the subject of a transaction has  
13 been supplied in accordance with a previous representation when it has not; and (19)  
14 inserting an unconscionable provision in a contract.

15         112. Concurrently with the filing of this lawsuit, Ms. Fisher served DCH Honda via  
16 certified and regular mail a Consumers Legal Remedies Act notification and demand letter  
17 seeking individual relief from DCH Honda.

18         113. The Consumers Legal Remedies Act provides that a complaint for violation  
19 of the Act may be amended without leave of court should the violation not be remedied  
20 within thirty (30) days of notification. Ms. Fisher will amend this complaint to add a claim  
21 for damages under the Consumers Legal Remedies Act for violation of Civil Code  
22 Sections 1770(a)(2),(3),(5),(7),(9), (13), (14), (16), and (19) should the statutory thirty-day  
23 period expire without a complete cure of DCH Honda's violations.

24         114. Section 1780(a)(2) of the Act provides that a consumer is entitled to an  
25 injunction prohibiting acts or practices which violate the Act. Ms. Fisher alleges that DCH  
26 Honda has established a pattern and practice of: (1) misrepresenting inspections and  
27 certifications, (2) misrepresenting vehicle condition, (3) misrepresenting vehicle history,  
28 (4) misrepresenting contractual rights, duties, and/or obligations, and (5) inserting

1 unconscionable arbitration clauses in contracts. Ms. Fisher seeks an order enjoining DCH  
2 Honda from the acts, methods, and practices as set forth in her Complaint and for payment  
3 of restitution.

4 115. Pursuant to Civil Code section 1780(d), Ms. Fisher may also recover  
5 attorney's fees and costs according to proof at time of trial.

6 **TENTH CAUSE OF ACTION**

7 **Violation of Song-Beverly Consumer Warranty Act**  
8 **Civil Code. Section 1790 *et seq.***  
9 **– Individual Claim**

10 116. Plaintiff incorporates by reference the allegations in Paragraphs 1  
11 through 115, inclusive, of this Complaint.

12 117. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter "Song-  
13 Beverly"), Civ. Code §§1790,1795, and 1795.5 *et al.*, the Vehicle purchased by Plaintiff  
14 constitutes "consumer goods" purchased primarily for family or household purposes and  
15 has been used primarily for these purposes.

16 118. Plaintiff is a "buyer" of consumer goods under Song-Beverly.

17 119. DCH Honda is a "seller" and "retailer" under Song-Beverly. Defendant's  
18 express warranties accompanied the sale to Plaintiff.

19 120. The Vehicle was delivered to Plaintiff with serious defects and non-  
20 conformities to warranties. The nonconformities substantially impair the value of the  
21 Vehicle.

22 121. The Vehicle was not in merchantable condition when sold to Plaintiff or at any  
23 time thereafter, was not fit for the ordinary purpose for which a car is used, and would not  
24 pass without objection in the trade. Defendant breached the warranty of merchantability  
25 implied by law in the instant transaction.

26 122. DCH Honda has failed or refused to remedy the nonconformities in any way.

27 123. By the failure or refusal of DCH Honda to remedy the defects as alleged  
28 above, or to issue a refund or replacement, DCH Honda is in breach of its obligations  
under Song-Beverly.



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Christopher P. Barry, SBN:179308 John W. Hanson, SBN: 214771 ROSNER & MANSFIELD, LLP 10085 Carroll Canyon Road, Suite 100 San Diego, CA 92131 TELEPHONE NO.: (858)348-1005 FAX NO.: (858)348-1150 ATTORNEY FOR (Name): Amberlee Fisher		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 4050 Main Street MAILING ADDRESS: CITY AND ZIP CODE: Riverside, CA 92501-3703 BRANCH NAME:		
CASE NAME: FISHER V.DCH TEMECULA IMPORTS, LLC		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	CASE NUMBER: <b>505227</b>
<input type="checkbox"/> <b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a.  Large number of separately represented parties    d.  Large number of witnesses

b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve    e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court

c.  Substantial amount of documentary evidence    f.  Substantial postjudgment judicial supervision

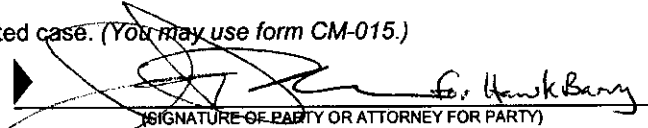
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

4. Number of causes of action (specify): Ten

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 28, 2008  
 Christopher P. Barry, SBN:179308  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
4050 Main Street  
Riverside, CA 92501  
www.riverside.courts.ca.gov

NOTICE OF TRIAL DEPARTMENT ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

FISHER VS DCH TEMECULA IMPORTS  
CASE NO. RIC505227

The above entitled case is ASSIGNED to the HONORABLE  
Judge Gary B. Tranbarger in Department 07 for ALL PURPOSES.

The Case Management Conference described in Rules of Court 3.721 is  
scheduled for 02/20/09 at 8:30 am/pm in Department 07.

The plaintiff/cross-complainant shall serve a copy of the Notice of  
Trial Department Assignment and Case Management Conference on all  
defendants/cross-defendants named or added to the complaint and file  
proof of service thereof.

Any challenge pursuant to Section 170.6 of the Civil Code of Procedure  
shall be made within twenty (20) days (15 days pursuant to 68616(I) GC  
plus 5 days pursuant to 1013(a) CCP) from the date of this notice of  
assignment, or if the party has not yet appeared, then within fifteen  
(15) days after the party's first appearance.

If this case has been assigned to a Judge Pro Tempore, whose  
appointment as Commissioner is in accordance with Article Six, Section  
Twenty-two of the Constitution of this State and who has been  
appointed as a Temporary Judge pursuant to an order of the Court  
under the authority of Article Six, Section Twenty-one of the  
Constitution and Section 259 of the Civil Code of Procedure; within  
ten (10) days of the date of this notice, the parties MUST file a  
Notice of Non-Stipulation if they do not stipulate to the hearing of  
pre-trial, trial and all subsequent post-trial law and motion matters  
before the Commissioner.

Failure to file such notice within (10) days shall be deemed  
acceptance of the assignment.

DATE OF NOTICE: 08/05/08

CLERK'S CERTIFICATE

I, Clerk of the above entitled Court, do hereby certify that on this  
date, I provided the plaintiff(s) or plaintiffs' attorney of record  
with a copy of the foregoing NOTICE.

Date: 08/05/08

CLERK OF THE COURT  
by:   
BECKY A. MARTINEZ