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7  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF NEVADA

12 KARL S. KUGLER, individually and )  
13 on behalf of all others similarly )  
situated, )

14 Plaintiff, )

15 v. )

16 D.O. NERONDE, INC. dba GRASS )  
17 VALLEY FORD LINCOLN )  
18 MERCURY NISSAN, a California )  
Corporation; and DOES 1 through 75, )  
inclusive, )

19 Defendants. )  
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Case No. 73538

**CLASS ACTION**

**[PROPOSED] SECOND AMENDED  
COMPLAINT FOR INJUNCTIVE  
RELIEF, RESTITUTION, AND  
DAMAGES:**

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (CLASS CLAIM);
2. VIOLATION OF AUTOMOBILE SALES FINANCE ACT (CLASS CLAIM);
3. VIOLATION OF THE BUSINESS & PROFESSIONS CODE § 17200, *et al* (CLASS CLAIM);
4. VIOLATION OF THE PUBLIC RESOURCES CODE § 42885 (CLASS CLAIM);
5. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INDIVIDUAL CLAIM);
6. INTENTIONAL MISREPRESENTATION (INDIVIDUAL CLAIM);
7. NEGLIGENT MISREPRESENTATION (INDIVIDUAL CLAIM);
8. VIOLATION OF THE AUTOMOBILE SALES FINANCE ACT (INDIVIDUAL CLAIM); and
9. VIOLATION OF THE BUSINESS & PROFESSIONS CODE § 17200, *et al* (INDIVIDUAL CLAIM).

1 Plaintiff KARL S. KUGLER, individually for all Causes of Action, and on behalf  
2 of all others similarly situated as to the First, Second, Third, and Fourth Causes of  
3 Action, alleges as follows against defendant D.O. NERONDE, INC. dba GRASS  
4 VALLEY FORD LINCOLN MERCURY NISSAN, on information and belief, formed  
5 after an inquiry reasonable under the circumstances:

6 **INTRODUCTION**

7 1. On November 12, 2007, Plaintiff was sold a 2001 Chevrolet Cavalier (VIN:  
8 1G1JF52T217230549) (hereinafter the Vehicle). Plaintiff is one of many consumers  
9 who have purchased a used vehicle from defendant and who were charged a California  
10 Tire Fee, even though the vehicle plaintiff and other consumers purchased did not have  
11 new tires. The California Tire Fee is charged by retail sellers to retail purchasers of  
12 *new* tires. Since none of these consumers received *new* tires in conjunction with their  
13 vehicle purchase, these consumers should not have been charged a California Tire Fee.  
14 Defendant's conduct herein described violates, *inter alia*, the Consumers Legal  
15 Remedies Act ("CLRA"), Civil Code §1750 *et seq.*, Business and Professions Code  
16 §17200, *et seq.* ("Unfair Competition Law" or "UCL"), Public Resources Code §42885,  
17 and the Automobile Sales Finance Act ("ASFA"), Civil Code §2981, *et seq.*

18 2. Plaintiff was also defrauded by the defendant dealership in several other  
19 notable ways. First, despite Defendant's knowledge and representations to the  
20 contrary, the car sold to plaintiff had significant prior damage and poor repairs,  
21 including but not limited to a complete repaint that is now peeling, poor repairs to the  
22 front bumper and headlights, dangerous fuel system leaks, and a corroded battery.  
23 Second, plaintiff was defrauded into purchasing an expensive (and significantly  
24 overpriced) GAP insurance policy by the dealership by being repeatedly told GAP was  
25 required to obtain financing and the best financing – which representations were  
26 untrue. Third, Plaintiff was charged \$50 for a smog inspection that Defendant never  
27 actually conducted on the vehicle. Plaintiff was also shown false Blue Book values to

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1 deceive him about the car's condition and value. To make matters worse, Plaintiff has  
2 encountered numerous mechanical problems with the vehicle since his purchase.

3 **JURISDICTION AND VENUE**

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

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

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

19 **PARTIES**

20 7. Plaintiff is an individual residing in the City of Penn Valley, in the  
21 County of Nevada.

22 8. Defendant D.O. Neronde, Inc. is a California corporation doing business  
23 in the City of Grass Valley, County of Nevada.

24 9. Defendant D.O. Neronde, Inc. conducts business as Grass Valley Ford  
25 Lincoln Mercury Nissan, a car dealership in the City of Grass Valley, County of  
26 Nevada.

27 10. Plaintiff does not know the true names and capacities, whether corporate,  
28 partnership, associate, individual, or otherwise of Defendants sued herein as Does 1

1 through 75, inclusive, under the provisions of §474 of the California Code of Civil  
2 Procedure. Defendants Does 1 through 75, inclusive, are in some manner responsible  
3 for the acts, occurrences, and transactions set forth herein, and are legally liable to  
4 plaintiff and others similarly-situated. Plaintiff will set forth the true names and  
5 capacities of the fictitiously-named Defendants together with appropriate charging  
6 allegations when ascertained.

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

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

15 **CLASS ACTION ALLEGATIONS**

16 13. This action is brought and may properly be maintained as a class action  
17 pursuant to provisions of the California Code of Civil Procedure §382 and Civil Code  
18 §1781(a). Plaintiff brings this action on behalf of himself and all others similarly-  
19 situated as a representative member of the following proposed class:

20 All persons who, between April 22, 2005, and May 8, 2009,  
21 (1) purchased a used vehicle from Defendant D.O. Neronde, Inc.  
22 dba Grass Valley Ford Lincoln Mercury Nissan ("Grass Valley") for  
23 personal use, and (2) were charged a California Tire Fee on their  
retail installment sale contract for one or more used tires,  
including the spare tire.

24 14. In this suit, Plaintiff seeks both equitable relief, including declaratory,  
25 injunctive, restitutionary, and other equitable monetary relief and economic and  
26 statutory damages as set forth more fully below.

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1           15.   Specifically excluded from the proposed Class are the Court and its staff,  
2 Defendants, any entity in which any of the Defendants have a controlling interest, and  
3 the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries,  
4 and/or assigns of any such individual or entity.

5           **A.   NUMEROSITY OF THE CLASS**

6           16.   The proposed Class is so numerous that the individual joinder of all its  
7 members in one action is impracticable. While the exact number and the identities of  
8 Class members are unknown at this time and can only be ascertained through  
9 appropriate investigation and discovery, the Class likely includes numerous consumers  
10 residing in California.

11           **B.   EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS**  
12                   **OF LAW AND FACT**

13           17.   Common questions of law and fact arising out of the claims here at issue  
14 exist as to all members of the Class and predominate over any individual issues. These  
15 common legal and factual questions include, but are not limited to, the following:

- 16           a.    whether Defendant violated state consumer protection statutes;  
17           b.    whether a California Tire Fee is an appropriate charge in the purchase  
18               of a used vehicle which does not come equipped with new tires;  
19           c.    the amount of revenues and profits Defendant received and/or the amount  
20               of monies or other obligations imposed on or lost by Class members as a  
21               result of such wrongdoing;  
22           d.    whether Class members are threatened with irreparable harm and are  
23               entitled to injunctive and other equitable relief and, if so, what is the  
24               nature of such relief; and  
25           e.    whether Class members are entitled to payment of actual, incidental,  
26               consequential, exemplary, punitive, and/or statutory damages plus  
27               interest thereon, and if so, what is the nature of such relief.

28    ///

1           **C.    TYPICALITY OF CLAIMS**

2           18.    Plaintiff's claims are typical of the claims of members of the Class.  
3 Plaintiff and all members of the Class were improperly charged California Tire Fees.  
4 Thus, Plaintiff and all members of the Class had their legal rights infringed upon,  
5 sustained injuries, losses, and damages as described herein, and/or are facing  
6 irreparable harm arising out of Defendant's common course of conduct. The right of  
7 Plaintiff and each member of the Class to payment of any actual, incidental,  
8 consequential, exemplary and/or statutory damages or restitution resulting therefrom  
9 were proximately caused by Defendant's wrongful conduct, in violation of state law as  
10 alleged herein.

11           **D.    ADEQUATE REPRESENTATION**

12           19.    Plaintiff will fairly and adequately protect the interests of the members  
13 of the Class in that he has no irreconcilable conflicts with or interests materially  
14 antagonistic to those of the other Class members.

15           20.    Plaintiff has retained attorneys experienced in the prosecution of class  
16 actions, including consumer class actions.

17           **E.    SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS**  
18                   **LITIGATION**

19           21.    To the extent it is an element for establishing class certification for  
20 certain causes of action, a class action is superior to other available methods for the  
21 fair and efficient group-wide adjudication of this controversy and, as applicable,  
22 possesses substantial benefits. Individual joinder of all members of the Class is  
23 impracticable, and no other group method of adjudication of all claims asserted herein  
24 is more efficient and manageable while at the same time providing all the remedies  
25 available to ensure the full purpose of this State's consumer protection laws are  
26 effectuated. Furthermore, as the damages suffered by each individual member of the  
27 Class may be relatively small and the relief sought discrete, the expense and burden  
28 of individual litigation in order to obtain such relief would make it difficult or

1 impossible for individual members of the Class to redress the wrongs done to them, and  
2 the cost to the court system of adjudicating such litigation on an individual basis would  
3 be substantial. The Class members, because of the amounts at stake, may have little  
4 interest in individually controlling the prosecution of separate actions; to counsel's  
5 knowledge there has not been any substantial litigation concerning this controversy  
6 commenced against the parties, and it is not anticipated that there will be any  
7 difficulties in the management of this litigation due to the focus of the wrongdoing on  
8 Defendants' conduct and their knowledge of the true facts. Individualized litigation  
9 would also present the potential for varying, inconsistent, or contradictory judgments  
10 and would magnify the delay and expense to all parties and to the court system  
11 resulting from multiple trials of the same factual issues. The conduct of this action as  
12 a class action presents fewer management difficulties, conserves the resources of the  
13 parties and the court system, and protects the rights of each Class member as  
14 compared to other methods for the group-wide adjudication of this controversy. Thus,  
15 both the Class and the court system achieve substantial benefits by the prosecution of  
16 this action on a class-wide basis by avoiding the burden of multiple litigation involving  
17 identical claims, as well as by aiding legitimate business enterprises in curtailing  
18 illegitimate competition and ensuring a therapeutic effect on those companies such as  
19 Grass Valley that indulge in fraudulent practices.

20       22. Notice of the pendency of and any resolution of this action can be provided  
21 to the Class members by publication and/or individual mailed notice, as appropriate  
22 under California law, and such costs are properly imposed on Defendant.

23       23. This action is also properly certified to proceed on a class-wide basis  
24 because:

- 25       a. The prosecution of separate actions by the individual members of the  
26       Class would create a risk of inconsistent or varying adjudications with  
27       respect to individual Class members, thus establishing incompatible  
28       standards of conduct for Defendant.

1 b. Because of the nature of the relief sought, the prosecution of separate  
2 actions by individual Class members would create a risk of adjudication  
3 with respect to them that would, as a practical matter, be dispositive of  
4 the interests of the other Class members not parties to such adjudications  
5 or would substantially impair or impede the ability of such Class  
6 members to protect their interests.

7 c. Defendant has acted or refuses to act in respects generally applicable to  
8 the Class, thereby making appropriate final injunctive relief with regard  
9 to the members of the Class as a whole in terms of the equitable relief  
10 sought.

11 **SUMMARY OF INDIVIDUAL FACTS**

12 24. On or about November 12, 2007, Mr. Kugler went to Grass Valley Ford  
13 Lincoln Mercury Nissan (hereinafter "Grass Valley," "Dealership," or "Defendant") to  
14 look for a used vehicle. He was eventually shown a 2001 Chevrolet Cavalier, VIN  
15 1G1JF52T217230549 (hereinafter "the Vehicle"). Dealership personnel told him the  
16 car was in good condition, noted the car had "great paint," and had passed a full  
17 inspection. Mr. Kugler was shown Kelly Blue Book values that were, unknown to  
18 Plaintiff, overstated for the Vehicle's mileage and condition. The dealership also  
19 specifically stated that nothing had been done to, or redone on, the Vehicle because it  
20 did not need it. The Finance Manager informed Plaintiff that GAP insurance was  
21 required if he was to get the best interest rate possible and the one stated on the  
22 contract. Mr. Kugler bought the Vehicle and GAP insurance relying on those  
23 statements. He was rushed through the contract and the many documents he was told  
24 to sign. He had no idea that sales contract he signed purported to waive important and  
25 unwaivable rights. A copy of the November 12, 2007 Retail Installment Sales Contract  
26 (RISC) is attached as Exhibit 1 to this Complaint.

27 25. Unknown to Mr. Kugler, but certainly known to the dealership, the  
28 Vehicle was badly damaged and had been only partially and poorly repaired.

1 Unknown to Mr. Kugler, GAP insurance was not required in order to obtain the stated  
2 interest rate on the contract.

3 26. Subsequent to the sale, Mr. Kugler has encountered numerous, significant  
4 mechanical issues such as electrical failures and dangerous gas leaks.

5 27. The dealership also, in violation of state law, charged a California (new)  
6 Tire Fee on the RISC, although only used tires were included with the Vehicle.

7 28. Public Resources Code §§42885(b)(1) and (3) permit Defendant to charge  
8 purchasers \$1.75 per *new* tire in the sale of a motor vehicle. Public Resources Code  
9 §42885(g) defines a new tire to include new tires sold with a new or used motor vehicle.  
10 However, the Vehicle sold to Plaintiff did not have any new tires. All the tires on the  
11 vehicle were used tires. Public Resources Code §42885(e) entitles Plaintiff and  
12 members of the Class to restitution and a civil penalty not to exceed twenty five  
13 thousand dollars (\$25,000) for each violation.

14 29. Additionally, in violation of state law, Plaintiff's RISC for the Vehicle  
15 contains a \$50 charge for "smog fee paid to seller" even though Defendant never  
16 performed a smog inspection on the Vehicle before it sold it to Plaintiff and thus no  
17 "smog fee" was due and owing by Plaintiff to Defendant.

18 **FIRST CAUSE OF ACTION**

19 **Violation of Consumers Legal Remedies Act Civil Code Section 1750 *et seq.***

20 **- Class Claim**

21 30. Plaintiff, on his own behalf and on behalf of the members of the Class,  
22 incorporates by reference each and every allegation set forth in Paragraphs 1 through  
23 29, inclusive, of this Complaint.

24 31. The vehicles purchased by Plaintiff and members of the Class constitute  
25 "goods" leased for use primarily for personal, family, or household purposes pursuant  
26 to Civil Code §1761(a).

27 32. Plaintiff and members of the Class are "consumers" pursuant to Civil  
28 Code §1761(d). Defendant is a "person" pursuant to Civil Code § 1761(c).

1           33.    The advertisement and sale of the vehicles to Plaintiff and members of the  
2 Class are “transactions” pursuant to Civil Code §1761(e).

3           34.    The policies, acts, and practices engaged in by Defendant and alleged  
4 herein were intended to, and did, result in the sale of the vehicle at issue to Plaintiff  
5 and the Class members primarily for personal, family, or household purposes, and  
6 violated and continued to violate the Consumers Legal Remedies Act (“CLRA”).  
7 Specifically, Defendant charged Plaintiff and Class members a new tire fee for vehicles  
8 that were sold with used tires.

9           35.    Defendant has employed the following unfair methods of competition and  
10 unfair or deceptive acts or practices prohibited under the CLRA, Civil Code  
11 §1770(a)(1)-(23): (5) representing that goods or services have sponsorship, approval,  
12 characteristics, ingredients, uses, benefits, or quantities which they do not have or that  
13 a person has a sponsorship, approval, status, affiliation, or connection which he or she  
14 does not have; (6) Representing that goods are original or new if they have deteriorated  
15 unreasonably or are altered, reconditioned, reclaimed, used or secondhand; (7)  
16 Representing that goods or services are of a particular standard, quality, or grade, or  
17 that goods are of a particular style or model, if they are of another; (14) representing  
18 that a transaction confers or involves rights, remedies, or obligations which it does not  
19 have or involve, or which are prohibited by law; and (19) inserting an unconscionable  
20 provision in the contract.

21           36.    In compliance with the provisions of California Civil Code §1782, Plaintiff  
22 provided written notice to Defendant of the intention to file an action for damages  
23 under California Civil Code §§1750, *et seq.* Plaintiff also requested Defendant offer an  
24 appropriate correction to him and all affected consumers regarding the Tire Fee.

25           37.    As Defendant failed to adequately respond to Plaintiff’s demand to correct  
26 or otherwise rectify the wrongful conduct described above on behalf of all consumer  
27 Class members, Plaintiff seeks for all Class members all actual and exemplary  
28 damages permitted for violation of the CLRA, including for statutory damages of up

1 to \$1,000 per consumer and/or up to \$5,000 per consumer who qualifies as a “senior  
2 citizen” under the CLRA.

3 38. Plaintiff alleges Defendant has a pattern and practice of illegally charging  
4 Tire Fees on used tires. Plaintiff, therefore, also seeks, pursuant to California Civil  
5 Code §1780(a)(2), an order enjoining these practices, providing restitution to all  
6 members of the Class who are so entitled, ordering the payment of costs and attorneys'  
7 fees, and such other relief as deemed appropriate and proper by the Court under  
8 California Civil Code §1780.

9 **SECOND CAUSE OF ACTION**

10 **Violation of the Automobile Sales Finance Act**

11 **Civil Code §2981 *et seq.* – Class Claim**

12 39. Plaintiff, on his own behalf and on behalf of the members of the Class,  
13 incorporates by reference each and every allegation set forth in Paragraphs 1 through  
14 38, inclusive, of this Complaint.

15 40. The purchase contracts executed by Mr. Kugler and each member of the  
16 Class for their vehicles are “conditional sale contracts” pursuant to Civil Code  
17 §2981(a).

18 41. Grass Valley is a “seller” pursuant to Civil Code §2981(b).

19 42. Mr. Kugler and each member of the Class are “buyers” pursuant to  
20 Civil Code §2981(c).

21 43. The vehicles purchased by Mr. Kugler and each member of the Class are  
22 “motor vehicles” pursuant to Civil Code §2981(k).

23 44. The vehicles purchased by Mr. Kugler and the Class did not have new  
24 tires when purchased.

25 45. Grass Valley violated Civil Code §2982 (a)(2)(C) by listing on Mr. Kugler’s  
26 and the Class members’ sales contracts California Tire Fees when none were owed, and  
27 by charging Mr. Kugler and each member of the Class these same California Tire Fees.

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1 tendency and likelihood to deceive purchasers of these vehicles and the members of the  
2 Class, and did in fact deceive them.

3 53. Defendant has also engaged in an “unfair” business act or practice in that  
4 the 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 54. The above-described unlawful, fraudulent, or unfair business acts and  
10 practices conducted by Defendant continue to this day and present a threat to Plaintiff,  
11 and/or members of the Class in that Defendant has failed to publicly acknowledge the  
12 wrongfulness of its actions and provide full equitable injunctive and monetary relief  
13 as required by the statute.

14 55. Pursuant to California Business & Professions Code §17203, Plaintiff and  
15 members of the Class seek an order of this Court requiring Defendant to immediately  
16 cease such acts of unfair competition and enjoining Defendant from continuing to  
17 conduct business via the unlawful, fraudulent, and/or unfair business acts and  
18 practices set forth in this Complaint and from failing to fully disclose the true nature  
19 of their misrepresentations, and ordering Defendant to engage in a corrective notice  
20 and advertising campaign. Plaintiff additionally requests an order from the Court  
21 requiring that Defendant provide complete equitable monetary relief so as to prevent  
22 Defendant from benefitting from the practices that constitute unfair competition or the  
23 use or employment of any monies resulting from the sale of these vehicles, including  
24 requiring the payment of restitution of any monies as may be necessary to restore to  
25 any member of the Class any money or property which may have been acquired by  
26 means of such acts of unfair competition.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of the Public Resources Code, Public Resources Code §42885**

3 **- Class Claim**

4 56. Plaintiff, on his own behalf and on behalf of the members of the Class,  
5 incorporates by reference each and every allegation set forth in Paragraphs 1 through  
6 55, inclusive, of this Complaint.

7 57. Defendant charged Plaintiff and members of the Class an amount for  
8 "California Tire Fees" on their purchase agreements.

9 58. Public Resources Code §42885(g) defines a new tire to include new tires  
10 sold with a new or used motor vehicle, including the spare tire.

11 59. At the time of the sale to Mr. Kugler, Public Resources Code §§42885(b)(1)  
12 and (3) permitted Defendant to charge purchasers \$1.75 per new tire in the sale of a  
13 motor vehicle.

14 60. Plaintiff's Vehicle and the class members' vehicles were not equipped with  
15 new tires when they purchased the vehicles.

16 61. Defendant violated Public Resources Code §42885. This violation entitles  
17 Plaintiff and each member of the Class to restitution and a civil penalty not to exceed  
18 twenty-five thousand dollars (\$25,000) for each violation, pursuant to Public Resources  
19 Code §42885(e).

20 **FIFTH CAUSE OF ACTION**

21 **Violation of Consumers Legal Remedies Act**

22 **Civil Code Section 1750 *et seq.* - Individual Claim**

23 62. Plaintiff incorporates by reference each and every allegation set forth in  
24 Paragraphs 1 through 61, inclusive, of this Complaint.

25 63. Plaintiff's Vehicle constitutes "goods" bought for use primarily for  
26 personal, family, or household purpose pursuant to Civil Code § 1761(a).

27 64. Plaintiff is a "consumer" pursuant to Civil Code § 1761(d). Defendant is  
28 a person pursuant to Civil Code § 1761(c).

1           65.    The advertisement and sale of the Vehicle to are “transactions” pursuant  
2 to Civil Code §1761(e).

3           66.    Defendant has employed the following unfair methods of competition and  
4 unfair or deceptive acts or practices prohibited under the CLRA, Civil Code  
5 §1770(a)(1)-(23): (2) misrepresenting the source, sponsorship, approval, or certification  
6 of goods or services; (3) misrepresenting the affiliation, connection, or association with,  
7 or certification by, another; (5) representing that goods or services have sponsorship,  
8 approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
9 have or that a person has a sponsorship, approval, status, affiliation, or connection  
10 which he or she does not have; (7) representing that goods or services are of a  
11 particular standard, quality, or grade, or that goods are of a particular style or model,  
12 if they are of another; (9) advertising goods or services with intent not to sell them as  
13 advertised; (13) making false or misleading statements of fact concerning reasons for,  
14 existence of, or amounts of price reductions; (14) representing that a transaction  
15 confers or involves rights, remedies, or obligations which it does not have or involve,  
16 or which are prohibited by law; (16) representing that the subject of a transaction has  
17 been supplied in accordance with a previous representation when it has not;  
18 (17) representing that the consumer will receive an economic benefit, if the earning of  
19 the benefit is contingent on an event to occur subsequent to the consummation of the  
20 transaction; (18) misrepresenting the authority of a salesperson, representative, or  
21 agent to negotiate the final terms of a transaction with a consumer; and (19) inserting  
22 an unconscionable provision in the contract.

23           67.    Concurrently with the filing of the original Complaint Plaintiff served  
24 Defendant via certified mail, return receipt requested, a Consumers Legal Remedies  
25 Act notification and demand letter.

26           68.    The Consumers Legal Remedies Act provides that a complaint for  
27 violation of the Act may be amended without leave of court should the violation not be  
28 remedied within thirty (30) days of notification. Plaintiff seeks damages and all

1 available remedies pursuant to the Consumers Legal Remedies Act for violation of  
2 Civil Code §§1770(a)(2), (3), (5), (7), (9), (13), (14), (16), (17), (18) and (19) as the  
3 statutory thirty-day period expired without cure of Defendant's violations.

4 69. Section 1780(a)(2) of the Act provides that a consumer is entitled to an  
5 injunction prohibiting acts or practices which violate the Act. Plaintiff alleges that  
6 Defendant has established a pattern and practice of: (1) selling damaged and poorly  
7 repaired vehicles without disclosure and/or with contrary misrepresentations,  
8 (2) misrepresenting the requirement to purchase GAP insurance, (3) misrepresenting  
9 vehicle histories, (4) inserting unconscionable arbitration clauses in customer  
10 contracts, and (5) misrepresenting vehicle condition and value.

11 70. Pursuant to Civil Code §1780(d), Plaintiff may also recover attorneys' fees  
12 and costs according to proof at time of trial.

### 13 SIXTH CAUSE OF ACTION

#### 14 **Intentional Misrepresentation – Individual Claim**

15 71. Plaintiff incorporates by reference the allegations in Paragraphs 1  
16 through 70, inclusive, of this Complaint.

17 72. At the time of purchase, and afterwards, the dealership made the  
18 misrepresentations as set forth above. First, despite Defendant's knowledge and  
19 representations to the contrary, the car sold to Plaintiff had significant damage and  
20 had been subject to poor repairs. Second, Plaintiff was defrauded into purchasing an  
21 expensive (and significantly overpriced) GAP insurance policy by the dealership by  
22 being repeatedly told GAP was required to obtain financing and the best financing –  
23 which representations were untrue. Plaintiff was also shown false Blue Book values  
24 to deceive him about the car's condition and value.

25 73. The Dealership omitted from the statements it made material facts, the  
26 disclosure of which were necessary (1) in order to make the Dealership's other  
27 statements not misleading; (2) because they were known materials facts; (3) because  
28 the Dealership knew that it had exclusive knowledge that was not accessible to

1 Plaintiff; and (4) because it was reasonable for Plaintiff to expect disclosure of such  
2 facts.

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

6 75. The Dealership made these representations and omitted material facts  
7 with the intent to defraud Plaintiff and to induce Plaintiff to purchase the Vehicle. At  
8 the time Plaintiff purchased the Vehicle he did not know, or have reason to know, that  
9 the Dealership was making false and misleading representations and had omitted  
10 material facts. Plaintiff acted in justifiable reliance upon the truth of the  
11 representations which misled him as to the nature and extent of the facts concealed.  
12 Plaintiff was justified in his reliance as the Dealership held itself out as a professional  
13 in the automotive sales industry and Plaintiff had no reason to doubt its  
14 representations.

15 76. As a direct and proximate result of the Dealership's fraudulent  
16 representations, omissions of material fact, and wrongful conduct, Plaintiff has  
17 suffered damages, including actual, general, consequential, and incidental damages  
18 according to proof at trial.

19 77. Dealership has established a pattern and practice of concealing, omitting,  
20 and misrepresenting prior accident damage sustained by vehicles it offers for sale, and  
21 misrepresenting government fees and illegally retaining those amounts and/or failing  
22 to pay these amounts. The Dealership acted with malice, oppression, and fraud toward  
23 Plaintiff within the meaning of Civil Code §3294. Plaintiff is therefore entitled to  
24 punitive damages.

25 78. The Dealership committed fraud in the inducement of the purchase  
26 contract, and Plaintiff is therefore entitled to rescission and restitution in an amount  
27 according to proof at trial.

28 ///



1 89. The purchase contract executed by Mr. Kugler for the Vehicle is a  
2 “conditional sale contracts” pursuant to Civil Code §2981(a).

3 90. Grass Valley is a “seller” pursuant to Civil Code §2981(b).

4 91. Mr. Kugler is a “buyer” pursuant to Civil Code §2981(c).

5 92. The Vehicle purchased by Mr. Kugler is a “motor vehicle” pursuant to  
6 Civil Code §2981(k).

7 93. The ASFA requires a dealership to disclose, on line 1.C of a customer’s  
8 retail installment sale contract any “fee charged by the seller *for certifying* that the  
9 motor vehicle complies with applicable pollution control requirements.” (Civ. Code  
10 § 2982(a)(1)(C).)

11 94. Grass Valley did not perform a smog test or inspection on the Vehicle or  
12 otherwise certify that the Vehicle complied with California’s Vehicle Air Pollution  
13 Control Act (Health & Safety Code §§ 43000 *et seq.*) before it sold it to Mr. Kugler.

14 95. Mr. Kugler has been damaged by Grass Valley’s violations of the ASFA.  
15 Since the violations are of Civil Code §2982(a), Mr. Kugler is entitled to the return of  
16 all payments made and to elect rescission of his purchase contract pursuant to Civil  
17 Code §2983, *et seq.* and return of all monies paid under the contract. Mr. Kugler also  
18 seeks his attorneys’ fees and costs pursuant to Civil Code §2983.4.

19 **NINTH CAUSE OF ACTION**

20 **Commission of Unlawful, Unfair, and/or Fraudulent Business Acts and**  
21 **Practices Bus. & Prof. Code §17200, *et seq.* – Individual Claim**

22 96. Plaintiff incorporates by reference the allegations in Paragraphs 1  
23 through 95, inclusive, of this Complaint.

24 97. Defendant’s acts, omissions, misrepresentations, practices, and non-  
25 disclosures constituted unlawful, unfair, and fraudulent business acts and practices  
26 within the meaning of California Business & Professions Code §17200, *et seq.*

27 98. Plaintiff has suffered injury in fact and has lost money or property as a  
28 result of Defendant’s unlawful, unfair, and/or fraudulent business practice.

1           99. Defendant has engaged in “unlawful” business acts and practices by  
2 charging \$50 in “smog fee paid to seller” when Defendant never conducted any smog  
3 testing or inspection on the Vehicle. This act, policy, and practice was intended to and  
4 did violate, *inter alia*, the ASFA (Civ. Code §2981 *et seq.*), California’s Vehicular Air  
5 Pollution Control Act (Health & Safety Code §§ 43000 *et seq.*), and the Vehicle Code  
6 §11713.1.

7           100. Accordingly, Defendant has violated Business & Professions Code  
8 §17200’s proscription against engaging in an “unlawful” business act or practice.

9           101. Defendant also engaged in a “fraudulent” business act or practice in that  
10 the representations and omissions of material fact described above have a tendency  
11 and likelihood to deceive Plaintiff and other purchaser, and did in fact deceive them.

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

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

23           104. Pursuant to California Business & Professions Code §17203, Plaintiff  
24 seeks an order of this Court requiring Defendant to immediately cease such acts of  
25 unfair competition and enjoining Defendant from continuing to conduct business via  
26 the unlawful, fraudulent, and/or unfair business acts and practices set forth in this  
27 Complaint and from failing to fully disclose the true nature of their  
28 misrepresentations, and ordering Defendant to engage in a corrective notice and

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

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for judgment as follows, on behalf of himself and  
10 the Class as appropriate for the particular causes of action:

11 1. An Order certifying the Class under the appropriate provisions of  
12 California law, and appointing Plaintiff and his counsel to represent the Class.

13 2. For the declaratory, equitable, and/or injunctive relief requested as  
14 permitted under the Consumers Legal Remedies Act and Business & Professions Code  
15 §17203.

16 3. For general, special, and actual damages according to proof at trial.

17 4. For rescission and/or restitution of all monies required to be expended.

18 5. For incidental and consequential damages according to proof at trial.

19 6. For the specified causes of action, punitive and/or statutory damages.

20 7. For pre-judgment interest at the legal rate.

21 8. For reasonable attorneys' fees and costs of suit as specified under, *inter*  
22 *alia*, Code of Civil Procedure §1021.5, Civil Code § 2983.4, and Civil Code §1780(d).

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

25 DATED: August 13, 2009

ROSNER & MANSFIELD, LLP

26 By: 

27 CHRISTOPHER P. BARRY  
28 Attorneys for Plaintiff

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7  
8 Attorneys for Plaintiff

**FILED**  
SEP 29 2009  
Superior Court of the  
State of California  
County of Nevada  
C. BECKETT

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

12 KARL S. KUGLER, individually and )  
13 on behalf of all others similarly )  
situated, )

14 Plaintiff,

15 v.

16 D.O. NERONDE, INC. dba GRASS )  
17 VALLEY FORD LINCOLN )  
18 MERCURY NISSAN, a California )  
Corporation; and DOES 1 through 75, )  
inclusive, )

19 Defendants.

Case No. 73538

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR LEAVE  
TO FILE SECOND AMENDED  
COMPLAINT**

Date: September 11, 2009  
Time: 10:00 a.m.  
Dept.: ~~6~~  
Judge: Hon. Thomas M. Anderson

Trial Date: Not set

20  
21  
22 Plaintiff's Motion for Leave to File Second Amended Complaint came on  
23 regularly for hearing before the Honorable Thomas M. Anderson on September 11,  
24 2009, at 10:00 a.m. in Department C-6 of the above-entitled Court. Based upon the  
25 pleadings and files in this matter, IT IS HEREBY ORDERED THAT:

26 A court rarely denies a motion to amend a complaint based on failure to set forth  
27 sufficient facts to constitute a cause of action. Such an analysis would require citation  
28 of authority relating to issuance of a smog certificate before sale of a used vehicle,

1 including any deadlines for utilizing a certificate before a sale. The proper method to  
2 attack the allegations is a demurrer.

3 It is also difficult to analyze prejudice to the defendants when plaintiff has not  
4 stated whether he intends to seek certification of a class based on collection of the smog  
5 fee. In any event, since the trial date was vacated and there is no pending trial, it has  
6 not been shown that defendant will be prejudiced by including the cause of action.

7 The court will sign the order presented (stating that the proposed Second  
8 Amended Complaint attached as Exhibit 1 to the Declaration of Christopher P. Barry  
9 in Support of Plaintiff's Motion for Leave to File Second Amended Complaint is deemed  
10 filed and served on Defendant D.O. Neronde, Inc., dba Grass Valley Ford Lincoln  
11 Mercury Nissan as of ~~this day~~ 9-11-09.


12 The motion to amend is granted. Moving party's attorney is to prepare, file and  
13 serve notice of order.

14 **IT IS SO ORDERED.**

15 DATED: ~~September 11, 2009~~  
16 SEP 29 2009

Thomas M Anderson  
17 Judge of the Superior Court

18 Approved as to form and content:

19  
20   
21 LINDSAY A. GOULDING  
22 Attorney for Defendant Grass Valley Ford