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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 13 2016

CLERK OF THE SUPERIOR COURT  
By MARGARET J. DOWNIE  
Deputy

6 Attorneys for Plaintiff

**VIA FAX**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA – HAYWARD HALL OF JUSTICE

10 STEVE L. MARTIN, an individual,

11 Plaintiff,

12 v.

13 MOJIBULLAH ZEMARIALAI, an  
individual, d/b/a Phantom Motors;  
14 CREDIT ACCEPTANCE CORPORATION,  
a Michigan corporation; HUDSON  
15 INSURANCE COMPANY, a Delaware  
corporation; and DOES 1 through 10,  
16 inclusive,

17 Defendants.

Case No.

COMPLAINT

HG16 8157 44

1. Violation of the Consumers Legal Remedies Act – Equitable and Injunctive Relief Only
2. Violation of the Song-Beverly Consumer Warranty Act
3. Violation of the Business & Professions Code § 17200
4. Violation of the Business & Professions Code § 17200
5. Fraudulent Misrepresentation
6. Negligent Misrepresentation
7. Breach of Contract / Violations of California Vehicle Code
8. Action on a Written Contract for Violations of the Automobile Sales Finance Act, Civil Code §§ 2981, et seq.
9. Violation of Vehicle Code §§ 17111, et seq.

1 Plaintiff STEVE L. MARTIN alleges as follows, against Defendants MOJIBULLAH  
2 ZEMARIALAI, an individual, d/b/a Phantom Motors (“Phantom Motors” or “the  
3 Dealership”); CREDIT ACCEPTANCE CORPORATION (“the Holder”) and HUDSON  
4 INSURANCE COMPANY (“the bond company”) on information and belief, formed after  
5 a reasonable inquiry under the circumstances:

6 **PARTIES AND VENUE**

7 1. Plaintiff Steve L. Martin is an individual who, at the time of the transaction  
8 at issue, resided in the city of San Jose, County of Santa Clara, State of California.

9 2. Defendant Mojibullah Zemarialai d/b/a Phantom Motors is or was a used  
10 car dealership, registered to do business in the State of California, and doing business in  
11 the city of Fremont, County of Alameda.

12 3. Defendant Hudson Insurance Company is a Delaware corporation which  
13 issued the bond to Defendant Mojibullah Zemarialai d/b/a Phantom Motors under  
14 Vehicle Code § 17100 (Bond No. 10003853, effective September 6, 2013) and is therefore  
15 liable for the acts of the Dealership and Does 1 through 10 for the illegal conduct stated in  
16 this Complaint.

17 4. Defendant Credit Acceptance Corporation is and was a lender doing  
18 business through the Dealership in the State of California, and doing business in the City  
19 of Fremont, County of Alameda. Credit Acceptance Corp., as the “Holder,” accepted  
20 assignment of the Retail Installment Sale Contract (“RISC” or “the Contract”) for the  
21 purchase of a 2004 Ford F-350 truck VIN: 1FTSW31P24EC15666 (“the Vehicle”), by  
22 Plaintiff.

23 5. The RISC includes the following language:

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

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1 California Code of Civil Procedure. Defendant Does 1 through 10, inclusive, are in some  
2 manner responsible for the acts, occurrences and transactions set forth herein, and are  
3 legally liable to Plaintiff and/or they are the alter-ego of the Defendants named herein.  
4 Plaintiff will set forth the true names and capacities of the fictitiously named Defendants  
5 together with appropriate charging allegations when ascertained.

6 12. All acts of the dealership's employees as hereinafter alleged were authorized  
7 or ratified by the owner or managing agents of the corporate employer.

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

14 **SUMMARY OF FACTS**

15 14. In November 2015, Plaintiff became interested in purchasing a reliable,  
16 high-quality, used truck.

17 15. While looking online, Plaintiff saw an advertisement on Craigslist.com for a  
18 2004 Ford F-350 truck, VIN: 1FTSW31P24EC15666 ("the Vehicle"), posted by Phantom  
19 Motors. In response to the online advertisement, Plaintiff decided to visit Phantom  
20 Motors sales lot.

21 16. When Plaintiff viewed the Vehicle on the sales lot, he noticed several things  
22 wrong with the Vehicle. Specifically, he noticed that the Vehicle's tires were bald, there  
23 appeared to be no rear shocks on the Vehicle, and the Vehicle was missing a catalytic  
24 converter and muffler, essential components of an exhaust system.

25 17. Plaintiff further noticed that the Vehicle's Check Engine Light ("CEL") was  
26 illuminated.

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1           18. Plaintiff inquired with the salesperson, whose identity can be ascertained  
2 through dealership records, about the condition of the Vehicle, including the items which  
3 Plaintiff noticed were in need of repair or replacement.

4           19. In response to Plaintiff's inquiry, the Phantom Motors salesperson  
5 represented to Plaintiff that the dealership would repair and/or replace the tires, shocks,  
6 and exhaust system issues.

7           20. The Phantom Motors salesperson further represented that the Vehicle was  
8 in good mechanical condition, and the reason the Vehicle's CEL was illuminated was  
9 because the Vehicle's catalytic converter had been removed, and the CEL would turn off  
10 once it was replaced.

11           21. Based on the salespersons representation that the tires, shocks, and exhaust  
12 system would be fixed at the expense of Phantom Motors, and the Vehicle was in  
13 otherwise good mechanical condition, Plaintiff agreed to purchase and accept delivery of  
14 the Vehicle that day.

15           22. It is a violation of the California Vehicle Code for a licensed dealer to sell a  
16 vehicle that does not have a catalytic converter.

17           23. Further, a vehicle that does not have a catalytic converter cannot pass a  
18 legitimate smog test.

19           24. As part of the Vehicle sale, Plaintiff negotiated the trade-in of his prior  
20 vehicle.

21           25. While negotiating the amount that Plaintiff would receive for his trade-in,  
22 the Phantom Motors employee offered Plaintiff \$3,300.

23           26. Plaintiff rejected that amount, began to walk out of the Dealership, and  
24 stated if \$3,300 was all the Dealership was going to give him for his trade-in, he wasn't  
25 interested in purchasing the Vehicle.

26           27. Phantom Motors employee then stated that it would give Plaintiff \$6,300  
27 for his trade-in. Plaintiff agreed to this amount and agreed to continue with the purchase  
28 of the Vehicle.

1           28. Plaintiff did not fill out his own credit application. Plaintiff provided his  
2 information to Phantom Motors Staff.

3           29. Plaintiff was not provided with a copy of his credit application.

4           30. Phantom Motors prepared the Contract for the sale of the Vehicle.

5           31. When preparing the Contract, Phantom Motors failed to list the VIN or  
6 odometer reading for Plaintiff's trade-in on the Contract.

7           32. Instead of listing the trade-in for the agreed upon price of \$6,300, Phantom  
8 Motors' employee listed the trade-in amount as \$3,233.13, nearly the same amount  
9 Plaintiff had already rejected.

10          33. Plaintiff was never provided with a paper copy of the Contract to sign.

11          34. Instead, Phantom Motors required Plaintiff to sign a form called a  
12 Declaration Acknowledging Electronic Signature Process ("Declaration"). Plaintiff signed  
13 the Declaration.

14          35. The Declaration falsely states that Plaintiff was provided with a paper copy  
15 of the Contract he was being asked to sign electronically.

16          36. In reality, Plaintiff was never provided with a paper copy of the Contact.

17          37. The Declaration states Plaintiff was in control of a keyboard, mouse, or  
18 other device that applied his "e-signature" to the Contract.

19          38. In reality, Plaintiff was never in control of a keyboard, mouse, or other  
20 device by which he applied his "e-signature." Plaintiff's "e-signature" was placed on the  
21 Contract by Phantom Motor's employee.

22          39. At no point prior to sale did Plaintiff see a copy of the Contract.

23          40. At no point was the computer screen turned around for Plaintiff to view the  
24 Contract that was prepared by Phantom Motors.

25          41. Plaintiff later learned that Phantom Motors added GAP insurance, a  
26 product Plaintiff did not want and did not request, onto the Contract without Plaintiff's  
27 knowledge or consent.

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1           42.    The Contract states Plaintiff was charged \$50.00 for a vehicle emissions  
2 test, and \$8.25 for a pollution control fee. On information and belief, Phantom Motors  
3 did not smog the Vehicle prior to sale, and simply pocketed this money.

4           43.    Line 2A of the Contact states Phantom Motors charged Plaintiff \$150.00 for  
5 Vehicle License Fees. Revenue and Tax Code § 10752 provided that after July 1, 2011, the  
6 annual amount of the License Fee for any vehicle sale be the sum of 0.65% of the vehicles  
7 market value. The Dealership's listed cash price of Plaintiff's vehicle on Line 1A1,  
8 \$12,995.00, was not less than the "market value" of the vehicle. The sum of 0.65% of  
9 \$12,995.00 is only \$84.50. Thus, US Toyota charged Plaintiff an amount that is more  
10 than the statutorily allowed fee. The dealership never refunded the \$65.50 which it  
11 overcharged Plaintiff. Instead, the Dealership, while purporting to collect fees on behalf  
12 of the State of California, simply pocketed and stole the additional monies it wrongfully  
13 collected.

14           44.    When the sale was complete, Phantom Motors provided Plaintiff with the  
15 catalytic converter for the Vehicle and directed him to a third-party muffler shop to have  
16 the catalytic converter installed.

17           45.    A few days after purchasing the Vehicle, Plaintiff attempted to take the  
18 Vehicle to the various mechanics that the Dealership directed him to for repairs of the  
19 balding tires, shocks, and exhaust system.

20           46.    The mechanic that the Dealership stated would replace the Vehicle's tires  
21 was purportedly too busy to complete the work.

22           47.    The mechanic which the Dealership stated would install the catalytic  
23 converter and fix the exhaust system did not have the proper parts to repair the Vehicle.

24           48.    Frustrated, Plaintiff contacted the dealership and requested permission to  
25 take the Vehicle to Plaintiff's own mechanic, Babe's Lightning Muffler ("Babe's").

26           49.    The Dealership agreed that the muffler work could be completed by Babes,  
27 and further agreed to pay the repair bill.

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1 reasonably incurred in connection with the commencement and prosecution of this  
2 action. Plaintiff seeks his attorney's fees and costs.

3 94. Plaintiff is entitled to, and seeks, in addition to the amounts recovered, a  
4 civil penalty from the Dealership of up to two times the amount of actual damages because  
5 the Dealership has willfully failed to comply with its responsibilities under Song-Beverly.

6 **THIRD CAUSE OF ACTION**

7 **Violation of Business & Professions Code §17200, et seq.**

8 ***(As Against All Defendants, Except Hudson Insurance Co.)***

9 95. Plaintiff incorporates by reference each and every allegation set forth in this  
10 Complaint, as though fully set forth herein, and further alleges as follow.

11 96. Phantom Motors has committed acts of unfair competition, as defined by  
12 Business and Professions Code §17200, et seq. As set forth more fully above. The  
13 Dealership has engaged in a course of conduct of systematically violating the consumer  
14 laws in this State prohibiting the commitment of deceptive practices, including the laws  
15 of fraud and deceit, and the various prohibitions contained in the Vehicle Code, the Song-  
16 Beverly Consumer Warranty Act, the Auto Sales Finance Act, and the Consumers Legal  
17 Remedies Act.

18 97. Phantom Motors engaged in "unlawful" business acts and/or practices by:  
19 (1) Selling an unmerchantable Vehicle; (2) Representing that the Vehicle was in good  
20 mechanical condition when it was not in good condition; (3) Selling a Vehicle with bald  
21 tires; (4) Selling a Vehicle without a catalytic converter; (5) Selling a Vehicle without a  
22 muffler; (6) Selling a Vehicle with an illuminated CEL; (7) Representing that the CEL  
23 would turn off when the catalytic converter was installed; (8) Representing that the  
24 Dealership would pay to have the Vehicle repaired, when it had no intention of doing so;  
25 (9) Selling a Vehicle without a valid smog certificate; (10) falsifying smog testing records;  
26 (11) Breaching the express and implied warranties that accompanied the sale of the  
27 Vehicle; (12) Misrepresenting the amount Plaintiff would receive from his trade-in;  
28 (13) Preparing a Contract to be signed by "electronic signature," in violation of the UETA

1 and ASFA; (14) Placing Plaintiff's "electronic signature" on the Contract for Plaintiff;  
2 (15) requiring Plaintiff sign documents stating that he received a paper copy of the  
3 Contract, when this was false; (16) Requiring Plaintiff to sign a document stating that he  
4 was in possession of the mouse/keyboard, etc. which placed the electronic signature,  
5 when he was never in possession of such devise nor saw the terms of the Contract to which  
6 his signature was added; (17) Failing to provide Plaintiff a copy of his credit application;  
7 (18) Failing to provide Plaintiff with a copy of the Contract on the date of sale; (19) Adding  
8 GAP insurance to the Contract without Plaintiffs knowledge or consent;  
9 (20) Overcharging Vehicle License Fees; (21) Failing to refund overcharged Vehicle  
10 License Fees; and, (22) Charging for an emissions test and smog certificate when the  
11 testing was not performed.

12 98. Credit Acceptance Corporation engaged in unlawful business practices by:  
13 (1) Providing Phantom Motors with the forms for obtaining "electronic signatures" on  
14 Vehicle sale contracts, a practice specifically prohibited by the UETA and ASFA; (2)  
15 Accepting assignment of a vehicle sale contract which bears an electronic signature; (3)  
16 Representing the Contract on which Plaintiffs electronic signature was placed is a valid  
17 and binding Contract; and (4) attempting to collect a debt created by an invalid, void  
18 Contract.

19 99. The harm to Plaintiffs outweighs the utility of Phantom Motors' policies and  
20 practices particularly considering the available alternatives, and that the Dealership's  
21 policies and practices are immoral, unscrupulous, unethical and against public policy. The  
22 Dealership's policies and practices consequently constitute an "unfair" business act or  
23 practice within the meaning of Business and Professions Code §17200.

24 100. The Dealership's deceptive policies and practices as set forth above also are  
25 likely to and/or have deceived Plaintiffs. Thus, the Dealership has also engaged in  
26 "fraudulent" business practices.

27 101. The Dealership has engaged in, and continues to engage in, the same form  
28 of deceptive acts and practices.



1 Vehicle sale contracts, a practice specifically prohibited by the UETA and ASFA; (2)  
2 Accepting assignment of a vehicle sale contract which bears an electronic signature; (3)  
3 Representing the Contract on which Plaintiffs electronic signature was placed is a valid  
4 and binding Contract; and (4) attempting to collect a debt created by an invalid, void  
5 Contract.

6 107. The harm to Plaintiffs outweighs the utility of Credit Acceptance  
7 Corporation's policies and practices particularly considering the available alternatives,  
8 and that Credit Acceptance Corporation's policies and practices are immoral,  
9 unscrupulous, unethical and against public policy. The policies and practices  
10 consequently constitute an "unfair" business act or practice within the meaning of  
11 Business and Professions Code §17200.

12 108. Credit Acceptance Corporation's deceptive policies and practices as set  
13 forth above also are likely to and/or have deceived Plaintiff. Thus, Credit Acceptance  
14 Corp. has also engaged in "fraudulent" business practices.

15 109. Credit Acceptance Corporation has engaged in, and continues to engage in,  
16 the same form of deceptive acts and practices.

17 110. Credit Acceptance Corporation's unlawful, unfair and fraudulent business  
18 practices present a continuing threat to Plaintiffs and others in that the Dealership will  
19 continue utilizing similar policies and practices.

20 111. Business and Professions Code §17203 provides that Plaintiff is entitled to  
21 an order enjoining Credit Acceptance Corporation from engaging in acts or practices that  
22 violate Business and Professions Code §17200, as well as providing for equitable  
23 monetary relief so as to preclude the retention of all ill-gotten monies by Credit  
24 Acceptance Corporation or so as to restore any monies wrongfully obtained by Credit  
25 Acceptance Corporation to Plaintiff. Plaintiff lost money and suffered injury in fact as a  
26 result of Credit Acceptance Corporation's illegal conduct. Plaintiff seeks such equitable  
27 monetary relief, and an order enjoining Credit Acceptance Corporation from engaging in  
28 the acts and practices set forth in this Complaint, imposing an asset freeze or constructive

1 trust over such monies as the Court deems appropriate, as well as compelling a corrective  
2 informational campaign to correct the misperceptions in the marketplace created by such  
3 conduct.

4 **FIFTH CAUSE OF ACTION**

5 **Fraudulent Misrepresentations**

6 ***(As Against All Defendants, Except Hudson Insurance Co.)***

7 112. Plaintiff incorporates by reference every allegation set forth in this  
8 Complaint, as though fully set forth herein, and further alleges as follows.

9 113. The representations made by Phantom Motors detailed above were not true.

10 114. The misrepresentations were made by Phantom Motors employees,  
11 including Plaintiff's salesperson, and other employees whose identities are known to it  
12 and can be ascertained from reviewing the dealership's file for the purchase transaction.

13 115. Phantom Motors advertised to Plaintiff that the Vehicle was "in good  
14 condition," and that the Vehicle's CEL would turn off on its own after the catalytic  
15 converter was installed.

16 116. Phantom Motors further represented that it would undertake to repair the  
17 Vehicle.

18 117. The above representations were not true.

19 118. At the time of the transaction, Phantom Motors concealed and/or omitted  
20 material facts from Plaintiff, including, but not limited to, the fact that the Vehicle had  
21 not, and could not, pass a valid smog test and the Vehicle was in poor mechanical  
22 condition.

23 119. Phantom Motors had knowledge of the Vehicle's true mechanical condition,  
24 yet failed to truthfully respond to Plaintiff's inquiry about the vehicle's condition.

25 120. Regardless of its actual belief, Phantom Motors made the representations  
26 and/or omissions of material fact without any reasonable grounds for believing them to  
27 be true.

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