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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Martin Plaintiff/Petitioner(s) VS. Zemarialai Defendant/Respondent(s) (Abbreviated Title)	No. HG16815744 Order Petition to Compel Arbitration (Motion) Denied

The Petition to Compel Arbitration (Motion) was set for hearing on 09/20/2016 at 09:00 AM in Department 15 before the Honorable Ioana Petrou. The Tentative Ruling required that the parties appear, and the matter came on regularly for hearing.

Moving Party Credit Acceptance Corporation appeared by counsel Le Duong.Opposing Party Steve L. Martin appeared by counsel Hallen D. Rosner.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The Motion by Defendant Credit Acceptance Corporation ("CAC") to Compel Arbitration is DENIED.

Prior to the September 20 hearing, the Court issued a tentative ruling on September 14 indicating that both sides' counsel and Plaintiff were to personally appear at the hearing and that CAC was to arrange, if at all possible, for the appearance of the agent for Phantom Motors who signed the Declaration Acknowledging Electronic Signature Process attached to the reply papers to appear as well.

Plaintiff appeared at the hearing, but the agent for Phantom Motors did not.

At the hearing, Plaintiff offered testimony under oath that he was never shown the Declaration Acknowledging Electronic Signature Process purportedly bearing his signature at any time before this lawsuit was filed, and certainly not on November 2, 2015. Plaintiff further testified that no one from Phantom Motors advised him, at the time he purchased the automobile that is the subject of this lawsuit, that as part of the purchase agreement he was agreeing to arbitrate any disputes arising from that agreement. Plaintiff also testified, in his declaration opposing this Motion, that at no time either before or after the purchase of the subject automobile did Phantom Motors provide him with a paper copy of the Retail Installment Contract ("RIC"), or permit him to review the RIC on the dealer's computer screen, and that he was neither informed of the arbitration provision in the RIC nor caused his electronic signature to be placed on the RIC.

CAC has submitted no admissible evidence contradicting Plaintiff's testimony. The only purported evidence submitted in support of this Motion are two declarations of Kimberly Cavazos, identified as a Legal Assistant for CAC. Cavazos purports to authenticate the RIC and the Declaration Acknowledging Electronic Signature Process that allegedly bear Plaintiff's signature. However, those documents are agreements between Plaintiff and Phantom Motors, which sold Plaintiff the subject

automobile. Cavazos is employed by CAC, not Phantom Motors, and she fails to establish any foundation for attesting to the authenticity of documents generated by an entirely different company. In particular, Cavazos fails to establish that she has personal knowledge of any information necessary to satisfy the requirements of the business records exception to hearsay pursuant to Evidence Code section 1271 as to those two documents.

Furthermore, even if the Court were to accept the authenticity of those two documents, they do not negate Plaintiff's testimony under oath that he did not see them prior to the filing of this lawsuit.

CAC's request for a continuance of the hearing to allow the agent for Phantom Motors who signed the Declaration Acknowledging Electronic Signature Process to appear to testify under oath is DENIED. As discussed above, the Court issued a tentative ruling on September 14 requiring counsel and Plaintiff to appear at the hearing, and advising CAC to attempt to arrange for the attendance of the agent for Phantom Motors. CAC's counsel did not attempt to contact Phantom Motors to arrange for his appearance until September 19, the day before this hearing.

Based on the state of the evidentiary record presented, the Court does not find that Plaintiff entered any agreement to arbitrate the claims alleged in this action.

Dated: 09/20/2016

facsimile

Judge Ioana Petrou

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG16815744
Order After Hearing Re: of 09/20/2016

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 09/20/2016.

Chad Finke Executive Officer / Clerk of the Superior Court

By Digital _____

Deputy Clerk