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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN BERNARDINO – SAN BERNARDINO JUSTICE CENTER

11 EMMANUEL EVANS², an individual,

12 Plaintiff,

13 v.

14 DEL MAR AUTO CENTER, INC., d/b/a
St. Alex Auto Center, a California
15 corporation; CREDIT ACCEPTANCE
CORPORATION, a Michigan corporation;
16 HUDSON INSURANCE COMPANY, a
Delaware corporation; and DOES 1
17 through 10, inclusive,

18 Defendants.

Case No. CIVDS1609319

**STATEMENT OF DECISION
[PROPOSED] REGARDING
DEFENDANTS CREDIT
ACCEPTANCE CORPORATION'S
MOTION TO COMPEL
ARBITRATION**

3 Judge: Hon. Keith D. Davis
Dept: S25

Complaint Filed: June 8, 2016
Trial Date: None Set

1 On November 9, 2016, Defendant Credit Acceptance Corporation's Motion to
2 Compel Arbitration came for a hearing before Department S25 of the above entitled Court,
3 located at 247 W. 3rd Street, San Bernardino, California 92415-0210, the Honorable Keith
4 D. Davis presiding . Gregory T. Babbitt, from Rosner, Barry & Babbitt, LLP, appeared on
5 behalf of Plaintiff Emmanuel Evans while Tuan V. Uong, from Reed Smith LLP, appear on
6 behalf of Defendant Credit Acceptance Corporation. No appearance was made on behalf of
7 Del Mar Auto Center, Inc. or Hudson Insurance Company.

8 The Complaint in this lawsuit was filed by Plaintiff Emmanuel Evans on June 8,
9 2016, against Defendants Del Mar Auto Center, Inc., Credit Acceptance Corporation, and
10 Hudson Insurance Company.

11 Credit Acceptance Corporation filed its Motion to compel arbitration based on its
12 contention there was an arbitration clause in the retail installment sale contract signed by
13 Plaintiff Emmanuel Evans when he purchased and financed the purchase of a vehicle Del
14 Mar Auto Sale. In the retail installment sale contract, Del Mar Auto Sales assigned its
15 interest in it to Credit Acceptance Corporation.

16 After receiving and considering Credit Acceptance Corporation's Motion to Compel
17 Arbitration, Mr. Evan's Opposition to the Motion to Compel Arbitration, Credit Acceptance
18 Corporation's Reply to Mr. Evan's Opposition, and evidence submitted in support of the
19 Motion, Opposition, and Reply, the Court denied Credit Acceptance Corporation's Motion
20 to Compel Arbitration.

21 The Court held the arbitration clause in the retail installment sale contract was
22 invalid, because under the law it was not legally signed or agreed to by Mr. Evans.

23 The arbitration clause upon which Credit Acceptance was relying was contained
24 within the retail installment sale contract between Mr. Evans and Del Mar Auto Sales. This
25 retail installment sale contract was electronically signed by them rather than signed in ink
26 with pen.

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2 The Uniform Electronic Transactions Act (“UETA”), Civil Code section 1633.1 *et*
3 *seq.*, permits contracts to be signed electronically. However, Civil Code section 1633.3(c)
4 provides that UETA does not apply transactions subject the Automobile Sales Finance Act
5 (“ASFA”), Civil Code section 2981 *et seq.* ASFA, in Section 2981.9, requires a contract to
6 which ASFA applies to be signed by the buyer and the seller. Since the retail installment
7 sale contract was not signed in compliance with ASFA, the retail installment sale contract
8 was invalid. Since the arbitration clause was contained within the retail installment sale
9 contract, it was also invalid and could not be enforced.

10 Because the arbitration clause was invalid and could not be enforced, the Court did
11 not address or consider whether the arbitration clause was unconscionable.

12 The Court denied Credit Acceptance Corporation’s request for stay.

13 The Court ordered Credit Acceptance Corporation to file a responsive pleading to
14 the Complaint by December 9, 2016.

15 Dated: November __, 2016

16 THE HONORABLE KEITH D. DAVIS
17 Judge of the Superior Court
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