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SERIOUS CONSIDERATION MUST BE GIVEN IN RESPONDING TO CLRA DEMANDS

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The Consumer Legal Remedies Act ("CLRA") gives consumers the right to sue a seller, individually and on behalf of a class of affected consumers, if the seller defrauded the consumer. A lawsuit may not be filed for violation of the CLRA unless the consumer first sends a written demand for correction to the seller and the seller fails to offer an adequate correction within thirty (30) after the demand is received. The FTC Holder Rule also gives the consumer the right to sue the finance company to unwind the transaction in addition to any claims against the seller, but limits the recovery to what the consumer paid for the product.

As auto dealers and finance companies are aware, certain rules must be followed when responding to a pre-litigation demand letter sent under the CLRA. Whether one could offer to rescind and provide restitution would be enough was unclear. One court held that doing so may be sufficient. (See *Benson v. Southern California Auto Sales, Inc.*, (4th Dist. 2015) 239 Cal.App.4th 1198.) A more recent decision, *Valdez v. Seidner-Miller, Inc.* (2nd Dist. 2019) 33 Cal.App.5th 600, held otherwise, creating a split between districts.

The Court in *Valdez* ruled on and clarified three areas relating to CLRA pre-litigation settlement offers, namely: (1) if the deadline to respond to a CLRA demand falls on a weekend or holiday, then such an offer is timely if the offer is sent on the next day that does not fall on a weekend or holiday, (2) a business may not condition a correction offer on a release of claims other than a claim for relief, including damages, under the CLRA (which is contrary to the popular holding out of the Fourth District, *Benson v. Southern California Auto Sales, Inc., supra*), and (3) a business may not condition a CLRA correction offer on the subjective determination of the business regarding the current condition of the product.

In *Valdez*, the plaintiff alleged that when he attempted to purchase a vehicle from the defendant's dealership, he was told that he did not qualify to finance but could lease the vehicle and refinance the contract after 10 monthly payments were made. After making 10 months of payments, he returned to the dealership only to find he could not finance the vehicle at the initial price and learned that the purchase price would be greater than under the lease agreement. The consumer, through his attorney, then sent a CLRA demand alleging violation of the CLRA, California's Unfair Competition Law ("UCL"), and fraud. The demand sought rescission, restitution, attorney's fees and costs, and an injunction.

The dealership, through its attorney, responded to the CLRA demand on the 32nd day after receipt (the 30th day fell on a Saturday), and offered to reimburse the down payment, monthly payments, to pay off the loan balance, and to pay attorney's fees and costs within 10 days of surrender. The e-mail from the dealership's attorney

enclosed a draft settlement agreement containing, in relevant part, a release of all known and unknown claims, a covenant not to sue, and a provision that the consumer would dismiss any actions with prejudice within five days of receipt of the settlement check. The CLRA offer also included a provision to return the vehicle "without damage or vandalism, save normal wear and tear" and allowed the dealership to void the settlement agreement if it determined the vehicle was in an unacceptable condition.

After unsuccessful negotiations, the consumer filed a lawsuit. The dealership ultimately filed a motion for summary judgment arguing that the case was barred because it timely offered an appropriate CLRA correction. The trial court found that the dealership's CLRA correction offer was timely pursuant to Code of Civil Procedure § 12(a), and that the consumer's claim was barred since an appropriate correction was offered. Thus, the trial court granted the dealership's motion for summary judgment.

The appellate court reversed the trial court's decision in one respect, and affirmed the trial court's decision in another. Since the dealership's deadline to respond to the CLRA demand fell on a Saturday, and its correction offer was presented on the following Monday, the appellate court upheld the trial court's decision that the response was timely on the 32nd day under Code of Civil Procedure § 12(a).

The appellate court reversed the trial court's decision as to the issue concerning the release of all claims in a settlement agreement, and whether a business could condition a CLRA offer on the subjective opinion of the business on the condition of the product upon return. Addressing the issue of whether a correction offer may condition settlement on a release and waiver of the right to injunctive relief and remedies under other statutes, the appellate court held that such a CLRA offer or resulting settlement agreement cannot do so. It thus concluded differently than *Benson v. Southern California Auto Sales* in that limited respect.

Instead, the appellate court relied on the Fifth District's ruling in *Flores v. Southcoast Automotive Liquidators, Inc.*, (2017) 17 Cal.App.5th 841, 850 , which holds that an appropriate correction offer made under the CLRA does not bar a consumer from seeking remedies for violations of other statutes or under the common law based on conduct that violates those laws. Further, *Valdez* holds that because the dealership's draft settlement agreement did not provide the consumer's requested injunctive relief, it was not appropriate for the dealership to condition its correction offer on release of the consumer's claims for injunctive relief.

As to the issue of conditioning a CLRA offer on the status of the vehicle, the appellate court disapproved of the dealership's CLRA offer in this regard. The appellate court concludes that it is not appropriate to condition settlement on the subjective determination of a business that a vehicle is in acceptable condition. Such an offer is illusory. Further, the court hinted, but did not affirmatively state, that an offset for damage beyond normal wear and tear might be appropriate for a CLRA correction offer. On this issue, the appellate court states "[the consumer] does not dispute that if he returned the vehicle with damage beyond normal wear and tear, [the dealership] would be entitled to an offset for the damage." Thus, the court leaves a grey area as to what might be appropriate in a CLRA correction offer should a consumer return a vehicle (or other product) with post-purchase damage.

As is shown from this decision, the laws on the CLRA, and particularly on CLRA correction offers, are changing. Because there is now a potential split between appellate districts in authority, such as the apparent difference between decisions in *Valdez* and *Flores* and the decision *Benson*, it may be that the California Supreme Court will accept a case for review in the near future to clarify certain aspects of the CLRA in this regard. These cases and rules should nonetheless be followed when responding to CLRA demands on behalf of businesses and merchants.

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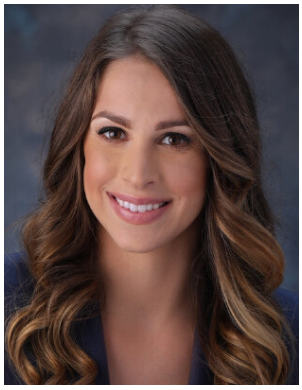

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