

E-filing

1 Kenneth Bernstein PRO Se  
2 4130 Morgan Territory Road  
3 Clayton, CA 94517  
4 (925)-672-4164

FILED

JUL 28 2009

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

IFP  
HP  
99

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

ADR  
MHP

C09-03472

CASE NO. \_\_\_\_\_

14 Kenneth Bernstein PRO Se

15 Plaintiff,

17 vs.

18 TOYOTA MOTOR SALES,  
19 U.S.A., INC., TOYOTA  
20 MOTOR NORTH AMERICA,  
21 INC., TUSTIN TOYOTA,  
22 OREMOR GROUP, LONG  
23 BEACH ACCEPTANCE  
24 CORPORATION,  
25 AMERICREDIT  
26 CORPORATION,  
27 AMERICREDIT FINANCIAL  
28 SERVICES, INC., BRASHERS  
SACRAMENTO AUTO  
AUCTION, DIGITAL DOG

COMPLAINT FOR:

- (1) Violation of California's Bus. & Prof. Code sections 17200. et seq.;
- (2) Violation of California's Bus. & Prof. Code sections 17500. et seq.;
- (3) Unjust Enrichment; and
- (4) Violation of California's Consumer Legal Remedies Act, California Civil Code sections 1750, et seq.
- (5) Fraud,
- (6) RICO
- (7) Wire Fraud and Mail fraud
- (8) JURY TRAIL DEMANDED

1 Plaintiff, Kenneth Bernstein (“Plaintiff” or Mr. Bernstein”). Brings this  
2 action against Defendants TOYOTA MOTOR SALES, U.S.A., INC.,  
3 TOYOTA MOTOR NORTH AMERICA, INC., TUSTIN TOYOTA,  
4 OREMOR GROUP, LONG BEACH ACCEPTANCE CORPORATION,  
5 AMERICREDIT CORPORATION, AMERICREDIT FINANCIAL  
6 SERVICES, INC., BRASHERS SACRAMENTO AUTO AUCTION,  
7 RIVER CITY REPO Collectively, “Defendants”), on behalf of himself .  
8

9 1. This action is brought by Plaintiff on behalf of himself who purchased  
10 a 2006 model year Toyota Prius Hybrid (“TPH” or “Subject Vehicle”)  
11 from Tustin Toyota On July 28, 2006.

12 2. This case narrowly focuses on the use of Fraud, false and deceptive  
13 advertising by Defendants to sell the THP. This case does not  
14 challenge the EPA testing guidelines, This case challenges the  
15 disingenuous way that Toyota advertises and markets the TPH, with  
16 inaccurate representations of fuel economy that the car simply does  
17 not achieve under normal driving conditions. The challenged  
18 representations of fuel economy in the marketing and advertising of  
19 the THP are not required by law and they are not put in the  
20 appropriate context.  
21

22 3. Toyota first introduced a hybrid car to the U.S. market on or about  
23 2001, touting its new fuel friendly engine as the most immediately  
24 available answer to consumers’ pressing need for a fuel efficient  
25 automobile as the the price of gasoline moved steadily upward,  
26 eventually rising to over \$3.50 a gallon.  
27

28 4. During the time Period, in order to induce consumers to purchase  
TPH, Toyota advertised the TPH with false statements of its fuel

1 efficiency and the cost saving realizable from its purchase,  
2 specifically, advertising the remarkable overall fuel efficiency of 55  
3 Miles Per Gallon of gasoline (“MPG”) when Toyota knew, or by the  
4 exercise of reasonable care should have know, but omitted to state,  
5 that such statements were untrue, deceptive, or materially misleading,  
6 and that the actual performance for the TPH is and was up to 42%  
7 below the miles per gallon of fuel efficiency or cost savings that  
8 Toyota advertised. A real world test driving test reported by  
9 Consumer reports in 2004 indicated that in city driving, despite a  
10 claim of 60 MPG, the TPH attained only 35 MPG----42% below the  
11 advertised fuel economy.

- 12 5. Toyota, through its own testing, records of customer complaints,  
13 dealership repair orders, as well as various other sources, was well  
14 aware and knew, or by exercise of reasonable care should have  
15 known, that the TPH does not perform up to the mileage estimates or  
16 cost savings on the Sticker(see infra) and that the experience of  
17 drivers of the TPH did not merely “vary” but was significantly lower .  
18 6. Toyota’s advertisements with their untrue, materially misleading or  
19 deceptive statements concerning fuel efficiency and cost savings wee  
20 communicated to every consumer who purchased the TPH from  
21 Toyota during the Class Period. Toyotas misrepresentations of the  
22 TPH fuel economy are a substantial actor, if not the controlling factor,  
23 inducing Plaintiff and each member of the class to purchase the TPH.  
24 7. Toyota deliberately concealed and/or omitted to state in its advertising  
25 that the TPH does not perform up to the mileage estimates or cost  
26 savings on the sticker, or that the experience of drivers of the TPH has  
27 not been merely “varied” but significantly lower. The facts concealed  
28

1 and omitted by Toyota are material facts in that a reasonable person  
2 would have considered them important in deciding whether or not to  
3 purchase (or pay a lesser price for) the TPH.

4 8. As a result of Toyota's misrepresentations and/or material omissions,  
5 the Plaintiff has been injured in fact and/or lost money or property.

6 9. Plaintiff assert claims against Defendants under the Unfair  
7 Competition Law ("UCL"), Cal. Bus. & Prof. Code §17200.*et seq.*,  
8 False Advertising Law ("FAL"), Bus,& Prof. Code §17500. *et seq.*,  
9 the consumer Legal remedies Act ("CLRA"). CAL. Civil Code  
10 §1750.*et seq.*, and for common law Unjust Enrichment.

11 10. Toyota's actions with respect to Plaintiff makes final injunctive relief  
12 appropriate. If an injunction not entered, Toyota will continue to  
13 engage in the illegal behavior described in this complaint.

14 11. Plaintiff seeks actual, compensatory, and punitive damages,  
15 reinstitution, and equitable relief, including disgorgement of profits  
16 and injunction, and attorney's fees and costs.  
17

18  
19 **THE PARTIES**  
20

21 12. Plaintiff Kenneth Bernstein ("Plaintiff" or "Mr. Bernstein") resides in  
22 Clayton, California this district. Plaintiff's Declaration, as required  
23 under Cal. Civ. Code section 1780©, which reflects that Toyota's  
24 principle place of business is in Los Angeles County California, is  
25 attached as Exhibit A.  
26

27 13. Mr Bernstein purchased a 2006 Toyota Prius on July 28 ,2006 from  
28 Tustin Toyota in Tustin, California. The Vehicle's sale price  
32,459.00 With tax, license, fees warranties', the total sales price of

1 the vehicle was 35,399.00. Mr. Bernstein purchased the vehicle for his  
2 family or household purposes. In approximately 95000 mile of  
3 driving, Mr. Bernstein has approximately averaged only 32 MPG in  
4 mixed highway and city driving in his Hybrid Vehicle, Significantly  
5 below the 55 MPG advertised by Toyota.

6 14. Defendant Toyota Motor Sales, U.S.A., Inc. is a California  
7 corporation with its principal place of business and executive offices  
8 located n Torrance California .

9 15. Defendant Toyota Motor North America, Inc. is a California  
10 corporation and a holding company with its principle place of  
11 business in Torrance , California  
12

13 16. Defendants regularly conducted, and continue to conduct, their  
14 distribution and sales business within the county of Los Angeles, State  
15 of California. At all times relevant to this action Defendants were  
16 engaged in the business of testing, studying, researching, evaluating,  
17 endorsing, designing, formulating, manufacturing, inspecting,  
18 distributing, marketing, labeling, promoting, packaging, advertising  
19 for sale, selling, leasing, or otherwise placing in the stream of  
20 interstate commerce, either directly or indirectly, through third parties  
21 or related entities, Subject Vehicles in interstate commerce in  
22 California, in this County and throughout the United states.  
23

24  
25  
26 17. Toyota is a California company disseminating advertising from  
27 California throughout the United States, which advertising was  
28 planned in California through Toyota's California- based advertising  
agency, Saatchi & Saatchi., in Torrance, California.

1 18. At all times herein mentioned, the officers and directors of Toyota  
2 participated in, authorized, ratified and directed the production,  
3 marketing and promotion of the Subject Vehicles when they knew or ,  
4 in the exercise of reasonable diligence, should have know of the  
5 damages the Toyota's misrepresentations and/or material omissions  
6 would have on consumers and thereby actively participated in the  
7 conduct which resulted in the damages described herein .  
8  
9

10 19. At all time relevant to this action, California is a site of  
11 Toyota's North American headquarters and the place where all  
12 significant decision-making occurred and emanated from with respect  
13 to the advertising, marketing, distribution and sale of the Subject  
14 Vehicle, is the center of gravity for this action, and through which  
15 Toyota directed, marketed, promoted and sold the Subject Vehicles. In  
16 doing the acts and things herein alleged, Defendants were acting  
17 within the course and scope of any applicable joint venture and/or  
18 agency and provided the appropriate authorization to their dealer  
19 network, to the extent that any misrepresentations or omissions  
20 alleged herein were perpetrated by Defendants through their  
21 dealerships.  
22  
23

24 20. Defendants market Toyota Automobile (including TPH) products in  
25 the United States through a sales network, upon information and  
26 belief, of over 1,000 authorized independent local automobile dealers,  
27 over 100 of which are located in the state of California.  
28

1 21. When ever this Complaint refers to any act or acts of the Defendants,  
2 the reference shall also be deemed to mean the directors, officers,  
3 employees, affiliates, or agents of the Defendants  
4

5 **JURISDICTION AND VENUE**  
6

7 22. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
8 §1332(d) because the the amount in controversy, upon information  
9 and belief, exceeds \$ 75,000, exclusive of interest an costs.  
10

11 23. 23. Venue is proper in this court because Plaintiff resides in this  
12 District, and a substantial part of the events alleged in this Complaint  
13 giving rise to Plaintiff's claims , including the dissemination of the  
14 false and misleading advertising alleged herein, occurred in and were  
15 directed from this District, additional, based upon information and  
16 belief , numerous Class members were injured and subjected to  
17 irreparable harm in this district. Defendants received substantial  
18 compensation and profits from sales of such products in this district.  
19 Thus, Defendants' liability arose in substantial part in this district.  
20 Defendants are also registered to do business and conduct substantial  
21 business in this district.  
22

23 **FACTUAL ALLEGATIONS**  
24

25  
26 24. Since their appearance on the market in the late 1990's, hybrids car  
27 sales have risen consistently. California strongly outpaces all other states for  
28 purchases registering more than five times the number of hybrids as the  
second place state, Florida. Upon information and belief, over 25% of all

1 hybrid cars are purchased in California, which is not surprising given that  
 2 California is one the most expensive states in the county for gasoline. Los  
 3 Angeles is the top metropolitan market for hybrids. Exxon Mobil estimates  
 4 that hybrid cars will eventually claim 30% of the new car market in the  
 5 United States.

6 ([www.greencarcongress.com](http://www.greencarcongress.com) 12/16/2005.)

7 25. The TPH has been phenomenally successful. Toyota posted sales of  
 8 106,000 TPH's for the 2006 model year and ,upon information and belief  
 9 sold 175,000 TPH's for the 2007 model year. In fact, the TPH has become  
 10 the best selling hybrid vehicle in the United States of America.

11 ([www.hybridcar.com](http://www.hybridcar.com) 10/1/2007

12 **Monroney Stickers or "Stickers"**

13 26. The Monroney Sticker – named for Senator Almer Stillwell  
 14 Monroney who proposed the Automobile information Disclosure  
 15 Act of 1958- requires a statement on a window sticker placed on  
 16 all new vehicles sold in the U.S. stating a fuel economy range for  
 17 city and highway driving for automobiles of that particular type.  
 18 Additionally, the Monroney Sticker provides an estimate of the  
 19 costs for operating the specific automobile offered for sale. 40  
 20 C.F.R.§600.306-86(a).

21  
 22 Governing regulations for the language of the Monroney Sticker require  
 23 the disclaimer" *actual mileage will vary with options, driving conditions,*  
 24 *driving habits, and {vehicle} condition...* " 40 C.F.R.§600.307-  
 25 95(a)(3)(ii)(A) (emphasis added).

26  
 27 27. At the point of sale, each ne TPH is required to have affixed to its  
 28 window the Monroney Sticker, reciting fuel estimates for the  
 automobile as calculated according to the method mandated by

1 the Environmental Protection Agency (“EPA”). The requirement  
2 that an EPA mileage estimate be on that sticker for all vehicles  
3 sold in the US. Can be found at 15 U.S.C. § 1232, 49 U.S.C. §  
4 32904, and the accompanying regulations. Each individual car  
5 manufacturer

6 Typically conducts the actual testing, with the EPA spot  
7 auditing the test results. The fuel economy numbers that  
8 Toyota advertised in print, TV, and on the worldwide web  
9 for the TPH are those measured pursuant to the EPA  
10 laboratory testing methods. However, Toyota knew at all  
11 relevant times, or by exercise of reasonable judgment should  
12 have known, that the fuel efficiency numbers advertised  
13 were grossly inflated, and that the TPH did not achieve  
14 performance levels or costs savings consistent with the EPA  
15 estimates. Despite changes in the EPA testing guidelines that  
16 have significantly decreased the fuel economy posted on the  
17 2008 model year stickers, Toyota continues to market,  
18 and/or has failed to correct, the TPH, fr model years 2004-  
19 2007 with the older fuel economy numbers they know to be  
20 deceptive and inaccurate.  
21

- 22 28. EPA fuel estimates frequently overstate the actual fuel efficiency  
23 for most automobiles because, as set out in the relevant statutes  
24 and regulations, and as Defendants knew, the EPA fuel economy  
25 calculations for the Sticker do not include on the road testing or  
26 real world driving experience. According to David Champion,  
27 Senior Director of consumer reports’ auto Test Center, however,  
28 while EPA fuel estimates may at times overstate actual fuel

1 efficiency for most cars, “the discrepancy for hybrids is much  
2 much bigger,” particularly when it comes to city  
3 driving, ([www.cbsnews.com](http://www.cbsnews.com) May28,2004.)

4 29. While the EPA discrepancy is much bigger with Hybrid vehicles,  
5 particularly when it comes to city driving, Toyota spokesman  
6 Dave Hermance states, “Pease keep in mind Hybrids shine in  
7 stop-and go traffic”. ([www.nytimes.com](http://www.nytimes.com) 7/31/2005.

8 30. In another real world driving test in 2004 USA Today reporter  
9 David Kiley compared the TPH with a Volkswagen Jetta diesel,  
10 driving both between his home in ann arbor, Michigan and the  
11 Washington, D.C. area. While both should have made the 500  
12 mile trip on one tank of gas, according to David Kiley “Jetta  
13 lived up to it’s one tank billing” while the “Prius did not”  
14 According to Mr. Kiley, the Prius ended up averaging 38 miles to  
15 the gallon, while the Jetta averaged 44 miles per gallon “on the  
16 nose for the [Jetta’s] highway fuel economy  
17 rating.” ([www.usatoday.com](http://www.usatoday.com) 6/11/2004.)

18 31. Toyota knew, or by the exercise of reasonable care should have  
19 known, that the fuel economy numbers stated in Toyotas  
20 advertising,, even though parroting the sticker, were not placed in  
21 the appropriate context and, as a result, were and are materially  
22 false, untrue, and deceptive. The Toyota advertising changed the  
23 federally mandated disclaimer language “[a]ctual mileage will  
24 vary” to a more deceptive “[a]ctual mileage may vary” and,  
25 upon information and belief, in some cases failed to include even  
26 the weakened disclaimer in the advertising of the TPH.  
27  
28

**False Advertising of the TPH**

1  
2  
3 32. The TPH is advertised for sale to all consumers on the basis of  
4 materially untrue, deceptive, and misleading representations or  
5 omissions of its fuel efficiency and the cost savings realized from  
6 this efficiency. This purported fuel economy, expressed in miles  
7 per gallon of gasoline consumed or cost savings realized on the  
8 fuel consumption, differentiated the TPH from other comparable  
9 automobiles, In Defendants' advertising in print media, on their  
10 website, and on television, Defendants' claim for the TPH of 55  
11 MPG fuel efficiency(60city/51highway) is repeated and  
12 emphasized. Toyota's advertising was directed to all consumers  
13 and potential consumers throughout the United States intending  
14 to result in sales of the TPH.  
15

16  
17 **FIRST CAUSE OF ACTION**

18 **(Violation of California Bus.& Pof. Code sections 17200. etseq.)**

- 19  
20 33. plaintiff repeats and realleges the allegations set forth above as if  
21 fully contained herein.  
22 34. Plaintiff brings this cause of action on behalf of himself.  
23 35. Defendants have engaged in unfair, unlawful, and fraudulent  
24 business acts or practices as described in this Complaint,  
25 including but not limited to, disseminating or causing to be  
26 disseminated from the State of California, unfair, deceptive,  
27 untrue, or misleading advertising as set forth above in this  
28 Complaint.

- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22
36. By engaging in the above –described acts and practices, Defendants committed one or more acts of unfair competition within the meaning of Unfair Competition Law, Cal Bus & Prof.Code sections 17200. et seq.
37. Defendants need only to have violated one of the three provisions set forth above to be found strictly liable under this Cause of action.
38. Defendants acts and practices are unlawful because they violate. Inter alia. California Civil Code sections 1770(a)(5),1770(a)(7), and 1770(a)(9).
39. Defendants’ acts and practices have deceived or are likely to continue to deceive consumers throughout the United States and impact the public interest. The material misrepresentations and omissions described in this Complaint are substantial and were made to the Plaintiff with the purpose and intent of inducing the Plaintiff to purchase a TPH.
40. Plaintiff suffered injury in fact as a result of Defendants’ unfair methods of competition when the Plaintiff purchased a TPH which does not perform as advertised.
41. Plaintiff, o behalf of himself seek an order of this Court against Defendants’

23  
24  
25  
26  
27

Awarding restitution, disgorgement, injunctive relief and all other relief allowed under sections 17200, *et seq*, plus interest, attorneys’ fees and costs, pursuant to inter alia, Cal Code Civ., Proc. Section 1021.5

28

**SECOND CAUSE OF ACTION**

**(Violation of California’s Bus, & Prof. ode sections 17500.et seq.)**

1  
2  
3  
42. Plaintiff repeats and realleges the allegations set forth above as if fully contained herein.

43. Plaintiff brings this cause of action on behalf of himself.

44. Defendants are California corporations disseminating advertising from California throughout the United States, which advertising was planed in California with Toyota's California advertising agency Saatchi & Saatchi., in Torrance .California Toyota disseminated, or caused to be disseminated, the materially untrue and misleading or omissive advertising described in this Complaint with the intent to directly or indirectly induce Plaintiff and members f the Class to purchase the TPH.

45. The advertising misrepresenting the fuel efficiency and the cost savings for the TPH, or omitting to state that EPA estimates were not Accurate, is grossly inflated, and is untrue, false, misleading, and deceptive as set forth in this Complaint.

46. When Defendants' disseminated the advertising described herein, they knew, or by the exercise of reasonable care should have known , that the statements concerning fuel efficiency and cost savings made for the TPH were untrue or misleading, or omitted to state the truth about TPH fuel consumption and gasoline costs for the vehicle , in violation of the Fair

47. Advertising Law, Cal. Bus & Prof.Code sections 17500,*et seg.*,

27 **THIRD CAUSE OF ACTION**

28 **(Unjust Enrichment For Violations Alleged In The First and Second**

**Causes of Action**

COMPLAINT

1  
2  
3 48. Plaintiff repeats and realleges the allegations set forth above as if fully  
4 contained herein.

5 49. Plaintiff brings this cause of action on behalf of himself.

6 50. As a direct and proximate result of the misconduct set forth above .  
7 , Defendants' have been unjustly enriched.

8  
9 51. Trough deliberate misrepresentations or omissions in connection with  
10 the advertising , marketing, promotion, and sale of the TPH, Defendants'  
11 reaped benefits which resulted in their wrongful receipt of profits.  
12 Accordingly, Defendants will be unjustly enriched unless ordered to  
13 disgorge those profits, for the Benefit of Plaintiff.  
14

15  
16 **FORTH CAUSE OF ACTION**

17 **(violation of California's Consumer Legal Remedies act,**

18 **California Civil Code sections 1750, et seq**

19  
20 52. Plaintiff repeats and realleges the allegations set forth above as if fully  
21 contained herein .

22 53. Plaintiff brings this cause of action on behalf of himself.

23 54. The California Consumer Legal Remedies Act, Cal. Civ. Code sections  
24 1750 et seq., ("CLRA"), has adopted a comprehensive statutory scheme  
25 prohibiting various deceptive practices in connection with the conduct of  
26 a business providing goods, property or services to consumers primarily  
27 for personal, family or household purposes.  
28

55. Defendants are "persons" as defined by Cal Civ. Code section 1761©.

1 56. Plaintiff is a consumer within the meaning of Cal.Civ. Code section  
2 1761(d).

3 57. The acts and practices described in this Complaint were intended to  
4 result in the sale of goods, specifically a motor vehicle, in a Consumer  
5 transaction .

6 Toyota acts and practices violated, and continue to violate. the  
7 Consumer Legal Remedies Act in at least the following respects:

- 8 a. Representing the TPH to have characteristics, uses of benefits that  
9 it does not have, in violation of section 1770(a)(5) of the CLRA;
- 10 b. Representing the TPH to be of particular standard, quality or grade,  
11 when it is of another, in violation of section 1770(a)(7) of the  
12 CLRA; and
- 13 c. Advertising the TPH with the intent not to sell the TPH as  
14 advertised in violation of section 1770(a)(9) of the CLRA.

15 58. plaintiff seeks and is entitled to equitable relief on behalf of  
16 himself in the form of an order (a) enjoining Defendants from  
17 continuing to engage In the practices described in this complaint;  
18 (b) requiring Defendants to make full restitution of all monies  
19 wrongfully obtained as a result of the conduct described in this  
20 Complain; (c) requiring the Defendants to provide public notice  
21 of the true nature of the TPH's fuel efficiency; (d) actual damages;  
22 and (e) punitive damages.  
23  
24

25  
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays:

- 28 a. that the Court enter an Order requiring the Defendants' to  
immediately cease the wrongful conduct as set forth above;



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: July 27,2009

Respectfully submitted,

By: *Kenneth Bernstein*

Kenneth Bernstein

Pro Se

## **DECLARATION**

1  
2  
3 The plaintiff Kenneth Bernstein entered into a various contracts: New Auto  
4 Sale, Service and Extended Warranty etc. contracts with the Toyota and its  
5 subsidiaries' and franchises on or about July 28, 2006. These contracts were  
6 partially funded by trade in a Windstar Van. The location was the Tustin  
7 Toyota Property located at 44 Auto Center Drive, Tustin, CA 92782 in the  
8 sales area and financial office. These contracts were induced by gross  
9 misrepresentations and multiple frauds which Mr. Bernstein relied on. Mr.  
10 Bernstein was damaged by Toyota , Tustin Toyota when they made these  
11 multiple misrepresentations which Mr. Bernstein relied on as truthful, which  
12 resulted in damage to Mr. Bernstein. These gross misrepresentations and  
13 were done with malice and forethought and the intent to deceive and to  
14 profit unfairly. In the Sales process on Tustin Toyota property Tustin Toyota  
15 employee's stated that Mr. Bernstein's 2003 Windstar Van VIN NO.  
16 2FMDA58493BA55659 had been in a accident and the accident had been  
17 verified by using magnets. They discounted the trade in value of Mr.  
18 Bernstein's van by Eight Thousand dollars from the Blue Book value in the  
19 instant of the transaction. Mr. Bernstein relied on Tustin Toyota's employees  
20 to be truthful. Mr. Bernstein stated at the time that the 2003 had not been in  
21 a accident at any time during *his* possession. Mr. Bernstein stated that the  
22 Van must have been in an accident prior to possession by Mr. Bernstein, at  
the Ford factory at the Ford final assembly point, at the Ford Motor  
assembly plant (Oakville) (Exhibit 1), or outside of Mr. Bernstein's control  
when Santa Margarita Ford had the Ford Windstar for initial set up or during  
service. Mr. Bernstein never had notice of any accident. Mr. Bernstein  
contacted Santa Margarita Ford who denied any accident repairs being done  
and after research they confirmed there was no history of any accident  
related to Mr. Bernstein's Ford Windstar prior to shipment.

23 *[(When Long Acceptance was contacted after the sale by a few days they*  
24 *stated there was nothing they would do. It was now past the time of the*  
25 *recession period, Mr. Bernstein stated, "there was no accident! , it was an*  
26 *act put on by several Tustin Toyota employees with the intent to deceive*  
27 *and was a fraud to grossly misrepresent the condition of Mr. Bernstein's*  
28 *collateral and under value Mr. Bernstein's Van's value used for trade in.*  
*Mr. Bernstein then stated the 2003 Windstar Van used as an trade in*  
*thesale was undervalued and this constituted fraud which would*

1 ***Unjustly Enrich Toyota and its dealer Tustin Toyota. Mr. Bernstein***  
2 ***stated very clearly he was shocked and angry”, at which point the***  
3 ***representative for Long Beach Acceptance the lien holder laughed and***  
4 ***then stated frauds happen all the time at car dealerships it’s not our***  
5 ***problem if you do not make your payments we will take the car and your***  
6 ***money and there is nothing you or a judge can do about .)]***

7 Mr. Bernstein at that time was asked what the maximum interest rate he  
8 would be willing to pay in a loan. Mr. Bernstein stated the loan rate he  
9 wanted was the same as the Ford Motor Credit the same loan rate that he  
10 was paying which was at 0%, ZERO PERCENT the maximum he would  
11 only pay was Four Percent as his 2003 Windstar Van was at a contract rate  
12 of 0% Zero Percent. Mr. Bernstein stated he would not buy the 2006 Prius  
13 unless he could get that rate or better.

14 ***[(Looking at the Court Documents AmeriCredit Counsel Mr. Austin***  
15 ***stated the true interest rate is 12.95%), Twelve Point Ninety Five***  
16 ***Percent.)]***

17 The Salesman said they could do the interest rate of 4% Four Percent no  
18 problem. Additionally, he stated that Mr. Bernstein would get a rebate of  
19 over \$3000.00 Three Thousand Dollars offered by the government on all  
20 new Prius sales right now, if Mr. Bernstein bought today. Mr. Bernstein  
21 stated that sounded really good. Mr. Bernstein relied on the Tustin Toyota  
22 Staff to be truthful. The Salesman continued to state the advantages of  
23 buying the Prius that day. The Sales man then stated that the Prius got  
24 between 55 and 60 miles to the gallon. Mr. Bernstein stated he would  
25 buy the Prius for that reason because his Windstar was eating a lot of  
26 gas. Mr. Bernstein asked multiple times if this was true, Mr. Bernstein  
27 relied on the statements of the the Tustin Toyota salesman’s expertise  
28 and knowledge of the vehicles he was selling. The salesman than  
repeated multiple times that the Prius was getting 55-60 Miles per  
gallon on the road and when Mr. Bernstein asked if it was true multiple  
times nothing was said about the EPA’s rating of the Prius. Mr.  
Bernstein has never gotten anywhere close to the mileage stated by  
Toyota. Mr. Bernstein also relied the Salesman statement that Mr.  
Bernstein would receive Clean Air Vehicle Stickers from the California  
Department of Motor Vehicles which were worth an additional \$3000.00  
Three Thousand Dollars for resale of the Prius in the future.

1 [(Mr. Bernstein was actually never eligible for the Clean Air Vehicle  
2 Stickers from the California Department of Motor Vehicles as the  
3 program had already ended . The Tustin Toyota sales staff materially  
4 misrepresented the program as still being offered, when it already had  
5 ended. Mr. Bernstein relied in the representation by the Tustin Toyota  
6 Sales , Financing staff and Managers in the sale to his detriment and  
7 damage.)]

8 [(This was confirmed and this was reiterated when Mr. Bernstein went to  
9 Santa Margarita Penske Toyota located at 22722 Avenida Empresa,  
10 Rancho Santa Margarita, CA on 12/19/2008 to get an evaluation of  
11 the Windstar Van's trade in value . The Sales Manager stated that due to  
12 the lack of the Clean Air Vehicle Stickers from the California  
13 Department of Motor Vehicles the trade in valve would be reduced by  
14 \$3000.00 Three Thousand Dollars. The USED VEHICLE APPRAISAL  
15 on Mr. Bernstein's Prius was given on 12-19-2008 and the amount was  
16 \$10,500 Ten Thousand Five Hundred Dollars. (Exhibit 2) Counsel  
17 for AmeriCredit Mr. Austin has manipulated the court by making  
18 continually making material misleading statements to the court .Mr.  
19 Austin represented to the court in his moving papers that the fair  
20 valve of the Prius in Question was \$21,075.00. Twenty One Thousand  
21 Seventy Five Dollars, a gross misrepresentation to the court of  
22 approximately of \$10,575.00 Ten Thousand Five hundred Dollars. This  
23 over twice the appraised valve of Mr. Bernstein's Prius . )]

24 Mr. Bernstein additionally demanded repairs to be done on the Prius that  
25 Toyota and its franchised Dealerships who have refused to repair namely:  
26 Excessive tire ware, Toyota Mr. Bernstein is now approaching his third set  
27 of tires. Toyota has acknowledged to Mr. Bernstein that there is a problem  
28 with the weight of the vehicle resulting in excessive tire ware and to over  
inflate the tire to remedy Walmart has refused to overinflate tires as they  
have stated it is to dangerous. Exhibits 3-8

HID front headlight turning off at night causing Mr. Bernstein to be  
stopped by the California Highway patrol on the 154 highway between the  
246 and 101 highways on January 23 2009. Mr. Bernstein was told it was  
extremely dangerous by the issuing officer Mr. Bernstien explained that  
Toyota had stated that would not repair and that they had no record of this  
problem. Exhibit 9 proof of showing approximate location Additional Mr.  
Bernstein cannot fully refuel the Prius due to the bladder collapsing which  
Toyota has stated there is no repair.

1 There is absolutely no possibility that Mr. Bernstein would try to evade  
2 service on this case. Long Beach Acceptance and AmeriCredit employees,  
3 managers and Mr. Austin have been aware of the addresses that Mr.  
4 Bernstein has resided at through the notices the insurance companies have  
5 continually supplied the companies as lien holders, additionally they have  
6 access to Mr. Bernstein's DMV registration addresses at all times. Mr.  
7 Austin's actions have been meant to punish, intimidate, and destroy Mr.  
8 Bernstein's reputation in the communities he has lived in.

9 Again, Mrs. Bernstein demanded Mr. Bernstein to leave their jointly owned  
10 property on August 7, 2007. Mr. Bernstein then relocated to 56 Bogey Lane,  
11 Coto de Caza, CA where he rented a room which was across the street from  
12 his family for approximately the next three months to try and work things  
13 out. Mrs. Bernstein did not allow Mr. Bernstein to stay or enter his own  
14 home, except to work on a legal case for a few hours effectively converting  
15 the property and all joint possessions accumulated in prior 17 years of  
16 marriage to her own use. Mrs. Bernstein has not allowed Mr. Bernstein to  
17 stay at the property since that time period. In fact it has come to Mr.  
18 Bernstein attention through Court Documents on an unrelated case that Mrs.  
19 Bernstein is cohabiting with another man that Mr. Bernstein had no  
20 knowledge of until the last few days. Although Mr. Bernstein has  
21 continuously tried to reach out to Mrs. Bernstein she has not replied in kind  
22 for the last two years and has not cooperated with Mr. Bernstein at all. Mr.  
23 Bernstein has not been allowed to see his 17 year old daughter except twice  
24 since August 7, 2007 with no holiday visits, including only a very few  
25 telephone contacts.

26 Mr. Austin's representations to the court that Mr. Bernstein is living at the 62  
27 Spoon Lane have been completely without merit and are gross  
28 misrepresentations to manipulate the court and to poison the record. Mr.  
Bernstein is requesting sanctions and is requesting that the entire record be  
stricken and the summons quashed as it prejudices any possibility of due  
process. Mr. Bernstein is well aware of the unethical conduct of the  
collection industry and collection attorneys. Mr. Bernstein was a vendor of a  
Collection Practice Management software for over five years attending legal  
collection conventions in New York as well as Chicago, Washington DC  
and London England. Mr. Bernstein was recognized as an expert in  
advanced technology and as such was asked to teach a continuing education  
class at a national legal conference for the Commercial Law League of  
America, (a network collection attorneys). Mr. Bernstein is very well aware  
of Collection Lawyers unethical and at times illegal collection tactics,  
although these collection tactics by Mr. Austin and AmeriCredit have been

1 the worst Mr. Bernstein has been exposed to in this case. Yes, Mr. Bernstein  
2 has retained The Pruis as it is unique property subject of a lawsuit and is  
3 unique to several litigations it If the Prius is returned to the lien holder it will  
4 create undue hardship as well as affect Mr. Bernstein's due Process rights.  
5 Mr. Bernstein on reviewing of Mr. Austin's documents to the court has  
6 discovered that he has run a campaign to terrorize Mrs. Bernstein and Mr.  
7 Bernstein's 17 year old daughter Alexandra with full knowledge that Mr.  
8 Bernstein did not reside at 62 Spoon Lane, Coto de Caza, CA. AmeriCredit  
9 violated Mrs. Bernstein's and Alexandra's Bernstein's rights to live in peace  
10 without constant harassment and trespass by the service agents directed by  
11 AmeriCredit's Counsel Mr. Austin. Long Beach Acceptance has been  
12 notified of Mr. Bernstein's new addresses by notification of his insurance  
13 company's multiple times. Mr. Austin cannot state otherwise. He had no  
14 reason to believe Mr. Bernstein was living within several hundred miles 62  
15 spoon lane, Coto de Caza from the time he filed this law suit. Mr. Austin at  
16 the time he meant to materially mislead this court into granting the recent  
17 service by publication motion. This publication was meant to punish and  
18 intimidate Mr. Bernstein, it has defamed and the libeled Mr. Bernstein's  
19 reputation in the community of Coto de Caza, CA that Mr. Bernstein has  
20 lived in and served in the past, effectively destroyed all good will built  
21 through years of community service. This Intentional continuing pattern  
22 was done with malice to discredit Mr. Bernstein in the eyes of his Family,  
23 Friends, Community and especially the Court and to gain advantage on  
24 litigation of preexisting going controversies from the initiation of the sales  
25 contract. Mr. Austin is well aware his proper course of action is to cross  
26 claim against Tustin Toyota and other defendants.  
27 Long Beach Acceptance was made aware immediately by Mr. Bernstein of  
28 the fraud committed by Toyota and it's dealership Tustin Toyota and later of  
the breach of contract far in advance of the filing of this action by Mr.  
Austin representing AmeriCredit. When noticed representatives at Long  
Beach Acceptance stated that if Mr. Bernstein did not make his payments  
that Long beach acceptance would repossess the car and take all the money  
owned in the contract and there was nothing Mr. Bernstein could do. It was  
clearly stated they would do nothing although fraud was committed in the  
origination of the contract. They stated frauds were committed all the time  
by auto dealers and that there was nothing that would be done about it by  
anyone including any judge, they then laughed. This statement was made  
immediately when Mr. Bernstein noticed Long Beach Acceptance of the  
frauds and later the breach contract of Toyota Motor Corporation  
surrounding the sale of the prius and trade in of Mr. Bernstein's Ford

1 Counsel for AmeriCredit has continued the manipulations by making  
2 material misleading statements to the court which he knows were materially  
3 false and stated to manipulate, mislead the court, falsify and poison the  
4 record. Telephone records will show Mr. Bernstein had discussions with Mr.  
5 Austin P. Nagel concerning service of court documents. Mr. Bernstein  
6 offered to waive service and requested Mr. Austin to email the summons and  
7 complaint to Mr. Bernstein's email address, kenneth\_bernstein@msn.com, as  
8 Mr. Bernstein travels extensively. Mr. Austin was informed by Mr.  
9 Bernstein that Mr. Bernstein had separated from Mrs. Bernstein August 7th  
10 2007 and had not been living at 62 Spoon Lane Coto de Caza, CA 92679  
11 since the evening of August 7, 2007. In fact Mr. Austin had full knowledge  
12 of addresses Mr. Bernstein had lived at over the last two years and asked  
13 specifically during a telephone conference of Mr. Bernstein if he was still  
14 residing at 62 spoon lane, 2073 Village Lane, Solvang. 93460. Mr. Austin  
15 after speaking to Mr. Bernstein sent a process server to 62 Spoon Lane Coto  
16 de Caza and 2073 Village Lane, Solvang with full knowledge that Mr.  
17 Bernstein did not live there and had already moved to 1530 Edison Unit E  
18 Santa Ynez, CA. Mr. Austin was told in the telephone conference very  
19 clearly that there was no mail delivery at the 1530 Edison, Unit E Address  
20 and that service would have to be made to either General Delivery Santa Ynez,  
21 CA 93463 or Mr. Bernstein's email address kenneth\_bernstein@msn.com.  
22 Exhibit 10-15 showing past and current mailing address of Mr. Bernstein.

23 Mr. Austin after speaking to Mr. Bernstein sent a process server to 62 Spoon  
24 Lane knowing full well Mr. Bernstein did not live there, on multiple days,  
25 continuously to harass Mrs. Bernstein, Alexandra Bernstein and a John Doe  
26 Cohabiting with Mrs. Bernstein that Mr. Bernstein had no knowledge of  
27 until the last few days until reviewing court documents on a unrelated case.  
28 Prior to and during the time that AmeriCredit requested that the court  
ordered service by publication in the Coto de Caza newspaper an extremely  
unethical act by AmeriCredit, AmeriCredit had full knowledge that Mr.  
Bernstein did not live within several hundred miles of the community of  
Coto de Caza this was due to insurance notifications to the lien holder Long  
Beach Acceptance an subsidiary of AmeriCredit. Mr. Bernstein in this time  
period resided at 4130 Morgan Territory Road Clayton, CA approximately  
thirty miles from Mr. Austin's office located in San Ramon, CA. Mr. Austin  
has internationally destroyed Mr. Bernstein's reputation through the abuse of  
process of service. Mr. Austin has also effectively terrorized Mrs. Bernstein  
and Alexandra Bernstein, Mr. Bernstein's daughter who is a minor, by

repeatedly sending the process server to the Mrs. Bernstein address of 62 Spoon Lane, Coto de Caza, CA. 'this was meant to intimidate, embarrass, Mr. Bernstein into foregoing suit against Toyota, Ford Motor Long beach Acceptance and AmeriCredit for violations of both State and Federal Laws, **Fair Debt Collection Practices Act , Song-Beverly Consumer Warranty Act, the Truth in Lending Act (TILA) (15 U.S.C. §1601 et seq. (1994))Etc.**

[The United States Supreme Court in *Federal Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233, 31 L. Ed. 2d 170, 92 S. Ct. 898 (1972), cited with approval the published statement of factors considered by the Federal Trade Commission in measuring unfairness. *Sperry*, 405 U.S. at 244 n.5, 31 L. Ed. 2d at 179 n.5, 92 S. Ct. at 905 n.5. These factors are (1) whether the practice offends public policy; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers. *Sperry*, 405 U.S. at 244 n.5, 31 L. Ed. 2d at 179 n.5, 92 S. Ct. at 905 n.5.]

Mr. Bernstein was the President of Andalusia and gave hundreds of hours of community service to his community. Mr. Bernstein also worked at a county level working with the LAFCO is a state mandated agency that oversees all jurisdictional changes within Orange County, including the incorporation of new cities; annexations to cities and special districts; and consolidations, mergers, and dissolutions of public agencies to analyze creating a special district to fund sheriff patrols to police Coto de Caza as there was no on going police presence in the community.

Mr. Bernstein comes a long line public service minded family members Mr. Bernstein's father was Dr. Theodore Bernstein of Solvang who served His country as a Major in the Army Medical Corps in World War Two, going from D-Day with Patton all the way into the liberation of the concentration camps in Germany. He came back to Solvang after the war to serve the community for many years as its only Medical Provider. Mr. Bernstein's Uncle Sid Bernstein was extremely active politics in Los Angles as the head of the township counsel in Malibu for many years. Mr. Bernstein for the years that he resided in Coto de Caza caddied on that Family Tradition, until Mrs. Bernstein asked him to leave on August 7, 2007

MC-005

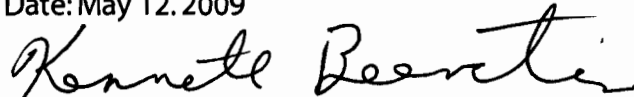
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Kenneth Bernstein</b> <b>PRO SE</b> 4130 Morgan Territory Road Walnut Creek, CA 94517 TELEPHONE NO.: 925 675 4164 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>kenneth_bernstein@msn.com</b>	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: 700 W. Civic Center Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center	
PLAINTIFF/PETITIONER: Americredit Financial Services DEFENDANT/RESPONDENT: Kenneth Bernstein	
DECLARATION KENNETH BERNSTEIN IN SUPPORT OF TEMPORY RESTRAINING ORDER	
CASE NUMBER: 30-00111148-CU-BC-CJC	

(Declaration of Kenneth Bernstein) I Kenneth Bernstein while as a resident the property located at 4130 territory Road make the following statement in regards to Kenneth Bernstein court case #30-2008-00111148-CU-BC CJC (Department C-25) Judge Randell Wilkinson and Mr. Bernsteins 2006 Prius. Mr. Bernstein has not been served and has not received any documents regarding Mr. Bernsteins Pruis except for the court documents (Notice of Continuance) dated aApril 27, 2008. At no time have any documents or billings been received at 4130 Morgan Territory Road, Clayton CA 94517 from Long Beach Acceptance, Americredit or The Law offices of Austin P. Nagel. At no time has service been attempted at 4130 Morgan Territory Road, Clayton CA 94517 in regards to Kenneth Bernstein or Mr. Bernsteins 2006 Prius.

On Sunday May 10,2009 at approximatly 3:00am in the morning a AutoReposer (James Brentlinger) working for Afterhours Recovery attempted to take Mr. Bernsteins 2006 Prius. Mr Bernstein Presented the above mentioned court documents to Mr. Brentlinger. On presentation of the Courts documents Mr. Brentlinger declined to take Mr. Bernsteins Prius. Mr. Bernstein stated very clearly that Mr. Bernstein would respect any order that the court issues and that if the court finds at a Jury trial that Mr. Bernstein is to return the Prius, Mr. Bernstein will present it immediately according to court order. Mr. Brentlinger then apoligized for any incovenace. On the above mentione court documents Mr. Brentlinger wrote a statement and signed his name ,and left the property.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correc

Date: May 12, 2009



Kenneth Bernstein

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28