THE KOLAR CHRONICLE

KEEPING YOU UP TO DATE WITH CALIFORNIA CONSUMER LAW AND THE SUCCESS OF KOLAR & ASSOCIATES

Kudos to Kolar & Associates

Kolar & Associates prevailed in Trial this month against a consumer who alleged jewelry was stolen out of her vehicle when it was being serviced. The dealership will be entitled to reimbursement of its costs from the consumer.

A Swing in the Right Direction

The Statute of Limi(TEA)tions for a CLRA Claim Just Got Sweeter!

In *Ries v. Arizona Beverages USA LLC*, the court held that the three-year statute of limitations began to run on a cause of action for misleading and deceptive advertising under California's Consumers Legal Remedies Act (CLRA) and False Advertising Law when the consumer purchased the allegedly mislabeled iced tea – it was then that the plaintiff was put on inquiry notice that the tea contained high fructose corn syrup and that citric acid might not be "all natural," as indicated on the label. This is a good decision for dealers since it sets a date certain for the triggering date of a claim under the CLRA and False Advertising instead of the now ambiguous "when the consumer discovers" the alleged violation.

Keeping Current With the Cases of 2013

The Frustration with Arbitration

In a series of seemingly inconsistent cases over the last four months, California courts have considered various arbitration agreements. First, in *Natalini v. Import Motors, Inc.*, an arbitration provision that allowed for an appeal only if the arbitration award included injunctive relief, exceeded a specified amount, or awarded no money, was found unenforceable because the contract was offered on a "take it or leave it" basis. The provision was also inconspicuous and favored the dealer by exempting the dealer's most likely remedy of repossession.

Subsequently, in *Flores v. West Covina Auto Group, LLC,* an arbitration clause was found enforceable, and the court held that a consumers' waiver of class-wide arbitration rights is no longer unenforceable. The arbitration clause was not hidden, and the plaintiffs could not avoid the terms of the contact simply because they failed to read it before signing.

In March, the Court of Appeal decided *Compton v. Superior Court*, where the parties' employment agreement included an arbitration provision by which most claims were arbitrable, with an exemption for claims by the employer for injunctive or equitable relief in trade secrets and unfair competition actions. The court held that the agreement was unenforceable due to the one-sided nature of the claims subject to arbitration.

A week later, in *Vasquez v. Greene Motors, Inc.*, the court held that where a RISC contained an arbitration clause on the reverse side of the contract with a large bold header in capital letters and a statement in capital letters that noted the presence of an arbitration clause on the back, it was enforceable and the consumer could not avoid arbitration because the clause was conspicuous. Two-sided contract forms are commonly used by dealers, and requiring the consumer to pay his own costs was not unfair, absent evidence that arbitration would be prohibitively expensive.

Based on the foregoing cases, it is clear that the courts treat each arbitration clause differently. However, the *Vasquez* case is a terrific opinion for dealers looking to keep a claim out of court!

"Anybody who thinks talk is cheap should get some legal advice." –Franklin P. Jones

Kolar and Associates, A Law Corporation ~ 12241 Newport Avenue, Santa Ana, CA 92705

Tel: (714) 544-0041 ~ Fax: (714) 544-0051

http://kolarandassociates.com/