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Pro Se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Edward Michael O'Brien,

Plaintiff,

Case No. CV99-07862 CM(JWJ)

v.

General Motors Acceptance Corporation,

and Rio Vista Chevrolet,

Defendants.

COMPLAINT for Defendants' violation of the United States Codes, Title 15, sections 1, 2, 14, 15; : The Truth in Lending Act [Title 15 U.S.C., sec. 1635(a), 1641(a)] and supplementary claims under California Codes: BUSINESS & PROFESSIONS: Sec. 9884.7(a)(d)(e)(g), and (h): Sec. 16727 :CIVIL: sec. 1770 (m)(n)(p)(q), 1812.20, 3439.03(b) and PENAL: sec. 601(a)1 :

I. FACTS AND CIRCUMSTANCES

On or about November 15, 1995, the General Motors Acceptance Corporation, a finance company with principle offices at 3022 W. Grand Blvd., Detroit, MI 48202, and Rio Vista Chevrolet, an automobile dealership with principle offices at 390 E. Hwy. 246, Buelton, CA 93463, hereinafter to be named the "defendants", sold Edward Michael O'Brien, owner of *Golf O'Brien Company*, a sole-proprietorship, and *SAVIORG*, a California public charity, hereinafter to be named the "plaintiff", a used car (1994 Camaro) at Rio Vista Chevrolet using a standard GMAC credit contract calling for a certain down-payment to be made. However, the defendants did not mention or attempt to collect the down-payment at any time during the sale.

More than twenty-four hours, but less than seventy-two hours, after the sale, and after Mr. O'Brien had taken full and unrestricted possession of the vehicle, defendants demanded in a telephone call to the plaintiff a cash payment of approximately 10% FMV as the down-payment for the sale. Mr. O'Brien said he no longer had that much in cash on hand, and needed some time to consider the matter. Defendants reiterated their demand for immediate payment, and hung-up after plaintiff again asked for more time.

Mr. O'Brien immediately called an attorney out of the Santa Barbara phonebook, and explained his position. The attorney tentatively agreed to represent the plaintiff and to call Rio Vista Chevrolet and demand a delay in any planned repossession until plaintiff had time to make a wise decision based on the law and the facts.

Next morning, around 9:00 am plaintiff's attorney called to say he was still shaken, intimidated and mad at the Rio Vista manager he talked to on the telephone last evening. The attorney said he had been verbally harassed, and that he would just as soon get off the case. Plaintiff consented, and hung-up.

Soon after plaintiff hung-up, as Mr. O'Brien was working at his desk in his office/apartment at 401 D, First Street, Solvang, CA 93454, the door flew open without a knock, and in stepped a Rio Vista salesman (well over 6' 2" tall and heavy set) and aggressively walking up to the seated plaintiff.

Plaintiff rose and politely challenged the salesman who demanded the down-payment or return of the car immediately. Plaintiff refused; showed the salesman his copy of the signed sales contract, and politely asked him to leave. Salesman left the office/apartment, slowly.

The next morning around 8:00 am, with no notice from Rio Vista Chevrolet, plaintiff, on his way back from a nearby coffee shop, observed a commercial tow-truck in his parking area pulling away with his car in tow. Mr. O'Brien immediately called the police, and reported the incident. Police told plaintiff to write a complaint to the county office of consumer affairs. Plaintiff complied, but no response to date.

II. CAUSE OF ACTION

Defendants, in formal conspiracy, directly and proximately injured the plaintiff by intentionally restraining trade and competition in relevant markets via an illegal tie-in sale. (15 U.S.C., sec. 1, 2, 14)

Plaintiff sustained secondary injury predicated upon, and directly motivated by, the tie-in sale in question when defendants intentionally violated federal and state laws (Truth in Lending Act (15 U.S.C., sec 1635(a); State laws as cited above:) subsequent to, and directly spawned by, their alleged antitrust violations.

III. CAUSE OF ACTION WITH SPECIFICITY

In November 1995, down-payment requirements for buyers in plaintiff's credit category were surveyed by Mr. O'Brien at car dealerships throughout Santa Barbara County and found to average 30% FMV. None were found below 25% FMV. Plaintiff was resigned to go without a car and use rental cars when absolutely necessary until a sufficient down-payment could be obtained via proceeds from a certain real property sale.

Plaintiff's recently inherited family home (25% interest) was on the market for sale (Prudential Realty: Lompoc, CA). A few offers had been received and declined, and sale proceeds were at least four weeks away from closing escrow at time of cause of action. Defendants had been informed of plaintiff's circumstances (including his home for sale) on several occasions, and were in possession of Mr. O'Brien's credit application two weeks prior to the sale. A Rio Vista salesman stated to plaintiff, while surveying the former's used car inventory that "a down-payment will not keep us from selling you a car." Defendants failure to demand any down-payment at time of sale, unreasonable considering plaintiff's known financial circumstances and negative credit rating, was also evidence that defendants' unusual tie-in sale was intended to preclude competition in relevant markets by resorting to a fraudulent bypass of down-payment requirements for the sake of acquiring plaintiff's business, immediately, before Mr. O'Brien could obtain proceeds from his real property sale, and make a market-competitive down-payment at another dealership.

Note 1: In fact, proceeds of plaintiff's real property sale were forthcoming on or about December 20, 1995 in the net amount of approximately \$15,000.00.

At time of sale, plaintiff thought the down-payment had either been waived, delayed, included in the GMAC financing, or encompassed in dealer financing. Later that day, at his office, Mr. O'Brien reread the sales contract, and saw that it clearly called for a 10% FMV down-payment to be paid at time/place of sale. Defendants' signature on the contract attested to the fact that the down-payment had been made at time of sale.

Failure by defendants to demand and/or even mention a down-payment at time of signing the credit contract gave reasonable cause for plaintiff to assume that the down-payment had been included in the financing. This *failure to demand* is a form of non-disclosure proscribed by the Truth in Lending Act (TILA) which is intended to "compel creditors to disclose complex and often obscure credit terms to the consumer in a meaningful fashion".

Defendants did not explain to plaintiff at time of sale why the down-payment was omitted from the transaction. Had plaintiff believed down-payments were not includable in dealer financing he would have surely retained the cash on hand after leaving the dealership believing a mistake had been made by defendants. The truth is plaintiff was quite confused by the situation, but delighted to have the extra cash. From the \$2,000. (traveler's checks) brought to the dealership on the morning of sale, plaintiff spent about \$300. on necessities within a 24 hour period following the sale and prior to hearing from Rio Vista about the missed down-payment.

Note 2: Defendants have *Truth In Lending Act* (TILA) liability in this case because TILA is subject to tolling (equitable and otherwise), and tolling is authorized in this case because (1) TILA was cited in plaintiff's cause of action in CIV-S-97-0250 LLK, and (2) Congressional intent, re tolling of TILA liability, was to advance "principles of equity". (*Ellis v. GMAC*, 11th Cir. USCA No. 97-6963, 11/13/1998) Extending TILA jurisdiction in this case, considering defendants' acts alleged fraudulent herein (and at least one of defendants' filings in CIV-S-97-0250 LLK alleged fraudulent), will further the advancement of Congressional concerns for the principles of equity and bring relief to the plaintiff.

Note 3: "TILA has specifically addressed the liability of assignees under the Act and provides that: [e]xcept as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter or proceeding...which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary....[A] violation apparent on the face of the disclosure statement includes but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this subchapter." (Ibid., *Ramadan v. Chase Manhattan Corp.*, 156 F.3d 499)

When defendants omitted demand for a down-payment at time of sale they rendered "incomplete or inaccurate" their disclosure statement which called for a literal interpretation of the credit sales contract which called for payment of a down-payment at time of sale.

"Congress specifically decided that assignee creditors will only be liable for TILA violations that are apparent on the face of the disclosure statement." (Supra.) Therefore, both dealer and assignee are *per se* liable for TILA violations alleged herein. [15 USCA, sec. 1641(a)]

Because TILA was clearly violated, plaintiff claims that the entire tie-in sale was antitrust illegal, and was not only a TILA violation but a sec. 14 violation.

Note 3: Mr. O'Brien did not steal a car from defendants. In addition to alleged TILA violation, defendants committed unlawful repossession by repossessing plaintiff's lawfully possessed automobile (California Codes:Vehicle: sec. 460) without a *perfected security interest* in the vehicle.

"A secured interest is perfected by the delivery to the department of the existing certificate of title containing the name and address of the lien-holder and the date of his security agreement and the required fee. It is perfected as of the time of its creation if the delivery is completed within twenty (20) days thereafter, otherwise, as of the time of the delivery." [*Pongetti v. General Motors Acceptance Corp.*, 3:92CV150-S : 11 USCS, sec. 547 (c) 3 (B), (e)2(A)].

"...determination of when transfer is perfected must be made by reference to state law." [*In re Conner*, 733 F2d 1560]

"...no security interest in any vehicle registered under this code, irrespective of whether such registration was effected prior or subsequent to the creation of such security interest is perfected until the secured party or his successor or assignee has deposited with the department, at its office in Sacramento, or at any other office as may be designated by the director, a properly endorsed certificate of ownership to the vehicle subject to the security interest showing the secured party as legal owner if the vehicle is then registered under this code, or, if the vehicle is not so registered, an application in usual form for an original registration, together with an application for registration of the secured party as legal owner, and upon payment of the fees as provided in this code.[California Codes:Vehicle: sec. 6300]

Perfection of defendants security interest had not been achieved when they paid a third party to unlawfully repossess. Had they waited a few days, as requested by the plaintiff and TILA, they would have had a copy of plaintiff's valid registration and the ability to perfect/reposess.

If the defendants contend that plaintiff had no right under TILA to a rescission in light of plaintiff's acknowledgement of receipt of all material disclosures signed by plaintiff, plaintiff may rebut on the same basis as that found in (*Brown v. National Permanent Federal Sav. & Loan Assoc.*, 526 F Supp 815 (1981, DC)).

If a defense of "bona fide error" is raised it will not exempt defendants from liability. (*Mirabal v. General Motors Acceptance Corp.*, 537 F.2d 871 (1976))

"Where borrower did not contend that mortgage loan broker had practiced any fraud or unconscionable conduct, borrower, upon seeking rescission and statutory

damages upon discovery of violations of Truth in Lending Act, had an equitable duty to restore the net amount received from the broker. Truth in Lending Act, Sec. 125(b), 15 U.S.C.A. sec. 1635(b); Truth in Lending Regulations, Regulation Z, Sec. 226.9(a-d), 15 U.S.C.A. following section 1700." (*Pedro v. Pacific Plan of California*, 393 F Supp. 315)

Borrower did have reason to suspect fraud and/or unconscionable conduct on the part of defendants and so was correct in demanding his three (3) day recessionary period under TILA, and in refusing to convey the vehicle back to lenders, at least for the recessionary period. What appeared initially to Mr. O'Brien to have been a very beneficial sales arrangement later proved highly detrimental.

Defendants' violation of federal and state laws subsequent to the tie-in sale were direct projections of action predicated upon alleged antitrust violation(s), and on-going antitrust injury to plaintiff's person, sole-proprietorship and public charity.

As an heir of real property with businesses that were newly established and very low on revenues, plaintiff was in a financial position requiring him to either (1) wait for the property sale to close before making a cash (or credit) purchase of a much needed car or (2) obtain unconventional credit financing in the present time to buy a car. Experiencing increasing pressure from rental car expenses (\$200. per week at *Budget* in Lompoc, CA) to obtain his own car, plaintiff was eventually compelled to seek any reasonable/legal way of obtaining reliable transportation.

A reliable car was so critically needed for business and personal purposes that plaintiff was literally forced to take the Rio Vista Chevrolet offer. When defendants closed the sale to plaintiff by avoiding all reference to down-payment requirements prior to, at, and following the time of sale they precluded normal competition in relevant markets for plaintiff's car purchase which was virtually certain in the near future.

A normal, legal tie-in of credit-for-car-purchase had become illegal and a violation of antitrust laws. (*Lloyd Design Corporation v. Mercedes-Benz of North America, Inc.*, 66 Cal. App. 4th 716,78 Cal. Rptr. 2d 185)

IV. SUPPLEMENTARY CAUSE OF ACTION

Plaintiff alleges defendants' violation of California Business & Professions Code sections 9884.7 (deceptive sales practice) and 16727 (antitrust statute falling within the Cartwright Act).

"The purpose of the Cartwright Act is to protect and foster competition by preventing combinations and conspiracies which unreasonably restrain trade."

(*Morrison v. Viacom, Inc.* (1997) 52 Cal.App. 4th 1514, 1524, 61 Cal.Rptr.2d 544.)

"Section 16727 is based on a federal equivalent, hence federal decisions are applicable when interpreting the Cartwright Act." (*Chicago Title Ins. Co. v. Great Western Financial Corp.* (1968) 69 Cal.2d 305, 315; 70 Cal.Rptr.849; 444 P.2d 481; *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* (1971), 4 Cal.3d 842, 853; 94 Cal.Rptr, 785; 484 P.2d 953.)

"Section 16727 prohibits illegal tying arrangements. A tying arrangement is an agreement by a party to sell one product but only on the condition that the buyer also purchase a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier." (*Lloyd Design Corp. v. Mercedes*, 78 Cal.Rptr.2d 185)

Had GMAC offered its' unique consumer credit (super low down-payment) for the purchase of a Ford, Chrysler or other car manufacturer's product as well as GM products, plaintiff would have gone to another dealership to make his car purchase. Mr. O'Brien had never owned a GM product.

The GMAC/RIO VISTA CHEVROLET tie-in not only restricted the plaintiff's choice of automobiles, but also restrained competition in relevant car markets for plaintiff's purchase (present and future).

As a former loan officer for a credit union in Santa Barbara County, plaintiff can attest to the fact that, when a defaulted loan is found to have been secured by an inadequate down-payment, it is a job threatening event.

Local "small business" credit grantors are effectively restrained from setting down-payment requirements well below market averages (wisdom).

Arguably, when GMAC arbitrarily lowers a certain down-payment requirement well below local and/or state/interstate market averages in order to close a particular sale, it uses its' special leverage, inordinate economies of scale, c-corp expensing structures, etc. to be *super* competitive rather than *anti* competitive. The rich tend to get richer because their assets make them better competitors. The better competitors set the pace and criteria for the rest of us, and thereby augment competition.

However, when a company like GMAC uses a super-competitive advantage (like the ability to set down-payments *ad hoc* at any level necessary to close a sale) in conjunction with an illegal action, what can normally be called "super-competitive" must be characterized as "anti-competitive". [Cal. Codes: Business and Professions: sec. 9884.7 (a)(d)(e)(g)(h): TILA, sec. 1635(a), 1641(a)]

When GMAC reduced plaintiff's down-payment requirement approximately 150% below the (surveyed) county average, prior to tying the sale of its' credit to the purchase of a GM product, it was probably being super-competitive because the automobile industry accepts credit-for-car-purchase ties as conventional and therefore *legal* in the normal course of business.

Nevertheless, when the GMAC/RIO VISTA tie became illegal, GMAC's super-competition became anti-competition.

Note 1: "The Federal Trade Commission, having reason to believe that General Motors Corporation, a corporation ('respondent' or 'General Motors'), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. sec. 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. sec. 1667-1667e, as amended, and its implementing Regulation M, 12 C.F.R. sec. 213, as amended, and the Truth in Lending Act, 15 U.S.C. sec. 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. sec. 226, as amended, and it appearing to the Commission that this proceeding is in the public interest...(8.) Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. sec. 45(a)."[FTC File No. 952-3093: *In The Matter of General Motors Corporation*]

The "deceptive acts" alleged in this case, concurring in time (1995) and manner with plaintiff's cause of action and with untold numbers of similar complaints against the same corporation, requiring special federal government protection of its citizens (consumers) via FTC prosecution, were not only *per se* illegal in California [California Codes: Business & Professions: sec. 9884.7 (a), (d), (e), (g), and/or (h)], but also illegal acts for which there is virtual (if not binding) *prima facie* evidence in cited proceedings.

When defendants' tie-in sale of credit for car purchase became illegal via an integral misrepresentation(s) it not only violated state law, it also violated federal antitrust law. Legal preclusion of competition (super competition), via accepted/traditional multi-national corporate efficiencies and market powers, became illegal preclusion of competition and injurious to at least one consumer. Mr. O'Brien.

When defendants' tie-in sale was conducted fraudulently and/or deceptively it not only made the tie illegal, it also made the complementary down-payment requirement illegal and anti-competitive, because all the legal competition for plaintiff's car purchase (a purchase of substantial economic value: \$20,000.00), had been effectively precluded.

Circumstances of antitrust violations alleged herein, and obtaining at least occasionally worldwide, are precisely what antitrust laws are designed to safeguard against.

Assuming that GMAC has been able, heretofore, to demonstrate the legality of its' tie-in sales on grounds they have not substantially "foreclosed competition" in relevant markets, plaintiff contends, nevertheless, that the GMAC tie-in under present analysis, is *per se* federally illegal, because it unreasonably restrained trade in California, and, effectively and substantially, on an interstate basis.

On a second tact for more wind, because substantial preclusion of interstate commerce is, in this case, both difficult of proof and debatable in terms of magnitude and extent, plaintiff also makes a *rule of reason* claim for illegal tie.

"Tying arrangements are illegal *per se* if the party has sufficient economic power and substantially forecloses competition in the relevant market. Even when not *per se* illegal, a tying arrangement violates the Cartwright Act if it unreasonably restrains trade." (*Morrison v. Viacom*, *supra*.)

The "unreasonable" element in defendants' actions is demonstrated within the tie-in sale itself. Defendants unreasonably lowered their down-payment requirement to about 10% FMV when no other competitor in relevant markets was willing (or able) to go below 25% FMV. And, during the sale, the defendants unreasonably failed to demand the down-payment which was noted in the finance contract signed by both seller and buyer. Finally, defendants' repossession prior to the TILA rescission period and against plaintiff's reasonable request for more time, was likewise unreasonable.

Therefore a characterization of "unreasonable" can be applied to defendants' tie-in sale as alleged in this case, and it can be said that when the tie-in restrained trade in relevant markets, as it did preclude future competition for plaintiff's car purchase which was certain following close of escrow on plaintiff's home sale, it restrained trade on an unreasonable basis.

V. PLAINTIFF'S STANDING

Plaintiff was a *bona fide* consumer of defendants' goods/services because a regular consumer credit contract had been properly signed by both seller and buyer, and possession of the purchased item had been properly transferred from seller to buyer who took possession in good faith. Defendants' failure to collect a down-payment at time of sale did not negate the validity of the sale because defendants, under no duress in their own showroom, legally consummated the sale by signing for the payment.

"Right to rescind credit transaction exists within 3 business days of consummation of transaction...consummation of transaction occurs at time commitment contract is executed." (*Murphy v. Empire of America FSA (1984, WD NY)*, 583 F Supp 1563, aff'd, 746 F2d 931)

"Where defendant did not make required disclosures and refused to voluntarily honor plaintiff's election to cancel, defendant forfeited its right to restitution under 15 USCS, Sec. 1635(b): however, where plaintiff recognized presence of equitable obligation to restore net balance of what she had received, and did not allege that defendant practiced any fraud or unconscionable conduct, she had equitable duty to restore net amount which she had received." (*Pedro v. Pacific Plan of California (1975, ND Cal)* 393 F Supp 315)

Plaintiff reiterates allegation of defendants' "fraud or unconscionable conduct". (Ibid.)

"Creditor's contention that debtor's attempted rescission of transaction under 15 USC, Sec. 1635 is ineffective because debtor did not tender to creditor amounts that it had expended for her benefit is rejected since sec. 1635(b) does not require tender or restitution as precondition of rescission." (*Brown v. National Permanent Federal Sav. & Loan Asso. (1981, DC Dist Col)*, 526 F Supp 815).

The conclusions cited above show that Mr. O'Brien had consummated a purchase, and had cause for claiming his TILA right to a rescission period in which to determine an equitable course of action re defendants' (1) failure to demand the down-payment while signing for same and (2) failure to honor plaintiff's initial request for time to get counsel,

and make a wise decision under stressful circumstances.

Defendants' restrained and otherwise injured plaintiff's businesses and person by drawing him into an illegal tie-in sale. This antitrust violation caused antitrust injury to the plaintiff who thereby incurred antitrust standing to bring this action.

Mr. O'Brien's primary claim for standing, based on consumer status, is bolstered by a secondary claim that almost every viable sole-proprietorship and corporation occasionally competes with local used car dealers. Therefore, used car dealers engaging in anticompetitive actions can injure their entire business community at one time or another.

Plaintiff, as owner of a sole-proprietorship and founding/CEO of a public charity in Solvang, California was a *defacto* competitor as well as a *bona fide* consumer of the defendants at time of cause of action.

VI. ANTITRUST CRITERIA

"To establish a per se tying violation, plaintiff must show the existence of two separate and distinct products or services and an agreement conditioning the sale of the tying product on the purchase of the tied product, that the seller possesses sufficient economic power with respect to the tying product to restrain free competition appreciably in the market for the tied product, and that the seller has thereby foreclosed a not insubstantial amount of interstate commerce in the tied product." (*Allen-Myland, Inc. v. Intern. Business Machines*, 693 F. Supp. 262 (E.D. Pa. 1988), page 262, #3.)

The evolution of antitrust law and court precedent has established certain essential factors as criteria used by federal courts in determining the viability of contemporary antitrust actions.

The following list of criteria, phrased as possible objections to antitrust standing, was obtained from an authoritative source (*Antitrust Law Journal*, vol.62, 1993/1994, p. 325). The plaintiff alleges, without specificity but certainly with the ability to prove specifically and comprehensively, each criteria well met (overcome) by the facts and circumstances of this case. (1) No conspiracy: GMAC and Rio Vista were in very close working relationship at time of cause of action. Plaintiff, as he sat at a desk in the defendants' showroom, overheard the GM dealer's salesman talking to the GMAC representative on telephone. The deceptive and/or fraudulent avoidance of a down-payment demand was, apparently, a sales inducement that was discussed and agreed upon during said telephone conversation. (2) No coercion: Coercion of the plaintiff's purchase has been alleged in this complaint. (3) No tying market power: GMAC's statewide, national and international market share of the automobile finance business is legendary: Over 35% of all new car finance transactions worldwide. This great share of a vast market clearly indicates that GMAC possessed the requisite economic power to make its' tying arrangements illegal and a significant restraint upon interstate commerce and competition in relevant markets.

Unlike Credit Corp. in *United States Steel Corporation v. Fortner Enterprises*, 429 U.S. 610 (1977), GMAC was (is) not only owned by a great corporation (General Motors Corporation has about \$150 billion annual revenues) it was (is) itself a great corporation with about \$100 billion in annual revenues. Therefore, "insufficiency of economic power", the only condition that precluded antitrust conviction in the very similar Fortner case, is not a viable defense herein.

(4) No showing of possible antitrust injury: Breach of antitrust law(s), designed to prevent certain injuries to plaintiff's person and/or business have been clearly alleged in complaint.

Defendants' illegal tie-in sale directly caused plaintiff to lose his newly purchased car; incur defamation of character and scandalized SAVIORG, plaintiff's public charity which was highly sensitive (and vulnerable) to public opinion. Mr. O'Brien lost significant business, at time of cause of action and afterwards because the tie-in sale in question caused the car sold in question to be seized by defendants without due process of law.

(5) No foreclosure on competition in tied product market: Foreclosure on competition in relevant markets for tied product has been clearly alleged in this complaint.

(6) No tie-in: An illegal tie-in sale has been alleged in this complaint.

(7) No economic benefit from sale of tied product: Benefits to defendants of tied product sales are obvious.

(8) No sales agreement for sec. 3 liability: The sale was legally consummated. A legal, binding and comprehensive sales contract was properly signed by all required parties as alleged.

(9) Not two separate and distinct products: GMAC credit and Rio Vista car: two distinct products, owned by two cooperating, independent companies, tied:

(10) Business justification outweighs anticompetitive effects: The "business justification" argument is the only way a gigantic finance company can justify making (super)competitive tie-in sales on a regular basis. However, only four automobile companies dominate international markets.

Competition is obviously being restrained.

When the GMAC/Rio Vista tie-in became especially illegal, via market imperfections and/or illegal sales practices, a "business justification" defense was (is) no longer sufficient to forestall liability.

(11) Insubstantial effect on interstate commerce: Plaintiff designed, manufactured, marketed and sold software (GOLF COACH) in Tulsa, Oklahoma, and Hawaii, as well as in California from 1989 to 1995. Plaintiff also served as founding president of SAVIORG, a California public charity, in Oklahoma and California in 1993-95.

Mr. O'Brien planned to expand his software business and non-profit operations at time of cause of action, and would have probably traveled to Oklahoma, Hawaii and other states in pursuit of business had he not been injured and effectively restrained by defendants' actions.

If defendants' tie-in sale negatively and unlawfully restrained competition with local Ford and Chrysler dealerships, as alleged, then defendants' tie-in negatively effected corporations that have great and pervasive interstate business involvements. Therefore, defendants' tie-in sale, alleged herein, negatively and unlawfully affected interstate commerce.

(12) No purchase of a tied product: Purchase was legally and practically consummated with the tender of all required signatures on the comprehensive/legal sales contract, and the lawful conveyance of the purchased item into the unrestricted possession of the plaintiff.

VII. JURISDICTION

The plaintiff alleges jurisdiction for this case in UNITED STATES DISTRICT COURT.

"The district courts shall have original jurisdiction of all actions arising under the constitution, laws, or treaties of the United States. (United States Codes, Title 15, Sec. 1331)

"...any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." (United States Codes, Title 15, Sec. 15)

VIII. VENUE

Plaintiff claims the UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Los Angeles) is the correct venue for this proceeding because at least one of the defendants does business in the Central District of California.

"(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." (United States Codes, Title 28, section 1391(c))

IX. LIMITS ON ACTION

On the date of this complaint's filing in district court, plaintiff alleges this action is within the statute limits for any action under (United States Codes, Title 15) because the date of the cause of action alleged was on or about December 15, 1995.

"Any action to enforce any cause of action under section 4A, or 4C (15 USCS, sec. 15, 15a, 15c) shall be forever barred unless commenced within four years after the cause of action accrued." (15 USCS, sec. 15(b))

X. SUMMARY

This complaint should not be dismissed. "A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations."[*Hishon v. King Spaulding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984)]

Plaintiff has stated allegations in this complaint that contain sets of facts that can be proven consistent with allegations stated, and, therefore, relief can be granted by the court of jurisdiction.

Rio Vista Chevrolet in close co-operation with GMAC may not have intentionally failed to demand plaintiff's down-payment due and payable at time of sale, and so may not have fraudulently conveyed a vehicle into the buyer's possession. They may have just made an "honest mistake" and signed the consumer credit contract while neglecting to collect the down-payment. Next day, when their costly and embarrassing error was discovered, defendants tried to quickly recoup the lost down-payment, even if it meant circumventing due process of law.

On the other hand, defendants' *per se* circumvention of due process (re TILA) indicates a certain malicious intent to deprive the plaintiff of his rights and property, and thereby injure his business and person. When plaintiff demanded his TILA right to a three (3) day rescission period to evaluate his legal position and financial options, defendants refused to abate their crude and aggressive collection actions designed to get the money they had legally signed for, but had lost through inexcusable negligence and/or a fraudulent sales ploy that backfired.

GMAC/Rio Vista Chevrolet made illegal an otherwise legal tie-in sale of credit-for-car-purchase by corrupting that sale with associated illegal intentions and actions accurately characterized herein as "unreasonable". The alleged illegal tie-in sale was a clear violation of United States Codes, Title 15, Sec.1, 2, and 14, and the Cartwright Act.

Plaintiff was injured in his business and person by an antitrust violation as well as associated federal and state law violations following a sale where Mr. O'Brien was, literally, forced by circumstances to buy a General Motors car.

XI. CONCLUSION

"From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked." - Luke 12:48

There is no federal statute for *deceptive sales practice*, but there is for *illegal tie*.

When a legal tie is combined with deceptive sales practice there obtains not only state liability but federal as well.

When national and multi-national corporations are permitted to establish and exploit tie-in sale formats (credit sales-for-product sales), imparting to the corporation the ability to legally preclude local competition as "super competitors", they incur super obligation to maintain the legality and equity of their tie-ins. When corporations break state laws regulating *intrastate* sales, their *interstate* economic power to preclude competition would certainly be augmented, were it not for federal liability and/or legal strictures. Competitive advantages that are consumer and/or competitor abusive, obtained on the local level via illegal acts, impart throughout a corporation (locally, interstate and internationally) derivative revenues and other advantages.

Example: If a multi-national corporation uses deceptive sales practices to get \$X., and then uses \$X. to obtain leverage of \$10X. for business investment, it can easily compound the \$X. into Y(\$X.) where Y is equal to 5,6,7...n. If the corporation is caught at the state level, and fined \$Z. it still makes Y(\$X) - \$Z. on an interstate and/or internationally basis. Excellent businesses realize excellent return on investment.

A tie-in that is *per se* illegal, intrastate, is at least *rule-of-reason* illegal interstate.

When GMAC/RIO VISTA broke California laws re intrastate commerce, they incurred liability for breach of federal laws re interstate commerce. When defendants' tie-in sale became illegal re state law(s) it became illegal, re associated federal law(s).

Defendants' federal liability for acts alleged in this complaint, combined with plaintiff's clearly alleged antitrust injury, imparts standing to proceed on cause of action.

XI. PRAYER

The plaintiff requests the court to compel defendants' tender of compensatory damages (for personal and business injury and permanent loss of income) and punitive damages to the plaintiff in the amounts of \$1.5 million and \$100.0 million, respectively.

Plaintiff's antitrust and personal injury (100% vocational disability) are matters of public record at state/federal agencies, and said injury was (is) the direct and proximate result of defendants' alleged actions.

Defendants' actions were such that effective (not nominal) punitive measures are necessary and required for the safety and general well being of California, USA and global consumers and businesses so pervasively impacted, on a continuing basis, by the policy and actions of the great General Motors Corporation.

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RESPECTFULLY submitted on _____

by _____

Edward Michael O'Brien, *Pro se*

COMMON, FEDERAL AND STATE LAW CITATIONS

Luke 12:48

Title 15, U.S. Codes, Sec. 1, 2, 14, 15, 15(a), 15(b), 15(c)

Title 15, U.S. Codes, Sec. 1635(a), (b); 1641(a); Sec. 125(b);

Sec. 226.9 (a-d): [Truth in Lending Act]

Title 15, U.S. Codes, Sec. 1331

Title 28, U.S. Codes, Sec. 1391(c)

CALIFORNIA CODES: Business & Professions: Sec. 9884.7(a)(d)(e)(g)(h),

sec. 16727; Civil: Sec. 1770 (m)(n)(p)(q), 1812.20, 3439.03(b);

Penal: Sec. 601(a)1

CASE CITATIONS

Allen-Myland, Inc. v. Intern. Business Machines, 693 F. Supp. 262 (E.D. Pa. 1988), page 262, #3.

Brown v. National Permanent Federal Sav. & Loan Asso., 526 F Supp 815 (1981, DC)

Chicago Title Ins. Co. v. Great Western Financial Corp. (1968), 69 Cal.2d 305, 315; 70 Cal. Rptr. 849; 44 P.2d 481

In re Conner, 733 F2d 1560

Corwin v. Los Angeles Newspaper Service Bureau, Inc. (1971), 4 Cal. 3d 842, 853; 94 Cal. Rptr. 785; 484 P. 2d 953

Ellis v. GMAC, 11th Cir., USCA, No. 97-6963, 11/13/1998

Hishon v. King Spaulding, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d, 59 (1984)

Lloyd Design Corporation v. Mercedes-Benz of North America, Inc. 66 Cal. App 4th 716, 78 Cal. Rptr. 2d 185

Mirabal v. General Motors Acceptance Corp., 537 F. 2d 871 (1976)

Morrison v. Viacom, Inc. (1997), 52 Cal. App. 4th 1514, 1524, 61 Cal. Rptr. 2d 544

Murphy v. Empire of America FSA (1984, *WD NY*), 583 F Supp 1563, aff'd 746 F.2d 931

Pedro v. Pacific Plan of California (1975, *ND Cal*), 393 F Supp 315

Pongetti v. General Motors Acceptance Corp., 3:92CV150-S, 11 USCS, sec. 547 (c)3(B), (e)2(A)

United States Steel Corporation v. Fortner Enterprises, 429 U.S. 610 (1977)

LAW JOURNAL CITATIONS

Antitrust Law Journal, vol. 62, 1994; ANTITRUST TIE-IN ANALYSIS AFTER *KODAK*: UNDERSTANDING THE ROLE OF MARKET IMPERFECTIONS, Warren S. Grimes, p.304