

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER Amended on 12/29/2014

DATE: 12/29/2014

TIME: 09:21:00 AM

DEPT: 42

JUDICIAL OFFICER PRESIDING: Henry Walsh

CLERK: Hellmi McIntyre

REPORTER/ERM:

CASE NO: **56-2013-00436494-CU-BT-VTA**

CASE TITLE: **Bustillos vs. Oxnard Automobile Exchange Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion to Strike Portions of Plaintiff's Second Amended Complaint and Demurrer to Second Amended Complaint (12/9/2014) under submission, now rules as follows:

The court has taken under submission various pleading challenges filed by defendant and cross-defendant Access Finance, Inc.

The demurrers are overruled.

Access demurs to each cause of action based on the 1 year statute of limitations applicable to a cause of action based on a statutory violation. Penal Code section 637.7 prohibits use of an electronic tracking device without the consent of the owner of the vehicle in question. The complaint refers to PC 637.7, but it is not an essential element of any of the causes of action, and plaintiffs are not seeking recovery of a statutory penalty. The statute of limitations demurrer is overruled.

The demurrer to the first cause of action for negligence is overruled. Although Access is a lender, its conduct in the case went well beyond the role of a mere lender of money.

The demurrer to the second cause of action for violation of B & P section 17200 is overruled. Plaintiffs allege that the defendants (including Access) engaged in a scheme to install tracking devices without the consent of the owners of the vehicles. This is a sufficient basis to allege that the conduct was "unfair" and a "deceptive" business practice.

The demurrer to the third cause of action for violation of the Consumer Legal Remedies Act is overruled. Plaintiffs have complied with the pre-filing notice requirements prior to the filing of their second amended

complaint. Some Federal courts have found this to be insufficient. Morgan v. AT&T Wireless, 177 Cal.App.4th 1235 holds that it is sufficient. A California Court of Appeal trumps a Federal District Court. Access also contends that suit against a lender does not fall within the scope of the CLRA, and cites the court to Van Slyke v. Capital One, 503 F. Supp 2d 1353. Van Slyke involved an extension of credit in the form of a credit card. Present here are circumstances beyond just the extension of credit, i.e. the purchase of a vehicle and orchestrating the installation of the tracking devices. This is more than was involved in Van Slyke.

Access also moves to strike the complaint as being an inappropriate attempt to bring a class action, and to strike various other allegations as well. The motion to strike the class allegations is denied. The complaint alleges a general practice on the part of the defendants which probably includes a boilerplate form of contract. Discovery will determine who has a claim beyond the applicable statutory period. Damages are probably similar for potential class members based on the nature of the conduct of the defendants. This is suitable for class treatment.

The motion to strike punitive damages is denied without prejudice. The conduct of the defendants is arguably fraudulent and/or malicious. The surreptitious use of a tracking device could be "Despicable conduct" for the purpose of malice. At the very least this motion is premature.

The motion to strike treble damages is granted. There are no allegations that any plaintiff is disabled or a senior citizen as required by Civil Code section 3345. If such persons turn up, this ruling can be revisited.

The motion to strike restitution and injunctive relief is denied. Access's argument presents factual issues which cannot be resolved on demurrer.

The motion to strike the prayer for attorneys fees is denied. Civil Code section 1780 provides for the award of fees to a prevailing plaintiff. The court has determined that the Civil Code section 1780 cause of action survives demurrer.

The demurrer of the cross-complaint by RCD Enterprises.

The demurrers to the first through third causes of action are sustained.

All three causes of action sound in fraud or constructive fraud. RCD's allegations include that it had knowledge of the terms of the Access contract, and that it knew that the tracking devices were being installed without consent. Under those circumstances, RCD could not have relied on representations by Access. RCD's allegations do not include any facts suggestive of a confidential or fiduciary relationship which would justify reliance by RCD on the representations of Access that installation of the devices was permissible.

Access is given through and including January 16, 2015 to answer the second amended complaint.

RCD is given until January 16, 2015 to file an amended cross-complaint.

Clerk to give notice.