

Assigned for all purposes to: Chatsworth Courthouse, Judicial Officer: Bernie LaForteza

MACDOWELL & ASSOCIATES, LTD.
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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
FOR CHATSWORTH JUDICIAL DISTRICT

TD Bank, N.A.) CASE NO: 22CHLC05173

Plaintiff,) COMPLAINT FOR MONEY
) 1. C.R.C. 3.740 COLLECTIONS
) BREACH OF CONTRACT
) (CC 2981/2985.7)

Alicia Pineda
and DOES 1 through 10,) DEMAND \$ 13879.53
Defendants.) LIMITED CIVIL MATTER

COMES NOW the Plaintiff, and for the causes of action
against the Defendants alleges the following:

1. That Plaintiff is unaware of the true names or
capacities, whether individual, associate, corporate or
otherwise, of Defendants DOES 1 through 10, and therefore sues
them by such fictitious names, and leave of Court will be
asked to insert their true names and capacities when same have
been ascertained.

2. Pursuant to CCP 395(b), this Judicial District is the
proper venue and jurisdiction of this action because at least

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1 one Defendant resides or entered into the contract
2 within this Judicial District.

3 3. On April 19, 2019, Defendants executed
4 a written Retail Installment contract for a vehicle with
5 Duarte Nissan Motor Group. A copy of the contract is attached.

6 4. Plaintiff, TD Bank, N.A. , is the
7 assignee for consideration of Duarte Nissan Motor Group.

8 5. Within four years of the filing of this action,
9 Defendants breached the contract by failing to uphold the
10 covenants regarding use, timely payment of all sums due for
11 monthly installments, late fees, interest, insurance, excessive
12 mileage and/or excessive depreciation.

13 6. Plaintiff has performed as required pursuant to the
14 contract and law to entitle it to bring this action.

15 7. The balance owing on the contract after applying all
16 proper credits is \$13879.53. Plaintiff has made demand on Defendant
17 for payment of this balance, but Defendants have failed to pay.
18 Plaintiff has been damaged by Defendants' breach and failure to
19 pay this amount.

20 WHEREFORE Plaintiff prays for judgment against Defendants
21 for the damages of \$13879.53, and as permitted by law
22 and the contract: interest from 01-31-20, costs and attorney's
23 fees.

24 MacDowell & Associates, Ltd.

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26 
27 Attorneys for Plaintiff
28 By: Todd A. MacDowell

VERIFICATION

I, the undersigned say:

I have read the foregoing COMPLAINT FOR MONEY and know its contents.

I am one of the attorneys for the Plaintiff in this action, TD Bank, N.A..

This party's corporate officers are not local to and are absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. Based on a review of Plaintiff's records, the matters stated therein are true.

Executed on March 1, 2022 at Newport Beach, California 92660.

I declare under penalty of perjury that the foregoing is true and correct.

MacDowell & Associates, Ltd.

Attorneys for Plaintiff
BY: Todd A. MacDowell, Esq.
F201192 / A137532

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OTHERING AGREEMENTS

1. FINANCE CHARGE AND PAYMENTS

- How we will figure Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed. Seller-Creditor may receive part of the Finance Charge.
- How we will apply payments. We may apply each payment to the interest and unpaid part of the Finance Charge, to the unpaid part of Amount Financed and to other amounts you owe under this contract in any order we choose.
- How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front of the contract that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time. If you do so, you must pay the interest and unpaid part of the Finance Charge and all other amounts due up to the date of your payment. As of the date of your payment, if the minimum finance charge is greater than the interest Finance Charge, you may be charged the difference; the minimum finance charge is as follows: (1) \$25 if the original Amount Financed does not exceed \$1,000; (2) \$50 if the original Amount Financed is more than \$1,000 but not more than \$2,000; or (3) \$75 if the original Amount Financed is more than \$2,000.

2. YOUR OTHER PROMISES TO US

- If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.

GAP LIABILITY NOTICE

In the event of theft or damage to your vehicle that results in a total loss, there may be a gap between the amount you owe under this contract and the proceeds of your insurance settlement and deductible. THIS CONTRACT PROVIDES THAT YOU ARE LIABLE FOR THE GAP AMOUNT. An optional debt cancellation agreement for coverage of the gap amount may be obtained for an additional charge.

- Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fees, or charges on the vehicle, you agree to repay the amount when we ask for it.
- Security interest. You give us a security interest in:
 - The vehicle and all parts of goods put on it;
 - All money or goods received (proceeds) for the vehicle;
 - All insurance, maintenance, service, or other contracts we finance for you; and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
 This security payment of all you owe on the contract also secures your other obligations in this contract as the law allows. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
- Insurance you must have on the vehicle. You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy other type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge computed at the Annual Percentage Rate shown on the front of this contract or, at our option, the highest rate the law permits. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- What happens to returned insurance, maintenance, service, or other contract charges. If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you pay less makes late payments. If you pay late, we may also take the steps described below.
- You may have to pay all you owe at once. If you break your promises (default), we may demand that you pay all you owe on this contract at once, subject to any right the law gives you to reinstate this contract. Default means:
 - You do not pay any payment on time;
 - You give false, incomplete, or misleading information on a credit application;
 - You affect proceedings in bankruptcy or one is started against you or your property;
 - The vehicle is lost, damaged or destroyed or
 - You break any agreement in this contract.
 The amount you will owe will be the unpaid part of the Amount Financed plus the interest and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
- You may have to pay collection costs. You will pay our reasonable costs to collect what you owe, including attorney fees, court costs, collection agency fees, and fees paid by other reasonable collection efforts. You agree to pay a charge not to exceed \$15 if any check you give to us is dishonored.
- We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. Many personal items are in the vehicle, we may store them for up to 30 days. If you do not ask these items back, we may dispose of them as the law allows.
- How you can get the vehicle back. If we take it, if we repossess the vehicle, you may pay to get it back (redeem). You may redeem the vehicle by paying all you owe, or you may have the right to reinstate the contract and redeem the vehicle by paying past due payments and any late charges, providing proof of insurance, and/or taking other action to cure the default. We will reinstate your account if you pay the law to tell you when and how much to pay and/or what action you must take to reinstate the vehicle.

- We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will accept a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses include expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay the amount when we ask, we may charge you interest at the Annual Percentage Rate shown on the face of this contract, not to exceed the highest rate permitted by law, until you pay.
- What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, you agree that we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is, a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. WARRANTIES SELLER DISCLAIMS

If you do not get a written warranty, and the Seller does not enter into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle; and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide. If the Seller has sold you a certified used vehicle, the warranty of merchantability is not disclaimed.

- Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para esta vehículo forma parte del presente contrato. La información del formulario de la ventanilla con efecto legal, disposición en contrario contenida en el contrato de venta.

5. SERVICE AND COLLECTION CONTACTS

You agree that we may try to contact you in writing, by e-mail, or using prerecorded artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you. You agree that you will within a reasonable time notify us of any change in your name, address, or employment.

6. APPLICABLE LAW

Federal law and California law apply to this contract. If any part of the contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without telling them. For example, we may extend the time for making some payments without extending the time for making others.

7. WARRANTIES OF BUYER

You promise you have given true and correct information in your application for credit, and you have no knowledge that will make that information untrue in the future. We have relied on the truth and accuracy of that information in entering into this contract. Upon request, you will provide us with documents and other information necessary to verify any item contained in your credit application.

You waive the provisions of Civil Vehicle Code Section 1808.21 and authorize the California Department of Motor Vehicles to furnish your residence address to us.

CREDIT DISABILITY INSURANCE NOTICE

CLAIM PROCEDURE
If you become disabled, you must tell us right away (You are entitled to send this information to the same address to which you are normally required to send your payments, unless a different address or telephone number is given to you in writing by us as the location where we would like to be notified). We will tell you where to get claim forms. You must send in the completed form to the insurance company as soon as possible and tell us as soon as you do. If your disability insurance covers all of your missed payments, we CANNOT TRY TO COLLECT WHAT YOU OWE OR FORECLOSE UPON OR REPOSSESS ANY COLLATERAL UNTIL THREE CALENDAR MONTHS AFTER your first missed payment is due or until the insurance company pays or rejects your claim, whichever comes first. We can, however, try to collect, foreclose, or repossess if you have any money due and owing us or are otherwise in default when your disability claim is made or if a senior mortgage or lien holder is foreclosing.

If the insurance company pays the claim within the three calendar months, we must accept the money as though you paid on time. If the insurance company rejects the claim within the three calendar months or accepts the claim within the three calendar months on a partial disability and pays less than for a total disability, you will have 30 days from the date that the rejection or the acceptance of the partial disability claim is made to pay past due payments, or the difference between the past due payments and what the insurance company pays for the partial disability, plus late charges. You can contact us, and we will tell you how much you owe. After that time, we can take action to collect or foreclose or repossess any collateral you may have given.

- Seller's Right to Cancel. Seller agrees to return the vehicle to you on the date this contract is signed by Seller and you. You understand that it may take some time for Seller to verify your credit and assign the contract. You agree that if Seller is unable to assign the contract to any one of the financial institutions with whom Seller regularly does business under an assignment acceptable to Seller, Seller may cancel the contract.
- Seller shall give you written notice (in any other manner in which such notice is given to you) within 10 days of the date this contract is signed if Seller elects to cancel. Upon receipt of such notice, you must immediately return the vehicle to Seller in the same condition as when you took possession, less reasonable wear and tear expected. Seller must give back to you all consideration received by Seller, including any trade-in vehicle.
- If you do not immediately return the vehicle, you shall be liable for all expenses incurred by Seller in taking the vehicle from you, including reasonable attorney fees.
- While the vehicle is in your possession, at all times of the contract, including those relating to use of the vehicle and insurance for the vehicle, shall be held liable and you shall assume all risk of loss or damage to the vehicle. You must pay all reasonable costs for repair of any damage to the vehicle until the vehicle is returned to Seller.

ARBITRATION PROVISION

PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS

1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this binding arbitration and not by a court action. If federal law provides that a claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action, you expressly waive any right you may have to arbitrate a class action. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (aaa.org), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will pay your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of \$500, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual or collective relief. Any court having jurisdiction may enter judgment on the arbitrator's award. The Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, other than waiver of class action rights, is deemed unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Provision shall be unenforceable.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment contained under this contract.

Seller assigns its interest in this contract to:		Assigned under the terms of Seller's agreement with Assignee.	
<input type="checkbox"/> Assigned with recourse	<input checked="" type="checkbox"/> Assigned without recourse	<input type="checkbox"/> Assigned with limited recourse	<input type="checkbox"/> Assigned without limited recourse

Seller: NISSAN OF DUARTE

Form No. 800-CA-478-715