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Case Number: CGC-01-401617

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ANSWER

PAUL DOWHAL VS. BILLINGS CHEVROLET, INC. et al

001C00542225

Instructions:

Please place this sheet on top of the document to be scanned.

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6 Attorney for Defendant: ALL CARS FOR LESS, INC.,
7 a California corporation doing business as CARS FOR LESS

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO
OCT 8 2002
GORDON P. [Signature], Clerk
BY: _____ Deputy Clerk

8 SUPERIOR COURT OF THE CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10)
11 DOWHAL, an individual;)
12) Case No. 401617
13)
14) Plaintiff,)
15) DEFENDANT, ALL CARS FOR LESS,
16 vs.) INC., dba CARS FOR LESS, ANSWER TO
17) COMPLAINT
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
BILLINGS CHEVROLET, INC., et al.,)
Defendants,)
_____)

19 Comes Now Defendant, ALL CARS FOR LESS, INC., a California corporation doing
20 business as CARS FOR LESS, and answers each cause of action in the unverified Complaint filed
21 herein as follows and alleges the following affirmative defenses:

23 1. Under the provisions of §431.30(d) of the Code of Civil Procedure of the State of
24 California, this answering Defendant denies each and all of the allegations of the Complaint, and
25 the whole thereof, including each and every purported cause of action contained therein, and denies
26 that Plaintiff sustained or will sustain damages in the sum or sums alleged, or any other sums, at all.

FIRST AFFIRMATIVE DEFENSE

1
2 2. The Complaint, and each and every cause of action therein contained, fails to state facts
3 sufficient to constitute a cause of action against Plaintiff/Cross- Defendant.

4 SECOND AFFIRMATIVE DEFENSE

5 3. This present answering Defendant alleges that the damages, if any sustained by
6 Plaintiff, which Defendant expressly denies, were proximately caused or contributed to in whole
7 or in part by the Plaintiff's own actions.
8

9 THIRD AFFIRMATIVE DEFENSE

10 4. Plaintiff acknowledged, ratified, consented to and acquiesced in the alleged acts or
11 omissions, if any, of this Defendant, thus barring Plaintiff's recovery.
12

13 FOURTH AFFIRMATIVE DEFENSE

14 5. This action is barred by the Statute of Limitations.

15 FIFTH AFFIRMATIVE DEFENSE

16 6. Plaintiff was partially if not wholly negligent or otherwise at fault on their own part
17 pursuant to the Doctrine of Comparative Negligence, and should be barred from recovery of their
18 portion of the damages directly attributable to their fault.
19

20 SIXTH AFFIRMATIVE DEFENSE

21 7. Plaintiff was itself careless and negligent in the matters alleged and negligence caused
22 or contributed to the damages alleged.

23 SEVENTH AFFIRMATIVE DEFENSE

24 8. Plaintiff failed to mitigate its damages.
25
26
27

EIGHTH AFFIRMATIVE DEFENSE

1
2 9. At all times, Defendant acted under a legal right or in a good faith belief in the
3 existence of a legal right.

4 NINTH AFFIRMATIVE DEFENSE

5 10 The damages sustained by Plaintiff, if any, were caused by whole or in part, by the
6 negligence, fault or intentional conduct of others, for which this answering Defendant is not liable or
7 responsible.
8

9 TENTH AFFIRMATIVE DEFENSE

10 11. Plaintiff is entirely, or alternatively, partially barred from recovery in this action to
11 the extent it has received consideration from this Defendant or from anyone else in satisfaction of
12 any purported claim against this answering Defendant.
13

14 ELEVENTH AFFIRMATIVE DEFENSE

15 12. This answering Defendant alleges that Plaintiff's claims are barred under the doctrine
16 of unclean hands.

17 TWELFTH AFFIRMATIVE DEFENSE

18 13. Any and all events and happenings, injuries, loss, damages and expenditures referred
19 to in Plaintiff's complaint, were directly and proximately caused and contributed to by the
20 carelessness and negligence of Plaintiff, and the extent of damages sustained by Plaintiff, if any,
21 should be reduced in proportion to the amount of negligence attributable to Plaintiff.
22

23 THIRTEENTH AFFIRMATIVE DEFENSE

24 14. Plaintiff acknowledged, ratified, consented to and acquiesced in the alleged acts or
25 omissions, if any, of these Defendant, thus barring Plaintiff's recovery.
26
27
28

FOURTEENTH AFFIRMATIVE DEFENSE

15. The complaint is barred in whole or in part by laches.

FIFTEENTH AFFIRMATIVE DEFENSE

16. This answering Defendant presently has insufficient knowledge or information upon which to form a belief as to whether he may have additional, as yet unknown, affirmative defenses. This answering Defendant reserves herein the right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

SIXTEENTH AFFIRMATIVE DEFENSE

17. Plaintiff itself beached the contract alleged and excused any further performance by this answering Defendant.

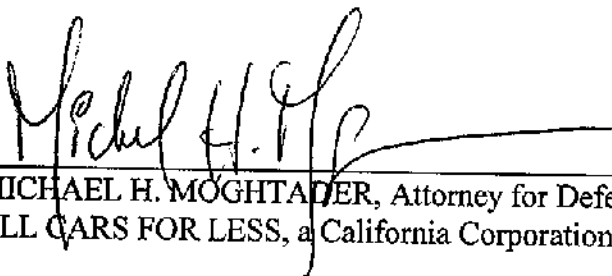
WHEREFORE, this Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff's Complaint be dismissed and that Plaintiff take nothing by this action;
2. For reasonable attorney fees;
3. For costs of suit herein incurred; and
4. For such other, further or different relief as the court deems just and proper.

DATED: October 22, 2002

LAW OFFICES OF MICHAEL H. MOGHTADER

By:


MICHAEL H. MOGHTADER, Attorney for Defendant,
ALL CARS FOR LESS, a California Corporation

**PROOF OF SERVICE
1013A (3) C. C. P.**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 18321 Ventura Boulevard, Suite 840, Los Angeles, California 90064.

On **October 24, 2002** I served the foregoing document(s) described as **DEFENDANT ANSWER TO COMPLAINT** on the interested parties in this action by placing a true (x) copy () original thereof enclosed in a sealed envelope addressed as follows:

**Eric S. Somers, Esq.
LEXINGTON LAW GROUP, LLP
1627 Irving Street
San Francisco, California 94122**

STATE


BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: I delivered such envelope by hand to the offices of the addressee(s).

BY FAX:

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **October 24, 2002**, at Los Angeles, California.


Rebeka Monteil