



NAMVBC

NADA 2015

**Lemon Laws – The Root of All
Litigation?**

By Jonathan Morrison

Dealership Lawsuit Tracker



2014 Annual California Dealership Lawsuit Report

MOST COMMON ALLEGATIONS AGAINST DEALERSHIPS IN 2014

In 2014, more than 1,000 lawsuits were filed against licensed California car dealers.

	Primary Allegation	Count	Breakdown	Count
1.	Lemon Law	410	Factory & Dealer	348
			Dealer Only	62
2.	Failure to Disclose Vehicle History/Damage	108	Accident	28
			Prior Rental	17
			Frame Damage	16
			Condition/Misc.	47
3.	Labor Law/Wrongful Termination		77	
4.	Personal Injury/Premises Liability		61	
5.	Unfair/Deceptive Business Practice		39	
6.	False Advertising		18	
7.	Incorrect Treatment of Downpayment (or Deferred Downpayment)		16	

Dealers Are Frequent Litigation/Enforcement Targets



- For Consumers:
 - Emotional and High Dollar Transactions;
 - High % of Monthly Budget; and
 - Lots of “We’ll Get You Out of Your Loan” Trial Lawyer Advertising.
- For Trial Lawyers:
 - *Very* Technical Legal Requirements;
 - Faulty One-Size-Fits-All Computerized Compliance Tools;
 - Strict Remedies of Rescission and Attorney Fees Apply in Many Situations.



Dealers Are Frequent Litigation/Enforcement Targets

- **For Government Agencies:**
 - **High Dollar and Emotional Nature of Vehicle Purchases Lead to Consumer Complaints;**
 - **Pressure to Boost Statistics (closed complaints, high dollar consumer remedies); and**
 - **Popular Political Targets.**

Violations Generally Do Not Coincide with Complaint

- *Thompson v. 10,000 RV:*
 - In May 2001, Reta Thompson wanted to trade-in her motorhome for a newer model and visited 10,000 RV in San Diego to do so.
 - She bought a service contract to cover her new(er) motorhome.
 - Several months later, she was experiencing problems with the motorhome, and sought to have it repaired under the service contract, but found that the service contract she purchased only applied to new, not used, motorhomes. The dealership refused to cover or pay for repairs to the vehicle, and would not refund the customer or replace the service contract. She sued.



Violations Generally Do Not Coincide with Complaint

- *Thompson v. 10,000 RV:*
 - The suit ended up revolving around the handling of the amount owed on the trade-in vehicle.
 - Thompson's trade-in was worth \$30,000, but she owed \$46,000 to the finance company. The likelihood of obtaining financing for the newer motorhome was bleak.
 - The dealer credited \$54,000 on the trade-in, "overallowing" \$24,000, and creating a net trade-in value of \$8,000 toward the newer vehicle.
 - The dealer took the \$24,000 overallowance and added it to the purchase price of the newer motorhome, taking it from \$69,398 to 93,398. This increased sales tax and VLF, which resulted in a higher finance charge.



Violations Generally Do Not Coincide with Complaint

- Relief Sought?: Fix My Motorhome, Refund My Service Contract, or Replace My Service Contract
- Result?: An entire line of cases against dealers (nationwide!) was borne based upon an interesting interpretation of state and federal law.



Violations Generally Do Not Coincide with Complaint

- *Nelson v. Pearson Ford:*
 - In October of 2004, Reggie Nelson bought a used Infiniti from Pearson Ford in San Diego for \$9,995. The dealer either promised that it would install new rims on the vehicle, or Nelson believed that to be the case.
 - He asked the dealer to install the rims, and it refused. He called a lawyer. They filed a class action.
 - The case revolved around the fact that the dealer could not get Nelson financed on the original written terms, executed its 10-day right to cancel the contract, and entered into a new contract on slightly different (and more favorable) terms. The contracts were both dated the original date of sale, despite a six-day difference in time.



Violations Generally Do Not Coincide with Complaint

- *Nelson v. Pearson Ford:*
 - The Court found that this “Backdating” of the rewritten contract led to a technical disclosure violation—that the interest on the period before the first installment payment due date was really due 39 days after the contract was signed, not 45 days. The fact that Nelson had possession of the vehicle this entire period was irrelevant to the Court’s conclusion that this six-days’ worth of interest (\$19.53), plus interest over the full loan period (\$7.47) should not have been paid.
 - The Court concluded that this led to an incorrect APR calculation that exceeded the tolerance limits of federal law.



Violations Generally Do Not Coincide with Complaint

- *Nelson v. Pearson Ford:*
 - The Court also found that the transaction violated the Automobile Sales Finance Act in a number of ways. The Court rendered Nelson's contract unenforceable (requiring the dealer to take the vehicle back and return every payment made by Nelson, less an offset for use of the vehicle).
 - The Court further ordered the contracts for every member of the 1,500 member class to be rescinded—involving potentially tens of millions of dollars. In light of the impossibility of hunting down the class members (most of which no longer had their vehicles), the parties settled.



Violations Generally Do Not Coincide with Complaint

- **Relief Sought?: Give Me My Rims**
- **Result?: A motherlode of class action lawsuits filed against dealers resulting from a common industry practice (with no real consumer harm) to simplify paperwork and ensure that factory or finance company incentives would be honored.**



Violations Generally Do Not Coincide with Complaint

- *Sanchez v. Valencia Holding Company:*
 - In August of 2008, Gil Sanchez visited Mercedes-Benz of Valencia and purchased a Certified Pre-Owned 2006 Mercedes-Benz S500V.
 - Soon afterward, Sanchez noticed malfunctions with the electrical systems, water leaks in the cabin and trunk, engine failures, and MIL warnings. Mercedes-Benz authorized facilities were unable to repair the vehicle. Eventually, a repair facility accused Sanchez of having tampered with or wrecking the vehicle, and stated that warranties would not apply.
 - Sanchez called a lawyer. They filed a class action alleging 15 separate violations of law.



Violations Generally Do Not Coincide with Complaint

- *Sanchez v. Valencia Holding Company:*
 - While the lawsuit invokes the Lemon Law (among many others), it primarily revolves around the following class allegations (any of which could result in a class-wide remedy of rescission):
 - Deferred Downpayments were not properly itemized on the conditional sale contract;
 - Registration Fees were not separately itemized from Vehicle License Fees; and
 - The Tire Fee was incorrectly calculated and collected.
 - The case is currently before the California Supreme Court on the enforceability of the arbitration language found in the then-current standard vehicle installment sale contract.

Violations Generally Do Not Coincide with Complaint



- Relief Sought?: Fix My Car
- Result: The enforceability of arbitration clauses and class action waivers under California law (and *not* just in the automobile finance sector) is in question.

The “Lemon Lawyers”



- Considerations:
 - A large majority of lawsuits filed against dealers initially invoke the Lemon Law, or started from complaints about the vehicle.
 - A large majority of anti-dealer consumer attorneys bill themselves as “Lemon Lawyers.”
 - Many of these “Lemon Lawyers” file few if any lawsuits invoking the Lemon Law.

The “Lemon Lawyers”



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LEMON LAW 101



Get Free Attorney Help With Your California Lemon

That's right, under the California Lemon Law, if your car is a lemon, the manufacturer of your vehicle is required to pay our fee.

Is My Car a Lemon Under the California Lemon Law?

If you have had repeated repairs to your vehicle or it has been out of service for several days, it may be a lemon under the California Lemon law and you may be entitled to a cash settlement, refund or a new car.

For a Free California Lemon Law Case Review

Call NOW 1 (800) 4NO – LEMON or click here to contact us.

Rosner, Barry, and Babbit Filings *	
Lawsuits Filed Against Dealers	Lemon Lawsuits Filed
131	17

*Source: Auto Advisory Services Lawsuit Tracker

The “Lemon Lawyers”



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Protecting Consumers
ACROSS CALIFORNIA

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The San Diego Lemon Lawyer: Get What You Paid For

You may have a California lemon law claim so you can return the vehicle and get a refund, a replacement vehicle, or a substantial cash settlement payment. Any new or used vehicle sold that has factory warranty coverage (including Certified Pre-Owned warranty coverage) has California lemon law protection. Many lemon law claims in California can be settled in very little time.

The Hanson Law Firm's experienced lemon law attorneys know the California lemon law. We also check every case for hidden fraud and finance-law disclosure violations, unlike "lemon mill firms" that abound on the internet. We are an in-California firm, not an out-of-state law firm, and are able to give you local, individual attention. Call 1-877-297-3372 (toll free) for a FREE consultation and a review of your repair history. Find out quickly if you have a case and leave the dealers and manufacturers to us.

In the News:

- AmeriCredit Repo Class Action Goes to Court
- Hanson Law Firm moves to Rancho Bernardo
- Hanson reports consumer arbitration bashed by California Supreme Court
- Hanson reports CLRA gives broad protections, courts say

>> more...

Protecting Consumers Pursuing Justice

For more information contact us:

Your Name:

Your Phone:

Your Email:

Tell us about your case:

4182

:: Submit ::

The Hanson Law Firm Filings*	
Lawsuits Filed Against Dealers	Lemon Lawsuits Filed
11	2

*Source: Auto Advisory Services Lawsuit Tracker

The “Lemon Lawyers”



- Many so-called “Lemon Lawyers” take complaints about vehicles, ask the customer to send all documents received, and interview the customer about the purchase process.
- They look for technical (preferably DMS-generated) non-compliance by the dealer.
- A key tool to managing litigation risk is to prevent the customer from feeling the need to call a Lemon Lawyer.

The Lemon Law



- California's Song-Beverly Consumer Warranty Act:
 - Establishes “implied” warranties unless specifically disclaimed (“As Is”);
 - Requires that “express” warranties meet certain requirements;
 - Requires that manufacturers must either:
 - 1) replace goods; or
 - 2) reimburse the buyer in an amount equal to the purchase price paid by the buyer (with an offset for use prior to discovering the defect)

if unable to repair the goods to conform to the warranty
after a reasonable number of attempts.

The Lemon Law



- The Tanner Act (“Lemon Law”) Applies to “New Vehicles”:
 - New vehicles bought or used primarily for personal, family, or household purposes;
 - New vehicles with a GVWR <10,000 lbs., purchased or used primarily for business purpose by a person with a CA-registered fleet of no more than five vehicles.
 - Dealer-owned vehicles;
 - Demonstrators; and
 - Other vehicles sold with a new factory warranty.

The Lemon Law



- Provides a rebuttable presumption that a “reasonable number” of repair attempts have been made if within 18 months from delivery or 18,000 miles on the odometer (whichever occurs first):
 - Two Repair Attempts: Problems likely to cause death or serious bodily injury and the consumer notifies the manufacturer;
 - Four Repair Attempts: Any other problem, and the customer notifies the manufacturer; or
 - More than 30 Days Out of Service.
- **Manufacturers are required to indemnify dealers for Lemon Law Claims**

Lemon Law Arbitration



- California's Lemon Law allows automakers to establish arbitration programs, which can be certified by the Department of Consumer Affairs's Arbitration Certification Program.
- If:
 - an automaker has a certified program in place; and
 - the vehicle purchaser or lessee receives timely notification about the program (POS),
- Then the customer must go through the arbitration process before asserting the statutory lemon presumptions.
- The customer may sue afterward, but the findings are admissible into evidence.

Lemon Law Arbitration



- All of the major automakers have certified Lemon Law Arbitration Programs in place, aside from Honda, Acura, Lexus, Chrysler, Dodge, Jeep, Ram, Fiat, and Mercedes Benz

Lemon Law Arbitration



- 2012 Arbitration Study: 1,766 Disputes Filed
 - 918 were outside of arbitration jurisdiction;
 - 371 were settled in mediation;
 - 477 were arbitrated.
- Of the 477 arbitrations:
 - 334 resulted in no relief to the consumer;
 - 95 resulted in vehicle replacement or a refund;
 - 43 resulted in the vehicle being repaired; and
 - 5 resulted in expense reimbursement.
- Of the consumers who received no relief, 13% went on to file a lawsuit against the automaker despite having the arbitration claim denied.

Drop in the Bucket



Lemon Law Data 2011-2014		
Year	Lemon Law Title Brands Issued*	% Increase
2011	6,950	x
2012	7,099	2.1
2013	7,418	4.5
2014	8,282	11.7

*Source: California Department of Motor Vehicles

Lemon Lawsuit Tracker



2014 California Lemon Law Breakdown by 12 Most-Frequent Defendants				
#	Factory	Lemon Lawsuits 2014*	% of Observed Lemon Law Claims	Market %**
1	General Motors	614	28.18%	9.6%
2	Ford Motor Co.	544	24.97%	10.2%
3	Chrysler Group	205	9.41%	6.0%
4	BMW/Mini	184	8.44%	4.9%
5	Nissan/Infiniti	175	8.03%	8.8%
6	Volkswagen Group	145	6.65%	5.1%
7	Mercedes-Benz	84	3.85%	4.1%
8	Hyundai	72	3.30%	3.9%
9	Kia	52	2.39%	3.5%
10	Honda/Acura	46	2.11%	13.1%
11	Toyota/Lexus	36	1.65%	22.0%
12	Jaguar/Land Rover	22	1.01%	0.7%
	Total	2,179		

*Source: Estimates from Auto Advisory Services Litigation Tracking
 **Source: California New Car Dealers Association Auto Outlook Report, Fourth Quarter
 Red: Lemon Lawsuit % Exceeds Marketshare

Lemon Lawsuit Tracker



2014 California Lemon Law Breakdown by 12 Most-Frequent Defendants					
#	Factory	Lemon Lawsuits 2014*	% of Observed Lemon Law Claims	Market %**	% over Marketshare
1	General Motors	614	28.18%	9.6%	193.52%
2	Ford Motor Co.	544	24.97%	10.2%	144.76%
3	Chrysler Group	205	9.41%	6.0%	56.80%
4	BMW/Mini	184	8.44%	4.9%	72.33%
5	Nissan/Infiniti	175	8.03%	8.8%	-8.74%
6	Volkswagen Group	145	6.65%	5.1%	30.48%
7	Mercedes-Benz	84	3.85%	4.1%	-5.98%
8	Hyundai	72	3.30%	3.9%	-15.28%
9	Kia	52	2.39%	3.5%	-31.82%
10	Honda/Acura	46	2.11%	13.1%	-83.89%
11	Toyota/Lexus	36	1.65%	22.0%	-92.49%
12	Jaguar/Land Rover	22	1.01%	0.7%	44.23%
	Total	2,179			

*Source: Estimates from Auto Advisory Services Litigation Tracking
 **Source: California New Car Dealers Association Auto Outlook Report, Fourth Quarter
Red: Lemon Lawsuit % Exceeds Marketshare

Lemon Lawsuit Causation



- Why would there be such a wide disparity?
 - Lack of a Lemon Law Arbitration Program?
 - But of the automakers *without* a certified Lemon Law Arbitration Program, only the Chrysler Group brands have Lemon Law Complaints in proportions exceeding their marketshare.

Lemon Lawsuit Causation



- Why would there be such a wide disparity?
 - Customer Service Problems?
 - JD Power Customer Service Survey Results
(Index based upon survey results relating to service satisfaction at franchised dealer facilities for maintenance or repair work among owners and lessees of 1- to 5-year-old vehicles)

Lemon Lawsuit Causation



Brand by JDP 2015 CSI Survey Results					
Brand	LL Suits (by Group)	Group LL Suit %	Group Marketshare	% Over Marketshare	JDP CSI, 2015
Jaguar	22	1.01%	0.70%	44.23%	877
Lexus	36	1.65%	22.00%	-92.49%	870
Audi	145	6.65%	5.10%	30.48%	865
Lincoln	544	24.97%	10.20%	144.76%	861
Cadillac	614	28.18%	9.60%	193.52%	858
Infiniti	175	8.03%	8.80%	-8.74%	857
Mercedes	84	3.85%	4.10%	-5.98%	854
BMW	184	8.44%	4.90%	72.33%	841
Porsche	145	6.65%	5.10%	30.48%	840
Buick	614	28.18%	9.60%	193.52%	836
Mini	184	8.44%	4.90%	72.33%	834
Acura	46	2.11%	13.10%	-83.89%	825
Land Rover	22	1.01%	0.70%	44.23%	823
Volkswagen	145	6.65%	5.10%	30.48%	818
Ind. Avg.	x	x	x	x	815
GMC	614	28.18%	9.60%	193.52%	811
Chevrolet	614	28.18%	9.60%	193.52%	807
Toyota	36	1.65%	22.00%	-92.49%	805
Hyundai	72	3.30%	3.90%	-15.28%	803
Kia	52	2.39%	3.50%	-31.82%	798
Nissan	175	8.03%	8.80%	-8.74%	796
Honda	46	2.11%	13.10%	-83.89%	796
Scion	36	1.65%	22.00%	-92.49%	777
Ford	544	24.97%	10.20%	144.76%	776
Chrysler	205	9.41%	6.00%	56.80%	775
Fiat	205	9.41%	6.00%	56.80%	762
Ram	205	9.41%	6.00%	56.80%	756
Dodge	205	9.41%	6.00%	56.80%	749
Jeep	205	9.41%	6.00%	56.80%	740

Lemon Lawsuit Causation



Brand by JDP 2014 CSI Survey Results					
Brand	LL Suits (by Group)	Group LL Suit %	Group Marketshare	% Over Marketshare	JDP CSI, 2014
Fiat	205	9.41%	6.00%	56.80%	NA
Cadillac	614	28.18%	9.60%	193.52%	872
Audi	145	6.65%	5.10%	30.48%	868
Lexus	36	1.65%	22.00%	-92.49%	867
Lincoln	544	24.97%	10.20%	144.76%	865
Infiniti	175	8.03%	8.80%	-8.74%	865
Jaguar	22	1.01%	0.70%	44.23%	853
Porsche	145	6.65%	5.10%	30.48%	848
Mercedes	84	3.85%	4.10%	-5.98%	847
BMW	184	8.44%	4.90%	72.33%	847
Acura	46	2.11%	13.10%	-83.89%	843
Buick	614	28.18%	9.60%	193.52%	835
Volkswagen	145	6.65%	5.10%	30.48%	830
GMC	614	28.18%	9.60%	193.52%	828
Mini	184	8.44%	4.90%	72.33%	828
Ind. Avg.	x	x	x	x	818
Chevrolet	614	28.18%	9.60%	193.52%	812
Land Rover	22	1.01%	0.70%	44.23%	805
Toyota	36	1.65%	22.00%	-92.49%	801
Chrysler	205	9.41%	6.00%	56.80%	799
Hyundai	72	3.30%	3.90%	-15.28%	798
Nissan	175	8.03%	8.80%	-8.74%	797
Kia	52	2.39%	3.50%	-31.82%	796
Honda	46	2.11%	13.10%	-83.89%	792
Ford	544	24.97%	10.20%	144.76%	791
Scion	36	1.65%	22.00%	-92.49%	780
Dodge	205	9.41%	6.00%	56.80%	765
Jeep	205	9.41%	6.00%	56.80%	756
Ram	205	9.41%	6.00%	56.80%	752

Lemon Lawsuit Causation



- Why would there be such a wide disparity?
 - Difference In Build Quality?
 - JD Power Dependability Survey Results
(National Survey: Problems per 100 Vehicles over 3 years)

Lemon Lawsuit Causation



Brand by JDP 2015 Dependability Study Results					
Brand	LL Suits (by Group)	Group LL Suit %	Group Marketshare	% Over Marketshare	JDP Dpndblty, 2015
Lexus	36	1.65%	22.00%	-92.49%	89
Buick	614	28.18%	9.60%	193.52%	110
Toyota	36	1.65%	22.00%	-92.49%	111
Cadillac	614	28.18%	9.60%	193.52%	114
Honda	46	2.11%	13.10%	-83.89%	116
Porsche	145	6.65%	5.10%	30.48%	116
Lincoln	544	24.97%	10.20%	144.76%	118
Mercedes	84	3.85%	4.10%	-5.98%	119
Scion	36	1.65%	22.00%	-92.49%	121
Chevrolet	614	28.18%	9.60%	193.52%	123
GMC	614	28.18%	9.60%	193.52%	123
Acura	46	2.11%	13.10%	-83.89%	124
Nissan	175	8.03%	8.80%	-8.74%	128
Ram	205	9.41%	6.00%	56.80%	134
Kia	52	2.39%	3.50%	-31.82%	138
Infiniti	175	8.03%	8.80%	-8.74%	144
BMW	184	8.44%	4.90%	72.33%	146
Ind. Avg.	x	x	x	x	147
Audi	145	6.65%	5.10%	30.48%	158
Volkswagen	145	6.65%	5.10%	30.48%	165
Chrysler	205	9.41%	6.00%	56.80%	173
Ford	544	24.97%	10.20%	144.76%	188
Hyundai	72	3.30%	3.90%	-15.28%	188
Land Rover	22	1.01%	0.70%	44.23%	192
Dodge	205	9.41%	6.00%	56.80%	193
Fiat	205	9.41%	6.00%	56.80%	197
Jeep	205	9.41%	6.00%	56.80%	258
Mini	184	8.44%	4.90%	72.33%	273
Jaguar	22	1.01%	0.70%	44.23%	NA

Lemon Lawsuit Causation



Brand by JDP 2014 Dependability Study Results					
Brand	LL Suits (by Group)	Group LL Suit %	Group Marketshare	% Over Marketshare	JDP Dpndblty, 2014
Lexus	36	1.65%	22.00%	-92.49%	68
Mercedes	84	3.85%	4.10%	-5.98%	104
Cadillac	614	28.18%	9.60%	193.52%	107
Acura	46	2.11%	13.10%	-83.89%	109
Buick	614	28.18%	9.60%	193.52%	112
Toyota	36	1.65%	22.00%	-92.49%	114
Honda	46	2.11%	13.10%	-83.89%	114
Lincoln	544	24.97%	10.20%	144.76%	114
Porsche	145	6.65%	5.10%	30.48%	125
Infiniti	175	8.03%	8.80%	-8.74%	128
BMW	184	8.44%	4.90%	72.33%	130
Chevrolet	614	28.18%	9.60%	193.52%	132
Jaguar	22	1.01%	0.70%	44.23%	132
GMC	614	28.18%	9.60%	193.52%	133
Ind. Avg.	x	x	x	x	133
Ford	544	24.97%	10.20%	144.76%	140
Nissan	175	8.03%	8.80%	-8.74%	142
Kia	52	2.39%	3.50%	-31.82%	151
Audi	145	6.65%	5.10%	30.48%	151
Scion	36	1.65%	22.00%	-92.49%	153
Chrysler	205	9.41%	6.00%	56.80%	155
Volkswagen	145	6.65%	5.10%	30.48%	158
Ram	205	9.41%	6.00%	56.80%	165
Hyundai	72	3.30%	3.90%	-15.28%	169
Jeep	205	9.41%	6.00%	56.80%	178
Land Rover	22	1.01%	0.70%	44.23%	179
Dodge	205	9.41%	6.00%	56.80%	181
Mini	184	8.44%	4.90%	72.33%	185
Fiat	205	9.41%	6.00%	56.80%	NA

Lemon Lawsuit Causation



- While Dependability has some apparent correlation with increased litigation under the Lemon Law, it does not explain the outsized amount of lemon litigation against General Motors or Ford.
- According to several dealer defense attorneys, this appears best explained by their approach to resolving Lemon Law complaints.

The Lemon Law



- Practical Approaches For Dealers:
 - Consult manufacturer about detection and notification requirements and recommendations (if any);
 - Train service team to track and report repeat service customers, including:
 - Multiple visits to dealership for repair;
 - Include “Could Not Replicate” as repair attempt; and
 - Take note of complaints about *other* dealership failed repair or “Could Not Replicate” experiences.
 - Make periodic follow-up calls to customers;
 - Coordinate with sales & finance staff who handle customer complaints.
 - **GET FACTORY INVOLVED EARLY**

The Lemon Law



- **Guidance For Automakers:**
 - **Encourage Dealers to be Proactive in Reporting Potential Lemons;**
 - ***Be Proactive in Handling Potential Lemons;***
 - **Promote Your Lemon Law Arbitration Programs;**
 - **Streamline Indemnification Procedures**

The Lemon Law



- **Conclusion:**
 - **By getting dealer, consumer, and factory on the same page and addressing consumer concerns at the earliest date:**
 - **The factory wins: legal fees will be reduced;**
 - **The dealer wins: legal fees and additional exposure will be reduced, and customer satisfaction increased;**
 - **The consumer wins: they will get out of the vehicle sooner and put into a replacement vehicle or receive a refund;**
 - **The state wins: clogged courtrooms and complaint lines will be reduced.**
 - **Only the attorneys lose when the lemon law operates as intended.**



Questions, Comments, Insults?

(714) 838-1233

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