



1 denied-in-part defendants' motion to dismiss, plaintiff filed its  
2 First Amended Complaint ("FAC"). Defendants now move to dismiss  
3 the fourth claim of the FAC pursuant to Federal Rule of Civil  
4 Procedure 12(b)(6) for failure to state a claim upon which relief  
5 can be granted.

6 Plaintiff's fourth claim alleges that defendants  
7 violated California Vehicle Code section 11713.3(a), which  
8 provides,

9 It is unlawful and a violation of this code for any  
10 manufacturer, manufacturer branch, distributor, or  
11 distributor branch licensed under this code to do any of  
12 the following:

13 (a) To refuse or fail to deliver in reasonable quantities  
14 and within a reasonable time after receipt of an order  
15 from a dealer having a franchise for the retail sale of  
16 any new vehicle sold or distributed by the manufacturer  
17 or distributor, any new vehicle or parts or accessories  
18 to new vehicles as are covered by the franchise, if the  
19 vehicle, parts, or accessories are publicly advertised as  
20 being available for delivery or actually being delivered.

21 . . .

22 To support its claim, plaintiff alleges that Mr. Woods,  
23 Roadtrek's Western Territory Regional Sales Manager, also  
24 functioned as plaintiff's "special agent" with "limited  
25 ordering/purchasing powers." (FAC ¶¶ 3, 55.) In this capacity,  
26 Mr. Woods allegedly "work[ed] 60% for Roadtrek and 40% for the  
27 dealer." (Id. ¶ 19.) Plaintiff further alleges that Mr. Woods  
28 "failed to order popular models" of recreational vehicles from  
Roadtrek, which caused plaintiff to lose sales. (Id. ¶ 58.)

Under section 11713.3(a), liability is predicated upon  
a manufacturer's failure to act "after receipt of an order from a  
dealer." However, aside from an oral contract under which Mr.  
Woods was to "mak[e] sure that [plaintiff's dealerships] were

1 properly stocked" (id. ¶ 34), the FAC does not allege that either  
2 Mr. Woods or Roadtrek received from plaintiff or its agents any  
3 communication, request, or "order" for specific vehicles, parts,  
4 or accessories with which they failed to comply. Accordingly,  
5 since the FAC does not allege conduct that is prohibited by  
6 section 11713.3(a), the court must grant defendants' motion to  
7 dismiss the fourth claim of the FAC.

8           IT IS THEREFORE ORDERED that defendants' motion to  
9 dismiss the fourth claim the FAC be, and the same hereby is,  
10 GRANTED.

11           Plaintiff has thirty (30) days from the date of this  
12 Order to file a second amended complaint, if it can do so  
13 consistent with this Order.

14 DATED: January 7, 2009

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16 WILLIAM B. SHUBB  
17 UNITED STATES DISTRICT JUDGE  
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