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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 1.1A. AUTOGRAPHED MEMORABILIA [1739.7- 1739.7.] (*Heading of Title 1.1A amended by Stats. 2016, Ch. 258, Sec. 1.*)

1739.7. (a) As used in this section:

(1) "Autographed collectible" means an item bearing the signature of a particular person that is sold or offered for sale for fifty dollars (\$50) or more, excluding sales tax and shipping fees, when the dealer offers the signed item at a higher price than the dealer would charge for a comparable item without the signature.

(2) For purposes of this section, an autographed collectible shall be limited to the following items:

(A) Sports items, including, but not limited to, a photograph, ticket, plaque, sports program, trading card, item of sports equipment or clothing, or other sports memorabilia.

(B) Entertainment media items related to music, television, and films, including, but not limited to, a picture, photo, record, compact disc, digital video disc, ticket, program, playbill, clothing, hat, poster, toy, plaque, trading card, musical instrument, or other entertainment memorabilia.

(3) For purposes of this section, and notwithstanding paragraph (2), an autographed collectible does not include the following items:

(A) Works of fine art, as defined by paragraph (1) of subdivision (d) of Section 982 that are originals or numbered multiples, and signed by the artist or maker.

(B) Furniture and decorative objects, including works of pottery, jewelry, and design that are signed by the artist or maker.

(C) Signed books, manuscripts, and correspondence, as well as ephemera not related to sports or entertainment media.

(D) Signed numismatic items or bullion.

(4) "Consumer" means any natural person who purchases an autographed collectible from a dealer for personal, family, or household purposes. "Consumer" also includes a prospective purchaser meeting these criteria.

(5) (A) "Dealer" means a person who is in the business of selling or offering for sale autographed collectibles exclusively or nonexclusively, and sells three or more autographed collectibles in a period of 12 months. "Dealer" includes an auctioneer or auction company that sells autographed collectibles at a public auction. "Dealer" includes a person engaged in a mail-order, telephone-order, online, or television business for the sale of autographed collectibles.

(B) "Dealer" does not include any of the following:

(i) A pawnbroker licensed pursuant to Chapter 3 (commencing with Section 21300) of Division 8 of the Financial Code, if the autographed collectible was acquired through a foreclosure on a collateral loan, provided that the pawnbroker does not hold himself or herself out as having knowledge or skill peculiar to autographed collectibles.

(ii) The person who autographed the collectible.

(6) "Limited edition" means any autographed collectible that meets all of the following requirements:

(A) A company has produced a specific quantity of an autographed collectible and placed it on the open market.

(B) The producer of the autographed collectible has posted a notice, at its primary place of business, that it will provide any consumer, upon request, with a copy of a notice that states the exact number of an autographed collectible produced in that series of limited editions.

(C) The producer makes available, upon request of a consumer, evidence that the electronic encoding, films, molds, or plates used to create the autographed collectible have been destroyed after the specified number of autographed collectibles have been produced.

(D) The sequence number of the autographed collectible and the number of the total quantity produced in the limited edition are printed on the autographed collectible.

(7) "Person" means any natural person, partnership, corporation, limited liability company, company, trust, association, or other entity, however organized.

(8) "Representation" means any oral or written representation, including, but not limited to, a representation in an advertisement, brochure, catalog, flyer, invoice, sign, radio or television broadcast, online communication, Internet Web page, email, or other commercial or promotional material.

(9) "Auctioneer" means an auctioneer as defined in subdivision (d) of Section 1812.601, or a representative or agent of an auctioneer.

(10) "Auction company" means an auction company as defined in subdivision (c) of Section 1812.601, or a representative or agent of an auction company.

(b) A dealer who, in selling or offering to sell to a consumer an autographed collectible, makes a representation to a consumer that the signature on the autographed collectible is the authentic signature of a particular person in that person's own hand, shall furnish an express warranty to the consumer at the time of sale. The dealer shall retain a copy of the express warranty for not less than seven years. The express warranty, which may be included in the bill of sale or invoice, shall meet all of the following criteria:

(1) Is written in at least 10-point type.

(2) Is signed by the dealer or his or her authorized agent, and contains the dealer's true legal name, business street address, and the last four digits of the dealer's seller's permit account number from the California Department of Tax and Fee Administration, if applicable.

(3) Specifies the date of sale and the purchase price.

(4) Describes the autographed collectible and specifies the name of the person who autographed it.

(5) Expressly warrants the autographed collectible as authentic, and that the warranty is conclusively presumed to be part of the bargain. The warranty shall not be negated or limited by reason of the lack of words such as "warranty" or "guarantee" or because the dealer does not have a specific intent or authorization to make the warranty or because any statement relevant to the autographed collectible is or purports to be, or is capable of being, merely the dealer's opinion.

(6) If the autographed collectible is offered as one of a limited edition, specifies (A) how the autographed collectible and edition are numbered and (B) the size of the edition and the size of any prior or anticipated future edition, if known by the dealer. If the size of the edition and the size of any prior or anticipated future edition is not known, the warranty shall contain an explicit statement to that effect.

(7) Indicates whether the dealer is surety bonded or is otherwise insured to protect the consumer against errors and omissions of the dealer and, if bonded or insured, provides proof thereof.

(8) Indicates if the autographed collectible was autographed in the presence of the dealer, and any proof thereof. Specify the date and location of, and the name of a witness to, the autograph signing, if known, and applicable.

(9) Identifies all information upon which the dealer relied when making the representation that the autographed collectible is authentic.

(10) Indicates an identifying serial number that corresponds to an identifying number printed on the autographed collectible item, if any.

(11) Indicates whether the item was obtained or purchased from a third party.

(c) The dealer shall retain, after January 1, 2018, a record of the name and address of the third party, as described in paragraph (11) of subdivision (b). This third-party information may be discoverable during a civil dispute. However, nothing in this subdivision prohibits a party from objecting to a discovery request on the grounds of a right to privacy. This third-party information shall be kept on file for seven years.

(d) (1) In addition to any other right or remedy provided under existing law, including, but not limited to, any rights and remedies provided under contract law, a consumer shall have the right to cancel the contract for the purchase of an autographed collectible represented by a dealer as authentic until midnight of the third day after the day on which the consumer purchased the autographed collectible. Notice of the cancellation may be provided in person or in a written or electronic form, and is deemed effective once communicated or sent. The autographed collectible shall be returned to the dealer within 30 days of the sale in the same condition in which it was sold, the cost of which shall be borne by the consumer. The price paid by the consumer shall be refunded within 10 days of receipt of the returned autographed collectible. Nothing in this section prevents the parties from agreeing to cancel a contract after midnight of the third day after the day on which the consumer purchases the autographed collectible.

(2) This subdivision does not apply to the following:

(A) Autographed collectibles sold by an auctioneer or auction company at auction.

(B) Autographed collectibles purchased by barter or trade of other items.

(C) Autographed collectibles sold at a trade show.

(D) Autographed collectibles sold by one dealer to another dealer.

(e) (1) No dealer shall display or offer for sale an autographed collectible unless, at the location where the autographed collectible is offered for sale and in close proximity to the autographed collectible merchandise, there is a conspicuous sign that reads as follows: "SALE OF AUTOGRAPHED COLLECTIBLES: AS REQUIRED BY LAW, A DEALER WHO SELLS TO A CONSUMER ANY COLLECTIBLE DESCRIBED AS BEING AUTOGRAPHED MUST PROVIDE A WRITTEN EXPRESS WARRANTY AT THE TIME OF SALE AND A THREE-DAY RIGHT OF RETURN. THIS DEALER MAY BE SURETY BONDED OR OTHERWISE INSURED TO ENSURE THE AUTHENTICITY OF ANY AUTOGRAPHED COLLECTIBLE SOLD BY THIS DEALER."

(2) This subdivision does not apply to an autographed collectible sold by an auctioneer or auction company at auction or an autographed collectible sold at a trade show.

(f) No dealer selling at a trade show, nor an auctioneer or auction company shall display or offer for sale an autographed collectible unless, at the location where the autographed collectible is offered for sale and in close proximity to the autographed collectible merchandise, there is a conspicuous sign that reads as follows:

"SALE OF AUTOGRAPHED COLLECTIBLES: AS REQUIRED BY LAW, A DEALER WHO SELLS TO A CONSUMER ANY COLLECTIBLE DESCRIBED AS BEING AUTOGRAPHED MUST PROVIDE A WRITTEN EXPRESS WARRANTY AT THE TIME OF SALE. THIS DEALER MAY BE SURETY BONDED OR OTHERWISE INSURED TO ENSURE THE AUTHENTICITY OF ANY AUTOGRAPHED COLLECTIBLE SOLD BY THIS DEALER."

(g) Any dealer engaged in a mail-order, telephone-order, or online business for the sale of autographed collectibles:

(1) Shall include the disclosure specified in subdivision (e), in type of conspicuous size, in any written advertisement relating to an autographed collectible.

(2) Shall include in each television or online advertisement relating to an autographed collectible the following written onscreen message, which shall be prominently displayed, easily readable, and clearly visible for no less than five seconds, and which shall be repeated for five seconds once during each four-minute segment of the advertisement following the initial four minutes:

"A written express warranty is provided with each autographed collectible, as required by law. This dealer may be surety bonded or otherwise insured to ensure the authenticity of any autographed collectible sold by this dealer."

(3) Shall include as part of the oral message of each radio advertisement for an autographed collectible the disclosure specified in subdivision (e).

(h) In a civil action brought by a consumer against a dealer, the following shall apply:

(1) A dealer who fails to provide an express warranty, or provides an express warranty that does not comply with all of the requirements of subdivision (b), shall be subject to a civil penalty of up to one thousand dollars (\$1,000), payable to the consumer.

(2) A dealer who provides a false express warranty that injures the consumer shall be subject to a civil penalty of up to one thousand dollars (\$1,000) payable to the consumer.

(3) A dealer who provides a false express warranty and whose act or omission amounts to gross negligence that injures the consumer, shall be subject to a civil penalty of three thousand dollars (\$3,000), or an amount equal to three times actual damages, whichever is greater, payable to the consumer.

(4) A dealer who knowingly provides a false express warranty, or knowingly fails to provide an express warranty required by this section, and whose act or omission results in an injury to a consumer shall be subject to a civil penalty of five thousand dollars (\$5,000), or an amount equal to five times actual damages, whichever is greater, payable to the consumer.

(5) A consumer may recover court costs, reasonable attorney's fees, interest, and expert witness fees, if applicable, pursuant to an action described in paragraphs (2) to (4), inclusive.

(6) The remedies specified in this section are in addition to, and not in lieu of, any other remedy that may be provided by law. The court, in its discretion, may award punitive damages based on the egregiousness of the dealer's conduct.

(i) A dealer may be surety bonded or otherwise insured for purposes of indemnification against errors and omissions arising from the authentication, sale, or resale of autographed collectibles.

(j) It is the intent of the Legislature that neither the amendment to this section by Assembly Bill 1570 of the 2015–2016 Regular Session, adding an exclusion of a provider or operator of an online marketplace to the definition of a dealer, nor the amendment to this section by Assembly Bill 228 of the 2017–2018 Regular Session, removing that exclusion from the definition of a dealer, be construed to affect the decision of the Court of Appeal in *Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816.

(Amended by Stats. 2017, Ch. 696, Sec. 1. (AB 228) Effective October 12, 2017.)