VACHON LAW FIRM
Michael R. Vachon, Esq. (SBN 206447)
17150 Via Del Campo, Suite 204
San Diego, California 92127
Tel.: (858) 674-4100
Fax: (858) 674-4222

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

NAOMI BOINUS-REEHORST, an individual; Plaintiff, v. INFINITI OF MISSION VIEJO, a business entity, form unknown; and DOES 1 through 75, Defendants.	Case No.: 30-2013-00660120 COMPLAINT FOR: 1. VIOLATION OF VEHICLE LEASING ACT; 2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (INJUNCTIVE RELIEF ONLY); AND 3. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200) Assigned to: Hon. Luis A. Rodriguez Dept.: C-6

SUMMARY

1. This lawsuit arises out of Plaintiff's lease of a 2013 Infiniti G37 from Defendant Infiniti of Mission Viejo. Infiniti of Mission Viejo has an illegal practice of (as it did in this case) improperly rolling undisclosed "negative equity" from trade-in vehicles into the prices of newly-leased automobiles. "Negative Equity" refers to the amount, if any, by which the outstanding loan or lease balance for a trade-in vehicle exceeds the vehicle's fair market value (*i.e.*, when a consumer trades in a vehicle with "negative equity" this effectively increases the amount that he or she will have to finance in connection with the new vehicle). Failing to properly disclose the full amount of negative equity in a transaction violates the Vehicle Leasing Act (Civil Code §2985.7 *et seq*.) (the "VLA"), the Consumers Legal Remedies Act (Civil Code §1750 *et seq*.) (the "CLRA"), and Bus. & Prof. Code §17200 *et seq*. (the "UCL").

PARTIES

2. Plaintiff Naomi Boinus-Reehorst is an individual residing in Arcadia, California.

3. Defendant Infiniti of Mission Viejo is a business entity, form unknown, that operates a car dealership under the name "Infiniti of Mission Viejo" at 28471 Marguerite Parkway, Mission Viejo, California.

4. Plaintiff does not know the true names and capacities, whether corporate, partnership, associate, individual, or otherwise, of defendants sued herein as Does 1 through 75, inclusive, and thus name them under the provisions of Section 474 of the California Code of Civil Procedure. Defendants Does 1 through 75 are in some manner responsible for the acts set forth herein, and are legally liable to Plaintiff. Plaintiff will set forth the true names of the fictitiously-named defendants together with appropriate charging allegations when ascertained.

5. All acts of corporate employees were authorized or ratified by an officer, director, or managing agent of the corporate employer.

FACTS

6. Plaintiff alleges as follows, on information and belief, formed after an inquiry reasonable under the circumstances:

7. On or about May 28, 2013, Plaintiff visited Infiniti of Mission Viejo at its dealership lot, and inquired about leasing that certain 2013 Infiniti G37 with vehicle identification number JN1CV6AP0DM303116 (the "Infiniti G37"). Plaintiff informed Infiniti of Mission Viejo that as a part of any lease of a new automobile she would be trading in the 2010 Infiniti G37 that she had previously leased (the "Trade-In Vehicle"). She also inquired as to how much negative equity from the Trade-In Vehicle would be rolled into the transaction for a new automobile.

8. Infiniti of Mission Viejo contacted the Trade-In Vehicle's lender, and discovered that, as of May 28, 2013, the payoff amount for the lease on the Trade-In Vehicle was $23,070.22. Because Infiniti of Mission Viejo assessed the Trade-In Vehicle's fair market value to be only $17,700, Plaintiff had $5,370.33 in "negative equity" in the Trade-In Vehicle.

9. Infiniti of Mission Viejo prepared the documents for the Infiniti G37 lease, and presented them to Plaintiff in a large pile. In preparing the lease contract, Infiniti of Mission Viejo intentionally understated the true amount of negative equity in the "Itemization of Gross Capitalized Cost" section of the lease in order to trick Plaintiff into believing that the negative equity included in the Infiniti G37's lease was less than it actually was. Specifically, in the "Itemization of Gross Capitalized Cost" section of the lease, Infiniti of Mission Viejo falsely stated that the "Prior Credit or Lease Balance" (*i.e.*,

the negative equity) was $2,336.40, even though the true amount of negative equity was actually $5,370.22.

10. Infiniti of Mission Viejo's improper disclosure of the negative equity fooled Plaintiff into believing that the Infiniti G37's lease contract contained less negative equity than it actually did. Had Plaintiff known about the true amount of negative equity she would not have leased the Infiniti G37. Infiniti of Mission Viejo falsified and failed to properly disclose the negative equity in order to trick Plaintiff into signing the lease contract and/or to obtain financing for a transaction that otherwise would not have been financed.

11. Consistent with Plaintiff's experience, Infiniti of Mission Viejo has a pattern and practice of illegally rolling undisclosed negative equity from trade-in vehicles into the leases of new vehicles without properly disclosing the true amounts of such negative equity.

FIRST CAUSE OF ACTION

Violation of Vehicle Leasing Act

12. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1 through 11.

13. The lease contract for the Infiniti G37 is a lease contract under the VLA.

14. Infiniti of Mission Viejo is a "lessor" under the VLA.

15. Plaintiff is a "lessee" under the VLA.

16. The Infiniti G37 is a "motor vehicle" under the VLA.

17. Civil Code Section 2985.8(c)(2)(F) requires that all motor vehicle lease contracts disclose in a section titled "Itemization of Gross Capitalized Cost" the true amount of any outstanding prior credit or lease balance.

18. Infiniti of Mission Viejo intentionally failed to comply with Civil Code Section 2985.8(c)(2)(F). Such failures include, but are not limited to, the fact that it falsely stated in the "Itemization of Gross Capitalized Cost" section of Plaintiff's lease contract that Plaintiff's outstanding prior credit or lease balance was $2,336.40, even though Infiniti of Mission Viejo knew that the true amount of negative equity in Plaintiff's lease was actually $5,370.22. Infiniti of Mission Viejo made this false representation intentionally, for the purpose of fooling Plaintiff into believing that lease transaction contained less negative equity than it actually did and/or to trick a lending into financing a transaction that it otherwise would not.

19. Because Infiniti of Mission Viejo's violations of the VLA were willful, Plaintiff is entitled to rescind her lease for the Infiniti G37.

20. Plaintiff has been damaged by Defendants' violations of the VLA. Plaintiff is entitled to statutory and compensatory damages pursuant to Civil Code Sections 2988.5(a) and (b), and also to her attorney's fees and costs.

SECOND CAUSE OF ACTION

Consumers Legal Remedies Act - Injunctive Relief Only

21. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1 through 20.

22. The Infiniti G37 constitutes "goods" leased for use primarily for personal, family or household purposes pursuant to Civil Code Section 1761(a).

23. Plaintiff is a "consumer" under the CLRA.

24. The advertisement and the lease of the Infiniti G37 to Plaintiff, as well as the performance of that contract, are "transactions" under the CLRA.

25. The CLRA prohibits numerous unlawful business acts, including: (1) representing that a transaction confers or involves rights, remedies, or obligations which

it does not have or involve, or which are prohibited by law; (2) representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; and (3) representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction. The CLRA also prohibits omissions where there exists an independent legal requirement to make a statement or disclosure.

26. Infiniti of Mission Viejo violated the CLRA by misrepresenting by failing to properly disclose the negative equity involved in Plaintiff's lease contract for the Infiniti G37.

27. Plaintiff is concurrently serving Infiniti of Mission Viejo with a CLRA notification and demand letter via regular mail and certified mail, return receipt requested. The notice letter sets forth the relevant facts, notifies Infiniti of Mission Viejo of its CLRA violations, and requests that Infiniti of Mission Viejo promptly remedy those violations.

28. Under the CLRA, a plaintiff may without prior notification file a complaint alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant does not remedy the CLRA violations within 30 days of notification, the plaintiff may amend her or his CLRA causes of action without leave of court to add claims for damages. Plaintiff will amend this complaint to add damages claims if Infiniti of Mission Viejo does not remedy its violations within the statutory period.

29. Under the CLRA, Plaintiff is entitled to a permanent injunction prohibiting practices that violate the CLRA.

30. Infiniti of Mission Viejo has an illegal pattern and practice of misrepresenting and failing to properly disclose the amount of negative equity being rolled into consumers' lease transactions.

31. Plaintiff is entitled to a permanent injunction that compels Infiniti of Mission Viejo to notify all consumers who have been victims of the above-described illegal conduct, and enjoining Infiniti of Mission Viejo from such further acts of illegal conduct.

32. Plaintiff is also entitled to recover her attorneys' fees, costs, and expenses.

THIRD CAUSE OF ACTION

Unfair Competition

33. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1 through 32.

34. Infiniti of Mission Viejo's acts, omissions, misrepresentations, practices, and non-disclosures constituted unlawful, unfair, and fraudulent business acts and practices within the meaning of California Business & Professions Code Sections 17200 *et seq*.

35. Infiniti of Mission Viejo has engaged in "unlawful" business acts and practices by misrepresenting and failing to properly disclose the amount of negative being rolled into automobile lease transactions. These acts and practices were intended to and did violate the VLA and the CLRA.

36. Infiniti of Mission Viejo also engaged in "fraudulent" business acts or practices in that the representations and omissions of material fact described above have a tendency and likelihood to deceive the general public.

37. Infiniti of Mission Viejo also engaged in "unfair" business acts or practices in that the justification for leasing vehicles based on the misrepresentations and omissions of material fact delineated above is outweighed by the gravity of the resulting harm, particularly considering the available alternatives, and offends public policy, is

immoral, unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

38. The above described unlawful, fraudulent, or unfair business acts and practices conducted by Infiniti of Mission Viejo continue to this day and present a threat to Plaintiff and the general public in that Infiniti of Mission Viejo has failed to publicly acknowledge the wrongfulness of its actions and provide full equitable injunctive and monetary relief as required by law.

39. Pursuant to California Business & Professions Code Section 17203, Plaintiff is entitled to and seeks a permanent injunction from this Court requiring Infiniti of Mission Viejo to immediately cease such acts of unfair competition and enjoining Infiniti of Mission Viejo from continuing to conduct business via the unlawful, fraudulent, and/or unfair business acts and practices set forth in this Complaint and from failing to fully disclose the true nature of its misrepresentations, and ordering Infiniti of Mission Viejo to engage in a corrective notice and advertising campaign.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows as appropriate for the particular causes of action:

1. For permanent injunctive relief as permitted under the VLA, the CLRA, and Business & Professions Code Section 17203;
2. For the declaratory and/or equitable relief under the VLA, the CLRA, and Business & Professions Code Section 17203;
3. For rescission of Plaintiff's $26,223.34 lease contract for the Infiniti G37, and restitution of all amounts that Plaintiff has paid towards the Infiniti G37's lease;

4. For incidental, consequential, punitive, statutory, and actual damages according to proof at trial;

5. For pre judgment interest;

6. For attorney's fees, costs of suit, and out-of-pocket litigation expenses; and

7. For such other and further relief as the Court deems just and proper under the circumstances.

VACHON LAW FIRM
Attorney for Plaintiff Naomi Boinus-Reehorst

Date: July 3, 2013

__/s/_____
Michael R. Vachon, Esq.