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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - HALL OF JUSTICE COURTHOUSE

ELIZABETH CZERSKI, an individual,

Plaintiff

v.

KEARNY MESA INFINITI, a business
entity, form unknown; and
DOES 1 THROUGH 75,

Defendants.

Case No.: 37-2015-00020512-CU-BT-CTL

COMPLAINT FOR:

- 1. VIOLATION OF VEHICLE LEASING ACT; AND
- 2. UNFAIR COMPETITION.

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SUMMARY

1. This lawsuit arises out of Plaintiff's lease of a 2013 Infiniti G37 from Defendant Kearny Mesa Infiniti. Kearny Mesa Infiniti violated California's Vehicle Leasing Act (Civil Code §2985.7 *et seq.*) (the "VLA") by failing to disclose in the Infiniti G37's lease contract the amount and deadline for Plaintiff's agreed-upon deferred down payment. This conduct also amounts to a violation of California's Unfair Competition Law statute (Bus. & Prof. Code §17200 *et seq.*) (the "UCL"). As a result, Plaintiff is entitled to rescission of her lease contract, restitution of the amounts that she paid for the Infiniti G37, an injunction preventing Infiniti of Mission Viejo from continuing to employ the unlawful conduct alleged herein, and her attorney's fees and costs.

PARTIES

2. Plaintiff Elizabeth Czerski is an individual residing in La Jolla, California.

3. Defendant Kearny Mesa Infiniti is a business entity, form unknown, that operates as a car dealership under the name "Kearny Mesa Infiniti" at 4670 Convoy Street, San Diego, 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.

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2 FACTS

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

5 7. On or about January 21, 2013, Plaintiff visited Kearny Mesa Infiniti at its
6 dealership lot, and inquired about leasing that certain 2013 Infiniti G37 with vehicle
7 identification number JN1CV6APXDM716094 (the "Infiniti G37").

8 8. Kearny Mesa Infiniti asked Plaintiff how much money she could pay as a down
9 payment, and Plaintiff informed Kearny Mesa Infiniti that she could trade in a 2001 Toyota
10 Forerunner that she owned, but that she could not make any other payment that day. Kearny
11 Mesa Infiniti and Plaintiff agreed to a \$3,000 trade-in value for the Toyota Forerunner.

12 9. Kearny Mesa Infiniti ran Plaintiff's credit report, and realized that it would not
13 be able to obtain financing for Plaintiff's lease of the Infiniti G37 unless she also made an
14 immediate down payment in addition to her trade in of the Toyota Forerunner.

15 10. In order to obtain Plaintiff's signature on a lease contract before she left and
16 could change her mind, and/or in order to trick a lender into financing Plaintiff's lease of the
17 Infiniti G37, Kearny Mesa Infiniti asked Plaintiff if she could make an additional payment
18 towards her down payment at some point in the future. Plaintiff and Kearny Mesa Infiniti then
19 agreed that Plaintiff would pay an additional \$1,500 down payment in 30 days (*i.e.*, on February
20 20, 2013).

21 11. Kearny Mesa Infiniti prepared the lease contract for Plaintiff's lease of the Infiniti
22 G37. In doing so, Kearny Mesa Infiniti falsely stated in that contract that Plaintiff was making
23 a total down payment of \$4,500 on or before the signing of the lease, consisting of the \$3,000
24 trade-in vehicle and \$1,500 in cash. In reality however, Plaintiff had only agreed to make the
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1 \$3,000 trade in on or before the signing of the lease, and the parties agreed that the remaining
2 \$1,500 would be paid on February 20, 2013.

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4 12. Plaintiff signed the lease contract for the Infiniti G37.

5 13. Kearny Mesa Infiniti had Plaintiff write a check for the remaining \$1,500 down
6 payment. Kearny Mesa Infiniti then created a separate document titled "Hold
7 Check(s)/And/Or Third Party Checkwriter Agreement" (the "Hold-Check Agreement"), which
8 memorialized the parties' agreement that Kearny Mesa Infinite would wait until February 20,
9 2013 prior to cashing the \$1,500 check. The fine print of the Hold-Check Agreement also
10 stated that if it is necessary to enforce the agreement, the prevailing party shall be entitled to
11 collect its attorney's fees and costs incurred in doing so.

12
13 14. Plaintiff signed the lease contract, and took delivery of the Infiniti G37 on
14 January 21, 2013.

15 15. The lease contract does not state that the remainder of Plaintiff's down payment
16 is due on February 20, 2013. It also does not state the amount of the payment due on February
17 20, 2013, or that if it is necessary to enforce the Hold-Check Agreement, the prevailing party
18 shall be entitled to collect its attorney's fees and costs incurred in doing so.

19 16. Consistent with Plaintiff's experience, Kearny Mesa Infiniti has a pattern and
20 practice of: (1) falsely stating in automobile lease contracts that lessees are making cash down
21 payment on or before the signing or delivery of the motor vehicle, when in reality they have
22 agreed to make payments at a future date; (2) not disclosing in lease contracts the amounts and
23 due dates of down payment amounts that lessees have agreed to pay on a date that is after the
24 dates on which they have signed and took delivery of their vehicles; (3) having lessees sign
25 separate documents (*i.e.*, Hold-Check Agreements) in connection with their automobile lease
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1 transactions that specify the amounts and due dates of deferred down payments, and which
2 also contain additional terms not mentioned in the lessees' lease contracts.
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4 FIRST CAUSE OF ACTION

5 VIOLATION OF VEHICLE LEASING ACT

6 17. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
7 through 16.

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

9 19. Kearny Mesa Infiniti is a "lessor" under the VLA.

10 20. Plaintiff is a "lessee" under the VLA.

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

12 22. Civil Code Section 2985.8(a) requires that all motor vehicle lease contracts
13 subject to the VLA contain in a single document all of the agreements between the lessor and
14 the lessee with respect to the obligations of each party (hereafter referred to as the "Single
15 Document Rule").
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17 23. Kearny Mesa Infiniti violated the Single Document Rule by failing to disclose
18 in the lease contract the amount and due date of Plaintiff's deferred down payment, Kearny
19 Mesa Infiniti's agreement not to immediately cash the down payment check, and the agreement
20 to permit collection of attorney's fees and costs for any disputes arising under the Hold-Check
21 Agreement.
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23 24. Civil Code Section 2985.8(c)(1) requires that all motor vehicle lease contracts
24 contain all of the disclosures required by Regulation M, in the manner required or permitted
25 by Regulation M.
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1 disclosing in lease contracts the amounts and due dates of down payment amounts that lessees
2 have agreed to pay on a date that is after the dates on which they have signed and took delivery
3 of their vehicles; (3) having lessees sign separate documents (*i.e.*, Hold-Check Agreements) in
4 connection with their automobile lease transactions that specify the amounts and due dates of
5 deferred down payments, and which also contain additional terms not mentioned in the lessees'
6 lease contracts.
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8 32. Kearny Mesa Infiniti also engaged in "fraudulent" business acts or practices in
9 that the representations and omissions of material fact described above have a tendency and
10 likelihood to deceive the general public.
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12 33. Kearny Mesa Infiniti also engaged in "unfair" business acts or practices in that
13 the justification for leasing vehicles based on the misrepresentations and omissions of material
14 fact delineated above is outweighed by the gravity of the resulting harm, particularly
15 considering the available alternatives, and offends public policy, is immoral, unscrupulous,
16 unethical, and offensive, or causes substantial injury to consumers.
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18 34. The above described unlawful, fraudulent, or unfair business acts and practices
19 conducted by Kearny Mesa Infiniti continue to this day and present a threat to Plaintiff and
20 the general public in that Kearny Mesa Infiniti has failed to publicly acknowledge the
21 wrongfulness of its actions and provide full equitable injunctive and monetary relief as required
22 by law.

23 35. Pursuant to California Business & Professions Code Section 17203, Plaintiff is
24 entitled to and seeks a permanent injunction from this Court requiring Kearny Mesa Infiniti to
25 immediately cease such acts of unfair competition and enjoining Kearny Mesa Infiniti from
26 continuing to conduct business via the unlawful, fraudulent, and/or unfair business acts and
27 practices set forth in this Complaint and from failing to fully disclose the true nature of its
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1 misrepresentations, and ordering Kearny Mesa Infiniti to engage in a corrective notice and
2 advertising campaign.
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4 PRAYER FOR RELIEF

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

6 1. For permanent injunctive relief as permitted under Business & Professions Code
7 Section 17203;

8 2. For the declaratory and/or equitable relief under Business & Professions Code
9 Section 17203;

10 3. For rescission of Plaintiff's \$22,212.36 lease contract for the Infiniti G37, and
11 restitution of all amounts that Plaintiff has paid towards the Infiniti G37's lease;

12 4. For general and statutory damages, as permitted under the VLA;

13 5. For pre judgment interest;

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

15 7. For such other and further relief as the Court deems just and proper under the
16 circumstances.
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20 Date: June 17, 2015

21 Michael R. Vachon, Esq.
22 Attorney for Plaintiff Elizabeth Czerski
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