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20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**

<p>22 FEDERAL TRADE COMMISSION, Plaintiff, 23 v. 24 UNIVERSAL CITY NISSAN, INC., et 25 al. 26 Defendants.</p>	<p>27 Case no 2:16-cv-07329-CAS(AJWx) Honorable Christina A. Snyder 28 (PROPOSED) PRELIMINARY INJUNCTION ORDER Date: November 14, 2016 Time: 10:00 a.m. Courtroom: 5, 312 N. Spring St.</p>
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1 The Federal Trade Commission (“Commission” or “FTC”) has filed a
2 Complaint seeking a permanent injunction and other equitable relief pursuant to
3 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §
4 53(b), charging Defendants with operating a common enterprise that has
5 deceptively and unlawfully advertised offers to purchase, finance, and lease
6 vehicles and engaged in deceptive and unfair practices involving the financing of
7 vehicles. The Commission’s Complaint alleges that Defendants’ deceptive and
8 unfair practices violate Section 5(a) of the FTC Act, 15 U.S.C. §45(a); the Truth in
9 Lending Act (“TILA”), 15 U.S.C. §§ 1601-1666j, and its implementing Regulation
10 Z, 12 C.F.R. § 226; and the Consumer Leasing Act (“CLA”), 15 U.S.C. §§ 1667-
11 1667f, and its implementing Regulation M, 12 C.F.R. § 213.

12 The Commission also has filed a Motion for a Preliminary Injunction and
13 Other Equitable Relief (“Motion”) against Defendants, seeking preliminary relief
14 in connection with the acts and practices alleged in the Complaint relating to
15 Counts I-II and VII-IX.

16 The Court, having considered the FTC’s Complaint, the Motion, the
17 memorandum of points and authorities in support of the Motion, including the
18 declarations and exhibits attached thereto, and Defendants’ opposition to the
19 motion, and being otherwise advised, makes the following findings of fact and
20 conclusions of law:

21 **FINDINGS**

22
23 1. This is an action by the Commission instituted under Section 13(b) of
24 the FTC Act, 15 U.S.C. § 53(b); TILA, 15 U.S.C. §§ 1601-1666j; and the CLA, 15
25 U.S.C. §§ 1667-1667f. The Commission has authority to seek the relief contained
26 herein.

27 2. The Commission’s Complaint states a claim upon which relief may be
28 granted against Defendants under Section 5(a) of the FTC Act, 15 U.S.C. §45(a);

1 Section 144 of TILA, 15 U.S.C. § 1664, and Section 226.24(d) of Regulation Z, 12
2 C.F.R. §226.24(d), as amended; and Section 184 of the CLA, 15 U.S.C. § 1667c,
3 and Section 213.7 of Regulation M, 12 C.F.R. §213.7.

4 3. This Court has jurisdiction over the subject matter of this case and all
5 parties hereto. Venue in the Central District of California is proper.

6 4. The acts and practices of Defendants are in or affecting commerce, as
7 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

8 5. The FTC has demonstrated that there is good cause to believe that
9 Defendants have engaged and are likely to engage in acts or practices in
10 connection with the advertising, marketing, offering for sale or lease, sale or lease,
11 and servicing of motor vehicles that violate Section 5(a) of the FTC Act, TILA, or
12 the CLA, including but not limited to:

- 13 a. misrepresenting that consumers can finance or lease vehicles for
14 prominently advertised terms;
- 15 b. deceptively advertising discounts or prices that are not generally
16 available to consumers;
- 17 c. deceptively advertising that Defendants will pay off a consumer's
18 trade-in vehicle when in fact Defendants have added any amount
19 owed on the trade-in vehicle to the new loan or lease balance the
20 consumer must pay;
- 21 d. representing that consumers can finance vehicles for prominently
22 advertised terms when those terms are components of lease offers
23 and not credit offers; and
- 24 e. deceptively posting or using online reviews that purport to be
25 independent and objective or that do not disclose material
26 connections with Defendants.

27 The FTC is therefore likely to prevail on the merits of this action.
28

1 accompanying text or other visual elements so that it is easily
2 noticed, read, and understood.

- 3 3. An audible disclosure, including by telephone or streaming video,
4 must be delivered in a volume, speed, and cadence sufficient for
5 ordinary consumers to easily hear and understand it.
- 6 4. In any communication using an interactive electronic medium,
7 such as the Internet or software, the disclosure must be
8 unavoidable.
- 9 5. The disclosure must use diction and syntax understandable to
10 ordinary consumers and must appear in each language in which the
11 representation that requires the disclosure appears.
- 12 6. The disclosure must comply with these requirements in each
13 medium through which it is received, including all electronic
14 devices.
- 15 7. The disclosure must not be contradicted or mitigated by, or
16 inconsistent with, anything else in the communication.

17 C. “**Consumer credit**” means credit offered or extended to a consumer
18 primarily for personal, family, or household purposes, as set forth in Section
19 226.2(a)(12) of Regulation Z, 12 C.F.R. § 226.2(a)(12), as amended.

20 D. “**Consumer lease**” means a contract in the form of a bailment or lease
21 for the use of personal property by a natural person primarily for personal, family,
22 or household purposes, for a period exceeding four months and for a total
23 contractual obligation not exceeding the applicable threshold amount, whether or
24 not the lessee has the option to purchase or otherwise become the owner of the
25 property at the expiration of the lease, as set forth in Section 213.2 of Regulation
26 M, 12 C.F.R. § 213.2, as amended.

27 E. “**Defendants**” means all of the Individual and Corporate Defendants,
28 individually, collectively, or in any combination.

- 1 1. **“Corporate Defendants”** means Covina MJL, LLC, also d/b/a Sage
2 Covina Chevrolet; Glendale Nissan/Infiniti, Inc., also d/b/a Glendale
3 Infiniti and d/b/a Glendale Nissan; Sage Downtown, Inc., also d/b/a
4 Kia Of Downtown Los Angeles; Sage Holding Company, Inc.; Sage
5 Management Co., Inc.; Sage North Hollywood, LLC, also d/b/a Sage
6 Pre-Owned; Sage Vermont, LLC, also d/b/a Sage Hyundai; Universal
7 City Nissan, Inc., also d/b/a Universal Nissan; Valencia Holding Co.,
8 LLC, also d/b/a Mercedes-Benz Of Valencia; West Covina Auto
9 Group, LLC, also d/b/a West Covina Toyota and d/b/a West Covina
10 Toyota/Scion; West Covina Nissan, Inc.; and their successors and
11 assigns.
- 12 2. **“Individual Defendants”** means Joseph Schrage, a/k/a Joseph Sage;
13 Leonard Schrage, a/k/a Leonard Sage, and Michael Schrage, a/k/a
14 Michael Sage.

15 F. **“Document”** and **“Electronically Stored Information”** are
16 synonymous in meaning and equal in scope to the usage of the terms in Rule 34(a)
17 of the Federal Rules of Civil Procedure and include but are not limited to:

- 18 1. The original or a true copy of any written, typed, printed,
19 electronically stored, transcribed, taped, recorded, filmed, punched, or
20 graphic matter or other data compilations of any kind, including, but
21 not limited to, letters, email or other correspondence, messages,
22 memoranda, interoffice communications, notes, reports, summaries,
23 manuals, magnetic tapes or discs, tabulations, books, records, checks,
24 invoices, work papers, journals, ledgers, statements, returns, reports,
25 schedules, or files; and
- 26 2. Any electronically stored information stored on any server,
27 Blackberrys or any type of mobile device, flash drives, personal
28 digital assistants (“PDAs”), desktop personal computers and

1 workstations, laptops, notebooks, and other portable computers, or
2 other electronic storage media, whether assigned to individuals or in
3 pools of computers available for shared use, or personally owned but
4 used for work-related purposes; backup disks and tapes, archive disks
5 and tapes, and other forms of offline storage, whether stored onsite
6 with the computer used to generate them, stored offsite in another
7 company facility, or stored, hosted, or otherwise maintained offsite by
8 a third-party; and computers and related offline storage used by
9 Defendants or Defendants’ participating associates, which may
10 include persons who are not employees of the company or who do not
11 work on company premises.

12 G. “**Lease inception**” means prior to or at consummation of the lease or
13 by delivery, if delivery occurs after consummation.

14 H. “**Motor Vehicle**” means as follows:

- 15 1. Any self-propelled vehicle designed for transporting persons or
16 property on a street, highway, or other road;
- 17 2. Recreational boats and marine equipment;
- 18 3. Motorcycles;
- 19 4. Motor homes, recreational vehicle trailers, and slide-in campers; and
- 20 5. Other vehicles that are titled and sold through dealers.

21 **ORDER**

22 **I. PROHIBITED MISREPRESENTATIONS RELATING TO THE**
23 **SALE, FINANCING, OR LEASING OF VEHICLES**

24 **IT IS ORDERED** that Defendants, Defendants’ officers, agents, employees,
25 and attorneys, and those persons or entities in active concert or participation with
26 any of them who receive actual notice of this Order, whether acting directly or
27 indirectly, in connection with the advertising, marketing, offering for sale or lease,
28 sale or lease, or servicing of motor vehicles, are preliminarily restrained and

1 enjoined from misrepresenting, expressly or by implication:

2 A. The cost of:

- 3 1. Purchasing a vehicle with financing, including but not limited to: the
4 amount or percentage of the down payment; the number of payments
5 or period of repayment; the amount of any payment, and the
6 repayment obligations over the full term of the loan, including any
7 balloon payment; or
8 2. Leasing a vehicle, including but not limited to: the total amount due at
9 lease inception, the down payment, amount down, acquisition fee,
10 capitalized cost reduction, any other amount required to be paid at
11 lease inception, and the amounts of all monthly or other periodic
12 payments.

13 B. The existence, amount, or availability of any discount, rebate, bonus,
14 incentive, or price;

15 C. That Defendants will pay all or any portion of any loan or lease
16 balance remaining on a trade-in vehicle, or whether the consumer will be
17 responsible for paying all or any portion of any remaining loan or lease balance;

18 D. Any restriction, limitation, or condition applicable to the finance or
19 purchase of vehicles for the advertised terms, including whether such terms are
20 lease or credit offers; or

21 E. Any aspect of any opinion, belief, finding, or experience of any
22 person, including, but not limited to, that any such opinions, beliefs, findings, or
23 experiences are independent or objective.

24 **II. REQUIRED DISCLOSURES**

25 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,
26 agents, employees, and attorneys, and those persons or entities in active concert or
27 participation with any of them who receive actual notice of this Order, whether
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1 acting directly or indirectly, in connection with any advertisement for any
2 extension of consumer credit, are preliminarily restrained and enjoined from:

3 A. Stating, expressly or by implication:

4 1. The amount or percentage of any down payment, the number of
5 payments or period of repayment, the amount of any payment, or the
6 amount of any finance charge, without disclosing clearly and
7 conspicuously all of the following terms:

8 a. The amount or percentage of the down payment;

9 b. The terms of repayment; and

10 c. The annual percentage rate, using the term “annual percentage
11 rate” or the abbreviation “APR.” If the annual percentage rate
12 may be increased after consummation of the credit transaction,
13 that fact must also be disclosed; or

14 2. A rate of finance charge without stating the rate as an “annual
15 percentage rate” or the abbreviation “APR,” using that term; or

16 B. Failing to comply in any respect with Regulation Z, 12 C.F.R. Part
17 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-
18 1667.

19 **IV. CONSUMER LEASING ACT**

20 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,
21 agents, employees, and attorneys, and those persons or entities in active concert or
22 participation with any of them who receive actual notice of this Order, whether
23 acting directly or indirectly, in connection with any advertisement for any
24 consumer lease, are preliminarily restrained and enjoined from:

25 A. Stating, expressly or by implication, the amount of any payment or
26 that any or no initial payment is required at lease inception without disclosing
27 clearly and conspicuously the following terms:

28 1. That the transaction advertised is a lease;

- 1 2. The total amount due at lease signing or delivery;
- 2 3. Whether or not a security deposit is required;
- 3 4. The number, amounts, and timing of scheduled payments; and
- 4 5. That an extra charge may be imposed at the end of the lease term in a
- 5 lease in which the liability of the consumer at the end of the lease term
- 6 is based on the anticipated residual value of the vehicle; or

7 B. Failing to comply in any respect with Regulation M, 12 C.F.R. Part
8 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as
9 amended.

10 **V. TEMPORARY REMOVAL OF DECEPTIVE REVIEWS**

11 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,
12 agents, employees, and attorneys, and those persons or entities in active concert or
13 participation with any of them who receive actual notice of this Order, including
14 any person hosting or otherwise controlling any Internet content, server, or website
15 that contains any existing reviews or testimonials that do not comply with Sections
16 I.E and II.C (hereinafter “Deceptive Reviews”), immediately upon service of the
17 Order upon them, shall:

18 A. Immediately take any necessary steps to ensure that any Deceptive
19 Reviews on any website, blog, or social media service are no longer
20 viewable or accessible to the public using the Internet;

21 B. Preserve any: (1) Internet content, servers, or websites that contain
22 Deceptive Reviews, by preserving such content, servers, or websites in the
23 format in which they were maintained as of the date of entry of this Order,
24 and (2) electronically stored information related to Deceptive Reviews; and

25 C. Within ten (10) days following this Order, notify in writing counsel for
26 the FTC of any Deceptive Reviews subject to Section V.A-B.

1 Such notice shall include: (1) the name of the business entity; (2) the address and
2 telephone number of the business entity; (3) the names of the business entity's
3 officers, directors, principals, and managers; and (4) a detailed description of the
4 business entity's intended activities; and

5 C. The commencement, prosecution, stay, continuation, cessation,
6 conclusion, or enforcement of any suit, legal proceeding, or judgment for, against,
7 on behalf of, in, or in the name of, any Defendant at least five (5) business days
8 after the occurrence of any such action.

9 **VIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

10 **IT IS FURTHER ORDERED** that immediately after service of this Order,
11 Defendants shall provide a copy of this Order to each of their agents, employees,
12 officers, subsidiaries, affiliates, attorneys, independent contractors, representatives,
13 franchisees, and all persons in active concert or participation with Defendants.
14 Within ten (10) days following this Order, Defendants shall provide the
15 Commission with an affidavit identifying the names, titles, addresses, and
16 telephone numbers of the persons that Defendants have served with a copy of this
17 Order in compliance with this provision.

18 **IX. SERVICE OF THIS ORDER**

19 **IT IS FURTHER ORDERED** that copies of this Order may be served by
20 facsimile, email, personal or overnight delivery, or by U.S. Mail, by agents and
21 employees of the FTC or by private process server upon any person or entity that
22 may be subject to any provision of this Order.

23 **X. CORRESPONDENCE**

24 **IT IS FURTHER ORDERED** that, for purposes of this Order, because
25 mail addressed to the FTC is subject to delay due to heightened security
26 screenings, all affidavits, correspondence, notice, and service of pleadings on the
27
28

1 Commission shall be sent via email or overnight courier such as FedEx or UPS
2 addressed to:

3 Thomas J. Widor
4 Federal Trade Commission
5 600 Pennsylvania Ave., NW
6 Mail Stop: CC-10232
7 Washington, DC 20580

8 **XI. RETENTION OF JURISDICTION**

9 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
10 matter for purposes of construction, modification, and enforcement of this Order.
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12 **SO ORDERED THIS** __ day of _____, 2016.
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16 _____
17 THE HON. CHRISTINA SNYDER
18 UNITED STATES DISTRICT COURT
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