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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

AUSTIN T. DEEHAN,)
)
 Plaintiff,)
)
 v.)
)
 LITHIA OF SOUTH CENTRAL AK,)
 INC., d/b/a CHEVROLET OF SOUTH)
 ANCHORAGE,)
)
 Defendant.)
 _____)

COPY
 Original Received
DEC - 3 2019
 Clerk of the Trial Courts

Case No. 3AN-19- 11483 CI

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

COMES NOW plaintiff Austin T. Deehan, by and through counsel, the Northern Justice Project, LLC, and for his complaint against defendant Lithia of South Central AK, Inc. (hereinafter "Lithia"), alleges and requests relief as follows:

PRELIMINARY STATEMENT

1. Specialist Austin T. Deehan is serving our country as an active duty soldier in the U.S. Army and is stationed at Joint Base Elmendorf-Richardson (JBER). Lithia tried to rip him off and would have succeeded had Specialist Deehan and

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JBER's advocacy services been less vigilant.

2. Lithia attempted the tried and true "yo-yo financing" scam with Specialist Deehan. This scam is a bait and switch tactic used by many car dealerships in Alaska and throughout the country to cheat unsuspecting consumers out of more money. In the textbook version of this scam, the dealer "sells" a car to the consumer and assures the buyer that he or she has been approved for financing at a certain interest rate and term. The dealer allows the consumer to drive the vehicle home and show it off to friends, family, and co-workers. After several days or weeks, when the buyer has become attached to the vehicle, the dealer will call the buyer and say that the financing was not approved on the promised terms and that the consumer must now either surrender the vehicle or agree to new financing terms that provide the dealer with even more profit.

3. This is the scam that Lithia tried to perpetrate on Specialist Deehan. He now brings this lawsuit as a private attorney general to put a stop to this pernicious practice by Lithia, one of the country's largest car dealers, and to protect other servicemen and servicewomen in Alaska from falling victim to the same scam.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to AS 22.10.020(c) as plaintiff is seeking injunctive relief which is beyond the jurisdiction of the District Court.

5. Venue is proper under AS 22.10.030 and Alaska Civil Rule 3(c) as

plaintiff's claims arose within the Third Judicial District.

PARTIES

6. Plaintiff Austin T. Deehan is a natural person residing in Anchorage, Alaska. Plaintiff is an active duty soldier with the United States Army stationed at JBER with a rank of Specialist.

7. Defendant Lithia of South Central AK, Inc., is an Alaska corporation which owns and operates the Chevrolet of South Anchorage dealership located at 9100 Old Seward Highway in Anchorage. Defendant is a subsidiary of Lithia Motors, Inc., which is a Fortune 500 company and is one of the largest automobile retailers in the United States, with more than 180 dealerships in 18 states.

GENERAL ALLEGATIONS

8. On August 19, 2019, Specialist Deehan went to the Chevrolet of South Anchorage dealership to inquire about a 2014 Harley Davidson motorcycle that was listed for sale. Specialist Deehan asked to take the motorcycle on a test drive. The sales manager, Jacob Baldrige, told Specialist Deehan that he could not test drive the motorcycle without a preapproved loan. Specialist Deehan agreed to let Lithia find him financing for the motorcycle.

9. Specialist Deehan provided Lithia with all information requested for the loan application, including his military Leave and Earnings Statement (LES) as evidence of his income, and a copy of his Enlisted Record Brief (ERB) which summarized his military career information. Lithia then prepared a loan application on behalf of Specialist Deehan with the information provided. Specialist Deehan was

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subsequently informed that he was approved for a loan through Alaska USA Federal Credit Union.

10. After Specialist Deehan was approved for the loan, he was allowed to take the motorcycle for a test drive. He fell in love with the motorcycle and decided to purchase it. Upon returning from the test drive, Specialist Deehan asked the sales representative to finalize the sales paperwork. Accordingly, Lithia prepared and Specialist Deehan signed various forms, including a Retail Installment Sale Contract and an Agreement to Deliver Vehicle Pending Final Approval of Financing.

11. The Retail Installment Sale Contract listed Specialist Deehan as the “Buyer” and Chevrolet of South Anchorage as the “Seller-Creditor.” According to the contract, the “Vehicle Cash Price” for the motorcycle was \$12,999. Specialist Deehan was also charged a \$200 “Doc Fee” and \$30 for “Government License and/or Registration Fees.” The down payment was \$2,599. The amount financed was \$10,630 for 60 months at an annual percentage rate of 4.25%. Monthly payments in the amount of \$197.32 were scheduled to commence on October 3, 2019.

12. Despite Lithia’s assurances to Specialist Deehan that he was already approved for financing through Alaska USA Federal Credit Union, Specialist Deehan was asked to sign an Agreement to Deliver Vehicle Pending Final Approval of Financing (hereinafter “the Agreement”). The Agreement stated that Lithia was “attempting to arrange financing” but “[f]inal financing arrangements have not yet been approved” The Agreement further stated: “Buyer understand (sic) that the

sale of the Vehicle is conditioned upon Buyer obtaining financing, and any financing terms discussed by Buyer and Seller remain subject to the approval of Buyer's financing institution. Buyer also understands that Seller retains title to the Vehicle and Seller may demand return of the Vehicle at any time, for any reason, prior to approval of financing and completion of the sale." A true and correct copy of the Agreement is attached hereto as Exhibit 1.

13. Although Specialist Deehan signed the Retail Installment Sale Contract and the Agreement to Deliver Vehicle Pending Final Approval of Financing on August 19, 2019, the sale could not be finalized on that day because the down payment of \$2,599 exceeded the daily limit on Specialist Deehan's debit card.

14. On the following day, August 20, 2019, Specialist Deehan contacted his bank and arranged to increase the daily limit on his debit card. He returned to the Lithia dealership to complete his purchase of the Harley Davidson. He paid the down payment of \$2,599, took possession of the motorcycle, and drove it to his quarters on JBER.

15. Unbeknownst to Specialist Deehan, the Agreement contained several misrepresentations of Alaska law. Specifically, the Agreement stated that a buyer is obligated to pay a use fee of \$45.00 per day and \$.28 per mile, and is responsible for any parking violations, other fines or expenses, and "all loss of or damage to the vehicle from any cause whatsoever," if the buyer "is unable to obtain financing approval as a result of incorrect or inaccurate financial information" provided to the

seller or its lending institution. However, AS 45.25.610, which governs motor vehicle sales contracts in Alaska, does **not** allow a dealer to charge buyers a flat daily use fee of \$45.00 per day if final financing is not approved. Moreover, under subsection (e) of the statute, a buyer is **not** obligated to pay **any** use fee, nor is responsible for any damage or fines, unless the buyer has made “an intentional misrepresentation in a credit application or other financial statement provided by the buyer to the motor vehicle dealer or to a financing institution.”

16. Lithia told Specialist Deehan at the time of the sale that it would take “a few days” for Alaska USA Federal Credit Union to process the loan paperwork. However, as of September 7, 2019, 19 days after the transaction, Specialist Deehan had not received any notification from Lithia, or from anyone else, that the financing for the sale was not approved. Specialist Deehan only learned this fact when he took the initiative to go to an Alaska USA branch, where a banker verbally informed him that his credit application was not approved because the loan application was “incomplete.” More specifically, the banker told Specialist Deehan that the loan was denied because his reenlistment paperwork was missing from the application. Specialist Deehan was confused by this explanation because he had specifically told Lithia before applying for the loan that he was **not** reenlisting with the Army; he was getting out of the service and moving to Rhode Island in May 2020.

17. Specialist Deehan is informed and believes and thereupon alleges that Lithia knowingly misrepresented and/or concealed Specialist Deehan’s reenlistment

status on his loan application. Lithia knew from prior financing experience that the lender would not approve Specialist Deehan's loan without evidence of continued employment, or reenlistment, in the military.

18. Specialist Deehan is informed and believes and thereupon alleges that Lithia intentionally and/or knowingly hid from Specialist Deehan that Alaska USA had not approved his loan application. This is part of the textbook yo-yo scam; the scam works much better when the consumer becomes attached to the vehicle and shows it off to friends and family, after which time the dealer can extract more money from the consumer.

19. Upon learning from Alaska USA that his loan application had been denied, Specialist Deehan immediately headed to the Lithia dealership and spoke with a sales representative about the status of the sale. Contrary to Lithia's earlier representations, Specialist Deehan was told by the Lithia sales representative that he "never had a loan to begin with" with Alaska USA but should not worry because Lithia would get him financing from another lender. The Lithia sales representative had Specialist Deehan telephone a different bank from the Lithia dealership. However, Specialist Deehan was told during this phone call that the bank could not approve him for financing because he would be leaving both the Army and Alaska within the life of the loan.

20. At this point, Lithia's sales representative pressured Specialist Deehan to hide from other potential lenders the fact that he was planning to leave the Army and

Alaska in May 2020. Specialist Deehan, who has been serving his country honorably since February 2017, refused to go along with Lithia’s proposed bank fraud and stated instead that he simply wanted to return the motorcycle and get a refund of his down payment, given that Lithia had been unable to obtain final financing approval for the sale.

21. Contrary to the requirements of AS 45.25.610(d), Lithia told Specialist Deehan that it was not possible to get a refund of his down payment. Specialist Deehan was told that he had only two options—he could either agree to a loan with another bank at a higher rate or bring the motorcycle back and Lithia would keep his entire down payment of \$2,599. Specialist Deehan politely declined the two proposed options and walked out of the Lithia dealership.

22. On September 10, 2019, David Raff, the general manager of the Lithia dealership, called Specialist Deehan and threatened to make his “life a living hell” unless he immediately returned the motorcycle to Lithia. Specialist Deehan told Mr. Raff that he would not return the motorcycle unless Lithia agreed to return his \$2,599 down payment.

23. On September 13 or 14, 2019, Specialist Deehan went back to the Lithia dealership and had a face-to-face meeting with Jacob Baldrige, Lithia’s sales manager. Prior to this meeting, Specialist Deehan had become aware of the protections of AS 45.25.610. When he cited this statute to Mr. Baldrige, Specialist Deehan was told that the statute was “void” and “did not apply.” Mr. Baldrige told Specialist

Deehan that if he returned the motorcycle, he would be charged \$45 per day and \$.28 per mile, in accord with the form Agreement.

24. Once again, Lithia lied to Specialist Deehan about his rights under Alaska law. Under AS 45.25.610(e), Lithia could only deduct a use fee if Specialist Deehan had made an intentional misrepresentation on his credit application. But Lithia had no good faith basis to claim that Specialist Deehan had misrepresented anything on his credit application.

25. Thereafter, Specialist Deehan obtained legal representation through the JBER Legal Assistance office. On November 13, 2019, more than two months after Specialist Deehan requested a refund of his down payment, Lithia *finally* credited the \$2,599 down payment back to his debit card.

26. Lithia failed to provide Specialist Deehan with an “adverse action” notice, as required by the Equal Credit Opportunities Act (ECOA), 15 U.S.C. § 1691(d)(4), within 30 days after Specialist Deehan’s loan application was denied.

27. Specialist Deehan has formally asked Lithia to stop perpetrating this scam on other Alaskans and on other servicemen and servicewomen, but Lithia has refused to so agree.

CLAIMS FOR RELIEF

COUNT I – VIOLATION OF ALASKA’S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

28. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

29. Defendant is engaged in “trade or commerce” within the meaning of AS 45.50.471(a).

30. Defendant committed unfair and/or deceptive acts and practices in violation of Alaska’s Unfair Trade Practices and Consumer Protection Act (UTPA) by misrepresenting and/or concealing Specialist Deehan’s reenlistment status on his loan application; failing to notify Specialist Deehan within a reasonable period of time after his credit application was denied by Alaska USA Federal Credit Union; misrepresenting Alaska law on the Agreement; misrepresenting Specialist Deehan’s rights under Alaska law after he requested a refund of his down payment; refusing to comply with the protections of AS 45.25.610; misrepresenting to Specialist Deehan that AS 45.25.610 was “void” and “did not apply” to his transaction; and failing to provide Specialist Deehan with an “adverse action” notice as required by the ECOA.

31. Plaintiff suffered an ascertainable loss of money or property as a direct and proximate result of the defendant’s unfair and/or deceptive acts.

32. On November 8, 2019 and November 20, 2019, plaintiff gave defendant written notice, as required by AS 45.50.535(b)(1), of his intent to seek private injunctive relief under the UTPA unless defendant agreed in writing to cease and desist from the foregoing unfair and/or deceptive acts and practices.

33. On November 22, 2019, corporate counsel for Lithia Motors, Inc. informed the undersigned that the Agreement “is no longer being used by any of the dealerships” in Alaska. However, the defendant has not indicated any intention to

cease and desist from any of the remaining unfair and/or deceptive acts and practices identified above.

COUNT II – VIOLATION OF THE EQUAL CREDIT OPPORTUNITIES ACT

34. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

35. Defendant is a “creditor” as defined by the ECOA, 15 U.S.C. § 1691a(e), and Regulation B, 12 C.F.R. § 1002.2(l), because the defendant regularly arranges for the extension of credit on behalf of its customers by submitting their credit applications to financial institutions, and because, in the ordinary course of its business, it regularly participates in credit decisions, including setting the terms of credit.

36. Defendant failed to provide plaintiff with an “adverse action notice,” as required 15 U.S.C. § 1691(d)(4), within 30 days after the credit application submitted on behalf of the plaintiff to Alaska USA Federal Credit Union, and any other lending institutions, were denied.

WHEREFORE, plaintiff prays for the following relief:

- (1) An award of three times plaintiff’s actual damages, or \$500, whichever is greater, in accordance with AS 45.50.531(a).
- (2) An award of plaintiff’s actual damages and punitive damages up to \$10,000 in accordance with 15 U.S.C. § 1691e(a) and (b).
- (3) An injunction under 15 U.S.C. § 1691e(c) requiring defendant must

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provide an “adverse action” notice in accord with the ECOA if financing on the agreed-upon terms is denied to a consumer who has signed Lithia’s form Agreement.

(4) An injunction under AS 45.50.535 requiring the defendant to notify buyers within 24 hours if financing on the agreed-upon terms is denied to a consumer who has signed Lithia’s form Agreement.

(5) An injunction under AS 45.50.535 prohibiting the defendant from failing or refusing to refund a buyer’s *entire* down payment, when financing upon the original terms is not approved, unless the defendant has *specific* evidence of an intentional misrepresentation that is disclosed in writing to the buyer.

(6) An injunction under AS 45.50.535 prohibiting the defendant from representing to buyers that they are responsible for any use fees, damage to the vehicle, or miscellaneous fines, unless the defendant has *specific* evidence of an intentional misrepresentation that is disclosed in writing to the buyer.

(7) An award of pre- and post-judgment interest.

(8) An award of the costs and expenses of litigation and full reasonable attorney’s fees pursuant to 15 U.S.C. § 1691e(d), AS 45.50.537, and any other applicable state or federal law.

(9) All other proper relief that is just and equitable under the circumstances.

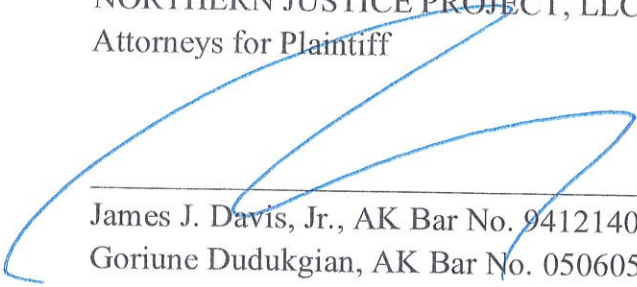
DATED this 2nd day of December, 2019 at Anchorage, Alaska.

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