California's Single Document Rule for Retail Automobile Transactions

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I. Introduction

In California, automobile retailers generally must include all agreements between the dealer and the consumer in a "single document."[1] This requirement, which differs slightly as between a retail installment sales contract (RISC) and a lease, is commonly known as the "Single Document Rule."[2]

With regard to leases, California's Vehicle Leasing Act (VLA) provides that the "lease contract shall be in writing, and the print portion of the contract shall be printed in at least eight-point type and shall contain in a single document all of the agreements of the lessor and lessee with respect to the obligations of each party."[3] The VLA also requires that lease forms include a separate seven-and-a-half-inch blank space[4] in

1. *See infra* notes 3 – 6.

2. With regard to leases, *see infra* notes 3 – 5; for RISCs, *see infra* note 6. For both, *see also* discussion throughout this article.

3. Cal. Civ. Code § 2985.8(a). *See generally*: Yuenger, *Leases of Personal Property*, 42A California Jurisprudence 3d § 112, 114 (Aug. 2016); 13 Witkin, Summary of California Law, Pers. Prop. § 194 (10th Ed. 2005).

4. *See*: *supra* note 1; Gutterman & Fatica, *California Consumer Services Agency Guide to Understanding Consumer Vehicle Leases*, 5 Cal. Transactions Forms--Bus. Transactions § 34:6 n. 37 (2016) ("The California Vehicle Leasing Act requires that all agreements between the lessee and lessor with respect to the obligations of each party must be contained in a single document. (Civ. Code, § 2985.8(a)). In Kroupa v. Sunrise Ford, 77 Cal. App. 4th 835, 92 Cal. Rptr. 2d 42 (2d Dist. 1999), as modified (Jan. 20, 2000) [discussed *infra* at Part III.A.], the lease did not refer to: (1) the lessee's trade-ins or turn-ins; (2) his cash payment; (3) the rebate on the new leased vehicle; or (4) the dealer's agreement to assume the negative equity in the trade-ins and charge it back to the lessee in the form of higher payments in the lease. The court found that these transactions constituted a single transaction, but there was no single document that contained all of the agreements of the lessee and dealer with respect to their obligations. The *Kroupa* court ruled that the facts concerning (1) – (4) [immediately above] 'were required to be reflected in some way, somewhere in the lease.'(92 Cal. Rptr.2d at 48.). The California Legislature responded to the *Kroupa* decision by enacting Civ. Code, § 2992 (and other provisions), which requires that form lease contracts contain a blank box for the lessor and lessee to memorialize trade-in, turn-in and other individualized agreements. As explained by the California Motor Car Dealers Association, this new disclosure box is intended to provide dealers with a blank space

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order to allow the lessor and the lessee to memorialize "trade-in, turn-in, and other individualized agreements" in that single document.[5] With regard to RISCs, however, California's Rees-Levering Automobile Sales Finance Act (ASFA) applies a more narrow version of the Single Document Rule: "Every conditional sale contract subject to this chapter shall be in writing and, if printed, shall be printed in type no smaller than 6-point, and shall contain in a single document all of the agreements of the buyer and seller *with respect to the total cost and the terms of payment for the motor vehicle*, including any promissory notes or any other evidences of indebtedness."[6]

"The purpose of the single document rule [is] the facilitation of the consumer's review of all of the parties' agreements before the consumer signs the sale or lease contract, so that the consumer has complete and accurate information."[7] However well intentioned, judicial application of the Single Document Rule has spawned a plethora of litigation[8] and conflicting case law on how retailers physically can comply with the Single Document Rule as well as on whether the Single Document Rule is merely a technical procedural requirement affording no remedy or a substantive "Get out of Jail Free" card affording a right to rescind, even when there has been no actual harm.

This article explores the background of the Single Document Rule, discusses how retailers can comply with it, and explains what rights and remedies are afforded by the Rule.

II. Background

Neither the ASFA nor the VLA define the term "single document," nor is the term defined elsewhere in any other California statutory scheme.[9] Accordingly, the Single Document Rule provides little guidance to sellers and lessors on how to physically comply with the Rule or what the remedies are for violating it.

Early Single Document Rule jurisprudence focused on the former issue, namely how sellers/lessors could physically comply with the Single Document Rule. In 1965, the California Attorney General opined that a contract entered into pursuant to the Unruh Act would be violated if "a deed of trust that was attached as part of the contract were detached from the rest of the document by means of tearing along perforations or removal of staples."[10] The Attorney General was asked to opine whether the Unruh Act's Single Document Rule required that a deed of trust be physically attached to the RISC. The Attorney General noted that the Unruh Act's Single Document Rule was intended to prevent:

> [t]wo of the major types of harsh practices…at which the Unruh Act [was] directed…"1. *[Lack of] Disclosures*. There is no legal requirement that full details regarding the cost and terms of the transaction be embodied in an installment contract or agreement. 2. *Blank Contracts*. Buyers are induced to sign contracts containing blank spaces to be filled in later." Our conclusion that a deed of trust is part of the contract effectuates the purpose of the Unruh Act to protect the buyer, primarily by requiring that the deed of trust may not contain blank spaces to be filled in after the buyer signs (§ 1803.4) and that a completed copy of the deed of trust be supplied to the buyer (§ 1803.7). A contrary conclusion would allow signatures to be obtained on blank trust deeds which could be subsequently filled in without copies even being shown or given to the buyer. Such practices would violate the policy of the Unruh Act.[11]

However, although California's Unruh Act contains a disclosure regimen for retail sales and a single document rule similar to the rules under the ASFA and VLA,[12] the Unruh Act does not apply to automobile sales and specifically excluded and excludes retail sales or leases of automobiles from its purview.[13]

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   in the lease to memorialize agreements that are not covered in a standardized form. Such individualized agreements may include, for example: terms of payoff agreement…; or, terms of a turn-in agreement…. (CMCDA Bulletin, October, 2001.)"); *see generally* Rojc & Jeffernbruch, *State Law Response to the New Regulation M*, 53 Bus. Law. 1027 (1998).

5. Cal. Civ. Code § 2992 ("A prospective assignee that provides a lessor under a lease contract with a preprinted form for use as a lease contract shall design the form in such a manner so as to provide on its face sufficient space for the *lessor* to include all disclosures and itemizations required pursuant to Section 2985.8 and shall also contain on its face a separate blank space no smaller than seven and one-half square inches for the lessor and lessee to memorialize trade-in, turn-in, and other individualized agreements") (emphasis added).

6. Cal. Civ. Code § 2981.9 (emphasis added); *see generally* Eclavea, *et al*., 13A Cal. Jur. 3d Consumer, etc. Protection Laws § 394 (2016).

7. 92 Cal. Op. Att'y Gen. 97, at * 3 (2009); *see also id*. at * 1 (Under the single document rule, "the necessary terms and notices may not be concealed from consumers by being shunted to an unseen appendix.").

8. *See e.g.*: *Calif. Honda Dealer: Charging DMV Fee Didn't Violate Law,* 14 Andrews Class Action Litig. Rep. 4, at *1 – 2 (2007) ("The dealer says the plaintiff is claiming that additional disclosure documents should be required to make customers aware of the fee. Asking the court to rule on this issue, Spirit says, is basically asking it to change clear and specific statutes governing the sale and lease of cars. The plaintiff's request violates the 'single document' rule, Spirit argues. The rule states that all terms of a vehicle's sale or lease must be contained in a single document for the customer"); Whelan v. Anderson Chevrolet of Los Gatos, Inc., No. H030039, 2007 WL 4217165, at * 2 (Cal. Ct. App. Nov. 30, 2007) (Not Officially Published, Rule 8.1115) ("The Court finds that the Defendant violated California Civil Code Section 2985.8…by not including reference to the trade-in vehicle or the existence of negative equity
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8. *(Continued from previous column)*

   in the lease. Thus, the 'single document' rule was violated as was the requirement that any outstanding prior credit balance be disclosed. (See Civil Code Section 2985.8(c)(2)(D))"); Angel v. YFB of Hemet, Inc., No. G030528, 2004 WL 1058180 (Cal. Ct. App. 30, 2004) (Not Officially Published, Rules 8.1105, 8.1110, and 8.1115) (failure to disclose on the RISC a promise to pay off the balance on a trade-in vehicle was found by the jury to violate the Single Document Rule); Norton v. Ford of Santa Monica, Inc., No. B237273, 2012 WL 6721400 (Cal. Ct. App. Dec. 28, 2012) (Not Officially Published, Cal. Rules of Court, Rules 8.1105, 8.1110 & 8.1115) (petition to arbitrate was granted in a class action alleging that a misstated tire fee violated the single document rule).

9. 92 Cal. Op. Att'y. Gen. 97, at *2 (2009) ("There is no definition in the ASFA of the term 'single document.' Nor do we find the term defined in other statutory schemes. Therefore, we look to the usual and ordinary meaning of the words, bearing in mind the context in which they are used.").

10. 45 Cal. Op. Att'y. Gen. 8, at *9, n. 2 (1965).

11. *Id*. at *10 (*citing* CALIFORNIA. (1959). Final report of Subcommittee on Lending and Fiscal Agencies: March 1959. [Sacramento], Assembly of the State of California.).

12. Cal. Civ. Code § 1803.2 ("Except as provided in Section 1808.3, every retail installment contract shall be contained in a single document that shall contain: (a) The entire agreement of the parties with respect to the cost and terms of payment for the goods and services, including any promissory notes or any other evidences of indebtedness between the parties relating to the transaction.").

13. Cal. Civ. Code § 1802.1 ("'Goods' means tangible chattels bought for use primarily for personal, family or household purposes, including certificates or coupons exchangeable for such goods, and including goods which, at the time of the sale or subsequently are to be so affixed to real property as to become
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The Single Document Rule was largely ignored by the California legislature and the state Attorney General for forty-five years until 2010, when the Attorney General addressed the Single Document Rule with respect to automobiles in particular. But, again, the Attorney General's focus was neither substance nor remedies, instead focusing only on whether "the single document requirement for automobile sales contracts [is] satisfied if the document consists of multiple pages that are attached to each other and integrated by means such as inclusive sequential page numbering (*e.g.*, '1 of 4,' '2 of 4,' etc.)?"[14]

As in 1965, in 2010 the Attorney General found no definition of the "Single Document Rule" and, instead, applied its "plain meaning." The Attorney General concluded that "nothing in this definition suggests that the entirety of the document must be contained on one page or on one sheet of paper."[15] The Attorney General stressed again the purpose of the Single Document Rule: "the facilitation of the consumer's review of all of the parties' agreements before the consumer signs the sale or lease contract, so that the consumer has complete and accurate information" and "to avert later disputes about the terms of the parties' final agreement."[16]

The Attorney General explained that "[w]hile a single-sheet document, which forecloses the possibility of pages becoming detached, may serve these objectives well, the single document rule does not require that the document consist of only one sheet of paper."[17] Accordingly, the Attorney General concluded that "the single document requirement for automobile sales contracts is satisfied if the document consists of multiple pages that are attached to each other and integrated by means such as inclusive sequential page numbering (*e.g.*, '1 of 4,' '2 of 4,' etc.)."[18] In other words, so long as "attachment" and "integration" were satisfied, so was the Single Document Rule.[19]

III. Judicial Treatment of the Single Document Rule

A. Undisclosed Agreements Combined with Retailer Chicanery Lead to Liability

As noted above, the Single Document Rule was ignored for almost thirty-five years following the California Attorney General's first opinion on it under the Unruh Act in 1965.[20] With the advent of a boom in consumer leasing in the late 1990s,[21] however, the VLA's broad Single Document Rule drew renewed attention. The seminal case applying the Single Document Rule arose under the VLA and, in the end, was the impetus for legislative changes to the VLA as well.[22]

Kroupa v. Sunrise Ford[23] involved a dealer's requirement that the consumer attempting to lease a new vehicle trade in two older vehicles. The dealer required Mr. Kroupa to sign two "trade-in forms" showing in each case the payoff amount for the trade-in vehicle, a lower "agreed price," the resulting negative equity in each vehicle, and the customer's agreement to apply the negative proceeds (totaling $7,819) to the new lease. The Second District Court of Appeal held that:

> There are no reported cases interpreting [the single document rule], or any other provision of the Act. However, we think it is patent that there was a single transaction in this case, and that there is *not* a single document that contains "all of the agreements" of Sunrise Ford and Kroupa with respect to their obligations.[24]

The court of appeal provided no guidance as to what might comply with the Single Document Rule. Indeed, the court twice suggested that it was the dealership's lack of any attempt to comply that violated the Single Document Rule:

> The lease does not refer in any way, anywhere, to Sunrise Ford's admitted agreement "to assum[e] the

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    a part of such real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold or leased with such a vehicle if sold under a contract governed by Section 2982 or leased under a contract governed by Section 2985.7.").

14. 92 Cal. Op. Att'y. Gen. 97, at *1 (2009).

15. *Id*. at *2.

16. *Id*. at *3.

17. *Id*.

18. *Id.*

19. Other states that have a single document rule for automobile financing also appear to allow the "fastening" and "integration" combination to comply with the rule. The state of Washington's Retail Installment Sales Act, in somewhat narrower fashion than California's VLA, requires that "[e]very retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties…." Wash. Rev. Code Ann. § 63.14.020. In Kenworthy v. Bolin, 17 Wash.App. 650 (1977), the court of appeals was asked to determine whether a promissory note that incorporated by reference a security agreement and conditional sales contract, which were not attached or provided to the consumers, violated the single document rule. The court of appeals held that the procedure failed to comply with the rule, but explained the means by which the seller might have complied: "This requirement could have been met, if at the time the [consumers] received the sale agreement and the promissory note, they also received a copy of the conditional sale contract and security agreement attached thereto…However, statutory compliance requires that they be attached to the sale agreement, thus constituting a 'single document;' therefore, the [consumers] are entitled to [statutory] remedies." *Id.*

20. Your authors acknowledge that much of the judicial authority cited in this article either was not published by the Court of Appeal or was depublished by the California Supreme Court -- both actions which render the decisions unciteable in California state courts. Scholarly commentary is not limited by the same rules of court that prohibit citation to unpublished or depublished decisions. *See* California Rule of Court 8.1115 ("**(a) Unpublished opinion**[.] Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action. **(b) Exceptions**[.] An unpublished opinion may be cited or relied on: (1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or (2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action") (emphasis in original). *See generally*: Joshua R. Mandell, *Trees that fall in the forest: The Precedential Effect of Unpublished Opinions,* 34 Loy. L.A. L. Rev. 1255 (2001); Johanna S. Schiavoni, *Who's Afraid of Precedent? The Debate over the Precedential Value of Unpublished Opinions,* 49 UCLA L. Rev. 1859 (2002). Since much of California's Single Document Rule jurisprudence is found in unpublished or depublished decisions, this article will indicate when an opinion under discussion was not published by the California Court of Appeal or was depublished by the California Supreme Court.

21. The consumer vehicle leasing boom, and problems of understanding created by "undisclosed" leases that did not disclose the "Gross Capitalized Cost" resulted in the Board of Governors of the Federal Reserve System revising Regulation M in 1996 and 1997. *See*: 61 Fed. Reg. 52246 – 52281 (Oct. 7, 1996); 62 Fed. Reg. 15364 – 15372 (Apr. 1, 1997); 53 Fed. Reg. 52107 (Sept. 29, 1998).

22. Gutterman & Fatica, *California Consumer Services Agency Guide to Understanding Consumer Vehicle Leases,* 5 Cal. Transactions Forms--Bus. Transactions § 34:6 n. 37 (2016) ("The California Legislature responded to the *Kroupa* decision by enacting Civ. Code, § 2992 (and other provisions), which requires that form lease contracts contain a blank box for the lessor and lessee to memorialize trade-in, turn-in and other individualized agreements.").

23. Kroupa v. Sunrise Ford, 77 Cal.App.4th 835 (1999).

24. *Id.*, 77 Cal.App.4th at 843 *as modified* (Jan 20, 2000), *review denied* (Mar. 15, 2000).

> negative equity owed by plaintiffs" or to the lessor's admitted charge of the negative [equity] back to the plaintiffs in the form of higher payments…The facts concerning Kroupa's trade-ins or turn-ins, including Mr. Kroupa's cash payment, any rebates and Sunrise Ford's agreement to assume the remaining negative equity and charge it back to Kroupa in the form of higher payments in the lease, were required to be reflected in some way, somewhere, in the lease.[25]

Two themes underpin the Court of Appeal's decision in *Kroupa*. First, because the lease preceded the Regulation M amendments requiring disclosure of the Gross Capitalized Cost, Mr. Kroupa may not have understood the terms of his lease transaction and/or how it incorporated the negative equity from his two trade-ins.[26] Second, the Court of Appeal rejected the contention that the trade-in transactions were "separate" transactions under, essentially, a "but-for" test: "Moreover, we cannot believe that Sunrise Ford would have agreed to either trade-in without the lease, or that Mr. Kroupa would have agreed to the lease without the trade-ins (which were necessary to eliminate his obligations on the other two vehicles)."[27]

The *Kroupa* decision and litigation triggered not only a legislative change, but also a wave of attention[28] and litigation[29] under the VLA and ASFA Single Document Rules.

B. Separate Agreements Not Part of the Financing Transaction Do Not Trigger the Single Document Rule

Following *Kroupa,* most Single Document Rule jurisprudence focused on the extent to which the Single Document Rule required completely separate transactions unrelated to the financing of a RISC or lease to be included and/or disclosed in the RISC or lease.[30] In *LaChapelle v. Toyota Motor Credit Corporation, et al.*,[31] the First District Court of Appeal revisited the Single Document Rule, again in the leasing context. There, the consumer was leasing a new Toyota 4-Runner and purporting to trade-in a used Honda Civic. The plaintiff's lease, however, marked "N/A" for the agreed-upon trade-in value of the Honda, and for the trade-in value that would be applied against the gross capitalized cost of the Toyota. The plaintiff claimed that the dealer's treatment of the trade-in violated the VLA's Single Document Rule.

The court of appeal disagreed, finding that the trade-in was a "separate transaction" independent of the lease:

> It appears that the dealer handled appellant's trade-in as a courtesy to appellant, and, after the value of the trade-in was determined, sent her a check for her equity interest in the Honda. The trade-in was not a part of the financing for the lease.[32]

The Court of Appeal found no Single Document Rule violation based on the factual conclusion that the trade-in was handled exclusively as a separate transaction:

> Appellant apparently contends that noting the trade-in of the Honda, but not assigning it a value, established on the face of the lease that the parties entered into a transaction that was not detailed in the lease agreement. The "single document" rule cannot reasonably be read as

25. *Id.* at 844.

26. *Id.*

27. *Id. at* 843. On appeal after remand, the Court of Appeal found in an unpublished decision that the assignee of the lease was entitled to assert statutory defenses to a Single Document Rule violation. "Initially it is noted that the language of section 2988.5 states at the beginning as a preamble 'Except as otherwise provided by this section….' It is apparent to this court that the preamble anticipates that sections 2985.8 and 2988.5 be jointly considered in connection with the issue of the one, or single-document rule; whether the violation was apparent on its face; whether the violation resulted from an involuntary assignment; whether the violation was unintentional and resulted from a bona fide error; and as well as any other defenses under the statute not at present conspicuous from the record but which may be legitimately raised at time of retrial." Kroupa v. Sunrise Ford, No. B147539, 2002 WL 433670, at *3 (Cal. Ct. App. Mar. 19, 2002) (Not Officially Published, Cal. Rules of Court, Rules 8.1105, 8.1110 & 8.1115).

28. *See, e.g.*: http://dealerfraud.org/dealer-tricks-single-document-rule/ ("However, sometimes dealerships use fraudulent practices and ask customers to sign additional documents, including trade-in forms stating that the customer agrees to pay any difference between the value of their trade-in vehicle and the amount owed on that vehicle. The other trick is when the dealership agrees to make payments on a trade-in vehicle but does not include the trade-in vehicle in the purchase agreement. The 'hold check agreement' when the customer agrees to pay additional money towards the down payment on a later date is also a common practice. These documents violate the single document rule."); http://carlawyer.com/blog/the-down-payment/ ("ASFA demands that all material financing terms appear on one document (The Single Document Rule). Any type of check guarantee, hold check agreement, or promissory note, violates this Single Document Rule. Also, check carefully, as most of these documents charge $25 or more for a returned check, but this charge is limited by contract (RISC) and the ASFA to $15. Under these circumstances, the dealer may take you to small claims court or a collection agency. But these 'Hold Check Agreements,' unless accurately disclosed at line 6D, are unenforceable. Most judges are unaware of this law."); http://www.californialemonlaw-lawyers.com/auto-fraud-other-car-dealer-tricks/falsifying-down-payment-amounts-in-vehicle-purchase-or-lease-contracts ("When a car dealership falsifies a vehicle lease contract by failing to include the deferred down payments, it violates California Civil Code Section 2985.8(c)(1) (which, by its incorporation of Regulation M, requires that deferred down payments be included in lease contracts) and the Single Document Rule (because the agreement to pay the deferred down payments is not included anywhere in the lease contract)."); and Vilorio v. Hayward Toyota (Alameda Co. Sup. No. 02-066308), http://www.christalaw.com/text_files/Vilorio%20Case%20Report_text.html (the plaintiff alleged that the dealer "had violated the single document rule and Automobile Sales Finance Act in recording of a deferred downpayment paid by the buyer.").

29. Answer to Amicus Brief of CMCDA, Jon L. KUNERT and Penny Kunert, Plaintiffs and Appellants, v. MISSION FINANCIAL SERVICES CORPORATION, Defendant and Respondent., 2002 WL 32151169 (Cal.App. 2 Dist.), 11 ("A fee paid by a consumer to the dealer as compensation for the dealer assisting in arranging the financing increases the cost of the conditional sales contracts and is included in the terms of payment. Such a fee, as with all other fees, must be disclosed under the single document rule"); Appellants' Brief, Mia SMITH, Plaintiff and Appellant, v. SAN FRANCISCO AUTO CENTER; Fidelity Financial Services, Inc. – San Bruno, a supervised financial organization; Fidelity Acceptance Corporation and Does 1 – 20, inclusive, Defendants and Respondents., 1999 WL 33904990 (Cal.App. 1 Dist.), 3 ("In the instant case, the single document rule was clearly violated if it is applicable"); *see also:* Olguin v. Mirkooshesh, Inc., 2005 WL 6490594 (Cal.Superior 2005) ("A brief statement of the Arbitrator's Findings of Fact/Conclusions of Law: (optional) (1) FRAUD NOT PROVEN (CC § 1632 DOES NOT APPLY); (2) NEGLIGENCE NOT PROVEN AND NO MISREPRESENTATION PROVEN (3) "SINGLE DOCUMENT RULE" NOT VIOLATED-NO BASIS FOR RESCISSION (4) NO BASIS FOR RESCISSION AS TO AMERI CREDIT (5) AWARD MADE FOR FAILURE TO REFUND EXCESS ON FEES.").

30. *See, e.g.*, Johnson v. The Lease Outlet, Inc., 2001 WL 35977682 (Cal. Super. 2001) ("The Court has also concluded plaintiff has failed to establish by a preponderance of the evidence that defendants have violated any terms of the California Vehicle Leasing Act in relation to either the Yukon lease transaction or the Toyota so called 'The Help-U-Lease Agreement.' The Court specifically finds that CC 1985.8, the single document rule, was not violated in that said agreement was in legal fact a consignment agreement, separate and distinct from the lease agreement and not an agreement that would be governed by the California Vehicle Leasing Act. The Toyota was not a trade-in that would affect the financial structure of the Yukon lease. The equity lease order (Exhibit No. 1012) was not the leased contract. It was an order form, not a lease that would be governed by the California Vehicle Leasing Act.").

31. LaChapelle v. Toyota Motor Credit Corp., 102 Cal.App.4th 977, 980 (2002).

32. *Id.* at 985.

> requiring a lease agreement to detail a transaction that is not a part of the lease transaction. A main purpose of the VLA, including the single document rule, is to protect consumers by improving the disclosure of lease terms and standardizing lease requirements. (Assem. Com. on Appropriations, Analysis of Sen. Bill No. 1291 (1997 – 1998 Reg. Sess.), com. 1 (Aug 27, 1997) p. 2; and see *Kroupa v. Sunrise Ford* (1999) 77 Cal.App.4th 835, 844, 92 Cal. Rptr. 2d 42, fn. 11.) This purpose would be hindered, rather than furthered, by compelling dealers to place terms of a separate transaction on the face of the lease agreement. Such a requirement could only lead consumers to conclude, incorrectly, that the terms of the separate transaction have some bearing on the terms of the lease. It follows that a dealer's failure to recite the terms of a trade-in agreement on the face of a lease does not violate the single document rule unless that trade-in agreement is a part of the lease agreement. It further follows that the fact that a lease agreement notes a trade-in but does not set forth the details of that transaction, does not demonstrate, on the face of the lease agreement, that the single document rule has been violated.[33]

Two years later, in *Franklin v. North County Ford,*[34] the Fourth District Court of Appeal held that the Single Document Rule could be violated by not disclosing a separate agreement in a RISC if the other agreement was not a separate transaction. *Franklin* involved an automobile purchase where the customer's boyfriend, who was not a party to a contract, provided the down payment (albeit deferred) by way of "hold check agreements." On appeal, the dealer did not contest that the RISC was unenforceable, but instead complained about having to refund money to the boyfriend. The Court of Appeal found that if the RISC was unenforceable, then so were the checks and the hold check agreement, such that the boyfriend was entitled to his money back. The Court of Appeal concluded that the non-party boyfriend's hold check agreement and the RISC were part-and-parcel of the same transaction:

> NCF also argues Franklin did not have standing to assert NCF's conditional sales contract violated the Rees-Levering Act because Franklin was not a party to that contract. NCF asserts the hold check agreement to which Franklin was a party was a separate transaction on May 30, 2001, and cannot be considered substantially part of the same transaction as the conditional sales contract executed on April 27, 2001, by Nelson, Barton and NCF. However, the hold check agreement is not a separate transaction independent of the conditional sales contract. Rather, it is essentially a subsequent amendment to or modification of the conditional sales contract, providing for modification of the terms of the deferred down payment and adding Franklin as a party to the transaction (although we assume not as a buyer).[35]

Thus, the Court of Appeal concluded that the Single Document Rule was violated:

> NCF argues the trial court made a contrary finding in denying Plaintiffs' summary judgment motion, which was based in part on their assertion that the conditional sales contract was void and unenforceable because it violated the "single document rule" of the Rees-Levering Act. Plaintiffs noted there were three documents-the conditional sales contract and two hold check agreements. In denying their summary judgment motion, the court noted "it appears separate transactions were at issue." Because of the context in which the court made that statement, we conclude the court did not find that the hold check agreement did not amend or modify the conditional sales contract or that the hold check agreement was enforceable even though the conditional sales contract violated the Rees-Levering Act. Accordingly, NCF's argument does not persuade us to conclude the conditional sales contract and the hold check agreement were separate, independent transactions for purposes of the Rees-Levering Act and the UCL.[36]

A decade later, however, the Court of Appeal for the Fourth District, Division 2 in *Harrelson v. CarMax Auto Superstores California, LLC*,[37] also assumed – consistently with its Division 1 colleagues' finding in *Franklin* – that a hold check agreement was a separate agreement that violated the Single Document Rule. In *Harrelson,* the Court of Appeal was called upon to decide the remedies available for a violation of the Single Document Rule, so that it could decide whether a three-year statute of limitations for rescission or a shorter one-year statute of limitations for "penalties or forfeitures" applied.[38] The Court of Appeal found that the ASFA afforded a right to rescission for violating the Single Document

33. *Id.* at 986.

34. Franklin v. North County Ford, No. D041259, 2004 WL 247382 (Cal. Ct. App. Feb. 11, 2004) (Not Officially Published, Cal. Rules of Court, Rules 8.1105, 8.1110 & 8.1115).

35. *Id. at* *5.

36. *Id.* at n. 12*; see also* Lewis v. Fletcher Jones Motor Cars, Inc., 2011 WL 8184153 (Cal. Super. 2011) ("The Defendant's reliance on *La Chapelle v. Toyota* (2002) 102 Cal. App. 4th 977 is improper because the court in that case merely held that the trade-in purchase was a separate transaction and not covered by the single document rule. In the case at hand, the $4000 down payment is part of the $6000 down payment, which is not a separate transaction to the lease agreement.").

37. Harrelson v. CarMax Auto Superstores California, No. E054435, LLC, 2013 WL 5348087 (Cal. Ct. App. Sept. 25, 2013) (Not Officially Published, Cal. Rules of Court, Rules 8.1105, 8.1110 & 8.1115).

38. Code of Civil Procedure § 340, subdivision (a) provides for a one-year statute of limitations if it is "[a]n action upon a statute for a penalty or forfeiture...." Code of Civil Procedure § 337, subdivision (3) provides for a four-year statute of limitations period for "[a]n action based upon the rescission of a contract in writing."

Rule's technical requirements and, accordingly, it was a penalty or forfeiture subject to the shorter one-year statute of limitations. In *Harrelson*, the plaintiff alleged that the creditor violated the ASFA by failing to properly disclose that she made a deferred payment and that the hold check agreement violated the Single Document Rule. She also alleged that CarMax was engaging in unlawful business acts by: improperly completing purchase contracts; failing to adequately disclose deferred down payments on purchase contracts; and failing to disclose in a single document all of the agreements as to the costs and terms of payment for the purchase of the vehicles. The Court of Appeal analyzed the remedies available for a violation of the Single Document Rule:

> Here the cont[r]act in question was the RIC signed by both Harrelson and CarMax. The RIC itself imposed no obligation to properly identify the down payment. The RIC did not require that the terms of payment of the Saab all be included in the RIC. There was no violation of the contract in this case. The only violation was that the RIC violated ASFA provisions regarding disclosure and the single document rule, a purely statutory violation. Moreover, Harrelson suffered no harm as a result of the held-check form. Harrelson still paid the down payment with a check, which the parties agreed would not be cashed for five days. As for the separate VPA and discharge of lien disclosure, she suffered no harm. She traded in her Civic, she received a payment on the Civic, and the remainder she owed on the car was rolled into the purchase of the Saab. Harrelson's claims are based purely on the statutory violation of ASFA. Nonetheless, under Civil Code sections 2982 and 2983, she would be entitled to a refund of all the sums that she expended on the Saab, subject to a limited discretionary offset for having used the car for over two and a half years. (*Nelson, supra*, 186 Cal.App.4th at pp. 1012 – 1013.) Since there was no actual injury, this recovery and right of rescission constituted a penalty under Code of Civil Procedure section 340, subdivision (a). As stated, generally, the one-year statute of limitations for an action upon a statute for a penalty applies if the civil penalty is mandatory. [citation omitted] Here, if Harrelson could prove a violation in the single document rule or the disclosures, she was entitled to rescission of the RIC. *Stone* correctly held that the statutory predecessor of current Civil Code section 2983 created a statutory liability for a penalty and was governed by Code of Civil Procedure section 340, subdivision (a)'s one-year limitations period. (*Stone v. James, supra*, 152 Cal.App.2d at pp. 738 – 740.)…Based on the foregoing, Harrelson's first and third causes of action failed to state a claim because they were barred by the one-year statute of limitations in section 340, subdivision (a).[39]

On August 16, 2016, the Court of Appeal for the Second District, Division 4 settled the issue raised by the unpublished decisions in *Franklin* and *Harrelson*, finding in *Nichols v. Century West, LLC*[40] that a post-dated check and oral agreement to hold the deposit thereof until after the consummation and delivery date of the vehicle was not a separate agreement that violates the Single Document Rule.

First, *Nichols* found that a dealer's honoring the customer's request to hold a down payment check is not a "deferred down payment" under the ASFA because "nothing in the language of the statute barred [the dealer] from accepting checks on the date of purchase and agreeing to deposit them later" and "the language of the statute does not require such checks to be categorized as 'deferred payments."[41] Second, such an agreement to accommodate a customer by depositing later a down payment check provided on the date of purchase does not violate the Single Document Rule because that agreement is not a "term of payment" requiring disclosure.[42]

Nichols is broader that its recitation of the facts. The court's decision was not premised on the number of post-dated checks nor the number of days the checks were held. Having found that post-dated checks were not a "deferred downpayment," it took little effort to find that the parties' "agreement to accommodate a customer by not immediately depositing a check" was not a "term of payment" required to be disclosed in a single document under the ASFA. While the court stressed the "informality" of the agreement,[43] the fact that the checks were post-dated demonstrated the formal nature of the agreement and the agreement's reduction to a writing. The court concluded that "nothing in the history or stated purposes of the AFSA suggests that the AFSA was intended to allow a buyer to rescind a contract where a dealer has accommodated a buyer's request to hold a down payment check for a few days."[44]

39. *Harrelson,* 2013 WL 5348087 at *5 – 7.

40. Nichols v. Century West, LLC, 2 Cal.App.5th 604 (2016).

41. *Id.*

42. *Id.* at 618.

43. *Id.*

44. *Id.*; *see also, e.g.,* Lopez v. Asbury Fresno Imports LLC, 2013 WL 2171069 (Cal.Super. 2013) ("In this case, the RISC (Ex. 'G') contains all the agreements of the parties and full disclosure of the deferred down payment required by Civil Code § 2982(a)(6)(D) and (F). The statute is not violated because some of the terms are republished in a second document such as the hold check agreement. The single document rule is intended to prevent the creation of the conditional sale contract with a cash down payment and then a second writing such as a promissory note for future payment of the cash down payment as was the case in *Bratta v. Caruso Car Co.* (1958) 166 Cal.App.2d 661. Here, the amount and the due date of the deferred down payment are disclosed on the face of the retail installment sale contract (Ex. 'G'). Plaintiffs gave Defendant their $4,000.00 check. All Defendant did was wait to deposit it in the bank. Plaintiffs' check was honored by the bank. Consequently, any asserted difference in the bad check charges between the RISC and the hold check agreement does not present a justiciable controversy.").

C. Division 1 Versus Division 2: Two Divisions of the Court of Appeal for the Second District Disagree on Whether the Single Document Rule is Merely a Procedural Requirement Rather Than a Substantive Obligation

The jurisprudential squabbling over whether particular facts justified a finding that a separate agreement was truly separate or not under the Single Document Rule paled in comparison to judicial wrangling over what remedy a Single Document Rule violation affords. *Kroupa* foreshadowed the debate when, on appeal after remand from its original decision, the Court of Appeal found that the assignee of the lease was entitled to assert statutory defenses to a Single Document Rule violation:

> Initially it is noted that the language of section 2988.5 states at the beginning as a preamble "Except as otherwise provided by this section…." It is apparent to this court that the preamble anticipates that sections 2985.8 and 2988.5 be jointly considered in connection with the issue of the one, or single-document rule; whether the violation was apparent on its face; whether the violation resulted from an involuntary assignment; whether the violation was unintentional and resulted from a bona fide error; and as well as any other defenses under the statute not at present conspicuous from the record but which may be legitimately raised at time of retrial.[45]

Almost a decade later, two divisions of the Court of Appeal for the Fourth District reached opposite conclusions on whether a Single Document Rule violation was a substantive right allowing rescission even without actual damages or whether it was simply a Legislative directive as to the form of a RISC/lease. In *Nelson v. Pearson Ford,*[46] the Court of Appeal for the Fourth District, Division 1 held that backdating[47] a second RISC in a spot delivery situation where the first RISC was not accepted for financing violated the Single Document Rule. As to this "backdating class," the Court of Appeal held that:

> …the only way to determine the date the parties consummated the transaction, the correct APR, and that Nelson improperly paid a finance charge when no contract existed is to review the three documents and perform some calculations. Accordingly, the second contract violated the single document rule because it did not contain "all of the agreements of the buyer and seller with respect to the total cost and the terms of payment for the motor vehicle….(§ 2981.9.) Pearson Ford's violation of the single document rule rendered the contract unenforceable under section 2983. We reject Pearson Ford's contention that the second contract did not violate the single document rule because it contained all of the agreements with respect to the total cost and terms of payment. This argument ignores that the consummation date is the beginning date to incur a finance charge, and an essential fact in calculating an accurate APR….We also reject Pearson Ford's assertion that it complied with the letter and spirit of the single document rule because the second contract contained all the required information. Unless dealers disclose correct information the disclosure itself is meaningless and the informational purpose of the ASFA is not served.[48]

Nelson involved a second class: purchasers of vehicles who also purchased insurance from the dealer, where the dealer did not disclose that cost on the RISC, instead adding it to the cash price of the car. The Court of Appeal found that this practice, too, violated the Single Document Rule:

> Pearson Ford argues that the single document rule does not preclude using multiple documents for matters relating to insurance because insurance is not part of the "total cost and the terms of payment for the motor vehicle…." (§ 2981.9.) While it may be true that the price of insurance generally does not impact the total cost of a vehicle, Pearson Ford's act of adding the insurance premium to the cash price of the car unquestionably impacted the total cost of the car because it increased the sales tax and financing charges. Accordingly, as the trial court correctly found, Pearson Ford violated section 2981.9 by placing the parties' agreements regarding insurance in a separate document.[49]

However, in *In re Raceway Ford Cases,*[50] the Court of Appeal for the Fourth District, Division 2, disagreed with the conclusion that their

45. *Kroupa*, 2002 WL 433670 at *3 (Not Officially Published, Cal. Rules of Court, Rules 8.1105, 8.1110 & 8.1115). *See also* discussion *supra* at Part III.A.

46. Nelson v. Pearson Ford, 186 Cal.App.4th 983 (2010).

47. The seminal decision for this theory is Rucker v. Sheehy Alexandria, Inc., 228 F.Supp. 2d 711, 717 (E.D. Va. 2002).

48. *Nelson,* 186 Cal.App.4th at 1004; *see also, e.g.,* Barbosa v. All Star Kia San Bernardino, 2013 WL 11274333 (Cal.Super. 2013) *(Continued in next column)*

48. *(Continued from previous column)*

("Motion for summary adjudication of the 5th cause of action is denied because defendant's defense of substantial compliance does not apply to the Auto Sales Finance Act. Even if the defense applied, DC Auto failed to substantially comply with the mandatory disclosure and itemization requirements under Civil Code 2928(a)(6) when it referred to Barbosa's and hidden deferment class members' deferred down payments as cash payments, and DC Auto failed to substantially comply with the single document rule under civil code 2981.9 by having separate agreements that specified the deferred down payments by Barbosa and hidden deferment class members without the same noted in the RISCs.").

After *Nelson*, some counsel advised dealers not to rewrite contracts at all in the event financing terms are not obtained, but to completely rescind the RISC or take a loss on an adverse financing. *See, e.g.*, http://www.autodealerlaw.com/2011/09/proper-dating-of-contracts/ ("This may result in the dealership either having to walk away from the deal because it does not make sense financially (this assumes a proper election to rescind was made, of course) or absorb the costs associated with a rate buy-down or the unavailability of a lender's incentive.").

49. *Id.* at 1006 – 1007.

50. *In re* Raceway Ford Cases, 229 Cal.App.4th 1119, *review granted and opinion superseded sub nom. In re* Raceway Ford Cases, 339 P.3d 350 (Cal. 2014).

colleagues in Division 1 had reached in *Nelson*. In *Raceway Ford,* Division 2 of the Fourth District Court of Appeal started with the premise that the court's backdating theory in *Nelson* held little water, finding that *Nelson* "stretches an already thin thread of authority beyond the breaking point."[51] The Court of Appeal expressed skepticism of the Single Document Rule theory in *Nelson* as well, stating that "[i]t is questionable whether a formatting rule should have any applicability to alleged inaccuracies in the substance of the document."[52] The Court of Appeal ultimately held that that Single Document Rule was a procedural formatting requirement, not a substantive right giving the consumer a right to rescind when the RISC otherwise was accurate:

> *Nelson* holds that a backdated second contract for a vehicle, similar to those at issue in this case, violates the single document rule because such a document does not contain "'all of the agreements of the buyer and seller with respect to the total cost and the terms of payment for the motor vehicle.'" (*Nelson, supra*, 186 Cal.App.4th at p. 1004, 112 Cal.Rptr.3d 607.)…We are not persuaded, because Nelson's reasoning is flawed in multiple respects. First, we have already rejected *Nelson's* erroneous conclusions regarding "preconsummation" finance charges. Second, the purpose of the single document rule is to facilitate the consumer's review of the parties' agreements, not review by a third party. (*See* 92 Ops.Cal.Atty.Gen., *supra*, at pp. *6 – 7.) A buyer signing even a backdated contract may be presumed to know the date that they are signing it. Third, there is no specific requirement in the ASFA that all information necessary to calculate the APR be disclosed to the buyer: section 2982 – via the incorporation of Regulation Z in the first unlettered paragraph – requires only that the APR itself be disclosed. (*See* § 2982; 15 U.S.C. § 1638, subd. (a)(4); 12 C.F.R. § 226.18(e) (2014).) Fourth, *Nelson's* interpretation of the single document rule renders a portion of section 2983 superfluous, specifically, the reference to the disclosure requirements listed in subdivision (a) of section 2982. [Citations omitted.] If a contract containing an inaccurate disclosure necessarily violated the single document rule, as *Nelson* suggests – in addition to whatever provision requires the disclosure in the first instance – any provisions regarding specific disclosure requirements included in section 2983 would have no significance, because the contract would be unenforceable anyway for violating the single document rule. Moreover, *Nelson's* interpretation of the single document rule stretches a rule that on its face deals with format of a contract into a rule governing the accuracy of the substance of the disclosures contained in the contract, while citing no authority in support of that expansive interpretation….Nothing like the single document rule is discussed anywhere in *Rucker*. In short, we conclude that section 2981.9 is not implicated by the potentially inaccurate disclosures of APR caused by Raceway's backdating of second or subsequent contracts. The single document rule governs the format of the contract, not its substance, and we reject *Nelson's* interpretation to the contrary as unpersuasive.[53]

The California Supreme Court granted review of *Raceway Ford Cases*, and, after oral argument on October 5, 2016,[54] the Supreme Court affirmed the Court of Appeal's finding that there was no violation of the Single Document Rule -- but for different reasons.[55] The Supreme Court avoided *Nelson*'s analysis of whether the Single Document Rule is a procedural requirement or substantive remedy. Rather, the Court merely held that the terms of the backdated RISC were consistent with the terms of the "Acknowledgment of Rescinded Contract" and, therefore, absent inconsistency, the Single Document Rule was not violated:

> Plaintiffs rely on *Nelson*, where the court found that a backdating practice similar to Raceway's violated the single document rule because "anyone reviewing the original contract and the second contract had no means of determining (1) the operative contract; (2) the date the parties consummated the transaction, and thus, the correct APR; or (3) that [the plaintiff] improperly paid a finance charge when no contract existed." (Nelson, supra, 186 Cal.App.4th at p. 1004.) According to Nelson, "[t]he only way to determine the date the parties consummated the transaction, the correct APR, and that Nelson improperly paid a finance charge when no contract existed is to review the three documents and perform some calculations." (*Ibid.*) But the analysis in Nelson is not convincing. Nothing in the original contract or the "Acknowledgment of Rescinded Contract" or "Acknowledgment of Rewritten Contract" signed by the consumer set forth an agreement

51. *Id*., 229 Cal.App. 4th at 1139.

52. *Id*. at 1144.

53. *Id. at* 1144 – 1145.

54. At oral argument, the Supreme Court focused its question on whether the bona fide error affirmative defense is applicable under the facts in *Raceway Ford,* and whether back-dating a second contract causes any harm; s*ee also:* http://www.appellatestrategist.com/2009/07/articles/class-actions/california-supreme-court-civil-issues-pending-commercialclass-actions/

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54. *(Continued from previous column)*

("Do Inapplicable Fees and Backdating Violate the Automobile Sales Finance Act? After the Court of Appeal affirmed in part and reversed in part the judgment in a civil action, the Supreme Court granted review on the following issues: (1) Does the inclusion of inapplicable smog check and smog certification fees in an automobile purchase contract violate the Automobile Sales Finance Act (Civ. Code, § 2981 et seq.)? (2) Does backdating a second or subsequent finance agreement to the date of the first finance agreement for purchase of a vehicle violate the Act? Raceway Ford Cases, S222211 (opinion below E054517, formerly 229 Cal.App.4th 1119). Review granted 12/17/14").

55. *In re:* Raceway Ford Cases, 2016 WL 7241420, at *8 (Cal. 2016).