

IN THE SUPREME COURT OF THE STATE OF NEVADA

oOo

LUCIA CASTILLO, an individual,)
and EDWIN PRATTS, an)
individual,)

Appellants,)

vs.)

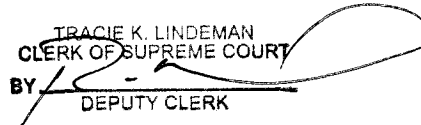
UNITED FEDERAL CREDIT)
UNION, a federal credit union)

Respondent.)
/)
)

)Supreme Court No. 70151
)District Court Case No.
CV1500421

FILED

APR 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

DOCKETING STATEMENT
CIVIL APPEALS

1. Judicial District and Judge
 - A. Second Judicial District Court of the State of Nevada in and for the County of Washoe. Case No. CV15-00421. Hon. Elliott A. Sattler
2. Attorney filing this docketing statement:
 - A. Michael Lehnrs, Esq. 429 Marsh Ave., Reno, Nevada 89509, (775) 786-1695.
 - B. Co-Counsel acting with Mr. Lehnrs on behalf of Appellants: Nathan R. Zeltzer, Esquire, Nevada Bar No. 5173, 12 W. Taylor Street, Reno, Nevada 89509, Telephone: (775) 786-9993, Telecopier: (775) 329-7220, Robert W. Murphy, *Pro Hac Vice*, Florida Bar No. 717223, 1212 SE 2nd Avenue, Fort Lauderdale, FL 33316, Telephone: (954) 763-8660, Telecopier: (954) 763-8607
 - C. Clients: Appellants Lucia Castillo and Edwin Pratts.
3. Attorney(s) representing respondents(s):

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DEPUTY CLERK

A. Respondent United Federal Credit Union is represented by James A. Kohl, Esq., Howard & Howard, Wells Fargo Tower, Suite 1000, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169-5914. Telephone (702) 257-1483, Telecopier (702) 567-1568

4. Nature of disposition below (check all that apply):

- | | |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input checked="" type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

A. No.

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

A. None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

A. None

8. Nature of the action. Briefly describe the nature of the action and the result below:

A. This is an appeal of the dismissal of a class action based upon the lack of jurisdiction. The Appellants alleged Respondent's notice of sale of repossessed collateral violated both Article Nine of the Uniform Commercial Code and NRS 482.516. Appellants alleged they were entitled to statutory damages of \$6,330.28 for the alleged Article Nine violation and to enjoin Respondent from attempting to collect its \$6,841.55 deficiency due to the alleged violation of NRS 482.516, for total relief of \$13,171.83. The Court ruled that the Appellants had failed to allege damages in excess of \$10,000.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

A. Did the District Court commit error in not aggregating the damages of individual class member damages in determining the jurisdictional threshold of District Court?

B. Did the District Court commit error by failing to calculate both the Article Nine statutory damages and the injunctive relief that would prohibit Respondent from collecting its deficiency towards the District Court's monetary jurisdictional threshold?

C. Did the District Court commit error by not asserting original jurisdiction over all portions of the complaint, as it sought injunctive relief, even if the damages alleged failed to meet the District Court's monetary jurisdictional threshold?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

A. None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

A. N/A

B. Yes

C. No

If not, explain: Not Applicable

12. Other issues. Does this appeal involve any of the following issues?

A. Reversal of well-settled Nevada precedent (identify the case(s))

B. An issue arising under the United States and/or Nevada Constitutions

C. A substantial issue of first impression

D. An issue of public policy

E. An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

F. A ballot question

If so, explain: The legal issue of whether a Plaintiff's claim for statutory damages can be aggregated with a Defendant's claim for deficiency to meet the jurisdictional threshold has not been decided. The legal issue of whether each putative class member's claim can be aggregated to meet the jurisdictional threshold has also not been decided.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the

specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

A. NRAP 17(a)(13) says that the Supreme Court shall hear and decide matters raising as a principal issue a question of first impression involving the United States or Nevada constitution or common law. This case involves two issues of first impression: (1) Whether or not a Plaintiff's claim for statutory damages can be aggregated with a claim for injunctive relief that would bar a Defendant's claim for a deficiency in order to meet the jurisdictional threshold and (2) Whether each putative class member's claim can be aggregated to meet the jurisdictional threshold.

14. Trial. If this action proceeded to trial, how many days did the trial last?
A. Not Applicable

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
A. No.

16. Date of entry of written judgment or order appealed from:
On October 27, 2015 the District Court entered its Order Granting Defendant United Federal Credit Union's Motion to Dismiss First Amended Complaint (DE 15). On November 5, 2015 appellants did file a motion to Amend the District Court's Order dismissing the appellants' complaint pursuant to Nev. R. Civ. Pro. 59(e). See DE 9. That motion was denied by Order on March 17, 2016 (DE 2). The notice of appeal was filed on April 11, 2016.

17. Date written notice of entry of judgment or order was served:
The Court mailed a copy of the order dismissing the Amended Complaint on October 27, 2015. Notice of Entry of the Order was filed and served by the Defendant on October 30, 2015.

Service was by mail and electronic means.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.
- A. Plaintiffs sued for statutory damages and injunctive relief. District Court dismissed amended complaint due to lack of subject matter jurisdiction.
24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?
- Yes
- No
25. If you answered "No" to question 23, complete the following:
- (a) Specify the claims remaining pending below: Not Applicable
- (b) Specify the parties remaining below: Not Applicable
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? Not Applicable
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? Not Applicable
26. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b):
- A. Not Applicable
27. Attach file-stamped copies of the following documents:
- A. The latest-filed complaint, counterclaims, cross-claims, and third-party claims: Please see Exhibit "1".
- B. Any tolling motion(s) and order(s) resolving tolling motion(s): Please see Exhibit "2"

- C. Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal:
Please see Exhibit "3"
- D. Any other order challenged on appeal: Not Applicable
- E. Notices of entry for each attached order: Please see Exhibit "4". No notice of entry of order denying motion to reconsider has been filed.

VERIFICATION


I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Lucia Castillo and Edwin Pratts
Appellants

April 25, 2016

County of Washoe, State of Nevada

Michael Lehnert, Esq., co-counsel for
Appellants



Michael Lehnert, Esq.

CERTIFICATE OF SERVICE

I certify that on the 25 day of April, 2016, I served a copy of this completed docketing statement upon all counsel of record:

By personally serving it upon him/her; or

By mailing it by first class mail with sufficient postage prepaid to the following address: James A. Kohl, Esq., Howard & Howard, Wells Fargo Tower, Suite 1000, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169-5914

Dated this 25 day of April, 2016

Dolores Stigall
Dolores Stigall

Exhibit 1

Exhibit 1

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Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

oOo

LUCIA CASTILLO, an individual, and
EDWIN PRATTS, an individual,

Plaintiffs,

Case No. CV15-00421
Dept. No. 10

vs.

CLASS REPRESENTATION
(Arbitration Exempt)

UNITED FEDERAL CREDIT UNION, a
federal credit union

Defendant.

FIRST AMENDED COMPLAINT FOR
DAMAGES AND INCIDENTAL RELIEF

Plaintiffs, Lucia Castillo, an individual (“Ms. Castillo”) and Edwin Pratts, individual (“Mr. Pratts”) (hereinafter collectively referred to as the “Class Representatives”), on behalf of themselves and all others similarly situated, files this their First Amended Complaint for Damages and Incidental Relief against Defendant, United Federal Credit Union, a federal credit union (“UFCU”), and allege the following:

INTRODUCTION

1 1. This class action seeks injunctive and monetary relief to redress an unlawful and
2 deceptive pattern of wrongdoing followed by UFCU with respect to the repossession and
3 repossession sales of the personal property of consumers in the State of Nevada.

4 2. As more particularly described below, UFCU sent to the Class Representatives
5 and hundreds of other Nevada consumers a form post-repossession notice which failed to
6 disclose consumer rights required by the Uniform Commercial Code ("UCC"), which mandates
7 disclosure of:

- 8 • the method of intended disposition;
- 9 • a description of the liability of a consumer for a deficiency;
- 10 • telephonic contact information for exercising the right of redemption;
- 11 • the consumer's entitlement to an accounting of any unpaid indebtedness,
12 and the charge, if any, for an accounting;
- 13 • the time and place of a public disposition or the time after which any other
14 disposition is to be made; and
- 15 • contact information for obtaining additional facts concerning the disposition
16 and the secured obligation.

17 3. In addition to not providing the statutorily mandated notice under the UCC,
18 UFCU failed to provide the required notice under NRS 482.156, which mandates that the
19 notice:

- 19 • must set forth that there is a right to redeem the vehicle and the total amount
20 required as of the date of the notice to redeem;
- 21 • may inform such persons of their privilege of reinstatement of the security
22 agreement, if the holder extends such a privilege;
- 23 • must give notice of the holder's intent to resell or again lease the vehicle at
24 the expiration of 10 days from the date of giving or mailing the notice;
- 25 • must disclose the place at which the vehicle will be returned to the buyer or
26 lessee upon redemption or reinstatement; and
- 27 • must designate the name and address of the person to whom payment must
28 be made.

29 4. After repossession of the vehicle of the Class Representatives and other similarly
30 situated consumers, UFCU informed the Class Representatives and other similarly situated

1 consumers that it intended to dispose of their vehicle without providing the statutorily mandated
2 notice with the specific disclosures as required under NRS 104.9613, 104.9614, and 482.516.

3 5. The Class Representatives bring this action on behalf of themselves and a class
4 of all other similarly situated consumers. The Class Representatives seek injunctive relief and an
5 award of statutory damages as provided for under Nevada law, and such other and further relief
6 as this Court may deem appropriate.

7 **JURISDICTION**

8 6. As more particularly described below, on or about March 11, 2014, the Class
9 Representatives executed a Simple Interest Vehicle Contract for Sale and Security Agreement to
10 finance a vehicle. The amount financed was \$16,096.77.

11 7. On or about January 21, 2015, subsequent to the repossession of the vehicle,
12 UFCU sent notice to the Class Representatives that their car had been sold and that \$6,841.55
13 was due and owing to UFCU.

14 8. As more particularly described below, UFCU informed the Class
15 Representatives and other similarly situated consumers that it intended to dispose of their vehicle
16 without providing the statutorily mandated notice with the specific disclosures as required under
17 NRS 104.9613, 104.9614, and 482.516 the Class Representatives and all other members
18 similarly situated are entitled to an amount not less than the credit service charge plus 10 percent
19 of the principal amount of the debt or the time-price differential plus ten percent of the cash
20 price.

21 9. Because UFCU informed the Class Representatives and other similarly situated
22 consumers that it intended to dispose of their vehicles without providing the statutorily
23 mandated notice with the specific disclosures as required under NRS 104.9613, 104.9614, and
24 482.516 the Class Representatives and all other members similarly situated are entitled to the
25 elimination of any deficiency balance owing.

26 10. As each Class Member is entitled to the elimination of the deficiency balance and
27 the statutory damages described herein, the amount in controversy exceeds \$10,000.00.
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PARTIES

11. At all times material hereto, the Class Representatives were *sui juris* and residents of Washoe County, Nevada.

12. At all times material hereto, UFCU, was a federal corporation doing business in Washoe County, Nevada.

13. At all times material hereto, UFCU was engaged in the business of providing financing to purchasers of new and used motor vehicles and other personal property in the State of Nevada, including Washoe County, Nevada.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

Details Concerning Repossession

14. On or about March 11, 2014, the Plaintiffs entered into a retail installment sale contract ("Castillo RISC"). A true and correct copy of said contract has been attached hereto as Exhibit "1".

15. Pursuant to the Castillo RISC, Plaintiffs financed the purchase of a 2012 Kia Forte motor vehicle, VIN: KNAFU4A24C5593307 ("Castillo Vehicle").

16. On or about December 18, 2014, UFCU repossessed the Castillo Vehicle.

17. On or about December 19, 2014, UFCU sent or caused to be sent to Plaintiffs a written notice advising Plaintiffs of its intent to dispose of the Castillo Vehicle in purported compliance with the requirements of the UCC ("Notice of Sale").

18. A true and correct copy of the Notice of Sale is attached hereto and incorporated herein by reference as Exhibit "1."

Description of UCC Non-Compliance

19. The Notice of Sale fails to comply with the UCC in that UFCU failed to state that Plaintiffs as debtors were entitled to an accounting of the unpaid indebtedness and the charge, if any, for said accounting, as required by NRS 104.9613 1(d) and 104.9614 1(a).

20. In the Notice of Sale, UFCU made the following representation concerning the obligation of Plaintiffs to pay a deficiency, if any:

1 If the proceeds from the sale, after deducting the expenses for repossession,
2 repair, storage and selling, are not sufficient to pay the total amount due
3 (including accrued interest), you are responsible for paying any deficiency
4 balance within (5) five days or you must make contact with the Credit Union to
5 arrange for payment.

6 ("Deficiency Payment Representation")

7 21. Contrary to the Deficiency Payment Representation, NRS 104.9616 provides in
8 pertinent part that in a consumer-goods transaction a secured creditor such as UFCU is required
9 to provide an explanation of a deficiency in the manner contemplated under said section before
10 or when the secured creditor first makes a written demand on the consumer after disposition for
11 payment of the deficiency.

12 22. Under the UCC, with respect to consumer goods transactions, a notification that
13 lacks any of the information required under NRS 104.9614 is insufficient as a matter of law.
14 Uniform Commercial Code Comment, Note 1, NRS 104.9614.

15 23. Under the UCC, "every non-compliance with the requirements of Part 6 in a
16 consumer-goods transaction results in liability, regardless of any injury that may have resulted."
17 Uniform Commercial Code Comment, Note 4, NRS 104.9625.

18 *Description of Non-Compliance With Nevada Law With Respect to*
19 *Repossession of Vehicles*

20 24. In addition to the above deficiencies under the UCC, the Notice of Sale fails to
21 comply with NRS 482.516 in the following respects:

- 22 (a) Failure to Disclose Location of Vehicle - UFCU failed to disclose the
23 place at which the Castillo Vehicle would be returned to Plaintiffs upon
24 redemption and reinstatement in contravention of NRS 482.516 2.(d); and
25 (b) Designation of Redemption/Reinstatement Payee - UFCU failed to
26 designate the name and address of the person to whom payment must be
27 made for redemption or reinstatement in contravention of NRS 482.516
28 2.(e).

29 25. Pursuant to NRS 482.516 3, persons such as Plaintiffs are liable for deficiency
30 after sale or lease of a repossessed vehicle only if the notice prescribed by said section is given

1 within sixty (60) days after repossession and includes an itemization of the balance and any
2 costs or fees for delinquency, collection or repossession.

3 26. As a result of the failure of UFCU to comply with the requirements of NRS
4 482.516, UFCU may not recover a deficiency against Plaintiffs and any other persons similarly
5 situated.

6 **Post-Repoession Credit Reporting and Collection Activities of UFCU**

7 27. NRS 104.9625, and the previous NRS 104.9507, provide that when a secured
8 party fails to comply with NRS 104.9614's notice requirements, the proceeds of a disposition
9 of collateral are presumed to be equal with the sum of the indebtedness. Thus, it is statutorily
10 presumed that the secured party is due no deficiency after the disposition of the collateral.

11 28. NRS 482.516(3) provides that creditors such as UFCU are proscribed from
12 collecting a deficiency from debtors such as Plaintiffs and all other persons similarly if the
13 notice prescribed by NRS 482.516(2) is not provided.

14 29. The Class Representatives are informed and believe and on that basis allege that,
15 in the four (4) years preceding the filing of the Complaint herein, UFCU has unlawfully
16 collected or attempted to collect deficiency balances from consumers issued defective post-
17 repossession notices, without legal authority and without accounting for a set-off in the amount
18 of the statutory damages set forth under NRS 104.9625(3)(b).

19 30. In addition to the unlawful collection or attempt to collect deficiency balances
20 from consumers, UFCU has maintained a practice and policy of reporting to the three national
21 consumer reporting agencies, to wit: Equifax Credit Information Services, Inc., Experian, Inc.,
22 and TransUnion, LLC (hereinafter referred to collectively as the "CRAs") derogatory
23 information concerning the Class Representatives and the members of the class which failed to
24 account for the statutory presumption and/or the set-off for statutory damages described herein.

25 31. Since the repossession of the vehicles of the Class Representatives and the class
26 members, UFCU has wrongfully collected and/or reported credit information to the CRAs with
27 respect to the consumer reports of the Class Representatives and the class members.
28

1 32. The Class Representatives and the class members do not have an adequate
2 remedy at law with respect to the continued collection and/or reporting of materially inaccurate
3 adverse credit information to the CRAs.

4 33. The Class Representatives and the class members will suffer irreparable injury if
5 UFCU is not enjoined from the future wrongful collection and reporting of adverse information
6 to the CRAs.

7 34. Since the repossession of the vehicle of the Class Representatives and the class
8 members, UFCU has wrongfully collected and/or reported credit information to the CRAs with
9 respect to the consumer reports of the Class Representatives and the class members.

10 35. Pursuant to NRS 104.9625, if it is established that a secured party is not
11 proceeding in accordance with Article 9, Part VI of the UCC, a court may enter an order
12 restraining collection, enforcement or disposition of collateral on appropriate terms and
13 conditions.

14 36. The Class Representatives and the class members do not have an adequate
15 remedy at law with respect to the continued collection and/or reporting of materially inaccurate
16 adverse credit information to the CRAs.

17 37. The Class Representatives and the class members will suffer irreparable injury if
18 UFCU is not enjoined from the future wrongful collection and reporting of adverse information
19 to the CRAs.

20 **CLASS REPRESENTATION ALLEGATIONS**

21 **Statement of Maintainable Class Claims**

22 38. Pursuant to Rule 23(a), Nevada Rules of Civil Procedure, this is a case
23 maintainable on a class-wide basis pursuant to Rule 23(b)(2) and (b)(3), Nevada Rules of Civil
24 Procedure, and the Class Representatives bring this action on behalf of themselves and of a
25 class of all other persons similarly situated, to remedy the ongoing unfair, unlawful, and/or
26 deceptive business practices alleged herein, and seek redress on behalf of all those persons who
27 have been harmed thereby.

1 Identification of Common Questions of Law or Fact

2 39. Pursuant to Rule 23(a)(2), Nevada Rules of Civil Procedure, there are questions
3 of law and fact common to the Class, which common issues predominate over any issues
4 involving owing individual class members.

5 40. The factual question common to the Class Representatives and to each class
6 member is that each was sent a post-repossession notice in the form of Exhibit "A" and has
7 been subjected or may be subjected to collection and credit reporting activities as described
8 above.

9 41. Pursuant to Rule 23(a)(2), Nevada Rules of Civil Procedure, the principal legal
10 question common to the Class Representatives and to each class member is whether the form
11 represented by the Notice of Sale complies with Nevada law with respect to providing the
12 disclosures set forth under NRS 104.9613, 104.9614, 104.9623, and 482.516.

13 Allegations of Typicality

14 42. Pursuant to Rule 23(a)(3), Nevada Rules of Civil Procedure, the claims of the
15 Class Representatives are typical of those of the classes they seek to represent in that the Class
16 Representatives were sent a form notice in the form of Exhibit "A" and has been subjected to
17 the collection and credit reporting activities as described above. As such, the claims of the Class
18 Representatives are identical to that of the class members.

19 Allegations of Numerosity

20 43. In the consumer finance industry in Nevada, similar finance companies
21 experience a default rate of 5% to 10% of their portfolios. See, generally, S. Agarwal and B.
22 Ambrose, *Household Credit Usage (2007)*. Based on the best due diligence and the experience
23 of Class Counsel, the Class Representatives believe that UFCU repossessed approximately one
24 hundred fifty (150) vehicles and other personal property in a fiscal year in the State of Nevada.

25 44. Based on the foregoing, the prospective class numbers are at least in the
26 hundreds and are so numerous that joinder of all members would be impractical. The exact size
27
28

1 of the proposed class and the identity of the members thereof are readily ascertainable from
2 UFCU's business records.

3 *Definition of Class*

4 45. Pursuant to Rule 23, Nevada Rules of Civil Procedure, the class is composed of
5 all Nevada residents who, in the four (4) years preceding the filing of the instant action:

- 6 (a) have or had a finance agreement held by UFCU for which personal
7 property was pledged as collateral;
8 (b) had said personal property repossessed in Nevada by UFCU or its agents;
9 and
10 (c) were sent a post-repossession notice which failed to contain one or more of
11 the mandated statutory disclosures under NRS 104.9613, 104.9614,
12 104.9625, and 482.516.

13 *Adequacy of Class Representatives*

14 46. Pursuant to Rule 23(a)(4), Nevada Rules of Civil Procedure, the Class
15 Representatives will fairly and adequately protect and represent the interest of each class
16 member. The Class Representatives have retained counsel with substantial experience in
17 handling class actions in federal and state court.

18 47. The Class Representatives have no conflicts of interest which would interfere
19 with their ability to represent the interests of the class members.

20 *Appropriateness of Hybrid Class Treatment Under Rule 23(b)(2) and (3)*

21 48. A class action is superior to other methods for the fair and efficient adjudication
22 of this controversy. Because the damages suffered by the individual class members may be
23 relatively small compared to the expense and burden of litigation, it would be impractical and
24 economically unfeasible for class members to seek redress individually. The prosecution of
25 separate actions by the individual class members, even if possible, would create a risk of
26 inconsistent or varying adjudications with respect to the individual class members against
27 UFCU.
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1 49. The Class Representatives are represented by counsel competent and experienced
2 in both consumer protection and class action litigation.

3 50. Members of the proposed class who have an interest in individually controlling
4 the prosecution of separate claims against UFCU will not be prejudiced by this action. Each
5 member of the proposed class will be identified through discovery from UFCU and will be
6 notified and given an opportunity to opt out of the class.

7 51. The Class Representatives do not presently know the nature and extent of any
8 pending litigation to which a member of the proposed classes is a party and in which any
9 question of law or fact controverted in the present action is to be adjudicated. The Class
10 Representatives will identify any such pending litigation by discovery from UFCU.

11 52. This Court is an appropriate forum for the present action in that the Class
12 Representatives are, and at all times herein mentioned have been, residents of this county; the
13 Class Representatives' Vehicle was purchased and repossessed in this county; and UFCU does
14 business in this county, including without limitation providing to residents of this county
15 financing of consumer goods.

16 53. Certification of a class under Rule 23(b)(2), Nevada Rules of Civil Procedure is
17 appropriate as UFCU has acted on grounds generally applicable to the Class with respect to the
18 collection and credit reporting activity as described above thereby making appropriate equitable
19 relief with respect to the Class as a whole. Unless restrained from such activities, UFCU will
20 continue to unlawfully harm the interests of the Class Representatives and the class for which
21 no adequate remedy at law exists.

22 54. Certification of a class under Rule 23, Nevada Rules of Civil Procedure is also
23 appropriate in that:

- 24 (a) The questions of law or fact common to the members of the class
25 predominate over any questions affecting an individual class member; and
26 (b) A class action is superior to other available methods for the fair and efficient
27 adjudication of the controversy.

28

1 55. The Class Representatives request certification of a "hybrid" class for monetary
2 damages under Rule 23(b)(3) and for equitable relief under Rule 23(b)(2), Nevada Rules of
3 Civil Procedure. See, *Penson v. Terminal Transport Co., Inc.*, 634 F.2d 989, 994 (5th Cir.
4 1981); *Agan v. Katzman & Korr, P.A.*, 222 F.R.D. 692 (S.D. Fla. 2004).

5 56. There are no difficulties likely to be encountered by the Court in the management
6 of this proposed class action.

7 57. The Class Representatives' counsel are entitled to a reasonable fee from the class
8 members or from a common fund for the handling of this action.

9 **APPLICABLE LAW**

10 58. NRS 104.9610 through 104.9628, regulate the rights of secured parties to
11 dispose of collateral after an alleged default. NRS 104.9610 requires a secured party to conduct
12 every aspect of its disposition of financed vehicles, including the method, manner, time, place
13 and other terms of sale, in a commercially reasonable manner.

14 59. NRS 104.9611, Nevada Statute, requires a secured party to issue to the
15 borrower an appropriate notice prior to the disposition. NRS 104.9614 further requires that the
16 notice disclose the time and place of any public sale or the time after which any other intended
17 disposition is intended to be made.

18 60. To protect consumers' valuable property interests in financed vehicles, NRS
19 104.9614 further requires that the notice disclose:

- 20 • any liability of the borrower for a deficiency;
- 21 • that the debtor is entitled to an accounting of the unpaid indebtedness; and
- 22 the charge, if any for such an accounting; and
- 23 • the telephone number and address of contacts from where the debtor may
- 24 obtain further information concerning the disposition of collateral.

25 61. The form represented by the Notice of Sale that UFCU sent to the Class
26 Representative was materially defective, invalid and incomplete as described above.

1 62. The Class Representatives were informed and believe and on that basis allege
2 that UFCU sent the standard form represented by the Notice of Sale, or variants of it containing
3 one or more of the enumerated defects, to hundreds, if not thousands, of Nevada consumers
4 following the repossession of their vehicles.

5 63. NRS 104.9625 provides that if the secured party fails to comply with the
6 statutory requirements for disposition, the consumer borrower may recover "an amount not less
7 than the credit service charge plus 10 percent of the principal amount of the debt or the time-
8 price differential plus ten percent of the cash price."

9 **CAUSES OF ACTION**

10 **COUNT I - ACTION FOR VIOLATION OF NRS 104.9610, UNIFORM**
11 **COMMERCIAL CODE**

12 64. The Class Representatives reallege and reincorporate herein by reference the
13 allegations of paragraphs 1 through 63 as though fully set forth herein.

14 65. NRS 104.9610 provides that "every aspect of a disposition of collateral,
15 including the method, manner, time, place and other terms, must be commercially reasonable."

16 66. As is hereinabove alleged, UFCU has engaged and is continuing to engage in
17 material violations of Nevada law in that the form represented by the Notice of Sale fails to
18 comply with the governing provisions of the UCC.

19 67. UFCU has thus deprived the Class Representatives and class members of
20 substantial rights granted to them under Nevada law, including, but not limited to, the right to
21 obtain a Notice of Sale that fully and accurately discloses their rights upon repossession.

22 68. As a direct and proximate result of the acts hereinabove alleged and UFCU's on-
23 going unlawful conduct, the Class Representatives and class members have been damaged and
24 have suffered economic losses in an amount to be proven at trial.

25 69. The Class Representatives and class members are therefore entitled to damages,
26 pursuant to NRS 104.9625, as well as injunctive relief.

27 **COUNT II - ACTION FOR VIOLATION OF NRS 104.9611, UNIFORM**
28 **COMMERCIAL CODE**

1 70. The Class Representatives reallege and reincorporate herein by reference the
2 allegations of paragraphs 1 through 69 above as if set forth in full herein.

3 71. NRS 104.9611, requires secured parties such as UFCU send a “reasonable
4 authenticated notification” of disposition of collateral.

5 72. The standard form represented by the Notice of Sale violates NRS 104.9611 in
6 that UFCU failed to provide reasonable notice of disposition of collateral to the Class
7 Representatives and Class Members.

8 73. As a direct and proximate result of the acts hereinabove alleged and UFCU’s
9 ongoing unlawful conduct, the Class Representatives and class members have been damaged
10 and have suffered economic losses in an amount to be proven at trial.

11 74. The Class Representatives and class members are therefore entitled to damages,
12 pursuant to NRS 104.9625, as well as to injunctive relief.

13 **COUNT III - ACTION FOR VIOLATION OF NRS 104.9614, UNIFORM**
14 **COMMERCIAL CODE**

14 75. The Class Representatives reallege and reincorporate herein by reference the
15 allegations of paragraphs 1 through 74 above as set forth in full herein.

16 76. NRS 104.9614 1(a) requires that a post-repossession notice include the
17 information provided in NRS 104.9613 1.

18 77. The standard form represented by the Notice of Sale violates NRS 104.9614 in
19 that UFCU failed to provide the statutorily mandated disclosures as described above.

20 78. As a direct and proximate result of the acts hereinabove alleged and UFCU’s
21 ongoing unlawful conduct, the Class Representatives and class members have been damaged
22 and have suffered economic losses in an amount to be proven at trial.

23 79. The Class Representatives and class members are therefore entitled to damages,
24 pursuant to NRS 104.9625, as well as to injunctive relief.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs, Lucia Castillo, an individual, and Edwin Pratts, an
27 individual, pray for relief on behalf of themselves and all others similarly situated as follows:
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A. For an order certifying this claim as a class action;

B. For statutory damages under the Uniform Commercial Code for each class member in the amount of either the credit service charge plus ten percent of the principal amount of the obligation, or the time-price differential plus ten percent of the cash price, whichever is greater, according to proof, pursuant to NRS 104.9625;

C. For an order preliminarily and permanently enjoining UFCU from engaging in the practices alleged herein;

D. For an order of mandatory injunction directed to UFCU to remove any adverse credit information which may have been wrongfully reported on the consumer reports of the class members;

E. For pre-judgment interest to the extent permitted by law;

F. For an award of attorney's fees, costs and expenses incurred in the investigation, filing and prosecution of this action to the extent permitted by law; and

G. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

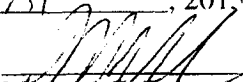
Plaintiffs, Lucia Castillo, an individual, and Edwin Pratts, an individual, pursuant to the

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Nevada Rules of Civil Procedure, demand a trial by jury of all issues so triable.

Dated: This 9 day of April, 2015

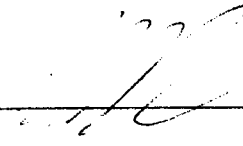

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Co-Counsel for Plaintiffs

Robert W. Murphy, Esquire
Florida Bar No. 717223
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Fort Lauderdale, FL 33316
Telephone: (954) 763-8660
Telecopier (954) 763-8607
Co-Counsel for Plaintiffs
(to be admitted Pro Hac Vice)

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in case herein does not contain the social security number of any person.



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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Michael Lehnert, Esq., and that on the 7 day of April, 2015 I deposited for mailing with postage prepaid a true and correct copy of the foregoing First Amended Complaint for Damages and Incidental Relief addressed to James A. Kohl, Esq., Robert Hernquist, Esq., Howard & Howard Attorneys, PLLC, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169.

Michael Lehnert
Employee

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Exhibit List

Exhibit 1 March 11, 2014 Retail Installment Sale Contract

EXHIBIT "1"

EXHIBIT "1"

SIMPLE INTEREST VEHICLE CONTRACT FOR SALE AND SECURITY AGREEMENT

SECTION A:

Buyer's Name(s): **LUCIA CASTILLO**
 Name: **EDWIN MARTIR PRATTS**

CREDITOR: **TOM DOLANS RENO MAZDA KIA**
 Address: **9475 SOUTH VIRGINIA ST.**
 City: **RENO** County: **WASHOE**
 State: **NV** Zip: **89511**
 Phone: **(775) 828-9666**

Address: **2310 PARADISE DR**
 City: **RENO** County: **WASHOE**
 State: **NV** Zip: **89512**
 Bus. Phone: **(775) 219-8031** Res. Phone: **(775) 453-2958**

Stock No.: **KE111** Salesman: **JOSE H ATSPURO-** Date: **03/11/2014**

SECTION B: DISCLOSURE MADE IN COMPLIANCE WITH FEDERAL TRUTH IN LENDING ACT.

Your Payment Schedule will be: (e) means an estimate

ANNUAL PERCENTAGE RATE
 The cost of your credit as a yearly rate.
8.74 %

FINANCE CHARGE
 The dollar amount the credit will cost you.
\$ 4720.59

Amount Financed
 The amount of credit provided to you or on your behalf.
\$ 16096.77

Total of Payments
 The amount you will have paid after you have made all payments as scheduled.
\$ 20817.36

Total Sales Price
 The total cost of your purchase on credit, including your down payment of \$ **2077.25**.
\$ 22894.61

Number of payments:	Amount of payments:	When payments are due:
N/A	N/A	N/A
72	289.12	MONTHLY BEGINNING 04/25/2014
N/A	N/A	N/A

INSURANCE AND DEBT CANCELLATION: Credit life insurance, credit disability insurance and debt cancellation coverage, which is also known as GAP coverage, are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

	Premium:	Term:	Signature(s):
Credit life:	\$ N/A	N/A	I want credit life insurance: X N/A <small>Signature(s)</small>
Joint credit life:	\$ N/A	N/A	We want joint credit life insurance: X N/A <small>Signature(s)</small>
Credit disability:	\$ N/A	N/A	I want credit disability insurance: X N/A <small>Signature(s)</small>
Credit life and disability:	\$ N/A	N/A	I want credit life and disability insurance: X N/A <small>Signature(s)</small>
Joint credit life and disability:	\$ N/A	N/A	We want joint credit life and single disability insurance: X N/A <small>Signature(s)</small>
Debt cancellation coverage (GAP coverage):	\$ 412.00	72	I want debt cancellation coverage (GAP coverage): X <small>Signature(s)</small> Lucia Castillo

You may obtain property insurance from anyone you want that is acceptable to the Creditor on page 1 of 2. If you get the insurance from the Creditor, you will pay \$ **N/A** and the term of the insurance will be **N/A**.

SECURITY: You are giving a security interest in the goods or property being purchased.
 If checked, you are giving a security interest in **N/A**.

LATE CHARGE: If a payment is more than 10 days late, you will be charged \$15 or 8 percent of the payment, whichever is less.
PREPAYMENT: If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and penalties.

SECTION C: ITEMIZATION OF AMOUNT FINANCED.

SECTION D: VEHICLE RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT.

- Vehicle Selling Price **\$ 14200.00**
 Plus: Documentary Fee **\$ 449.50**
 (This charge represents costs and profit to the dealer for items such as inspecting, cleaning, adjusting vehicles, and preparing documents related to the sale.)
 Plus: Emissions Inspection Fee **\$ N/A**
 Plus: Other (VTR) **\$ 189.00**
 Plus: Other (N/A) **\$ N/A**
 Plus: Other (N/A) **\$ N/A**
 Total Taxable Selling Price **\$ 14838.50**
- Total Sales Tax **\$ 1146.27**
- Amounts Paid to Public Officials
 - Titling Fee **\$ 20.00**
 - Registration Fee **\$ N/A**
 - Other **\$ N/A**
 Total Official Fees (Add 3a through 3c) **\$ 20.00**
- Optional, nontaxable, fees or charges
 - N/A** **\$ N/A**
 - DRY-AWAY FEE-DMV NV** **\$ 9.25**
 - N/A** **\$ N/A**
 - N/A** **\$ N/A**
 - N/A** **\$ N/A**
 - N/A** **\$ N/A**
 Total Optional, nontaxable, fees or charges **\$ 9.25**

This contract is made the **11th** (day) of **MARCH** (month) of **2014** (year), between you, the Buyer(s) shown on page 1 of 2, and us, the Seller shown as Creditor on page 1 of 2. Having been quoted a cash price and a credit price and having chosen to pay the credit price (shown as the Total Sales Price in Section B on page 1 of 2), you agree to buy and we agree to sell, subject to all the terms of this contract, the following described vehicle, accessories and equipment (all of which are referred to in this contract as "Collateral"):

New or Used: **USED** Year and Make: **2012 KIA**
 Series: **FORTE** Body Style: **4DR SDN EX AT** No. Cyl.: **4**

If truck, ton capacity: **N/A**

Manufacturer's Serial Number: **KNAE1J4A24C5593307**
 Use for which purchased: Personal Business Agriculture

- INCLUDING:**
- | | | |
|----------------------------------------------|-------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> Sun/Moon Roof | <input type="checkbox"/> Air-Conditioning | <input type="checkbox"/> Automatic Transmission |
| <input type="checkbox"/> Power Steering | <input type="checkbox"/> Power Door Locks | <input type="checkbox"/> Power Seats |
| <input type="checkbox"/> Power Windows | <input type="checkbox"/> Tilt Wheel | <input type="checkbox"/> Vinyl Top |
| <input type="checkbox"/> Cassette | <input type="checkbox"/> Cruise Control | <input type="checkbox"/> AM/FM Stereo |
| <input type="checkbox"/> Compact Disc Player | | |

RED Color **Y** Tires **Y** Lic. No.

Total Optional, non-refundable, fees or charges
(Add 4a through 4f) \$ 8.25

5. TOTAL CASH SALES PRICE \$ 16013.02

6. Gross Trade In Allowance \$ 1000.00
2002 HYUNDAI SONATA KMHWF25S32A654529
 Year Make Model VIN

Less Prior Credit or Lease Balance \$ N/A
 Net Trade In Allowance
 (If negative, enter 0 and see line 11a) \$ 1000.00

7. Down Payment (Other Than Net Trade-In Allowance):
 a. Trade-In Sales Tax Credit \$ 77.25
 b. Cash \$ 1000.00
 c. Manufacturer's Rebate \$ N/A
 d. Deferred Down Payment \$ N/A
 e. Other (N/A) \$ N/A
 Down Payment (Add 7a through 7e) \$ 1077.25

8. TOTAL DOWN PAYMENT AND NET TRADE-IN ALLOWANCE (Add 6 and 7) \$ 2077.25

9. UNPAID BALANCE OF CASH SALES PRICE (Subtract 8 from 5) \$ 13935.77

10. Plus Optional Insurance and Debt Cancellation Charges*
 a. Credit Life Insurance Premium
 Paid to (N/A) Term (N/A) \$ N/A
 b. Credit Disability Insurance Premium
 Paid to (N/A) Term (N/A) \$ N/A
 c. Debt Cancellation Coverage (GAP Coverage)
 Paid to (THIC) Term (72) \$ 412.00
 d. Other Insurance
 Paid to (N/A) Term (N/A) \$ N/A
 Total Optional Insurance and Debt Cancellation Charges (Add 10a through 10d) \$ 412.00

11. Other Amounts Financed*
 a. Prior Credit or Lease Balance
 Paid to (N/A) \$ N/A
 b. N/A
 Paid to (N/A) \$ N/A
 c. SERVICE CONTRACT
 Paid to (PORTFOLIO) \$ 1749.00
 Total Other Amounts Financed (Add 11a through 11c) \$ 1749.00

12. TOTAL AMOUNT FINANCED (Add 9, 10 and 11) \$ 16096.77
 *Seller may retain or receive a portion of this amount.

You, severally and jointly, promise to pay us the Total of Payments (shown in Section B) according to the Payment Schedule (also shown in Section B), until paid in full, together with interest after maturity at the Annual Percentage Rate disclosed on page 1 of 2.

To secure such payment, you grant to us a purchase money security interest under the Uniform Commercial Code in the Collateral and in all accessions to and proceeds of the Collateral. Insurance in which we or our assignee are named as beneficiary or loss payee, including any proceeds of such insurance or refunds of unearned premiums, or both, are assigned as additional security for this obligation and any other obligation created in connection with this sale. We, our successors and assigns, hereby waive any other security interest or mortgage which would otherwise secure your obligations under this contract except for the security interests and assignments granted by you in this contract.

Address where Collateral will be located:

Street 2310 PARADISE DR City RENO

County WASHOE State NV 89512

Your address after receipt of possession of Collateral:

Street 2310 PARADISE DR City RENO

County WASHOE State NV 89512

Notice of Rescission Rights
(Option to Cancel)

If the Buyer signs here, the notice of rescission rights on page 2 of 2 is applicable to this contract.

Buyer's signature X [Signature]

Co-Buyer's signature X [Signature]

STATE DISCLOSURE REQUIREMENTS: The provisions of Section B and Section C are incorporated into this agreement for purposes of state disclosure requirements.

Additional Terms and Conditions: The additional terms and conditions set forth in this contract are a part of this contract and are incorporated herein by reference.

OPTION N/A. You pay no Finance Charge if the Total Amount Financed, Item No. 12, Section C, is paid in full on or before the N/A (day) of N/A (month) of N/A (year).

SELLER'S INITIALS: N/A

SECTION E:

If checked, you agree to use electronic records and electronic signatures to document this contract. Your electronic signatures on electronic records will have the same effect as signatures on paper documents. We may designate one authoritative copy of this contract. If we do, the authoritative copy will be the electronic copy in a document management system we designate for storing authoritative copies. We may convert the authoritative copy to a paper original. We will do so by printing one paper copy marked "Original." This paper original will have your electronic signature on it. It will have the same effect as if you had signed it originally on paper.

If you agree to use electronic records and electronic signatures, we will comply with all applicable federal, state and local law and regulations.

UPON ENTERING INTO THIS CONTRACT, YOU WILL RECEIVE A PAPER COPY OF THE ORIGINAL CONTRACT ELECTRONICALLY SIGNED AND COMPLETE WITH ALL TERMS, CONDITIONS AND DISCLOSURES TO TAKE WITH YOU.

NOTICE TO BUYER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

If you are buying a used vehicle with this contract, as indicated in the description of the vehicle on page 1 of 2, federal regulation may require a special buyer's guide to be displayed on the window.

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON

ADDITIONAL TERMS AND CONDITIONS: (THE SCHEDULED TERMS SET FORTH HEREIN ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE FINANCIAL INSTITUTION'S CREDIT AGREEMENT WITH THE BUYER.)
 OPTION H/A You pay no Finance Charge if the Total Amount Financed, Item No. 12, Section C, is paid in full on or before the H/A (day) of H/A (month) of H/A (year).

SELLER'S INITIALS: H/A

SECTION E:

If checked, you agree to use electronic records and electronic signatures to document this contract. Your electronic signatures on electronic records will have the same effect as signatures on paper documents. We may designate one authoritative copy of this contract. If we do, the authoritative copy will be the electronic copy in a document management system we designate for storing authoritative copies. We may convert the authoritative copy to a paper original. We will do so by printing one paper copy marked "Original." This paper original will have your electronic signature on it. It will have the same effect as if you had signed it originally on paper.

If you agree to use electronic records and electronic signatures, we will comply with all applicable federal, state and local law and regulations.

UPON ENTERING INTO THIS CONTRACT, YOU WILL RECEIVE A PAPER COPY OF THE ORIGINAL CONTRACT ELECTRONICALLY SIGNED AND COMPLETE WITH ALL TERMS, CONDITIONS AND DISCLOSURES TO TAKE WITH YOU.

NOTICE TO BUYER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

If you are buying a used vehicle with this contract, as indicated in the description of the vehicle on page 1 of 2, federal regulation may require a special buyer's guide to be displayed on the window.

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The text of the preceding two paragraphs is set forth below in Spanish:
 Si usted está comprando un vehículo usado mediante este contrato según la descripción del vehículo en la página 1 de 2, la ley federal podrá exigir que la ventanilla demuestre una guía especial para el comprador.

LA INFORMACIÓN QUE USTED VE EN LA FORMA DE VENTANILLA PARA ESTE VEHÍCULO ES PARTE DE ESTE CONTRATO. LA INFORMACIÓN EN LA FORMA DE VENTANILLA DOMINA CUALQUIER ESTIPULACIÓN CONTRARIA EN EL CONTRATO DE VENTA.

BUYER AND CO-BUYER ACKNOWLEDGE RECEIPT OF A TRUE AND COMPLETELY FILLED-IN PAPER COPY OF THIS CONTRACT AND THE DISCLOSURE ON PAGE 1 OF 2 AT THE TIME OF SIGNING. LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED UNLESS OTHERWISE INDICATED IN SECTION C.

Buyer: X X Sullivan Date: 03/11/2014 Co-Buyer: X X Sullivan Date: 03/11/2014
 Creditor: BLAWS-RENO MAZDA KIA Title: SALES

LAW FORM NO. 553-NV (REV. 10/12)
 THIS FORM IS NOT VALID UNLESS IT IS PRINTED ON THE PROVIDED PAPER AND THE BUYER'S SIGNATURE IS VERIFIED AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

- b. **DRY-AWAY FEE-DMV NV** \$ 8.25
- c. **N/A** \$ N/A
- d. **N/A** \$ N/A
- e. **N/A** \$ N/A
- f. **N/A** \$ N/A

CUSTOMER/TRUTH IN LENDING COPY

- Power Steering
- Power Windows
- Cassette
- Compact Disc Player
- Power Door Locks
- Tilt Wheel
- Cruise Control
- Power Seats
- Vinyl Top
- AM/FM Stereo

Exhibit 2

Exhibit 2

1 CODE 2175
Michael Lehnars, Esquire
2 Nevada Bar Number 003331
429 Marsh Ave.
3 Reno, Nevada 89509
Telephone: (775) 786-1695
4 Telecopier: (775) 786-0799

5 Nathan R. Zeltzer, Esquire
Nevada Bar No. 5173
6 12 W. Taylor Street
Reno, Nevada 89509
7 Telephone: (775) 786-9993
Telecopier: (775) 329-7220

8 Robert W. Murphy, *Pro Hac Vice pending*
9 Florida Bar No. 717223
1212 SE 2nd Avenue
10 Fort Lauderdale, FL 33316
Telephone: (954) 763-8660
11 Telecopier: (954) 763-8607

12 Attorneys for Plaintiffs

13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14 IN AND FOR THE COUNTY OF WASHOE

o/o

15 LUCIA CASTILLO, an individual, and
16 EDWIN PRATTS, an individual,

Case No. CV15-00421

Dept. No. 10

17 Plaintiffs,

CLASS REPRESENTATION
(Arbitration Exempt)

18 vs.

19 UNITED FEDERAL CREDIT UNION, a
federal credit union

MOTION TO AMEND ORDER

20 Defendant.
_____ /

21 Plaintiffs, Lucia Castillo and Edwin Pratts, (herein Castillo), by and through
22 undersigned counsel file the following motion to Amend this Court's Order dismissing
23 Castillo's complaint pursuant to Nev. R. Civ. Pro. 59(e). This motion is made and based upon
24 the pleadings on file herein and the Memorandum of Points and Authorities attached hereto.
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1 **1. Background**

2 On March 3, 2015 Castillo filed the instant class action against United Federal Credit
3 Union ("UFCU"). Castillo alleged claims for relief under Part VI of the Uniform Commercial
4 Code ("UCC"), NRS 104.9601, *et sequi*. Specifically, Castillo's complaint alleges:

- 5 A. On or about March 11, 2014, Castillo purchased a 2012 Kia Forte.
- 6 B. UFCU held the secured note in the 2012 Kia.
- 7 C. On December 18, 2014, UFCU repossessed the Kia.
- 8 D. After taking the Kia, UFCU sent Castillo a notice of sale that failed to
9 comply with the requirements of NRS 104.9610 *et. seq.*
- 10 E. Castillo's complaint alleged that UFCU's notice of sale was defective
11 under UCC 9 for the following reasons:
- 12 I. UFCU failed to state that the Plaintiffs as debtors were entitled to
13 an accounting of any unpaid indebtedness and the charge, if any,
14 for said accounting, as required by NRS 104.9613(1)(d) and
15 104.9614(1)(a).
- 16 II. UFCU failed to provide the proper disclosure to Plaintiffs of the
17 obligation of Plaintiffs to pay any deficiency arising from the sale
18 of the Castillo Vehicle in a manner contrary to NRS 104.9616.
- 19 F. Castillo's complaint alleged that UFCU's notice of sale was defective
20 under NRS 482.516 for the following reasons:
- 21 I. UFCU failed to disclose the place at which the Castillo Vehicle
22 would be returned to Plaintiffs upon redemption and reinstatement
23 in contravention of NRS 482.516(2)(d).
- 24 II. UFCU failed to designate the name and address of the person to
25 whom payment must be made for redemption or reinstatement in
26 contravention of NRS 482.516(2)(e).

1 Based upon these facts, Castillo alleged that they were entitled to statutory damages
2 pursuant to NRS 104.9625(3)(b)¹.

3 **2. Jurisdiction**

4 Castillo's complaint contained claims for monetary relief, a claim for injunctive relief to
5 discharge any deficiency that may be claimed by UFCU and a claim for injunctive relief
6 prohibiting the reporting of derogatory credit. Specifically, Castillo's statutory damages were
7 \$6,330.28.

8 However, in their prayer for relief, Castillo requested "[A]n order preliminarily and
9 permanently enjoining UFCU from engaging in the practices alleged herein". Castillo alleged in
10 paragraph seven that "On or about January 21, 2015, subsequent to the repossession of the
11 vehicle, UFCU sent notice to the Class Representatives that their car had been sold and that
12 \$6,841.55 was due and owing to UFCU." This claim for injunctive relief would bar UFCU
13 from attempting to collect its \$6,841.55 deficiency.

14 In paragraph 30 of the complaint, Castillo alleged in relevant part that "UFCU has
15 maintained a practice and policy of reporting to the three national consumer reporting agencies,
16 to wit: Equifax Credit Information Services, Inc., Experian, Inc., and TransUnion, LLC". In
17 paragraph 33 Castillo alleged "The Class Representatives and the class members will suffer
18 irreparable injury if UFCU is not enjoined from the future wrongful collection and reporting of
19 adverse information to the CRAs." In their prayer for relief, Castillo requested "[A]n order of
20 mandatory injunction directed to UFCU to remove any adverse credit information which may
21 have been wrongfully reported on the consumer reports of the class members."

22 *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280, (Nev. 2006)
23 held that in cases seeking both injunctive relief and monetary damages under the TCPA, the
24 district court has jurisdiction over all portions of the complaint, even if the damages sought fail
25 to meet the district court's monetary jurisdictional threshold. 122 Nev. at 321. When the district

26 _____
27 ¹ NRS 104.9625 gives two mutually exclusive options for damages. NRS 104.9625(2)
28 allows recovery of actual damages. In the alternative, one may recover statutory
damages under NRS 104.9625(3)(b) which is the credit service charge plus ten
percent of the purchase price.

1 court denied Edward's injunctive relief, it did not thereby lose its jurisdiction to consider
2 Edwards' claims for monetary damages. Id 122 Nev. at 325.

3 **3. UFCU's Motion to Dismiss**

4 This Court's October 27, 2015 Order states that the Plaintiffs are precluded from
5 asserting the amount in controversy is \$13,171.83. The Plaintiff will only be able to recover
6 under one theory¹.

7 This "double recovery" argument was first raised by UFCU in its reply. It was not part
8 of its motion. The motion to dismiss only referenced the statutory damages. It did not discuss
9 the deficiency.

10 In their opposition, the Plaintiffs did explain why their individual claim for \$6,330.28
11 in statutory damages can be added to the value of eliminating UFCU's deficiency of
12 \$6,841.55².

13 The Plaintiffs could not respond to the Reply's new double recovery argument. If they
14 had been able to, they would have parsed the applicable statute, which is NRS 104.9625.
15 Subsection 4 provides:

16 (4) A debtor whose deficiency is eliminated under NRS 104.9626 may
17 recover damages for the loss of any surplus. However, a debtor or secondary
18 obligor whose deficiency is eliminated or reduced under that section may not
19 otherwise recover under subsection 2 of this section for noncompliance with
the provisions of this part relating to collection, enforcement, disposition or
acceptance³.

20 Subsection 2, in turn provides:

21 (2) Subject to subsections 3, 4 and 6, a person is liable for damages in the
22 amount of any loss caused by a failure to comply with this article. Loss caused
23 by a failure to comply may include loss resulting from the debtor's inability to
24 obtain, or increased costs of, alternative financing.

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¹ Order Page 3.

27 ² See *JTH Tax vs. Frashier* 624 F.3d 635 (4th Cir. 2010) reversing lower court that
failed to consider not only the amount of money damages requested but also the
injunctive relief the Plaintiff sought when determining jurisdiction.

28 ³ Emphasis supplied

1 Subsection two, which is the focus of subsection four's election of remedies rule,
2 pertains to actual damages. It is subsection three (b) of NRS 104.9625 that sets forth the
3 statutory damages that were plead in the amended complaint:

4 (3)(b) If the collateral is consumer goods, a person that was a debtor or a
5 secondary obligor at the time a secured party failed to comply with this part may
6 recover for that failure in any event an amount not less than the credit service
7 charge plus 10 percent of the principal amount of the obligation or the time-price
8 differential plus 10 percent of the cash price.

9 Not only was UFCU's election of remedies a false statement to this Court of the
10 applicable law, it was also a new argument raised in a reply brief.

11 **4. Relief Sought**

12 Nev. R. Civ. Pro. 59(e) provides that a motion to alter or amend the judgment shall be
13 filed no later than 10 days after service of written notice of entry of the judgment. The Plaintiffs
14 are requesting a substantive alteration of the Order of Dismissal. The Plaintiffs are not
15 requesting the mere correction of a clerical error, or relief of a type wholly collateral to the Order
16 of Dismissal.

17 The Supreme Court has noted that Fed. R. Civ.P. 59(e) was adopted "to mak[e] clear
18 that the district court possesses the power to rectify its own mistakes in the period immediately
19 following the entry of judgment." *White v. New Hampshire Dep't of Employment Sec.*, 455
20 U.S. 445, 450, 102 S.Ct. 1162, 1166, 71 L.Ed.2d 325 (1982)

21 Plaintiffs bear a heavy burden in bringing this motion. A manifest error may not be
22 demonstrated by the disappointment of the losing party. Rather, it is the wholesale disregard,
23 misapplication, or failure to recognize controlling precedent. *Oto v. Metro. Life Ins. Co.*, 224
24 F.3d 601, 606 (7th Cir. 2000) citing *Sedrak v. Callahan*, 987 F.Supp. 1063, 1069
25 (N.D.Ill.1997).

26 While these decisions refer to the Federal Rules, Our Supreme Court, in *Nelson v.*
27 *Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), recognized that federal decisions
28 involving the Federal Rules of Civil Procedure provide persuasive authority when this court
 examines its rules.

1 **5. Evidence that the Plaintiffs have met their burden**

2 The District Court has original jurisdiction over requests for injunctive relief. This is the
3 law so long as such claim was not improperly or fraudulently made solely to invoke state district
4 court's jurisdiction. *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280,
5 (Nev. 2006).

6 UFCU has never alleged that the Plaintiffs' request for injunctive relief was fabricated to
7 invoke jurisdiction.

8 The October 27, 2015 Order references UFCU's double recovery argument that was
9 first raised in the reply. This argument is a false statement of law to this Court because the
10 double recovery, as specified in the statute, only applies to actual damages. It does not apply to
11 statutory damages.

12 **6. Conclusion**

13 Relief under Nev. R. Civ. Pro. 59(e) is warranted for two reasons. First, only the
14 District Court has original jurisdiction for injunctive relief. It can therefore hear cases where the
15 amount in controversy is less than \$10,000 where there is a good faith request for injunctive
16 relief. That is the case here.

17 Second, the Order of dismissal references UFCU's double recovery argument. That
18 argument misstates what NRS 104.9625 says, and it was never raised in its initial motion,
19 depriving the Plaintiff of parsing the statute in a responsive pleading.

20 For those reasons, the Order of Dismissal should be set aside.

21 **Affirmation**

22 **Pursuant to NRS 239B.030**

23 The Undersigned does hereby affirm that the preceding document filed in the case herein
24 does not contain the social security number of any person.

25 Dated: This 5 day of November, 2015


26 By: _____

27 Michael Lehnert, Esq.
28 429 Marsh Ave.
 Reno, Nevada 89509
 Nevada Bar Number 003331

CERTIFICATE OF MAILING

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Pursuant to NRCP 5(b), I hereby certify that I am an employee of Michael Lehnert, Esq., and that on the 5 day of Nov, 2015 I deposited for mailing with postage prepaid a true and correct copy of the foregoing Motion for Reconsideration to James A. Kohl, Esq., Robert Hernquist, Howard & Howard Attorneys, PLLC 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.



Employee

1 CODE 3370
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7

8 LUCIA CASTILLO, an individual, and
9 EDWIN PRATTS, an individual,

10 Plaintiffs,

11 vs.

Case No. CV15-00421

Dept. No. 10

12 UNITED FEDERAL CREDIT UNION, a
13 federal credit union,

14 Defendants.
15 _____/

16 ORDER

17 Presently before the Court is a MOTION TO AMEND ORDER (“the Motion”) filed by
18 Plaintiffs LUCIA CASTILLO and EDWIN PRATTS (collectively “the Plaintiffs”) on November 5,
19 2015. Defendant UNITED FEDERAL CREDIT UNION (“the Defendant”) filed DEFENDANT
20 UNITED FEDERAL CREDIT UNION’S OPPOSITION TO PLAINTIFFS’ MOTION TO AMEND
21 ORDER (“the Opposition”) on November 23, 2015. The Plaintiff filed a REPLY TO OPPOSITION
22 TO MOTION TO AMEND ORDER (“the Reply”) on December 1, 2015. The Plaintiffs submitted
23 the matter for the Court’s consideration on February 12, 2016.

24 The Defendant filed DEFENDANT UNITED FEDERAL CREDIT UNION’S MOTION TO
25 DISMISS FIRST AMENDED COMPLAINT (“the Motion to Dismiss”) on April 28, 2015. The
26 Plaintiffs filed an OPPOSITION TO DEFENDANT UNITED FEDERAL CREDIT UNION’S
27 MOTION TO DISMISS (“the Opposition to the Motion to Dismiss”) on May 11, 2015. The
28 Defendant filed a DEFENDANT UNITED FEDERAL CREDIT UNION’S REPLY TO MOTION
TO DISMISS FIRST AMENDED COMPLAINT (“the Reply”) on May 26, 2015. The Plaintiffs

1 submitted the matter for the Court's consideration on June 9, 2015. The Court heard oral argument
2 on August 17, 2015. The Court issued an ORDER ("the October Order") granting the Motion to
3 Dismiss on October 27, 2015.

4 The Motion seeks to amend the October Order pursuant to NRCPP 59(e). The Court notes the
5 requested relief is not to amend the October Order, but to have the October Order set aside. The
6 requested relief is appropriately sought pursuant to D.C.R. 13(7) and WDCR 12(8). Accordingly,
7 the Court will treat the Motion as a motion for reconsideration.

8 Pursuant to D.C.R. 13(7) and WDCR 12(8) a court may grant leave to rehear a motion in
9 certain circumstances. "A district court may reconsider a previously decided issue if substantially
10 different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*
11 *Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489
12 (1997). "Only in very rare instances in which new issues of fact or law are raised supporting a ruling
13 contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of*
14 *Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

15 The Motion contends the Court erred when it found it did not have jurisdiction over the
16 Plaintiffs' claims. The Motion argues the Court had jurisdiction due to the Plaintiffs' requested
17 injunctive relief. The Motion contends the inability of the Justice Court to grant equitable relief
18 requires this Court to exercise jurisdiction over the Plaintiffs' claims. The Plaintiffs request an order
19 enjoining the Defendant from seeking a deficiency. The Opposition contends such a request is
20 inappropriate for injunctive relief. The Opposition contends such relief can be granted via
21 declaratory judgment by the Justice Court. The Opposition further argues the requested injunctive
22 relief is an improper "obey the law" injunction. The Opposition 8:10-13.

23 The Court finds the Motion to be unpersuasive. NRS 104.9625 does not permit the
24 injunctive relief the Plaintiffs seek. NRS 104.9625 (1) provides "a court may order or restrain
25 collection, enforcement or disposition of collateral on appropriate terms and conditions." The
26 Defendants have already repossessed and disposed of the vehicle at issue in this case. The Amended
27 Complaint 4:11-22. The Reply cites to NRS 33.010 as authority for injunctive relief. As previously
28 noted, the Defendant has repossessed and disposed of the collateral. Therefore, any injunction to

1 prevent the repossession and sale of the vehicle is now moot. The Reply alleges and seeks an
2 injunction against the Defendant, preventing it from collecting a deficiency balance and a mandatory
3 injunction directing the Defendant to remove any adverse credit information from consumer reports
4 regarding the Plaintiffs. When an adequate remedy at law exists, "the harsh remedy of injunction
5 will not lie." *Czipott v. Fleigh*, 87 Nev. 496, 498, 489 P.2d 681, 682-83 (1971). The Court finds the
6 Plaintiffs have an adequate remedy at law. The Plaintiffs may seek and obtain a declaratory
7 judgment in Justice Court determining whether the Plaintiffs do in fact owe the Defendant a
8 deficiency. Should the Justice Court make such a determination and require any negative reporting
9 to be rescinded, the Defendant is expected to follow such an order.

10 The Motion further argues the Court erred in dismissing this case for failure to allege the
11 jurisdictional amount to bring this action before the District Court. The Motion argues NRS
12 104.9625 does not preclude double recovery. The Opposition asserts the Plaintiffs are only able to
13 recover under one legal theory. The Opposition argues Article 9 of the Uniform Commercial Code
14 ("the UCC") acknowledges the public policy of precluding double recovery. The Reply, while
15 acknowledging the Opposition's discussion regarding double recovery, does not respond to the
16 Opposition's arguments.

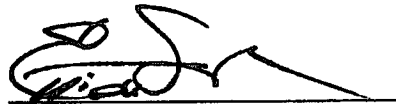
17 The Court finds the Motion has not presented substantially different evidence or persuasive
18 legal authority, nor has it demonstrated the October Order was clearly erroneous. Comment 3 to
19 UCC 9-625 provides "to the extent that damages in tort compensate the debtor for the same loss
20 dealt with by this Article, the debtor should be entitled to only one recovery." Comment 4 to UCC
21 9-625 notes a "secured party is not liable for statutory damages under this subsection more than
22 once with respect to any secured obligation." Reading NRS 104.9625 in conjunction with NRS
23 482.516 indicates the statutory framework did not intend to permit double recovery of monetary
24 damages. Further, even assuming such double recovery was permissible, the amount of damages

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1 still does not arise to the jurisdictional amount of the District Court. The Plaintiffs cannot recover
2 damages in excess of \$6,330.28. The Plaintiffs cannot merely add the statutory damages to the
3 value of the claimed deficiency by the Defendant in order to meet the jurisdictional amount.

4 IT IS HEREBY ORDERED MOTION TO AMEND ORDER is DENIED.

5 DATED this 17 day of March, 2016.



ELLIOTT A. SATTLER
DISTRICT JUDGE

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 17 day of March, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

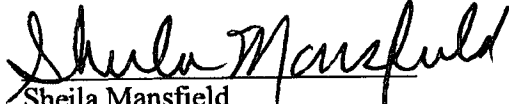
Nathan R. Zeltzer, Esq.
12 W. Taylor Street
Reno, NV 89509

Robert W. Murphy, Esq.
1212 SE 2nd Avenue
Fort Lauderdale, FL 33316

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 17 day of March, 2016, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Michael C. Lehnars, Esq.
James A. Kohl, Esq.


Sheila Mansfield
Administrative Assistant

● ●

Exhibit 3

Exhibit 3

1 CODE 3370
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7

8 LUCIA CASTILLO, an individual, and
9 EDWIN PRATTS, an individual,

10 Plaintiffs,

11 vs.

Case No. CV15-00421

Dept. No. 10

12 UNITED FEDERAL CREDIT UNION, a
13 federal credit union,

14 Defendants.
15

ORDER

16 Presently before the Court is a DEFENDANT UNITED FEDERAL CREDIT UNION'S
17 MOTION TO DISMISS FIRST AMENDED COMPLAINT ("the Motion") filed by Defendant
18 UNITED FEDERAL CREDIT UNION ("the Defendant") on April 28, 2015. Plaintiffs LUCIA
19 CASTILLO and EDWIN PRATTS (collectively "the Plaintiffs") filed an OPPOSITION TO
20 DEFENDANT UNITED FEDERAL CREDIT UNION'S MOTION TO DISMISS ("the
21 Opposition") on May 11, 2015. The Defendant filed a DEFENDANT UNITED FEDERAL
22 CREDIT UNION'S REPLY TO MOTION TO DISMISS FIRST AMENDED COMPLAINT ("the
23 Reply") on May 26, 2015. The Plaintiffs submitted the matter for the Court's consideration on June
24 9, 2015. The Court heard oral argument on August 17, 2015.

25 The Motion seeks dismissal of this case for lack of subject matter jurisdiction pursuant to
26 NRCP 12(b)(1). In the alternative, the Motion seeks dismissal for failure to state a claim upon
27 which relief may be granted pursuant to NRCP 12(b)(5).
28

1 The Motion contends the Plaintiffs fail to establish the jurisdictional amount of damages to
2 bring this action before the District Court. NRS 4.370(1)(b)¹ establishes original jurisdiction of the
3 Nevada Justice Courts to those actions where “the damage claimed does not exceed \$10,000.” The
4 District Courts “have original jurisdiction in all cases excluded by law from the original jurisdiction
5 of justices’ courts.” NEV. CONST. art. VI, § 6.

6 The Opposition avers the Plaintiffs satisfy the jurisdictional requirement because the amount
7 in controversy for class actions is measured in the aggregate. The Opposition relies of the Class
8 Action Fairness Act (CAFA), 28 U.S.C. §1332. The Opposition cites various federal cases to the
9 Court relying upon CAFA to support the argument that the Plaintiffs may aggregate their damages to
10 satisfy the jurisdictional amount. The Opposition further notes CAFA expanded limits of *federal*
11 diversity jurisdiction. The Opposition correctly notes the Supreme Court of the State of Nevada “has
12 not addressed the issue of whether class member claims can be aggregated to satisfy the jurisdiction
13 requirement for the District Court.” The Opposition 4:26-27. The Court finds a review of the record
14 does not reflect an order certifying a class action may be maintained. Accordingly, the Plaintiffs’
15 claim will be addressed as an independent cause of action.

16 The Motion contends dismissal is warranted because the Plaintiffs cannot recover damages in
17 excess of \$6,330.28. The Motion 8:5-24. The Opposition argues the proper amount in controversy
18 is \$13,171.83. The Opposition arrives at the higher value by adding damages pursuant to statutory
19 damages of \$6,330.28 to Plaintiffs’ calculated damages for failure to comply with NRS 482.516 of
20 \$6,841.55. The Opposition 5:25-27-6:1-3.

21 The Reply avers the Plaintiffs are precluded from combining the two calculations to satisfy
22 the jurisdictional requirement. The Reply contends the Plaintiffs must elect which recovery they are
23 seeking pursuant to NRS 104.9625. If a party seeks to have a deficiency eliminated under NRS
24 104.9626 he may “not otherwise recover under [NRS 104.9625(2)] for noncompliance with”
25 provisions relating to collection.” NRS 104.9625(4).

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¹ NRS 4.370 has been amended. The amendatory provisions will be effective January 1, 2017.

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The Court finds the Plaintiffs are precluded from asserting the amount in controversy is \$13,171.83. The Plaintiff will only be able to recover under one theory. Damages under either theory of recovery does not exceed \$10,000.00.

IT IS HEREBY ORDERED DEFENDANT UNITED FEDERAL CREDIT UNION'S MOTION TO DISMISS FIRST AMENDED COMPLAINT is GRANTED.

DATED this 27 day of October, 2015.



ELLIOTT A. SATTLER
DISTRICT JUDGE

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 27 day of October, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Nathan R. Zeltzer, Esq.
12 W. Taylor Street
Reno, NV 89509

Robert W. Murphy, Esq.
1212 SE 2nd Avenue
Fort Lauderdale, FL 33316

CERTIFICATE OF ELECTRONIC SERVICE

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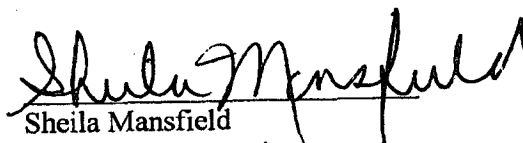

Sheila Mansfield
Administrative Assistant

Exhibit 4

Exhibit 4

1 James A. Kohl, Nevada Bar No. 5692
jak@h2law.com

2 Robert Hernquist, Nevada Bar No. 10616
rwh@h2law.com

3 HOWARD & HOWARD ATTORNEYS, PLLC
4 3800 Howard Hughes Pkwy., Suite 1000
5 Las Vegas, NV 89169
6 Telephone: (702) 257-1483
7 Facsimile: (702) 567-1568

Attorneys for Defendant United Federal Credit Union

8 **SECOND JUDICIAL DISTRICT COURT**
9 **WASHOE COUNTY, NEVADA**

10 LUCIA CASTILLO, an Individual, and
11 EDWIN PRATTS, an individual,

12 Plaintiffs,

13 vs.

14 UNITED FEDERAL CREDIT UNION, a
15 federal credit union,

16 Defendant.

Case No. CV15-00421

Dept. No. 10

NOTICE OF ENTRY OF ORDER

17 TO: ALL INTERESTED PARTIES

18 PLEASE TAKE NOTICE that an Order in the above captioned matter on the 27th day
19 of October, 2015, a copy of which is attached hereto as Exhibit 1.

20 Dated: October 30, 2015

21 HOWARD & HOWARD ATTORNEYS PLLC

22 By: /s/ James A. Kohl

23 James A. Kohl, Nevada Bar No. 5692

24 Robert Hernquist, Nevada Bar No. 101616

25 3800 Howard Hughes Parkway, Suite 1000

26 Las Vegas, NV 89169

27 *Attorneys for Defendant United Federal Credit*
28 *Union*

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: October 30, 2015

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ James A. Kohl
James A. Kohl, Nevada Bar No. 5692
Robert Hernquist, Nevada Bar No. 101616
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169

Attorneys for Defendant United Federal Credit Union

Howard & Howard Attorneys, PLLC
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
(702) 257-1483

CERTIFICATE OF SERVICE

1
2 I, the undersigned, do hereby certify that pursuant to NRCP 5(b), that on October 30,
3 2015, I served a copy of the foregoing NOTICE OF ENTRY OF ORDER to all parties by using
4 by regular mail postage pre-paid and/or via the EC/CMF system which served the following
5 parties electronically:
6

7 Michael Lehnerts, Esq.
8 *Counsel for Plaintiff*

9 I hereby certify that a true and correct copy of the foregoing was placed in a sealed
10 envelope on the 30th day of October, 2015, postage prepaid thereon, in the United States Mail,
11 addressed to:
12

13 Nathan R. Zeltzer, Esq.
14 12 W. Taylor Street
15 Reno, NV 89509
16 *Co- Counsel for Plaintiff*

17 and

18 Robert W. Murphy, Esq.
19 1212 SE 2ND AVENUE
20 Fort Lauderdale, FL 33316
21 *Co- Counsel for Plaintiff*

22
23 /s/ Stephanie T. George
24 An employee of Howard & Howard Attorneys PLLC
25
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27
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Howard & Howard Attorneys, PLLC
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
(702) 257-1483

Howard & Howard Attorneys, PLLC
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
(702) 257-1483

EXHIBIT LIST

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1. ORDER

4822-4228-6634, v. 1

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2015-10-30 11:31:57 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5213707

EXHIBIT 1

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7

8 LUCIA CASTILLO, an individual, and
9 EDWIN PRATTS, an individual,

10 Plaintiffs,

11 vs.

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13 federal credit union,

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27 which relief may be granted pursuant to NRCP 12(b)(5).
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4 District Courts “have original jurisdiction in all cases excluded by law from the original jurisdiction
5 of justices’ courts.” NEV. CONST. art. VI, § 6.

6 The Opposition avers the Plaintiffs satisfy the jurisdictional requirement because the amount
7 in controversy for class actions is measured in the aggregate. The Opposition relies of the Class
8 Action Fairness Act (CAFA), 28 U.S.C. §1332. The Opposition cites various federal cases to the
9 Court relying upon CAFA to support the argument that the Plaintiffs may aggregate their damages to
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11 diversity jurisdiction. The Opposition correctly notes the Supreme Court of the State of Nevada “has
12 not addressed the issue of whether class member claims can be aggregated to satisfy the jurisdiction
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14 does not reflect an order certifying a class action may be maintained. Accordingly, the Plaintiffs’
15 claim will be addressed as an independent cause of action.

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17 excess of \$6,330.28. The Motion 8:5-24. The Opposition argues the proper amount in controversy
18 is \$13,171.83. The Opposition arrives at the higher value by adding damages pursuant to statutory
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21 The Reply avers the Plaintiffs are precluded from combining the two calculations to satisfy
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24 104.9626 he may “not otherwise recover under [NRS 104.9625(2)] for noncompliance with”
25 provisions relating to collection.” NRS 104.9625(4).

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28 _____
¹ NRS 4.370 has been amended. The amendatory provisions will be effective January 1, 2017.

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The Court finds the Plaintiffs are precluded from asserting the amount in controversy is \$13,171.83. The Plaintiff will only be able to recover under one theory. Damages under either theory of recovery does not exceed \$10,000.00.

IT IS HEREBY ORDERED DEFENDANT UNITED FEDERAL CREDIT UNION'S MOTION TO DISMISS FIRST AMENDED COMPLAINT is GRANTED.

DATED this 27 day of October, 2015.



ELLIOTT A. SATTLER
DISTRICT JUDGE

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 27 day of October, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

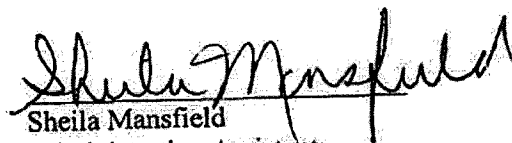
Nathan R. Zeltzer, Esq.
12 W. Taylor Street
Reno, NV 89509

Robert W. Murphy, Esq.
1212 SE 2nd Avenue
Fort Lauderdale, FL 33316

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 27 day of October, 2015, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Michael C. Lehnars, Esq.
James A. Kohl, Esq.


Sheila Mansfield
Administrative Assistant