IN THE SUPREME COURT OF THE STATE OF NEVADA

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LUCIA CASTILLO, an individual, and EDWIN PRATTS, an individual,	)
Appellants,	)Supreme Court No. 70151)District Court Case No. CV1500421
vs.	)
UNITED FEDERAL CREDIT UNION, a federal credit union	)
Respondent.	)

APPELLANTS' OPENING BRIEF

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APPELLANTS' OPENING BRIEF

Appellants, LUCIA CASTILLO and EDWIN PRATTS, by and through their counsel of record hereby submit their Opening Brief in accordance with the provisions of NRAP 28.

Affirmation
Pursuant to NRS 239B.030

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

Dated: This 25 day of August, 2016

By: _____

Michael Lehners, Esq.
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Respondent.	)

NRAP 26.1 DISCLOSURES

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed:

Corporate affiliations: None

Counsel for Appellants: Michael Lehners, Esquire
Nathan R. Zeltzer, Esquire
Robert W. Murphy, Esquire

Pseudonyms: None

Dated: This 25 day of August, 2016

By: _____

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CASES

STATUTES

I. JURISDICTIONAL STATEMENT

On October 27, 2015 the District Court entered its Order Granting Defendant United Federal Credit Union's Motion to Dismiss First Amended Complaint. Appellants' Excerpts of Record (herein "EOR") 110-113. On November 5, 2015 the Appellants filed a motion to Amend the District Court's Order dismissing the appellants' complaint pursuant to Nev. R. Civ. Pro. 59(e). EOR 123-129. That motion was denied by Order on March 17, 2016. EOR 196-200. The notice of appeal was filed on April 11, 2016 (EOR 201-202).

The District Court's October 27, 2016 motion dismissing the Plaintiffs' amended complaint is such a final order. This Court has jurisdiction to review the District Court's Order of Dismissal pursuant to Nev. R. App. Pro. 3(b)(1).

II. ROUTING STATEMENT

This matter is presumptively retained by the Supreme Court. Nev. R. App. Pro. 17(a)(13) provides 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. 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.

III. SUMMARY OF ARGUMENT

Class action suits are designed to allow representatives of a group of similarly situated people to sue on behalf of that class in order to obtain a judgment that will bind all. Thereby, class actions promote efficiency and justice in the legal system by reducing the possibilities that courts will be asked to adjudicate many separate suits arising from a single wrong. For these reasons, the overwhelming number of state appellate courts that have addressed the aggregation issue in a class context have allowed for aggregation.

The district courts have subject matter jurisdiction where the amount in controversy exceeds $10,000. The amount in controversy is measured by the value of the object of the litigation. In this case the object of the litigation was the Respondent's repossession and sale of the Appellants' automobile. Respondent sought a deficiency of $6,841.55. Appellants sought to enjoin the collection of this deficiency amount and they sought statutory damages of $6,330.28. The amount in controversy was therefore $13,171.83.

The district courts have exclusive subject matter jurisdiction over claims for injunctive relief. Where injunctive relief is sought in good faith, the district court has jurisdiction over all portions of the complaint, even if the damages sought fail to meet the district court's monetary jurisdictional threshold. In the district court, the Appellants sought to enjoin Respondent from collecting any

deficiency and to remove any adverse credit information which may have been wrongfully reported on the consumer reports of the class members.

IV. STATEMENT OF ISSUES

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 to 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?

V. STATEMENT OF THE CASE

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.

VI. STATEMENT OF FACTS

A. Overview of Complaint

The instant action was brought by the Castillos against UFCU for violation of Nevada law concerning the repossession sale of automobiles under Article 9, Part VI of the Uniform Commercial Code ("UCC"), NRS 104.9614, and for violating the requirements of Nevada law with respect to retail installment sale contracts under NRS 482.516.

According to the allegations of the Castillo Complaint, as subsequently amended, on or about March 11, 2014, (EOR 36-57) the Castillos entered into a written retail installment sale contract ("RISC") to finance the purchase of a 2012 Kia Forte ("Castillo Vehicle") (Amended Complaint ¶¶14-15, EOR 39).

On December 18, 2014, UFCU repossessed the Castillo Vehicle (Complaint ¶16). The day after the repossession, UFCU sent or caused to be sent to the Castillos a written notice advising the Castillos of its intent to dispose of the Castillo Vehicle in purported compliance with the requirements of the UCC ("Notice of Sale").

In their Amended Complaint, the Castillos asserted that the Notice of Sale failed to comply with the UCC in the following respects:

A. Description of Liability for Deficiency – UFCU did not properly describe the liability of the Castillos for a deficiency, as required by NRS 104.9616; and

B. Accounting - UFCU did not disclose that the Castillos were entitled to an accounting on unpaid indebtedness and the charge, if any, for an accounting as required by NRS 104.9613(1)(d) and NRS 104.9614(1)(a).

In addition to the above deficiencies under the UCC, the Notice of Sale also failed to comply with NRS 482.516 in the following respects:

A. Failure to Disclose Location of Vehicle – UFCU failed to disclose the place at which the Castillo Vehicle would be returned to the Castillos upon redemption or reinstatement in contravention of NRS 482.516(2)(d); and

B. Designation of Redemption/Reinstatement Payee - UFCU failed to designate the name and address of the person to whom payment must be made for redemption or reinstatement in contravention of NRS 482.516(2)(e).

B. Description of Statutory Damages Claim of Class

In the Amended Complaint, the Castillos requested statutory damages for themselves and all members of the class under the UCC pursuant to NRS

104.9625(3)(b). Under the UCC, statutory minimum damages are computed by adding the "credit service charge" or "time price differential" (i.e., the finance charge) and ten (10%) percent of the "principal amount of debt" (i.e., amount financed) or "cash price." The statutory damages are based on the finance charge and the amount financed at the beginning of the transaction, not the interest and principal remaining due at the time of the violation. As a result, the statutory damages can be significant. See, e.g., *Muro v. Hermano's Auto Wholesalers, Inc.*, 514 F. Supp.2d 1343, 1352 (S.D. Fla. 2007) [statutory damages in excess of $9,000.00]; *In Re: Koresko*, 91 B.R. 689 (Bkrpt. E.D. Penn. 1988) [statutory damages awarded in an amount of $14,289.03 for lack of notice of sale with respect to a $22,000.00 dollar vehicle].

C. Description of Claim for Injunctive Relief

Under the Amended Complaint, the Castillos also alleged that UFCU had unlawfully collected or attempted to collect deficiency balances from consumers using defective post-repossession notices without legal authority under NRS 482.516 and without accounting for a set-off in the amount of statutory damages set forth under NRS 104.9625(3)(b). In addition to the unlawful collection or attempt to collect deficiency balances from consumers, UFCU maintained a practice and policy of reporting to the three national consumer reporting agencies, to-wit: Equifax Credit Information Services, Inc., Experian, Inc., and

TransUnion, LLC (hereinafter referred to collectively as the "CRAs") derogatory information concerning the Class Representatives and members of the class which failed to account for the statutory presumption and/or the set-off for statutory damages described in the Amended Complaint (Amended Complaint ¶ 30).

In the Amended Complaint, the Castillos alleged that the Castillos and the members of the class did not have an adequate remedy at law with respect to the continued collection and/or reporting of materially inaccurate adverse credit information to the CRAs (Amended Complaint ¶ 32). Accordingly, the Castillos sought injunctive relief against UFCU to proscribe further collection and reporting activities (Amended Complaint ¶¶ 32-37).

D. Entry of Dismissal Order

On October 27, 2015 the District Court entered its Order Granting Defendant United Federal Credit Union's Motion to Dismiss First Amended Complaint (EOR 110-113). On November 5, 2015 the Appellants filed a motion to Amend the District Court's Order pursuant to Nev. R. Civ. Pro. 59(e) (EOR 123-129). That motion was denied by Order on March 17, 2016 (EOR 196-200). The notice of appeal was filed on April 11, 2016 (EOR 201-202).

VII. ARGUMENT

A. THE DISTRICT COURT COMMITTED ERROR IN NOT AGGREGATING THE DAMAGES OF INDIVIDUAL CLASS MEMBERS IN DETERMINING THE JURISDICTIONAL THRESHOLD OF DISTRICT COURT.

1. The claim of the Class rather than the individual class members should be used to determine the jurisdiction of the District Court.

The entire issue of the "amount in controversy" has been mis-perceived by the court below. In the dismissal order, the Court stated:

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

(Italicized in the original) EOR 111, lines 6-15.

The District Court failed to recognize that the claim to be adjudicated is that of the ***Class***: the hundreds if not thousands of persons who have had their rights as consumers violated as a result of the post-repossession practices of UFCU. The claim is not of any single person. Rather, it is a class of the consumers whose claim is being asserted. The Representative Plaintiffs are just that: "representatives" of the consumer class.

The misdirection of the focus on the part of the District Court is linked inextricably to the finding that "a review of the record does not reflect an order certifying a class action may be maintained." As such, the flawed logic of the District Court rejected aggregation as an appropriate means to maintaining jurisdiction. Whether or not aggregation is appropriate depends upon whether the plaintiffs have "distinct and separate interests" or whether the plaintiffs are "claimants under a common right." The Class Members in this action claim under a common right based on being subjected to a single institutionalized practice of the lender in using non-compliant repossession forms. Commonality has been well-pled and fully described in the Amended Complaint. The common right to be vindicated arises from the consistent course of business conduct that UFCU deprived members of the Class of their statutory rights under Nevada law.

2. The legal analysis of other states supporting aggregation is persuasive.

This Court has not addressed the issue of whether class member claims can be aggregated to satisfy the jurisdictional requirement for District Court. However, the overwhelming number of state appellate courts that have addressed the aggregation issue have allowed for aggregation. *Thomas v. Liberty National Life Ins.Co.*, 368 So.2d 254 (Ala.1979) (aggregation permitted); *Judson School v. Wick*, 494 P.2d 698 (Ariz.1972) (aggregation permitted); *Paley v. Coca-Cola Co.*, 209 N.W. 2d 232 (Mich. 1973); *Fillmore v. Leasecomm Corp*, 18 Mass.L.Rptr. 560, (Mass. Super. 2004) ["no blanket prohibition against aggregation"]; *Johnson v. Plantation Gen.Hosp.*, 641 So.2d 58 (Fla.1994) (aggregation permitted); *contra*, *Lamar v. Office of Sheriff of Daviess County*, 669 S.W. 2d 27 (Ky.App. 1984).

The decisions refusing to permit aggregation generally do so with little analysis other than citing the federal diversity jurisdiction decisions of *Snyder v. Harris*, 394 US 332 (1969) and *Zahn v. Int'l Paper Company*, 414 US 291, 95 S.Ct. 505 (1973). See, e.g., *Lamar*, 669 S.W. 2d at 31. In *Zahn*, the United States Supreme Court held that in a federal class action *based on diversity* of citizenship, each class member must satisfy the jurisdictional amount in that their claims may not be aggregated to meet the jurisdictional requirement. *Id.* at

301. In arriving at this conclusion, the Court was governed by the historic construction of the "matter in controversy" component of 28 U.S.C. §1332(a), which sets forth the requirements of federal court *diversity* jurisdiction. *Id.* at 292-94. In the opinion, the United States Supreme Court reviewed a long line of cases that had restrictively construed the statutes defining federal court jurisdiction. This historic construction of the federal jurisdictional statutes compelled the Court's conclusion that individual claims based upon *diversity* may not be aggregated for jurisdictional purposes.

The underlying premise of *Zahn* is that the federal district courts are courts of limited jurisdiction. In diversity cases, Congress sought to control the case load of the federal courts and leave to state courts of general jurisdiction those cases falling outside limited congressional criteria. In contrast, state courts have a different jurisdictional genesis and criteria than federal courts, and are not bound by the congressional intent that prevents aggregation of claims presented to federal courts under diversity theory.

The question presented here (unlike that in a federal court system) is not whether the case can be brought at all, but whether a potentially multi-million dollar litigation should be brought in the "greater" court because of its aggregate size, or in the "lesser" court because aggregate size is the product of hundreds or thousands of small individual claimants. The compelling force of

reason is that the district courts are better equipped to handle the large and more complicated matters, which would certainly include a class action, and that the justice courts are to handle smaller and less complicated disputes. As stated by one court:

> The class action rule contemplates a single judgment, not hundreds or thousands of judgments for each individual claim . . . [G]iven the purpose of the class action procedure and the size and complexity of the usual class action, we concluded that the class action rule contemplates that the amount of the claim of the entire class determines the dollar amount jurisdiction. Our circuit courts are designed to hear such complex cases; our county courts are not. If the aggregated individual claims do not exceed the $15,000 jurisdictional amount, the class action belongs in county court. If it exceeds the circuit court threshold, it belongs in circuit court.
>
> *Galen of Florida, Inc. v. Arscott*, 629 So.2d 856, 857 (Fla. 5th DCA 1993); *see also, Hernando County v. Moran*, 979 So.2d 276 (Fla. 5th DCA 2008)

It is respectfully urged that the decisions and analysis of sister states that have considered this issue should be persuasive on this Court. In *Judson School, supra*, the Arizona Supreme Court held that it was not bound by federal case law concerning aggregation of claims for class actions. The Arizona Supreme Court recognized that limited jurisdiction of federal courts was one of the most basic distinctions between federal and state court jurisdiction. As in the case below, the Defendant raised the same issue of aggregation. In relying on aggregation for jurisdictional purposes, the Arizona Supreme Court stated:

> Were we to hold that claims less than $200 cannot be aggregated in Arizona, there would be no forum where class actions potentially involving millions of dollars and hundreds, possibly thousands of parties could find effective relief. A justice of the peace court clearly is not equipped to handle the serious legal questions frequently posed by a suit on a small claim which should be determinative of the rights of many and it becomes either impossible or it is improvident for one litigant alone to absorb the enormous expense of prosecuting his claim or defending his position.
>
> *Judson School*, 494 P.2d at 699

In permitting claims of less than $200 to be aggregated to satisfy jurisdiction, the Arizona Court examined *Snyder v. Harris*, 394 U.S. 332 (1969), which was a precursor to *Zahn*. In Snyder, the United States Supreme Court observed that the congressional purpose of the "matter in controversy" statute was to limit the federal court caseload. *Snyder* at 339-41. The Court further observed that "*suits involving issues of state law and brought on the basis of diversity of citizenship can often most appropriately tried in state courts.*" *Id.* at 341 (emphasis added). Because of the strict statutory requirement, the U.S. Supreme Court held that individual claims could not be aggregated to satisfy the jurisdictional amount for a class action suit *based on diversity of citizenship*. This is clearly distinguished from jurisdiction based upon federal issues of law where no dollar barrier pertains to class actions.

Indeed, the whole concept of higher and lower trial court jurisdiction based upon the amount in controversy is totally absent from the federal jurisprudence.

The Arizona Supreme Court held *Snyder* did not apply in state court proceedings. *Judson School*, 494 P.2d at 699. According to the Court, the United States Supreme Court intended *Snyder* to result in more cases being tried in state courts. The Arizona Court rejected the notion that just because the legislature had adopted the federal Rule 23 into a state rule of procedure did not mean that Arizona had to adopt all federal law concerning the rule's limitations. *Id.*

The reasoning of the Alabama, Michigan and Florida courts is also instructive. The rationale of the Alabama court was that where the legislature had not shown intent to divest trial courts of jurisdiction in class suits, and where there was a concomitant presumption against the divestiture of jurisdiction from the higher court to the lower court, aggregation is appropriate. *Liberty National*, 368 So.2d at 254. Similarly, the Michigan Supreme Court upheld aggregation as it found that class action suits were historically in equity and equitable principles justify aggregation. *Paley*, 209 N.W. 2d at 234-37.

Subsequent to *Paley*, the Michigan Supreme Court expanded on its holding on aggregation in *Dix v. American Banker's Life Assurance Co.*, 415

N.W. 2d 206 (Mich. 1987). Focusing on the rational underlying the federal diversity jurisdiction cases, the *Dix* Court stated:

> In contrast with litigants in a diversity action in the federal courts, litigants seeking to maintain a class action in state court would have no further recourse if they are not allowed to bring a class action somewhere in the state court system. The rationale for not allowing an aggregation of the federal courts is not applicable at the state level.
>
> *Id.* at 210.

In the Alabama case, *Thomas v. Liberty National Life Ins. Co.*, 368 So.2d 254 (Ala. 1979), the claims of policy holders for interest on the face amounts of their individual insurance polices were all less than the $500 jurisdictional threshold of the trial court of general jurisdiction. In holding that the action should be reinstated in the higher trial court, the Alabama Supreme Court stated:

> We find that, where the various statutes govern the jurisdiction of the district court and the circuit court are read together, there is no clear and unequivocal showing of an intent by the legislature to divest the circuit court of subject matter jurisdiction in class actions. This is true whether or not any individual plaintiff can recover the minimum $500 jurisdictional amount, so long as the aggregate claim of the plaintiff class is in excess of $500. The district court system was not established, nor is it equipped, to handle the complexities of a class action . . .
>
> *Id.* at 257.

In *Plantation General Hospital, Ltd.*, 641 So.2d 58 (Fla.1994), the Florida Supreme Court likewise held that the aggregation of claims for purposes of the class action amount in controversy requirement was permissible. Like the cases cited above, the Florida Supreme Court flatly rejected the notion that federal diversity case law was relevant for determining the state court jurisdictional criteria. The Court stated:

> We acknowledge that the Florida Rule of Civil Procedure 1.220, which establishes the guidelines for class actions, was modeled after Federal Rule of Civil Procedure 23. . . Although the rules are similarly worded and often similarly interpreted, we find the rationale for precluding aggregation of claims in the federal courts for diversity jurisdiction is not applicable to the state court class action. . . .
>
> *Id.* at 60.

After recognizing that the lower county courts were not designed to manage cases as complex as class actions, the Florida Supreme Court found that "the purpose of the class action is to provide litigants who share common questions of law and fact with an economically viable means for addressing their needs in court. We believe that purpose is served best if jurisdiction is conferred on the circuit courts when the aggregated claims of the class meet the monetary jurisdictional requirement even though an individual claim of a class member does not reach that threshold." *Id.*

The few courts that have rejected the notion of aggregation based on federal diversity analysis did so largely prior to the enactment of the so-called "Class Action Fairness Act" ("CAFA"), 28 U.S.C. §1332. Becoming effective in 2005, CAFA expanded the limits of federal diversity jurisdiction, both for class actions filed by plaintiffs in federal court and for those removed from state court by defendants. Like ordinary diversity jurisdiction, the amount in controversy for class actions under CAFA is now measured in the aggregate:

> In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000.00, exclusive of interest and costs.
>
> 28 U.S.C. §1332(d)(6)

To the extent that any decision is based on pre-CAFA case law, the federal prohibition against aggregation to satisfy jurisdictional criteria in a class action has now been removed. See, *Exxon Mobil Corp. v. Allapattah Services*, 545 U.S. 546, 125 S.Ct. 2611 (2005) [Zahn superseded by CAFA].

3. Aggregation promotes the purpose of class litigation.

In *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 846, 124 P.3d 530, 537 (Nev.2005) this Court noted the following purpose of class action lawsuits:

> Class action suits are designed to allow representatives of a numerous class of similarly situated people to sue on behalf of that class in order to obtain a judgment that will bind all. Thereby, class actions promote efficiency and justice in the legal system by reducing the possibilities that courts will be asked to adjudicate many separate suits arising from a single wrong and that the individuals be unable to obtain any redress for "wrongs otherwise irremediable because the individual claims are too small or the claimants too widely dispersed."
>
> *Id*, 121 Nev. at 846, 124 P.3d at 537

The economy that is found in class action lawsuits should not be restricted by failing to allow class members to aggregate their claims. The aggregation of claims in the instant action will serve the interests of justice and promote the efficiency of the class action process.

B. THE DISTRICT COURT COMMITTED ERROR BY FAILING TO CALCULATE BOTH THE ARTICLE 9 UCC STATUTORY DAMAGES AND THE INJUNCTIVE RELIEF THAT WOULD PROHIBIT RESPONDENT FROM COLLECTING ITS DEFICIENCY TOWARDS THE DISTRICT COURT'S MONETARY JURISDICTIONAL THRESHOLD.

Where one of the claims is for injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation. *Hunt v. Washington State Apple Advertising Commission* 432 U.S.

333, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977). The value of that right is measured by the losses that will follow from the statute's enforcement. *Id.* at 432 U.S. 347, citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135 (1936).

This right of the Castillos has two sides. First, the Castillos are entitled to $6,330.28 in statutory damages. Second, the Castillos seek the elimination of the $6,841.55 deficiency to Respondent. The value of this right objectively exceeds the $10,000.00 jurisdictional floor of the district court.

The Amended Complaint specifically states that because UFCU informed the Class Representatives and other similarly situated consumers that it intended to dispose of their vehicles without providing the statutorily mandated notice with the specific disclosures as required under NRS 104.9613, NRS 104.9614, and NRS 482.516 the Class Representatives and all other members similarly situated are entitled to the elimination of any deficiency balance owing (EOR 038).

Both the Appellants' statutory damages and elimination of Respondent's deficiency has an aggregate value of $13,171.83, which is within the subject matter jurisdiction of the district court.

C. THE DISTRICT COURT COMMITTED ERROR BY FAILING TO ASSERT 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.

In their prayer for relief, Appellants requested "*[A]n order preliminarily and permanently enjoining UFCU from engaging in the practices alleged herein*" (EOR 049). Appellants alleged in paragraph seven of their amended complaint that "*On or about January 21, 2015, subsequent to the repossession of the vehicle, UFCU sent notice to the Class Representatives that their car had been sold and that $6,841.55 was due and owing to UFCU.*" (EOR 038) This claim for injunctive relief would bar Respondent from attempting to collect its $6,841.55 deficiency.

In paragraph 30 of the amended complaint, Appellants alleged in relevant part that "*UFCU has maintained a practice and policy of reporting to the three national consumer reporting agencies, to wit: Equifax Credit Information Services, Inc., Experian, Inc., and TransUnion, LLC*" (EOR 041).

In paragraph 33 of the amended complaint, Appellants alleged "*The Class Representatives and the class members will suffer irreparable injury if UFCU is*

not enjoined from the future wrongful collection and reporting of adverse information to the CRAs." (EOR 041)

In their prayer for relief, the Appellants requested "*[A]n 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.*" (EOR 049)

In *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280 (Nev. 2006), this court held that in cases seeking both injunctive relief and monetary damages under the TCPA, the district court has jurisdiction over all portions of the complaint, even if the damages sought fail to meet the district court's monetary jurisdictional threshold. 122 Nev. at 321. When the district court denied Edward's injunctive relief, it did not thereby lose its jurisdiction to consider Edwards' claims for monetary damages. *Id.* 122 Nev. at 325.

The same reasoning applies in this case. The amended complaint requests injunctive relief: (1) to prevent UFCO from collecting any deficiency and (2) to order UFCO to remove any adverse credit information wrongfully reported on the consumer reports of the class members.

The district court therefore had exclusive jurisdiction over this class action even if the Appellants had failed to meet the jurisdictional threshold.

VIII. CONCLUSION

District courts have exclusive jurisdiction when injunctive relief is sought. Inferior courts have no ability to issue injunctive orders. When the district court dismissed this case, the Appellants were unable to obtain the same relief in Justice Court. That court was without the power to enjoin Respondent from pursuing its deficiency and reporting derogatory credit. Dismissal left the Appellants without a remedy.

The district court improperly valued the amount in controversy. This amount is measured by the value of the object of the litigation. The value of that right is measured by the losses that will follow from the statute's enforcement. By enforcing NRS 482.516 the Respondent forfeits its right to collect $6,841.55. By enforcing NRS 104.9625(3)(b) the Appellants may recover $6,330.28. The "value" is $13,171.83, and it is within the district court's subject matter jurisdiction.

Finally, this is a class action. To facilitate the purpose of class action litigation, the claims of the members should be aggregated in order to achieve economy. For these reasons, the district court's order dismissing the amended

/ /

complaint should be reversed.

Dated: This 26 day of August, 2016

By: _____
Michael Lehners, Esq.
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Nevada Bar Number 003331

NRAP 28.2 ATTORNEY'S CERTIFICATE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

1 This brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 4.0 in Century Schoolbook 14 point font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 5,205 words and it does not exceed 30 pages.

3. Finally, I certify that I have read this Respondent's Answering Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. Pro. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the Nevada

/ /

Rules of Appellate Procedure.

Dated: This 25 day of August, 2016

By: _____
Michael Lehners, Esq.
429 Marsh Ave.
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Nevada Bar Number 003331