

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

EUGENE SALAZAR,

Plaintiff,

v.

No. D-202-CV-2020-06651

ABQ, INC.,
FJS, LLC, and
U DRIVE ACCEPTANCE CORP, INC.,
d/b/a RIGHT WAY SALES AND LEASING,

Defendants.

**ORDER GRANTING
PLAINTIFF'S OPPOSED MOTION FOR CLASS CERTIFICATION**

Plaintiff Eugene Salazar filed an Opposed Motion for Class Certification, requesting that the Court certify the following class pursuant to Rule 1-023 NMRA:

All persons who, starting four years prior to the filing of this lawsuit, received the form Notice or similar notice after having their vehicle repossessed subject to a secured loan with Right Way.

The parties submitted briefing and appeared for a hearing on this matter on November 16, 2022.

For the following reasons, the Court will grant the Motion for Class Certification.

II. The Class Satisfies the Requirements of Rule 1-023

A. Numerosity

Defendants admitted in written discovery that the class contains 310 members. Defendants did not dispute this element in briefing or at the hearing. The Court concludes that Plaintiff's proposed class definitions satisfies the numerosity requirement, Rule 1-023(A)(1).

B. Commonality

Rule 1-023(A)(2) requires class members' claims to share a common question of law or fact. The evidence establishes that the same issues regarding notice after repossession of vehicles arise for each class member, as they do for Mr. Salazar. These common questions include the following:

1. Whether Right Way's standard form Notice violates the UCC;
2. Whether the representations in Right Way's standard form Notice constitute unfair and deceptive practices or unconscionable practices in violation of the UPA;
3. Whether Right Way converted property belonging to class members, including vehicles and proceeds from the sale of vehicles; and
4. The appropriate remedies for any legal violations.

The Court concludes that Plaintiff's proposed class definition satisfies the commonality requirement, Rule 1-023(A)(2).

C. Typicality

The claims of Mr. Salazar and the other members of the class all arise from the same course of conduct by Defendants. Defendants sent Mr. Salazar the same allegedly deceptive notice that they sent the other class members. The legal theories raised by Plaintiff are the same as those raised on behalf of the class.

The Court concludes that Mr. Salazar's proposed class definition satisfies the typicality requirement, Rule 1-023(A)(3).

D. Adequate Representation

Defendants do not dispute the element of adequacy. The Court finds that Mr. Salazar, the class representative, has no interests antagonistic to those of the class. Plaintiff's attorney Nicholas H. Mattison is qualified, knowledgeable and experienced in bringing consumer class actions.

The Court concludes that Plaintiff satisfies the adequacy requirement, Rule 1-023(A)(4).

IV. Rule 1-023(B) Factors: Predominance and Superiority

A. Common Questions of Law or Fact Predominate

The Court finds that Plaintiff's case is premised on the use of an allegedly unlawful form following the repossession of vehicles. As such, this case well-suited for class resolution. There are no individual issues that will predominate over class determinations. To the extent that any inquiry into the underlying transactions is required, such inquiry will be ministerial in nature and will not require the type of individualized fact finding that would predominate over shared questions.

The Court concludes that Plaintiff's proposed class definition satisfies the predominance requirement, Rule 1-023(B)(3).

B. Superiority

This case meets the superiority requirement, because a class action results in judicial economy, is manageable, and will provide a forum for the relatively small claims here. Class members have little or no interest in controlling the prosecution of separate actions and are likely unaware of the matters raised by this lawsuit. It is desirable that all similar claims be litigated in this forum, given the standardized nature of Defendants' practices relating to disposition of collateral.

V. Conclusion

Plaintiff Eugene Salazar's putative class action meets the requirements of Rule 1-023. The Court therefore ORDERS:

1. Plaintiff's Motion for Class Certification is granted as to the following class:

All persons who, starting four years prior to the filing of this lawsuit, received the form Notice or similar notice after having their vehicle repossessed subject to a secured loan with Right Way.

2. Eugene Salazar is appointed class representative.
3. Nicholas H. Mattison is appointed as class counsel.
4. Within forty-five (45) days of the entry of this Order, Defendants shall produce to Plaintiff a list in Excel format in which each row represents a transaction within the class (class members may be represented in multiple rows), and the following columns:
 - a. Last name;
 - b. First name;
 - c. Last name borrower 2;
 - d. First name borrower 2;
 - e. Address 1 (street);
 - f. Address 2 (apt etc);
 - g. City;
 - h. State;
 - i. Zip;
 - j. Phone number;
 - k. Social Security number, to be kept confidential and used only as necessary to prosecute this class action, including disclosure to a third party class action administrator;
 - l. VIN;
 - m. Date of sale;
 - n. Date of repossession;

- o. Date of notice; and
- p. Date of sale of vehicle after repossession.

If any of this information cannot be obtained, the parties will confer in good faith to determine a practicable solution to obtaining a class list.

- 5. Counsel for Plaintiff will confer with Defendants, then submit to the Court for approval within thirty (30) days of the entry of this Order a proposed notice of this Order and the right to opt out of the class, to be sent to class members by first class mail.
- 6. Plaintiff shall distribute the notice within thirty (30) days of the later of (1) the approval of the notice by the Court, or (2) the date that Defendants provide Plaintiff with the class list.

SO ORDERED.



THE HONORABLE ELAINE P. LUJAN

Submitted:

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