

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.

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

RECITALS

- A. **Parties.** The parties to this Class Action Settlement Agreement (“Agreement”) are: Plaintiff Eugene Salazar (“Plaintiff”), individually and on behalf of a class of persons (“the Class”), and Defendants ABQ, Inc., FJS, LLC, and U Drive Acceptance Corporation, Inc. (“Defendants”). Provided it is approved by the Court, this Agreement binds Defendants, its heirs, assigns and successors, officers and employees, and all others acting on behalf of Defendants. Provided it is approved by the Court, this Agreement also binds Plaintiff and all members of the certified class (“Class”), and their heirs, assigns and successors, and all others acting on behalf of Plaintiff and the Class. Together all of the above-mentioned individuals and entities shall be referred to as the “Parties” herein.
- B. **Nature of Litigation.** On December 7, 2020, Plaintiff filed a class action in the New Mexico Second Judicial District Court, Case No. D-202-CV-2020-06651 (“the Lawsuit”), alleging that Defendants’ repossession practices violated certain state laws. On December

2, 2022, the District Court certified the Class. On December 19, 2024, the Parties engaged in mediation with the Honorable Gregory J. Fouratt and reached settlement. This Agreement resolves all claims in the Lawsuit.

- C. **Denial of Liability.** It is agreed that this Agreement is a compromise of disputed claims, and that entry into this Agreement, the terms of this Agreement, and any actions taken in furtherance of this Agreement do not constitute and will not be deemed or construed as an admission of liability or wrongdoing, or of any position whatsoever, in any respect, by Defendants, and that liability or wrongdoing is expressly denied by Defendants. This Agreement cannot, under any circumstance, be interpreted or represented as a suggestion of, or an admission by, Defendants of liability or wrongdoing.
- D. **Investigation.** Counsel for Plaintiff and the Class (“Class Counsel”) has investigated the facts available and the applicable law. Class Counsel has obtained information and documents from Defendants, including a list of class members (“Class List”) sent to Class Counsel that was used to calculate potential damages. Class Counsel has thoroughly investigated the finances of Defendants and issues concerning their insurance coverage. The Parties reached settlement after engaging in a formal mediation led by the Honorable Gregory J. Fouratt.
- E. **Affidavits.**
- a. Defendants shall provide an affidavit under oath affirming that the Class List is complete to the best of its knowledge, based on investigation of all available information. Defendants shall also affirm the following facts about the Class (“Class Facts”):

1. Starting four years prior to the filing date and ending on the date of certification, Defendants sent out 654 deficient repossession notices.
2. The total finance charge for these transactions is \$5,971,257.47.
3. 10% of the amount financed for these transactions is \$924,521.49.

Defendants acknowledge that the completeness of the Class List and Class Facts is a material requirement of settlement and that it shall constitute a breach of the Agreement if it is determined that Defendants knew or should have known that the Class List or Class Facts were materially inaccurate or materially incomplete.

- b. Defendants shall provide an affidavit under oath affirming that the financial statements and tax returns (“Financial Records”) disclosed to Class Counsel are complete to the best of their knowledge, based on investigation of all available information. Defendants acknowledges that the completeness of the Financial Records is a material requirement of settlement and that it shall constitute a breach of the settlement agreement if it is determined that Defendants knew or should have known that the Financial Records were incomplete.
- c. To the extent that Defendants take the position that their repossession practices have been corrected, Defendants shall provide an affidavit affirming such change. Defendants acknowledge that the completeness of this information is a material requirement of settlement and that it shall constitute a breach of the settlement agreement if it is determined that Defendants knew or should have known that their statements concerning repossession practices were incomplete.

F. **Compromise.** Plaintiff, on his own behalf and on behalf of the members of the Class, desires to settle his claims against Defendants, having taken into account, through Class

Counsel, the risks, delay and difficulties involved in further litigation. Based on the foregoing, and upon an analysis of the benefits which this Agreement affords the Class, Plaintiff considers it to be in the best interest of the Class to enter into this Agreement.

- G. **Settlement of all Claims.** In consideration of the foregoing and for other good and valuable consideration, the Parties agree that all claims of the Plaintiff and the members of the Class, known or unknown, should be and are compromised and settled, subject to the approval of the Court, upon the following terms and conditions.
- H. **Power to Execute.** All Parties represent and warrant that they have complete authority, right and power to enter into and execute this Agreement.

TERMS OF SETTLEMENT

The foregoing recitals are hereby incorporated into and made a part of this Agreement.

1. **Effective Date.** This Agreement shall become effective (“Effective Date”) upon the Court’s entry of a Final Order approving this Agreement as fair, reasonable and adequate to the Class; provided, however, that the Order has become final, meaning that there has been no objection, or the time for appeal by an objector has expired, or, if there has been an appeal, that the Order has been upheld on appeal without material change.
2. **Class Definition.** The Class is defined as follows: 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.
3. **Relief.**
 - a. **Generally:** Full settlement is in the amount of \$300,000 (“Monetary Relief”). This amount is the full and final settlement amount for any and all claims, known or unknown, which is inclusive of all damages to Class Members, and all of Class

Counsel's attorneys' fees, costs, all costs of administration, and the entire service award to the named Plaintiff. Plaintiff is responsible for calculating and determining the distributions to the Class Members. Plaintiff is responsible for settlement administration, including the cost of settlement administration. Defendants will not be obligated to pay any fees, expenses, or costs in connection with the Lawsuit or the Agreement other than the amount of Monetary Relief specifically provided for in the Agreement. Defendants shall have no liability for any taxes accruing to Plaintiff or Class Members in connection with the Agreement.

b. Monetary Relief:

- i. Defendants are jointly and severally liable for payment of \$50,000, to be paid as follows: \$35,000 by December 20, 2024, and \$15,000 no later than January 15, 2025. Plaintiff acknowledges that as of the execution of this Agreement, both payments, in the total amount of \$50,000, have already been received. Up to \$20,000 of this amount may be used as needed for payment of a third-party administrator to perform notification of class members of certification and preliminary approval, and any amounts expended for that purpose shall not be refundable even if final approval is eventually denied, notwithstanding any provisions concerning the Effective Date of this Agreement. All other amounts paid shall be refunded from Plaintiff's counsel's trust account if final approval is denied.
- ii. No later than 10 days after the Effective Date, Defendants' insurer, Those Certain Underwriters at Lloyd's, London, Subscribing to Certificate No. SUAUSD50147-2001 ("Lloyd's") shall make payment of \$250,000

(“Monetary Relief”). Payment shall be by check or wire transfer to Feferman & Warren LLC Trust Account, and if mailed or hand-delivered, shall be delivered to Nicholas H. Mattison, Feferman, Warren & Mattison, 300 Central Ave. SW, Ste. 2000W, Albuquerque, NM 87102. Plaintiff, Defendants, and Lloyd’s shall enter into a separate agreement relating to this payment.

- iii. **Personal Guarantee.** Brian Berkenpas, the owner of Defendants, agrees to personally guarantee Defendants’ payment of \$50,000, as set forth above.
- iv. Defendants and Lloyd’s shall not be jointly and severally liable for each other’s portions of the total settlement amount.
- v. The Monetary Relief will be utilized as follows:
- vi. **Payment of Class Counsel’s Attorneys’ Fees and Costs.** Plaintiff will submit an attorneys’ fee and cost application to the Court. Defendants will not oppose Plaintiff’s reasonable request for attorneys’ fees and costs.
- vii. **Payment of Costs of Administration.** Plaintiff will submit a request for payments of costs of administration. Defendants will not oppose Plaintiff’s reasonable request for costs of administration.
- viii. **Service Award for Plaintiff.** In recognition of Mr. Salazar’s contributions to the Lawsuit and this Agreement, Plaintiff will submit a request for a service award (also referred to as an “incentive payment”). Defendants will not oppose Plaintiff’s reasonable request for a service award.
- ix. **Monetary Relief to the Class.** After payment of the above sums, the balance of the Monetary Relief remaining will be distributed to members of

the Class (excluding any who cannot be located) pursuant to a formula to be approved by the Court. Defendants will not oppose Plaintiff's reasonable proposed formula for distribution of settlement funds to the Class.

c. **Distribution of Monetary Relief to the Class.** Within thirty (30) days after the full payment of Monetary Relief, a settlement administrator selected by Class Counsel will distribute the remaining Monetary Relief to Class Members by checks which will become void 180 days from the date of issue to such members of the class as can be located through reasonable efforts.

i. **Deceased Class Members.** In the event that a Class Member who is entitled to a payment is deceased, the payment shall be issued to a person reasonably believed to be that person's heir or beneficiary, upon presentation of reasonable written documentation by such person to Class Counsel. Plaintiff is solely responsible for this determination.

ii. **Unclaimed Amounts.** The total cash amount of all checks written to Class Members who fail to cash their checks by the void date will be redistributed to Class Members if economically practicable. If a second distribution is not economically practicable, or if funds remain after a second distribution, all remaining funds will be donated, subject to Court approval, as a *cy pres* award to New Mexico Legal Aid, a 501(c)(3) organization which provides legal assistance to low-income persons residing in New Mexico. The refusal of the Court to approve this *cy pres* award, or the Court's modification of this *cy pres* award, will not constitute a material change to this Agreement. There will be no reverter to Defendants.

d. **Additional Relief.**

- i. Defendants agree that Class Members owe them nothing further with respect to the transactions giving rise to Class membership (“Class Accounts”). Defendants will not attempt to collect on Class Accounts or cause any third party to collect on Class Accounts. Defendants will not sell, assign, or otherwise transfer ownership of Class Accounts. Defendants warrant that they are currently the sole owner of Class Accounts and the sole party with any right to collect on Class Accounts. Defendants warrant that the Class Accounts have not been pledged as collateral for a loan (including as part of Defendants’ accounts receivable). Defendants acknowledge that this warranty is a material term of settlement and that it shall constitute a breach of the settlement agreement if it is determined that Defendants knew or should have known otherwise. Defendants shall not issue or cause to be issued IRS form 1099C with respect to Class Accounts, since this settlement represents the resolution of disputed claims and not the cancellation of indebtedness.
- ii. To the extent that Defendants or their agents have reported information concerning Class Accounts to any credit reporting agency, including but not limited to Equifax, Experian, and Trans Union, Defendants shall request or cause to be requested that such tradeline (i.e., all information) shall be deleted. Should Defendants learn that such request has not been granted, Defendants shall repeat the request. Should Defendants learn that a Class Member has disputed its credit reporting concerning a Class Account,

Defendants shall not oppose the dispute. Plaintiff acknowledges that Defendants have no control over what the credit reporting agencies, including Equifax, Experian, and Trans Union, do in response to requests to remove or delete such tradeline information relative to Class Accounts.

- e. **Information Exchange.** Defendants shall cooperate in providing all information necessary to send notice and make payment to Class Members, provided that such information is in its possession. This includes additional identification to supplement the Class List, if necessary.

4. **Releases.**

- a. Plaintiff and each Class Member who does not opt out, for themselves, their attorneys, spouses, beneficiaries, executors, representatives, heirs, successors and assigns, as of the Effective Date, fully and finally release and discharge Defendants, their present and former officers, directors, successors, predecessors, representatives, agents, subsidiaries, parents, administrators, heirs, assigns, shareholders, members, affiliated companies, insurers, attorneys and employees, from any and all rights, claims, demands, actions, causes of action, damages, known or unknown, costs and expenses of any kind (including court costs and attorneys' fees) arising out of, based on, or in any way related to, the claims asserted in the Lawsuit. This release is conditioned upon payment of the Monetary Relief.
- b. Defendants release and discharge Plaintiff and all Class Members, and their attorneys, from all rights, claims, demands, actions, causes of action, damages, known or unknown, costs and expenses of any kind (including court costs and

attorneys' fees) based on the transactions at issue in the Lawsuit or based on the litigation of the Lawsuit.

5. If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the Parties hereto and shall not be used as a limitation on Plaintiff's alleged claims or damages, nor as an admission, or evidence, of liability for claims or damages by Defendants in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.
6. **Certification and Preliminary Approval.** As soon as practicable after execution of this Agreement, Plaintiff shall submit a Motion for Preliminary Approval of Settlement Agreement, requesting that the Court enter an Order which:
 - a. Preliminarily approves this Agreement;
 - b. Schedules a "Fairness Hearing" for final approval of this Agreement by the Court;
 - c. Sets deadlines for objections to the Agreement;
 - d. Approves a proposed form of Notice to the Class; and
 - e. Finds that mailing of such class Notice is the only Notice required and that such Notice satisfies the requirements of due process and Rule 1-023 NMRA.

Defendants agree not to object to Plaintiff's Motion for Class Certification and Preliminary Approval of Settlement Agreement without waiver of their right to contest the Lawsuit if the settlement does not receive final approval.

7. **Attorneys' Fees, Costs, Costs of Administration and Service Award.** Prior to the Fairness Hearing, Plaintiff shall apply to the Court for an award of attorneys' fees, costs, costs of administration, and service award. Defendants shall not oppose Plaintiff's reasonable request.

8. **Final Approval.** Prior to the Fairness Hearing, Plaintiff shall apply to the Court for Final Approval of the Agreement. Defendants shall not oppose this request. At the conclusion of the Fairness Hearing, the Court will determine whether to enter a Final Order approving the terms of this Agreement as fair, reasonable and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the class members satisfies the requirements of due process and Rule 1-023 NMRA, directing the entry of the Final Order, and retaining jurisdiction to enforce the provisions of this Agreement.
9. **Court Required Changes to Agreement.** In the event that the Court conditions its preliminary or final approval of this Agreement on any changes to the Agreement, the Parties shall consent to them if they do not materially alter the obligation of the party. Changes that shall be deemed to materially change the obligation of a party include, but are not limited to, changes that affect (a) the amount of the monetary payment required hereunder; (b) the scope of the releases to be granted; (c) the definition of the Class or Class Members; or (d) a provision expressly noted as material in this Agreement. Changes that merely alter wording or that reasonably modify timing of any event do not materially change the obligations hereunder.
10. **Class Notice.** By no later than 30 days following the Court's entry of the Preliminary Approval Order of the Settlement Agreement (the "Notice Completion Deadline"), the Claims Administrator will notify Class Members of the settlement by U.S. mail ("Class Notice").
11. **Right of Exclusion.** Any Class Member may seek to be excluded from this Agreement and from the Class in the manner provided by the Court. Any Class Member so excluded

shall not be bound by the terms of this Agreement nor entitled to any of its benefits. Class Members who submit a timely, written request for exclusion from the Class will be excluded from the Class. A request for exclusion must be in writing and signed by the Class Member, and the written request must state the name, address, and phone number of the person seeking exclusion. The written request also must clearly manifest a person's intent to be excluded from the Class. The request must be mailed to the Claims Administrator at the address provided in the Class Notice, postmarked no later than 45 days from the date the Class Notice is issued, or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Class Notice, or that is not mailed by the deadline will be invalid, and the person submitting the request will remain a Class Member for this Agreement. All persons who submit valid, timely notices of their intent to opt out of the Class shall not receive any benefits of and/or be bound by the terms of the Agreement. All persons falling within the definition of the Class who do not request to be excluded from the Class in the manner described in this paragraph shall be bound by the terms of the Agreement. Class Counsel will file a list of Class Members requesting exclusion with the Court. Defendants acknowledge that Class Members may elect to exclude themselves from this Agreement, and agrees that such exclusion shall not affect this Agreement.

12. **Objections.** Any notices of objections to this Agreement shall, no later than 45 days from the date the Class Notice is issued, or any other date set by the Court, be filed with the Court and sent, via first class mail, to Nicholas H. Mattison, Feferman, Warren & Mattison, 300 Central Avenue, SW, Suite 2000W, Albuquerque, NM 87102. No Class Member will be heard and no papers submitted by any Class Member will be considered unless, the

Class Members' written objection(s) include: (a) the title of the case; (b) the objector's name, address, and telephone number; (c) all legal and factual bases for any objection; and (d) copies of any documents that the objector wants the Court to consider. Should the objector wish to appear at the Final Approval Hearing, he or she must so state, and must identify any documents or witnesses the Class Member intends to call on his or her behalf. Any Class Member who fails to object in this manner will be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or to object to the Agreement, and the Class Member shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Agreement shall be through the provisions set forth in this paragraph. Without limiting the foregoing, any challenge to the Agreement, the Final Judgment and Order approving this Agreement, or the judgment to be entered upon final approval shall be pursuant to appeal under the New Mexico Rules of Appellate Procedure and not through a collateral attack. Defendants acknowledge that Class Members may object to this Agreement and agrees that such objection shall not affect this Agreement, except as otherwise provided in the event that the Court materially modifies this Agreement as the result of an objection.

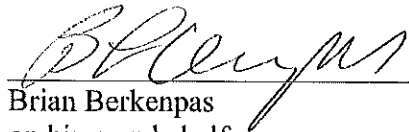
13. **Confidentiality.** Plaintiffs agree not to issue any press release or other public disclosure of this Agreement beyond any disclosures required to effectuate this Agreement.
14. **Cooperation.** Defendants agree to reasonably cooperate in Plaintiff's motions seeking preliminary and final court approval for the Agreement, attorneys' fees and costs, service award for named Plaintiff, and *cy pres* award. Defendants agree to reasonably cooperate in any additional actions required to effectuate this agreement. Defendants shall reasonably

- cooperate in providing all information necessary to send notice and make payment to Class Members. This includes additional available identification to supplement the Class List, if necessary.
15. In an action to enforce this Agreement after breach by a party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred therein.
 16. The Agreement was drafted and negotiated by counsel for the Parties at arm's length. The foregoing constitutes the entire agreement between the Parties in regard to the Lawsuit, and subject matter thereof, and may not be modified or amended except in writing, signed by the Parties hereto, and approved by the Court. The Agreement has been drafted by all Parties and shall not be construed for or against any of the Parties.
 17. This Agreement may be executed in counterparts, in which case the various counterparts shall be said to constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete Agreement. Photocopies of executed copies of this Agreement may be treated as originals.
 18. Each and every term of this Agreement shall be binding upon Plaintiff, the Class Members, their successors, assigns, heirs, personal representatives and all others acting on behalf of Plaintiff and on Defendants and its assigns and successors, officers and employees, and all others acting on behalf of Defendants. Each of these persons and entities are intended to be beneficiaries of this Agreement.
 19. The Parties have relied upon the advice and representation of their counsel concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Agreement, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

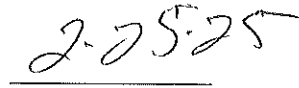
20. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Mexico.

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have so agreed.

[signatures begin on following page]



Brian Berkenpas
on his own behalf
and on behalf of
ABQ, Inc.,
FJS, LLC, and
U Drive Acceptance Corporation, Inc.



Date


Eugene Salazar

2-26-2025
Date

[signatures continue on following page]