

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHMUEL COHEN, YEHUDA FISCHER,
ELIEZER ROSENBERGER and MAYER
TANNENBAUM *on behalf of themselves
and all others similarly situated,*

Plaintiffs,

v.

ALLEGIANCE ADMINISTRATORS, LLC
d/b/a PERFORMANCE FIRST and
AUTOGUARD ADVANTAGE
CORPORATION,

Defendants.

Case No.: 2:20-cv-03411

Judge James L. Graham

Magistrate Judge Kimberly A. Jolson

ORAL ARGUMENT REQUESTED

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and (b)(3), Plaintiffs Shmuel Cohen, Yehuda Fischer, and Eliezer Rosenberger, by and through their undersigned counsel, hereby move this Court for an order appointing them as class representatives and certifying the following class in this action:

Each person who entered into an Excess Wear & Tear Protection Waiver with Defendants to provide coverage for a leased vehicle and who (a) submitted at least one eligible claim for coverage under the Waiver Agreement and (b) was denied coverage for a stated reason set forth in Defendants' claims report (or other substantively similar document) that is not a grounds for non-coverage under the terms and conditions set forth in the Waiver Agreement.

Plaintiffs also move pursuant to Fed. R. Civ. P. 23(g)(1) for an order appointing Daniel A. Schlanger and Evan S. Rothfarb as class counsel for the above certified class.

In support of this Motion, Plaintiffs submit Plaintiffs' Memorandum in Support of Motion for Class Certification, the Declaration of Evan S. Rothfarb in Support of Plaintiffs' Motion for

Class Certification dated May 22, 2023, and the exhibits attached thereto, and the Declaration of Daniel A. Schlanger in Support of Plaintiffs' Motion for Class Certification dated May 22, 2023, and the exhibit thereto.

Dated: May 22, 2023

Respectfully submitted,

/s/ Evan S. Rothfarb

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION

Plaintiffs Shmuel Cohen, Yehuda Fischer, and Eliezer Rosenberger,¹ on behalf of themselves and all other consumers similarly situated, bring this suit to challenge an overt predatory scheme in which Defendants Allegiance Administrators, LLC and Autoguard Advantage Corporation² (together, “Defendants”) receive fix sums from consumers around the country who have leased vehicles and seek protection against unanticipated wear and tear charges at the end of their leases. By this motion, Plaintiffs seek class certification on behalf themselves and similarly affected consumers. Plaintiffs and putative Class Members have meritorious claims under for breach of contract against the Defendants for identical misconduct.

Under written contracts known as Performance First Excess Wear & Tear Protection Waivers (“Waiver Agreements”), Defendants agree to reimburse consumers for excess wear and tear charges “subject only to the terms and conditions set forth” in the documents. Second Amended Complaint (ECF Doc. 52-1) (“SAC”), ¶ 5. Instead of meeting this obligation, Defendants deny coverage based upon reasons that are not found in the terms and conditions in the Waiver Agreements. Defendants rely on a written pamphlet in adjudicating claims that is not appended to the Waiver Agreements or even provided to consumers as well as common understandings among claims adjusters regarding coverage without any corresponding exclusions in the Waiver Agreements.

¹ Mayer Tannenbaum has withdrawn from this action in all respects. *See* ECF Doc. 133.

² Autoguard is an empty shell with no employees, as it has always been. Rothfarb Decl., Ex. D (DeFouw Deposition) 97:16-17. All claims pursuant to the Waiver Agreements at issue were submitted to co-Defendant Allegiance for adjustment. In fact, Autoguard’s corporate witness was employed by Allegiance for years as well as its corporate predecessor, Dimension Service Corporation.

The claim denial criteria Defendants employ are not ad hoc. Rather, Defendants explicitly state their extra-contractual basis for the denial. Put differently, this is a class action based on form documents, overt written policies and procedures, and stated reasons for denials of coverage.

Defendants not only failed to honor their contracts, but also expressed that no consumer could pursue them for their wrongdoing. The need for class certification in this matter is epitomized by the statement of Bob Cramer, the former QC & RM Director (an individual who trained the other claims adjusters and was responsible for overseeing the claims process for years), who responded as follows when a consumer conveyed that he might seek legal assistance:

As for your lawyer threat, it also doesn't affect the Claims Dept. decision. If someone wants to spend a couple thousand dollars to try to get \$1070.00 in damage done to the vehicle covered, that's their prerogative.

Declaration of Evan S. Rothfarb in Support of Plaintiffs' Motion for Class Certification dated May 22, 2023 ("Rothfarb Decl."), Exhibit A.

II. FACTUAL BACKGROUND

Plaintiffs' core factual allegations have been borne out by the written materials and testimony adduced in discovery.

A. The Waiver Agreements

A modern-day feature of automobile leases places upon the lessee responsibility for "excessive wear and tear" on their vehicles at the end of lease terms. Consumers, including the named Plaintiffs and the members of the Class, entered into Waiver Agreements with Defendants to insure against the charges that may be assessed. SAC, ¶ 26; Rothfarb Decl., Ex. B (Gutierrez Deposition) 48:12-17. Defendants sold contracts available to consumers by way of its relationships with "about 2,000 [car] dealers" throughout the country. [Citation omitted]. SAC, ¶ 25; Rothfarb Decl., Ex. C (Biglin Deposition) 26:10-27:22; Exhibit D (DeFouw Deposition) 42:10-

43:9. The Waiver Agreements sold to the members of the Class were the same boilerplate form. Declaration of Evan S. Rothfarb dated May 22, 2023 (“Rothfarb Decl.”), Exhibit E.

The Waiver Agreements promise to reimburse consumer lessees for excess wear and tear charges, or to “waive” a lessee’s responsibility for the same, “up to a maximum of five thousand dollars (\$5,000).” *Id.* The Waiver Agreements specify that the reimbursement obligations under the contract are subject only to “terms and conditions set forth” in the Waiver Agreement. *Id.*

The Waiver Agreement contains very few relevant “terms and conditions.” As pertinent here, the Waiver Agreements state that Defendants will not be responsible for damage that would be covered by an automobile policy providing “comprehensive” and “collision” coverage, “unless repair of damage from any single event results in a cost to repair of less than the Maximum Single Event Limit” of \$500 or \$1,000. *Id.* Further, the Waiver Agreements exclude damages based on consumers’ “wrongful or intentional acts.” *Id.*

Other “terms and conditions” in the Waiver Agreement exclude things like “charges resulting from use of the vehicle for racing or commercial purposes,” “[c]harges due to the presence of or the cost to remove signs, lettering, [or] bumper stickers” and missing or improperly replaced parts. *Id.*

B. Defendants’ Claim Adjustment Process

Under the terms of the Waiver Agreement, consumers, including the named Plaintiffs and each of the members of the Class, submitted documentation to Defendants to initiate claims under the Waiver Agreements. Defendants’ claim adjusters, in turn would rely on the following documents, which were the only materials used to adjudicate claims: (1) the Waiver Agreement; (2) the Wear & Tear brochure/pamphlet; (3) the bill from the vehicle owner/finance company; (4) the vehicle inspection/condition report; and (5) a copy of the lease agreement. Rothfarb Decl., Ex.

F (Blevins Deposition) 57:5-59:6 and 123:11-124:5; Ex. B (Gutierrez Deposition) 102:4-23; Ex. E. As noted by a claims adjuster, to the extent a vehicle was damaged, reviewing pictures of the damaged parts after the incident occurred does not indicate the source or reason for the damage. Rothfarb Decl., Ex. B (Gutierrez Deposition) 80:15-19.

Defendants' claim adjusters used the same process and principles to adjudicate the claims of all those who procured Waiver Agreements. Rothfarb Decl., Ex. B (Gutierrez Deposition) 57:18-22; Ex. F (Blevins Deposition) 60:12-18. Three claim adjusters adjusted the vast majority of claims submitted under the Waiver Agreements. Rothfarb Decl., Ex. F (Blevins Deposition) 61:18-24. The adjusters were trained by Bob Cramer, now deceased, to resolve claims and ensure consistent criteria and standards were applied. Rothfarb Decl., Ex. B (Gutierrez Deposition) 57:23-58:3.

C. Defendants' Extra-Contractual Rules

Defendants have a policy and practice to deny eligible claims for reasons other than a term or condition found in the Waiver Agreement. Defendants rely on a brochure/pamphlet to provide criteria for denial of claims. Rothfarb Decl., Ex. F (Blevins Deposition) 151:7-152:6; Ex. B (Gutierrez Deposition) 85:7-14 and 102:4-23; Ex. G; Ex. H. The brochure/pamphlet indicates that only dents above 4" are excluded. Rothfarb Decl., Ex. G; Ex. H. Cracks, dents and gouges, or scratches are not identified as covered. Rothfarb Decl., Ex. G; Ex. H. This brochure/pamphlet is not internally referenced in the Waiver Agreements, nor do analogous criteria appear in the exclusions from coverage. *See* Rothfarb Decl, Ex. E.

Defendants' claim adjusters also developed common understandings regarding other facets of claim adjudication for the Waiver Agreements. Scratches greater than 12" are excluded from coverage as are "gouges" and "cracks," without regard to the amount of damages. Rothfarb Decl.,

Ex. B (Gutierrez Deposition) 66:16-19; Ex. G; Ex. H. Similarly, any damage attributed to an impact or collision is excluded irrespective of the amount.³ Rothfarb Decl., Ex. I.

Reasons like these are not “terms and conditions set forth” in the Waiver Agreement. They are, by contrast, the very definition of “wear and tear,” which consumers would expect to be covered by the Waiver Agreement. Yet, these are the reasons for claim denials articulated by Defendants in their decisions contained in the Corrective Action section of their books and records and verified in additional communications and testimony.

D. Class Definition and the Named Plaintiffs

The following Nationwide class was set forth in the SAC:

Each person who entered into an Excess Wear & Tear Protection Waiver with Defendants to provide coverage for a leased vehicle and who (a) submitted at least one eligible claim for coverage under the Waiver Agreement and (b) was denied coverage for a stated reason set forth in Defendants’ claims report (or other substantively similar document) that is not a grounds for non-coverage under the terms and conditions set forth in the Waiver Agreement.

SAC, ¶ 66.

Each of the three named Plaintiffs are members of this proposed Class. Each is an individual who entered into a Waiver Agreement with Defendants and submitted an eligible claim that was denied for a stated reason other than a term or condition found in the Waiver Agreement. Rothfarb Declaration, ¶30 and Ex. E.

At the conclusion of their leases, each of the Plaintiffs submitted claims under the Waiver Agreement to Defendants for assessed damage on their vehicles and provided all documentation required by Defendants. However, the Plaintiffs did not receive the coverage for which they paid. Mr. Cohen’s claim for damage to his left front door (\$168) was denied because it had a “scratch . . .

³ As admitted by Defendants’ claim adjuster, to the extent a vehicle has incurred damage, reviewing the pictures of the damage alone, after the incident occurred, will not indicate the source or reason for the damage. Gutierrez 80:15-19.

over 12 inches.” Mr. Fischer’s claims for damage to his front bumper cover (\$886.28), rear bumper cover (\$436.50), and right rear cargo door (\$148.50) were all denied as “not wear & tear.” Mr. Rosenberger’s claims for damage to his right front door (\$168), right rear door (\$204), and right rocker panel (\$272) were all denied because they were “dented 6”+”, the damage to the left rear door was denied because it was “scratched 12”+”, and the damage to rear bumper (\$603.71) was denied due to an unspecified “collision.” Rothfarb Decl., ¶ 30. None of the reasons provided in the Corrective Action for these components correspond to coverage exclusions in the Waiver Agreements, which is the only place where Defendants document the reasons for claim denials in their books and records. Rothfarb Decl., Ex. B (Gutierrez Deposition) 77:11-78:1.

III. PROCEDURAL POSTURE

Plaintiffs commenced this matter on July 7, 2020, as a class action and have twice amended their complaint. *See* ECF Docs. 1, 17, 45, and 52-1. Defendants separately moved to dismiss and also moved for judgment on the pleadings and to strike the class allegations. *See* ECF Docs. 47, 69 and 113. By written Opinion & Order dated April 15, 2022 (ECF Doc. 110) and subsequent Opinion & Order dated August 16, 2022 (ECF Doc. 122), the Court granted in part and denied in part Defendants’ various motions to dismiss and strike. As germane here, following the Court’s rulings in this matter, the Court previously declined to strike the proposed class as fail-safe and Plaintiffs have a claim for breach of contract in this matter.

Now that class and merits discovery have concluded, Plaintiffs move to certify this matter as a class action.

IV. STANDARD OF REVIEW

“Class certification is governed by Federal Rule of Civil Procedure 23.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). To obtain class certification, a plaintiff must meet each

of the four prerequisites contained in Federal Rule of Civil Procedure 23(a)—numerosity, commonality, typicality, and adequate representation. *Zehentbauer Family Land, LP v. Chesapeake Expl. LLC*, 935 F.3d 496, 503 (6th Cir. 2019).

“[C]ertification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). This rigorous analysis may require “the court to probe behind the pleadings before coming to rest on the certification question.” *Id.* However, courts do not have “license to engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013).

In addition to meeting the four criteria in Rule 23(a), a plaintiff must demonstrate that the putative class complies with at least one of the requirements of Rule 23(b). *Id.* Here, Plaintiffs seek certification of the Class pursuant to Fed. R. Civ. P. 23(b)(2) and (3).

V. ARGUMENT

As reflected below, class certification is appropriate in this matter pursuant to Fed. R. Civ. P. 23(b)(2) and (3). Just like other nationwide class actions based on breach of contract claims, this matter is based on boilerplate form documents and uniform policies. *See Klopfenstein v. Fifth Third Bank*, No. 1:12cv851, 2021 U.S. Dist. LEXIS 75020, at *17 (S.D. Ohio Mar. 26, 2021); *see also Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 441 (1st Cir. 2013) (collecting cases) (“Several federal courts have certified classes for contract disputes over form contracts because the form contracts are interpreted uniformly across members of the class, and thus the outcome does not depend on extrinsic evidence that would be different for each putative class member.”).

A. The Class Is Ascertainable and Administratively Feasible

Although not explicitly stated in Rule 23, the Sixth Circuit has found that a “class definition must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of a proposed class.” *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 537-38 (6th Cir. 2012) (quoting 5 James W. Moore et al., *Moore’s Federal Practice* § 23.21[1] (Matthew Bender 3d ed. 1997)).

With respect to ascertainability of the class, a court “must be able to resolve the question of whether the class members are included or excluded from the class by reference to objective criteria.” *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532 (6th Cir. 2012). However, this applies only to Rule 23(b)(2) classes. *Cole v. City of Memphis*, 839 F.3d 530, 542 (6th Cir. 2016) (“The decisions of other federal courts and the purpose of Rule 23(b)(2) persuade us that ascertainability is not an additional requirement for certification of a (b)(2) class seeking only injunctive and declaratory relief.”).

Moreover, even the need for manual review does not preclude class certification. As held by the Sixth Circuit:

Equally—if not more—persuasive is the district court’s practical rationale: “[T]he need to manually review files is not dispositive. If it were, defendants against whom claims of wrongful conduct have been made could escape class-wide review due solely to the size of their businesses or the manner in which their business records were maintained.” We find this reasoning compelling. It is often the case that class action litigation grows out of systemic failures of administration, policy application, or records management that result in small monetary losses to large numbers of people. To allow that same systemic failure to defeat class certification would undermine the very purpose of class action remedies. We reject defendants’ attacks on administrative feasibility based on the number of insurance policies at issue.

Young v. Nationwide Mut. Ins. Co., 693 F.3d 532, 540 (6th Cir. 2012); *see also Legrand v. IntelliCorp Records, Inc.*, No. 1: 15 CV 2091, 2016 U.S. Dist. LEXIS 38690, at *9 (N.D. Ohio Mar. 22, 2016) (any “argument that ascertainability would be administratively difficult because

there is no easily available list of affected individuals would be unavailing.”); *Cowit v. Citimortgage, Inc.*, No. 1:12-cv-869, 2013 U.S. Dist. LEXIS 32219, at *8 n.3 (S.D. Ohio Mar. 8, 2013) (holding “whether a particular individual is a member of the class can be determined by reference to . . . Defendant’s own records[of Plaintiff’s status and damages]” and that the class was therefore “objectively defined and ascertainable”).

The proposed class definition is adequate if readily identifies the class members by objective criteria. *See Hicks v. State Farm Fire & Cas. Co.*, No. 14-CV-00053-HRW, 2019 U.S. Dist. LEXIS 27584, at *6 (E.D. Ky. Feb. 21, 2019) (“Under *Young*, for a putative class to be ascertainable, “the court must be able to resolve the question of whether class members are included or excluded from the class by reference to objective criteria.”) (internal citations omitted); *compare Neumont v. Monroe County, Fla.*, 198 F.R.D. 554, 556 (S.D. FL. 2000) *citing O’Connor v. Boeing North American, Inc.*, 184 F.R.D. 311, at 319, (C.D. Cal. 1998) (“a class will be found to exist if the description of the class is definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member”). Furthermore, Courts have “broad discretion to modify class definitions” to “ensure that a certified class is properly constituted.” *Powers v. Hamilton County Public Defender Com’n*, 501 F.3d 592, 619 (6th Cir. 2007).

“[C]laims arising from the interpretation of a form contract are particularly suited for class treatment, and breach of contract cases are routinely certified as such.” *Cowit v. Citimortgage, Inc.*, No. 1:12-cv-869, 2013 U.S. Dist. LEXIS 32219, at *17 (S.D. Ohio Mar. 8, 2013); *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 383 (S.D.N.Y. 2019) (noting that the “applicable legal standard for breach of contract is not materially different across jurisdictions” and collecting cases).

Plaintiffs seek to certify a national class as follows:

Each person who entered into an Excess Wear & Tear Protection Waiver with Defendants to provide coverage for a leased vehicle and who (a) submitted at least one eligible claim for coverage under the Waiver Agreement and (b) was denied coverage for a stated reason set forth in Defendants' claims report (or other substantively similar document) that is not a grounds for non-coverage under the terms and conditions set forth in the Waiver Agreement.

SAC, ¶66.

Here, the claims data and other discovery adduced from Defendants provide the necessary identification requirements. The data reflect 1,405 individuals who had identical Waiver Agreements who submitted claims for their leased vehicles corresponding to 9,987 components of damage that were denied in whole or in part. Defendants denied the claims for these components utilizing explicit criteria embodied in the "Corrective Action" data field in their books and records. Of those denials, 736 individuals submitted claims for damages to vehicle components that were denied by Defendants based on extra-contractual criteria. This was determined based on the search methodology described in the accompanying declaration. *See* Rothfarb Decl., ¶¶ 4-27.

B. The Prerequisites Under Fed. R. Civ. P. 24(a)

1. Numerosity

While there is no strict numerical threshold, "[o]ften, a class of 40 or more members is sufficient to meet the numerosity requirement." *Dillow v. Home Care Network, Inc.*, No. 1:16-cv-612, 2017 U.S. Dist. LEXIS 85788, at *6 (S.D. Ohio June 5, 2017) (internal citation and quotations omitted); *see also Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006) (holding "substantial" numbers usually satisfy this requirement"); *Bacon v. Honda of Am. Mfg., Inc.*, 370 F.3d 5665, 570 (6th Cir. 2004) (the "sheer number of potential litigants in a class, especially if it is more than several hundred, can be the only factor needed to satisfy [numerosity].").

Plaintiffs have identified 736 members of the proposed Class. All of these individuals entered into uniform Waiver Agreements with Defendants and had their claims denied by Defendants utilizing extra-contractual criteria. Numerosity is satisfied.

2. Commonality and Typicality

Federal Rule of Civil Procedure 23(a)(2) requires that “there are questions of law or fact common to the class.” Although the Rule “speaks of ‘questions’ in the plural,” the Sixth Circuit has held that “one question common to the class” satisfies this requirement. *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998). As the Supreme Court explained in *Tyson Foods, Inc. v. Bouaphakeo*, “[a]n individual question is one where ‘members of a proposed class will need to present evidence that varies from member to member,’ while a common question is one where ‘the same evidence will suffice for each member to make a *prima facie* showing [or] the issue is susceptible to generalized, class-wide proof.’” 577 U.S. 442 (2016) (*quoting* 2 W. Rubenstein, Newberg, Newberg on Class Actions § 4:50, pp. 196-197 (5th ed. 2012)).

Commonality does not require “the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Zehentbauer Family Land, LP*, 935 F.3d 496, 503 (6th Cir. 2019) (*quoting Wal-Mart*, 564 U.S. at 350). Stated alternatively, commonality is met when determining the “truth or falsity” of a common contention “that will resolve an issue that is central to the validity of each one of the claims in one stroke,” advancing the litigation. *Wal-Mart*, 564 U.S. at 350; *Sprague*, 133 F.3d at 397. Where a general policy which allegedly affected a class is the focus of the litigation, the commonality requirement is satisfied. *Intercommunity Just. & Peace Ctr. v. Registrar, Ohio Bureau of Motor Vehicles*, 440 F. Supp. 3d 877, 888 (S.D. Ohio 2020) (*quoting Bovee v. Coopers & Lybrand*, 216 F.R.D. 596, 608 (S.D. Ohio 2003)).

Additionally, Federal Rule of Civil Procedure 23(a)(3) requires plaintiffs to demonstrate that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” “Typicality is met if the class members’ claims are ‘fairly encompassed by the named plaintiffs’ claims.” *Hendricks v. Total Quality Logistics, LLC*, No. 1:10cv649, 2019 U.S. Dist. LEXIS 96940, at *24 (S.D. Ohio Mar. 22, 2019) (*quoting Sprague*, 133 F.3d at 399). The purpose of the requirement is to ensure that the representatives’ interests and the interests of the class members are aligned. *Id.* “Many courts have found typicality if the claims or defenses of the representatives and the members of the class stem from a single event or a unitary course of conduct, or if they are based on the same legal or remedial theory.” *Rikos v. Procter & Gamble Co.*, 799 F.3d 497, 509 (6th Cir. 2015) (*quoting* Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 7A Federal Practice and Procedure § 1764 (3d ed. 2005)). The threshold for typicality is low. *Salvagne v. Fairfield Ford, Inc.*, 264 F.R.D. 321, 328 (S.D. Ohio 2009) (citation omitted).

Commonality and typicality “tend to merge;” both are instrumental in determining if the plaintiff’s claims and class claims are sufficiently interrelated and if maintenance of a class action is economical. *See Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 542 (6th Cir. 2012). Further, “[n]o matter how individualized the issue of damages may be,” the determination of damages “may be reserved for individual treatment with the question of liability tried as a class action.” *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988).

As the Court recognized in this action, “Plaintiffs’ theory is that Defendants have a policy by which they deny claims for reasons other than those listed in the [Waiver Agreement].” That theory, in turn, raises two fundamental common questions:

- (1) Whether Defendants have a policy and practice to deny eligible claims made under the Waiver Agreement for reasons other than a “term[]” or “condition[] set forth” in the Waiver Agreement;

- (2) Whether Defendants' denial of eligible claims under the Waiver Agreement, for reasons other than "terms and conditions set forth" in the Waiver Agreement, constitutes a breach of contract.

These common questions alone, as well as their answers, are sufficient to satisfy commonality. As set forth above, Defendants' adjustments of Plaintiffs' claims and the those of the Class Members utilized a uniform approach premised on written materials and common understandings among the adjusters.

Furthermore, the three named Plaintiffs are typical. Plaintiffs obtained Waiver Agreements at the inception of their auto leases. Each submitted claims under the Waiver Agreement to Defendants for assessed damage on their vehicles and provided all required documentation. However, the Plaintiffs did not receive the coverage for which they paid. Instead, their claims were denied because of a "scratch . . . over 12 inches" or "scratched 12"+," had "dented" panels of "6"+," had been in an unspecified "collision" or did were "not wear & tear" for not articulated reason at all.

None of these reasons for claim denials provided above correspond to coverage exclusions in the Waiver Agreements. Plaintiffs seek damages for breach of contract based on such violations. The Class Members seek identical claims against Defendants and there is no potential for conflicting interests in this action. Thus, each of the Plaintiffs and the Class as whole have common claims stemming from the Defendants' common course of conduct.

3. *Adequacy*

The adequacy of representation requirement of Rule 23(a)(4) ensures that "the representative parties will fairly and adequately protect the interests of the class." This requirement has two components: (1) the representatives must have common interests with the unnamed class members, and (2) it must appear that the representatives will vigorously prosecute

the class action through qualified counsel. *Rikos v. P&G*, No. 1:11-cv-226, 2018 U.S. Dist. LEXIS 72722, at *14 (S.D. Ohio Apr. 30, 2018) (citing *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524-25 (6th Cir. 1976)).

Here, the named Plaintiffs and the Class Members possess the same interest and suffered the same injury: each of them purchased a Waiver Agreement, submitted one or more claims for coverage under it, and Defendants have denied the claims in whole or in part based on criteria that are not a basis for denial in the contract. Furthermore, each of the named Plaintiffs has participated in the litigation of this matter by, *inter alia*, regularly communicating with counsel, responding to discovery demands, and appearing for depositions. Rothfarb Decl., ¶¶ 31-35. Accordingly, Plaintiffs are adequate Class Representatives and satisfy each aspect of the adequacy requirement.

Further, Plaintiffs are represented by qualified counsel with experience prosecuting consumer class actions. *See* Rothfarb Decl., ¶¶ 36-60; Declaration of Daniel A. Schlanger in Support of Plaintiffs' Motion for Class Certification dated May 22, 2023. Plaintiffs' counsel have vigorously litigated this matter, including engaging in prolonged discovery battles, seeking depositions, and contesting multiple motions to dismiss and strike the class allegations. *Id.*

Accordingly, adequacy is met. *See Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 626 (6th Cir. 2007) ("Class representatives are adequate when it appears that they will vigorously prosecute the interest of the class through qualified counsel . . . which usually will be the case if the representatives are part of the class and possess the same interest and suffer the same injury as the class members").

C. The Requirements for a Class Pursuant to Fed. R. Civ. P. 23(b)(3)

1. Predominance

To be certified as a type 23(b)(3) class action, the movant must show that the common questions of law or fact “predominate” over questions “affecting only individual members.” *Eaton v. Ascent Res. - Utica, LLC*, No. 2:19-cv-3412, 2021 U.S. Dist. LEXIS 145585, at *35-36 (S.D. Ohio Aug. 4, 2021) (citing Fed. R. Civ. P. 23(b)(3)). The predominance inquiry tests class cohesiveness. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 594 (1997).

Plaintiffs must establish that “the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof.” *Beattie v. CentruryTel, Inc.*, 511 F.3d 554, 564 (6th Cir. 2007) (internal quotation omitted). “[T]he fact that a defense may arise and may affect different class members differently does not compel a finding that individual issues predominate over common ones.” *Id.* (internal quotations omitted). Notably, “common issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues.” *Id.* (internal quotation omitted).

Here, Plaintiffs’ claims arise from a standard form contract prepared by Defendants. Although individual adjustments took place following the submission of claims, the process of the claims handling was uniform, and the articulated reasons for the claim denials are memorialized in Defendants’ books and records. *Compare Kleiner v. First Nat’l Bank*, 97 F.R.D. 683, 692 (N.D. Ga. 1983) (“When viewed in light of Rule 23, claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action, and breach of contract cases are routinely certified as such.”) (collecting cases); *Menagerie Prods. v. Citysearch*, No. CV 08-4263 CAS (FMO), 2009 U.S. Dist. LEXIS 108768, at *36 (C.D. Cal. Nov. 9, 2009) (“The Court finds that common issues of law and fact predominate with regard to plaintiffs’ breach of contract claim.”).

2. *Superiority*

In addition to predominance, Plaintiffs must show that a class action is the “superior” method for adjudicating the controversy fairly and efficiently. Fed. R. Civ. P. 23(b)(3). “The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (internal citation omitted). Indeed, the Advisory Committee designed Rule 23(b)(3) to “cover cases ‘in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.’” *Id.* (citation omitted). “Typically, a class action is a better vehicle for litigation when there is a single course of wrongful conduct, while it is less suitable for use when many individual inquiries are necessary.” *Eaton v. Ascent Res. - Utica, LLC*, No. 2:19-cv-3412, 2021 U.S. Dist. LEXIS 145585, at *40-41 (S.D. Ohio Aug. 4, 2021).

Resolving this matter as a class action will resolve issues common to hundreds of Waiver Agreements at once. In so doing, it will avoid a scenario where the same issues are subject to virtually duplicitious litigation by individual plaintiffs. The benefit of avoiding this scenario is twofold. First, it will cut down on costs for the litigants and the judiciary. Second, it will avoid the possibility of inconsistent results.

Furthermore, the possibility that some class members would not litigate their claims individually due to economic infeasibility is readily apparent and was explicitly raised by Defendants. As reflected in the experiences of the named Plaintiffs, which is confirmed in the class data, the range of damages experienced by the Class Members goes from less than a hundred

dollars to a few thousand dollars, but never more than \$5,000. The Waiver Agreements themselves set a maximum cap of \$5,000 per policy (and also impose either \$1,000 or \$500 limit per incident).⁴

First, individually prosecuting Plaintiffs' claims is impractical because the cost of litigating a single case would exceed the potential return. Further, to Plaintiffs' knowledge, there are no other actions against Defendants for the claims asserted by Plaintiffs, and concentrating the litigation in this Court will allow it to proceed in an efficient manner without risking inconsistent outcomes. There will be little difficulty in managing this action as a class action, and the methods of calculating damages need only be plausible at the certification stage which they are here, as the amount sought in the claims is reflected in the class data adduced.

D. The Requirements for a Class Pursuant to Fed. R. Civ. P. 23(b)(2)

A class may proceed under Rule 23(b)(2) if the parties opposing the class have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). This provision is met when the relief sought affects the entire class at once. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011).

Here, Plaintiffs seek a declaratory judgment which finds that the unlawful conduct alleged in the SAC, namely Defendants' use of extra-contractual criteria to deny claims under the Waiver Agreements, constituted an unlawful breach of contract. SAC, at 18. Plaintiffs further seek an injunction against Defendants, enjoining them and anyone working in concert with them from continuing the unlawful practices regarding claims adjustment. *Id.*

Under a breach of contract theory, the maximum amount recoverable by each class member is \$5,000, which is the Waiver Agreement policy limit. Where the monetary threshold is on the

⁴ Nearly all claim denials are subject to the \$1,000 single incident limit. Less than 20 records reflect a single incident limit of \$500.

lower end, Plaintiffs' request for monetary damages do not predominate as a matter of law over the equitable relief sought. *Compare Kelly v. Montgomery Lynch & Assocs.*, No. 1:07-CV-919, 2007 U.S. Dist. LEXIS 93656, at *17-18 (N.D. Ohio Dec. 19, 2007) ("The putative class members, therefore, seek to determine the legality of the Defendant's behavior with respect to the entire class. The minimal monetary damages sought in this case clearly do not predominate over the equitable relief sought.").

VI. CONCLUSION

For the reasons set forth above, Plaintiffs, on behalf of themselves and all others similarly situated, request that this Court certify this matter as a class action; appoint Plaintiffs Shmuel Cohen, Yehuda Fischer, and Eliezer Rosenberger as class representatives; and appoint Daniel A. Schlanger and Evan S. Rothfarb and their law firm Schlanger Law Group, LLP as class counsel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all appearing counsel in this matter.

/s/ Evan S. Rothfarb

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHMUEL COHEN, YEHUDA FISCHER,
ELIEZER ROSENBERGER and MAYER
TANNENBAUM *on behalf of themselves
and all others similarly situated,*

Plaintiffs,

v.

ALLEGIANCE ADMINISTRATORS, LLC
d/b/a PERFORMANCE FIRST and
AUTOGUARD ADVANTAGE
CORPORATION,

Defendants.

Case No.: 2:20-cv-03411

Judge James L. Graham

Magistrate Judge Kimberly A. Jolson

**DECLARATION OF DANIEL A. SCHLANGER IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

DANIEL A. SCHLANGER, an attorney duly licensed to practice law in the States of New York and New Jersey and admitted *pro hac vice* to practice in this Court, does hereby declare under the penalty of perjury that the following is true and correct:

1. I am the managing partner of Schlanger Law Group LLP, counsel for Plaintiffs and am familiar with the facts and documents relevant to this dispute.
2. I make this Declaration in support of Plaintiffs' Motion for Class Certification.
3. Specifically, I make this declaration to properly set before the Court my credentials and experience in application to designate me as co-Class Counsel.

I. Qualifications and Experience

4. I am a 2004 graduate of Harvard Law School, *cum laude*.

5. Following law school, I clerked for one year on the United States Court of Appeals 11th Circuit for the Honorable R. Lanier Anderson, III.

6. From mid-2006 through mid-2007, I worked as a staff attorney at the Legal Aid Society of Cleveland, where I was a member of the Consumer Protection practice group.

7. I joined Schlanger Law Group's predecessor firm, Schlanger & Schlanger, LLP in August, 2007.

8. My practice has focused virtually exclusively on representation of consumers pursuant to federal and state consumer protection statutes.

9. The large majority of these litigations have involved affirmative individual or class action claims brought in federal court.

10. Attached hereto as **Exhibit A** is a true and correct copy of a table of "Selected Consumer Litigation for Daniel A. Schlanger", which contains a detailed listing of over one hundred (100) such matters I have handled since going into private practice in 2007. These matters include multiple class actions, as well as individual cases, appeals, and fully litigated arbitrations.

11. I have also resolved a large number of consumer claims under state and federal consumer protection statutes at the pre-litigation stage.

12. I am a member in good standing of the bar of the states of New York and New Jersey and of the U.S. District Courts for the Southern, Northern, Eastern, and Western Districts of New York and the District of New Jersey.

13. I am also a member in good standing of the U.S. Court of Appeals, Second Circuit and the U.S. Supreme Court.

14. I am also admitted in Ohio and was in good standing there until I took inactive status in 2013.

15. I am a former member of the New York City Bar Association Professional Responsibility Committee, serving from 2009-2010.

16. From 2010 to Fall 2013, I served on the New York City Bar's Civil Court Committee.

17. From Fall 2013 to Spring 2015, I served on the New York City Bar's Consumer Affairs Committee.

18. I am a member of the National Association of Consumer Advocates, and served from 2010 through 2012, and from Spring 2015 through 2020 on that organization's Education/Professional Development Committee.

19. From 2020 through 2022, I served on the National Association of Consumer Advocates Issues Committee (which is responsible for that organization's amicus participation in appellate cases across the country, including the U.S. Supreme Court).

20. From December 2022 through May 3, 2023, I served as the co-chair for the 2023 National Association of Consumer Advocates Class Action Workshop (held in New Orleans, LA on May 2 and 3, 2023).

21. I speak regularly on consumer law topics at CLE events and other lawyer-focused fora. For example:

- On May 2, 2023, I co-presented a CLE at the National Association of Consumer Advocates/National Consumer Law Center Spring Training, titled "Emerging Areas in Class Actions";
- On December 6, 2022, I co-presented a CLE at the Practising Law Institute's 2022 Annual Consumer Financial Services Institute titled "Deposit Account Litigation Update";

- On May 28, 2021, I presented a Lawline CLE titled, “Representing Victims of Identity Theft And Other Unauthorized Charges: Federal Claims Against Financial Institutions & Credit Bureaus”;
- On May 25, 2021, I presented a Lawline CLE titled, “Representing Victims of Inaccurate Credit Reporting: Identifying & Litigating Fair Credit Reporting Act Claims”;
- On March 12, 2019, I co-presented a CLE at the National Consumer Law Center Conference titled, “Valuing Companies for FDCPA Class Actions: Dealing with Claims of Low, No or Negative Net Worth”;
- On February 8, 2017, I presented a Lawline CLE titled “Using TILA To Challenge Predatory Auto Lending”;
- On July 28, 2016, I presented a Lawline CLE on “The Fair Debt Collection Practices Act: Bringing Suit Based On State Court Litigation And Judgment Enforcement Misconduct”;
- On October 11, 2015, I presented regarding FDCPA issues at the advanced FDCPA litigator’s session of the National Consumer Litigation Conference, in San Antonio, Texas;
- In September 2015, I presented a National Association of Consumer Advocates webinar on assignee liability in auto fraud cases;
- In Fall 2012, I presented a webinar for the same organization regarding consumer law practice management and case selection issues;

- I also served as a panelist for a CLE training for volunteer attorneys on consumer protection issues, sponsored by the New York City Bar Association and Fordham Law School's Feerick Center for Social Justice (Spring 2012).

22. From mid-2012 through Spring 2014, I served as the Chair of the Westchester CLARO program's Steering Committee implementing that program's pro bono Courthouse consumer assistance clinic.

23. In May of 2013, I was awarded a New York State Bar Association's President's award for my pro bono work on behalf of consumers.

24. In August 2013, I was awarded the White Plains, New York Rotary Club's annual award for business ethics.

25. I have published on consumer law issues. These publications include:

a. *Assisting the Consumer Debtor: Becoming Aware of Potential Affirmative Claims*, New York State Bar Association, One on One (Quarterly Publication of the General Practice Section) Fall 2009, Vol. 30, No.3;

b. *Assisting the Consumer Debtor, Part II: Defenses To Consumer Credit Claims*, New York State Bar Association, One on One (Quarterly Publication of the General Practice Section), Winter 2009, Vol. 30, No.4; and

c. *Assisting the Consumer Debtor, Part III: Improper Service*, New York State Bar Association, One on One (Quarterly Publication of the General Practice Section), Spring/Summer 2010, Vol. 31, No.2.

26. As set forth in the attached list of selected cases, I have been appointed class counsel in numerous consumer class action cases.

27. More generally, I am a committed, skilled, knowledgeable, federal litigator who has dedicated his career to consumer protection.

28. My firm has been involved in every facet of the litigation, including initial case planning, drafting initial and amended pleadings, drafting merits submissions; strategy; client

communications; drafting discovery requests and discovery responses; review, analysis and compilation of voluminous discovery materials including class-wide, claims-level data aggregation; discovery-related meet and confers; discovery dispute letters written communications with the Court; attendance and participation at court conferences; class certification-related work, etc.

29. My firm has zealously represented Plaintiffs throughout this litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 22, 2023

Respectfully Submitted,

/s/Daniel A. Schlanger

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EXHIBIT A

**SELECTED CONSUMER LITIGATION
DANIEL A. SCHLANGER**

I. Selected Federal Litigation

A. Consumer Class Action Litigation

- i. *Carrillo v. Wells Fargo Bank, N.A.*, 2:18-CV-03095 (E.D.N.Y.) (approved TILA/breach of contract class action). *See*, 2019 U.S. Dist. LEXIS 80634 (E.D.N.Y. May 10, 2019);
- ii. *Cheng v. HSBC Bank USA, N.A.*, 20-CV-1551 (E.D.N.Y.) (pending EFTA class action). *See*, 467 F. Supp. 3d 46 (E.D.N.Y. 2020); 2021 U.S. Dist. LEXIS 1634 (E.D.N.Y. Jan. 4, 2021);
- iii. *Coble, et al. v. Cohen & Slamowitz, et al.*, 11-CV-01037 (S.D.N.Y.) (approved FDCPA/GBL class action). *See*, 824 F. Supp. 2d 568 (S.D.N.Y.) (denying defendants' motion to dismiss);
- iv. *Daisley v. West Creek Financial, Inc.*, 1:18-CV-03555 (E.D.N.Y.) (approved rent-to-own class action);
- v. *Diallo v. Immediate Credit Recovery, Inc. et al.*, 1:18-CV-00470 (E.D.N.Y.) (approved FDCPA/GBL class action);
- vi. *De La Paz v. Rubin & Rothman, LLC & Keith Rothman*, 11-CV-9625 (S.D.N.Y.) (approved FDCPA/GBL class action);
- vii. *Granados v. OnPoint Community Credit Union*, 21-cv-00847 (Dist. Oregon) (pending EFTA class action);
- viii. *In re Porsche Cars North America, Inc., Plastic Coolant Tubes Products Liability Litigation*, 11-MD-2233 (Consolidated in S.D. Ohio) (approved MDL product defects class action) (member, executive committee). *See*, 880 F. Supp. 2d 801 (S.D. Ohio 2012); 2014 U.S. Dist. LEXIS 88693 (S.D. Ohio June 30, 2014) *aff'd* summary order (6th Cir. 14-3421, 7/13/15)
- ix. *Jurs v. Transworld Systems Inc.* 17-CV-1030 (N.D.N.Y.) (approved FDCPA/GBL class action);
- x. *Klippel v. Portfolio Recovery Associates, LLC, et al.*, 15-CV-1061 (N.D.N.Y.) (approved FDCPA/GBL class action);

- xi. *In re Midland Funding LLC Interest Rate Litigation*, 11-CV-814 (S.D.N.Y.) (approved FDCPA/usury class action). See, 2015 U.S. App. 8483, 786 F.3d 246 (2d Cir. 2015); 2017 U.S. Dist. LEXIS 27109 (S.D.N.Y. Feb. 27, 2017);
- xii. *Miranda v. CACH LLC, et al.*, 15-CV-0627 (N.D.N.Y.) (approved FDCPA/GBL class action);
- xiii. *Moy v. Eltman, Eltman & Cooper, PC*, 12-CV-02382 (E.D.N.Y.) (approved FDCPA/GBL class action);
- xiv. *Munoz, et al. v. Wells Fargo Bank, N.A.*, 23-cv-202 (D.C.N.M.) (pending EFTA class action);
- xv. *Nelipa, et al. v. TD Bank, N.A.*, 21-cv-01092 (E.D.N.Y.) (pending EFTA class action);
- xvi. *Silver v. Livewatch Security, LLC d/b/a Brinks Home Security f/k/a Bolster LLC d/b/a Safemart, et al.*, 20-CV-02478 (E.D.N.Y.) (case at bar) (approved GBL/Breach of Contract class action);
- xvii. *Sessa v. Linear Motors, LLC, et al.*, 19-CV-9914 (S.D.N.Y.) (appeal pending) (pending TILA and FCRA class action);
- xviii. *Sparkman v. Comerica Bank*, 23-cv-2028 (N.D.CA) (pending EFTA class action);
- xix. *Thomas v. Sherwin Robins, et al.*, 16-CV-2529 (N.D.Ga) (approved FDCPA class action). See, 2017 U.S. Dist. LEXIS 227255 (N.D. Ga. Sep. 7, 2017);
- xx. *Tito v. Rubin & Rothman, LLC & Keith Rothman*, 12-CV-3464 (E.D.N.Y.) (approved FDCPA/GBL class action);
- xxi. *Winslow v. Forster & Garbus, LLP, et al.*, 15-CV-02996 (E.D.N.Y) (approved FDCPA/GBL class action). See 2017 U.S. Dist. LEXIS 205113 (E.D.N.Y. Dec. 13, 2017) (certifying class and denying Defendant's motion for Summary Judgment);

B. Individual Fair Debt Collection Practices

- i. *Blair v. Forster & Garbus*, 09-CV-2407 (S.D.N.Y.);

- ii. *Bolaños v. Arrow Financial Services, LLC and Rubin & Rothman, LLC*, 10-CV-07243 (S.D.N.Y.);
- iii. *Buelow v. Plaza Motors of Brooklyn, Inc. d/b/a Plaza Honda*, 17-cv-04288 (E.D.N.Y.);
- iv. *Darby v. Palisades Collection, LLC and Pressler & Pressler, LLP*, 11-CV-1673 (E.D.N.Y.);
- v. *Dewey v. Midland Credit Management, Inc. et al.*, 10-CV-7857 (S.D.N.Y.);
- vi. *Diaz v. Portfolio Recovery Assoc., LLC*, 10-CV-3920 (E.D.N.Y.) 2012 U.S. Dist. LEXIS 25802 (E.D.N.Y. Feb. 28, 2012), *adopted by, objections overruled by*, 2012 U.S. Dist. LEXIS 72724 (E.D.N.Y. May 23, 2012);
- vii. *DiMatteo v. Sweeney, Gallo, Reich & Bolz*, 13-CV-8451 (S.D.N.Y.) *See*, 2015 U.S. App. LEXIS 12250 (2d Cir. July 16, 2015)(reversing dismissal);
- viii. *Douyon v. NY Med. Health Care, P.C.*, 10-CV-3983 (E.D.N.Y.) *See*, 2011 U.S. Dist. LEXIS 47850 (E.D.N.Y. May 4, 2011) (striking defendants' answer and sanctioning defendants); 894 F. Supp. 2d 245 (granting in part and denying in part parties' cross motions for summary judgment), plaintiffs' motion for reconsideration granted at 2013 U.S. Dist. LEXIS 138053 (E.D.N.Y. Sept. 25, 2013); 49 F. Supp. 3d 328 (E.D.N.Y. 2014) (awarding attorney's fees);
- ix. *Hauseman v. Consumer Recovery Associates and ICS & Associates*, 11-CV-00772 (E.D.N.Y.);
- x. *Healy v. Enterprise Recovery Systems, LLC*, 11-CV-3295 (S.D.N.Y.);
- xi. *Hernandez v. Erin Capital Mgmt., LLC*, 10-CV-1695 (C.D.Ca.) *See*, 2011 U.S. Dist. LEXIS 114133 (C.D.Ca 2011);
- xii. *Levy v. Law Offices of J. Henry Nierman, et al.*, 17-CV-004022 (S.D.N.Y) (pending);
- xiii. *Mason v. Midland Credit Management, Inc.*, 12-CV-4861 (S.D.N.Y.);
- xiv. *Molina v. Windels, Marx, Lane & Mittendorf, LLP*, 11-CV-02995 (S.D.N.Y.);
- xv. *Muradov v. Forster & Garbus LLP*, 15-CV-2276 (S.D.N.Y.);
- xvi. *O'Connor v. Municipal Credit Union, et al.*, 17-cv-02860 (S.D.N.Y.);

- xvii. *Rathburn v. Sharinn & Lipshie, P.C. et al.*, 10-CV-04449, (S.D. Tex. 2010);
- xviii. *Renken-Sebastian v. Retrieval Masters Creditors Bureau, Inc.*, 14-CV 390, (S.D.N.Y.);
- xix. *Robert v. Cohen & Slamowitz, LLP*, 12-CV-2551 (E.D.N.Y.);
- xx. *Robertson v. Capital Management Services, P.C.*, 12-CV-4860 (S.D.N.Y.);
- xxi. *Ruffin v. Kirschenbaum & Phillips P.C., et al.*, 20-CV-05422 (S.D.N.Y.);
- xxii. *Santos et al. v. Metro Portfolios, Inc., et al.*, 20-CV-06706 (S.D.N.Y.);
- xxiii. *Shepherd v. Law Offices of Cohen & Slamowitz, LLP*, 08-CV-6199 (S.D.N.Y.).
See, 668 F.Supp. 2d 579 (S.D.N.Y. 2009).
- xxiv. *Simmons v. Collection Bureau Hudson Valley, Inc.*, 08-CV-6407 (S.D.N.Y.);
- xxv. *Simmons v. Security Credit Systems, Inc.*, 08-CV-7701 (S.D.N.Y.);
- xxvi. *Singleton v. New Century Financial Services, Inc., et al.*, 10-CV-3982 (E.D.N.Y.);
- xxvii. *Taronji v. Mel S. Harris & Associates, LLC*, 08-CV-2126 (E.D.N.Y.);
- xxviii. *Thomas v. Kirschenbaum & Phillips, P.C., et al.*, 14-CV-06446 (S.D.N.Y.);
- xxix. *Trinidad v. David J. Gold, P.C. and David J. Gold, Esq.*, 11-CV-1744 (E.D.N.Y.);
- xxx. *Webster v. Asset Acceptance, LLC, et al.*, 11-CV-00670 (S.D.N.Y. 2011);
- xxxi. *Dempsey v. Navy Federal Credit Union*, 11-CV-0166 (E.D.N.Y. 2011) (FCBA);
- xxxii. *Johnston v. Capital One*, 11-CV-02269 (S.D.N.Y.) (FCBA);
- xxxiii. *Vargas v. Kavulich & Associates, P.C.*, 16-CV-08680 (S.D.N.Y.);
- xxxiv. *Velazquez v. Kavulich & Associates, P.C.*, 17-cv-07401 (S.D.N.Y).

C. Auto Fraud Litigation

- i. *Ahmed v. Planet Motor Cars, Inc., Santander Consumer USA Holdings, Inc., et al.*, 15-CV-0284, (E.D.N.Y);

- ii. *Alkhatib v. New York Motor Group., LLC*, 2015 U.S. Dist. LEXIS 72055 (E.D.N.Y.);
- iii. *Baccas, et al. v. Nissan of New Rochelle, et al.*, 17-CV-03207 (S.D.N.Y.);
- iv. *Banon v. M&T Bank*, 14-CV-4691 (E.D.N.Y.);
- v. *Chattopadhyay et al. v. Baron Cohen Auto Group, Inc. et al.*, 21-cv-06695 (E.D.N.Y.) (pending);
- vi. *Chowdhury v. NY Motor Group, et al.*, Case No. 14-CV-2981 (E.D.N.Y.);
- vii. *Dong v. NY Motor Group, et al.*, 14-CV-2980 (E.D.N.Y.);
- viii. *Freire v. NY Motor Group, et al.*, 13-CV-7291 (E.D.N.Y.);
- ix. *Gabrys v. NY Motor Group, et al.*, 13-CV-7290 (E.D.N.Y.);
- x. *Gaspard v. Kings Autoshow Inc. et al.*, 20-cv-02896 (E.D.N.Y.);
- xi. *Gutierrez, et al. v. East Hills Chrysler-Plymouth Inc, et al.*, 17-CV-6953 (E.D.N.Y.);
- xii. *Islam, et al. v. Lee's Motors, Inc., et al.*, 17-CV-03955 (E.D.N.Y.). *See*, 2018 U.S. Dist. LEXIS 170998 (E.D.N.Y. Sep. 30, 2018);
- xiii. *Lawson v. Mercedes-Benz Financial Services USA LLC, et al.*, 21-cv-06014 (E.D.N.Y.) (pending);
- xiv. *Magliocca v. Auto Gallery Imports, et al.*, 09-CV-0766 (E.D.N.Y.);
- xv. *Omilig v. Auto Mall 46, Inc.*, (AAA Case No. 18 420 00547) (arbitrated through decision, treble damages awarded);
- xvi. *Pierre v. Planet Automotive, Inc., et al.*, 13-CV-675 (E.D.N.Y.), *See*, 2016 U.S. Dist. LEXIS 150557, 2016 WL 6459617 (E.D.N.Y. Oct. 31, 2016);
- xvii. *Pyskaty v. Wide World of Cars, LLC and BMW Bank of North America*, 15-CV-1600 (S.D.N.Y.), 856 F.3d 216 (2d Cir. N.Y. May 10, 2017);
- xviii. *Roa v. Carsbucks, Inc.*, 17-CV-00817 (E.D.N.Y.);
- xix. *San Antonio & Jimenez-Veloz v. Northern Auto Traders, LLC, et al.*, 11-CV-1415 (E.D.N.Y.);
- xx. *So v. Nemet Motors, LLC, et al.*, 11-CV-0168 (E.D.N.Y.);

- xxi. *Tawiah v. Eternity Auto Center Corp., et al.*, 15-CV-02342 (E.D.N.Y.);
- xxii. *Thompson v. Rallye Motors, LLC*, JAMS Reference No. 1425008642 (settled at conclusion of JAMS arbitration, prior to decision);
- xxiii. *Vasquez v. Major World Chevrolet, LLC and Capital One Auto Finance, Inc.*, 16-CV-06815 (E.D.N.Y.);
- xxiv. *Velazquez v. L.I. Autoworld, Inc. d/b/a Generation Kia, et al.*, 20-cv-01055 (E.D.N.Y.).

D. Fair Credit Reporting Act/Identity Theft Litigation

- i. *Abdallah v. LexisNexis Risk Solutions FL, Inc., et al.*, 19-CV-03609 (E.D.N.Y.) (pending). *See*, 2021 U.S. Dist. LEXIS 248117 (E.D.N.Y. Dec. 30, 2021);
- ii. *Abdur-Rashid v. Citibank, N.A.*, 21-cv-06276 (E.D.N.Y.) (pending);
- iii. *Ayala v. Sallie Mae et al.*, 21-cv-05322 (S.D.N.Y.) (pending);
- iv. *Bien-Aime v. Experian Information Solutions, Inc.*, 19-CV-06961 (E.D.N.Y.);
- v. *Bien-Aime v. Nordstrom, Inc., et al.*, 19-CV-04701 (E.D.N.Y.);
- vi. *Brefo v. JPMorgan Chase Bank, N.A.*, 19-CV-01338 (S.D.N.Y.);
- vii. *Burman v. Citibank, N.A.*, 01-21-0016-1006 (AAA) (pending);
- viii. *Domingue v. Discover Financial Services, LLC, et al.*, 18-CV-06144 (E.D.N.Y.);
- ix. *Dominik et al. v. Wells Fargo Bank, N.A., et al.*, 20-CV-04021 (E.D.N.Y.) (pending);
- x. *Fields v. Equifax Information Services LLC, et al.*, 20-CV-0895 (S.D.N.Y.);
- xi. *Francis v. Equifax Information Services LLC, et al.*, 20-CV-00584 (N.D.N.Y.) (pending);
- xii. *Gomez v. JPMorgan Chase Bank, N.A.*, 5220000032 (JAMS) (pending);
- xiii. *Green v. Capital One, N.A., et al.*, 20-CV-04655 (S.D.N.Y.) (pending). *See*, 2021 U.S. Dist. LEXIS 161837 (S.D.N.Y. Aug. 26, 2021);
- xiv. *Haddad v. Citizens Bank, N.A., et al.*, 19-CV-06176 (W.D.N.Y.);
- xv. *Hart v. Equifax Information Services LLC, et al.*, 19-CV-342 (N.D.N.Y.) (pending). *See*, 2019 U.S. Dist. LEXIS 167707 (N.D.N.Y. Sep. 30, 2019);

- xvi. *Hasson v. HSBC Bank USA, N.A.*, 20-CV-1024 (S.D.N.Y.);
- xvii. *Islam v. Experian Information Solutions, Inc., et al.*, 18-CV-01021 (E.D.N.Y.);
- xviii. *Jarnicki v. Equifax Information Services LLC, et al.*, 18-CV-10631 (S.D.N.Y.);
- xix. *Koniuk et al. v. TD Bank, N.A.*, 20-CV-02376 (E.D.N.Y.) (pending);
- xx. *Lara v. Santander Bank, N.A.*, 20-CV-00855 (E.D.N.Y.);
- xxi. *Liu v. TD Ameritrade, Inc.*, 18-CV-6764 (E.D.N.Y.);
- xxii. *Lombardo v. Equifax Information Services LLC, et al.*, 20-CV-06813 (S.D.N.Y.) (pending);
- xxiii. *Morgan v. Discover Bank, et al.*, 17-CV-2452 (E.D.N.Y.);
- xxiv. *Nguyen et al. v. JPMorgan Chase Bank, et al.*, 5100000028 (JAMS) (pending);
- xxv. *Potente v. Equifax Information Services LLC, et al.*, 19-CV-04050 (S.D.N.Y.);
- xxvi. *Regan v. Equifax Information Services LLC, et al.*, 17-CV-06167 (S.D.N.Y.);
- xxvii. *Somma v. Equifax Information Services LLC, et al.*, 19-CV-04716 (E.D.N.Y.);
- xxviii. *Stewart v. American Express National Bank*, 19-CV-11432 (S.D.N.Y.);
- xxix. *Tracey v. Equifax Information Services LLC, et al.*, 17-cv-06166 (S.D.N.Y.);
- xxx. *Valdez v. TD Bank, N.A.*, 19-CV-02115 (E.D.N.Y.);
- xxxi. *Zumbo v. Experian Information Solutions, Inc. et al.*, 17-cv-04820 (E.D.N.Y.).

E. Other Significant Federal Litigation

- i. *Anastassopoulos v. Hospital for Special Surgery, et al.*, 17-cv-04345 (S.D.N.Y.) (False Advertising and Medical Malpractice) (settled);
- ii. *Cisneros-Calderon, et al. v. Salinas*, 08-CV-6406 (S.D.N.Y.) (FLSA) (settled after entry of judgment);
- iii. *Mendoza et al v. G & M Foods*, 08-CV-4498 (S.D.N.Y.) (FLSA). *See*, 2008 U.S. Dist. LEXIS 120758 (S.D.N.Y 2008) (settled).

II. Selected State Court Litigation

- i. *United States Bank Nat'l Ass'n v. Pia*, 2011 N.Y. Misc. LEXIS 4962 (N.Y. Sup. Ct. Oct. 7, 2011) (granting consumer rescission of home loan pursuant to

the Truth In Lending Act); *affirmed* 106 A.D.3d 991 (2d Dept 2013); *leave to appeal denied*, 2013 LEXIS 2512 (Ct of Appeals, 9/17/13); 2014 N.Y. Misc. LEXIS 3841 (N.Y. Sup. Ct. Aug. 26, 2014) (holding bank in contempt for non-compliance with prior court orders and denying bank's motion to quash post-judgment discovery);

- ii. *Worldwide Asset Purchasing LLC v. Austin*, Index No. 85344/07 Bronx County Civil Court, *See Slip Op.* dated 8/7/12 (dismissing motion to enforce arbitration award, *inter alia*, on grounds that the arbitral form was institutionally biased against consumer).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHMUEL COHEN, YEHUDA FISCHER,
ELIEZER ROSENBERGER and MAYER
TANNENBAUM *on behalf of themselves
and all others similarly situated,*

Plaintiffs,

v.

ALLEGIANCE ADMINISTRATORS, LLC
d/b/a PERFORMANCE FIRST and
AUTOGUARD ADVANTAGE
CORPORATION,

Defendants.

Case No.: 2:20-cv-03411

Judge James L. Graham

Magistrate Judge Kimberly A. Jolson

DECLARATION OF EVAN S. ROTHFARB IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION

Evan S. Rothfarb, an attorney duly licensed to practice law in the State of New York and admitted *pro hac vice* to practice in this Court, does hereby affirm under the penalty of perjury:

1. I am a partner at Schlanger Law Group, LLP, lead counsel for Plaintiffs and, as such, am familiar with the facts, documents, and testimony relevant to this dispute.
2. I make this Declaration in support of Plaintiffs' Motion for Class Certification.

Exhibits

3. The following exhibits are documents that were either produced by Plaintiffs or Defendants in this matter true and correct excerpts from the depositions taken under oath in connection with this matter:

Exhibit	Description
A	E-mail dated July 10, 2019 from Bob Cramer (redacted)
B	Deposition of Juan Gutierrez on October 26, 2022
C	Deposition of Brian Biglin on December 6, 2022
D	Deposition of Michelle DeFouw on December 13, 2022
E	Performance First Excess Wear & Tear Protection Waivers for Shmuel Cohen, Yehuda Fischer, and Eliezer Rosenberg
F	Deposition of Matthew Blevins on October 18, 2022
G	Performance First Wear and Tear Brochure/Pamphlet
H	Letter dated July 30, 2019 from Brian Biglin to Ohio State Attorney General's Office
I	Responses to Better Business Bureau dated August 20, 2019 produced by Autoguard Advantage Corporation

Class Data Set

4. On December 20, 2022, Defendant Allegiance Administrators, LLC (“Allegiance”) produced a spreadsheet to Plaintiffs identified as Allegiance_Cohen 000600 (the “Data Set”).
5. With the transmission of the records, counsel for Allegiance indicated that the Data Set was limited to claims submitted to it for damages pursuant to the Performance First Excess Wear & Tear Protection Waiver agreements (“Waiver Agreements”) and included “claims denied in whole or in part starting on July 6, 2014 through the present”
6. The Data Set consists of two tabs – “W&T ClaimsComp” and “W&T CC BreakDown”.

7. W&T ClaimsComp consists of 1,405 unique records, each record corresponding to a unique claim number that is related to an identified individual natural person (the “Composite Claims”).
8. Each record of the Composite Claims reflects the form contract to which it applies, namely the “LOL/Performance First/Excess W & T/04 6/2016.”
9. This is the same alphanumeric sequence that appears on the first page of each of the named Plaintiffs’ Waiver Agreements. *See* Exhibit E.
10. The Composite Data reflect that out of 1,405 records, 20 out of them had a \$500 coverage maximum for single events.
11. The remaining 1,385 records in the Composite Data reflect a \$1,000 coverage maximum for single events.
12. The Composite Data also reflect that all contracts had a \$5,000 maximum coverage limit.
13. The W&T CC Breakdown consists of 9,987 records, each record constituting a unique claim for damage to a vehicle component (the “Component Claims”).
14. The Component Claims data reflect that the decisions made by the Defendants’ claims adjusters at the component level.
15. The entries in the Component Claims are disaggregated data reflected in the Composite Claims and both data sets contain related value information for the various items of damage within the claims.
16. The entries in the Composite Claims contain a data field referred to as “Corrective Actions.”
17. As testified by Defendants’ witnesses, the Corrective Action field contains the reasons for claim denials, which are found nowhere else in Defendants’ books and records.

Class Data Set Analysis

18. Utilizing matching data fields, the Composite Claims and Component Claims data may be combined to create a more complete data compilation (“Data Compilation”).
19. A series of filters may be applied to the Data Compilation corresponding to the proposed Class in this matter.
20. My law firm staff and I created a Data Compilation and applied a series of filters.
21. The filters did not in any way alter the underlying data produced by Defendants.
22. A filter was applied to remove any claim records in the Data Compilation which received the maximum payout of \$5,000 (or above).
23. A filter was applied to remove any records from the Data Compilation which exceeded either the \$500 or \$1,000 single event maximum, as applicable.
24. The Data Compilation was further restricted to claims where the requested value was greater than zero and the amount paid out was less than the requested value.
25. A further filter was applied to the Data Compilation, limiting claims using query language corresponding to terms appearing in the Corrective Actions (hereafter, the “Search Terms”), which resulted in the following hits (representing the number of Component Claims denied):

Corrective Action	Component Claims
impact damage	405
not wear	519
excess wear	1466
*den*dent*	948
*den*scratch*	281
*den*worn*	114
*den*4+*	92
*den*over 4*	282
*den*impact*	577
*den*collision*	474

*dec*dent*	50
*dec*scratch*	40
*dec*worn*	1
*dec*4+*	5
*dec*over 4*	19
*dec*impact*	131
*dec*collision*	56
*dec*12*in*	24
*dec*12+*	0
*dec*over*12*	39
*den*12*in*	210
*den*12+*	41
*den*over*12*	318

26. After removing the duplicate data resulting from queries using the Search Terms, there were 2,433 Component Claims relating to 736 submissions from unique individuals.
27. Accordingly, there are 736 members of the proposed Class.

Named Plaintiffs

28. The three named Plaintiffs in this action are Shmuel Cohen, Yehuda Fischer, and Eliezer Rosenberger.
29. Each of these Plaintiffs had a Waiver Agreement with Defendants. *See* Exhibit E.
30. According to the Corrective Action in the Data Set, Mr. Cohen’s claim for damage to his left front door (\$168) was denied because it had a “scratch . . . over 12 inches.” Mr. Fischer’s claims for damage to his front bumper cover (\$886.28), rear bumper cover (\$436.50), and right rear cargo door (\$148.50) were all denied as “not wear & tear.” Mr. Rosenberger’s claims for damage to his right front door (\$168), right rear door (\$204), and right rocker panel (\$272) were all denied because they were “dented 6”+”, the damage to the left rear door was denied because it was “scratched 12”+”, and the damage to rear bumper (\$603.71) was denied due to an unspecified “collision.”
31. Each of the three named Plaintiffs has significantly participated in the litigation.

32. Along with the other appearing counsel this action and the staff of our law firms, I have worked with Plaintiffs throughout the pendency of this matter.
33. The Plaintiffs have regularly communicated with counsel.
34. The Plaintiffs have worked with their attorneys in reviewing case documents and responding to discovery demands.
35. The Plaintiffs have also spent significant time in preparing for and appearing at their depositions.

Qualifications and Experience of Class Counsel

36. I also submit this declaration with regard to my experience as a consumer protection attorney, in connection with Plaintiffs' request that my firm be appointed as class counsel.
37. I am a member in good standing of the following state and federal courts: New York State, U.S. District Courts for the Southern, Eastern and Northern Districts of New York, and U.S. Court of Appeals for the Second Circuit.
38. I am a 2005 graduate of Cornell Law School.
39. Since January 2017, I have worked as a consumer protection attorney at Schlanger Law Group, LLP, where I became Partner in Summer 2019.
40. Since devoting my practice to consumer protection, I have been involved in multiple consumer class actions.
41. Representative consumer class actions in which I have substantially participated include the following matters:
 - *Diallo v. Immediate Credit Recovery, Inc.*, No. 1:18-cv-00470-KAM-SJB (E.D.N.Y.)
 - *Silver v. LiveWatch Security, LLC*, No. 2:20-cv-02478-JS-AYS (E.D.N.Y.)
 - *In re Midland Funding, LLC Interest Rate Litig.*, No. 11-cv-8149 (LMS) (S.D.N.Y.)
 - *Thomas v. Sherwin P. Robin & Associates, P.C.*, No. 1:16-cv-02529-AT-AJB (N.D. Ga.)

- *Daisley v. West Creek Financial, Inc.*, No. 1:18-cv-03555-BMC (S.D.N.Y.)
- *Winslow v. Forster & Garbus, LLP*, No. 2:15-cv-02996 (E.D.N.Y.)
- *Klippel v. Portfolio Recovery Associates LLC*, No. 6:15-cv-01061-MAD-TWD (N.D.N.Y.)

42. In both the *Diallo* and the *Thomas* matters above, I was appointed as class counsel and served as primary counsel throughout the litigation.

43. In addition to my work on class cases, I regularly handle a significant number of complex consumer cases in federal court.

44. Some representative consumer case decisions are listed below:

- *Levy v. Law Offices of J. Henry Nierman*, No. 17-cv-4022 (NSR), 2022 U.S. Dist. LEXIS 221790 (S.D.N.Y. Dec. 8, 2022)
- *Green v. Capital One, N.A.*, No. 20 Civ. 4655 (ER), 2021 U.S. Dist. LEXIS 161837 (S.D.N.Y. Aug. 26, 2021)
- *Abdallah v. LexisNexis Risk Sols. Fl*, No. 19-CV-3609 (RRM) (VMS), 2021 U.S. Dist. LEXIS 62229 (E.D.N.Y. Mar. 30, 2021)
- *Potente v. Barclays Bank Del.*, No. 19 CV 4050 (VB), 2020 U.S. Dist. LEXIS 97863 (S.D.N.Y. June 3, 2020)
- *Hart v. Equifax Info. Servs. LLC*, No. 5:19-cv-00342 (BKS/ML), 2019 U.S. Dist. LEXIS 167707 (N.D.N.Y. Sep. 30, 2019)
- *Pyskaty v. Wide World of Cars, LLC*, No., 15 Civ. 1600 (JCM), 2019 U.S. Dist. LEXIS 30006 (S.D.N.Y. Feb. 25, 2019)

45. More generally, I am a committed, skilled, knowledgeable and well-respected federal consumer protection litigator.

46. I am also a member of the National Association of Consumer Advocates and the New York City Bar Association.

47. Between 2019 and 2021, I was recognized as a SuperLawyers Rising Star for Consumer Law in Metro New York.

48. I also regularly speak on topics related to consumer protection and litigation practice.

49. In the recent years, I have had the following speaking engagements:
- Speaker, *National Consumer Law Center Consumer Rights Litigation Conference 2022* (Attacking Payment Fraud and Unauthorized Charges)
 - Speaker, *Practising Law Institute 27th Annual Consumer Financial Services Institute - 2022* (Deposit Account Litigation Update)
 - Speaker, *National Association of Consumer Advocates Spring Training 2022* (Consumer Class Actions and Depositions)
 - Speaker, *National Association of Consumer Advocates Spring Training 2021* (Consumer Mediation)
50. Before I focused my legal practice on consumer protection, my prior experience was largely as a federal litigator.
51. Following law school, I worked as a junior associate in a litigation boutique in New York City named Hoffinger, Stern & Ross, LLP, where I focused on class action defense of consumer frauds, multi-district litigations, and general commercial litigation matters.
52. Between 2006 and 2008, I clerked for a two-year term for the Honorable James Knoll Gardner, District Judge, in the U.S. District Court for the Eastern District of Pennsylvania.
53. From 2009 through the end of 2016, I founded and operated a commercial litigation boutique, where I handled a variety of commercial matters.
54. I have acted as lead counsel in this matter to date, which has included identifying and investigating the claims in this case, serving discovery demands and responding to demands served upon Plaintiffs, authoring many of the motions and memoranda submitted in this matter, and taking and defending the depositions in this matter.
55. My firm and I have zealously represented the Plaintiffs and the putative class.
56. We have also affiliated with necessary counsel to prosecute this action.

57. We have affiliated with Meyer Wilson Co., LPA, who has served as our local counsel in this Court.
58. We have also affiliated with Sarfaty & Associates, PC, counsel in the community where the named Plaintiffs reside.
59. My firm has dedicated significant resources to this litigation and will continue to do so.
60. In light of the foregoing, I respectfully request that this Court appoint the undersigned as class co-counsel along with my law partner Daniel A. Schlanger as class co-counsel.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 22, 2023

/s/ Evan S. Rothfarb
Evan S. Rothfarb
(Admitted Pro Hac Vice)
SCHLANGER LAW GROUP, LLP
80 Broad Street, Suite 3103
New York, NY 10004
T: 212-500-6114
F: 646-612-7996
E: erothfarb@consumerprotection.net

Attorney for Plaintiffs and the Putative Class

EXHIBIT A

From: **Bob Cramer** <bcramer@alltpa.com>

Date: Wed, Jul 10, 2019 at 12:12 PM

[REDACTED]

Again, I'm not sure who you are or what your interest is in this, or why I should respond to you.

Your points don't affect our decision at all. The physical evidence is clear, the damage isn't wear & tear, and the Hyundai bumpers aren't any cheaper than anyone else's. Federal law requires that they have to take a 2.5mph impact with no damage. That clearly means the speed at the time of impact was above 2.5mph, to cause the bumper to shatter like it did.

As for your lawyer threat, it also doesn't affect the Claims Dept. decision. If someone wants to spend a couple thousand dollars to try to get \$1070.00 in damage done to the vehicle covered, that's their prerogative.

Bob Cramer

QC & RM Director

Allegiance Administrators

5500 Frantz Road, Suite 100

Dublin, Oh 43017

800-457-7703 ext 3243

[REDACTED]

EXHIBIT B

In the Matter of

Civil Action No. 2:20-cv-03411-3JLG-KAJ

COHEN, et al.

v.

ALLEGIANCE ADMINISTRATORS, LLC, et al.

Deposition of Juan Gutierrez

Wednesday, October 26, 2022



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New York, NY 10018
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO - EASTERN DIVISION

SHMUEL COHEN, YEHUDA FISCHER, ELIEZER
ROSENBERGER, and MAYER TANNENBAUM, on behalf of
themselves and all similarly situated,

Plaintiffs,

-v- Case No. 2:20-cv-03411-JLG-KAJ

ALLEGIANCE ADMINISTRATORS LLC d/b/a PERFORMANCE
FIRST,

Defendant.

REMOTE VIDEOCONFERENCE DEPOSITION OF JUAN
GUTIERREZ, a Witness herein, taken by the
Plaintiffs, on Wednesday, October 26, 2022, at
9:30 a.m., before Jeffrey Shapiro, a
Stenographic Reporter and Notary Public, within
and for the State of New York.

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS, et al.
Juan Gutierrez --- October 26, 2022

2

1 A P P E A R A N C E S :

2 SCHLANGER LAW GROUP, LLP

3 Attorneys for the Plaintiffs

4 80 Broad Street, Suite 1301

5 New York, New York 10004

6 BY: EVAN ROTHFARB, ESQ.
7 KEITH GIBSON, ESQ.

8

9 MACMURRAY & SHUSTER, LLP

10 Attorneys for AUTOGUARD

11 6525 West Campus Oval, Suite 210

12 New Albany, Ohio 43054

13 BY: CHRIS WAGER, ESQ.

14

15

16 ARNOLD & CLIFFORD, LLP

17 Attorneys for the Defendant

18 ALLEGIANCE ADMINISTRATORS, and the Deponent
19 JUAN GUTIERREZ

20 115 West Main Street, Suite 400

21 Columbus, Ohio 43215

22 BY: GAGE GOSNELL, ESQ.

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Gutierrez

A. Just wear and tear.

Q. When you became a claims adjuster, were there multiple types of wear and tear products or just the single one?

A. I believe that was the only one.

Q. During your time working for Allegiance, were you aware of any other wear and tear products besides the one you were originally aware of?

A. Not that I'm aware of.

Q. In your own words, can you explain what the wear and tear product is?

A. I think it was supposed to govern accidental, vehicles that were leased but -- It was supposed to cover normal wear and tear of the vehicle.

Q. Going back to Mr. Roy. What guidance did he give you about how to adjust claims on behalf of Allegiance?

A. Basically he trained me how to use the system and how to read the contracts.

Q. Start with the system. What system?

A. DSC Net.

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Gutierrez

inspection report.

Q. So am I correct in understanding when you say "depends on the damage" means how much damage on a particular claim, would depend on what's on the inspection report?

A. No.

Q. Then what do you mean by it?

A. By damage on a specific panel.

Q. And that did not appear on the inspection report?

A. I'm not understanding your question. Aren't you asking me what I was -- from the inspection report?

Q. No. I'm asking you a different question.

A. Okay. So what is it?

Q. Did you use the same criteria to evaluate claims as every other adjuster when administering or adjusting claims submitted under wear and tear agreements?

A. For the most part, yes.

Q. And it was Bob Cramer's job when you were hired to make sure all the adjusters were using the same criteria and the same

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS, et al.
Juan Gutierrez --- October 26, 2022

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Gutierrez

Q. Did Bob Cramer ever tell you there was a 12 inch scratch rule?

A. Yes.

Q. What was there 12 inch scratch rule?

A. I do not recall, but I do remember there was one for total scratches.

Q. So all claims with greater than a 12-inch scratch were denied; correct?

A. It would depend on the pictures.

Q. What would the pictures reveal about a scratch?

A. Sometimes it might be two or three scratches, but sometimes they say that's one.

Q. But if there was a contiguous scratch that was 12 inches or longer, the claim was denied?

A. Yes.

Q. That was true in all instances; correct?

A. I would like to say yes. I do not know.

Q. Do you recall a specific provision in the contract that said scratches greater

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Gutierrez

those specific ones.

Q. So whenever you denied a claim, the reason for denial was never a collision?

A. I do not recall.

Q. Do you recall any of the exclusions that you applied to deny claims submitted under the wear and tear agreements?

A. Any of the exclusions, you say? For the denials?

Q. Do you recall any of the reasons you denied claims under the wear and tear agreements?

A. Yes, some.

Q. Who were those reasons?

A. The tires is the one that I remember the most. And then the scratches over 12 inches. That's pretty much what I remember, what I can recall at the moment.

Q. Do you have any record of the reasons you denied claims?

A. It's in the claims themselves.

Q. The claims themselves have a recorded reason for the denials?

A. Yes. It would be in the corrective

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Gutierrez

action.

(Recess taken.)

BY MR. ROTHFARB:

Q. Mr. Gutierrez, I want to ask you:
Is a scratch or dent always the result of an
intentional act?

A. No.

Q. A scratch or dent can happen
whether someone is driving or not; correct?

A. Yes.

Q. And a scratch or dent can be the
result of vandalism; correct?

A. Correct.

Q. Just because there's a dent or
scratch appearing on the vehicle does not mean
there was a wrongful or intentional act?

A. Correct.

Q. Can you determine by looking at a
picture alone whether a scratch or dent is a
result of an intentional act or a wrongful act?

A. I would have to base my decision
off the pictures.

Q. Can the pictures alone indicate the
cause of the --

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Gutierrez

question, then.

Q. So when you adjusted claims, you looked at pictures that were taken as part of an inspection report; correct?

A. Correct.

Q. Those pictures were not at the time damage was sustained to a vehicle; correct?

A. What do you mean by "damage sustained to a vehicle"?

Q. Those pictures were not taken contemporaneously, at the same time as damage was sustained on the vehicle; correct?

A. Correct; no, it was not.

Q. So by looking at a picture of damage after an incident of damage occurred, could you definitively determine the source or reason for the damage?

A. No.

Q. Mr. Gutierrez, I'm now showing you Exhibit 12 (indicating).

Do you see that on your screen?

A. Yes.

Q. Do you recognize Exhibit 12?

A. I know its's a wear and tear

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Gutierrez

Can you point me to any dent rule?

A. I do not see one.

Q. I'm taking you to the second page of Exhibit 9 (indicating). Have you seen Exhibit 9 before; correct?

A. Yes; a brochure.

Q. We refer to this interchangeably as the "brochure" or "pamphlet"; correct?

A. That's correct.

Q. And this is the brochure or pamphlet that specifically applies to the wear and tear coverage; correct?

A. Yes.

Q. Looking at the first category, do you see on second page under "Exterior," you see it says "Dents and scratches can happen just about anywhere you park your vehicle"?

A. Sure do, yes.

Q. Do you see any limitation listed in this paragraph on the size of scratches which will be covered under the wear and tear agreement?

MR. ROTHFARB: Answer if you can.

THE WITNESS: Your question is if I

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Gutierrez

directly to -- I was in front of him, probably five feet or ten feet at most.

Q. What did he explain about the criteria he would use to decide whether to approve or deny a claim during this period?

A. We would use the brochure, the waiver and then the pictures; pretty much had to get all the documentation.

Q. No other documents were consulted; correct?

A. What do you mean, "no other documents were consulted"?

Q. So, in order to decide the claim you looked at the brochure, the waiver and the pictures you received; correct?

A. It was the lease agreements as well, but the final bill as well. And that's all I can remember off the top of my head.

Q. Would you look at any sort of centralized book or anything else to decide a claim?

A. No.

Q. No sort of other guidance document to decide a claim?

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS, et al.
Juan Gutierrez --- October 26, 2022

155

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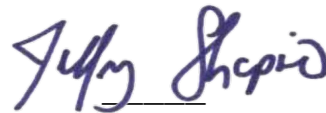
C E R T I F I C A T I O N

I, Jeffrey Shapiro, a Stenographic Reporter and Notary Public, within and for the State of New York, do hereby certify:

That JUAN GUTIERREZ, the witness whose examination is hereinbefore set forth, was first duly sworn by me, and that transcript of said testimony is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of November, 2022.



JEFFREY SHAPIRO

EXHIBIT C

In the Matter of

Civil Action No. 2:20-cv-03411-3JLG-KAJ

COHEN, et al.

v.

ALLEGIANCE ADMINISTRATORS, LLC, et al.

Deposition of Brian Biglin

Tuesday, December 6, 2022



The Little
Reporting
Company

469 Seventh Avenue
12th Floor
New York, NY 10018
tel: 646-650-5055
www.littlereporting.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO - EASTERN DIVISION
Case No. 2:20-cv-03411-JLG-KAJ

-----X

SHMUEL COHEN, YEHUDA FISCHER,
ELIEZER ROSENBERGER, and
MAYER TANNENBAUM, on behalf of
themselves and all similarly
situated,

Plaintiffs,

-against-

ALLEGIANCE ADMINISTRATORS LLC
d/b/a PERFORMANCE FIRST,

Defendant.

-----X

December 6, 2022
9:30 a.m.

Examination of BRIAN BIGLIN, held pursuant to
Notice, held via Zoom conference, before
Ruthayn Shalom, a Stenographic Reporter and
Notary Public, within and for the State of New
York.

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS
Brian Biglin --- December 6, 2022

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A P P E A R A N C E S :

SCHLANGER LAW GROUP, LLP
Attorneys for Plaintiffs
80 Broad Street, Suite 1301
New York, New York 10004
BY: EVAN ROTHFARB, ESQ.
KEITH GIBSON, ESQ.

MACMURRAY & SHUSTER, LLP
Attorneys for Defendant
AUTOGUARD
6525 West Campus Oval, Suite 210
New Albany, Ohio 43054
BY: CHRIS WAGER, ESQ.

ARNOLD & CLIFFORD, LLP
Attorneys for Defendant
ALLEGIANCE ADMINISTRATORS
115 West Main Street, Suite 400
Columbus, Ohio 43215
BY: DAMION CLIFFORD, ESQ.

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS
Brian Biglin --- December 6, 2022

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IT IS HEREBY STIPULATED AND AGREED, by
and between the attorneys for the respective
parties hereto, that this examination may be
sworn to before any Notary Public.

IT IS FURTHER STIPULATED AND AGREED that
the sealing and filing of the said examination
shall be waived.

IT IS FURTHER STIPULATED AND AGREED that
all objections to questions except as to form
shall be reserved for trial.

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B. Biglin

business of Dimension?

A Generally it was automotive warranty products.

Q Can you describe what an automotive warranty product is?

A Extended service contract purchased at the time of sale of the vehicle or directly marketed by some third party to a consumer.

Q Was Dimension in the business of marketing and selling those products?

A No.

Q What was Dimension's business model?

A Providing the products and then administering the products post sale from an accounting and claims perspective, administrative perspective.

Q To clarify, was it that Dimension was not in the business of selling direct to consumer but rather was in the business of selling through dealerships and third parties?

A Correct.

Q In order to sell through third parties, Dimension had a marketing and sales department, correct?

1 B. Biglin

2 A There were employees that served in those
3 roles, yes.

4 Q When you joined Dimension, did it have
5 affiliates or subsidiaries?

6 MR. CLIFFORD: Objection, foundation. Go
7 ahead.

8 A Yes.

9 Q What were those?

10 MR. CLIFFORD: Same objection. Go ahead.

11 A Autoguard was one, National Automotive
12 Services Company was another, NASC.

13 Q Any others?

14 A Those are the entities that would deem as
15 affiliates.

16 Q When you say affiliate, what was the
17 relationship between Dimension and Autoguard?

18 MR. CLIFFORD: Objection, foundation. Go
19 ahead.

20 A They were companies that had acted in the
21 same industry that had entirely common ownership and
22 acted to support each other in the roles they had.

23 Q Did you serve in a position for either
24 affiliated entity?

25 A I was a Dimension employee at that time.

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C E R T I F I C A T I O N

I, RUTHAYN SHALOM, a Court Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose deposition is hereinbefore set forth, was duly sworn by me, and that the within transcript is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December, 2022.

Ruthayn Shalom
RUTHAYN SHALOM

EXHIBIT D

In the Matter of

Civil Action No. 2:20-cv-03411-3JLG-KAJ

COHEN, et al.

v.

ALLEGIANCE ADMINISTRATORS, LLC, et al.

Deposition of Michelle DeFouw

Tuesday, December 13, 2022



The Little
Reporting
Company

469 Seventh Avenue
12th Floor
New York, NY 10018
tel: 646-650-5055
www.littlereporting.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO - EASTERN DIVISION

-----x

SHMUEL COHEN, YEHUDA FISCHER, ELIEZER
ROSENBERGER, and MAYER TANNENBAUM, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

ALLEGIANCE ADMINISTRATORS LLC d/b/a
PERFORMANCE FIRST,

Case No.
2:20-cv-
03411-JLG-
KAJ

Defendant.

-----x

December 13, 2022
9:37 a.m.

Remote 30(b)(6) Deposition of Autoguard
Advantage Corporation by MICHELLE DeFOUW, and
MICHELLE DeFOUW Individually, taken by Plaintiffs,
pursuant to Notice, held via Zoom before Lisa
Hiesiger, a Shorthand Reporter and Notary Public
within and for the State of New York.

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A P P E A R A N C E S :

SCHLANGER LAW GROUP LLP
Attorneys for Plaintiffs
80 Broad Street, Suite 1301
New York, New York 10004

By: EVAN ROTHFARB, ESQ.
KEITH GIBSON, ESQ.

MAC MURRAY & SHUSTER LLP
Attorneys for Autoguard Advantage Corporation
6525 West Campus Oval
Suite 210
New Albany, Ohio 43054

By: CHRIS WAGER, ESQ.

ARNOLD & CLIFFORD LLP
Attorneys for Defendant Allegiance Administrators
115 West Main Street
Suite 400
Columbus, Ohio 43215

By: DAMION M. CLIFFORD, ESQ.

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COHEN, et al. v. ALLEGIANCE ADMINISTRATORS
Michelle DeFouw --- December 13, 2022

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IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

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DeFouw

these were employees that were in other business units of Mr. Elzayn, I believe. One employee at the time of separation, I believe there was one employee that remained that was familiar with the service contract business, and that was the CFO at the time was Mike Murphy. The other employees were not affiliated with the service contract space.

Q. Are you familiar with the Performance First excess wear and tear protection waiver?

A. I have heard of that program, yes.

Q. Would you mind if I colloquially refer to that agreement as a waiver agreement?

A. Yes, sir.

Q. Ms. DeFouw, did you respond? I didn't hear you.

A. Yes, sir.

Q. If I say waiver agreement, you'll understand I'm specifically referring to the Performance First excess wear and tear waiver agreement?

A. Yes, sir.

Q. So is the waiver agreement part of the vehicle service contract business?

1 DeFouw

2 A. Yes, sir.

3 Q. As of April 2018 that was transferred
4 to Allegiance Administrators as Dimension,
5 correct?

6 MR. WAGER: Objection.

7 A. The Allegiance Administrators started
8 administering that business effective April of
9 2018.

10 Q. And was Allegiance Administrators
11 also selling the waiver agreements as of April
12 2018?

13 MR. CLIFFORD: Objection.

14 Go ahead.

15 A. I believe that Allegiance had
16 developed a waiver program for one of its clients
17 Triton.

18 Q. Are you familiar with the website URL
19 alltpa.com?

20 A. Yes.

21 Q. What is alltpa.com?

22 A. It was at the time the Allegiance
23 administrator's website.

24 Q. Did the Allegiance Administrators
25 website identify the waiver agreement as a

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DeFouw

specifically the single-page document contained in page 37. On the top of the page it reads Autoguard Advantage Corporation, correct?

A. That's correct.

Q. Is this Autoguard Advantage Corporation's letterhead?

A. No, it's not. I mean it seems as if it is but Autoguard Advantage Corporation does have like logo letterhead with a shield on it.

Q. Who is Brian Biglin?

A. General counsel.

Q. Does Brian Biglin work at Autoguard?

A. No, he does not.

Q. Has he ever worked at Autoguard?

A. Autoguard has never had any employees.

Q. I'm showing you now what has been marked as Exhibit 39. Have you seen Exhibit 39 before?

A. I believe I saw it in reference to production for this case here.

Q. I'll represent to you that this is a document produced by your counsel in this case on behalf of Autoguard. Do you know where this

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS
Michelle DeFouw --- December 13, 2022

142

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C E R T I F I C A T I O N

I, LISA HIESIGER, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of December, 2022.


LISA HIESIGER

EXHIBIT E

TERMS AND CONDITIONS – We will waive, or at Our option, reimburse You for charges as set forth in the coverage You have selected on the reverse side of this Waiver, provided:

1. You have made all payments as scheduled under the Contract.
2. **For Standard Coverage:** Your Contract has not been terminated more than ninety (90) days prior to and no more than ninety (90) days after the original Scheduled Termination Date.
For Open Term Coverage: Your Contract has not been terminated more than one (1) year after the original Scheduled Termination Date.
If neither the Standard nor the Open Term Coverage box is checked Your coverage will be Standard Coverage with a two hundred and fifty dollar (\$250) deductible. If coverage is selected but no deductible box is checked Your deductible is two hundred and fifty dollars (\$250).
3. You have returned the vehicle to Us or Our agent as instructed.
4. Your vehicle's odometer does not in any way misrepresent Your vehicle's actual mileage.
5. Your vehicle was not used to generate income, including but not limited to: rental, taxi, limousine or shuttle services, delivery, towing, road repair operations, construction, job site activities, hauling, police or emergency service, principally off-road use, racing or competitive driving, snow removal, route work, service or repair work or any use involving regular multiple drivers.
6. You have maintained and kept Your vehicle in good condition as required by the Contract.
7. You have complied with all the terms and conditions of the Contract.
8. You have complied with the claim procedures as shown in "**HOW TO SUBMIT A CLAIM**".
9. Your vehicle meets all of the following eligibility requirements:
 - Your vehicle's M.S.R.P. is one hundred fifty thousand dollars (\$150,000) or less;
 - Your Contract term is no greater than seventy-two (72) months; and
 - Your vehicle is not an excluded make and/or model.
 If any of the eligibility requirements are not met, Your vehicle is not eligible for coverage and this Waiver is void.
10. Your vehicle has less than ten thousand (10,000) miles on the odometer at the inception of the Contract unless Your vehicle qualifies as Certified Pre-Owned. To qualify as a Certified Pre-Owned Vehicle the following criteria must be met:
 - The vehicle make and model must be eligible for coverage;
 - The vehicle's mileage must be less than thirty thousand (30,000) miles at the inception of the Contract;
 - The vehicle must be no older than current or prior three (3) model years old; and
 - Proof of the manufacturer's certification must be provided to the administrator at the time of purchase of this Waiver.
 If the preceding qualifications for a Certified Pre-Owned Vehicle are not met, this Waiver is void. The Certified Pre-Owned Vehicle coverage is not available in Florida or Washington.
11. You sign the Vehicle Condition Report upon return of the vehicle.
12. You do not exercise the purchase option under the Contract.
13. You purchased this Waiver on the same date that You executed the Contract.

CANCELLATION – If You request cancellation within the first sixty (60) days from the effective date of the Contract, a refund of the entire amount paid will be made. After the first sixty (60) days, a refund of the unearned fee will be determined by the pro-rata method, based on the number of months of the Contract term expired at the time of cancellation, less a twenty-five dollar (\$25) cancellation fee. Both You and We will be listed on any refund. If You are in default on the Contract or the vehicle is repossessed or becomes a total loss, We are authorized to initiate cancellation and credit the refund to Your account. We may cancel this Waiver if You do not pay the Waiver price.

ASSIGNMENT – We, and any assignee, shall have the right to assign Our right(s), title and finance charges in the Contract at any time. Assignment of the Contract by Us or an assignee shall not in any way effect the terms and conditions of this Waiver. This Waiver remains a part of the Contract upon the assignment, sale or transfer of the Contract to an assignee by Us or an assignee.

TRANSFER – This Waiver is not transferable unless the original Contract is also transferred and there is no charge to the underlying terms and conditions of the Contract. Written documentation from Us confirming that We have authorized the transfer of the Contract must be received by Our administrator prior to the transfer of this Waiver.

EXCLUSIONS – This Waiver does NOT waive any of Your obligations under the Contract to pay and We will not waive or reimburse for:

1. Repairs done prior to lease or Contract termination.
2. Repairs of any damage that would be covered by a service agreement, warranty, manufacturer's or repairer's guarantee, or by a standard automobile policy, including the deductible amount, whether or not there is a policy in-force, unless repair of damage from any single event results in a cost to repair of less than the Maximum Single Event Limit You selected on the reverse side of this Waiver. If no Maximum Single Event Limit box is checked on the reverse side, the Maximum Single Event Limit is five hundred dollars (\$500). If a single event causes more in charges than the applicable Maximum Single Event Limit, no portion of the excess wear and tear charges will be waived on the parts damaged by the single event.
A standard automobile policy means a standard form of automobile insurance policy that provides comprehensive coverage (which includes fire, theft, flood, windstorm and hail) and collision coverage at minimum.
3. Any excess wear and tear present on Your vehicle prior to Your Contract date.
4. Charges for damage or repair due to alterations, improper repairs or modifications, including but not limited to:
 - Replacement parts that do not meet the manufacturer's specifications;
 - Mismatched parts to a set;
 - Add-on parts;
 - Poor or incomplete body work;
 - Body filler;
 - Mismatched paint;
 - Damage to the vehicle's frame or alignment; and/or
 - Damage arising prior to the start of the Contract.
5. Charges due to missing parts valued greater than one hundred dollars (\$100) each.
6. Charges due to improper replacement of parts.
7. Charges due to damage to any part, equipment or accessory added to the vehicle after delivery of the vehicle to You.
8. Charges due to the presence of or the cost to remove signs, lettering, bumper stickers or other adhesive items, including any subsequent repairs resulting from their removal.
9. Charges resulting from mechanical or electrical breakdown, except for the following parts and/or surfaces: head lamps, tail lamps, sealed beams, lenses, light bulbs, factory or dealer installed audio equipment and systems, convertible tops, mirrors, door handles and antennae.
10. Charges resulting from Your wrongful or intentional acts; charges if Your vehicle is a total loss; charges if Your vehicle is repossessed or due to repossession; charges occurring because You failed to fulfill Your Contract obligations; charges resulting from use of the vehicle for racing or commercial purposes; charges due to war, terrorism or riot.
11. Any excess mileage charges.
12. Charges not set forth on the lender/lessor's itemized inspection statement detailing the excess wear and tear charges.

HOW TO SUBMIT A CLAIM – Prior to scheduled Contract termination, please contact Our claims administrator at 5500 Frantz Road, Suite 100, Dublin, OH 43017, (866) 994-7063 for instructions on how to file a claim. You must supply Our administrator with the following: the Vehicle Inspection/Condition Report; the lender/lessor's itemized statement detailing the charges; a copy of Your Excess Wear & Tear Protection Waiver; a copy of Your Contract; proof of the date that Your vehicle was returned to the lender/lessor; and other such documentation regarding the excess wear and tear charges which may be requested. Our administrator reserves the right to conduct its own inspection of the vehicle or require photographs of the excess wear which is the subject of Your claim. The terms of this Waiver are in addition to any other Contract requirements and do not supersede other terms and conditions of the Contract.

LOI/Performance First/Excess W & T/04 6/2016

PERFORMANCE FIRST

**EXCESS WEAR & TEAR PROTECTION
WAIVER**

This Waiver ("Waiver") waives excess wear and tear charges subject to the terms and conditions herein, and is entered into between You ("You", "Your" or "Purchaser") and the Administrator ("We", "Us" or "Our") that executes this Waiver on the signatory line below or their assignee. This Waiver amends Your Finance Agreement ("Contract") and is a part thereof.

Vehicle Lessee/ Purchaser	Lessee/Purchaser Name: Fischer, Yehuda		Waiver Number: EF00102717	
	Address: 28 Calvert Dr		Telephone:	
	City: Monsey	State: NY	Zip Code: 10977	
Vehicle	Finance Contract Date: May 26, 2016		Odometer Reading at Finance Contract Date: 73	
	Year: 2016		Make: Honda	
	Model: Odyssey		Vehicle Identification Number (VIN): 5FNRL5H32GB081055	
Dealer	Dealer Name: Community Leasing USA Inc (PF Excess Wear & Tear)		Dealer Number: NYA-05857-LSZ-AAA	
	Address: 55 Union Road Suite 109		Telephone: (845) 352-2255	
	City: Spring Valley	State: NY	Zip Code: 10977	
Lender/Lessor	Lender/Lessor Name: Hvt Inc.		Telephone:	
	Address: Po Box 650201		City: Hunt Valley	
	State: MD	Zip Code: 21065		
Agreement Information	M.S.R.P.: 34400		Finance Contract Term (In Months): 36 months	
	Charge to Consumer: \$500.00		First Payment Due Date: 374.99	
		Monthly Payment Amount: 374.99	Scheduled Termination Date: May 26, 2019	Final Payment Amount:

Coverage: Standard Open Term (You may select only one coverage)

Deductible: \$0 \$100 \$250

Maximum Single Event Limit: \$500 \$1,000

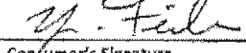
Certified Pre-Owned Vehicle Eligible vehicles must have less than thirty thousand (30,000) miles on the odometer and be no older than current or prior three (3) model years. Proof of certification by the manufacturer must be provided to the administrator at the time of purchase of this Waiver. The Certified Pre-Owned Vehicle Coverage is not available in Florida or Washington.

EXCESS WEAR & TEAR PROTECTION COVERAGE - Coverage is available on leases and residual based finance agreements which include an excess wear and tear provision. In consideration of the additional charge shown above, and subject to the terms and conditions set forth herein, We agree to amend the provisions of Your Contract in accordance with the coverage You have selected.

Under Standard or Open Term Coverage, We will waive or reimburse You for charges defined as Excess Wear and Tear in Your Contract that exist at the time You turn in Your vehicle up to a maximum of two thousand five hundred dollars (\$2,500) or five thousand dollars (\$5,000) as indicated by the Coverage Amount selected above. You agree to pay any deductible shown above. If Standard Coverage is selected, You must turn in Your vehicle within ninety (90) days of the original Scheduled Termination Date. If Open Term Coverage is selected, You must turn in Your vehicle any time prior to or within one (1) year after the original Scheduled Termination Date. **WE WILL NOT PROVIDE ANY EXCESS WEAR AND TEAR COVERAGE IF YOU DO NOT TURN IN YOUR VEHICLE IN ACCORDANCE WITH THE TIME PERIOD FOR THE COVERAGE YOU HAVE SELECTED.**

Performance to You under this Waiver is insured by Lloyd's Underwriting Syndicate Number 5820. You may file a claim with this insurer if any promise made in this Waiver has been denied or has not been honored within sixty (60) days from the date proof of loss was filed by contacting ANV Syndicates Limited, Lloyd's Underwriting Syndicate Number 5820, 47 Mark Lane, London EC3R 7QQ, United Kingdom, (888) 705-8941.

By signing below, You acknowledge that You have elected to amend Your Contract, and that You have read and understand all of the terms of this Waiver, including the conditions, limitations and exclusions printed on the reverse side. **YOU UNDERSTAND THAT THE PURCHASE OF THIS WAIVER IS NOT REQUIRED TO OBTAIN CREDIT.** Coverage will not be provided unless You sign below and pay the charge shown above.

 5/24/16
Consumer's Signature Date Dealer/Lender/Lessor Signature
(Circle appropriate entity title)

Administered by: Autoguard Advantage Corporation, 5500 Frantz Road, Suite 100, Dublin, OH 43017, (866) 994-7063
(WH) ADMINISTRATOR (YW) FINANCE (GD) SELLER (PK) CUSTOMER

TERMS AND CONDITIONS – We will waive, or at Our option, reimburse You for charges as set forth in the coverage You have selected on the reverse side of this Waiver, provided:

1. You have made all payments as scheduled under the Contract.
2. **For Standard Coverage:** Your Contract has not been terminated more than ninety (90) days prior to and no more than ninety (90) days after the original Scheduled Termination Date.
For Open Term Coverage: Your Contract has not been terminated more than one (1) year after the original Scheduled Termination Date.
If neither the Standard nor the Open Term Coverage box is checked Your coverage will be Standard Coverage with a two hundred and fifty dollar (\$250) deductible. If coverage is selected but no deductible box is checked Your deductible is two hundred and fifty dollars (\$250).
3. You have returned the vehicle to Us or Our agent as instructed.
4. Your vehicle's odometer does not in any way misrepresent Your vehicle's actual mileage.
5. Your vehicle was not used to generate income, including but not limited to: rental, taxi, limousine or shuttle services, delivery, towing, road repair operations, construction, job site activities, hauling, police or emergency service, principally off-road use, racing or competitive driving, snow removal, route work, service or repair work or any use involving regular multiple drivers.
6. You have maintained and kept Your vehicle in good condition as required by the Contract.
7. You have complied with all the terms and conditions of the Contract.
8. You have complied with the claim procedures as shown in "**HOW TO SUBMIT A CLAIM**".
9. Your vehicle meets all of the following eligibility requirements:
 - Your vehicle's M.S.R.P. is one hundred fifty thousand dollars (\$150,000) or less;
 - Your Contract term is no greater than seventy-two (72) months; and
 - Your vehicle is not an excluded make and/or model.

If any of the eligibility requirements are not met, Your vehicle is not eligible for coverage and this Waiver is void.

10. Your vehicle has less than ten thousand (10,000) miles on the odometer at the inception of the Contract unless Your vehicle qualifies as Certified Pre-Owned. To qualify as a Certified Pre-Owned Vehicle the following criteria must be met:
 - The vehicle make and model must be eligible for coverage;
 - The vehicle's mileage must be less than thirty thousand (30,000) miles at the inception of the Contract;
 - The vehicle must be no older than current or prior three (3) model years old; and
 - Proof of the manufacturer's certification must be provided to the administrator at the time of purchase of this Waiver.
 If the preceding qualifications for a Certified Pre-Owned Vehicle are not met, this Waiver is void. The Certified Pre-Owned Vehicle coverage is not available in Florida or Washington.
11. You sign the Vehicle Condition Report upon return of the vehicle.
12. You do not exercise the purchase option under the Contract.
13. You purchased this Waiver on the same date that You executed the Contract.

CANCELLATION – If You request cancellation within the first sixty (60) days from the effective date of the Contract, a refund of the entire amount paid will be made. After the first sixty (60) days, a refund of the unearned fee will be determined by the pro-rata method, based on the number of months of the Contract term expired at the time of cancellation, less a twenty-five dollar (\$25) cancellation fee. Both You and We will be listed on any refund. If You are in default on the Contract or the vehicle is repossessed or becomes a total loss, We are authorized to initiate cancellation and credit the refund to Your account. We may cancel this Waiver if You do not pay the Waiver price.

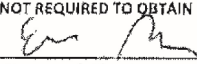

ASSIGNMENT – We, and any assignee, shall have the right to assign Our right(s), title and finance charges in the Contract at any time. Assignment of the Contract by Us or an assignee shall not in any way effect the terms and conditions of this Waiver. This Waiver remains a part of the Contract upon the assignment, sale or transfer of the Contract to an assignee by Us or an assignee.

TRANSFER – This Waiver is not transferable unless the original Contract is also transferred and there is no charge to the underlying terms and conditions of the Contract. Written documentation from Us confirming that We have authorized the transfer of the Contract must be received by Our administrator prior to the transfer of this Waiver.

EXCLUSIONS – This Waiver does NOT waive any of Your obligations under the Contract to pay and We will not waive or reimburse for:

1. Repairs done prior to lease or Contract termination.
2. Repairs of any damage that would be covered by a service agreement, warranty, manufacturer's or repairer's guarantee, or by a standard automobile policy, including the deductible amount, whether or not there is a policy in-force, unless repair of damage from any single event results in a cost to repair of less than the Maximum Single Event Limit You selected on the reverse side of this Waiver. If no Maximum Single Event Limit box is checked on the reverse side, the Maximum Single Event Limit is five hundred dollars (\$500). If a single event causes more in charges than the applicable Maximum Single Event Limit, no portion of the excess wear and tear charges will be waived on the parts damaged by the single event.
A standard automobile policy means a standard form of automobile insurance policy that provides comprehensive coverage (which includes fire, theft, flood, windstorm and hail) and collision coverage at minimum.
3. Any excess wear and tear present on Your vehicle prior to Your Contract date.
4. Charges for damage or repair due to alterations, improper repairs or modifications, including but not limited to:
 - Replacement parts that do not meet the manufacturer's specifications;
 - Mismatched parts to a set;
 - Add-on parts;
 - Poor or incomplete body work;
 - Body filler;
 - Mismatched paint;
 - Damage to the vehicle's frame or alignment; and/or
 - Damage arising prior to the start of the Contract.
5. Charges due to missing parts valued greater than one hundred dollars (\$100) each.
6. Charges due to improper replacement of parts.
7. Charges due to damage to any part, equipment or accessory added to the vehicle after delivery of the vehicle to You.
8. Charges due to the presence of or the cost to remove signs, lettering, bumper stickers or other adhesive items, including any subsequent repairs resulting from their removal.
9. Charges resulting from mechanical or electrical breakdown, except for the following parts and/or surfaces: head lamps, tail lamps, sealed beams, lenses, light bulbs, factory or dealer installed audio equipment and systems, convertible tops, mirrors, door handles and antennae.
10. Charges resulting from Your wrongful or intentional acts; charges if Your vehicle is a total loss; charges if Your vehicle is repossessed or due to repossession; charges occurring because You failed to fulfill Your Contract obligations; charges resulting from use of the vehicle for racing or commercial purposes; charges due to war, terrorism or riot.
11. Any excess mileage charges.
12. Charges not set forth on the lender/lessor's itemized inspection statement detailing the excess wear and tear charges.

HOW TO SUBMIT A CLAIM – Prior to scheduled Contract termination, please contact Our claims administrator at 5500 Frantz Road, Suite 100, Dublin, OH 43017, (866) 994-7063 for instructions on how to file a claim. You must supply Our administrator with the following: the Vehicle Inspection/Condition Report; the lender/lessor's itemized statement detailing the charges; a copy of Your Excess Wear & Tear Protection Waiver; a copy of Your Contract; proof of the date that Your vehicle was returned to the lender/lessor; and other such documentation regarding the excess wear and tear charges which may be requested. Our administrator reserves the right to conduct its own inspection of the vehicle or require photographs of the excess wear which is the subject of Your claim. The terms of this Waiver are in addition to any other Contract requirements and do not supersede other terms and conditions of the Contract.

PERFORMANCE FIRST		EXCESS WEAR & TEAR PROTECTION WAIVER			
<p>This Waiver ("Waiver") waives excess wear and tear charges subject to the terms and conditions herein, and is entered into between You ("You", "Your" or "Purchaser") and the Administrator ("We", "Us" or "Our") that executes this Waiver on the signatory line below or their assignee. This Waiver amends Your Finance Agreement ("Contract") and is a part thereof.</p>					
Vehicle/Lessee/ Purchaser	Lessee/Purchaser Name: Rosenberger, Eliezer		Waiver Number: EF00128461		
	Address: 108 North Cole Ave		Telephone: (845) 426-0470		
	City: Spring Valley,	State: NY	Zip Code: 10977		
Vehicle	Finance Contract Date: May 01, 2017		Odometer Reading at Finance Contract Date: 8	Vehicle Identification Number (VIN): 3NIAB7AP3HY280116	
	Year: 2017	Make: Nissan	Model: Sentra		
	Dealer Name: Community Leasing USA Inc (PF Excess Wear & Tear)			Dealer Number: NYA-05857-LSZ-AAA	
Dealer	Address: 1 Orchard Street		Telephone: (845) 352-2255		
	City: Spring Valley	State: NY	Zip Code: 10977		
	Lender/Lessor Name: Nissan Infiniti Lt		Telephone:		
Lender/Lessor	Address: Po Box 254648		State: CA		
	City: Sacramento	Zip Code: 95865			
	M.S.R.P.: 20115		Finance Contract Term (In Months): 24 months	Charge to Consumer: \$500.00	
Agreement Information	First Payment Due Date:	Monthly Payment Amount: 194	Scheduled Termination Date: May 01, 2019	Final Payment Amount:	
	<p>Coverage: <input type="checkbox"/> Standard <input checked="" type="checkbox"/> Open Term (You may select only one coverage)</p> <p>Deductible: <input checked="" type="checkbox"/> \$0 <input type="checkbox"/> \$100 <input type="checkbox"/> \$250</p> <p>Maximum Single Event Limit: <input type="checkbox"/> \$500 <input checked="" type="checkbox"/> \$1,000</p>				
<p>Certified Pre-Owned Vehicle (Check box if applicable) <input type="checkbox"/></p>		<p><i>Eligible vehicles must have less than thirty thousand (30,000) miles on the odometer and be no older than current or prior three (3) model years. Proof of certification by the manufacturer must be provided to the administrator at the time of purchase of this Waiver. The Certified Pre-Owned Vehicle Coverage is not available in Florida or Washington.</i></p>			
<p>EXCESS WEAR & TEAR PROTECTION COVERAGE – Coverage is available on leases and residual based finance agreements which include an excess wear and tear provision. In consideration of the additional charge shown above, and subject to the terms and conditions set forth herein, We agree to amend the provisions of Your Contract in accordance with the coverage You have selected.</p> <p>Under Standard or Open Term Coverage, We will waive or reimburse You for charges defined as Excess Wear and Tear in Your Contract that exist at the time You turn in Your vehicle up to a maximum of five thousand dollars (\$5,000) as indicated by the Coverage Amount selected above. You agree to pay any deductible shown above. If Standard Coverage is selected, You must turn in Your vehicle within ninety (90) days of the original Scheduled Termination Date. If Open Term Coverage is selected, You must turn in Your vehicle any time prior to or within one (1) year after the original Scheduled Termination Date. WE WILL NOT PROVIDE ANY EXCESS WEAR AND TEAR COVERAGE IF YOU DO NOT TURN IN YOUR VEHICLE IN ACCORDANCE WITH THE TIME PERIOD FOR THE COVERAGE YOU HAVE SELECTED.</p> <p>Performance to You under this Waiver is insured by Lloyd's Underwriting Syndicate Number 5820. You may file a claim with this insurer if any promise made in this Waiver has been denied or has not been honored within sixty (60) days from the date proof of loss was filed by contacting ANV Syndicates Limited, Lloyd's Underwriting Syndicate Number 5820, 47 Mark Lane, London EC3R 7QQ, United Kingdom, (888) 705-8941.</p> <p>By signing below, You acknowledge that You have elected to amend Your Contract, and that You have read and understand all of the terms of this Waiver, including the conditions, limitations and exclusions printed on the reverse side. YOU UNDERSTAND THAT THE PURCHASE OF THIS WAIVER IS NOT REQUIRED TO OBTAIN CREDIT. Coverage will not be provided unless You sign below and pay the charge shown above.</p>					
<p> Consumer's Signature</p>		<p>5/1/17 Date</p>	<p> Dealer/Lender/Lessor Signature (Circle appropriate entity title)</p>		
<p>Administered by: Autoguard Advantage Corporation, 5500 Frantz Road, Suite 100, Dublin, OH 43017, (866) 994-7063 (WH) ADMINISTRATOR (YW) FINANCE (GD) SELLER (PK) CUSTOMER</p>					
<p>LOI/Performance First/Excess W & T/04 6/2016</p>					

TERMS AND CONDITIONS – We will waive, or at Our option, reimburse You for charges as set forth in the coverage You have selected on the reverse side of this Waiver, provided:

1. You have made all payments as scheduled under the Contract.
2. **For Standard Coverage:** Your Contract has not been terminated more than ninety (90) days prior to and no more than ninety (90) days after the original Scheduled Termination Date.
For Open Term Coverage: Your Contract has not been terminated more than one (1) year after the original Scheduled Termination Date.
If neither the Standard nor the Open Term Coverage box is checked Your coverage will be Standard Coverage with a two hundred and fifty dollar (\$250) deductible. If coverage is selected but no deductible box is checked Your deductible is two hundred and fifty dollars (\$250).
3. You have returned the vehicle to Us or Our agent as instructed.
4. Your vehicle's odometer does not in any way misrepresent Your vehicle's actual mileage.
5. Your vehicle was not used to generate income, including but not limited to: rental, taxi, limousine or shuttle services, delivery, towing, road repair operations, construction, job site activities, hauling, police or emergency service, principally off-road use, racing or competitive driving, snow removal, route work, service or repair work or any use involving regular multiple drivers.
6. You have maintained and kept Your vehicle in good condition as required by the Contract.
7. You have complied with all the terms and conditions of the Contract.
8. You have complied with the claim procedures as shown in "HOW TO SUBMIT A CLAIM".
9. Your vehicle meets all of the following eligibility requirements:
 - Your vehicle's M.S.R.P. is one hundred fifty thousand dollars (\$150,000) or less;
 - Your Contract term is no greater than seventy-two (72) months; and
 - Your vehicle is not an excluded make and/or model.
 If any of the eligibility requirements are not met, Your vehicle is not eligible for coverage and this Waiver is void.
10. Your vehicle has less than ten thousand (10,000) miles on the odometer at the inception of the Contract unless Your vehicle qualifies as Certified Pre-Owned. To qualify as a Certified Pre-Owned Vehicle the following criteria must be met:
 - The vehicle make and model must be eligible for coverage;
 - The vehicle's mileage must be less than thirty thousand (30,000) miles at the inception of the Contract;
 - The vehicle must be no older than current or prior three (3) model years old; and
 - Proof of the manufacturer's certification must be provided to the administrator at the time of purchase of this Waiver.
 If the preceding qualifications for a Certified Pre-Owned Vehicle are not met, this Waiver is void. The Certified Pre-Owned Vehicle coverage is not available in Florida or Washington.
11. You sign the Vehicle Condition Report upon return of the vehicle.
12. You do not exercise the purchase option under the Contract.
13. You purchased this Waiver on the same date that You executed the Contract.

CANCELLATION – If You request cancellation within the first sixty (60) days from the effective date of the Contract, a refund of the entire amount paid will be made. After the first sixty (60) days, a refund of the unearned fee will be determined by the pro-rata method, based on the number of months of the Contract term expired at the time of cancellation, less a twenty-five dollar (\$25) cancellation fee. Both You and We will be listed on any refund. If You are in default on the Contract or the vehicle is repossessed or becomes a total loss, We are authorized to initiate cancellation and credit the refund to Your account. We may cancel this Waiver if You do not pay the Waiver price.

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4. Charges for damage or repair due to alterations, improper repairs or modifications, including but not limited to:
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 - Mismatched parts to a set;
 - Add-on parts;
 - Poor or incomplete body work;
 - Body filler;
 - Mismatched paint;
 - Damage to the vehicle's frame or alignment; and/or
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6. Charges due to improper replacement of parts.
7. Charges due to damage to any part, equipment or accessory added to the vehicle after delivery of the vehicle to You.
8. Charges due to the presence of or the cost to remove signs, lettering, bumper stickers or other adhesive items, including any subsequent repairs resulting from their removal.
9. Charges resulting from mechanical or electrical breakdown, except for the following parts and/or surfaces: head lamps, tail lamps, sealed beams, lenses, light bulbs, factory or dealer installed audio equipment and systems, convertible tops, mirrors, door handles and antennae.
10. Charges resulting from Your wrongful or intentional acts; charges if Your vehicle is a total loss; charges if Your vehicle is repossessed or due to repossession; charges occurring because You failed to fulfill Your Contract obligations; charges resulting from use of the vehicle for racing or commercial purposes; charges due to war, terrorism or riot.
11. Any excess mileage charges.
12. Charges not set forth on the lender/lessor's itemized inspection statement detailing the excess wear and tear charges.

HOW TO SUBMIT A CLAIM – Prior to scheduled Contract termination, please contact Our claims administrator at 5500 Frantz Road, Suite 100, Dublin, OH 43017, (866) 994-7063 for instructions on how to file a claim. You must supply Our administrator with the following: the Vehicle Inspection/Condition Report; the lender/lessor's itemized statement detailing the charges; a copy of Your Excess Wear & Tear Protection Waiver; a copy of Your Contract; proof of the date that Your vehicle was returned to the lender/lessor; and other such documentation regarding the excess wear and tear charges which may be requested. Our administrator reserves the right to conduct its own inspection of the vehicle or require photographs of the excess wear which is the subject of Your claim. The terms of this Waiver are in addition to any other Contract requirements and do not supersede other terms and conditions of the Contract.

EXHIBIT F

In the Matter of

Civil Action No. 2:20-cv-03411-3JLG-KAJ

COHEN, et al.

v.

ALLEGIANCE ADMINISTRATORS, LLC, et al.

Deposition of Matthew Blevins

Tuesday, October 18, 2022



The Little
Reporting
Company

469 Seventh Avenue
12th Floor
New York, NY 10018
tel: 646-650-5055
www.littlereporting.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

-----x

SHMUEL COHEN, YEHUDA FISCHER,
ELIEZER ROSENBERGER and MAYER
TANNENBAUM, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

Civil Action No.

v.

2:20-cv-03411-3JLG-KAJ

ALLEGIANCE ADMINISTRATORS, LLC
d/b/a PERFORMANCE FIRST and
AUTOGUARD ADVANTAGE CORPORATION,
Defendants.

-----x

October 18, 2022

9:30 a.m.

REMOTE DEPOSITION
OF
MATTHEW BLEVINS

Reported by: Anita Shemin, CSR

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS, et al.
Matthew Blevins --- October 18, 2022

2

1 A P P E A R A N C E S:

2 SCHLANGER LAW GROUP, LLP

3 Attorneys for Plaintiffs

4 80 Broad Street

5 Suite 1301

6 New York, New York 10004

7 BY: EVAN ROTHFARB, ESQ.

8 KEITH GIBSON, ESQ.

9

10 ARNOLD & CLIFFORD LLP

11 Attorneys for Defendant Allegiance Administrators

12 115 W. Main Street

13 Suite 400

14 Columbus, Ohio 43215

15 BY: GAGE GOSNELL, ESQ.

16

17 MacMURRAY & SHUSTER, ESQS.

18 Attorneys for Defendant Autoguard Advantage Corp.

19 6525 West Campus Oval

20 Suite 210

21 New Albany, Ohio 43054

22 BY: LISA MESSNER, ESQ.

23 CHRIS WAGER, ESQ.

24

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COHEN, et al. v. ALLEGIANCE ADMINISTRATORS, et al.
Matthew Blevins --- October 18, 2022

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IT IS HEREBY STIPULATED AND AGREED that the filing and sealing of the within examination, be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, be and the same are hereby reserved, to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be sworn to before any Notary Public with the same force and effect as if sworn to before JUDGE of the COURT.

IT IS FURTHER STIPULATED AND AGREED that the transcript is to be certified by the REPORTER.

* * * * *

COHEN, et al. v. ALLEGIANCE ADMINISTRATORS, et al.
Matthew Blevins --- October 18, 2022

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1 A. Yes.

2 Q. Do you consider that to be one of the type
3 of claims that Allegiance would have to adjudicate?

4 A. Yes.

5 Q. So let's focus in on that in particular.
6 If I refer to it as an Excess Wear & Tear claim; is
7 that fair?

8 A. Yes.

9 Q. You know what I am talking about?

10 A. Yes.

11 Q. On an Excess Wear & Tear claim, how does
12 that procedure generally get initiated?

13 A. We would get that in multiple fashions.
14 It would be physical mail, email. We would have had
15 claims generated over the phone, and then documents
16 were requested to be sent over. Fax. Multiple
17 ways.

18 Q. In an Excess Wear & Tear claim, do you
19 generally talk to the contractholder, or no?

20 A. It would depend on who submits the claim.

21 Q. What types of documents do you need to
22 adjudicate an Excess Wear & Tear claim?

23 A. If I remember correctly, we need a copy of
24 the final bill from the lienholder, a copy of the
25 labor, declaration page, a copy of the Condition

1 Report with colored photos, and a copy of the lease
2 agreement.

3 Q. Those items that you just mentioned, are
4 those written down somewhere in some sort of a
5 policy or procedure or other type of list as to what
6 you need to adjudicate those type of claims?

7 A. They came from the waiver. At the bottom
8 of one of the pages, I believe it says how to submit
9 a claim and the documentation needed to submit it.

10 Q. Okay. Are those written down anywhere
11 else besides the waiver, how to submit a claim
12 section?

13 A. I don't believe so, no.

14 Q. And so do you need all of those to
15 adjudicate this type of a claim?

16 A. Yes.

17 Q. As the adjuster, do you ever do your own
18 physical inspection of the vehicle?

19 A. No.

20 Q. Do you rely entirely on the Condition
21 Report you mentioned with colored photos and other
22 information they included there?

23 A. Yes.

24 Q. Other than the Condition Report, do you
25 rely on any other documents to adjudicate the Excess

1 Wear & Tear claim?

2 A. Just the ones stated before.

3 Q. All of those.

4 Other than those including the Condition
5 Report, do you rely on anything else?

6 A. No.

7 Q. Do you ever take your own photographs of
8 the vehicle on an Excess Wear & Tear claim?

9 A. No.

10 Q. Do you ever do your own measurements?

11 A. No.

12 Q. Can you ever think of an example or a
13 situation where you asked -- strike that. Let me
14 back up for a minute.

15 Who prepares the Condition Report?

16 A. Whoever is accepting the vehicle. It's on
17 behalf of the lienholder.

18 Q. So not an Allegiance employee?

19 A. No.

20 Q. Someone at the dealership or some other
21 type of -- you mentioned a lienholder?

22 A. Yes. For example, if the vehicle is
23 leased to Nissan, Nissan has specific people that
24 would prepare that information for them.

25 Q. Okay. I think I recall in this case, one

1 of the vehicles involving Nissan was -- one of the
2 plaintiffs was the one involving a Nissan that you
3 were the adjuster for; is that right?

4 A. Maybe.

5 Q. Okay. And what kind of company do they
6 use for -- generally does Nissan use, do you recall
7 or know?

8 A. Not offhand. A certain contractholder
9 could use three different sources. It was all based
10 off of, I believe, who they returned it to and where
11 in the region they returned it.

12 Q. And when you get that final -- the
13 documents you mentioned, the final bill, the copy of
14 the waiver, the Condition Report, the Lease
15 Agreement, what do you do with that information or
16 those documents?

17 A. Gather them, and we look at them and
18 adjudicate the claim accordingly.

19 Q. Do you put all of those documents into the
20 DSC software platform?

21 A. They get scanned.

22 Q. And what kind of information do you put
23 into the DSC software related to a claim?

24 A. Generally just information directly
25 transferred from the Condition Report and then the

1 other information.

2 Q. How much time, on average, would you say
3 you spend adjudicating an Excess Wear & Tear claim?

4 A. Start to finish, they usually took about a
5 week, sometimes shorter, sometimes longer.

6 Q. And during that week, you are working on
7 other claims as well?

8 A. Yes. I mean, I adjudicate several claims.

9 Q. You have many claims opened at one time,
10 and you are going through the process of
11 adjudicating those sort of simultaneously or at the
12 same time?

13 A. Yes, in some form or fashion.

14 Q. So generally, you said it takes about a
15 week from the time a claim is initiated until it is
16 adjudicated?

17 A. Probably about a week from the time we get
18 the information to the completion.

19 Q. Do you ever not get the information --
20 what do you mean by that? You get the information
21 at various stages during the process, not all at the
22 beginning; is that what you are saying?

23 A. Yes. We may get submitted information,
24 and it might be missing one of those documents as
25 requested, and the customer would have to contact

1 on any claim that would be referenced in the
2 Corrective Action section of the database?

3 A. It may be. I know that exclusion has been
4 used before.

5 Q. By you?

6 A. Possibly, yes.

7 Q. As you sit here today, do you have a
8 specific recollection of using that exclusion on an
9 Excess Wear & Tear claim while at Allegiance?

10 A. No.

11 Q. Does the Waiver Agreement itself have any
12 specifications about, like, for example, the length
13 of a scratch or the size of a dent that would result
14 in a denial of the claim?

15 A. No.

16 Q. Other than the brochure which you
17 referenced earlier, which I think you said you are
18 familiar with -- I am happy to show it to you if you
19 would like -- can you think of any other written
20 document that has any standards, or measurements, or
21 anything like that related to the size or dimensions
22 of damage that would cause a claim to be denied?

23 A. You said anything other, correct?

24 Q. Right.

25 A. You said anything other than the brochure,

1 correct?

2 Q. Yes.

3 A. Correct.

4 Q. There's nothing other than the brochure?

5 A. Right.

6 MR. GIBSON: Okay.

7 This is probably -- we have been going a
8 while. This might be a good time for a break.

9 MR. GOSNELL: Yes. We need a little bit
10 longer to eat something.

11 How long do you think you need afterwards?

12 MR. GIBSON: Probably at least another
13 hour. If I thought I was going to wrap up in a
14 half hour, I would say let's do it short and
15 plow through, but it probably makes sense to
16 take a little bit of a longer break. If you
17 want to come back at 1:30?

18 MR. GOSNELL: I was just going to suggest
19 1:30.

20 (Luncheon Recess Taken)

21 (Time noted: 12:46 p.m.)

22

23

24

25

1 about the possibility of implementing written
2 policies and procedures around how to adjudicate
3 claims?

4 A. (No response).

5 Q. What was that?

6 A. No.

7 Q. The brochure we mentioned earlier has at
8 least some written specification on what's included
9 within the Excessive Wear & Tear coverage?

10 A. Correct.

11 Q. For example, four-inch diameter dents
12 would be included, correct?

13 A. Correct.

14 Q. Okay. Do you feel that the brochure and
15 the language in the brochure is consistent with the
16 contract language and the language of the
17 exclusions?

18 MR. GOSNELL: I will put in an objection.
19 Again, you are asking kind of a legal question,
20 but I think you said do you feel, so I'll let
21 the question go ahead.

22 A. So do I feel that they go hand in hand? I
23 would have a hard time answering that, to give a
24 good answer. I think they do kind of go hand in
25 hand, but how it was given or portrayed to the

1 customer may differ.

2 Q. Did you ever raise any concern or raise
3 any issue with the fact that there were any
4 inconsistencies between the brochure and the
5 contract language?

6 A. Not directly, no.

7 Q. Earlier we talked about a determination
8 that you may make that damage was caused by a
9 collision as part of your adjudicating a claim; is
10 that right?

11 A. Yes.

12 Q. Can you tell me what training you had in
13 terms of determining whether damage is caused by a
14 collision?

15 A. Automotive training. That's one of the
16 fields during the testing process, to determine
17 collision damage, versus wear damage, versus
18 component failure.

19 Q. Have you ever had any training on how to
20 determine whether damage from a collision resulted
21 from a single incident or different or multiple
22 incidents?

23 A. Formal like in class, no.

24 Q. What is your basis, then, for being able
25 to determine whether damage that you feel results

EXHIBIT G



ELIGIBILITY

New vehicles must have less than 10,000 odometer miles and Certified Pre-owned vehicles must have less than 20,000 odometer miles and be no older than current or prior two model years old at time of sale.

FILING A CLAIM

To file a claim simply call our claims department at 866-994-7063, give our friendly claims professional your waiver number (on your waiver) and a description of your claim. All claims will be handled in an efficient and professional manner with your complete satisfaction being our goal!

TERM LENGTH OPTIONS

Performance First Wear and Tear is available for new and Certified Pre-owned vehicles for terms of 24, 36, 39, 48, 60 or 72 months, keeping your investment in excellent condition and preventing charges at lease end.

TRANSFERABLE / CANCELLABLE

Coverage is fully transferable and cancellable during the term of the lease.

Excess Wear & Tear Waiver of Coverage

The Excess Wear & Tear Program has been explained to me in conjunction with my automobile lease agreement.

I choose not to purchase the Excess Wear & Tear Program at this time with the full understanding that any charges for excess wear and tear at the end of my lease agreement shall be completely at my expense.

Signature _____ Date _____

ALLEGIANCE ADMINISTRATORS

5500 Frantz Road, Suite 100, Dublin, OH 43017
866-994-7063 | www.alltpa.com

Performance First Wear and Tear is administered by Dimension Service Corporation, a division of Allegiance Administrators.

This brochure is not a contract and program details are subject to change. Complete details, terms and conditions are in the Waiver and should be reviewed. Some benefits are not allowed in some states - these benefits would be excluded from coverage.

WEAR & TEAR COVERAGE

Why worry about costly penalties at the end of your lease? Protect your vehicle with up to \$5,000 in protection and coverage for the excess wear and tear charges assessed when you turn in your vehicle!

BELOW IS A SAMPLE OF PERFORMANCE FIRST'S EXTENSIVE WEAR AND TEAR COVERAGE.



EXTERIOR

Dents and scratches can happen just about anywhere you park your vehicle. Rest assured that Performance First Wear and Tear covers those dents (up to 4" in diameter) on all exterior

painted sheet metal panels. Chips, cracks, pits, rust and corrosion are also covered.

Additional covered Exterior items include:

- Convertible and vinyl tops, including trim and moldings
- Door, trunk and hatch handles
- Hood ornaments and body insignia
- Side mirrors



INTERIOR

Today's interior repair technology allows technicians to restore rips, tears, stains, spotting and burns on your upholstery to be virtually undetectable! Performance First

Wear and Tear also covers your interior's audio equipment, speakers, navigation and touch screen.

UNDER THE HOOD

Performance First's coverage isn't just about the exterior and interior of your vehicle. The mufflers, tail pipe and header pipe are protected along with the brake rotors, pads, linings and shoes. Shock absorbers, strut insert cartridges, belts and hoses are covered as well.

LAMPS AND LIGHTS

Your vehicle's head and tail lamp, turn signal, running, brake and fog light lenses are covered along with sealed beams, halogen and light bulbs.



BUMPERS

Did you know that over 80% of today's vehicles are manufactured with plastic or vinyl painted bumpers? Performance First Wear and Tear covers both the front and rear

bumper of your vehicle for scuffs, often saving you hundreds of dollars in body shop repairs!



WINDSHIELD AND GLASS

Performance First Wear and Tear covers the repair or replacement of the vehicle's front and rear windshield due to sand damage and pitting, and minor chips or cracks caused by

propelled rocks or other road debris. Side glass chips are covered as well.



TIRES AND WHEELS

Wheel damage is a common occurrence. Performance First Wear and Tear covers the resurfacing and refinishing of scratches and abrasions on factory wheels, chrome, steel,

brushed or painted. Tires are covered for excess wear and less than 1/8" remaining tread.



MISCELLANEOUS

Additional coverage includes all fasteners (bolts, studs, pins, clips, screws and retainers) and up to \$100 for each missing part.

EXHIBIT H



Ohio Attorney General's Office
Attn: Diana Shouman, Consumer Complaint Specialist
30 East Broad Street, 14th Floor
Columbus, OH 43215

July 30, 2019

RE: Complaint # 937411 – Chaim Toder

Ms. Shouman,

Allegiance Administrators, LLC (“Allegiance”) administers the Performance First line of contracts, including the Performance First Lease Wear and Tear program (the “Program”). Mr. Toder’s complaint has been reviewed and Allegiance’s response follows.

Allegiance reviews and adjudicates claims made by contract holders under the Program and Mr. Toder’s claim was reviewed by Allegiance’s QC & RM Director who has extensive experience reviewing claims and has been directly reviewing Program claims for three years. Certain items among the damage cited to Mr. Toder’s vehicle were not subject to coverage under the Program guidelines. See the Performance First brochure included with this letter which gives more detail to the Program coverage. Note that bumpers are directly addressed and the brochure lists “scuffs” as being covered, and not gouges, cracks or other significant damage indicating the occurrence of a collision of some magnitude which should be covered under the owner’s standard auto insurance. Among the other specific damage components excluded are dents in excess of 4 inches and mismatched tires, both of which were included in Mr. Toder’s claim.

Allegiance paid \$1,350.00 on Mr. Toder’s claim, of the total damage claim amount of \$2,908.50, as being covered under the Program guidelines. The remaining damage items were excluded under Program exclusions and are covered under standard auto insurance, and thus not paid.

If you have questions or wish to discuss this matter further please feel free to contact me directly.

Respectfully,

ALLEGIANCE ADMINISTRATORS, LLC

Brian D. Biglin

Brian D. Biglin, Esq.
General Counsel
T: (614) 652-3625
E: bbiglin@alltpa.com

EXHIBIT I



Better Business Bureau
Serving 21 Counties in Central Ohio
1169 Dublin Rd.
Columbus, OH 43215
ph. 614.486.6336
fx. 614.486.6631
www.bbb.org / info@columbus-ohbbb.org

8/20/2019

Mr. Morsel submitted an invoice with six damage items listed on it totaling \$928.87. Our company covered four of the six items for a total amount covered equal to \$586.67. We denied two items of damage, totaling \$342.20. The reason these two items were denied is simply that our contract covers lease wear & tear, not collision damage. Collision damage is excluded under the contract, as is damage that would otherwise be covered by the vehicle owner's standard automobile insurance policy. The two items of damage denied were both related to collision damage, or damage that would otherwise be covered by the vehicle owner's standard automobile insurance policy.

Of note, Mr. Morsel overestimated the remainder amount by almost \$100. The damage covered by the contract was paid in full. The damage that was not covered was denied and not paid. There is an element of judgment in all claims adjudication, and in this example, the claim was properly handled.

Similarly, our contract excludes from coverage wrongful or intentional actions. If any of the items of damage clearly appear to be the result of wrongful actions, they can be excluded on that basis. Thus, a gouge down the side of a vehicle exceeding 20 inches, for example, was either caused by a collision with another vehicle driving past the covered vehicle (collision), or by the driver of the covered vehicle contacting a stationary object, which began scratching the covered vehicle, and failing to use due caution in stopping and backing out of the situation to reduce the damage once the scratching began (wrongful action and covered by the owner's standard automobile insurance).



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8/20/2019

[If you do not say why you are rejecting the company's response, BBB must close your complaint.]

Complaint: 13773835

I am rejecting this response because: Typically, normal wear and tear by car leases covers any 2 inch size damages. I purchased this waiver of EXCESS wear and tear which is supposed to cover any single damage up to \$1,000. That kind of damage by a car can only be caused by COLLISION. So what do they mean when they say they don't cover collision?

Regards,

Raphael Morsel