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12 **SUPERIOR COURT OF ARIZONA**
13 **MARICOPA COUNTY**

14 CONSUMER 1 and CONSUMER 2,

15 NO CV_____

16 Plaintiffs,

17 vs.

18 **COMPLAINT FOR DAMAGES**

19 ARIZONA FEDERAL CREDIT UNION,

20 (Breach of Warranty of Title, Violation of
21 Arizona Consumer Fraud Act)

22 Defendant.

23 **INTRODUCTION**

24 Consumers 1 and 2 purchased a 2002 Toyota Sequoia (“Sequoia”) from Classy Auto
25 Sales (“Classy”) on February 1, 2008. Classy referred Consumers 1 and 2 to, and
26 arranged their financing with, Defendant Arizona Federal Credit Union (“AZFCU”).

27 Classy never transferred title to the Sequoia to Consumers 1 and 2 and the Sequoia was
28 repossessed by its previous lienholder. AZFCU refused to release Consumers 1 and 2
from the terms of the loan even though under federal law, its loan contract with

Consumers 1 and 2 should have contained language providing that AZFCU was subject
to any claims or defenses Consumers 1 and 2 could assert against Classy. Consumers 1

1 and 2 bring this action against AZFCU for its breach of the warranty of title and violation
2 of the Arizona Consumer Fraud Act (“ACFA”). A.R.S. § 44-1522.

3 JURISDICTION AND VENUE

4 The transaction from which this case arises occurred in Phoenix, Maricopa County,
5 Arizona.

6 Plaintiff seeks declaratory relief as well as actual and punitive damages.

7 Thus, jurisdiction and venue are proper with this Court.

8 PARTIES

9 Plaintiff Consumer 1 (“Consumer 1”) is a natural person who resides in Phoenix,
10 Arizona.

11 Plaintiff Consumer 2 (“Consumer 2”) is a natural person who resides in Phoenix,
12 Arizona.

13 AZFCU is a federally chartered credit union conducting business in Phoenix, Maricopa
14 County, Arizona.

15 FACTS COMMON TO ALL COUNTS

16 Consumer 1 and Consumer 2 Purchase a Sequoia from Classy Auto Sales

17 Consumer 2 and Consumer 1 are father and daughter.

18 Consumer 1 is twenty-three years old, and lives with Consumer 2 and her two young
19 children.

20 The youngest of Consumer 1’s children has spina bifida, requiring two weekly visits to
21 the doctor.

22 Consumer 2 decided to help Consumer 1 to purchase a reliable vehicle to transport her
23 children and to get to work.
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1 . Consumer 1 and Consumer 2 went to Classy Auto Sales.

2 . Classy Auto Sales (“Classy”) is an Arizona Corporation that operated a used car
3 dealership at 2717 W. Colter, Phoenix, AZ 85017.

4 . Consumer 1 selected the Sequoia to purchase.

5
6 **Classy Refers Consumer 1 and Consumer 2 to AZFCU For Financing**

7 . Consumer 1 had planned to have her vehicle financed by Classy.

8 . However, Classy told Consumer 1 and Consumer 2 that it could not finance the Sequoia
9 purchase at the dealership.

10 . Instead, Classy told them, AZFCU would give them a loan.

11
12 . Classy told them to go to the AZFCU branch located at 19th Avenue and Colter.

13 . Consumer 1, Consumer 2, and a Classy employee then met at AZFCU so that Consumer
14 1 and Consumer 2 could obtain a loan.

15 . The Classy employee drove to AZFCU in the Sequoia Consumer 1 intended to purchase
16 from Classy.

17
18 . When the Classy employee entered the building, bank employees greeted him by name.

19 . Consumer 1 and Consumer 2 then obtained a loan for the purchase of the Sequoia
20 pursuant to a Closed-End Note and Disclosure Statement (“the Contract”). (A copy of
21 the Contract is attached as Exhibit A).

22
23 . In order to obtain the loan, Consumer 1 and Consumer 2 had to become members of
24 AZFCU.

25 . The Contract listed Consumer 1 and Consumer 2 as co-debtors.

26 . The Contract stated that \$14,628.60 was paid to Consumer 1 and Consumer 2 directly.
27
28

1 . Under the Contract, AZFCU also charged Consumer 1 and Consumer 2 \$295.00 for GAP
2 protection.

3 . The Amount Financed under the Contract was \$14,923.60.

4 . Pursuant to the Contract, Consumer 1 and Consumer 2 were also charged a finance
5 charge of \$4,912.37.
6

7 . Under the Loan, Consumer 1 and Consumer 2 were required to make 60 monthly
8 payments of \$330.66 to AZFCU.

9 . After Consumer 1 and Consumer 2 signed the loan document, AZFCU gave Consumer 1
10 a check for \$14,628.60, which was made out directly to Classy.
11

12 . The Classy employee then drove Consumer 1 back to the dealership.

13 . Consumer 1 gave the Classy salesman the check from AZFCU.

14 . At that time, she signed the Vehicle Purchase Order and related documents for the sale of
15 the Sequoia. (A copy of the Vehicle Purchase Order is attached as Exhibit B).
16

17 . The Total Cash Sale Price of the Sequoia under the Purchase Order was \$15,628.60.

18 . Consumer 1 and Consumer 2 made a downpayment of \$1,000.00, leaving a balance due
19 of \$14,628.60.

20 . This was the amount of the check AZFCU had written to Classy.

21 . Pursuant to the terms of the Purchase Order, Consumer 1 and Consumer 2 paid Classy
22 \$300.00 to register and title the Sequoia.
23

24 . Consumer 1 and Consumer 2 purchased the Sequoia for personal, family, or household
25 purposes.

26 . Consumer 1 and Consumer 2 signed the Contract for personal, family, or household
27 purposes.
28

Americredit Repossesses the Sequoia

1
2 . Since the inception of the Contract, Consumer 1 has made 5 monthly payments to
3 AZFCU, totaling \$1,730.00.

4 . However, Classy never obtained permanent registration for the Sequoia for Consumer 1
5 and Consumer 2.

7 . Instead, Classy issued numerous temporary registration plates for the Sequoia.

8 . In August of 2008, Americredit Financial Services, Inc. (“Americredit”) repossessed the
9 Sequoia from Consumer 1 and Consumer 2.

10 . Believing that the Sequoia had been stolen, Consumer 1 contacted the police.

12 . The police told Consumer 1 that the Sequoia had been repossessed by Americredit.

13 . When Consumer 1 contacted Americredit she learned that Classy had never paid off the
14 lien on the Sequoia when Classy took it as a trade-in from its previous owner.

15 . Consequently, Americredit repossessed the Sequoia.

AZFCU’s Improperly Failed to Include the FTC Anti-Holder Language

17
18 . The Federal Trade Commission (“FTC”) has issued a Rule Concerning Preservation of
19 Consumers’ Claims and Defenses (“FTC Anti-Holder Rule”). 16 C.F.R. § 433.

20 . Pursuant to that rule, it is an unfair and deceptive trade practice for a seller to “Accept, as
21 full or partial payment for such sale or lease, the proceeds of any purchase money loan
22 (as purchase money loan is defined herein), unless any consumer credit contract made in
23 connection with such purchase money loan contains the following provision in at least
24 ten point, bold face:
25

26 **ANY HOLDER OF THIS CONSUMER CREDIT**
27 **CONTRACT IS SUBJECT TO ALL CLAIMS AND**
28 **DEFENSES WHICH THE DEBTOR COULD ASSERT**

1 **AGAINST THE SELLER OF GOODS OR SERVICES**
2 **OBTAINED PURSUANT HERETO OR WITH THE**
3 **PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE**
4 **DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE**
5 **DEBTOR HEREUNDER.”**

6 16 C.F.R. § 433.2(b).

7 The above-referenced language shall be referred to as the “Anti-Holder Language.”

8 Under the FTC Anti-Holder Rule, a “purchase money loan” is defined as “[a] cash
9 advance for which is received by a consumer in return for a ‘Finance Charge’ within the
10 meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or
11 substantial part, to a purchase of goods or services from a seller who (1) refers consumers
12 to the creditor or (2) is affiliated with the creditor by common control, contract, or
13 business arrangement.

14 Consumer 1 and Consumer 2 are consumers as defined by the FTC Anti-Holder Rule. 16
15 C.F.R. § 433.1(b).

16 AZFCU is a person who, in the ordinary course of business, lends purchase money or
17 finances the sale of goods or services to consumers on a deferred payment basis.

18 AZFCU is a “creditor” as defined by the FTC Anti-Holder Rule. 16 C.F.R. § 433.1(c).

19 The proceeds of the Contract were applied in substantial part to the purchase of the
20 Sequoia.
21 Sequoia.

22 The transaction between Consumer 1 and Consumer 2 and AFCU was a purchase money
23 loan as defined by the FTC Anti-Holder Rule. 16 C.F.R. § 433.1(d).

24 Consequently, the FTC Anti-Holder language should have been included in the Contract.

25 A.R.S. § 47-9403(D) provides:
26 A.R.S. § 47-9403(D) provides:
27 A.R.S. § 47-9403(D) provides:
28

1 In a consumer transaction, if a record evidences the account
2 debtor's obligation, law other than this chapter requires that the
3 record include a statement to the effect that the rights of an
4 assignee are subject to claims or defenses that the account debtor
5 could assert against the original obligee, and the record does not
6 include such a statement: 1) The record has the same effect as if
the record included such a statement; and 2) The account debtor
may assert again an assignee those claims and defenses that would
have been available if the record include such a statement.

7 . Thus, the FTC Anti-Holder Language is part of the Contract pursuant to A.R.S. § 47-
8 9403(D).

9 . AZFCU is the current holder of the Contract.

10 . Upon information and belief, Classy had a pattern and practice of referring its customers
11 to AZFCU for financing.

12 . AZFCU had a pattern and practice of accepting loan referrals from Classy.

13 . In fact, the Sequoia was traded-in to Classy by its prior owner Nicole X in connection
14 with her purchase of a Nissan Armada.

15 . Nicole X was also referred to AZFCU by Classy.

16 . Numerous other customers of Classy were referred to AZFCU for purchase money loans.

17 . In fact, AZFCU has filed the following lawsuits in connection with such referrals.

18 *Arizona Federal Credit Union v. Classy Auto Sales, LLC, Dealer Services Corporation*
19 *and Ana Bel Villasenor, Maricopa County CV2008-010866¹;*

20 *Arizona Federal Credit Union v. Classy Auto Sales, LLC, Dealer Services Corporation*
21 *and Jaime Infante Cazares, et al., Maricopa County CV2008-010820;*

22 *Arizona Federal Credit Union v. Classy Auto Sales, LLC, Dealer Services Corporation*
23 *and Helida Corral-Jaques, Maricopa County CV2008-010819;*

24
25
26 1 In this lawsuit, AZFCU attached loan documents revealing Ana Villasenor's
27 social security number and date of birth as an exhibit to its Complaint. Upon
28 information and belief, AZFCU attached similar documents in other lawsuit.

1 *Arizona Federal Credit Union v. Classy Auto Sales LLC, Dealer Services Corporation*
2 *and Abdalla Amlas, Maricopa County CV2008-010818;*

3 *Arizona Federal Credit Union v. Classy Auto Sales LLC, Dealer Services Corporation*
4 *and Rocio M Chavez-Sanchez, Maricopa County CV2008-010817;*

5 *Arizona Federal Credit Union v. Classy Auto Sales LLC, Dealer Services Corporation*
6 *and Martin Vera, Maricopa County CV2008-010816.*

7 In all of the above lawsuits Classy failed to convey proper title to individual defendants
8 (purchasers who were referred to AZFCU).

9 AZFCU filed the above lawsuits against its own members claiming they breached the
10 loan contracts, seeking damages, attorney's fees and costs.

11 **AZFCU Refuses to Let Consumer 1 and Consumer 2 Out of the Loan**

12 After the repossession, Consumer 1 informed AZFCU that Americredit had repossessed
13 the Sequoia.

14 She asked AZFCU whether it would release her and her father from the loan since they
15 no longer had the Sequoia.

16 Consumer 1 asked them both in person and over the phone.

17 AZFCU refused.

18 Instead, they agreed that she could defer her August payment to September. (A copy of
19 AZFCU's letter is attached as Exhibit C).

20 However, AZFCU indicated that the extension would increase the total amount of her
21 finance charges.

22 Furthermore, AZFCU stated that Consumer 1 would not be granted another extension for
23 a period of 12 months.
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1 . Because she has been unable to get out from under this loan, Consumer 1 has not been
2 able to obtain financing for another vehicle.

3 . Therefore, she has been without a vehicle to get to work and to transport her children.
4 . Classy is no longer in business.

5 . Through this Complaint, Plaintiffs confirm their revocation of their acceptance of the
6 . Sequoia based on the breach of warranty of title.
7

8 **COUNTS**

9 **Count I: Breach of Contract**

10 . Classy's failure to transfer title to the Sequoia to Consumer 1 and Consumer 2 constitutes
11 a breach of the warranty of title. A.R.S. § 47-2312.
12

13 . Plaintiffs are entitled to revoke their acceptance of the Sequoia based on Classy's breach
14 of warranty of title. A.R.S. § 47-2608

15 . In the alternative, Consumer 1 and Consumer 2 are entitled to recover the difference
16 between the value of the Sequoia as warranted and the value of the Sequoia as received.
17 A.R.S. § 47-2714(B).
18

19 . Pursuant to the terms of the FTC Anti-Holder Rule, as incorporated into the Contract by
20 A.R.S. § 47-9403(D), AZFCU is subject to any claims or defenses which Consumer 1 and
21 Consumer 2 could assert against Classy.
22

23 **COUNT II: Violation of the Arizona Consumer Fraud Act**

24 . Classy's acts and omissions in connection with the sale of the Sequoia constitute
25 deceptive acts and practices under the ACFA, including but not limited to:

- 26 a. Its representation that it would transfer title and register the Sequoia in Consumer
27 1 and Consumer 2's name;
28

1 b. Its failure to disclose that it did not have title to the Sequoia; and,

2 c. Its failure to disclose that Americredit held a lien on the Sequoia.

3 Classy's actions were taken in connection with the sale of merchandise.

4 Classy acted with intent that Consumer 1 and Consumer 2 rely on its actions.

5 Consumer 1 and Consumer 2 did rely on Classy's actions and suffered damages.

6 Classy's actions therefore constitute violations of the ACFA. A.R.S. § 44-1522.

7 In violating the ACFA, Classy acted with an evil mind, intending to injure Consumer 1

8 and Consumer 2 or consciously disregarding the substantial risk that its conduct would

9 cause significant harm to Consumer 1 and Consumer 2.

10 Consumer 1 and Consumer 2 are therefore entitled to recover actual and punitive

11 damages.

12 Pursuant to the terms of the FTC Anti-Holder Rule, as incorporated into the Contract by

13 A.R.S. § 47-9403(D), AZFCU is subject to any claims or defenses which Consumer 1 and

14 Consumer 2 could assert against Classy.

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18 **COUNT III: Violation of the Arizona Consumer Fraud Act**

19 AZFCU's acts and omissions in connection with its loan of money to Consumer 1 and

20 Consumer 2 constitute violations of the ACFA, including but not limited to:

21 a. AZFCU's omission of the Anti-Holder Language from the Contract;

22 b. AZFCU and Classy's attempt to structure their relationship and the transaction in

23 manner so as to avoid the requirements of the FTC Anti-Holder Rule.

24 c. AZFCU's enforcement of the Contract without the inclusion of the FTC Anti-

25 Holder Language.

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1 d. AZFCU's enforcement of the Contract when it knew that Americredit had
2 repossessed the Sequoia from Consumer 1 and Consumer 2 and that it was subject
3 to any claims Consumer 1 and Consumer 2 had against Classy.

4 AZFCU's actions were taken in connection with its loan to Consumer 1 and Consumer 2.

5 AZFCU acted with intent that Consumer 1 and Consumer 2 rely on its actions and
6 suffered damages.
7

8 Consumer 1 and Consumer 2 did rely on AZFCU's actions.

9 AZFCU's actions constitute violations of the ACFA. A.R.S. § 44-1522.

10 In violating the ACFA, AZFCU acted with an evil mind, intending to injure Consumer 1
11 and Consumer 2 or consciously disregarding the substantial risk that its conduct would
12 cause significant harm to Consumer 1 and Consumer 2.
13

14 Consumer 1 and Consumer 2 are therefore entitled to recover actual and punitive
15 damages.
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Consumer 1 and Consumer 2 pray that this Court enter the following
19 awards in their favor and against Defendant:

20 a. Actual damages;

21 b. Punitive damages;

22 c. Declaratory judgment that Consumer 1 and Consumer 2 are no longer obligated
23 under the terms of the Contract;
24

25 d. An order that Defendant cease reporting this item in a derogatory manner on their
26 credit; and,
27

28 e. Attorney's fees and costs pursuant to A.R.S. § 12-341.01.

1 DATED this 17th day of September, 2008

2 CHOI & FABIAN, PLC

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7 Attorneys for Plaintiffs
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