

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[plaintiff]JOHNSON, VEGA, RODRIGUEZ, NORRELL, NORRELL, DURAN,
and SEILER, individually and on behalf of all other persons
similarly situated,

Plaintiffs,

[vs.]

[defendant]FIRST NATIONAL BANK IN ALAMOGORDO, THE CAR LOT, INC.,
a New Mexico Corporation, DOUGLAS RAY BURNS, Sr., DOUGLAS RAY
BURNS, Jr., and SALLY BURNS,

Defendants.

[action]No. CIV 89-1137 HB

FINAL REPORT OF PLAINTIFFS' COUNSEL

COMES NOW Richard J. Rubin, counsel for the Plaintiffs in
the herein cause, and hereby submits his final report, stating
as follows:

1. I am and have been the lead counsel for the Plaintiffs
and the Plaintiff class in this action during the entirety of
this litigation.

2. I have been personally involved in executing the terms
of the *Order Preliminarily Approving Settlement of Class Action*
filed on August 27, 1991 (hereinafter "the Order") and in
monitoring the efforts of the Defendant First National Bank in
Alamogordo (hereinafter "the Bank") in meeting its obligations
in accordance with the Order.

3. As shown by the *Affidavit* dated March 30, 1994,
executed by Ms. Patricia Denney, a loan officer for the Bank,
the Bank has made the following progress in accordance with
those obligations. It has identified a total of 180
transactions which fall within the universe of all transactions
from which the Plaintiff class is derived, that is, those
persons who purchased used motor vehicles from the Defendant The
Car Lot, Inc., and who financed those purchases through
installment contracts assigned to the Bank. Of the 180 subject

transactions, the Bank determined that the total number of class members are those 77 persons who meet the further class definition of those persons the odometers in whose vehicles were altered and who received odometer disclosure statements in violation of the Federal Odometer Act. Of the remaining 103 persons, the Bank determined (1) that 85 were not victims of odometer fraud on the basis of its comparison of the available title documentation and (2) that adequate documentation with regard to the other 18 persons was unavailable in order to undertake the comparison of odometer readings necessary to make a substantive decision whether odometer fraud did in fact occur. The 77 class members received a total of \$306,260.63 in compensation in accordance with the formula contained in the *Order* together with the appropriate Notice required by the *Order*. The remaining 103 persons received no compensation but did receive the appropriate Notice in accordance with the *Order*.

4. Over the course of the past approximately two and a half years, I have personally reviewed the documentation provided to me by the Bank demonstrating the tasks performed by it in accordance with the *Order*. With regard to the 77 persons constituting the class, I personally reviewed the underlying documentation and the worksheets generated by the Bank and have confirmed the accuracy of the recovery which the Bank has certified has now been paid to each member. The work performed by the Bank was generally accurate and comprehensive, though my review revealed in a small number of instances calculation errors which in each case were brought to the attention of the Bank and corrected. There was also an initial misunderstanding by the Bank with regard to a number of class members when the vintage of their vehicles prevented them from being included in the NADA Used Car Guide from the appropriate month of sale. However, due to the efforts of myself, opposing counsel, and Ms. Denney, the Bank retrieved the NADA Older Used Car Guide, which does list these older vehicles, and calculated the appropriate amount owing to each affected member.

5. Of the 77 class members, only one, Mr. David McLaughlin, refused to accept the payment owing. I was personally aware that Mr. McLaughlin executed the Exclusion Request contained in his Notice and thereby opted out of the class recovery. In addition, I personally spoke by telephone with Mr. McLaughlin, who clearly indicated to me that he fully understood the nature of the litigation and his right to participate in the recovery and that he was excluding himself knowingly and voluntarily.

6. On the basis of my review of the worksheets and documentation provided by the Bank, my communication with Mr. McLaughlin, and the efforts undertaken by me in monitoring the efforts of the Bank and Ms. Denney specifically, I believe that the \$306,260.63 paid to the 76 class members participating in the recovery represents an accurate calculation of the damages owing to these persons and Rill compliance by the Bank with the obligations imposed upon it under the *Order*.

7. In the initial stages of executing the *Order*, the Bank had some difficulty in retrieving the title documentation from the States of prior vehicle registration. I personally participated with Ms. Denney in contacting the two wholesale auto auctions in southern California where The Car Lot, Inc., purchased the vast majority of the subject used vehicles and monitored the Bank's efforts in retrieving from the auctions the contemporaneous documentation maintained by them showing the odometer readings of those vehicles at the time of the transfers of those vehicles to The Car Lot, Inc. That retrieval, the delay in which caused the majority of the hiatus between entry of the *Order* and the conclusion of this litigation, ultimately provided the Bank with the documentation from which an adequate comparison of odometer readings was made possible. Having then received adequate documentation to undertake the comparisons required by the *Order*, the Bank reached its substantive conclusion with regard to the 85 persons whom it determined were not victims of odometer fraud. I have personally reviewed that documentation and have confirmed the apparent accuracy of the Bank's determination with regard to those 85 individuals.

8. Neither I nor the Bank was able to undertake a comparison of odometer/title information regarding the remaining 18 persons where the Bank was unable to procure adequate prior documentation. Accordingly, I can only now confirm that I am satisfied that the Bank has exhausted all available avenues of retrieving the necessary documentation. Specifically, I have no reason to believe that Ms. Denney did not use all reasonable efforts to communicate with the motor vehicle departments of the States of last registration and yet has been unsuccessful in procuring documentation which would have been necessary to undertake the comparison required by *Order*. In this regard, I am relying solely on the representations made to me during the past many months by Ms. Denney and the Bank's counsel, Mr. Gagne, as I have monitored their efforts.

9. As contemplated by the *Order*, the bulk of the substantive efforts undertaken to comply with it has been

performed by the Bank. I have monitored each element of the Bank's efforts and, based on that monitoring, the additional work that I have personally performed, and the representations contained in the *Affidavit* of Ms. Denney, I have no reason to doubt that the Bank now has completed all work required of it pursuant to the *Order*.

Respectfully submitted,

Attorney for Plaintiffs

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AFFIDAVIT

PATRICIA DENNEY, Loan Officer II for the Defendant FIRST NATIONAL BANK IN ALAMOGORDO, being first duly sworn, upon her oath states:

1. I am a Loan Officer II in the Installment Loan Department for the FIRST NATIONAL BANK IN ALAMOGORDO, Defendant herein;

2. I have been involved in the work of carrying out the BANK'S obligations under the ORDER PRELIMINARILY APPROVING; SETTLEMENT OF CLASS ACTION, either directly or by assisting counsel for the BANK, and all information contained herein is known by me to be true and accurate;

3. The BANK undertook the initial task of identifying on an individualized basis each member of the class by determining from its own records for the entire period when it was purchasing installment contracts from THE CAR LOT, INC., all persons who purchased a used motor vehicle from THE CAR LOT, INC., through an installment contract assigned to the BANK by THE CAR LOT, INC.

4. Except as otherwise set forth below in paragraphs 6 and 7, those persons who were found to fit this category who, upon further investigation as outlined below, were found to be victims of odometer fraud were compensated as follows:

a. The victim's cash purchase price was determined from the sales contract;

b. The average retail price of each vehicle purchased was calculated from the NADA Buyer's Guide from the month of purchase and adjusted for high mileage, vehicle options and the like, as appropriate;

c. The average retail price, adjusted as appropriate, was subtracted from the victim's cash purchase price to determine the actual damages;

d. The actual damages were trebled and the victim compensated on the greater of treble the victim's actual damages or \$1500.

5. The following persons were determined to be victims of odometer fraud either by the criminal investigation of the Alamogordo Department of Public Safety or by the BANK by comparing in each case the odometer reading from the last transfer of the subject vehicle prior to the transfer to THE CAR LOT, INC. to the odometer reading in the sales transaction to THE CAR LOT, INC. and to the odometer reading in the transfer to the persons named below. Such victims were compensated using the method set forth above, in the following amounts:

[Affidavit lists amounts ranging from \$1500 to \$17,085 for 71 named individuals.]

6. The following persons were compensated on a different basis, as approved by the court, as more fully set forth in the ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, (Paragraph 9) as follows:

[Affidavit lists amounts ranging from \$0 to \$1813 for four named individuals.]

The following person was compensated on a basis approved in open Court on November 8, 1991:

[Affidavit lists amount of \$8779 for one named individual.]

7. Class member [name] refused to accept the payment that would be owed to him as a member of the class in settlement of this class action claim in the amount of \$3585.00. He has opted out of the class as more fully set forth on his Exclusion Request attached hereto as Exhibit A [not reprinted].

8. The following persons were determined by the BANK not to be victims of odometer fraud by using the same procedure described in paragraph 5 above:

[List of 85 individuals by name.]

9. The persons named in paragraphs 5 and 6 above have all been sent checks in the amounts listed next to their names and have each been sent the Notice attached hereto as EXHIBIT B [not reprinted], in each case individually completed to contain the information for that person.

10. All persons named in paragraphs 5 and 6 above have received and cashed their checks as of the date of filing hereof.

11. All persons named in paragraph 8, above, have been sent the Notice attached hereto as EXHIBIT C [not reprinted], in each case individualized for the person to whom it was sent. All persons named in paragraph 8 above have received their Notices, EXHIBIT C [not reprinted].

12. No title information containing odometer information was available for the following persons, each of whom was sent a notice, EXHIBIT C [not reprinted]:

[List of eighteen individuals by name.]

All of these persons received their Notices, EXHIBIT C [*not reprinted*].

13. The BANK has kept a record of all of the communications from persons contacting the BANK to inquire about the settlement of the Class Action Lawsuit. Those records are attached hereto as EXHIBIT D [*not reprinted*].

14. The BANK has completed all work required of it pursuant to the ORDER PRELIMINARILY APPROVING SETTLEMENT OF CLASS ACTION.

AFFIANT FURTHER SAYETH NOT.

PATRICIA DENNEY
Loan Officer II for the FIRST
NATIONAL BANK IN ALAMOGORDO
Notarization