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# 53022 A

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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ALBERT PARRA, KAREN PARRA and  
MARTIN CORDOVA, individually and  
on behalf of all others similarly situated,  
  
Plaintiffs,

vs.

STATE OF NEVADA DEPARTMENT OF  
MOTOR VEHICLES AND PUBLIC  
SAFETY, and JOHN DREW, in his official  
capacity as Director,  
  
Defendants.

CASE NO.  
DEPT. NO.

**Exempt From Arbitration:  
Class Action For  
Declaratory & Injunctive Relief**

**COMPLAINT**

Plaintiffs, Albert Parra, Karen Parra, and Martin Cordova, on behalf of themselves and all others similarly situated, by and through counsel, Dan L. Wulz, Esq., Clark County Legal Services Program, Inc., for their Complaint against defendants, allege and state as follows.

**I. INTRODUCTION**

1. This is a class action for declaratory relief pursuant to NRS 30.010 *et seq.* and for injunctive relief pursuant to Article 6, Section 6 of the Nevada Constitution, NRS 33.010 *et seq.*, and NRCPC 65, for violations of NRS 484.60665 and the Motor Vehicle Information and

Cost Savings Act, 49 U.S.C. § 32701 *et seq.* ("Federal Odometer Act"), for violations of 42 U.S.C. § 1983, for violations of state law regarding processing of documents for used motor vehicle titles, and for reasonable attorneys fees and costs, all as a result of defendants' failure and refusal to obey and enforce the Federal Odometer Act and regulations adopted pursuant thereto and state law. Plaintiffs and all class members, being all consumers who purchase used motor vehicles in the State of Nevada, have been and will continue to be harmed by defendants' policies and practices of licensing motor vehicles in Nevada in violation of the requirements of the Federal Odometer Act and state law.

## **II. PARTIES**

2. Plaintiffs, Albert and Karen Parra, husband and wife, are citizens of the United States and residents of Clark County, Nevada.

3. Plaintiff, Martin Cordova, is a citizen of the United States domiciled in Clark County, Nevada, but temporarily residing in Boulder, Colorado.

4. Defendant, The State of Nevada Department of Motor Vehicles and Public Safety (hereafter "DMV"), is a public body corporate and politic with the power to sue and be sued and may be served with process herein by service upon its Director, JOHN DREW, 555 Wright Way, Carson City, Nevada 89711-0250, pursuant to N.R.S. 12.105 and NRS 41.031(2)(b), and upon the attorney general, or a person designated by the attorney general, at the office of the attorney general in Carson City, pursuant to NRS 41.031(2)(a).

5. Defendant, JOHN DREW, is and at all times relevant hereto has been the Director of defendant, DMV, and is sued in his official capacity as Director. Defendant, JOHN DREW, is responsible for the overall management and operation of defendant, DMV, and is the person to whom the injunction requested herein should be directed. Defendant may be served with process herein at his office address at 555 Wright Way, Carson City, Nevada 89711-0250.

## **III. CLASS ALLEGATIONS**

6. Plaintiffs bring this action for declaratory and injunctive relief on behalf of a

class of all persons similarly situated, pursuant to NRC 23(a) and 23(b)(2).

7. The class which plaintiffs seek to represent is defined as all current and future consumer buyers of used motor vehicles in the State of Nevada.

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8. This class is patently so numerous that joinder of all class members is impracticable.

9. There are questions of law common to all class members, namely whether defendants' actions are in violation of the laws in the particulars set forth below.

10. The claims of the named plaintiffs are typical of the claims of the class members.

11. The named plaintiffs will fairly and adequately protect and represent the interests of the class members. Plaintiffs are represented by counsel experienced in class action litigation.

12. The prosecution of separate actions would create a risk of inconsistent adjudications, and defendants have acted on grounds generally applicable to the class members; namely, defendants have implemented and perpetuated policies and condoned practices in violation of NRS 484.60665 and 49 U.S.C. § 32701 *et seq.* and the regulations adopted pursuant thereto, and state law.

13. Accordingly, final declaratory and injunctive relief with respect to the class members as a whole is appropriate in this action.

14. Defendants' continued violations of the law (as detailed below) threaten irreparable harm to the plaintiff class. Congress in the Federal Odometer Act chose state DMVs as gatekeepers by providing that vehicles could not be licensed unless all the requirements of the law were met; DMV is the sole entity charged with that responsibility. Members of the plaintiff class do not know they are entitled by law to federal disclosures on the title or on a secure document, and DMV is licensing vehicles in violation of those requirements of the law. DMV

even exacerbates the situation by providing dealers with an unlawful, non-secure power of attorney form (DMV Form RD-136, Exhibit # 8, attached) which allows dealers to sign certificates of ownership for the buyers, which facts are unknown to the plaintiff class but known to defendants. These violations occur on a daily basis without the knowledge of members of the plaintiff class, causing irreparable damage to members of the plaintiff class as it most often goes undiscovered. Moreover, in the few cases that violations are discovered and aggrieved consumers seek to enforce their rights against car dealers, car dealer personnel defend themselves by pointing out the fact DMV not only condones but approves their actions and even provides the forms to do so, thereby frustrating consumers' efforts to seek just compensation.

15. The public is vitally interested in seeing that used vehicles are not licensed in Nevada unless the requirements of the law are met. Congress has found that the mileage on a vehicle affects the value of the vehicle. Inaccurate disclosure of the mileage enables fraud to the detriment of all consumers of used motor vehicles in the State of Nevada.

16. As detailed below, defendants further accept state Dealer's Reports of Sale ("DRS") submitted with title transfer documents more than 30 days after the date of sale in violation of NRS 482.424. As a result and in combination with defendants' violations of title processing requirements of the Federal Odometer Act, all members of the plaintiff class are potentially harmed in another way as follows. Defendants' violations coincidentally enable Nevada dealers to "yo-yo" vehicles, i.e. keep vehicles on a string. When DMV fails to require a dealer to timely submit the DRS and properly completed title with proper disclosures, a dealer can yo-yo (repossess) a "sold" vehicle back to its lot while taking the position that it can pocket a consumer's down payment and/or sell the consumer's trade in vehicle and keep the proceeds. The dealer involved with plaintiff, Martin Cordova, KOI of Las Vegas, Inc, d/b/a The Used Car Factory, has done this to other consumers who complained to DMV (e.g. George Karathanasis; Tina Rodriguez; Gene Kuberth).

#### **IV. APPLICABLE LAW**

17. Each state has enacted a certificate of title act that requires that anytime someone purchases a car for use (as opposed to for resale), that purchaser must obtain a certificate of title or certificate of registration in his or her own name.

18. Federal law requires that the title contain specified language with blank spaces for the transferor to complete, including a disclosure of the mileage at the time of sale, acknowledged by the transferee/buyer, and certifies to one of the following: that the mileage is accurate, that the mileage reflects mileage in excess of an odometer's mechanical limits, or that the mileage is inaccurate and cannot be relied upon. Then the title issued by the State to the transferee must be produced by means of a secure printing process, indicate the mileage disclosure, and contain a space for the transferee to disclose the mileage at the time of future transfer and to sign and date the disclosure. 42 U.S.C. § 32705. States began conforming their motor vehicle titles with these federal requirements in 1989 and such a title is known as a "conforming" title.

19. Federal law requires that when a motor vehicle with a conforming title is sold, the transferor shall complete the mileage disclosures on the title. 49 U.S.C. § 32705(b)(1); 49 C.F.R. § 580.5(a). Certain specific exceptions occasionally apply.

20. An exception to this requirement to disclose the mileage on the title exists when the title is not physically present upon transfer (e.g., as when held by a lien holder). In that event, the disclosures may be made on a power of attorney. 49 U.S.C. § 32705(b)(2)(A); 49 C.F.R. § 580.13.

21. Under federal law, when it is appropriate to give a power of attorney to sign the title, the power of attorney must be printed by means of a secure printing process, must be signed by the transferor, and must contain the following information: (1) the odometer reading at the time of transfer; (2) the date of transfer; (3) the transferor's name and current address; (4) the transferee's name and current address; and (5) the identity of the vehicle, including its make, model, year, body type and vehicle identification number. The transferee signs the power of

attorney form, and returns a copy to the transferor. 49 U.S.C. § 32705(b)(2)(A)(ii); 49 C.F.R. § 580.13.

22. In its Registration and Title Guide, DMV provides Nevada car dealers with its Form RD-136, a power of attorney printed by means of a non-secure process, which allows the recipient to sign in the name, place and stead of the signator "any Certificate of Ownership issued by the [DMV] covering the motor vehicle described above, in whatever manner necessary to transfer any registration of said motor vehicle." Nevada used car dealers routinely use this form in virtually every used car sale and submit same to DMV. Use of this form to sign a conforming title when a federal odometer disclosure is required would never be lawful because (a) if the dealer has the title, odometer disclosures must be made on the title, and (b) if the dealer does not have the title, then the dealer does not know whether the title is a conforming or a non-conforming title and, therefore, must assume that the title is a conforming title and make the odometer disclosure on a secure power of attorney containing the information required as itemized in paragraph no. 21, above. The DMV Form RD-136 is not printed by means of a secure printing process and does not contain odometer disclosures.

23. NRS 482.424 provides that when a used vehicle is sold in this state to any person, except a licensed dealer, by a dealer, the seller shall complete and execute a dealer's report of sale along with the properly endorsed certificate of title within 30 days after the execution of the dealer's report of sale unless an extension of time is granted.

## V. FACTS

### A. Albert Parra

24. On March 10, 1997, plaintiff, Albert Parra, signed a contract to purchase from a Las Vegas used car dealer, Davey Deals, a 1989 Ford Aerostar Van, VIN 1FMCA11U4KZC26389 (hereafter, "the Ford Mini-Van").

25. The Ford Mini-Van has a five digit odometer.

26. Unbeknownst to plaintiff, on or about February 1, 1997, the original owner,

Jack Benanti, transferred the Ford Mini-Van to Howard Barnett with a 1989 California Certificate of Title (attached as Exhibit # 1) (technically not a completely conforming title but which did contain a space for odometer disclosure on the front of the title) and leaving the odometer disclosures on the title blank. The title was accompanied by a separate, non-secure odometer disclosure statement (attached as Exhibit # 2) that the odometer then read 56,641 (no tenths) miles, but checking the box that the odometer reading reflects the amount of mileage in excess of its mechanical limits (meaning the five-digit odometer had rolled over); this statement was not complete as the date was left BLANK and the transferor's address was left BLANK. The title was also accompanied by a non-secure power of attorney by Jack Benanti appointing Howard Barnett "to sign in the name, place and stead of the undersigned, any Certificate of Ownership issued by the Department of Motor Vehicles. . . ." (attached as Exhibit # 3).

27. Unbeknownst to plaintiff, on February 1, 1997, Howard Barnett transferred the Ford Mini-Van to Malco Enterprises of Nevada, Inc. d/b/a Budget Car and Truck Sales ("Budget"), with the title (Exhibit # 1) and a separate, non-secure odometer disclosure statement that the odometer then read 56,641 (no tenths) miles, and also checking the box that the odometer reading reflects the amount of mileage in excess of its mechanical limits (attached as Exhibit # 4), as well as a non-secure power of attorney by Howard Barnett appointing Budget "to sign in the name, place and stead of the undersigned, any Certificate of Ownership issued by the Department of Motor Vehicles. . . ." (attached as Exhibit # 5).

28. Unbeknownst to plaintiffs, on or about February 10, 1997, Budget transferred the Ford Mini-Van to Davey Deals, a Las Vegas used car dealer, with the title (Exhibit # 1) that was incomplete in that the mileage disclosure was left BLANK, along with a separate, non-secure odometer disclosure statement that was also left BLANK (attached as Exhibit # 6). These documents were eventually submitted with BLANKS to DMV.

29. Unaware of the existence of these documents, on March 10, 1997, plaintiff signed a contract to purchase the Ford Mini-Van. In connection with the purchase, Davey Deals

had plaintiff sign a non-secure power of attorney by Albert Parra appointing Davey Deals "to sign in the name, place and stead of the undersigned, any Certificate of Ownership issued by the Department of Motor Vehicles. . . ." (attached as Exhibit # 5). In connection with the purchase, plaintiff was given a separate, non-secure odometer disclosure statement signed by Davey Deals. That statement certified that the odometer reading was 56,648 miles, and that the odometer reading to the best of the seller's knowledge reflected the actual mileage of the vehicle. (Attached as Exhibit # 7). Davey Deals did not check a box stating the odometer reading reflects the amount of mileage in excess of its mechanical limits.

30. All of the above-described paperwork and the title for the Ford Mini-Van were submitted together to DMV, which approved all the paperwork and licensed the Ford Mini-Van in violation of 49 U.S.C. § 32701 *et seq.* and the regulations adopted pursuant thereto (which violates NRS 484.60665) and NRS 482.245. DMV violated federal and state law in the following particulars:

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- a. When Benanti transferred to Barnett, the odometer disclosure on the front of the title was left BLANK and remained BLANK when submitted to DMV. For a conforming title, this would violate 49 U.S.C. § 32705 and 49 C.F.R. § 580.5. Since this was not a completely conforming title, this was not a violation of the law but was a red flag which ties in with other violations below.
- b. At the same time, Benanti signed and provided to Barnett a separate odometer disclosure statement stating the mileage was 56,641 but also checking the box that the odometer exceeded the mechanical limits (the 5-digit odometer had rolled over). Thus, this separate odometer disclosure statement was inconsistent with the BLANK odometer disclosure on the front of the title. Also, this disclosure was not complete in violation of 49 U.S.C. § 32705(a)(3) since the date was not completed and the transferor's address was not completed.
- c. Barnett, title in hand, sold to Budget, and signed a separate odometer disclosure statement stating that the mileage was 56,641 and also checking the box. (Exhibit # 4). The transfer to Barnett does not appear on the title. This was unlawful under state law because Barnett, not being a dealer, should have been required to register the vehicle under NRS 482.205 and in order to register the vehicle had to present proof of ownership under NRS 482.215. This would and should have resulted in issuance of a Nevada

certificate of title showing Barnett as owner and the odometer as "exceeds mechanical limits" on the title. NRS 482.245 and 49 C.F.R. § 580.5(a). This Nevada title would have been a conforming title and Barnett would have been required by federal law to make odometer disclosure on the conforming title. Therefore, it was not lawful for Barnett to make odometer disclosure on a separate disclosure statement as he did on Exhibit # 4.

d. Budget transferred the Ford Mini-Van to Davey Deals, providing the title with BLANKS in the odometer disclosure in the reassignment section and providing BLANKS in the odometer disclosure of a separate odometer disclosure statement. This violated 49 U.S.C. §32705 and 49 C.F.R. § 580.5.

e. Davey Deals transferred the Ford Mini-Van to plaintiff, Albert Parra, certifying on the back of the title that the mileage of 56,641, and certifying on a separate odometer disclosure statement that the mileage of 56,648, on the odometer was correct and not checking the box that the odometer exceeded mechanical limits. DMV issued a title stating the mileage of 56,648 was the actual mileage. Licensing the vehicle and issuing such a title in light of the inconsistent odometer disclosures set forth above violates 49 U.S.C. § 32701 *et seq.* and NRS 482.245.

31. None of defendants' acts of which complaint are made are incidental, isolated, or accidental. Each of the acts of which complaint are made are done intentionally and routinely as part of defendants' policy, practice and procedure.

32. As a result of defendants' violations of the law, plaintiffs were harmed. They thought they were buying a low mileage Mini-Van and paid a purchase price commensurate with that understanding. In truth, they received a Mini-Van which certainly had more than 100,000 miles on it and probably had 156,648 miles or more on it. Defendants, not plaintiffs, were privy to this information upon issuance of title but failed to follow the requirements of state and federal law, and continue to do so with respect to every used car in the State of Nevada every day.

33. Plaintiffs are residents of Nevada and intend to purchase used motor vehicles in this state. Plaintiffs and all class members have been and will continue to be harmed by defendants' failure and refusal to obey the law with respect to registration of motor vehicles.

**B. Martin Cordova**

34. On July 16, 1998, plaintiff, Martin Cordova, signed a contract to purchase a

1991 Ford F-150 pickup truck, VIN 1FTDF15NXMPA33434 (the "first pickup") from KOI of Las Vegas, Inc. d/b/a/ The Used Car Factory (hereafter, "UCF").

35. On or about September 10, 1998, UCF agreed to accept return of the first pickup and provide plaintiff another pickup.

36. On or about September 10, 1998, UCF provided plaintiff, another 1991 Ford F-150 pickup truck, VIN 1FTDF15NXMLA66019 (the "second pickup").

37. UCF prepared a Dealer's Report of Sale ("DRS") as to both vehicles as required by Nevada law, NRS 482.424. As to the first pickup, the DRS is #467989 dated July 16, 1998 (attached as Exhibit # 9). As to the second pickup, the DRS is #467819 dated September 14, 1998 (attached as Exhibit # 10).

38. UCF eventually re-sold the first pickup to James Chavis, as per DRS # 512187 dated October 16, 1998 (attached as Exhibit # 14).

39. As to both vehicles, a search of DMV's records revealed no Dealer's Report of Sale (DRS) to plaintiff on file concerning the vehicles. NRS 482.424 provides that when a used vehicle is sold in this state to any person, except a licensed dealer, by a dealer, the seller shall complete and execute a dealer's report of sale. Unless an extension of time is granted by the department, the seller shall submit the original of the dealer's report of sale to the department within 30 days after the execution of the dealer's report of sale, together with the properly endorsed certificate of title or certificate of ownership previously issued for the vehicle.

40. Used car dealers are required to keep the yellow copy of the DRS and maintain it for three years from the date of sale. The books and records of the dealer are required to be open for inspection and copying by DMV during usual business hours. NRS 482.3263.

41. If UCF failed to submit the original DRSs together with the certificates of title to DMV, then UCF violated NRS 482.424 and NRS 482.436 and UCF has not to plaintiff's knowledge been disciplined or sanctioned despite DMV being advised of the situation.

42. If UCF did submit the original DRSs together with the certificates of title to

DMV, but DMV did not make a record of the transfers, then DMV has violated NRS 239.080 regarding retention of state records, and 49 U.S.C. § 32701 *et seq.*, the Federal Odometer Act.

43. The certificates of title to both vehicles do not show the transfer to plaintiff. (Title to first pickup attached as Exhibit # 11 and title to second pickup attached as Exhibit # 12). Neither UCF nor plaintiff ever signed the certificate of title to either vehicle transferring either vehicle to plaintiff.

44. Consistent with DMV's routine and unlawful policy and practice, the title to the first pickup (Exhibit # 11, which is a conforming certificate of title) shows DMV processed documents for title containing federal odometer disclosures on a conforming title where the transferor's and transferee's (both James Ruddell to UCF and UCF and James Chavis) signature appears by a power of attorney, which power of attorney is non-secure and does not contain the information required by federal law, 49 C.F.R. § 580.13. (Powers of Attorney attached as Exhibit # 13). These transfers were done pursuant to paperwork submitted to defendant, DMV, with non-secure powers of attorney (DMV's Form RD-136, attached as Exhibit # 8) as expressly allowed by DMV's own Registration and Title Guide, in direct violation of 49 U.S.C. § 32705(b)(2)(A)(ii) and 49 C.F.R. § 580.13. Moreover, the exception permitting a secure power of attorney was not even applicable here since it is evident from the documents submitted that UCF had possession of the title upon transfer.

45. Consistent with DMV's routine and unlawful policy and practice, the DRS on the first pickup which was eventually sold to James Chavis (attached as Exhibit # 14), was dated October 16, 1998, but not date-stamped as received by DMV until over three months later on January 19, 1999, in violation of the 30-day requirement of NRS 482.424.

46. If UCF did submit the original DRSs regarding plaintiff, Cordova, together with the certificates of title to DMV, then DMV overlooked violations of NRS 482.400(1), which provides that upon transfer of the title to, or the interest of an owner in, a vehicle issued a certificate of ownership (title), the transferor(s) and the transferee(s) shall write their signatures

with pen and ink upon the certificate of ownership issued for the vehicle, together with the residence address of the transferee, in the appropriate spaces provided upon the reverse side of the certificate.

47. If UCF did submit the original DRSs regarding plaintiff, Cordova, together with the certificates of title to DMV, then DMV violated 49 U.S.C. § 32705 and 49 C.F.R. § 580.5, which provides that in connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title. If the transferor's title is physically held by a lien holder (making it impractical to disclose the mileage on the title), then 49 U.S.C. § 32705(b)(2)(A) and 49 C.F.R. § 580.13 allow the transferor to use a written power of attorney in making the mileage disclosure, but the power of attorney must contain all the information set forth 49 C.F.R. § 580.13 and be on a *secure* power of attorney. 49 U.S.C. § 32705(b)(2)(A)(ii); *see* Appendix E to Part 580, Power of Attorney Disclosure Form. DMV provides dealers with and allows dealers to use DMV Form RD-136 (Exhibit # 8), a non-secure power of attorney in violation of federal law. UCF never provided the federal mileage disclosures for either vehicle to plaintiff on the title or on a secure power of attorney.

48. As a result of defendants' violations of the law, all members of the plaintiff class are potentially harmed. As noted, defendants' violations coincidentally enable Nevada dealers to "yo-yo" vehicles, i.e. keep vehicles on a string. When DMV fails to require a dealer to timely submit the DRS and properly completed title with proper disclosures, a dealer can yo-yo (repossess) a "sold" vehicle back to its lot while taking the position that it can pocket a consumer's down payment and/or sell the consumer's trade in vehicle and keep the proceeds.

49. None of defendants' acts of which complaint are made are incidental, isolated, or accidental. Each of the acts of which complaint are made are done intentionally and routinely as part of defendants' policy, practice and procedure.

50. As a result of defendants' violations of the law, plaintiff was harmed. Plaintiff never got title to either pickup and never received federal disclosures on the title or other

secure document.

51. Although temporarily residing in Colorado, plaintiff, Cordova, is domiciled in Nevada and intends to purchase used motor vehicles in Nevada. Plaintiff and all class members have been and will continue to be harmed by defendants' failure and refusal to follow the law with respect to registration of motor vehicles.

## **VI. COUNT ONE**

### **(THE PARRAS, INDIVIDUALLY AND ON BEHALF OF THE CLASS)**

#### **(LEGAL THEORIES AND REMEDIES)**

52. NRS 484.60665 provides: "The department shall enforce the provisions of 49 U.S.C. §§ 32701 *et seq.* and the regulations adopted pursuant thereto."

53. 49 U.S.C. § 32705(b) provides that a "motor vehicle the ownership of which is transferred may not be licensed for use in a State unless..." the requirements contained in 49 U.S.C. § 32701 *et seq.* are followed.

54. 49 U.S.C. § 32710(b) provides: "A person may bring a civil action to enforce a claim under this section . . . ."

55. Defendants have failed and refused to follow the legal requirements of NRS 484.60665 and 49 U.S.C. § 32701 *et seq.* in the particulars stated above.

#### **A. VIOLATION OF FEDERAL RIGHTS - 42 U.S.C. § 1983**

56. Federal law, 49 U.S.C. § 32701 *et seq.* and 49 C.F.R. Part 580, provides plaintiffs with the right to disclosures and protections as stated above.

57. 42 U.S.C. § 1983 provides in pertinent part:  
"Every person who, under color of any statute, . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law...."

58. Defendants under color of law cause the plaintiff class to be subjected to the deprivation of rights secured by federal law, i.e. the right to complete and accurate odometer

disclosures on the title documents upon transfer of a used motor vehicle..

59. The plaintiff class is entitled to declaratory and injunctive relief as detailed below for defendants' violations of their federal rights in violation of 42 U.S.C. § 1983.

60. The plaintiff class has been required to hire an attorney and is entitled to attorney fees and costs under federal law.

### **B. DECLARATORY RELIEF**

61. Plaintiffs' rights and legal relations are affected by the referenced statutes. Plaintiffs are entitled to declaratory relief pursuant to NRS 30.010 *et seq.* to declare and construe their rights under the referenced statutes. Plaintiffs seek a Declaratory Judgment that defendants are in violation of NRS 484.60665 and 49 U.S.C. § 32701 *et seq.* and the regulations adopted pursuant thereto, and NRS 482.245 in the following particulars:

a. Defendants have licensed a vehicle when presented with a title containing blanks for federal odometer disclosures.

b. Defendants have licensed a vehicle when presented with inconsistent federal odometer disclosures.

c. Defendants have licensed a vehicle and issued a certificate of ownership (title) for a vehicle containing a reading of the vehicle's odometer not as provided to DMV by the transferor.

### **C. INJUNCTIVE RELIEF**

62. Plaintiffs are entitled to preliminary and permanent injunctive relief pursuant to Article 6, Section 6 of the Nevada Constitution, NRS 33.010 *et seq.*, and NRCP 65, as plaintiffs are entitled to the relief demanded and such relief consists in restraining the commission or continuance of the acts complained of, now and in the future.

63. Defendants' continued violations of the law threaten irreparable harm to the plaintiff class as set forth above.

64. Accordingly, plaintiffs are entitled to a preliminary and permanent injunction as follows: Restraining defendants from licensing vehicles in the State of Nevada unless all the requirements of NRS 484.60665 and 49 U.S.C. § 32701 *et seq.* and the regulations adopted

pursuant thereto, and NRS 482.245 are met, and specifically:

- a. Defendants must be enjoined from licensing a vehicle when presented with a conforming title containing blanks for federal odometer disclosures.
- b. Defendants must be enjoined from licensing a vehicle when presented with inconsistent federal odometer disclosures.
- c. Defendants must be enjoined from licensing a vehicle and issuing a certificate of ownership (title) for a vehicle containing a reading of the vehicle's odometer not as provided to DMV by the transferor.

## **VII. COUNT TWO**

### **(CORDOVA, INDIVIDUALLY AND ON BEHALF OF THE CLASS)**

#### **(LEGAL THEORIES AND REMEDIES)**

65. NRS 484.60665 provides: "The department shall enforce the provisions of 49 U.S.C. §§ 32701 *et seq.* and the regulations adopted pursuant thereto."

66. 49 U.S.C. § 32705(b) provides that a "motor vehicle the ownership of which is transferred may not be licensed for use in a State unless..." the requirements contained in 49 U.S.C. § 32701 *et seq.* are followed.

67. 49 U.S.C. § 32710(b) provides: "A person may bring a civil action to enforce a claim under this section . . . ."

68. Defendants have failed and refused to follow the legal requirements of NRS 484.60665 and 49 U.S.C. § 32701 *et seq.* in the particulars stated above.

#### **A. VIOLATION OF FEDERAL RIGHTS - 42 U.S.C. § 1983**

69. Federal law, 49 U.S.C. § 32701 *et seq.* and 49 C.F.R. Part 580, provides plaintiffs with the right to disclosures and protections as stated above.

70. 42 U.S.C. § 1983 provides in pertinent part:  
"Every person who, under color of any statute, . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law...."

71. Defendants under color of law cause the plaintiff class to be subjected to the deprivation of rights secured by federal law, i.e. the right to complete and accurate odometer disclosures on the title documents upon transfer of a used motor vehicle..

72. The plaintiff class is entitled to declaratory and injunctive relief as detailed below for defendants' violations of their federal rights in violation of 42 U.S.C. § 1983.

73. The plaintiff class has been required to hire an attorney and is entitled to attorney fees and costs under federal law.

**A. DECLARATORY RELIEF**

74. Plaintiffs' rights and legal relations are affected by the referenced statutes. Plaintiffs are entitled to declaratory relief pursuant to NRS 30.010 *et seq.* to declare and construe their rights under the referenced statutes. Plaintiffs seek a Declaratory Judgment that defendants are in violation of federal and state law in the following particulars:

- a. Defendants have licensed a vehicle when presented with non-secure powers of attorney (DMV's Form RD-136) as expressly allowed by DMV's own Registration and Title Guide.
- b. Defendants have licensed a vehicle pursuant to disclosures made pursuant to a power of attorney when other documents show that at the time of the signing of the power of attorney, the title was in the possession of the transferor.
- c. Defendants have licensed a vehicle when presented with a conforming title signed by a transferor on behalf of a transferee pursuant to a power of attorney which does not contain all the information required by federal law.
- d. Defendants have violated NRS 482.400(1), which provides that upon transfer of the title to, or the interest of an owner in, a vehicle issued a certificate of ownership (title), the transferor(s) and the transferee(s) shall write their signatures with pen and ink upon the certificate of ownership issued for the vehicle, together with the residence address of the transferee, in the appropriate spaces provided upon the reverse side of the certificate.
- e. Defendants have violated NRS 482.424, which provides that when a used vehicle is sold in this state to any person, except a licensed dealer, by a dealer, the seller shall complete and execute a dealer's report of sale. Unless an extension of time is granted by the department, the seller shall submit the original of the dealer's report of sale to the department within 30 days after the execution

of the dealer's report of sale, together with the properly endorsed certificate of title or certificate of ownership previously issued for the vehicle.

75. The plaintiff class has been required to hire an attorney and requests attorney fees and costs.

**B. INJUNCTIVE RELIEF**

76. Plaintiffs are entitled to preliminary and permanent injunctive relief pursuant to Article 6, Section 6 of the Nevada Constitution, NRS 33.010 *et seq.*, and NRCP 65, as plaintiffs are entitled to the relief demanded and such relief consists in restraining the commission or continuance of the acts complained of, now and in the future.

77. Defendants' continued violations of the law threaten irreparable harm to the plaintiff class as set forth above.

78. Accordingly, plaintiffs are entitled to a preliminary and permanent injunction as follows: Restraining defendants from licensing vehicles in the State of Nevada unless there is compliance with all the requirements of state and federal law, and specifically:

a. Defendants must be enjoined from use and acceptance of DMV Form RD-136, a non-secure power of attorney, permitting the holder to sign conforming certificates of ownership to vehicles containing federal odometer disclosures.

b. Defendants must be enjoined from licensing a vehicle when federal odometer disclosures are made pursuant to a power of attorney and when other documents show that at the time of the signing of the power of attorney, the title was in the possession of the transferor.

c. Defendants must be enjoined from licensing a vehicle when presented with a conforming title signed by a transferor on behalf of a transferee pursuant to a power of attorney which does not contain all the information required by federal law.

d. Defendants must be enjoined from licensing vehicles unless there is compliance with NRS 482.400(1), which provides that upon transfer of the title to, or the interest of an owner in, a vehicle issued a certificate of ownership (title), the transferor(s) and the transferee(s) shall write their signatures with pen and ink upon the certificate of ownership issued for the vehicle, together with the residence address of the transferee, in the appropriate spaces provided upon the reverse side of the certificate.

e. Defendants must be enjoined from licensing vehicles unless there is compliance with NRS 482.424, which provides that when a used vehicle is sold in this state to any person, except a licensed dealer, by a dealer, the seller shall complete and execute a dealer's report of sale. Unless an extension of time is granted by the department, the seller shall submit the original of the dealer's report of sale to the department within 30 days after the execution of the dealer's report of sale, together with the properly endorsed certificate of title or certificate of ownership previously issued for the vehicle.

79. The plaintiff class has been required to hire an attorney and requests attorney fees and costs.

WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, pray for the declaratory and injunctive relief stated above, and their costs and attorney fees incurred in prosecuting this action.

DATED this \_\_\_\_\_ day of February, 2000.

**CLARK COUNTY LEGAL SERVICES  
PROGRAM, INC.**

By:

\_\_\_\_\_  
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