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5 THEODORE STRONG

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SUPERIOR COURT OF THE STATE OF WASHINGTON
YAKIMA COUNTY

THEODORE STRONG,

Plaintiff,

vs.

NUMERICA CREDIT UNION,

Defendants.

) Case No: 1720140639
)
) **FIRST AMENDED COMPLAINT**
) **FOR:**
) **(1) VIOLATIONS OF THE**
) **UNIFORM COMMERCIAL CODE**
) **(2) VIOLATIONS OF THE**
) **CONSUMER PROTECTION ACT**

1 Plaintiff Theodore Strong, on behalf of himself and all others similarly
2 situated, hereby complains against defendant Numerica Credit Union, and alleges
3 on information and belief as follows:

4 **OPERATIVE FACTS**

5 1. Plaintiff purchased a vehicle primarily for personal, family or
6 household use in Prosser, Washington, and entered into a retail installment sales
7 contract with Tom Denchel Ford Country, the seller. The dealership took a security
8 interest in the vehicle. Defendant Numerica Credit Union subsequently became the
9 holder of the retail installment sales contract.

10 2. Plaintiff fell behind on the contract payments. Numerica repossessed
11 plaintiff's vehicle, and mailed him a written notice of sale (hereinafter "NOI"). The
12 NOI stated "If we get less money than you owe, you (will or will not, as applicable)
13 still owe us the difference." Numerica's failure to select either "will" or "will not"
14 on the form letter violated RCW §§ 62A.9A-614(1)(B), which requires a
15 description of the borrower's liability for a deficiency balance.

16 3. Numerica's defective NOI was created on a form template. Plaintiff is
17 informed and believes that Numerica has a regular practice of issuing NOI's to
18 borrowers, in which the selection of "will" or "will not" in the "will or will not as
19 applicable" text area is not made, and that Numerica has issued such defective
20 NOI's to at least hundreds of borrowers in the last four years.

21 4. Numerica sold plaintiff's vehicle, and sent him a notice of deficiency
22 balance (hereinafter "NOD"), which attempted to explain how his deficiency
23 balance was calculated. Numerica's NOD violated RCW §§ 62A.9A-616(a)(1)(B)
24 in the following ways:

25 (a) in violation of RCW § 62A.9A-616(c)(1), the notice disclosed the
26 "principal balance," instead of the aggregate amount of obligations secured by the
27 security interest;

28 (b) in violation of RCW §§ 62A.9A-616(c)(1), the notice did not specify the

1 date on which the principal balance was calculated;

2 (c) in violation of RCW §§ 62A.9A-616(c)(3), the notice did not disclose the
3 aggregate amount of the obligations, after deducting the amount of sales proceeds;

4 (d) in violation of RCW §§ 62A.9A-616(c)(5), the notice did not disclose the
5 types of credits to which plaintiff was entitled, but lumped them all together into a
6 generic “Refunds”;

7 (e) in violation of RCW §§ 62A.9A-616(a)(1)(C), the notice did not disclose
8 that future credits or rebates could affect the amount of the deficiency balance.

9 5. Numerica’s defective NOD was created on a form template, and
10 plaintiff is informed and believes that Numerica has issued identical defective
11 NOD’s to at least hundreds of borrowers in the last four years.

12 6. As a result of defendant’s violations of the UCC, and by operation of
13 RCW §§ 62A.9A-626, plaintiff and the putative class do not owe defendant a
14 deficiency balance on their accounts, and are entitled to statutory damages under
15 the UCC against defendant.

16 **CLASS ACTION ALLEGATIONS**

17 7. The defective and improper NOI which Numerica issued to plaintiff
18 deprived him of statutorily-mandated notice under the UCC. It is a standard, form
19 notice sent by Numerica to all persons who are liable under retail installment
20 contracts or loans held by Numerica, and whose vehicles are repossessed or
21 surrendered. Plaintiff is informed and believes, and based thereon alleges, that
22 Numerica routinely violates the provisions of RCW §§ 62A.9A-614(1)(B) in its
23 form NOI’s.

24 8. The defective and improper NOD which Numerica issued to plaintiff
25 also deprived him of statutorily-mandated notice under the UCC. It is a standard,
26 form notice sent by Numerica to all persons who are liable under retail installment
27 contracts or loans held by Numerica, and whose vehicles are repossessed or
28 surrendered and subsequently sold. Plaintiff is informed and believes, and based

1 thereon alleges, that Numerica routinely violates the provisions of RCW §§
2 62A.9A-616 in its form NOD's.

3 9. Defendants and/or their agents routinely misrepresent to persons liable
4 under retail installment contracts or loans involving a repossession, that they are
5 liable for deficiency balances remaining after disposition of their repossessed or
6 surrendered vehicles, when, in fact, defendants knew or should have known said
7 persons were not liable for said deficiencies, or any part of them, due to Numerica's
8 defective NOI. Defendants regularly have collected deficiency balances from
9 persons liable under these accounts in violation of the UCC, which prohibits
10 defendant from collecting such deficiency balances by virtue of its defective form
11 NOI.

12 10. Plaintiff is informed and believes, and based thereon alleges, that
13 defendants and/or their agents regularly have reported or communicated to
14 consumer credit reporting organizations that purported deficiencies following
15 disposition of vehicles pursuant to the unlawful practices described herein are valid
16 debts when, in fact, borrowers are not liable for said deficiencies as a matter of law.
17 At all relevant times, defendants have had actual and constructive knowledge that
18 such persons are not liable for said deficiencies.

19 11. Plaintiff is informed and believes, and based thereon alleges, that
20 defendants continue to issue the defective and improper form NOI's and NOD's
21 discussed herein to defendants' borrowers, following repossession or surrender of
22 their vehicles, as a regular and uniform business practice.

23 12. Pursuant to the Washington Code of Civil Procedure and Washington
24 Superior Court Civil Rule 23, plaintiff brings his claims as a class action on behalf
25 of himself and all other persons similarly situated. Plaintiff brings this action in a
26 representative capacity to remedy the ongoing unlawful, unfair and fraudulent
27 business practices alleged herein, and to seek redress on behalf of all those persons
28 who have been affected thereby.

1 13. The proposed class is comprised of all Washington state citizens who
2 who purchased a vehicle primarily for personal, family, or household use, whose
3 purchase was financed by defendant Numerica, and who were issued an NOI by
4 Numerica within the four years preceding the filing of the original complaint in this
5 action. The subclass is comprised of all such Washington state citizens who were
6 also issued an NOD by Numerica.

7 14. Plaintiff is unable to state the precise number of potential members of
8 the class because that information is in the possession of defendant. The class
9 consists of at least hundreds of members, and is so numerous that joinder of all
10 members would be impracticable. The exact size of the class, and the identities of
11 the members thereof, will be readily ascertainable from defendants' business
12 records.

13 15. There is a community of interest among the members of the class in
14 that there are questions of law and fact common to the class that predominate over
15 questions affecting only individual members. Proof of a common set of facts will
16 establish the liability of defendants, and the right of each member of the class to
17 recover. The common questions which predominate include, inter alia, whether
18 defendants failed to provide to individuals whose motor vehicles were repossessed
19 or voluntarily surrendered with an NOI and NOD containing all of the disclosures
20 required by the UCC; whether defendant collected, or has attempted to collect,
21 deficiency balances from members of the class that it had no legal right to obtain or
22 attempt to collect; whether defendant negligently and/or fraudulently
23 misrepresented to members of the class that they were liable for deficiency
24 balances when there was no obligation to pay such amounts, and whether
25 defendants falsely reported deficiencies as valid debts to credit reporting
26 organizations.

27 16. Plaintiff's claims are typical of those of the class and subclass, and he
28 will fairly and adequately represent the interests of the class and subclass.

1 17. Plaintiff is represented by counsel competent and experienced in both
2 consumer protection and class action litigation.

3 18. A class action is superior to other methods for the fair and efficient
4 adjudication of this controversy. Because the damages suffered by the individual
5 members of the class may be relatively small compared to the expense and burden
6 of litigation, it would be impracticable and economically unfeasible for members of
7 the class to seek redress individually. The prosecution of separate actions by the
8 individual members of the class, even if possible, would create a risk of
9 inconsistent or varying adjudications with respect to individual members of the
10 class against defendants, and would establish incompatible standards of conduct.

11 **JURISDICTION AND VENUE**

12 19. The Superior Court has jurisdiction over this matter pursuant to RCW
13 § 2.08.010 because the demand exceeds three hundred dollars, and plaintiff seeks
14 injunctive relief.

15 20. Venue is proper in Yakima County because plaintiff is seeking civil
16 penalties imposed by statute and the cause of action arose here.

17 **PARTIES**

18 21. Plaintiff Theodore Strong is a natural person over the age of 18 years
19 and is a resident of Yakima county, Washington.

20 22. Defendant Numerica Credit Union is a Washington corporation with
21 its headquarters in Spokane, Washington.

22 23. At all times mentioned herein, each defendant was the agent or
23 employee of each of the other defendants and was acting within the course and
24 scope of such agency or employment. The defendants are jointly and severally
25 liable to plaintiff.
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1 **FIRST CAUSE OF ACTION**
2 **(Against All Defendants for Violations of the Uniform Commercial Code)**

3 24. Plaintiff realleges and incorporates herein by reference the allegations
4 of all paragraphs above.

5 25. Pursuant to RCW 62A.9A-625(b) and (c)(1), plaintiff and the class are
6 entitled to recover the actual damages caused by defendants' failure to comply with
7 the Uniform Commercial Code, in the amount of any payments they made to
8 defendant on the alleged deficiency balances.

9 26. Pursuant to RCW 62A.9A-625(c)(2), plaintiff and the class are entitled
10 to recover from defendant the credit service charge plus ten percent of the principal
11 amount of the obligation, as statutory damages, for defendant's violations of RCW
12 62A.9A-614.

13 27. Pursuant to RCW 62A.9A-625(e)(5), plaintiff and the class are entitled
14 to recover \$500 each from defendant, as statutory damages for defendant's
15 violations of RCW 62A.9A-616. Defendants failure to comply with RCW 62A.9A-
16 616 was part of a pattern, or consistent with a practice, of noncompliance.

17 28. Pursuant to RCW 62A.9A-625(a), plaintiff and the class are entitled to
18 an injunction against defendant to restrain it from any collection efforts on the
19 alleged deficiency balances of the class, including from making derogatory credit
20 reporting on the credit reports of members of the class regarding the affected
21 accounts.

22 WHEREFORE, plaintiff prays for relief as set forth below.

23 **SECOND CAUSE OF ACTION**
24 **(Against All Defendants For Violations Of The Consumer Protection Act,
RCW § 19.86.910 et seq)**

25 29. Plaintiff realleges and incorporates herein by reference the allegations
26 of all paragraphs above.

27 30. Defendants committed unfair methods of competition and/or unfair or
28 deceptive acts or practices, in the conduct of any trade or commerce, and therefore

1 violated RCW § 19.86.020.

2 31. Defendants' acts were injurious to the public interest within the
3 meaning of RCW 19.86.093.

4 32. Plaintiff and the class were injured in their business or property by
5 defendants' violations of RCW 19.86.020, and are therefore entitled to injunctive
6 relief, actual damages, and attorneys fees and costs, pursuant to RCW § 19.86.090.

7 33. Plaintiff and the class seek injunctive relief to restrain defendant from
8 collecting any deficiency balance from them, and/or reporting to any credit
9 reporting agency that they owe defendant a debt.

10 34. In addition to actual damages, plaintiff and the class are entitled to
11 treble damages not exceeding \$25,000 each, pursuant to RCW § 19.86.090.

12 35. Plaintiff and the class are entitled to a civil penalty of \$2,000 for each
13 of defendants' violations of RCW § 19.86.020, pursuant to RCW § 19.86.140.

14 WHEREFORE, plaintiff prays for relief as set forth below.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, plaintiff prays for the following relief:

- 17 1. For actual damages;
 - 18 2. For statutory damages;
 - 19 3. For civil penalties;
 - 20 4. For treble damages;
 - 21 5. For injunctive relief;
 - 22 6. For pre-judgment interest to the extent permitted by law;
 - 23 7. For an award of attorneys' fees, costs and expenses incurred in the
24 investigation, filing and prosecution of this action; and
 - 25 8. For such other and further relief as the Court may deem just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury under the United States and Washington constitutions.

Dated: January 29, 2018

Respectfully Submitted,
TRUEBLOOD LAW FIRM

By: 
Alexander B. Trueblood

Attorneys for Plaintiff
THEODORE STRONG

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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. I am an employee of the Trueblood Law Firm.

On January 29, 2018, I served the following documents described as:

FIRST AMENDED COMPLAINT

by placing them in the US Mail, postage prepaid, addressed as follows:

Witherspoon Kelley
Michael D. Currin, Esq.
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201-0300

Executed on January 29, 2018, at Fort Hood, Texas. I declare under penalty of perjury that the foregoing is true and correct.


Elizabeth D. Sackett