

2009

Jordan Credit Union v. Harry Suniville : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Harry Suniville; Defendant/Appellant.

Richard C. Terry; Christopher G. Jessop; Douglas A. Oviatt; Terry, Jessop and Bitner; Attorneys for Plaintiff/Appellee.

Recommended Citation

Brief of Appellee, *Jordan Credit Union v. Suniville*, No. 20090398 (Utah Court of Appeals, 2009).
https://digitalcommons.law.byu.edu/byu_ca3/1672

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

JORDAN CREDIT UNION,

Plaintiff/Appellee,

v.

HARRY SUNIVILLE,

Defendant/Appellant.

0398
Case No. 2009-CA

BRIEF OF APPELLEE JORDAN CREDIT UNION

Appeal from a ruling of the Honorable Kate A. Toomey
Judge of the Third District Court

Harry Suniville
#17265
Utah State Prison
PO Box 250
Draper, Utah 84020
Defendant/Appellant

Richard C. Terry, USB No. 3216
Christopher G. Jessop, USB No. 8542
Douglas A. Oviatt, USB No. 12192
TERRY JESSOP & BITNER
39 Exchange Place, Suite 100
Salt Lake City, Utah 84111
Telephone: (801) 534-0909
Attorneys for Plaintiff/Appellee
Jordan Credit Union

FILED
UTAH APPELLATE COURTS

NOV 04 2009

IN THE UTAH COURT OF APPEALS

JORDAN CREDIT UNION,

Plaintiff/Appellee,

v.

HARRY SUNIVILLE,

Defendant/Appellant.

Case No. 2009-CA

BRIEF OF APPELLEE JORDAN CREDIT UNION
Appeal from a ruling of the Honorable Kate A. Toomey
Judge of the Third District Court

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
JURISDICTION	1
RESTATEMENT OF THE ISSUES	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENTS	7
ARGUMENT	10
I. MR. SUNIVILLE HAS FAILED TO MARSHAL THE EVIDENCE. . .	10
II. THE TRIAL COURT PROPERLY CONSIDERED MR. SUNIVILLE’S MEMORANDUM IN OPPOSITION.	11
III. MR. SUNIVILLE WAS NOT ENTITLED TO APPOINTED COUNSEL NOR TO STAY THE PROCEEDINGS..	12
IV. THE TRIAL COURT PROPERLY CONSIDERED AND DISCOUNTED MR. SUNIVILLE’S INADMISSABLE EVIDENCE.	13
V. JORDAN WAS WITHIN ITS RIGHTS TO REPOSSESS THE VEHICLE FOLLOWING MR. SUNIVILLE’S ARREST AND INCARCERATION.	15
VI. JORDAN’S DISPOSITION OF THE VEHICLE WAS COMMERCIALLY REASONABLE	16

VII. JORDAN IS ENTITLED TO AN AWARD OF ITS ATTORNEY'S FEES ON APPEAL	20
CONCLUSION	20
ADDENDUM	
Trial Court's Memorandum Decision and Order	Exhibit A
Plaintiff's Memorandum in Support of Motion for Summary Judgment	Exhibit B
Affidavit of Michelle Rogers (in support of Plaintiff's motion)	Exhibit C
Declaration of Ken Martinez (in support of Plaintiff's motion)	Exhibit D
Defendant's Memorandum and Reply, And as an Opposing Response, to Plaintiff's Motion for Summary Judgment	Exhibit E
Plaintiff's Reply and Objection	Exhibit F
Second Affidavit of Michelle Rogers	Exhibit G
Affidavit of Ron Hinkley (filed in opposition to Plaintiff's motion)	Exhibit H
Notice to Court and to Plaintiff Regarding New Evidence	Exhibit I
Affidavit/Declaration From Mirror Image Auto Body and Paint	Exhibit J

TABLE OF AUTHORITIES

Cases:

<i>Adams v. Portage Irrigation, Reservoir & Power Co.</i> , 95 Utah 1, 72 P.2d 648, 651 (1937)	1
<i>Chrysler Dodge Country, U.S.A., Inc. v. Curley</i> , 782, P.2d 536 (Utah Ct. App. 1989)	17, 18
<i>Culbertson v. Board of County Commissioners of Salt Lake County</i> , 2008 UT App 22, 177 P.3d 621	20
<i>Hill v. Estate of Allred</i> , 216 P.3d 929, 943 (Utah 2009)	10
<i>Johnson v. Gold’s Gym</i> , 2009 UT App 76, 206 P.3d 302	2
<i>Johnson v. Higley</i> , 1999 UT App 106, 977 P.2d 1209	11
<i>Pratt v. Nelson</i> , 2005 UT App 541, 127 P.3d 1256	1
<i>Rushton v. Salt Lake County</i> , 1999 UT 36, 977 P.2d 1201	2
<i>State v. Richardson</i> , 843 P.2d 517 (Utah Ct. App. 1992)	2
<i>State v. Young</i> , 853 P.2d 327, 354 (Utah,1993)	12
<i>Wardley Better Homes and Gardens v. Cannon</i> , 2002 UT 99, 61 P.3d 1009	10

Statutes:

Utah Code Ann. § 78A-4-103(2)(j)	1
Utah Code Ann. § 70A-9a-601	16
Utah Code Ann. § 70A-9a-609	16
Utah Code Ann. § 70A-9a-610	16

Utah Code Ann. § 70A-9a-611 16

Utah Code Ann. § 70A-9a-614 17

Utah Code Ann. § 70A-9a-615 17

Utah Code Ann. § 70A-9a-627 3, 16

Other Authorities:

Utah Rules of Civil Procedure, Rule 56(e) 13

Utah Rules of Evidence, Rules 802, 803 and 804 14

JURISDICTION

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(j).

RESTATEMENT OF THE ISSUES

Although Mr. Sunniville's appeal brief contains a statement of the issues, the statement does not include any standards of appellate review, as required by Rule 24(a)(5) of the Utah Rules of Appellate Procedure. Jordan Credit Union therefore restates the issues, and sets forth the applicable standards of review, as follows.

Issue 1: Did the lower court properly consider Mr. Suniville's memorandum in opposition (styled "Answer & Memorandum and reply in support of motion to dismiss and opposing response to plaintiff's motion for summary judgment")?

Standard of Review: A ruling on whether to strike (or ignore) an untimely memorandum is reviewed for abuse of discretion. *See Pratt v. Nelson*, 2005 UT App 541, ¶ 9, 127 P.3d 1256. ("A ruling thereon, except under circumstances which amount to a clear abuse of discretion, will not be disturbed on appeal." *Pratt*, citing *Adams v. Portage Irrigation, Reservoir & Power Co.*, 95 Utah 1, 72 P.2d 648, 651 (1937).)

Issue 2: Was Mr. Suniville entitled to the appointment of counsel in a civil case, or, in the alternative, to stay the civil proceedings against him for over a year until he was released from prison?

Standard of Review: This is a question of law, which is reviewed for correctness. *See State v. Richardson*, 843 P.2d 517, 518 (Utah Ct. App. 1992) (“[W]e consider the trial court’s interpretation of binding case law as presenting a question of law and review the trial court’s interpretation of that law for correctness.”).

Issue 3: Did the lower court appropriately consider Mr. Suniville’s otherwise inadmissible evidence?

Standard of Review: The trial court’s interpretation of the Utah Rules of Evidence and the Utah Rules of Civil Procedure is a question of law which is reviewed for correctness. *See Rushton v. Salt Lake County*, 1999 UT 36, ¶ 17, 977 P.2d 1201.

Issue 4: Did the lower court properly conclude that Jordan Credit Union’s repossession of the vehicle was commercially reasonable?

Standard of Review: The grant of summary judgment is a question of law, which is reviewed for correctness, affording no deference to the trial court. *See Johnson v. Gold’s Gym*, 2009 UT App 76, ¶ 9, 206 P.3d 302.

Issue 5: Did the lower court properly conclude that Jordan Credit Union’s repossession and subsequent sale of the vehicle at issue to a salvage yard was commercially reasonable?

Standard of Review: The grant of summary judgment is a question of law, which is reviewed for correctness, affording no deference to the trial court. *See Johnson v. Gold’s Gym*, 2009 UT App 76, ¶ 9, 206 P.3d 302.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following statutes are of central importance to this appeal:

1. Utah Code Ann. § 70A-9a-627(1) and (2). Determination of whether conduct was commercially reasonable.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(a) in the usual manner on any recognized market;

(b) at the price current in any recognized market at the time of the disposition; or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

STATEMENT OF THE CASE

This is a garden-variety collection action for a deficiency owed to Jordan Credit Union by Defendant, Harry Suniville. Specifically, Jordan loaned \$12,829.00 to Mr. Suniville in October 2005, so that he could purchase a 2003 Mitsubishi Eclipse. Two years later, Jordan became aware that Mr. Suniville had been arrested for driving under the influence, and that the vehicle had been impounded. Pursuant to the default clause in the loan agreement between the parties, Jordan elected to repossess the vehicle (which Jordan later discovered had been significantly damaged over time) and accelerate the debt. After sending notice to Mr. Suniville's address of record, and after attempting to auction the vehicle for two weeks with no bids from any prospective buyers, Jordan sold the

vehicle to a salvage company for \$200. Jordan then sued Mr. Suniville for the deficiency, which was \$8,778.12 as of January 26, 2008.

Mr. Suniville, acting *pro se*, initially filed a motion to dismiss which was denied. Jordan then filed a motion for summary judgment, which the trial court granted, based in part, on Mr. Suniville's failure to submit any admissible evidence in opposition to the motion. Mr. Suniville appeals from the trial court's Memorandum Decision and Order, dated April 6, 2009.

STATEMENT OF FACTS

Because there is no formal statement of facts in Mr. Suniville's opening brief, Jordan hereby recites the undisputed facts, as relied upon by the trial court, as follows: (Hereafter, all citations to the Record shall be "R. at ____.")

1. On or about October 5, 2005, Mr. Suniville executed a Retail Installment Contract and Security Agreement (hereinafter the "Agreement") in connection with the purchase of a 2003 Mitsubishi Eclipse (hereinafter the "Collateral"). (R. at 119, ¶ 4; see Exhibit C attached hereto.)

2. On or about December 3, 2007, Mr. Suniville was arrested for driving under the influence and the Collateral was impounded. (R. at 34; R. at 128; Ex. C.)

3. A notice dated December 3, 2007 was sent to Jordan from the Utah State Tax Commission stating that the Collateral had been impounded. (R. at 128; Ex. C.)

4. Mr. Suniville was in default under the Agreement due to his failure to keep the Collateral in his possession and because Jordan now believed, in good faith, that Mr. Suniville would not be able to continue to perform his obligations under the Agreement. (R. at 126; R. at 119 ¶ 7; Ex. C.)

5. After the Collateral had been in impound for one week, and to protect its interests, Jordan elected to repossess the Collateral, retrieving it from the impound lot on December 10, 2007. (R. at 119, ¶ 7; Ex. C.)

6. Under the terms of the Agreement, any failure to perform any obligation under the Agreement, or the good faith belief by the lender that an obligation would not or could not be performed, is considered a default. (R. at 126, Section “Default”; Ex. C.)

7. Upon default, Plaintiff was permitted to avail itself of one or more of several remedies listed in the Agreement. These included acceleration of the entire debt, pay any fees incurred and/or costs of repair (to be added to the principal debt amount), repossession and sale of the collateral, and initiate a legal action to collect on any amounts left owing after the sale, including attorney’s fees. (*Id.*)

8. On or about December 11, 2007, Jordan sent a letter to Mr. Suniville, at the address he provided, stating that the Collateral had been repossessed due to the impound action. The letter explained that the costs of impound and repossession totaled \$869.00 and had been added to the loan balance. The letter further stated that the debt had been accelerated and directed Mr. Suniville to pay to Jordan the entire loan balance of

\$9,312.37 on or before December 20, 2007. The letter also stated that failure to do so would result in Jordan's sale of the Collateral and that Mr. Sunnville would be liable for any deficiency between the sale price and the loan balance. (R. at 130; Ex. C.)

9. Jordan received no subsequent communication from Mr. Sunnville. Hence, the Collateral was advertised for sale to the auto wholesale community, as is usual and customary in the industry. (R. at 120, ¶ 12; Ex. C.)

10. Jordan received no bids on the Collateral due to its condition. (Id.)

11. In response to the lack of interest due to the damage, Jordan delivered the vehicle to a mechanic, Ken Martinez, for inspection and evaluation. (R. at 120, ¶ 13; R. at 134, ¶¶ 4-5; *see* Ex. C and Ex. D attached hereto.)

12. The inspection showed that the vehicle had not been kept in good condition and repair as required by the Agreement. There were many issues, both aesthetic and mechanical, that required extensive parts and labor to correct. An estimate prepared by Ken Martinez on January 12, 2008, indicates that the vehicle required more than \$2,500.00 in body work. (R. at 134 ¶¶ 6-7; R. at 136; Ex. D.)

13. At the time of the initial notice of repossession sent to Defendant, the issues related to the true condition of the vehicle were not known. After learning of the extensive damage to the vehicle and the great expense that would be required to make the car sellable, the only commercially reasonable option available to Jordan was to sell the Collateral as salvage. At that point, Jordan had received no offers to purchase the vehicle.

Furthermore, Jordan's inquiry into the value of the vehicle indicated that even if the necessary repairs were performed, the wholesale value of the vehicle would only be about \$3,500.00. In Jordan's experience, sales after repossession generally only bring approximately wholesale value, or slightly less. (R. at 120, ¶ 14; Ex. C.)

14. After considering these factors, and after receiving no communication from Mr. Suniville, Jordan sought offers from salvage yards and accepted the only offer it received, which was for \$200.00 from Midvale All Small Auto, Inc.. Jordan sold the vehicle to Midvale All Small Auto on or about January 17, 2008. R. at 121, ¶ 15; R. at 152, ¶ 5; *see* Ex. C and Ex. G attached hereto.)

15. After the disposition of the Collateral, Jordan sent a letter to Mr. Suniville at his record address informing him that the Collateral had been sold and that after applying the sale proceeds to his loan, the deficiency that remained was \$8,778.12, plus collection costs, attorney fees and interest at the rate of 5.5% per annum accruing as of January 26, 2008. (R. at 121, ¶ 16; Ex. C.)

SUMMARY OF ARGUMENTS

I. MR. SUNIVILLE HAS FAILED TO MARSHAL THE EVIDENCE.

Rule 24(a)(9) of the Utah Rules of Appellate Procedure require an appellant to marshal the evidence against him and meticulously demonstrate how the evidence does not support the factual findings of the trial court. Mr. Suniville did not marshal the evidence or show that the findings of fact are clearly erroneous and lacking in support.

II. THE TRIAL COURT PROPERLY CONSIDERED MR. SUNIVILLE'S MEMORANDUM IN OPPOSITION.

Although the trial court concluded that Mr. Suniville's memorandum in opposition was untimely, the court nevertheless considered all of the arguments and documents Mr. Suniville submitted, including Mr. Suniville's memorandum in opposition, as demonstrated in the court's Memorandum Decision and Order. The trial court properly ruled against Mr. Suniville after considering all of his documents and arguments.

III. MR. SUNIVILLE WAS NOT ENTITLED TO APPOINTED COUNSEL NOR TO STAY THE PROCEEDINGS.

The trial court properly denied Mr. Suniville's request for appointment of an attorney, as a civil litigant has no right to court-appointed counsel. Furthermore, the trial court properly declined to stay the proceedings for over a year pending Mr. Suniville's release from prison.

IV. THE TRIAL COURT PROPERLY CONSIDERED AND DISCOUNTED MR. SUNIVILLE'S INADMISSABLE EVIDENCE.

Mr. Suniville failed to meet his burden under Rule 56(e) of the Utah Rules of Civil Procedure. None of the purported evidence he submitted to the trial court was admissible. The trial court therefore properly granted summary judgment in favor of Jordan Credit Union.

V. JORDAN WAS WITHIN ITS RIGHTS TO REPOSSESS THE VEHICLE FOLLOWING MR. SUNIVILLE'S ARREST AND INCARCERATION.

Mr. Suniville defaulted under the terms of the Agreement between the parties because he lost possession of the vehicle as a result of his incarceration. Mr. Suniville further breached the Agreement by not keeping the vehicle in good condition or repair. Jordan was therefore within its contractual rights to repossess the vehicle.

VI. JORDAN'S DISPOSITION OF THE VEHICLE WAS COMMERCIALY REASONABLE.

Jordan materially complied with the obligations imposed by the loan and security agreement as well as the Utah Commercial Code for disposition of repossessed collateral. Notice was properly given, despite a harmless error concerning Jordan's notice of the anticipated sale of the vehicle. The sale was to a third party in an arms length transaction, with no self dealing, in a manner recognized for this type of collateral. Thus, the sale was for commercially reasonable.

VII. JORDAN IS ENTITLED TO AN AWARD OF ITS ATTORNEY'S FEES ON APPEAL.

Jordan is entitled to an award of its attorney's fees on appeal pursuant to the Agreement between the parties, and in accordance with Utah law.

ARGUMENT

I. MR. SUNIVILLE HAS FAILED TO MARSHAL THE EVIDENCE.

Although, strictly speaking, the granting of summary judgment is a question of law, it is clear from Mr. Suniville's brief that he hotly contests the finding of facts that undergird the lower court's ruling. Specifically, Mr. Suniville wants to dispute whether the Court correctly accounted for the condition of the vehicle at the time Jordan sold it to the salvage yard. Mr. Suniville further attempts to dispute whether Jordan gave adequate notice of its intentions after it repossessed the car, and whether the sale of the car was commercially reasonable at all. The problem is that Mr. Suniville failed to put any admissible evidence in front of the trial court that might have created a dispute of material fact. Mr. Suniville now has a similar problem on appeal, in that he has failed to marshal the evidence, much less identify any fatal flaw in the lower court's reasoning.

It is the duty of the appellant challenging a factual finding to marshal the evidence that supports the challenged finding. Utah R. App. P. 24(a)(9); *See also Wardley Better Homes and Gardens v. Cannon*, 2002 UT 99, ¶ 14, 61 P.3d 1009. The appellant must then demonstrate that, even with this evidence, the findings of fact are clearly erroneous and lacking in support. *Hill v. Estate of Allred*, 216 P.3d 929, 943 (Utah 2009). Mr. Suniville has failed to meet his obligation to show that the findings of the trial court were erroneous and that the grant of summary judgment was therefore against the great weight of the evidence. Consequently, the findings of fact (as set forth in the "Background"

section of the lower court's Memorandum Decision and Order) are presumed to be correct.

See Johnson v. Higley, 1999 UT App 106, ¶ 31, 977 P.2d 1209.

II. THE TRIAL COURT PROPERLY CONSIDERED MR. SUNIVILLE'S MEMORANDUM IN OPPOSITION.

Mr. Suniville suggests that the trial court improperly failed to consider his memorandum in opposition because the trial court believed that it was untimely. For the record, Jordan concedes that it received Mr. Suniville's memorandum in a timely fashion after filing its motion for summary judgment. For whatever reason, the memo in opposition was not filed with the court (or, at least it was not stamped in) until January 5, 2009, approximately one month after Mr. Suniville mailed the memorandum to counsel for Jordan.¹ (*See* R. at 175; *See* Ex. E.)

In its Memorandum Decision and Order, the court concluded that the memorandum in opposition was untimely. (R. at 232; *See* Ex. A.) Nevertheless, the court went on to consider all of the arguments and documents that Mr. Suniville had submitted, just as the court said it would do during oral argument. (R. at 232-235; *see* Ex. A. *See also* R. at 283, page 19, lines 22-23.) Those arguments included: (a) whether Mr. Suniville was current with his car payments; (b) whether Jordan had given adequate notice of the sale;

¹Not all of Mr. Suniville's opposing documents were filed on time, however. The unsigned affidavits of Ron Hinckley (Mr. Suniville's prison caseworker) and Mirror Image Auto Body and Paint, together with a Notice Regarding New Evidence, were not filed until late February, 2009, nearly three months after Mr. Suniville sent his memorandum in opposition to counsel for Jordan, and well after his deadline to file a response to Jordan's motion for summary judgment. (*See* R. at 210 and 225.)

and (c) whether the vehicle was in working condition when it was repossessed. (R. at 233-235; *see* Ex. A.) After considering all of that, the court concluded that Mr. Suniville's opposition was "substantively lacking" and ruled against him anyway.² (*Id.*) The argument that the court failed to consider Mr. Suniville's memorandum is without merit.

III. MR. SUNIVILLE WAS NOT ENTITLED TO APPOINTED COUNSEL NOR TO STAY THE PROCEEDINGS.

Mr. Suniville next argues that the trial court should not have denied his request for appointed counsel or to stay of the proceedings until his release from prison, scheduled for March 23, 2010. (*See* Appellant's Brief, at 8.) Again, this argument is without merit. Mr. Suniville is not entitled to have counsel appointed for him in a civil matter. *See State v. Young*, 853 P.2d 327, 354 (Utah, 1993) ("We note that Defendant has no right to counsel in a civil case"). Furthermore, the court informed Mr. Suniville from the beginning of the case that choosing to represent himself would come with certain consequences and he chose to proceed on his own anyway. (*See* R. at 56.) That was his choice, and it is his problem. The court properly denied the motion to appoint counsel.

²The trial court concluded that the evidence Mr. Suniville offered consisted of "hearsay, unsubstantiated opinions, and irrelevancies." (R. at 233; *see* Ex. A.) To illustrate, Mr. Suniville submitted: (1) the unsigned affidavit of his prison caseworker (R. at 210; *see* Ex. H.); (2) the affidavit of Shannon Weirick, who is the *wife* of a mechanic who had reportedly performed work on the car (R. at 225, *see* Ex. J); and (3) various other documents offered with no foundation or basis for admission (R. at 84-101).

The court also correctly denied Mr. Suniville's request to stay the proceedings for over a year until he was released from prison. There was and remains no legal basis for his request to stay the proceedings. While Mr. Suniville's current housing situation is lamentable, it is nonetheless one of his own making. Allowing this matter to sit on the trial court's calendar for over a year would have resulted in undue delay and prejudice to Jordan Credit Union. Thus, the Court properly denied the request to stay the proceedings.

IV. THE TRIAL COURT PROPERLY CONSIDERED AND DISCOUNTED MR. SUNIVILLE'S INADMISSABLE EVIDENCE.

Mr. Suniville next argues that the court ignored "pivotal and key evidence." (*See, e.g.,* Appellant's Brief, at 9.) This argument is without merit. Again, the court states in its Memorandum Decision and Order that it considered Mr. Suniville's submissions, generally, and specifically referred to the unsigned affidavit of Mr. Suniville's prison caseworker, who speculated that the car must have been functional when Mr. Suniville was arrested. (R. at 233-35; *see* Ex. A.) The problem is that none of Mr. Suniville's purported evidence was admissible.

Rule 56(e) of the Utah Rules of Civil Procedure says:

Supporting and opposing affidavits shall be made *on personal knowledge*, shall set forth such facts *as would be admissible in evidence*, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest

upon the mere allegations or denials of the pleadings, but *the response*, by affidavits or as otherwise provided in this rule, *must set forth specific facts showing that there is a genuine issue for trial. Summary judgment, if appropriate, shall be entered against a party failing to file such a response.* (Emphasis added.)

None of Mr. Suniville's purported evidence rose to the level of creating a dispute of material fact for the purposes of Rule 56(e). Not only did Mr. Suniville fail to submit signed affidavits, the purported testimony in the affidavits was speculative, contained hearsay, or was without foundation altogether. (*See* R. at 210, 225; *see* Ex's H and J.)

Take for example, the Affidavit signed by Shannon Weirick.³ (R. at 225; Ex. J.) Ms. Weirick is the wife of the mechanic who allegedly worked on the vehicle a few months prior to its repossession. Ms. Weirick had no personal knowledge concerning the inspection of the vehicle. Hence, her testimony is inadmissible hearsay. (*See* Utah R. Evidence, Rules 802, 803, and 804.) The unsigned affidavit of Ron Hinckley also contains hearsay and opinion testimony concerning a portion of a report that he did not produce describing events to which he was not present. (R. at 210; Ex. H.) Finally, Mr. Suniville wanted the court to consider other documents, such as value and repair estimates, that were submitted without any hint of authentication or foundation, and were not attached to any sworn testimony at all. (*See* R. at 84-101, 220.) Mr. Suniville cannot ignore the basic, fundamental rules of evidence and civil procedure, and expect to create a dispute

³The unsigned affidavit appears in its entirety in the Record at 225. The signature page, which is only signed by Mrs. Weirick, appears in the Record at 221. (*See* Ex. I.)

of material fact for the purposes of Rule 56 - much less prevail on any of his claims or defenses. More importantly, Mr. Suniville cannot accuse the lower court of ignoring pivotal and key evidence, when he did not put any admissible evidence before the court in the first place.

V. JORDAN WAS WITHIN ITS RIGHTS TO REPOSSESS THE VEHICLE FOLLOWING MR. SUNIVILLE'S ARREST AND INCARCERATION.

Next, Mr. Suniville essentially argues that Jordan breached the loan agreement by repossessing the vehicle at issue solely as a result of Mr. Suniville's incarceration. Again, Mr. Suniville is wrong. The Retail Installment Contract and Security Agreement, which Mr. Suniville signed on October 5, 2005, requires Mr. Suniville to keep the vehicle in his possession and in good condition and repair." (R. at 125-26, *see* "Ownership and Duties Toward Property", paragraph D; Ex. C.) He was also required to keep the vehicle at the address listed on page 1 of the Agreement, unless otherwise agreed in writing. (*Id.*) The Agreement goes on to say that Mr. Suniville will be in default if he fails to perform any obligation set forth in the Agreement, or Jordan believes in good faith that he cannot or will not perform his obligations. (*Id.*, *see* "Default".) In the event of default, the Agreement gives Jordan the right to immediately repossess the vehicle. (*Id.*, *see* "Remedies", paragraph D; Ex. C.)

Mr. Suniville breached the Agreement when the vehicle was impounded as a result of his arrest for driving under the influence. (*See* R. at 128; Ex. C.) Because of these

events, the vehicle was no longer stored at Mr. Suniville's address, and he no longer had possession of the vehicle. Mr. Suniville further breached the Agreement by failing to keep the vehicle in good condition and repair. (*See* R. at 133-137; Ex. D.) Jordan was therefore within its contractual rights to repossess the vehicle.

VI. JORDAN'S DISPOSITION OF THE VEHICLE WAS COMMERCIALY REASONABLE.

In addition, despite Mr. Suniville's arguments to the contrary, Jordan's subsequent sale of the vehicle was commercially reasonable, and was consistent with the requirements of the Uniform Commercial Code as set forth in Utah Code Ann. § 70A-9a-601 *et. seq.* After default, a secured party is allowed to take possession of collateral securing a debt. (*See* U.C.A. § 70A-9a-609.) Following repossession the secured party may dispose of the collateral by commercially reasonable means. (*See* U.C.A. § 70A-9a-610.) If the sale is commercially reasonable, the "secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms." *Id.* Whether a sale is commercially reasonable depends upon whether the sale is made, "(1) in the usual manner on any recognized market, (2) at the price current in any recognized market at the time of the disposition, or (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition." (U.C.A. § 70A-9a-627(2).)

A pre-requisite to the disposition is notice to the debtor of the repossession and intended disposition of the collateral. (*See* U.C.A. § 70A-9a-611.) This notice must contain the information set forth in U.C.A. § 70A-9a-614. Then a creditor may dispose of the collateral and apply the proceeds of the sale first to the costs of sale and repossession, second to the loan balance owed to the creditor, and finally to any subordinate security interests. (*See* U.C.A. § 70A-9a-615.) The debtor is then entitled to proceeds in excess of the loan amount or is liable for any deficiency. *Id.* When disposing of collateral, the creditor has an obligation to secure the best possible price, but is under no obligation to use extraordinary means to obtain that price. *Chrysler Dodge Country, U.S.A, Inc., v. Curley*, 782 P.2d 536, 541 (Utah Ct. App. 1989).

Jordan notified Mr. Suniville of the repossession of the vehicle by way of a letter, dated December 11, 2007, that was sent to the address listed on the first page of the Agreement. (*See* R. at 125, 130.) Having notified Mr. Suniville of the acceleration of the debt and that the car would be sold after December 20, 2007, if he had not paid the loan in full, and having received no communication from Mr. Suniville thereafter, Jordan proceeded to market the car for sale as is, but received no offers. (R. at 120, ¶¶ 11-12; Ex. C.) Jordan had the vehicle examined by a mechanic who determined that it required in excess of \$2,500 in repairs. (R. at 120, ¶¶ 13-14; Ex. C. *See also* R. at 133-137; Ex. A.) Jordan decided that it would likely not recoup that expense in a later sale and elected

to sell the car for the best price it could get. (R. at 120, ¶ 14; Ex. C.) Jordan was offered \$200 and accepted the offer on January 17, 2008. (R. at 120, ¶ 15; Ex. C.)

Jordan's disposition of the vehicle was commercially reasonable under these circumstances, especially considering that the vehicle needed thousands of dollars of repair work. Requiring Jordan to expend thousands of dollars with no guarantee of recouping those funds, either through the sale or by adding them to the loan balance and seeking the deficiency, is an extreme measure that Jordan is not required to take under the *Chrysler Dodge* opinion. *See Chrysler Dodge*, at 541.

Nevertheless, Mr. Suniville attempts to dispute elements of the sale, specifically that the notice letter Jordan sent to him on December 11, 2007, only gave nine days's notice of Jordan's intent to advertise the vehicle for sale, instead of ten days, as required by the Agreement. (*See* R. at 126, "Remedies," paragraph E; Ex. C.) It is true that the Agreement provides that a notice of disposition would be sent no less than 10 days prior to any intended sale. And Jordan concedes that the letter provided only nine days' notice. However, the trial court correctly held that this was a harmless error because even if the extra day had been given, it would not have mattered as Mr. Suniville was still incarcerated and would not have received it in any case. (R. at 234; Ex. A.) In addition, the actual sale did not take place until January 17, 2008, more than five weeks after the date of the letter. (R. at 120, ¶ 15; Ex. C.) The lack of a full 10 day notice of the

intended sale was an immaterial breach, if a breach at all, and resulted in no harm to Mr. Suniville.

Finally, Mr. Suniville repeatedly raises the issue of the blue book value of his car. Although valuation is not an element of determining the commercial reasonableness of a sale, both parties nevertheless introduced printouts from online vehicle evaluators as evidence of the value of the car at the time of the sale. (R. at 99-102 and 132; Ex. C.) Jordan introduced its valuation by way of a sworn affidavit, while Mr. Suniville did not. (R. at 118, 132; Ex's B and C.) Ignoring the admissibility issue, Mr. Suniville's valuation greatly overestimates the value of his car by using values that did not account for the damage to the car. The car was not in excellent condition, as Mr. Suniville would have the Court believe. Based on the descriptions in the condition ratings, the car was in fair condition, at best, if not poor condition, putting the value between \$3,000 and \$4,000. The battle of competing estimates is moot, however, because Jordan could not find a single buyer in the wholesale community, that was willing to purchase the car in its damaged state. (R. at 120, ¶ 121; Ex. C.) Thus, the payment of \$200 by the salvage yard is an accurate reflection of the fair market value of the vehicle.

The trial court found that the diminished value of the car, together with the reduced sales prices at the auction and the extreme cost of making the car appealable to a buyer justified Jordan's decision to forgo the repairs and seek the best price it could get, as is.

Mr. Suniville produced no admissible facts to dispute this finding or to show that it was in error. This Court should do the same.

VII. JORDAN IS ENTITLED TO AN AWARD OF ITS ATTORNEY’S FEES ON APPEAL.

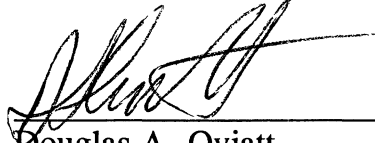
Jordan Credit Union hereby requests an award of the attorney’s fees and costs it has incurred on appeal pursuant to the “Default” section of the written agreement between the parties, which says, in relevant part, “If you default, you agree to pay our costs for collecting amounts owing, including, without limitation, court costs, attorneys’ fees, and fees for repossession, repair, storage and sale of the Property securing this Contract.” (R. at 126, “Default”; Ex. C.) Utah follows the American rule regarding attorney fees, which dictates that fees are generally recoverable only if provided for by statute or contract. *Culbertson v. Board of County Commissioners of Salt Lake County*, 2008 UT App 22, ¶9, 177 P.3d 621.

CONCLUSION

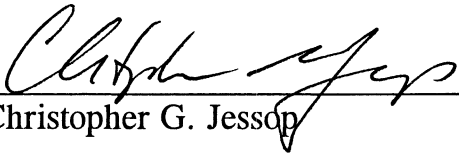
For the reasons set forth above, the decision of the trial court should be affirmed and Mr. Suniville’s appeal denied. The Court should also award Jordan its attorney’s fees and costs incurred on appeal, pursuant to the written agreement between the parties.

DATED this 4th day of November, 2009.

TERRY JESSOP & BITNER
Attorneys for Appellee Jordan Credit Union



Douglas A. Oviatt

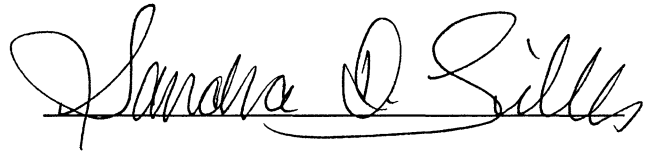


Christopher G. Jessop

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was mailed to the following at the address(es) indicated on the 4th day of November, 2009.

Harry F. Suniville, Jr.
#17265
c/o Utah State Prison
P.O. Box 250
Draper, Utah 84020

A handwritten signature in black ink, reading "Sandra D. Sillis". The signature is written in a cursive style with a horizontal line underneath the name.

I:\3\3681\579\Appeal\Appeal Brief - Suniville.wpd

ADDENDUM

EXHIBIT A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

<hr/>	:	MEMORANDUM DECISION AND ORDER
JORDAN CREDIT UNION,	:	
Plaintiff,	:	
vs.	:	CASE NO. 09040 03840
HARRY F. SUNIVILLE,	:	
Defendant.	:	
<hr/>		

On November 21, 2008, Plaintiff Jordan Credit Union ("JCU") submitted its Motion for Summary Judgment. Defendant Harry Suniville filed an opposition and JCU responded. A hearing was held March 2, 2009, and the Court took the matter under advisement. The motion is now ready for decision.

BACKGROUND

On October 5, 2005, Mr. Suniville signed a Retail Installment Contract and Security Agreement ("Contract") with JCU for the purchase of a car. Mr. Suniville borrowed \$12,829.00 and agreed to make monthly payments, using the car as collateral. The Contract provided that Mr. Suniville would keep the car in his possession and in good condition and repair. It also provided that default would occur upon failure to perform a contractual obligation, or when JCU, "in good faith, believe[s] that you cannot, or will not, perform the obligations you have agreed to in this Contract." The Contract provided that upon default JCU could accelerate the entire debt, repossess the car, and initiate legal action to collect the amount left owing after the car is sold, plus collection costs, attorney fees, court costs, towing fees, repossession costs, repairs and storage costs.

On December 3, 2007, JCU was notified that Mr. Suniville's car had been impounded. JCU deemed this a default under the Contract and repossessed the car. On December 11, 2007, JCU sent a letter to Mr. Suniville's address of record notifying him that it was repossessing the car, but that in the alternative Mr. Suniville could pay off the balance and impound fee by December 20, 2007 and retain the vehicle. Mr. Suniville did not respond within the given time period.

JCU attempted to sell the car at auction but found no buyers. JCU's mechanic found that the car required about \$2600.00 worth of repairs, excluding necessary engine work, but even then the car would likely sell for about \$3500-\$4000, yielding a slim, if any, profit. JCU opted for the less burdensome route and on January 23, 2008 sold the car to a junk yard for \$200.00. JCU moves for summary judgment on its claims of breach of contract and unjust enrichment, requesting the Court to order Mr. Suniville to pay \$8778.12 in unpaid principal, plus impound fees, interest on the loan, and attorney fees and court costs.

DISCUSSION

Rule 7(c)(1), Utah Rules of Civil Procedure, requires an opposition to a motion to be filed within ten days of service of the motion. Mr. Suniville filed his objection on January 5, 2009, over six weeks from the date JCU filed its motion. Mr. Suniville's opposition is untimely. The Court affords pro se litigants "every consideration that may reasonably be indulged." *Thompson v. Dep't of Corrections*, 2007 UT App 97, *1 (unpublished) (quoting *Nelson v. Jacobsen*, 669 P.2d 1207, 1213 (Utah 1983)). Nevertheless, "[a] party who represents himself will be held to the same standard of knowledge and practice as any

qualified member of the bar.” *In re Cannatella*, 2006 UT App 89, ¶ 5, 132 P.3d 684 (citation omitted). Mr. Suniville's motions and oppositions filed with this Court lack proper titles, form and content, both procedural and substantive.

Even if Mr. Suniville had filed a timely opposition, his objection is substantively lacking. He has not demonstrated an issue of material fact as required to defeat a motion for summary judgment. His submissions are based upon hearsay, unsubstantiated opinions, and irrelevancies. Mr. Suniville argues that he never missed a car payment, so he has not defaulted on the contract. However, JCU based its determination of default on the fact that the car had been in impound for a week before JCU was notified by the impound lot and that JCU did not receive any response to the letter it sent Mr. Suniville. That Mr. Suniville had diligently paid his monthly payments for over two years is irrelevant; JCU reasonably concluded that Mr. Suniville had defaulted under the terms of the contract.

Mr. Suniville argues that the \$200.00 JCU recovered from the sale of the car was below its actual value and that JCU failed to mitigate damages. JCU complied with the Utah Uniform Commercial Code in its reasonable attempt to sell the repossessed car. The statute allows a creditor to sell collateral in a “commercially reasonable manner,” meaning:

- (a) in the usual manner on any recognized market;
- (b) at the price current in any recognized market at the time of the disposition; or
- (c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

Utah Code Ann. § 70A-9a-627(2). The Utah Court of Appeals held that the sale of a repossessed car is commercially reasonable if: (1) the lender does not engage in self-dealing, (2) the debtor is given notice of the sale, and (3) the lender advertises the sale and

gets a fair price. *Chrysler Dodge Country, U.S.A., Inc. v. Curley*, 782 P.2d 536, 539-42 (Utah Ct. App. 1989). Here, JCU sold the car to a junk yard, so it did not engage in self-dealing. It also gave Mr. Suniville notice by letter that it was repossessing the car and would sell it unless Mr. Suniville paid off his loan within a given period of time. While JCU gave Mr. Suniville one day less than the 10 days notice required by the Agreement, the error was harmless because even if the letter had given Mr. Suniville another day, Mr. Suniville would not have received the letter in time because it went to his mother's house and he was incarcerated. As the court in *Chrysler Dodge* found in a similar fact-situation, "there is no evidence that [the creditor] was injured by lack of notice." *Id.* at 541. Lastly, JCU was required to sell the car through advertising and for a fair price. *Id.* The Utah Court of Appeals held:

It is the duty of the secured party to obtain the best possible price for the benefit of the debtor. However, the secured party does not have to use extraordinary means. . . . There is no requirement or prohibition that the dealer must sell at wholesale or retail, but only that the secured party obtains the best possible price under the circumstances. . . . "Of prime importance, are the secured party's attempts to obtain a fair price for the collateral by advertising the collateral or otherwise notifying potential buyers that the collateral is for sale." . . . Public advertising is not mandatory, however.

Id. at 541 (citations omitted). JCU attempted to sell the car at auction and got no bidders. It could have put a considerable amount of repairs into the car, but there was no guarantee that it would recoup its investment. Under the circumstances, JCU decided to cut its losses and get the \$200.00.

Mr. Suniville argues that there is an issue of material fact regarding whether the car was in running order at the time of impoundment on December 3, 2007. He submitted an

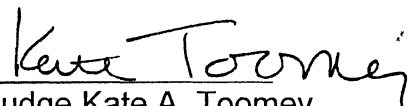
unsigned affidavit from his prison caseworker, who speculates that the car must have been functional since Mr. Suniville was arrested while driving the car. JCU's mechanic's sworn declaration stated that the car was not running. His testimony is based upon personal knowledge, unlike the conclusory statements submitted by Mr. Suniville.

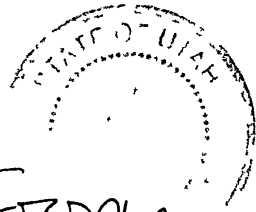
JCU was within its rights under the Contract to find Mr. Suniville in default. A court's determination of commercial reasonableness is to be determined on a case-by-case basis. *See Chrysler Dodge*, 782 P.2d. at 541. This Court has discretion to consider whether JCU's sale of the car was reasonable. JCU had previously attempted to sell the car at auction but had no bidders. The sale of the car for \$200.00 was a fair attempt to mitigate damages.

ORDER

As required for a motion for summary judgment, the Court draws all reasonable inferences in a light most favorable to the non-moving party. Employing these standards, the Court determines that Mr. Suniville has not demonstrated a genuine issue of material fact, and the Plaintiff is entitled to judgment as a matter of law. The Court GRANTS Plaintiff's Motion for Summary Judgment.

DATED this 6 day of April, 2009.


Judge Kate A. Toomey
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080903840 by the method and on the date specified.

MAIL: HARRY SUNIVILLE #17265 PO BOX 250 DRAPER, UT 84020

MAIL: RICHARD C TERRY 39 EXCHANGE PLACE STE 100 SALT LAKE CITY UT 84111

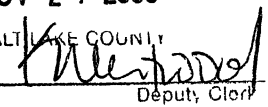
Date: April 6, 2009

Pat Jones
Deputy Court Clerk

EXHIBIT B

FILED DISTRICT COURT
Third Judicial District

NOV 21 2008

By 
SALT LAKE COUNTY
Deputy Clerk

Richard C. Terry, USB No. 3216
Douglas A. Oviatt, USB No. 12192
CORBRIDGE BAIRD & CHRISTENSEN
39 Exchange Place, Suite 100
Salt Lake City, Utah 84111
Telephone: 801/534-0909

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

JORDAN CREDIT UNION,

Plaintiff,

v.

HARRY F. SUNIVILLE,

Defendant.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO
DEFENDANT'S RENEWED MOTION
TO DISMISS**

Civil No. 080903840

Judge Kate Toomey

Plaintiff, Jordan Credit Union (hereinafter "Jordan"), by and through the undersigned counsel of Corbridge, Baird & Christensen, hereby submits the following Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Motion to Dismiss as follows:

ARGUMENT RE: MOTION TO DISMISS

Plaintiff requests that this renewed Motion to Dismiss be denied. Defendant previously filed a motion to dismiss on August 29, 2008. That motion was reviewed by this Court and was

dismissed. The issue having already been reviewed and denied by this Court, Plaintiff asks the this renewed motion also be denied. This renewed motion raises no new issues or presents any new and relevant facts to be addressed and denial is proper. In addition, Plaintiff objects to the entirety of Defendant's motion as hearsay and lacking any proper foundation. The motion consists of nothing more than baseless accusations and conclusions, none of which are supported by a single piece of relevant and admissible evidences. Because Defendant has provided no admissible evidence for the Court to consider in connection with his motion to dismiss, the same should be denied.

In the alternative, should the Court find merit in Defendant's position, Plaintiff requests that the Court also consider the facts and argument presented below in support of summary judgment in reviewing and ruling on the motion to dismiss. Plaintiff's request is made on the grounds of judicial economy in that the facts and argument offered in support of and favoring summary judgment in this case also adequately and appropriately address Defendant's points and support denial of the motion to dismiss, Plaintiff believes it is prudent and an economical use of the Court's time to avoid unnecessary duplication by filing a separate response to the motion to dismiss.

FACTS

The following facts are established by the Complaint, attached documents and affidavits:

1. On or about October 5, 2005, Defendant Harry Suniville executed a Retail Installment Contract and Security Agreement (hereinafter "Agreement") in connection with the

purchase of a 2003 Mitsubishi Eclipse (“Collateral”), a copy of which is attached to the Affidavit of Michelle Rogers as Exhibit “A” and incorporated herein by reference. (Affidavit of Michelle Rogers, ¶ 4).

2. Jordan has performed all of its obligations under the Agreement. (Affidavit of Michelle Rogers, ¶ 5).

3. On or about December 3, 2007, Jordan received a notice from the Utah State Tax Commission that the Collateral had been impounded. A true and correct copy of this notice is attached to the Affidavit of Michelle Rogers as Exhibit “B”. (Affidavit of Michelle Rogers, ¶ 6).

4. Because the Collateral had been impounded and was no longer in Defendant’s possession, Defendant was in default under the terms of the Agreement. While the Collateral remained impounded, storage and impound fees were continuing to accrue and Plaintiff learned that the vehicle had extensive body damage and would not start. On the good faith belief that he would be unable to make the required payments on the loan, and to mitigate the damage and protect its interest in the Collateral, Jordan repossessed the Collateral from the impound lot on or about December 10, 2007. (Affidavit of Michelle Rogers ¶ 7).

5. Under the terms of the Agreement, any failure to perform any obligation under the Agreement, or the good faith belief by the lender that an obligation would not or could not be performed, is considered a default. (Affidavit of Michelle Rogers, ¶ 8 ; Exhibit A, Page 2, Section “Default”).

6. Defendant consented, by signing the Agreement, that upon default, he was liable to Plaintiff for all collection costs, including attorney fees, court costs, and fees for towing, repossession, repair, and storage. (Affidavit of Michelle Rogers, ¶ 9 ; Exhibit A, Page 2, Section “Default”).

7. Upon default, Plaintiff was permitted to avail itself of one or more of several remedies listed in the Agreement. These included acceleration of the entire debt, pay any fees incurred and/or costs of repair (to be added to the principal debt amount), repossession and sale of the collateral, and initiate a legal action to collect on any amounts left owing after the sale. (Affidavit of Michelle Rogers, ¶ 10; Exhibit A, Page 2, Section “Default”).

8. On or about December 11, 2007, a letter was sent to Defendant at the address he provided to Jordan stating that the collateral had been repossessed due to the impound action. A true and correct copy of this letter is attached to the Affidavit of Michelle Rogers as Exhibit “C”. This letter explained that the costs of impound and repossession totaled \$869.00 and had been added to the loan balance. The letter further stated that the debt had been accelerated and that Defendant needed to pay to Jordan on or before December 20, 2007 the entire loan balance, \$9,312.37 and that failure to do so would result in Jordan selling the Collateral and that Defendant would be liable for any deficiency between the sale price and the loan balance. (Affidavit of Michelle Rogers, ¶ 11).

9. When the deadline passed and Jordan had received no communication from Defendant, the Collateral was advertised for sale to the auto wholesale community, the usual and

customary procedure for the industry. Due to the damage and condition of the vehicle, there was no interest in purchasing the vehicle. (Affidavit of Michelle Rogers, ¶ 12).

10. In response to the lack of interest due to the damage, Jordan delivered the vehicle to a mechanic for inspection and evaluation. (Affidavit of Michelle Rogers, ¶ 13).

11. Through this inspection it was determined that the vehicle had not been kept in good condition and repair as required by the Agreement. There were many issues, both aesthetic and mechanical, that required extensive parts and labor to correct. A copy of the estimate of Ken Martinez dated January 12, 2008 indicates that the Collateral required more than \$2,500.00 in body work. In addition, the engine also needed work as it would not start. (Declaration of Ken Martinez ¶¶ 6-7, Exhibit A).

12. At the time of the initial notice of repossession sent to Defendant, the issues related to the true condition of the vehicle were not known. After learning of the extensive damage to the vehicle and the great expense that would be required to make the car saleable, the only commercially reasonable option available to Jordan was to sell the Collateral as salvage. At that point no offers to purchase had been received and an inquiry into the value of the vehicle indicated that even after the repairs wholesale value was only around \$3,500.00 and sales after repossession generally only bring approximately wholesale value, or slightly less. Attached to the Affidavit of Michelle Rogers as Exhibit "D" is a true and correct copy of the current wholesale value of the Collateral. (Affidavit of Michelle Rogers, ¶ 14).

13. After considering these factors and after receiving no communication from Defendant, Jordan sought offers from salvage yards and accepted the only offer received, which was for \$200.00 from Midvale All Small Auto, Inc., selling the vehicle on or about January 23, 2008. (Affidavit of Michelle Rogers, ¶ 15).

14. After the disposition of the Collateral, a letter was sent to Defendant at his record address informing him that the Collateral had been sold and that after applying the sale proceeds to his loan, the deficiency that remained was \$8,778.12, plus collection costs, attorney fees and interest at the rate of 5.5% per annum accruing as of January 26, 2008. (Affidavit of Michelle Rogers, ¶ 16).

15. Demand for payment has been made and is hereby made upon Defendant for all sums due and owing pursuant to the terms of the Agreement, but Defendant has failed and refused to make payment. (Affidavit of Michelle Rogers, ¶ 17).

16. Jordan has been required to employ counsel in order to enforce the terms of the Agreement. Pursuant thereto, Defendant is responsible for all collection costs and legal expenses, including reasonable attorney's fees, incurred by Jordan in enforcing the Agreement. (Affidavit of Michelle Rogers, ¶ 18).

17. Defendant Harry Suniville executed the Agreement as set forth in Jordan's First Cause of Action, and pursuant thereto received the use and benefit of funds. (Affidavit of Michelle Rogers, ¶ 19).

18. Defendant has had the use, benefit and possession of all the funds loaned to him without compensating Jordan, all to the detriment of Jordan. Defendant currently has the use and possession of those funds. (Affidavit of Michelle Rogers, ¶ 20).

19. The amount of unjust enrichment received by Defendant through January 26, 2008, under the Agreement is the sum of \$8,788.12, together with interest at the highest legal rate from January 26, 2008, until paid in full. (Affidavit of Michelle Rogers, ¶ 21).

20. Jordan has been required to retain the services of an attorney in order to seek compensation for Jordan for the amount of unjust enrichment conferred upon Defendant. Jordan is entitled to an award of attorney fees. (Affidavit of Michelle Rogers, ¶ 22).

ARGUMENT

I. JORDAN CREDIT UNION IS ENTITLED TO DAMAGES FOR BREACH OF AGREEMENT

Summary judgment is appropriate in this case because there is no material dispute that Defendant breached the Agreement, that Plaintiff acted in conformity with the Agreement and the law in repossessing and selling the vehicle, or that Defendant remains obligated on the remaining loan balance. Utah Rule of Civil Procedure 56(c) provides that summary judgment should be granted where there is no dispute as to any material fact and the moving party is entitled to a judgment as a matter of law. Plaintiff in this case is entitled to summary judgment under this standard.

The material facts in this case are undisputed. Defendant executed the Agreement with Plaintiff in which he promised to repay to Plaintiff the sum \$12,829.00 plus interest in exchange

for Plaintiff loaning to Defendant a total of \$12,829.00. As security for the loan, Defendant pledged the Collateral, purchased with the proceeds of loan. By signing the Agreement, Defendant also made several other promises, including that he would maintain possession of the Collateral at all times, keep the Collateral at his residence, maintain the vehicle in a condition of good repair, and to notify Plaintiff of any loss or damage.

The Agreement further provided that any failure on the part of Defendant to fulfill these obligations would be considered a default of the Agreement, which default then permitted Plaintiff to exercise any or all of the agreed upon remedies. Those remedies included debt acceleration, repossession of the Collateral, power of sale to dispose of the Collateral in the event no payment is received, and to file legal action to collect any deficiency. Defendant also agreed that he was responsible for any and all fees related to collection, repossession and disposition of the Collateral. The Agreement also provided that any notice required regarding the repossession or intended sale of the Collateral was deemed reasonable if mailed or delivered to the last known address on file with Plaintiff.

There is no dispute that the Collateral was impounded, dispossessing Defendant of the Collateral. There is no dispute that the Collateral was damaged and not kept in good repair. In addition to the extensive body damage, there was an unidentified mechanical issue that prevented the vehicle from even starting. There can be no dispute, in good faith, that these facts constitute default under the Agreement.

Plaintiff had a good faith belief that Defendant would now be unable to meet his obligations under the Agreement. Because Defendant was in default, Plaintiff exercised its contractual and legal rights and repossessed the Collateral. Pursuant to the Agreement, Plaintiff provided notice to Defendant of the repossession and acceleration of the debt, and his right to cure the default by paying all sums then due and owing. This notice was mailed to the only known address on file with Plaintiff, incidentally the very address provided by Defendant on the Agreement.

A further default occurred after Plaintiff received no response from the Defendant, much less the full demanded payment. Defendant's prior pleadings evidence a grave misunderstanding of the nature of Plaintiff's causes of action. Plaintiff has claimed that Defendant failed to make the required payment. This claim is based on the fact that the debt was accelerated by Plaintiff following default and pursuant to the Agreement. Defendant did not make that payment when due and Plaintiff then exercised its right to dispose of the collateral and seek the deficiency from the Defendant. Plaintiff understands now that Defendant was incarcerated at that time. However, Plaintiff had no knowledge at that time that Defendant's situation was any different from the many other cases in which debtor's simply defaulted and attempted to walk away from their obligations. Defendant's incarceration was the result of his own choices, and should not be seen as a means of escaping liability for other obligations.

Defendant has repeatedly inferred that Plaintiff had a duty to use every effort to track him down, assumably by calling throughout the phonebook and by searching the state's jails. By making this argument, Defendant fails to acknowledge that the duty to communicate was his. It

was his duty to care for the vehicle, to prevent its impound, and to understand the Agreement he signed. While his circumstances may be unfortunate, they are not to be seen as relieving him of his duties, especially when he made no effort to communicate them to Plaintiff.

Defendant contractually agreed to be obligated on any deficiency, has defaulted on the Agreement multiple times, was given proper and reasonable notice of the default and the pending action, and failed to cure the default as provided. Plaintiff recognizes that Defendant was incarcerated and is not unsympathetic, however, Plaintiff did all it was required or could be expected to do in this matter. Fairness and justice dictate that Defendant be made to honor his obligations.

II. THE SALE OF THE COLLATERAL WAS COMMERCIALY REASONABLE.

In repossessing and disposing of the Collateral, Plaintiff was required to ensure the disposition was commercially reasonable. Plaintiff's sale of the repossessed vehicle was commercially reasonable under Article 9 of the Uniform Commercial Code (as codified in Utah Code Ann. § 70A-9a *et.seq.*). Section 70A-9a-627(2) of the Utah Code Annotated reads as follows:

. . . (2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made: (a) in the usual manner on any recognized market; (b) at the price current in any recognized market at the time of the disposition; or (c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

Utah Code Ann. § 70A-9a-627(2). In interpreting this section, the Utah Court of Appeals ruled that the sale of a repossessed vehicle was commercially reasonable where there was no self dealing on the part of the dealer/lender, reasonable notice of the sale was given to the debtor, and the vehicle was sold for a fair price. *See Chrysler Dodge Country, U.S.A., Inc. v. Curley*, 782 P.2d 536-542 (Ut. Ct. App. 1989).

In this case, there was no self-dealing. The vehicle was sold in an arms-length transaction to an uninterested third party. Notice was provided to Defendant of the repossession and that unless full payment of the accelerated debt was made by a certain date, the vehicle would be sold. This notice was provided to Defendant at the only address Plaintiff had been provided and the only address Plaintiff had knowledge of as a means of communicating with Defendant.

Finally, the vehicle was sold for a fair price under the circumstances. Plaintiff initially attempted to sell the vehicle in the manner usual and customary among the financial institutions at public auction. These auctions typically result in a sale of the vehicle at or near the approximate wholesale value of the vehicle. The current wholesale price of the vehicle is between \$3,200 and \$4,400. Plaintiff had the Collateral inspected by an experienced mechanic who determined there to be at least \$2,600.00 in damage, not including engine repairs. It would have been commercially *unreasonable* for Plaintiff to expend what was likely to be well in excess of \$3,000.00 to make the Collateral saleable, increasing the total loan debt past \$12,000.00 for a vehicle that in perfect condition would likely not have resulted in a sale for more than \$3,500-\$4,000. It was then commercially reasonable to sell the Collateral for salvage. The net effect of either avenue was

essentially the same, a deficiency of between \$8,500 and \$9,000. The condition of the vehicle upon repossession was the result of the Defendant alone and he alone bears the responsibility for the consequences of his actions. Plaintiff made every effort to mitigate its damages and in the end opted for the less burdensome route.


Regardless of the disposition of the Collateral, Defendant was and remains obligated to repay to Plaintiff the loan. Defendant's promise to pay was unrelated to his continued possession of the vehicle. Plaintiff acted responsibly and in accordance with the law and the Agreement and should be granted judgment on its claims.

CONCLUSION

Because there is no material dispute as to any genuine issue of fact, and as a matter of law Plaintiff is entitled to judgment against Defendant, Plaintiff requests that judgment be granted in favor of Plaintiff and against Defendant in the amount of \$8,788.12 as of January 26, 2008, plus interest at the contract rate of 5.5% per annum until paid in full, plus attorney's fees and costs.

DATED this 21 day of November, 2008.

CORBRIDGE, BAIRD & CHRISTENSEN
Attorneys for Plaintiff

By: 
Douglas A. Oviatt

CERTIFICATE OF SERVICE

I certify that on the 21st day of November, 2008, I mailed, postage prepaid, a true and correct copy of the foregoing Memorandum of Points and Authorities in Support of Motion for Summary Judgment and in Opposition to Defendant's Renewed Motion to Dismiss to:

Harry F. Suniville
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT 84020

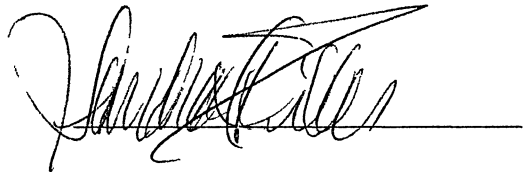
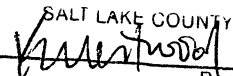
A handwritten signature in black ink, appearing to read "Harry F. Suniville", written over a horizontal line.

EXHIBIT C

FILED DISTRICT COURT
Third Judicial District

NOV 21 2008

Richard C. Terry, USB No. 3216
Douglas A. Oviatt, USB No. 12192
CORBRIDGE BAIRD & CHRISTENSEN
39 Exchange Place, Suite 100
Salt Lake City, Utah 84111
Telephone: 801/534-0909

By 
SALT LAKE COUNTY
Deputy Clerk

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

JORDAN CREDIT UNION,

Plaintiff,

v.

HARRY F. SUNIVILLE,

Defendants.

AFFIDAVIT OF MICHELLE ROGERS

Civil No. 080903840

Judge Kate Toomey

STATE OF UTAH)
) ss.
County of Salt Lake)

I, Michelle Rogers, being first duly sworn, hereby depose and state as follows:

1. I am employed by the Plaintiff, Jordan Credit Union (hereinafter "Jordan"), as a Collection Officer.
2. I am over the age of eighteen (18) and have personal knowledge of the facts stated herein.
3. I have personal knowledge of and am familiar with the Complaint on file herein. The allegations of Jordan Credit Union against the Defendant Harry Suniville are true.

4. On or about October 5, 2005, Defendant executed a Retail Installment Contract and Security Agreement (hereinafter "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

5. Jordan Credit Union has performed all of its obligations under the Agreements.

6. On or about December 3, 2007, Jordan received a notice from the Utah State Tax Commission that the Collateral had been impounded. A true and correct copy of this notice is attached to this Affidavit as Exhibit "B".

7. Because the Collateral had been impounded and was no longer in Defendant's possession, Defendant was in default under the terms of the Agreement. While the Collateral remained impounded, storage and impound fees were continuing to accrue and Plaintiff learned that the vehicle had extensive body damage and would not start. On the good faith belief that he would be unable to make the required payments on the loan and to mitigate the damage and protect its interest in the Collateral, Jordan repossessed the Collateral from the impound lot on or about December 10, 2007.

8. Under the terms of the Agreement, any failure to perform any obligation under the Agreement, or the good faith belief by the lender that an obligation would not or could not be performed, is considered a default.

9. Defendant consented, by signing the Agreement, that upon default, he was liable to Plaintiff for all collection costs, including attorney fees, court costs, and fees for towing, repossession, repair, and storage.

10. Upon default, Plaintiff was permitted to avail itself of one or more of several remedies

listed in the Agreement. These included acceleration of the entire debt, pay any fees incurred and/or costs of repair (to be added to the principal debt amount), repossession and sale of the collateral, and initiate a legal action to collect on any amounts left owing after the sale.

11. On or about December 11, 2007, a letter was sent to Defendant at the address he provided to Jordan stating that the collateral had been repossessed due to the impound action. A true and correct copy of this letter is attached to this Affidavit as Exhibit "C". This letter explained that the costs of impound and repossession totaled \$869.00 and had been added to the loan balance. The letter further stated that Defendant needed to pay to Jordan on or before December 20, 2007 the entire loan balance, \$9,312.37 and that failure to do so would result in Jordan selling the Collateral and that Defendant would be liable for any deficiency between the sale price and the loan balance.

12. When the deadline passed and Jordan had received no communication from Defendant, the Collateral was advertised for sale to the auto wholesale community, the usual and customary procedure for the industry. Due to the damage and condition of the vehicle, there was no interest in purchasing the vehicle.

13. In response to the lack of interest due to the damage, Jordan delivered the vehicle to a mechanic for inspection and evaluation.

14. At the time of the initial notice of repossession sent to Defendant, the issues related to the true condition of the vehicle were not known. After learning of the extensive damage to the vehicle and the great expense that would be required to make the car saleable, the only commercially reasonable option available to Jordan was to sell the Collateral as salvage. At that

point no offers to purchase had been received and an inquiry into the value of the vehicle indicated that even after the repairs wholesale value was only around \$3,500.00 and sales after repossession generally bring less than book value, or slightly less. Attached hereto as Exhibit "D" is a true and correct copy of the current wholesale value of the vehicle.

15. After considering these factors and after receiving no communication from Defendant, Jordan sought offers from salvage yards and accepted the only offer received, which was for \$200.00 from Midvale All Small Auto, Inc., selling the vehicle on or about January 23, 2008.

16. After the disposition of the Collateral, a letter was sent to Defendant at his record address informing him that the Collateral had been sold and that after applying the sale proceeds to his loan, the deficiency that remained was \$8,778.12, plus collection costs, attorney fees and interest at the rate of 5.5% per annum accruing as of January 26, 2008.

17. Demand for payment has been and is hereby made upon Defendant for all sums due and owing under the terms of the Agreement. Defendant has failed and refused to make payment.

18. Jordan has been required to employ counsel in order to enforce the terms of the Agreement. Pursuant thereto, Defendant is responsible for all collection costs and legal expenses, including reasonable attorney's fees, incurred by Jordan in enforcing the Agreement.

19. Defendant executed the Agreement as set forth in Jordan's First Cause of Action, and pursuant thereto received the use and benefit of funds.


20. Defendant has had the use, benefit and possession of all the funds loaned to him without compensating Jordan, all to the detriment of Jordan. Defendant currently has the use and possession of those funds.

21. The amount of unjust enrichment received by Defendant under the Agreement, through January 26, 2008, is the sum of \$8,788.12, together with interest at the highest legal rate from January 26, 2008, until paid in full.

22. Jordan has been required to retain the services of an attorney in order to seek compensation for Jordan for the amount of unjust enrichment conferred upon Defendant. Jordan is entitled to an aware of attorney fees.

FURTHER, THIS AFFIANT SAITH NAUGHT.

DATED this 13 day of November, 2008.

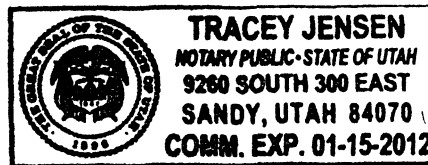

Michelle Rogers

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Subscribed, sworn to, and acknowledged before me this 13th day of November, 2008, by Michelle Rogers, signer of the above instrument, who duly acknowledged to me that she executed the same.


Notary Public

C:\Documents and Settings\Michelle Rogers\Local Settings\Temp\motion for summary judgment wpd



CERTIFICATE OF SERVICE

I certify that on the 21st day of November, 2008, I mailed, postage prepaid, a true and correct copy of the foregoing Affidavit of Michelle Rogers to:

Harry F. Suniville
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT 84020

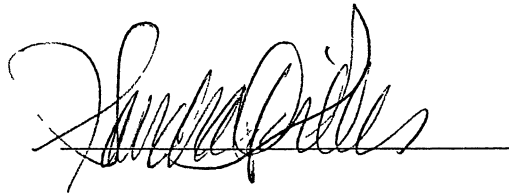
A handwritten signature in black ink, appearing to read "Suniville", is written over a horizontal line.

Exhibit “A”

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT	Seller	Buyer
	ACCESS AUTO 3968 SOUTH STATE SALT LAKE CITY, UT 84107	SUNIVILLE HARRY 2235 DALLIN ST SALT LAKE CITY, UT 84109
No	"We" and "us" mean the Seller above its successors and assigns	"You" and "your" mean each Buyer above and guarantor jointly and individually
Date 10/05/05		

SALE You agree to purchase from us on a time basis subject to the terms and conditions of this contract and security agreement (Contract) the Motor Vehicle (Vehicle) and services described below. The Vehicle is sold in its present condition together with the usual accessories and attachments.

Description of	Year	VIN	Other
Motor Vehicle	2003	4A3A034683E017976	
Made	MITSUBISHI	Lic No/Year	
Purchased	Model	<input type="checkbox"/> New <input checked="" type="checkbox"/> Used	
	ECLIPSE		

Description of

Trade In VIN:

SECURITY To secure your payment and performance under the terms of this Contract you give us a security interest in the Vehicle all accessories attachments accessories and equipment placed in or on the Vehicle together called Property and proceeds of the Property You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract

PROMISE TO PAY AND PAYMENT TERMS You promise to pay us the principal amount of \$ 12829.00 plus finance charges accruing on the unpaid balance at the rate of 5.500 % per year from today's date until maturity Finance charges accrue on a Actual 365 day basis After maturity or after you default and we demand payment we will earn finance charges on the unpaid balance at 5.500 % per year You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES You also agree to pay any additional amounts according to the terms and conditions of this Contract

ADDITIONAL FINANCE CHARGE You agree to pay an additional finance charge of \$ N/A that will be ☐ paid in cash ☐ added to the Cash Price ☐ paid proportionally with each payment You agree that \$ N/A of the prepaid finance charges will be nonrefundable if you pay this Contract in full before the maturity date

DOWN PAYMENT You also agree to pay or apply to the Cash Price on or before today's date any cash rebate and net trade in value described in the ITEMIZATION OF AMOUNT FINANCED ☐ You agree to make deferred payments as part of the cash down payment as reflected in our Payment Schedule

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you	AMOUNT FINANCED The amount of credit provided to you or on your behalf	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
5.500 %	\$ 2101.52	\$ 12829.00	\$ 14930.52	\$ N/A

Payment Schedule Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
66	226.22	MONTHLY BEGINNING 11/19/05

Security You are giving a security interest in the Motor Vehicle purchased

Late Charge If a payment is more than 10 days late you will be charged 5% of the delinquent amount or \$30.00 dollars, which ever is greater

Prepayment If you pay off this Contract early you will not have to pay a penalty

☐ If you pay off this Contract early you may be entitled to a refund of part of the Additional Finance Charge

Contract Provisions You can see the terms of this Contract for any additional information about nonpayment default any required prepayment before the scheduled date and prepayment refunds and penalties

REDIT INSURANCE Credit life credit disability (accident and health) and any other insurance coverage quoted below are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium If you want such insurance we will obtain it for you (if you qualify for coverage) We are quoting below ONLY the coverages you have chosen to purchase

redit Life Insured ☐ Single ☐ Joint Prem \$ N/A Term N/A
redit Disability Insured ☐ Single ☐ Joint Prem \$ N/A Term N/A

our signature below means you want (only) the insurance coverage(s) noted above. If none are quoted you have declined any coverages we offer

Buyer d/o/b Buyer d/o/b

PROPERTY INSURANCE You must insure the Property securing this Contract You may purchase or provide the insurance through any insurance company reasonably acceptable to us The collision coverage deductible may not exceed \$ N/A If you get insurance from or through us you will pay \$ N/A for N/A of coverage

This premium is calculated as follows

\$ N/A Deductible Collision Coverage \$ N/A
\$ N/A Deductible Comprehensive Cov \$ N/A
Fire-Theft and Combined Additional Coverage \$ N/A

ability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this contract unless checked and indicated

SINGLE INTEREST INSURANCE You must purchase single interest insurance as part of this sale transaction You may purchase the coverage from a company of your choice reasonably acceptable to us If you buy the coverage from or through us you will pay \$ N/A for N/A of coverage

SERVICE CONTRACT With your purchase of the Vehicle you agree to purchase a Service Contract to cover

This Service Contract will be in effect for

ASSIGNMENT This Contract and Security Agreement is assigned to

the Assignee phone

This assignment is made ☐ under the terms of a separate agreement ☐ under the terms of the ASSIGNMENT

BY SELLER on page 2 ☐ This assignment is made with recourse

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 759.00)	\$ 12259.00
Service Contract Paid to	\$ N/A
Cash Price	\$ 12259.00
Manufacturer's Rebate	\$ N/A
Cash Down Payment	\$ N/A
Deferred Down Payment	\$ N/A
a Total Cash/Rebate Down	\$ N/A
b Trade In Allowance	\$ N/A
c Less Amount owing	\$ N/A
Paid to (includes f)	
d Net Trade In (b minus c)	\$ N/A
e Net Cash/Trade In (a plus d)	\$ N/A
f Amount to Finance line e (if e is negative)	\$ 0.00
Down Payment (e disclose as \$0 if negative)	\$ N/A
Unpaid Balance of Cash Price	\$ 12259.00
Paid to Public Officials Filing Fees	\$ 118.00
Insurance Premiums	\$ N/A
Additional Finance Charge(s) Paid to Seller	\$ N/A
To Documentary Fee	\$ 299.00
To	\$ N/A
To Tire Tax	\$ 133.00
To	\$ N/A
To	\$ N/A
To	\$ N/A
To	\$ N/A
Total Other Charges/Amounts Pd to Others	\$ 570.00
Less Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 12829.00

*We may retain or receive a portion of this amount

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces (2) You are entitled to a completely filled in copy of this agreement (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT

Buyer Signature *Harry Suniville* Date 10/05/05

Signature Date 10/05/05

ADDITIONAL TERMS OF THIS CONTRACT

GENERAL TERMS You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the items over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect and you do not agree to pay any finance charge or fee that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, we will instead apply it first to reduce the principal balance and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

BALLOON PAYMENT If any payment is more than twice as large as the average of all other regularly scheduled payments, you may refinance that payment when due. You may do so on terms as favorable as the terms originally agreed to in this Contract. If you meet our normal credit standards, this right does not apply if your payment schedule is adjusted for seasonal or irregular income or we do not offer similar credit at that time.

PREPAYMENT You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance.

OWNERSHIP AND DUTIES TOWARD PROPERTY By giving us a security interest in the Property, you represent and agree to the following:

- Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or affixed to the Vehicle.
- You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
- The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
- You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
- You will not attempt to sell the Property (unless it is properly identified inventory) or otherwise transfer any rights in the Property to anyone else without our prior written consent.
- You will pay all taxes and assessments on the Property as they become due.
- You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully and without breaching the peace.

DEFAULT You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- You fail to perform any obligation that you have undertaken in this Contract.
 - We in good faith believe that you cannot or will not pay or perform the obligations you have agreed to in this Contract.
- If you default, you agree to pay our costs for collecting amounts owing, including without limitation court costs, attorneys' fees, and fees for repossession, repair, storage and sale of the Property securing this Contract.

If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the post maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
- We may require you to make the Property available to us at a place we may designate in this Contract.
- We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive is provided by law to our reasonable expenses and then toward your obligations.
- Except where prohibited by law, we may sue you for additional

SECURITY AGREEMENT

Amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not waive our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address as reflected in our records at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

INSURANCE If required, you agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section or as we will otherwise require. You will name us as loss payee on any such policy. In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. You agree that if the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the post maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

OBLIGATIONS INDEPENDENT Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- You must pay this Contract even if someone else has also signed it.
- We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- We may release any security and you will still be obligated to pay this Contract.
- If we give up any of our rights, it will not affect your duty to pay this Contract.
- If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WARRANTY Warranty information is provided to you separately.

WAIVER To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due, (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner, or (3) give notice that we intend to make, or are making, this Contract immediately due.

THIRD PARTY AGREEMENT

By signing below, you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature _____ Date _____

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller sells and assigns this Actual Installment Contract and Security Agreement (Contract) to the Assignee, its successors and assigns, including all its rights title and interest in this Contract and any guarantee executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made "under the terms of a separate agreement" as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

Seller warrants:

- This Contract represents a sale by Seller to Buyer on a time-price basis and not on a cash basis.
 - The terms of this Contract are true and correct.
 - The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
 - This sale was completed in accordance with all applicable federal and state laws and regulations.
 - This Contract is valid and enforceable in accordance with its terms.
 - The names and signatures on this Contract are not forged, fictitious or assumed and are true and correct.
 - This Contract is vested in the Seller from all liens is not subject to any claims or defenses of the Buyer and may be sold or assigned by the Seller.
 - A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
 - The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
 - Seller has or will perfect a security interest in the Property in favor of the Assignee.
- If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorneys' fees.
- Seller will not, merely Assignee's fee for any loss sustained by it because of judicial set off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.
- Seller warrants notice of the acceptance of this Assignment, notice of non payment or non performance and notice of any other remedies available to Assignee.

Assignee may, without notice to Seller and without affecting the liability of Seller under this Assignment, compound or release any rights against and grant extensions of time for payment to be made to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

WITH RECOURSE: If the Assignment is made with recourse as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that it is a Buyer's default on any obligation of payment or performance under this Contract. Seller will, upon demand, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

Exhibit “B”



State of Utah

RON M. HUNTSMAN JR.
Governor

GARY R. HERBERT
Lieutenant Governor
#RWNGSFT

#1055 1057 51#



JORDAN CREDIT UNION
PO BOX 1888
SANDY UT 84091-1888

Utah State Tax Commission

PAM HENDRICKSON
Commission Chair

R. BRUCE JOHNSON
Commissioner

MARC B. JOHNSON
Commissioner

PAULY DIXON PIGNANELLI
Commissioner

RODNEY G. MARRELLI
Executive Director

December 3, 2007

NOTICE OF IMPOUNDED VEHICLE

We recently received notice from the law enforcement agency shown below that a vehicle registered in your name has been impounded. The information shown lists the vehicle, the date it was impounded, and the name of the impound yard where it is stored. If you no longer own this vehicle, reply in writing to the Division of Motor Vehicles. Please provide a copy of the bill of sale with your reply.

Plate: 827UTR VIN: 4A3AC34G83E017976 Year: 2003 Make: MITSUBISHI

Report #: A1205047 Impound Date: 12/03/2007 Impound Reason: DUI

Impound Agency: SALT LAKE COUNTY SHERIFF - UT0180000

Impound Yard: GUIJERMO BLANCO TOWING 3790 S 150 E SOUTH SALT LAKE UT 84115-4770 (801) 759-2973

To Obtain An Impound Release

Step 1 - Go to your local Motor Vehicle Office and present ownership documents and picture identification; and Pay, if due title and registration fees and \$230 Administrative Impound Fee for DUI, tampering of or operation without Ignition Interlock System, or Exhibition Driving.

Step 2 - Go to the impound yard and present Impound Release issued by the Motor Vehicle office; Pay the towing and storage fees.

Failure To Claim Vehicle listed above within 30 days, may result in the sale of the vehicle at public auction. Utah Code Ann. §41-1a-1103.

Effective May 5, 2003, the registered owner, lien holder, or owner's agent may be entitled to a refund of the DUI fee if the Driver's License Division did not take action against the driver under Utah Code Ann. §53-3-223 or §41-6-44.10. To obtain a refund of the DUI fee, the person must submit a copy of the DDL letter to the DMV within 30 days of the date of the letter along with TC-542, DUI refund request form.

QUESTIONS REGARDING THIS IMPOUND NOTICE may be directed to the Division of Motor Vehicles at (801) 297-7780 or 1-800-368-8824 or fax (801) 297-3578. Criminal proceedings related to the impoundment of this vehicle are separate actions and are not covered in this notice, nor by the Tax Commission. If you believe the Tax Commission has imposed incorrect fees or penalties, or has erred regarding the potential sale of this vehicle, you may appeal to the Division of Motor Vehicles as prescribed by Utah Code Ann. §59-1-501 and §63-46b-3. However, the Tax Commission has no authority or jurisdiction over the towing and storage fees or the grounds for the impoundment.

TO APPEAL TAX COMMISSION ACTION

To file an appeal with the Tax Commission and to protect your appeal rights, you must file a "Petition for Redetermination" within 30 days of the mailing date of this notice. If a petition is not filed within the 30 day period, the Tax Commission has no authority to consider your appeal and this notice becomes the final determination. Attach a copy of this notice to your petition and return both to the Utah State Tax Commission, Division of Motor Vehicles, Attn: Special Services/Appeal at 210 N 1950 W, Salt Lake City, UT 84134. The Division of Motor Vehicles will schedule a telephone-division conference to answer questions and to discuss the issues within 30 days from the date we receive your petition. After the telephone-division conference, if you still disagree, your petition may be forwarded to the Appeals Division.

UTAH STATE TAX COMMISSION
Division of Motor Vehicles
Special Services Unit

CC: JERRY E. SUNIVILLE
IP-003
210 North 1950 West
Salt Lake City, Utah 84134
(801) 297-2200
Fax (801) 297-6338
tome.tax.utah.gov

If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-2411 or Telecommunication Device for the Deaf (TDD) (801) 297-2020. Please allow three working days for a response.

Exhibit “C”



Main Office: 9260 South 300 East, Sandy UT 84070-2917
(801) 567-3351 or e-mail: loanhelp@jordan-cu.org

Date: 12/11/2007

Re: Account # 58350-3 001

HARRY F SUNIVILLE
2235 S DALLIN ST
SALT LAKE CITY, UT 84109-1118

Dear HARRY F SUNIVILLE:

On 12/10/2007, Jordan Credit Union repossessed the 2003 MITSUBISHI used as collateral on the above loan. The repossession expenses incurred to date are \$869.00. When added to the outstanding balance of \$8,443.37, the amount owed to the credit union is \$9312.37. If you want us to explain to you how we figured the amount you owe us you may call or write us.

This does not include fees incurred from the repossession company of: \$15.00 per day storage, and a minimum of \$25.00 personal property fee. These fees are to be paid to the repossession company (in the form of cash) upon delivery of said vehicle.

Unless \$9312.37 is delivered to the credit union in cash or cashier's check by 12/20/2007, the credit union will advertise the collateral for sale and solicit bids. We will then sell the collateral to the highest approved bidder. The credit union reserves the right to accept or reject any or all bids. You may not bid on the collateral; however, you may notify other persons of the sale so that they may present bids. In the event that an acceptable bid is not received, the credit union will sell the collateral in the manner it deems best. A sale may take place at any time without further notice to you. If you need more information about the sale you may write us or call us.

Following the sale of the property, the sale proceeds will be applied to the costs of the sale, collection costs, accrued interest, and then to the outstanding principal. If proceeds still remain, the balance will be delivered to you. **If a deficiency remains, the credit union reserves the right to collect from anyone obligated to pay.** In the event that legal action is taken to recover this deficit, a judgement, including attorney's fees will be sought. Parties obligated to pay will be responsible for all fees/ charges incurred.

Personal belongings must be claimed by 12/02/2007, or they will be disposed of. Please call if you have any questions.

Sincerely,

Collections Department
JORDAN CREDIT UNION

(801) 567-3351 (800) 866-1655

Exhibit “D”



Kelley Blue Book
THE TRUSTED RESOURCE

advertisement



**HOW MUCH WILL
A MINI COOPER
SAVE ME ON GAS?**

Enter your car's highway MPG

> CALCULATE

[Home](#) [New Cars](#) [Used Cars](#) [Research & Explore](#) [News & Reviews](#) [Ready To Buy](#) [Classifieds](#)

[Used Car Prices](#) | [Search Used Car Listings](#) | [Certified Pre Owned](#) | [Compare Vehicles](#) | [Perfect Car Finder](#) | [Most Researched](#)

[Welcome Back](#) | [Sign In](#) | [Create Account](#) | [My KBB](#)

ZIP Code 84093

[Recently Viewed](#)

[Home](#) > [Used Cars](#) > [2003](#) > [Mitsubishi](#) > [Eclipse](#) > [RS Coupe 2D](#)

2003 Mitsubishi Eclipse RS Coupe 2D

Trade-In Value

Private Party Value

Suggested Retail Value

Photo Gallery

Compare Vehicles

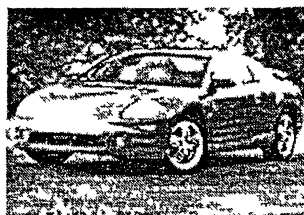
Blue Book Review

Consumer Ratings

Find Your Next Car

Specifications

BLUE BOOK™ TRADE-IN VALUE



[More Photos](#)

Condition Value

Excellent \$4,435

Good \$3,985

Fair \$3,235

Shopping Tools

[Free CARFAX Record Check](#)

[Auto Loan from 5.44% APR](#)

[Compare Insurance Rates](#)

[Payment Calculator](#)

[Find a Dealer](#)

NEXT STEP: Price New Cars

Local Listings:

- ☒ [View Mitsubishi Eclipse](#)
- ☐ [Search all Classifieds in 84093](#)

[Search Used Cars](#)

LIST YOUR CAR FOR SALE

Special Package Offer!

For one low price you
can reach millions of
used car shoppers

[Learn more now](#)

BUY A USED CAR
on Blue Book Classifieds™

EXHIBIT D

NOV 21 2008

By Kate Toomey
SALT LAKE COUNTY
Deputy Clerk

Richard C. Terry, USB No. 3216
Douglas A. Oviatt, USB No. 12192
CORBRIDGE BAIRD & CHRISTENSEN
39 Exchange Place, Suite 100
Salt Lake City, Utah 84111
Telephone: 801/534-0909
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

JORDAN CREDIT UNION,

Plaintiff,

v.

HARRY F. SUNIVILLE,

Defendants.

DECLARATION OF KEN MARTINEZ

Civil No. 080903840

Judge Kate Toomey

STATE OF UTAH)
) ss.
County of Salt Lake)

I, Ken Martinez, state as follows:

1. I am over the age of eighteen years (18) and have personal knowledge of the facts set forth below.
2. I am a certified mechanic and have worked in the automotive repair industry for 22 years.
3. I have been asked on several occasions to perform inspection, estimation and repair services on vehicles repossessed by Jordan Credit Union.

4. On or about January 12, 2008, I was asked by Jordan Credit Union to inspect a vehicle it had recently repossessed and to provide a repair estimate for the work that would be required.

5. The vehicle I was asked to inspect was a 2002 or 2003 Mitsubishi Eclipse.

6. I inspected the vehicle and found several problems that required work. These issues included body damage to the entire right side of the vehicle, both front headlight assemblies, passenger window broken, driver automatic window non-operating, broken tail light, flat tire, and missing gas cap. In addition the vehicle would not start.

7. I prepared an estimate, as requested, for the body work, parts and labor, required to repair the vehicle. This estimate was approximately \$2,665.00 and did not include any amount for diagnosis or repair of the obvious engine problem. A true and correct copy of this estimate is attached to this hereto as Exhibit "A".

8. Jordan Credit Union declined to have the repairs made because the cost was greater than what the car would sell for at auction.

**I DECLARE UNDER CRIMINAL PENALTY OF THE STATE OF UTAH THAT
THE FOREGOING IS TRUE AND CORRECT.**

EXECUTED on November 17, 2008.

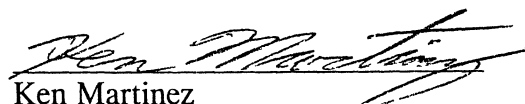

Ken Martinez
Declarant

Exhibit A

155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973

QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	side window	195.00	
1	regulator & motor	225.00	
1	gas lid	45.00	
1	R.H. light assembly	265.00	
1	L.H. light assembly	265.00	
1	bumper support	95.00	
1	bumper cover	235.00	
1	R.H. fender	125.00	
1	tire	85.00	
	paint supplies & labor	305.00	
	Labor - to repair Right		
	rear quarter panel and		
	Right front corner as well		
	as front bumper and		
	surrounding areas & replace		
	drivers door glass and motor		
	regulator assembly		
	NOTE: 15 @ 55.00		825.00
	estimate only does		265.00
	not include engine problem		
	TOTAL PARTS		
	LABOR		
	TOTAL		
	TAX		
	TOTAL		

CERTIFICATE OF SERVICE

I certify that on the 21ST day of November, 2008, I mailed, postage prepaid, a true and correct copy of the foregoing Declaration of Ken Martinez to:

Harry F. Suniville
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT 84020

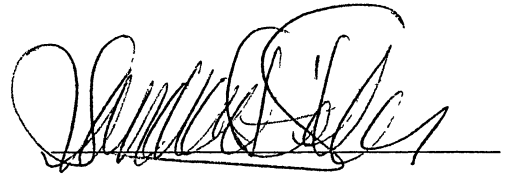
A handwritten signature in black ink, appearing to read "Harry F. Suniville", written over a horizontal line.

EXHIBIT E

Harry F. Suniville, Jr.
PRO SE
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT. 84020

FILED DISTRICT COURT
Third Judicial District

JAN - 5 2008

By [Signature] SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT CIVIL COURT, SALT LAKE COUNTY, UTAH

Harry F. Suniville, Jr.
Defendant/Respondent

vs.

Jordan Credit Union
Plaintiff

MEMORANDUM AND REPLY
(Submitted in *SUPPORT OF*
Motion to Dismiss and Defendant's
ANSWER TO PLAINTIFF'S
[Original] COMPLAINT), AND AS AN
OPPOSING RESPONSE TO PLAINTIFF
MOTION FOR SUMMARY JUDGMENT

Case # 080903840

Judge Kate A. Toomey

Comes now before this Court, Harry F. Suniville, Jr., PRO SE, and as the Defendant in the above-notated action, hereby submits this **MEMORANDUM AND REPLY** (In support of my preceding *Motion to Dismiss, and Defendant Answer to Plaintiff's [Original] Complaint,*) AND which is **also** hereby respectfully submitted in **Opposition Response and Reply to** Plaintiff's OPPOSING MEMORANDUM AND MOTION FOR SUMMARY JUDGMENT.

Here it may now be required or appropriate for me to point out that my *MOTION TO DISMISS AND DEFENDANT'S ANSWER TO PLAINTIFF'S [ORIGINAL] COMPLAINT*, (the pleading that I filed with this Court November 4th, '08) is not, (as Plaintiff asserts,) really a "renewed" MOTION TO DISMISS, insomuch as it was the only argument (besides this one you now hold in your hand,) so far submitted by me in answer to Plaintiff's Original Complaint – since this Court set aside the *Default Judgment* against me in its MINUTE ENTRY dated October 8th, but allowing, nonetheless, an open window for Plaintiff to start the proceedings anew by mailing me a copy of their original Complaint, which I did not have, up until its receipt by me on October 21, the benefit of having anytime ever before then received.

Now, Plaintiff has submitted a Motion for Summary Judgment, along with their *Memorandum of Points and Authorities in Support of Motion for Summary Judgment, and in Opposition to Defendant's "Renewed" Motion to Dismiss* [Henceforth referred to as Plaintiff's new Memorandum. . .] – **And this is my Opposing Response and Reply to that.**

Quite frankly, I continue to be astounded at Plaintiff's impudence in continuing to pursue this lawsuit even after the egregious abuse and mistreatment of me as their used-to-be car loan customer is brought to light, and when their *apology* would seem, to me at least, to be the more deserved and appropriate response under these circumstances.

Now replying to these newly-filed Plaintiff Motion for Summary Judgment, and Plaintiff Memorandum of Points and Authorities In Support of Motion for Summary Judgment and In

Opposition to Defendant's Renewed Motion to Dismiss, both of which were delivered to me at evening mail call on Tuesday night, November 25th, I will follow Plaintiff's example, in order to avoid unnecessary duplication and in consideration of a more economical use of the Court's time, by requesting that these facts and arguments offered herein in reply, and in support of and favoring my **MOTION TO DISMISS**, to also appropriately be considered as my address of, and my **Opposition Response to**, Plaintiff's Motion for Summary Judgment, (along with its Supporting Memorandum). I believe these facts and arguments presented herein also, and accordingly – including some 25 material disputes as to genuine issue of fact – support a Court *denial* of said Motion for Summary Judgment.

INTRODUCTION

Plaintiff's Memorandum starts off by saying my Motion "raises no new issues or presents any new and relevant facts to be addressed . . . Plaintiff objects to the entirety of Defendant's motion as hearsay and lacking any proper foundation. The motion consists of nothing more than baseless accusations and conclusions, none of which are supported by a single piece of relevant and admissible evidences. Because Defendant has provided no admissible evidence for the Court to consider in connection with his motion to dismiss, the same should be denied." (Pg. 2, Plaintiff's Memorandum of Points and Authorities)

However, the Original Complaint filed against me was based entirely upon an alleged failure by me "to make payments when due pursuant to the terms of the loan agreement" (***Their words***: See #7, First Cause of Action); and in the Complaint's Second [and only other] "Cause of Action," (@ #14,) it is based upon the unfounded and redundant allegation that, "Defendant has had the use, benefit and possession of all the funds loaned to them [him?] without compensating Plaintiff. . ." Moreover, both the supposed "Breach of Contract," and "Unjust Enrichment," which are the First and Second (***and only***) **Cause(s) of Action**, as named in this Complaint, individually and collectively pivot upon this key point: an alleged failure of me to make my car **payments** [plural payments] on time. Accordingly then, in my Defendant MOTION TO DISMISS, I effectively showed, supported by notarized affidavit from U.S. Bank Private Client Group Vice President Michael Poulter, and other evidence(s) as well, that these Plaintiff allegations, which were the very *foundation* of their Complaint against me, was a foundation made of sand: that their case against me must necessarily fall, ***and fail***, once the foundational basis crumble and is proven to be false – which it was.

Now, it is almost laughable for Plaintiff to go backwards and try to clean it up, to switch up/change the foundational allegation by now saying (See newest Plaintiff Memorandum, @pg. 9,) "Defendant failed to make the required payment" [singular payment] and "This claim is based on the fact that the debt was accelerated by Plaintiff following default and pursuant to the Agreement."

One has to interject the question, here directed to Plaintiff, how is a notarized affidavit from Jordan Credit Union Collection Officer Michelle Rogers any more credible than a notarized statement from my mothers' bank Vice President, and why, if my Motion and evidence really "raises no new issues or presents any new and relevant facts to be addressed," has it required you to change your entire story in pursuit of these bogus claims?

Fortunately, I have faith that this Court will give impartial and even-handed consideration to the true facts of this case – will throw the lawsuit out of court if such is the appropriate relief and remedy when one party ***changes their whole story mid-stream***, or submits pleadings and

argument so transparently ‘squirming’ and disingenuous as has this Plaintiff Jordan Credit Union.

Moreover, since this case at issue also pivots upon this loan contract here at issue, I would hope and pray for this Court to furthermore bear in mind the intrinsic ‘Big Picture’ here at stake. That it will reinforce my faith and belief in the fairness of Courts generally, by considering the precedent being set if a lender like Jordan Credit Union is allowed to just run rough-shod over the rights and legitimate property interests of those who choose to finance their purchase of a car.

Please consider how you would feel, personally, to be so shabbily mistreated by a lender; and how nobody in his right mind would *dare* to finance a car if these kinds of lender behavior (as characterized by the words and actions of the Plaintiff themselves,) were the norm.

Please consider that in big bold all capital letters near the bottom of the Loan Agreement and Contract are the words: “NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.” Also, that even though I am, in my stumbling and awkward pro se ignorance, at a loss to know enough to specifically invoke what surely must be inherent Consumer Protections written into laws and regulations like Article 9 of the Uniform Commercial Code, (Article 9, and elsewhere,) and in the Courts’ precedent interpretations of same, to be used in my defense – that doesn’t make these claims, protections and defenses any less real or relevant to this case at hand. Finally, I would hope and pray this Court to pay special attention to the Plaintiff’s own words in their version of the foregoing events, and of Plaintiff’s actions that their own words describe with this central question always in mind: were they acting like prudent and responsible business people when they made their decisions relevant to this case at hand, or could their preceding actions more properly be regarded, (and as I would certainly characterize them,) as arbitrary, capricious, hasty and reckless?

Sometimes the truth, or more of it than a dissembling person would choose to tell, will inadvertently slip out; I believe Plaintiff’s choice of words, (See newest Plaintiff Memorandum, [and version of events] @ Pg. 12,) “Plaintiff . . . in the end opted for the *less burdensome* route” is a poignant case-in-point because it is an unintended but succinct self-described summarization and revelation of Plaintiff’s impetuous and callous disregard of me, and of my own inherent property rights in the car loan collateral/asset and vehicle (my car!) here at issue. They made absolutely zero effort at any step along the way to treat either me, or my/their collateral asset property, with any respect whatsoever on the assumption that I could be made to pay under the terms of this contract no matter how irresponsible and hasty, arbitrary and capricious, their own actions in regards to it. And that, in my humble opinion, surely constitutes the more egregious “**Breach of Contract,**” *by Plaintiff*, to be herein considered.

DISPUTED MATERIAL FACTS

1. Once again, freshly stated anew, these are some of the disputed material facts in this case. In plain language, I strongly dispute Plaintiff’s allegations regarding my car’s condition. I believe and assert that my car was kept in reasonably good condition and repair for the 2+ years that I faithfully made my car payments on time to the Plaintiff. In Plaintiff’s most recent rendition of their story, (their latest Memorandum of Points . . .) they allege it was not, and they attempt to partially explain their decision to repossess my car from off the impound lot where it

was being temporarily stored as being based on this disputed allegation that it, (my car) was not kept in good condition. Interestingly, Plaintiff in their own latest Memorandum of Points, can be seen to contradict themselves:

“At the time of the initial [only] notice of repossession sent to Defendant, *the issues related to the true condition of the vehicle were not known.*” [Emphasis added] (See Plaintiff Memorandum of Points. . . Pg. 5 @ ¶12; and Affidavit of Michelle Rogers @ ¶ 14). Remember, this notice of repossession mailed to my mother’s house – the only notice they ever bothered to send anywhere, and not received by me until January 17th, the day I got out of jail – was dated 12/11/07, and it informed me, (See Exhibit C, Attached to Affidavit of Michelle Rogers,) “On 12/10/2007, Jordan Credit Union repossessed the 2003 Mitsubishi used as collateral on the above loan.”

However, these statements of theirs are contradicted elsewhere, (See Plaintiff Memorandum of Points. . . Pg. 3 @ ¶4; and Affidavit of Michelle Rogers @ ¶7) where they allege, “While the Collateral remained impounded. . . Plaintiff learned *that the vehicle had extensive body damage and would not start.* [Emphasis added] On the good faith belief that he would be unable to make the required payments on the loan, and to mitigate the damage and protect its interest in the Collateral, Jordan repossessed the Collateral from the impound lot on or about December 10, 2007.”

2. What’s more, I dispute **both** parts of this allegation (extensive body damage and would not start) regarding my car’s true condition of maintenance and repair. And, I assert that it can only remain an undisputed material fact – one that directly contradicts Plaintiff allegations – that this car was running just fine right up until the traffic stop by S.L. County Sheriffs that resulted in my arrest and the impound of my vehicle. This begs the question: Where does this falsely alleged and non-existent, so-called “engine problem” come from?

Were I not so handicapped of resources like unlimited phone calls, or access to legal self-help and law books that many people not presently incarcerated might tend to take for granted – particularly were I not so pressured by time restraints in keeping to Court-filing deadlines – there are several relevant issues come immediately to mind as *screaming* for more extensive scrutiny by means of discovery.

3. First, I have previously stated, in my first Defendant response to this original Complaint (my Motion to Dismiss, and Defendant’s Answer to Plaintiff’s [original] Complaint,) that there were some admittedly then-pending body damage repairs that needed to be made on my car when it was impounded. I also provided this Court an Exhibit C, therein, which was a previously obtained formal Estimate for all of these needed repairs, dated October 9, 2007, from Mirror Image Body and Paint. It is where get all of my body damage repairs made – both previously on this very same car in question, and on cars that I have owned before this one – especially my 1997 Mitsubishi Eclipse that I sold when I upgraded to this newer 2003 now at issue. I go to them because they, (owners Dick and his wife Shannon, who over time have also become my friends,) do first-class, excellent showroom quality work at a fraction of the cost some other body shops might charge for the same amount of work. As an example, when my previous car, (before this one at issue, the 1997 Mitsubishi Eclipse,) was “run over” by a large semi-truck, crushing a corner of its roof, in turn shattering the front windshield and drivers’ side window, with extensive door and quarter panel damage, too, the first estimate for body damage repairs I obtained was in excess of \$4400.00, the second one came in closer to \$4800.00, and then my very expert auto mechanic (Lynn’s Auto, Murray, where all my cars get very expertly mechanically-maintained,) recommended I take it to Mirror Image Auto Body and Paint: and

there it was fixed for 'good as new' at a cost of only \$1500.00 (approximately). We subsequently hung before-and-after photos of my car, and of their extremely professional repairs, on their office wall to advertise for future, quality-seeking customers!

4. Now consider this Plaintiff-submitted "Declaration" of Ken Martinez whose name and business appear nowhere on any on-line directory, in any capacity as an auto repair business (at least none that my prison caseworker could find when he 'surfed' Google and Dex, and other directories looking,) and whose credentials are stated to be, "I have been asked on several occasions to perform inspection, estimation and repair services on vehicles repossessed by Jordan Credit Union." In this "Declaration" he further asserts, "8. Jordan Credit Union declined to have the repairs made because the cost was greater than what the car would sell for at auction." Doesn't such a statement seem *just a little contrived*, and coached, and self-serving, coming as it does from a "several occasions" in the past mechanic for a financial institution like Plaintiff Jordan Credit Union? – particularly if the sale of a \$9,000.00 car for only \$200.00 was really an "arms-length" transaction, as Plaintiff alleges?

5. When I contacted the salvage yard owner who ended up buying my 2003 Mitsubishi Eclipse in my efforts to try and reverse the outrageously ludicrous transaction whereby my \$9,000.00 Kelly Blue Book-valued car had been sold to him for only \$200.00, he refused, not surprisingly; and, he asked me to **provide** him a key for my car because the necessary computer-chip key, (with codes available only from Mitsubishi: my car had a keyless entry and ignition lock system which made duplicate keys very hard to come by, or at least expensive, since by personal experience, key duplication cost in excess of \$125.00,) – that is, the only key then existing, had stayed in my pocket when I was taken to jail. And this, of course, in turn then begs the question: what was Ken Martinez using for a key when he was determining my car "would not start"? Too, does this help to explain all his confusion about windows supposedly broken?

6. Moreover, I question, and I dispute, altogether, and most firmly, many more aspects of this "Declaration's" assertions as well because I believe it is a deliberate exaggeration and distortion of the true condition of my car now belatedly, and at second-hand, alleged by Plaintiff solely to strengthen their bogus claims in this matter.

Next consider this: in his so-called inspection and estimation of repair services, this self-described "mechanic" [notice: not auto body mechanic] identified my car as a "2002 Mitsubishi Eclipse" – and with the model year wrong, (mine was a 2003,) how can he possibly, and accurately price replacement parts?

7. Additionally, there was nothing at all wrong with either headlight assembly, though his greatly exaggerated Estimate lists them both as needing replacement at a cost of \$265.00 apiece. His same estimate invoice says a Passenger Window was broken, and a taillight, and that a right front tire was "flat." Now, if the car had truly lacked both headlights, *and* a taillight, doesn't it seem likely that the Sheriff who cited me for not having an "Ignition Interlock Device," (which I never have been required to have on any car of mine, and who also cited me for DUI even though my breathalyzer testing at the time of arrest showed 0.00, and blood testing at the scene of arrest also resulted in 0.00 blood toxicology,) – would then overlook such basic vehicle equipment violations as these would be?

8. Now turning back to his written testimony, (See "Declaration", @ 6) he states "body damage to the entire right side of the vehicle," in addition to both front headlight assemblies, passenger window broken, . . . broken tail light, flat tire, and missing gas cap. In addition, the vehicle would not start." (I ask again, what ignition key was he using?) And, here, different from the written and itemized Estimate, (See Attachment to his written "Declaration(s)") my

“driver automatic window” also turns up to be allegedly, “non-operating,” and yet, it is the Driver Door Glass which he says needs replacement on the left side, bottom, of his formal Estimate of Repairs – and it is the Passenger Window broken on the right side of his itemized Estimate of Repairs! With window replacements priced at \$420.00 this is not an insignificant discrepancy, and he has told three differing accounts on only two pieces of paper! Moreover, when I last saw my car, no window was broken, and my Exhibit from the Impound Tow Truck driver will prove this to be so.

9. Furthermore, on this “Declaration’s” attached itemized Estimate of Repairs, note that the gas lid is listed at a replacement cost of \$45.00! Additionally, that the alleged replacement cost of a bumper support is listed at \$95.00: Yet, Mirror Image Auto Body and Paint would tell you that we had already replaced the front bumper support preparatory to the complete, then-pending (at the time of repossession) body shop repairs that would have rendered my car cosmetically to a “good as new” state of repair.

10. In November/October of '07, the Mirror Image Auto Body and Paint formal estimate of pending repairs (and which I previously submitted to this Court in my most recent pleadings as an Exhibit C,) priced all of my then-pending and needed repairs at \$511.81 – and these included repairs to the front fiberglass bumper, which we ‘jerry-rig’ and temporarily repaired by tying down the old, broken one to the *newly-installed bumper support*, with arrangements then made for a new front bumper cover (already paid for in advance, early October) and that was part of the final and complete repairs which we at that time put on hold for the remaining \$500.00, (earmarked from my Christmas money,) to be paid. Then, and that way, everything needing the slightest bit of attention to keep this prized sports car of mine a ‘hot’ car could all be painted at once. Hence, and in short, this temporary, ‘jerry rig’ repair of the broken front bumper – tied to the newly-installed bumper support, so that all adjacent parts could be held in place securely, not to rattle around, possibly fall off – could *not* have been made at all except that the bumper support that Ken Martinez has alleged was needed was already installed and in place.

Here, I suppose I have raised questions by herein admitting that there were, in fact, some automotive body shop repairs then pending for this car here in question and that it would have been “less burdensome” or more convenient to ignore altogether. Except that I have faith that even a simple man telling the simple truth can prevail in our Courts if the unvarnished truth of things supports such a verdict. In life, sometimes the truth can be messy, maybe inconvenient, or at least complicated. Too, as I write this, I am also now remembering that some of these then-pending auto body repair charges were being deferred and juggled against other expenses, and these other expenses, necessarily put first, included the annual licensing and registration, complete with complete safety and emission testing that always has been due on this particular car of mine before the end of October. Certainly, anybody who has ever owned a car will appreciate the fact that car maintenance is usually a ‘work in progress.’ I still have a full set of service receipts and records on this car which would prove beyond a shadow of a doubt that all routine and preventative mechanical maintenance and repairs were always made on time for as long as I had this car under contract of the Loan Agreement. Similarly, when this credit union lender first asked me to ensure that the full insurance which I have always carried on this car – including comprehensive and collision insurance coverage – was renegotiated with my insurance carrier to include a higher-priced policy of less deductible on the comprehensive and collision insurance parts of my coverage package, I readily and promptly attended to that responsibility of mine, also.

Still, because the cost of all the then-pending body damage repairs on my car were less than the deductible, it remained for me to do this as I could afford to, ie. with Christmas money from my mother. It was by far the more prudent and economical of choices regarding same for these repairs to the front end (requiring a new fiberglass bumper cover @ \$235.00,) and to the passenger side front-fender panel (@ \$125.00 as itemized by Ken Martinez; \$175.00 @ Mirror Image Auto Body and Paint,) because it is far easier and better to paint everything all at once, besides being less intrusive to the car's normal, day-to-day usage.

One other consideration also played into this minimal delay of mine in getting everything fixed for good as new, with my car restored to an excellent, almost '**mint**' condition of maintenance and repair with Christmas money, and that was the circumstances of my apartment complex neighbor, next door to me in Apartment 4, having made October arrangements with me to compensate me in \$50.00 installments out of his weekly paychecks as a means of paying for the approximate \$250.00 in damages to my right front fender when his drunken and uninsured girlfriend hit my car with her own when sloppily parking her car in the stall immediately adjacent to my #5 apartment parking stall. I agreed to this arrangement – in the interest of neighbor relations – not to file an insurance claim because these repairs were only half the amount of my deductible, and thus would have represented an out-of-pocket expense anyway, (given her uninsured status,) figuring that \$250.00 in installments was better than nothing coming from her non-existent insurance coverage. They were a purely cosmetic dent damage anyway, a dent that did not affect in any way my headlight, nor my wheel.

I apologize to this Court for all these many words: but at least they have the virtue of being unvarnished truth, even if somewhat complicated to explain – and with the advantage that every aspect of these circumstances surrounding the roughly \$500.00 then pending to complete all repairs can be completely confirmed and verified by all these other persons, and facts, involved.

11. Since obviously, taking all of these facts and circumstances and arguments of mine into consideration, into account, there remains a lot of controverted material facts relative to Plaintiff's allegation that my car was in terrible condition when they arbitrarily decided to repossess it – particularly since, depending upon which version of their story one chooses to believe regarding my car's true and actual condition, its condition after impound is being used as a justification for their capricious decision to accelerate the loan payments and to repossess this loan collateral. Perhaps even more importantly, the true condition of my car has a very direct bearing on my own argument that they failed miserably to mitigate their alleged collateral deficiency damages by selling my car – the collateral asset – for a mere pittance of its real and true, actual value.

12. Because this is a core issue at the heart of this case, I inquire of the Court, "What would it take to depose these 2 witnesses from "Ken Martinez" and from Mirror Image Body and Paint, respectively? To depose other witnesses I might call in my defense to set the record straight regarding my prized sports car service and maintenance records, or the neighbors and friends who would not hesitate to confirm my story that this car (regardless some relatively minor and pending, purely cosmetic repairs to the front bumper and passenger-side (right) front fender,) was always kept in a reasonably good condition and state of repair? How can I, without Court extensions of filing deadlines, introduce into the record photographs of my car to lend better credence to these assertions of mine, and to my side of these very substantial, and significant, disputed material facts?

13. Meanwhile, I wish to now introduce into the record my **Exhibit A, Attached** – which is the Vehicle Impound Report issued by Guillermo Blanco Towing at the date and time of my arrest and the subsequent decision by S.L. County Sheriff to impound my car. (Please Note that with all or nearly all of my Exhibits herein, including this one here at hand, and previously too, I am sending the **Original**, and not a copy, to this Court.) This Vehicle Impound Report, issued by the arresting officer and Guillermo Blanco Towing necessarily addresses the condition of the vehicle being impounded with some small thoroughness, lest the owner of the vehicle when coming to the impound lot to reclaim the vehicle try to blame them for pre-existing damages. This, very sadly for me, turns out to be the last time I ever saw my car, (though I had already been hauled off in handcuffs before this Report was ever written,) – and that’s because Plaintiff Jordan Credit Union interjected themselves between myself and Blanco Towing by maliciously and capriciously repossessing my car from off the Blanco Towing Impound Lot. And, a close examination directly contradicts the greatly exaggerated claims of damage alleged by Plaintiff to this car at issue.

Nowhere does this Vehicle Impound Report’s list of pre-existing damages list, for example, broken windows, flat tires, missing gas lids, nor broken headlights, broken taillights – all of which the itemized Estimate and “Declaration” submitted by Plaintiff – now obviously fraudulently – does allege! Furthermore, when one compares the reported odometer reading between this Vehicle Impound Report and the Itemized Estimate submitted by Plaintiff, it would appear either he or the repossession company drove my “non-starting” car an additional 40 miles!

14. Given all of these contradictions that are clearly evident throughout Plaintiff’s contentions that my car was not kept in an overall and reasonably good condition of repair, as I believe, and testify that it was, their contention that \$2665.00 would be required to fix my car, not including engine repairs (as declared by their affidavits), or “well in excess of \$3,000.00 to make the car saleable,” (See new Plaintiff Memorandum of Points. . . @ Pg. 11) there probably exists right here, alone, grounds adequate enough -- if not to throw their case out of Court in its entirety – then to at least dismiss their Motion for Summary Judgment on the basis of all these disputed material facts?

II. PLAINTIFF IS IN BREACH OF CONTRACT

Plaintiff is in Breach of Contract: both the ‘letter’ of the Loan Contract Agreement has been violated by them, along with and as well as its ‘spirit’.

15. I dispute “reasonable notice,” as Plaintiff has asserted. Plaintiff’s new Memorandum of Points. . . places much of the emphasis and focus of their arguments upon the Loan Contract Agreement that I signed at the time I purchased my car, and a copy of said Contract is submitted by them as an Exhibit A, Attached to Affidavit of Michelle Rogers. Then they have repeatedly asserted that I “was given proper and reasonable notice of the default and the pending action.” (See new Plaintiff Memorandum, @ pg. 10; also as a so-called Fact #8 @ Pg. 4; and in Michelle Rogers’ Affidavit @ #11, also.)

Yet, the letter that they sent to me at my mother’s house **on December 11th**, (See Plaintiff Exhibit C, Attached to Michelle Rogers’ Affidavit) and which they freely admit was their only outgoing attempt at any kind of communication with me throughout the course of this entire fiasco, very clearly says, “Unless \$9312.37 is delivered to the credit union in cash or cashier’s check **by 12/20/07**, the credit union will advertise the collateral for sale and solicit bids.

We will then sell the collateral to the highest approved bidder. . . A sale may take place at any time without further notice to you. If you need more information about the sale you may write us or call us.” Finally, from the last paragraph of their letter, “Personal belongings must be claimed by 12/02/2007, or they will be disposed of.” This last is a pretty telling representation of the ‘sloppy’ work that characterizes Plaintiff’s arbitrary and capricious, reckless, hasty and arrogant, most of all incompetent, actions for every step of the way henceforth forward – the sale of my car, particularly.

But, anyway, **back to the heart of this argument:** By far more importantly, turn now back to the Loan Contract in question (See my highlighted **Exhibit B, Attached**). “You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, **at least 10 days** before the date of the intended sale or transfer (or such other period of time as is required by law).” Because 12/11 is **9, not 10 days**’ notice before the intended sale of 12/20/07, Plaintiff is clearly **in default** of their own obligations to this ‘two-way street’ Contractual Agreement! And thus contradicting their very own alleged material facts re. Reasonable notice by the very evidence they have themselves provided! Very clearly, “Reasonable Notice” never was provided in this case at issue.

16. Perhaps even more importantly and central to my primary argument, they have themselves also breached the essential spirit of this Contract, as well as its letter.

Plaintiff’s Exhibit B, submitted in their newest pleadings, is the Notice of Impounded Vehicle sent to Jordan Credit Union as the title holder of my car by the Utah State Tax Commission advising them that my car was impounded to Blanco Towing’s Impound Yard. Note that the only thing ‘scary’ or irreversible about this notice is the advisement that towing and daily storage fees will be required to get the car out of impound, and that “Failure to claim vehicle listed above within 30 days may result in the sale of the vehicle at public auction,” and dated December 3rd. Presumably this letter triggered all of Plaintiff’s behavior that followed. According to Michelle Rogers, (See her Affidavit @ ¶7; also, Plaintiff’s newest Memorandum, Pg. 3 @ ¶4) “Because the Collateral had been impounded and was no longer in Defendant’s possession, Defendant was in default under the terms of the Agreement.”

The Contract Agreement does have a provision that says “You will keep the Property in your possession in good condition and repair . . . Unless otherwise agreed in writing, the Property will be located at your address. . .” But, it also says, “By choosing any one or more of these remedies, we do not waive our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default **if it happens again.**” [Emphasis added] In other words, lender, (in this case Plaintiff Jordan Credit Union,) reserves the right always to make subjective judgment regarding same, and exercise these rights to default and to the full extent of the law and this contract, **if** the situation seems to call for such dire measures, seems to present a problem that places in jeopardy the lender’s security interest in the collateral (car) purchased with the proceeds of the car loan they elected to accept.

People financing a car enter into these kinds of agreements with their eyes open (one would assume or hope), certainly: For example, everyone knows that if they fail in their primary and most important obligation – namely, their agreement to make all of their agreed-upon car payments on time, they will very soon afterward lose the car. Similarly, that the lender’s security interest in the vehicle collateral must be protected at all times – meaning full insurance to the lender’s complete satisfaction, and the car commensurately and also kept in good

condition and repair – or again, they should not be surprised to soon lose their car to repossession if they fail in these primary obligations and responsibilities to the lender.

However, and nonetheless, the Contract is a two-way street, and the borrower, as the registered owner of the vehicle in question has his own vested property rights and interests at stake in his purchase of it, and thus is surely entitled to reasonable assurance and expectations that the lender will accordingly respect his own property rights, and treat him fairly and in accordance with, and in harmony with, reasonable and responsible, acceptable and established standards of normal business lender behavior – not willy-nilly considering him in default at the slightest deviation from the ‘fine print’, surely. In other words, provided he has met all of his most important obligations to the lender, the registered owner of the vehicle is surely entitled to just a little leeway with regards to where he parks his vehicle: different from his home if he’s sleeping over at a girlfriend’s house, or on vacation out of town, for example. Provided he has insurance policy coverage on the vehicle that allows it, (and no jeopardy to the lender,) perhaps he’s not constantly and technically “in possession” of the vehicle at all times because some other licensed driver has been given permission to drive his car; or as another example, perhaps he’s not constantly and technically “in possession” if the car’s been left overnight at the service mechanic’s shop. . . Yet, despite these small ‘fine print’ deviations from the “in possession” clause, is there any reasonable-thinking person who would really and truly consider him to be “in default” of the car loan contract? And, certainly, if his important obligation to keep his car in reasonably good condition of maintenance and repair has been met, if all the important mechanical maintenance, preventative maintenance, upkeep and repair has been satisfied, and evidences diligent care and concern for the legitimate property interests of the lender, then “in good faith” nearly everyone would have an unstated understanding that inevitably sometimes a needed repair is on pending status while waiting for parts, money, time enough, etc. and surely that person is not then “in default” if his car has been allowed to go unwashed, say – or in my case, if pending cosmetic repairs have been temporarily postponed until all the money to make a pending repair had become available. (Remember, my car had just finished passing safety and emissions testing that were required for the car’s annual registration and licensing obligations, and that were renewed for another year by State of Utah’s *October Renewal*.)

These are only common-sense exceptions to the rule – but in retrospect, common sense has become to seem a very rare commodity in Plaintiff’s ‘scheme of things’ because they have used the term “good faith” to mean “we can do anything we want – regardless the vested rights and interests of the car loan customer.” In Plaintiff’s vernacular, the term “good faith” has become an oxymoron because they use this term to justify the most arrogant, disrespectful, and malicious of behaviors on their own part – and if I ever hear the term from them again, rest assured, I’ll be holding on to my wallet. Without reservation, I adamantly dispute the so-called material “facts” as alleged by them whenever and wherever they have used the term in their explanations for all that herein follows the triggering event, which was the car’s impound and temporary storage at the tow yard.

Plaintiff tells us, (Please see Plaintiff’s newest Memorandum. . . ¶4, Michelle Rogers’ Affidavit @ ¶7) “On the *good faith* belief that he would be unable to make the required payments on the loan, and to mitigate the damage and protect its interest in the Collateral, Jordan repossessed the Collateral from the impound lot on or about 12/10/07.”

And, (@ Plaintiff’s newest Memorandum. . . ¶5, Michelle Rogers’ Affidavit @ ¶8,) “on the good faith belief by the lender that an obligation would not or could not be performed is considered a default.” . . **Except as prohibited by law.** [Emphasis added].

18. It is not very hard to see that this was a very large assumption (*presumption*, more like,) for them to be making on the basis of so little information. It is also yet one more of their so-called “material facts” that I vigorously dispute because on the basis of these flimsy *presumptions*, Plaintiff accelerated the loan’s entire outstanding, unpaid balance; and then they repossessed my car right out from under me – from my rightful partial ownership, established by 2+ years of monthly car payments already paid to them, on time, like clockwork, each and every month – when they just up and decided, (without one iota of attempted communication with me: their December 11th letter, and the *only* notice they ever even bothered to send, reported my car’s repossession as a ‘done deal’ and an accomplished fact; and by then, my car had *already* been repossessed when they mailed this letter to me,) to take it from me and from off the impound lot where it was temporarily stored! I believe this decision made by them was entirely impetuous and imprudent, as well as malicious, arbitrary, and capricious – coming at me as it did without the slightest attempt, or courtesy whatsoever, to try and talk to me first, seemingly with zero regards for the uncontroverted fact that I had been for them, up until the impound and their subsequent decision to repossess, an entirely trouble-free, steady and reliable with my on-time, every-time car loan payments, kind of car loan customer. Talking to me first, or through my family, would most certainly have put all their collateral security-based cares and concerns (read *after-the-fact excuses*, more like,) to rest.

19. I mean, Does it really seem to be prudent business decision-making at work when they stoop to say, (Please see Plaintiff’s newest Memorandum. . . @ Pg. 9) “Plaintiff had no knowledge at that the time that Defendant’s situation was any different from the many other cases in which debtor’s [debtors] simply defaulted and attempted to walk away from their obligations.” ? This after 2+ years of making every single one of my car loan payments on time?
...

20. Plaintiff’s weak, feeble, and ineffectual efforts to communicate with me were ineffective and not at all reasonable given that they surely must have by then known where these monthly car payments were coming to them from: ie. my mother’s bank (U.S. Bank Private Client Group). Moreover, there are (and always have been) 2 Salt Lake City telephone directory phone book listings for Suniville; both are family members, and both would have immediately intervened to protect both mine, *and* the Plaintiff’s interests in my car, if only the problem had been in any way communicated to anybody.

With such momentous news as this to communicate, their single Notice of Repossession letter, dated December 11th – and which was their only effort to communicate with me in any way whatsoever – sent as a Certified, Return Receipt Requested Mail, or even as a telegram, would have been far more reasonable. Obviously, even a delinquent car loan customer would have received more and/or different mail than did I.

Moreover, the Impound Notice mailed to them as the title holder by the Utah State Tax Commission made it evident, as well very likely, that I was in Salt Lake County Jail – put there by the S.L. County Sheriff’s Office (the same as my car was impounded,) as a result of an arrest for DUI. One single telephone call to the jail would have confirmed this. It would also, by far, have saved everyone concerned a great deal of trouble because I, or my family acting in my behalf, would have immediately taken steps to protect my car from such dire and unexpected response precipitated by Jordan Credit Union. My point bears repeating, I think: *even a delinquent customer, behind on his car loan payments, would have received more notice than was sent to me.*

Plaintiff has tried to argue that it was I who had a “duty to communicate,” that I was given proper and reasonable notice of the default and the pending action (which is itself predicated on false presumptions, and hardly a reasonable amount of notice, clearly contradicted even by the terms, and requirements of the Loan Contract Agreement itself, (and as I have already shown to be clearly defined therein.) Then, Also: that, “After receiving no communication from Defendant,” (Please see Plaintiff’s newest Memorandum. . . @ Pg. 6, ¶13, Michelle Rogers’ Affidavit @ ¶15) “Jordan sought offers from salvage yards and accepted the only offer received which was for \$200.00”! **How could I possibly be expected to remedy what I didn’t know was happening?** Please consider: I might just as easily been on an extended vacation out of town and inaccessible to the reach of ordinary mail. Isn’t it far more “reasonable” an expectation that before entering into a transaction that obviously represented such a “bath” and egregious loss for them, as well as for me, that in the interests of pure common sense, as well as prudent business practices, they might have tried just a little harder to contact me first? Wouldn’t this have been, by their own words, the by far “less burdensome route”? . . . if only to explore the potentiality by *at least somehow attempting to assure themselves that their single letter had actually been received?*

Quite easily, I could have refinanced the accelerated loan balance with some other financial institution, (and been done with Jordan Credit Union once and for all,) for the out-of-pocket additional expense of repossession (stated to be \$869.00, according to the one, only, Notice of Repossession, which was ineffectually mailed to me after the repossession had become accomplished fact) – and which presumably, mostly, represents the charges incurred at Blanco Towing which I was intending and prepared to pay anyway.

Reversing or reconsidering the default decision *might* have kept me in the loan with payments of \$226.00 paid to them *monthly* for a long time afterwards (according to the terms of our Loan Contract Agreement.) So isn’t it logical then, to at least wonder why they made not the slightest effort to somehow at least *explore* the barest possibility of that **before** they next proceeded to just flush all of mine/*and their collateral asset* straight down the drain by accepting a single, one time payment of only \$200.00?

In fact, every other decision and action taken by Jordan Credit Union in response, and which, step by step, in turn precipitated all these problems that followed, seems rushed, hasty, and ill-considered, (as well as mean-spirited, malicious even) but mostly, reckless, capricious and arbitrary. . . One almost has to wonder whether they already had a pre-conceived agenda they were putting into momentum – almost as though they hoped that I wouldn’t step up to salvage the loan and save my car?

21. So here I must now ask this Court another critical question: How can a deposition be arranged to be taken from whichever Jordan Credit Union loan officer was in charge of my car loan when all these preceding and critical decisions were being made? Plaintiff has introduced into the record an Affidavit from Michelle Rogers – but was it actually she who was in charge of these reckless decisions at the time? Here is why I am starting to speculate and wonder about the worst:

In an earlier pleading to this Court, I once stated that every time Plaintiff Jordan Credit Union has filed a new piece of paper, I learn something new about my car. In Plaintiff’s newest Memorandum. . . , it is stated that my car was “sold for \$200.00 to Midvale All Small Auto, Inc. on *January 23rd, ’08*. Plaintiff mailed this Court an Exhibit A on September 18th that was attached to the Memorandum in Opposition (before this Court’s Decision and Minute Entry that set the default judgment aside.) It was a notarized record of S.L. County Jail Records, and it

shows that I was first released from jail, (following the December 3rd arrest that resulted in the temporary impound of my car,) on **January 17, '08**. My own Verizon cellular phone records confirm and verify what I also remember: that from my very first communication with Jordan Credit Union, (talking to someone whose name I do not exactly remember, except that it was the person I was told that I must talk to because she was in charge of my loan account, and car – I wrote it all down, of course, but I do not have those notes with me here,) always, from the very first conversation, the sale of my car was being reported as a ‘done deal’ and accomplished fact. I remember asking her incredulously, “You sold my \$9,000.00 car to a salvage yard for \$200.00!” “Yes,” she answered, “it had some front end damage and we couldn’t get the car to start.” . . . Incredible!

But here’s my point, which is a huge question: Out of jail, which was not until about 5pm on January 17th, which was a Thursday, too late to call anybody then, I began my calls to all-importantly retrieve my car, on the following morning, Friday, 1/18/08 – and I was told that the girl I needed to talk to at Jordan Credit Union was unavailable to talk with me until that following Monday, which would have been January 21, '08. Now learning that the sale of my car did not take place, according to Plaintiff’s newest Memorandum. . . , until January 23rd, then I was either being lied to when I talked to her, or she avoided all of my telephone calls for three days while she made the final arrangements that sold my car for a mere pittance of its actual, real and true value!

Apparently there is a law already in place that is meant to ensure that the sale of a repossessed vehicle does not involve any self-dealing (by proxy, or otherwise, presumably.) Given the very fishy smell emanating from this transaction, especially in light of my own inquiries being stalled and/or avoided for 3 long days *before* – by Plaintiff’s own admission – this sale had been finalized, completed on January 23rd, I think it would be very interesting indeed to get both these parties in Court, or before a Deposition Hearing? . . .

22. So, here again, I most vehemently dispute everything about the so-called material “facts,” as characterized and alleged by this Plaintiff, regarding both the “reasonable” and adequate Notice provided me, the customer, by Plaintiff – along with nearly everything else about the sale of my car by them, and which I, in turn, must instead characterize as arbitrary and capricious, especially hasty and recklessly impetuous, as well as mean-spirited and malicious, or worse. . . There was no adequate or reasonable Notice provided me, nor was this car of mine sold for a fair price.

23. I have already shown how, by far, the best price Plaintiff could have received for the collateral asset would have been simply to have left me in it – kept the loan alive, and thereby received every last penny as we originally contracted between us by the terms of the Contractual Loan Agreement. It would appear they very arrogantly and cavalierly assumed (presumed) that my mother’s bank would compensate them for the entire amount of any collateral deficiency owing, regardless how reckless and impetuous their own failure to mitigate the collateral deficiency damages. It would appear they just didn’t care, in their rush to find the “less burdensome” route. Unfortunately for them, neither my mother nor my bank has the slightest obligation, *nor inclination*, to continue to help me pay for a car I no longer have. Sadly, I have been sent to prison ten times over the last twenty-two years, and haven’t a single valuable or worthwhile asset to my name, nor do I have any marketable job skills or prospects, either. Still, if this Court should decide *not* to rule in my favor, it will be a shame for my credit to have been fruitlessly ruined by the egregiously remiss and unfair treatment of me by this Plaintiff. . . and for the bad precedents being set, to the detriment of everyone else behind me who might be

considering to finance a car – particularly from this Plaintiff whose bad behavior would then have been encouraged, rewarded and protected, no matter that they have demonstrated a callous indolence and disregard for my own rights and reasonable expectations in this matter.

24. It is my contention that Plaintiff's Notice of Repossession, dated 12/11/07 – which was their only attempt at communication with me – and which said, (see Plaintiff's Exhibit C) "A sale may take place at any time without further notice to you. If you need more information about the sale you may write us or call us," was a most inadequate notice which not only violates the Loan Contract itself, (and as I have already shown, my pg. X, herein,) which required 10, not 9 days notice between December 11th and December 20th; it also seem to fall far short of the 'reasonable notice of the sale' required to be given to the debtor, as proscribed by law.

25. Neither was Plaintiff's decision to sell my/their collateral asset, (my car!), to a salvage yard for a mere pittance of its real, true and actual value a "commercially reasonable" decision. Just now please consider that when the original Loan Agreement and Contract was made and accepted by this Plaintiff (October 2005,) my car's retail value was accepted to be worth \$11,500.00 which was the amount of the loan, zero down payment required, (the amount financed being \$12,829.00 after fees and sales tax were added on.) This car was also accepted to be, at that time, an adequate collateral sufficiently enough to meet their own security in the amount loaned to me.

Now, only 25 months later, (25 monthly payments later,) they 'stretch and scramble' to make the sale of this collateral *seem* more reasonable in their arguments, by purporting that its value had sunk to a mere (See Plaintiff's new Memorandum. . . @ Pg. 11) "wholesale price of the vehicle . . . between \$3200.00 and \$4400.00" However, this is a *wholesale Trade-In value* and it is *one year more dated* (Kelly Blue Book, 10/28/2008) than when they actually sold my car for \$200.00, as evidenced by their self-serving Exhibit 'D' (attached to Michelle Rogers' Affidavit) which, being a year different, newer, of course places less valuation on my car than it was worth in December, 2007.

26. Even still, their own submitted math is wrong, becoming yet one more disputed so-called material "facts" in this case. First, and primarily because, as I have already shown, their allegation that my car needed \$2600.00 for enormously inflated and exaggerated costs of repair, additional to an undiagnosed engine problem, and as declared by Ken Martinez, lacks credibility, (to say it kindly.)

Moreover, even if this Court were accepting of that testimony despite its contradiction of record by both Mirror Image Auto Body and Paint, AND by the tow and impound receipt showing no broken windows, headlights, taillights, etc. . . the math is still wrong insomuch as \$4400.00 (disputed) less greatly exaggerated costs of repairs @ \$2600.00 (also disputed,) leaves a collateral asset amount of \$1800.00, not \$200.00. Furthermore, what prudent and responsible business person would ever loan at retail, and sell for wholesale? Other credit unions sometimes park their repossessed automobiles outside the business with FOR SALE signs in the window, presumably to best recoup their money in loans gone bad, ie. when a loan customer fails to make his promised payments. Jordan Credit Union seems not to care about any of that: it was far easier for them to hastily sell my car willy-nilly for any old price so long as it was quick and easy, "less burdensome," and because they figured I could be made to pay for their improvident mistakes, no matter how badly they behaved. As such, for egregious and cavalier FAILURE TO MITIGATE THEIR DAMAGES, one might almost regard this resulting collateral deficiency as their just and deserved 'rewards'. Most certainly, this disposition of collateral has not been made "in conformity with reasonable commercial practices among dealers," and as Article 9 of the

Uniform Commercial Code proscribes. As the Utah Court of Appeals has previously ruled, the vehicle must be sold for a “fair price,” (sans self-dealing.)

CONCLUSION

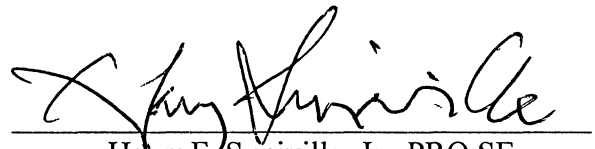
Had I been left in charge of my own car, I’d have sold it for its true worth, retail to a private buyer, and had money left over after paying off my loan completely, like as not – and this more closely approximates what any “reasonable commercial practices among dealers” would similarly dictate under these circumstances. Not the “less burdensome” route? Less burdensome would have been to take a few extra minutes to try and communicate to me, Plaintiff’s steady and reliable customer for over 2 years. It was also a courtesy that I had every right to expect. They loaned for \$12,000.00, then sold for \$200.00: no wonder they lost money and there’s a collateral deficiency left over once the smoke from their rash and hasty, arrogant and arbitrary caprices clears the air. Accordingly, I pray for this Court’s relief from these bogus and unjust claims. And, I additionally argue that I should myself be compensated from out of the pockets of this Plaintiff who, (in their original Complaint, and in their vehement argument against their previously obtained judgment by default against me, too – a judgment obtained for exactly *double the amount they now are more modestly alleging their collateral deficiency to be?* I hereby seek compensation for the full 2 months car loan payments accepted by them *after* they already had repossessed my car, and also for a fair and modest \$250.00 replacement costs borne by me when all of my personal property inside the vehicle turned up missing, and for any other punitive cost relief and damages which this Court feels it appropriate to award me. **Thank You** for these considerations.

CERTIFICATE OF NOTIFICATION

I hereby certify that a copy of the foregoing and attached document (**Memorandum and Reply In Support of My Preceding Motion to Dismiss, and Defendant Answer to Plaintiff's [Original] Complaint, AND as an OPPOSITION RESPONSE TO PLAINTIFF MOTION FOR SUMMARY JUDGMENT**) was sent to the following people by FIRST CLASS, PREPAID MAIL on the date specified, for Case #080903840.

TO: Richard C. Terry, and Douglas Oviatt
Attorneys for Plaintiff
39 Exchange Place
Suite 100
Salt Lake City, UT 84111

DATED THIS 4th day of December, 2008.



Harry F. Suniville, Jr., PRO SE
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT. 84020

Exhibit A

Utah State Tax Commission

Vehicle Impound Report

Citation no

No. **A 1205047**

Impound Date & time 12-3-07 0003	Vehicle year 2003	Make Mitsubishi	Model Eclipse	Type 2D	Color Red
--	-----------------------------	---------------------------	-------------------------	-------------------	---------------------

Vehicle Identification or serial number 4A3AC34G83E01976	Odometer reading 88226
--	----------------------------------

License plate number 827UTR	State UT	Decal number 072325875	Year of decal 08	Month/Year of expiration 10-08
---------------------------------------	--------------------	----------------------------------	----------------------------	--

Where was vehicle removed from?
1290E 3300S

Name and address of yard Guillermo Blanca Towing 3790S 150E	Yard number 865
---	---------------------------

Reason for impound

☐ Expired registration *Must be expired 3 months for impoundment.*
☐ Improper registration
 ☐ No Utah registration
 ☐ Theft
 ☒ Other: **Vehicle Unsafe to drive**

☒ DUI
 ☐ Abandoned:
 ☐ Reported theft
 ☐ Possible theft

Owner/lessee HARRY F SUNNIVILLE	Address 2235 DALLIN ST SLC, UT 84109
---	--

Driver's name Same	Address Same
------------------------------	------------------------

Accessories on vehicle

☒ Radio
 ☒ Tape/CD
 ☒ Hub caps/Special rims
 ☒ Mirrors
 ☒ Mats
 ☐ Other (see Remarks below)

Property in vehicle
MISC Clothing Tools Gas Containers

Visible damage
Front End, Drivers side Front, Paint Dents, Paint

Remarks

Officer's signature x A. Valley	Agency SLSO	ORI number B81	Case number 07-110251
---	-----------------------	--------------------------	---------------------------------

☐ Do not release from impound without authorization from impounding agency.

Exhibit B

ADDITIONAL TERMS OF THE CONTRACT SECURITY AGREEMENT

GENERAL TERMS You have been given the opportunity to review the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the items over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect and you do not agree to pay any finance charge or fee that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, we will refund it first to reduce the principal balance and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as part of this Contract may involve money retained by us or paid to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the remaining terms will remain part of this Contract.

ALLOON PAYMENT If any payment is more than twice as large as the average of all other regularly scheduled payments, you may rescind that payment when due. You may do so on terms as favorable as the terms originally agreed to in this Contract. If you elect our normal credit standards, this right does not apply if your payment schedule is adjusted for seasonal or irregular income or we do not offer similar credit at that time.

REPAYMENT You may prepay this Contract in full or in part at any time. Any prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance.

OWNERSHIP AND DUTIES TOWARD PROPERTY By giving us a security interest in the Property, you represent and agree to the following:

- Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract or they are installed in or delivered to the Vehicle.
- You will defend our interest in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
- The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
- You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
- You will not attempt to sell the Property unless it is properly identified (inventory) or otherwise transfer any rights in the Property to anyone else without our prior written consent.
- You will pay all taxes and assessments on the Property as they become due.
- You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully and without breaching the peace.

DEFAULT You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- You fail to perform any obligation that you have undertaken in this Contract.
- We, in good faith, believe that you cannot or will not pay or perform the obligations you have agreed to in this Contract. If you default, you agree to pay our costs for collecting amounts owing, including without limitation court costs, attorneys' fees, and costs for repossession, repair, storage and sale of the Property during this Contract.

If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES If you are in default on this Contract, we have all of the remedies provided by law and this Contract.

- We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- We may pay taxes, assessments or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the post maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
- We may require you to make the Property available to us at a place we designate if it is reasonably convenient to you and us.
- We may repossess the Property if you are in default or if you are in possession or sell help but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then forward your obligations.
- Except when prohibited by law, we may sue you for additional

amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not waive our right to later use any other remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address as reflected in our records at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

INSURANCE If required, you agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section or as we will otherwise require. You will name us as loss payee on any such policy. In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. You agree that if the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the post maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

OBLIGATIONS INDEPENDENT Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- You must pay this Contract even if someone else has also signed it.
- We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- We may release any security and you will still be obligated to pay this Contract.
- If we give up any of our rights, it will not affect your duty to pay this Contract.
- If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WARRANTY Warranty information is provided to you separately.

WAIVER To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; or (3) give notice that we intend to make or are making, this Contract immediately due.

THIRD PARTY AGREEMENT

By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature _____ Date _____

NOTICE ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller assigns to Assignee this Contract and all rights and obligations under this Contract and Security Agreement (Contract) to the Assignee, its successors and assigns, including all its rights and interests in the Contract and any guarantee executed in connection with the Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract (SEPARATE AGREEMENT). If this Assignment is made under the terms of a separate agreement, its details are described in a separate writing(s) and not as provided below.

Seller's Warranties

The Contract represents a sale by Seller to Buyer on a firm price basis and not on a cash basis.

The statements, covenants and conditions in this Contract are true and correct.

The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.

This sale was completed in accordance with all applicable federal and state laws and regulations.

This Contract is valid and enforceable in accordance with its terms.

The names and signatures on the Contract are not forged, fictitious or assumed and are true and correct.

This Contract is, voided in the buyer's line of all claims, is not subject to any claims or defenses of the Buyer and may be sold or assigned by the Seller.

A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.

The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.

Seller is or will perfect a security interest in the Property in favor of the Assignee.

If any of the warranties is breached or untrue, Seller will upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorneys' fees.

Seller will indemnify Assignee for any loss sustained by it because of judicial set off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the receipt of this Assignment, notice of non payment or non performance and notice of any other remedies available to Assignee.

Assignee may without notice to Seller and without affecting the liability of Seller under this Assignment, compound or release any rights against and grant extensions of time for payment to be made to Buyer and any other person obligated under this Contract.

RELEASE OF OTHER INFORMATION ON PAGE 1 THIS ASSIGNMENT IS WITHOUT RECOURSE

RELEASE OF OTHER INFORMATION If the Assignment is made with recourse, it is included on page 1. Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, reimburse the Assignee for the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorneys' fees.

RETAIL INSTALLMENT CONTRACT
AND SECURITY AGREEMENT

Seller

ACCESS AUTO
3772 SOUTH STATE
SALT LAKE CITY, UT 84107

Buyer

SURIVILLE HARRY

2235 DALLIN ST
SALT LAKE CITY, UT 84109

10/05/05

"We" and "us" mean the Seller above its
successors and assigns

"You" and "your" mean each Buyer above and
guarantor jointly and individually

LE. You agree to purchase from us on a time basis subject to the terms and conditions of this contract and security agreement (Contract) the
for Vehicle (Vehicle) and services described below. The Vehicle is sold in its present condition together with the usual accessories and attachments

Description of Year 2003 VIN 4A3AB34G83D017976 Other
for Vehicle Make MITSUBISHI Lic No./Year
closed Model ECLIPSE ☐ New ☒ Used

Description of
de In VIN:

CURITY To secure your payment and performance under the terms of this Contract you give us a security interest in the Vehicle all
accessories attachments accessories and equipment placed in or on the Vehicle together called Property and proceeds of the Property
also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with
Contract

OMISE TO PAY AND PAYMENT TERMS You promise to pay us the principal amount of \$ 12829.00 plus finance
charges accruing on the unpaid balance at the rate of 5.500 % per year from today's date until maturity. Finance charges accrue on a
Actual 365 day basis. After maturity or after you default and we demand payment we will earn finance charges on the unpaid
balance at 5.500 % per year. You agree to pay this Contract according to the payment schedule and late charge provisions shown in
TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.
ADDITIONAL FINANCE CHARGE You agree to pay an additional finance charge of \$ N/A that will be ☐ paid in cash
added to the Cash Price ☐ paid proportionally with each payment. You agree that \$ N/A of the prepaid finance charges
are nonrefundable if you pay this Contract in full before the maturity date.

WN PAYMENT You also agree to pay or apply to the Cash Price on or before today's date any cash rebate and net trade in value described
in ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in
the Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase on credit, including your down payment of
5.500 %	\$ 2101.52	\$ 12829.00	\$ 14930.52	\$ N/A

Payment Schedule Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
66	226.22	MONTHLY BEGINNING 11/19/05

curity You are giving a security interest in the Motor Vehicle purchased

Late Charge If a payment is more than 10 days late you will be charged
3% of the delinquent amount or \$30.00 dollars, which ever is greater

epayment If you pay off this Contract early you will not have to pay a penalty

☐ If you pay off this Contract early you may be entitled to a refund of part of the Additional Finance Charge

Contract Provisions You can see the terms of this Contract for any additional information about nonpayment default any required
payment before the scheduled date and prepayment refunds and penalties

EDIT INSURANCE Credit life credit disability (accident and
th) and any other insurance coverage quoted below are not
required to obtain credit and we will not provide them unless you sign
agree to pay the additional premium. If you want such insurance
We will obtain it for you (if you qualify for coverage). We are quoting
w ONLY the coverages you have chosen to purchase

dit Life Insured _____
Single ☐ Joint Prem \$ N/A Term N/A
dit Disability Insured _____
Single ☐ Joint Prem \$ N/A Term N/A

signature below means you want (only) the insurance coverage(s)
indicated below. If none are quoted you have declined any coverages we
offer.

Buyer _____

PROPERTY INSURANCE You must insure the Property securing
Contract. You may purchase or provide the insurance through any
insurance company reasonably acceptable to us. The collision coverage
policy may not exceed \$ N/A. If you get insurance
or through us you will pay \$ N/A for
N/A of coverage.

premium is calculated as follows:
N/A Deductible Collision Coverage \$ N/A
N/A Deductible Comprehensive Cov \$ N/A
Fire-Theft and Combined Additional Coverage \$ N/A

odily injury insurance coverage for bodily injury and motor
vehicle damage caused to others is not included in this
contract unless checked and indicated

SINGLE INTEREST INSURANCE You must purchase
the interest insurance as part of this sale transaction. You may
have the coverage from a company of your choice reasonably
acceptable to us. If you buy the coverage from or through us you
pay \$ N/A for _____ of coverage.

SERVICE CONTRACT With your purchase of the Vehicle
you agree to purchase a Service Contract to cover _____

This Service Contract will be in
effect for _____

SIGNMENT This Contract and Security Agreement is assigned

_____ the Assignee phone
_____ This assignment is made ☐ under the terms
of the agreement ☐ under the terms of the ASSIGNMENT
SET L&A on page 4. ☐ This assignment is made with recourse

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 735.00)	\$ 12259.00
Service Contract Paid to	\$ N/A
Cash Price	\$ 12259.00
Manufacturer's Rebate	\$ N/A
Cash Down Payment	\$ N/A
Deferred Down Payment	\$ N/A
a Total Cash/Rebate Down	\$ N/A
b Trade In Allowance	\$ N/A
c Less Amount owing	\$ N/A
Paid to (includes f)	\$ N/A
d Net Trade In (b minus c)	\$ N/A
e Net Cash/Trade In (a plus d)	\$ 0.00
f Amount to Finance line e (if e is negative)	\$ N/A
Down Payment (e disclose as \$0 if negative)	\$ 12259.00
Unpaid Balance of Cash Price	\$ 118.00
Paid to Public Officials Filing Fees	\$ N/A
Insurance Premiums	\$ N/A
Additional Finance Charge(s) Paid to Seller	\$ 299.00
To Documentary Fee	\$ N/A
To Title Tax	\$ 133.00
To	\$ N/A
To	\$ N/A
To	\$ N/A
To	\$ N/A
Total Other Charges/Amounts Pd to Others	\$ 576.00
Less Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 12829.00

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if
it contains any blank spaces. (2) You are entitled to a
completely filled-in copy of this agreement. (3) Under
the law, you have the right to pay off in advance the
full amount due and under certain conditions to
obtain a partial refund of the finance charge.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON
PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES
RECEIPT OF A COPY OF THIS CONTRACT

Buyer _____ 10/05/05
Signature _____ Date
Signature _____ 10/05/05
Date

EXHIBIT F

11-17-16
JUDICIAL DISTRICT COURT
US DEC 16 PM 3:53

DEPARTMENT
K. Toomey
CLERK

Richard C. Terry, USB No. 3216
Douglas A. Oviatt, USB No. 12192
CORBRIDGE BAIRD & CHRISTENSEN
39 Exchange Place, Suite 100
Salt Lake City, Utah 84111
Telephone: 801/534-0909

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

JORDAN CREDIT UNION,

Plaintiff,

v.

HARRY F. SUNIVILLE,

Defendant.

REPLY AND OBJECTION

Civil No. 080903840

Judge Kate Toomey

Plaintiff, by and through the undersigned counsel, hereby submits its reply to Defendant's Response to Plaintiff's Motion for Summary Judgment. Plaintiff also objects to the Response and objects to this Court's consideration of Defendant's response and all exhibits and other offers of evidence. This objection is made due to Defendant's violation of Rules 7, 10, and 11 of the Utah Rules of Civil Procedure and because the proposed evidence is inadmissible on the grounds of hearsay and lack of proper foundation.

I. GENERAL OBJECTION

Plaintiff objects to any consideration of Defendant's Response to Plaintiff's Motion for

Summary Judgment. This objection is based on the following: the lack of signature, improper form and memorandum exceeding the allowed pages, in violation of Utah Rules of Civil Procedure 7 and 10, and 11, and lack of foundation, and is supported by the filings and pleadings of record and the argument set forth below.

Defendant has already been put on notice by this Court of his obligation to abide by the Rules of Civil Procedure, that his choice to proceed unrepresented by counsel would not relieve him of this duty nor allow him special consideration or treatment. Defendant has yet to present one piece of admissible evidence in support of his many pages of argument. This most recent memorandum is the equivalent of twenty-eight double spaced pages, where the rule mandated maximum is five. It is impossible for Plaintiff to fairly and adequately respond to Defendant's many points and still stay in compliance with the applicable rules. A proper remedy is to exclude the memorandum and offered documents from consideration.

Therefore, Plaintiff requests that Defendant's response be stricken in its entirety, or in the alternative, Plaintiff respectfully requests that the Court limit its consideration to the first two and a half pages of argument, the equivalent of the five page maximum allowed by rule.

Plaintiff also objects to admission of any and all exhibits submitted by Defendant as well as the numerous unsupported facts alleged throughout his memoranda. Defendant has provided only one notarized statement, which was neither sworn nor given under penalty of law, the substance of which is not even material to the argument before this Court, i.e., the timeliness of previous loan payments. Plaintiff's action is based on Defendant's failure to pay the rightfully accelerated debt when called due. The prior payments are irrelevant and immaterial.

Because Defendant has provided no foundation for any exhibit or purported fact, Plaintiff requests that this Court strike and not consider all Defendant's exhibits and any purported facts set forth in his memoranda, with the clear exception of references to Plaintiff's evidence.

II. REPLY

A. SUMMARY JUDGMENT IS PROPER IN THIS CASE BECAUSE DEFENDANT HAS PRESENTED NO GENUINE ISSUE OF MATERIAL FACT.

Defendant has failed to provide facts which present a genuine issue of material fact in this case Plaintiff is entitled to judgment as a matter of law.

The facts, as presented by Plaintiff in its initial memorandum, remain undisputed. Defendant executed the contract containing a security interest in the vehicle. Defendant breached that contract by failing, by his own admission, to maintain the vehicle in good working order and in his possession. Jordan was within its rights under the contract and applicable law, to repossess the vehicle after impound and to accelerate the debt. Defendant was given proper notice under the terms of the contract of the repossession and possible sale of his vehicle. That notice was only required to be sent to the address he provided to Plaintiff. Plaintiff's evidence indicates that the vehicle was properly sold on January 17, 2008. (Second Aff'd of Michelle Rogers). Defendant was subsequently notified of that sale and the deficiency, for which he is liable under the contract.

Notwithstanding his protestations to the contrary, Defendant has not provided any admissible evidence to place any of these facts in dispute. Instead, Defendant asks this Court if the actions of Plaintiff were prudent or reasonable business practices. This argument is irrelevant and immaterial to the case at hand. The prudence of Plaintiff's actions is not at issue in this case,


only whether such actions were permitted under existing and accepted principles of law. The answer to that inquiry must be yes. Plaintiff had a valid contract, which was breached by Defendant, entitling Plaintiff to exercise its rights for enforcing the contract. The actions precipitating the response by Plaintiff were of the Defendant's own making and choosing. Because there is no genuine issue of fact in dispute, Plaintiff's motion should be granted and judgment entered against Defendant.

III. CONCLUSION

Plaintiff has established, by the evidence, that there was a contract between Plaintiff and Defendant, that Defendant materially breached that contract, that his breach was not excused, and that Plaintiff was then entitled to enforce the default provisions within that contract. Defendant has not provided this court with argument or admissible evidence to place any material part of Plaintiff's claim in dispute. Summary judgment is proper in this case and Plaintiff respectfully requests that this Court grant Plaintiff's motion and enter judgment in favor of Plaintiff.

DATED this 16 day of December, 2008.

CORBRIDGE BAIRD & CHRISTENSEN

By: 

Douglas A. Oviatt
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on the 16th day of December, 2008, I mailed, postage prepaid, a true and correct copy of the foregoing Plaintiff's Reply and Objection to:

Harry F. Suniville
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT 84020

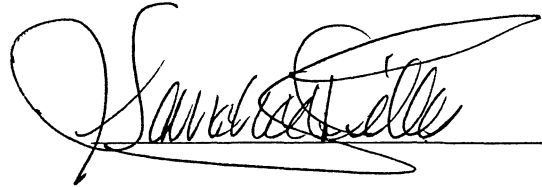
A handwritten signature in black ink, appearing to read "Harry F. Suniville", written over a horizontal line.

EXHIBIT G

Richard C. Terry, USB No. 3216
Douglas A. Oviatt, USB No. 12192
CORBRIDGE BAIRD & CHRISTENSEN
39 Exchange Place, Suite 100
Salt Lake City, Utah 84111
Telephone: 801/534-0909

CLERK OF DISTRICT COURT
08 DEC 16 PM 3:53
J. L. HARRINGTON
[Signature]
CLERK

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

JORDAN CREDIT UNION,

Plaintiff,

v.

HARRY F. SUNIVILLE,

Defendant.

**SECOND AFFIDAVIT OF MICHELLE
ROGERS**

Civil No. 080903840

Judge Kate Toomey

STATE OF UTAH)
) ss.
County of Salt Lake)

I, Michelle Rogers, being first duly sworn, hereby depose and state as follows:

1. I am employed by the Plaintiff, Jordan Credit Union (hereinafter "Jordan"), as a Collection Officer.
2. I am over the age of eighteen (18) and have personal knowledge of the facts stated herein.
3. I have personal knowledge of and am familiar with the Complaint on file herein.

The allegations of Jordan Credit Union against the Defendant Harry Suniville are true.


about the 23rd of January, 2008. This was the date noted in the deficiency letter sent to Mr. Suniville, however this was actually the date the sale proceeds were applied to the loan. A copy of that transaction history is attached hereto as Exhibit A. This record was made contemporaneous with the transaction, and is a record regularly kept in the course of business

5. The sale of the vehicle did in fact occur on January 17, 2008. Attached hereto as Exhibit B is a true and correct copy of the check from the buyer, dated January 17, 2008.

6. The delay between the actual sale and the posting of the proceeds was for administrative and processing purposes.

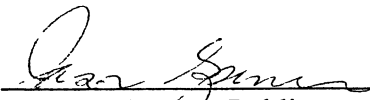
FURTHER, THIS AFFIANT SAITH NAUGHT.

DATED this 12 day of December, 2008.


Michelle Rogers

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Subscribed, sworn to, and acknowledged before me this 12th day of December, 2008, by Michelle Rogers, signer of the above instrument, who duly acknowledged to me that she executed the same.


Notary Public

I\3\3681\579\D.wpd

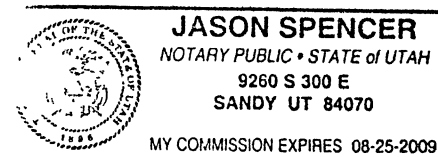


Exhibit A

Account Histories

HARRY F SUNIVILLE	Account: 58350-3	SSN: XXX-XX-3848
1418 SO 1100 EAST #5	Telephone: (801) 598-0522	Branch: Sandy
SALT LAKE CITY, UT 84105-2427	Association:	

From: 01/01/2008 to 02/01/2008

Share History									
Description	Effective	Br	Transaction Description	Amount	Withheld	Balance	Code	Number	Teller Id
001-Regular Shares	01/01/2008		Previous Balance	0.00	0.00	25.35			
	01/23/2008	1	SHARE DEPOSIT	200.00	0.00	225.35	SD	416226	B9
	01/23/2008	1	GNRL/LDGR ADJ	-200 00	0.00	25.35	GL	416232	B9
	01/23/2008		REPO SALVAGE PROCEEDS				MG	416232	B9

Loan History										
Description	Effective	Br	Transaction Description	Amount	Principal	Interest	Fees	Balance	Code	Nun
001-REPO	01/01/2008		Previous Balance	0.00	0.00	0.00	0.00	9,104.09		
	01/14/2008		Repossession Rep	55.00	55.00	0.00	0.00	9,159.09	GL	250
	01/23/2008	1	GNRL/LDGR ADJ	-200 00	-200 00	0.00	0.00	8,959.09	GL	416
	01/23/2008		REPO SALVAGE PROCEEDS	0.00	0.00	0.00	0.00	8,959.09	MG	416
	01/25/2008	1	LOAN PAYMENT	-226 22	-182 29	-43 93	0.00	8,776.80	LP	464
	01/25/2008	1	Lobby Transaction (LP)	0.00	0.00	0.00	0.00	8,776.80	NS	464
	01/25/2008	1	Next Loan Payment Due: 01 Mar 2008	0.00	0.00	0.00	0.00	8,776.80	NS	464

Exhibit B

MIDVALE ALL SMALL AUTO, INC.

VENDOR NO.				CHECK NO.								
VOUCHER NO.	VENDOR INV. NO.	DATE INV.	GROSS AMOUNT INV.	DISCOUNT	NET AMOUNT INV.							
<p>2003 mits. Eclipse Vin# 4A3AC34G83F017976</p>												
EARNINGS AND DEDUCTIONS STATEMENT - DETACH BEFORE DEPOSITING-MIDVALE ALL SMALL AUTO, INC.												
PERIOD ENDING	HOURS			EARNINGS			DEDUCTIONS					NET PAY
	REG.	O.T.	TOTAL	REGULAR	OVERTIME	OTHER	GROSS AMOUNT	F.I.C.A.	FED. W.H. TAX	STATE TAX	INSURANCE	

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER / SIGNATURE LINE

MIDVALE ALL SMALL AUTO, INC.
 6990 SOUTH STATE
 MIDVALE, UTAH 84047
 PHONE: 661-2251

31-297
1240

0017662

VENDOR	DATE	CHECK NO.	DOLLARS
XX Two Hundred & No/100 dollars XX	1-17-08	0017662	XX \$200.00 XX

PAY TO THE ORDER OF

Jordan Credit Union

WELLS FARGO BANK
 NORTHWEST NA
 299 South Main Street, 7th Floor
 Salt Lake City, Utah 84111

Kent H. Price
 AUTHORIZED SIGNATURE

⑈017662⑈ ⑈12400297⑈ ⑈0056583057⑈

EVJIBT BR

CERTIFICATE OF SERVICE

I certify that on the 11th day of December, 2008, I mailed, postage prepaid, a true and correct copy of the foregoing Affidavit of Michelle Rogers to:

Harry F. Suniville
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT 84020

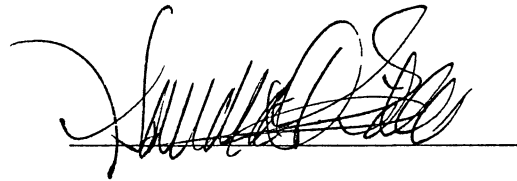
A handwritten signature in black ink, appearing to read "Harry F. Suniville", is written over a horizontal line.


EXHIBIT H

IN THE THIRD JUDICIAL DISTRICT CIVIL COURT, SALT LAKE COUNTY, UTAH

Harry F. Suniville, Jr.
Defendant/Respondent

vs.

Jordan Credit Union
Plaintiff

FILED
09 FEB 24 AM 9:37
AFFIDAVIT OF RON HINCKLEY
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY  DEPUTY CLERK

Case # 080903840

Judge Kate A. Toomey

My name is Ron Hinckley and I am Harry F. Suniville, Jr.'s. (#17265) assigned prison caseworker while he remains housed at Utah State Prison, Promontory facility, Draper site. The attached copy is taken from Harry's "blue packet" and I can confirm and verify that this is a true and accurate, correct copy of information recently considered by the Utah State Board of Pardons at Mr. Suniville's Board Hearing.

Information like this is culled from a variety of official sources such as police reports, and Adult Probation and Parole investigative reports. This specific and attached page is copied from a Post-Sentencing Report prepared for the Board of Pardons by the Utah State Department of Corrections' Adult Probation and Parole, relative to a traffic stop by the Salt Lake County Sheriff's Office on 12/03/07, which resulted in his subsequent arrest for alleged DUI/Drugs. Based on the attached document, I would feel comfortable to say that yes, his car was obviously running up until the time of its impoundment on this date - which is a disputed fact at issue, as I understand it, in the case cited above.

However, to be clear, I cannot personally speak to anything of that; rather, I can only personally attest that the page attached (**Please see Exhibit A, attached**) is a legitimate and accurate partial copy of an Investigative Post-Sentence Report prepared by a certified officer/agent of the Department of Corrections' Adult Probation and Parole office.

**I DECLARE UNDER CRIMINAL PENALTY OF THE STATE OF UTAH THAT
THE FOREGOING IS TRUE AND CORRECT.**

FURTHER, THIS AFFIANT SAITH NAUGHT.

EXECUTED ON _____, 2009.

Ron Hinckley

Subscribed, sworn to, and acknowledged before me on this _____ day of _____, 2009, by _____, signer of the above instrument, who duly acknowledged to me that he executed the same.

My Commission Expires _____

Notary Seal

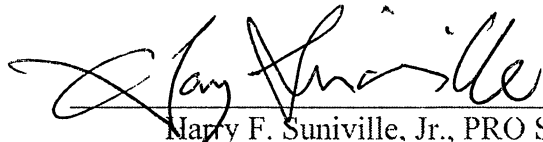
Note:
This Exhibit A has been
separately mailed direct
to this Court's Clerk
for perox copying

CERTIFICATE OF NOTIFICATION

I hereby certify that a copy of the foregoing and attached document (**AFFIDAVIT OF RON HINCKLEY**) was sent to the following people by FIRST CLASS, PREPAID MAIL, on the date specified, for Case #080903840.

TO: Richard C. Terry and Douglas Oviatt
Attorneys for Plaintiff
39 Exchange Place
Suite 100
Salt Lake City, UT. 84111

DATED THIS 20th day of February, 2009.

A handwritten signature in black ink, appearing to read "Harry F. Suniville, Jr.", written over a horizontal line.

Harry F. Suniville, Jr., PRO SE
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT. 84020

Inmate Number 11267
Inmate Housing PLF #F-41
Utah State Prison
P O Box 250
Draper, Utah 84020-0250
Case # 080903840

23 FEB 2009 PM 2 T



USA 42

Judge Kate A. Toomey
% THIRD DISTRICT CIVIL COURT
450 South State Street
P.O. Box 1860
Salt Lake City, UT. 84111-1860
ATTN: HONORABLE JUDGE KATE TOOMEY

2
13

EXHIBIT I

Harry F. Suniville, Jr.
PRO SE
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT. 84020

Dear Court Clerk,

IN THE THIRD JUDICIAL DISTRICT CIVIL COURT, SALT LAKE COUNTY

Third Judicial District

Harry F. Suniville, Jr.
Defendant/Respondent

vs.

Jordan Credit Union
Plaintiff

NOTICE TO COURT,
AND TO PLAINTIFF,
REGARDING NEW EVIDENCE

FEB 24 2009

SALT LAKE COUNTY

Deputy Clerk

Case # 080903840

Judge Kate A. Toomey

Comes now before this Court, Harry F. Suniville, Jr., PRO SE, and as the

Dear Court Clerk

Please: \$5.00 for copy fees have been sent to this Court in a separate envelope because I have nowhere else to turn for 8xerox copies (2 each) of each page, these 3 pages (one is double-sided) of Original Evidence documents. This Court is intended to keep the Originals; the 2 sets of extra copies are for my file, and to be mailed as well to Plaintiff's Attorneys in the 2 stamped and pre-addressed envelopes provided. Thank You! 2/20/09

Signature of Inmate

Signature of Attorney

Date

Case #080903840

Harry Suniville 217

Office - White

UTAH STATE PRISON DISCIPLINARY APPEAL FORM

LAST NAME FIRST MIDDLE <i>Survilla, Harry F.</i>	USP # <i>17265</i> OFFENDER#	UNIT <i>PCT.</i> CELL <i># F. 41</i>
INCIDENT CASE #	DISCIPLINE CASE #	HEARING DATE APPEAL DATE

REQUEST AN APPEAL REVIEW OF MY DISCIPLINARY HEARING FOR THE FOLLOWING REASONS:

☒ **THE DISCIPLINARY PROCEDURES WERE NOT PROPERLY FOLLOWED.**

☒ **THERE WAS NO EVIDENCE TO SUPPORT THE DHO'S FINDINGS.**

☒ **THE DISCIPLINARY SANCTIONS WERE ARBITRARY, CAPRICIOUS, UNREASONABLY HARSH OR UNREASONABLY LIGHT.**

PS. may take a week to arrive.

FOR EACH BOX CHECKED ABOVE, PROVIDE SPECIFIC DETAIL

Today I am mailing a \$5.00 (five dollars) payment to this Court to cover the cost of xerox copying needed in this case. It will arrive in a separate envelope from this one because it first must be processed by Inmate Fund Accounting; and these xerox copies are needed by me because I am forced to send my only ORIGINAL COPIES of these 3 (three) enclosed documents direct to this Court, in the interest of timely sharing them with both Court and Plaintiff, and that is because a recent development at the prison has made legal copying, and computer access, too completely unavailable to me. Of course, all of my communication with this Court must necessarily also be shared with the Plaintiff in this case, and I have thus additionally provided herewith 2 pre-addressed, stamped envelopes for the purpose that copies of these 3 (three) original documents can all the easier be mailed back to me, and to Plaintiff, now that this Court (herewith, enclosed) has their originals.

I have already mailed a complete copy of the Affidavit/Declaration from Mirror Image Auto Body and Paint to Plaintiff — except that having just received the Original back — now signed and notarized under penalty of perjury by Shannon Weirick, Plaintiff has not yet been able to see that this is so, and that it has now, subsequently, been signed and notarized for the benefit of this Court, and that is the reason for Copies #1; and #2 being the Mirror Image Auto Body and Paint formal estimate of repairs, now revisited for a second time since its initial inclusion in my November 4th, '88 Defendant Brief.

SIGNATURE _____ DATE _____

**UTAH STATE PRISON
DISCIPLINARY APPEAL FORM**

LAST NAME <i>Suniville</i>	FIRST <i>Harry</i>	MIDDLE <i>F.</i>	USP # <i>17265</i>	UNIT <i>PCF</i>
OFFENDER#			CELL <i>#F-41</i>	
INCIDENT CASE#	DISCIPLINE CASE#	HEARING DATE	APPEAL DATE	

REQUEST AN APPEAL REVIEW OF MY DISCIPLINARY HEARING FOR THE FOLLOWING REASON(S):

☒ **THE DISCIPLINARY PROCEDURES WERE NOT PROPERLY FOLLOWED**

☒ **THERE WAS NOT SOME EVIDENCE TO SUPPORT THE DHO'S FINDINGS**

☒ **THE DISCIPLINARY SANCTIONS WERE ARBITRARY, CAPRICIOUS, UNREASONABLY HARSH, OR UNREASONABLY LIGHT**

FOR EACH BOX CHECKED ABOVE, PROVIDE SPECIFIC DETAIL

PAGE (2)

The 3rd (third) Xerox Copy needed is taken from the blue Original (enclosed) and is best described by the Affidavit of Ron Hinckley. For the timely benefit of Plaintiff, the relevant portion of this document says, "OFFICIAL VERSION": On December 03, 2007, Officer Barrett from the Salt Lake County Sheriff's Office observed the defendant, Harry Suniville driving in an erratic way. Officer Barrett initiated a traffic stop on the vehicle the defendant was driving..." (End Quote)

I have meanwhile requested the prison's Records Office (GRAM) to better authenticate this last document because the Ron Hinckley Affidavit (also previously shared with Plaintiff) remains unsigned. Prison policy, come to find out, leaves all document authentication to their BIO Records Office, and they have yet to respond to me to corroborate and verify the authenticity of this particular page that is taken from a Dept. of Corrections, Adult Probation and Parole Post-Sentence Report prepared in December for the Utah State Board of Pardons and Parole.

Of course, in the meantime, I am also sharing by carbon copy these exact same foregoing words with Plaintiff's Attorneys by pre-paid, First Class Mail sent today, Friday, February 20, 2009, to Richard C. Terry/Douglas Christ at Cambridge Baird Christensen Attorneys, 39 Exchange Pl., Suite 100, SLC, UT.

So Certified to Plaintiff's Attorneys
 SIGNATURE: *[Signature]* DATE: *2-20-09*

**MIRROR IMAGE
AUTO/BODY & PAINT**

608 W. CENTER STREET
MIDVALE, UT 84047

Phone #

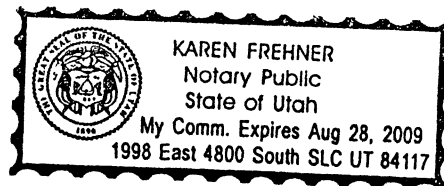
801-748-4993

HARRY SUNNYVILLE
2003 MITSUBISHI ECLIPSE

Estimate

Date	Estimate #
10/9/2007	48

Description	Qty	Rate	Total
REPLACE RH FENDER		175.00	175.00T
LABOR	1	40.00	40.00T
REPAINT RH FENDER	3	44.00	132.00T
PAINT & SUPPLIES	3	44.00	132.00T
		Subtotal	\$479.00
		Sales Tax (6.85%)	\$32.81
		Total	\$511.81



OFFICIAL VERSION:

On December 03, 2007, Officer Barrett from the Salt Lake County Sheriffs Office observed the defendant, Harry Suniville driving in an erratic way. Officer Barrett initiated a traffic stop on the vehicle the defendant was driving. Upon speaking with the defendant, Officer Barrett observed the defendant's slurred speech and inability to complete ordered tasks. The defendant had several warrants for his arrest and was driving a vehicle on a denied license.

Officer Barrett searched the vehicle and discovered a glass pipe in the drivers' seat with burnt residue inside it as well as a bundle of white rocks, which later tested positive for cocaine. The defendant attempted to complete field sobriety tests by Officer Barrett and failed.

Officer Barrett booked the defendant into the Salt Lake Adult Detention Center for Possession of Cocaine, Possession of Drug Paraphernalia, DUI third offense, Driving on an Alcohol Revoked License, and Driving Without an Interlocking Device as well as other outstanding warrants.

Exhibit "A"

RESTITUTION:

There is no restitution determined in this case.

CUSTODY STATUS:

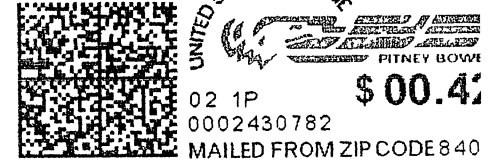
Judge Atherton from the Salt Lake Third District Court sentenced Mr. Suniville to the Utah State Prison on October 10, 2008, for a term of 0-5 years for case #071909070. Mr. Suniville is currently serving this sentence.

CRIMINAL HISTORY UPDATE:

(Update any arrest/convictions since the last Pre/Post Sentence Report).

DATE	ARRESTING AGENCY	OFFENSE	DISPOSITION
/10/2008	Salt Lake County Sheriff	WA- Theft, Felony WA- Possession of a Controlled Substance, Felony WA- DUI, Felony	No Disposition
/20/2008	Adult Probation and Parole	BW- Possession of Drug Paraphernalia	Justice Court Warrant

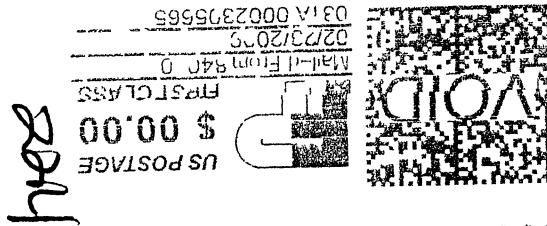
Inmate Number 11111
Inmate Housing PCF # F-41
Utah State Prison Case #080903840
P O Box 250
Draper, Utah 84020



Court Clerk — Judge Kate A. Toomey
C/O THIRD DISTRICT CIVIL COURT
450 South State Street
P.O. Box 1860

Salt Lake City, UT. 84111-1860

Attn. Court Clerk,
HONORABLE JUDGE KATE A. TOOMEY



84110/1860

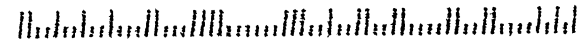


EXHIBIT J

FILED
DISTRICT COURT
IN THE THIRD JUDICIAL DISTRICT CIVIL COURT, SALT LAKE COUNTY, UTAH

Harry F. Suniville, Jr.
Defendant/Respondent

**AFFIDAVIT / DECLARATION
FROM MIRROR IMAGE AUTO
BODY AND PAINT**

09 FEB 25 AM 9:42

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY PL DEPUTY CLERK

vs.

Jordan Credit Union
Plaintiff

Case # 080903840

Judge Kate A. Toomey

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Dick and Shannon WEIRICK, do solemnly state as follows:

1. I am/We are over the age of eighteen (18) and have personal knowledge of the facts set forth below.

2. I am a certified mechanic (or wife and business partner) and I have worked in the automotive repair industry practically all my life (for 20 number of years). My main areas of professional expertise are auto body repairs and painting.

3. I/We derive our income from a business centered around that same expertise, and we call our company Mirror Image Auto Body and Paint. Our business address is currently located at 608 W. Center Street, Midvale, UT. 84047.

4. We are both well acquainted with Harry F. Suniville, Jr., because on several occasions in the past we have been asked to perform inspection, estimation, and auto body repairs, plus painting services, on a succession of different Mitsubishi Eclipse automobiles owned by him, starting with autumn, 2003.

5. On or about October 9th, 2007, we were asked by Harry F. Suniville, Jr., to inspect his cayenne red 2003 model year Mitsubishi Eclipse, and to provide a repair estimate for the work that would be required to fix a dent on this car's passenger-side front fender. I believe he might have explained at that time that this newer dent on his car had been caused by a drunken apartment-complex neighbor.

6. At the time of this estimation for new repair services required, there were then pending between us, by previous verbal contract and understanding, some as-yet-unmade repairs to this same car's front bumper panel. At that time, Harry had credit at our shop sufficient

enough to pay for an after-market front fiberglass bumper panel, and for the painting which would be required to fix his front end entirely; and these repairs were put on hold and left pending at customer's request, until such time as he could come up with the money required to pay for the newest repairs (to his front fender.) At that time, it was our plan that then all of the needed auto body repairs could be made at once and simultaneously. This is always the better plan because then all required auto body painting can be flawlessly matched.

7. At the time of this, the last estimate on record at our shop, it is my belief, and my strong recollection, that for the final estimate price of \$511.⁸¹, (body work parts and labor,) Harry's car could have been fixed up and made cosmetically (from an auto body and paint perspective,) "good as new" – that is, restored to a 'showroom quality' condition of repair. We have submitted a true and correct copy of this formal Repair Estimate, and it is attached to this hereto as **Exhibit A**.

8. Furthermore, I know for a fact that Harry's front bumper assembly, although broken off in places at the bottom, needed no new front bumper support, (a \$95.⁰⁰ part,) because Harry had already paid for a new front bumper support: one which we previously had installed for him as a cash purchase, and because he wanted to ensure himself – while replacement of the broken fiberglass front bumper panel remained in limbo – that all the other extrinsic and attached parts of the bumper assembly, and that didn't need repair, nor replacement, as they were already "good as new" (that is, reflector plastic, turn signal lights, and both front headlight assemblies) could stay solidly affixed – without shake or rattle. In other words, his broken front bumper fiberglass was previously, at our shop, and by one of our mechanics, firmly tied down to a brand new, replacement, front bumper support.

9. Now, I have had opportunity just recently to read a document submitted to this Court by Jordan Credit Union titled "Declaration of Ken Martinez" and it is my honest opinion: freely submitted here in consideration of "front bumper support," falsely alleged as needed, and many other seeming inconsistencies, also, but mostly based upon my/our own personal knowledge and recall – and especially submitted in the interest of simple justice – that he (this "Ken Martinez") is plainly lying with regards to the state of, and condition of repairs on Harry's car.

10. For one thing, I have already stated what I know about the front bumper support. And I want to personally contradict the testimony of this "Ken Martinez" relative to same, because we know by our own shop's records, and personal knowledge, that this front bumper support allegedly needed had already been replaced!

11. In truth, I/we find this "Declaration of Ken Martinez" plainly laughable and
1. I know, because by professional experience, nobody can accurately price anything (neither

after-market used parts, nor new, factory/replacement parts,) without first knowing the exact model year of the car to which estimates are being made. Additionally, it is plain to me that this is a fraudulent and greatly exaggerated assessment of the true condition of Harry's car, and I/we base this opinion on personal knowledge of Harry's car as I/we last saw it in October '07.

12. Accordingly, I now have had occasion to read Harry's answer to the lawsuit complaint to which he has subsequently been forced to defend himself. Specifically, I/we have now have had an opportunity to actually read parts of Harry's answer to this lawsuit, and the case he makes therein (called **MEMORANDUM AND REPLY SUBMITTED IN SUPPORT OF MOTION TO DISMISS AND DEFENDANT'S ANSWER TO PLAINTIFF'S [ORIGINAL] COMPLAINT, AND AS AN OPPOSING RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**) @ §3, §5, §6, §8, §9, §10 on Pages 4-7, AND, based upon my/our personal and professional knowledge of this car in question, particularly in regards to this car's actual and true condition of repair – as we personally know and recall it to be in October '07 – we both wish to weigh in and hereby attest and testify under oath that to the very best of our knowledge and belief, Everything that Harry has told this Court and stated therein is factually true.

13. Moreover, based upon my own professional knowledge and experience, when an automobile's car ignition system requires a computer chip ignition key to operate, and as Harry's 2003 Mitsubishi required, that car will simply not start and run for more than a second or two, until, with a computer code supplied only by Mitsubishi Motors, a new computer chip key has been made to order by key-code specifications. It is an expensive proposition then to duplicate such a key; and locksmiths typically charge \$125.⁰⁰ and more to duplicate an ignition key that is capable of operating the car.

14. Also, based upon my professional experience, if everything wrong with Harry's car were really true – all that this "Ken Martinez" has alleged – then there is not a mechanic in this world who would have passed the car for safety and emissions testing and certification, as I personally know would have been required for Harry's mandatory, by end-of-October deadline, in order that the current registration be renewed with new current-registration (October) stickers, as required by the Utah State Department of Motor Vehicles. In fact, we both do actually recall that the expense of this was one of the reasons why our own Mirror Image body shop repairs were left pending and in 'limbo' at that time, back in October when the last formal Mirror Image Estimate of Repairs was deferred and postponed pending the availability of the last \$500.⁰⁰ or so required with the plan being that, then, all of the then-pending repairs required to perfectly restore Harry's car to a showroom quality of repairs could be made all at once, then simultaneously painted, all at once. Certainly, official records at the Utah State Department of

Motor Vehicles could confirm and verify, corroborate, the accuracy of this part of our statement, regarding these October vehicle registration – and prerequisite safety and emissions testing certifications.

WE BOTH DO SOLEMNLY DECLARE UNDER CRIMINAL PENALTY OF THE STATE OF UTAH THAT THE FOREGOING IS TRUE AND CORRECT.

FURTHER, THESE AFFIANTS SAITH NAUGHT.

EXECUTED ON _____, 2009.

BY x _____
 Dick _____
 Declarant

 x _____
 Shannon _____
 Declarant

BY: Mirror Image Auto Body and Paint
 608 W. Center Street
 Midvale, UT 84047

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Subscribed, sworn to, and acknowledged before me on this _____ day of _____, 2009, by _____ & _____, signer(s) of the above instrument, who duly acknowledged to me that he/she executed the same.

My Commission Expires _____ Notary Seal

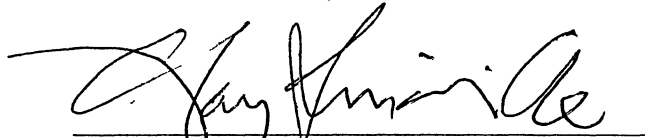
*Note: Exhibit A, as well as
The Original Signed and Notarized
Page of this document has
been sent direct to this Court's
Clerk for further xerox copying
because it is also the only
original signed copy*

CERTIFICATE OF NOTIFICATION

I hereby certify that a copy of the foregoing and attached document
(AFFIDAVIT/DECLARATION FROM MIRROR IMAGE AUTO BODY AND PAINT)
was sent to the following people by FIRST CLASS, PREPAID MAIL, on the date specified, for
Case #080903840.

TO: Richard C. Terry and Douglas Oviatt
Attorneys for Plaintiff
39 Exchange Place
Suite 100
Salt Lake City, UT. 84111

DATED THIS 20th day of February, 2009.

A handwritten signature in black ink, appearing to read "Harry F. Suniville, Jr.", written over a horizontal line.

Harry F. Suniville, Jr., PRO SE
#17265
c/o Utah State Prison
P.O. Box 250
Draper, UT. 84020