

2010

Vilma Estrada v. Robin Mendoza, Fred W. Almanza,  
Feria Access LLC, Southern Management  
Professional Limited Liability Company, Does 1-50  
: Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

<p><b>Vilma Estrada, Plaintiff/ Appellant</b> v. Robin Mendoza, Fred W Almanza, FERIA Access LLC, Southern Management Professional Limited Liability Company; Does 1-50</p> <hr/> <p>Lidia Hernandez Arellano, Plaintiff/ Appellant v. Robin Mendoza et al.</p> <hr/> <p>Victor Bravo, Plaintiff/ Appellant v. Robin Mendoza et al.</p> <hr/> <p>Jose Lopez, Plaintiff/ Appellant v. Robin Mendoza et al.</p> <hr/> <p>Hilda Hernandez, Plaintiff/ Appellant v. Robin Mendoza et al.</p> <hr/> <p>Leila Stowell, Plaintiff, Appellant v. Robin Mendoza</p>	<p><b>Appellants' Reply Brief</b></p> <p><b>Appellate Case No.</b> <b>20100418-CA</b></p>
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**IN THE UTAH COURT OF APPEALS**

**Vilma Estrada, Plaintiff/ Appellant**

**v.**

Robin Mendoza, Fred W Almanza, Feria  
Access LLC, Southern Management  
Professional Limited Liability Company;  
Does 1-50

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Lidia Hernandez Arellano, Plaintiff/  
Appellant

**v.**

Robin Mendoza et al.

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Victor Bravo, Plaintiff/ Appellant

**v.**

Robin Mendoza et al.

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Jose Lopez, Plaintiff/ Appellant

**v.**

Robin Mendoza et al.

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Hilda Hernandez, Plaintiff/ Appellant

**v.**

Robin Mendoza et al.

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Leila Stowell, Plaintiff, Appellant

**v.**

Robin Mendoza

**Appellants' Reply Brief**

**Appellate Case No.  
20100418-CA**

# Appellants' Reply Brief

## Summary of Argument

1. The Court granted a Motion for Judgment on the Pleadings. The allegations of the Appellants' several complaints were presumed to be true. Appellants are not challenging in this appeal any finding of fact which would require the marshaling of the evidence.
2. Appellees' assertion that Appellants failed to preserve their objections to the improper belated raising of issues is feckless. Appellants Opening Brief included citations to the record where these issues were preserved for appeal.
3. The deliberate and knowing application for garnishments with inflated judgment and cost amounts was absolutely deceptive and unconscionable and violated the UCSPA.

## ARGUMENT

### **I. Appellants Are Not Appealing Any Factual Ruling Made by Judge Layton**

There was no evidentiary hearing in this case. This is an appeal of the granting of a Motion for Judgment on the pleadings. This is an appeal of Judge Layton's conclusions of law. Consequently, Appellants can not be faulted for not "includ[ing] in the record a transcript of all evidence relevant to [the trial court's factual finding]." Utah R. App. P. 11(e)(2). The rule cited by Appellees is entirely inapplicable.

Similarly, Appellees' argument that Appellants failed to marshal the evidence is also irrelevant and inapplicable.

### **II. Appellants Preserved Their Objections for Appeal**

Appellants respectfully disagree with the Appellees and believe that the record does show that they preserved these issues for appeal.

### III. The Defendants' Conduct Violated the UCSCPA

The Utah Consumer Sales Practices Act applies to “consumer transactions,” (UCA 13-11-3), and a loan to a consumer is clearly a transaction. The lending of money to a consumer for consumer purposes is the “sale ... or disposition of goods, services, or other property” – the money given to the consumer in exchange for a note. Numerous cases in other jurisdictions have so held. *See Lavinia v. Hoard Bank*, Clearinghouse No. 26,015 (Vt. Super. Ct. 1976)(“Service means to furnish and supply something needed or desired .... Thus anyone supplying money, a need, would be one who serves”); *Stafford v. Cross Country Bank*, 262 F. Supp. 2d 776 (W.D. Ky. 2003)(Credit is a Service); *Flores v. Shapiro & Kreisman*, 246 F. Supp. 2d 427 (E.D. Pa. 2002)(UDAP covers loans that finance goods or services for personal use)

The UCSPA defines suppliers as “a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.” The Defendants/ Appellees were all suppliers under this definition in connection with the making of the consumer loans, and then with respect to the enforcing of those loans via the lawsuits and garnishments complained about.

UCSPA 13-11-4 declares that any deceptive act or practice violates the act:

“(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.”

UCSPA 13-11-4(2) expressly does not limit the scope and breadth of this subsection:

“(2) ***Without limiting the scope of Subsection (1)***, a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:”

The Appellees' argument that the enumerated list of examples of conduct which would violate the UCSPA is all inclusive and excludes any other types of deceptive conduct is simply

and obviously incorrect.

The same is true with respect to 13-11-5 and unconscionability.

With respect to whether the conduct complained of by the Appellants' in their complaints was unconscionable, Appellants will paraphrase the *Wade v. Jobe* case quoted by the Appellee's:

**“[N]o decent, fair-minded person would view [the intentional inflation of the amount of the judgment and costs requested in the writs of garnishment, and the fact that based upon the false representations, the Defendants/ Appellees garnished more money from the Appellants than they owed] without being possessed of a profound sense of injustice.”** *Wade v. Jobe*, 818 P. 2d 1006, 1017 (Utah 1991).

The Appellees' conduct involves deception – i.e., the knowing and intentional falsification of the amounts owed on by the Appellants in the applications for writs of garnishments and the writs of garnishment themselves.

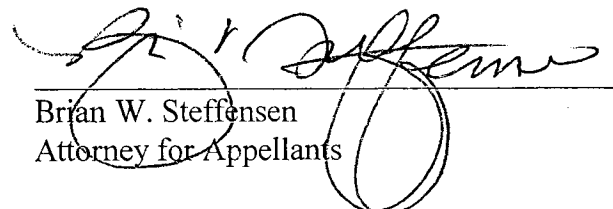
This conduct was also unconscionable. This Court should hold that this type of knowing and intentional conduct if proven is unconscionable and reverse the dismissal of Plaintiffs/ Appellants' complaints.

### CONCLUSION

Plaintiffs/ Appellants will rely upon their opening brief with respect to the Defendants'/ Appellees' arguments not expressly addressed above.

The dismissal of Plaintiffs/ Appellants' complaints was legally incorrect in all of the ways and or all of the reasons outlined in Appellants' Opening Brief and should be reversed.

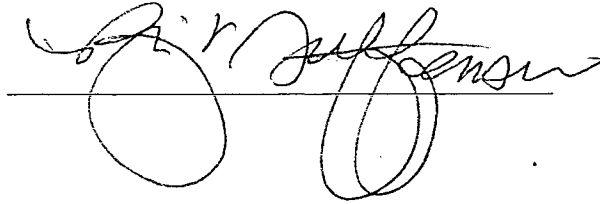
DATED this 4<sup>th</sup> day of April, 2011.

  
Brian W. Steffensen  
Attorney for Appellants

### Certificate of Mailing

I hereby certify that on the 4<sup>th</sup> day of April, 2011, that I caused two (2) true and correct copies of the foregoing instrument to be ☒ mailed, postage prepaid; and/or ☐ hand delivered by ☐ fax and/or by ☐ courier; to each of the following:

Jamis M. Gardner  
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A handwritten signature in cursive script, appearing to read "Robinson Seiler & Anderson LC", is written over a horizontal line.