UCS

CHAVEZ & GERTLER LLP
MARK A. CHAVEZ (Bar No. 90858)
KIM E. CARD (Bar No. 147779)
MAXWELL S. PELTZ (Bar No. 183662)
42 Miller Avenue
Mill Valley, California 94941
Telephone: (415) 381-5599
Facsimile: (415) 381-5572

LAW OFFICE OF WILLIAM E. KENNEDY
WILLIAM E. KENNEDY (Bar No. 158214)
2797 Park Avenue, Suite 201
Santa Clara, California 95050
Telephone: (408) 241-1000

STEPHAN R. WATTENBERG (Bar No. 183914)
1074 East Avenue, Suite C
Chico, California 95926
Telephone: (530) 342-8930

Attorneys for Plaintiffs
SMITH, GARZA, et al. and the Certified Classes

FILED
NOV 19 2003
KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
ROWENA A. WALKER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

DEPARTMENT 17C

Coordination Proceeding Special Title (Rule 1550(b))	**Judicial Council Coordination Proceeding No. 4225**
GMAC REPOSSESSION CASES	**Superior Court of California County of Santa Clara Smith v. GMAC Case No. 1-98-CV-776152**
Included actions:	
Smith v. General Motors Acceptance Corp.	**Superior Court of California County of Butte Garza v. GMAC Case No. 124098**
Garza v. General Motors Acceptance Corp.	**CLASS ACTION**
	~~**PROPOSED**~~ **STATEMENT OF DECISION ~~[REVISED]~~** FIRST PHASE OF TRIAL —
	Dept: 17 Judge: Hon. Jack Komar
	Trial: July 22-28, 2003

This matter came on for the first phase of trial in Department 17 of this Court on July 22, 2003. Mark A. Chavez, Kim E. Card and Maxwell S. Peltz, of the law firm Chavez & Gertler LLP, appeared for plaintiffs and the certified plaintiff classes. John Sullivan, Mark D. Lonergan, and Mary Kate Sullivan, of the law firm Severson & Werson, appeared for defendant General Motors Acceptance Corporation ("GMAC"). All parties having previously waived any right to a jury trial, the case was tried to the Court, the Honorable Jack Komar presiding.

This first phase of trial commenced on July 22, 2003, proceeded from day to day thereafter, and concluded on July 28, 2003. The Court issued its Tentative Decision on July 31, 2003. Both parties subsequently filed Requests for Statement of Decision. Accordingly, pursuant to Code of Civil Procedure §632, the Court issues the following Statement of Decision. A final judgment in this matter will not be entered until subsequent phases of the trial and/or the claims process as ordered below have concluded.

I. THE COORDINATED CLASS ACTIONS

The above-entitled actions, Smith v. GMAC and Garza v. GMAC, are coordinated class actions alleging that defendant GMAC violated provisions of the Rees-Levering Motor Vehicle Sales and Finance Act, Civil Code Section 2981 et seq. (the "Rees-Levering Act") and the Unfair Competition Law, Business & Professions Code § 17200 et. seq. ("UCL"). The Rees-Levering Act provides, inter alia, that following the repossession or voluntary surrender of a financed motor vehicle, a written notice of intent to dispose of the vehicle shall be given to all persons liable on the contract, and that those persons shall be liable for a deficiency after disposition of the vehicle only if the notice prescribed by the statute is given in a timely manner and contains all of the disclosures required by the statute. Civil Code §2983.2(a).

The Smith and Garza actions allege that from August 20, 1994 through June 30, 2001, GMAC violated the Rees-Levering Act by issuing notices to California buyers following the repossession or voluntary surrender of their financed motor vehicles (hereinafter referred to as "post-repossession notices") that failed to contain disclosures that are mandated by Civil

Code §2983.2(a) of the Rees-Levering Act. The actions further allege that GMAC assessed, demanded and collected deficiency balances that, as a result of GMAC's failure to issue a post-repossession notice containing all of the disclosures mandated by the statute, the buyers never owed. Plaintiffs allege three causes of action for (1) violations of the Rees-Levering Act; (2) violations of the Unfair Competition Law, Business and Professions Code §17200, et seq.; and (3) for declaratory relief. They seek damages under the Rees-Levering Act in the amount of all payments on deficiency balances collected from class members by GMAC, restitution of the same sums and injunctive relief under the UCL, declaratory relief, pre-judgment interest, and attorneys' fees, costs and expenses.

The Court certified the plaintiff class in the Smith action on May 21, 2001. The "Smith class" is defined pursuant to the Court's prior orders as including all persons who: (1) entered into a motor vehicle conditional sales contract with, or subsequently assigned to, GMAC; (2) were issued a post-repossession notice by GMAC that did not contain one or more of the disclosures required by Civil Code § 2983.2(a) to an address in California, on any date between August 20, 1994 and December 31, 1998; (3) were assessed a deficiency balance by GMAC following the disposition of the vehicle; (4) did not have a deficiency judgment entered against them in favor of GMAC by a Municipal or Superior Court prior to May 21, 2001; (5) had not filed for bankruptcy at the time the post-repossession notice was issued; and, (6) did not have their vehicles were seized by a government agency as described in Civil Code § 2983.3(b)(6).

Following the coordination of the actions, the Court certified the plaintiff class in the Garza action on April 3, 2003. The "Garza class" is defined pursuant to the Court's prior orders as including all persons who: (1) entered into a conditional sales contract in California with, or that was subsequently assigned to GMAC; (2) were issued a post-repossession notice by GMAC to an address in California, on any date between January 1, 1999 and June 30, 2001; and (3) were assessed a deficiency balance by GMAC following the disposition of the vehicle; but (4) excluding all persons who: (a) are subject to a deficiency judgment that was entered against them in favor of GMAC by a Municipal or Superior Court on a date prior to

the certification of the class; or (b) filed for bankruptcy at any time after the date they entered in the conditional sales contract with GMAC; or (c) had their vehicles seized by a government agency as described in Civil Code §2983.3(b)(6). The Court also certified a sub-class of persons who were issued the same form of post-repossession notice that was issued to plaintiff Garza ("the Garza notice"). Class notice was given to the Smith and Garza classes pursuant to prior orders of this Court.

At the pre-trial conference in this matter, the parties proposed, and the Court agreed, that the trial would be bifurcated, with certain issues as to liability to be tried first. Accordingly, the Court limited the evidence presented at trial to evidence relevant to those issues, and did not admit evidence concerning other issues or the amount of damages or restitution claimed either by the certified classes as a whole, or by any individual plaintiff or class member. The Court determined, and so ordered at trial, that if a finding of liability was made in the plaintiffs' favor, all remaining issues, including issues as to whether buyers qualified for class membership and as to the amount of damages and restitution to be ordered, would be resolved in a subsequent proceeding and/or by way of a claims process.

II. APPLICABILITY OF THE REES-LEVERING ACT.

Based on the evidence at trial, the Court finds that all of the named plaintiffs entered into conditional sales contracts for the purchase of motor vehicles in California, which were subject to the provisions of the Rees-Levering Act. GMAC was assigned the contracts for each of the named plaintiffs and thereby provided the financing for their vehicle purchase. The Court also finds that the evidence established that each of the named plaintiffs purchased their vehicle primarily for personal or family purposes, such that the provisions of the Rees-Levering Act were applicable. See Civil Code §2981(k) (defining "Motor Vehicle" for purposes of the statute as any vehicle that is required to be registered under the Vehicle Code and that is bought for use primarily for personal or family purposes).

With respect to the class members, the Court held at trial and reiterates here that evidence as to the applicability of the Rees-Levering Act would be taken in a subsequent proceeding, by way of claims process and/or as otherwise ordered by the Court.

III. POST-REPOSSESSION NOTICES

The evidence at trial established that GMAC repossessed the vehicles of the named plaintiffs. The evidence also established that, after the repossession or voluntary surrender of a vehicle, GMAC sent each of the named plaintiffs and each of the class members a post-repossession notice as required by the Rees-Levering Act. There was no dispute as these facts. The primary question presented to the Court at trial in this liability phase was whether the post-repossession notices that GMAC sent to the named plaintiffs, the class members and the affected members of the general public contained all of the disclosures required by Civil Code §2983.2(a), and in particular, whether the notices lacked disclosures as alleged by plaintiffs.

The Rees-Levering Act regulates, inter alia, the repossession and disposition of motor vehicles financed under conditional sales contracts in California. See Civil Code §2981 et seq. Civil Code §2983.2(a) of the Rees-Levering Act provides that a fifteen-day notice of intent to dispose of the vehicle "shall be given to all persons liable on the contract," and further provides that "those persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle only if the notice prescribed by this section is given within 60 days of repossession or surrender and does all of the following: . . . ."). Civil Code §2983.2(a) (emphasis added). (This notice is referred to herein as the "post-repossession notice".) In a separate section, the statute further provides that "no deficiency judgment shall lie . . . unless the court has determined that the sale or other disposition was in conformity with the provisions of this Chapter. . . ." Civil Code § 2983.8(b). Thus, if the post-repossession notice does not contain all of the required provisions, the persons obligated on the contract are not liable for any deficiency that may exist following the sale or other disposition of the repossessed automobile.

The evidence at trial in this matter established that the post-repossession notices that GMAC issued to the named plaintiffs, to the class members and to affected members of the general public did not contain all of the disclosures required by Civil Code Section 2983.2(a), and were therefore defective. Each of the violations alleged by the plaintiffs is

addressed below.

A. Civil Code Section 2983.2(a), Subsections (3) and (6).

The Court finds and holds that GMAC failed to comply with the provisions of subsections (3) and (6) of Civil Code §2983.2(a). Those subsections require a disclosure of the buyer's right to a ten-day extension of time within which to reinstate or redeem the contract. Subsection (3) provides that the notice of intent to dispose of the repossessed motor vehicle must "state" that upon written request the seller or holder shall extend for an additional ten days the right to redeem the motor vehicle or reinstate the contract. Moreover, subsection (6) requires that the notice itself must "state" that upon such written request, the seller or holder "shall without further notice extend the period accordingly."[1] In short, not only does the law require an automatic extension of the redemption/reinstatement period, the law requires that the defaulting buyer be advised that the ten-day extension will be automatically granted if requested by the buyer.

The language in the notices used by GMAC during the relevant period, for all of the class members in both the Smith and Garza classes, does not comply with these statutory requirements. The recipients of the notice are advised that they may request a ten day extension, but they are not informed that a request will be automatically granted, or that the request will be granted without further notice.

The parties each offered evidence to interpret the notice language used by GMAC.

---

[1] In relevant part, Civil Code § 2983.2 provides:

> (a) . . . at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle shall be given to all persons liable on the contract . . . . Except as otherwise provided in Section 2983.8, those persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle only if the notice prescribed by this Section is given within 60 days of repossession or surrender and does all of the following:
>
> * * *
>
> (3) States that, upon written request, the seller or holder shall extend for an additional 10 days the redemption period, or, if entitled to the conditional right of reinstatement, both the redemption and reinstatement periods. . . .
>
> * * *
>
> (6) States . . ., and further, that upon written request to extend the redemption period and any applicable reinstatement period for 10 days, the seller or holder shall without further notice extend the period accordingly.

GMAC's expert opined that reasonable people would understand that a requested extension would be automatically granted. Plaintiffs' expert testified that some persons would and some would not so understand the notice. The Court holds, however, that regardless of what a reasonable person could have or should have understood or assumed from the language in the notice, the evidence is clear that the notices used by GMAC did not expressly state that an extension request must and will be granted. That is what is required by the plain language of the statute. The buyer's understanding of the language is irrelevant.

The Court further finds and holds that, by the express terms of the statute, the failure by GMAC to comply with the requirements of the statute eliminates any liability the plaintiffs and class members may have had for any deficiency resulting from the sale of their repossessed automobiles. See Bank of America v. Lallana, 19 Cal. 4th 203 (1998). According to the statute, a person liable on the contract "shall be liable for any deficiency after disposition of the repossessed . . . motor vehicle only [emphasis added] if the notice prescribed by this section is given. . . ." Civil Code § 2983.2(a). The evidence is clear that GMAC failed to include the disclosures required by subsections (3) and (6) in the notices that were issued to the members of both classes in these coordinated actions, and therefore none who qualify under the statute can be liable for any deficiency resulting from a shortfall in the proceeds from the sale or other disposition of their repossessed motor vehicle.

B. Civil Code Section 2983.2(a), Subsection (8).

Civil Code §2983.2(a), subsection (8) requires that a post-repossession notice contain a disclosure in at least 10-point bold type stating as follows: "'NOTICE. YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE.'" As with the disclosures required under subsections (3) and (6), a lender's failure to include this disclosure in a post-repossession notice eliminates any liability for a deficiency following the sale of the motor vehicle.

///

Plaintiffs alleged the GMAC issued post-repossession notices to some borrowers during the Garza class period that lacked this disclosure.[2] GMAC conceded, and the evidence at trial established, that this provision was not included in a number of the post-repossession notices issued to buyers during the Garza class period, including plaintiff Brown. Accordingly, the Court holds that no buyer who qualifies under the statute and who was issued a post-repossession notice lacking the (a)(8) disclosure can be liable for any deficiency balance.

C. Civil Code Section 2983.2(a), Subsection (9).

Civil Code §2983.2(a) subsection (9) requires that a post-repossession notice contain a disclosure stating that "upon disposition of the motor vehicle, [the obligor] will be liable for the deficiency balance plus interest at the contract [or legal] rate . . . from the date of disposition of the vehicle to the date of entry of judgment." Civil Code §2983.2(a)(9). The subsection requiring this disclosure was added to the statute by amendment effective January 1, 1997. The evidence at trial established that for a period of approximately one year and nine months, between January 1, 1997 and September of 1998, GMAC issued post-repossession notices to some members of the Smith class that did not include language disclosing that interest would be added to any deficiency judgment; other notices issued during that same period did contain the disclosure. The evidence also established that GMAC's issuance of notices lacking the subsection (9) disclosure in the 1997-1998 time frame was the result of an error by one of GMAC's vendors.

GMAC argues that the section 2983.2(a)(9) disclosure is only applicable to those sales contracts executed after the effective date of the statute, rather than to all notices issued after that date. The court concludes to the contrary that the language is applicable to all repossessions that occurred after the effective date of the statute, irrespective of when the contract was executed, because the statutory change did not affect any substantive right that

---

[2] This allegation was added to the Garza action by way of an unopposed amendment to plaintiffs' UCL cause of action to conform to proof at trial. The claim was asserted on behalf of affected members of the public rather than as a class claim.

was vested by contract or otherwise. See People v. Grant, 20 Cal.4th 150, 157 (1999) (explaining that a law has retroactive effect only if it changes the legal consequences of past conduct). The creditor was always entitled to interest on the debt and this statutory change did not affect that right.

This provision, however, while required to be in the notice if interest will be claimed on the judgment, would not seem to be necessary if the creditor was waiving any right to interest. The evidence at trial established that GMAC did not collect pre-judgment interest on deficiency balances through its in-house collections activity. Although there was evidence that GMAC demanded pre-judgment interest when accounts were referred to one of its collections attorneys and when that attorney filed lawsuits for the collection of deficiency balances on GMAC's behalf, there was no evidence that GMAC actually collected pre-judgment interest from any of the class members in these actions. Clearly, the holder of the contract can waive any interest on the debt. If interest is not sought on a deficiency judgment, there would not be any reason to reference it in a notice. The effect of such an omission, therefore, should be the same as a waiver of any other right that a creditor could assert against a debtor – if it is waived and the waiver does not detract from the rights of the debtor, its omission from the notice should not affect the right of a creditor otherwise entitled to a deficiency judgment.

D. Civil Code Section 2983.2, Subsection (2).

The evidence at trial established that the post-repossession notice issued to plaintiff Smith and the notices issued to some number of other buyers during the time period covered by the Smith class contained additional language added to the form notice by GMAC personnel by way of a red ink stamp. The evidence also established that use of the stamp by GMAC personnel was discontinued in approximately the Fall of 1998. In essence, this "stamp language" required, in order for a borrower to reinstate his or her contract, payment of all fees owed in cash or certified funds, proof of insurance, and payment of all delinquent DMV fees in certified funds. Plaintiffs alleged that this "stamp language" violated subsection (2) of Civil Code §2983.2(a) – which requires the post-repossession notice to

include a disclosure of all conditions of reinstatement or redemption – because it imposed conditions on the buyer's right to reinstatement that were not authorized by Civil Code §2983.3(d) of the Rees-Levering Act. That section sets forth the conditions that may be imposed on the right to reinstatement. It refers to conditions relating to defaults under the contract ". . . that were a ground for repossession or occurred subsequent to repossession." Civil Code §2983.3(d) (emphasis added). This violation was alleged solely under plaintiffs' UCL cause of action in the Smith case, and was not asserted as a class claim (there were no allegations concerning the stamp language in the Garza action).

The Court finds that there was no evidence presented by plaintiffs establishing that any of the conditions set forth in the stamped portion of the notices were not valid conditions for reinstatement, or that in any other way violated the terms of the statute. Every contract entered into with class members required that the buyer keep the vehicle free of liens (unpaid DMV fees become a lien on the vehicle) and that the buyer maintain insurance to protect the security interest of the defendant. Moreover, it is not an improper or unreasonable condition to require a defaulting buyer to reinstate a contract or redeem a repossessed motor vehicle by paying cash or certified funds. Accordingly, the Court finds that the "stamp language" on the notices issued to Smith and other buyers during the Smith class period did not violate Civil Code §2983.2(a) subsection (2) or Civil Code §2983.3(d)(1)-(5).

E. The "Garza Notice" Violation.

The evidence at trial established that GMAC issued a post-repossession notice to plaintiff Garza on November 10, 1999 that lacked a number of the disclosures required by Civil Code §2983.2(a). GMAC conceded that the notice issued to plaintiff Garza and some number of other members of the Garza class was a notice intended for out-of-state purchasers that was issued in error, and that did not comply with California law. Accordingly, the Court finds that plaintiff Garza and all other members of the Garza class who were issued a post-repossession in the same form as the one issued to Garza, i.e., all members of the Garza sub-class as previously certified by the Court, are not liable for the deficiency balances that were assessed to their accounts by GMAC.

IV. GMAC'S ASSESSMENT AND COLLECTION OF DEFICIENCY BALANCES.

The evidence presented at trial established that none of the named plaintiffs redeemed or reinstated their contracts following the repossession of their vehicles, that GMAC subsequently sold or otherwise disposed of their vehicles, and that GMAC thereafter assessed a deficiency balance to each of their accounts. The deficiency balance was the amount that GMAC calculated as the difference between the outstanding unpaid balance on their account at the time of repossession, plus repossession and other expenses, and less the amount credited to the account from the sale of the vehicle. The Smith and Garza classes are defined as including only persons who were similarly assessed a deficiency balance following the sale of their repossessed vehicles.

The evidence at trial established that, with respect to each of the named plaintiffs and all of the class members, GMAC demanded payment of the deficiency balance and undertook efforts to collect it. The evidence also established that GMAC has, and had, a usual practice of attempting to collect deficiency balances following a sale or other disposition of a repossessed motor vehicle before any litigation was commenced. According to this usual practice, the customer was contacted by both telephone and letter demanding payment of the deficiency balance. Although the respective classes in the Smith and Garza cases are defined as including only those persons against whom GMAC did not obtain a judgment for the deficiency balance, the evidence established that a number of the members of each class, including named plaintiff Kathryn Brown, nevertheless made payments to GMAC on the asserted deficiencies in response to demands for payment by GMAC and/or following conversations with GMAC collections personnel.

Plaintiffs contend that such payments made by class members who were issued a defective post-repossession notice should be returned to the class member in the form of damages and/or restitution. GMAC contends that payments made by class members when no lawsuit was filed were made voluntarily and therefore should not be ordered as restitution, especially since the payments only resulted in satisfaction of what was owed.

The Court holds that payments made on deficiency balances by class members who qualify under the statute and who paid in response to a demand by GMAC must be returned to the class member with interest at the legal rate. Because the statutory scheme provides that there is no liability if the lender fails to comply with the notice provisions of the statute, the deficiency balances assessed by GMAC against class members were not owed either at the time of the demand or when payment was made. That portion of the installment contract became unenforceable because of GMAC's failure to comply with the statute. It would be contrary to the intent of the legislation to permit a creditor to make demand for payment of a supposed balance owing where the legislature has declared there is no liability. At the least, it would appear that the money was paid by class members under a mistake of fact, namely a mistaken understanding or assumption, based on the demands for payment and representations made by GMAC, that the deficiency balance was owed. Accordingly, the Court finds that GMAC's contention that payments were made voluntarily does not constitute a defense to the violations of the Rees-Levering Act established by plaintiffs, as set forth above, when GMAC has made a demand for payment. The Court also rejects GMAC's contention that its good faith precludes recovery by the class members. Although the Court finds no evidence of bad faith by GMAC, its good faith is irrelevant to the claims alleged and violations established under the Rees-Levering Act.

The Court also rejects GMAC's contention that class members' oral agreements to make payments on deficiency balances, or to pay a lump sum in "settlement" of the amount demanded by GMAC, constituted an accord and satisfaction, novation and/or modification of their original obligations. It would be contrary to the purposes and intent of the Rees-Levering Act to allow a lender to circumvent the post-repossession notice provisions of the statute by successfully engaging in collections activity on deficiency balances that the statute declares are not owed, and by thereafter asserting that the payments made by buyers in response to those collection efforts, or their oral agreements to make such payments, create a defense to claims for violations of the statute. The Court also rejects GMAC's contention that class members had "unclean hands" with respect to the claims in the actions because

they failed to make payments under their contracts. Given that the provisions of the Rees-Levering Act that are issue in these actions are specifically addressed to the rights and obligations of the parties after a default by the buyer, it would make little sense for a court to hold that the buyer's default creates an "unclean hands" defense to a claim for violations of the statute. Such an interpretation would essentially nullify the provisions of the statute. Accordingly, the Court finds that the evidence at trial did not establish these defenses, and that they fail as a matter of law for the reasons set forth above.

The Court also finds, however, that if any payments were made by class members prior to receipt of the initial form demand letter from GMAC and in the absence of any demand for payment by GMAC, such payments could be considered wholly voluntary, and not subject to an order of restitution.

V. REPORTING OF DEFICIENCY BALANCES TO CREDIT BUREAUS.

The evidence presented at trial established that GMAC reports the status of its accounts, including its post-repossession deficiency accounts, to the major credit reporting agencies. The evidence further established that, if there is a deficiency balance on an account following the disposition of a repossessed vehicle, GMAC reports the account to the credit bureaus a "charge-off" or "profit and loss" account, and also reports an outstanding balance on the account in the amount of the deficiency. The evidence further established that credit report status codes "charge-off" and "profit and loss" are derogatory items on a credit report, and that the presence of an outstanding balance in a credit report trade line can also negatively impact a consumer's ability to obtain future credit.

The Court finds that GMAC provided inaccurate information to credit bureaus concerning the plaintiffs and class members in that GMAC was not entitled to claim any deficiency balance from such individuals and such amounts were not legally owed, but GMAC nevertheless reported such balances to credit bureaus. Although it was not inaccurate for GMAC to report the "charge off" or "profit and loss" status of the accounts, the reporting of a balance remaining on the account, chargeable to the buyer, which was not owed, was and is inaccurate. The Court further finds that such reporting caused and

continues to cause harm to the plaintiffs and class members so as to warrant injunctive relief, as set forth below.

VI. PLAINTIFFS' CAUSE OF ACTION UNDER THE REES-LEVERING ACT.

Plaintiffs' first cause of action in the operative complaints in both the Smith and Garza action alleges violations of the Rees-Levering Act and seeks affirmative relief under the statute. Specifically, plaintiffs request damages equal to the amount that GMAC collected from class members on deficiency balances that were not owed as a result of GMAC's failure to comply with the notice requirements in the statute. GMAC contends that there is no private right of action under the Rees-Levering Act.

The Court finds that plaintiffs have demonstrated their entitlement to affirmative relief and damages under the Rees-Levering Act. The Rees-Levering Act is a consumer protection statute, see e.g. Hernandez v. Atlantic Finance Co., 105 Cal.App.3d 65, 69 (1980) (the Rees-Levering Act was intended "to provide more comprehensive protection for the unsophisticated motor vehicle purchaser"), and a borrower's right to affirmative relief under the statute is supported by both its terms and purposes. Civil Code Section 2983.4 of the statute expressly contemplates a suit by the buyer in authorizing attorney's fees and costs for the prevailing party, "whether the action is instituted by the seller, holder or buyer." (Emphasis added.) This provision clearly reflects the Legislature's intent that borrowers be entitled to assert affirmative claims under the statute. Civil Code Section 2984 also refers to "any failure to comply with any provision of this chapter (commencing with Section 2981)" and provides that "[a]ny amount improperly collected from the buyer shall be . . . returned to the buyer." Beyond that language, the Court finds that there is an affirmative remedy for violations of the statutory scheme, and that reimbursement for money paid pursuant to an unlawful demand is a reasonable remedy.

Accordingly, for the reasons and under the conditions set forth above, the Court finds that the named plaintiffs and class members who qualify under the statute are entitled to damages under the Rees-Levering Act in the amount of payments they made in response to a demand by GMAC on alleged deficiency balances following the repossession and disposition

of their vehicles, plus interest at the legal rate on those amounts.

VII. PLAINTIFFS' CAUSE OF ACTION UNDER THE UNFAIR COMPETITION LAW.

Plaintiffs' second cause of action in both the Smith and Garza actions alleges violations of the UCL, Business and Professions Code §17200, et seq., on behalf of the plaintiffs, the class members, and the general public. The Court finds that GMAC engaged in unlawful and unfair practices in violation of the UCL. Specifically, the Court finds that GMAC engaged in unlawful business practices in that it failed to comply with Civil Code §2983.2(a) of the Rees-Levering Act, in the manner set forth above, when issuing post-repossession notices to the plaintiffs, class members and affected members of the public. The Court also finds that GMAC engaged in unfair business practices in violation of the UCL by demanding and collecting deficiency balances that the Rees-Levering Act expressly declared were not owed.

The Court finds that GMAC did not engage in fraudulent business practices in violation of the UCL.

Accordingly, pursuant to Business and Professions Code §17203, the Court holds that the plaintiffs, the members of both classes, and affected members of the general public are entitled to restitution and injunctive relief under the remedial provisions of the UCL. Specifically, the Court holds that the plaintiffs, class members, and affected members of the public who qualify under the Rees-Levering Act are entitled to restitution in the amount of all payments made on deficiency balances pursuant to a demand by GMAC, plus interest at the legal rate. Such monies were obtained by GMAC by means of its unlawful and unfair practices as set forth above, including its issuance of post-repossession notices that did not comply with the Rees-Levering Act, and its subsequent conduct in assessing, demanding, and collecting deficiency balances that were never owed by the borrowers. Accordingly, the Court holds that such monies must be disgorged by GMAC and returned as restitution to those persons in interest from whom they were taken. See Bus. & Profs. Code §17203. As is set forth below, the Court will retain jurisdiction over additional proceedings in this action

to "identify, locate and repay" all persons who are entitled to restitution. See Kraus v. Trinity Management Services, Inc., 23 Cal.4th 116, 138 (2000).

The Court also finds that injunctive relief is appropriate and warranted, and accordingly, the final judgment to be entered in this action following the subsequent phase of the trial and/or the claims process ordered below will include injunctive relief as set forth below. The evidence at trial established that GMAC is continuing to engage in collections activity with respect to deficiency balances allegedly owed by class members, and is continuing to report the accounts of class members to credit bureaus in the manner discussed above. Therefore, the Court finds that GMAC should be ordered to correct its records to reflect that no balances are owed by the plaintiffs, class members and affected members of the public. All files maintained by GMAC in connection with any installment contract subject to these coordinated actions should contain a reference to this Court's order eliminating any balance for a deficiency. In addition, at the time of final judgment, GMAC will be enjoined from any and all future collection activities against any class member.

The Court also finds that GMAC must correct the information that it submits to credit reporting agencies for the plaintiffs and class members. As discussed above, the evidence at trial established that GMAC currently reports the accounts of class members as "charge-offs" or a similar such term, and also reports a balance for the account in the amount of the deficiency. There was a dispute between the parties and their respective experts as to whether the reporting of such a balance reflects that it is legally owed by a consumer, or whether it simply reflects the amount of the loss sustained by the lender. Regardless of how the balance might be viewed from the lender's perspective, however, and regardless of how the terms on a credit report might be viewed from a technical perspective or by those with inside knowledge of the industry, the Court finds that, for all practical purposes, the reporting of the deficiency on a borrower's account is most likely to be understood by persons reviewing the report, future creditor grantors or otherwise, to reflect that such amount is still owed by the borrower. As that is not true with respect to the class members in this action, the final judgment to be entered later in this action will direct GMAC to submit corrected

information for the class members to all credit bureaus that are the recipients of its credit data. Such corrected information may reflect that there was a repossession on the class member's account, but shall also reflect that no balance is owed – i.e., a zero balance. GMAC may report, if and in the manner that the codes available in the credit reporting system allow, that the account was charged off, and it may also report what the balance was prior to charge-off since that amount was part of an original obligation of the customer on the installment contract, but it may not submit any data for a class member reflecting that the deficiency balance is owed by the class member. It may also continue to report the accounts of any class member who paid their account in full as "paid in full" so long as the report does not reflect any amount still owing.

VIII. DECLARATORY RELIEF

Plaintiffs' third cause of action in both the Smith and Garza actions seeks declaratory relief. The Court holds that plaintiffs and the certified classes are entitled to such declaratory relief pursuant to Code of Civil Procedure §1060. There is an actual controversy between plaintiffs and class members, on the one hand, and GMAC on the other hand, as to the parties' respective rights and obligations under the Rees-Levering Act, and as to whether plaintiffs and the class members owed or were legally obligated to pay the deficiency balances assessed by GMAC. See Ludgate Ins. Co. v. Lockheed Martin Corp., 82 Cal.App.4th 592, 604 (2000) ("The existence of an 'actual controversy relating to the legal rights and duties of the respective parties,' suffices to maintain an action for declaratory relief."); see also Redwood Coast Watersheds Alliance v. State Board of Forestry & Fire Protection, 70 Cal.App.4th 962, 969 (1999) ("A controversy over an interpretation of a statute, and the duties that statute imposes, is a proper basis for a declaratory relief claim."). Accordingly, for the reasons set forth above, the Court finds, orders and declares that the post-repossession notices that GMAC issued to the plaintiffs and to members of the certified plaintiff classes in these coordinated actions were legally defective as set forth above; that plaintiffs and the class members therefore are not liable for any deficiency balances assessed to their accounts by GMAC, and never owed those amounts; and that GMAC was not and is not legally entitled to

demand, to collect, or to retain payments on deficiency balances that it assessed to the accounts of the plaintiffs and class members.

IX. ATTORNEYS' FEES, COSTS AND EXPENSES

The Court finds that plaintiffs have established a right to attorneys' fees and costs under the Rees-Levering Act, Civil Code §2983.4, and other applicable provisions of law. Plaintiffs are also entitled to recover costs and expenses incurred in the filing and prosecution of the actions, pursuant to Civil Procedure Code §1032 et seq. The amounts to be awarded for attorneys' fees, costs and expenses shall be determined at such time as the Court has made a final determination of the relief to be awarded hereunder.

X. CLAIMS PROCEDURE

The Court finds that a claims procedure is appropriate to distribute the damages and restitution ordered herein to the class members. All members of the Smith and Garza classes, including the Garza subclass, shall be provided notification of the Court's decision on liability and shall be provided an opportunity to submit a claim in a form to be approved by the Court. Among other things, the claim form shall require a statement under penalty of perjury establishing that in all respects the claiming class member is a member of either the Smith or Garza class, is entitled to protection of the statute and is entitled to recover funds paid pursuant to a demand by GMAC. The parties are directed to meet and confer concerning a notice and a method of processing claims and to present a proposal for the same to the Court. While there are subclasses within the class – e.g., the persons who received out-of-state notices in lieu of 2983.2(a) notices ("the Garza notice") – because the omissions with regard to the right to an automatic ten-day extension apply to all class members including the subclasses, all members of the class should receive the same notice regarding that violation with the subclasses to receive the additional language as part of their notice.

///

///

///

XI. RETENTION OF JURISDICTION.

The Court retains jurisdiction in these coordinated actions to oversee additional proceedings as necessary, including any post-liability proceedings that the Court deems appropriate and necessary, and implementation of the claims process.

DATED: NOVEMBER 19, 2003

HON. JACK KOMAR
JUDGE OF THE SUPERIOR COURT