

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*,
RAÚL TORREZ, Attorney General

Plaintiff,

v.

Case No. _____

K&T LLC, a Domestic Limited Liability
Company d/b/a Carite of Gallup;
KAUL CORLEY, individually and
as a registered agent of K&T LLC; XYZ
CORPORATIONS 1-10; and JOHN/JANE
DOES 1-10,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE UNFAIR PRACTICES ACT, FRAUD,
CONVERSION, RESTITUTION AND CIVIL PENALTIES, PETITION FOR
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AND DECLARATORY
RELIEF**

COMES NOW, the State of New Mexico *ex rel.* Raúl Torrez, its Attorney General (“Plaintiff”), by and through his undersigned counsel, Assistant Attorney General Victor A. Hall, and brings this Complaint for Restitution, Civil Penalties, Petition for Injunctive and Declaratory Relief against K&T LLC *dba* Carite of Gallup, Kaul Corley, individually and as an agent of K&T LLC, XYZ CORPORATIONS 1-10, and JOHN/JANE DOES 1-10 (jointly, “Defendants”). In support of its Complaint, Plaintiff states the following:

I. PARTIES, JURISDICTION, VENUE

1. Plaintiff Raúl Torrez is the duly elected Attorney General of the State of New Mexico and shall prosecute and defend all actions in which the State may be an interested party. *See* NMSA 1978, §8-5-2(B) (1975).

2. The Attorney General has the statutory authority to enforce laws for the protection of the public, including the New Mexico Unfair Practices Act, NMSA 1978, Sections 57-12-1 to -26 (2019) (“UPA”), claims for civil fraud, *see* UJI 13-1633 NMRA, claims for conversion, *Muncey v. Eyeglass World*, 2012-NMCA-120, ¶¶22-23, 289 P.3d 1255, requests for declaratory relief, NMSA 1978, Sections 44-6-1 to -15 (1975), and requests for injunctive relief, Rule 1-066 NMRA.

3. Defendant K&T LLC *dba* Carite of Gallup (“Defendant Carite”) is a Domestic Limited Liability Company formed and/or organized under the laws of New Mexico in 2013. Defendant Carite’s principal place of business is located at 1200 W Jefferson Ave., Gallup, NM 87301.

4. Defendant Carite conducted business in New Mexico and was engaged in the business of buying and selling used vehicles. Defendant Carite’s registered agent and organizer was Defendant Kaul Corley.

5. Upon information and belief, at all times relevant, Defendant Kaul Corley acted as CEO, President, or as a director of Defendant Carite.

6. Upon information and belief, Defendant Kaul Corley is currently a resident of the State of Texas.

7. At all relevant times regarding the allegations in this Complaint, Defendant Kaul Corley was a resident of the State of New Mexico.

8. Upon information and belief, Defendants XYZ Corporations 1-10 are various corporations and/or entities which have participated in the unlawful acts alleged herein and whose names are not known at the present time. Plaintiff will seek leave of the Court to amend this complaint to reflect their true names when they have been ascertained.

9. Upon information and belief, Defendants JOHN/JANE DOES 1-10 are any officers, principals, trustees, employees, managers, agents, members, or representatives, who have participated in the unlawful acts alleged herein and whose names are not known at the present time. Plaintiff will seek leave of the Court to amend this complaint to reflect their true names when they have been ascertained.

10. Whenever in this complaint reference is made to any act of any individual defendant, such reference shall be deemed to mean the personal act of said defendant or the act of said defendant's employees, members, agents, or other representatives acting within their scope of employment or authority.

11. Whenever in this complaint reference is made to any act of any corporate defendant, such reference shall be deemed to mean the act of said defendant's officers, directors, shareholders, employees, and agents or other representatives or within their scope of employment or authority.

12. As a court of general jurisdiction, this court has subject matter jurisdiction over this matter, *See* N.M. Const. art. VI, §13.

13. The court has personal jurisdiction over Defendant Carite because Defendant's place of incorporation and principal place of business is in New Mexico. *See* NMSA §57-12-8 (A); *see also Chavez v. Bridgestone Americas Tire Operations, LLC*, 2022-NMSC-006, ¶ 24, 503 P.3d 332; N.M. Const. art. XII, §13; U.S. Const. Amend 14, § 1.

14. Venue is proper in this County because Plaintiff resides in this County. NMSA 1978, §38-3-1(A) (1988).

15. Pursuant to Rule 1-038(B)(1) NMRA, Plaintiff hereby demands a trial by jury of twelve persons.

II. FACTUAL ALLEGATIONS

16. Plaintiff re-alleges and incorporates the factual allegations set forth above.

17. Based on information and belief, Defendants have engaged in deceptive acts and practices, made fraudulent misrepresentations, and concealed, omitted, and/or suppressed material facts in connection with the sales and financing of motor vehicles to public consumers, including, but not limited to, the acts and practices set forth in this Complaint.

18. Defendants' most prevalent bad act is their "trade-in scheme," as described below.

19. During their regular course of doing business as a New Mexico motor vehicle dealer, Defendants would offer to take consumers' vehicles in trade toward the purchase of a new vehicle.

20. When taking a consumer's vehicle in trade, Defendants would offer to pay the loan balance remaining on the traded-in vehicle, crediting the remaining value, if any, to the consumer's new vehicle.

21. However, Defendants would, habitually, either refuse or fail to pay the balance on the traded-in vehicle.

22. Defendants' acts would result in consumers failing to make payments on the traded-in vehicle, thereby saddling consumers with debt, damaged credit, and the attention of collections agencies.

23. Despite the above practice, Defendants would retain possession of the consumer's property, thereby unlawfully exercising dominion and control over personal property belonging to the consumers.

24. Upon information and belief, in the course of selling motor vehicles to consumers, Defendants would fail to license, register, and title vehicles within thirty days of the date of sale, pursuant to NMSA §66-3-107.

25. Upon information and belief, in the course of selling motor vehicles to consumers, Defendants would fail to fund Gap Insurance and other add-on products, despite consumers contracting for these services.

26. Upon information and belief, in the course of selling motor vehicles to consumers, Defendants would falsify consumers' income on credit applications, inducing consumers to enter into financial agreements that Defendants knew or should have known that consumers could not afford.

27. Due to the foregoing actions, Defendants have caused, and unless enjoined, will continue to cause, harm to the State of New Mexico and its citizens.

III. VIOLATIONS OF UPA

28. Plaintiff re-alleges and incorporates the factual allegations set forth above.

29. The UPA prohibits unfair or deceptive trade and unconscionable trade practices in the conduct of any trade or commerce. NMSA §57-12-3.

30. The UPA defines an "unfair or deceptive trade practice" as:

an act specifically declared unlawful pursuant to the UPA, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit ... that may, tends to or does deceive or mislead any person.

NMSA § 57-12-2(D).

31. The UPA further defines an "unfair or deceptive trade practice" to include:

- a. "using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;" § 57-12-2(D)(14); and

- b. “failing to deliver the quality or quantity of goods or services contracted for;” § 57-12-2(D)(17)

32. The UPA defines an “unconscionable trade practice” as

an act or practice in connection with ... the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts that to a person’s detriment: (1) takes advantage of a lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.

NMSA §57-12-2(E).

COUNT ONE

Defendants knowingly made false or misleading oral or written statements in connection with the sale of motor vehicles tends to or did deceive or mislead consumers.

33. Plaintiff re-alleges and incorporates the factual allegations set forth above.

34. Defendants, as part of the sales of motor vehicles that included consumers trading in a vehicle, would contract to pay off the remaining balance on the trade in vehicle.

35. However, Defendants neglected, failed, or refused to pay off remaining balances on trade in vehicles, despite contracting to do so.

36. Defendants’ written statement to pay the remaining balance on the trade in vehicle in connection with the sale of vehicles tended to or did deceive consumers.

37. Defendants, as part of the sales of motor vehicles, also contracted to abide by laws governing the sales of motor vehicles, including licensing, registering, and titling vehicles within thirty (30) days of purchase. *See* NMSA §66-3-107(A).

38. However, Defendants neglected, failed, or refused to license, register, and title vehicles within thirty (30) days of purchase. *Id.*

39. Defendants, as part of the sales of motor vehicles, also contracted to fund Gap Insurance and other add-on products associated with purchase of motor vehicles.

40. However, Defendants neglected, failed, or refused to fund Gap Insurance and other add-on products, despite contracting to do so.

41. Defendants, as part of the sales of motor vehicles, knowingly made false written statements by falsifying consumers' credit applications.

42. Defendants' acts are a violation of the UPA. NMSA §57-12-2(D).

COUNT TWO

Defendants failed to state material facts relating to the purchase of motor vehicles that tended to deceive or did deceive consumers.

43. Plaintiff re-alleges and incorporates the factual allegations set forth above.

44. Defendants, as part of the sales of motor vehicles that included consumers trading in a vehicle, failed to inform consumers that they would not pay off the remaining amount owed on the traded in vehicles.

45. Defendants failed to inform consumers that consumers would remain as registered owners of the vehicles that they intended to trade in for purchase of motor vehicles from Defendants.

46. Defendants failed to state material facts related to the transaction that tended to, or did, deceive consumers.

47. Defendants' acts are a violation of the UPA. NMSA §57-12-2(D)(14).

COUNT THREE

Defendants, to consumers' detriment, took advantage of the lack of consumers' knowledge, ability, experience, and/or capacity to an unfair degree. Alternatively, Defendants' acts resulted in a gross disparity between the value received by consumers and the price paid.

48. Plaintiff re-alleges and incorporates the factual allegations set forth above.

49. Defendants, as dealers of motor vehicles, possess licensure to carry on or conduct the active trade or business of a dealer in motor vehicles, pursuant to NMSA, §66-4-1(A)(1).

50. Defendants, as dealers of motor vehicles, have specialized knowledge, ability, experience, and/or capacity regarding the sale of motor vehicles.

51. Defendants, as dealers of motor vehicles, have knowledge of transaction requirements, relevant statutes, relevant codes, procedures, and other information necessary to carry on or conduct the active trade or business of a dealer in motor vehicles.

52. Defendants, as dealers of motor vehicles, have knowledge of information related financial transactions in the purchase of motor vehicles.

53. Defendants knew or should have known that consumers would lack the specialized knowledge, ability, experience and/or capacity related to the sales of motor vehicles.

54. Defendants' acts in selling motor vehicles through unfair or deceptive trade practices alleged above took advantage of consumers' lack of knowledge, ability, experience, and/or capacity to a grossly unfair degree, to the consumer's detriment.

55. Alternatively, Defendants' acts resulted in a gross disparity between the value received by consumers and the price paid.

56. As such, Defendants' acts constituted an unconscionable trade practice. NMSA § 57-12-2(E)(1), (2).

IV. FRAUD

COUNT FOUR

Defendants knowingly or recklessly made misrepresentations of fact with the intent to deceive and induce reliance on the misrepresentation to the detriment of consumers.

57. Plaintiff re-alleges and incorporates the factual allegations set forth above.

58. The Attorney General brings a claim against Defendants for civil fraud pursuant to its *parens patriae* authority for the purpose of protecting its citizens for unfair, deceptive, and unconscionable trade practices.

59. Defendants are liable for damages proximately caused by their fraudulent misrepresentations. *See* UJI 13-1633 NMRA.

60. The elements of fraud include (1) a misrepresentation of fact; (2) either knowledge of the falsity of the representation or recklessness on the part of the party making the misrepresentation, (3) intent to deceive and to induce reliance on the misrepresentation, and (4) detrimental reliance on the misrepresentation. *Id.*

61. Defendants knowingly or recklessly made material and untrue representations of fact to consumers with whom they have contracted.

62. Defendants made false or misleading misrepresentations in contracting with consumers through the above alleged trade-in scheme, including, but not limited to, representing that they would pay off traded-in vehicles, representing that they would license, register, and title vehicles within the time prescribed by law; representing that they would fund gap insurance and other contracted-for add-on products, and representing false credit information.

63. Each representation by Defendants was made with the intent to deceive and to induce consumers to rely on the representations.

64. Consumers did, in fact, rely on the representations made by entering into contracts with Defendants. Each of the contracts entered into by consumers was secured by fraud in the inducement to enter into the contract. Therefore, each contract entered into by consumers through fraud is voidable at the option of the consumer.

65. New Mexico Law enables a party to recover damages proximately caused by fraud and that a plaintiff alleging fraud may recover such damages as are the direct and natural consequences of the reliance on a fraudulent representation. *See Indus. Supply Co. v. Goen*, 1954-NMSC-107, ¶ 12, 58 N.M. 738, 743, 276 P.2d 509, 512.

V. CONVERSION

COUNT FIVE

Defendants converted consumers' property, thereby damaging consumers.

66. Plaintiff re-alleges and incorporates the factual allegations set forth above.

67. The Attorney General brings a claim against Defendants for civil conversion pursuant to its *parens patriae* authority for the purpose of protecting its citizens for unfair, deceptive, and unconscionable trade practices.

68. Defendants are liable for damages proximately caused by their conversion of consumer's property.

69. Civil conversion is either (a) the unlawful exercise of dominion and control over personal property belonging to another in exclusion or defiance of the owner's rights, (b) acts constituting an unauthorized and injurious use of another's property, or (c) a wrongful detention of another's property after demand has been made. *See Muncey v. Eyeglass World, LLC*, 2012-NMCA-120, ¶ 22, 289 P.3d 1255, 1262.

70. Defendants have exercised unlawful dominion and control over personal property belonging to consumers in exclusion or defiance of the consumers in perpetrating the above trade-in scheme.

71. Alternatively, Defendants have perpetrated acts constituting an unauthorized and injurious use of consumers' property in perpetrating the above trade-in scheme.

72. Alternatively, Defendants have wrongfully detailed consumers' property after demand has been made in perpetrating the above trade-in scheme.

73. New Mexico law defines the measure of damages for conversion as follows:

- a. the exchange value of the subject matter or plaintiff's interest therein at the time and place of the conversion or destruction, or a different value where that is necessary to give just compensation, and

- b. the amount of any further loss suffered as the result of the deprivation, and
- c. interest from the time at which the value is fixed or compensation for the loss of use.

Id. at ¶23, *see also Frank Bond & Son, Inc. v. Reserve Minerals Corp.*, 1959-NMSC-016, ¶ 13, 65 N.M. 257, 261, 335 P.2d 858, 861.

74. Consumers have suffered damages as a result of Defendants conversion of their property, including the value of traded-in vehicles wrongly converted by Defendants, loss of use, damage to credit, diminution of value, and other losses suffered as a result of deprivation of their property.

VI. PERSONAL LIABILITY

COUNT SIX

Defendant Kaul Corley is personally liable.

75. Plaintiff re-alleges and incorporates the factual allegations set forth above.

76. A director of a corporation has a duty to act to prevent injuries to third parties where they have knowledge, amounting to acquiescence, of the corporation's wrongful acts. *C & H Const. & Paving Co., Inc. v. Citizens Bank*, 1979-NMCA-077, ¶ 12, 93 N.M. 150, 157, 597 P.2d 1190, 1197 (*citing Taylor v. Alston*, 1968-NMCA-082, ¶ 3, 79 N.M. 643, 644, 447 P.2d 523, 524).

77. An individual is liable for a corporate entity's deceptive acts or practices if the individual (1) either participated directly in the entity's acts or practices or had the authority to control them, and (2) knew or should have known of the entity's acts. *See New Mexico ex rel. Balderas v. Real Estate Law Center, P.C.*, 430 F. Supp. 3d 761, 868 (D.N.M. 2019).

78. Officers or agents are individually liable for violations of law committed by the corporation if the if the officers or agents participated in or directed the acts or practices, had

knowledge and authority to control the acts or practices or acquiesced or sanctioned the acts or practices. *Lobato v. Pay Less Drug Stores, Inc.*, 261 F.2d 406, 408-09 (10th Cir. 1958).

79. As either CEO, President, or as a director of Defendant Carite, Defendant Kaul Corley knew or should have known about Defendant Carite's wrongful or deceptive acts or practices.

80. Defendant Kaul Corley had a duty to act to prevent injuries to third parties caused by Defendant Carite's wrongful or deceptive acts or practices.

81. Defendant Kaul Corley, either participated directly in or had the authority to control Defendant Carite's wrongful or deceptive acts or practices.

82. Defendant Kaul Corley either failed to control, acquiesced, or sanctioned Defendant Carite's wrongful or deceptive acts or practices.

83. Based on the foregoing, Defendant Kaul Corley is personally liable for these violations of law.

VII. REQUEST FOR DECLARATORY RELIEF

COUNT SEVEN

84. Plaintiff re-alleges and incorporates the factual allegations set forth above.

85. Plaintiff requests that this Court declare all transactions of the Defendants sharing the same or similar unlawful scheme in violation of the UPA and Fraud to be voidable as a matter of New Mexico law.

86. Plaintiff requests that this Court declare null and void all liens obtained in violation of the UPA and Fraud.

87. Plaintiff requests reimbursement of costs and an award of reasonable attorneys' fees.

VIII. REQUEST FOR INJUNCTIVE, EQUITABLE, AND ANCILLARY RELIEF

COUNT EIGHT

INJUNCTIVE, EQUITABLE, AND ANCILLARY RELIEF, INCLUDING THE DISGORGEMENT OF ALL ILL-GOTTEN GAINS FOR UPA VIOLATIONS

88. Plaintiff re- alleges and incorporates the factual allegations set forth above.

89. Defendants' business activities violate New Mexico law and reveal a pattern and practice of exploiting consumers through the use of deceptive acts and business practices.

90. On this basis, the New Mexico Attorney General petitions the Court for temporary or permanent injunctive relief pursuant to the UPA and Fraud.

91. In any action filed pursuant to the UPA, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution. *See* NMSA §57-12-8.

92. Defendant's form of contract purports to require that certain disputes be individually arbitrated. Defendants' arbitration clause is not enforceable because the contract is substantively and procedurally unconscionable and/or is against public policy. To the extent that Defendant asserts that claims asserted herein, on behalf of and/or by Defendants' New Mexico customers, are subject to an arbitration agreement(s), Plaintiff requests declaratory and/or injunctive relief in the form of a finding as void and unenforceable each such purported arbitration agreement.

93. When seeking injunctive relief pursuant to the UPA, the attorney general is not required to post bond. NMSA §57-12-8(A).

94. Plaintiff requests reimbursement of costs and an award of reasonable attorneys' fees.

COUNT NINE

UNJUST ENRICHMENT

95. Plaintiff re-alleges and incorporates the factual allegations set forth above.

96. As a direct and proximate result of Defendants' trade-in scheme, other violations of the UPA, and Fraud, Defendant has been unjustly enriched.

97. This Court should find that Defendants have been unjustifiably enriched and order Defendants to disgorge all monies received as a result of its unlawful business practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that:

A. the Court issue a preliminary injunction restraining the Defendants from engaging in the conduct alleged herein;

B. the Court issue a permanent injunction to permanently enjoin the Defendants from engaging in conduct which is found to be unlawful pursuant to the UPA;

C. the Court declare all transactions of the Defendants sharing the same or similar unlawful scheme in violation of New Mexico Law, and therefore unenforceable;

D. the Court order the Defendants to restore all persons any monies which may have been acquired by any practice alleged herein to be in violation of the UPA;

E. the Court determine and adjudge that Defendant Kaul Corley is personally liable as a corporate owner, officer, or manager having knowledge and authority to direct the acts of Defendant Carite;

F. the Court order Defendants to disgorge all monies collected from engaging in conduct which is found to be unlawful pursuant to UPA;

G. the Court order the Defendants to pay to the State of New Mexico a civil penalty of up to FIVE THOUSAND DOLLARS (\$5,000.00) per violation, pursuant to UPA;

H. the Court order the Defendant to reimburse the New Mexico Office of the Attorney General for its attorney fees and costs incurred in the investigation and prosecution of this matter;
and

I. For such further relief as the Court deems just and proper.

J. Plaintiff requests a trial by jury.

Respectfully submitted,

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