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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUIS MANUAL MORA,

Plaintiff,

v.

HARLEY-DAVIDSON CREDIT CORP,

Defendants.

1:08-cv-01453-OWW-GSA

MEMORANDUM DECISION REGARDING
THE PARTIES' CROSS MOTIONS FOR
SUMMARY JUDGMENT (Docs. 45,
50)

I. INTRODUCTION.

Plaintiff Luis Manual Mora ("Plaintiff") proceeds with an action for damages against Defendant Harley-Davidson Credit Corp. ("Defendant"). Defendant removed Plaintiff's action to federal court on September 26, 2008. (Doc. 1).

Defendant filed a motion for summary judgment on May 3, 2010. (Doc. 45). Plaintiff filed opposition to Defendant's motion for summary judgment on June 4, 2010. (Doc. 49). Defendant filed a reply to Plaintiff's opposition on June 21, 2010. (Doc. 52).

Plaintiff filed a motion for summary judgment on June 4, 2010. (Doc. 50). Defendant filed opposition to Plaintiff's motion on July 7, 2010. (Doc. 54). Defendant also filed objections in connection with its opposition to Plaintiff's motion for summary judgement (Docs. 53, 57), an additional statement of undisputed facts (Doc. 59), and a response to Plaintiff's statement of

1 undisputed facts (Doc. 58). Plaintiff filed a reply to Defendant's
2 opposition on July 27, 2010. (Doc. 62).

3 **II. FACTUAL BACKGROUND.**

4 On or about October 4, 2006, Plaintiff purchased a
5 Harley-Davidson motorcycle from dealer Golden Valley Harley
6 Davidson. (Defs. SUF No. 1). Plaintiff financed his purchase by
7 obtaining a direct loan from lender ESB ("the Loan"). (Defs. SUF
8 No. 2). Pursuant to the terms of the Loan, ESB, as lender, took a
9 security interest in the Motorcycle, as collateral; ESB assigned
10 its rights in Plaintiff's loan to Harley-Davidson Credit Company
11 ("HDCC"). (Defs. SUF Nos. 3, 4).

12 In August 2007, Plaintiff surrendered the motorcycle to Golden
13 Valley Harley-Davidson. (Defs. SUF 7.). On September 4, 2007,
14 HDCC sent Plaintiff a Notice of Intent to Dispose of Repossessed
15 Collateral and Extension Request ("NOI"). (Defs. SUF 9, 10).
16 Plaintiff never submitted the extension form and did not redeem or
17 reinstate the loan within the allowed time. (Defs. SUF No. 39).

18 On or about October 5, 2007, HDCC sold the Motorcycle at a
19 private auction for a total of \$4,315.00, including a \$115.00 buyer
20 fee. (Defs. SUF No. 40). Within 45 days of the date of sale, HDCC
21 sent Plaintiff a Repossession and Accounting Statement
22 ("Accounting") which, among other items, includes the gross
23 proceeds of the disposition, the actual fees and the amount of any
24 deficiency or surplus. (Defs. SUF Nos 41, 42). The Accounting sent
25 to Plaintiff informed him of the actual fees on the Mora Loan in
26 the amount of \$439.80, which consisted of a \$194.00 transportation
27 fee, a \$40.00 reconditioning fee, and a \$205.80 sales commission.
28 (Defs. SUF No. 43). The Accounting was sent with a letter that

1 informed Plaintiff that he was responsible for the payment of the
2 \$4,358.92 balance remaining on the Loan and that future debits,
3 credits, charges, rebates and expenses may affect the amount of the
4 deficiency. (Defs. SUF No. 44). Plaintiff did not pay the
5 deficiency balance. (Defs. SUF No. 45).

6 **III. LEGAL STANDARD.**

7 Summary judgment/adjudication is appropriate when "the
8 pleadings, the discovery and disclosure materials on file, and any
9 affidavits show that there is no genuine issue as to any material
10 fact and that the movant is entitled to judgment as a matter of
11 law." Fed. R. Civ. P. 56(c). The movant "always bears the initial
12 responsibility of informing the district court of the basis for its
13 motion, and identifying those portions of the pleadings,
14 depositions, answers to interrogatories, and admissions on file,
15 together with the affidavits, if any, which it believes demonstrate
16 the absence of a genuine issue of material fact." *Celotex Corp. v.*
17 *Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265
18 (1986) (internal quotation marks omitted).

19 Where the movant will have the burden of proof on an issue at
20 trial, it must "affirmatively demonstrate that no reasonable trier
21 of fact could find other than for the moving party." *Soremekun v.*
22 *Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). With
23 respect to an issue as to which the non-moving party will have the
24 burden of proof, the movant "can prevail merely by pointing out
25 that there is an absence of evidence to support the nonmoving
26 party's case." *Soremekun*, 509 F.3d at 984.

27 When a motion for summary judgment is properly made and
28 supported, the non-movant cannot defeat the motion by resting upon

1 the allegations or denials of its own pleading, rather the
2 "non-moving party must set forth, by affidavit or as otherwise
3 provided in Rule 56, 'specific facts showing that there is a
4 genuine issue for trial.'" *Soremekun*, 509 F.3d at 984. (quoting
5 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct.
6 2505, 91 L. Ed. 2d 202 (1986)). "A non-movant's bald assertions or
7 a mere scintilla of evidence in his favor are both insufficient to
8 withstand summary judgment." *FTC v. Stefanichik*, 559 F.3d 924, 929
9 (9th Cir. 2009). "[A] non-movant must show a genuine issue of
10 material fact by presenting affirmative evidence from which a jury
11 could find in his favor." *Id.* (emphasis in original). "[S]ummary
12 judgment will not lie if [a] dispute about a material fact is
13 'genuine,' that is, if the evidence is such that a reasonable jury
14 could return a verdict for the nonmoving party." *Anderson*, 477
15 U.S. at 248. In determining whether a genuine dispute exists, a
16 district court does not make credibility determinations; rather,
17 the "evidence of the non-movant is to be believed, and all
18 justifiable inferences are to be drawn in his favor." *Id.* at 255.

19 **IV. DISCUSSION.**

20 **A. Plaintiff's Claim for Violation of the Rees-Levering Automobile** 21 **Sales Finance Act (Cal. Civ. Code § 2981 et seq.)¹**

22 The complaint alleges that Defendant violated sections 2983.2,
23 2983.3, and 2983.8 of the Rees-Levering Automobile Sales Finance
24 Act ("ASFA"). (Complaint at 6) (referencing Cal. Civ. Code § 2981
25 et seq.). Both parties move for summary judgment on the critical
26

27 ¹ As the court decides the parties' cross motions for summary judgement on this
28 claim without reference to the sample notice provided by Plaintiff, Defendant's
objections to the sample notice are moot. (Docs. 53, 57).

1 issue² of whether Defendant's NOI complied with the requirements of
2 ASFA as set forth in section 2983.2(a), which provides in part:

3 Except where the motor vehicle has been seized as
4 described in paragraph (6) of subdivision (b) of Section
5 2983.3, any provision in any conditional sale contract
6 for the sale of a motor vehicle to the contrary
7 notwithstanding, at least 15 days' written notice of
8 intent to dispose of a repossessed or surrendered motor
9 vehicle shall be given to all persons liable on the
10 contract. The notice shall be personally served or shall
11 be sent by certified mail, return receipt requested, or
12 first-class mail, postage prepaid, directed to the last
13 known address of the persons liable on the contract. If
14 those persons are married to each other, and, according
15 to the most recent records of the seller or holder of the
16 contract, reside at the same address, one notice
17 addressed to both persons at that address is sufficient.
18 Except as otherwise provided in Section 2983.8, those
19 persons shall be liable for any deficiency after
20 disposition of the repossessed or surrendered motor
21 vehicle only if the notice prescribed by this section is
22 given within 60 days of repossession or surrender and
23 does all of the following:

24 (1) Sets forth that those persons shall have a right to
25 redeem the motor vehicle by paying in full the
26 indebtedness evidenced by the contract until the
27 expiration of 15 days from the date of giving or mailing
28 the notice and provides an itemization of the contract
balance and of any delinquency, collection or
repossession costs and fees and sets forth the
computation or estimate of the amount of any credit for
unearned finance charges or canceled insurance as of the
date of the notice.

(2) States either that there is a conditional right to
reinstate the contract until the expiration of 15 days
from the date of giving or mailing the notice and all the
conditions precedent thereto or that there is no right of
reinstatement and provides a statement of reasons
therefor.

(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. The seller or holder shall provide

² Pursuant to the court's February 12, 2010 scheduling order, the parties' motions are limited to the issue of whether the NOI complied with AFSA. (Doc. 44). Whether Defendant is actually subject to AFSA entails factual disputes not at issue in this motion.

1 the proper form for applying for the extensions with the
2 substance of the form being limited to the extension
3 request, spaces for the requesting party to sign and date
4 the form, and instructions that it must be personally
5 served or sent by certified or registered mail, return
6 receipt requested, to a person or office and address
7 designated by the seller or holder and received before
8 the expiration of the initial redemption and
9 reinstatement periods.

6 (4) Discloses the place at which the motor vehicle will
7 be returned to those persons upon redemption or
8 reinstatement.

8 (5) Designates the name and address of the person or
9 office to whom payment shall be made.

10 (6) States the seller's or holder's intent to dispose of
11 the motor vehicle upon the expiration of 15 days from the
12 date of giving or mailing the notice, or if by mail and
13 either the place of deposit in the mail or the place of
14 address is outside of this state, the period shall be 20
15 days instead of 15 days, and further, that upon written
16 request to extend the redemption period and any
17 applicable reinstatement period for 10 days, the seller
18 or holder shall without further notice extend the period
19 accordingly.

15 (7) Informs those persons that upon written request, the
16 seller or holder will furnish a written accounting
17 regarding the disposition of the motor vehicle as
18 provided for in subdivision (b). The seller or holder
19 shall advise them that this request must be personally
20 served or sent first-class mail, postage prepaid, or
21 certified mail, return receipt requested, to a person or
22 office and address designated by the seller or holder.

20 (8) Includes notice, in at least 10-point bold type if
21 the notice is printed, reading as follows: "NOTICE. YOU
22 MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT
23 OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT
24 TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE."

23 (9) Informs those persons that upon the disposition of
24 the motor vehicle, they will be liable for the deficiency
25 balance plus interest at the contract rate, or at the
26 legal rate of interest pursuant to Section 3289 if there
27 is no contract rate of interest, from the date of
28 disposition of the motor vehicle to the date of entry of
judgment.

27 Cal. Civ. Code § 2983.2.

28 ///

1 Plaintiff contends that the NOI provided by Defendant was
2 deficient for numerous reasons. Because ASFA requires that a
3 notice comply with each of the nine criteria set forth in section
4 2983.2(a), Defendant's failure to comply any one of section
5 2983.2(a)'s subparts renders the notice deficient. See Cal. Civ.
6 Code § 2983.2(a) (debtor liable for deficiency after disposition
7 "only if the notice prescribed by this section...does all of the
8 following...") (emphasis added).

9 The parties advance conflicting positions regarding the
10 quantum of compliance required by ASFA. Plaintiff contends that
11 ASFA requires "strict compliance." (Doc. 50, Plaintiff's MSJ at 7)
12 (citing *Bank of America v. Lallana*, 19 Cal. 4th 203, 215 (Cal.
13 1998)). Defendant contends that "substantial compliance" is
14 sufficient under ASFA. Assuming *arguendo* that only substantial
15 compliance is required by ASFA, Defendant's NOI was deficient.

16 **1. Section 2983.2(a)(2)**

17 Plaintiff contends that Defendant's NOI was deficient, *inter*
18 *alia*, because the notice failed to state the actual amount
19 Plaintiff was required to pay to effect reinstatement as required
20 by section 2983.2(a)(2); specifically, Plaintiff points out that
21 the NOI did not include the actual amount of fees owed in
22 connection with "repossession fees." Defendant contends that the
23 NOI complied with section 2983.2(a)(2) because the NOI provided
24 Plaintiff with an estimate of repossession fees.

25 There is currently no California Supreme Court opinion
26 interpreting the ambiguous language contained in section
27 2983.2(a)(2). See *Juarez v. Arcadia Financial, Ltd.*, 152 Cal. App.
28 4th 889, 903 (Cal. Ct. App. 2007) *petition for review and*

1 *depublication denied at 2007 Cal. LEXIS 10705 (Cal. 2007) (holding*
2 *that the phrase "all conditions precedent" contained in section*
3 *2983.2(a)(2) is ambiguous); see also Arguelles-Romero v. Superior*
4 *Court, 184 Cal. App. 4th 825, 830 (Cal. Ct. App. 2010) (citing*
5 *Juarez as the definitive California case law interpreting section*
6 *2983.2(a)(2)); Salenga v. Mitsubishi Motors Credit of America,*
7 *Inc., 183 Cal. App. 4th 986, 999 (Cal. Ct. App. 4th 2010) (same).*
8 *The construction of section 2983.2(a)(2) set forth in the decisions*
9 *of the California Court of Appeal guide analysis of Plaintiff's*
10 *claim. E.g. Batlan v. Bledsoe, 569 F.3d 1106, 1110 (9th Cir. 2009)*
11 *("In the absence of a pronouncement by the highest court of a*
12 *state, [federal courts] must follow the decision[s] of the*
13 *intermediate appellate courts of the state unless there is*
14 *convincing evidence that the highest court of the state would*
15 *decide differently").*

16 *Juarez provides a careful and comprehensive statutory*
17 *construction of section 2983.2(a)(2). See Juarez, 152 Cal. App.*
18 *4th at 899-906) (applying cannons of statutory construction). In*
19 *Juarez, the California Court of Appeal confronted the issue of*
20 *"whether an NOI must state the specific amount a buyer must pay for*
21 *reinstatement in order to comply with section 2983.2, subdivision*
22 *(a)(2)"; the Court answered the question presented in the*
23 *affirmative:*

24 *Reading the phrase "all the conditions precedent" in*
25 *subdivision (a)(2) of section 2983.2 in the context of*
26 *the overall statutory scheme, and considering the*
27 *Legislature's purpose in enacting Rees-Levering, it seems*
28 *clear that the Legislature intended that the NOI provide*
a level of specificity as to the conditions precedent to
reinstatement sufficient to inform the buyer—without need
for further inquiry—as to exactly what the buyer must do
to cure the default. Thus, the statute requires that a

1 creditor inform the consumer of any amounts the buyer
2 must pay to the creditor and/or to third parties, and
3 provide the buyer with the names and addresses of those
4 who are to be paid...If the creditor does not provide the
defaulting buyer with this information, the creditor has
not informed the defaulting buyer of "all the conditions
precedent" to reinstatement of the contract.

5 *Id.* at 904-905 (emphasis added). Two cases decided by the
6 California Court of Appeal this year confirm *Juarez's* holding that
7 a NOI must state "the amounts due, to whom they are due, the
8 addresses and/or contact information for those parties."
9 *Arguelles-Romero*, 184 Cal. App. at 830; *Salenga*, 183 Cal. App. 4th
10 at 999 (same).

11 The fact that a debtor owes fees to one or more third parties
12 does not excuse a creditor from its' obligation to state the
13 specific amounts a buyer must pay for reinstatement in a NOI. See
14 *Juarez*, 152 Cal. App. 4th at 908-09; see also *Arguelles-Romero*, 184
15 Cal. App. at 830 (notice must state "the amounts due, to whom they
16 are due, the addresses and/or contact information for those
17 parties"); *Salenga*, 183 Cal. App. 4th at 999 (Cal. Ct. App. 4th
18 2010) (same). Section 2983.2 requires a creditor to provide all
19 information it knows, reasonably should know, or has the ability to
20 discern regarding the amounts a debtor must pay to third parties.
21 *Juarez*, 152 Cal. App. 4th at 909.

22 **2. Defendant's NOI**

23 It is undisputed that the NOI Defendant sent to Plaintiff did
24 not contain the actual amounts Plaintiff owed for repossession fees
25 or law enforcement fees. (See Doc. 56, *Acosta Dec.*, Ex. D). It is
26 also beyond depute that Defendant's NOI did not provide Plaintiff
27 notice of the parties to whom such repossession and law enforcement
28 fees were due. (See *id.*). Accordingly, Defendant's NOI was

1 deficient in material respects, as it failed to state the amounts
2 due, to whom they were due, the addresses and/or contact
3 information for those parties. *Juarez*, 152 Cal. App. 4th at 908-
4 09. The NOI did not provide Plaintiff with sufficient information
5 to allow him to fulfill all of the conditions precedent to
6 reinstatement "without need for further inquiry" as required by
7 section 2983.2(a)(2). *Juarez*, 152 Cal. App. 4th at 904-05.
8 Instead, the NOI merely listed general prerequisites to
9 reinstatement and placed the burden of further investigation on
10 Plaintiff; placing this burden on Plaintiff frustrated the purpose
11 of the notice requirement embodied in section 2983.2(a)(2). *Id.* at
12 905 ("The burden that Arcadia's NOI places on the buyer makes it
13 more difficult for a buyer to exercise the right to reinstate, and
14 reduces the amount of time the consumer has to fulfill the
15 conditions by requiring that the consumer spend time tracking down
16 the relevant information...it would be unreasonable to conclude
17 that the Legislature intended that such a burden be placed on
18 buyers").

19 Here, as in *Juarez*, Plaintiff could not exercise his right to
20 reinstatement without conducting an independent inquiry to
21 determine the amounts owed for any repossession fees and law
22 enforcement fees. Further, because the NOI did not provide any
23 contact information for the entities to whom Plaintiff might owe
24 such fees, Plaintiff's ability to comply with the reinstatement
25 conditions was entirely dependant on Defendant's cooperation. As
26 the California Court of Appeal reasoned in *Juarez*:

27 If general information were all that is required under
28 section 2983.2, subdivision (b), then a buyer would never
have the right to be told precisely how much he or she

1 must pay in order to reinstate the contract. Without this
2 specific information, a buyer would not be able to
3 exercise the right of reinstatement...[and] the
4 defaulting buyer's ability to reinstate is left to the
5 discretion of the creditor, who will be in the position
6 of deciding whether to provide a buyer the specific
7 information necessary to allow him or her to reinstate.
8 Such a result would clearly conflict with the statutory
9 scheme as a whole. It would be unreasonable to conclude
10 that the Legislature intended that buyers not be
11 provided sufficient information to be able to exercise
12 their rights under the statute. Since section 2983.2,
13 subdivision (a) (2) is the only provision that requires
14 creditors to provide information to the buyer, the most
15 reasonable interpretation of that provision is that it
16 requires creditors to provide notice sufficient to allow
17 the buyer to exercise the right to reinstate.

18 *Id.* at 907.

19 Defendant contends that because it did not know, and could not
20 reasonably ascertain, the amount of fees Plaintiff owed to third
21 parties at the time it sent Plaintiff the NOI, the estimate of
22 repossession fees provided in its NOI was sufficient to meet
23 section 2983.2(a) (2)'s requirements as stated in *Juarez*. (Doc. 54,
24 Def. Opp. To MSJ at 12-14). Defendant's argument is belied by the
25 record. Monica Acosta, a Manager in Defendant's loss mitigation
26 and servicing department, stated that Defendant can obtain the
27 actual amounts of repossession fees by placing a phone call to the
28 relevant entity. (Doc. 46, Acosta Dec. at ¶ 18; Acosta Deposition
Trans. at 57-58, 73-74). Ray Kunz, a re-marketing representative
employed by Defendant, also stated that when a debtor responded to
an NOI by calling Defendant to ascertain the exact amounts due for
repossession fees, Defendant would place the debtor on hold, call
the relevant entity in possession of the information, and obtain
the exact amount of repossession fees owed. (Kunz Dep. Trans. at
71-72).

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1 Defendant's ability to ascertain the exact amounts due for
2 repossession and law enforcement fees by placing a few phone calls
3 distinguishes Defendant's situation from the hypothetical
4 situations contemplated in *Juarez*, where the debtor is in a best
5 position to obtain the relevant information:

6 We acknowledge that there may be instances in which the
7 creditor does not possess information about the amount a
8 buyer must pay to a third party in order to satisfy a
9 condition precedent to reinstatement [such as situations
10 in which the default arises as a result of the buyer's
11 failure to keep the car free from encumbrances and liens,
12 or as a result of the buyer's failure to maintain
13 insurance for the car]. However, the fact that there may
14 be some instances in which the creditor does not know the
15 amount the defaulting buyer must pay to another party
16 does not mean that creditors need not provide information
17 about the amounts owed to the creditor or to third
18 parties when the creditor does (or reasonably should)
19 know those amounts. The creditor must provide the buyer
20 with all of the relevant information it possesses and/or
21 information it has the ability to discern, concerning
22 precisely what the buyer must do to reinstate his or her
23 contract.

24 *Id.* at 908-09.

25 Defendant contends that provision of estimates in an NOI is
26 contemplated by section 2983.2. Defendant points to language
27 contained in section 2983.2(a)(1) which states that a notice must
28 provide:

an itemization of the contract balance and of any
delinquency, collection or repossession costs and fees
and sets forth the computation or estimate of the amount
of any credit for unearned finance charges or canceled
insurance as of the date of the notice.

Cal. Civ. Code 2983.2(a)(1) (emphasis added). Defendant's argument
is untenable.

First, section 2983.2(a)(1) imposes more stringent notice
requirements for repossession costs and fees than for credits for
unearned finance charges or canceled insurance; subsection (a)(1)

1 requires "itemization" of repossession costs but permits
2 "computation or estimate" of the amount of credits for unearned
3 finance charges or canceled insurance. *Id.* Contrary to
4 Defendant's argument, the plain language of section 2983.2(a)(1)
5 suggests that the Legislature placed special importance on
6 disclosure of actual repossession fees in an NOI. Second, section
7 2983.2(a)(1) concerns a debtor's right to redemption, while section
8 2983.2(a)(2) concerns the debtor's right to reinstatement. *Juarez*
9 expressly distinguished sections (a)(1) and (a)(2) and rejected the
10 argument that the notice requirements of subsection (a)(2) should
11 be construed in light of the language contained in subsection
12 (a)(1). 152 Cal. App. 4th at 909-910 ("The difference in the
13 wording used [in subsections (a)(1) and (a)(2)] is a function of
14 the fact that these sections describe very different things.").

15 Finally, assuming *arguendo* that, in some rare situations,
16 estimates of repossession costs may be sufficient to comply with
17 section 2983.2(a)(2) where the creditor cannot reasonably obtain
18 the actual amounts owed, it is axiomatic that in such situations,
19 the estimates must be reasonable. An unreasonable estimate which
20 bears no relation to the actual fees a debtor must pay in order to
21 effect reinstatement is precisely the type of "meaningless
22 information" that impedes the debtor's ability to exercise her
23 rights under ASFA. See *id.* at 905. Here, Defendant's NOI
24 indicated estimated repossession costs of six-hundred dollars, when
25 in fact, the actual amount of repossession costs Plaintiff would
26 have had to pay to reinstate his contract as of the date of the NOI
27 would have been zero dollars. A cursory investigation by Defendant
28 of information entirely within its control would have revealed that

1 Plaintiff surrendered his motorcycle to the dealership, a fact that
2 put Defendant on notice that a repossession cost estimate of six-
3 hundred dollars was inaccurate as to Plaintiff.³

4 According to Ms. Acosta's deposition, when a vehicle was
5 actually repossessed by a repossession agent, the repossession
6 agent would send a "Condition Report" to Defendant's office.
7 (Acosta Deposition Trans. at 42-43). By contrast, when a vehicle
8 was surrendered to a dealer, no Condition Report was generated.
9 (Id.). The absence of a Condition Report regarding Plaintiff's
10 vehicle put Defendant on notice that Plaintiff's vehicle was not
11 repossessed by a repossession agent, and thus that the six-hundred
12 dollar estimate included in the NOI was erroneous. (See id.).

13 At the time Defendant sent its NOI, Defendant should have
14 known that the NOI did not provide a reasonable estimate of the
15 repossession costs applicable to Plaintiff. The estimate provided
16 in Defendant's NOI was not only six-hundred dollars too high, it
17 also had the effect of inflating the reinstatement payment amount
18 by almost three-hundred percent. The purposes underlying section
19 2983.2(a)(2)'s notice requirement are thwarted by estimates that,
20 in addition to bearing no relationship to the actual amounts owed,
21 inflate the reinstatement payment amount significantly and thereby
22 discourage a debtor from exercising their right to reinstatement.

23 Defendant's NOI failed to include the correct amount of
24 repossession fees owed, failed to include the amount of law
25 enforcement fees owed, failed to identify the third parties to whom
26 such fees were owed, and failed to provide contact information such

27
28 ³ At oral argument, Defendant's counsel conceded that Defendant knew that Plaintiff's vehicle had been surrendered at the time Defendant sent the NOI.

1 third parties; all of this information is required by section
2 2983.2(a)(2). *Arguelles-Romero*, 184 Cal. App. at 830; *Salenga*, 183
3 Cal. App. 4th at 999. Plaintiff's request for summary judgment on
4 his contention that Defendant's NOI was deficient is GRANTED.

5 **B. Plaintiff's UCL Claim**

6 Plaintiff's UCL claim is predicated on Defendant's alleged
7 violation of ASFA. As a factual dispute exists regarding whether
8 Defendant is subject to ASFA, neither party is entitled to summary
9 judgment on Plaintiff's UCL claim at this time.

10 **ORDER**

11 For the reasons stated, IT IS ORDERED:

- 12 1) Defendant's motion for summary judgment is DENIED;
13 2) Plaintiff's motion for summary judgment on the limited
14 issue of whether Defendant's NOI complied with ASFA is
15 GRANTED;
16 3) Plaintiff's motion for summary judgment as to his UCL claim
17 is DENIED; and
18 4) Plaintiff shall submit a form of order consistent with this
19 Memorandum Decision within five (5) days of entry of this
20 order.

21 IT IS SO ORDERED.

22 **Dated: October 12, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE