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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RONALD WRIGHT, individually, and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
AMERICREDIT FINANCIAL SERVICES,  
INC. dba ACF FINANCIAL SERVICES,  
INC.,  
  
Defendant.

CASE NO. 10cv0922 DMS (BLM)

**ORDER GRANTING  
DEFENDANT’S MOTION TO  
DISMISS**

**[Docket No. 16]**

This case comes before the Court on Defendant’s motion to dismiss. Plaintiff filed an opposition to the motion, and Defendant filed a reply. For the reasons discussed below, the Court grants the motion.

**I.  
BACKGROUND**

This case is one of six class action cases against Americredit currently pending in the state and federal courts of California. In each case, Defendant repossessed the plaintiff’s vehicle, and sent the plaintiff a statutory notice regarding the repossession. In each case, the plaintiff alleges the notice did not comply with the Rees Levering Automobile Sales Finance Act (“Rees-Levering”).

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1 In this case, Plaintiff Ronald Wright purchased a used 1999 Mercedes-Benz from a car  
2 dealership in Oceanside, California. (First Amended Complaint (“FAC”) ¶ 6.) The dealership arranged  
3 financing for the purchase of the vehicle, and assigned the sales contract to Americredit. (*Id.*)

4 In January 2010, Americredit repossessed Plaintiff’s vehicle. (FAC ¶ 7.) On January 26, 2010,  
5 Americredit sent Plaintiff a statutory notice about the repossession. (*Id.*, FAC, Ex. B.)

6 On April 29, 2010, Plaintiff filed the present case, and on August 6, 2010, Plaintiff filed the  
7 FAC. The FAC alleges claims for violation of Rees-Levering, violation of California’s Unfair  
8 Competition Law (“UCL”) and declaratory relief. The present motion followed.

## 9 II.

### 10 DISCUSSION

11 Defendant moves to dismiss the FAC in its entirety. It argues the statutory notice at issue in the  
12 case (“NOI”) complies with Rees-Levering, and absent a violation of Rees-Levering, Plaintiff’s other  
13 claims fail.

#### 14 A. Standard of Review

15 In two recent opinions, the Supreme Court established a more stringent standard of review for  
16 12(b)(6) motions. *See Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937 (2009); *Bell Atlantic Corp. v.*  
17 *Twombly*, 550 U.S. 544 (2007). To survive a motion to dismiss under this new standard, “a complaint  
18 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
19 face.’” *Iqbal*, 129 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 570). “A claim has facial plausibility  
20 when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
21 defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

22 “Determining whether a complaint states a plausible claim for relief will ... be a context-specific  
23 task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 1950  
24 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007)). In *Iqbal*, the Court began this task “by  
25 identifying the allegations in the complaint that are not entitled to the assumption of truth.” *Id.* at 1951.  
26 It then considered “the factual allegations in respondent’s complaint to determine if they plausibly  
27 suggest an entitlement to relief.” *Id.* at 1951.

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1 **B. Rees-Levering Act**

2 The Rees-Levering Act:

3 provides a detailed framework that governs conditional sale contracts for motor vehicles.  
4 Under the Act, defaulting buyers whose cars have been repossessed by a creditor must  
5 be given the opportunity to redeem their vehicles by paying the full balance due under  
6 the contract. The Act also requires that defaulting buyers be given the opportunity, in  
7 many circumstances, to reinstate their contracts by curing the default and meeting certain  
8 other conditions set by the creditor.

9 *Juarez v. Arcadia Financial, Ltd.*, 152 Cal. App. 4<sup>th</sup> 889, 894 (2007). In addition,

10 [t]he Act requires that creditors provide a defaulting buyer with a notice of intention  
11 (NOI) to dispose of the repossessed vehicle. To ensure that a defaulting buyer is made  
12 aware of his or her right to redeem or reinstate prior to the creditor disposing of the  
13 vehicle, the Act requires that creditors include in the NOI information about the buyer's  
14 right to redeem or reinstate.

15 *Id.* Compliance with the notice requirements is a prerequisite to the creditor's ability to collect any  
16 deficiency from the defaulting buyer. Cal. Civ. Code § 2983.2(a). This case involves four of the notice  
17 requirements.

18 1. Section 2983.2(a)(1)

19 The first requirement at issue is found in section 2983.2(a)(1). This section states the NOI must  
20 set forth that the defaulting buyers:

21 have a right to redeem the motor vehicle by paying in full the indebtedness evidenced  
22 by the contract until the expiration of 15 days from the date of giving or mailing the  
23 notice and provide[ ] an itemization of the contract balance and of any delinquency,  
24 collection or repossession costs and fees and set[ ] forth the computation or estimate of  
25 the amount of any credit for unearned finance charges or canceled insurance as of the  
26 date of the notice.

27 Cal. Civ. Code § 2983.2(a)(1). Plaintiff alleges Defendant's NOI does not comply with this requirement  
28 because it does not set forth the amount due at the end of the 15-day redemption period. Defendant  
disagrees that its NOI fails to provide this information.

The NOI at issue in this case set forth two possible amounts that Plaintiff could have paid to  
redeem his vehicle: \$7,095.82 or \$7,245.82. (*See* FAC, Ex. B.) The NOI clearly states that Plaintiff  
would have to pay the larger amount if he wanted to redeem his vehicle more than six days after the date  
of the NOI. (*Id.*) Thus, the NOI does provide the amount due at the end of the 15-day redemption  
period, contrary to Plaintiff's allegation.

1           Nevertheless, Plaintiff appears to argue that the NOI does not set forth the exact amount due on  
2 the fifteenth day after mailing. He specifically complains about the uncertainty over any late charge and  
3 when the \$150 transportation fee is incurred. However, there is nothing in the statute that requires the  
4 NOI to list the amount due on the fifteenth day after mailing. Furthermore, as indicated on Plaintiff's  
5 NOI, there is no late charge. With respect to the transportation fee, the NOI states that fee will be  
6 assessed six days after repossession when "the vehicle will be transported to an auction location to be  
7 prepared for sale[.]" (*Id.*)

8           Based on this Court's reading of the NOI, Plaintiff has failed to state a plausible claim for  
9 violation of section 2983.2(a)(1).

10           2.       Section 2983.2(a)(2)

11           The next requirement at issue is found in section 2983.2(a)(2). This section requires that the  
12 NOI state "either that there is a conditional right to reinstate the contract until the expiration of 15 days  
13 from the date of giving or mailing the notice and all the conditions precedent thereto or that there is no  
14 right of reinstatement and provide[ ] a statement of reasons therefor." Cal. Civ. Code § 2983.2(a)(2).  
15 Plaintiff alleges Defendant's NOI does not set forth "all the conditions precedent" to reinstatement, in  
16 particular, the amount due at the time of reinstatement, therefore the NOI violates the statute. Defendant  
17 disagrees that its NOI does not set forth this information.

18           The NOI at issue here lists three amounts Plaintiff could have paid to reinstate his account:  
19 \$969.70, \$1,119.70 and \$1,372.00. (FAC, Ex. B.) As with the redemption amounts, the first amount  
20 for reinstatement applied for the first six days after the date of the NOI. (*Id.*) If Plaintiff wished to  
21 reinstate his account on or after the seventh day, he should have paid the second amount, or \$1,119.70.  
22 (*Id.*) The final amount applied only if Plaintiff requested an extension of the redemption period, and  
23 only if he wished to reinstate his account on the last day of the extension period. (*Id.*) Thus,  
24 Defendant's NOI does set forth the amounts due at specific times during the reinstatement period.

25           Plaintiff argues that the NOI is nevertheless deficient because the defaulting buyer may owe a  
26 late charge under certain circumstances that are not set out in the NOI. The NOI states that the late  
27 charge applies if the defaulting buyer does "not make a Payment to Come Due within the grace period  
28 ... See your contract for details." (*Id.*) Defendant explains that the contract referred to in the NOI is the

1 sales contract, which defines the grace period as the 10-day period following the payment due date. (*See*  
2 FAC, Ex. A.) In Plaintiff’s case the payment due date was the 25<sup>th</sup> day of the month, which also  
3 happened to be the expiration date for his extension period. Therefore, Defendant asserts that Plaintiff’s  
4 NOI, which reflected no late charges, complied with the statute.

5 Because the expiration date of Plaintiff’s extension period and the due date for his monthly  
6 payments was the same,<sup>1</sup> Plaintiff’s NOI set forth “all the conditions precedent” to reinstatement of his  
7 account. Accordingly, Plaintiff has failed to state a plausible claim for violation of section 2983.2(a)(2).

8 3. Section 2983.2(a)(3)

9 The next section at issue in this case is section 2983.2(a)(3). This section provides that the NOI  
10 must state:

11 that, upon written request, the seller or holder shall extend for an additional 10 days the  
12 redemption period or, if entitled to the conditional right of reinstatement, both the  
13 redemption and reinstatement periods. The seller or holder shall provide the proper form  
14 for applying for the extension with the substance of the form being limited to the  
15 extension request, spaces for the requesting party to sign and date the form, and  
instructions that it must be personally served or sent by certified or registered mail,  
return receipt requested, to a person or office and address designated by the seller or  
holder and received before the expiration of the initial redemption and reinstatement  
periods.

16 Cal. Civ. Code § 2983.2(a)(3). Plaintiff alleges Defendant’s NOI does not comply with this section  
17 because it fails to designate a person or office and address upon which the defaulting buyer can effect  
18 personal service. Defendant disputes that the statute requires this information be included in the NOI.

19 By its plain terms, the statute requires that the form for requesting an extension of the  
20 redemption or reinstatement period include “instructions that it must be personally served or sent by  
21 certified or registered mail, return receipt requested, to a person or office and address designated by the  
22 seller or holder and received before the expiration of the initial redemption and reinstatement periods.”

23 *Id.* Notably, the statute does not require that the form be sent to a person *and* an office and address.  
24 Rather, it provides for the option of personal service or service by certified or registered mail. There  
25 is no requirement in the statute that both options be made available to the defaulting buyer. Based on  
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27 <sup>1</sup> Absent this coincidence, there may be a question about whether the NOI would comply with  
28 the statute. For example, if the purchase contract provided that payments were due on the 15<sup>th</sup> of the  
month, and the NOI failed to include any late charges in its itemization of amounts due, the NOI may  
not comply with the requirement that it set forth “all conditions precedent” to reinstatement.

1 this Court's interpretation of the statutory language, Plaintiff has not stated a plausible claim for  
2 violation of section 2983.2(a)(3).

3 4. Section 2983.2(a)(7)

4 The final section at issue in this case is section 2983.2(a)(7). This section provides that the NOI  
5 inform the defaulting buyer:

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

9 Cal. Civ. Code § 2983.2(a)(7). In the FAC, Plaintiff alleged Defendant's NOI does not comply with this  
10 section because it fails to inform the defaulting buyer that the request for an accounting must be made  
11 within one year of disposition of the vehicle.<sup>2</sup> Defendant argues that this section does not require  
12 inclusion of this information in the NOI. Plaintiff did not address this argument in his opposition brief,  
13 and the Court finds the argument persuasive. Therefore, the Court grants Defendant's motion to dismiss  
14 Plaintiff's claim for violation of section 2983.2(a)(7).<sup>3</sup>


15 **III.**

16 **CONCLUSION AND ORDER**

17 For these reasons, the Court grants Defendants' motion to dismiss. Plaintiff requests leave to  
18 amend, but as to the NOI at issue here and the facts of Plaintiff's case, the Court finds any amendment  
19 would be futile. Accordingly, Plaintiff's FAC is dismissed with prejudice.

20 **IT IS SO ORDERED.**

21 DATED: December 6, 2010

22 

23 HON. DANA M. SABRAW  
24 United States District Judge

25 \_\_\_\_\_  
26 <sup>2</sup> Plaintiff also alleged that the NOI did not comply with section 2983.2(a)(7) because it did not  
allow for personal service. For the reasons discussed above, the Court rejects that argument.

27 <sup>3</sup> Plaintiff's two remaining claims for violation of the UCL and for declaratory relief are  
28 premised on his claims for violations of Rees-Levering. Because Plaintiff has failed to state a plausible  
claim for violation of Rees-Levering, the Court also grants the motion to dismiss Plaintiff's UCL and  
declaratory relief claims.