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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FIFTH JUDICIAL CIRCUIT
Willie Mae Kirby, on behalf of herself and all others similarly situated, Plaintiff, vs. Excelsior I, Inc., Excelsior of Charleston, LLC and and We Finance, LLC, Defendants.	Case No. **SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your Answer to the said Complaint on the subscriber, David A. Maxfield, Esquire, at his office at P.O. Box 11865, Columbia, South Carolina 29211, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the Complaint. If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVE MAXFIELD, ATTORNEY, LLC

_s/ David A. Maxfield, ID 7163________
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DATED: February 25, 2019
Columbia, South Carolina

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vs.	
Excelsior I, Inc., Excelsior of Charleston, LLC, and We Finance, LLC, Defendants	**(Jury Trial Demanded)**

CLASS ACTION COMPLAINT

Plaintiff, through her undersigned counsel, complaining of the Defendants, alleges as follows for herself and all others similarly situated.

JURISDICTION

1. Plaintiff resides in the State of South Carolina.
2. Defendant Excelsior I, Inc. ("Excelsior I"), is a South Carolina corporation with its principal place of business, "nerve center", and headquarters in Richland County.
3. Defendant Excelsior of Charleston, Inc., is a South Carolina corporation with its principal place of business, "nerve center", and headquarters in Charleston County.
4. Defendant We Finance, Inc., (f/k/a Excelsior of Greenville, Inc.) is a South Carolina corporation with its principal place of business, "nerve center", and headquarters in Greenville County.

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5. This Court has personal jurisdiction over the parties, and subject matter jurisdiction over this action, and venue is proper.

Introduction

6. This case arises out of a "revolving repossession" or "churning" scheme whereby used cars were sold to the public by JDB of Columbia, Inc. and affiliated sales companies in Greenville and Charleston (together “Dealer”), financed by Defendants, repossessed without the legally required notice and process, then returned to Dealer’s lot to repeat the process, with all sums taken from the customers at each stage retained by Defendants, without notice or accounting for the value recovered upon resale or other disposition of the cars.
7. Defendants are, upon information and belief, affiliated companies engaged in the business of automotive financing, primarily or exclusively to customers of Dealer.
8. The vehicles in question were sold to consumers with limited access to credit, generally at inflated prices, and often involved “non-refundable” “deferred down payments”, wherein a consumer would pay additional money to Dealer for the first few months after taking delivery of the vehicle, which would be retained by Dealer even where (as here) the vehicle was repossessed almost immediately.
9. Similarly, all or substantially all vehicles were sold with an “optional” service contract, that was not necessarily optional, with the full premiums retained by Defendants or their affiliates even if the vehicle was quickly repossessed.
10. All or substantially all of the vehicles sold by Dealer were financed by Defendants at subprime interest rates, in many cases on the order of 25% per year.
11. Following an alleged customer payment default, Defendants initiated repossessions.
12. Often, following repossession, no further notice was sent to consumers. To the extent post-repossession sale notices were sent to consumers, same were false and misleading "notices of private sale."
13. Any announced sale was a sham, and not a commercially reasonable private sale as defined under the law of South Carolina.

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14. Defendants simply transferred title back to Dealer under a repurchase arrangement. No other "purchaser" ever attended these "sales."
15. The vehicle was then returned to Dealer's lot, to be sold to another customer.
16. Most repossessed cars that were resold to new Dealer customers were sold at prices that exceeded the prior customer's unpaid balance due for the vehicle. Since the resale price of these cars exceeded the customer's loan amount, Defendants were obligated by law to pay a surplus to the customer. But Defendants never did that.
17. Following the "new" sale of the vehicle, Defendants entered into similar financing arrangements with the new customer, with default again the likely result.
18. This scheme allowed Defendants to churn the same vehicle through this cycle repeatedly, sometimes as many as five times. For example, a car would be purchased at auction for $2500, lightly improved, sold for $10,000 with a $2,400 down payment, promptly repossessed, and then sold again for $10,000 with a $2,400 down payment.
19. Each iteration of the cycle allowed Defendants to extract down payments for its benefit or that of the affiliate dealer, including deferred down payments, service contract premiums and similar add-ons, together with high interest payments, all without accounting for or payment of any post-sale surplus to consumers.

<u>The Plaintiff's Vehicle</u>

20. On or about April 1, 2015 another vehicle dealer (Drive Time n/k/a Bridgepoint) sold a 2010 Chevrolet HHR VIN Number 3GNBABDB5AS6XXXXX with 94,784 miles to Prior Owner 1.
21. Less than a year later, on or about January 26, 2016, Drive Time repossessed the HHR from Prior Owner 1.
22. On or about February 17, 2016 Dealer purchased the HHR from Drive Time with 110,129 miles on it.
23. On March 4, 2016 Dealer sold the vehicle to Prior Owner 2.
24. Defendant Excelsior I financed Prior Owner 2's purchase of the vehicle.

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25. On or about May 1, 2016, approximately two months after the sale, Excelsior I repossessed the HHR from Prior Owner 2.
26. On or about May 20, 2016, Excelsior I transferred the title back to Dealer, who again put the HHR on its lot for sale.

The Plaintiff's Transaction and Aftermath

27. Plaintiff is an elderly woman with multiple disabilities whose sole income is a monthly social security check in the amount of $1,258.00.
28. Before she retired several years ago, Plaintiff worked for 27 years as a housekeeper at Richland Memorial Hospital. Before that she worked on a farm as a sharecropper.
29. Plaintiff has multiple medical conditions that make walking or standing difficult, and she badly needed reliable transportation.
30. On or about June 3, 2016 Plaintiff visited Dealer's Columbia dealership.
31. Dealer sold Plaintiff the same 2010 Chevrolet HHR that Excelsior I had recently repossessed from Mr. Hayes. The HHR then had about 113,368 miles on it.
32. Plaintiff's agreed to pay $10,999 including an "optional" service agreement for $995.00.
33. The sales order prepared by Dealer recited that Plaintiff had paid a $1,000.00 down payment, but was required to make two additional *non-refundable* "Deferred Down Payments" of $700.00 each, in July and August respectively.
34. The remaining purchase price of $9,963.00 was financed by Excelsior I and was to be made in 38 monthly installment payments of $396.88, the first being due on September 3, 2016. The total of all payments, including periodic and "down" payments, was to be $17,481.44.
35. On or about July 1, 2016, Plaintiff made her first deferred down payment of $700.00.
36. On or about August 3, 2016, Plaintiff made her second deferred down payment of $700.00.
37. Plaintiff's first "regular" $396.88 installment payment was due on September 3, 2016. This payment, which equaled nearly 32% Plaintiff's gross monthly income, she could not make.
38. The next day, Excelsior I contacted Plaintiff's daughter and granddaughter, revealed that Plaintiff was late with her payment, and stated that it intended to repossess the car.

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39. On or about September 7, 2016 Excelsior I mailed a notice to Plaintiff stating that her payment needed to be made "no sooner than **Today**."

40. On or about September 9, 2016 Defendant's representatives came to Plaintiff's home, got into her car, and used a key to start it and drive it away.

41. The following day, September 10, 2016, Excelsior I filed an Affidavit of Repossessed vehicle with the South Carolina Department of Motor Vehicles stating, "under penalty of perjury" that it had repossessed the vehicle from Plaintiff "voluntarily."

42. That same day, less than 24 hours after taking the car from Plaintiff, and before the notice or expiration of any redemption period, Excelsior I transferred the title back to Dealer, who immediately returned the vehicle to its lot to start the process all over again.

43. Violating applicable law, Excelsior I sent no notice to Plaintiff concerning her right to redeem the vehicle.

44. On December 9, 2016, Dealer sold the very same HHR to a Subsequent Owner.

45. Upon information and belief, Dealer required the same non-refundable down payment and/or deferred down payments from Mr. Darby that it had required of Plaintiff. And Subsequent Owner's purchase was also financed by Excelsior I.

46. On information and belief, Dealer sold the car to Subsequent Owner for an amount greater than was owed by Plaintiff, but failed to account to and pay Plaintiff for any surplus resulting from the sale of collateral, in violation of applicable law.

47. Thus, in less than nine months and 10,000 miles, the same vehicle was sold at least three times, earning thousands in "non-refundable" payments, service contract premiums, and interest each time.

Allegations Common to Class Claims

48. On information and belief, Defendants have repeated the above scheme, or variations of it, for years.

49. In conducting this scheme, Defendants have violated numerous provisions of South Carolina law, including without limitation the following Disclosure Provisions of the UCC, as adopted in Title 36:

a. **Disclosure Concerning Method of Intended Disposition** — Defendants failed to state the method of intended disposition as required under S.C. Code §§36-9-613(1)(c) and 36-9-614(1)(A);

b. **Disclosure Concerning Date and Time of Public Disposition** — If Defendants intended to dispose of a vehicle by "public sale," Defendants failed to state the date, time and place of said public disposition as required under S.C. Code §§36-9-613(1)(e) and 36-9-614(1)(A);

c. **Description of Liability for Deficiency** — Defendants failed to provide a "description" of how such a deficiency was to be determined as required under S.C. Code §36-614(1)(B);

d. **Right to Redeem** — Defendants failed to properly disclose the right of the Consumer to redeem vehicle in violation of S.C. Code §§36-9-623;

e. **Disclosure Concerning Telephonic Contact Information for Redemption** — Defendant failed to provide the telephone number from to call to learn the amount required to redeem the collateral under S.C. Code §§36-9-623, as required by §36-9-614(1)(C); and

f. **Right to Accounting** — Defendant failed to state that the consumer, as a debtor, was entitled to an accounting of the unpaid indebtedness and the charge, if any, for said accounting, as required by S.C. Code §§36-9-613(1)(D) and 36-9-614(1)(A).

50. In consumer goods transactions, a notification that lacks any of the information required under South Carolina Code S.C. Code §36-9-614(1) is insufficient as a matter of law. Uniform Commercial Code Comment, Note 1 to S.C. Code §36-9-614.

51. Under S.C. Code §36-9-608(a)(4), a secured party shall account to and pay the debtor for any surplus resulting from the sale of collateral.

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52. Defendants' practice and policy of not remitting the surplus to persons such as Plaintiff upon the sale of the repossessed vehicles thus violates South Carolina law.

53. Defendants' refusal to remit the surplus to consumers is an integral part of the revolving repossession and churning scheme described above as it allows Defendant to repeatedly steal the equity in their customers' repossessed vehicles.

54. Under the UCC, "every non-compliance with the requirements of Part 6 in a consumer-goods transaction results in liability, regardless of any injury that may have resulted." Uniform Commercial Code Comment, Note 4 to S.C. Code §36-9-625.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this suit as a class action under Rule 23 of the South Carolina Rules of Civil Procedure, on behalf of herself and all other similarly situated persons as members of a class initially defined as:

> All persons who financed the purchase of a vehicle with Excelsior I, Inc., Excelsior of Charleston, LLC, or We Finance, LLC (f/k/a Excelsior of Greenville, LLC), all doing business as Car Now Acceptance Corporation or CNAC, and whose vehicle was repossessed by one of these companies between February 12, 2014 and March 1, 2018.

56. The class as defined above are so numerous that joinder of all members is impracticable. Class members can be identified by records maintained by Defendants, and also by the records of the South Carolina Department of Motor Vehicles.

57. There are questions of law and fact common to the class. Common questions of law and fact include whether Defendants provided the required notices, whether they resold or transferred vehicle titles before the expiration of statutory redemption periods, and whether they resold vehicles for amounts higher than owed post-repossession yet failed to remit or account for surpluses.

58. Plaintiff's claims are typical of the claims or defenses of the class because all suffered the same types of damages arising out of Defendants' wrongful conduct as described herein.

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The claims of Plaintiff and all class members arise from Defendants' unlawful churning scheme, and the failure to provide required notices upon which that scheme depended.

59. Plaintiff will fairly and adequately protect and represent the interests of the class. Plaintiff has retained counsel competent and experienced in class action lawsuits and consumer protection litigation. Plaintiff has no interests antagonistic to or in conflict with those of other class members and therefore is an adequate representative.

60. The amount of damages in controversy for each member of the class exceeds $100.00.

FOR A FIRST CAUSE OF ACTION

(Violation of the UCC)

61. Plaintiff incorporates paragraphs 1 through 55.

62. The contract(s) between Plaintiff and Defendant Excelsior I (and those of similarly situated persons with other Defendants) was "chattel paper" as the term is defined under S.C. Code §36-9-102(a)(11).

63. The vehicles were "collateral" as the term is defined under S.C. Code §36-9-102(a)(12).

64. Plaintiff and class members were "debtors" as the term is defined under S.C. Code §36-9-102(a)(28).

65. The vehicle constituted "goods" as the term is defined under S.C. Code §36-9-102(a)(44).

66. Defendants were "secured parties" as the term is defined under S.C. Code §36-9-102(a)(73), including specifically in the asserted right to take collateral for non-payment of "deferred" down payments, or regular contract payments.

67. The vehicles were used primarily for personal, family or household purposes and therefore the vehicles were and are "consumer goods" as the term is defined under S.C. Code §36-9-102(a)(23).

68. Under S.C. Code §36-9-609 secured parties such as Defendants may take possession of collateral without judicial process, if same proceeds without breach of the peace.

69. Under S.C. Code §36-9-610, every aspect of the disposition of collateral, including the method, manner, time, place and other terms must be commercially reasonable.

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70. The repossession of the Plaintiff's vehicle, and those of the other class members, was not commercially reasonable within the meaning of the U.C.C.

71. As a direct and proximate result of the above-described acts, Defendants are liable for all damages sustained by Plaintiff and the class members.

72. Under S.C. Code §36-9-625(c)(2), Plaintiff and each class member has the right to recover actual damages or an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time-price differential plus 10 percent of the cash price.

73. Plaintiff and the class members are further entitled to and seek interest, costs, and attorney's fees.

FOR A SECOND CAUSE OF ACTION

(Conversion)

74. Plaintiff incorporates paragraphs 1 through 55.

75. The actions of Defendants constitute conversion of the property of Plaintiff and class members who were owed a surplus following the sale of their repossessed vehicles.

76. Defendants' unlawful conversion of this equity injured Plaintiff and the class members. Plaintiff and the class members are entitled to recover the value of all property converted, plus interest, other consequential damages, punitive damages, costs, and attorney's fees.

FOR A THIRD CAUSE OF ACTION

(Civil Conspiracy)

77. Plaintiff incorporates paragraphs 1 through 55 above.

78. Defendants planned, agreed, schemed, and conspired to join together and effect the above-described churning scheme, using unlawful and fraudulent means.

79. Defendants joined for the purpose of injuring the Plaintiff and numerous other class members, as described above.

80. Defendants' wrongful acts directly and proximately injured Plaintiff and the class members.

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81. Judgment should be granted to Plaintiffs and the class members for compensatory damages for all injuries or damages done to them, including for all economic and personal harms.

82. Defendants' recklessness and malicious conduct entitles Plaintiff and the class members to punitive damages in an amount to be determined by the trier of fact.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth the Complaint, Plaintiff prays that the Court grant by verdict or judgment an award of all damages Plaintiff and the class members are entitled to recover under the law under all causes of action set forth in this Complaint, including actual damages, consequential damages, special damages, penalties, and punitive damages in an amount to be determined by a jury, as well as declaratory and injunctive relief, attorney's fees and costs as allowed by any statute or court rule, and such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ DAVID A. MAXFIELD, ID 7163

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(To be admitted pro hac vice)

Attorneys for Plaintiff(s)

February 20, 2019

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