

CAUSE NO. _____

FIRST SERVICE CREDIT UNION
Plaintiff

V.

ALEXANDER M. NICOLAS, SIMON
NICOLAS, GALE NICOLAS, SAID R.
NASR, INDIVIDUALLY AND D/B/A
PRECISION GENERAL AND TEXAS
DEPARTMENT OF MOTOR
VEHICLES (TXDMV)
Defendants

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IN DISTRICT COURT

OF HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR WRIT OF SEQUESTRATION, AND REQUEST FOR DISCLOSURE

Plaintiff, FIRST SERVICE CREDIT UNION (“Plaintiff”), files this Plaintiff’s Original Petition, Application for Writ of Sequestration, and Request for Disclosure against Defendants, ALEXANDER M. NICOLAS, SIMON E. NICOLAS, GALE NICOLAS, SAID R. NASR, INDIVIDUALLY AND D/B/A PRECISION GENERAL, and TEXAS DEPARTMENT OF MOTOR VEHICLES (“TXDMV”) (collectively “Defendants”), and shows as follows:

I. Parties

1. In accordance with Texas Rule of Civil Procedure 190, discovery in this case will be conducted under Level 2.
2. Plaintiff is a credit union and is authorized to conduct business in the State of Texas.
3. Defendant, ALEXANDER M. NICOLAS, is an individual residing in Harris County, Texas and may be served through his attorney of record, J. Nathan Overstreet, Attorney at Law, 8711 Highway 6, North, Suite 230, Houston, TX 77095 or where ever he may be found.

4. Defendant, SIMON E. NICOLAS, is an individual residing in Harris County, Texas and may be served through his attorney of record, J. Nathan Overstreet, Attorney at Law, 8711 Highway 6, North, Suite 230, Houston, TX 77095 or where ever he may be found.

5. Defendant, GALE NICOLAS, is an individual residing in Harris County, Texas and may be served at her residence, 84 W. Sandalbranch Cir., The Woodlands, TX 77382 or where ever she may be found.

6. Defendant, SAID R. ANSR, Individually and d/b/a PRECISION GENERAL (hereinafter "Precision General"), is an individual conducting business in Harris County, Texas and may be served with process at 8923 Bell Flower Street, Houston, TX 77063, 7015 Navidad, Houston, TX 77083, or at any other place they may be found.

7. Defendant, TEXAS DEPARTMENT OF MOTOR VEHICLES is a public agency and may be served with informal process by serving their representative, Ms. Jennifer Soldano or Ms. Sarah Swanson, Associate General Counsel, 4000 Jackson Ave., Austin, TX 78731.

II. Jurisdiction & Venue

8. Jurisdiction over the matter is proper because Defendants are residents of the State of Texas and because the amount in controversy is within the jurisdictional limits of the Court.

9. Venue is proper in Harris County, Texas, because it is the county of Defendants' residence, it is the county in which Defendants, Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas signed the Contract and it is the county where Precision General operates and where the Collateral is believed to be located.

III. Facts

10. On or about January 15, 2016, Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas signed a Consumer Lending Plan Advance Receipt and Truth-In-Lending Statement (the "Contract") in the Amount Financed of \$7,670.80. A true and correct copy of the Contract is attached hereto as Exhibit "1-A" and is incorporated herein for all purposes. Plaintiff is the owner of the Contract and is the person entitled to enforce the Contract.

11. By signing the Contract, Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas granted to Plaintiff a first lien on a 2010 Mini Cooper-4 Cyl bearing VIN WMWFMF3C53ATZ21800 (the "Collateral") to secure repayment of the Contract. Plaintiff perfected its lien in the Collateral by having its lien noted on the Collateral's Certificate of Title. A true and correct copy of the Texas Certificate of Title, showing the perfection of Plaintiff's lien in the Collateral, is attached as Exhibit "1-B" and is incorporated herein by reference for all purposes.

12. Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas defaulted under the Contract by failing to make payments as they became due. Therefore, Plaintiff accelerated the maturity of the Contract and now demands immediate payment of the net unpaid balance due under the Contract from Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas.

13. The net unpaid balance due under the Contract is \$7,942.50, as of March 20, 2017, plus interest from that date at the rate of 6.740% per annum or \$1.429 per diem and all other fees and costs recoverable under the Contract including reasonable and necessary attorneys' fees and costs of court.

14. Following Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas default under the Contract, Plaintiff made several attempts to contact Alexander M. Nicolas, Simon E.

Nicolas, and Gale Nicolas about their past due loan. Plaintiff then attempted to obtain possession of the Collateral. Plaintiff was unsuccessful in its efforts to repossess the Collateral from Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas.

15. On knowledge and belief, Alexander M. Nicolas, Simon E. Nicolas, and/or Gale Nicolas delivered the Collateral to Precision General for certain repair work to be performed. Precision General asserts that it was contracted for and performed repair work with costs totaling \$5,643.18 and appears to now assert a Mechanic's Lien in the Collateral in the amount of \$5,643.18. A true and correct copy of Precision General's invoice for repair work on the Collateral is attached as Exhibit "1-C" and is incorporated herein for all purposes. Precision General received insurance proceeds from Acceptance/Old American County Mutual in the amount of \$4,676.26 for the repair work performed on the Collateral. Precision General deposited these monies, totaling \$4,676.26, in its account at Capital One. A true and correct copy of the front and back of the Acceptance/Old American County Mutual check in the amount of \$4,676.26 is attached as Exhibit "1-D" and is incorporated herein for all purposes. Plaintiff has offered to pay to Precision General the sum of \$966.92, the remaining balance owed on the repair work following application of the insurance monies, for the release of the Collateral.

16. On knowledge and belief, Precision General now appears to assert that the \$4,676.26 received from Acceptance/Old American County Mutual was utilized to fund some sort of side loan agreement with Nicolas Nicolas for the payment of medical bills. Plaintiff was supplied with copies of three (3) checks showing disbursements to Nicolas Nicolas in the amounts of \$1,800.00, \$500.00, and \$150.00. A true and correct copy of the June 24, 2016 check to Nicolas Nicolas in the amount of \$1,800.00 is attached as Exhibit "1-E" and is incorporated herein for all purposes. A true and correct copy of the June 29, 2016 check to

Nicolas Nicolas in the amount of \$500.00 is attached as Exhibit "1-F" and is incorporated herein for all purposes. A true and correct copy of the July 23, 2016 check to Nicolas Nicolas in the amount of \$150.00 is attached as Exhibit "1-G" and is incorporated herein for all purposes.

17. Defendants have prevented Plaintiff from repossessing the Collateral by failing and/or refusing to surrender the Collateral or to make its current whereabouts and status known to Plaintiff. Furthermore, the Collateral is an asset that rapidly depreciates with the mere passage of time as well as through usage. The Collateral will continue to rapidly depreciate during the pendency of this action. There is immediate danger that the Defendant or the party in possession of the Collateral will conceal, dispose of, ill-treat, or destroy the Collateral or remove it from the county during the pendency of this action.

18. The fair market retail value of the Collateral is approximately \$7,050.00, assuming an average condition.

19. The Collateral is believed to be located at Precision General's place of business at 8923 Bell Flower St., Houston, TX 77063.

20. All conditions precedent have been performed or have occurred.

IV. Plaintiff Sues for Breach of Contract, Possession of the Collateral, and Turnover

21. Plaintiff incorporates the foregoing paragraphs herein by reference.

22. The Contract is a valid and enforceable contract. Plaintiff has performed its obligations under the Contract. Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas have breached the Contract by failing to make the required monthly payments and otherwise comply with the terms of the Contract. Alexander M. Nicolas, Simon E. Nicolas, and Gale Nicolas breach of the Contract has injured Plaintiff. Plaintiff is entitled to and does request a money judgment for balance owed under the Contract, pre-judgment and post-judgment interest,

reasonable and necessary attorneys' fees incurred in enforcing the Contract and cost of court.

23. Additionally, Plaintiff is entitled to and does request a judgment for possession of the Collateral under the terms of the Contract and Texas Business and Commerce Code §9.609.

24. Plaintiff is entitled to and does request an order requiring Defendants to immediately turnover the Collateral to Plaintiff.

V. Declaratory Relief

25. Plaintiff also seeks declaratory relief against Precision General.

26. Plaintiff seeks declarations that:

(a) At best, Precision General was contracted to perform repair work on the Collateral at a sum totaling \$5,643.18;

(b) Precision General received insurance proceeds in the amount of \$4,676.26 for the repair work that it performed on the Collateral;

(c) After application of the insurance proceeds, Precision General is owed, at best, \$966.92 for the repair work that it performed on the Collateral;

(d) Plaintiff is entitled to possession of the Collateral from Precision General upon payment of \$966.92, as it previously agreed to pay to Precision General;

(e) Plaintiff played no role in the alleged loan of money between Precision General and Nicolas Nicolas;

(f) Precision General's loan of money to Nicolas Nicolas, if any, is separate and apart from and wholly unrelated to the alleged repair work on the Collateral and the receipt of insurance proceeds for payment of the repair work on the Collateral; and

(g) Alternatively, Plaintiff seeks a declaration that any effort by Precision General to place a mechanic's lien and/or otherwise challenge Plaintiff's interest in the Collateral

is invalid and Plaintiff's interest in the Collateral is superior to that asserted by Precision General.

VI. Application for Writ of Sequestration

27. Plaintiff incorporates the foregoing paragraphs herein by reference.

28. Plaintiff is entitled to and does request a writ of sequestration for the pre-judgment seizure of the Collateral. Plaintiff's request for a writ of sequestration is supported by the affidavit of Plaintiff's representative, which is attached as Exhibit "1" and is incorporated herein by reference for all purposes.

VII. Fair Debt Collection Practices Act Notice

THIS NOTICE IS MANDATED BY FEDERAL LAW AND DOES NOT SHORTEN OR EXTEND THE TIME FOR YOU TO RESPOND TO THIS LAWSUIT. YOU ARE HEREBY ADVISED AS FOLLOWS:

THIS IS AN ATTEMPT BY A DEBT COLLECTOR TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

UNLESS, WITHIN THIRTY (30) DAYS AFTER YOU RECEIVE THIS NOTICE, YOU DISPUTE THE VALIDITY OF THIS DEBT, OR ANY PORTION OF THE DEBT, THE DEBT WILL BE ASSUMED TO BE VALID.

IF, WITHIN THIRTY (30) DAYS AFTER YOU RECEIVE THIS NOTICE, YOU NOTIFY US IN WRITING THAT YOU DISPUTE THIS DEBT, OR ANY PORTION OF IT, THEN WE WILL OBTAIN AND MAIL TO YOU VERIFICATION OF THIS DEBT OR A COPY OF ANY JUDGMENT AGAINST YOU. IF, WITHIN THIRTY (30) DAYS AFTER YOU RECEIVE THIS NOTICE, YOU REQUEST IN WRITING THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, THEN WE WILL OBTAIN AND MAIL IT TO YOU.

The name of the creditor to whom this debt is owed is: FIRST SERVICE CREDIT UNION.

The Plaintiff has informed us that the amount of this debt as of March 20, 2017 is \$7,942.50, plus interest at the rate of 6.740%.

VIII. Request for Disclosure

Pursuant to Rule 194, Defendants are requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

IX. Prayer

Plaintiff, FIRST SERVICE CREDIT UNION, requests that Defendants, ALEXANDER M. NICOLAS, SIMON E. NICOLAS, GALE NICOLAS and PRECISION GENERAL be cited to appear and answer and that upon final hearing, Plaintiff have judgment against Defendants, jointly and severally for the following:

- a. Possession of the Collateral and all writs necessary to secure possession of the Collateral;
- b. Actual damages in the amount of \$7,942.50;
- c. Declaratory relief against Precision General, as set forth in more detail in this Petition;
- d. All costs of court;
- e. Reasonable and necessary attorney's fees;
- f. Pre-judgment and post-judgment interest at the highest rate allowed by law;
- g. An order requiring the Defendants to immediately turnover the Collateral to Plaintiff.

Additionally, and as a preliminary matter, Plaintiff also requests that the Court enter an order for the issuance of a writ of sequestration to cause the pre-judgment seizure and delivery to Plaintiff of the Collateral.

Plaintiff also requests any other relief to which it may be entitled in law or equity.

Respectfully submitted,

By 

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