

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Brittany L. Folchi, on behalf of herself
and on behalf of all similarly situated
persons

Plaintiffs

vs.

Autovest, LLC.
c/o CT Corporation System
1300 E. Ninth St.
Cleveland, Ohio 44114

Defendant

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Case No. 1:15cv107

**Class Action Complaint Alleging Violation of the Fair Debt Collection
Practices Act & Ohio Consumer Sales Practices Act; Seeking Statutory, Actual
Attorney Fees; Jury Demand**

Preliminary Statement and Introduction

This matter is brought as a class action against the Defendant named herein for violations of both federal and state consumer statutes. Named Plaintiff and each of the class members she seeks to represent are consumers who entered into credit sales with local car dealers for the purchase and financing of new and used motor vehicles. Each of these transactions involved an extension of credit by the dealer, the initial creditor, thus constituting a retail installment sale governed by the Ohio Retail Installment Sales Act, Ohio Rev. Code, §1317.01, et seq. The contracts were immediately sold to and purchased by an entity of Wells Fargo Bank. Thereafter when the Named Plaintiff and each of the persons she seeks to represent defaulted on their obligations it resulted in repossession by Wells Fargo who, as a secured creditor, would sell the collateral.

Prior to each sale after repossession, Wells Fargo was required to publish an advertisement concerning the sale of the vehicle in advance in a newspaper of general circulation in the county in which the vehicle was to be sold. This was rarely done. Additionally, consumer was mailed a notice stating, among other things, that he or she could come and inspect and/or bid on the vehicle at the time of the sale. Typically this was at a location far from the residence of the consumer. Further, while each consumer received written notice that his or her vehicle would be sold at public auction as required by law, after the sale, each debtor was informed in writing that his or her vehicle was actually sold privately. This sale invariably resulted in a deficiency between the amount obtained from that sale and the note that was originally executed, in part, resulting from the commercially unreasonable manner described herein.

Instead of bringing suit on these deficiencies, Wells Fargo wrapped all of these accounts into a portfolio and offered it for sale on the open market at a huge discount. Defendant Autovest bid-on and purchased this debt portfolio whereupon it proceeded to file hundreds of lawsuits in the trial courts of Ohio seeking the full face value of all amounts owed plus interest supposedly accrued from the date of each default. The Named Plaintiff herein is one of these accounts.

For the purposes of this lawsuit the Defendant Autovest has stepped into the shoes of Wells Fargo and is subject to any and all claims and defenses which the Named Plaintiff and all persons she seeks to represent could assert against Wells Fargo. For reasons known only to the Defendant, in the filing of lawsuits, either intentionally or through ignorance of the law, chose to treat these transactions other than what they were. Specifically, the transaction of the named Plaintiff and others she seeks to

represent were credit sales governed by Ohio's retail installment sales act [ORISA] yet Defendant treated them as direct loans or transactions outside the scope and governance of that Act. In so doing Defendant, among other potential violations of the law, filed collection suits that were barred by the applicable statute of limitations and on accounts where the collateral was unlawfully disposed of prohibiting the collection on any deficiency. Defendant, therefore, obtained monies unlawfully and under false pretenses using the Courts of this state to do so as will be alleged in detail hereinbelow. Additionally, included in the deficiencies that were sought were charges and fees expressly prohibited under Ohio law.

Claim One
[FDCPA unfair debt collection]

Jurisdiction

1. This is a claim for actual and statutory damages brought by Named Plaintiff, Brittany L. Folchi, on behalf of herself and all similarly situated persons, for Defendant's violations of the Fair Debt Collection Practices Act [**hereinafter referred to as the "Act"**], 15 U.S.C. §1692, et seq., which expressly prohibits a debt collector from engaging in abusive, deceptive, unconscionable and unfair debt collection practices.

2. Jurisdiction of this Court is invoked pursuant to 15 U.S.C. §1640(e), 15 U.S.C. §1692k(d) and 28 U.S.C. §1337.

Parties

3. Plaintiff, **Brittany L. Folchi**, is a resident of Clermont County, Ohio [hereinafter referred to as "Plaintiff" or "Named Plaintiff"] and is a "consumer" as defined in the Act at 15 U.S.C. §1692a.(3) who may or may not have been obligated to pay a debt which debt was incurred primarily for household, family and personal purposes

[hereinafter referred to as the “debt” or “account”].

4. Defendant, **Autovest, LLC**, [hereinafter “Autovest” or “Defendant”] is a foreign corporation incorporated under the laws of the state of Michigan who is a distressed debt buyer which specializes in the purchase of delinquent and defaulted consumer obligations or accounts obtained from an original creditor bought at a large discount who then attempts to collect the entire balance due from the consumer and, therefore, is a “**debt collector**”, as defined in the Act at 15 U.S.C. §1692a(6).

5. The above-referenced Defendant regularly collects or attempts to collect debts owed or due or asserted to be owed or due another as defined in the Act at 15 U.S.C. §1692a.(6).

6. The above-referenced Defendant regularly engages in and transacts business in the state of Ohio through the use of the United States mails, telephone, trial courts of the state or other instrumentality of interstate commerce and is subject to the jurisdiction of this Court.

Individual Factual Allegations

7. On or about November 30, 2007 Named Plaintiff entered into a retail installment sale as it is defined in the Ohio Retail Installment Sales Act, O.R.C. §1317.01(A) for the purchase and financing of a 2003 Ford Taurus automobile from Beechmont Ford [hereinafter the “contract”].

8. This transaction was a “credit sale” for the purchase and financing of goods governed by the Ohio Retail Installment Sales Act [hereinafter the “Act”] payable in 60 monthly payments of \$248.17 for a total of payments of \$14890.20 pursuant to a Retail Installment Sale Contract.

9. Beechmont Ford, as the initial creditor, sold or assigned its interest in the contract to Wells Fargo Auto Finance [hereinafter referred to as "Wells Fargo"].

10. As a result of having previously lost her employment and no longer having sufficient income to pay her obligation, sometime in November, 2009, Named Plaintiff defaulted on her obligation.

11. On or about November 17, 2009 Wells Fargo wrote and demanded that she pay her past due balance or else it would "accelerate the full balance of the loan and "Once the full balance of the contract has been accelerated,refuse to accept any payment(s)that is less than the full balance due."

12. Sometime between November 17, 2009 and December 4, 2009 Wells Fargo repossessed Named Plaintiff's vehicle. The was the first and only repossession of Named Plaintiff's vehicle.

13. On or about December 4, 2009 Wells Fargo, sent notice to Named Plaintiff offering her the opportunity to cure her default within 20 days and, if she did not cure, it would then offer her vehicle for public sale.

14. On or about December 28, 2009 Wells Fargo sent notice to Named Plaintiff that it intended to sell her vehicle at public sale on January 13, 2010 at 10:00am at the Ohio Auto Auction in Grove City, Ohio where she was invited to attend to either inspect and/or bid on the vehicle. Plaintiff resided in Batavia, Ohio at the time and currently which is a distance of 101 miles.

15. On or about January 14, 2010 Wells Fargo sent another notice to Named Plaintiff that it intended to sell her vehicle at public sale on February 3, 2010 at 10:00am at the Ohio Auto Auction in Grove City, Ohio where she was invited to attend. Plaintiff resided in Batavia, Ohio at the time which is a distance of 101 miles.

16. On February 5, 2010 Wells Fargo notified the Named Plaintiff that it sold her vehicle on February 3, 2010 at a private sale for \$2000 which it deducted from an alleged unpaid balance of \$8547.01 leaving a deficiency balance of \$5547.01 [hereinafter the "deficiency"]. From that amount it added \$235.66 in "costs of repossession, storage, preparation, sale and attorneys fees/legal expenses."

17. On or about April 30, 2011 Well Fargo sold, transferred and assigned its interest in Named Plaintiff's account to Defendant Autovest.

18. On or about February 12, 2014, more than 4 years after the default of the Named Plaintiff, Autovest filed a collection action against Named Plaintiff in the Clermont County, Ohio Municipal Court seeking to recover the deficiency of \$6343.03 plus "accrued interest in the sum of \$5,475.07 through February 1, 2014, plus interest at the rate of 19.100% per annum until paid....."

19. By virtue of all of the conduct described herein Defendant Autovest was not entitled to a deficiency and, therefore, not entitled to sue the Named Plaintiff.

20. Defendant, without limiting the scope of any additional violations which may have been committed, violated the Fair Debt Collection Practices Act by engaging in the following unfair, deceptive, unconscionable and abusive debt collection practices expressly prohibited by the FDCPA:

(a) by taking action that it could not legally take in connection with the collection of a debt in violation of 15 U.S.C. §1692e(5);

(b) by falsely representing the character, amount or legal status of a debt or the compensation which may be recovered in connection with the collection of a debt in violation of 15 U.S.C. §1692e(2);

(c) by using a false, deceptive or misleading representation or means to collect a debt in violation of 15 U.S.C. §1692e and (e)(10);

(d) by attempting to collect an amount in excess of what is lawfully owed in violation of 15 U.S.C. §1692f(1); and,

(e) by using an unfair and unconscionable means to collect or attempt to collect a debt in violation of 15 U.S.C. §1692f.

Class Action Allegations

21. Plaintiff is bringing this action on behalf of herself and other member of a class of consumers, numbering at least 100 but believed to be in the hundreds, the class consisting of ALL persons against whom Defendant Autovest filed civil actions in any trial Court in the state of Ohio between February 11, 2014 and the present date, in connection with an alleged default of a retail installment sales contract which obligation it purchased from Wells Fargo in which the collateral was earlier repossessed where the action was brought: (a) either beyond the statute of limitations; and/or (b) where the collateral was previously sold at a private auction; and/or (c) where the collateral was sold without it being first advertised in a newspaper of general circulation in the County in which it was sold; and/or (d) where attorney fees and legal expenses were included in the deficiency balance sought; and/or (e) where the collateral was held for sale in a location far from and inconvenient to the debtor; and/or (f) for any other violation of the Ohio Retail Installment Sales Act in the repossession and disposition of the collateral.

22. This is a class action under the provisions of Rule 23(a) and 23(b)(3), for damages and other relief consistent and subordinate thereto, including costs and expenses of investigation and litigation and attorney fees.

23. The class so represented by Named Plaintiff in this action, and of which she herself is a member, consists of those persons defined above and is so numerous that joinder of individual members is impracticable.

24. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class and the relief sought is common to the entire class.

Some but not all common questions of fact are:

- the manner in which collateral was sold and disposed of
- whether the transaction involving a potential class member was consumer related
- whether the claim of a potential class member is timely
- whether these were retail installment sales contracts subject to the Ohio Retail Installment Sales Act

Some but not all common questions of law are:

- whether these transactions were retail sales
- whether these transactions are governed by the Ohio Retail Installment Sales Act
- whether a creditor is prohibited by law from seeking a deficiency judgment
- whether claims against class members are barred
- whether the conduct of the Defendant constituted violations of the Fair Debt Collection Practices Act

25. Plaintiff's claims are typical of the claims of the class in that the claim of all members of the class depend on a showing of the acts and omissions of Defendant giving rise to the relief sought herein.

26. There is no known conflict between Plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

27. Plaintiff is the representative party for the class and is able to, and will, fairly and adequately protect the interests of the class.

28. Plaintiff's counsel are experienced and capable in the field of consumer rights and protection and has successfully represented claimants in similar litigation.

29. This action is properly maintained as a class action in that the prosecution of separate actions by individual class members creates risk of individual adjudications which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

30. This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create risk of varying individual adjudications which would establish incompatible standards of conduct for Defendant, who is expected to oppose the class.

31. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the class members predominate over any questions affecting only individual members; a class action is superior to other methods available for the efficient adjudication of the controversy; the relief sought by all members of the class will be effective and appropriate for the entire class; and all members of the class have a right to damages or other relief which may be readily computed in each case or otherwise readily determined.

32. The identity of each individual member of the class can be ascertained from the books and records maintained by Defendant and from public Court records throughout the State of Ohio.

33. Because many of the persons with whom Defendant has dealt, or who were affected by its activities, may not be aware of their rights, or may not be in a financial position to assert such rights readily, and because relegation of their claims to individual actions would result in a unreasonable multiplicity of suits and a corresponding burden on this and other courts, a class action is far superior to all other methods for a fair and efficient adjudication of this controversy.

Claim Two
[damages under state law]
[OCSPA]
Jurisdiction

34. This claim is made against Defendant Autovest pursuant to the *Ohio Consumer Sales Practices Act*, hereinafter referred to as the "Act", O.R.C. §1345.01.01 et seq.

35. The jurisdiction of this Court is invoked pursuant to the principles of pendent or ancillary jurisdiction in that the claim herein arose out-of the same basic facts which gave rise to the federal claim.

Parties

36. The parties are the same as alleged in claim one.

37. Plaintiff, Brittany L. Folchi, is a "**consumer**" as defined in the "Act" at O.R.C. §1345.01(D).

38. Autovest is a "**supplier**" as defined in the "Act" at O.R.C. §1345.01(c) in that, subsequent to the consummation of a consumer transaction, Defendant engaged in the conduct of attempting to collect a debt.

Allegations

39. Plaintiff hereby incorporates each and every specific factual allegation of paragraphs 1-19 as if fully rewritten herein.

40. Defendant Autovest, as the assignee of accounts purchased from Wells Fargo stepped entirely into the shoes of Wells Fargo where it is subject to any and all claims and defenses which could be asserted against Wells Fargo.

41. Without limiting the scope thereof, Autovest's filing of lawsuits under the circumstances outlined herein constituted the following unfair, deceptive and unconscionable debt collection practices in violation of the Act as follows:

42. Through its conduct of filing a collection suit where it had been represented that her vehicle would be sold publicly but, in fact, it had been privately offered for sale in violation of both O.R.C. §1345.02(A) and O.R.C. §1345.03(A).

43. Through its conduct in filing time barred collection suits in the manner set forth hereinabove, in connection with a consumer debt, sales practice in violation of O.R.C. § 1345.02(A) and O.R.C in violation of O.R.C. § 1345.02(A) and O.R.C. §1345.03(A).

44. Through its conduct in filing collection suits on deficiency balances which included attorney fees and legal expenses in violation of O.R.C. § 1345.02(A) and O.R.C. §1345.03(A).

Class Action Allegations

45. Plaintiff is bringing this action on behalf of herself and other member of a class of consumers, numbering at least 100 but believed to be in the hundreds, the class consisting of ALL persons against whom Defendant Autovest filed civil actions in any trial Court in the state of Ohio between February 11, 2013 and the present date, in connection with an alleged default of a retail installment sales contract which obligation it purchased from Wells Fargo in which the collateral was earlier repossessed where the action was brought: (a) either beyond the statute of limitations; and/or (b) where the collateral was previously sold at a private auction; and/or (c) where the collateral was sold without it being first advertised in a newspaper of general circulation in the County in which it was sold; and/or (d) where attorney fees and legal expenses were included in the deficiency balance sought; and/or (e) where the collateral was held for sale in a location far from and inconvenient to the debtor; and/or (f) for any other violation of the Ohio Retail Installment Sales Act in the repossession and disposition of the collateral.

46. This is a class action under the provisions of Rule 23(a), 23(b)(2) and 23(b)(3), for injunctive and declaratory relief as well as civil damages and other relief consistent and subordinate thereto, including costs and expenses of investigation and litigation and attorney fees.

47. The class so represented by Plaintiff in this action, and of which she herself is a member, consists of those persons defined above and is so numerous that joinder of individual members is impracticable.

48. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class and the relief sought is common to the entire class.

Some but not all common questions of fact are:

- the manner in which collateral was sold and disposed of
- whether the transaction involving a potential class member was consumer related
- whether the claim of a potential class member is timely

Some but not all common questions of law are:

- whether these transactions were retail sales
- whether these transactions are governed by the Ohio Retail Installment Sales Act
- whether a creditor is prohibited by law from seeking a deficiency judgment
- whether Defendant's conduct was deceptive, unfair or unconscionable
- whether the acts of the Defendant were either unfair, deceptive or unconscionable

49. Named Plaintiff's claims are typical of the claims of the class in that the claim of all members of the class depend on a showing of the acts and omissions of Defendant giving rise to the relief sought herein.

50. There is no known conflict between Plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

51. Plaintiff is the representative party for the class and is able to, and will, fairly and adequately protect the interests of the class.

52. Plaintiff's attorneys are experienced and capable in the field of consumer rights and protection and has successfully represented claimants in similar litigation.

53. This action is properly maintained as a class action in that the prosecution of separate actions by individual class members creates risk of individual adjudications which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

54. Autovest, who is expected to oppose the class, has acted or refused to act on grounds that generally apply to the class so that final injunctive or declaratory relief is appropriate respecting the class as a whole.

55. This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create risk of varying individual adjudications which would establish incompatible standards of conduct for Defendant, who is expected to oppose the class.

56. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the class members predominate over any questions affecting only individual members; a class action is superior to other methods available for the efficient adjudication of the controversy; the relief sought by all members of the class will be effective and appropriate for the entire class; and all members of the class have a

right to damages or other relief which may be readily computed in each case or otherwise readily determined.

57. The identity of each individual member of the class can be ascertained from the books and records maintained by Defendant and from public Court records throughout the State of Ohio.

58. Because many of the persons with whom Defendant has dealt, or who were affected by its activities, may not be aware of their rights, or may not be in a financial position to assert such rights readily, and because relegation of their claims to individual actions would result in a unreasonable multiplicity of suits and a corresponding burden on this and other courts, a class action is far superior to all other methods for a fair and efficient adjudication of this controversy.

Prayer for Relief

Named Plaintiff prays for the following relief:

- (a) in all claims an Order certifying the each is appropriate for class treatment;
- (b) in claim one a judgment for statutory damages of \$500,000 or 1% of the net worth of each defendant; whichever is less;
- (c) in claims one and two for a judgment of actual damages seeking the return of all monies unlawfully collected from each class member related to its unlawful activity alleged herein;
- (d) in all claims for an award of reasonable attorney fees as authorized by statute;
- (e) in all claims for reimbursement of all costs and expenses incurred in connection with the prosecution of all claim;
- (f) for a trial by jury on all appropriate factual issues; and,
- (g) for any and all other relief this Court may deem appropriate.

Respectfully submitted by:

/s/Steven C. Shane

Steven C. Shane (0041124)
Trial Attorney for Plaintiff
P.O. Box 73067
Bellevue, Ky. 41073
859) 431-7800
(859) 431-3100 facsimile
shanelaw@fuse.net

and

/s/Stephen F. Felson
Stephen R. Felson (0038432)
220 Loraine Ave., Suite 2
Cincinnati, Ohio 45220
(513) 520-6348
Stevef8953@aol.com