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July 8, 2024

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Lori E. Withrow †
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Clerk
Ray County Circuit Court
100 W Main St, 2nd Fl
Richmond, MO 64085

Re: TROY CAPITAL, LLC v. KACEY COLLIER & Jimmy Collier
24RY-CV00372

Dear Clerk:

Enclosed please find Troy Capital, LLC's Answer to Kacey Collier and Jimmy Collier's Counterclaim, which I would appreciate being filed with your office. Please return filed copies to me in the enclosed self-addressed envelope.

Thank you in advance for your kind attention to this matter.

Respectfully,

Allen & Withrow

Enclosures

cc: Judge Lori J. Baskins
Matt Wilson
Jimmy Collier

**IN THE CIRCUIT COURT OF RAY COUNTY,
STATE OF MISSOURI**

| | | |
|--|---------------|-------------------------------|
| TROY CAPITAL, LLC |) | |
| | Plaintiff(s), | Cause No. <u>24RY-CV00372</u> |
| |) | |
| Vs. |) | Division No. <u> </u> |
| |) | |
| KACEY COLLIER & JIMMY COLLIER |) | |
| | Defendant(s) |) |
| |) | |

**TROY CAPITAL, LLC'S ANSWER TO KACEY COLLIER AND JIMMY COLLIER'S
COUNTERCLAIM**

Comes now the Counterclaim Defendant ("Troy"), by and through counsel, Allen & Withrow, and for its Answer to Kacey Collier and Jimmy Collier's Counterclaim Petition Against Troy Capital, LLC ("the Counterclaim"), states as follows:

1. Troy generally and specifically denies each and every allegation contained in the Answer and Counterclaim unless specifically admitted herein. To Counterclaim Plaintiffs' ("Collier" or "the Colliers") first paragraph, Troy Capital, LLC is a limited liability company conducting business in the state of Missouri.
2. Troy's records indicate the Colliers are individual residents of Missouri.
3. Troy's records indicate the information in this paragraph 3 of the Counterclaim is correct.
4. Troy's records indicate the Colliers defaulted on this valid contract for the purchase of the automobile referenced in paragraph 3 of the Colliers' counterclaim, proper notice of right to cure was given, and when no cure was made, notice of intent to sell the auto was given, the sale was conducted in a commercially reasonable manner for less than the balance remaining on the Colliers' contract, and the Colliers were made aware of the deficiency they still owed from their contractual breach.
5. Troy's records indicate paragraph 5 of the Counterclaim is correct.
6. Troy disagrees with the Colliers' interpretation of R.S. Mo Section 400.2-210(5) in paragraph 6. Troy argues the more apt subsection of that statute to this case is 400.2-210(2), which states that "Unless otherwise agreed all rights of either seller or buyer can be assigned

except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him or her by his or her contract,...” Troy would not have accepted the assignment of the rights in this contract that would “...increase materially the burden or risk imposed on him or her by his or her contract,...”, and in fact, those terms were not assigned by the language of this subsection of R.S. Mo 400.2-210.

7. Troy does not dispute the language in the Colliers’ paragraph 7.

8. Troy does not have knowledge or information on whether its predecessor-in-interest applied unlawful charges and/or fees to the Colliers’ account in violation of RSMo section 365.100(4), and therefore denies same.

9. Troy denies that it or its predecessor-in-interest has collected, and seeks to collect amounts from the Colliers that are not lawfully owed under the Installment Contract, in violation of R.S. Mo § 365.100. Troy is only attempting to collect the deficiency balance after selling the Colliers’ auto on which they defaulted payments under the valid original contract, along with statutorily allowed post-judgment interest.

10. Troy denies it violated the Motor Vehicle Time Sales Law (“MVTSL”), and states that it is attempting to collect a balance lower than the deficiency balance calculated by its predecessor-in-interest which represents the deficiency balance after the commercially reasonable sale of the Colliers’ purchased auto, which served as the collateral under this valid original contract. Under the MVTSL, a time-price differential can be agreed to by the retail buyer, which the Colliers did when they signed the original contract. (R.S. Mo § 365.120, 2022). And, § 365.130 actually allows for delinquency and collection charges under the MVTSL.

11. Troy denies the Colliers have suffered any actual damages, damages to credit, or any alleged improper damages from a supposed time price differential, delinquency and/or collection charges. The Colliers breached the original valid contract and have been held to appropriate remedies provided for therein.

**TROY’S ANSWER TO COUNT I - ALLEGED VIOLATION OF THE FAIR DEBT
COLLECTION PRACTICES ACT (“FDCPA”) AGAINST TROY**

12. Troy incorporates by reference their preceding responses and allegations as if reproduced here verbatim.

13. Troy does not dispute it uses instrumentalities of interstate commerce in its normal course of business, as does nearly every other business.

14. Troy does not dispute the Colliers are consumers as defined by 15 U.S.C. § 1692a(3).

15. Troy does not dispute the Colliers are both natural persons obligated to pay this valid debt.

16. Troy does not dispute the valid debt at issue here is from a retail installment contract originated by its predecessor-in-interest, from whom it lawfully purchased the Colliers' debt.

17. Troy does not dispute the Colliers' valid debt was originally owed to its predecessor-in-interest, from whom it lawfully purchased the Colliers' debt, and the Colliers' debt was in default when it was purchased by Troy.

18. Troy does not deny it is not the originator of the valid contract in this case for the Colliers' debt, but denies the rest of paragraph 18 of the Counterclaim.

19. Troy denies paragraph 19 of the Counterclaim.

20. Troy does not deny it fits within the definition of "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692k et seq.

21. Troy denies it is attempting to collect amounts it knows it has no right to collect and denies it is misrepresenting the legal status of this valid debt in violation of 15 U.S.C. § 1692e, or any other law. The amount being sought is the remaining deficiency balance from the commercially reasonable sale of the Colliers' collateral in the original contract at issue.

22. Troy denies its Affidavit of Account attached to the petition in this matter falsely suggests the affiant has knowledge regarding the account and is competent to testify regarding the validly owed balance of \$13,510.98 on this debt. Affiant is an employee of Troy who assists in its recordkeeping, is familiar with, and interacts with its records in her normal course of employment.

23. Troy denies filing of this lawsuit was an unfair or unconscionable attempt to collect a debt, and denies that the Colliers' account was unlawfully originated and/or serviced.

24. Troy denies it engages in a pattern and practice of seeking collection on deficiency accounts against Missouri consumers and denies that any accounts it services were unlawfully originated and/or serviced and denies it seeks such accounts from entities originating the account that allegedly knew any payments were unaffordable and/or there was a high likelihood of default. Troy demands strict proof of these baseless allegations of fraud.

25. Troy denies paragraph 25 of the Counterclaim.

26. Troy denies paragraph 26 of the Counterclaim.

27. Troy denies paragraph 27 of the Counterclaim.

28. Troy denies paragraph 28 of the Counterclaim.

29. Troy denies paragraph 29 of the Counterclaim and denies it filed this lawsuit in a deceptive attempt to collect on an invalid debt. The Colliers' valid debt was purchased and assigned from Troy's predecessor-in-interest, and Troy complies with the FDCPA and all other relevant law in its regular course of business.

30. Troy denies paragraph 30 of the Counterclaim. Troy denies it committed any unlawful acts or omissions and denies the allegations it attempted to do so willfully, intentionally, knowingly, and/or in gross disregard of the rights of the Colliers and other consumers. Troy complies with the FDCPA and all other relevant law in its regular course of business.

31. Troy denies paragraph 31 of the Counterclaim. Troy denies it committed any unlawful acts or omissions and denies the allegations it attempted to do so indiscriminately, frequently, and persistently, as part of Troy's regular and routine collection efforts. Troy complies with the FDCPA and all other relevant law in its regular course of business.

32. Troy cannot deny the language of the FDCPA § 1692k, but denies it violated the FDCPA and denies it is liable for any alleged actual damages, statutory damages, court costs, and attorney's fees.

TROY'S ANSWER TO COUNT II - ALLEGED VIOLATION OF SECTION 408.556 R.S.

Mo AGAINST TROY

33. Troy incorporates by reference their preceding responses and allegations as if reproduced here verbatim.

34. Troy denies its petition allegations, petition filing, and affidavit of account are false and denies it violated R.S. Mo § 408.556.1. Troy's filings and affidavit of account reflect the properly kept business records in this matter, and the current deficiency amount owed by the Colliers.

35. Troy denies the Colliers suffered any damages, including actual damages, damages related to this collection lawsuit, damage to their credit, inconvenience, aggravation, embarrassment, frustration, humiliation and emotional distress. The Colliers committed a breach

of the valid contract with Troy's predecessor-in-interest, Troy purchased and was assigned the rights from original contract, and has been lawfully attempting to collect the deficiency balance owed by the Colliers when they defaulted on their payments in the original contract.

36. Troy denies it committed any unlawful or wrong conduct and denies the allegations it did so with knowledge and "bad intent", and in a supposed pattern, and questions how such alleged "bad intent" can be quantified.

37. Troy denies the Colliers are entitled to any recovery, including, but not limited to, alleged actual damages, award of attorney's fees, or any alleged equitable relief. Troy denies the Colliers are entitled to any alleged punitive damages, and denies it violated any of the statutes to which R.S. Mo § 408.562 refers.

TROY'S ANSWER TO COUNT III - ALLEGED LIABILITY FOR ATTORNEY FEES
UNDER R.S. MO § 408.092

38. Troy incorporates by reference their preceding responses and allegations as if reproduced here verbatim.

39. Troy does not deny the instant action against the Colliers is an attempt to enforce the terms of a "credit agreement" as defined under R.S. Mo. §§ 408.092.1, 432.045.

40. Troy denies that the Colliers' Affirmative Defenses and Counterclaims 1 and 2 are attempts to enforce terms of the same "credit agreement" as defined under R.S. Mo. §§ 408.092.1, 432.045.

41. Troy denies the Colliers are entitled to recover any attorney's fees from Troy in this case.

WHEREFORE, Plaintiff prays that the Court dismiss the Colliers' frivolous Counterclaim in this case, deny the Colliers' requests for actual damages, compensatory damages, statutory damages, interest at the statutory rate, costs, attorney's fees and for any other relief the Colliers requested, and grant all other appropriate relief to which Troy is entitled, including reasonable attorney's fees incurred in preparing this Counterclaim Answer.

ALLEN & WITHROW

BY _____

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501.227.2000 voice
501.707.1214 facsimile

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a copy of the above and foregoing has been sent via first-class mail on July _____, 2024, to the following:

Matt Wilson
920 East Broadway, #206
Columbia, MO, 65201

Jimmy Collier
518 N CLARK ST
LAWSON MO 64062-0000

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Honorable Lori J. Baskins
Ray County Courthouse
100 West Main Street, 2nd Floor
Richmond, MO 64085

Re: TROY CAPITAL, LLC v. KACEY COLLIER & Jimmy Collier
24RY-CV00372

Dear Judge Baskins:

Enclosed please find an Order on Answer to Counterclaim along with a copy of the Motion Response which I have sent to the Clerk for filing. I would appreciate your signing it if it meets with your approval. Please return the same to me in the enclosed self-addressed envelope. I will forward it to the Clerk for filing.

Thank you in advance for your time and consideration of this matter.

Respectfully,

Allen & Withrow

Enclosures:

cc: Matt Wilson
Jimmy Collier

IN THE CIRCUIT COURT OF RAY COUNTY,
STATE OF MISSOURI

TROY CAPITAL, LLC)
Plaintiff(s),) Cause No. 24RY-CV00372
Vs.)
)
KACEY COLLIER & JIMMY COLLIER)
Defendant(s))
)

ORDER ON ANSWER TO COUNTERCLAIM

Upon Motion of Plaintiff and good cause shown, and the court being well and sufficiently advised, IT IS CONSIDERED, ORDERED, and ADJUDGED that the Plaintiff Troy Capital, LLC's Answer to Counterclaim is granted and the Defendants Colliers' Counterclaim is dismissed.

IT IS SO ORDERED.

JUDGE

ALLEN & WITHROW

BY _____

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