Filed in Douglas District Court

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## IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ALLY BANK,	) Case No
Plaintiff,	) ) COMPLAINT IN REPLEVIN
VS.	)
RANDAL D. ELLIS,	<b>)</b>
Defendant.	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \

COMES NOW the Plaintiff, Ally Bank, ("Ally") and for its cause of action against the Defendant, for possession of certain collateral alleges as follows:

- 1. Plaintiff is an entity organized under the laws of Delaware, with its principal administrative offices in Detroit, Michigan, and authorized to do business in the State of Nebraska.
- 2. Defendant, Randal D. Ellis, resides in Douglas County, and has a business located at 928 South 72<sup>nd</sup> Street, Omaha, Nebraska 68114.
- 3. Defendant is in possession of the vehicle owned by Plaintiff which is the subject matter of this action.
- 4. Plaintiff is the owner of the following described vehicle, now in the possession of the Defendant:

One (1) 2014 Chevrolet Corvette VIN # 1G1YK3D72E5128152 Fair Market Value: \$53,850.00

hereinafter the "Vehicle".

- 5. A true and correct copy of the Electronic Title Document is attached hereto, marked Exhibit "A", and by this reference incorporated herein.
- 6. Plaintiffs have a special ownership interest in the Vehicle by virtue of the terms and conditions of a Retail Installment Sale Contract Simple Finance Charge 93-Randal Ellis#6950779

(hereinafter "Contract"), executed by Defendant, Randal D. Ellis on July 22, 2014, in favor of Huber Chevrolet Co., Inc. ("Dealer") and by such assigned to Ally. A true and correct copy of the Contract is attached hereto as Exhibit "B", and by this reference incorporated herein.

- 7. Plaintiff has performed all of its obligations and conditions precedent, if any, pursuant to the Contract. Defendant has failed to fulfill his obligations under the Contract by failing to make the required monthly payments to Plaintiff.
- 8. On numerous occasions, Plaintiff has demanded Defendant either cure the monthly payment arrearages, or in the alternative, deliver possession of the above-described Vehicle to the Plaintiff, but Defendant has failed and refused to do so.
- 9. The Vehicle sought to be replevined hereunder is, upon information and belief, located within Douglas County, State of Nebraska, and being wrongfully detained by Defendant.
- 10. The Plaintiff is entitled to immediate possession of the Vehicle pursuant to the terms and conditions of the above-described Contract. Exhibit "B" hereto.
- 11. Upon information and belief, the Defendant is not incompetent, a minor, or a member of the military forces of the United States of America or any of its allies.
- 12. Attached hereto, marked Exhibit "C", and by this reference incorporated herein and made a part hereof, is an Affidavit of Plaintiff's Replevin Specialist, Tiyesa Ethridge, which sets forth sufficient additional facts to authorize the entry of an Order of Delivery as requested below.
- 13. Attached to this Complaint, marked Exhibit "D", and by this reference incorporated herein and made a part hereof is the notice required under the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff prays this Court issue an Order that Defendant, Randal D. Ellis or anyone else in possession of the above-described Vehicle, forthwith deliver to the Sheriff of Douglas County, Nebraska, the Vehicle described herein, and direct that if the Defendant fails to deliver said Vehicle, the Sheriff shall seize and deliver the Vehicle to Plaintiff; that the Court approve a delivery bond in the sum of One Hundred Seven Thousand Seven Hundred Dollars and 00/100ths (\$107,700.00), twice the value of the Vehicle upon which delivery is sought; and such other and further relief as the Court may deem just and proper in the premises.

DATED this \_544 day of January, 2016.

ALLY BANK, Plaintiff

By:

Frederick D. Stehlik, #15481 Gross & Welch, P.C., L.L.O.

1. Stetle

2120 South 72nd Street

**Suite 1500** 

Omaha, NE 68124-2342

(402) 392-1500

(402) 392-8101 facsimile

ATTORNEYS FOR PLAINTIFF

# CALLY Electronic Title Document

ELT\*NE

Title #:

14206010252/0146534

Title Type:

Issue Date:

07/25/2014

Lie/Γag/Control #:

VIN:

1G1YK3D72E5128152

Vehicle Info:

2014 CHEV

Brand code:

Odometer Reading:

000006

Date:

00/00/0000

Status:

Owner information

Owner Information:

RANDAL D ELLIS

Co-Owner:

Third Owner:

Owner Address:

928 S 72ND ST

OMAHA, NE 681140000

Lienholder information

Lienholder:

ALLY BANK

PO BOX 8108

COCKEYSVILLE, MD 21030

2nd Lienholder Name:

ELT Sent Date:

07/25/2014

Lien Type:

Owner Driver License #:

PDP Doc Ref:

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Primary Use For Which Purchased

tabbles EXHIBIT

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any subsequent holder or assignee of this contract. have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

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NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY

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NO COOLING OFF PERIOD  State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your aimply because you change your mind. This notice does not apply to mind. This notice does not apply to	(1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	00 / 60 00 00 00 / 60 00 / 60	Eurotes Aguera	TIOST: TO STUDIAL TO S	Wild Supply Supp
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Disclosures below are part of this contract. and Finance Charge in U.S. lunds according to the payment schedule below. We will figure your Innance charge on a daily basis. The Truth-In-Londing You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for each or on creat. By signing this contract, you choose to bay the vehicle on creat under the sgreements in this contract. You agree to pay the Creater, Seller (sometimes "we" or "us" in this contract) the Amount Financed

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Contract Kurrbor ..

SIMPLE FINANCE CHARGE RETAIL INSTALLMENT SALE CONTRACT

#### 1. FINANCE CHARGE AND PAYMENTS

- s. How we will figure Finance Charge. We will figure the Finance Charge on a delly basis at the Annual Percentage Rate on the unpaid part of the Annual Financed.
- b. How we will apply payments. We may apply each payment to the samed and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
- s. How tale payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on page 1 of this contract on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and loss if you pay early. Changes may take the form of a larger or amalier final payment or, at our option, more or tower payments of the same amount as your scheduled payment with a smaller final payment. We will sent you a notice telling you about these changes before the final scheduled payment is due.
- d. You may prepay. You may propay all or part of the unpaid part of the Amount Financed at any time without panalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.

#### 2. YOUR OTHER PROMISES TO US

- If the vehicle is damaged, destroyed, or missing.
   You agree to pay us all you own under this contract even if the vehicle is damaged, destroyed, or missing.
- b. Using the vehicle. You agree not to remove the vehicle from the U.S. or Ganada, or to soil, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, solure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, lines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. Security Interest.
  - You give us a security interest in:

    The vehicle and all parts or goods put on it;
  - All money or goods received (proceeds) for the vehicle:
  - All Insurance, maintenance, service, or other contracts we finance for you; and
  - All proceeds from insurance, maintenance, service, or other contracts we linance for you.
     This includes any refunds of premiums or charges from the contracte.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (ilen) in the vehicle.

d. Insurance you must have on the vehicle.

You agree to have physical damage insurance covering loss of or demage to the xchicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance, if we decide to buy physical damage insurance, we may cither buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must psy. The charge will be the promium of the insurance and a finance charge equal to the Annual Percentage Rate shown page 1 of this contract or, at our option, the highest rate the law allows. If the vuhicle is lest or damaged, you agree that we may use any insurance sattlement to reduce what you owo or repair the vehicle.

e. What happens to returned injurance, maintenance, service, or other contract charges. If we get a return of insurance, maintenance, service, or other contracts, you agree that we may subtract the return from what you owe.

### J. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. You may owe late charges. You will pay a late charge on each late payment as shown on page 1 of this contract. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.
  - If you pay late, we may also take the steps described below.
- b. You may have to pay all you owe at once, it you break your promises (default), we may demand that you pay all you owe at once after we give you any notice the taw requires. Default means;
  - You do not pay any payment on time; or
  - 2. You start a proceeding in bankruptcy or one is started against you or your property; you give false, incomplete, or misleading information on a credit application; or you break any agreements in this contract; except that if you bought the vehicle primarily for personal, tamily, or household purposes, we will only treat these events as delauted if they significantly impair the prospect of payment, performance, or realization of the collateral.

The amount you will owe will be the unpeld part of the Amount Financed plus the earned and unpeld part of the Finance Charge, any late charges, and any amounts due because you delauted.

- c. We may take the vehicle from you. If you delauh, we may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement peaceful stay with the vehicle. If any personal lens are in the vehicle, we may store them for you at your expanse. If you do not ask for these liems back, we may dispose of them as the law allows.
- d. How you can get the vehicle back if we take it. If we repasses the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sail the vehicle.
- e. We will sell the vehicle if you do not get it back, if you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone size. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.
- 1. What we may do about optional insurance, maintanance, service, or other contracts. This contract may contain charges for optional insurance, maintanance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim beneils under these contracts and cancel thom to obtain refunds of unaamed charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unsamed charges to reduce what you owe.

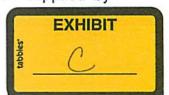
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## IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ALLY BANK,	) Case No
Plaintiff,	) ) AFFIDAVIT FOR PREJUDGMENT
VS.	) REPLEVIN
RANDAL D. ELLIS,	) }
Defenda	int. )
STATE OF MINNESOTA	SS.
COUNTY OF RAMSEY )	55.

COMES NOW Tiyesa Ethridge of lawful age, being first duly sworn upon her oath, states as follows:

- 1. I am an authorized representative for Ally Bank, ("Ally"), the Plaintiff in the above-entitled action, employed as a Replevin Specialist. My duties include overseeing the treatment of the claims of Ally on various cases and collection matters and monitoring accounts for lapses in payments as well as lapses in insurance coverage. Presently, I oversee the account of the above captioned Defendant.
- 2. In my capacity as a Replevin Specialist for Ally my duties include serving as a custodian of records on behalf of Ally with respect to contracts with customers who have defaulted on their obligations. I am familiar with the manner and procedures by which the records, letters, and memoranda contained in Ally's files are prepared and maintained and am able to certify the authenticity thereof. Those records, letters, and memoranda are prepared by agents and employees of Ally in performance of their regular business duties. Those records, letters and memoranda are made either by persons with knowledge of the matters they record or from information supplied by



persons with such knowledge. It is Ally's regular business practice to maintain such records, letters, or memoranda in the course of its business. Except as otherwise specifically stated in this declaration, the facts set forth herein are based on my review of Ally's files and records concerning the customer, and if called as a witness I could and would be competent to testify to those facts.

- 3. On or about July 22, 2014, Randal D. Ellis, entered into a Retail Installment Sale Contract Simple Finance Charge (hereinafter "Contract") with Dealer in which Plaintiff has a special ownership interest in, whereby Randal D. Ellis, purchased a 2014 Chevrolet Corvette VIN #1G1YK3D72E5128152, (hereinafter "Vehicle"), which is titled in the name of Randal D. Ellis, and upon which Ally is noted as first lien holder.
- 4. Defendant has failed to fulfill his obligation pursuant to the above-described Contract by failing to make the required monthly payments to Plaintiff as they become due.
- 5. Ally has made numerous demands upon Defendant for payment of the monthly amounts owed pursuant to the Contract; however, Defendant has failed and refused to make said payments.
- 6. Pursuant to the terms of the Contract, Ally has a right to immediate possession of the Vehicle described herein.
- 7. Ally has made numerous demands upon Defendant to surrender the Vehicle, however, Defendant has failed to surrender the Vehicle and the same is being wrongfully detained by the Defendant.
- 8. The Fair Market Value of said Vehicle is \$53,850.00 for the 2014 Chevrolet Corvette.

- 9. Said Vehicle has not been seized under any legal process, execution or attachment.
- 10. Ally may be in danger of losing the Vehicle unless it is taken out of possession of the Defendant or otherwise secured.
- 11. Upon information and belief, the Defendant is not incompetent, a minor, or a member of the military forces of the United States of America or any of its allies.
- The Vehicle, to the best of Affiant's knowledge, is located within Douglas
   County, Nebraska.

FURTHER AFFIANT SAYETH NOT.

DATED this day of	DATED this	day of	Dec	_, 2015
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TIYESA ETHRIDGE, Authorized Representative for Ally Bank

STATE OF MINNESOTA	)
COUNTY OF RAMSEY	) ss. )

On this 30 day of \_\_\_\_\_\_\_, 2015, before me, a notary public in and for said County and State, personally came the above-named Tiyesa Ethridge, duly sworn as the Authorized Representative for Ally Bank, who executed the within and foregoing instrument on behalf of said corporation; and acknowledged the execution of said instrument to be her voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and Notarial Seal this day and year last above written.

Notary Public



## NOTICE REQUIRED UNDER THE FAIR DEBT COLLECTION PRACTICES ACT

- 1. This is an attempt to collect a debt and any information obtained will be used for that purposes.
  - 2. The amount of the debt is stated in the Complaint.
  - 3. The name of the creditor is stated in the Complaint.
- 4. Unless the debtor disputes the validity of the debt within thirty (30) days after receipt of the notice, it will be assumed that the debt is valid.
- 5. If the debtor notifies the lawyer in writing within thirty (30) days that the debt is disputed, the lawyer will obtain verification of the debt or a copy of a judgment and mail it to the debtor.
- 6. The lawyer will provide the debtor with the name and address of the original creditor, if different from the current creditor, if the debtor requests this in writing within thirty (30) days.

