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EXHIBIT 1

DISTRICT COURT, DENVER COUNTY,
COLORADO
Court Address: 1437 Bannock Street, Denver, CO
80202

SABA RAEL, individually and on behalf of all similarly
situated persons,

Plaintiff,

v.

RED ROCKS CREDIT UNION,

Defendant.

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Consolidated Case No.: 2020cv32226

Division: 409

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AMENDED COMPLAINT AND JURY DEMAND	

Plaintiff Saba Rael, on behalf of himself and all others similarly situated, brings this Amended Complaint against Defendant Red Rocks Credit Union (“RRCU” or “Defendant”) alleging claims for breach of contract. Plaintiff also separately alleges a claim on his individual behalf for violations of the Colorado Consumer Protection Act against Defendant.

INTRODUCTION

1. This putative class action concerns RRCU’s practice of failing to refund unearned Guaranteed Automobile Protection (“GAP”) fees to Colorado customers when the customer’s auto loan is paid off early – *i.e.*, prepaid prior to the original maturity date of the customer’s finance agreement (an “early payoff”) - in violation of its contracts. RRCU, as the creditor on the finance agreement, has an obligation to refund unearned GAP fees to its customers upon an early payoff of a finance agreement. *See* 4 Colo. Code Regs. § 902-1:8 (h). Plaintiff brings claims on his individual behalf for violations of the Colorado Consumer Protection Act (“CCPA”). Claimant also separately brings a claim for breach of contract on behalf of himself, individually, and all others similarly situated (the “Class”).

2. Plaintiff and the Class Members paid off their auto loans early, but RRCU (their creditor) failed to refund the unearned GAP fees as required by the contracts. And, in instances where RRCU issued refunds, it did so *after* this case. Those post-lawsuit refunds do not change the fact that RRCU is in breach, because the refunds were not issued in a reasonable time. *Ranta Const., Inc. v. Anderson*, 190 P.3d 835, 841 (Colo. App. 2008) (where a contract does not specify a time for performance, the law implies the obligation be performed in a reasonable time).

Further, RRCU's post-lawsuit refunds did not include interest. Accordingly, RRCU has breached its contracts with Plaintiff and the Class Members and violated Colorado law.

FACTUAL BACKGROUND

3. Plaintiff and the Class Members financed the purchase of their cars by entering into a loan agreement ("finance agreement") with RRCU. RRCU agrees to lend them the money to buy the car from the dealer. RRCU then pays the dealer and the customer agrees to repay the loan in monthly installments, with interest, over a multi-year term. The finance agreements are "consumer credit transactions" under C.R.S. § 5-1-301.

4. The finance agreements of Plaintiff and the Class Members include GAP Waiver forms. The GAP Waiver form is an addendum to the finance agreement and part of the contract. It is a debt cancellation term that provides that if a customer suffers a "total loss" and the customer's liability insurance payout for the car is insufficient to pay off the customer's remaining loan balance, then the creditor on the finance agreement will agree to waive the difference. This difference is known as the "GAP." For example, assume a customer's car is stolen and they still owe \$10,000 on their finance agreement. Also, assume the customer's liability insurer only agrees to pay \$8,000 for the "total loss," because that is the car's "actual cash value." Without a GAP Waiver form, the customer would still owe the \$2,000 difference to the creditor on the finance agreement, even though the customer no longer possesses the vehicle. However, if the finance agreement has a GAP Waiver, then the creditor is required to "waive" the \$2,000 difference.

5. Plaintiff and the members of the Class financed the cost of their GAP coverage for the full term of their auto loans – for example, \$800 for a four-year loan ("GAP fees"). The GAP Waiver fees were included as a separate line item in the finance agreements. They were incrementally paid in monthly installments by the customer over the life of the loan, with

interest, along with the rest of the purchase price of the car. In other words, while the customer was told up-front what the total cost of the GAP coverage will be for the full term of the loan, the customer actually pays this amount incrementally over time to the creditor on a month-to-month basis as part of their “car payments.” These GAP fees are often referred to as “GAP premiums,” because they are similar to insurance premiums.

6. When customers pay off their finance agreements early (before the original maturity date) this results in what RRCU, the industry and Colorado law refer to as an “unearned” GAP fee. For example, if the total GAP fees for four years of GAP coverage are \$800, but the customer pays off their finance agreement in two years, then the customer will be entitled to a refund of \$400 for the unused half of the loan.

7. Colorado law requires that creditors (here RRCU) refund customers any unearned fee paid for GAP when the customer pays off the finance agreement early and no GAP claim has been made for a total loss. Specifically, 4 Colo. Code Regs. § 902-1:8 (h) provides:

If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer’s possession due to the creditor’s lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method. If GAP is determined to be insurance, the refund method used shall be any method authorized under applicable insurance statutes, rules, or interpretations of the Colorado Division of Insurance.

8. Pursuant to 4 Colo. Code Regs. § 902-1:8 (h), RRCU was required to refund unearned GAP fees upon an early payoff. Plaintiff’s GAP Waiver form also specifies that a refund is owed when a loan is paid off early. The GAP Waiver, however, does not specify an exact time for performance of the refund obligation; thus, the obligation must be performed in a reasonable time.

9. RRCU breached its finance agreements with Plaintiff and the Class Members, and violated Colorado law, by failing to refund the unearned GAP fees or, alternatively, by unreasonably waiting until after this lawsuit to issue refunds and not paying interest on the refunded amount..

10. RRCU's practice of including unearned GAP fees in the early payoff amount quoted to customers, and its subsequent failure to refund the unearned GAP fees after the early payoff, or its failure to refund the unearned GAP fees in a reasonable time, also constitutes a deceptive and unfair business practice in violation of the CCPA, § 6-1-101, *et seq.*, C.R.S.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to C.R.S. § 13-1-124(a), as the claims set forth herein arise out of Defendant's business conducted in the State of Colorado.

12. Venue is proper pursuant to C.R.C.P. 98(c), as Defendant conducts business in this county.

FACTS SPECIFIC TO PLAINTIFF

13. Plaintiff is an individual and a citizen and resident of Colorado. Plaintiff (a) entered into a finance agreement with a GAP Waiver form with RRCU, (b) paid off his finance agreement early (i.e., before the original maturity date), and (c) did not receive a refund of the unearned GAP fees collected until after he was forced to file suit for RRCU's breach (which refund was not issued in a reasonable time).

14. Plaintiff purchased a 2011 Dodge Dakota on September 27, 2016. Plaintiff's loan term for the 2011 Dodge Dakota, financed through RRCU, was 84 months. As part of the financing agreement, Plaintiff purchased a GAP Waiver for \$449.82. Plaintiff paid off the loan with RRCU on March 30, 2020.

15. RRCU breached its contract with Plaintiff and violated Colorado law by failing to refund Plaintiff his unearned GAP fees prior to him filing suit and by failing to refund him in a reasonable time. Calculated on a pro-rata basis, Plaintiff's unearned GAP fees collected by RRCU are approximately \$249.43, excluding interest. Although RRCU provided a check to Plaintiff purporting to be a refund for unearned GAP fees *after* Plaintiff filed this action, Plaintiff did not cash this check, and this check did not include interest. Moreover, any effort on RRCU's part to pick off Plaintiff as a class representative by issuing him a refund of his unearned GAP fees, or by issuing the Class members a refund of their unearned GAP fees (assuming such refunds were actually made to all Class members), is moot because the post-lawsuit refunds did not include interest. Plaintiff also prayed for class certification in his initial Complaint in this matter, and RRCU's attempt to thwart his class action claims by providing him a refund is, thus, improper.

DEFENDANT

16. Defendant Red Rocks Credit Union ("RRCU") is, and at all relevant times was, a credit union with its headquarters in Littleton, Colorado. RRCU owned, serviced, and/or oversaw the automobile loans secured by Plaintiff and the other Class Members in Colorado. Upon information and belief, executives and/or employees within RRCU implemented, oversaw and/or approved the strategy and operations relating to the company's GAP policies and procedures, including its refund policies.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action pursuant to Rule 23 of the Colorado Rules of Civil Procedure on behalf of the following class (the "Class"): All persons who: (1) entered into finance agreements with GAP Waivers in Colorado with RRCU; (2) who paid off their finance agreements before the end of the original maturity date; and (3) (a) who did not receive a refund

of the unearned GAP fees, or (b) who received a refund of the unearned GAP fees after the Complaint was filed in this case and the refund did not include interest.

18. The Class Period begins six years prior to the filing of this Complaint.

19. The aforementioned members of the Class are referred to herein as “Class Members.”

20. Excluded from the proposed Class are: (a) Defendant and its agents, officers, directors, parent companies, subsidiaries, and affiliates; (b) counsel representing Plaintiff and any person employed by counsel; and (c) any judicial officers assigned to this case and their staff.

21. Plaintiff reserves the right to revise the definition of the Class based upon subsequently-discovered information.

22. **Numerosity:** While the exact numbers of the members of the Class are unknown to Plaintiff at this time, membership in the Class may be ascertained from the records maintained by RRCU. At this time, Plaintiff is informed and believes that the Class includes at least 40 members, and most likely includes hundreds if not thousands of members. Therefore, the Class is sufficiently numerous that joinder of all members of the Class in a single action is impracticable, and the resolution of their claims through a class action will be of benefit to the parties and the Court.

23. **Ascertainability:** The names and addresses of the members of the Class are contained in RRCU’s records. Notice can be provided to the members of the Class through direct mailing, publication, or otherwise using techniques and a form of notice similar to those customarily used in consumer class actions arising under state and federal law.

24. **Common Facts:** Common facts exist as to all members of the Class and predominate over any issues affecting individual members of the Class. The common facts include the following:

a. Plaintiff and the members of the Class entered into finance agreements with GAP Waiver forms to finance the purchase of their cars.

b. The finance agreements (including their GAP Waiver forms) were form contracts and were executed in Colorado.

c. The full cost of every GAP Waiver form was listed as a separate line item on the first page of the finance agreement and included in the “total amount financed.”

d. Plaintiff and the members of the Class were required to make all payments under the finance agreements to RRCU with interest, including, but not limited to, the amount financed for the cost of the GAP Waiver forms (the “GAP fees”).

e. Plaintiff and the members of the Class paid off the balances on their finance agreements before the end of the original loan term, which resulted in unearned GAP fees.

f. RRCU did not refund Plaintiff and the members of the Class their unearned GAP fees, or did not refund them until after this lawsuit was filed and such refund did not include interest, which was unreasonable.

25. **Common Questions of Law:** Common questions of law exist as to all members of the Class and predominate over any issues solely affecting individual members of the Class. The common questions of law include, but are not limited to:

a. Whether RRCU breached its contracts and violated Colorado law by failing to refund unearned GAP fees to Plaintiff and the Class Members upon an early payoff, or

by not refunding them until after this lawsuit was filed (i.e., not refunding them in a reasonable time).

b. Whether Plaintiff and the Class Members are entitled to interest on the unearned GAP fees that RRCU did not refund, or on the unearned GAP fees that RRCU refunded after this lawsuit was filed, including the date when the interest began to accrue.

26. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff is an adequate representative of the Class, because he does not have any interests which are adverse to the interests of the members of the Class. Plaintiff is committed to the vigorous prosecution of this action and, to that end, Plaintiff has retained counsel who are competent and experienced in handling class action litigation on behalf of consumers.

27. Plaintiff's interests are co-extensive with, and not antagonistic to, those of the absent members of the Class. Plaintiff will undertake to represent and protect the interests of the absent members of the Class.

28. Plaintiff has engaged the services of the undersigned counsel. Counsel is experienced in complex consumer class action litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise represent, Plaintiff and the absent members of the Class.

29. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of the claims asserted in this action because, at a minimum: (a) the expense and burden of individual litigation make it economically unfeasible for members of the Class to seek redress of their claims other than through the procedure of a class action; (b) if separate actions were brought by individual members of the Class, the resulting duplicity of lawsuits would risk inconsistent results; and (c) absent a class action, RRCU will likely retain the benefits of its wrongdoing, resulting in a failure of justice.

30. **Predominance:** Class action status is warranted because, at a minimum, questions of law or fact common to the members of the Class predominate over any questions affecting only individual members. The interests of the members of the Class in individually controlling the prosecution of separate actions are theoretical and not practical. Prosecution of this action through multiple Class Representatives would be superior to individual lawsuits. Plaintiff is not aware of any difficulty which will be encountered in the management of this litigation which should preclude its maintenance as a class action.

FIRST CLAIM
BREACH OF CONTRACT
(On Behalf of Plaintiff and the Class)

31. Plaintiff hereby repeats, realleges and incorporates by reference each and every allegation contained above as though the same were fully set forth herein.

32. Plaintiff brings this claim on behalf of himself and the members of the Class.

33. Plaintiff and the members of the Class entered into finance agreements with GAP Waiver forms with RRCU. Under that contract, RRCU was required to refund unearned GAP fees to Plaintiff and the members of the Class in the event of an early payoff and to do so in a reasonable time. Plaintiff and the members of the Class performed their obligations under the finance agreement and its GAP Waiver form.

34. A true and correct copy of Plaintiff's finance agreement and its GAP Waiver form are attached as Exhibit 1.

35. The terms of the GAP Waiver form were presented to Plaintiff and the members of the Class on a non-negotiable "take-it or leave-it" basis and are therefore contracts of adhesion.

36. Plaintiff and the members of the Class financed the cost of the GAP Waivers as part of their finance agreements and were charged for GAP protection for the full term of the loans. These amounts were paid directly to RRCU.

37. Plaintiff and the members of the Class paid off the balance on their finance agreements to RRCU prior to end of the loan term. This resulted in unearned GAP fees.

38. RRCU breached the parties' contract, and violated Colorado law, by collecting and then failing to refund Plaintiff and the members of the Class their unearned GAP fees, or by not refunding them in a reasonable time and by not including interest on the refunded amount.

39. Plaintiff and the members of the Class were harmed, suffered out-of-pocket loss, and did not receive the benefit of their bargains because (a) RRCU failed to refund the unearned GAP fees after the early payoff of the finance agreements, and failed to pay the interest that accrued on those unpaid amounts; or (b) RRCU did not refund them until after this lawsuit was filed (i.e., did not refund them in a reasonable time), and failed to pay the interest that accrued on the untimely refunded amount.

40. RRCU is liable to Plaintiff and the members of the Class for the damages they suffered as a direct result of RRCU's collection and failure to promptly refund the unearned GAP fees, as well as the interest that accrued on those unpaid amounts.

SECOND CLAIM
VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT
(On behalf of Plaintiff on an individual basis only)

41. Plaintiff incorporates by reference paragraphs 1 through 16 above.

42. The CCPA prohibits unfair or deceptive acts or practices.

43. Plaintiff is a consumer within the meaning of the CCPA.

44. When consumers want to pay off their finance agreement early, RRCU's general business practice is to include the unearned GAP fees in the early payoff amount quoted to

consumers. RRCU will then collect and keep the unearned GAP fees, unless the consumer requests a refund. RRCU keeps this unearned money even though RRCU knows that consumers are unaware that the payoff quote included the unearned GAP fees.

45. This practice constitutes an unfair and/or deceptive trade practice, within the meaning of Colo. Rev. Stat. § 6-1-101, *et seq.*, because it enables RRCU to collect and keep unearned money from its customers through false pretenses. RRCU engaged in this conduct in the usual course of its business. Moreover, RRCU's conduct violates, *inter alia*, Colo. Rev. Stat. § 6-1-105(l) and (kkk).

46. Plaintiff entered a finance agreement and GAP addendum that was assigned to RRCU.

47. Plaintiff wanted to pay off his finance agreement early, *i.e.*, prior to the original maturity date.

48. In conformance with its unfair and deceptive trade practice, RRCU included unearned GAP fees in the early payoff amount quoted to Plaintiff.

49. In reliance on RRCU's payoff quote, Plaintiff paid RRCU the payoff amount, including the unearned GAP fees.

50. RRCU unreasonably failed and refused to refund Plaintiff the unearned GAP fees in a timely manner because Plaintiff, who was unaware that the payoff quote improperly included unearned GAP fees, did not specifically request a refund of the unearned GAP fees from RRCU. RRCU did not refund Plaintiff the unearned GAP fees until after this lawsuit was filed and such refund did not include interest, which was unreasonable.

51. RRCU collected unearned GAP fees from Plaintiff under false pretenses that such amounts were due and owing.

52. There is no reasonable basis for RRCU to include unearned GAP fees in the payoff amounts quoted to its customers. Further, there is no legitimate basis to require customers to send a subsequent written notice to RRCU or its agents that the finance agreement has been paid off early as a condition precedent for the refund, given that RRCU already knows that the finance agreement has been paid off early and that a refund is due. This practice is substantially injurious to consumers and has allowed RRCU to be unjustly enriched at the consumers' expense.

53. RRCU's deceptive trade practices significantly impact the public, including future customers whose GAP agreements will be assigned to RRCU. There are likely thousands of consumers impacted by RRCU's deceptive trade practices, and most of these consumers lack the relative sophistication needed to comprehend the nuances concerning the refund of unearned GAP fees. Moreover, the finance agreements and GAP addendums are contracts of adhesion, and the consumers lack any bargaining power. RRCU is continuing to engage in these deceptive trade practices and, thus, its practices will impact consumers in the future.

54. RRCU's deceptive trade practices caused the Plaintiff to suffer injury in fact to a legally protected interest, namely, his right to a timely refund of the unearned GAP fees, and his right to interest on the GAP fees which were not refunded until after this lawsuit was filed.

55. RRCU engaged in these deceptive trade practices fraudulently, willingly, knowingly, and intentionally. Thus, RRCU engaged in bad faith conduct under the CCPA entitling Plaintiff to three times the amount of actual damages sustained.

56. Plaintiff seeks actual damages, statutory damages under the CCPA, penalties under the CCPA (three times the amount of actual damages sustained), attorneys' fees under the CCPA, restitution and disgorgement of the unearned GAP fees, and pre-and post-judgment interest.

57. Plaintiff also seeks an injunction requiring that RRCU either: (1) refrain from collecting unearned GAP fees upon an early payoff of the finance agreement; or (2) automatically refund those unearned fees, plus interest, back to the customer within a reasonable time after the early payoff of the finance agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter a judgment against RRCU in favor of Plaintiff and the members of the Class and award the following relief:

1. With respect to the first claim for relief alleging a claim for breach of contract on behalf of Plaintiff and the Class:
 - a. An order certifying Plaintiff's breach of contract claim as a class action pursuant to Rule 23, appointing Plaintiff as the representative of the Class, and appointing Plaintiff's counsel as Class Counsel for the Class;
 - b. An order declaring the following:
 - i. RRCU, as the assignee, took over the contractual obligation to pay the refund of unearned GAP fees to the customer to the extent a refund is owed under the GAP agreement; and
 - ii. RRCU is required to pay interest on any unearned GAP fees that it collects when the finance agreement has been paid off early and which it subsequently fails to promptly refund;

- c. An award to Plaintiff and the members of the Class of all appropriate relief pursuant to Plaintiff's and members of the Class's breach of contract claim, including actual damages and unpaid interest;
 - d. An award of all costs for prosecuting the litigation, including expert fees;
 - e. An award of pre- and post-judgment interest;
 - f. An award of attorneys' fees, if any, as permitted by law; and
 - g. An order granting any such additional relief as this Court may deem just and proper.
2. With respect to the second claim for relief alleging a claim for a violation of the CCPA on behalf of Plaintiff on an individual basis only:
- a. An award to Plaintiff of all appropriate relief pursuant to the CCPA, including actual damages, statutory damages under the CCPA, penalties under the CCPA (three times the amount of actual damages sustained), restitution and disgorgement of the unearned GAP fees;
 - b. An injunction requiring that RRCU either: (1) refrain from collecting unearned GAP fees upon an early payoff of the finance agreement; or (2) automatically refund those unearned fees, plus interest, back to the customer within a reasonable time after the early payoff of the finance agreement;
 - c. An award of attorneys' fees as permitted by the CCPA.
 - d. An award of all costs for prosecuting the litigation, including expert fees;
 - e. An award of pre- and post-judgment interest; and
 - f. An order granting any such additional relief as the Arbitrator may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Amended Complaint so triable.

Respectfully submitted this 5th day of January, 2022.

FRANKLIN D. AZAR & ASSOCIATES, P.C.

Pursuant to C.R.C.P. 121 § 1-29(9), original is duly signed and on file at the office of Franklin D. Azar & Associates, P.C., and will be made available for inspection by other parties of the Court upon request.

s/Franklin D. Azar

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2022, a true and correct copy of the foregoing **AMENDED COMPLAINT AND JURY DEMAND** was filed via Colorado Courts E-Filing and served upon:

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