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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

TUCOEMAS FEDERAL CREDIT UNION,
Plaintiff, Cross-defendant and Respondent,

v.

ELIZABETH SEE,
Defendant, Cross-complainant and Appellant.

F063339

(Super. Ct. No. VCU242330)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Melinda Myrle Reed, Judge.

Kemnitzer, Barron & Krieg, William M. Krieg and Eric M. Kapigian for Defendant, Cross-complainant and Appellant.

Matheny, Sears, Linkert & Jaime, Michael A. Bishop and Shelbi L. Ovenstone, for Plaintiff, Cross-defendant and Respondent.

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INTRODUCTION

Defendant, cross-complainant, and appellant Elizabeth See (Borrower) purchased a used BMW and obtained financing for the vehicle through plaintiff, cross-defendant and respondent Tucoemas Federal Credit Union (Credit Union).

SEE DISSENTING OPINION

Borrower stopped making payments on the car. Credit Union repossessed the car, notified Borrower of its plan to sell the car, resold the car for less than the amount owed, and filed a breach of contract action against Borrower to recover the deficiency.

Borrower filed a cross-complaint that alleged Credit Union's written notice of its plan to sell the car violated mandatory provisions of the Automobile Sales Finance Act (Civ. Code, § 2981 et seq. (ASFA)).¹ Borrower seeks class certification of this claim, contending that the defective notice precludes Credit Union from collecting a deficiency from her or any putative class members who received a similarly defective notice.

Credit Union filed a demurrer, which the trial court granted on the ground that the written notice complied with the ASFA. Borrower challenges this decision, arguing that the trial court misinterpreted the written notice—an exhibit to Borrower's pleading—and gave that misinterpretation precedence over the allegations in the complaint. In particular, Borrower argues that the court should not have (1) inferred that the notice's statement of the address where the vehicle could have been picked up if redeemed also correctly stated the address where payment of the storage charges would be accepted or (2) assumed that the notice provided complete and accurate information about storage charges and reconditioning fees. Borrower believes the trial court resolved questions of fact that should not have been decided against her at the pleading stage.

We agree with Borrower's first contention and therefore reverse the order sustaining the demurrer.²

¹ This legislation is also known as the Rees-Levering Motor Vehicle Sales and Finance Act. (Stats. 2011, ch. 526, § 1; *Bank of America v. Lallana* (1998) 19 Cal.4th 203, 206.) All further statutory references are to the Civil Code unless otherwise indicated.

² Our review of a general demurrer ends and reversal is required once we determine the complaint has stated a cause of action under any legal theory. (*Genesis Environmental Services v. San Joaquin Valley Unified Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597, 603.) Because we have concluded that Borrower has stated a claim

FACTS AND PROCEEDINGS

Sales Contract

In May 2007, Borrower entered into a conditional sales contract with Madera Public Auto Auction for the purchase of a used 2004 BMW. Under the contract, Borrower paid \$1,000 as a down payment and financed the balance of \$29,052.52, agreeing to an annual interest rate of 7.89 percent and monthly payments of \$507.83 for six years. The vehicle served as collateral for the payments due under the conditional sales contract.

Madera Public Auto Auction arranged financing for Borrower's purchase of the vehicle through Credit Union and subsequently assigned its interest in the conditional sales contract to Credit Union.

Borrower Default, Repossession, and Sale

In December 2009, Borrower defaulted on her payments under the contract. Credit Union repossessed the vehicle and sent Borrower a document titled "NOTICE OF OUR PLAN TO SELL PROPERTY" and dated March 12, 2010 (NOI).³

The NOI stated that (1) Credit Union intended to sell the 2004 BMW at a private sale sometime after March 28, 2010; (2) if Credit Union got less money from the sale than was owed, Borrower would still owe Credit Union the difference, and (3) Borrower could get the vehicle back at any time before it was sold by paying Credit Union the full amount owed, including expenses. The NOI also included an Addendum 2, which, among other items discussed later, included information required by the ASFA, including

regarding the payment address, we do not reach Borrower's claim that the notice's information about storage charges and reconditioning fees was incorrect.

³ We adopt this acronym because it was used by the parties and the trial court and is based on the "notice of intent to dispose of a repossessed or surrendered motor vehicle" referred to in section 2983.2, subdivision (a).

the amounts required to redeem the vehicle (\$23,797.78) or reinstate the contract (\$2,247.04) as of the notice date, the additional amounts that would become due after the notice date, and information about obtaining an extension of the redemption or reinstatement period. After sending the NOI, Credit Union resold the vehicle for an amount less than Borrower owed.

Deficiency Action Against Borrower

On July 20, 2010, Credit Union filed a limited civil case alleging Borrower breached the conditional sales contract and owed damages of \$11,345.25 plus attorney fees and interest at the annual rate of 7.89 percent from April 14, 2010.

In September 2010, Borrower filed an answer that included a general denial and 16 affirmative defenses. The eighth affirmative defense alleged that Credit Union failed to comply with the ASFA after repossessing the vehicle.

Borrower Class Action for Violation of ASFA

In April 2011, after obtaining leave from the trial court, Borrower filed a cross-complaint. The first cause of action was described as a class action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) based on violations of the ASFA.⁴ Borrower alleged that the NOI failed to comply with statutory requirements because it failed to disclose the address of a third party to whom storage charges were to be paid, failed to provide information about reconditioning charges to be paid to third parties, failed to provide a physical address where the written request for an extension could be personally served, and contained extraneous information not allowed by the statute. Borrower attached copies of the conditional sales contract and the NOI as exhibits to her cross-complaint.

⁴ The other three causes of action in the cross-complaint alleged violations of the Consumers Legal Remedies Act (§ 1750 et seq.), fraud and negligence. These causes of action are not relevant to this appeal.

Demurrer

Credit Union filed a demurrer to the cross-complaint on the grounds that it failed to state facts sufficient to constitute a cause of action. Credit Union argued that the legal adequacy of the NOI, which was attached to the cross-complaint as an exhibit, could be determined by comparing the contents of the NOI to the statutory requirements.

Borrower opposed the demurrer, arguing that the merits of her class action allegations should not be decided at the pleading stage and that the cross-complaint adequately alleged the NOI violated specific requirements of section 2983.2, subdivision (a).

In June 2011, the trial court heard argument on the demurrer and issued a minute order sustaining the demurrer to the cross-complaint's first cause of action without leave to amend. The court concluded that, as an exhibit to the cross-complaint, the NOI took precedence over inconsistent allegations in the cross-complaint. The court also concluded that the NOI sufficiently provided specific information to comply with the statute and to inform Borrower of exactly what she was required to do to cure the default.

In August 2011, Borrower filed a notice of appeal from the order sustaining the demurrer to the first cause of action and its class action allegations.⁵

DISCUSSION

I. STANDARD OF REVIEW

A. Basic Principles Governing General Demurrers

The parties agree that a trial court's decision to sustain a general demurrer without leave to amend is reviewed de novo to determine if a plaintiff's complaint contains sufficient facts to state a cause of action. We independently review the ruling on

⁵ Borrower contends this order is appealable because it entirely terminates the class claims. (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 754, 760.)

demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.)

When conducting this de novo review, “[w]e give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law. [Citations.]” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

B. Rules of Law Regarding Exhibits to the Pleading

The NOI is an exhibit to Borrower’s cross-complaint and plays a central role in this appeal. Therefore, the legal rules addressing how a court reviewing a general demurrer should treat exhibits to the pleading are relevant to this appeal.

These legal rules have been stated with varying degrees of precision. For example, in *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561 (*Mead*), the court made the following general statement:

“For purposes of a demurrer, we accept as true both facts alleged in the text of the complaint and facts appearing in exhibits attached to it. If the *facts appearing in the attached exhibit* contradict those expressly pleaded, those in the exhibit are given precedence. [Citation].” (*Id.* at pp. 567-568, italics added.)⁶

In contrast, other courts have employed narrower, more precise language. In *Satten v. Webb* (2002) 99 Cal.App.4th 365 (*Satten*), the court stated that an appellate court reviewing a ruling on a demurrer considers all of the facts pled as true, including “those evidentiary facts found in recitals of exhibits attached to a complaint.” (*Id.* at pp. 374-375; see 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 431, pp. 564-565

⁶ The trial court relied on this language when it stated: “Since the NOI is an exhibit attached to the cross-complaint, it is given precedence over inconsistent allegations in the [cross-]complaint. (*Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561.)” (Italics added, underlining omitted.)

[recitals inconsistent with allegations in pleading]; cf. Evid. Code, § 622 [“facts recited in a written instrument are conclusively presumed to be true as between the parties thereto”].)

We conclude that the broader statement of the rule set forth by the court in *Mead* is not inconsistent or in conflict with the more precise statement of the rule contained in *Satten*, because the facts presented in *Mead* fall within the rule that is limited to evidentiary facts found in the recitals of an exhibit.

In *Mead*, plaintiffs signed a deed of trust to the defendant bank as security for a construction loan to a real estate developer. (*Mead, supra*, 61 Cal.App.4th at p. 567.) After the defendant bank started foreclosure proceedings, the plaintiffs sued the bank. (*Id.* at pp. 565-566.) The plaintiffs alleged that they were sureties on the loan, not principal obligors. (*Id.* at p. 567.) The bank demurred, contending that the plaintiffs’ allegation that they were sureties was superseded by a recital in the deed of trust that identified the plaintiffs as “trustors.” (*Ibid.*) Thus, although the *Mead* court broadly stated that precedence is given to “facts appearing in the attached exhibit,” it actually applied that statement to facts set forth in a recital of the attached deed of trust, signed by the plaintiffs, that they were trustors. Based on the facts presented in *Mead* and the court’s explicit references to “the recital in the deed of trust,” (*Id.* at p. 567, italics and capitalization omitted), we conclude that the less precise statement of the rule of law by the court in *Mead* should not be interpreted as an expansion of the narrower statement of the rule set forth in *Satten v. Webb, supra*, 99 Cal.App.4th at pages 374 to 375.

In summary, we conclude the rules of law applicable to the NOI attached to the cross-complaint can be stated as follows:

First, by attaching a copy of a document to the pleading and alleging that the copy is true and correct, the pleader has pled the *contents* of that document. Second, when a court reviews a demurrer, it does not treat all factual statements contained in exhibits attached to the pleading as true. Rather, the court accepts as true the evidentiary facts

found in recitals of exhibits attached to the pleading and gives those facts precedence over inconsistent allegations in the pleading. (*Satten v. Webb, supra*, 99 Cal.App.4th at pp. 374-375.) As a general rule, a pleader must be a party to the written instrument for the recitals of that instrument to be binding. (See Evid. Code, § 622.)

C. Contentions of the Parties

On appeal, Credit Union relies on the statement of the rule set forth in *Mead*, contending our analysis of the NOI and Borrower's pleading should "disregard allegations that ... are contradicted by the express terms of an exhibit incorporated into the complaint. [Citation.]" (*Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th 171, 178, fn. 3.)⁷

Borrower's position concerning our analysis of the NOI is stated from a different perspective:

⁷ As outlined above, Credit Union reads *Mead*, and its reference to facts appearing in exhibits attached to the complaint, too broadly. The fact at issue in *Mead* was contained in a factual recitals in a trust deed signed by the plaintiffs. Here, Borrower did not sign or agree to the contents of the NOI, and therefore she cannot be bound by the factual statements in the NOI. In short, the NOI is not an exhibit that sets forth evidentiary facts in recitals that are binding on Borrower.

To illustrate this point, assume a notice stated that a borrower owed a balance of \$5 million on a financed automobile. The borrower could attach the notice to his or her complaint to establish the fact that the notice *said* \$5 million was owed. Attaching the notice, however, would not preclude the borrower from alleging the notice misstated the actual balance owed. In other words, a borrower could attach the notice to the pleading to establish what the contents of the notice were, but alleging a true and correct copy of the notice is attached and incorporated into the pleading does not require the borrower to concede the accuracy or correctness of the notice's contents. Thus, the borrower could allege that the \$5 million balance stated in the notice was wrong without contradicting an evidentiary fact contained in a recital binding on the borrower.

In this case, Borrower alleged what the contents of the NOI were by attaching a copy to her cross-complaint. By taking this approach, she is not deemed to have alleged those contents were accurate. A contrary holding would mean that a plaintiff who wishes to allege a notice containing inaccuracies could not attach a copy of the notice to his or her complaint.

“Here, the decisive facts (the language of the NOI) relied on by the trial court are undisputed, thus, the reviewing court is confronted with a pure question of law and is not bound by the findings of the trial court. [(*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)] Independent review is appropriate for matters of statutory interpretation. [Citation.] This court is not bound by the trial court’s analysis of whether the NOI complies with ASFA.”

In effect, Borrower argues our de novo review of the language of the NOI allows us to independently determine whether a contradiction exists between the allegations in her cross-complaint and the NOI attached as an exhibit. We agree.

In the context of a demurrer, a reviewing court is not bound by the construction placed on the pleadings by the trial court. (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239.) Under the independent standard of review, the reviewing court must make its own judgment about the proper construction of the pleadings. (*Ibid.*) That independent review necessarily extends to the question of whether a contradiction exists between the NOI and the allegations in Borrower’s cross-complaint.

D. Analysis

Borrower did not sign or agree to the facts contained in the NOI. Based on our independent review and analysis of *Mean* and *Satten*, we conclude that the NOI contains no recitals of evidentiary facts that are binding on Borrower. Therefore, there is no legally impermissible conflict or contradiction between the allegations in Borrower’s cross-complaint and the contents of the NOI.

II. ADDRESS OF THIRD PARTIES OWED FEES

A. Statutory Requirement

Section 2983.2 provides that a consumer shall be liable for a deficiency after disposition of a repossessed vehicle only if the notice of intent provides all of the information set forth in paragraphs (1) through (9) of subdivision (a). The notice shall provide “an itemization of the contract balance and of any delinquency, collection or

repossession costs and fees” (§ 2983.2, subd. (a)(1).) Further, the notice must also state “all the conditions precedent” that must be performed by a defaulting buyer before reinstatement of a purchase contract. (§ 2983.2, subd. (a)(2).) The notice also must designate “the name and address of the person or office to whom payment shall be made.” (§ 2983.2, subd. (a)(5).) These provisions were interpreted by the court in *Juarez v. Arcadia Financial, Ltd.* (2007) 152 Cal.App.4th 889, which concluded:

“[T]he Legislature intended that the NOI provide a level of specificity as to the conditions precedent to reinstatement sufficient to inform the buyer—without need for further inquiry—as to exactly what the buyer must do to cure the default. Thus, the statute requires that a creditor inform the consumer of any amounts the buyer must pay to the creditor and/or third parties, and provide the buyer with the names and addresses of those who are to be paid.” (*Id.* at pp. 904-905.)

B. Alleged Violation and Contents of NOI

The cross-complaint alleges that the NOI “fails to disclose [the] address of the third party, Fresno Auto Dealer’s Auction, to whom storage charges are to be paid, and provides only a telephone number, thus requiring the consumer to contact other entities to obtain information about how to make payments.”

The cross-complaint also alleged that a true and correct copy of the NOI was attached as an exhibit and was incorporated into the cross-complaint by reference. The NOI includes an “ADDENDUM 2,” which is divided into sections A through I and a form for requesting an extension of the redemption or reinstatement period. Section F of the NOI contains a table that itemizes the components of the redemption amount and the reinstatement amount. Under “Amounts to be Paid to Third Parties” there is a subheading for “Amounts That Will Become Due After the Notice Date.” Under this subheading there is an entry for a storage fee of \$15.00 per day that states: “Pay To: Fresno Auto Dealers Auction [¶] Telephone: 559-268-8051.” No address for Fresno Auto Dealers is provided for this particular fee or elsewhere in the payment itemization information provided by section F of the NOI. However, section D of the NOI states: “If

you Redeem the vehicle or Reinstate your contract, the vehicle will be returned to you at: [¶] Name: Fresno Auto Dealers Auction [¶] Physical Address: 278 N. Marks, Fresno, Ca. 93706.”

C. Trial Court’s Ruling and Contentions of the Parties

Borrower argued that the omission of an address where Fresno Auto Dealers Auction would accept payment of its storage fee violated the requirements of section 2983.2, subdivision (a). The trial court rejected this argument, concluding : “[T]he NOI provides sufficient specificity of the amount of storage fees that will become due to Fresno Auto Dealers Auction and its address (NOI, Addendum 2, Sections D and F)”

Borrower challenges the trial court’s determination on two grounds. First, Borrower argues that the trial court’s use of the term “sufficient” indicates that the court thought substantial compliance with the statutory requirements was legally permissible when strict compliance is required. Second, Borrower argues:

“[T]he court mistakenly presumed that ‘the place where the motor vehicle will be returned’ (Fresno Auto Dealer’s Auction) must be the same as the ‘address of the person or office to whom payment shall be made.’ But, no consumer can know this without calling to obtain the information. As the ASFA requires that an address be provided, providing only a phone number does not comply. *Juarez [v. Arcadia Financial, Ltd., supra, 152 Cal.App.4th]* at pp. 904-905.”

Credit Union’s appellate brief does not rebut this particular argument with an explanation of how we can decide that the address given for one purpose is also the address that will work for a second purpose. Instead, the brief simply refers to the address given in section D of the NOI and asserts that Borrower’s “allegation that the NOI does not provide Fresno Auto Dealers Auction address is blatantly wrong.”

D. Analysis of NOI

The dispute between the parties presents the following question: Is the address where Fresno Auto Dealers Auction would have returned the vehicle to Borrower under

section D also the address where Fresno Auto Dealers Auction would have accepted payment of its storage charges under section F?

This is a question of fact, not a question of law. The NOI itself did not inform the Borrower that the single address worked for both purposes. Similarly, Borrower's cross-complaint does not specifically allege that Fresno Auto Dealers Auction had only one address or that it would accept payment at the address where it would have returned the vehicle. Therefore, the contents of the NOI do not explicitly contradict Borrower's allegations that the payment address was not provided. Furthermore, the contents of the NOI and the allegations in the cross-complaint do not explicitly resolve the question of fact about where Fresno Auto Dealers would accept payment.

The absence of an explicit answer leads us to consider whether the documents implicitly answer the question. In other words, may we *infer* that the storage charges could be paid at the address given in section D of the NOI?

As a general principle, the allegations in a pleading "must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) Under this rule of liberal construction, the reviewing court must draw inferences favorable to the plaintiff, not the defendant. (*Carney v. Simmonds* (1957) 49 Cal.2d 84, 93; *Advanced Modular Sputtering, Inc. v. Superior Court* (2005) 132 Cal.App.4th 826, 835 ["pleadings are to be liberally construed in favor of the pleader"].) Further, *Juarez v. Arcadia Financial, Ltd.* "requires creditors to provide enough information to allow buyers to determine precisely what they must do in order to reinstate their contracts." (*Juarez v. Arcadia Financial, Ltd.*, *supra*, 152 Cal.App.4th at p. 904.)

Consequently, we may not resolve the question of fact in favor of Credit Union by inferring that the address set forth in section D of the NOI, where the vehicle can be picked up, was also the address where Fresno Auto Dealers Auction would have accepted

payment of its storage charges under section F.⁸ Instead, for purposes of this demurrer, we must draw the opposite inference.

Therefore, we conclude Borrower's allegation that the NOI failed to disclose the address of the third party to whom storage charges were to be paid is not contradicted by the fact that an address for Fresno Auto Dealers is given in section D of the NOI. That address might not be the location where Fresno Auto Dealer would accept payment.⁹ Whether payment would have been accepted there is a factual question we cannot resolve against Borrower at the pleading stage. In short, we reject Credit Union's position that the four corners of the cross-complaint and attached exhibit establish that Borrower was notified of the correct address for the delivery of payments to Fresno Auto Dealer. This factual question may later be decided by the trial court.

Thus, we conclude Borrower's allegations are sufficient to state a cause of action involving a violation of section 2983.2, subdivision (a).

⁸ The dissent is willing to draw this inference and decide this question of fact against the plaintiff because the plaintiff did not specifically allege the address was incorrect. However, the language in paragraph 27 of the cross-complaint that underlies this dispute states: "The NOTICE fails to disclose the address of the third party, Fresno Auto Dealer's Action, to whom storage charges are to be paid, and provides only a telephone number, thus requiring the consumer to contact other entities to obtain information about how to make payment."

⁹ If it is determined that Fresno Auto Dealers Auction would have accepted payment of its storage charges at the address given in section D of the NOI, then the legal question whether that manner of providing the address complies with section 2983.2, subdivision (a) will need to be addressed. We express no opinion on how this legal question should be resolved because, in part, the record contains no legislative history concerning the statutory language to be applied. In contrast, the dissent has answered this legal question in the affirmative.

DISPOSITION

The order sustaining the demurrer to the first cause of action is reversed and the trial court is directed to enter a new order overruling the demurrer. Borrower shall recover her costs on appeal.

Franson, J.

I CONCUR:

Cornell, Acting P.J.

POOCHIGIAN, J, dissenting

I respectfully dissent. The Notice of Intent (NOI) included an “Addendum 2,” which contained information apprising Borrower of amounts necessary to either reinstate the subject contract or redeem the vehicle. The bases of Borrower’s claims relate to contentions that there is lack of specificity in the NOI, as required by the Automobile Sales Finance Act (Civ. Code, § 2981 et seq.), concerning the address at which charges were to be paid, the amount of any “reconditioning charges,” and the physical address where requests for extension of time could be served. A valid cause of action for violation of notice requirements of the Automobile Sales Finance Act necessarily must focus on the NOI.

On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, we conduct a de novo review, giving the complaint a reasonable interpretation, “reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusion of law. [Citations.]” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) “When an appellate court reviews a ruling on demurrer, it independently determines whether a cause of action is stated under a consideration of all of the facts pled, considered as true, such that the plaintiff should be entitled to any relief. This consideration of facts includes those evidentiary facts found in recitals of exhibits attached to a complaint. [Citation.]” (*Satten v. Webb* (2002) 99 Cal.App.4th 365, 374-375.)

The question in this case is simply whether the NOI and Addendum received by Borrower contained the statutory elements required by law as to the name and address to which the Borrower must submit the amount due for storage fees.

I agree with the majority opinion’s reliance on *Juarez v. Arcadia Financial, Ltd.* (2007) 152 Cal.App.4th 889 (*Juarez*), that creditors must “provide enough information to

allow buyers to determine precisely what they must do in order to reinstate their contracts.” (*Id.* at p. 904, italics omitted.)

However, I disagree with the conclusion regarding the sufficiency of the addresses provided in the NOI and its Addendum 2. Section D of Addendum 2 states that in the event of redemption of the vehicle or reinstatement of the contract, the vehicle would be returned to Borrower at Fresno Auto Dealers Auction whose physical address is stated to be “278 N. Marks, Fresno, CA 93706.”

Section E of Addendum 2 informs Borrower as follows: “Payment of Redemption Amounts or Reinstatement Amounts should be made to the Credit Union at: 2300 W. Whitendale, Visalia, CA 93277. Mailing address: PO Box 5011, Visalia, CA 93278.”

The party to whom redemption or reinstatement amounts would be payable, the place of payment therefor, and the physical location for recovery of the vehicle are without doubt. This brings us to the essence of the claimed inadequacy of the creditor’s notice: the place of payment of accrued *storage charges*. Under section F, paragraph 2 of the addendum (“Amounts to be Paid to Third Parties”), the following information is provided to the Borrower at paragraph 2(b)(1): “Storage Fee...Pay to: Fresno Auto Dealers Auction. Telephone 559-288-8051.” Thus, the Borrower is informed of the physical location where the vehicle would be returned upon redemption or reinstatement, and the identity of such party, Fresno Auto Dealers Auction – the same entity to which Borrower is instructed to pay storage fees. In my view, these facts are distinguishable from those presented in *Juarez, supra*, 152 Cal.App.4th 889 as there could be no confusion or uncertainty as to the amount and place of payment of such fees.

Borrower simply alleges that the notice in section F “fails to disclose [the] address of the third party, Fresno Auto Dealer’s Auction, to whom storage charges are to be paid, and provides only a telephone number, thus requiring the consumer to contact other entities to obtain information about how to make payments.” In raising these bare

allegations of insufficient notice, Borrower has not alleged that the address stated for Fresno Auto Dealers Auction in section D is incorrect, that it was not the correct address to submit the consumer's payment of storage fees, or that payment of storage fees to this address would not have been satisfactory. I believe Borrower cannot overcome the undisputed fact that the address for Fresno Auto Dealers Auction is contained in the entirety of the documents received as the NOI.

For these reasons, I would uphold the order sustaining the demurrer without leave to amend.

Poochigian, J.