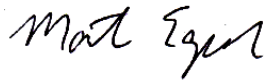


DISTRICT COURT, DENVER COUNTY, COLORADO		
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202		
<b>Plaintiff(s)</b> ANDREW SWENSON et al. v. <b>Defendant(s)</b> SMART VAN LINES GROUP INC et al.		DATE FILED: March 8, 2023 7:31 AM CASE NUMBER: 2022CV31439
		△ COURT USE ONLY △
		Case Number: 2022CV31439 Division: 409                      Courtroom:
<b>Order: Order of Judgment</b>		

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 3/8/2023



MARTIN FOSTER EGELHOFF  
District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	
<b>Plaintiff(s):</b> ANDREW SWENSON and JULIA SEESE, individuals  v.  <b>Defendant(s):</b> SMART VAN LINES GROUP INC., d/b/a SMART VAN LINES, a Florida corporation; PRICELINE LOGISTICS, LLC, a Florida corporation; and MARTIN GALLAGHER, an individual	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> Case No.: 2022CV031439 Division: 409
<b>ORDER OF JUDGMENT</b>	

THIS MATTER comes before the Court upon Plaintiffs Andrew Swenson’s and Julia Seese’s Motion for Default Judgment against Defendants Smart Van Lines Group Inc. d/b/a Smart Van Lines (“Smart Van Lines”) and Priceline Logistics, LLC (“Priceline”). An in-person damages hearing was set for February 13, 2023 at 2:00 p.m. Plaintiffs appeared at the hearing and were represented by counsel. Neither Smart Van Lines nor Priceline appeared at the hearing. The Court received testimony from Plaintiffs at the hearing and admitted Plaintiffs’ Exhibits numbered “1” through “9”. The Court also entertained the arguments made by Plaintiffs’ counsel at the hearing.

Based upon the testimony presented, the Court’s determination of credibility and assessment of the sufficiency and weight of the evidence, as well as applicable law, the Court entered oral rulings and findings from the bench on February 13, 2023. The Court now reduces its oral findings and rulings into writing and enters the following Order of Judgment:

1. Venue and jurisdiction is proper.
2. Plaintiffs initially contracted with Priceline to transport their personal property from Washington to Colorado. Priceline commissioned Smart Van Lines to perform the actual transport of Plaintiffs’ personal property.
3. Plaintiffs entrusted their property to Smart Van Lines, but their property was never delivered by Smart Van Lines.
4. Plaintiffs’ property was stolen while entrusted to Smart Van Lines. All of Plaintiffs’ property was lost and has not been recovered.
5. The Court finds the evidence and testimony presented at hearing regarding the value of Plaintiffs’ lost property to be credible. Plaintiffs provided a list of lost items and

established the value of the lost property by reference to websites for comparable property. The Court finds the total value of Plaintiffs' loss, as documented in Plaintiffs' Exhibit 5, is \$58,071.34.

6. Plaintiffs paid Smart Van lines the amount of \$3,510.38. Plaintiffs also paid Priceline the amount of \$3,103.00. Plaintiffs paid these amounts to these entities for the purpose of moving their personal property. Smart Van Lines and Priceline have not repaid these amounts despite Plaintiffs' demands. Plaintiffs have proven that Smart Van Lines' and Priceline's refusal to repay these amounts constitutes a violation of Colorado's Civil Theft Statute. The Court therefore trebles the amounts owed to Plaintiffs from Smart Van Lines and Priceline to \$10,531.14 and \$9,309.00, respectively.

7. The Court further adopts the theory advanced by Plaintiffs' counsel for an award of all attorneys' fees and costs incurred by Plaintiffs. The Court finds a total of \$31,582.46 in attorneys' fees and costs were incurred by Plaintiffs and Orders that amount in favor of Plaintiffs and against Defendants Smart Van Lines and Priceline.

8. The Court further instructed Plaintiffs to file authority of some kind stating their fraud claims are not barred by application of the economic loss rule and the Court is legally authorized to treble Plaintiffs' damages. The Court has reviewed this authority and adopts the theory advanced by Plaintiffs. The Court finds Plaintiffs' intentional tort claims against Priceline for fraud based on nondisclosure/concealment (First Claim for Relief) and Smart Van Lines for fraudulent misrepresentation (Seventh Claim for Relief) are not barred by the economic loss rule. The Court will therefore treble Plaintiffs' losses of \$58,071.34, resulting in losses of \$174,214.02.

9. At this juncture, the Court finds Plaintiffs have established a loss of \$205,796.48, which is comprised of the value of lost property in the amount of \$174,214.02 (the loss of \$58,071.34 trebled), and reasonable attorneys' fees and costs in the amount of \$31,582.46. The Court **ENTERS JUDGMENT** against Smart Van Lines Group Inc. d/b/a Smart Van Lines and Priceline Logistics, LLC, jointly and severally, and in favor of Plaintiffs in the amount of \$205,796.48. Plaintiffs are also entitled to statutory prejudgment interest at the rate of 8% per annum from January 12, 2022 through February 13, 2023, in the amount of \$17,835.69. Finally, Plaintiffs are entitled to statutory post-judgment interest at the rate of 8% compounded annually until the judgment is paid in full. The judgment amount is subject to offset by the amounts actually paid by dismissed Defendant Martin Gallagher pursuant to the terms of the settlement agreement between Plaintiffs and Defendant Martin Gallagher.

10. The Court **FURTHER ENTERS JUDGMENT** in favor of Plaintiffs and against Defendant Smart Van Lines Group Inc. d/b/a Smart Van Lines individually in the amount of \$10,531.14, the amount paid by Plaintiffs under the contract, trebled pursuant to Colorado's Civil Theft Statute. Plaintiffs are also entitled to statutory prejudgment interest at the rate of 8% per annum, from January 11, 2022 through February 13, 2023. Finally, Plaintiffs are entitled to statutory post-judgment interest at the rate of 8% compounded annually until the judgment is paid in full.

11. The Court **FURTHER ENTERS JUDGMENT** in favor of Plaintiffs and against Defendant Priceline Logistics, LLC individually in the amount of \$9,309.00, the amount paid by Plaintiffs under the contract, trebled pursuant to Colorado's Civil Theft Statute. Plaintiffs are also entitled to statutory prejudgment interest at the rate of 8% per annum, from January 11, 2022

through February 13, 2023. Finally, Plaintiffs are entitled to statutory post-judgment interest at the rate of 8% compounded annually until the judgment is paid in full.

**ACCORDINGLY**, pursuant to C.R.C.P. 58(a), the Court directs the Clerk of Court to enter the following judgment on the register of actions:

- (a) In favor of Plaintiffs Andrew Swenson and Julia Seese, and against Defendants Smart Van Lines Group Inc. d/b/a Smart Van Lines and Priceline Logistics, LLC, jointly and severally, awarding damages in the amount of \$205,796.48, together with prejudgment interest calculated pursuant to C.R.S. §5-12-102 in the amount of \$17,835.69 through February 13, 2023, with interest continuing to accrue on the total judgment, including the trebled portion, at the statutory rate of 8% per annum, compounded annually, until the judgment is satisfied in full.
- (b) In favor of Plaintiffs Andrew Swenson and Julia Seese, and against Defendant Smart Van Lines Group Inc. d/b/a Smart Van Lines in the amount of \$10,531.14, together with prejudgment interest calculated pursuant to C.R.S. §5-12-102 in the amount of \$912.70 through February 13, 2023, with interest continuing to accrue on the total judgment at the statutory rate of 8% per annum, compounded annually, until the judgment is satisfied in full.
- (c) In favor of Plaintiffs Andrew Swenson and Julia Seese, and against Defendant Priceline Logistics, LLC in the amount of \$9,309.00, together with prejudgment interest calculated pursuant to C.R.S. §5-12-102 in the amount of \$806.78 through February 13, 2023, with interest continuing to accrue on the total judgment at the statutory rate of 8% per annum, compounded annually, until the judgment is satisfied in full.

DONE and ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2023, *nunc po tunc* to February 13, 2023.

BY THE COURT:

\_\_\_\_\_  
District Court Judge