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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Case No. 2023-000540

Target Motors, LLC d/b/a Port City Motors, Appellant,

v.

Grand Strand Nissan, Inc., and Grainger Companies, Inc. d/b/a Grainger Honda, Defendants,

Of which Grand Strand Nissan, Inc., is the Respondent.

RECORD ON APPEAL

LAW OFFICES OF BROOKS R. FUDENBERG, LLC
Brooks R. Fudenberg
14 Ashe Street
Charleston, SC 29403
Tel.: (843) 416-2558
BRF@Fudenberglaw.com

C. STEVEN MOSKOS, P.A.
C. Steven Moskos
6650 Rivers Ave., Ste 210
N. Charleston, SC 29406
Tel. (843) 763-5297
Steve@moskoslawfirm.com

Attorneys for Appellant

HAYNSWORTH SINKLER BOYD, P.A.
Mary M. Caskey
P.O. Box 11889
Columbia, South Carolina 29211-1189
(803) 779-3080
mcaskey@hsblawfirm.com

Sarah P. Spruill
P.O. Box 2048
Greenville, South Carolina 29602
(864) 240-3200
sspruill@hsblawfirm.com

Attorneys for Respondent

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2600861

Target Motors LLC et al
PLAINTIFF(S)

Grand Strand Nissan Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion/Compel Defendant Grainger Co. to respond Initial Discovery is Granted. A formal Order to follow by Attorney Moskos.
Defendant's Motion/Summary Judgment is Granted. A Formal Order to Follow by Attorney Mary Caskey.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/05/2023 .

Port City Motors

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Jan 05 9:37 AM - HORRY - COMMON PLEAS - CASE#2022CP2600861

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Horry Common Pleas

Case Caption: Target Motors LLC , plaintiff, et al VS Grand Strand Nissan Inc , defendant, et al

Case Number: 2022CP2600861

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

ELECTRONICALLY FILED - 2023 Jan 19 3:07 PM - HORRY - COMMON PLEAS - CASE#2022CP260861

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-00861

Target Motors, LLC d/b/a Port City Motors,

Plaintiff,

vs.
Grand Strand Nissan, Inc., Grainger Companies, Inc. d/b/a Grainger Honda, and Manheim Remarketing, Inc. d/b/a Manheim, Darlington,

Defendants.

ORDER GRANTING GRAND STRAND NISSAN, INC.'S
MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS

This matter came before the Court on Defendant Grand Strand Nissan, Inc.'s ("Grand Strand") Motion for Summary Judgment as to all claims asserted by Plaintiff Target Motors, LLC d/b/a Port City Motors ("Plaintiff"). A hearing was held before me on January 3, 2023. Mary M. Caskey, Esq. appeared for Grand Strand, and C. Steven Moskos, Esq. appeared for the Plaintiff. William E. Lawson was present for Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger"), but the Motion sought no relief from Grainger. After the hearing and having carefully considered the motion, the parties' memoranda, the summary judgment record, and the arguments of counsel at the hearing, the Court grants summary judgment in favor of Grand Strand as detailed below.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts

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exist on which reasonable minds cannot differ." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

The Court must view the facts and inferences in the light most favorable to the nonmoving party. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). When the nonmoving party bears the burden of proof as to an issue, a party seeking summary judgment may meet this standard by showing the trial court "that there is an absence of evidence to support the nonmoving party's case." *Richardson v. State-Record Co., Inc.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998). "[W]hen ruling on a summary judgment motion, a court must determine whether the plaintiff has established a prima facie case as to each element of a claim…." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). If a plaintiff cannot establish facts on each element of the cause of action asserted, summary judgment is mandated by Rule 56(c), SCRCP. *Id.*

If a motion has been properly made and supported in accordance with Rule 56, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

UNDISPUTED FACTS

Grand Strand is a car dealership that services, repairs, sells, and buys new and used cars. On August 30, 2019, Grand Strand completed wreck-related repairs on a 2018 Nissan Titan SV (the "Truck") owned by Aaron Burnstein. Grand Strand also sold parts to Performance Collision, a body shop that completed other repairs on the Truck. After the Truck was fully repaired, Burnstein traded the Truck into Grand Strand for $24,000.00 on October 14, 2019. Shortly

thereafter, Grand Strand entered the Truck into an online auction owned and operated by Manheim Remarketing, Inc. d/b/a Manheim, Darlington ("Manheim").

On November 14, 2019, co-Defendant Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger") purchased the Truck through the auction for $21,000.00. This transaction was Grand Strand's last connection to the Truck.

About two weeks after the purchase, Grainger entered the Truck into the Charleston Auto Auction, but the Truck was removed from the auction after an AutoCheck report pulled by the auction reported structural damage. Grainger then contacted Manheim about the structural damage to the Truck, and Manheim offered to run the Truck back through Manheim's auction. Although both Grainger and Manheim knew the Truck had structural damage, the Truck was put back through the auction under a green light on December 12, 2019, with no disclosure of the frame damage.

On January 2, 2020, Plaintiff purchased the Truck from Grainger through the auction. Plaintiff admits that Grand Strand was not involved in this transaction and did not communicate with Plaintiff regarding the condition of the Truck at any time prior to Plaintiff's purchase of the Truck. Plaintiff also admits that there is no contract or agreement related to the Truck between Plaintiff and Grand Strand. Further, Plaintiff did not review any disclosures by Grand Strand about the Truck or rely on any information provided by Grand Strand to Grainger when Plaintiff decided to purchase the Truck.

Plaintiff then sold the Truck on its lot to a consumer on January 25, 2020. On February 17, 2020, the consumer complained to Plaintiff about the Truck's structural damage. Plaintiff ultimately paid the consumer $4,000 as the result of the damage to the Truck, and this suit followed.

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DISCUSSION

Ultimately, all of Plaintiff's claims require either that Grand Strand have some form of communication, relationship, or interaction with Plaintiff regarding the history and condition of the Truck and that Grand Strand be the proximate cause of Plaintiff's damages. Grand Strand has shown that there is no evidence to support Plaintiff's claim, and Plaintiff has failed to identify any genuine issue of material fact in rebuttal.[1] The undisputed facts show that Grand Strand did not enter into any transactions with Plaintiff for the sale of the Truck, and Grand Strand did not communicate with Plaintiff at any point prior to this lawsuit about the condition or history of the Truck. Grand Strand's alleged fault is too remote to be linked to Plaintiff's damages as a matter of law, particularly when an intervening party, Grainger, had knowledge of the prior wreck damage and failed to disclose it to the Plaintiff.

1. Plaintiff's claim for negligence fails because Grand Strand owed Plaintiff no duty and did not cause Plaintiff's damages.

To prove negligence, a plaintiff is required to show that "(1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered injury or damages." *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). However, Plaintiff did not prove any genuine issue of material fact as to whether or not Grand Strand owed a duty to Plaintiff, or as to whether Grand Strand was the proximate cause of Plaintiff's damages, and the Court grants summary judgment in favor of Grand Strand on Plaintiff's negligence claim.

[1] In its Memorandum in Opposition to Grand Strand's Motion and at the hearing, Plaintiff argued that summary judgment was premature because Plaintiff had not been able to conduct depositions. However, Plaintiff's representative admitted that Plaintiff never had any communication with Grand Strand of any kind prior to purchasing the Truck, and Plaintiff could not identify any fact that if discovered would create a duty by Grand Strand to Plaintiff. Further, it was undisputed among the Parties that Grainger knew the Truck was wrecked when it sold the Truck to Plaintiff, acknowledging a key intervening fact that would break any causal link between Plaintiff and Grand Strand.

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(i) Grand Strand did not owe a duty to Plaintiff under any theory recognized by South Carolina law.

"If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135-36, 638 S.E.2d 650, 656 (2006). In South Carolina, the duty to disclose has been reduced to three distinct classes:

> (1) where it arises from a preexisting definite fiduciary relation between the parties; (***2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied***; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Wright v. Craft, 372 S.C. 1, 25, 640 S.E.2d 486, 499 (Ct. App. 2006) (emphasis added). Duty is intrinsically tied to the relationship between the parties.

Plaintiff argues that Grand Strand's duty to Plaintiff is implied based on the second class stated above and that the circumstances of this case created a duty from Grand Strand to Plaintiff. However, it is undisputed that there was no contract or transaction between Grand Strand and Plaintiff of any kind. It is also undisputed that Plaintiff and Grand Strand never had any communications about the Truck prior to Plaintiff's purchase of the Truck, and Plaintiff never relied on any documentation or disclosures made by Grand Strand about the Truck.[2] "A tortfeasor's duty arises from his relationship to the injured party." *South Carolina State Ports*

[2] Plaintiff relied on two cases to argue the existence of a duty to a third party, but in both cases, the negligent party intended for unknown third parties to rely on the information and the third parties actually did rely on the negligently prepared information. *See ML-Lee Acquisition Fund, L.P. v. Deloitte v. Touche*, 320 S.C. 143, 463 S.E.2d 618 (Ct. App. 1995) (finding an accountant owed a duty to third parties whom the accountant intended the information to benefit and when the third parties relied on an audit report prepared by the accountant); *Private Mortgage Investment Services, Inc. v. Hotel and Club Associates, Inc.*, 296 F.3d 308 (4th Cir. 2002) (finding an appraiser could be liable to a third party for negligent misrepresentation for information in an appraisal where the appraiser knew the appraiser would be used by third parties and the third party actually relied on the information). In this case, there was no evidence offered that Grand Strand knew that any third party would rely on information presented during the sale to Grainger, nor any evidence that Plaintiff actually relied on any omissions or representations by Grand Strand in the first sale to Grainger. Therefore, there is no basis to find that Grand Strand owed any duty to Plaintiff.

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Authority v. Booz–Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325–26 (1986). For liability to attach, "the parties shall have sustained a relationship recognized by law as the foundation of a duty of care." *Ravan v. Greenville Cnty.*, 315 S.C. 447, 467, 434 S.E.2d 296, 308 (Ct. App. 1993). "Where this relationship is too attenuated, a duty will not arise." *Id.* (citations omitted).

Any other duty Plaintiff claims that Grand Strand owes is too attenuated and not recognized by South Carolina law. Plaintiff argues that because Grand Strand knew that the Truck might be sold by Grainger and subsequent owners, Grand Strand's liability expands to all future owners of the Truck. However, whether a duty of care exists is a matter of law, and South Carolina has been reluctant to recognize or create new duties of care that would expand the scope of traditional tort liability. *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003). *See, e.g., Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003) (holding that a school owes no duty of care to a student in giving advice concerning the courses the student should take); *Wyatt v. Fowler, 326 S.C. 97*, 484 S.E.2d 590 (1997) (holding that the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them); *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992) (holding that the South Carolina Public Service Authority had no duty to discover and warn of a latent hazardous condition on land that it leased to another). South Carolina has not recognized a theory of liability where a previous vehicle owner could be held liable to a future purchaser for failing to disclose wreck damage where the parties had no relationship or interaction, and the Court declines to create one here.

Plaintiff also alleges that Grand Strand owed him a contractual duty to disclose prior wreck damage, even though Plaintiff admits that it was not in privity of contract with Plaintiff. Plaintiff relies heavily on the contractual provisions of the Auction Policy that governed the relationship

between Grand Strand, Manheim, and Grainger. However, Plaintiff was not a third party beneficiary to the Auction Policy, and it is undisputed that Grand Strand no contractual duties to Plaintiff.[3]

Finally, Plaintiff argued that Grand Strand owed Plaintiff a statutory duty under the UTPA and Dealers' Act to disclose prior wreck damage. However, neither statute imposes a duty on vehicle owners to disclose damage to future, unknown owners, and Grand Strand's actions could not have been unfair or deceptive to Plaintiff when Grand Strand did not own the Truck at the time of the sale and Grand Strand did not interact with Plaintiff prior to the Truck's purchase.

(ii) Grand Strand was not the proximate cause of any damage suffered by Plaintiff.

Even if Grand Strand owed a duty to Plaintiff, its claims for negligence still fail as a matter of law because Plaintiff failed to prove that Grand Strand was the proximate cause of Plaintiff's damages. A claim for "[n]egligence is not actionable unless it is a proximate cause of the injury." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 83 (1998). "Proximate cause requires proof of: (1) causation-in-fact, and (2) legal cause." *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006). "Causation-in-fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence, and legal cause is proved by establishing foreseeability." *Id.* Although the issue of proximate cause is generally one for the jury, "when the evidence is susceptible of only one inference, [] proximate cause becomes a matter of law for the court." *Bishop*, 331 S.C. at 89, 502 S.E.2d at 83.

[3] Further, a breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie." T*ommy L. Griffin Plumbing & Heating Co. v. Jordon, Jones & Goulding, Inc.*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995) ("In most instances, a negligence action will not lie when the parties are in privity of contract."). Only if a duty arises independently from any contractual duties between the parties can there possibly be a tort action. *Id.*

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Here, the only inference the Court can reach is that Grand Strand was not the proximate cause of Plaintiff's damages. The evidence in the record demonstrated that Grainger was fully aware that the Truck had been damaged when it sold the Truck to Plaintiff. Any duty to disclose was Grainger's and any damage to Plaintiff was caused by Grainger. The test for cause in fact is not: "but for" Grand Strand's sale to Grainger, Plaintiff suffered damages. Instead, the test here is "but for" Grainger's failure to disclose known wreck damage and "but for" Grainger knowingly selling the Truck back through the auction without disclosing the damage, Plaintiff suffered damages. There are simply too many intervening negligent events to link Grand Strand to Plaintiff's damages. *See Oliver v. South Carolina Dep't of Highways & Public Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992) (stating that an intervening cause can render initial negligence too remote).

2. There are no representations to support Plaintiff's fraud or negligent misrepresentation claims.

It is undisputed between the Parties that Grand Strand never made any representation to Plaintiff, by omission or otherwise, because Grand Strand did not know the identity of Plaintiff, did not participate in the sale of the Truck to Plaintiff, and did not have any interaction of any kind with Plaintiff. Without a representation, Plaintiff's claims for negligent misrepresentation and fraud fail as a matter of law. *See Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 273, 847 S.E.2d 793, 802–03 (Ct. App. 2020) (finding that a negligent misrepresentation claim must have a representation made to the plaintiff); *Sorin Equip. Co. v. The Firm, Inc.*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (Ct. App. 1996) (determining that a fraud claim must have a material false representation to survive). Here, Plaintiff's claims rest solely on representations made by Grand Strand to Grainger, and not by representations made by Grand Strand to Plaintiff. Any claims arising from Grand Strand's representations to Grainger are Grainger's claims alone.

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Further, for negligent misrepresentation and fraud claims, a plaintiff must prove that the defendant was the proximate cause of actual damages and that the damage was suffered as a result of the reliance on the representation. As already outlined above, Grand Strand was not the proximate cause of any damage suffered by Plaintiff, and the Court grants summary judgment in favor of Grand Strand on these claims.

3. Grand Strand did not act unfairly or deceptively towards Plaintiff.

There is no evidence of an unfair or deceptive act by Grand Strand as to Plaintiff. To prove a claim under the UTPA, the plaintiff must establish that "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013); *see also* S.C. Code Ann. § 39-5-20. It is axiomatic that Grand Strand could not have committed an unfair or deceptive act against Plaintiff because it never engaged in or entered into a transaction with Plaintiff.

Additionally, "[t]he statute clearly requires that in order to recover pursuant to the UTPA one must prove each of the following three elements . . . 1) a violation of the Act, 2) proximate cause, and 3) damages." *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct. App. 1995). As with Plaintiff's other claims, it has failed to prove that Grand Strand was the proximate cause of its damages, and therefore cannot recover under the UTPA. South Carolina law does not recognize a theory of liability for a vehicle owner to pursue claims against a dealer with whom the owner had no direct contact with solely because the dealer placed the vehicle in the stream of commerce. The Court grants summary judgment in favor of Grand Strand as to Plaintiff's UTPA claim.

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4. Grand Strand did not violate the Dealers Act.

For the same reasons the Court granted summary judgment in favor of Grand Strand on Plaintiff's UTPA claim, the Court grants summary judgment as to Plaintiff's South Carolina Motor Vehicle Dealer's Act claim (the "Dealers Act"). The Dealers Act provides that unfair deceptive acts or practices as defined in section 56-15-40 are unlawful. S.C. Code Ann. § 56-15-30(a). Specifically, the Act provides that it is unlawful for any motor vehicle dealer to "engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damages to any of the parties or to the public." S.C. Code Ann. § 56-15-40(B). However, a party can only recover under the Act against the dealer who proximately caused the party's damage.

Plaintiff has not produced any evidence to show that Grand Strand acted arbitrarily or in bad faith towards Plaintiff because Grand Strand has never taken any action towards Plaintiff at all. Plaintiff was not a party to Grand Strand's contract to sell the Truck, and Grand Strand never communicated with Plaintiff about the Truck or its condition. And as outlined above, Grand Strand cannot be held liable for fraud or for its refusal to fulfill a duty or contractual obligation because Grand Strand did not owe a duty to Plaintiff and did not have a contract with Plaintiff setting forth any obligations owed by Grand Strand. Ultimately, nothing Grand Strand did could be construed as the proximate cause of Plaintiff's damages because Grand Strand's transactions did not involve Plaintiff or directly harm Plaintiff. Grainger is the only party that contracted and communicated with Plaintiff and is the only party that can be held liable in this action.

CONCLUSION

For the above reasons, the Court grants Grand Strand's motion and finds that judgment shall be entered in favor of Grand Strand on all claims asserted by the Plaintiff.

IT IS SO ORDERED.

_____

William H. Seals Jr.
Horry County
Fifteenth Judicial Circuit

_____, 2023

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Horry Common Pleas

Case Caption: Target Motors LLC , plaintiff, et al VS Grand Strand Nissan Inc , defendant, et al

Case Number: 2022CP2600861

Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2600861

Target Motors LLC et al
PLAINTIFF(S)

Grand Strand Nissan Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

After very careful and deliberate consideration, Judge Seals is hereby denying Plaintiff's Motion to Reconsider the Court's Order Granting Grand Strand Nissan, Inc.'s Motion for Summary Judgment.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/02/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Mar 03 8:51 AM - HORRY - COMMON PLEAS - CASE#2022CP2600861

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Horry Common Pleas

Case Caption: Target Motors LLC , plaintiff, et al VS Grand Strand Nissan Inc , defendant, et al

Case Number: 2022CP2600861

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 4/18/2022 at 11:41 AM EDT and filed on 4/18/2022

Case Name: Target Motors LLC v. Grand Strand Nissan Inc et al
Case Number: 4:22-cv-00908-RBH
Filer:
Document Number: 18(No document attached)

Docket Text:

TEXT ORDER granting Plaintiff Target Motors, LLC's [10] motion to amend the complaint to remove Manheim Remarketing, Inc. as a party defendant, granting Plaintiff's motion to dismiss without prejudice the eighth cause of action under the Federal Odometer Act, and granting Plaintiff's motion to remand. Plaintiff's motion indicates that counsel for Defendant Manheim Remarketing, Inc. and Defendant Grand Strand Nissan, Inc. consent to the proposed amendment to the complaint and remand of this case to state court. Counsel for Defendant Grainger Companies, Inc. also consents to the dismissal of the cause of action under the Federal Odometer Act and has filed no opposition to the requested remand of this case to state court. As this case was removed to federal court under federal question jurisdiction based solely on the Federal Odometer Act cause of action, which has now been dismissed, this Court finds that remand to state court is appropriate. The Clerk of Court is directed to file the Amended Complaint and remand this case to the Horry County Court of Common Pleas. Signed by Chief Judge R Bryan Harwell on 4/18/2022.(tmcb,)

A TRUE COPY ATTEST:
ROBIN L. BLUME, CLERK
BY: s/H.Ciccolella, Deputy Clerk
4/18/2022

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., AND GRAINGER COMPANIES, INC. d/b/a GRAINGER Honda, Defendants.	Case No.: 4:22-cv-00908-RBH **AMENDED COMPLAINT**

Plaintiff, complaining of Defendants, alleges the following:

1. That Plaintiff Target Motors, LLC d/b/a Port City Motors, hereinafter Port City, is a limited liability company organized and existing pursuant to the laws of the United States of America. Plaintiff is authorized to do business in the State of North Carolina.

2. That Defendants Grand Strand Nissan, Inc. is a limited liability companies organized and licensed in the State of South Carolina, and are doing business in the county of Horry, South Carolina.

3. That Defendant Grainger Companies, Inc. d/b/a Grainger Honda is a limited liability company organized and licensed in the State of Georgia, and is doing business in the county of Chatham, Georgia.

4. That Manheim Remarketing, Inc. d/b/a Manheim Darlington, hereinafter Manheim, is a limited liability company organized and licensed in the State of South Carolina, and is doing business in the county of Darlington, South Carolina.

5. That in 2019 Aaron Burstein owned a 2018 Nissan Titan SV K1500 VIN: 1N6AA1C50JN508002.

6. That on August 12, 2019, Mr. Burstein and the 2018 Titan were involved in a wreck in Myrtle Beach, South Carolina.

7. That Performance Collision in Myrtle Beach began repairs to the truck.

8. That on August 13, 2019, North Strand Nissan began performing wreck related repairs to the Titan.

9. That on August 30, 2019, Defendant Grand Strand Nissan began performing wreck related repairs to the Titan.

10. That on or about October 2, 2019, Grand Strand Nissan performed additional work on the Nissan related to the wreck damage.

11. That at some point the vehicle was brought to Grand Strand Nissan as the odometer was inoperable.

12. That Grand Strand Nissan performed repairs to the odometer.

13. That the odometer reading did not reflect the actual miles the truck had been driven.

14. That the wreck caused approximately $18,000.00 worth of damage.

15. That the repairs to the vehicle included replacing the frame as it had been bent in the wreck.

16. That on or about October 14, 2019, Mr. Burstein sold the Titan to Grand Strand Nissan.

17. That on November 14, 2019, Grand Strand Nissan, through Manheim, sold the Titan to Grainger Honda without disclosing the prior wreck damage or the odometer discrepancy.

18. That after the sale, Grainger Honda learned of the prior wreck damage.

19. That Defendant Grainger Honda complained to Manheim that it had been sold a vehicle with prior wreck damage which was not disclosed at the time of the sale.

20. That Manheim recommended to Defendant Grainger Honda that Defendant Grainger run the car back through the auction.

21. That Grainger Honda complained to Defendant Grand Strand Nissan that Defendant Grand Strand Nissan had sold a vehicle with prior wrecked damage which was not disclosed at the time of the sale.

22. That Defendant Grand Strand Nissan refused to accept responsibility for selling a previously wrecked vehicle without disclosure.

23. That Grainger Honda decided to sell the Titan through Manheim's auction instead of trying to sell it on its lot.

24. That Grainger Honda and Grand Strand Nissan decided to sell the Titan through Manheim's auction.

25. That on or about January 2, 2020, Grainger Honda offered the Titan for sale through Manheim in Darlington, South Carolina via an online auction.

26. That on or about January 2, 2020, Defendant Grainger Honda knew the subject vehicle had been previously damaged and repaired.

27. That Defendant Grainger Honda did not notify potential buyers that the Titan had been previously wrecked.

28. That Defendant Grainger Honda did not instruct Manheim to notify or announce to potential buyers that the Titan had been previously wrecked.

29. That Grainger Honda sold the truck under a green light indicating that the Titan did not have any mechanical or structural issues.

30. That Grainger Honda sold the truck under a green light indicating that the Titan

had not been previously wrecked

31. That on January 2, 2020, Defendant Grainger Honda advertised the Titan for sale.

32. That on January 2, 2020, Plaintiff purchased the Titan from Grainger Honda via Manheim's online auction.

33. That based on the representations of Defendants' agents and employees that the vehicle was in good shape and safe to drive, Plaintiff purchased the Titan from Defendant Grainger Honda.

34. That the vehicle was transported to Plaintiff's dealership in Morehead City, North Carolina.

35. That on January 25, 2020, Plaintiff sold the vehicle to Ana Bey.

36. That on or about February 17, 2020, Plaintiff received a phone call from Ms. Bey's husband informing Plaintiff that the Titan had been involved in a wreck suffering structural or frame damage.

37. That on February 19, 2020, Plaintiff agreed to pay Ms. Bey $4,000 to resolve her dispute with Plaintiff.

38. That Plaintiff has had to hire an attorney to represent it in this matter.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Grainger Honda)

39. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

40. That Plaintiff entered into a contract with Defendant Grainger Honda for the purchase of a vehicle which did not have any prior wreck damage, was in excellent condition, safe, and could be operated and used dependably.

41. That Defendant Grainger Honda failed to sell to Plaintiff a vehicle which had not been wrecked, was in excellent condition, safe, and could be operated and used

dependably.

42. That as a result of Defendant's breach of contract, Plaintiff has been damaged in that it has lost the benefit of the bargain it made with Defendant Grainger Honda and it has paid more for a vehicle than what it is worth.

43. That as a result of Defendant's breach of contract, Plaintiff has suffered actual damages, together with the costs and disbursements of this action.

FOR A SECOND CAUSE OF ACTION
(Negligence as to all Defendants)

44. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

45. That Defendants owed a duty to Plaintiff in one or more of the following particulars:

a. To research the history of the subject vehicle prior to buying it;

b. To hire appraisers who could properly look for and evaluate damage previously done to vehicles;

c. To train properly managers, service managers, and service employees to evaluate properly previous damage done to vehicles;

d. To inspect the subject vehicle thoroughly prior to offering it for sale;

e. To represent properly and truthfully the cars Defendants offered for sale;

f. To notify Plaintiff and other purchasers of prior damage to the vehicle; and

g. To do those things which a reasonable, prudent person or company would do under the circumstances then and there prevailing.

46. That Defendants failed to perform one or more of the aforementioned duties.

47. That as a result of Defendants' negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made

with Defendants, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

48. That as a result of Defendants' negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiff demands actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation as to all Defendants)

49. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

50. That Defendants made false representations to Plaintiff.

51. That Defendants had a pecuniary interest in making the statements.

52. That Defendants owed a duty of care to communicate truthful information to Plaintiff.

53. That Defendants breached that duty by failing to exercise due care.

54. That Plaintiff justifiably relied on Defendant's representations.

55. That Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made with Defendants, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

56. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiff was damaged, thereby entitling Plaintiff to actual and punitive damages together with prejudgment interest, together with the costs and disbursements of

this action.

FOR A FOURTH CAUSE OF ACTION
(Fraud as to all Defendants)

57. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

58. That Defendants' agents and employees failed to disclose to Plaintiff material facts regarding the prior wreck in which the vehicle was involved.

59. That Defendants failed to disclose to Plaintiff material facts regarding the damage sustained by the Titan as a result of the wreck in which the Titan was involved.

60. That the Defendants' agents and employees made false representations of material fact to Plaintiff.

61. That Defendant knew or should have known that the representations which were made to Plaintiff were false.

62. That Defendant intended that Plaintiff rely upon their misrepresentations of material fact concerning the condition of the vehicle.

63. That Plaintiff was unaware of the falsity of the representations and at the time the representations were made, Plaintiff were unable to discover the falsity of the representations made by Defendants' agents and employees.

64. That Plaintiff had a right to rely and did rely upon the representations made by Defendants' agents and employees.

65. That Defendants had an obligation to inform Plaintiff that the vehicle had previously been wrecked and rebuilt.

66. That Defendants failed to fulfill their obligations to Plaintiff.

67. That Defendants' failure to disclose to Plaintiff the condition of the Titan constitutes affirmative fraud, fraudulent concealment, or nondisclosure of material facts

regarding the transaction.

68. That as a result of the Defendants' fraud, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made with Defendants, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

69. That because of Defendants' fraud, Plaintiff demands its actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
(Regulation of Motor Vehicle Dealers Act)

70. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

71. That Plaintiff is informed and believes that the malicious and deceptive acts and practices of Defendants constitute a violation of Section 56-15-10 et. seq. of the South Carolina Code of Laws 1976.

72. That as a result of Defendants' deceptive acts and practices, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has incurred various repair bills, it has lost the benefit of the bargain it made with the Defendant, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

73. That as a result of Defendants' violation of this State's Statutes dealing with the regulation of motor vehicle dealers, Plaintiff demands twice its actual damages, together with punitive damages not to exceed three times the actual damages,

together with attorney fees, together with the costs and disbursements of this action.

FOR A SIXTH CAUSE OF ACTION
(UTPA Violation)

74. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

75. That the aforementioned acts and practices of Defendants were unfair and deceptive.

76. That the aforementioned acts and practices of Defendants are against the public interest and that these acts and practices are capable of repetition.

77. That Defendants' actions were willful and wanton in that Defendants knew or should have known that their conduct was unfair and deceptive and, therefore, a violation of this State's statutes concerning unfair and deceptive acts and practices.

78. That as a result of the Defendants' violation of the Unfair Trade Practices Act, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made with Grand Strand, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

79. That as a result of Defendants' violation of the Unfair Trade Practices Act, the Plaintiff is entitled to its actual damages, together with three (3) times its actual damages, together with attorney's fees, together with the costs and disbursements of this action.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

a. In the First Cause of Action for its actual damages together with the costs and disbursements of this action.

b. In the Second Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

c. In the Third Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

d. In the Fourth Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

e. In the Fifth Cause of Action for two (2) times the actual damages, together with punitive damages not to exceed three times the actual damages, together with attorney's fees, together with the costs and disbursements of this action.

f. In the Sixth Cause of Action for three (3) times the actual damages, together with attorney's fees, together with the costs and disbursements of this action.

g. For an award of reasonable attorney's fees.

h. For such other and further relief as this Court deems just and proper.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF

BY: s/C. Steven Moskos
SC Bar# 7938
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
April 1, 2022

ELECTRONICALLY FILED - 2022 Apr 26 3:51 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2022-CP-26-00861

Target Motors, LLC d/b/a Port City Motors,

Plaintiff,

vs.

Grand Strand Nissan, Inc. Grainger Companies, Inc. d/b/a Grainger Honda, and Manheim Remarketing, Inc. d/b/a Manheim Darlington,

Defendants.

ANSWER OF GRAND STRAND NISSAN, INC. TO AMENDED COMPLAINT

Defendant Grand Strand Nissan, Inc. ("Grand Strand") hereby answers Plaintiff's Amended Complaint as follows:

1. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 1 and therefore denies them.

2. Answering the allegations of paragraph 2, Grand Strand states that it is a corporation organized under South Carolina law, and Grand Strand does business in Horry County, South Carolina.

3. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 3 and therefore denies them.

4. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore denies them.

5. Grand Strand admits the allegation of paragraph 5.

6. Answering the allegations of paragraph 6, Grand Strand admits on information and belief that the 2018 Titan was involved in a collision in 2019, Grand Strand is without

information or knowledge sufficient to form a belief as to the truth of the remaining allegations and therefore, Grand Strand denies them.

7. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 7 and therefore denies them.

8. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 8 and therefore denies them.

9. Grand Strand admits the allegations of paragraph 9.

10. Grand Strand admits the allegations of paragraph 10.

11. On information and belief, Grand Strand admits the allegations of paragraph 11.

12. Grand Strand admits the allegations of paragraph 12.

13. Grand Strand denies the allegations of paragraph 13.

14. Grand Strand is without information or knowledge to form a belief as to the truth of the allegations of paragraph 14 and therefore denies them.

15. Grand Strand admits the allegations of paragraph 15.

16. Answering the allegations of paragraph 16, Grand Strand admits Mr. Burstein traded in the 2018 Titan to Grand Strand.

17. Answering the allegations of paragraph 17, Grand Strand admits it sold the Titan through Manheim, but denies that it committed any wrongful acts or failed to make any required disclosures.

18. On information and belief, Grand Strand denies the allegations of paragraph 18.

19. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies them.

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20. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 20, and therefore denies them.

21. On information and belief, Grand Strand denies the allegation of paragraph 21.

22. Answering the allegations of paragraph 22, Grand Strand denies that it had any responsibility or liability to Grainger, and is without information or belief sufficient to form a belief as to the truth of the remaining allegations of paragraph 22, and therefore denies them.

23. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 23, and therefore denies them.

24. Answering the allegations of paragraph 24, Grand Strand admits that it sold the 2018 Title through Manheim's auction, but is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 24, and therefore denies them.

25. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 25, and therefore denies them.

26. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 26. and therefore denies them.

27. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies them.

28. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 28, and therefore denies them.

29. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 29, and therefore denies them.

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30. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 30, and therefore denies them.

31. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 31, and therefore denies them.

32. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 32, and therefore denies them.

33. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies them.

34. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 34, and therefore denies them.

35. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies them.

36. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 36, and therefore denies them.

37. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 37, and therefore denies them.

38. Answering the allegations of paragraph 38, Grand Strand admits that Plaintiff is represented by an attorney but denies that it was the proximate cause of Plaintiff needing to hire an attorney or that Grand Strand committed any wrongful acts making it liable to Plaintiff.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract-Grainger Honda)

39. The allegations of paragraphs 39 through 43 do not apply to Grand Strand, and do not require a response from Grand Strand. To the extent a response is required, Grand Strand denies the allegations.

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FOR A SECOND CAUSE OF ACTION
(Negligence as to all Defendants)

40. Answering the allegations of paragraph 44, Grand Strand repeats its prior allegations as fully as if repeated herein.

41. Grand Strand denies the allegations of paragraph 45.

42. Grand Strand denies the allegations of paragraph 46.

43. Grand Strand denies the allegations of paragraph 47.

44. Grand Strand denies the allegations of paragraph 48.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation as to all Defendants)

45. Answering the allegations of paragraph 49, Grand Strand repeats its prior allegations as fully as if repeated herein.

46. Grand Strand denies the allegations of paragraph 50.

47. Grand Strand denies the allegations of paragraph 51.

48. Grand Strand denies the allegations of paragraph 52.

49. Grand Strand denies the allegations of paragraph 53.

50. Grand Strand denies the allegations of paragraph 54.

51. Grand Strand denies the allegations of paragraph 55.

52. Grand Strand denies the allegations of paragraph 56.

FOR A FOURTH CAUSE OF ACTION
(Fraud as to all Defendants)

53. Answering the allegations of paragraph 57, Grand Strand repeats its prior allegations as fully as if repeated herein.

54. Grand Strand denies the allegations of paragraph 58.

55. Grand Strand denies the allegations of paragraph 59.

56. Grand Strand denies the allegations of paragraph 60.

57. Grand Strand denies the allegations of paragraph 61.

58. Grand Strand denies the allegations of paragraph 62.

59. Grand Strand denies the allegations of paragraph 63.

60. Grand Strand denies the allegations of paragraph 64.

61. Grand Strand denies the allegations of paragraph 65.

62. Grand Strand denies the allegations of paragraph 66.

63. Grand Strand denies the allegations of paragraph 67.

64. Grand Strand denies the allegations of paragraph 68.

65. Grand Strand denies the allegations of paragraph 69.

FOR A SIXTH CAUSE OF ACTION
(Regulation of Motor Vehicle Dealers Act)

66. Answering the allegations of paragraph 70, Grand Strand repeats its prior allegations as fully as if repeated herein.

67. Grand Strand denies the allegations of paragraph 72.

68. Grand Strand denies the allegations of paragraph 72.

69. Grand Strand denies the allegations of paragraph 73.

FOR A SEVENTH CAUSE OF ACTION
(UTPA Violation)

70. Answering the allegations of paragraph 74, Grand Strand repeats its prior allegations as fully as if repeated herein.

71. Grand Strand denies the allegations of paragraph 75.

72. Grand Strand denies the allegations of paragraph 76.

73. Grand Strand denies the allegations of paragraph 77.

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74. Grand Strand denies the allegations of paragraph 78.

75. Grand Strand denies the allegations of paragraph 79.

76. Grand Strand denies that Plaintiff is entitled to the relief in its prayer for relief.

FOR A SECOND DEFENSE

77. The Complaint fails to state facts sufficient to constitute a cause of action as to Grand Strand and should be dismissed pursuant to Rule 12(b)(6), FRCP.

FOR A THIRD DEFENSE

78. Plaintiff's claims for damages, if any, directly and proximately result, in whole or in part, from the intervening and superseding acts of third parties over whom Grand Strand had no control and is not responsible.

FOR A FOURTH DEFENSE

79. Even if Grand Strand was negligent as alleged in the Plaintiff's Complaint, which is specifically denied, any damage suffered by the Plaintiff was due to his own comparative negligence so as to bar or partially bar any recovery in this matter.

FOR A FIFTH DEFENSE

80. That, even if Grand Strand was negligent, as alleged in the Plaintiff's Complaint, which is specifically denied, the negligence of Grand Strand is not the direct or proximate cause of any injury alleged by the Plaintiff and, therefore, Grand Strand is not liable for any damages allegedly sustained by the Plaintiff.

FOR A SIXTH DEFENSE

81. Grand Strand's claims are barred by all equitable doctrines available to Grand Strand, including, but not limited to, laches, ratification, unclean hands, waiver, estoppel, and unjust enrichment.

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FOR A SEVENTH DEFENSE

82. Grand Strand hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and, thus, reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answer Plaintiff's Complaint, Grand Strand prays that the Complaint be dismissed and that the Court grant such other and further relief as may be just and proper.

/s/ Mary M. Caskey
Mary M. Caskey (SC Bar #76198)

HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
Phone: 803-779-3080
Fax: 803-765-1243
mcaskey@hsblawfirm.com

Attorneys for Grand Strand Nissan, Inc.

April 26, 2022

ELECTRONICALLY FILED - 2022 Apr 29 12:45 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861

STATE OF SOUTH CAROLINA	)	IN THE CORT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Docket No.: 2022-CP-26-00861
TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, v. GRAND STRAND NISSAN, INC. AND GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, Defendants, v. MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Third-Party Defendant.	)	**ANSWER TO AMENDED COMPLAINT ON BEHALF OF GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA AND CROSS-CLAIM AGAINST GRAND STRAND NISSAN, INC. AND THIRD-PARTY COMPLAINT AGAINST MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON**

The Defendant, Grainger Companies, Inc. d/b/a Grainger Honda, makes answer to the Amended Complaint and would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Amended Complaint not hereinbelow specifically admitted, qualified or denied.

2. This Defendant admits, upon information and belief, the allegations of Paragraphs 1 and 2 of the Amended Complaint.

3. This Defendant admits the allegations of Paragraph 3 of the Amended Complaint.

4. This Defendant admits, upon information and belief, the allegations of Paragraph 4 of the Amended Complaint.

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5. This Defendant does not have sufficient information to form a belief as to the allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 and would deny the same.

6. This Defendant admits so much of Paragraph 17 that alleges that on or about November 14, 2019 Grand Strand Nissan sold the Titan to Grainger Honda through Third-Party Defendant Manheim.

7. This Defendant does not have sufficient information to form a belief as to the allegations of Paragraphs 19 through 38 of the Amended Complaint and would deny same.

8. This Defendant denies allegations of Paragraph 39 of the Amended Complaint which are not inconsistent with the foregoing.

9. This Defendant denies the allegations of Paragraphs 40 through 43 of the Amended Complaint.

10. This Defendant denies allegations of Paragraph 44 of the Amended Complaint which are not inconsistent with the foregoing.

11. This Defendant denies the allegations of Paragraphs 45 through 48 of the Amended Complaint.

12. This Defendant denies allegations of Paragraph 49 of the Amended Complaint which are not inconsistent with the foregoing.

13. This Defendant denies the allegations of Paragraphs 50 through 56 of the Amended Complaint.

14. This Defendant denies allegations of Paragraph 57 of the Amended Complaint which are not inconsistent with the foregoing.

15. This Defendant denies the allegations of Paragraphs 58 through 69 of the Amended Complaint

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16. This Defendant denies allegations of Paragraph 70 of the Amended Complaint which are not inconsistent with the foregoing.

17. This Defendant denies the allegations of Paragraphs 71 through 73 of the Amended Complaint.

18. This Defendant denies allegations of Paragraph 74 of the Amended Complaint which are not inconsistent with the foregoing.

19. This Defendant denies the allegations of Paragraphs 75 through 79 of the Amended Complaint.

20. This Defendant denies the Wherefore clause of the Amended Complaint.

AS AN ADDITIONAL DEFENSE
(Comparative Negligence)

21. FURTHER ANSWERING, any damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Because Plaintiff's negligence or willfulness may be greater than the alleged negligence or willfulness of one or more adverse parties, Plaintiff may be barred from recovery.

AS AN ADDITIONAL DEFENSE
(Third Party)

22. FURTHER ANSWERING, any injury or damage sustained was due to and caused by the negligence, gross negligence, willfulness, wantonness, or carelessness on the part of some third party over whom this Defendant had or has no authority or control.

AS AN ADDITIONAL DEFENSE
(Reservation of Rights)

23. FURTHER ANSWERING, this Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery about the allegations of this lawsuit. This Defendant gives notice of the intent to assert any further affirmative defenses that any investigation

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supports, including, but not limited to, defenses that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, this Defendant reserves the right to amend this pleading to assert any such defenses.

FOR A THIRD AND FURTHER DEFENSE
AND AS CROSS-CLAIM AGAINST
GRAND STRAND NISSAN, INC.
AND THIRD-PARTY COMPLAINT AGAINST
MANHEIM REMARKETING, INC.

26. That the Defendant Grand Strand Nissan, Inc. (hereinafter "Grand Strand Nissan") is a limited liability company organized and licensed in the State of South Carolina and doing business in the County of Horry, South Carolina.

27. That the Third-Party Defendant Manheim Remarketing, Inc. d/b/a Manheim Darlington (hereinafter "Manheim Remarketing" or "Manheim") is a limited liability company organized and licensed in the State of South Carolina and doing business in the County of Darlington, South Carolina.

AS A FIRST CAUSE OF ACTION
BREACH OF CONTRACT AS TO MANHEM REMARKETING

28. This answering Defendant repeats all previous paragraphs as if repeated herein verbatim.

29. That this answering Defendant entered into a contract with Manheim so that this Defendant could buy and sell cars at any Manheim location.

30. That this answering Defendant entered into a contract with Manheim to inspect the subject truck after purchasing, called a post-sale inspection.

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31. That as part of the contract for auction services and as part of the contract for the inspection of the subject vehicle, Manheim was to inform this answering Defendant of any prior wreck damage to the truck.

32. That Manheim failed to inspect the Titan properly and to inform this answering Defendant of any prior issues/damages to the truck.

33. That Manheim breached its contract with this answering Defendant and this answering Defendant has been damaged for the lost value of the vehicle.

AS A SECOND CAUSE OF ACTION
BREACH OF CONTRACT AS TO GRAND STRAND NISSAN

34. This answering Defendant repeats all previous paragraphs as if repeated herein verbatim.

35. This answering Defendant entered into a contract with the Grand Strand Nissan for the purchase of the vehicle which did not have any prior wreck damage.

36. That the Grand Strand Nissan failed to advise this answering Defendant that the vehicle had been wrecked and had undergone repairs.

37. That Grand Strand Nissan failed in selling to this answering Defendant a vehicle which had been wrecked.

38. That as a result of Grand Strand Nissan's breach of contract, this answering Defendant has been damaged in that it paid more for a vehicle than the value of that vehicle.

39. That as a result of Grand Strand Nissan's breach of contract, this answering Defendant has suffered actual damages together with costs and disbursements of the action.

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AS A THIRD CAUSE OF ACTION
NEGLIGENCE AS TO BOTH GRAND STRAND NISSAN AND MANHEIM REMARKETING, INC.

40. This answering Defendant repeats all previous paragraphs as if repeated herein verbatim.

41. That Grand Strand Nisan and Manheim owed a duty to this Defendant and has breach those duties. These duties include, but are not limited to:

a. Research the history of the subject vehicle prior to buying it;

b. Hire appraisers who could properly look for and evaluate damage previously done to vehicles;

c. Train properly managers, service managers, and service employees to evaluate properly previous damage done to vehicles;

d. Inspect the subject vehicle thoroughly prior to offering it for sale;

e. Represent properly and truthfully the cars they offered for sale;

f. Notify answering Defendant and other purchasers of prior damage to the vehicle; and

g. Do those things which a reasonable, prudent person or company would do under the circumstances then and there prevailing.

42. That as a result of Grand Strand Nisan's and Manheim's negligence, carelessness, recklessness, willfulness, and wantonness, this answering Defendant has been damaged in that it purchased the vehicle at a price more than the vehicle was worth.

43. That as a result of Grand Strand Nisan's and Manheim's negligence, carelessness, recklessness, willfulness and wantonness, the answering Defendant suffered actual and punitive damages.

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AS A FOURTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION AS TO BOTH GRAND STRAND NISSAN AND MANHEIM REMARKETING, INC.

44. This answering Defendant repeats all previous paragraphs as if repeated herein verbatim.

45. Grand Strand Nisan and Manheim made false representations to the Plaintiff. Misrepresentations occurred at the sale of the 2018 Titan at Manheim's Darlington auction lot in Darlington, South Carolina.

46. These misrepresentations occurred as to Manheim again on January 2, 2020 at Manheim's Darlington auction lot in Darlington, South Carolina.

47. The negligence misrepresentations are in connection with the sale of the 2018 Titan at both sales events at Manheim Darlington.

48. Grand Strand Nisan and Manheim had a pecuniary interest in making these statements.

49. Manheim and Grand Strand Nissan, owed a duty of care to communicate critical information to this answering Defendant as it related to the auction of the vehicle.

50. Manheim and Grand Strand Nissan, breached that duty by failing to exercise due care.

51. That this answering Defendant, Grainger Honda, had a right to rely on the representations made by both Grand Strand Nissan and Manheim.

52. That this answering Defendant, Grainger Honda, had been damaged in that it first purchased the vehicle that was not as represented and then has been sued based upon Manheim's continued misrepresentations as to the condition of the vehicle.

53. As a direct and proximate result of Grand Strand Nissan and Manheim's negligent misrepresentation, this answering Defendant has been damaged as to both actual and punitive damages.

WHEREFORE, having answered, this Defendant asks this Court to dismiss the Amended Complaint against it and to grant such other and further relief as this Court deems just and proper. Should a verdict be retained against this Defendant on behalf of the Plaintiff, then this Defendant believes it would be entitled to judgment against both Grand Strand Nissan and Manheim Remarketing, Inc. d/b/a Manheim Darlington on its Cross-Claim and Third-Party Complaint.

TURNER PADGET GRAHAM & LANEY, P.A.

/s/ William E. Lawson

William E. Lawson
SC Bar No. 03239
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Direct: 843-213-5501
Fax: 843-213-5601
wlawson@turnerpadget.com

Myrtle Beach, South Carolina

April 29, 2022

ATTORNEYS FOR DEFENDANT,
GRAINGER COMPANIES, INC.
D/B/A GRAINGER HONDA

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2022-CP-26-00861

Target Motors, LLC d/b/a Port City Motors,

Plaintiff,

vs.

Grand Strand Nissan, Inc. Grainger Companies, Inc. d/b/a Grainger Honda, and Manheim Remarketing, Inc. d/b/a Manheim Darlington,

Defendants,

v.

Manheim Remarketing, Inc. d/b/a Manheim Darlington,

Third-Party Defendant.

ANSWER OF GRAND STRAND NISSAN, INC. TO CROSS-CLAIM OF GRAINGER COMPANIES INC. D/B/A GRAINGER HONDA

Defendant Grand Strand Nissan, Inc. ("Grand Strand") hereby answers the Amended Answer, Cross-Claim, and Third-Party Complaint of Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger") dated April 29, 2022, as follows:

1. The allegations of paragraphs 1 through 25 are in answer to Plaintiff's Complaint and do not require a response from Grand Strand. To the extent a response is required, Grand Strand denies them.

Cross-Claim Against Grand Strand Nissan, Inc. and Third Party Complaint Against Manheim Remarketing, Inc.

2. Grand Strand admits the allegations of paragraph 26.

3. Grand Strand is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 27 and therefore denies them.

As a First Cause of Action
Breach of Contract as to Manheim Remarketing

4. The allegations of paragraphs 28 through 33 do not apply to Grand Strand, and therefore do not require a response from Grand Strand. To the extent a response is required, Grand Strand denies these allegations.

As a Second Cause of Action
Breach of Contract as to Grand Strand Nissan

5. Answering the allegations of paragraph 33, Grand Strand realleges the prior paragraphs as fully as if repeated herein.

6. Grand Strand denies the allegations of paragraphs 35 through 39.

As a Third Cause of Action
Negligence as to Grand Strand Nissan and Manheim Remarketing, Inc.

7. Answering the allegations of paragraph 40, Grand Strand realleges the prior paragraphs as fully as if repeated herein.

8. The allegations of paragraph 41 state legal conclusions to which no response is required. However, to the extent a response is required, Grand Strand denies the allegations of paragraph 41.

9. Grand Strand denies the allegations of paragraphs 42 and 43.

As a Fourth Cause of Action
Negligent Misrepresentation as to Grand Strand Nissan and Manheim Remarketing, Inc.

10. Answering the allegations of paragraph 44, Grand Strand realleges the prior paragraphs as fully as if repeated herein.

11. Grand Strand denies the allegations of paragraphs 45 through 48.

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12. The allegations of paragraph 49 state legal conclusions to which no response is required. However, to the extent a response is required, Grand Strand denies the allegations of paragraph 49.

13. Grand Strand denies the allegations of paragraph 50.

14. The allegations of paragraph 51 state legal conclusions to which no response is required. However, to the extent a response is required, Grand Strand denies that it engaged in any wrongful action as to Grainger, and denies the allegations of paragraph 51.

15. Grand Strand denies the allegations of paragraphs 52 and 53.

16. Grand Strand denies that Grainger is entitled to the relief requested in its prayer for relief.

FOR A SECOND DEFENSE

17. The Cross-Claim fails to state facts sufficient to constitute a cause of action as to Grand Strand and should be dismissed pursuant to Rule 12(b)(6), FRCP.

FOR A THIRD DEFENSE

18. Grainger's claims for damages, if any, directly and proximately result, in whole or in part, from the intervening and superseding acts of third parties over whom Grand Strand had no control and is not responsible.

FOR A FOURTH DEFENSE

19. Even if Grand Strand was negligent as alleged in the Cross-Claim, which is specifically denied, any damage suffered by Grainger was due to its own comparative negligence so as to bar or partially bar any recovery in this matter.

FOR A FIFTH DEFENSE

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20. That, even if Grand Strand was negligent, as alleged in the Cross-Claim, which is specifically denied, the negligence of Grand Strand is not the direct or proximate cause of any injury alleged by the Grainger and, therefore, Grand Strand is not liable for any damages allegedly sustained by the Grainger.

FOR A SIXTH DEFENSE

21. Grand Strand's claims are barred by all equitable doctrines available to Grand Strand, including, but not limited to, laches, ratification, unclean hands, waiver, estoppel, and unjust enrichment.

FOR A SEVENTH DEFENSE

22. Grand Strand hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and, thus, reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Cross-Claim, Grand Strand prays that the Cross-Claim be dismissed and that the Court grant such other and further relief as may be just and proper.

/s/ Mary M. Caskey
Mary M. Caskey (SC Bar #76198)

HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
Phone: 803-779-3080
Fax: 803-765-1243
mcaskey@hsblawfirm.com

Attorneys for Grand Strand Nissan, Inc.

May 2, 2022

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS NONJURY
COUNTY OF HORRY)

TARGET MOTORS, LLC D/B/A/ PORT CITY MOTORS,
PLAINTIFF,
vs.
GRAND STRAND NISSAN, INC., GRAINGER COMPANIES D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM, DARLINGTON,
DEFENDANTS.

TRANSCRIPT OF RECORD

2022-CP-26-861

January 3rd, 2023

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge.

A P P E A R A N C E S:

C. STEVEN MOSKOS
ESQ.
Attorney for the Plaintiff

MARY CASKEY
ESQ.
Attorney for the Defendant Grand Strand Nissan, LLC

WILLIAM E. LAWSON
ESQ.
Attorney for the Defendant Grainger Company, Inc. d/b/a Grainger Honda

Transcribed by Pamela E. Green, from WebEx Recording

I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

THE COURT: All right. Good afternoon, everybody.

MR. LAWSON: Good afternoon, judge.

THE COURT: Do we have everybody we need?

MR. LAWSON: For my motions I think we do. I'm not sure for -- I think there's a motion for summary judgment by Grand Strand Nissan.

THE COURT: Okay.

MR. LAWSON: That's --.

THE COURT: I'm ready whenever you are.

MR. LAWSON: I think we're -- would be waiting for Mary, Mary Caskey.

Is that right, Steve?

MR. MOSKOS: There we go. Yeah, she was having a little bit of trouble getting in. We thought you -- we thought we were suppose to -- there she is.

Okay.

THE COURT: There we go. We got her.

Let's see. We had her.

MS. CASKEY: I can hear y'all and see y'all and I tested my camera before the hearing.

THE COURT: We can hear you but we can't see you.

MS. CASKEY: May I try one thing real quickly?

THE COURT: Yeah.

Do you have the camera thing on at the top of the computer?

MS. CASKEY: Yes, sir, it's just hooked up through a monitor. Give me one second.

(Pause.)

THE COURT: There we go. I got you.

MS. CASKEY: All right.

THE COURT: All right. Okay. Well, I'm ready when you are.

MR. MOSKOS: Your Honor, my name is Steve Moskos. I filed a motion to compel against Grainger. It's -- this is, this is a little confusing.

But, anyway, the long and the short about this case, judge, is that my client is a car dealer. He bought a truck, a Nissan Titan, at an auction in Darlington, the Manheim Auto Auction. And, as it turns out, the original owner of this vehicle, a guy named Aaron Burstein -- and I lay out the facts in my brief for the next motion.

He bought this car. I believe he was out in Arizona. Anyway, he was here and wound up wrecking the truck and damaging the frame. All of it costing about $18,000, actually a little over $18,000, to repair.

Grand Strand provided the parts for this car. It also did some work on the truck. Then Mr. Burstein decided he was gonna sell the truck and he sold it to Grand Strand

Nissan.

Grand Strand Nissan decided to take it to the auto auction. I don't know how familiar you are with auto auctions, Your Honor.

Do, do you need me to explain some of that?

THE COURT: Maybe just a little bit but not much. I'm somewhat familiar with it and the one in Darlington.

MR. MOSKOS: Yes, sir.

At the auction, you can sell vehicles under a green light, a yellow light, and a red light. Those are indications to the dealers and Manheim is a dealer only auction. Consumers just can't walk in there.

So, it -- the green, the green light indicates that the vehicle's guaranteed. It's a good vehicle. No problems. The yellow light means there might be some problems. So you need to check it out. And a red light is as is and there's something that could be really wrong with it like the transmission might be slipping or something like that.

The dealership, Grand Strand, took this vehicle -- took the truck to the, the auction and put it up for sale under the green light. Grand Strand did not tell anybody at the auction to announce -- and this is a requirement. If you know about prior structural damage, you're required to announce at the auction what you know so that people bidding on it can make informed decisions.

Grand Strand Nissan did not tell anybody about the frame damage, prior wreck damage, anything. It sold this truck under the green light. It sold it to Grainger Honda, which is out of Georgia.

This -- the vehicle was wrecked in August of 2019. This sale at the Manheim Auction occurred November 14, 2019. The next week, November 21, Grainger took the truck to the Charleston Auto Auction and put it up for sale. At that point Charleston Auto Auction, using a vehicle history report called AutoCheck, that is manufactured by Experian, and is kind of a counterpart to CARFAX, does the same thing, and the auction announced the truck as having frame damage because it was on the report.

At that point Grainger pulled the truck from the auction and went back to Manheim and complained saying, you know, this vehicle had frame damage and they didn't know about it, allegedly they didn't know about it, and they wanted to do something -- they wanted Manheim to do something about it.

There's a question -- we haven't taken depositions yet. So what Manheim did or didn't do or was willing to do we don't know yet. But Manheim -- well -- oh, excuse me. Grainger wound up putting -- running this vehicle back through the auction at -- in Darlington, through the same auction, and ran it through as a green light, under a green

light and did not notify or -- to anyone or announce to anyone, as required by the Manheim policies, that the vehicle had had frame damage.

My client, Port City Motors, bought the truck believing that it was a good truck and there was no damage to it and what have you. My client, Port City, bought the truck, wound up selling it shortly thereafter to a consumer. The consumer wound up going down to Florida and wanted to trade in the vehicle. I don't -- not really sure why. But they took it in and, at that point, they were told there is a -- that there was frame damage and they came back to my client really mad and angry that they hadn't been told about the prior wreck damage.

My client was totally surprised by this. Nonetheless, my client worked out a settlement with the purchaser and had to pay them money for their loss. That's the basis of the case.

To me, and what I've read so far, Grand Strand admits that it did not sell -- that it did not notify anybody about the damage. Grainger admits that it didn't announce any damage when my client came in to buy this truck.

I sent discovery to Mr. Lawson. I had some issues with it. When, when I got his responses, I had some issues with those responses and I wrote to him and I said please correct these issues. And I filed that as part of my motion to

compel. I think that was back in -- I'm not sure if that was back in August.

But, anyway, I filed this motion and I asked him to -- I, I sent him a letter and I said please respond to these. Elaborate on these particular items. I laid it out. I did not get a response. I filed my motion.

I want to say last week I received supplemental responses to the -- to my discovery and I wrote to Mr. Lawson with still having some issues with the discovery.

My understanding is Mr. Lawson was sick last week with COVID and he was gonna get back to me. And I understand the holidays and I understand -- well, I don't -- I -- hopefully I don't find out what it's like to have COVID.

But, anyway, I have not received supplemental responses and there aren't too many issues that I'm trying to get resolved today, Your Honor.

My Interrogatory Number 9 -- I'm sorry. I was asking for the statements made by anybody basically when Grand Strand bought this vehicle. It says identify all oral statements or -- and all documents relating to your purchase of the subject vehicle including but not limited to all statements and documents relating to negotiations and communications prior to the purchase of the vehicle and to the actual purchase transactions of the vehicle. Identify the people who have knowledge or, or participated in these

discussions, inspections, repairs, or maintenance concerning the vehicle. And I received responses that basically said that there are two people, Jamie McKenzie and Joey Grainger, are representatives of this defendant that would have personal knowledge of the alleged facts.

I, I said -- I asked, I asked for that to be clarified. The response I got did not really clarify it. Basically Grainger was -- yeah, I'm sorry. Grainger. This is a motion to compel against Grainger. Not Grand Strand. I apologize.

What's, what's throwing me off, judge, is Mr. Lawson is in Horry and representing somebody from Georgia and Ms. Caskey's in Columbia representing somebody from Horry. So, I'm -- it doesn't make sense to me. But -- so I apologize.

I asked for Grainger's information and I was referred to Interrogatory Number 1 and the supplemental responses just simply sent me back to Interrogatory Number 1 and the answers I got was -- were that these -- one fellow would -- he would testify concerning his interactions with both, both Manheim and Charleston Auto Auctions. Mr. McKenzie, the wholesale, the wholesaler reports directly to Joey and Mr. Wigley will testify, testify as to all documents related to the inter -- interaction with Manheim and with Charleston Auto Auctions and any other documents between the parties.

I think I'm entitled to something more than just these

conclusionary vague statements. I'm, I'm asking for particular information, what were the conversations and I'm asking that those be set forth.

In Interrogatory 16 I asked for communications between the parties and Manheim. But the response sends me over to Charleston Auto Auction. It talks about Charleston Auto Auction and, and appears to have been -- the answer in 16 appears to have been copied and pasted from seven and, therefore, it's totally unresponsive to the interrogatory.

Interrogatories 29 and 30 relate to punitive damages. If the facts, as admitted by the parties, are put in front of a jury, I fully expect a punitive damage award. I have the right to present net worth to the jury.

And so I, I am asking -- Interrogatories 29 and 30 are asking for the net worth of Grainger and -- ah, excuse me. Yes, Grainger and at -- I don't know if Your Honor is familiar with car dealers. But every month, and particularly at the end of the year, a franchise car dealer has to provide a written report to the manufacturer and, in that report, it outlines how many cars they sell, how many repairs they've done. All this information, financial information, and it -- at the end, it says the net worth of the company.

I just need that report. I'm happy to accept the year end December 31 or I guess it would be the 2022 year end

report that Grainger sends to Honda. That's fine as long as it's updated by the time of trial. And the response I received from Grainger was simply that's not -- the questions are not -- the interrogatories are not reasonably calculated to lead to evidence which is admissible at trial.

If I put in front of a jury, you know, a car dealer did not disclose $18,000 worth of wreck damage, I think a jury's gonna be entitled to rule on that issue. So, I'd ask that the net worth of Grainger be provided.

I asked for -- then on the request for production, I asked for communications, emails, letters, whatever between Manheim and/or Grand Strand. Those have not been produced and basically there's no reference to them. In other words, it's not like Grainger said they don't exist. It's just it was never dealt with.

So, anyway, I'm asking for that discovery. That's what I'm down to now, answering Interrogatory 9, 16, 29, and 30, which deal with punitive damages, and providing documentation, documentation dealing with contact with Manheim and Grand Strand.

THE COURT: Thank you.

Mr. Lawson.

MR. LAWSON: Thank you, Your Honor.

Good afternoon.

Steve was right, Your Honor. After avoiding it for

almost three years, last week was not fun. So, I was not able to get much done last week and, candidly, not -- still not be able to get a lot done.

And so -- but Steve did send me a letter on December 29th outlining what he thought were those deficiencies and I've emailed him back and just said I was not gonna be able to get to it and here we are today.

Your Honor, the -- you know, we are only as good as lawyers as our -- as the information that flows from our client. I thought, and maybe I need to go back and take another hard look at it, but I thought our responses to interrogatories and response to request for production indicated that there was no communication with Grand Strand and that the only communication with Manheim was that we took it back and said it's got frame damage according to Charleston Auto Auction and Manheim checked it again and said it doesn't. And that's when the car was put back through.

It's clear now that it, it -- that there was damage to the vehicle and maybe I need to clean up what those two individuals will testify to as it relates to their interactions. The only interaction from Grainger within -- with Manheim or with Charleston would of been our individual, Mr. McKenzie, cause that's the only one.

They have indicated to me that the only documents are

the ones that I produced in the original responses to discovery and the -- I did produce a handbook that came to light later on when I sent that to Steve with those supplemental responses.

I'll be glad to go revisit what he's indicated in the letter. I'll be glad to do that to give him -- give me some amount of time. I did try to talk to the client not yesterday. We were closed yesterday and I was out. I did this morning. I did have some exchanged e -- voice mails with my contact there.

As to the financials, I understand where Steve's coming from. But it -- in some of these cases we just need an order of the Court to protect everybody.

And having said that, I'll -- if the Court orders that to be produced, I'll do that and would ask for a protective order just so it's not put out in the mainstream with the competitors.

So, that's, that's where it is, Your Honor, and that's not much of -- for me to say. I thought we had covered all that Steve had asked for. Steve says I didn't. I'll be glad to go revisit, and like Steve said, there's been no depositions taken to date on this one.

And so that's where we are.

THE COURT: All right. Mary, anything you want to add to that or --.

(WHEREUPON, there was no audible response.)

THE COURT: All right. Why don't do it -- why don't we provide that information under a protective order and give you 20 days to revisit everything. Take a look at it. Make sure you got it up to speed.

MR. LAWSON: Yes, sir, I'll be glad to do that. Thank you, sir.

THE COURT: Any other motions?

MS. CASKEY: Your Honor, we have a motion for summary judgment.

THE COURT: Okay.

MS. CASKEY: I believe it's the next one on the roster.

THE COURT: Okay. Motion for summary judgment.

MS. CASKEY: Yes, Your Honor, by Grand Strand against the plaintiff, Port City.

THE COURT: I'm ready when you are.

MS. CASKEY: Thank you, Your Honor.

Again, this is Mary Caskey on behalf of Grand Strand for the record.

Your Honor, Mr. Moskos' recitation of the facts is large -- is, is correct and the, the facts are pretty simple.

Grand Strand sold this vehicle through the auction. It sold it under a green light and that was in November of 2019.

Now, it's important to note that there's two separate auctions and there are different participants at those auctions.

So, the first auction in November 2019, which is the only one that Grand Strand was involved in, was directly between Grainger and Grand Strand. Grand Strand admits that it sold the vehicle under the green light and Grainger has asserted claims against Grand Strand for doing that and those are not before you today.

Grand -- Grainger purchased the vehicle and it sent it to the Charleston Auto Auction, and then, two months later, it came back to Manheim and that second auction is where the plaintiff comes into play. And that second auction was in January of 2020.

And, at that auction, Grainger sells it to Port City, the plaintiff. Grand Strand isn't involved in that auction. They weren't present at this auction and Mr. Hickman, who's the owner of Port City, has admitted, in discovery and in his affidavit that he filed, that he didn't do any investigation with Grand Strand. He didn't go back to Grand Strand and say hey, can I see your records. He also didn't go back to the prior action, the first one, where it was sold green light and said let me take a look at how this, this car was sold the first time.

So, it's important to know that there's two distinct

dates, two distinct auctions, and there's really no connection between them other than Grainger, which is in the middle of these two parties.

It's also important to note that there's really only two misrepresentations that have been alleged here. The first is the first auction green light sale and then there's the second green light sale. Those are the misrepresentations that are at issue.

And so, as between these parties, Grand Strand, again taking the facts in favor of the plaintiff, they're not -- we're not disputing that we sold it through the green light. But, at the first auction, the, the incorrect statement was made by Grand Strand to Grainger. At the second auction, the misstatement that's been alleged was made between Grainger and Port City.

So, based on those facts, Your Honor, and, again, as, as Mr. Moskos stated, at the end, Port City sold this to a consumer. The consumer came back and complained and Port City paid them $4,000, which presumably is the difference between what the vehicle was worth, wrecked, but well repaired, versus not wrecked and they've reached that settlement and then, of course, this suit followed.

The claims that have been asserted by the plaintiff, Port City, against Grand Strand are negligence, negligent misrepresentation, fraud, unfair trade practices, and the

dealer's act.

With respect to those two negligence case -- claims, the key issue is duty. How does a seller, prior in the chain of title, owe any duty to an owner three transactions down. That has not been recognized by South Carolina law.

Second, with respect to fraud, of course, that requires a statement directly to Port City, which is not even alleged here. The statement that's at issue was made by Grand Strand to Grainger, and with respect to the UTPA and dealer's act claim, and actually as to all claims, we have to look at who was the proximate cause of the damage to the plaintiff here. And, in this instance, after Grand Stand sold the vehicle to Grainger, Grainger learned of the vehicle damage.

So, it -- for purposes of when Grainger sold it to Port City, and, therefore, created the alleged damage, Grainger had full knowledge of the wreck damage regardless of what Grand Strand did prior to that. And so Port City is trying to step into the shoes of Grainger to sue Grand Strand.

So, the plaintiff's first argument against summary judgment is that there needs to be more discovery. But this is -- although summary judgment's notoriously difficult in South Carolina, this is the type of case I think that it's meant for because there's not going to be any discovery that changes the fact that Grand Strand sold the vehicle to

Grainger and then was never to be seen again until this lawsuit.

It had no contact with Port City. It had no communication with Port City. Even Grainger admits that it didn't have any communication with Grand Strand. Everything was through the auction, which is the normal course.

There's no discovery, there's no deposition that's gonna change that, and, in fact, Mr. Hickman, who's the owner of Port City, submitted an affidavit this morning stating that, you know, he was just in reliance on all car dealers being ethical. He's not saying that he relied on any statement from Grand Strand, and if he, Port City, communicated with Grand Strand, he would of -- be in the position to know that.

There's no affidavit or evidence before you. There's no discovery that's gonna the change the fact that there's no relationship between those two parties.

Another thing that's important is, in the discovery, Port City admits that it never went back and looked at the documents from the sale from Grand Strand to Grainger. Now, if they had done that, if Port City had gone back and looked at those documents and somehow relied on them, this might be a different case but it's not because they never looked at them. They solely relied on the information they got from Grainger who was the seller to them.

Now, there are three bases of duty that the plaintiff is alleged exists here. The first is common law duty that Your Honor's well familiar with. But, in this particular instance, the one that's familiar -- that's relevant is that Port City claims that, where a party reposes trust and confidence in someone else, where they create the nature of the dealing such that there's this trust and this confidence and there's a duty there.

Well, to do that, you got to have a relationship with somebody. You got to have some sort of communication with them, some sort of interaction with them, and there's no evidence of any interaction here.

The second -- and, and I would note too, and Your Honor's probably very familiar with this, but there's a long line of case law that talks about how Courts should not identify or create and try to expand duties of care and used car transactions have been going on for a long time. And our Courts have never taken it upon themselves to say that if a -- one seller makes a misrepresentation to a buyer, and then that buyer -- and that misrepresentation passes itself down, that the eventual owner gets to sue the first seller. In fact, that wouldn't make any sense because as we both -- as we all know, every time a car changes hands, new facts can be developed as to that car.

It can go through wrecks. It can go through different

maintenance.

So, there's no duty between every single owner of a car to every subsequent owner of a car and that's never been recognized and isn't, isn't cited by the plaintiff in any cases either.

The second type of duty that the plaintiff alleges is a contractual duty. But it's undisputed that there is no contract between Port City and Grand Strand.

The contract that is referenced is the one between Grand Strand and Manheim. Grand Strand agreed to do certain things in order to participate in the auction. Of course, Port City's not a third party beneficiary to that not because it's -- didn't attend the auction. But because it didn't attend the auction that Grand Strand sold the vehicle at because, again, there's two different auctions, two different transactions, two months apart.

So anything that Grand Strand did that may of violated any agreement between Grand -- Grainger and Manheim was not a breach of any contract to which Port City is a third party beneficiary.

The last duty that Port City believes was breached is this -- is a statutory duty and plaintiff alleges this gets created by the Unfair Trade Practices Act or the dealer's act and I know Mr. Lawson and Mr. Moskos, in particular, does a lot of these cases and there's not a single case

cited here or anywhere that says that an unfair trade practice or a violation of the dealer's act equates to a breach of negligence. And to do so would violate the longstanding principles of South Carolina law to create a new duty where the Legislature and the Court haven't found one to exist.

So, fundamentally is point one. There is no duty between Port City and Grainger -- I'm, I'm sorry. Grand Strand. I'm getting just as confused. Grand Strand and Port City. There's simply no duty, no relationship, no contract. It's far too attenuated.

When I first heard the facts of this case, what popped to my mind was that this smacked of a claim that you might see in a products liability case where someone gets alleged to have put something in the stream of commerce. But that concept, that idea that you've put something into the stream of commerce of, of, of commerce and can be responsible all the way down the chain has never been recognized in this concept, and, if you think about it, that makes sense because, in a car transaction, in a vehicle sale, seller and buyer are interacting with one another and have the opportunity to exchange information.

And so the Courts and the, and the statutes recognize certain duties with respect to that relationship. But the law has never expanded the duties of a seller of a used car

to go all the way down the stream of commerce.

The next claim that the plaintiff asserts is, is negligent misrepresentation, which fails because there's no duty. But even if it doesn't, the plaintiff points out a few cases that talk about where a party has relied on a document produced by another party. So, it's sort of a third party reliance argument and the two cases cited are very distinct from this case because, in both of those cases that are cited by the plaintiff, there was an intentional effort by the plaintiff to go and find documentation that had been created.

So, for example, in one case, there was an appraisal report and the appraisal got used by the person who commissioned the appraisal, and then, far down the line, another buyer relied on that same appraisal. They had a written document that they relied on and, in that instance, the Court said that that was proper third party reliance to support a claim for negligent misrepresentation.

Here there's no evidence, there's no allegation that Port City ever went and tried to find any statements that were made by Grand Strand. In fact, Port City did not know that the vehicle had been sold by Grand Strand via green light until this lawsuit commenced. They did not know that.

So, how could they have possibly relied on it and the same is true for the fraud claim. There's no reliance

because there was no interaction. There's no communication. You have to have some sort of relationship of some kind other than being an owner of the same product at different times in order to support these claims.

And, finally, plaintiff asserts claims under the unfair trade practices and the dealer's act claim. And, in response, in summary judgment, they argue that well, Grand Strand created a, a or committed an unfair trade practice by putting a wrecked vehicle out into again the stream of commerce sort of concept without disclosing it. But both of those acts require that the unfair trade practice be the proximate cause and the direct cause of the damage.

And, here, you have an important intervening act that occurred, which is that, regardless of what Grand Strand did to Grainger, Grainger found out about it. And Grainger found out that there was a damage to this vehicle and sold it under the green light anyway.

So, even if Grand Strand had disclosed all of the information, there was nothing to prevent Grainger from doing exactly what it did here, and, in fact, Grainger had all of the information needed to do what the plaintiff says it should have done, which was announce the wrecked damage.

So, there's no evidence, again, just due to the sheer lack of relationship between these parties, that, under the unfair trade practices of the dealer's act, Grand Strand

would be responsible to Port City.

And so, for those reasons, Your Honor, Grand Strand seeks summary judgment against Port City. This does not end the case. Plaintiff still has its claims against Grainger and Grainger has proper indemnification claims that it's asserted against Grand Strand and that's how these cases have played out and that's how these liability theories should be pleaded and bore out before the Court.

But trying to jump the hurdle of Grainger over to Grand Strand is just too far and Port, and Port City's claims should be dismissed.

Thank you, Your Honor.

THE COURT: All right. Any reply to that?

MR. MOSKOS: Yes, sir.

First, first of all, Your Honor, I have submitted a brief addressing all of Ms. Caskey's issues.

She is absolutely correct. She made a lot of my arguments.

The first thing that I was going to say is that obviously summary judgment is a drastic remedy and should only be permitted or considered actually after all discovery has been done. As Mr. Lawson and I have said, we still haven't done depositions yet that may influence a decision by a judge on, on this case or on the motion.

There are -- the South Carolina statutes and the case

law recognize that a third party can sue for damages caused by another who intends or has reason to expect that its representations will be repeated or its substance communicated to another or that -- and that it will influence his conduct in the transaction or type of transaction involved.

Basically what we have here is a dealership, Grand Strand, which knew about $18,000 worth of damage to this truck. In fact, it sold a bunch of parts, and this is part of my brief as an exhibit, it sold a ton of parts to the repair shop that fixed it including the frame. The, the frame on this vehicle was replaced. And Grand Strand then goes to an auction and misrepresents it.

The policies that I have -- the Manheim policies that I've put in the -- at the -- put in the record as an exhibit clearly state that any sort of structural damage, structural repair has to be announced. It is admitted by Grand Strand that it did not in any way announce this prior wreck damage.

What that does -- that -- it is not a situation where that vehicle was bought by Grainger, sold to another person, driven, you know, five years, purchased by another dealer, sold again, and drive -- you know, driven for another five years and then everybody's coming back to Grand Strand.

What we have here is the vehicle was sold, excuse me, November, November 14, 2019, from Grand Strand to Grainger

under a green light. No announcement. That was an affirmative misrepresentation about the vehicle.

Grand Strand, excuse me, Grainger does find out about it, but because of the representations by Grand Strand, Grainger is able to go back to the same auction and run it back through under a green light.

Now, this is a dealer only auction. Grand Strand knows that some -- somebody buying a used car at this dealership is gonna sell it to either another dealer or directly to a consumer. It is going to get back into the retail market and this is a -- I think it's a 2018 Nissan Titan sold in 2019. Certainly everybody knows that it's gonna get back into -- back into a consumer's hands.

So, the question becomes who's gonna be stuck with the hot potato cause that's what's happening here. Grand Strand bought this vehicle so they could sell a vehicle. They were trying to make money. They take it. They sell it at an auction and they found somebody who, who bought it. Grainger then finds out about it and they put it out there trying to get rid of the potato.

Frankly -- but for the statements made by Grand Strand, this would not have occurred, occurred because, if they had announced the vehicle as having prior wreck damage, one, the vehicle would not have been sold under a green light. It would of been sold either as a yellow or a red light. My

client only buys under a green light.

Number two. It would of been announced to everybody at the auction. Everybody would of known about it. Now whether anybody would have purchased it we don't know. The -- but having been announced, it would of been in Manheim's computer and so the -- if the vehicle came through the auction again, there's information there that Manheim can now say hey, you guys, you guys sold this as being wrecked. How can you sell it under a green light now. That, that would prevent that from happening.

So, as far as negligence goes, the but for and the foreseeability test are easily satisfied. I would ask -- if Your Honor is interested in really taking a look at the law in that, the case to look at is Mellen versus Lane, 377 S.C. 261. Mellen versus Lane. I have it in my brief.

It's a -- an opinion by Ralph King Anderson and goes into all the details and I've set forth a lot of those in my brief. I won't bore you with those at this time.

Excuse me.

As far as the -- excuse me.

As far as the duties go, South Carolina has set forth when there is a duty to disclose prior wreck damage. That is when -- where one party expressly reposes a trust or confidence in the other with reference to the particular transaction in question or else from the circumstances of

the case, the nature of their dealings, or their position towards each other, such trust and confidence in the particular case is necessarily applied. That does not necessarily mean that they -- that it can only be face-to-face negotiations or this doesn't apply just simply to face-to-face negotiations.

A, a person such as Grand Strand making these representations at the auction knows that these representations are gonna be repeated to somebody else and they certainly were. They were repeated to my client. As Ms. Caskey said, November 14 is when the sale from Grand Strand to Grainger happened. Grainger tried to sell it a week later and then, about six weeks later, sold the vehicle to my client.

There's not three transactions. There's one, there's one transaction. This vehicle moving through Manheim's process, there are actually three parties in this, the -- Grainger, Grand Strand, and my client.

The, the representations made by Grand Strand are such that they knew they would be passed along and my client -- I want to address the contract issue that Ms. Caskey brought up. She said my client didn't have a contractual arrangement with Grand Strand and that's true. But for the purposes of what we're talking about, that's irrelevant.

The policies at the auction of which all three parties

are part of require ethical conduct, require that the -- that honesty be used by everybody and that announcements such as this one have to be made. My client did have a -- my, my client operated under the terms of that policy expecting every dealer that he deals with to be telling the truth and I'm sure Grainger is gonna say the same thing. And so that duty flows through everybody.

This is not -- there are -- there is no intervening cause, and even if there was, Your Honor, in -- if you look at the Mellen case, Judge Anderson says that an intervening case or an intervening party or another party does not necessarily relieve the first party of any, of any duties and you have to look at several things.

I was gonna try and pull some of that up for you.

Yeah. To exculpate a negligent defendant, the intervening cause must be one which breaks the sequence or causal connection between the defendant's negligence and the injury alleged. The superceding act must so intervene as to exclude the negligence of the defendant as one of the proximate causes of the injury. And, as Your Honor knows, there can be more than one proximate cause. There, there, there isn't just one or the other. So, both Grainger and Grand Strand can be the proximate cause of my client's loss.

The statutes at play dealing with the UTPA and I've set this -- set forth the logical analysis.

Excuse me?

I'm sorry?

Were you saying something, judge?

I didn't hear you.

THE COURT: No, I was just talking to my law clerk.

Go ahead. I was (indiscernible) out loud.

MR. MOSKOS: Okay. If you take a look at -- well, I put forth a -- some information from Trivelas versus South Carolina Department of Transportation. It says in order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things, that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered, and that he is a member of the class of persons the statute is intended to protect and I walk through that.

My client fits the class of people who are to be protected and the -- yeah, under the dealer's act -- well, under the UTPA we're a person who is to be protected. Under the dealer's act, Grand Strand is prevented or Grand Strand would violate the act by engaging in any arbitrary, bad faith, or unconscionable conduct which caused damage to the parties or the public and obviously my client fits within the public, at least that part of the definition.

So, there can be a duty raised. Violation of that duty would be an unfair trade practice in and of itself. And it

creates a negligence per se situation for Grand Strand. And I've already dealt with the but for issue.

Privity of contract is not required to establish tort liability, which is what we have here, and they're a number of cases that I've cited which deal with that.

Basically what you're looking for is foreseeability, not privity, and I believe the Terlindi versus Neely case that I cite on Page 10 explains all that.

The reason -- the objective is to protect the innocent purchaser from latent defects the reasoning which would arbitrarily -- the reasoning which would arbitrarily interpose a first buyer as -- this is dealing -- this particular case, Your Honor, I believe deals with, with the sale of a home and a claim against a builder. And the Court was saying that the reasoning which would arbitrarily interpose a first buyer as an obstruction to someone equally as deserving is incomprehensible.

The fact that the subsequent purchaser did not know the original seller, as did the original purchaser, does not negate the reality of the holding out of the merchant's expertise and reliance which occurs in the market place. That's right on point.

Ms. Caskey raises proximate cause. As we know, proximate cause is a particular -- is particularly a question for a jury. It shouldn't be decided -- really it

shouldn't be decided by the Courts because it is so fact dependent. I have dealt with that significantly in my brief also.

Negligent misrepresentation has not been dealt with in South Carolina on this issue. However, the Fourth Circuit has dealt with the issue, and in reviewing all the cases as to whether a third party could bring a claim, the Fourth Circuit has said we only find cases that would allow it. We have not found any cases which would not allow a third party to bring a claim under negligent misrepresentation.

Again, under the fraud claim, there is a duty to speak. Nondisclosure is fraudulent when there is a duty to speak. You can't put a vehicle out for sale under a green light claiming full value, the highest possible value of a vehicle that's not damaged. You have a duty to speak and say what the truth is so that everybody knows.

I mean the, the fact that the -- judge, did we lose you?

I just want to make sure.

(WHEREUPON, there was no response.)

MR. MOSKOS: Ah.

THE COURT: (Indiscernible) my battery died on my computer. So.

MR. MOSKOS: Okay.

THE COURT: (Indiscernible).

MR. MOSKOS: Yes, sir.

So, there is a duty to speak, and if you do speak, you have to tell the truth. You can't -- you -- the law doesn't allow you to lie. And so, once they do start speaking, they have to, they have to tell the truth.

And South Carolina law, under Lawson and Wright versus Craft, meshes with the restatement of Torts 533 which states that the maker of the fraudulent representation is subject to liability for pecuniary loss to another who acts in justifiable reliance on it if the representation, although not direct -- made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to another and that that's gonna influence the person -- whether the person acts on that in that transaction.

Clearly, Grand Strand's representations and choice, choice not to disclose this information would -- allowed Grainger to pass that false information on to my client. Reliance is a jury, a jury issue. However, there is a -- you know, one of the things that we -- an Iowa Court has stated it is difficult to conceive of a commodity that -- I'm sorry.

THE COURT: Go ahead. I didn't say anything. I was just --.

MR. MOSKOS: It is difficult to conceive of a commodity

that is more likely to involve knowledge by a seller that there isn't a special likelihood that a misrepresentation will reach third parties and will influence their conduct than in the case of a motor vehicle.

It's -- it -- we all know how quickly cars can move. They go through auctions. They can be across the country in a short period of time. We need to hold dealers responsible for their representations and not, and not allow them -- I mean basically what Ms. Caskey's is saying, as long as we can sell this vehicle and not get caught by somebody later -- you know, as long as we don't get caught by the first guy, we're scot-free.

Think about what that means for our economy. Think about what that means in car sales. All you got to do is get it past the first guy, get him to sell it to somebody else, and you don't have to worry about misrepresentations that you make. That can't be what the law stands for.

The UTPA and dealer's act are remedial statutes and the UTPA deals with trade and commerce directly or indirectly affecting the public. And clearly Grand Strand's false representations, at least we believe directly, but at least indirectly, affect the public.

And the, the particular Code Section 39-5-140(a) says any person who suffers any ascertainable loss of money as a result of the use or employment by another person of an

unfair or deceptive method, act, or practice declared unlawful may bring an action individually but not in a representative capacity. It doesn't say you got to have direct communication. Anybody who has suffered a loss as a result of an unfair and deceptive act and practice.

I don't think anybody's gonna say or deny that what Grand, Grand Strand did was an unfair and deceptive act and practice and my client was damaged by it because those statements allowed Grainger to can -- perpetuate those false representations causing damage to my client.

Frankly I don't think we need case law. Ms., Ms. Caskey relies heavily on the fact that there aren't a lot of cases out there dealing with the issues that we're talking about, at least not South Carolina cases. There are plenty of cases outside the jurisdiction which find car dealers in the chain responsible to the third parties.

Nonetheless, what you're looking at with the statute, you don't need case law. You just look at the plain language of the statute and it imposes liability on Grand Strand.

THE COURT: Do you wish to reply to that, Ms. Caskey?

MS. CASKEY: Yes, Your Honor, just, just briefly.

First, Your Honor, with respect to the, the statement that, that I would suggest to this Court that if we don't get caught then we're not in trouble, that's, of course, not

what I'm saying.

What I'm saying is that the law creates certain causes of action that are the rights of certain parties and those parties are the ones who are in relationships and who owe each other duties.

And, in this particular instance, the way that this case ought to be aligned is that the plaintiff sued Grainger and Grainger sued Grand Strand. Plaintiff and Grand Strand don't have anything do with each other. The law recognizes indemnification, third parties, third party complaints, all of those mechanisms to prevent the very thing that Mr. Moskos states that I'm suggesting.

What I'm stating to the Court is the plaintiff's claims do not lie against Grand Strand. They lie against Grainger. It's not before the, the Court today how the, the initial mistake of selling it through the green light got made and I'm sure that that will come out later. But we certainly deny it was an unfair trade practice. This is nothing more than, than a mistake.

But, but perhaps, more importantly, the plaintiff here is trying to step into the shoes of Grainger and skip over them completely when the claims are against them. And the key fact that makes this different from some sort of good faith mistake by the intervening purchasers -- this would be a different case if Grainger had never found out about the

wreck damage. But they did find out about the wreck damage and they didn't disclose it and they sold the vehicle to the plaintiff, which created the cause of action in favor of the plaintiff.

The reason that the cause of action from the plaintiff doesn't go back down to Grand Strand is because the plaintiff never did any of the things that Mr. Moskos suggests would be -- would of made them rely on the misrepresentation. They never went to Manheim's computer and looked to see how the vehicle was sold in the first place. They didn't go -- look at the AutoCheck and say oh, well, I know -- cause you would see these in affidavits in opposition to my motion if these had happened.

They didn't go to the AutoCheck and say oh, look, Grand Strand owned this before Grainger, let me go check with them. That would of created the type of situation where there would be some basis for reliance. But the -- where we're headed now is sort of it's an -- it's a wonderful life scenario where we can come up with every single but for opportunity to create a connection between parties.

That's not what the law allows for and Grand Strand is not relieved of liability if you grant its motion today. It simply aligns the parties in the way that the law intends.

Thank you.

THE COURT: All right. I'll take it under advisement

and let you know something this week.

MR. LAWSON: Yes, sir.

MS. CASKEY: Thank you.

MR. MOSKOS: I, I -- Your Honor, if I might just very quickly.

I would ask you to take a look at the Mellen case because it addresses these points by Ms. Caskey. It says in determining a, a -- the question is whether or not Grand Strand's actions or the damage to my client was the consequence -- whether the consequence to my client is natural and probable. The defendant's conduct must be viewed in the light of the attendant circumstances.

And it also says in there an intervening act by a third person will not relieve the first wrongdoer of liability if such intervention should have been reasonably foreseen in the attendant circumstances. And obviously the folks know how an auction works and that other people are gonna be relying on those -- on that information and we believe that summary judgment should be denied.

THE COURT: Well, thank you. I'll let you know something this week.

MR. MOSKOS: Thank you.

MS. CASKEY: Thank you, Your Honor.

MR. LAWSON: Thank you, Your Honor.

THE COURT: Thanks. It's good to see everybody. Thank

y'all.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Horry County, South Carolina, on the 3rd day of January, 2023.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 4th, 2023



PAMELA E. GREEN, Court Reporter

ELECTRONICALLY FILED - 2022 Mar 23 4:26 PM - HORRY - COMMON PLEAS - CASE#2022CP260861

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, v. GRAND STRAND NISSAN, INC. GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Defendants.	Case No.: 4:22-cv-_____ **DEFENDANTS' NOTICE OF REMOVAL**

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, FLORENCE DIVISION; THE COURT OF COMMON PLEAS FOR HORRY COUNTY; AND ALL PARTIES AND ATTORNEYS OF RECORD:

1. Please take notice that Defendants Manheim Remarketing, Inc. d/b/a/ Manheim Darlington ("Manheim"), Grand Strand Nissan, Inc. ("Grand Strand"), and Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger") (collectively "Defendants"), pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, hereby remove the above-entitled action from the Court of Common Pleas for Horry County, South Carolina to the United States District Court for the District of South Carolina, Florence Division.

2. This action was brought in the Court of Common Pleas, County of Horry, State of South Carolina, by Target Motors, LLC d/b/a Port City Motors ("Plaintiff"), with the filing of a Summons and Complaint on February 8, 2022. State Court pleadings are attached hereto as Exhibit A.

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3. The Summons and Complaint were served on Defendant Manheim on or about February 16, 2022.

4. This action arises out of an alleged breach of contract, assorted tort causes of action, and violation of state and federal statutes. All of the events and omissions complained of in the Complaint occurred in Horry County, South Carolina.

5. This Notice of Removal is based on federal question jurisdiction pursuant to 28 U.S.C. § 1331 and is filed within 30 days of service upon Defendants pursuant to 28 U.S.C. § 1446(b). Exhibit A constitutes all process and pleadings served in this action.

6. Defendants are entitled to removal of the aforesaid civil action to this Court on the grounds of federal question jurisdiction pursuant to 28 U.S.C. § 1331, in that Plaintiff has asserted a cause of action under federal law in its original Complaint. Specifically, Plaintiff alleged that Defendant Grand Strand violated the Federal Odometer Act 49 U.S.C. 32701 et seq. (Compl. ¶ 92). Further, Plaintiff's additional claims are so related in the action that they form part of the same case or controversy to warrant this Court's exercise of supplemental jurisdiction under 28 U.S. Code § 1367.

7. Accordingly, this case raises a question of federal law and is removable under 28 U.S.C. § 1441(a) and 28 U.S.C. §1446(b).

8. A copy of this Notice of Removal will be filed with the Clerk of Court for the Horry County Court of Common Pleas.

9. By copy of this Notice of Removal, and in accordance with the attached Certificate of Service, Defendants are providing notice to Plaintiff in this action and advising Plaintiff of this filing pursuant to 28 U.S.C. § 1446(d).

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10. Defendants have simultaneously served herewith their Responses to Local Rule 26.01 Interrogatories. Defendants will timely file their response to the Complaint pursuant to Rule 81(c)(2)(C) of the Federal Rules of Civil Procedure.

11. Defendants specifically reserve, and expressly do not waive, any defenses they may have, including the right to refer all or part of this action to arbitration.

12. In the event any question arises as to the propriety of removal of this action, Defendants reserve the right to amend or supplement this Notice of Removal, and further request the opportunity to present briefs, oral arguments and, if necessary, affidavits and other evidence in support of its position that removal is proper.

WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446 Defendants herby remove this matter from the Court of Common Pleas for Horry County, South Carolina, into this Court for trial and determination.

Respectfully submitted,

s/ Robert E. Sumner IV
Robert E. Sumner IV (Fed ID No. 10215)
Joel A. Berly, IV (Fed ID No. 13101)
BUTLER SNOW, LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
Phone: 843.277.3700
Fax: 843.277.3701
E-mail: Robert.sumner@butlersnow.com
E-mail: Jay.berly@butlersnow.com

March 18, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Mar 23 4:26 PM - HORRY - COMMON PLEAS - CASE#2022CP260861

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

TARGET MOTORS, LLC d/b/a PORT CITY MOTORS, Plaintiff, v. GRAND STRAND NISSAN, INC., GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Defendants.	Case No.: 4:22-cv-_____ **CERTIFICATE OF SERVICE**

This is to certify that a copy of the **DEFENDANTS' NOTICE OF REMOVAL** has been served upon the following counsel of record via electronic email and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 18th day of March, 2022.

C. Steven Moskos, Esquire
C. STEVEN MOSKOS, P.A.
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
steve@moskoslawfirm.com

Attorney for the Plaintiff

s/ Robert E. Sumner IV
Robert E. Sumner, IV (Fed ID No. 10215)
BUTLER SNOW, LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
Phone: 843.277.3700

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EXHIBIT A

ELECTRONICALLY FILED - 2022 Mar 23 4:26 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861
ELECTRONICALLY FILED - 2022 Feb 08 2:54 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861

STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-_____ **SUMMONS** (Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the attorney for Plaintiff, C. Steven Moskos, at his office located at 4000 Faber Place Drive, Suite 300, North Charleston, South Carolina 29405, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF
BY: s/C. Steven Moskos
SC Bar# 7938
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
February 8, 2022

ELECTRONICALLY FILED - 2022 Mar 23 4:26 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861
ELECTRONICALLY FILED - 2022 Feb 08 2:54 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861

STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS Plaintiff, vs. GRAND STRAND NISSAN, INC., GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-_____ **COMPLAINT** (Jury Trial Demanded)

Plaintiff, complaining of Defendants, alleges the following:

1. That Plaintiff Target Motors, LLC d/b/a Port City Motors, hereinafter Port City, is a limited liability company organized and existing pursuant to the laws of the United States of America. Plaintiff is authorized to do business in the State of North Carolina.

2. That Defendants Grand Strand Nissan, Inc. is a limited liability companies organized and licensed in the State of South Carolina, and are doing business in the county of Horry, South Carolina.

3. That Defendant Grainger Companies, Inc. d/b/a Grainger Honda is a limited liability company organized and licensed in the State of Georgia, and is doing business in the county of Chatham, Georgia.

4. That Defendant Manheim Remarketing, Inc. d/b/a Manheim Darlington, hereinafter Manheim, is a limited liability company organized and licensed in the State of South Carolina, and is doing business in the county of Darlington, South Carolina.

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5. That in 2019 Aaron Burstein owned a 2018 Nissan Titan SV K1500 VIN: 1N6AA1C50JN508002.

6. That on August 12, 2019, Mr. Burstein and the 2018 Titan were involved in a wreck in Myrtle Beach, South Carolina.

7. That Performance Collision in Myrtle Beach began repairs to the truck.

8. That on August 13, 2019, North Strand Nissan began performing wreck related repairs to the Titan.

9. That on August 30, 2019, Defendant Grand Strand Nissan began performing wreck related repairs to the Titan.

10. That on or about October 2, 2019, Grand Strand Nissan performed additional work on the Nissan related to the wreck damage.

11. That at some point the vehicle was brought to Grand Strand Nissan as the odometer was inoperable.

12. That Grand Strand Nissan performed repairs to the odometer.

13. That the odometer reading did not reflect the actual miles the truck had been driven.

14. That the wreck caused approximately $18,000.00 worth of damage.

15. That the repairs to the vehicle included replacing the frame as it had been bent in the wreck.

16. That on or about October 14, 2019, Mr. Burstein sold the Titan to Grand Strand Nissan.

17. That on November 14, 2019, Grand Strand Nissan, through Defendant Manheim, sold the Titan to Grainger Honda without disclosing the prior wreck damage or the odometer discrepancy.

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18. That after the sale, Grainger Honda learned of the prior wreck damage.

19. That Defendant Grainger Honda complained to Defendant Manheim that it had been sold a vehicle with prior wreck damage which was not disclosed at the time of the sale.

20. That Defendant Manheim recommended to Defendant Grainger Honda that Defendant Grainger run the car back through the auction.

21. That Grainger Honda complained to Defendant Grand Strand Nissan that Defendant Grand Strand Nissan had sold a vehicle with prior wrecked damage which was not disclosed at the time of the sale.

22. That Grainger Honda decided to sell the Titan through Defendant Manheim's auction instead of trying to sell it on its lot.

23. That Grainger Honda, Grand Strand Nissan, and Manheim decided to sell the Titan through Defendant Manheim's auction.

24. That on or about January 2, 2020, Grainger Honda offered the Titan for sale through Defendant Manheim in Darlington SC via an online auction.

25. That on or about January 2, 2020, Defendant Grainger Honda and Defendant Manheim knew the subject vehicle had been previously damaged and repaired.

26. That Defendant Grainger Honda did not notify potential buyers that the Titan had been previously wrecked.

27. That Defendant Manheim did not notify potential buyers that the Titan had been previously wrecked.

28. That Grainger Honda sold the truck under a green light indicating that the Titan did not have any mechanical or structural issues.

29. That on January 2, 2020, Defendant Grainger Honda advertised the Titan for sale.

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30. That on January 2, 2020, Plaintiff purchased the Titan from Grainger Honda via Manheim's online auction.

31. That based on the representations of Defendants' agents and employees that the vehicle was in good shape and safe to drive, Plaintiff purchased the Titan from Defendant Grainger Honda.

32. That Plaintiff hired Defendant Manheim to perform a post-sale inspection.

33. That Manheim's post sale inspection should have revealed the prior wreck damage present in the Titan.

34. That Defendant Manheim did not inform Plaintiff about the prior wreck damage done to and present in the Titan.

35. That the vehicle was transported to Plaintiff's dealership in Morehead City, North Carolina.

36. That on January 25, 2020, Plaintiff sold the vehicle to Ana Bey.

37. That on or about February 17, 2020, Plaintiff received a phone call from Ms. Bey's husband informing Plaintiff that the Titan had been involved in a wreck suffering structural or frame damage.

38. That on February 19, 2020, Plaintiff contacted Defendant Manheim and requested it buy back the Titan.

39. That Defendant Manheim refused to except return of the Titan and to refund Plaintiff's money.

40. That Defendant Manheim stated that the only solution it would offer is for Plaintiff to run the Titan through the auction again.

41. That on February 19, 2020, Plaintiff agreed to pay Ms. Bey $4,000 to resolve her dispute with Plaintiff.

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42. That Plaintiff has had to hire an attorney to represent it in this matter.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Grainger Honda)

43. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

44. That Plaintiff entered into a contract with Defendant Grainger Honda for the purchase of a vehicle which did not have any prior wreck damage, was in excellent condition, safe, and could be operated and used dependably.

45. That Defendant Grainger Honda failed to sell to Plaintiff a vehicle which had not been wrecked, was in excellent condition, safe, and could be operated and used dependably.

46. That as a result of Defendant's breach of contract, Plaintiff has been damaged in that it has lost the benefit of the bargain it made with Defendant Grainger Honda and it has paid more for a vehicle than what it is worth.

47. That as a result of Defendant's breach of contract, Plaintiff has suffered actual damages, together with the costs and disbursements of this action.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract – Manheim Remarketing)

48. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

49. That Plaintiff entered into a contract with Defendant Manheim so Plaintiff could buy and sell cars at any Manheim location.

50. That Plaintiff entered into a contract for Manheim to inspect the subject truck after Plaintiff purchased it.

51. That as part of the contract for auction services and as part of the contract for the inspection of the subject vehicle, Defendant Manheim was to inform Plaintiff of any prior wreck damage to the truck, and that the Titan was in excellent condition, safe,

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and could be operated and used dependably.

52. That Defendant Manheim failed to inspect the Titan properly and to inform Plaintiff of the prior wreck damage in the truck.

53. That as a result of Defendant Manheim's breach of contract, Plaintiff has been damaged in that it has lost the benefit of the bargain it made with Defendant, and it has paid more for a vehicle than what it was worth.

54. That as a result of Defendant Manheim's breach of contract, Plaintiff has suffered actual damages, together with the costs and disbursements of this action.

FOR A THIRD CAUSE OF ACTION
(Negligence as to all Defendants)

55. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

56. That Defendants owed a duty to Plaintiff in one or more of the following particulars:

a. To research the history of the subject vehicle prior to buying it;

b. To hire appraisers who could properly look for and evaluate damage previously done to vehicles;

c. To train properly managers, service managers, and service employees to evaluate properly previous damage done to vehicles;

d. To inspect the subject vehicle thoroughly prior to offering it for sale;

e. To represent properly and truthfully the cars Defendants offered for sale;

f. To notify Plaintiff and other purchasers of prior damage to the vehicle; and

g. To do those things which a reasonable, prudent person or company would do under the circumstances then and there prevailing.

57. That Defendants failed to perform one or more of the aforementioned duties.

58. That as a result of Defendants' negligence, carelessness, recklessness,

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willfulness, and wantonness, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made with Defendants, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

59. That as a result of Defendants' negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiff demands actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation as to all Defendants)

60. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

61. That Defendants made false representations to Plaintiff.

62. That Defendants had a pecuniary interest in making the statements.

63. That Defendants owed a duty of care to communicate truthful information to Plaintiff.

64. That Defendants breached that duty by failing to exercise due care.

65. That Plaintiff justifiably relied on Defendant's representations.

66. That Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made with Defendants, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

67. As a direct and proximate result of Defendants' negligent misrepresentations,

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Plaintiff was damaged, thereby entitling Plaintiff to actual and punitive damages together with prejudgment interest, together with the costs and disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
(Fraud as to all Defendants)

68. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

69. That Defendants' agents and employees failed to disclose to Plaintiff material facts regarding the prior wreck in which the vehicle was involved.

70. That Defendants failed to disclose to Plaintiff material facts regarding the damage sustained by the Titan as a result of the wreck in which the Titan was involved.

71. That the Defendants' agents and employees made false representations of material fact to Plaintiff.

72. That Defendant knew or should have known that the representations which were made to Plaintiff were false.

73. That Defendant intended that Plaintiff rely upon their misrepresentations of material fact concerning the condition of the vehicle.

74. That Plaintiff was unaware of the falsity of the representations and at the time the representations were made, Plaintiff were unable to discover the falsity of the representations made by Defendants' agents and employees.

75. That Plaintiff had a right to rely and did rely upon the representations made by Defendants' agents and employees.

76. That Defendants had an obligation to inform Plaintiff that the vehicle had previously been wrecked and rebuilt.

77. That Defendants failed to fulfill their obligations to Plaintiff.

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78. That Defendants' failure to disclose to Plaintiff the condition of the Titan constitutes affirmative fraud, fraudulent concealment, or nondisclosure of material facts regarding the transaction.

79. That as a result of the Defendants' fraud, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made with Defendants, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

80. That because of Defendants' fraud, Plaintiff demands its actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

FOR A SIXTH CAUSE OF ACTION
(Regulation of Motor Vehicle Dealers Act)

81. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

82. That Plaintiff is informed and believes that the malicious and deceptive acts and practices of Defendants constitute a violation of Section 56-15-10 et. seq. of the South Carolina Code of Laws 1976.

83. That as a result of Defendants' deceptive acts and practices, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has incurred various repair bills, it has lost the benefit of the bargain it made with the Defendant, it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

84. That as a result of Defendants' violation of this State's Statutes dealing with the

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regulation of motor vehicle dealers, Plaintiff demands twice its actual damages, together with punitive damages not to exceed three times the actual damages, together with attorney fees, together with the costs and disbursements of this action.

FOR A SEVENTH CAUSE OF ACTION
(UTPA Violation)

85. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

86. That the aforementioned acts and practices of Defendants were unfair and deceptive.

87. That the aforementioned acts and practices of Defendants are against the public interest and that these acts and practices are capable of repetition.

88. That Defendants' actions were willful and wanton in that Defendants knew or should have known that their conduct was unfair and deceptive and, therefore, a violation of this State's statutes concerning unfair and deceptive acts and practices.

89. That as a result of the Defendants' violation of the Unfair Trade Practices Act, Plaintiff has been damaged in that it has purchased a vehicle that was not as represented, it has lost the benefit of the bargain it made with Defendant Manheim Remarketing, Inc., it has paid more for a vehicle than what it is worth, and it has suffered reputational damage, embarrassment, anxiety, inconvenience, mental distress and emotional distress.

90. That as a result of Defendants' violation of the Unfair Trade Practices Act, the Plaintiff is entitled to its actual damages, together with three (3) times its actual damages, together with attorney's fees, together with the costs and disbursements

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of this action.

FOR AN EIGHTH CAUSE OF ACTION
(Violations of the Federal Odometer Act)

91. That Plaintiff repeats all previous paragraphs as if repeated herein verbatim.

92. Defendant Grand Strand is a "transferor" within the terms of the Federal Odometer Act, 49 U.S.C. 32701 et seq.

93. That upon information and belief, Defendant disconnected and replaced the odometer in the subject vehicle in violation of the Federal Odometer Act.

94. That upon information and belief, Defendant, with intent to defraud, operated the vehicle on a street, road, or highway knowing that the odometer of the vehicle had been disconnected or not operating.

95. That upon information and belief, Defendant, with intent to defraud, failed to disclose and did, in fact, conceal, that the odometer of the vehicle had been disconnected, replaced, or had stopped operating.

96. That Defendant was required to provide that odometer disclosure on the title of the car and to sign the title at that time.

97. That Defendant has an established business practice of not providing the odometer disclosures required by federal law to consumers on the titles of cars they sell.

98. That Defendant violated the Federal Odometer Act with intent to defraud.

99. That pursuant to its normal business practice, Defendant failed to make the required odometer disclosure with the intent to defraud consumers, of which Plaintiff is one.

100. That pursuant to its normal business practice, Defendant disclosures regarding

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odometer reading were false and made with the intent to defraud purchasers, of which Plaintiff is one.

101. That pursuant to their normal business practice, Defendant misrepresented the mileage on the vehicle with the intent to defraud Plaintiff.

102. That as a result of Defendants' violation of the Federal Odometer Act, Plaintiff prays the Court award it three times their actual damages or statutory damages of $10,000.00, whichever is greater, pursuant to the Federal Odometer Act, 49 U.S.C. 32710, together with reasonable attorney's fees.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

a. In the First Cause of Action for its actual damages together with the costs and disbursements of this action.

b. In the Second Cause of Action for its actual damages together with the costs and disbursements of this action.

c. In the Third Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

d. In the Fourth Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

e. In the Fifth Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

f. In the Sixth Cause of Action for two (2) times the actual damages, together with punitive damages not to exceed three times the actual damages, together with attorney's fees, together with the costs and disbursements of this action.

g. In the Seventh Cause of Action for three (3) times the actual damages, together with attorney's fees, together with the costs and disbursements of this action.

h. In the Eighth Cause of Action for three times its actual damages or statutory

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damages of $10,000.00, whichever is greater, pursuant to the Federal Odometer Act, 49 U.S.C. 32710 together with reasonable attorney's fees.

i. For an award of reasonable attorney's fees.

j. For such other and further relief as this Court deems just and proper.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF

BY: s/C. Steven Moskos
SC Bar# 7938
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
February 8, 2022

C. Steven Moskos
C. Steven Moskos, P. A
4000 Faber Place Dr., Ste. 300
North Charleston SC 29405

CERTIFIED MAIL



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$13.53[0]
US POSTAGE
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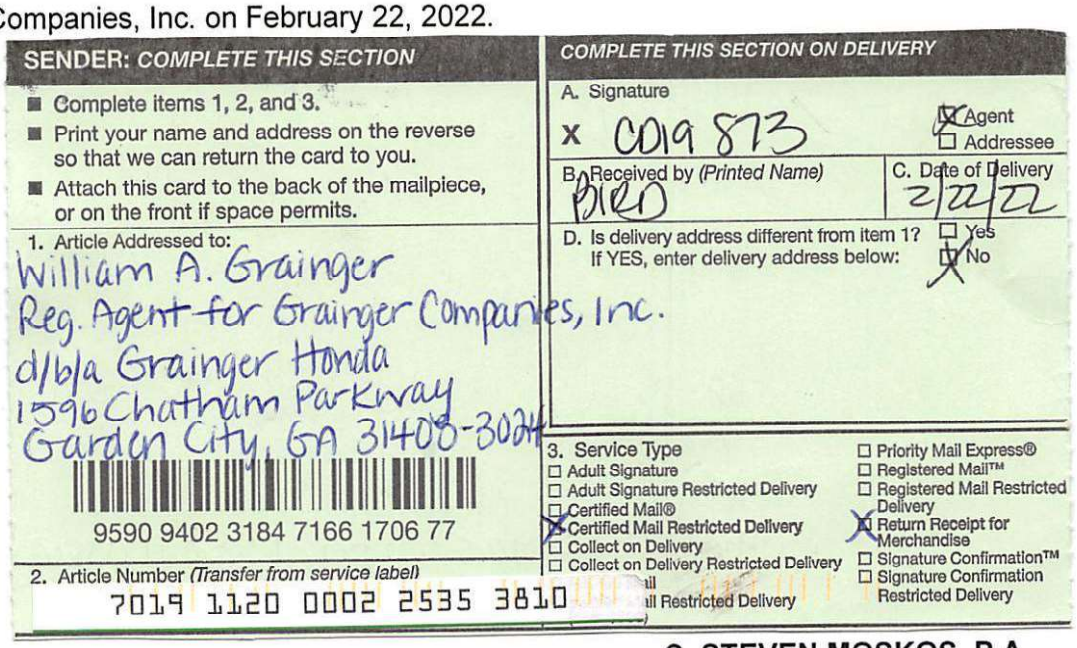
Corporation Service Company
Reg. Agent for Manheim Remarketing, Inc.
d/b/a Manheim Darlington
508 Meeting St.
West Columbia SC 29169-7535

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ELECTRONICALLY FILED - 2022 Mar 24 3:36 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861

STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTHTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-00861 **AFFIDAVIT OF SERVICE**

PERSONALLY appeared before me the undersigned deponent, who being duly sworn says that she served one copy of the Summons and Complaint in this action by certified mail return receipt requested to the addressee, on William A. Grainger, Registered Agent for Grainger Companies, Inc. on February 22, 2022.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
William A. Grainger
Reg. Agent for Grainger Companies, Inc.
d/b/a Grainger Honda
1596 Chatham Parkway
Garden City, GA 31408-3024

9590 9402 3184 7166 1706 77

2. Article Number (Transfer from service label)
7019 1120 0002 2535 3810

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X CDI9 873
☒ Agent
☐ Addressee

B. Received by (Printed Name)
BIEN

C. Date of Delivery
2/22/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☒ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF

BY: s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Ste. 210
North Charleston, SC 29406
Telephone: (843) 576-5479
steve@moskoslawfirm.com

Charleston, South Carolina
March 7, 2022

ELECTRONICALLY FILED - 2022 Mar 14 1:39 PM - HORRY - COMMON PLEAS - CASE#2022CP2600861

STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTHTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-00861 **AFFIDAVIT OF SERVICE**

PERSONALLY appeared before me the undersigned deponent, who being duly sworn says that she served one copy of the Summons and Complaint in this action by certified mail return receipt requested to the addressee, on Corporation Service Company, Registered Agent for Manheim Remarketing, Inc. on February 16, 2022.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Corporation Service Company
Reg. Agent for Manheim Remarketing, Inc.
d/b/a Manheim Darlington
West Columbia, SC 29169-7535

9590 9402 3184 7166 1706 60

2. Article Number (Transfer from service label)
7019 1120 0002 2535 3797

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Edna Zheng ☐ Agent ☐ Addressee

B. Received by (Printed Name) Edna Zheng
C. Date of Delivery 2/16/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☒ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF
BY: s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Ste. 210
North Charleston, SC 29406
Telephone: (843) 576-5479
steve@moskoslawfirm.com

Charleston, South Carolina
March 7, 2022

ELECTRONICALLY FILED - 2022 Oct 05 11:13 AM - HORRY - COMMON PLEAS - CASE#2022CP2600861

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-00861

Target Motors, LLC d/b/a Port City Motors,

Plaintiff,

vs.
Grand Strand Nissan, Inc., Grainger Companies, Inc. d/b/a Grainger Honda, and Manheim Remarketing, Inc. d/b/a Manheim, Darlington,

Defendants.

DEFENDANT GRAND STRAND NISSAN INC.'S
MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF

Pursuant to Rule 56, SCRCP, Defendant Grand Strand Nissan, Inc. ("Grand Strand") moves for summary judgment as to the claims asserted against it by Target Motors, LLC d/b/a Port City Motors ("Plaintiff"). Specifically:

1. Plaintiff's claim for negligence fails as a matter of law because Grand Strand did not owe a duty to Plaintiff and was not the proximate cause of any damage suffered by Plaintiff.

2. Plaintiff's claim for negligent misrepresentation fails as a matter of law because Grand Strand never communicated or made a representation to Plaintiff and was not the proximate cause of any damage suffered by Plaintiff.

3. Plaintiff's claim for fraud fails as a matter of law because Grand Strand never made a representation to Plaintiff that could be relied upon.

4. Grand Strand is entitled to summary judgment on Plaintiff's claim that Grand Strand violated the Unfair Trade Practices Act ("UTPA") because Plaintiff cannot show as a matter

of law that any alleged violation of the UTPA by Grand Strand is the proximate cause of Plaintiff's damages.

5. Grand Strand is entitled to summary judgment on Plaintiff's claim that Grand Strand violated the South Carolina Motor Vehicle Dealers Act because Plaintiff cannot show as a matter of law that Grand Strand was the proximate cause of Plaintiff's damages.

This Motion is based on the pleadings, discovery conducted to date, including the Affidavit of Robbie Haynes, Grainger's Answer to Grand Strand's Interrogatories, Plaintiff's Answer to Grand Strand's Interrogatories, Plaintiff's Answer to Grainger's Interrogatories, and a memorandum of law to be filed at a later date.

/s/ Mary M. Caskey
Mary M. Caskey (SC Bar No. 76198)

Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779-3080

Attorney for Grand Strand Grand Strand Nissan, Inc.

October _5, 2022

ELECTRONICALLY FILED - 2022 Oct 05 11:13 AM - HORRY - COMMON PLEAS - CASE#2022CP2600861

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-00861

Target Motors, LLC d/b/a Port City Motors,

Plaintiff,

vs.
Grand Strand Nissan, Inc., Grainger Companies, Inc. d/b/a Grainger Honda, and Manheim Remarketing, Inc. d/b/a Manheim, Darlington,

Defendants.

AFFIDAVIT OF ROBBIE HAYNES

Personally appeared before me, Robbie Haynes, who, being duly sworn, deposes, and states as follows:

1. I am the Executive Manager of Grand Strand Nissan, Inc. ("Grand Strand"), and am duly authorized to make this Affidavit on behalf of Grand Strand. I am over the age of 18 and competent to testify as to the matters contained in this affidavit.

2. The statements contained in this Affidavit are based upon my own personal knowledge, my knowledge of the records maintained by Grand Strand in the ordinary course of business, and my review of Grand Strand's business records and transactions regarding the 2018 Nissan Titan SV K1500 VIN 1N6AA1C50JN508002 (the "Truck"), which is the subject of this action.

3. On or about August 26, 2019, Grand Strand received the Truck to perform repairs caused by an accident. At the time of the repairs, the Truck was owned by Aaron Burstein ("Burstein").

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4. When Grand Strand received the Truck, the Truck would not start and the electrical board was without power. As a result, none of the components of the Truck that are electrical were operational, including the odometer.

5. On or about August 30, 2019, Grand Strand reconnected power to the electrical board, which restored the Truck's electrical board, including the odometer. However, Grand Strand did not alter, replace, or complete any repairs to the odometer.

6. After the electrical repair was complete, Grand Strand returned the Truck to Performance Collision, who completed other repairs. Grand Strand sold Performance Collision certain parts for the repairs, but all repairs related to the wreck damage, (other than the electrical repair described above), were completed by Performance Collision.

7. After Performance Collision completed repairs related to the wreck, Burstein brought the Truck to Grand Strand to have additional work completed on the Truck that were not covered by insurance or were not related to the wreck.

8. Ultimately, Burstein decided to purchase a new vehicle from Grand Strand, and traded in the Truck for $24,000.

9. At the time the Truck was traded in, it had been fully and completely repaired.

10. On or about October 29, 2019, Grand Strand entered the Truck into Manheim Remarketing, Inc. d/b/a Manheim, Darlington's ("Manheim") auction to be sold.

11. On November 14, 2019, Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger") purchased the Truck for $21,000 as evidenced by the Bill of Sale attached as **Exhibit 1**.

12. After Grand Strand sold the Truck to Grainger, Grand Strand was not involved in any subsequent transfers or sales of the Truck.

13. Grand Strand never entered into a contract with the Plaintiff, Port City Motors, for the sale of the Truck.

14. Grand Strand never made any representations or had any communications with Port City Motors before Port City Motors purchased the Truck at the Manheim Auction from Grainger. In fact, Grand Strand never communicated with Port City Motors about the Truck or the condition of the Truck in any way prior to Port City Motors' purchase of the Truck.

Grand Strand Nissan, Inc.

By: _____

Name: Robbie Haynes

Its: Executive Manager

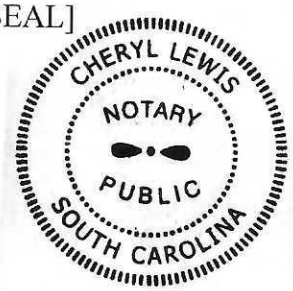
Sworn to and subscribed before me
this 5 day of October 2022

Cheryl Lewis

Notary Public, State of South Carolina

My commission expires 3-6-2024

[NOTARY SEAL]



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Manheim

BILL OF SALE

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THIS IS NOT AN INVOICE

DOCUMENT NOT VALID FOR EXPORT

Grand Strand Nissan 0076

505 MANHEIM DARLINGTON
1111 HARRY BYRD HWY
DARLINGTON, SC 29532 US

Please refer to the vehicle release for the pickup location

Sale Date
14-NOV-2019 13:13:45

Yr Wk Ln Rn
2019-46-4-81

Sale Type
In-Lane

Vehicle Information
2018 Nissan Titan
XCAB SV Gray
1N6AA1C50JN508002

Mileage: 44213 Miles 0

License Plate No:

Title Information
State: AZ Number: 1

Vehicle Features
8 Cylinder Engine
7-Speed A/T

50 State

Vehicle Purchase Price	
Sale Price	$ 21,000.00
Adjustments	$ 0.00
Final Sale Price	$ 21,000.00

Seller
GRAND STRAND NISSAN INC
4701 HIGHWAY 501
MYRTLE BEACH, SC 29579 US

Seller Rep:
Signature on file

Buyer
GRAINGER HONDA
1596 CHATHAM PKWY
GARDEN CITY, GA 31408 US

Buyer Rep: MCKENZIE, JAMES
Signature on file

Auction Lights
GREEN Buyer protection to conditions

Odometer Disclosure
Federal law (and state law, if applicable) requires the Seller to state the mileage upon transfer of ownership. Failure to complete or providing false information may result in fines and/or imprisonment.

Seller hereby states that the odometer for this Vehicle now reads identically to the Mileage stated on this Bill of Sale under Vehicle Information and certifies to the best of Seller's knowledge that this reflects the actual mileage of the Vehicle, unless disclosed otherwise in the Announcements & Notes below.

ROA 117

Announcements & Notes

Seller agrees to sell the vehicle covered by this Bill of Sale to Buyer for the price noted herein.
Seller is the transferor of the vehicle and is responsible for all disclosures, including odometer and mileage.
Buyer must return a signed copy of the title front and back, including the odometer statement therein, to Seller or be subject to civil and criminal penalties. See 49 CFR § 580.5(f).
Manheim retains a purchase money security interest in the Vehicle and its title until good funds are received from the Buyer.
Seller and Buyer agree to the Manheim Terms and Conditions in effect at the time of the sale.
Sale terms and this Bill of Sale are subject to adjustments by Manheim. Please check your customer account at Manheim.com for most current version of this document.
Bill of Sale is not an Invoice. Please refer to Invoices in your account on Manheim.com.

Printed on: 06-Apr-2022 04:10:17

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Docket No.: 2022-CP-26-00861
TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, v. GRAND STRAND NISSAN, INC. AND GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, Defendants. v. MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Third-Party Defendant.	)	**DEFENDANT GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA'S ANSWERS TO DEFENDANT GRAND STRAND NISSAN, INC.'S FIRST SET OF INTERROGATORIES**

TO: DEFENDANT AND ATTORNEY FOR DEFENDANT:

Defendant, Grainger Companies, Inc. d/b/a Grainger Honda, answers Defendant Grand Strand Nissan, Inc.'s First Set of Interrogatories as follows:

1. Give the names and addresses of persons known to Grainger to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements. Identify all documents that support this answer by Bates Number.

ANSWER: Target Motors, LLC d/b/a Port City Motors c/o C. Steven Moskos, P.A. It is anticipated that Plaintiff's representatives will testify according to the allegations set forth in the Amended Complaint.

Grand Strand Nissan, Inc. c/o Haynsworth Sinkler Boyd, P.A. It is anticipated that Defendant's representatives will testify according it their personal knowledge of the alleged facts.

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Manheim Remarketing, Inc. d/b/a Manheim Darlington c/o Butler Snow, LLP. It is anticipated that Third-Party Defendant's representatives will testify according to their personal knowledge of the alleged facts.

Grainger Companies, Inc. d/b/a Grainger Honda c/o Tuner Padget Graham and Laney. It is anticipated that Defendant's representatives will testify according to their personal knowledge of the alleged facts.

Defense counsel reserves the right to call as witnesses any persons listed by any party in their discovery responses, whether expert or lay witnesses. Further, counsel reserves the right to supplement this Answer as discovery progresses.

Defense counsel is not in possession of any statements.

2. Set forth a list of prepared documents in possession of Grainger that relate to the claims or defenses in the case. Identify all documents that support this answer by Bates Number.

ANSWER:

a. **CarFax Report (Grainger 001 – 008);**
b. **Bill of Sale from Grand Strand Nissan to Grainger Honda (Grainger 009 – 010);**
c. **Invoice for vehicle purchase (Grainger 011);**
d. **Invoice for post-sale inspection (Grainger 012);**
e. **Title (Grainger 013 – 014)**
f. **Retail Purchase Agreement from Grainger Honda to Manheim Darlington (Grainger 015);**
g. **AutoCheck Report (Grainger 016 – 021); and**
h. **Grainger Honda Deal Recap Sheet (Grainger 022).**

3. List the names and addresses of any expert witnesses Grainger proposes to use as a witness at the trial of the case.

ANSWER: Defense counsel has not yet retained the services of an expert witness but reserves the right to supplement this Answer as discovery progresses. Defense counsel reserves the right to name any expert named by any other party.

4. For each person known to Grainger or its counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a

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copy of any written or recorded statements taken from such witnesses. Identify all documents that support this answer by Bates Number.

ANSWER: See Answer to Interrogatory No. 1. James "Jamie" McKenzie, Jr. and Joel "Joey" Grainger are the representatives of this Defendant that would have personal knowledge of the alleged facts.

5. Identify all appraisals that Grainger completed on the 2018 Nissan Titan (the "Truck") prior to or after Grainger purchased the Truck. Identify all documents that support this answer by Bates Number.

ANSWER: None. The vehicle would have been appraised on a mobile device at the sale.

6. State whether Grainger obtained a Carfax or AutoChek report on the Truck prior to or after Grainger purchased the Truck. For each report obtained by Grainger, identify the date on which it was pulled, the person who was responsible for pulling it, and whether or not Grainger still has a copy of the report. Identify all documents that support this answer by Bates Number.

ANSWER: Jamie McKenzie, Jr. pulled a CarFax report while at the sale on November 14, 2019. The CarFax report showed no damaged. He did not pull an AutoCheck. Mr. McKenzie took the truck to Charleston Auto Auction to be sold approximately two weeks after it was purchased. When the truck was put on the auction block, it was announced that the vehicle had structural damage. Mr. McKenzie instructed Charleston Auto Auction to remove the vehicle from the lane as he was unaware of any structural damage. As a result of that damage, he was unable to sell the vehicle. When Mr. McKenzie asked Charleston Auto Auction about the structural damage, he was informed that the structural damage was shown on the AutoCheck report that they pull on all vehicles. A copy of the CarFax is bates numbered Grainger 001 – 008 and the AutoCheck is bates numbered Grainger 016 – 021.

7. Identify all representatives of Grainger who were involved in the decision by Grainger to purchase the Truck. Identify each representative by name, address, title, and state whether the representative is still employed by Grainger.

ANSWER: James McKenzie, Jr.

8. Identify and describe all inspections completed by Grainger of the Truck prior to purchase. Identify all documents that support this answer by Bates Number.

ANSWER: The truck was viewed in the lane as is the normal process.

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9. State whether Grainger completed a post-sale inspection of the Truck. If so, describe who completed the inspection, the results of the inspection, and identify any witnesses who were present during the inspection. Identify all documents that support this answer by Bates Number.

ANSWER: A post-sale inspection was performed at the time of sale on November 14, 2019. The post-sale inspection by Manheim Darlington came back as "passed wholesale inspection." No documentation was provided. This information was given verbally, which was the normal process at the time.

10. Identify the date that Grainger first learned that the Truck had been in an accident, and describe how Grainger learned of the accident. Identify all documents that support this answer by Bates Number.

ANSWER: See Answer to Interrogatory No. 6.

11. Identify and describe all communications between Grainger and Manheim Remarketing, Inc. d/b/a Manheim Darlington ("Manheim") concerning the Truck before and after it was purchased by Grainger. Identify all documents that support this answer by Bates Number.

ANSWER: After the truck was flagged with structural damage in Charleston, Mr. McKenzie contacted Steven, who was the General Manager of Manheim at the time, and Michael, who oversees dealer arbitration of Manheim at the time, to let them know that the truck was showing structural damage. Mr. McKenzie requested that Manheim accept the truck back on a return due to the structural damage and to back the sale up to the seller. Manheim refused and offered to check the truck again. The truck was taken back and checked again, and Manheim advised that no structural damage could be found. Mr. McKenzie advised that he could not sell the truck showing the damages listed on the AutoCheck report. Manheim offered to re-run the truck and sold it as a result. The truck was sold and lost money. Mr. McKenzie requested Manheim cover the entire loss. They would not. They offered to split 50% of the loss, which Mr. McKenzie agreed to even though he did not believe it was fair.

12. Identify and describe all communications between Grainger and Plaintiff concerning the Truck. Identify all documents that support this answer by Bates Number.

ANSWER: None.

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13. Identify who was responsible for making the decision to sell the Truck back through Manheim after it was purchased by Grainger. Identify the person by name, address, title, and state whether or not they are still with Grainger.

ANSWER: James McKenzie, Jr.

14. Identify the total number of vehicles that Grainger purchased through the Manheim in the past five (5) years.

ANSWER: Defendant is in the process of researching this information and will supplement this Answer.

15. Identify the total number of vehicles that Grainger has purchased through any type of vehicle auction for the past five (5) years.

ANSWER: Defendant is in the process of researching this information and will supplement this Answer.

Turner Padget Graham & Laney, P.A.

/s/William E. Lawson

William E. Lawson
SC Bar No. 03239
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Direct: 843-213-5501
Fax: 843-213-5601
wlawson@turnerpadget.com

Myrtle Beach, South Carolina

August 5, 2022

ATTORNEYS FOR DEFENDANT

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STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., AND GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, Defendants v. MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Third-Party Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-00861 **PLAINTIFF'S ANSWERS TO DEFENDANT GRAND STRAND NISSAN'S FIRST SET OF INTERROGATORIES**

Plaintiff, responding to Defendant Grand Strand Nissan, Inc.'s interrogatories, states as follows:

1. Give the names and addresses of persons known to Plaintiff to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements. Identify all documents that support this answer by Bates Number.

RESPONSE:

Curtis Hickman
c/o C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406

Donna Hickman
c/o C. Steven Moskos

6650 Rivers Ave., Ste 210
North Charleston, SC 29406

Ana Bey
695 Hubert Blvd
Hubert, NC 28539

Michael Hayden
Steven Twelkemier
Mechanics
Auctioneer
Staff
Manheim Darlington
1111 Harry Byrd Hwy
Darlington, SC 29532

Aaron Burstein
512 Hobie Cat Rd.
Myrtle Beach, SC 29588

Grand Strand Nissan
4701 US 501
Myrtle Beach, SC 29579
Natasha McLamb
Brianna
Christine
Mechanics
Staff

North Strand Nissan
2592 Hwy 9E
Little River, SC 29566
Diego Gasardi
Mechanics
Staff

Performance Collision
905 Jason Blvd
Myrtle Beach, SC29577
Peggy Ann
Mechanics
Staff

State Farm Insurance
Kyle

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Grainger Honda
1596 Chatham Pkwy
Savannah, GA 31408
Joey Grainger
Mechanics
Staff

No written or recorded statements have been taken

Plaintiff reserves the right to call any witness named by Defendants or Third-Party Defendant and any other witnesses uncovered during discovery in the case.

2. Set forth a list of prepared documents in possession of Plaintiff that relate to the claims or defenses in the case. Identify all documents that support this answer by Bates Number.

RESPONSE: Plaintiff has provided a copy of all non-privileged documents.

3. List the names and addresses of any expert witnesses Plaintiff proposes to use as a witness at the trial of the case.

RESPONSE: None at this time.

4. For each person known to Plaintiff or its counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses. Identify all documents that support this answer by Bates Number.

RESPONSE:

Curtis Hickman will testify as to the representations made by Grainger and Manheim at the auction that caused Plaintiff to purchase the vehicle, Plaintiff's efforts to sell the vehicle, Plaintiff's transaction with Ms. Bey, Plaintiff's dispute and resolution of said dispute with Ms. Bey, and Plaintiff's attempts to resolve this matter with Grainger, Manheim, and Grand Strand.

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Donna Hickman will testify as to the representations made by Grainger and Manheim at the auction that caused Plaintiff to purchase the vehicle, Plaintiff's efforts to sell the vehicle, Plaintiff's transaction with Ms. Bey, Plaintiff's dispute and resolution of said dispute with Ms. Bey, and Plaintiff's attempts to resolve this matter with Grainger, Manheim, and Grand Strand.

Ana Bey will testify as to her purchase of the vehicle, when and how she learned the vehicle had been previously wrecked and the frame damaged, and her resolution of her dispute with Plaintiff.

Michael Hayden and Steven Twelkemier at Manheim Darlington will testify as to Plaintiff's complaint regarding the subject vehicle being sold without disclosure of prior frame damage. They are also expected to testify as to their investigation into Plaintiffs' claims. Manheim Darlington's mechanics will testify as to their inspection of the subject vehicle and their findings. Manheim Darlington's auctioneer and staff will testify as to the representations made by Grainger and Manheim at the auction in which Plaintiff purchased the subject vehicle, the representations made by Grand Strand Nissan and Manheim to Grainger at the auction in which Grainger purchased the subject vehicle from Grand Strand Nissan, and any conversations or communications from Grainger concerning it being sold a vehicle with previous wreck damage that was not disclosed at the auction.

Aaron Burstein well testify as to his ownership of the subject vehicle, the wreck in which he was involved, the repairs performed to the truck, and his representations to Grand Strand Nissan regarding the prior wreck damage to the vehicle.

The employees of Grand Strand Nissan, Natasha McLamb, Brianna, and Christine, will testify to their knowledge of the prior wreck damage to the truck. Grand Strand Nissan's mechanics and staff will also testify as to Grand Strand Nissan's inspection of the subject truck, its knowledge of the prior wreck damage, its notice to Grainger and other potential purchasers that the vehicle had been previously wrecked, notice from Grainger and/or Manheim regarding Grainger's dissatisfaction with its purchase of the subject vehicle, how Grand Strand Nissan dealt with the issues related to this vehicle, and the policies and procedures at the dealership.

North Strand Nissan, Diego Gasardi, will testify to the vehicle being worked on under warranty and that Grand Strand Nissan had worked on the vehicle while it was being repaired by Performance Collision because the odometer was inoperable.

The employees of Performance Collision, including Peggy Ann, will testify to the repair facility's approximately $18,000 repair of the subject vehicle and its communications with Mr. Burstein, Grand Strand Nissan, and North Strand Nissan.

State Farm Insurance will testify as to the repairs done to Mr. Burstein's vehicle and the cost of those repairs.

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The employees of Grainger Honda, including Joey Grainger, will testify as to the representations made by Grand Strand Nissan concerning the subject vehicle when it was being sold at the Manheim auto auction, Grainger's purchase of the subject vehicle, Granger's discovery of the prior wreck damage, Grainger's attempts to resolve its dispute with Grand Strand Nissan, Grainger's communications with Manheim regarding how to resolve Grainger's dispute with Grand Strand Nissan, Grainger's representations to other dealers when it attempted to sell the subject vehicle at the Manheim auction, and Grainger's communications with Plaintiff regarding the subject vehicle.

5. Identify all appraisals that Plaintiff completed on the 2018 Nissan Titan (the "Truck") prior to or after Plaintiff purchased the Truck. Identify all documents that support this answer by Bates Number.

RESPONSE: Plaintiff objects to this interrogatory as an "appraisal" is not defined. Without waiving set objection, Plaintiff hired Manheim to do a post-sale inspection.

6. State whether Plaintiff obtained a Carfax or AutoChek report on the Truck prior to or after Plaintiff purchased the Truck. For each report obtained by Plaintiff, identify the date on which it was pulled, the person who was responsible for pulling it, and whether or not Plaintiff still has a copy of the report. Identify all documents that support this answer by Bates Number.

RESPONSE: Prior to purchase, Curtis Hickman would have consulted a Carfax, an Autochek, NADA, and Manheim Market report. After the purchase, Curtis Hickman obtained a Vincheck report (2/17/20) and an NMVTIS report (2/18/20). Plaintiff only consulted those reports online. It did not keep a copy of these reports. After the purchase, Plaintiff pulled two Carfax reports, on February 24, 2020 and February 24, 2022. The Carfax reports have been produced.

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7. Identify all representatives of Plaintiff who were involved in the decision by Plaintiff to purchase the Truck. Identify each representative by name, address, title, and state whether the representative is still employed by Plaintiff.

RESPONSE: Curtis Hickman, owner of Target Motors LLC d/b/a Port City Motors, was solely involved in the decision to purchase the Nissan Titan.

8. Identify and describe all inspections completed by Plaintiff of the Truck prior to purchase. Identify all documents that support this answer by Bates Number.

RESPONSE: None. The vehicle was purchased online. Manheim did a presale inspection, and the truck was sold under a green light.

9. State whether Plaintiff completed a post-sale inspection of the Truck. If so, describe who completed the inspection, the results of the inspection, and identify any witnesses who were present during the inspection. Identify all documents that support this answer by Bates Number.

RESPONSE: Plaintiff hired Manheim to perform a post-sale inspection. No structural issues were reported. Plaintiff does not know the specific individual who performed the inspection.

I 0. Identify the date that Plaintiff first learned that the Truck had been in an accident and describe how Plaintiff learned of the accident. Identify all documents that support this answer by Bates Number.

RESPONSE: Plaintiff was first made aware of the prior wreck damage to the subject vehicle when Ana Bey sent Curtis Hickman a text on February 18, 2020. Ms. Bey

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provided an Autochek report showing structural or frame damage. A copy of the Autochek report is attached.

11. Identify and describe all communications between Plaintiff and Manheim Remarketing, Inc. d/b/a Manheim Darlington ("Manheim") concerning the Truck before and after it was purchased by Plaintiff. Identify all documents that support this answer by Bates Number.

RESPONSE: Plaintiff did not have any communications with Manheim prior to purchasing the vehicle other than Plaintiff reviewing Manheim's inventory and bidding on the subject vehicle. Post-sale, Plaintiff requested a post-sale inspection report from Manheim. Upon learning of the prior structural damage, Plaintiff communicated with Manheim requesting that it repurchase the vehicle. Manheim refused. Plaintiff also requested that Manheim pay the $4,000 settlement with Ms. Bay. Again, Manheim refused.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF
s/C. Steven Moskos
SC Bar# 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
July 12, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on July 12, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

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STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., AND GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, Defendants v. MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-00861 **PLAINTIFF'S ANSWERS TO DEFENDANT GRAINGER COMPANY'S, INC. D/B/A GRAINGER HONDA'S STANDARD**

Plaintiff, responding to Defendant Grainger Company Inc.'s interrogatories, states as follows:

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

Curtis Hickman
c/o C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406

Donna Hickman
c/o C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406

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Ana Bey
695 Hubert Blvd
Hubert, NC 28539

Michael Hayden
Steven Twelkemier
Mechanics
Auctioneer
Staff
Manheim Darlington
1111 Harry Byrd Hwy
Darlington, SC 29532

Aaron Burstein
512 Hobie Cat Rd.
Myrtle Beach, SC 29588

Grand Strand Nissan
4701 US 501
Myrtle Beach, SC 29579
Natasha McLamb
Brianna
Christine
Mechanics
Staff

North Strand Nissan
2592 Hwy 9E
Little River, SC 29566
Diego Gasardi
Mechanics
Staff

Performance Collision
905 Jason Blvd
Myrtle Beach, SC29577
Peggy Ann
Mechanics
Staff

State Farm Insurance
Kyle

Grainger Honda

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1596 Chatham Pkwy
Savannah, GA 31408
Joey Grainger
Mechanics
Staff

No written or recorded statements have been taken

Plaintiff reserves the right to call any witness named by Defendants or Third-Party Defendant and any other witnesses uncovered during discovery in the case.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or the defense in the case.

RESPONSE: Plaintiff has provided a copy of all non-privileged documents.

3. Set forth the names and addresses of all insurance companies that have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE: Plaintiff does not have access to Defendants' insurance policies, so it is unable to answer this interrogatory.

4. Set forth an itemized statement of all damages (including any economic losses), claimed to have been sustained by the party.

RESPONSE:

Loss of Profit - $4,000

5. List the names and addresses of each expert witness that the party proposes to use as a witness at the trial of the case.

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RESPONSE: None at this time.

6. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other parties of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witness.

RESPONSE:

Curtis Hickman will testify as to the representations made by Grainger and Manheim at the auction that caused Plaintiff to purchase the vehicle, Plaintiff's efforts to sell the vehicle, Plaintiff's transaction with Ms. Bey, Plaintiff's dispute and resolution of said dispute with Ms. Bey, and Plaintiff's attempts to resolve this matter with Grainger, Manheim, and Grand Strand.

Donna Hickman will testify as to the representations made by Grainger and Manheim at the auction that caused Plaintiff to purchase the vehicle, Plaintiff's efforts to sell the vehicle, Plaintiff's transaction with Ms. Bey, Plaintiff's dispute and resolution of said dispute with Ms. Bey, and Plaintiff's attempts to resolve this matter with Grainger, Manheim, and Grand Strand.

Ana Bey will testify as to her purchase of the vehicle, when and how she learned the vehicle had been previously wrecked and the frame damaged, and her resolution of her dispute with Plaintiff.

Michael Hayden and Steven Twelkemier at Manheim Darlington will testify as to Plaintiff's complaint regarding the subject vehicle being sold without disclosure of prior frame damage. They are also expected to testify as to their investigation into Plaintiffs' claims. Manheim Darlington's mechanics will testify as to their inspection of the subject vehicle and their findings. Manheim Darlington's auctioneer and staff will testify as to the representations made by Grainger and Manheim at the auction in which Plaintiff purchased the subject vehicle, the representations made by Grand Strand Nissan and Manheim to Grainger at the auction in which Grainger purchased the subject vehicle from Grand Strand Nissan, and any conversations or communications from Grainger concerning it being sold a vehicle with previous wreck damage that was not disclosed at the auction.

Aaron Burstein well testify as to his ownership of the subject vehicle, the wreck in which he was involved, the repairs performed to the truck, and his representations to Grand Strand Nissan regarding the prior wreck damage to the vehicle.

The employees of Grand Strand Nissan, Natasha McLamb, Brianna, and Christine, will testify to their knowledge of the prior wreck damage to the truck. Grand Strand Nissan's

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mechanics and staff will also testify as to Grand Strand Nissan's inspection of the subject truck, its knowledge of the prior wreck damage, its notice to Grainger and other potential purchasers that the vehicle had been previously wrecked, notice from Grainger and/or Manheim regarding Grainger's dissatisfaction with its purchase of the subject vehicle, how Grand Strand Nissan dealt with the issues related to this vehicle, and the policies and procedures at the dealership.

North Strand Nissan, Diego Gasardi, will testify to the vehicle being worked on under warranty and that Grand Strand Nissan had worked on the vehicle while it was being repaired by Performance Collision because the odometer was inoperable.

The employees of Performance Collision, including Peggy Ann, will testify to the repair facility's approximately $18,000 repair of the subject vehicle and its communications with Mr. Burstein, Grand Strand Nissan, and North Strand Nissan.

State Farm Insurance will testify as to the repairs done to Mr. Burstein's vehicle and the cost of those repairs.

The employees of Grainger Honda, including Joey Grainger, will testify as to the representations made by Grand Strand Nissan concerning the subject vehicle when it was being sold at the Manheim auto auction, Grainger's purchase of the subject vehicle, Grainger's discovery of the prior wreck damage, Grainger's attempts to resolve its dispute with Grand Strand Nissan, Grainger's communications with Manheim regarding how to resolve Grainger's dispute with Grand Strand Nissan, Grainger's representations to other dealers when it attempted to sell the subject vehicle at the Manheim auction, and Grainger's communications with Plaintiff regarding the subject vehicle.

7. Has the party ever been involved in any other legal action (civil or criminal), either as a Defendant or as a Plaintiff? If so, state:

    1. A description of the nature of each such action; and

    2. The final disposition of each such action.

RESPONSE: None

8. Please identify any information, material, writings, posts, updates, correspondence, photographs, email, and other items that have been deleted from any account or profile identified above after the date of the incident giving rise to this lawsuit.

RESPONSE: None

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9. Without simply referencing the language of this lawsuit, provide a detailed description of the incident that gives rise to this lawsuit.

RESPONSE: On January 2, 2020, Curtis Hickman, the owner of Port City Motors, was attending an online auction through Manheim Remarketing. Mr. Hickman saw the 2018 Nissan Titan being offered for sale by Grainger Companies. Mr. Hickman reviewed Manheim's condition report which did not reflect any major or frame damages. Grainger Companies sold the vehicle through a green light sale. Port City Motors was the successful bidder. A post-sale inspection was also performed by Manheim. The truck passed the inspection. Mr. Hickman then contacted a transport company to have the vehicle brought to Morehead City, North Carolina. After an oil change and checking the brakes and tires, the car was put on the lot for sale.

On January 25, 2020, Ana Bey and her husband James, came to Port City Motors and purchased the Titan.

On February 17, 2020, James contacted Port City Motors about major frame/structural damage to the truck.

Mr. Hickman immediately contacted Manheim regarding the major frame/structural damage to the truck. Manheim disclosed that the vehicle had been returned to the auction for the same issue in the past.

Mr. Hickman later learned that the vehicle had had over $18,000 worth of repairs.

Later Mr. Hickman spoke to an employee at North Strand Nissan. He explained that in North Carolina he needed a damage disclosure form for the Titan. North Strand's employee said she could send a North Carolina damage disclosure form to Mr. Hickman because she had a power of attorney from the prior owner. She did so. Mr. Hickman also learned that the wiring harness and frame of the Titan had been replaced due to the wreck.

Mr. Hickman also contacted Manheim requesting assistance with the matter. The only option Manheim provided was for Port City Motors to run the vehicle through the auction again. Manheim also disclosed that, after buying the truck, the previous dealer had complained to the auction that the truck had possible frame damage which had not been disclosed.

On February 20, 2022, Mr. Hickman communicated with Ana Bey's husband regarding resolving Ms. Bey's complaint. James wanted $4,000 to settle the matter.

Mr. Hickman contacted Manheim requesting it pay $4,000 so he could settle the matter with Ms. Bey. Manheim refused stating it could not afford to pay Port City Motors $4,000.

This lawsuit resulted.

10. If you allege punitive damages, please set forth a factual account (other than simply referencing the lawsuit) about Defendant's actions that you contend constitute willful, wanton, reckless, or grossly negligent behavior to sustain a punitive damage award.

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RESPONSE: While additional facts may come to light, Plaintiff is informed that Grainger Companies bought the Titan from Grand Strand Nissan through the Manheim auction. After its purchase, Grainger Companies learned the truck had been severely damaged. Grainger Companies contacted Manheim regarding the vehicle being misrepresented at the time of the auction. Manheim's only suggestion to resolve this matter was to run the truck through the auction again. Even though Grainger Companies knew the truck was previously severely wrecked, Grainger Companies placed the Titan in a green light sale and did not announce at the auction that the Titan had had severe frame damage or that it had been involved in a previous wreck. Once Port City Motors notified Grainger Companies that it had misrepresented the truck, Grainger Companies did nothing to rectify its malfeasance.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF
s/C. Steven Moskos
SC Bar# 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
July 12, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on July 12, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-00861

Target Motors, LLC d/b/a Port City Motors,

Plaintiff,

vs.
Grand Strand Nissan, Inc., Grainger Companies, Inc. d/b/a Grainger Honda, and Manheim Remarketing, Inc. d/b/a Manheim, Darlington,

Defendants.

DEFENDANT GRAND STRAND NISSAN, INC.'S
MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRCP, Defendant Grand Strand Nissan, Inc. ("Grand Strand"), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment as to all claims asserted against it by Plaintiff Target Motors, LLC d/b/a Port City Motors ("Plaintiff").

UNDISPUTED FACTS

Grand Strand is a car dealership that services, repairs, sells, and buys new and used cars. On or about August 30, 2019, Grand Strand completed wreck-related repairs on a 2018 Nissan Titan SV (the "Truck") owned by Aaron Burnstein. (Compl. ¶ 9; Haynes Aff. ¶¶ 5-6). Grand Strand also sold parts to Performance Collision, a body shop that completed other repairs on the Truck. (Haynes Aff. ¶ 6). After the Truck was fully repaired, Burnstein traded the Truck into Grand Strand for $24,000.00 on October 14, 2019. (Compl. ¶ 16; Haynes Aff. ¶ 8). Shortly thereafter, Grand Strand entered the Truck into an online auction owned and operated by Manheim Remarketing, Inc. d/b/a Manheim, Darlington ("Manheim"). (Compl. ¶ 17; Haynes Aff. ¶ 10).

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On November 14, 2019, co-Defendant Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger") purchased the Truck through the auction for $21,000.00. (Haynes Aff. ¶ 11). This transaction was Grand Strand's last connection to the Truck. (*Id*. ¶¶ 12-14).

About two weeks after the purchase, Grainger entered the Truck into the Charleston Auto Auction, but the Truck was pulled from the auction after an AutoCheck report pulled by the auction reported structural damage. (Compl. ¶ 18; Grainger Ans. to Grand Strand Int. p. 3). Grainger then contacted Manheim about the structural damage to the Truck, and Manheim offered to run the Truck back through Manheim's auction. (Compl. ¶¶ 19, 20; Grainger Ans. to Grand Strand Int. p. 4). Although both Grainger and Manheim knew the Truck had structural damage, the Truck was put back through the auction under a green light on December 12, 2019, with no disclosure of the frame damage. (Compl. ¶¶ 25, 29; Grainger Ans. to Grand Strand Int. p. 4; Pl. Ans. to Grand Strand Int. p. 6).

On January 2, 2020, Plaintiff purchased the Truck from Grainger through the auction. (Compl. ¶ 32). Grand Strand was not involved in this transaction and did not communicate with Plaintiff regarding the condition of the Truck at any time prior to Plaintiff's purchase of the Truck. (Haynes Aff. ¶¶ 10-12). There is no contract or agreement related to the Truck between Plaintiff and Grand Strand.

Prior to the purchase, Plaintiff consulted a Carfax report, AutoCheck report, NADA, and Manheim's market report.[1] (Pl. Ans. to Grand Strand Int. p. 5). In addition, Manheim performed a post-sale inspection on the Truck, and the Truck passed inspection. (Pl. Ans. to Grainger Int. p. 6). The Truck was then taken to Plaintiff's dealership where it was sold once again to Ana Bey

[1] Interestingly, Plaintiff did not retain the reports it pulled prior to the purchase of the Truck so it is unknown what damage Plaintiff had knowledge of. Based on the timing of the reports, however, it is likely that Plaintiff would have seen the same structural damage listed on AutoCheck that the Charleston Auto Auction flagged.

on January 25, 2020. (Compl. ¶ 35). On February 17, 2020, Plaintiff was notified by Bey's husband that the Truck had structural damage. (Compl. ¶ 36). Plaintiff ultimately paid Ana Bey $4,000 as the result of the damage to the Truck, and this suit followed.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Once the moving party meets its "initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial." *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999) (citations omitted). A motion for summary judgment must be granted "against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 346, 433 S.E.2d 905, 906 (Ct. App. 1993).

ARGUMENT

Grand Strand is entitled to summary judgment as a matter of law as to all claims asserted against it. Ultimately, all of Plaintiff's claims require either that Grand Strand have some form of communication with Plaintiff regarding the history and condition of the Truck or that Grand Strand be the proximate cause of Plaintiff's damages. Plaintiff can prove neither. As the undisputed facts make clear, Grand Strand did not enter into any transactions with Plaintiff for the sale of the Truck, and Grand Strand did not communicate with Plaintiff at any point prior to this lawsuit about the condition or history of the Truck. Further, Grand Strand's alleged fault is too remote to be linked

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to Plaintiff's damages as a matter of law. Too many transactions and events sit between Grand Strand's sale of the Truck to Grainger and Plaintiff's purchase of the Truck to hold Grand Strand liable for Plaintiff's damages.

Instead, Plaintiff's sole recourse in this case must be against Grainger. Grainger had actual knowledge of the Truck's structural damage. Despite knowing about the Tuck's damage, Grainger and Manheim willingly and knowingly ran the Truck back through the auction under a green light. Grainger then sold the Truck to Plaintiff knowing that Plaintiff expected the Truck to be damage free. And finally, Grainger and Manheim were the only parties who made any communications or representations to Plaintiff regarding the Truck's condition and history. For those reasons, Grainger is the only party that can be deemed the proximate cause of Plaintiff's damages.

(a) Plaintiff's claim for negligence fails as a matter of law because Grand Strand did not owe a duty to Plaintiff and was not the proximate cause of any damage suffered by Plaintiff.

To prove negligence, a plaintiff is required to show that "(1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered injury or damages." *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). Plaintiff cannot establish the first and fourth elements of a negligence claim.

(i) Grand Strand did not owe a duty to Plaintiff.

"If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135-36, 638 S.E.2d 650, 656 (2006). In South Carolina, the duty to disclose has been reduced to three distinct classes:

> (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very

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> contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Wright v. Craft, 372 S.C. 1, 25, 640 S.E.2d 486, 499 (Ct. App. 2006).

Grand Strand's relationship to Plaintiff does not fall within one of these three classes. First, Grand Strand and Plaintiff did not have a preexisting definite fiduciary relationship. Second, a duty based on trust and confidence cannot be implied from a transaction or circumstances in this case because Grand Strand and Plaintiff did not contract for the sale of the Truck and Plaintiff was not a customer of Grand Strand. *Cf id.* (finding that a used car dealer had a duty to disclose wreck damage to its customer). Lastly, and as previously stated, there was no contract or transaction between Grand Strand and Plaintiff that would require Grand Strand to disclose information or to act in good faith towards Plaintiff.

Any other duty Plaintiff claims that Grand Strand owes is too attenuated. "A tortfeasor's duty arises from his relationship to the injured party." *South Carolina State Ports Authority v. Booz–Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325–26 (1986). For liability to attach, "the parties shall have sustained a relationship recognized by law as the foundation of a duty of care." *Ravan v. Greenville Cnty.*, 315 S.C. 447, 467, 434 S.E.2d 296, 308 (Ct. App. 1993). "Where this relationship is too attenuated, a duty will not arise." *Id.* (citations omitted).

Grand Strand and Plaintiff did not sustain a relationship that would be recognized by law. Grand Strand's involvement with the Truck ended with the sale to Grainger. Thereafter, only Grainger and Manheim communicated with Plaintiff about the Truck. Grand Strand did not directly sell the Truck to Plaintiff nor was Grand Strand involved at all in the sale to Plaintiff. Simply put, Grand Strand did not have a relationship with Plaintiff. Any "relationship" between Grand Strand and Plaintiff would rest on the fact that both parties owned the Truck at some point

in time, but this connection is too attenuated to give rise to a duty. Because Grand Strand did not owe a duty to Plaintiff, but its claim for negligence fails as a matter of law.

(ii) Grand Strand was not the proximate cause of any damage suffered by Plaintiff.

A claim for "[n]egligence is not actionable unless it is a proximate cause of the injury." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 83 (1998). "Proximate cause requires proof of: (1) causation-in-fact, and (2) legal cause." *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006). "Causation-in-fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence, and legal cause is proved by establishing foreseeability." *Id.* Although the issue of proximate cause is generally one for the jury, "when the evidence is susceptible of only one inference, [] proximate cause becomes a matter of law for the court." *Bishop*, 331 S.C. at 89, 502 S.E.2d at 83.

Here, Plaintiff cannot prove as a matter of law that Grand Strand proximately caused its damages because the undisputed evidence establishes that Grand Strand is not the "but-for" cause of Plaintiff's damages. Grainger was fully aware that the Truck had been damaged when it sold the Truck to Plaintiff. Any duty to disclose was Grainger's and any damage to Plaintiff was caused by Grainger.

The test for cause in fact is not: "but for" Grand Strand's sale to Grainger. Instead, the test here is "but for" Grainger's failure to disclose known wreck damage, and "but for" Grainger's choice to sell the Truck back through the auction without disclosing the damage. There are simply too many intervening negligent events to link Grand Strand to Plaintiff's damages. *Oliver v. South Carolina Dep't of Highways & Public Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992) (stating that an intervening cause can render initial negligence too remote). Relying solely on Grand Strand's sale to Grainger to establish proximate cause is far too remote to be considered the cause of

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Plaintiff's damages. The evidence allows only one inference—Grainger is the sole proximate cause of Plaintiff's damages, not Grand Strand.

(b) Plaintiff's claim for negligent misrepresentation fails as a matter of law because Grand Strand never made a representation to Plaintiff nor had any communication with Plaintiff regarding the condition of the Truck.

To succeed under a negligent misrepresentation theory, the plaintiff must show that "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." *Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 273, 847 S.E.2d 793, 802–03 (Ct. App. 2020).

Here, Plaintiff has failed to produce any evidence that Grand Strand made a false representation to Plaintiff. Simply, Grand Strand never communicated with Plaintiff prior to the sale of the Truck. Grand Strand did not participate in any sales or communications regarding the Truck after it was sold to Grainger.

In fact, Plaintiff has not produced any evidence to show that Grand Strand communicated with Plaintiff regarding the Truck, let alone produced any evidence that Grand Strand made a representation to Plaintiff regarding the condition or collision history of the Truck. Plaintiff instead bases its claim against Grand Strand on the fact that Grand Strand did not properly advise Grainger of any prior wreck damage to the Truck. Even if true, Grand Strand's communications regarding the condition of the Truck were made only to Grainger—not to Plaintiff. Thus, Grand Strand is entitled to summary judgment because Grand Strand never communicated with Plaintiff regarding the condition of the Truck.

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Lastly, and as discussed above, Plaintiff cannot prove as a matter of law that Grand Strand was the proximate cause of its damages. And under a negligent misrepresentation theory, Plaintiff must establish that it "suffered a pecuniary loss as the proximate result *of its reliance upon the representation*." *Id.* (emphasis added). Because Grand Strand never made a representation to Plaintiff, Plaintiff could not have relied on the representation and could not suffer from damages as a result. Thus, Plaintiff's claim for negligent misrepresentation must fail.

(c) Plaintiff's claim for fraud must fail because Grand Strand never made any representations of any kind to Plaintiff.

Grand Strand is entitled to summary judgment as a matter of law as to Plaintiff's fraud claim because Grand Strand never made a representation to Plaintiff regarding the condition of the Truck for which Plaintiff could rely. To establish fraud, the plaintiff must prove: "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Sorin Equip. Co. v. The Firm, Inc.*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (Ct. App. 1996). And "[f]ailure to prove any element of fraud is fatal to the action." *Id.*

Here, Plaintiff has failed to prove *any* elements of fraud as to Grand Strand. As explained above, Grand Strand never communicated with Plaintiff regarding the Truck's condition and was never involved in the sale with Plaintiff. Because Grand Strand never made a representation to Plaintiff, elements one through four automatically fail. Additionally, Plaintiff had no representation by Grand Strand to rely on regarding the condition of the truck. Any alleged representations made by Grand Strand to Grainger or Manheim were not delivered to Plaintiff and were not intended to be relied upon by Plaintiff.

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Further, any allegations that Grand Strand committed fraud by altering the odometer in the Truck also fail because Plaintiff has not produced any evidence to show that Grand Strand disconnected or altered the Truck's odometer. When the Truck arrived at Grand Strand for repairs, the entire electrical board was without power. (Haynes Aff. ¶ 4). Once the power was reconnected to the electrical board, the odometer and the rest of the car's electrical controls were restored. (*Id.* ¶ 5). However, there is no evidence of any repair or alteration of the odometer by Grand Strand, or any evidence that Grand Strand made any representations or omissions concerning the odometer to Plaintiff. Because Grand Strand never made a representation to Plaintiff concerning the Truck, Plaintiff's claim for fraud fails as a matter of law.

(d) Plaintiff's Unfair Trade Practices Act claim must fail because Grand Strand did not engage in any unfair or deceptive acts towards Plaintiff, and Grand Strand was not the proximate cause of Plaintiff's damages.

To prove a claim under the UTPA, the plaintiff must establish that "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013); *see also* S.C. Code Ann. § 39-5-20.

As explained previously, Grand Strand did not engage with or enter into a transaction with Plaintiff. Grand Strand was not involved in any subsequent transactions between Plaintiff, Grainger, and Manheim. Because Grand Strand did not have any involvement in the sale of the Truck to Plaintiff, Grand Strand could not have engaged in an unfair or deceptive act towards Plaintiff.

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Additionally, "[t]he statute clearly requires that in order to recover pursuant to the UTPA one must prove each of the following three elements . . . 1) a violation of the Act, 2) proximate cause, and 3) damages." *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct. App. 1995). Again, Plaintiff cannot prove as a matter of law that Grand Strand proximately caused its damages. Solely relying on Grand Strand's sale of the Truck to Grainger to establish proximate cause is far too remote as a matter of law. Thus, the evidence allows only one inference—Grand Strand is not the proximate cause of Plaintiff's damages.

(e) Grand Strand is entitled to summary judgment as to Plaintiff's South Carolina Motor Vehicle Dealers Act Claim because Grand Strand is not the proximate cause of Plaintiff's damages.

For the same reasons Grand Strand is entitled to summary judgment on Plaintiff's UTPA claim, Grand Strand is entitled to summary judgment as to Plaintiff's South Carolina Motor Vehicle Dealer's Act claim (the "Dealers Act"). The Dealers Act provides that unfair deceptive acts or practices as defined in section 56-15-40 are unlawful. S.C. Code Ann. § 56-15-30(a). Specifically, the Act provides that it is unlawful for any motor vehicle dealer to "engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damages to any of the parties or to the public." S.C. Code Ann. § 56-15-40(B). However, a party can only recover under the Act against the dealer who proximately caused the party's damage.

Plaintiff has not produced any evidence to show that Grand Strand acted arbitrarily or in bad faith towards Plaintiff because Grand Strand has never taken any action towards Plaintiff at all. Plaintiff was not a party to Grand Strand's contract to sell the Truck, and Grand Strand never communicated with Plaintiff about the Truck or its condition. And as outlined above, Grand Strand cannot be held liable for fraud or for its refusal to fulfill a duty or contractual obligation because Grand Strand did not owe a duty to Plaintiff and did not have a contract with Plaintiff setting forth

any obligations owed by Grand Strand. Nothing Grand Strand did could be construed as the proximate cause of Plaintiff's damages because Grand Strand's transactions did not involve Plaintiff or directly harm Plaintiff. Grainger is the only party that contracted and communicated with Plaintiff and is the only party that can be held liable in this action.

CONCLUSION

Based on the foregoing, Grand Strand is entitled to summary judgment as to all claims asserted against it by Plaintiff.

/s/ Mary M. Caskey
Mary M. Caskey (SC Bar #76198)
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
Phone: 803-779-3080
Fax: 803-765-1243
mcaskey@hsblawfirm.com
Attorneys for Grand Strand Nissan, Inc.

December 22, 2022

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STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-00861 **AFFIDAVIT OF CURTIS HICKMAN**

I, Curtis Hickman, under penalty of perjury, state that:

1. I am the owner of Target Motors, LLC d/b/a Port City Motors.
2. I am responsible for buying vehicles for Port City Motors.
3. I buy vehicles as trade-ins and I buy cars at auctions.
4. In buying cars at an auction, I rely on other dealers to accurately and truthfully represent vehicles they are selling.
5. I only buy cars under an auction's "green light" as those cars are not supposed to have any major problems or wreck damage.
6. I take my reputation very seriously. I do not want to jeopardize my reputation and consequently my livelihood on possibly unknowingly selling a previously wrecked vehicle to a consumer as I do not want to be labeled crooked or deceitful.
7. On January 2, 2020, I bought a 2018 Nissan Titan SV K1500 VIN: 1N6AA1C50JN508002 through Manheim Remarketing, Inc. d/b/a Manheim Darlington.

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8. The truck was sold under a "green light". Manheim did not announce that the truck had been previously wrecked. I expected that Grainger Honda was providing me truthful information it had received from the person or dealer from whom it had purchased the truck.

9. I had no indication that Grainger Honda's statements were false.

10. Had I known that Grand Strand Nissan had misrepresented the condition of the truck, I would not have purchased it from Grainger Honda.

11. If dealers at auctions do not have a duty to make truthful statements upon which other dealers and consumers can rely, the process of selling cars in America will have to change dramatically as unscrupulous and unethical dealers will have free reign to cheat honest dealers. That will result in honest dealers, including me, having to spend more time and money evaluating vehicles.

12. If dishonest dealers are allowed to flourish as suggested by Grand Strand, honest dealers will start to become dishonest so they can compete and stay in business. This will ultimately damage consumers and the economy.

13. I went on vacation starting December 29, 2022. I was unavailable to review this affidavit. Even if I had received the affidavit, I would not have been able to find a notary to notarize my affidavit. I returned to Moorehead City on January 2, 2023. I received this affidavit January 3, 2023 when I returned to my office. I signed it, had it notarized, and returned it to my attorney immediately.

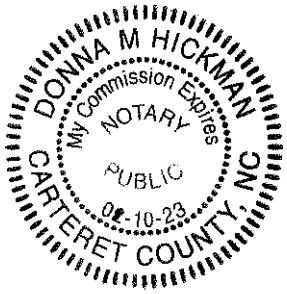
SIGNATURE ON NEXT PAGE

Curtis Hickman

Moorehead City, North Carolina
January 2nd 2023

SWORN TO AND SUBSCRIBED before me
January 2nd 2023

Notary Public for North Carolina
My Commission Expires:



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STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., AND GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, Defendants	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-00861 **PLAINTIFF'S OPPOSITION TO GRAND STRAND NISSAN, INC.'S MOTION FOR SUMMARY**

FACTS

The facts supporting Port City's claims are admitted by Grand Strand Nissan, Inc. Aaron Burstein wrecked his Titan in Myrtle Beach resulting in over $18,000 in repairs. The damages were so extensive, they required an original estimate and five supplemental estimates. (Exhibit 5.[1] Repair Shop Estimate[2].) Grand Strand worked on the wrecked truck and provided parts to the repair shop fixing the truck. These parts included a new frame. (Haynes Aff. 3-6; Exhibits 6, 7, and 8.) Grand Strand later bought the truck knowing that it had been wrecked and repaired. (Haynes Aff. 8.) Grand Strand then took the truck to the Manheim Auto Auction, a dealer only auction, in Darlington. (Haynes Aff. 10.) Grand Strand did not disclose the prior wreck damage or the replacement of the frame to the auction so the damage could be announced to potential buyers. (Exhibit 14 Response to Interrogatory 23.) Instead, Grand Strand represented that the truck met

[1] Since Port City is using exhibits attached to Grand Strand's motion, Port City's exhibit numbers will start at 5.

[2] The Repair Estimate is a compilation of the five estimates created before it. For brevity only the last estimate is made an exhibit.

Manheim's requirements regarding selling a vehicle under a green light. (Exhibit 9.)

Manheim Auto Auction requires dealers to be ethical. (Exhibits 10 and 11 p. 2 Sec. I(1)). Manheim is not part of the sale and does not provide any guarantees regarding the vehicles dealers sell. (Exhibit 10 p. 2 Sec. I(2)(a)). Vehicles sold under a "green light", as was the Titan, are **guaranteed** by the seller and any defects or issues requiring disclosure per the auction's policies must be announced. (Exhibit 10 p. 3 Sec. II(1)). A selling dealer is held responsible for the accuracy and completeness of all representations or descriptions. Dealers are responsible for ensuring that their vehicles are sold with the correct representations. (Exhibit 10 p. 4 Sec. III(1)). Disclosures are required for any matters that relate to the safety or integrity of the vehicle including as per the stated dollar threshold and disclosure requirements, and all requirements under local, state, or federal statutes or regulations. Announcements must be made verbally and disclosed on the auction bill of sale. (Exhibit 10 p. 4 Sec. III(5)). The auction requires disclosure of structural damage, certified structural repair or replacement, structural alteration, and any disclosure required by law. (Exhibit 10 p. 9). Frame damage is defined as structural damage that must be disclosed. (Exhibit 10 p. 10 Sec. VIII(1)(2)). The Titan's damage falls within these definitions. The auction rules require sellers to "disclose permanent structural damage, any structural alterations, structural repairs or replacements (certified or non- certified) as outlined in this policy prior to selling a vehicle at auction regardless of sales channel or light condition. Disclosures are required for the following: a. Any/all existing permanent (non- repairable aka kinked or broken) structural damage as defined in this policy. k. Damage due to contact with parking abutments and/or road debris that permanently deforms structural components outlined in this policy. (Exhibit 10 p. 11 Sec.

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III(a) and (k)). And if the disclosure requirements were still unclear to a dealer, the auction has a chart which clearly shows that structural damage must be disclosed when the frame rails have been removed, modified, repaired, or replaced. (Exhibit 10 p. 13).

On November 14, 2019, Grainger Honda, relying on Grand Strand's silence as to the wreck damage, bought the truck under a green light not knowing it was previously wrecked. (Haynes Aff. 11; Exhibit 9.)

On November 21, 2019, Grainger Honda tried to sell the Titan at the Charleston Auto Auction. When the truck was offered for sale, Charleston Auto Auction announced that the truck had been wrecked. Grainger Honda allegedly learned for the first time that the truck had been wrecked. Grainger Honda then pulled the truck from the auction. Grainger Honda returned the truck to Manheim Auto Auction. (Exhibit 2 Grainger's Answers to Interrogatories; Exhibit 12.)

On January 2, 2020, Grainger Honda, knowing the Titan had been previously wrecked, ran the Titan through the Manheim Auto Auction under a green light without disclosing the prior wreck damage. Port City Motors, relying on Grainger Honda's silence, bought the truck. (Exhibit 13.)

Port City Motors sold the truck to a consumer. The consumer learned of the prior wreck damage and made a claim against Port City. The consumer and Port City arrived at a resolution. Port City made a demand for reimbursement on the Defendants. Said demands were ignored.

SUMMARY JUDGEMENT STANDARD

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In

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determining whether any triable issues of fact exist to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998). If any triable factual issues exist, those issues must go to the jury. Rothrock v. Copeland, 305 S.C. 402, 409 S.E.2d 366 (1991). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Cf. Rule 56(f) S.C.R.C.P. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

Summary judgment should be denied as Port City has not been able to conduct depositions of the Defendants and Manheim. While Interrogatories and Requests for Production have been submitted to the Parties, Port City was forced to file a motion to compel on September 20, 2022 against Grainger to obtain more complete responses. The motion to compel has not been heard.

While Grand Strand argues there are only questions of law for the court, it relies on facts to support its claims that Port City did not have any contact with Grand Strand. Grand Strand also claims its conduct could not be the proximate cause of Port City's loses because its conduct was too remote[3]. Port City has not had an opportunity to deal with these factual questions. Additionally, these factual questions raise questions that a jury must decide. Since Port City has not had a chance to complete discovery, summary

[3] Whether Grand Strand's conduct was too remote is a factual question to be answered by a jury.

judgment is inappropriate at this time.

ARGUMENT

Grand Strand's reading of the law is too narrow. As shown below, South Carolina's statutes and case law recognize that a third party can sue for damages caused by another who intends or has reason to expect that its representations will be repeated or its substance communicated to the other, and that it will influence his conduct in the transaction or type of transaction involved. Grand Strand sold this truck at a dealer-only auction knowing, through its own experience and through Manheim's policies, that another dealer would buy this truck and sell it to another dealer or to a consumer. Grand Strand knew its representations that the truck could be sold under a "green light" was false and that not instructing the auction to announce the prior wreck damage was a representation that the truck was not damaged. It also knew another dealer would rely on these representations and pass them on to others.

1. SOUTH CAROLINA ALLOWS THIRD PARTY CLAIMS IN NEGLIGENCE.

a. Grand Strand's Common Law Duty Disclose The Prior Wreck Damage.

As stated by Grand Strand, it owes a duty to disclose … (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, ***or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied***;… (emphasis added.) Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006).

This raises a jury question as to whether from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied. The circumstances of the case required

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disclosure so the truth about the truck could be conveyed to anyone interested in buying the truck. Grand Strand had superior knowledge about the truck in that it knew the truck had been wrecked and the extent of the damage to the truck. Grand Strand knew the truck would pass from a purchasing dealer to another dealer or to a consumer. Those parties would want to know about the quality of the $18,000 worth of repairs so they could properly value the truck. The nature of their dealings and their position towards each other required disclosure.

"There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious." Clomon v. Jackson, 988 F. 2d 1314, 1318 (2nd Cir.1993), citing Federal Trade Commission v. Standard Education Society, 302 U.S. 112, 116, 58 S.Ct. 113, 115, 82 L.Ed. 141 (1937). Our economy requires honesty so people can trust merchants and so that honest people are not forced to be dishonest in order to be able to compete with dishonest merchants. Grand Strand had a legal duty to disclose the wreck damage.

b. Grand Strand's Contractual Duty To Disclose The Prior Wreck Damage.

Grand Strand's duty to disclose also arises from Manheim's Auction Policy. (Exhibit 10.) Manheim's policy requires sellers to be ethical and fair to purchasers at the auction (p. 2.), to provide accurate and complete representations or descriptions of the vehicles it sells (p. 4), to announce any matter that relates to the safety or integrity of the vehicle (p. 4), to disclose and announce structural repair or replacement (pp. 9, 10, 11, 12, and 13)[4]. This disclosure requirement continues into the Manheim Terms and

[4] This is in line with S.C, Code §36-1-201(20) which defines "Good faith" as honesty in fact and the observance of reasonable commercial standards of fair dealing.

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Conditions. (Exhibit 11 page 1 paragraph 3.) The seller is solely responsible for all disclosures regarding the truck. (Exhibit 11 page 4 paragraph (I)(ii).)

Contrary to Grand Strand's position, there was a relationship between Grand Strand and Port City. Both are dealers who buy and sell cars at auctions.

While Grand Strand may not have had direct communication with Port City[5], it did have at least indirect communication. Grand Strand made false affirmative representations that the truck could be sold under a "green light" which is also a representation that the truck has not been wrecked. See Manheim's Auction Policies re: duties. (Exhibits 10 and 11.) Grand Strand knew another dealer was going to rely on its representations and would pass that information on to another dealer or a consumer[6].[7] Knowing others would rely on that information mandated Grand Strand to divulge the wreck damage. This is important for dealers and consumers to make informed decisions about what to pay for the vehicles they buy, to investigate the extent and quality of the repairs performed, and to represent properly the vehicle when it is later sold.

c. Duty Arising From Statutes.

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class

[5] This is yet to be determined as discovery is not complete.

[6] The Manheim Terms and Conditions state, "You acknowledge and agree that any Vehicle is purchased for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased by you for resale. (Exhibit 11 p. 5 paragraph (m).)

[7] "It is difficult to conceive of a commodity that is any more likely to involve knowledge by a seller 'that there is an especial likelihood that [a misrepresentation] will reach [third] persons and will influence their conduct,' *Restatement § 531 cmt. d*, than in the case of a motor vehicle." Clark v. McDaniel, 546 N.W.2d 590, 593-94 (Iowa 1996).

of persons the statute is intended to protect. Trivelas v. South Carolina Dept. of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001).

Grand Strand owed Port City duties under the South Carolina Unfair Trade Practices Act S.C. Code §39-5-10 *et seq.* and the Dealers Act S.C. Code §56-15-10 *et seq*. Both Acts prohibited Grand Strand from committing unfair or deceptive acts. The essential purpose of the Acts is to provide a remedy to purchasers who are injured by a business' unfair or deceptive acts and practices.

Port City is a member of the class of persons intended to be protected. Port City is a "person" under the UTPA. S.C. Code §39-5-10(a). Port City has a cause of action as it suffered an "ascertainable loss of money" resulting from Grand Strand's use or employment of an unfair or deceptive method, act or practice. S.C. Code §39-5-140(a).

Port City is a "person" under the Dealers Act. S.C. Code §56-15-10(n). Grand Strand violated the Act by engaging in arbitrary, bad faith, or unconscionable conduct which caused damage **to the parties or to the public**. S.C. Code §56-15-40(B). Any person injured in his business or property by reason of anything forbidden in the Dealers Act has the right to sue the wrongdoer. S.C. Code §56-15-110.

Port City is a member of the classes these statutes are designed to protect from unscrupulous car dealers.

Grand Strand's violations of these Acts constitute negligence *per se*.

d. **"But For" Grand Strand's Conduct, Port City Would Not Have Been Hurt.**

South Carolina allows Plaintiffs to sue for negligence committed by a third party. Barker v. Sauls, 289 S.C. 121, 345 S.E.2d 244 (1986) (Suit allowed to proceed against insurance salesman sued for negligence and fraud by employee of a company for whom

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salesman was to acquire workers compensation insurance but did not.); South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 346 S.E.2d 324, 289 S.C. 373 (1986) (a duty to use due care imposed on consultant to the commercial competitor who is being critiqued.)

Grand Strand's liability to Port City is separate from Grand Strand's contractual arrangement with Grainger. Liability rests on Grand Strand's duty to exercise due care.

"But for" Grand Strand's choice not to tell the auction, and therefore other dealers, about the wreck damage, Port City would not have been injured. Had Grand Strand announced the prior wreck damage, the auction would have sold the truck under a "yellow" or "red" light. Port City would never have been exposed to this vehicle. Had Grand Strand announced the wreck damage and Grainger had bought it, Grainger would not have been able to sell it at Manheim under a "green" light as Manheim already had the information and would announce it at a subsequent sale. In either case, Port City would not have had contact with this truck and would not have been injured.

As stated below, Port City's damages were foreseeable.

e. PRIVITY OF CONTRACT IS NOT REQUIRED.

A tort-feasor may be subjected to tort liability for injury to a third party arising out of the tort-feasor's contractual relationship with another, despite the absence of privity between the tort-feasor and the third party. Terlinde v. Neely, 275 S.C. 395, 271 S.E.2d 768 (1980). The tort-feasor's liability exists independently of contract, and rests upon the tort-feasor's duty to exercise due care to avoid injury or damage to others. Edward's of Byrnes Downs v. Charleston Sheet Metal Co., Inc., 253 S.C. 537, 172 S.E.2d 120 (1970).

The key inquiry is what duty, if any, is owed by the tort-feasor to the third party. It

is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tort-feasor. 57 Am. Jur.2d, Negligence, Section 36. This duty may be derived from the tort-feasor's contractual relationship with another. See, Ateyeh v. Volkswagen of Florence, Inc., 341 S.E.2d 378 (1986). Barker v. Sauls, 289 S.C. 121, 345 S.E.2d 244 (1986).

The key inquiry regarding the duty is foreseeability, not privity. Terlinde v. Neely, 271 S.E.2d 768, 275 S.C. 395 (1980). The objective is to protect the innocent purchaser from latent defects. The reasoning, which would arbitrarily interpose a first buyer as an obstruction to someone equally as deserving, is incomprehensible. The fact that the subsequent purchaser did not know the original seller, as did the original purchaser, does not negate the reality of the 'holding out' of the merchant's expertise and reliance which occurs in the marketplace. Terlinde v. Neely, 271 S.E.2d 768, 275 S.C. 395 (1980). (Finding implied warranties extended to third parties not in privity with home builder and that privity is no longer viable in South Carolina.); Ravan v. Greenville County, 434 S.E.2d 296, 315 S.C. 447 (Ct. App. 1993) (Subsequent landowner allowed to sue waste disposal company for improper disposal of hazardous waste at a landfill even though landowner bought property eight years after landfill was closed.)

Grand Strand's argument is that since Port City did not have a contract with Grand Strand for the sale of the truck, Grand Strand could not be liable for Port City's damages. Port City has not made a contract claim against Grand Strand. Its claims sound in tort.

As stated in section 1(a) above, Grand Strand has duties under the law and pursuant to Manhiem's policies to disclose the enormous damage done to this truck. Grand Strand's actions and inactions violated these duties and the duty to exercise due

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care.

Grand Strand could foresee a dealer or consumer being injured by its choice not to disclose the damage. It knew the truck would be sold to a dealer and eventually to a consumer. See Manheim Terms and Conditions. (Exhibit 11 p. 5 paragraph (m).) Grand Strand did not disclose the wreck damage because it knew a truck with $18,000 worth of wreck damage repairs including replacement of the frame would be worth less than a nondamaged truck and that it would cause some purchasers to walk away from it all together. Even though it knew this, Grand Strand still chose to withhold this information from purchasers so it could receive the highest price for the truck.

In our mobile society, it is well known that many people buy and sell cars every few years and that cars can be operational for more than ten years. It is thus foreseeable that vehicles will be owned by more than the original purchaser. Since Port City is in the class of entities that buy and use automobiles, it is entitled to a duty of care requiring the disclosure of prior wreck damage by Grand Strand.

f. Proximate Cause Is Peculiarly A Question For The Jury.

"'Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence." "[I]n the ordinary case, it is peculiarly a question for the jury." Trivelas v. South Carolina Dept. of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). "'Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law.'" *Id.* "Causal relation is one of fact. It is always for the jury, except when the facts are such that they will support only one reasonable inference." *Id.*

The court should not rule on proximate cause as that is a question for the jury.

g. Grand Strand Is The Proximate Cause Of The Port City's Injuries.

Should the Court reach the proximate cause issue, it should apply the following. "Proximate cause requires proof of both causation in fact, and legal cause. 'Causation in fact is proved by establishing the injury would not have occurred `but for' the defendant's negligence.' ....

'Legal cause is proved by establishing foreseeability.' 'The standard by which foreseeability is determined is that of looking to the 'natural and probable consequences' of the complained of act." ....

"Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach. It is not necessary for a plaintiff to demonstrate the defendant should have foreseen the particular event which occurred but merely that the defendant should have foreseen his or her negligence would probably cause injury to someone." Trivelas v. South Carolina Dept. of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). "Conduct is the proximate cause of an injury if that injury is within the scope of reasonably foreseeable risks of the conduct." Mellen v. Lane, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008).

The act, to be the proximate cause, does not need to be the sole cause of the plaintiff's injury. Liability can be imposed on a defendant if his actions, not necessarily the sole cause, are the proximate concurring cause of the injury. Id.

Where there is a contention that an intervening agency interrupts the foreseeable chain of events, there are two consequences to be tested: (1) the injury complained of, and (2) the acts of the intervening agency. If the acts of the intervening agency are a

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probable consequence of the primary wrongdoer's actions, i.e., "foreseeable", the primary wrongdoer is liable. Mellen v. Lane, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008). For an intervening act to break the causal link, the intervening act must be unforeseeable; whether the intervening act breaks the causal connection is a question of fact for the fact finder which will not be disturbed on appeal unless found to be without evidence which reasonably supports the finding. Dixon v. Besco Eng'g, Inc., 320 S.C. 174, 180, 463 S.E.2d 636, 640 (Ct. App.1995).

The Court in Pfaehler v. Ten Cent Taxi Co., 198 S.C. 476, 485-486, 18 S.E.2d 331, 335 (1942) set forth the rule regarding intervening events. It stated:

> "[T]he general rule is that whoever does a wrongful act is answerable for all the consequences that may ensue in the ordinary course of events, though such consequences are immediately and directly brought about by an intervening cause, if such intervening cause was set in motion by the original wrongdoer, or was in reality only a condition on or through which the negligent act operated to produce the injurious result. Any number of causes and effects may intervene between the first wrongful cause and the final injurious consequence; and if they are such as might, with reasonable diligence have been foreseen, the last result, as well as the first, and every intermediate result is to be considered in law as the proximate result of the first wrongful cause. The question always is, [198 S.C. 486] Was there any unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury? The test is to be found in the probable injurious consequences which were to be anticipated, not in the number of subsequent events and agencies which might arise."

This holding was reaffirmed in Bishop v. SC Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998).

Grand Strand's argument is that a seller does not have any duty to a buyer later in the chain of ownership. In essence, its position is that if a seller can cheat the first purchaser and get away with it, it does not have any responsibility to any subsequent

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purchaser. Pfaehler v. Ten Cent Taxi Co., 198 S.C. 476, 18 S.E.2d 331 (1942) and Bishop v. SC Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998) defeat that argument.

Port City has set forth its "but for" and "foreseeability" arguments previously and incorporates them here by reference. Port City does point out that its injury would not have occurred had Grand Strand chose to disclose the wreck instead of hiding it. The natural and probable consequences of choosing to withhold the wreck information is that the purchasing dealer will either unknowingly pass on the false information believing it to be true or it will lie about the vehicle claiming it did not know about the damage so it can limit its loss. This will naturally and probably result in someone in the chain getting burned by this hot potato. This was foreseeable by Grand Strand.

The Court should not grant summary judgment on proximate cause for several reasons. First, proximate cause is particularly a question for the jury. Second, discovery has not been completed as Plaintiff has not deposed Defendants or Manheim. Additional facts may yet be discovered. Third, Port City has shown its injuries were proximately caused by Grand Strand. Fourth, Grainger's misrepresentations were not an intervening event which protects Grand Strand.

2. SOUTH CAROLINA SHOULD ALLOW THIRD PARTY CLAIMS FOR NEGLIGENT MISREPRESENTATIONS.

South Carolina has not dealt specifically with this question, however, the Fourth Circuit held in Private Mortg. Inv. V. Hotel and Club Associates, 296 F.3d 308 (4th Cir. 2002) that South Carolina would hold that an appraiser would be liable to a third party for a negligent misrepresentation.[8] The Fourth Circuit stated that the South Carolina Court

[8] The Fourth Circuit held that the South Carolina Supreme Court would find third parties could be sued for

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of Appeals in ML-Lee Acquisition Fund v. Deloitte & Touche, 320 S.C. 143, 463 S.E.2d 618 (Ct. App.1995), rev'd in part on other grounds, 327 S.C. 238, 489 S.E.2d 470 (1997) has adopted *Restatement (Second) of Torts § 552* which provides:

> (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. (2) ... [T]he liability stated in Subsection (1) is limited to loss suffered
> (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and
> (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

The Court of Appeals held there is no requirement that the person making the representation know who is to receive that representation. A car dealer selling a two-year-old truck at an auction knows the truck is going to make its way back into the retail market. Clark v. McDaniel, 546 N.W.2d 590, 593-94 (Iowa 1996).

Here, Grand Strand represented that the truck could be sold under a "green light" and it represented that the truck was undamaged as it did not tell anyone about the damage. Silence is a representation that a condition does not exist. Jacobson v. Yaschik, 249 S.C. 577, 155 S.E. 2d 601 (1967). Grainger passed on Grand Strand's fraudulent statements when Grainger fraudulently sold the truck to Port City. Port City had a right to rely on the representations. As a result of relying on those representations, Port City was hurt.

Port City relies on its arguments above regarding Grand Strand's claim that it was

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negligent misrepresentations based on "the indicators that we have just set forth, along with the absence of contrary indicators,…".

not the proximate cause of Port City's injuries.

3. GRAND STRAND MADE FRAUDULENT REPRESENTATIONS TO PORT CITY THAT COULD BE RELIED UPON BY PORT CITY.

a. Fraudulent representations

To prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). "Non-disclosure is fraudulent when there is a duty to speak." Ardis v. Cox, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct. App. 1993). Non-disclosure becomes fraudulent concealment when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. Lawson v. Citizens S. Natl. Bank of S.C., 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972). A duty to speak arises … (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied;… Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006).

South Carolina's holdings mesh with *Restatement (Second) of Torts § 533* which states, "The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the

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other, and that it will influence his conduct in the transaction or type of transaction involved."

As stated above, Grand Strand made at least two false affirmative representations regarding the truck, that it could be sold under a "green light" and that it was undamaged as it did not tell anyone about the damage. Grand Strand knew these representations would be passed on to other dealers or consumers. Therefore, Grand Strand had reason to expect that the purchasing dealer would pass on the false representations it made about the truck and that stating the truth would have influenced others' conduct regarding buying the truck.

b. Justifiable Reliance

"'The general rule is that questions concerning reliance and its reasonableness are factual questions for the jury.' Unlimited Servs., Inc. v. Macklen Enters., Inc., 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991); see also Starkey v. Bell, 281 S.C. 308, 313, 315 S.E.2d 153, 156 (Ct. App.1984) ('Issues of reliance and its reasonableness, going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the triers of the facts.')." Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003).

"It is difficult to conceive of a commodity that is any more likely to involve knowledge by a seller 'that there is an especial likelihood that [a misrepresentation] will reach [third] persons and will influence their conduct,' *Restatement § 531 cmt. d*, than in the case of a motor vehicle." Clark v. McDaniel, 546 N.W.2d 590, 593-94 (Iowa 1996).

Whether Port City relied and was justified in relying on Grand Strand's representations is a jury question. Summary judgment on this basis would be inappropriate.

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Nonetheless, Grand Strand knew other dealers would rely on its representations. It made false representations anyway. These false representations were passed on by Grainger. Since Grand Strand had duties under South Carolina common law, statutory law, and Manheim's policies to tell the truth, Port City was justified in relying and did rely on the representations made by Grand Strand.

As for Grand Strand's arguments regarding Port City's Odometer Act claims, Port City has not had the opportunity to complete discovery so it cannot properly respond at this time.

4. Grand Strand's Violation Of The Unfair Trade Practices Act ("UTPA") Was The Proximate Cause Of Plaintiff's Damages.

To prove a UTPA violation, a plaintiff must establish that "(1) the Defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." Gentry v. Yonce, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999). "An act is 'deceptive' when it has a tendency to deceive." Id.; see also S.C. Code Ann. § 39-5-20.

The UTPA, SC Code §39-58-10 *et seq*., is a remedial statute entitled to liberal construction to effectuate its purpose. State ex rel. McLeod v. C & L Corp., Inc., 313 S.E.2d 334, 280 S.C. 519 (Ct. App. 1984) (Act creates new substantive rights by making unlawful conduct which was not actionable under the common law); Ducworth v. Neely, 319 S.C. 158, 459 S.E. 2d 896 (Ct. App. 1995). The purpose of the Act is to stop unfair and deceptive conduct by businesses.

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The SCUTPA defines "trade or commerce" as "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce ***directly or indirectly*** affecting the people of this State." S.C. Code Ann. § 39–5–10(b) (1985). By these plain terms, it is clear the General Assembly intended for the SCUTPA to apply to acts and practices that the public experienced directly and indirectly. Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 743 S.E.2d 808 (S.C. 2013)

SC Code Section 39-5-140(a) states "***Any person who suffers any ascertainable loss of money*** or property, real or personal, ***as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful*** by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." (Emphasis added.) To be actionable under the UTPA, the unfair or deceptive act or practice must have an impact upon the public interest. Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989). This resolves the proximate cause issue in favor of Port City. It is undenied Port City suffered an ascertainable loss of money because Grand Strand used or employed an unfair or deceptive method, act or practice by withholding information about the prior wreck damage.

Whether an act or practice is unfair or deceptive within the meaning of the UTPA depends on the surrounding facts and the impact of the transaction on the marketplace. Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006).

It is undisputed that Grand Strand breached its duty to disclose to Grainger the

wrecked condition of the truck when it was sold at auction. (Exhibit 14 Response to Interrogatory 23.) Grand Strand's conduct was unfair and deceptive in trade or commerce as Grand Strand is in the business of selling vehicles. Grand Strand's conduct affects the public interest. It is obvious that dealers and/or consumers will be adversely monetarily affected by the sale of previously wrecked vehicles whose condition was not disclosed. See Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006); Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010); O'Shields v. Columbia Auto., LLC, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021).

Grand Strand's argument ignores the UTPA's language. Grand Strand claims it must deal directly with Port City. The Act covers trade or commerce directly or indirectly affecting the public. Port City contends that it was directly affected by Grand Strand's unfair and deceptive acts and practices. Nonetheless, if the Court determines Port City was only indirectly affected, that is enough to deny Grand Strand's motion for summary judgment.

Grand Strand's deceptive conduct started the deception in this matter. It was easily foreseeable that another dealer would not want to be left with a previously wrecked vehicle for which it overpaid. It is easily foreseeable that a dealer who overpaid for this truck would fail to disclose the damage to whomever it could find to buy it. Had Grand Strand been honest to begin with, the wreck damage would have been disclosed, it would have been sold under a yellow or red light, and another dealer would have paid a lower price for the truck making it more likely that dealer would disclose the truth to the next owner.

Port City incorporates its other arguments regarding proximate cause here.

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Violation of the UTPA would necessarily be a violation of the Dealers Act. Here, Defendants failed to disclose the prior damage to the truck, and they did not accurately state the mileage the truck had been driven.

5. **Grand Strand Violated The South Carolina Motor Vehicle Dealers Act And Is Liable To Port City For The Damages Port City Sustained.**

Pursuant to S.C. Code §56-15-30(a), unfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are unlawful. It shall be deemed a violation of Section 56-15-30(a) for any...motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage ***to any of the parties or to the public***. (Emphasis added.) S.C. Code §56-15-40(B).

South Carolina Code §56-15-10(m) defines "fraud" to be, in addition to its normal legal connotation, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and **an intentional failure to disclose a material fact**. (Emphasis added.)

The Dealers Act is a remedial statute also and should be interpreted broadly to effectuate its purpose.

Grand Strand claims Port City must me a “party” for the Dealers Act to apply. Again, Grand Strand does not provide any authority for this position. Port City is a party to the transaction as the vehicle moves through the stream of commerce. Even if Port City were not a party, it is a member of “the public”. Grand Strand damaged Port City by failing to disclose the damage to the vehicle to Grainger, which allowed Grainger to sell the truck claiming nothing was wrong with it.

Grand Strand’s reliance on Grainger being a middleman is misplaced. Grand

Strand could have foreseen that its misrepresentations would cause someone harm and that others may continue the fraud to avoid injury. Grand Strand was in the unique position to know exactly what had been damaged on the truck as it provided the parts to the repair shop. Had Grand Strand disclosed the wreck damage, the auction would have sold it under a different light, Grainger would not have bought it, and Port City would never have seen the truck.

Port City incorporates its previous arguments regarding proximate cause.

Violation of the Dealers Act would necessarily be a violation of the UTPA. Here, Grand Strand failed to disclose the prior damage to the truck and it did not accurately state the mileage the truck had been driven.

6. The Court Should Deny Grand Strand's Motion Regarding Any Novel Issue Of Law.

"Important questions of novel impression should not be decided on demurrer." Jackson v. Atlantic Soft Drink Co., 286 S.C. 577, 579 (1985); Vaughan v. Kalyvas, 288 S.C. 358, 364 (Ct. App. 1986) ("Demurrers should not be granted when the pleadings raise important questions of novel impression."); State ex rel. McLeod v. Fritz Waidner Sports Cars, Inc., 263 S.E.2d 384, 274 S.C. 332 (1980) (Important questions of novel impression should not be determined on demurrer.). Before a novel question is considered, "the case should be fully developed and tried on its merits." Jackson.

Should the Court decide that any of Grand Strand's arguments deal with novel legal issues, it should deny Grand Strand's motion, allowing the merits of the case to be developed for trial.

CONCLUSION

Based on the foregoing arguments and law and taking the facts in the light most

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favorable to the Plaintiff, Defendant's motion should be denied.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF
s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
January 2, 2023

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Performance Collision Centers-Myrtle Beach
Fixed Right. On Time. The First Time
905/907 Jason Blvd., Myrtle Beach, SC 29577
Phone: (843) 839-9080
FAX: (843) 839-9081

Workfile ID: 75efad29
PartsShare: 5wKwxP
Federal ID: 82-0924332

Exhibit 5

Supplement of Record 5 with Summary

RO Number: 6996

Written By: Ryan Forbes, 10/18/2019 11:35:37 AM
Adjuster: Express Team L, (855) 341-8184 Business

Insured:	BURSTEIN, AARON	Policy #:		Claim #:	03-9995-V2701
Type of Loss:	Collision	Date of Loss:	8/9/2019 8:15 PM	Days to Repair:	0
Point of Impact:	12 Front				

Owner:
BURSTEIN, AARON
23971 N NECTAR AVE
FLORENCE, AZ 85132-5210
(480) 296-3254 Cell
(480) 296-3254 Other

Inspection Location:
Other (Tow Yard, Repair Facility)
1511 ABSCO DR
LONGS, SC 29568
Other

Insurance Company:
STATE FARM INSURANCE COMPANIES

Vehicle Drop Off Date:	08/19/2019	**Promise Date:**	10/11/2019	**Repair Start Date:**	08/19/2019
Repair Completion Date:	10/07/2019	**Vehicle Pick Up/Return Date:**	10/07/2019		

VEHICLE

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

VIN:	1N6AA1C50JN508002	Interior Color:		Mileage In:	43,266	Vehicle Out:	10/7/2019
License:		Exterior Color:	grey	Mileage Out:			
State:	SC	Production Date:	10/2017	Condition:	Good	Job #:	Stanley

TRANSMISSION
Automatic Transmission
4 Wheel Drive
POWER
Power Steering
Power Brakes
Power Windows
Power Locks
Power Mirrors
DECOR
Dual Mirrors
Privacy Glass
CONVENIENCE
Air Conditioning
Intermittent Wipers
Tilt Wheel
Cruise Control
Rear Defogger
Keyless Entry
Alarm
Steering Wheel Touch Controls
Telescopic Wheel
RADIO
AM Radio
FM Radio
Stereo
Search/Seek
CD Player
SAFETY
Drivers Side Air Bag
Passenger Air Bag
Anti-Lock Brakes (4)
4 Wheel Disc Brakes
Traction Control
Front Side Impact Air Bags
SEATS
Cloth Seats
WHEELS
Aluminum/Alloy Wheels
PAINT
Clear Coat Paint
TRUCK
Rear Step Bumper
Rear Sliding Window

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RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

Line			Oper		Description	Part Number	Qty	Extended Price $		Labor		Paint
1	#		S05		*FINAL BILL, DOP ATTACHED-PLEASE PAY SHOP DIRECT*		1					
2	**FRONT BUMPER**											
3		<>	S01	Repl	Upper cover w/o Platinum Reserve, PRO-4X	62025EZ40H	1	150.56		0.4		2.2
4					Add for Clear Coat							0.9
5			S01	Repl	Lower grille	62254EZ40E	1	59.42		Incl.		
6					O/H front bumper					1.8		
7	*		S01	Repl	Bumper gun metallic w/prk sensr	62022EZ90E	1	869.36		Incl.		0.0
8					Add for park sensor					0.4		
9			S01	Repl	Retainer	62290EZ40B	1	349.93		0.3		
10	*		S01	Repl	LT Trim bezel w/o fog lamps	62257EZ02A	1	36.71		0.2		
11	*		S01	Repl	RT Trim bezel w/o fog lamps	62256EZ02A	1	36.71		0.2		
12	*		S01	Repl	RT Insert w/o park sensor	622569FS0B	1	47.75		0.2		
13	*		S01	Repl	LT Insert w/o park sensor	622579FS0B	1	47.75		0.2		
14			S01	Repl	LT Inner bracket	62221EZ50A	1	46.58		Incl.		
15			S01	Repl	RT Inner bracket	62220EZ50A	1	46.58		Incl.		
16			S01	Repl	RT Mount bracket	62222EZ40B	1	88.65		Incl.		
17			S01	Repl	LT Mount bracket	62223EZ40B	1	88.65		Incl.		
18			S01	Repl	RT Inner bracket rivet	015150007U	8	14.40				
19			S01	Repl	RT Side bracket	62222EZ40C	1	69.91		0.1		
20			S01	Repl	LT Inner bracket rivet	015150007U	8	14.40				
21			S01	Repl	LT Side bracket	62223EZ40C	1	69.91		0.1		
22			S01	Repl	Spoiler	96015EZ40A	1	64.00		Incl.		
23			S02	Repl	Park sensor inner	25994EZ01E	2	718.36		0.2		
24	**GRILLE**											
25	*		S01	Repl	Grille assy Midnight Edition pkg gun metallic	623109FS6A	1	951.98		Incl.		1.8
26			S01		Overlap Major Non-Adj. Panel							-0.2
27			S01		Add for Clear Coat							0.3
28			S01	Repl	Shutter	214219FT0B	1	312.35		0.4		
29	**FRONT LAMPS**											
30				R&I	RT Headlamp assy w/o LED, w/o Midnight Edition pkg					Incl.		
31				R&I	LT Headlamp assy w/o LED, w/o Midnight Edition pkg					Incl.		
32	**RADIATOR SUPPORT**											
33			S01	Repl	Lower tie bar Titan	62500EZ40A	1	308.60		0.4		0.7
34			S04		Evacuate & recharge				m	1.4	M	
35			S04		Refrigerant recovery				m	0.4	M	
36					Aim headlamps					0.5		
37			S01	Repl	Front shield w/o PRO-4X Titan	50810EZ03B	1	127.96		0.3		
38				R&I	Upper tie bar Titan					0.6		
39	**COOLING**											

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RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

40		S01	Repl	RT Intake duct Titan	21468EZ30A	1	37.35					
41		S01	Repl	LT Intake duct Titan	21469EZ30B	1	37.98					
42		S04	R&I	Radiator assy Titan				m	1.6	M		
43	#		Rpr	Bleed Coolant System					1.0	M		
44	**AIR CONDITIONER & HEATER**											
45		S04	R&I	Condenser assy Titan				m	0.6	M		
46		S04	R&I	Rear AC tube				m	1.0	M		
47		S04	R&I	Liquid line Titan				m	0.8	M		
48		S04	R&I	Discharge line Titan				m	0.4	M		
49	**HOOD**											
50			R&I	R&I hood assy					0.6			
51		S01	R&I	Lock w/o intelligent key Titan					0.3			
52	**FENDER**											
53	*	S01	Repl	LT Protector	63845EZ40B	1	30.71		0.1			
54	*	S01	Repl	RT Protector	63844EZ40B	1	30.71		0.1			
55			R&I	RT R&I fender assy					1.8			
56			R&I	LT R&I fender assy					1.8			
57			R&I	RT Fender liner					0.4			
58			R&I	LT Fender liner					0.4			
59	**FRAME**											
60	*		Rpr	RT Rail end Titan				s	1.5			0.5
61		S01		Overlap Minor Panel								-0.2
62	*		Rpr	LT Rail end Titan				s	1.5			0.5
63				Overlap Minor Panel								-0.2
64	#		Repl	Cavity wax		1	15.00		0.3			
65	#		Rpr	Set-up & measure					2.0	F		
66	#		Rpr	Additional Set-up time for Truck Clamp System					2.0	F		
67			Repl	Frame assy 5.6L, Titan 4WD	50100EZ23B	1	5,472.95		32.0			
68	**ELECTRICAL**											
69	*	S01	Repl	Wire harness engine compartment SV, 4 door	24012EZB0A	1	1,360.87		6.0			
70		S04	R&I	Battery				m	0.3	M		
71		S01	R&I	High note horn					0.2			
72		S01	R&I	Low note horn					0.2			
73	**EXHAUST SYSTEM**											
74	*	S04	R&I	Muffler & pipe				m	0.7	M		
75	**WHEELS**											
76		S04	R&I	LT/Front R&I wheel				m	0.1	M		
77		S04	R&I	LT/Rear R&I wheel				m	0.1	M		
78		S04	R&I	RT/Front R&I wheel				m	0.1	M		
79		S04	R&I	RT/Rear R&I wheel				m	0.1	M		
80	**FRONT SUSPENSION**											
81		S04	R&I	R&I front suspension both sides				m	Incl.	M		
82	**STEERING GEAR & LINKAGE**											
83	*		R&I	Gear assy				m	Incl.			

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2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

84	#		Rpr	Bleed Power Steering System				1.0	M	
85	**STEERING COLUMN**										
86		S04	R&I	R&I steering column			m	1.4	M	
87	**CAB**										
88			R&I	RT Scuff plate front w/o metallic				0.1			
89			R&I	LT Scuff plate front w/o metallic				0.1			
90			R&I	RT Lwr ctr plr trim				0.3			
91			R&I	LT Lwr ctr plr trim				0.3			
92			R&I	RT Scuff plate rear w/o metallic				0.1			
93			R&I	LT Scuff plate rear w/o metallic				0.1			
94			R&I	RT Cowl trim				0.2			
95			R&I	LT Cowl trim				0.2			
96	*	S01	R&I	LT Step bar charcoal				0.7			
97	*	S01	R&I	RT Step bar charcoal				0.7			
98	**RESTRAINT SYSTEMS**										
99		S04	R&I	Ft impact sensor			m	0.3	M		
100	#			Disarm airbags	1			1.0	M		
101	**PICK UP BOX**										
102			R&I	R&I box assy				Incl.			
103	**FUEL SYSTEM**										
104		S04	R&I	R&I fuel tank			m	2.4	M		
105		S04	R&I	Filler tube 6.5 foot bed			m	0.6	M		
106	#		R&I	Fuel Lines				1.0	M		
107		S04	R&I	Vent hose			m	0.6	M		
108	**REAR SUSPENSION**										
109		S04	R&I	R&I axle housing as an assy			m	Incl.	M		
110		S04	Repl	Bleed brake system	1		m	0.6	M		
111	**REAR LAMPS**										
112			R&I	RT Combo lamp assy SV, PRO-4X w/o utility bed				0.3			
113			R&I	LT Combo lamp assy SV, PRO-4X w/o utility bed				0.3			
114	**REAR BUMPER**										
115			R&I	R&I bumper assy				Incl.			
116	**VEHICLE DIAGNOSTICS**										
117	*		Repl	Pre-repair scan	1		m	0.5	M		
118	*		Repl	Post-repair scan	1		m	0.5	M		
119	**MISCELLANEOUS OPERATIONS**										
120	*		Repl	Cover car/bag	1	4.00		0.2			
121	#		Repl	Corrosion protection	1	15.00		0.3			
122	#			D&R SRS components	1			1.0	M		
123	#		Rpr	Disconnect battery cable				0.2	M		
124	#		Subl	Hazardous waste removal	1	5.00	X				
125	#		Repl	Weld-through primer	1	6.00		0.3			
126	#			access OEM repair procedures	1			0.3			
127	#		Refn	mask/cover engine bay for cut-in							0.5

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Produced by Target 240

RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

128	#		Rpr	Adjust Emergency Brakes					1.0	M
129	**FLUIDS**									
130			Repl	Brake fluid Dot 3	999MPA4100P	1	6.65			
131			Repl	Engine coolant Blue long life	999MPL25500P	2	41.98			
132	#		Repl	Refrigerant R-134a		1	9.00			
133		S02	Repl	Pwr strng fluid Pwr strng fluid II	999MPAG200P	3	29.97			
134			Repl	Auto trans fluid w/o diesel Matic S	999MPMAT00S	2	21.98			
135	#	S02	Repl	Antifreeze - OEM Required		3	60.00			
				Note: using non oem coolant voids manufactoers warranty						
136	#	S02	Repl	Frame bolt		1	5.00			
137	#	S02	Repl	Gear Oil		1	5.00			
138	#	S02	Subl	Mechanical Sublet		1	2,235.49	X		
139	#	S05		*FINAL BILL, DOP ATTACHED-PLEASE PAY SHOP DIRECT*		1				
140					OTHER CHARGES					
141	#	S01			Towing	1	100.00			
					SUBTOTALS		**14,051.16**		**82.7**	**6.8**

ESTIMATE TOTALS

Category	Basis		Rate	Cost $
Parts				11,710.67
Body Labor	58.0 hrs	@	$ 44.00 /hr	2,552.00
Paint Labor	6.8 hrs	@	$ 44.00 /hr	299.20
Mechanical Labor	20.7 hrs	@	$ 55.00 /hr	1,138.50
Frame Labor	4.0 hrs	@	$ 48.00 /hr	192.00
Paint Supplies	6.8 hrs	@	$ 30.00 /hr	204.00
Miscellaneous				2,240.49
Other Charges				100.00
Pre-Tax Discount			-4.2 %	-774.35
Subtotal				17,662.51
Sales Tax	$ 11,218.82	@	8.0000 %	897.51
Grand Total				**18,560.02**
Deductible				500.00
CUSTOMER PAY				**500.00**
INSURANCE PAY				**18,060.02**

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RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

SUPPLEMENT SUMMARY

Line		Oper	Description	Part Number	Qty	Extended Price $		Labor	Paint
Deleted Items									
118	#	Subl	mechanical sublet W&M - steering angle sensor calibration		1	-62.50	X		
119	#	Subl	mechanical sublet W&M - seat occupany sensor calibration		1	-75.00	X		
Added Items									
1	#	S05	*FINAL BILL, DOP ATTACHED-PLEASE PAY SHOP DIRECT*		1				
139	#	S05	*FINAL BILL, DOP ATTACHED-PLEASE PAY SHOP DIRECT*		1				
				SUBTOTALS		**-137.50**		**0.0**	**0.0**

TOTALS SUMMARY

Category	Basis	Rate	Cost $
Parts			0.00
Miscellaneous			-137.50
Pre-Tax Discount		-4.2 %	5.77
Subtotal			-131.73
Total Supplement Amount			**-131.73**
NET COST OF SUPPLEMENT			**-131.73**

CUMULATIVE EFFECTS OF SUPPLEMENT(S)

Estimate	15,978.86	Jason Antidormi
Supplement S01	-370.59	Jason Antidormi
Supplement S02	3,023.93	Ryan Forbes
Supplement S03	-82.72	Ryan Forbes
Supplement S04	142.27	Ryan Forbes
Supplement S05	-131.73	Ryan Forbes
Job Total:	**$ 18,560.02**	
CUSTOMER PAY:	**$ 500.00**	
INSURANCE PAY:	**$ 18,060.02**	

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RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

Performance Collision Center provides a limited lifetime warranty on workmanship relating to the current repairs. It will apply to all items on the final repair invoice. The warranty shall cover defects occurring under normal conditions. Damage caused by accident, negligence, abuse, expose to the elements, or paint chipped by driving shall not be covered under this warranty. Performance Collision Centers shall not be responsible for loss of use, loss of time, inconvenience, towing, rental, lodging or loss of business, or any other incidental or consequential damages. Performance Collision Centers provides a limited lifetime warranty effective the date of completion of repairs, unless manufactures warranty is less or more, on new parts installed by or at the shop. (Shop warranty does not exceed MANUFACTURE'S WARRANTY)

'Installing a part, other than a part described on the written estimate, without prior approval from the customer is unlawful. If you suspect an illegal installation of parts by your auto repair facility, call the State Department of Insurance, Consumer Assistance Office at (800) 768-3467.

FOR YOUR PROTECTION ARIZONA LAW REQUIRES THE FOLLOWING STATEMENT TO APPEAR ON THIS FORM. ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

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ELECTRONICALLY FILED - 2023 Jan 02 8:22 PM - HORRY - COMMON PLEAS - CASE#2022CP260861

RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide ARF3626, CCC Data Date 10/17/2019, and potentially other third party sources of data; and (b) the parts presented are OEM-parts. OEM parts are manufactured by or for the vehicle's Original Equipment Manufacturer (OEM) according to OEM's specifications for U.S. distribution. OEM parts are available at OE/Vehicle dealerships or the specified supplier. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships with discounted pricing. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2020 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:
m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:
D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:
Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:
BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

PARTS SUPPLIER LIST

Line	Supplier	Description	Price
3	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62025EZ40H Upper cover w/o Platinum Reserve, PRO-4X	$ 150.56
5	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62254EZ40E Lower grille	$ 59.42
7	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62022EZ90E Bumper gun metallic w/prk sensr	$ 869.36
9	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62290EZ40B Retainer	$ 349.93
10	Keystone 3580 N WILLIAMSBURG COUNTY HWY CADES SC 29518 (800) 922-7223	#62257EZ02A LT Trim bezel w/o fog lamps Quote: 397569667 Expires: 09/29/19	$ 36.71
10	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62257EZ02A LT Trim bezel w/o fog lamps	$ 36.71
11	Keystone 3580 N WILLIAMSBURG COUNTY HWY CADES SC 29518 (800) 922-7223	#62256EZ02A RT Trim bezel w/o fog lamps Quote: 397569784 Expires: 09/29/19	$ 36.71
11	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62256EZ02A RT Trim bezel w/o fog lamps	$ 36.71
12	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#622569FS0B RT Insert w/o park sensor	$ 47.75

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Produced by Target 245

RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

13	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#622579FS0B LT Insert w/o park sensor	$ 47.75
14	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62221EZ50A LT Inner bracket	$ 46.58
15	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62220EZ50A RT Inner bracket	$ 46.58
16	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62222EZ40B RT Mount bracket	$ 88.65
17	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62223EZ40B LT Mount bracket	$ 88.65
18	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#015150007U RT Inner bracket rivet	$ 1.80
19	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62222EZ40C RT Side bracket	$ 69.91
20	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#015150007U LT Inner bracket rivet	$ 1.80
21	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62223EZ40C LT Side bracket	$ 69.91
22	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579	#96015EZ40A Spoiler	$ 64.00

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RO Number: 6996

2018 NISS Titan SV King Cab 4WD 4D P/U 8-5.6L Gasoline Gasoline Direct Injection grey

	(843) 236-2191		
25	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#623109FS6A Grille assy Midnight Edition pkg gun metallic	$ 951.98
28	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#214219FT0B Shutter	$ 312.35
33	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#62500EZ40A Lower tie bar Titan	$ 308.60
37	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#50810EZ03B Front shield w/o PRO-4X Titan	$ 127.96
40	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#21468EZ30A RT Intake duct Titan	$ 37.35
41	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#21469EZ30B LT Intake duct Titan	$ 37.98
53	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#63845EZ40B LT Protector	$ 30.71
54	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#63844EZ40B RT Protector	$ 30.71
69	Grand Strand Nissan 4701 Highway 501 Myrtle Beach SC 29579 (843) 236-2191	#24012EZB0A Wire harness engine compartment SV, 4 door	$ 1,360.87

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GRAND STRAND NISSAN

Myrtle Beach
South Carolina

4701 HWY 501 * MYRTLE BEACH, SC 29579
(843) 236-2191
www.grandstrandnissan.com

Exhibit 6

DISCLAIMERS OF WARRANTIES

The only warranties applying to this part(s) are those which may be offered by the manufacturer. The selling dealer hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this part(s) and/or service. Buyer shall not be entitled to recover from the selling dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income or any other incidental damages.

DATE ENTERED	YOUR ORDER NO.	DATE SHIPPED	INVOICE DATE	INVOICE NUMBER
06 SEP 19	6996	06 SEP 19	06 SEP 19	62702

ACCOUNT NO. 209AR

PAGE 1 OF 1

SOLD TO
PERFORMANCE COLLISION CENTER
905 JASON BLVD
MYRTLE BEACH, SC 29577

SHIP TO
PERFORMANCE COLLISION CENTER
905 JASON BLVD
MYRTLE BEACH, SC 29577

SHIP VIA	SLSM.	B/L NO.	TERMS	F.O.B. POINT
	107		DUE ON 10TH OF MON	MYRTLE BEACH, SC

QUANTITY ORD	QUANTITY SHIP	QUANTITY B.O.	PART NO.	DESCRIPTION	LIST	NET	AMOUNT
1	1	0	50100-EZ22B	FRAME	5390.89	3773.62	3,773.62
			2018 NISSAN TITAN				
			1N6AA1C50JN508002				
			THANK YOU				

PARTS	3,773.62
SUBLET	
FREIGHT	0.00
SALES TAX	0.00
TOTAL	$3,773.62

CUSTOMER'S SIGNATURE
X

ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS INVOICE.
NO RETURNS ON ELECTRICAL OR SPECIAL ORDER PARTS.
NO RETURNS AFTER 30 DAYS. 20% RE-STOCK CHARGE ON ALL RETURNED PARTS.
ROA 185

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GRAND STRAND NISSAN

Myrtle Beach
South Carolina

Exhibit 7

4701 HWY 501 * MYRTLE BEACH, SC 29579
(843) 236-2191
www.grandstrandnissan.com

DISCLAIMERS OF WARRANTIES

The only warranties applying to this part(s) are those which may be offered by the manufacturer. The selling dealer hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this part(s) and/or service. Buyer shall not be entitled to recover from the selling dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income or any other incidental damages.

DATE ENTERED	YOUR ORDER NO.	DATE SHIPPED	INVOICE DATE	INVOICE NUMBER
06 SEP 19	6996	06 SEP 19	06 SEP 19	62683

SOLD TO

ACCOUNT NO. 209AR

PERFORMANCE COLLISION CENTER
905 JASON BLVD
MYRTLE BEACH, SC 29577

SHIP TO

PERFORMANCE COLLISION CENTER
905 JASON BLVD
MYRTLE BEACH, SC 29577

SHIP VIA	SLSM.	B/L NO.	TERMS	F.O.B. POINT
	38		DUE ON 10TH OF MON	MYRTLE BEACH, SC

QUANTITY ORD.	QUANTITY SHIP	QUANTITY B.O.	PART NO.	DESCRIPTION	LIST	NET	AMOUNT
1	1	0	62257-EZ02A	BRACKET-FR	36.71	23.22	23.22
1	1	0	62256-EZ02A	FINISHER-F	36.71	23.22	23.22
1	1	0	62025-EZ40H	FASCIA-FRO	150.56	105.39	105.39
1	1	0	62254-EZ40E	GRILLE-FRO	59.42	41.59	41.59
1	1	0	62022-9FT3D	BUMPER SET	869.36	608.55	608.55
1	1	0	62290-EZ40B	RETAINER A	349.93	244.95	244.95
1	1	0	62256-9FS0B	GRILLE FRO	47.75	33.43	33.43
1	1	0	62257-9FS0B	GRILLE FRO	47.75	33.43	33.43
1	1	0	62221-EZ50A	BRACKET -	46.58	32.61	32.61
1	1	0	62220-EZ50A	BRACKET -	46.58	32.61	32.61
1	1	0	62222-EZ40B	BRACKET FR	88.65	62.06	62.06
1	1	0	62223-EZ40B	BRACKET FR	88.65	62.06	62.06
16	16	0	01515-0007U	RIVET-BLIN	1.80	1.26	20.16
1	1	0	62222-EZ40C	BRACKET FR	69.91	48.94	48.94
1	1	0	62223-EZ40C	BRACKET FR	69.91	48.94	48.94
1	1	0	96015-EZ40A	AIR SPOILE	64.00	44.80	44.80
1	1	0	62310-9FS6A	GRILL RADI	951.98	666.39	666.39
1	1	0	21421-9FT0B	SHUTTER AS	312.35	218.65	218.65
1	1	0	62500-EZ40A	SUPPORT AS	308.60	216.02	216.02
1	1	0	50810-EZ03B	COVER-UNDE	127.96	89.57	89.57
1	1	0	24012-EZB0A	HARNESS AS	1360.87	952.61	952.61

PARTS	
SUBLET	
FREIGHT	
SALES TAX	
TOTAL	

CUSTOMER'S SIGNATURE
X

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GRAND STRAND NISSAN

Myrtle Beach
South Carolina

4701 HWY 501 * MYRTLE BEACH, SC 29579

ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS INVOICE.
NO RETURNS ON ELECTRICAL OR SPECIAL ORDER PARTS.
NO RETURNS AFTER 30 DAYS. 20% RE-STOCK CHARGE ON ALL RETURNED PARTS.

(843) 236-2191
www.grandstrandnissan.com

DISCLAIMERS OF WARRANTIES

The only warranties applying to this part(s) are those which may be offered by the manufacturer. The selling dealer hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this part(s) and/or service. Buyer shall not be entitled to recover from the selling dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income or any other incidental damages.

DATE ENTERED	YOUR ORDER NO.	DATE SHIPPED	INVOICE DATE	INVOICE NUMBER
06 SEP 19	6996	06 SEP 19	06 SEP 19	62683

ACCOUNT NO. 209AR

SOLD TO
PERFORMANCE COLLISION CENTER
905 JASON BLVD
MYRTLE BEACH, SC 29577

SHIP TO
PERFORMANCE COLLISION CENTER
905 JASON BLVD
MYRTLE BEACH, SC 29577

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GRAND STRAND NISSAN

Myrtle Beach
South Carolina

4701 HWY 501 * MYRTLE BEACH, SC 29579

SHIP VIA	SLSM.	B/L NO.	TERMS	F.O.B. POINT
	38		DUE ON 10TH OF MON	MYRTLE BEACH, SC

QUANTITY ORD	QUANTITY SHIP	QUANTITY B.O.	PART NO.	DESCRIPTION	LIST	NET	AMOUNT
1	1	0	21468-EZ30A	AIR DUCT-I	37.35	26.14	26.14
1	1	0	21469-EZ30B	DUCT-AIR I	37.98	26.59	26.59
1	1	0	63845-EZ40B	PROTECTOR	30.71	21.50	21.50
1	1	0	63844-EZ40B	PROTECTR F	30.71	21.50	21.50

PARTS	3,704.93
SUBLET	
FREIGHT	0.00
SALES TAX	0.00
TOTAL	$3,704.93

CUSTOMER'S SIGNATURE

X

ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS INVOICE.
NO RETURNS ON ELECTRICAL OR SPECIAL ORDER PARTS.
NO RETURNS AFTER 30 DAYS. 20% RE-STOCK CHARGE ON ALL RETURNED PARTS.

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CUSTOMER COPY

Repair Order Detail - Internal Copy

G.S.

RO Number: 290613 RO Status: CLOSED

Exhibit 8

Customer:
Phone(s): Contact: (480)296-3254 Main:
Vehicle: 1N6AA1C50JN508002 2018 TITAN

Click to View Cust Copy
Cell:

Mileage: 43,575
Service advisor: 191
Tag number: T3372

Payment type: CASH

Promised date: 10/14/2019

Waiter: Yes
Estimate: 0.00

~~~~~~

A CUSTOMER REQUEST INSPECT ENGINE LIGHT CAME ON AFTER PICKING UP VEHICLE FROM BODY SHOP CHECK AND REPORT

EAT	IUV	CEL ON. DTC' P0456. FOUND 3 HOSES LEFT DISCONNECTED. RECHECKED FOR EVAP LEAKS. SMOKE TEST. ALL OK	2.00	191.00

Tech(s): 638

Pts: 0.00 Lbr: 191.00 Other: 0.00 Total Line A: 191.00

~~~~~~

B CUSTOMER STATES WHEN UNLOCKING THE VEHICLE THE WINDOWS GO DOWN

ELR	IUV	REMOVED DRIVERS DOOR LOCK ACTUATOR AND CHECK FOR WIRING PROBLEMS. FOUND UNLOCK LEVER CONSTATLY PRESSED AGAINST HARNESS	1.50	143.25

Tech(s): 638

Pts: 0.00 Lbr: 143.25 Other: 0.00 Total Line B: 143.25

~~~~~~

C CUSTOMER STATES THE TAILGATE DOESN'T LOCK

YA91AA	WN93	RPL TAILGATE LOCK	0.70	73.50

Tech(s): 638

999M2-W3005 1 ELECTRONIC TAILGATE LOCK 245.00

Pts: 245.00 Lbr: 73.50 Other: 0.00 Total Line C: 318.50

Story: 43575 TAILGATE ACTUATOR FAULTY. REMOVED AND REPLACED ACTUATOR. NO FURTHER ISSUES

~~~~~~

D CUSTOMER STATES THE WINDSHIELD FLUID DOESN'T WORK

ELR	IUV	FOUND HARNESS AT WASHER PUMP NOT SEATED CORRECTLY. RESECURED AND TESTED ALL OK	1.00	95.50

Tech(s): 638

Pts: 0.00 Lbr: 95.50 Other: 0.00 Total Line D: 95.50

~~~~~~

E CUSTOER STATES WHEN TURNING STEERING WHEEL LEFT OR RIGHT WHEN DRIVING HEARS A CREAKING SOUND CHECK AND ADVISE

BODY	IUV	LUBED STEERING WHEEL GROMMET FOR RUBBING SOUND	0.50	0.00

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~~~~~~

Repair Order Detail - Internal Copy

RO Number: 290613 RO Status: CLOSED

Customer:
Phone(s): Contact: (480)296-3254 Main:
Vehicle: 1N6AA1C50JN508002 2018 TITAN

Click to View Cust Copy
Cell:

Mileage: 43,575
Service advisor: 191
Tag number: T3372

Payment type: CASH

Promised date: 10/14/2019

Waiter: Yes
Estimate: 0.00

~~~
~~~

Exhibit 9

Manheim GW0728

BILL OF SALE

THIS IS NOT AN INVOICE

DOCUMENT NOT VALID FOR EXPORT

505 MANHEIM DARLINGTON
1111 HARRY BYRD HWY
DARLINGTON, SC 29532 US

Sale Date
14-NOV-2019 11:14:27

Yr Wk Ln Rn
2019-46-4-81

Pickup Location
1111 HARRY BYRD HWY
DARLINGTON, SC 29532 US

Sale Type
In-Lane

Vehicle Information
2018 Nissan Titan
XCAB SV Gray
1N6AA1C50JN508002

Mileage: 44213 Miles 0

License Plate No:

Title Information
State: Number:

Vehicle Features
8 Cylinder Engine
7-Speed A/T

50 State

Vehicle Purchase Price

Sale Price	$ 21,000.00
Adjustments	$ 0.00
Final Sale Price	$ 21,000.00

Seller
GRAND STRAND NISSAN INC
4701 HIGHWAY 501
MYRTLE BEACH, SC 29579 US

Seller Rep:
Signature on file

POSTED

Buyer
GRAINGER HONDA
1596 CHATHAM PKWY
GARDEN CITY, GA 31408 US

Buyer Rep: MCKENZIE, JAMES
Signature on file

Auction Lights

GREEN Buyer protection to conditions

Odometer Disclosure
Federal law (and state law, if applicable) requires the Seller to state the mileage upon transfer of ownership. Failure to complete or providing false information may result in fines and/or imprisonment.

Seller hereby states that the odometer for this Vehicle now reads identically to the Mileage stated on this Bill of Sale under Vehicle Information and certifies to the best of Seller's knowledge that this reflects the actual mileage of the Vehicle, unless disclosed otherwise in the Announcements & Notes below.

Announcements & Notes

$ 21070.00

Seller agrees to sell the vehicle covered by this Bill of Sale to Buyer for the price noted herein.
Seller is the transferor of the vehicle and is responsible for all disclosures, including odometer and mileage.
Buyer must return a signed copy of the title front and back, including the odometer statement therein, to Seller or be subject to civil and criminal penalties. See 49 CFR § 580.5(f).
Manheim retains a purchase money security interest in the Vehicle and its title until good funds are received from the Buyer.
Seller and Buyer agree to the Manheim Terms and Conditions in effect at the time of the sale.
Sale terms and this Bill of Sale are subject to adjustments by Manheim. Please check your customer account at Manheim.com for most current version of this document.
Bill of Sale is not an Invoice. Please refer to Invoices in your account on Manheim.com.

Printed on: 14-Nov-2019 08:15:32

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ARBITRATION POLICY

In-Lane and Online

EFFECTIVE DATE: April 17, 2017

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I. General Policies:

1. Fair and Ethical Sale

The sales made at an Auction are intended to promote fair and ethical treatment to both the Buyer and Seller. If Auction determines that the transaction is not fair and ethical to either party, the Seller and the Buyer agree that Auction may cancel the sale, at its sole discretion. Federal, State, and Local laws supersede these policies where applicable.

2. Auction Role in Sale:

a. Auction makes no representations or guarantees on any vehicle sold or offered for sale.

b. Auction is not a party to the contract of the sale. The sales contract is between the Seller and Buyer only.

c. All vehicles bought or sold on the premises must be processed through the Auction office. Failure to do so will result in suspension of trading privileges at Auction.

d. Auction reserves the right to review any audio/video documentation to verify the accuracy of a sale.

e. Any vehicle consigned with the Auction is subject to government inspection, with or without prior notice, by the FBI, State Police, National Auto Theft Bureau, Local Police Authorities, any other governmental agency, or quasi-governmental agency.

3. Auction VIN Policies

All vehicles consigned must have a visible public Vehicle Identification Number (VIN) plate attached to the vehicle by the manufacturer or state inspector (state reassigned VIN only). Those vehicles having a reassigned VIN plate by the State in place of the original VIN plate must be announced or will be subject to sale cancellation or Buyer return. Auction reserves the right to refuse the sale of any vehicle in which the VIN plate appears to be altered in any way.

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II. Sale Light System:

Auction has a standard light/video display system to describe the condition and/or disclosures related to the vehicle being sold. The system is defined as:

1. **Green Light –Ride and Drive:** The green light signals that this vehicle is guaranteed under the conditions outlined in this policy by the seller. Any defects or issues requiring disclosure per this policy should be announced using the green and yellow lights.

2. **Yellow Light – Limited Guarantee:** This light is an indication to the Buyer that the Auctioneer or Selling Representative has made announcements that qualify/clarify the condition or equipment and limit arbitration of this vehicle in conjunction with the green light or when "limited guarantee" is announced.

3. **Red Light – As-Is:** Vehicles selling under the red light will only qualify for arbitration under the rules outlined in this policy. (As-Is dollar amount, model years, and mileage are subject to local auction policy).

4. **Blue Light Title Attached/Title Unavailable/Title Absent:** This light is used to announce that the title is not present (auction managed location) at the time of the sale. For Auction rules regarding titles please refer to the Title Arbitration Policy section. If "title attached/unavailable/absent" is not announced, a vehicle could be arbitrated for no title in the absence of auction company policy.

Announcement /Light Legend			
Announcements:	Light Usage Recommendation		
	Green	Yellow	Red
Ride & Drive Only	✓	N/A	N/A
Ride & Drive with Caution	✓	✓	N/A
Limited Guarantee Only	N/A	✓	N/A
As-is, No Arbitration	N/A	N/A	✓

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III. Seller Responsibilities:

1. Seller will be held responsible for the accuracy and completeness of all representations or descriptions. This includes handouts, catalogues, vehicle markings, condition information or vehicle listings and verbal or written statements made by Seller, Auction, Auctioneer or Selling Representative at the time of sale. This includes the condition report written by or on behalf of the seller as per the "NAAA Generic Condition Report Position Statement". The Seller understands that the sale light/video display is a binding arbitration representation of vehicle condition, and is therefore responsible for ensuring that their vehicles sell under the correct light in the lane.

2. Mileage announcements are not required for vehicles that are 10 years or older and/or deemed exempt from Odometer and Title disclosure laws unless a mileage discrepancy is known or apparent to the seller. The Seller may represent miles on exempt vehicles; any disclosures made by the Seller and all known odometer discrepancies are grounds for arbitration.

3. Title discrepancies must be announced including, but not limited to: not actual miles, salvage, theft recovery, stolen vehicle, flood damage, Lemon Law buybacks and trade assist.

4. If a vehicle is being offered for sale by a third party, an announcement of "3rd Party Seller" is required. Disclosure requirements and time limits are subject to local auction policy.

5. Announcements are required for any matters that relate to the safety or integrity of the vehicle including as per the stated dollar threshold and disclosure requirements stated in this policy, all requirements under local, state or federal statutes or regulations. Announcements must be made both verbally and disclosed on the auction invoice/sale contract/bill of sale or equivalent document in a physical or online auction environment.

6. The announcement of the presence of warning lights does not exempt a Seller from arbitration responsibilities as defined by the policy. The issue/defect found to be the cause of the light may be arbitrated within the stated time period and dollar amount threshold according to Appendix 1.

7. The availability of a manufacturer's warranty shall not affect a Buyer's right to arbitrate a vehicle. Regardless of the warranty coverage in terms of the root cause of the complaint, an announcement may be required.

8. In the event of a successful arbitration by the Buyer, the Seller is responsible for reimbursement of all reasonable documented expenses incurred by the Buyer (excluding profit, commissions and detail charges) on vehicles arbitrated for undisclosed conditions. Reimbursements that qualify under these guidelines will be at the sole discretion of the Auction and will be limited to the reasonable and documented expenses at auction (wholesale) repair cost.

9. Seller will not be paid for vehicles in arbitration until arbitration is settled and vehicles are sold. For arbitrations occurring after the seller has been paid, seller is required to promptly return the payment to the auction if the transaction is voided as a result of arbitration.

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IV. Buyer Responsibilities:

1. Prior to placing bids, the Buyer is responsible for inspecting the vehicle, listening to and reviewing any verbal or written announcements and disclosures made by the Seller, Auction, Auctioneer or Selling representative. Buyers are also responsible for reviewing all pertinent information available online, including, but not limited to, announcements, disclosures, condition reports, pictures and online listings. Buyers are also responsible for observing and understanding the sale lights (Green, Green/Yellow, Yellow, Red, and/or Blue), which identify various sale conditions for the vehicle. Once the vehicle is sold, the Buyer must review the Auction sales receipt or appropriate document to confirm the vehicle price, disclosures and announcements are correct before legibly printing and signing their name or digitally/electronically signing the Auction sales receipt or appropriate document.

2. It is strongly encouraged that a Buyer should have a Post Sale Inspection (PSI), warranty or assurance product from the auction on vehicles purchased.

3. Buyer agrees to be liable for any and all work done to a vehicle (including a vehicle purchased as title attached, unavailable or absent) prior to returning the vehicle to Auction except on vehicles arbitrated for undisclosed conditions not detectable through vehicle inspection, including but not limited to, not actual miles, salvage, theft recovery, stolen vehicle, flood damage, Lemon Law buybacks and trade assist.

4. The Buyer is financially responsible for any pending sale and assumes all risk of loss until arbitration is final.

5. The Buyer or Buyer's agent (transporter or driver) must document any damage on the gate release prior to removing the vehicle from the Auction or facilitation service provider's location. Auction or facilitation service provider and Seller will not be responsible for any damage not identified on the gate release once the vehicle is removed from the location.

6. The Buyer shall not surrender possession of the vehicle to any claimant, except as required by legal process, nor shall Buyer voluntarily pay or acknowledge the validity of any claim, without the prior approval of Auction. Time is of the essence. Any failure on the part of the Buyer, after becoming aware of said claim, to notify Auction of any claim in a timely manner or failure of the Buyer to cooperate in defending any such claim shall relieve Auction and seller of any liability under this policy.

7. A vehicle is not considered returned until received, inspected and approved for return by Auction management. Any vehicle returned must be in the same or better condition as when sold. Any vehicles delivered to and left on Auction premises without Auction approval remain the sole responsibility of the Buyer. Buyer assumes all risk of loss. Vehicle must be returned in a timely manner consistent with Auction direction.

8. Vehicles with over (auction choice) miles from when sold are not eligible for arbitration.

9. The Seller/Auction shall not be liable for any vehicle sale or repairs made by the Buyer before the title is received by the Buyer. If the title has been mailed from Auction to Buyer, Buyer may not return vehicle. If the Seller presents a valid negotiable title to the Auction within close of business on the next day (excluding weekends and auction observed holidays) from the time that the Buyer notifies the auction of their intent to return the vehicle, then the transaction will stand.

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v. Title Arbitration Policy:

1. All titles submitted by Seller must be in Seller's company name on title or on a properly executed reassignment form. The Seller guarantees the titles of vehicles that are sold through Auction. This guarantee of the title warrants that the title shall be marketable and free and clear of all liens and encumbrances. This includes any brand (such as "salvage") noted upon the current or any prior certificate of title unless such encumbrances were announced at the time the vehicle is sold through Auction and for a period of four (4) years from the date of sale. Seller's liability under this title guarantee shall never exceed the Auction sale price (the "maximum amount") of the vehicle, and this maximum amount shall be reduced by two percent (2%) per month following Auction sale date. All liability under this title guarantee shall expire and terminate four (4) years after Auction sale date. Auction will not be responsible for any expenses incurred on vehicles returned for late title.

2. Seller warrants, represents and guarantees possession and conveyance of a certificate of title, properly executed, valid in the state where the transaction is occurring and clear of all liens and encumbrances (except current year DMV fees in California), and seller warrants and will defend the title against the claims and demands of all persons whatsoever.

3. Seller will ensure that the title must be reassigned directly to Buyer. Any title assigned directly to facilitating auction will not be accepted.

4. Seller will not be paid for vehicles until a transferable title is received.

5. Auction accepts no responsibility for non-titled vehicles sold without title. Seller must announce the vehicle being sold with a bill of sale only and that there is no title to transfer. All non-titled vehicles and equipment will be sold "As-Is."

6. If the title problem is due to a clerical or coding error, or incomplete documentation, Auction shall be given reasonable time after receiving notice to have the error corrected.

7. Applications or other documents related to a duplicate title will not be accepted, unless announced as such or if allowed by the appropriate jurisdiction.

8. Where legal by municipal and/or state law, any vehicle being offered for sale with a foreign (non-US) title, must be disclosed prior to the sale by the seller. Disclosure requirements and time limits are subject to local auction title policy. Vehicle must be legal to sell in the United States.

9. Seller has up to a maximum of [see individual Auction Company's Title Policy (Auction Choice)] calendar days for title to be received by Auction. (Sale day is Day 1). After (Auction Choice) calendar day period, it is the Buyer's option to return the vehicle or wait a reasonable period of time for the title. If, after 90 calendar days, Seller has not produced negotiable title and Buyer has not returned the vehicle, this title guarantee shall not apply and Auction shall have no duty to produce the certificate of title to the Buyer and shall have no duty to pay Seller.

10. Vehicles lacking a properly assigned title or reassignment to transfer a title at time of sale must sell "Title Attached/Title Unavailable/Title Absent," with the Blue light on.

11. Vehicles lacking lien release or a valid repo affidavit for a repossessed vehicle (where allowed by law) must be sold "Title Attached/Title Unavailable/Title Absent," with the Blue light on.

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12. In regard to defect in title, and in any matter relating to odometer mileage, odometer statements, or damage disclosure statements: Seller and Buyer agree to indemnify and hold harmless Auction from any liability, loss costs, damage or expense, including attorney fees which may arise either directly or indirectly from the sale and purchase of the consigned vehicle including but not limited to title services provided.

13. Whenever any claim is made by any person against the title of a vehicle, whether by suit or otherwise, the Buyer, after becoming aware of said claim, shall immediately notify Auction. This involves giving full particulars of claim, cooperating fully in defending any legal action, and in taking other steps to minimize possible loss.

VI. Previous Canadian and/or Grey Market Vehicles:

1. A "Previous Canadian" disclosure is required for any vehicle (regardless of manufacturing origin) having been registered in a Canadian province. Additional announcements may be required as well due to the use in Canada (i.e. Full or partial voided warranty, foreign title and etc.)

2. Any vehicle not originally built to U.S. specifications can, under certain circumstances, be imported through a registered importer who modifies the vehicle to comply with U.S. equipment and safety regulations (DOT and NHTSA) and then certifies it as compliant, and an independent commercial importer who modifies the vehicle to comply with U.S. emissions regulations and then certifies it as compliant. Only vehicles properly converted to U.S. specifications can be sold and must be announced as such.

3. Required Conversion

a. All other vehicles imported must be imported through a Registered Importer. Registered Importers are required to post a bond with the U.S. Department of Transportation and/or National Highway Transportation Safety Administration. All vehicles imported through a Registered Importer must have:

   i. U.S. Safety Standard Certification Label that identifies the Registered Importer
   ii. Valid U.S. Title or Legal Foreign Title
   iii. Meet ALL Federal NHTSA, D.O.T. and/or E.P.A. Mandated Guidelines
   iv. Documentation must be provided at any time by seller.
   v. Cleared the mandated wait time.

b. All vehicles, whether imported by a Manufacturer or a Registered Importer, must show miles per hour on the speedometer and miles traveled on the odometer. Title 49, United States Code, Chapter 327, Section 32704, allows replacement odometers without a door frame sticker if the conversion from kilometers to miles can be done without changing the distance traveled by the vehicle; therefore, replacement of an odometer under these circumstances does not have to be announced by the Seller.

VII. Arbitration Guidelines:

Vehicles that have any of the defects outlined in Appendix I that were not disclosed by the seller or announced at the time of sale must be reported to Auction within the time frame noted below in order to be eligible for arbitration. Vehicles must be returned to Auction in the same or better condition than when purchased with no more than (auction choice) miles.

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1. **Time Period:** Refer to Appendix I for arbitration time periods. Sale day is Day 1. Arbitration shall end at the close of business as determined by each Auction on the last calendar day in the time period.

2. **Process:** Any single mechanical defect that has a repair cost of $500 or more is subject to arbitration on vehicles sold under qualifying lights and lack of announcement by the seller per Appendix I. Each vehicle transaction is allowed one chance at arbitration. The arbitrator will inspect only the defect that is on the initial arbitration claim. Repair costs will be determined by the auction and will reflect the auction cost to repair. If price adjustment is made and accepted, vehicle becomes "As-Is, No Arbitration" property of the Buyer, and is not subject to any further arbitration. The auction management makes the binding decision upon both the Buyer and Seller on all arbitration matters.

3. **Fees:** Auction reserves the right to assess an arbitration fee to the Buyer. If the arbitration is valid, Auction reserves the right to assess an arbitration fee to the Seller in addition to any charges associated with the arbitration.

4. **Not subject to arbitration:**
   a. Vehicles exceeding 20 model years, with the exception of trailers, RVs, and watercraft, which cannot be arbitrated if they exceed 10 model years.

   b. Kit vehicles, homemade vehicles, or modified vehicles are sold "As-Is" and cannot be arbitrated for odometer, structural issues, warranty books, or model year.

   c. Inherent Conditions: No arbitration can be based on conditions that are inherent or typical to a particular model or manufacturer. Manufacturer warranty guidelines will be used where applicable to determine whether the condition is inherent. Additional resources can be found on NAAA's Standards page at www.NAAA.com.

   d. Manual Transmissions: Vehicles with standard (full or partial shift) transmissions cannot be arbitrated for manual clutch assemblies unless the defect will not allow a safe test drive.

   e. Wearable Items: Auction will not arbitrate vehicles for wearable items normally worn vs excessively worn or inoperative (not inherent). For purposes of this policy wearable items are defined as parts of the vehicle that the manufacturer recognizes the need for replacement/adjustment during the expected life of the vehicle driven the average miles per model year (15k). These items are normally identified in the Owner's Manual for routine check and replacement and would include, but are not limited to, air ride suspensions, tires, wipers, brake pads, shoes, rotors, belts, hoses, lubricants/fluids, timing belts, bulbs, filters, shocks and struts.

   f. Unsafe vehicles: Auction reserves the right to reject any vehicle that management judges to be unsafe.

   g. Vehicles may not be arbitrated based solely upon information provided in Electronic Data Vehicle Histories (EDVH) or printed EDVH reports. Auction and Seller are not bound by information listed in EDVH. Examples of EDVH include Carfax, AutoCheck, NMVTIS, etc. The facilitating Auction may investigate vehicle history based on information found in EDVH for information that may impact arbitration.

   h. Auction is not bound by vehicle grades or other types of scoring systems placed upon the vehicle. Buyers may only arbitrate a vehicle based upon damage or defects that were present at the time of the sale of the vehicle.

   i. Vehicles with more than (auction choice) miles from time of sale.

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ROA 200

National Auto Auction Association
www.naaa.com

National Arbitration Policy Guidelines

APPENDIX I

Effective Date
September 5, 2017

NAAA Seller Disclosure/Announcement Requirements	Disclosure/Announcement Required			Arbitration Time Periods		
	Green Light Only Ride & Drive	Yellow Light Only Limited Guarantee	Red Light Only As-Is, No Arbitration	Green Light Only Ride & Drive	Yellow Light Only Limited Guarantee	Red Light Only As-Is, No Arbitration
Major Components						
Engine Problem*	YES	YES	NO	A or C	A or C	N/A
Cracked or Repaired Block*	YES	YES	NO	A or C	A or C	N/A
Transmission Problem*	YES	YES	NO	A or C	A or C	N/A
4X4 System Inoperable*	YES	YES	NO	A or C	A or C	N/A
ABS Problem*	YES	NO	NO	A or C	N/A	N/A
Emission Control Equipment Missing or Inoperable*	YES	NO	NO	A or C	N/A	N/A
Air Conditioning System*	YES	NO	NO	A or C	N/A	N/A
SRS – Missing or Problem with Airbags*	YES	NO	NO	B or C	N/A	N/A
Hybrid or Electric Vehicle Battery Problems and/or Missing or Inoperable Battery Charger*	YES	YES	NO	A or C	A or C	N/A
Vehicle History Issues						
Structural Damage/Certified Structural Repair or Replacement/Structural Alteration Per NAAA Structural Damage Policy	YES	YES	YES	B or C	B or C	B or C
Not Actual Miles/Inoperative Odometer	YES	YES	YES	B or C	B or C	B or C
Total Loss and/or Salvage Retention (By Insurance Records)**	YES	YES	YES	B or C	B or C	B or C
Theft Recovery/Stolen Vehicles (Including History)	YES	YES	YES	30 Days	30 Days	30 Days
Bonded, Insurance and/or Salvage Titles (Including History)**	YES	YES	YES	B or C	B or C	B or C
Flood Damage (By Auction Inspection)	YES	YES	YES	30 Days from Sale Date	30 Days from Sale Date	30 Days from Sale Date
Lemon Law/Manufacturer's Buyback**	YES	YES	YES	B or C	B or C	B or C
State-Issued VIN Plates (Including Kit Vehicles)	YES	NO	NO	B or C	N/A	N/A
All Taxis and Livery Requiring Local or State Licenses and Law Enforcement Vehicles	YES	NO	NO	B or C	N/A	N/A
Previous Canadian Vehicles	YES	YES	YES	B or C	B or C	B or C
Grey Market Vehicles**	YES	YES	YES	B or C	B or C	B or C
Vehicles Being Sold with No Title (Bill of Sale Only)	YES	YES	YES	B or C	B or C	B or C
Voided Factory Warranty	YES	NO	NO	B or C	N/A	N/A
Fuel Conversion	YES	NO	NO	B or C	N/A	N/A
Non-Original Engine (Excludes Items Replaced Under Manufacturer's Warranty) Current Model Year and Up to 4 Model Years Old	YES	NO	NO	B or C	N/A	N/A
Logo or Decal Misrepresentation	YES	NO	NO	A or C	N/A	N/A
Biohazard Vehicles (Existing or Cleaned)	YES	YES	YES	A or C	A or C	A or C
Flood Damage History (Discovered By DMV and/or Insurance Company Records)	YES	YES	YES	120 Days	120 Days	120 Days
Other Issues						
Vehicle Accessory Electrical Problems* (Current Model Year and Up to 4 Model Years Old)	YES	NO	NO	A or C	N/A	N/A
Paintwork (3 Panels or More) on Current Model Year and Newer (Excludes Bumpers)	YES	NO	NO	A or C	N/A	N/A
Vehicles Not Equipped With Air Conditioning (Excludes Vehicles 10 Model Years Old or Older)	YES	NO	NO	A or C	N/A	N/A
Vehicles Being Sold With a Government Release for Title (i.e., 27A, SF-97-1 and etc.), CO, MSO, or Repo Affidavit Title (If Required By Law)	YES	YES	YES	7 Days After Receipt of Title	7 Days After Receipt of Title	7 Days After Receipt of Title
Pending State or Local DMV Fees or Taxes Over $100 Due On Vehicle (If Required By Law)	YES	YES	YES	7 Days After Receipt of Title	7 Days After Receipt of Title	7 Days After Receipt of Title
Any Disclosure Required By Law	YES	YES	YES	7 Days After Receipt of Title	7 Days After Receipt of Title	7 Days After Receipt of Title

Time Period vs. Sale Channel Breakdown

"A" Inlane-Sale Day Only *"B" Inlane-7 Calendar Days Only* *"C" Online-2 Calendar days within verified receipt of the vehicle from seller and/or auction not to exceed 10 calendar days from the original sale date*

**Must disclose defects that are singularly $500 or more to repair or replace*

***These transactions may be subject to arbitration regardless of the stated time limits. Arbitration claims initiated after the stated time period will be addressed via the depreciation formula described in "Title Arbitration Policy" (Paragraph I).*

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VIII. Structural Damage, Alteration or Certified Structural Repair or Replacement Policy

The purpose of the NAAA Structural Damage Policy is to define and clarify terminology associated with structural issues and to specify the disclosure requirements of the seller for vehicles offered at NAAA affiliated auctions. The policy is intended to provide adequate disclosure to the buyer for informed purchase decisions and to limit arbitrations for the seller. This policy, along with the main Arbitration Policy will serve as the primary criteria for all arbitration proceedings.

1. Definitions

a. Vehicle Structure-The main load-bearing platform of a vehicle that gives strength, stability and design exclusivity and to which all other components of the vehicle are fastened. For purposes of this policy, there are three macro types:

i. Unibody - A type of structure whereby the floor pan assembly, roof bows/braces, pillars, etc. are bonded together into one unit, thereby eliminating the need for a separate conventional structure

ii. Unibody on Frame-A type of structure whereby a unitized structure is bolted to a conventional structure.

iii. Conventional Structure-A type of structure consisting of two symmetrical rails (beams) connected by various cross-members.

b. UVMS-Used Vehicle Measurement Standard. The commercially acceptable measurement deviation from the vehicle's original structural specification in order for any deviation not to be considered structural damage.

c. Permanent Damage (aka "Kinked" or "Broken")- The result of two or more objects striking or coming together at a significant change in velocity that permanently deforms the structural component(s) rendering it non-repairable per the manufacturer.

2. Recommended Disclosures

a. Structural Damage-Damage to the structure or a specific structural component of the vehicle. Often referred to as frame damage, although it also applies to Unibody and Unibody on Frame structures in addition to Conventional Frame.

b. Certified Structural Repairs/Replacement-Repairs to a specifically identified structural component of a vehicle that has been certified to be within the Used Vehicle Measurement Standard (UVMS).

c. Structural Alteration -An alteration to the vehicle's structure including a lengthened or shortened frame, a modified suspension, or the installation or removal of after-market accessories.

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3. Seller Disclosure Requirements

Sellers must disclose permanent structural damage, any structural alterations, structural repairs or replacements (certified or non-certified) as outlined in this policy prior to selling a vehicle at auction regardless of sales channel or light condition. Disclosures are required for the following:

a. Any/all existing permanent (non-repairable aka kinked or broken) structural damage as defined in this policy

b. Improper and/or substandard prior repairs (not meeting OEM repair guidelines)

c. Repairs not certified using OEM guidelines or to be within the UVMS Improper alterations to the structure Lengthened or Shortened structure verified by visual inspection.

d. Altered suspension that requires the structure to be modified from its OEM form.

e. After-market accessories installed or removed to the structure.

f. Towing packages installed (or removed) where new holes are drilled, OEM holes are enlarged, or if the towing package is welded or brazed to the structure.

g. Multiple access holes (regardless of size) or singular access holes greater than 5/8". Access holes between 1/4" and 5/8" are subject to disclosure based upon location and condition of structural component.

h. Corrosion of structural components determined by one or more of the following; when the substrate loses its shape, the original bonds near the affected area are loose or are no longer in existence, the original thickness of the substrate has been changed by more than 25%, the affected area no longer possesses its absorption or deflection properties.

i. Structural tear damage (i.e. transport tie down) if more than 1" in length (measured from tear start/stop points)

j. Damage due to improper jacking or lifting that permanently deforms structural components outlined in this policy.

k. Damage due to contact with parking abutments and/or road debris that permanently deforms structural components outlined in this policy.

l. Roof bows/braces that have been modified, have existing permanent damage or removed. A replaced roof skin is not a required disclosure in terms of the Structural Damage Policy.

m. The C pillar/quarter or Cab panel may or may not be a structural component(s) as per the vehicle manufacturer.

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4. Arbitration Rules for Structural Damage, Alteration, Certified Repairs or Certified Replacement

a. A vehicle may be arbitrated if it has undisclosed existing permanent damage alteration, Certified Repairs or Certified Replacement, which should have been disclosed under this policy, even though the vehicle is within the UVMS. If a structural issue is properly disclosed, the vehicle may only be arbitrated for improper repair of the designated area, existing permanent damage or repairs to other areas of the vehicle not disclosed, or for failure to be within the UVMS that was verified by visual inspection.

b. Damaged or replaced radiator core supports or rear body panels do not require a structural disclosure under this policy.

c. Damage to the aprons, rail floor pan assembly, inner wheelhouse (upper or lower), D pillar (if equipped) or other ancillary structural components on a unitized structure in the area where the radiator core support or rear body panel attaches will require a disclosure if permanent damage exists.

d. Brazed exhaust hangers are not a required disclosure under this policy.

e. Facilitating auction will, at its discretion, have a vehicle measured according to the UVMS at a facility of its choice. Prior to sending the vehicle for measurement, the auction reserves the right to complete a visual verification of the physical condition of the vehicle to determine that it should be measured. If the measuring facility determines that the vehicle is within the UVMS, the buyer of the vehicle will be responsible for the charges paid to the facility. Likewise, if the measuring facility determines that the vehicle is not within the UVMS, the seller will be responsible for the charges paid to the facility.

f. Visual evidence supersedes any/all mechanical or electronic measurements.

g. For measurements according to the UVMS, the following guidelines will apply:

   i. The vehicle structure must measure to a total tolerance of no more than +/- 8 millimeters (mm) of published specification of length, width and height at control points that capture the front (2), center (4) and rear (2) sections of the vehicle.

   ii. Symmetrically (comparative measure from side to side and point to point based on point measurement), the length, width and height must measure to a difference of no more than 6 mm. Upper body measurements (tram gauge) by themselves will not be adequate.

h. Buyer must arbitrate any/all structural misrepresentations as outlined in this policy within published timelines (outlined in the main Arbitration Policy Guidelines) from date of purchase (purchase day counts as Day One).

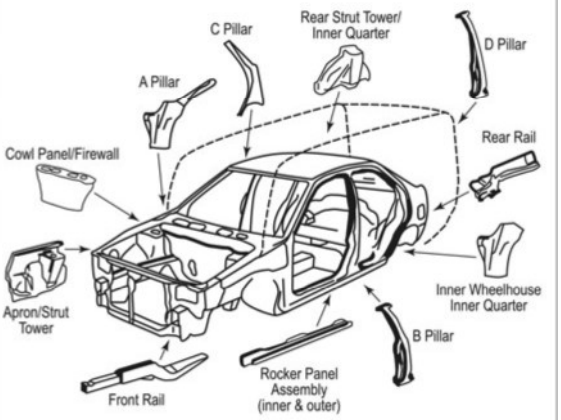
i. The buyer must contact and follow the arbitration process of the auction where the vehicle was purchased including the auction's direction for return of the vehicle and the timeframe allowed for the vehicle to be returned.

j. In the event of improperly disclosed structural damage by the seller, the buyer will be entitled to reimbursement in accordance with the main Arbitration Policy.

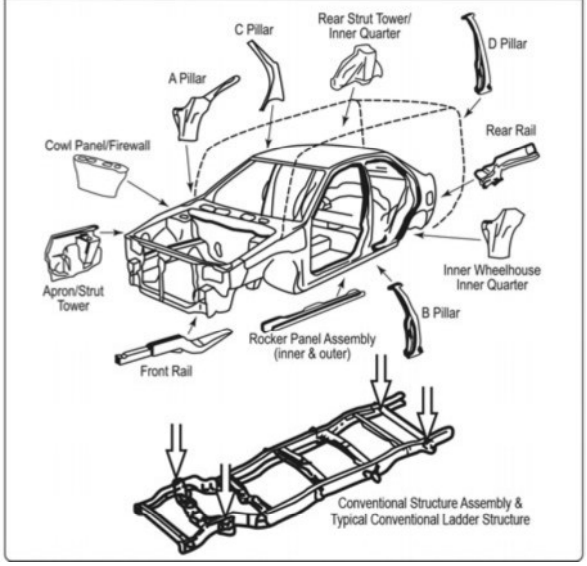
	Structural Components	Structural Damage Disclosure Requirement		
		Unibody	Unibody on Conventional Structure	Conventional Structure
1.	**Frame Rails** (Including Front, Center and Rear Rails)	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		
2.	**Spring Pod, Torque Box or Stabilizer Mount**	N/A	Existing Permanent Damage, Removed, Modified, Repaired or Replaced	
3.	**Cross Members** (Except Bolt-On)	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		
4.	**Apron Assembly**	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		N/A
5.	**Strut Tower Assembly**	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		N/A
6.	**Cowl Panel/Firewall**	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		N/A
7.	**Support Pillars** (Includes A, B, C*, D)	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		
8.	**Roof Braces/Bows**	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		
9.	**Rocker Panel** (Outer)	Replacement Only		N/A
10.	**Rocker Panel** (Inner)	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		N/A
11.	**Floor/Trunk Panels**	Tears 1" or More, Existing Permanent Damage, Removed, Modified, Repaired or Replaced Panels		N/A
12.	**Quarter* or Cab* Panel**	Replacement Only		N/A
13.	**Inner Quarter Panel Assembly** (Includes Inner Wheelhouse Panel, Rear Strut Tower, and Wheelhouse Extension Lower)	Existing Permanent Damage, Removed, Modified, Repaired or Replaced		N/A

** Only Applies to Components Deemed Structural Per the Vehicle Manufacturer.*

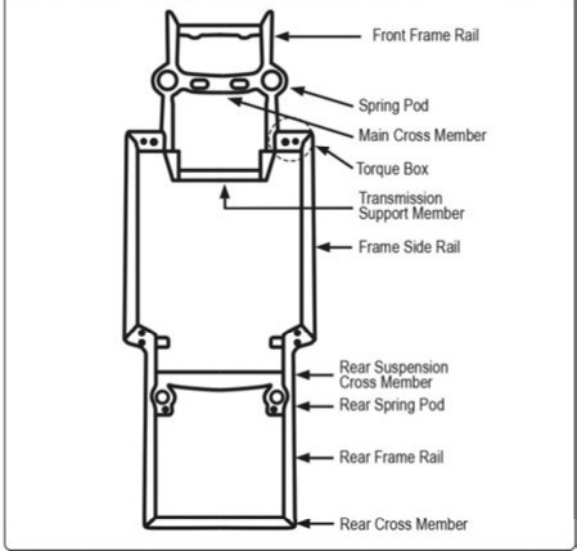
TYPICAL UNIBODY STRUCTURE



TYPICAL UNIBODY ON CONVENTIONAL STRUCTURE



TYPICAL CONVENTIONAL PERIMETER STRUCTURE



IX. Flood,

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Damage Policy

Vehicles are frequently exposed to moisture during their ordinary operation, maintenance, and reconditioning. Occasionally, such exposure may leave residual marks or indicators similar to those left by exposure or immersion of the vehicle in floodwater. In determining what conditions require disclosure or in arbitrating vehicles for flood exposure/damage it is critical that the total condition of the vehicle be considered including VIN data history. Disclosure requirements can be found in Appendix I.

1. Disclosure Not Required

No disclosure is required nor is arbitration allowed for the following types of water exposure, provided that none of the components outlined below are damaged:

a. Rain, snow or sleet due to open windows, doors or tops or leaking seals.

b. Car wash or rinse water.

c. Carpet or upholstery shampooing or cleaning.

d. Stream, pond, puddle or floodwater that does not rise above the rocker panel or otherwise enter the passenger compartment.

e. Stream, pond, puddle or floodwater that enters the luggage compartment, but does not damage any electrical components (such as lighting or wiring harness) or does not enter the passenger compartment.

2. Disclosure Required

Disclosure is required and arbitration shall be allowed under the following conditions:

a. The title has been correctly branded indicating flood history of the vehicle.

b. Any of the following components have been damaged due to stream, pond, puddle or floodwater immersion/ingress:

i. Front or rear internal lighting or wiring harnesses
ii. Engine and its major components
iii. Transmission and differential
iv. Dash instrument panel and wiring
v. Passenger seat cushions
vi. Power seat functions or window motor
vii. Major sound system components

Exhibit 11

Manheim Terms and Conditions

English | Español

Updated: November 1, 2019

Welcome to Manheim, the world's largest provider of vehicle remarketing services. By attending any of Manheim's private auctions or using any of Manheim's services, whether at a Manheim location or online, you agree, for yourself, your dealership, your company, and your representatives (collectively, "you"), to abide by the following terms and conditions, as amended from time to time by Manheim:

1. **Manheim:** These terms and conditions govern your use of and access to the automobile auctions, websites, mobile sites, online tools, and other service delivery channels made available by Manheim Remarketing, Inc and its various subsidiaries and affiliates, including the various Manheim auto auctions, Cox Automotive, Inc , and others (collectively, "Manheim," "we," "our," or "us") These terms and conditions are in addition to, and not in lieu of, any more specific agreements you may have or make with Manheim (e g , sales invoices, consignment agreements, online visitor agreements, privacy policies, loan agreements, etc) To the extent there is any conflict between these terms and conditions and other more specific agreements you have signed with Manheim, those other more specific agreements will control Manheim may amend these terms any time by posting an amended version on its website, which shall become effective on the date of posting Time is of the essence with respect to all of your duties hereunder

2. **Accuracy of Information:** You certify that all registration and representative information you have provided to us, via AuctionACCESS and otherwise, is true, correct, and complete You agree to promptly update your information via AuctionACCESS if there is any change to the information you have provided

3. **Fairness and Courtesy:** You agree to behave in a fair, ethical, courteous, and civil manner in your interactions with us, our personnel, and our other customers while participating in any Manheim auction, when accessing our online and mobile sites, or when otherwise using any of Manheim's services Should you have issues or concerns with the behavior of our personnel or other customers while attending any Manheim auction that cannot be resolved quickly and civilly on your own, you will raise those issues discreetly with our management

4. **Dealer Only:** With limited and specifically-advertised exceptions, our sales are dealer-only wholesale auctions open only to pre registered and pre approved licensed motor vehicle dealers, banks, manufacturers, and other commercial buyers (each a “Buyer”) and sellers (each a “Seller”) Curbstoning (i e retail sales from our premises) is strictly prohibited You agree not to bring any actual or prospective retail buyers to Manheim, or to give them access to Manheim's online portals, or to negotiate or consummate any retail transactions on or adjacent to any of our property You further agree not to appoint any representatives to act on your behalf who are not bona fide agents of your dealership You also represent to us that your purchases through us are for resale only and exempt from any state sales tax and agree that you, and not Manheim, are responsible to

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pay any taxes or tariffs on your related or subsequent transactions.

5. Bidding: Unless announced otherwise during the sale, all units are sold with reserve, and the auctioneer may bid up to the reserve. Seller bidding and use of shills are strictly prohibited. Bidders should remain aware and satisfy themselves as to a unit's condition and value before bidding and bring any incidents of improper bidding to management's attention immediately at the close of bidding on a unit. Otherwise, participants ratify the auction of the unit.

6. Terms of Sale: You agree to the following terms of sale for each vehicle you buy or sell through Manheim ("Vehicle"), as well as the Manheim Arbitration Policies (as defined below) that apply in the jurisdiction of sale:

(a) Buyer is the transferee and agrees to purchase the Vehicle; Seller is the transferor and agrees to sell the Vehicle. Manheim is merely the auctioneer or facilitator in the transaction and expressly disclaims any and all express and/or implied warranties or conditions as to merchantability, merchantable quality, fitness for a particular purpose, or any other matter whatsoever with respect to a Vehicle, and Manheim, not being the seller of the Vehicle, makes no warranty whatsoever with respect to title to the Vehicle, other than the limited title guarantee set forth below. You acknowledge and agree that you are a sophisticated commercial party and agree to satisfy yourself as to the condition and value of a Vehicle and the terms of any bid before bidding or selling. You further agree to look to the counter-party Buyer or Seller (as applicable) in such a transaction, and not Manheim, for any legal claims falling outside your rights under the Manheim Arbitration Policies.

(b) Any adjustments or rejections must be raised the day of sale and resolved prior to settlement. Vehicles must be paid for on the day of purchase, or Manheim may, at its discretion, impose fees as described below in Section 8 and/or consider the sale null and void.

(c) Vehicles shall be removed from Manheim premises no later than the sixth (6th) day following the date of sale, and thereafter, Manheim may charge a reasonable daily storage fee of up to $25 per day should any Vehicle be left on Manheim premises.

(d) Title to a Vehicle does not pass to Buyer until good funds are received. Buyer grants Manheim a security interest in each Vehicle to secure payment of the purchase price and of any other debt owing from Buyer to Manheim (including affiliates). You agree that Manheim may resell any Vehicle, if retained or repossessed, at a regular Manheim sale or through any affiliated sale, including Manheim's online sales channels, which are established commercially reasonable markets for the sale of motor vehicles.

(e) Buyer agrees:

(i) to purchase the applicable Vehicle for the purchase price established by the auctioneer, or displayed on any online platform as the purchase price of the Vehicle, and shown on the final bill of sale or other final purchase receipt from us;

(ii) before settling for such Vehicle, to check the serial and/or engine numbers on such Vehicle with those on the certificate of title and to compare the actual condition of such Vehicle with its description and with the announcements and Seller disclosures, if any;

(iii) not to resell such Vehicle until good funds have been transmitted to Manheim;

(iv) upon making settlement, regardless of payment method, to consider the sale a fully

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consummated cash transaction for present consideration;

(v) that no stop payment of any Buyer check to Manheim shall be honored;

(vi) that any stop payment order of a check/draft, electronic funds transfer, or wire transfer, or giving a check/draft which is returned unpaid shall be deemed to be evidence of fraud existing at the time of payment and shall be construed as an intent to defraud in order to obtain the Vehicle and/or its title;

(vii) that Manheim may deposit any check or draft immediately upon receiving it, regardless of whether such Vehicle's certificate of title has been submitted by Seller or whether Buyer has asked Manheim to hold the instrument;

(viii) to make any claim of defects in such Vehicle with Seller, who shall be solely responsible for those claims, and to immediately notify Manheim of such claims pursuant to its policies;

(ix) that Buyer will comply with Subsection 6(c) above with respect to removal of Vehicles from Manheim's premises and payment of daily storage fees; and

(x) that Buyer is responsible for Buyer's own transportation of such Vehicle.

(f) You represent and warrant to Manheim that you are solvent, that you are a licensed or duly authorized motor vehicle dealer in good standing or otherwise authorized to sell or buy on a commercial wholesale basis in the relevant jurisdiction(s), and that any Vehicle you purchase is purchased solely for resale.

(g) Seller represents and warrants that Seller is the true and lawful owner of the Vehicle being sold; that the Vehicle is free from all liens and encumbrances; that Seller has good right and full power and authority to sell and transfer title to the Vehicle; and that Seller will warrant and defend the Vehicle against the claims and demands of all persons whomsoever.

(h) You agree that any amounts owing to Manheim may be deducted from any proceeds or other property due to you and that Manheim may stop payment or refuse to authorize payment on any check or draft to you and hold any consigned vehicles pursuant to this right of setoff. Manheim may hold any of your property in Manheim's possession for a reasonable period of time pending any odometer fraud, VIN-switch, or similar investigation.

(i) Seller acknowledges responsibility for completion and execution of the required odometer mileage statement pertaining to any Vehicle on the invoice for such Vehicle and/or on the certificate of title for such Vehicle.

(j) Upon payment to Seller, Manheim shall be subrogated to all of Seller's and Buyer's respective rights, and Seller and Buyer agree to promptly take any action or sign any document deemed necessary, in Manheim's sole discretion upon Manheim's request, to secure such rights and do nothing to prejudice them.

(k) Limited Title Guarantee: Upon full payment by Buyer and upon delivery of the certificate of title of Vehicle to Buyer, Manheim will guarantee title to be free and clear of liens and encumbrances as of such delivery as, and only as, follows:

(i) This limited guarantee shall last for a period of four (4) years from the date of sale and applies only to stolen Vehicles and mortgage liens. The amount of Manheim's liability under this limited

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guarantee of title shall never exceed the auction sale price of the Vehicle and shall be reduced by deducting from said sale price two percent (2%) on the first of each month following the date of sale until the date of payment, with all liability of Manheim expiring and terminating on the first day of the 48th month after that date.

(ii) Manheim's limited guarantee of title is expressly limited to Buyer of the applicable Vehicle and is not negotiable or transferable. The limited guarantee shall be void if the purchase price for the Vehicle is not paid by Buyer, and it does not protect against defects in the title known to Buyer whether or not listed as exceptions on the face of the bill of sale for such Vehicle.

(iii) Whenever any claim is made by any person against the title of any Vehicle, whether by suit or otherwise, Buyer must, within five (5) days after becoming aware of said claim, notify Manheim, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss Failure to satisfy these conditions shall void Manheim's liability under this limited guarantee

(iv) Buyer shall not surrender possession of any Vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, in each case without the prior written approval of Manheim.

(v) On payment of any claim under this limited guarantee, Buyer will return the applicable Vehicle to Manheim, if and as requested, and execute all necessary documentation subrogating its right to recover against Seller, or others, to Manheim.

(l) Disclaimers and Indemnification

(i) You agree that Manheim is responsible for neither odometer mileage on any Vehicle nor the information contained in the odometer mileage statement which Seller, as transferor, is required to complete and deliver, and Buyer, as transferee, is required to acknowledge

(ii) You agree that all representations or disclosures concerning any Vehicle are solely the responsibility of Seller, whether made on the block, before the sale, or otherwise, and you acknowledge and agree that Manheim has made no representations or disclosures whatsoever about any Vehicle, including any representation as to the accuracy of data included in vehicle history or condition reports, regardless of whether Manheim has interpreted such information as a courtesy to you or on your behalf.

(iii) You acknowledge that Manheim is merely performing an auction service and expressly disclaims all express and/or implied warranties or conditions as to merchantability, merchantable quality, fitness, or any other matter whatsoever, and Manheim, not being the seller of the vehicle, makes no warranty whatsoever with respect to title to the Vehicle, other than the limited title guarantee set forth above.

(iv) You agree, jointly and severally with any Buyer or Seller (as the case may be), to indemnify, defend, and hold Manheim harmless from and against any and all liability, loss, cost, damage, or expense, including attorneys' and legal fees, as applicable, which are in any way related to or may otherwise arise, either directly or indirectly, from any Vehicle, including, but not limited to, the purchase or sale of any Vehicle, any matters relating to odometer mileage or odometer mileage statements, any damage or condition disclosures or lack thereof, and/or any damage caused by transporters or other agents of either Buyer or Seller.

(v) If Manheim is required to make or defend a claim related in any way to a Vehicle or Vehicle

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(v) If Manheim is required to make or defend a claim, related in any way to a Vehicle or Vehicle transaction, from or against either Seller or Buyer or an agent, employee, insurer, or bonding company of either, then Manheim shall recover, in addition to the amount of the claim and the costs incurred in the claim, reasonable attorneys' fees and legal fees in an amount not less than twenty-five percent (25%) of the amount of the claim, regardless of whether suit is filed, including appellate and bankruptcy fees and costs. Interest shall accrue on the unpaid balance of any such claim at the rate of one and one-half percent (1.5%) per month, provided that, if applicable law permits a higher rate, such higher rate will apply.

(m) You acknowledge and agree that any Vehicle is purchased for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased by you for resale. In the event that any Vehicle is used for any purpose other than for resale, you will pay directly to the proper taxing authorities such sales or use tax as may then be accrued and become payable. As a Buyer, you further certify that you hold a retail sales tax registration certificate, license, or other permit, issued by the sales taxing authority of your city, state/territory, county, and/or country, as appropriate.

(n) If the Vehicle is purchased "for export only" or equivalent, you will: (A) transport it out of the country as soon as reasonably practicable; (B) not resell or use it domestically; (C) not further transform or alter the Vehicle domestically; and (D) provide us with satisfactory evidence of exportation of the Vehicle upon request.

(o) MANHEIM RESERVES THE RIGHT TO VOID, UNWIND, ADJUST, OR CANCEL ANY TRANSACTION IN ITS SOLE DISCRETION.

7. **Vehicle Arbitration Rules:** You agree and acknowledge that:

(a) you have received and read a copy of our prevailing National Auto Auction Association Arbitration Policy, including any Manheim addendums, and, if applicable, the Manheim $3,000 & Under Arbitration Policy, each of which are available at www.manheim.com/market_policies (collectively, the "Manheim Arbitration Policies");

(b) you understand and are bound by the Manheim Arbitration Policies, which may be amended unilaterally by us from time to time, when participating in any transactions at Manheim; and

(c) any dispute arising from the purchase or sale of a Vehicle through Manheim will be resolved in accordance with the Manheim Arbitration Policies, which are incorporated herein by reference and as may be amended from time to time by posting on Manheim's website, and our decision as arbitrator shall be final and binding upon you with respect to any transaction.

8. **Payments:** Payments for goods or services must be made by the registered customer purchasing those goods or services or a pre-established direct floor planner acting on that customer's behalf. Although we retain the discretion to make appropriate exceptions, other third-party payments generally will not be accepted. Payments must be made in good funds and in a form acceptable to Manheim. Manheim reserves the right, in its sole discretion, to change the forms and types of payment that are accepted by Manheim. In addition to any other rights Manheim may have, you agree, in accordance with the Late Payment Policy found in Manheim Marketplace Policies on Manheim.com, to pay a late fee on any unpaid obligations to Manheim not received by us in full, on time, and otherwise in accordance with these Terms and Conditions. You further agree that, if any electronic debit or check or draft we present on your bank account is returned unpaid, you will pay a service charge of up to $100.00. Manheim may waive these fees in its sole discretion.

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AutoCheck Auctions Logo

Exception Report

Exhibit 12

Reference ID:	CSCAA-20191121094527		
Customer:	AUCT0442	**Date:**	11-21-2019,08:45 AM
To:	AMERICAN AUTO AUCTION LLC -SC 651 Precast Lane Moncks Corner , SC 29461	**From:**	Red Mountain Technologies Contact our Help Desk with any questions. (205) 414-2727 phone (205) 414-2737 fax
Phone:	(843) 719 - 1900		
Fax:			
Email:	lbrock@charlestonautoauction.com, awindham@charlestonautoauction.com		HelpDesk@AutoCheckAuctions.com

Sale	Dealer	VIN Brand	Year Date	Make Location
493486	**G00021**	**1N6AA1C50JN508002** STRUCTURAL OR FRAME REPAIR PERFORMED	**2018** 08-19-2019	**Nissan Titan PRO-4X / S / SV**

Exception Vehicles Found: 1

Invalid Vins Found: 0

Total Unique Vins Submitted: 19

Experian's AutoCheck Vehicle History Report is compiled from multiple sources. It is not always possible for Experian to obtain complete discrepancy information on all vehicles; therefore, there may be other title brands, odometer readings or discrepancies that apply to a vehicle that are not reflected on that vehicle's report. Experian searches data from additional sources where possible, but all discrepancies may not be reflected on the AutoCheck Vehicle History Report.

THESE REPORTS ARE BASED ON INFORMATION SUPPLIED TO EXPERIAN BY EXTERNAL SOURCES BELIEVED TO BE RELIABLE, BUT NO RESPONSIBILITY IS ASSUMED BY EXPERIAN OR ITS AGENTS FOR ERRORS, INACCURACIES OR OMISSIONS. THE REPORTS ARE PROVIDED STRICTLY ON AN "AS IS WHERE IS" BASIS, AND EXPERIAN FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THIS REPORT.

Experian shall not be liable for any delay or failure to provide an accurate report if and to the extent which such delay or failure is caused by events beyond the reasonable control of Experian, including, without limitation, "acts of God" or public enemies, labor disputes, equipment malfunctions, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments, or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes. These terms and the relationship between you and Experian shall be governed by the laws of the State of Illinois (USA) without regard to its conflict of law provisions. You and Experian agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Cook, Illinois.

License/Use Restrictions- As a condition to purchase or use of this proprietary AutoCheck Vehicle History Report (whether this Report is an AutoCheck Full History Report, an AutoCheck Exception Report, or any other report sourced from AutoCheck Auctions), Customer agrees to the following license/use restrictions: Customer will not directly or indirectly provide or disclose this AutoCheck Vehicle History Report or any data derived from this Report to any other party, except that Customer may use the Report and data contained in it as intended at Customer's auto auction or auction website where Customer communicates to its buyers and sellers at the live or cyber auction the history/condition of a vehicle being sold then at the auction. Compiling, allowing or enabling another to compile, or directly or indirectly providing to another party this AutoCheck Vehicle History Report or data derived from this Report for the purpose or with the known result of this Report or data being provided to a vehicle history report provider other than AutoCheck, AutoCheck Auctions or Red Mountain Technologies, is strictly prohibited. Violation of these restrictions may result in termination of Customer's right to receive AutoCheck Vehicle History Reports and/or the exercise of other rights - which are expressly reserved.

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Data Provided by Experian, Inc.

Manheim

BILL OF SALE

Exhibit 13

THIS IS NOT AN INVOICE

DOCUMENT NOT VALID FOR EXPORT

505 MANHEIM DARLINGTON
1111 HARRY BYRD HWY
DARLINGTON, SC 29532 US

P ease refer to the veh c e re ease for the p ckup ocat on

Sale Date
02 JAN 2020 10:32:48

Yr Wk Ln Rn
2020 1 4 54

Sale Type
S mu cast

Vehicle Information
2018 N ssan T tan
XCAB SV Gray Four Whee Dr ve
1N6AA1C50JN508002

M eage: 44345 M es 0

L cense P ate No:

Title Information
State: AZ Number: 1

Vehicle Features
Hard Top
8 Cy nder Eng ne
A/T
Power Steer ng
C oth Seats
Power W ndows
Cru se Contro
Dr ver A r Bag
50 State

Vehicle Purchase Price

Sale Price	$ 20,100.00
Adjustments	$ 0.00
Final Sale Price	$ 20,100.00

Seller
GRAINGER HONDA
1596 CHATHAM PKWY
GARDEN CITY, GA 31408 US

Se er Rep:
Signature on file

Buyer
PORT CITY MOTORS
314 ARENDELL ST
MOREHEAD CITY, NC 28557 US

Buyer Rep: HICKMAN, ROBERT
Signature on file

Auction Lights
GREEN Buyer protect on to cond t ons

Odometer Disclosure
Federal law (and state law if applicable) requires the Seller to state the mileage upon transfer of ownership Failure to complete or providing false information may result in fines and/or imprisonment

Seller hereby states that the odometer for this Vehicle now reads identically to the Mileage stated on this Bill of Sale under Vehicle nformation and certifies to the best of Seller's knowledge that this reflects the actual mileage of the Vehicle unless disclosed otherwise in the Announcements & Notes below

Announcements & Notes

Se er agrees to se the veh c e covered by th s B of Sa e to Buyer for the pr ce noted here n.
Se er s the transferor of the veh c e and s respons b e for a d sc osures, nc ud ng odometer and m eage.
Buyer must return a s gned copy of the t t e front and back, nc ud ng the odometer statement there n, to Se er or be subject to c v and cr m na pena t es. See 49 CFR § 580.5(f).
Manhe m reta ns a purchase money secur ty nterest n the Veh c e and ts t t e unt good funds are rece ved from the Buyer.
Se er and Buyer agree to the Manhe m Terms and Cond t ons n effect at the t me of the sa e.
Sa e terms and th s B of Sa e are subject to adjustments by Manhe m. P ease check your customer account at Manhe m.com for most current vers on of th s document.
B of Sa e s not an Invo ce. P ease refer to Invo ces n your account on Manhe m.com.

Pr nted on: 09 Feb 2022 11:14:57

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RCVD 2022

Exhibit 14

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2022-CP-26-00861

TARGET MOTORS, LLC D/B/A PORT CITY MOTORS,

Plaintiff,

VS.

GRAND STRAND NISSAN, INC.. GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, AND MANHEIM REMARKETING, INC. D/B/A MANHEIM DARLINGTON,

Defendants.

GRAND STRAND NISSAN, INC.'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

Pursuant to Rule 33, SCRCP, Defendant Grand Strand Nissan, Inc. ("Grand Strand") herein answers Plaintiff's Interrogatories as follows. The General Objections are hereby incorporated by reference into each of the individual responses below. Grand Strand reserves its right to supplement these responses as additional information becomes available to it.

GENERAL OBJECTIONS

a. Grand Strand objects to the Interrogatories to the extent that they purport to impose upon it obligations exceeding those set forth in the South Carolina Rules of Civil Procedure.

b. Grand Strand objects to the Interrogatories to the extent that they seek documents or information that is not currently in its possession, custody, or control.

c. Grand Strand objects to the Interrogatories to the extent that they seek information that is confidential or proprietary.

d. Grand Strand objects generally to these Interrogatories to the extent they seek information regarding transactions, topics, correspondence, discussions, and other issues beyond

the scope of the allegations in the parties' pleadings, on the grounds that such Interrogatories are overly broad, unduly burdensome, and seek information that is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

e. Grand Strand objects generally to these Interrogatories to the extent they may seek information protected by the attorney-client privilege or work product privilege.

f. Grand Strand objects to these Interrogatories to the extent they ask for "any and all" documents or information or "all" documents or information or require a response to "STATE IN FULL DETAIL." Defendant will conduct a reasonable search of its business records for responsive information and will provide such information as is not otherwise objectionable.

g. Grand Strand's responses do not waive any objections it may raise. All objections as to competency, relevancy, materiality, authenticity, privilege or admissibility are expressly reserved.

ANSWERS TO INTERROGATORIES

1. Provide the following information concerning each person known to the party or counsel to be a witness concerning the facts of the case. Include those people who communicated with Aaron Burstein, Plaintiff, Grainger Companies, Inc., Manheim Remarketing, Inc. or their agent, and any other witness with information regarding the vehicle which is the subject of this action:

(a) What are their names and addresses?

(b) Have written or recorded statements been taken from any of them?

(c) If so, who is in possession of such statements?

(d) Set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses or provide a copy of any written or recorded statements taken from such witnesses.

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ANSWER:

Marty Martin
76 Shady Oak Drive
Murrells Inlet, SC 29576
843 457-6118

Mr. Martin was employed as General Sales Manager at the time that Aaron Burstein traded in the subject vehicle to Grand Strand. He may testify concerning the facts related to the purchase and sale of the subject vehicle, or procedures utilized by Grand Strand in this transaction. No written statement.

Vito Marchiano
c/o Mary M. Caskey
Haynsworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
Columbia, SC 29201

Mr. Marchiano was the Finance Manager at Grand Strand at the time that Aaron Burstein traded in the subject vehicle to Grand Strand and was involved in that transaction. He may testify concerning the facts related to the purchase and sale of the subject vehicle, or procedures utilized by Grand Strand in this transaction. No written statement.

Robbie Haynes
c/o Mary M. Caskey
Haynsworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
Columbia, SC 29201

Mr. Haynes is the Executive Manager of Grand Strand Nissan and the Managing Partner of North Strand Nissan. He may testify concerning the facts related to the purchase and sale of the subject vehicle, or procedures utilized by Grand Strand in this transaction. No written statement.

Marcus McLean
c/o Mary M. Caskey
Haynsworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
Columbia, SC 29201

Mr. Mclean is the used car manager and has knowledge concerning Grand Strand's procedures concerning the purchase and sale of used vehicles. No written statement.

Aaron C. Burstein
415 Pelican Village Loop, Unit C
Little River, SC 29566

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Mr. Burstein has knowledge concerning the subject vehicle's condition before it was sold to Grand Strand. No written statement.

Performance Collision
Jason Antidormi and Others
907 Jason Blvd
Myrtle Beach, SC 29577

Representatives of Performance Collision have information concerning the condition and repairs made to the subject vehicle. No written statement.

Manheim Remarketing, Inc.
d/b/a Manheim-Darlington
1111 Harry Byrd Hwy
Darlington, SC 29532

Representatives of Manheim, including Michael Hayden, have information concerning the sale of the subject vehicle in 2019. No written statement.

2. Please set forth a list of photographs, plats, sketches, policies and procedures manuals, or other prepared documents in possession of the party or counsel that relate to the claim or defense in this case.

ANSWER: A complete copy of the deal jacket, service records, and sales documents concerning the subject vehicle are being produced in response to Plaintiff's First Requests for Production.

3. List the names, current addresses, and phone numbers of expert witnesses whom the party proposes to use as a witness at the trial of the case. For each expert named, state the following:

(a) Whether they were used by Defendant or Defendant's counsel to investigate the incident which is the subject of this action.

(b) State the opinion of each expert as to each issue and set forth the basis and reason for each such opinion, the data or other information considered by the expert in forming the opinions, a description of any exhibits to be used as a summary of or support for the opinions.

(c) Describe the education, experience and/or credentials which qualifies each as an expert witness to render an opinion in this case, such to include a listing of all publications authored by the expert either alone or with anyone else along with a copy of the expert witness's curriculum vitae.

(d) All cases in which such expert has testified in Court or through a deposition as an expert witness on any matter by parties, counsel, and court. List the name of the action, the jurisdiction, the civil action number, the date of the testimony or

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deposition, and the names, current addresses, and telephone numbers for the attorneys for each of the parties in the action.

(e) The compensation paid or to be paid to the expert for services rendered to Defendant herein.

ANSWER: Grand Strand has not yet determined which expert witness, if any, it may use in this case, and reserves the right to supplement its answer to this Interrogatory accordingly.

4. Is there any insurance policy which is applicable to this case? If so, what are the policy limits and what is the insurance company?

ANSWER: Yes, Johnson Automotive Group d/b/a Grand Strand Nissan has an Auto Dealers Liability policy with a $500,000 policy limit and an Umbrella policy with a $10 million dollar policy limit with Federated Insurance.

5. Identify all stockholders of Grand Strand Nissan. Include their name(s), address(es), and percentage of ownership of the company.

ANSWER: Grand Strand objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. The stockholders of the company have no bearing on any liability in this case and there are no allegations support a claim to pierce the corporate veil.

6. In 2019, who was responsible for preparing and implementing the policies, procedures, and standard business practices for the business known as Grand Strand Nissan related to inspecting vehicles brought into the dealership's inventory as a trade in, selling vehicles to the public, selling vehicles through an auction, and accepting return of vehicles which have prior repaired wreck damage and then sold to another entity?

ANSWER: Marcus McLean and Marty Martin.

7. Identify each and every person who, at any time, has informed the Defendant Grand Strand Nissan, Inc. that the subject vehicle had been damaged/wrecked or had its odometer altered prior to Defendant Grand Strand purchasing the vehicle. Include that person's name, address, telephone number, the substance of the communication and whether the communication was oral or in writing.

ANSWER: Grand Strand became aware that the subject vehicle had been repaired for wreck damage from Jason Antidormi with Performance Collision. The communication from Jason Antidormi was in writing and orally. Grand Strand does not have any knowledge or information that anyone ever informed it that the odometer was altered in any way. Instead, see answer to Interrogatory No. 8 as to the odometer. Grand Strand has investigated this transaction and the employees involved do not have a specific recollection of any discussions about the vehicle. Its investigation continues. Further responding, pursuant to Rule 33(c), SCRCP, see documents produced with Grand Strand's answers to Plaintiff's First Requests for Production.

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8. State why the subject truck's odometer was not working or had been disabled between August 1, 2019 and January 2, 2020.

ANSWER: Grand Strand has no record of any odometer repairs. When the vehicle was delivered to Grand Strand, it had no power to any of the electric components on the dash. Once the ECM issue was fixed, all power was restored. Because the power on the vehicle was off when the vehicle was delivered to Grand Strand, the repair order does not show any mileage. Pursuant to Rule 33(c), SCRCP, see the repair orders and other documents concerning the vehicle produced with Grand Strand's responses to Plaintiff's Requests for Production.

9. Identify each mechanic or technician at Defendant Grand Strand's facility who worked on or in any way serviced the subject vehicle. Include the person's name, the person's position, the person's last known address and telephone number, and what the mechanic or technician worked on.

ANSWER: Pursuant to Rule 33(c), SCRCP, see the repair records produced with Grand Strand's answers to Plaintiff's Requests for Production. All employees can be contacted through Grand Strand's counsel.

10. Did Grand Strand Nissan know Aaron Burstein's vehicle had been wrecked prior to Mr. Burstein selling the truck to Grand Strand Nissan? If so, how did Grand Strand Nissan learn of the prior wreck damage? Identify the Grand Strand Nissan employee who acquired the knowledge that the truck had been wrecked prior to Mr. Burstein selling the truck to Grand Strand Nissan.

ANSWER: Yes. See previous answers to these Interrogatories. Pursuant to Rule 33(c), SCRCP, see documents produced with Grand Strand's answers to Plaintiff's Requests for Production.

11. IDENTIFY all ORAL STATEMENTS and all DOCUMENTS relating to your purchase of the subject vehicle including but not limited to all statements and documents relating to negotiations and communications prior to the purchase of the vehicle, and to the actual purchase transactions on the vehicle. Identify all persons known to you to have knowledge of or to have participated in any discussions, inspections, repairs, or maintenance concerning any subject vehicle between the time you first knew of the vehicle and the present, and for each such person STATE IN FULL DETAIL the nature of his/her knowledge of or participation in those events.

ANSWER: Grand Strand objects to this Interrogatory on the grounds that is overbroad. It is impossible for Grand Strand to identify all oral statements that may have been made during a transaction that occurred almost three years ago. Further, Grand Strand objects to this Interrogatory on the grounds that it's not reasonably calculated to lead to the discovery of admissible evidence. Grand Strand acknowledges that it knew that the subject vehicle had wreck damage. Further, Grand Strand has investigated this transaction and is informed that the employees involved do not have a specific recollection of any discussions about the vehicle. See prior answers to these Interrogatories and pursuant to

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Rule 33(c), SCRCP, see documents produced with Grand Strand's answers to Plaintiff's Requests for Production.

12. "STATE IN FULL DETAIL" any inspections, repairs, maintenance, or appraisals done by you or for you to the "vehicle," and list the date of each such repair or maintenance and "identify" all persons known to you who inspected or performed mechanical inspections or repairs on the "vehicle."

ANSWER: Pursuant to Rule 33(c), SCRCP, see documents produced with Grand Strand's responses to Plaintiff's Requests for Production.

13. "STATE IN FULL DETAIL" all steps and precautions you took to ensure that the subject vehicle was not damaged nor had an inaccurate odometer reading when Mr. Burstein sold it to you.

ANSWER: Grand Strand knew the vehicle had been wrecked when it accepted it as a trade in from Aaron Burstein. Grand Strand has no records indicating that the odometer reading was inaccurate. See prior answers to these Interrogatories.

14. State each and every step taken by you to do a reasonable inspection of the vehicle prior to its purchase. State who did the inspection, when it occurred, where it occurred and what was determined by the inspection.

ANSWER: Grand Strand objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and reserving this objection, see answers to Interrogatories no. 10, 11, 13, and pursuant to Rule 33(c), SCRCP, see documents produced with Grand Strand's answers to Plaintiff's Requests for Production. Further, Grand Strand completes a visual inspection of any vehicle that is being traded in, and pulls a Carfax report on the vehicle.

15. State each and every step taken by you to do a reasonable inspection of the vehicle after it was brought to Grand Strand Nissan's lot. State who did the inspection, when it occurred, where it occurred and what was determined by the inspection.

ANSWER: The vehicle was brought into the dealership by Burstein before he made the decision to trade it in. Grand Strand inspected the vehicle, diagnosed items for repair, and made the repairs. Once the repairs were complete and the vehicle was traded in, ti was designated as a wholesale vehicle and sent to auction. Pursuant to Rule 33(c), SCRCP, see documents produced with Grand Strand's responses to Plaintiff's Requests for Production.

16. Please set forth the training program provided by the Defendant in 2019 so that Defendant's employees would be properly trained. Said training includes, but is not limited to, training on how to inspect vehicles for prior wreck damage or improper odometer readings and how prior wreck damage or improper odometer reading are to be disclosed to consumers. Please include when said training sessions occur, who teaches the training sessions, what policies and procedures manuals are provided to the employee, and any other documents or training received by the employee.

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ANSWER: Grand Strand objects to this Interrogatory on the grounds that it seeks information that is confidential and proprietary. Grand Strand further objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. It purports to ask for all training of any kind performed by Grand Strand.

[Grand Strand notes that Plaintiff's Interrogatories do not include any interrogatories numbered 17 or 18.]

19. State the mileage shown on the odometer on the day Defendant Grand Strand Nissan purchased the subject truck.

ANSWER: 44,130

20. From what vehicle did Defendant obtain the odometer/odometer cluster Defendant installed in the subject vehicle?

ANSWER: Grand Strand did not install any odometer/odometer cluster for the subject vehicle.

21. Did Defendant Grand Strand Nissan provide Manheim Remarketing, Inc. d/b/a Manheim Darlington with information, whether verbally or in writing, that the odometer in the subject vehicle had been replaced or altered?

ANSWER: Grand Strand did not replace or alter the odometer in the subject vehicle, so Grand Strand did not notify Manheim of any such replacement or alteration.

22. State any and all information provided by Defendant Grand Strand Nissan to Manheim Remarketing, Inc. so the auction could announce to potential buyers that the odometer in the subject vehicle had been replaced or altered.

ANSWER: See answer to Interrogatories no. 20 and 21.

23. State any and all information provided by Defendant Grand Strand Nissan to Manheim Remarketing, Inc. so the auction could announce to potential buyers that the subject vehicle had been wrecked or damaged.

ANSWER: Grand Strand did not provide any information to Manheim concerning any wreck damage to the vehicle. Upon arrival and prior to the auction, Manheim completed a condition report at Grand Strand's request, and identified the vehicle has having prior damage. Further answering, pursuant to Rule 33(c), SCRCP, see documents produced with Grand Strand's responses to Plaintiff's Requests for Production. Further answering, Grand Strand states that Plaintiff is in the possession of a subpoena response from Manheim with documents concerning the sale of the vehicle.

24. When Grand Strand Nissan sold the subject vehicle at Manheim Auto Auction, did it represent to potential buyers that the odometer reading was true and accurate?

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ANSWER: Yes. See Bill of Sale produced with Grand Strand's responses to Plaintiff's Requests for Production.

25. State the mileage on the odometer when Grand Strand Nissan sold the subject truck to Defendant Grainger.

ANSWER: 44,213

26. Please identify Defendant's agent or employee who notified Defendant Grainger that the vehicle had previously been wrecked.

ANSWER: Grand Strand had no communications directly with Grainger concerning the vehicle. Further answering, and pursuant to Rule 33(c), SCRCP, see documents produced with Grand Strand's responses to Plaintiff's Requests for Production.

27. Did Defendant review a Carfax report relating to the vehicle prior to the sale to Defendant Grainger?

ANSWER: It is the procedure of Grand Strand to view a Carfax prior to accepting a vehicle as a trade in, so Grand Strand believes that based on the procedure and habit and practice of its employees, it viewed a Carfax. Any Carfax would have been viewed electronically on V-Auto. Grand Strand's investigation into this Interrogatory continues.

28. State the name, title, and work address of each person who assisted or participated in preparing and/or supplying any of the information given in answer to, or relied upon, in preparing answers to these interrogatories.

ANSWER: Robbie Haynes, Executive Manager of Grand Strand Nissan, 4701 Highway 501, Myrtle Beach, SC 29579.

29. Set forth all "intervening and superseding acts of third parties" as set forth in paragraph 78 of Grand Strand's Answer to Plaintiff's Amended Complaint. Identify the third party and exactly what the third party did that constitutes an intervening and superseding act.

ANSWER: Grand Strand has no knowledge or information about what occurred with respect to the subject vehicle after Grainger sold the vehicle through the Manheim auction. Grand Strand has never had any interactions with Plaintiff or its subsequent customer related to the subject vehicle. Therefore, Grand Strand is informed and believes that actions after it sold the vehicle by third parties are responsible for any damages suffered by Plaintiff.

30. Set forth all facts upon which Defendant Grand Strand relies to assert in paragraph 79 of Grand Strand's Answer to Plaintiff's Amended Complaint that "any damage suffered by the Plaintiff was due to his own comparative negligence so as to bar or partially bar any recovery in this matter".

ANSWER: Plaintiff knew or should have known that the subject vehicle had been previously wrecked based on the information that it had from the Carfax and Autocheck

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reports it viewed, or from information provided by Grainger, who sold the vehicle to Plaintiff.

31. Identify the entity Defendant believes is the direct or proximate cause of Plaintiff's injuries as alleged in paragraph 80 of Grand Strand's Answer to Plaintiff's Amended Complaint. Include the facts upon which Defendant relies to make its assertions in paragraph 80.

ANSWER: Grainger Companies, Inc.

32. Set forth all facts upon which Defendant Grand Strand relies to assert in paragraph 81 of Grand Strand's Answer to Plaintiff's Amended Complaint that Plaintiff's claims are barred by the doctrine of laches, ratification, unclean hands, waiver, estoppel, and unjust enrichment.

ANSWER: See answers to Interrogatories Nos 30, 31, and the documents produced with Grand Strand's responses to Plaintiff's Requests for Production.

33. Is Defendant Grand Strand properly identified? If not, state Grand Strand's proper name and whether Defendant will accept service of a Second Amended Summons and Complaint setting forth the correct name of Defendant.

ANSWER: Yes.

34. "Identify" your net "income" and "net profits" for the last three years, including the current year. This identification should include the following:

(a) The amount of the net "income" and the year in which it was received;

(b) Each "person" who was involved in the calculation of net "income";

(c) The gross "income" used to calculate "net profits";

(d) The "Deductible costs" used to calculate "net profits";

(e) The method used to calculate "net profits".

(f) The "persons" involved in the calculation of the net "income";

(g) All "documents" used to calculate "net profits".

ANSWER: Grand Strand objects to this Interrogatory on the grounds that it seeks information that is confidential.

35. State Defendant's net worth for the last three years, including the current year.

ANSWER: Grand Strand objects to this Interrogatory on the grounds that it seeks information that is confidential.

36. Please list the names of current automobile dealerships or other businesses owned by the current owner or majority shareholder of Defendant Grand Strand Nissan.

ANSWER: **Grand Strand objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. There are no allegations or claims related to any affiliates of Grand Strand, or against its owner(s) or shareholders.**

/s/ Mary M. Caskey
Mary M. Caskey (SC Bar #76198)
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
Phone: 803-779-3080
Fax: 803-765-1243
mcaskey@hsblawfirm.com

Attorneys for Grand Strand Nissan, Inc.

August 24, 2022

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CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 24th day of August, 2022, caused the foregoing **Grand Strand Nissan Inc.'s Answers to Interrogatories of Plaintiff**, **and Grand Strand Nissan Inc.'s Responses to Requests for Production of Plaintiff,** to be served via U.S. mail, postage prepaid, and by electronic mail on counsel of record at the address(es) shown below:

C. Steven Moskos, Esq.
C. Steven Moskos P.A.
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
steve@moskoslawfirm.com
Attorney for the Plaintiff

William E. Lawson, Esq.
Turner Padget Graham and Laney, P.A.
PO Box 2116
Myrtle Beach, SC 29578
wlawson@turnerpadget.com
Attorney for Defendant, Grainger Company, Inc. d/b/a Grainger Honda

s/ Jeslyn Harvey
Jeslyn Harvey
Haynsworth Sinkler Boyd, P.A.

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STATE OF SOUTH CAROLINA COUNTY OF HORRY TARGET MOTORS, LLC D/B/A PORT CITY MOTORS, Plaintiff, vs. GRAND STRAND NISSAN, INC., AND GRAINGER COMPANIES, INC. D/B/A GRAINGER HONDA, Defendants	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-00861 **PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S ORDER GRANTING GRAND STRAND NISSAN, INC.'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS**

Plaintiff, Target Motors, LLC d/b/a Port City Motors, respectfully asks the Court to reconsider its Order of January 19, 2023, which granted summary judgment to Defendant Grand Strand Nissan, Inc. on all of Plaintiff's claims against that Defendant.

The grounds for the motion are that the Court did not explicitly rule on Plaintiff's arguments as to all causes of action, especially the claims under the Dealers Act and Unfair Trade Practices Act, that, to the extent the order accepts Defendant Grand Strand's arguments that upstream tortfeasors are not liable for the downstream consequences of their conduct, this is a novel issue that should not be decided until after trial. *Jackson v. Atlantic Soft Drink Co*., 286 S.C. 577, 579 (1985). Before a novel question is decided, "the case should be fully developed and tried on its merits." *Id.*

This is especially erroneous as here, discovery has not been completed. Before considering whether Plaintiff's claims against Defendant Grand Strand Nissan, Inc. are dismissed, discovery should be allowed into whether and how Defendant Grainger Companies, Inc., maintains that Grand Strand's alleged wrongdoing against Grainger was

a but-for cause of Grainger's alleged wrongdoing against Plaintiff. Rule 56(f) S.C.R.C.P.; Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF
s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
January 30, 2023

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