ORIGINAL

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED
AUG 07 2013
SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2012-CP-23-07156

CHRISTINE WATTS

Respondent,

v.

SONIC AUTOMOTIVE 2752 LAURENS ROAD, GREENVILLE, INC. d/b/a CENTURY BMW

Appellant.

RECORD ON APPEAL

VOLUME I

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No. 2006-CP-02-1230

Heather Herron, *et al.*,

Plaintiffs,

vs.

Car Max Auto Superstores, Inc., *et al.*,

Defendants.

ORDER REGARDING ARBITRATION MOTIONS

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAY - 2 2007

Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.

Barbara Riggins
Deputy Clerk

THIS MATTER came before the Court for hearing on Wednesday, April 4, 2007 on Defendants' Motions to Dismiss. At the hearing, Richard Ness, on behalf of Gene Reed Imports and Rush Smith, on behalf of James Ervin Toyota, raised their previously filed Motions to Dismiss based on the issue of the arbitration agreements between their clients and the customers of their clients. Additionally, Defendant Century BMW previously filed a Motion to Compel Arbitration. Other Defendants have also filed Motions to Dismiss or have reserved the right to present motions on the issue concerning arbitration.

Plaintiffs' counsel requested that Defendants provide the applicable arbitration agreements, including blank copies of any arbitration agreements used by the dealer since October 16, 2002. Defendants' counsel agreed to provide the relevant information.

Additionally, Defendants' counsel indicated that Plaintiffs' counsel had been soliciting additional clients and requested that Plaintiffs' counsel provide the names of persons they might propose as additional Plaintiffs with claims against their respective dealerships. Plaintiffs' counsel agreed to provide the names of Plaintiffs already identified by April 13, 2007.

5-2-2007
C.C.P.&G.S.
8:30 AM

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiffs' counsel will provide Defendants with the names of all additional persons that they may move to add as plaintiffs in this matter by May 29, 2007. Nothing herein shall prevent Plaintiffs' counsel from disclosing this information prior to that date. Defendants' counsel will provide a copy of any applicable arbitration agreements to Plaintiffs' counsel. All arbitration agreements will be subject to a separately filed Protective Order.

The Court will hear any motions regarding these arbitration agreements, including motions to compel arbitration or to dismiss, as soon as a date can be reasonably scheduled after May 29. All briefs shall be exchanged so as to be received by opposing counsel no later than fifteen (15) days prior to the date of the hearing to allow for the filing of responses.

Doyet A. Early, III

Aiken, South Carolina

April 2, 2007

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-02-1230

MC_____ JR_____

Heather Herron, et al

PLAINTIFF(S)

Car Max Auto Superstores, Inc et al

DEFENDANT(S)

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_____

IT IS ORDERED AND ADJUDGED: [✓] See attached order; [ ] Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____.

_____
PRESIDING JUDGE

This judgment/order was entered/filed on the 2 day of May, 2007, and a copy mailed/hand-delivered/boxed this 2 day of May, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

_____

ATTORNEY(S) FOR THE PLAINTIFF(S)

Brad Martin

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard
CLERK OF COURT

By: Barbara Riggs
DEPUTY CLERK

SCRCP APP-24

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 06-CP-02-1230
COUNTY OF AIKEN	)	
	)	
Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease, Michael Watts, Individually and for the Benefit of All Car Buyers Whom Paid "Administrative Fees" as Described below to Defendants	)	
Plaintiffs,	)	**ORDER DENYING MOTION TO COMPEL ARBITRATION**
vs.	)	
Century BMW a/k/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.; J.L.H. Investments, LP a/k/a Hendricks Honda; Overland, Inc. d/b/a Land Rover of Columbia; Taylor Toyota a/k/a Taylor Investments; and Toyota of Greenville, Inc., et. al.	)	
Defendants.	)	

DAB #1

This matter comes before the Court by way of Century BMW a/k/a Sonic Automotive's ("Century BMW's") Motion to Compel Arbitration. This motion was argued before me on November 30, 2007. After considering the parties' filings, as well as the memoranda and legal arguments of counsel, I have determined that the Motion to Compel Arbitration should be denied.

FACTUAL BACKGROUND

On January 25, 2005, Plaintiff Christine Watts, a twenty-four year old college student, and her father, Michael Watts, a garage door salesman, purchased a car from Defendant Century BMW. The vehicle was a graduation present for Ms. Watts. The car was purchased to be Ms. Watts's primary source of transportation and was needed so that she could get back and forth to work.

After the parties agreed to a price for the car, Century BMW's F&I manager took Ms. Watts and her father into a cubicle to sign paperwork. Christine Watts in her affidavit stated that the documents were "hastily presented." Century BMW refers to this process as "rolling out the paper."

The Wattses say they were presented with a big packet of documents containing flags indicating where the Wattses were supposed to sign. Century BMW's General Manager testified that it was the F&I manager's custom to place his finger on the individual documents pointing to the place on the documents that needed to be signed and say "sign here."

The Wattses signed multiple documents. Some of the documents were required to be signed by law.

The arbitration agreement at issue was one of the documents included in the packet. This arbitration agreement is a form contract drafted by Century BMW. The arbitration agreement uses a small font.

The Wattses say there was no discussion with the F&I manager about the arbitration agreement. Century BMW's General Manager did not know what was discussed with the Wattses but stated that he would expect his people to tell the customer that the agreement is "a document providing a remedy for the customer without having to go to court." The Wattses also testified that believed that they were required to sign all of the documents in order to get the car.

DAE #2

On October 31, 2006, Plaintiff Watts initiated the current action against Defendant Century BMW. In the Amended Complaint, Plaintiff Watts alleged causes of action for a declaratory judgment, civil conspiracy, and violation of the Motor Vehicle Dealers Act. On December 29, 2006, Defendant Century BMW filed a motion to compel arbitration.

ANALYSIS

The Plaintiff and Defendant agree that Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (S.C.,2007) is the controlling authority for this motion. The Simpson Court held that a car dealer's attempt in a form contract to prevent a consumer from prosecuting statutory rights in arbitration was unconscionable and unenforceable. Simpson, 644 S.E.2d at 668-671. Application of the Simpson test here shows that the Century BMW arbitration agreement is also unconscionable and unenforceable.

A. The Century BMW Arbitration is an Adhesion Contract.

The Century BMW arbitration agreement is an adhesion contract. "[A]n adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." Simpson, 644 S.E.2d at 669. Adhesion contracts "are standard in the automobile retail industry." Id.

The arbitration agreement here is a standard form contract drafted by Century BMW. The contract has only blanks that can be filled in depending on the date of the transaction, the VIN number of the vehicle, the name of the customer, and the name of the dealership. Plaintiff Watts did not participate in the drafting of the agreement and had no voice in the formulation of its terms.

Century BMW presents the arbitration agreement on a take-it-or-leave-it basis. Century BMW's procedures and method of presentation lead to the conclusion that the arbitration agreement must be signed to purchase the car. Century BMW's General Manager stated that the F&I Manager's "practice" was to present the individual documents and point to on the paper to where the customer was supposed to sign and say "sign here." Century BMW had no standard

AE 3

statements to tell purchasers. This practice indicates that signing the document is required in order to purchase a car. This conclusion is further supported by the fact that in over 6,000 transactions, the only person the General Manager could name who ever bought a car without signing the arbitration agreement was Brad Martin, Esq., a lawyer in this case.

The agreement is a standard form contract. Century BMW's procedures and the Watts's testimony[1] show that the terms of the arbitration agreement were not negotiable. Accordingly, I find that the arbitration agreement is an adhesion contract. Because the Century BMW arbitration agreement is an adhesion contract, the Century BMW arbitration agreement should be viewed with "considerable skepticism." Simpson, 644 S.E.2d at 670(adopting rationale of Ohio Courts in analyzing arbitration agreements by automobile retailers and stating "We...proceed to analyze this contract between a consumer and automobile retailer with 'considerable skepticism'.").

B. Absence of Meaningful Choice.

I also find that there was an absence of meaningful choice in agreeing to arbitrate and waive the statutory right to participate in a multi-plaintiff action. The Simpson case describes absence of meaningful choice as follows:

> Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. In determining whether a contract was "tainted by an absence of meaningful choice," courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of

DAE #4

[1]The Wattses' testimony is the only testimony about the events surrounding the execution of the agreement. The Wattses testified they believed they were required to sign the agreement in order to get the car. Century BMW was unable to produce any witness whom remembered the transaction.

the challenged clause; and the conspicuousness of the clause.

Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (internal citation omitted).

Because an automobile is a "necessity" in everyday life, the Simpson Court found this factor should be considered in determining "whether a consumer had a meaningful choice in negotiating the arbitration agreement." Simpson, 644 S.E.2d at 669.

Applying this analysis, the Simpson Court provided as follow:

> [T]he contract between Simpson and Addy involved a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society. Applying the factors considered by the Fourth Circuit in analyzing arbitration clauses, we also acknowledge Simpson's claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter. *But see Munoz*, 343 S.C. 531, 542 S.E.2d 360 (failing to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender). Similarly, we note that Simpson's allegation that the contract was "hastily" presented for her signature.

Simpson, 644 S.E 2d at 670. The facts here support a finding of an absence of meaningful choice by the Plaintiffs.

There was a clear disparity in the parties' bargaining power and the relative sophistication between the parties. Century BMW argues that Ms. Watts is sophisticated because in 2008 she works as an auditor. However, in 2005, when the vehicle was purchased, Ms. Watts was a student at the College of Charleston. Michael Watts sold garage doors. The Wattses did not have any attorney present when they signed the agreement. The Plaintiffs were not sophisticated and obviously not substantial business concerns.

)AE
#5

Century BMW, on the other hand, is owned by Sonic Automotive, Inc., a large corporation that owns dozens of cars dealerships. Sonic Automotive, Inc. drafted the arbitration

agreement and had engaged in thousands of transactions where arbitration clauses were used Sonic was a sophisticated car dealer with years of arbitration clause use. I find that there was a disparity of bargaining power between the parties.

Additionally, there was unfairness in the bargaining process Century BMW inconspicuously placed the arbitration agreement within a series of documents that included documents that were required to be signed by law and then had its F&I Manager point on each document (whether required to be signed by law or not) and say sign here. There was nothing telling the Wattses that the arbitration agreement, unlike the documents required to be signed by law was not mandatory. This procedure indicates that signing all of the documents is mandatory and is indicative of unfairness in the bargaining process. Simpson, 644 S.E.2d at 669 ("Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue.").

The Watts stated that there was no discussion of the arbitration agreement. Century BMW's General Manager did not know what was discussed with the Wattses but stated that he would expect his people to tell the customer that the agreement is "a document providing a remedy for the customer without having to go to court." This statement, if given by Century BMW, is sorely lacking because the arbitration agreement in actuality takes away remedies and statutory rights. The lack of a Century BMW full explanation is further evidence showing the fundamental unfairness of the bargaining process.

There was also an element of surprise involved in the inclusion of the arbitration agreement because none of the signatories of the arbitration agreement (the Wattses nor the F&I manager) understood what they were signing. Neither of the Wattses had ever participated in an

arbitration nor had any understanding of arbitration. Similarly, Century BMW's General Manager and F&I manager did not have much understanding of the arbitration agreement nor how it worked

Century BMW's argument that the bargaining process was fair because the Wattses could have read the arbitration agreement is non-availing. The Plaintiff in Simpson also could have read the arbitration agreement at issue in that case. Additionally, even if the Wattses had read the arbitration agreement, the bargaining process was unfair because the arbitration agreement was not easily understandable.

Century BMW's Rule 30(b)(6) representative as the person most knowledgeable on the arbitration agreement testified that he did not have much understanding of how the arbitration agreement worked. Century BMW's General Manager has thirty-two years worth of experience in the car industry, has dealt with the subject arbitration agreement since 2002, and does not understand the arbitration agreement. Similarly, the F&I manager, whom presented the arbitration agreement to the Wattses, does not have much understanding of the agreement. It is unfair to expect the Wattses to understand the agreement, when in a little cubicle with the F&I Manager with his finger on the document pointing to the place to sign.

I also find that use of the car was a necessity to Ms. Watts. The car was purchased to be Ms. Watts's primary source of transportation and was purchased so that she could get back and forth from work. Century BMW argues that the vehicle was not necessity because Christine Watts previously owned a Mitsubishi Montero. The fact that Ms. Watts previously owned another vehicle does not defeat the fact that use of a car is a necessity. The plaintiff in Simpson, prior to purchasing the car in that case, owned a 2001 Toyota 4-Runner and the South Carolina

DAE #7

Supreme Court expressly found that the car purchased was a necessity. Simpson, 644 S.E.2d at 663. The car purchased by Ms. Watts, like the car purchased in Simpson, was purchased to be her primary source of transportation. As such, I find that the use of the car was a necessity.

In the end, I find that the facts in this case are similar to those in Simpson. These facts, just as they did in Simpson, warrant a finding that Plaintiff Watts had an absence of meaningful choice when she entered into the arbitration agreement.[2]

C. One-Sided and Oppressive Terms.

The Century BMW arbitration agreement contains oppressive and one-sided terms. In analyzing this factor, the Simpson Court stated:

> The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. *Carolina Care Plan*, 631 S.C at 555, 606 S.E.2d at 758. In our opinion, this rule has two applications in the present case. First, this arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled in her underlying SCUTPA and Dealers Act claims. Second, unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest. Therefore, under the general rule, this provision in the arbitration clause is unenforceable.

Simpson, 644 S.E.2d at 671(citing the "strong public policy notions behind the enactment of the...Dealers Act."). The Simpson case reasoning is equally applicable here.

PAE #8

[2]In addition to Simpson, the North Carolina Supreme Court's decision in Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362 (N.C.2008) also supports a finding that the arbitration agreement here is unenforceable.

One-Sided Terms

The prohibition of multi-plaintiff and class action in the Century BMW arbitration agreement is one-sided. Although styled as a mutual prohibition on representative class actions, it is difficult to envision the circumstances on which the provision might negatively impact Century BMW, because car dealers typically do not sue their customers in class action lawsuits. Such a one-sided contract is unconscionable. *See* Kinkel v. Cingular Wireless, LLC, 828 NE2d 812, 820-821 (Ill.App. 5 Dist..2005)("cellular telephone service providers typically do not sue their customers in class action lawsuits. Thus, Cingular's provision barring class arbitration is a one-sided limitation on its customers' ability to seek relief...such a one-sided limitation that could effectively deny plaintiffs their day in court is substantively unconscionable."). *See also* Szetela v. Discover Bank, 97 Cal.App. 4th 1094 (2002)(Holding a similar clause unconscionable and one-sided because "credit card companies typically do not sue their customers in class action lawsuits."). Clearly, the Century BMW arbitration agreement contains one-sided terms.

Oppressive Terms

The arbitration agreement contains oppressive terms that violate public policy and statutory law. The Century BMW arbitration agreement here, like the arbitration agreement in Simpson, attempts to take away Plaintiff Watts's statutory rights. The Dealers Act provides substantive rights to those harmed by violations. S.C. Code Ann. §56-15-110(2) provides:

> (2) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole Including actions for injunctive relief.

DAE #9

S.C. Code Ann. §56-15-110(2) provides statutory rights to plaintiffs including the right to bring a

claim on behalf of a group and injunctive relief on behalf of a group. The statute was "[o]bviously enacted. .because consumers' remedies at common law were deemed inadequate." *See* Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App.,2002). As stated by the Supreme Court in Simpson, the purpose behind the Dealers Act is to "punish[ ] acts that adversely affect the public interest." Simpson, 644 S.E.2d at 671.

The Century BMW arbitration agreement's attempted prohibition of group suits prevents Plaintiff Christine Watts from effectively vindicating her statutory rights in arbitration. The right to bring a claim on behalf of a group under S C. Code Ann. §56-15-110(2) is significant. This protection is necessary because otherwise parties with nominal individual claims, but significant collective claims, would be left with limited avenues for relief and a wrongdoer car dealer with little checks on its abuses of law. S.C. Code Ann. §56-15-110 makes it economical for a car purchaser who has been harmed by violation of the statute to bring claims against a car dealer. Century BMW's attempt to take this right away is violative public policy.

Similarly, Plaintiff Christine Watts's statutory right, as one harmed Plaintiff, to seek group injunctive relief, when an action is of common or general interest to many persons, cannot be effectively vindicated under the Century BMW arbitration Agreement. S.C. Code Ann.§56-15-110(2) is designed so that one person can stop a car dealers from perpetrating wrongdoing against many car purchasers. This right to group injunctive relief was given by the General Assembly to prevent car dealerships from perpetrating mass wrongdoing on the public. This is a significant right that cannot be vindicated in the Century BMW arbitration agreement.

Courts in other jurisdictions have found similar provisions unconscionable and unenforceable. *See* Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362 (N.C.2008);

Cooper v. QC Financial Services, Inc., 503 F.Supp2d 1266, 1290 (D.Ariz.,2007); Eagle v. Fred Martin Motor Co., 809 NE2d 1161 (Ohio App. 2004)(concluding provision preventing right to proceed through a class action or as a private attorney general were both against public policy and the underlying purpose of the Consumer Sales Practices Act and thus were unenforceable). Lozada v. Dale Baker Oldsmobile, Inc., 91 F. Supp. 2d 1087 (W.D. Mich. 2000)(arbitration clause involving the sale of automobiles providing for waiver by buyer's or right to proceed by way of a class action was substantially unreasonable and unconscionable), State Ex Rel. Dunlap v. Berger, 567 SE2d 570, 576 (Fla. Dist. Ct. App.. 1998)

The South Carolina Supreme Court has stated that it will not enforce this type of arbitration clause. "[P]reclusion of class-wide or consolidated arbitration in an adhesion contract, even if explicit, undermines principles favoring expeditious and equitable case disposition absent demonstrated prejudice to the drafter of the adhesive contract." Bazzle v. Green Tree Financial Corp., 569 S.E.2d 349, 361 (S.C.,2002)(*R'vd on other grounds*). Such clauses are unconscionable because they insulate Defendants from significant exposure brought about when otherwise small claims are grouped together.

The class action and representative capacity suit prohibitions in the Century BMW arbitration agreement are contrary to the "strong public policy reasons" behind the enactment of the Dealers Act and contrary to the Dealers Act's purpose of "punishing acts that adversely affect the public's interest." Simpson, 644 S.E.2d at 671. I, therefore, find that the terms of the arbitration agreement are oppressive and violative of public policy and statutory law.

DAG #11

CONCLUSION

11

Like the arbitration agreement at issue in Simpson, there was an absence of meaningful choice by the Wattses in entering into the Century BMW arbitration agreement. Additionally, the Century BMW arbitration agreement's attempt to take away statutory rights under the Motor Vehicle Dealers Act are one-sided and violative of statutory law. I therefore find that the Century BMW arbitration agreement is unconscionable and unenforceable.

Based upon the foregoing, the Motion to Compel Arbitration filed by Century BMW is denied.

AND IT IS SO ORDERED.

Hon. Doyet A. Early, III
Circuit Court Judge
Second Judicial Circuit

Beaufort, South Carolina
March 10, 2008

TO: Steve Hamm

From: Kate Hyland
w/ Judge Early

Fax: 803-779-0016

Re: Heather Herron, et al vs. Century BMW, et al

Attached please find the signed order denying Motion to Compel Arbitration

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease, Michael Watts, Individually and for the Benefit of All Car Buyers Whom Paid "Administrative Fees" as Described below to Defendants Plaintiffs, vs. Century BMW a/k/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.; J.L.H. Investments, LP a/k/a Hendricks Honda; Overland, Inc. d/b/a Land Rover of Columbia; Taylor Toyota a/k/a Taylor Investments; and Toyota of Greenville, Inc. Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT CIVIL ACTION NO.: 06-CP-02-1230 STATE OF SOUTH CAROLINA COUNTY OF AIKEN I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the Order filed in this office this OCT 12 2009 Liz Godard C.C.C.P. & G.S., Aiken County, S.C. Anita Knoepfle Deputy Clerk **ORDER ON MOTION TO DISMISS AND SUBSTITUTE AS TO TOYOTA OF GREENVILLE, INC.** FILED 10-12-09 Liz Godard C.C.C.P.&G.S. Anita Knoepfle 10AM Deputy Clerk

This matter comes before the Court by way of Plaintiffs' Motion to Dismiss and Substitute as to Defendant Toyota of Greenville. This motion was argued before me on October 1, 2009. After considering the parties' filings, as well the legal arguments of counsel, I have determined the motion should be granted and that David Carroll is to replace Plaintiff Michael Watts as the named representative as to Defendant Toyota of Greenville, Inc. Plaintiff Watts's individual claims are dismissed with prejudice.

This a consumer protection action brought against the Defendants based on alleged violations of South Carolina laws, including but not limited to the South Carolina Manufacturers, Distributors, and Dealers Act ("Dealers Act"), codified at S.C. Code Ann. sections 56-15-10, et

seq. The Dealers Act prohibits motor vehicle dealers from engaging "in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public." S.C. Code Ann. § 56-15-40. In order to protect the public through enforcement of the Dealers Act, the Legislature created a private right of action for damages in section 56-15-110, and in order to further protect the public through private enforcement, added a separate provision enabling a private action to be brought in a representative capacity for "the benefit of the whole." S.C. Code § 56-15-110(2). The specific language of this section reads:

> When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

Id. This statute allows one aggrieved car purchaser to sue "for the benefit of the whole," including all persons hurt by the same Defendant's violations of the Dealers Act.

This case was filed on August 29, 2006. On October 31, 2006, Plaintiffs amended the Complaint. The October 31, 2006 amendment added Plaintiff Michael Watts as a named representative under the Dealers Act representing all persons who paid "administrative fees" to Defendant Toyota of Greenville, Inc. Plaintiffs' Amended Complaint defines "administrative fees" as including illegal fees "often referred to as an 'administrative fee,' a 'recording and processing fee,' 'closing fee,' 'dealer documentation and closing fee.'" Plaintiffs allege that Defendants are charging the "administrative fees" in violation of the Consumer Protection Code, S.C. Code Ann. §37-2-307, and the Dealers Act, §56-15-10 *et seq.*[1]

[1]The Consumer Protection Code, S.C. Code Ann.§37-2-307 uses the term "closing fees" as encompassing all of these fees.

In July 2007, this Court issued an Order confirming a substantive statutory right of the named Plaintiffs to proceed "for the benefit of the whole" under the Dealers Act against all Defendants without "a requirement that the plaintiff plead and prove the class certification requirements of S.C. R. P. Rule 23." This finding certifies that the named plaintiffs could proceed on behalf of the group of car purchasers who paid "administrative fees."

In January 2008, this Court ruled on certain Defendants' Rule 59(e) motions and then held that each named Plaintiff had standing to sue for himself and in a representative capacity for others against the Defendant that transacted business with that named Plaintiff. The January 2008 ruling confirmed that named Plaintiffs, including Plaintiff Watts, who, as alleged in the Amended Complaint, paid "administrative fees," represented a large group of people who had paid the same kind of fee.[2]

In May 2009, Plaintiff Watts decided that he no longer wished to participate in this case as the named representative plaintiff against Defendant Toyota of Greenville, Inc. Defendant Toyota of Greenville, Inc. refused to consent to Plaintiff Watts's request for a dismissal with prejudice of his claim.

In June 2009, David Carroll, a purchaser who like Plaintiff Watts alleges he paid "administrative fees" to Defendant Toyota of Greenville, Inc., came forward and sought to be substituted as a named representative in this case in order to protect the interests of the group of car purchasers that was represented by Plaintiff Watts. David Carroll has answered written

[2]As stated by Plaintiffs' counsel at the hearing and confirmed by Defendant Toyota of Greenville's Second Revised Answers to Plaintiffs' First Set of Interrogatories, this Court was correct that there are thousands of car purchases at issue. One purchaser who paid an "administrative fee" has the statutory right to proceed "for the benefit of the whole."

discovery promulgated by Defendant Toyota of Greenville, Inc. and has provided available dates for his deposition.

On June 23, 2009, Plaintiffs' counsel filed this motion seeking to dismiss Plaintiff Michael Watts and substitute David Carroll in this action. In support of the motion, Plaintiffs argue that in representative actions the unnamed group members have an interest that should be protected by allowing the replacement of the named representative. Plaintiffs cite to representative cases for the proposition that "[W]hen a class representative is unable or unwilling to continue as the class representative, the court should permit class members an opportunity to 'substitute themselves as the class representative. By doing so, the court protects the interests of the class, which has a separate and distinct legal status from that of the representative." *Citing* Birmingham Steel Corp. v. Tennessee Valley Authority, 353 F.3d 1331 (11th Cir. 2003); Swan v. Stoneman, 635 F.2d 97 (2nd Cir. 1980); Griffith v. Bowen, 678 F.Supp. 942 (D.Mass. 1988).

Defendant Toyota of Greenville, Inc. opposes the motion. Toyota of Greenville, Inc. argues that replacement of Mr. Watts is not proper because class certification has not occurred. At the hearing, Toyota of Greenville, Inc. conceded that if class certification had occurred in this case, Toyota of Greenville, Inc. would not oppose the requested replacement of Plaintiff Watts with Mr. Carroll.

Toyota Greenville, Inc.'s argument as to the necessity of a class certification order fails. This is not a Rule 23, SCRCP class action. This is a group representative action under the Dealers Act, S.C. Code Ann. Section 56-15-110(2). Nothing under the Dealers Act requires the Plaintiffs to move for class certification. Furthermore, I previously ruled "that a named Plaintiff has standing to pursue all three causes of action, on behalf of himself or others, against the Defendant from which that particular Plaintiff purchased a vehicle...." and that "[P]laintiffs are

not required to plead and prove the requirements pertaining to class actions contained in Rule 23 SCRCP during the liability or litigation phase of this case." January 31, 2008, Order, pp. 5 and 11. This Order confirmed that the named Plaintiffs were prosecuting these cases in a representative capacity on behalf of the group of purchasers who purchased vehicles from the same dealership and paid "administrative fees." No separate class certification order is required under the Dealers Act, as "group representation" has already been granted to the named Plaintiffs. Accordingly, Toyota of Greenville, Inc.'s argument that a class certification order is a prerequisite to allowing Mr. Carroll to replace Plaintiff Watts fails.[3]

Additionally, I find that the unnamed members of the group have an interest in the case that needs to be protected. *See* Birmingham Steel Corp. v. Tennessee Valley Authority, 353 F.3d 1331 (11th Cir. 2003); Swan v. Stoneman, 635 F.2d 97 (2nd Cir. 1980); Griffith v. Bowen, 678 F.Supp. 942 (D.Mass. 1988). As pointed out by several commentators, the interest of unnamed members in a representative suit is significant such that Plaintiffs' counsel has a duty when the unnamed members of the group stand to unknowingly lose their claims "to make reasonable efforts to recruit and identify a new representative." The Annotated Manual for Complex Litigation provides in part:

> Later replacement of a class representative may become necessary if, for example the representative's individual claim has been mooted or otherwise significantly altered. Replacement also may be appropriate if a representative has engaged in conduct inconsistent with the interests of the class or is no longer pursuing the litigation. In such, circumstances, courts generally allow class counsel time to make reasonable efforts to recruit and identify a new representative who meets the Rule 23(a) requirements.

Annotated Manual for Complex Litigation, (Fourth), §21.26. Based on the foregoing, I find that the unnamed group members here who paid administrative fees to Defendant Toyota of

[3]Notably, even in Rule 23 class actions, some courts have allowed the replacement of named plaintiffs prior to class certification. *See* Griffith v. Bowen, 678 F.Supp. 942 (D.C.Mass. 1988).

Greenville, Inc. have an interest from the inception of the suit that needs to be protected by the replacement of Plaintiff Watts with David Carroll.

Furthermore, this case is being prosecuted pursuant to a "private attorneys general" provision under the Dealers Act. A "private attorneys general suit" is a term used by courts when statutes authorize both the Attorney General's office and private citizens, through civil actions, to enforce regulation. *See* Hedgepath v. American Tel.& Tel. Co., 348 S.C. 340, 359, 559 S.E.2d 327, 338 (Ct.App. 2001)(discussing Aurora National Bank v. Tri Star Marketing, 990 F.Supp. 1020 (N.D.Ill.1998) and the "private attorneys general" provision in the Resource Conservation and Recovery Act). In this case, the Dealers Act empowers both the state Attorney General and private citizens to seek injunctive relief on behalf of the public. *See* §56-15-40(5) (empowering the Attorney General to issue injunctive relief) and §56-15-110(2)(empowering private citizens to bring suit for the benefit of the public interest). Plaintiffs have sought injunctive relief on behalf of the whole and thus are acting as private attorneys general. *Cf.* Davis v. U.S. Bancorp, 383 F.3d 761 (8th Cir. 2004)(referring to Minn.Stat. §8.31, subd. 3a, as a private attorney general statute. Minn.Stat. §8.31, subd. 3a, like the Dealers Act allows individuals to enforce statutes regulating unfair business practices by bringing a civil cause of action). Plaintiffs' counsel, as private attorneys general, from the inception of this litigation have represented the public interest in attempting to regulate allegedly unfair practices by motor vehicle dealers and therefore represent all those affected by such practices. Class certification is not a prerequisite to action to a private attorneys general suit. Moreover, the public interest is protected by allowing the replacement of Plaintiff Watts by David Carroll. Because I find this case is being prosecuted as private attorneys general, this is an additional reason why Plaintiffs' motion should be granted.

Toyota of Greenville, Inc. also argues that Mr. Carroll should not be permitted to replace Plaintiff Watts in this case because there is no rule of civil procedure specifically dealing with this situation. Plaintiffs' counsel contends that Rule 7, SCRCP allows parties to apply for Orders from the Court when the rules do not provide specifically for a motion. *Citing* Wright & Miller, Federal Practice and Procedure, §1190 ("Finally, a party confronted by a situation in which the rules do not provide specifically for a motion, but who can show a need for an order from the court to prevent overreaching or injustice, may make what might be called an 'undifferentiated motion' stating his problem, the grounds for relief, and the remedy desired."). Plaintiffs also point out that replacing named representatives is permitted in other representative lawsuits even though it does not fall within the technical meaning of the terms "substitution' or "intervention" as used in the rules of civil procedure. *Citing* Coffey v. Braddy, 2009 WL 591280, n. 7 (M.D.Fla. 2009)("[N]othing more is required than to permit the original representatives, who apparently have relinquished their duties, to be replaced. Although some of the cases reviewed use the terms 'intervention' and 'substitution,' it appears many courts use both those terms (sometimes interchangeably within the same sentence) to describe the replacement of class representatives, not necessarily meaning to ascribe to the terms the technical meaning under the Federal Rules of Civil Procedure."). Notably, again, at the hearing, Toyota of Greenville, Inc. conceded that if class certification had occurred in this case, Toyota of Greenville, Inc. would not oppose the requested replacement of Plaintiff Watts with Mr. Carroll.

I find Plaintiffs' arguments as to Rule 7, SCRCP and the Coffey case persuasive. This interpretation is in accord with Rule 1, SCRCP which states that the rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." In this case, if I were to deny the motion, Mr. Carroll may be forced to start over and file a separate

lawsuit on behalf of the group already represented in this action. This separate case would be the fourth case dealing with the same issues before the Court in this matter.[4] The filing of a new lawsuit to replace this existing case is not speedy or inexpensive. Additionally, I find that the replacement of Plaintiff Watts with David Carroll avoids unfair prejudice to all parties and is therefore just. The substitution allows all parties to proceed towards a final determination on the merits after several years of litigation without starting anew. It would be unfair to all to sacrifice the time and expense of this litigation without the certainty of final ruling on the legality of the actions at issue.

I also find that an award of attorneys fees to Toyota of Greenville, Inc. is not warranted. None of the cases cited by Toyota of Greenville, Inc. are representative actions where absent group members needed to be protected. *See* Shipp v. Richardson Corporation of South Carolina, Inc., 285 S.C. 460, 330 S.E.2d 291 (1985); Mauro v. Clabaugh, 299 S.C. 184, 383 S.E.2d 244 (Ct.App. 1989); McEachern v. Wilson, 165 S.C. 485, 164 S.E.2d 133 (1932). This is a representative action under the Dealers Act and any prejudice to Toyota of Greenville, Inc. is mitigated by the substitution of Mr. Carroll. Mr. Carroll will replace Plaintiff Watts, as the named representative for the group of Toyota of Greenville, Inc. purchasers currently represented in this proceeding. This group will continue to be in the suit and any effort expounded by Toyota of Greenville, Inc. in defending against the group's claims will not be lost. Additionally, the cases cited by Toyota of Greenville, Inc. all involve dismissals without prejudice. By contrast, Plaintiff Watts seeks to dismiss his personal claims with prejudice. Toyota of

[4]In addition to this case the cases of Adams, et al v. Action Ford, et al., Civil Action Number: 07-CP-02-1232 and West-Cox, et al v. Cale Yarborough Honda, Inc., a/k/a Cale Yarborough Motors of SC, et al. Civil Action No.: 2007-CP-1154 also involve allegations of illegal "administrative fees."

Greenville, Inc. would not automatically be entitled to attorneys fees if Plaintiff Watts's individual claim was lost with prejudice on summary judgment or at trial. Accordingly, it would be inequitable to force Mr. Watts to pay attorneys fees for dismissing only his individual claim with prejudice at this stage.

Based on the foregoing and after full consideration of the issues herein,

IT IS HEREBY ORDERED that the Motion to Dismiss Plaintiff Michael Watts and substitute David Carroll by and the same is hereby granted,

IT IS FURTHER ORDERED that the Defendant's Request for Attorneys fees be and the same is hereby denied.

AND IT IS SO ORDERED.

Doyet A. Early, III
Resident Circuit Court Judge
Second Judicial Circuit

Blacksburg, South Carolina
This 7th day of Oct., 2009.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF **AIKEN**
IN THE COURT OF COMMON PLEAS

Heather Herron et al

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP0201230

CARMAX AUTO SUPERSTORE, et al

DEFENDANT(S)

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

☐ **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:

This judgment was entered on the 12th day of October, 2009, and a copy mailed first class this 12th day of October, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by A Knepple
Liz Godard - Clerk of Court

Supreme Court of South Carolina
Heather HERRON, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease, Michael Watts, Individually and for the Benefit of All Car Buyers Who Paid "Administrative Fees" as Described below to Defendants, Respondents,
v
CENTURY BMW a/k/a Sonic Automotive, Dick Dyer & Associates, Inc , Galeana Chrysler Plymouth, Inc , a/k/a Galeana Chrysler Jeep, Inc , J L H Investments LP a/k/a Hendrick Honda, Overland, Inc , d/b/a Land Rover of Columbia, Taylor Toyota a/k/a Taylor Investments, and Toyota of Greenville, Inc et al , Defendants
of whom Century BMW a/k/a Sonic Automotive is the Appellant

No 26805
Heard Jan 20, 2010
Decided April 19, 2010
Rehearing Denied June 9, 2010
Certiorari Granted May 2, 2011

Background: Buyers of automobile brought class-action lawsuit against dealership and other dealers, alleging that defendants had charged illegal administrative fees in violation of Regulation of Manufacturers, Distributors, and Dealers Act The Circuit Court, Aiken County, Doyet A Early, III, J , denied dealership's motion to compel arbitration Dealership appealed, and Supreme Court granted certification

Holdings: The Supreme Court, Kittredge, J , held that
(1) arbitration agreement was adhesion contract,
(2) buyers had meaningful choice in making decision to enter into arbitration agreement, as would support conclusion that agreement was not unconscionable,
(3) buyers' failure to read arbitration agreement did not invalidate enforceability of agreement,
(4) arbitration agreement did not contain oppressive, one-sided terms, and
(5) clause prohibiting class-action lawsuits was unenforceable on public policy grounds

Affirmed in result

West Headnotes

[1] Alternative Dispute Resolution 25T 200

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk197 Matters to Be Determined by Court
25Tk200 k Arbitrability of dispute Most Cited Cases

The question of arbitrability of a claim is an issue for the courts

[2] Alternative Dispute Resolution 25T 213(5)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk204 Remedies and Proceedings for Enforcement in General
25Tk213 Review
25Tk213(5) k Scope and standards of review Most Cited Cases

Determination of whether a claim is subject to arbitration is subject to de novo review, but a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings

[3] Alternative Dispute Resolution 25T 210

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk204 Remedies and Proceedings for Enforcement in General
25Tk210 k Evidence Most Cited Cas-

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es

There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes

[4] Alternative Dispute Resolution 25T ⚿116

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk116 k What law governs Most Cited Cases

General contract principles of state law apply to a court's evaluation of the enforceability of an arbitration clause governed by the Federal Arbitration Act (FAA) 9 U S C A § 1 et seq

[5] Alternative Dispute Resolution 25T ⚿134(6)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(6) k Unconscionability Most Cited Cases

Arbitration agreement regarding sale of automobile was "adhesion contract," as would support conclusion that agreement was unconscionable, agreement was contract on standard form and was presented on take-it-or-leave-it basis, and buyers did not contribute to drafting of agreement or possess bargaining power to negotiate terms of agreement

[6] Contracts 95 ⚿1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k Nature and grounds of contractual obligation Most Cited Cases

Adhesion contracts are not per se unconscionable, finding a contract to be one of adhesion is merely the beginning point in the analysis of whether the contract is unconscionable

[7] Contracts 95 ⚿1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k Nature and grounds of contractual obligation Most Cited Cases

"Unconscionability" is defined as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them

[8] Alternative Dispute Resolution 25T ⚿134(6)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(6) k Unconscionability Most Cited Cases

Automobile buyers had meaningful choice in making decision to enter into arbitration agreement regarding purchase of automobile from dealership, as would support conclusion that agreement was not unconscionable, although transaction involved consumers and commercial entity, and although one buyer planned to use automobile as her primary means of transportation, agreement was separate, one-page document which both buyers signed, agreement was clearly labeled to be an arbitration agreement at top of document in bold, capital, and underlined font, and important terms and provisions of agreement appeared in body of agreement and again in capital letters just above signature line

[9] Contracts 95 ⚿1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k Nature and grounds of contractual obligation Most Cited Cases

For purposes of unconscionability, the absence

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of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue

[10] Contracts 95 ⚿1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k Nature and grounds of contractual obligation Most Cited Cases

In determining whether there is an absence of a meaningful choice, as would support determination that contract is unconscionable, courts consider the relative disparity in the parties' bargaining power, the parties' relative sophistication, the nature of the injuries suffered by the plaintiff, whether the plaintiff is a substantial business concern, whether there is an element of surprise in the inclusion of the challenged clause, and the conspicuousness of the clause

[11] Alternative Dispute Resolution 25T ⚿134(3)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(3) k Validity of assent Most Cited Cases

Automobile buyers' failure to read arbitration agreement governing sale of automobile did not invalidate enforceability of agreement, failure to read agreement was solely attributed to buyers' actions and not to dealership's actions

[12] Alternative Dispute Resolution 25T ⚿134(6)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(6) k Unconscionability Most Cited Cases

Arbitration agreement regarding sale of automobile did not contain oppressive, one-sided terms, as would support conclusion that agreement was not unconscionable, agreement allowed buyers a choice of venue, dealership agreed to pay entire filing fee if it commenced arbitration and to pay part of filing fee if buyers commenced arbitration, dealership agreed to pay more than half of arbitrator's fees, and agreement did not prevent arbitrator from awarding punitive damages or double or treble compensatory damages

[13] Alternative Dispute Resolution 25T ⚿134(1)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(1) k In general Most Cited Cases

In arbitration agreement regarding buyers' purchase of automobile from dealership, clause prohibiting class-action lawsuits was unenforceable on public policy grounds, by enacting Manufacturers, Distributors, and Dealers Act, legislature had made clear that the public policy was to provide consumers with nonwaivable right to bring class action suits for violations of the Act and that any contract prohibiting a class action suit violated state's public policy and was void and unenforceable Code 1976, §§ 56-15-110(2), 56-15-130

[14] Antitrust and Trade Regulation 29T ⚿192

29T Antitrust and Trade Regulation
29TIII Statutory Unfair Trade Practices and Consumer Protection
29TIII(C) Particular Subjects and Regulations
29Tk191 Motor Vehicles
29Tk192 k In general Most Cited Cases

The purpose of the Regulation of Manufacturers, Distributors, and Dealers Act is consumer protection Code 1976, § 56-15-10 et seq

[15] Alternative Dispute Resolution 25T ⚿213(5)

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25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk204 Remedies and Proceedings for Enforcement in General
25Tk213 Review
25Tk213(5) k Scope and standards of review Most Cited Cases

In appealing denial of its motion to compel arbitration of buyers' claim arising from purchase of automobile, dealership abandoned for appellate review its claim that arbitration agreement's unenforceable clause banning class-action lawsuits was severable from remainder of agreement, dealership's attorney unambiguously stated at oral argument before Supreme Court that dealership did not wish to invoke severance clause and sever provision banning class actions from remainder of agreement

[16] Contracts 95 ⚿137(1)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k135 Effect of Illegality
95k137 Partial Illegality
95k137(1) k In general Most Cited Cases

Courts will attempt to sever an illegal provision in an otherwise valid contract and enforce the remaining terms

[17] Contracts 95 ⚿137(1)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k135 Effect of Illegality
95k137 Partial Illegality
95k137(1) k In general Most Cited Cases

For purposes of rule that courts will attempt to sever an illegal provision in an otherwise valid contract, a "severable contract" is one in its nature and purpose susceptible of division and apportionment, with an emphasis on discerning the parties' intent

[18] Contracts 95 ⚿137(1)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k135 Effect of Illegality
95k137 Partial Illegality
95k137(1) k In general Most Cited Cases

Whether an illegal provision in an otherwise valid contract may be severed from the contract is a matter of the intent of the parties

****396** Dennis M Black and Ryan L VanGrack, of Williams & Connolly, of Washington, Steven W Hamm, C JoAnne Wessinger-Hill, David A Anderson, and Jocelyn T Newman, all of Richardson, Plowden & Robinson, of Columbia, for Appellant

A Camden Lewis and Brady R Thomas, both of Lewis & Babcock, of Columbia, Gedney M Howe, III, of Charleston, Michael Eugene Spears, of Spartanburg, and Richard A Harpootlian, of Columbia, for Respondents

Justice KITTREDGE

***529** This case concerns the enforceability of an arbitration agreement Respondents Christine and Michael Watts entered into a contract with Appellant Century BMW (Century) for the purchase of a car The transaction included the execution of an arbitration agreement Subsequently, the Wattses filed a class action suit against Century alleging the dealership had charged illegal administrative fees Century moved to compel arbitration The trial court found the arbitration agreement was unconscionable and unenforceable and denied the motion to compel Century appealed, and we granted certification pursuant to Rule 204, SCACR

We hold the arbitration agreement, although an adhesion contract, is not unconscionable Yet the arbitration provision prohibiting class actions is against public policy, which would ordinarily be sev-

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ered pursuant to the agreement's severance clause Century has insisted, however, that if the class action prohibition provision is unenforceable, it will abandon the balance of its rights under the arbitration agreement and consent to the action proceeding in the trial court Although the arbitration agreement is otherwise enforceable, in accordance with Century's request, we affirm in result the trial court's order denying the motion to compel arbitration

***530 I.**

In 2005, Michael Watts began looking for a car to purchase for his daughter, Christine Watts, as a graduation present He negotiated with Century for the sale of a 2004 BMW Z4 convertible Michael gave Century a bottom line price of $32,000, which Century initially rejected, but ultimately accepted On the day of sale, Century presented a packet of documents Michael and Christine were to sign Within the packet was a document titled "***ARBITRATION AGREEMENT.***" The arbitration agreement provided that any dispute between the parties would be subject to arbitration [FN1] and that the agreement was governed by the Federal Arbitration Act (FAA) The agreement further provided that the parties were waiving their right to bring or participate in a class action suit

FN1 The Wattses have never contended that this dispute is not within the scope of the arbitration agreement

****397** The Wattses brought a class action suit against Century and numerous other car dealerships in South Carolina, alleging the dealers charged an illegal administrative fee in violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act") S C Code Ann § 56-15-10 *et seq* (2005) Century filed a motion to compel arbitration pursuant to the terms of the agreement Relying heavily on *Simpson v MS1 of Myrtle Beach, Inc* 373 S C 14, 644 S E 2d 663 (2007), the trial court found the arbitration agreement was unconscionable because there was an absence of a meaningful choice and the agreement contained oppressive and one-sided terms Accordingly, the trial court found the arbitration agreement was unenforceable and denied Century's motion to compel

II.

A.

Arbitration

[1][2] The question of arbitrability of a claim is an issue for the courts *Partain v Upstate Automotive Group*, 386 S C 488, 689 S E 2d 602 (2010) (Shearouse Adv Sh No 6 at 28) ***531** The determination of whether a claim is subject to arbitration is subject to de novo review, but a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings *Id*

[3][4] At the outset, we recognize that there is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes *Heffner v Destiny, Inc* 321 S C 536, 537, 471 S E 2d 135, 136 (1995) At the same time, general contract principles of state law apply to a court's evaluation of the enforceability of an arbitration clause governed by the FAA *Munoz v Green Tree Fin Corp* 343 S C 531, 539, 542 S E 2d 360, 364 (2001) (citing *Doctor's Assoc, Inc v Casarotto*, 517 U S 681, 685, 116 S Ct 1652, 134 L Ed 2d 902 (1996)) To this end, if a court as a matter of law finds any clause of a contract involving the sale of goods to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result S C Code Ann § 36-2-302(1) (2003)

B.

Adhesion Contract

[5] The Wattses and Century dispute whether this contract is an adhesion contract Century argues the transaction was thoroughly negotiated and the sale was not conditioned upon the Wattses agreeing to sign the arbitration agreement The Wattses, on the other hand, argue there is evidence to support the trial court's finding that this was an adhesion contract, including the fact that this was a standard form contract It appears that one customer (and certainly no more than a few customers) out of approximately six thousand failed to sign the arbitration agreement

[6] We agree with the trial court that this is an adhesion contract This was a contract on a standard form, presented on a take-it-or-leave-it basis The Wattses did not contribute to the drafting of the contract or possess the bargaining power to negotiate the terms of the contract [FN2] *See* ***532***Lackey v Green Tree Fin Corp* 330 S C 388, 394, 498 S E 2d 898, 901 (Ct App 1998) (recognizing a contract of adhe-

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sion is generally thought of as a standard form contract, offered on a take-it-or-leave-it basis, containing non-negotiable terms) Nevertheless, although this Court has approached adhesion contracts between a consumer and automobile retailer with "considerable skepticism," adhesion contracts are not per se unconscionable *Simpson*, 373 S C at 27, 644 S E 2d at 669 Finding a contract to be one of adhesion is merely the beginning point in the analysis of whether the contract is unconscionable *Lackey*, 330 S C at 395, 498 S E 2d at 902

FN2 Although the Wattses negotiated the *price of the car*, they did not have the power to negotiate the *terms of the contract*

****398 C.**
Unconscionability

[7] In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them *Simpson* 373 S C at 25, 644 S E 2d at 668

1 Absence of Meaningful Choice

[8][9][10] Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue *Id* at 25, 644 S E 2d at 669 In determining whether there is an absence of a meaningful choice, courts consider the relative disparity in the parties' bargaining power, the parties' relative sophistication, the nature of the injuries suffered by the plaintiff, whether the plaintiff is a substantial business concern, whether there is an element of surprise in the inclusion of the challenged clause, and the conspicuousness of the clause *Id*

We are firmly convinced and find the Wattses had a meaningful choice in signing the contract We recognize that this was a contract for the sale of a vehicle Christine Watts planned to use as her primary means of transportation, "which is critically important in modern day society" *Id* at 27, 644 S E 2d at 670 We also recognize that there was an inherent disparity in bargaining power between the parties, as this was ***533** a transaction between a consumer and a commercial entity[FN3] However, the arbitration agreement is a separate, one-page document which both Michael and Christine Watts signed It is clearly labeled to be an arbitration agreement at the top of the document in bold, capital, and underlined font The important terms and provisions of the agreement appear in the body of the contract and again in capital letters just above the signature line

FN3 Contrary to Century's assertion, we find no significance in the fact that this was a luxury vehicle or that Christine Watts was "highly-educated" These factors do not change the "consumer/business nature" of the transaction

[11] The Wattses both admitted they did not read the arbitration agreement, and their deposition testimony confirmed the failure to read the documents was solely attributed to them and not to Century's actions Our jurisprudence forbids us to allow the Wattses to invalidate the enforceability of the arbitration agreement by claiming they did not read it *Regions Bank v Schmauch*, 354 S C 648, 663, 582 S E 2d 432, 440 (Ct App 2003) (citing *Sims v Tyler*, 276 S C 640, 643, 281 S E 2d 229, 230 (1981)) ("A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it")

This arbitration agreement and the actions of Century surrounding the transaction are markedly different from the actual agreement as well as surrounding circumstances in *Simpson* The *Simpson* arbitration agreement was inconspicuously buried in the sales contract, on the opposite page from the customer's signature, in paragraph "10" of sixteen other paragraphs Additionally, the *Simpson* customer alleged the contract was "hastily" presented for her signature

The significant features that impacted the unconscionability determination in *Simpson* are not present here We hold the Wattses had a meaningful choice in making the decision to enter into this contract with Century

2 Oppressive One–Sided Terms

[12] First, we will address the provisions in the arbitration agreement, save for the provision prohibiting a customer from bringing a class action suit against Century

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***534** Under the agreement, all claims must be brought within the applicable statute of limitations, the arbitrator shall be an attorney or retired judge, and each party is responsible for his or her own attorney's fees Additional terms include no arbitration is required if the claim is brought in small claims court, the arbitration shall be conducted, at the customer's option, in the federal district in which the customer resides or in which the vehicle was purchased, the arbitrator shall apply governing local, state or federal laws and award damages or other relief allowed ****399** by such governing laws, if the customer initiates a claim, Century will pay the portion of the filing fee which exceeds the court filing fee, if Century initiates the claim, it will pay the entire filing fee, Century will pay up to $1,500 of the arbitrator's fees, and parties shall equally share fees in excess of $1,500

In our view, these terms are neither oppressive nor one-sided Moreover, nothing in the agreement prevents the arbitrator from awarding punitive damages or double or treble compensatory damages, nor does the agreement limit any available statutory remedies Several provisions favor the customer, such as allowing the customer a choice of venue and Century's obligation to pay certain fees Moreover, both the customer and Century are subject to the same terms in the arbitration agreement, thus there is no lack of mutuality of remedy *See* *Simpson*, 373 S C at 32, 644 S E 2d at 672 (adhering to previous holdings in that lack of mutuality of remedy will not invalidate an arbitration agreement, but finding the provision dictating that the dealer's judicial remedies supersede the consumer's arbitral remedies was one-sided and oppressive)

These terms stand in sharp contrast to the terms present in *Simpson* In *Simpson*, the arbitration provision required the customer to waive her right to mandatory statutory remedies, including the right to punitive damages and double and treble compensatory damages There was a lack of mutuality of remedies, as the customer was forced to arbitrate all claims she may have had against the dealer, while the dealer reserved its right to judicial remedies in certain circumstances Further, the scope of the arbitration agreement in *Simpson* ***535** was so broad it included non-arbitratable disputes [FN4]

FN4 The Court found the scope of the arbitration agreement was broad enough to implicate claims arising under the Magnuson–Moss Warranty Act (MMWA), a federal statute that governs warranties on consumer products The Court noted that federal regulations state that informal dispute resolution procedures set forth in written warranties under the MMWA are not to be legally binding on any person 16 C F R § 703 5(j) (2006) Accordingly, the Court held "the inclusion of the MMWA in the scope of the arbitration clause is unenforceable as a matter of public policy" *Simpson*, 373 S C at 33, 644 S E 2d at 673

3 Ban on Class Actions

[13] Finding the terms in the arbitration agreement not to be oppressive or one-sided, we next turn to the provision banning class action suits This provision provides "By entering into this Agreement the Parties are waiving their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration" The Wattses argue this provision is unenforceable because it is oppressive in that it takes away statutory rights, and it is one-sided in that Century would not bring a class action suit against its customers While we agree with the Wattses that the provision is unenforceable, we hold the ban on class actions is unenforceable on public policy grounds

[14] The purpose of the Dealers Act is consumer protection Damages are typically small in individual consumer cases, thereby discouraging plaintiffs from bringing individual actions Our Legislature recognized this and expressly provided plaintiffs with the right to bring class action lawsuits for violations of the Dealers Act

> When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief

Section 56–15–110(2) The Dealers Act further provides "Any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable" Section 56–15–130

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*536 Stated succinctly, the Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act and that any contract prohibiting a class action suit violates our State's public policy and is void and unenforceable We note that courts across the country are split over whether an arbitration agreement may include a waiver of the right **400 to bring a class action suit *See* Scott v Cingular Wireless 160 Wash 2d 843, 161 P 3d 1000, 1004 (2007) (highlighting the split in authority with a list of nationwide cases finding class action waivers enforceable and unenforceable) We are guided by our state law, and the unmistakable statutory language contained in the Dealers Act indicating our Legislature intended for this to be a non-waivable right We therefore hold this provision is unenforceable on public policy grounds *See* Carolina Care Plan, Inc v United HealthCare Servs, Inc, 361 S C 544, 555, 606 S E 2d 752, 758 (2004) (holding the general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution)

4 *Severance*

[15][16][17][18] Finding this provision unenforceable would normally not end the inquiry on the enforceability of the remainder of the contract, as courts will attempt to sever an illegal provision in an otherwise valid contract and enforce the remaining terms [FN5] The parties' arbitration agreement provides that "[i]f any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable "

> FN5 A severable contract is one in its nature and purpose susceptible of division and apportionment, with an emphasis on discerning the parties' intent Columbia Architectural Group, Inc v Barker, 274 S C 639, 641, 266 S E 2d 428, 429 (1980) Whether an illegal provision in an otherwise valid contract may be severed from the contract is a matter of the intent of the parties Beach Co v Twillman, Ltd, 351 S C 56, 64, 566 S E 2d 863, 867 (Ct App 2002)

Nevertheless, counsel for Century unambiguously stated at oral argument that Century did not wish to invoke the severance clause and sever the provision banning class actions from the remainder of the agreement Century unequivocally expressed*537 its intent for the arbitration agreement to stand or fall as a whole Obviously, the Wattses seek to avoid the arbitration agreement and proceed in court We will not provide a remedy that neither party seeks We treat the issue of severability as abandoned Therefore, we decline to enforce the arbitration agreement and affirm in result the trial court's denial of Century's motion to compel arbitration

III.

We hold, except for the provision prohibiting customers from bringing class actions, the arbitration agreement is not unconscionable, for the Wattses had a meaningful choice in entering this agreement and the agreement does not contain oppressive or one-sided terms The arbitration agreement is enforceable except for the ban on class actions, which, under ordinary circumstances, would be severed However, Century has abandoned its right to severance and seeks to litigate this matter in court if the ban on class actions is unenforceable Accordingly, we affirm in result the trial court's order denying the motion to compel arbitration

AFFIRMED IN RESULT.

TOAL, C J , BEATTY, HEARN, JJ , and Acting Justice JAMES E MOORE, concur

S C ,2010
Herron v Century BMW
387 S C 525, 693 S E 2d 394, 72 UCC Rep Serv 2d 409

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The Supreme Court of South Carolina

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease, Michael Watts, Individually and for the Benefit of All Car Buyers Who Paid "Administrative Fees" as Described below to Defendants — Respondents,

v.

Century BMW a/k/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc., a/k/a Galeana Chrysler Jeep, Inc.; J.L.H. Investments LP a/k/a Hendrick Honda; Overland, Inc., d/b/a Land Rover of Columbia; Taylor Toyota a/k/a Taylor Investments, and Toyota of Greenville, Inc. et. al. — Defendants

of whom Century BMW a/k/a Sonic Automotive is the — Appellant.

ORDER

On April 19, 2010, we issued our opinion in *Herron v. Century BMW*, Shearouse Adv. Sh. No. 15 at 14 (April 19, 2010), in which we affirmed the trial court's denial of Century's motion to compel arbitration. Although we found the arbitration agreement was not unconscionable, we held the provision banning class actions was invalid on state law grounds. Specifically, we held:

> [T]he Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act and that any contract prohibiting a class action suit violates our State's public policy and is void and unenforceable.

Although the arbitration agreement contained a severance clause, at oral argument, counsel for Century adamantly insisted it was their position that the severance clause not be invoked to sever the provision and repeatedly requested the Court to consider the arbitration as a whole. In honoring Century's position and request, we held the inclusion of the provision banning class action suits rendered the arbitration agreement unenforceable.

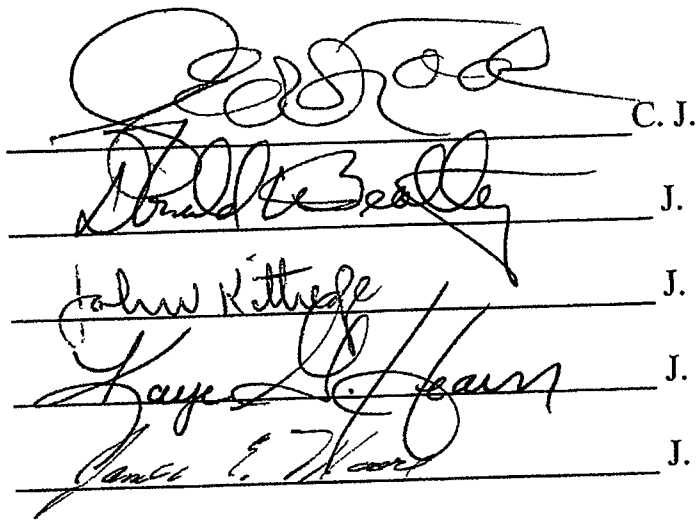
Eight days after we issued our opinion, the United States Supreme Court issued *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 130 S.Ct. 1758 (2010), in which the Supreme Court held a party cannot be compelled to submit to class arbitration unless there is a contractual basis for concluding

that the party agreed to do so. Century has now filed a petition for rehearing. Century asserts "[t]his Court held that Century BMW could not arbitrate unless it did so as part of a class arbitration," and argues such a holding is contrary to the holding in *Stolt-Nielsen*.

We deny Century's petition for rehearing. Our opinion affirming the trial court's denial of the motion to compel arbitration is wholly based on state law grounds, namely a provision in a contract banning class action suits is invalid pursuant to the Dealer's Act and the public policy of this State. Although we would have looked to the severance clause of the agreement to sever this invalid provision, Century unequivocally insisted we consider the arbitration agreement as a whole, which we did. Century's attempt to depict our opinion as holding "that Century BMW could not arbitrate unless it did so as part of a class arbitration" is disingenuous to the opinion and a holding we never made. We did not condition the enforcement of the arbitration agreement on the availability of class arbitration or otherwise indicate the plaintiffs could proceed as a class in arbitration. This case is not controlled by *Stolt-Nielsen*, for is distinguishable on the law and the facts.

For these reasons, we deny Century's petition for rehearing.

IT IS SO ORDERED.



C. J.

J.

J.

J.

J.

Columbia, South Carolina
June 9, 2010

131 S Ct 1740, 79 USLW 4279, 11 Cal Daily Op Serv 4842, 2011 Daily Journal D A R 5846
(Cite as: 131 S.Ct. 1740)

H

Supreme Court of the United States
AT&T MOBILITY LLC, Petitioner,
v
Vincent CONCEPCION et ux

No 09–893
Argued Nov 9, 2010
Decided April 27, 2011

Background: Customers brought putative class action against telephone company, alleging that company's offer of a free phone to anyone who signed up for its cellphone service was fraudulent to the extent that the company charged the customer sales tax on the retail value of the free phone The United States District Court for the Southern District of California, Dana M Sabraw, J , 2008 WL 5216255, denied company's motion to compel arbitration Company appealed The United States Court of Appeals for the Ninth Circuit, Carlos T Bea, Circuit Judge, 584 F 3d 849, affirmed Certiorari was granted

Holding: The Supreme Court, Justice Scalia, held that the Federal Arbitration Act preempts California's judicial rule regarding the unconscionability of class arbitration waivers in consumer contracts, abrogating *Discover Bank v Superior Court*, 36 Cal.4th 148, 30 Cal Rptr 3d 76 113 P 3d 1100

Reversed and remanded

Justice Thomas filed a concurring opinion

Justice Breyer filed a dissenting opinion, in which Justices Ginsburg, Sotomayor, and Kagan, joined

West Headnotes

[1] Alternative Dispute Resolution 25T 114

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk114 k Constitutional and statutory provisions and rules of court Most Cited Cases

The provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, reflects both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract 9 U S C A § 2

[2] Alternative Dispute Resolution 25T 114

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk114 k Constitutional and statutory provisions and rules of court Most Cited Cases

In light of the liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract, which are reflected in the provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, courts must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms 9 U S C A § 2

[3] Alternative Dispute Resolution 25T 117

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk117 k Preemption Most Cited Cases

States 360 18.15

360 States
360I Political Status and Relations
360I(B) Federal Supremacy, Preemption
360k18 15 k Particular cases, preemption or supersession Most Cited Cases

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The Federal Arbitration Act (FAA) preempts California's judicial rule stating that a class arbitration waiver is unconscionable under California law if it is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and if it is alleged that the party with superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, because that rule stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the FAA, which include ensuring the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings, abrogating *Discover Bank v Superior Court*, 36 Cal 4th 148, 30 Cal Rptr 3d 76, 113 P 3d 1100 9 U S C A § 2, West's Ann Cal Civ Code §§ 1668, 1670 5(a)

[4] Alternative Dispute Resolution 25T 134(1)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(1) k In general Most Cited Cases

Alternative Dispute Resolution 25T 134(3)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(3) k Validity of assent Most Cited Cases

Alternative Dispute Resolution 25T 134(6)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(6) k Unconscionability Most Cited Cases

Under the saving clause in the provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, arbitration agreements may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability, but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue 9 U S C A § 2

[5] Contracts 95 1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k Nature and grounds of contractual obligation Most Cited Cases

Under California law, a finding that a contract is unconscionable requires a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results West's Ann Cal Civ Code §§ 1668, 1670 5(a)

[6] Alternative Dispute Resolution 25T 117

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk117 k Preemption Most Cited Cases

States 360 18.15

360 States
360I Political Status and Relations
360I(B) Federal Supremacy, Preemption
360k18 15 k Particular cases, preemption or supersession Most Cited Cases

When state law prohibits outright the arbitration of a particular type of claim, the conflicting state rule is displaced by the Federal Arbitration Act (FAA) 9 U S C A § 2

[7] Alternative Dispute Resolution 25T 117

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25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk117 k Preemption Most Cited Cases

States 360 ⚿18.15

360 States
360I Political Status and Relations
360I(B) Federal Supremacy, Preemption
360k18.15 k Particular cases, preemption or supersession Most Cited Cases

In light of the preemptive effect of the Federal Arbitration Act (FAA), a court may not rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable, for this would enable the court to effect what the state legislature cannot 9 U S C A § 2

[8] Alternative Dispute Resolution 25T ⚿114

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk114 k Constitutional and statutory provisions and rules of court Most Cited Cases

While the saving clause, in the provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives 9 U S C A § 2

[9] States 360 ⚿18.11

360 States
360I Political Status and Relations
360I(B) Federal Supremacy, Preemption
360k18.11 k Congressional intent Most Cited Cases

A federal statute's preemption saving clause cannot in reason be construed as allowing a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act, in other words, the act cannot be held to destroy itself

[10] Alternative Dispute Resolution 25T ⚿114

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk114 k Constitutional and statutory provisions and rules of court Most Cited Cases

The principal purpose of the Federal Arbitration Act (FAA) is to ensure that private arbitration agreements are enforced according to their terms 9 U S C A §§ 2–4

[11] Alternative Dispute Resolution 25T ⚿111

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk111 k Nature, purpose, and right to arbitration in general Most Cited Cases

In bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes

[12] Judgment 228 ⚿677

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(B) Persons Concluded
228k677 k Persons represented by parties Most Cited Cases

For a class-action money judgment to bind absentees in litigation, class representatives must at all times adequately represent absent class members, and absent members must be afforded notice, an opportunity to be heard, and a right to opt out of the class

[13] Alternative Dispute Resolution 25T ⚿112

25T Alternative Dispute Resolution

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131 S Ct 1740, 79 USLW 4279, 11 Cal Daily Op Serv 4842, 2011 Daily Journal D A R 5846
(Cite as: 131 S.Ct. 1740)

25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk112 k Contractual or consensual basis
Most Cited Cases

Alternative Dispute Resolution 25T ⚿114

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk114 k Constitutional and statutory provisions and rules of court Most Cited Cases

Arbitration is a matter of contract, and the Federal Arbitration Act (FAA) requires courts to honor parties' expectations 9 U S C A § 1 et seq

**1742 Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader See *United States v Detroit Timber & Lumber Co*, 200 U S 321, 337, 26 S Ct 282, 50 L Ed 499

The cellular telephone contract between respondents (Concepcions) and petitioner (AT & T) provided for arbitration of all disputes, but did not permit classwide arbitration After the Concepcions were charged sales tax on the retail value of phones provided free under their service contract, they sued AT & T in a California Federal District Court Their suit was consolidated with a class action alleging, *inter alia,* that AT & T had engaged in false advertising and fraud by charging sales tax on "free" phones The District Court denied AT & T's motion to compel arbitration under the Concepcions' contract Relying on the California Supreme Court's *Discover Bank* decision, it found the arbitration provision unconscionable because it disallowed classwide proceedings The Ninth Circuit agreed that the provision was unconscionable under California law and held that the Federal Arbitration Act (FAA), which makes arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U S C § 2, did not preempt its ruling

Held Because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v Davidowitz*, 312 U S 52, 67, 61 S Ct 399, 85 L Ed 581, California's *Discover Bank* rule is pre-empted by the FAA Pp 1745 – 1753

(a) Section 2 reflects a "liberal federal policy favoring arbitration," *Moses H Cone Memorial Hospital v Mercury Constr Corp*, 460 U S 1, 24, 103 S Ct 927, 74 L Ed 2d 765, and the "fundamental principle that arbitration is a matter of contract," *Rent–A Center West, Inc v Jackson*, 561 U S ---, ---, 130 S Ct 2772, 177 L Ed 2d 403 (2010) Thus, courts must place arbitration agreements on an equal footing with other contracts, *Buckeye Check Cashing, Inc v Cardegna*, 546 U S 440, 443, 126 S Ct 1204, 163 L Ed 2d 1038, and enforce them according to their terms, *Volt Information Sciences, Inc v Board of Trustees of Leland Stanford Junior Univ*, 489 U S 468, 478, 109 S Ct 1248, 103 L Ed 2d 488 Section 2's saving clause permits agreements to be invalidated by "generally applicable contract defenses," but not by defenses that apply ***1743** only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue *Doctor's Associates, Inc v Casarotto*, 517 U S 681, 687 116 S Ct 1652, 134 L Ed 2d 902 Pp 1745 – 1746

(b) In *Discover Bank*, the California Supreme Court held that class waivers in consumer arbitration agreements are unconscionable if the agreement is in an adhesion contract, disputes between the parties are likely to involve small amounts of damages, and the party with inferior bargaining power alleges a deliberate scheme to defraud Pp 1745 – 1747

(c) The Concepcions claim that the *Discover Bank* rule is a ground that "exist[s] at law or in equity for the revocation of any contract" under FAA § 2 When state law prohibits outright the arbitration of a particular type of claim, the FAA displaces the conflicting rule But the inquiry is more complex when a generally applicable doctrine is alleged to have been applied in a fashion that disfavors or interferes with arbitration Although § 2's saving clause preserves generally applicable contract defenses, it does not suggest an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives Cf *Geier v American Honda Motor Co* 529 U S 861, 872, 120 S Ct 1913, 146 L Ed 2d 914 The FAA's overarching purpose is to ensure the en-

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forcement of arbitration agreements according to their terms so as to facilitate informal, streamlined proceedings Parties may agree to limit the issues subject to arbitration, *Mitsubishi Motors Corp v Soler Chrysler-Plymouth Inc*, 473 U S 614, 628, 105 S Ct 3346, 87 L Ed 2d 444, to arbitrate according to specific rules, *Volt, supra* at 479, 109 S Ct 1248, and to limit with whom they will arbitrate, *Stolt-Nielsen, supra*, at — — Pp 1746 – 1750

(d) Class arbitration, to the extent it is manufactured by *Discover Bank* rather than consensual, interferes with fundamental attributes of arbitration The switch from bilateral to class arbitration sacrifices arbitration's informality and makes the process slower, more costly, and more likely to generate procedural morass than final judgment And class arbitration greatly increases risks to defendants The absence of multilayered review makes it more likely that errors will go uncorrected That risk of error may become unacceptable when damages allegedly owed to thousands of claimants are aggregated and decided at once Arbitration is poorly suited to these higher stakes In litigation, a defendant may appeal a certification decision and a final judgment, but 9 U S C § 10 limits the grounds on which courts can vacate arbitral awards Pp 1750 – 1753

584 F 3d 849, reversed and remanded

SCALIA, J , delivered the opinion of the Court, in which ROBERTS, C J , and KENNEDY, THOMAS, and ALITO, JJ , joined THOMAS, J , filed a concurring opinion BREYER, J , filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ , joined

Andrew J Pincus, Washington, DC, for Petitioner

Deepak Gupta, for Respondents

Donald M Falk, Mayer Brown LLP, Palo Alto, CA, Neal Bernhout, Atlanta, GA, Kenneth S Geller, Andrew J Pincus, Evan M Tager, Archis A Parasharami, Kevin Ranlett, Mayer Brown LLP, Washington, DC, for Petitioner

For U S Supreme Court Briefs, See 2010 WL 3017755 (Pet Brief)2010 WL 4312794 (Reply Brief)

***1744** Justice SCALIA delivered the opinion of the Court

Section 2 of the Federal Arbitration Act (FAA) makes agreements to arbitrate "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract " 9 U.S C § 2 We consider whether the FAA prohibits States from conditioning the enforceability of certain arbitration agreements on the availability of classwide arbitration procedures

I

In February 2002, Vincent and Liza Concepcion entered into an agreement for the sale and servicing of cellular telephones with AT & T Mobility LCC (AT & T) [FN1] The contract provided for arbitration of all disputes between the parties, but required that claims be brought in the parties' "individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding " App to Pet for Cert 61a [FN2] The agreement authorized AT & T to make unilateral amendments, which it did to the arbitration provision on several occasions The version at issue in this case reflects revisions made in December 2006, which the parties agree are controlling

FN1 The Conceptions' original contract was with Cingular Wireless AT & T acquired Cingular in 2005 and renamed the company AT & T Mobility in 2007 *Laster v AT & T Mobility LLC*, 584 F 3d 849, 852, n 1 (C A 9 2009)

FN2 That provision further states that "the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding " App to Pet for Cert 61a

The revised agreement provides that customers may initiate dispute proceedings by completing a one-page Notice of Dispute form available on AT & T's Web site AT & T may then offer to settle the claim, if it does not, or if the dispute is not resolved within 30 days, the customer may invoke arbitration by filing a separate Demand for Arbitration, also available on AT & T's Web site In the event the parties proceed to arbitration, the agreement specifies that AT & T must pay all costs for nonfrivolous claims, that arbitration must take place in the county in which the customer is billed, that, for claims of $10,000 or less, the customer may choose whether the arbitration

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proceeds in person, by telephone, or based only on submissions, that either party may bring a claim in small claims court in lieu of arbitration, and that the arbitrator may award any form of individual relief, including injunctions and presumably punitive damages The agreement, moreover, denies AT & T any ability to seek reimbursement of its attorney's fees, and, in the event that a customer receives an arbitration award greater than AT & T's last written settlement offer, requires AT & T to pay a $7,500 minimum recovery and twice the amount of the claimant's attorney's fees [FN3]

FN3 The guaranteed minimum recovery was increased in 2009 to $10,000 Brief for Petitioner 7

The Concepcions purchased AT & T service, which was advertised as including the provision of free phones, they were not charged for the phones, but they were charged $30 22 in sales tax based on the phones' retail value In March 2006, the Concepcions filed a complaint against AT & T in the United States District Court for the Southern District of California The complaint was later consolidated with a putative class action alleging, among other things, that AT & T had engaged in false advertising and fraud by charging sales tax on phones it advertised as free

In March 2008, AT & T moved to compel arbitration under the terms of its contract***1745** with the Concepcions The Concepcions opposed the motion, contending that the arbitration agreement was unconscionable and unlawfully exculpatory under California law because it disallowed classwide procedures The District Court denied AT & T's motion It described AT & T's arbitration agreement favorably, noting, for example, that the informal dispute-resolution process was "quick, easy to use" and likely to "promp[t] full or even excess payment to the customer *without* the need to arbitrate or litigate", that the $7,500 premium functioned as "a substantial inducement for the consumer to pursue the claim in arbitration" if a dispute was not resolved informally, and that consumers who were members of a class would likely be worse off *Laster v T Mobile USA, Inc*, 2008 WL 5216255, *11-*12 (S D Cal, Aug 11, 2008) Nevertheless, relying on the California Supreme Court's decision in *Discover Bank v Superior Court* 36 Cal 4th 148, 30 Cal Rptr 3d 76, 113 P 3d 1100 (2005), the court found that the arbitration provision was unconscionable because AT & T had not shown that bilateral arbitration adequately substituted for the deterrent effects of class actions *Laster*, 2008 WL 5216255, *14

The Ninth Circuit affirmed, also finding the provision unconscionable under California law as announced in *Discover Bank Laster v AT & T Mobility LLC*, 584 F 3d 849, 855 (2009) It also held that the *Discover Bank* rule was not preempted by the FAA because that rule was simply "a refinement of the unconscionability analysis applicable to contracts generally in California" 584 F 3d, at 857 In response to AT & T's argument that the Concepcions' interpretation of California law discriminated against arbitration, the Ninth Circuit rejected the contention that " 'class proceedings will reduce the efficiency and expeditiousness of arbitration' " and noted that " ' *Discover Bank* placed arbitration agreements with class action waivers on the *exact same footing* as contracts that bar class action litigation outside the context of arbitration ' " *Id*, at 858 (quoting *Shroyer v New Cingular Wireless Services Inc*, 498 F 3d 976, 990 (C A 9 2007))

We granted certiorari, 560 U S ——, 130 S Ct 3322, 176 L Ed 2d 1218 (2010)

II

[1][2] The FAA was enacted in 1925 in response to widespread judicial hostility to arbitration agreements See *Hall Street Associates, L L C v Mattel Inc* 552 U S 576, 581, 128 S Ct 1396, 170 L Ed 2d 254 (2008) Section 2, the "primary substantive provision of the Act," *Moses H Cone Memorial Hospital v Mercury Constr Corp* 460 U S 1, 24, 103 S Ct 927, 74 L Ed 2d 765 (1983), provides, in relevant part, as follows

> "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract " 9 U S C § 2

We have described this provision as reflecting both a "liberal federal policy favoring arbitration," *Moses H Cone, supra*, at 24, 103 S Ct 927, and the "fundamental principle that arbitration is a matter of

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contract," *Rent-A-Center, West, Inc v Jackson*, 561 U S ——, ——, 130 S Ct 2772, 2776, 177 L Ed 2d 403 (2010) In line with these principles, courts must place arbitration agreements on an equal footing with other contracts, *Buckeye Check Cashing, Inc v Cardegna*, 546 U S 440, 443, 126 S Ct 1204, 163 L Ed 2d 1038 (2006), and enforce them according to their terms, ***1746***Volt Information Sciences, Inc v Board of Trustees of Leland Stanford Junior Univ*, 489 U S 468, 478, 109 S Ct 1248, 103 L Ed 2d 488 (1989)

[3][4] The final phrase of § 2, however, permits arbitration agreements to be declared unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract" This saving clause permits agreements to arbitrate to be invalidated by "generally applicable contract defenses, such as fraud, duress, or unconscionability," but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue *Doctor's Associates, Inc v Casarotto*, 517 U S 681, 687 116 S Ct 1652, 134 L Ed 2d 902 (1996), see also *Perry v Thomas*, 482 U S 483, 492–493, n 9, 107 S Ct 2520, 96 L Ed 2d 426 (1987) The question in this case is whether § 2 preempts California's rule classifying most collective-arbitration waivers in consumer contracts as unconscionable We refer to this rule as the *Discover Bank* rule

[5] Under California law, courts may refuse to enforce any contract found "to have been unconscionable at the time it was made," or may "limit the application of any unconscionable clause" Cal Civ Code Ann § 1670 5(a) (West 1985) A finding of unconscionability requires "a 'procedural' and a 'substantive' element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results" *Armendariz v Foundation Health Psychcare Servs, Inc*, 24 Cal 4th 83, 114, 99 Cal Rptr 2d 745, 6 P 3d 669, 690 (2000), accord, *Discover Bank*, 36 Cal 4th, at 159–161, 30 Cal Rptr 3d 76, 113 P 3d, at 1108

In *Discover Bank*, the California Supreme Court applied this framework to class-action waivers in arbitration agreements and held as follows

> "[W]hen the waiver is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury to the person or property of another' Under these circumstances, such waivers are unconscionable under California law and should not be enforced" *Id*, at 162, 30 Cal Rptr 3d 76, 113 P 3d, at 1110 (quoting Cal Civ Code Ann § 1668)

California courts have frequently applied this rule to find arbitration agreements unconscionable See, *e g*, *Cohen v DirecTV, Inc*, 142 Cal App 4th 1442, 1451–1453, 48 Cal Rptr 3d 813, 819–821 (2006), *Klussman v Cross Country Bank*, 134 Cal App 4th 1283, 1297, 36 Cal Rptr 3d 728, 738–739 (2005), *Aral v EarthLink Inc*, 134 Cal App 4th 544, 556–557, 36 Cal Rptr 3d 229, 237–239 (2005)

III

A

The Concepcions argue that the *Discover Bank* rule, given its origins in California's unconscionability doctrine and California's policy against exculpation, is a ground that "exist[s] at law or in equity for the revocation of any contract" under FAA § 2 Moreover, they argue that even if we construe the *Discover Bank* rule as a prohibition on collective-action waivers rather than simply an application of unconscionability, the rule would still be applicable to all dispute-resolution contracts, since California prohibits waivers of class litigation as well See ***1747***America Online, Inc v Superior Ct*, 90 Cal App 4th 1, 17–18, 108 Cal Rptr 2d 699, 711–713 (2001)

[6][7] When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward The conflicting rule is displaced by the FAA *Preston v Ferrer*, 552 U S 346, 353, 128 S Ct 978, 169 L Ed 2d 917 (2008) But the inquiry becomes more complex when a doctrine normally thought to be generally applicable, such as duress or, as relevant here, unconscionability, is alleged to have been applied in a fashion that disfavors arbitration In *Perry v Thomas*, 482 U S 483, 107 S Ct 2520, 96 L Ed 2d 426 (1987), for example, we noted that the FAA's preemptive effect might extend even to grounds traditionally thought to exist " 'at law or in

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equity for the revocation of any contract ' " *Id*, at 492, n 9, 107 S Ct 2520 (emphasis deleted) We said that a court may not "rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable, for this would enable the court to effect what the state legislature cannot " *Id*, at 493, n 9, 107 S Ct 2520

An obvious illustration of this point would be a case finding unconscionable or unenforceable as against public policy consumer arbitration agreements that fail to provide for judicially monitored discovery The rationalizations for such a holding are neither difficult to imagine nor different in kind from those articulated in *Discover Bank* A court might reason that no consumer would knowingly waive his right to full discovery, as this would enable companies to hide their wrongdoing Or the court might simply say that such agreements are exculpatory—restricting discovery would be of greater benefit to the company than the consumer, since the former is more likely to be sued than to sue See *Discover Bank supra* at 161, 30 Cal Rptr 3d 76, 113 P 3d, at 1109 (arguing that class waivers are similarly one-sided) And, the reasoning would continue, because such a rule applies the general principle of unconscionability or public-policy disapproval of exculpatory agreements, it is applicable to "any" contract and thus preserved by § 2 of the FAA In practice, of course, the rule would have a disproportionate impact on arbitration agreements, but it would presumably apply to contracts purporting to restrict discovery in litigation as well

Other examples are easy to imagine The same argument might apply to a rule classifying as unconscionable arbitration agreements that fail to abide by the Federal Rules of Evidence, or that disallow an ultimate disposition by a jury (perhaps termed "a panel of twelve lay arbitrators" to help avoid preemption) Such examples are not fanciful, since the judicial hostility towards arbitration that prompted the FAA had manifested itself in "a great variety" of "devices and formulas" declaring arbitration against public policy *Robert Lawrence Co v Devonshire Fabrics, Inc* 271 F 2d 402, 406 (C A 2 1959) And although these statistics are not definitive, it is worth noting that California's courts have been more likely to hold contracts to arbitrate unconscionable than other contracts Broome, An Unconscionable Applicable of the Unconscionability Doctrine How the California Courts are Circumventing the Federal Arbitration Act, 3 Hastings Bus L J 39, 54, 66 (2006), Randall, Judicial Attitudes Toward Arbitration and the Resurgence of Unconscionability, 52 Buffalo L Rev 185, 186–187 (2004)

The Concepcions suggest that all this is just a parade of horribles, and no genuine worry "Rules aimed at destroying arbitration" or "demanding procedures incompatible with arbitration," they concede, ***1748** "would be preempted by the FAA because they cannot sensibly be reconciled with Section 2 " Brief for Respondents 32 The "grounds" available under § 2's saving clause, they admit, "should not be construed to include a State's mere preference for procedures that are incompatible with arbitration and 'would wholly eviscerate arbitration agreements ' " *Id*, at 33 (quoting *Carter v SSC Odin Operating Co, LLC*, 237 Ill 2d 30, 50, 340 Ill Dec 196, 927 N E 2d 1207, 1220 (2010)) [FN4]

> FN4 The dissent seeks to fight off even this eminently reasonable concession It says that to its knowledge "we have not applied the Act to strike down a state statute that treats arbitrations on par with judicial and administrative proceedings," *post*, at 10 (opinion of BREYER, J), and that "we should think more than twice before invalidating a state law that puts agreements to arbitrate and agreements to litigate 'upon the same footing' " *post*, at 4–5

[8][9] We largely agree Although § 2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives Cf *Geier v American Honda Motor Co* 529 U S 861, 872, 120 S Ct 1913, 146 L Ed 2d 914 (2000), *Crosby v National Foreign Trade Council*, 530 U S 363, 372–373, 120 S Ct 2288, 147 L Ed 2d 352 (2000) As we have said, a federal statute's saving clause " 'cannot in reason be construed as [allowing] a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act In other words, the act cannot be held to destroy itself ' " *American Telephone & Telegraph Co v Central Office Telephone, Inc*, 524 U S 214, 227–228, 118 S Ct 1956 141 L Ed 2d 222 (1998) (quoting *Texas & Pacific R Co v Abilene Cotton Oil Co*, 204 U S 426, 446, 27 S Ct 350, 51 L Ed 553 (1907))

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We differ with the Concepcions only in the application of this analysis to the matter before us We do not agree that rules requiring judicially monitored discovery or adherence to the Federal Rules of Evidence are "a far cry from this case" Brief for Respondents 32 The overarching purpose of the FAA, evident in the text of §§ 2, 3, and 4, is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings Requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA

B

[10] The "principal purpose" of the FAA is to "ensur[e] that private arbitration agreements are enforced according to their terms" *Volt* 489 U S , at 478, 109 S Ct 1248, see also *Stolt-Nielsen S A v AnimalFeeds Int'l Corp* , 559 U S ——, —— 130 S Ct 1758, 1763, 176 L Ed 2d 605 (2010) This purpose is readily apparent from the FAA's text Section 2 makes arbitration agreements "valid, irrevocable, and enforceable" as written (subject, of course, to the saving clause), § 3 requires courts to stay litigation of arbitral claims pending arbitration of those claims "in accordance with the terms of the agreement", and § 4 requires courts to compel arbitration "in accordance with the terms of the agreement" upon the motion of either party to the agreement (assuming that the "making of the arbitration agreement or the failure to perform the same" is not at issue) In light of these provisions, we have held that parties may agree to limit the issues subject to arbitration, *Mitsubishi Motors Corp v Soler Chrysler Plymouth, Inc* , 473 U S 614, 628, 105 S Ct 3346, 87 L Ed 2d 444 (1985), ***1749** to arbitrate according to specific rules, *Volt, supra,* at 479, 109 S Ct 1248, and to limit *with whom* a party will arbitrate its disputes, *Stolt Nielsen, supra* at ——-, 130 S Ct at 1773

The point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute It can be specified, for example, that the decisionmaker be a specialist in the relevant field, or that proceedings be kept confidential to protect trade secrets And the informality of arbitral proceedings is itself desirable, reducing the cost and increasing the speed of dispute resolution *14 Penn Plaza LLC v Pyett,* 556 U S ——, ——, 129 S Ct 1456, 1460, 173 L Ed 2d 398 (2009), *Mitsubishi Motors Corp supra,* at 628, 105 S Ct 3346

The dissent quotes *Dean Witter Reynolds Inc v Byrd* 470 U S 213, 219, 105 S Ct 1238, 84 L Ed 2d 158 (1985), as " 'reject[ing] the suggestion that the overriding goal of the Arbitration Act was to promote the expeditious resolution of claims' " *Post,* at 4 (opinion of BREYER, J) That is greatly misleading After saying (accurately enough) that "the overriding goal of the Arbitration Act was [not] to promote the expeditious resolution of claims," but to "ensure judicial enforcement of privately made agreements to arbitrate," 470 U S , at 219, 105 S Ct 1238, *Dean Witter* went on to explain "This is not to say that Congress was blind to the potential benefit of the legislation for expedited resolution of disputes Far from it " *Id* , at 220, 105 S Ct 1238 It then quotes a House Report saying that "the costliness and delays of litigation can be largely eliminated by agreements for arbitration" *Ibid* (quoting H R Rep No 96, 68th Cong , 1st Sess , 2 (1924)) The concluding paragraph of this part of its discussion begins as follows

> "We therefore are not persuaded by the argument that the conflict between two goals of the Arbitration Act—enforcement of private agreements and encouragement of efficient and speedy dispute resolution—must be resolved in favor of the latter in order to realize the intent of the drafters " 470 U S , at 221, 105 S Ct 1238

In the present case, of course, those "two goals" do not conflict—and it is the dissent's view that would frustrate *both* of them

Contrary to the dissent's view, our cases place it beyond dispute that the FAA was designed to promote arbitration They have repeatedly described the Act as "embod[ying] [a] national policy favoring arbitration," *Buckeye Check Cashing,* 546 U S , at 443, 126 S Ct 1204, and "a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary," *Moses H Cone,* 460 U S at 24 103 S Ct 927, see also *Hall Street Assocs* , 552 U S , at 581, 128 S Ct 1396 Thus, in *Preston v Ferrer* holding preempted a state-law rule requiring exhaustion of administrative remedies before arbitration, we said "A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results,' " which objective

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would be "frustrated" by requiring a dispute to be heard by an agency first 552 U S , at 357–358, 128 S Ct 978 That rule, we said, would "at the least, hinder speedy resolution of the controversy " *Id* at 358, 128 S Ct 978 [FN5]

> FN5 Relying upon nothing more indicative of congressional understanding than statements of witnesses in committee hearings and a press release of Secretary of Commerce Herbert Hoover, the dissent suggests that Congress "thought that arbitration would be used primarily where merchants sought to resolve disputes of fact [and] possessed roughly equivalent bargaining power " *Post,* at 6 Such a limitation appears nowhere in the text of the FAA and has been explicitly rejected by our cases "Relationships between securities dealers and investors, for example, may involve unequal bargaining power, but we [have] nevertheless held that agreements to arbitrate in that context are enforceable " *Gilmer v Interstate/Johnson Lane Corp* 500 U S 20, 33, 111 S Ct 1647, 114 L Ed 2d 26 (1991), see also *id* , at 32- 33, 111 S Ct 1647 (allowing arbitration of claims arising under the Age Discrimination in Employment Act of 1967 despite allegations of unequal bargaining power between employers and employees) Of course the dissent's disquisition on legislative history fails to note that it contains nothing—not even the testimony of a stray witness in committee hearings—that contemplates the existence of class arbitration

***1750** California's *Discover Bank* rule similarly interferes with arbitration Although the rule does not *require* classwide arbitration, it allows any party to a consumer contract to demand it *ex post* The rule is limited to adhesion contracts, *Discover Bank,* 36 Cal 4th, at 162–163, 30 Cal Rptr 3d 76, 113 P 3d, at 1110, but the times in which consumer contracts were anything other than adhesive are long past [FN6] *Carbajal v H & R Block Tax Servs , Inc* , 372 F 3d 903 906 (7th Cir 2004), see also *Hill v Gateway 2000, Inc* , 105 F 3d 1147, 1149 (C A 7 1997) The rule also requires that damages be predictably small, and that the consumer allege a scheme to cheat consumers *Discover Bank supra,* at 162 163, 30 Cal Rptr 3d 76, 113 P 3d, at 1110 The former requirement, however, is toothless and malleable (the Ninth Circuit has held that damages of $4,000 are sufficiently small, see *Oestreicher v Alienware Corp* , 322 Fed Appx 489, 492 (2009) (unpublished)), and the latter has no limiting effect, as all that is required is an allegation Consumers remain free to bring and resolve their disputes on a bilateral basis under *Discover Bank,* and some may well do so, but there is little incentive for lawyers to arbitrate on behalf of individuals when they may do so for a class and reap far higher fees in the process And faced with inevitable class arbitration, companies would have less incentive to continue resolving potentially duplicative claims on an individual basis

> FN6 Of course States remain free to take steps addressing the concerns that attend contracts of adhesion—for example, requiring class-action-waiver provisions in adhesive arbitration agreements to be highlighted Such steps cannot, however, conflict with the FAA or frustrate its purpose to ensure that private arbitration agreements are enforced according to their terms

Although we have had little occasion to examine classwide arbitration, our decision in *Stolt-Nielsen* is instructive In that case we held that an arbitration panel exceeded its power under § 10(a)(4) of the FAA by imposing class procedures based on policy judgments rather than the arbitration agreement itself or some background principle of contract law that would affect its interpretation 559 U S , at ——, 130 S Ct at 1773–1776 We then held that the agreement at issue, which was silent on the question of class procedures, could not be interpreted to allow them because the "changes brought about by the shift from bilateral arbitration to class-action arbitration" are "fundamental " *Id* , at ——, 130 S Ct at 1776 This is obvious as a structural matter Classwide arbitration includes absent parties, necessitating additional and different procedures and involving higher stakes Confidentiality becomes more difficult And while it is theoretically possible to select an arbitrator with some expertise relevant to the class-certification question, arbitrators are not generally knowledgeable in the often-dominant procedural aspects of certification, such as the protection of absent parties The conclusion follows that ***1751** class arbitration, to the extent it is manufactured by *Discover Bank* rather than consensual, is inconsistent with the FAA

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[11] First, the switch from bilateral to class arbitration sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment "In bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes " 559 U S , at ——, 130 S Ct at 1775 But before an arbitrator may decide the merits of a claim in classwide procedures, he must first decide, for example, whether the class itself may be certified, whether the named parties are sufficiently representative and typical, and how discovery for the class should be conducted A cursory comparison of bilateral and class arbitration illustrates the difference According to the American Arbitration Association (AAA), the average consumer arbitration between January and August 2007 resulted in a disposition on the merits in six months, four months if the arbitration was conducted by documents only AAA, Analysis of the AAA's Consumer Arbitration Caseload, online at http // www adr org/ si asp?id=5027 (all Internet materials as visited Apr 25, 2011, and available in Clerk of Court's case file) As of September 2009, the AAA had opened 283 class arbitrations Of those, 121 remained active, and 162 had been settled, withdrawn, or dismissed Not a single one, however, had resulted in a final award on the merits Brief for AAA as *Amicus Curiae* in *Stolt–Nielsen,* O T 2009, No 08–1198, pp 22–24 For those cases that were no longer active, the median time from filing to settlement, withdrawal, or dismissal—not judgment on the merits—was 583 days, and the mean was 630 days *Id*, at 24 [FN7]

> FN7 The dissent claims that class arbitration should be compared to class litigation, not bilateral arbitration *Post,* at 6–7 Whether arbitrating a class is more desirable than litigating one, however, is not relevant A State cannot defend a rule requiring arbitration-by-jury by saying that parties will still prefer it to trial-by-jury

[12] Second, class arbitration *requires* procedural formality The AAA's rules governing class arbitrations mimic the Federal Rules of Civil Procedure for class litigation Compare AAA, Supplementary Rules for Class Arbitrations (effective Oct 8, 2003), online at http // www adr org/ sp asp? id=21936, with Fed Rule Civ Proc 23 And while parties can alter those procedures by contract, an alternative is not obvious If procedures are too informal, absent class members would not be bound by the arbitration For a class-action money judgment to bind absentees in litigation, class representatives must at all times adequately represent absent class members, and absent members must be afforded notice, an opportunity to be heard, and a right to opt out of the class *Phillips Petroleum Co v Shutts,* 472 U S 797, 811–812, 105 S Ct 2965, 86 L Ed 2d 628 (1985) At least this amount of process would presumably be required for absent parties to be bound by the results of arbitration

We find it unlikely that in passing the FAA Congress meant to leave the disposition of these procedural requirements to an arbitrator Indeed, class arbitration was not even envisioned by Congress when it passed the FAA in 1925, as the California Supreme Court admitted in *Discover Bank,* class arbitration is a "relatively recent development " 36 Cal 4th, at 163, 30 Cal Rptr 3d 76, 113 P 3d, at 1110 And it ***1752** is at the very least odd to think that an arbitrator would be entrusted with ensuring that third parties' due process rights are satisfied

Third, class arbitration greatly increases risks to defendants Informal procedures do of course have a cost The absence of multilayered review makes it more likely that errors will go uncorrected Defendants are willing to accept the costs of these errors in arbitration, since their impact is limited to the size of individual disputes, and presumably outweighed by savings from avoiding the courts But when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims Other courts have noted the risk of "in terrorem" settlements that class actions entail, see, *e g*, *Kohen v Pacific Inv Management Co LLC* 571 F 3d 672, 677- 678 (C A 7 2009), and class arbitration would be no different

Arbitration is poorly suited to the higher stakes of class litigation In litigation, a defendant may appeal a certification decision on an interlocutory basis and, if unsuccessful, may appeal from a final judgment as

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well Questions of law are reviewed *de novo* and questions of fact for clear error In contrast, 9 U S C § 10 allows a court to vacate an arbitral award *only* where the award "was procured by corruption, fraud, or undue means", "there was evident partiality or corruption in the arbitrators", "the arbitrators were guilty of misconduct in refusing to postpone the hearing or in refusing to hear evidence pertinent and material to the controversy[,] or of any other misbehavior by which the rights of any party have been prejudiced", or if the "arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award was not made " The AAA rules do authorize judicial review of certification decisions, but this review is unlikely to have much effect given these limitations, review under § 10 focuses on misconduct rather than mistake And parties may not contractually expand the grounds or nature of judicial review *Hall Street Assocs*, 552 U S, at 578, 128 S Ct 1396 We find it hard to believe that defendants would bet the company with no effective means of review, and even harder to believe that Congress would have intended to allow state courts to force such a decision [FN8]

FN8 The dissent cites three large arbitration awards (none of which stems from classwide arbitration) as evidence that parties are willing to submit large claims before an arbitrator *Post,* at 7–8 Those examples might be in point if it could be established that the size of the arbitral dispute was predictable when the arbitration agreement was entered Otherwise, all the cases prove is that arbitrators can give huge awards—which we have never doubted The point is that in class-action arbitration huge awards (with limited judicial review) will be entirely predictable, thus rendering arbitration unattractive It is not reasonably deniable that requiring consumer disputes to be arbitrated on a classwide basis will have a substantial deterrent effect on incentives to arbitrate

[13] The Concepcions contend that because parties may and sometimes do agree to aggregation, class procedures are not necessarily incompatible with arbitration But the same could be said about procedures that the Concepcions admit States may not superimpose on arbitration Parties *could* agree to arbitrate pursuant to the Federal Rules of Civil Procedure, or pursuant to a discovery process rivaling that in litigation Arbitration is a matter of contract, and the FAA requires courts to honor parties' expectations ***1753***Rent-A-Center, West*, 561 U S, at ——, 130 S Ct 2772, 2774 But what the parties in the aforementioned examples would have agreed to is not arbitration as envisioned by the FAA, lacks its benefits, and therefore may not be required by state law

The dissent claims that class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system See *post,* at 9 But States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons Moreover, the claim here was most unlikely to go unresolved As noted earlier, the arbitration agreement provides that AT & T will pay claimants a minimum of $7,500 and twice their attorney's fees if they obtain an arbitration award greater than AT & T's last settlement offer The District Court found this scheme sufficient to provide incentive for the individual prosecution of meritorious claims that are not immediately settled, and the Ninth Circuit admitted that aggrieved customers who filed claims would be "essentially guarantee[d]" to be made whole, 584 F 3d, at 856, n 9 Indeed, the District Court concluded that the Concepcions were *better off* under their arbitration agreement with AT & T than they would have been as participants in a class action, which "could take months, if not years, and which may merely yield an opportunity to submit a claim for recovery of a small percentage of a few dollars " *Laster*, 2008 WL 5216255, at *12

* * *

Because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v Davidowitz*, 312 U S 52, 67, 61 S Ct 399, 85 L Ed 581 (1941), California's *Discover Bank* rule is preempted by the FAA The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion

It is so ordered

Justice THOMAS, concurring

Section 2 of the Federal Arbitration Act (FAA) provides that an arbitration provision "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any

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contract " 9 U S C § 2 The question here is whether California's *Discover Bank* rule, see *Discover Bank v Superior Ct*, 36 Cal 4th 148, 30 Cal Rptr 3d 76, 113 P 3d 1100 (2005), is a "groun[d] for the revocation of any contract "

It would be absurd to suggest that § 2 requires only that a defense apply to "any contract " If § 2 means anything, it is that courts cannot refuse to enforce arbitration agreements because of a state public policy against arbitration, even if the policy nominally applies to "any contract " There must be some additional limit on the contract defenses permitted by § 2 Cf *ante,* at 17 (opinion of the Court) (state law may not require procedures that are "not arbitration as envisioned by the FAA" and "lac[k] its benefits"), *post,* at 5 (BREYER, J , dissenting) (state law may require only procedures that are "consistent with the use of arbitration")

I write separately to explain how I would find that limit in the FAA's text As I would read it, the FAA requires that an agreement to arbitrate be enforced unless a party successfully challenges the formation of the arbitration agreement, such as by proving fraud or duress 9 U S C §§ 2, 4 Under this reading, I would reverse the Court of Appeals because a district court cannot follow both the FAA and the *Discover Bank* rule, which does not relate to defects in the making of an agreement

***1754** This reading of the text, however, has not been fully developed by any party, cf Brief for Petitioner 41, n 12, and could benefit from briefing and argument in an appropriate case Moreover, I think that the Court's test will often lead to the same outcome as my textual interpretation and that, when possible, it is important in interpreting statutes to give lower courts guidance from a majority of the Court See *US Airways, Inc v Barnett,* 535 U S 391, 411, 122 S Ct 1516, 152 L Ed 2d 589 (2002) (O'Connor, J , concurring) Therefore, although I adhere to my views on purposes-and-objectives pre-emption, see *Wyeth v Levine,* 555 U S 555, ——, 129 S Ct 1187, 173 L Ed 2d 51 (2009) (opinion concurring in judgment), I reluctantly join the Court's opinion

I

The FAA generally requires courts to enforce arbitration agreements as written Section 2 provides that "[a] written provision in a contract to settle by arbitration a controversy thereafter arising out of such contract shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract " Significantly, the statute does not parallel the words "valid, irrevocable, and enforceable" by referencing the grounds as exist for the "invalidation, revocation, or nonenforcement" of any contract Nor does the statute use a different word or phrase entirely that might arguably encompass validity, revocability, and enforce-ability The use of only "revocation" and the conspicuous omission of "invalidation" and "nonenforcement" suggest that the exception does not include all defenses applicable to any contract but rather some subset of those defenses See *Duncan v Walker,* 533 U S 167, 174, 121 S Ct 2120, 150 L Ed 2d 251 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute" (internal quotation marks omitted))

Concededly, the difference between revocability, on the one hand, and validity and enforceability, on the other, is not obvious The statute does not define the terms, and their ordinary meanings arguably overlap Indeed, this Court and others have referred to the concepts of revocability, validity, and enforceability interchangeably But this ambiguity alone cannot justify ignoring Congress' clear decision in § 2 to repeat only one of the three concepts

To clarify the meaning of § 2, it would be natural to look to other portions of the FAA Statutory interpretation focuses on "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole " *Robinson v Shell Oil Co* 519 U S 337, 341, 117 S Ct 843, 136 L Ed 2d 808 (1997) "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law " *United Sav Assn of Tex v Timbers of Inwood Forest Associates, Ltd ,* 484 U S 365, 371, 108 S Ct 626 98 L Ed 2d 740 (1988)

Examining the broader statutory scheme, § 4 can be read to clarify the scope of § 2's exception to the enforcement of arbitration agreements When a party seeks to enforce an arbitration agreement in federal court, § 4 requires that "upon being satisfied that the making of the agreement for arbitration or the failure

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to comply therewith is not in issue," the court must order arbitration "in accordance with the terms of the agreement "

Reading §§ 2 and 4 harmoniously, the "grounds for the revocation" preserved in § 2 would mean grounds related to the ***1755** making of the agreement This would require enforcement of an agreement to arbitrate unless a party successfully asserts a defense concerning the formation of the agreement to arbitrate, such as fraud, duress, or mutual mistake See *Prima Paint Corp v Flood & Conklin Mfg Co*, 388 U S 395, 403–404, 87 S Ct 1801, 18 L Ed 2d 1270 (1967) (interpreting § 4 to permit federal courts to adjudicate claims of "fraud in the inducement of the arbitration clause itself" because such claims "g[o] to the 'making' of the agreement to arbitrate") Contract defenses unrelated to the making of the agreement—such as public policy—could not be the basis for declining to enforce an arbitration clause [FN*]

FN* The interpretation I suggest would be consistent with our precedent Contract formation is based on the consent of the parties, and we have emphasized that "[a]rbitration under the Act is a matter of consent " *Volt Information Sciences, Inc v Board of Trustees of Leland Stanford Junior Univ* 489 U S 468, 479 109 S Ct 1248, 103 L Ed 2d 488 (1989)

The statement in *Perry v Thomas*, 482 U S 483, 107 S Ct 2520 96 L Ed 2d 426 (1987), suggesting that § 2 preserves all state-law defenses that "arose to govern issues concerning the validity, revocability, and enforceability of contracts generally," *id*, at 493, n 9, 107 S Ct 2520, is dicta This statement is found in a footnote concerning a claim that the Court "decline[d] to address " *Id*, at 493, n 9, 107 S Ct 2520 Similarly, to the extent that statements in *Rent–A–Center West, Inc v Jackson*, 561 U S ——, —— n 1, 130 S Ct 2772, 2778 n 1 (2010), can be read to suggest anything about the scope of state-law defenses under § 2, those statements are dicta, as well This Court has never addressed the question whether the state-law "grounds" referred to in § 2 are narrower than those applicable to any contract

Moreover, every specific contract defense that the Court has acknowledged is applicable under § 2 relates to contract formation In *Doctor's Associates, Inc v Casarotto*, 517 U S 681, 687, 116 S Ct 1652, 134 L Ed 2d 902 (1996), this Court said that fraud, duress, and unconscionability "may be applied to invalidate arbitration agreements without contravening § 2 " All three defenses historically concern the making of an agreement See *Morgan Stanley Capital Group Inc v Public Util Dist No 1 of Snohomish Cty*, 554 U S 527, 547, 128 S Ct 2733, 171 L Ed 2d 607 (2008) (describing fraud and duress as "traditional grounds for the abrogation of [a] contract" that speak to "unfair dealing at the contract formation stage"), *Hume v United States*, 132 U S 406, 411, 414, 10 S Ct 134, 33 L Ed 393 (1889) (describing an unconscionable contract as one "such as no man in his senses and not under delusion would make" and suggesting that there may be "contracts so extortionate and unconscionable on their face as to raise the presumption of fraud in their inception" (internal quotation marks omitted))

II

Under this reading, the question here would be whether California's *Discover Bank* rule relates to the making of an agreement I think it does not

In *Discover Bank*, 36 Cal 4th 148, 30 Cal Rptr 3d 76, 113 P 3d 1100, the California Supreme Court held that "class action waivers are, under certain circumstances, unconscionable as unlawfully exculpatory " *Id* at 65, 30 Cal Rptr 3d 76, 113 P 3d, at 1112, see also *id*, at 161, 30 Cal Rptr 3d 76, 113 P 3d, at 1108 ("[C]lass action waivers [may be] substantively unconscionable inasmuch as they may operate effectively as exculpatory contract clauses that are contrary to public policy") The court concluded that where a class-action waiver is found in an arbitration agreement in certain consumer contracts of adhesion, such waivers "should not be enforced " *Id*, at 163, 30 Cal Rptr 3d 76, 113 P 3d, at 1110 In practice, the court explained, such agreements "operate to insulate

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a party from liability that otherwise would be imposed under California law " *Id.*, at 161, 30 Cal Rptr 3d 76, 113 P 3d, at 1108, 1109 The court did not conclude that a customer would sign such an agreement only if under*1756 the influence of fraud, duress, or delusion

The court's analysis and conclusion that the arbitration agreement was exculpatory reveals that the *Discover Bank* rule does not concern the making of the arbitration agreement Exculpatory contracts are a paradigmatic ex-ample of contracts that will not be enforced because of public policy 15 G Giesel, Corbin on Contracts §§ 85 1, 85 17, 85 18 (rev ed 2003) Indeed, the court explained that it would not enforce the agreements because they are " 'against the policy of the law ' " 36 Cal 4th, at 161, 30 Cal Rptr 3d 76, 113 P 3d, at 1108 (quoting Cal Civ Code Ann § 1668), see also 36 Cal 4th, at 166, 30 Cal Rptr 3d 76, 113 P 3d, at 1112 ("Agreements to arbitrate may not be used to harbor terms, conditions and practices that undermine public policy" (internal quotation marks omitted)) Refusal to enforce a contract for public-policy reasons does not concern whether the contract was properly made

Accordingly, the *Discover Bank* rule is not a "groun[d] for the revocation of any contract" as I would read § 2 of the FAA in light of § 4 Under this reading, the FAA dictates that the arbitration agreement here be enforced and the *Discover Bank* rule is pre-empted

Justice BREYER, with whom Justice GINSBURG, Justice SOTOMAYOR, and Justice KAGAN join, dissenting

The Federal Arbitration Act says that an arbitration agreement "shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract* " 9 U S C § 2 (emphasis added) California law sets forth certain circumstances in which "class action waivers" in *any* contract are unenforceable In my view, this rule of state law is consistent with the federal Act's language and primary objective It does not "stan[d] as an obstacle" to the Act's "accomplishment and execution " *Hines v Davidowitz*, 312 U S 52, 67, 61 S Ct 399, 85 L Ed 581 (1941) And the Court is wrong to hold that the federal Act pre-empts the rule of state law

I

The California law in question consists of an authoritative state-court interpretation of two provisions of the California Civil Code The first provision makes unlawful all contracts "which have for their object, directly or in-directly, to exempt anyone from responsibility for his own violation of law " Cal Civ Code Ann § 1668 (West 1985) The second provision authorizes courts to "limit the application of any unconscionable clause" in a contract so "as to avoid any unconscionable result " § 1670 5(a)

The specific rule of state law in question consists of the California Supreme Court's application of these principles to hold that "some" (but not "all") "class action waivers" in consumer contracts are exculpatory and unconscionable under California "law " *Discover Bank v Superior Ct*, 36 Cal 4th 148, 160, 162, 30 Cal Rptr 3d 76, 113 P 3d 1100, 1108, 1110 (2005) In particular, in *Discover Bank* the California Supreme Court stated that, when a class-action waiver

> "is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury **1757** to the person or property of another ' " *Id.*, at 162–163, 30 Cal Rptr 3d 76, 113 P 3d, at 1110

In such a circumstance, the "waivers are unconscionable under California law and should not be enforced " *Id.*, at 163, 30 Cal Rptr 3d 76, 113 P 3d, at 1110

The *Discover Bank* rule does not create a "blanket policy in California against class action waivers in the consumer context " *Provencher v Dell, Inc* 409 F Supp 2d 1196, 1201 (C D Cal 2006) Instead, it represents the "application of a more general [unconscionability] principle " *Gentry v Superior Ct*, 42 Cal 4th 443, 457, 64 Cal Rptr 3d 773, 165 P 3d 556, 564 (2007) Courts applying California law have enforced class-action waivers where they satisfy general unconscionability standards See, *e g*, *Walnut Producers of Cal v Diamond Foods Inc*, 187 Cal App 4th 634, 647-650, 114 Cal Rptr 3d 449, 459–462 (2010), *Arguelles-Romero v Superior Ct*,

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184 Cal App 4th 825, 843–845, 109 Cal Rptr 3d 289, 305–307 (2010), *Smith v Americredit Financial Servs., Inc.*, No 09cv1076, 2009 WL 4895280 (S D Cal., Dec 11, 2009), cf *Provencher, supra,* at 1201 (considering *Discover Bank* in choice-of-law inquiry) And even when they fail, the parties remain free to devise other dispute mechanisms, including informal mechanisms, that, in con-text, will not prove unconscionable See *Volt Information Sciences, Inc. v Board of Trustees of Leland Stanford Junior Univ.*, 489 U S 468, 479, 109 S Ct 1248, 103 L Ed 2d 488 (1989)

II

A

The *Discover Bank* rule is consistent with the federal Act's language It "applies equally to class action litigation waivers in contracts without arbitration agreements as it does to class arbitration waivers in contracts with such agreements" 36 Cal 4th, at 165–166, 30 Cal Rptr 3d 76, 113 P 3d, at 1112 Linguistically speaking, it falls directly within the scope of the Act's exception permitting courts to refuse to enforce arbitration agreements on grounds that exist "for the revocation of *any* contract" 9 U S C § 2 (emphasis added) The majority agrees *Ante,* at 9

B

The *Discover Bank* rule is also consistent with the basic "purpose behind" the Act *Dean Witter Reynolds Inc. v Byrd*, 470 U S 213, 219, 105 S Ct 1238, 84 L Ed 2d 158 (1985) We have described that purpose as one of "ensur[ing] judicial enforcement" of arbitration agreements *Ibid.*, see also *Marine Transit Corp. v Dreyfus* 284 U S 263, 274, n 2, 52 S Ct 166, 76 L Ed 282 (1932) (" 'The purpose of this bill is to make *valid and enforceable* agreements for arbitration' " (quoting H R Rep No 96, 68th Cong., 1st Sess., 1 (1924), emphasis added)), 65 Cong Rec 1931 (1924) ("It creates no new legislation, grants no new rights, except a remedy to enforce an agreement in commercial contracts and in admiralty contracts") As is well known, prior to the federal Act, many courts expressed hostility to arbitration, for example by refusing to order specific performance of agreements to arbitrate See S Rep No 536, 68th Cong., 1st Sess., 2 (1924) The Act sought to eliminate that hostility by placing agreements to arbitrate " '*upon the same footing as other contracts*' " *Scherk v Alberto Culver Co.*, 417 U S 506, 511, 94 S Ct 2449, 41 L Ed 2d 270 (1974) (quoting H R Rep No 96, at 2, emphasis added)

Congress was fully aware that arbitration could provide procedural and cost advantages The House Report emphasized the "appropriate[ness]" of making arbitration***1758** agreements enforceable "at this time when there is so much agitation against the costliness and delays of litigation" *Id.*, at 2 And this Court has acknowledged that parties may enter into arbitration agreements in order to expedite the resolution of disputes See *Preston v Ferrer*, 552 U S 346, 357, 128 S Ct 978, 169 L Ed 2d 917 (2008) (discussing "prime objective of an agreement to arbitrate") See also *Mitsubishi Motors Corp. v Soler Chrysler–Plymouth Inc.* 473 U S 614, 628, 105 S Ct 3346, 87 L Ed 2d 444 (1985)

But we have also cautioned against thinking that Congress' primary objective was to guarantee these particular procedural advantages Rather, that primary objective was to secure the "enforcement" of agreements to arbitrate *Dean Witter*, 470 U S., at 221, 105 S Ct 1238 See also *id.*, at 219, 105 S Ct 1238 (we "reject the suggestion that the overriding goal of the Arbitration Act was to promote the expeditious resolution of claims"), *id.*, at 219, 217–218, 105 S Ct 1238 ("[T]he intent of Congress" requires us to apply the terms of the Act without regard to whether the result would be "possibly inefficient"), cf *id.*, at 220, 105 S Ct 1238 (acknowledging that "expedited resolution of disputes" might lead parties to prefer arbitration) The relevant Senate Report points to the Act's basic purpose when it says that "[t]he purpose of the [Act] is *clearly set forth in section 2,*" S Rep No 536, at 2 (emphasis added), namely, the section that says that an arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U S C § 2

Thus, insofar as we seek to implement Congress' intent, we should think more than twice before invalidating a state law that does just what § 2 requires, namely, puts agreements to arbitrate and agreements to litigate "upon the same footing"

III

The majority's contrary view (that *Discover Bank* stands as an "obstacle" to the accomplishment of the federal law's objective, *ante,* at 9–18) rests primarily upon its claims that the *Discover Bank* rule increases

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the complexity of arbitration procedures, thereby discouraging parties from entering into arbitration agreements, and to that extent discriminating in practice against arbitration These claims are not well founded

For one thing, a state rule of law that would sometimes set aside as unconscionable a contract term that forbids class arbitration is not (as the majority claims) like a rule that would require "ultimate disposition by a jury" or "judicially monitored discovery" or use of "the Federal Rules of Evidence " *Ante,* at 8, 9 Unlike the majority's examples, class arbitration is consistent with the use of arbitration It is a form of arbitration that is well known in California and followed elsewhere See, *e g*, *Keating v Superior Ct*, 109 Cal App 3d 784, 167 Cal Rptr 481, 492 (1980) (officially depublished), American Arbitration Association (AAA), Supplementary Rules for Class Arbitrations (2003), http // www adr org/ sp asp? id= 21936 (as visited Apr 25, 2011, and available in Clerk of Court's case file), JAMS, The Resolution Experts, Class Action Procedures (2009) Indeed, the AAA has told us that it has found class arbitration to be "a fair, balanced, and efficient means of resolving class disputes " Brief for AAA as *Amicus Curiae* in *Stolt-Nielsen S A v AnimalFeeds Int'l Corp*, O T 2009, No 08–1198, p 25 (hereinafter AAA *Amicus* Brief) And unlike the majority's examples, the *Discover Bank* rule imposes equivalent limitations on litigation, hence it cannot ***1759** fairly be characterized as a targeted attack on arbitration

Where does the majority get its contrary idea—that individual, rather than class, arbitration is a "fundamental attribut[e]" of arbitration? *Ante,* at 9 The majority does not explain And it is unlikely to be able to trace its present view to the history of the arbitration statute itself

When Congress enacted the Act, arbitration procedures had not yet been fully developed Insofar as Congress considered detailed forms of arbitration at all, it may well have thought that arbitration would be used primarily where merchants sought to resolve disputes of fact, not law, under the customs of their industries, where the parties possessed roughly equivalent bargaining power See *Mitsubishi Motors, supra* at 646, 105 S Ct 3346 (Stevens, J , dissenting), Joint Hearings on S 1005 and H R 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong , 1st Sess , 15 (1924), Hearing on S 4213 and S 4214 before a Subcommittee of the Senate Committee on the Judiciary, 67th Cong , 4th Sess , 9–10 (1923), Dept of Commerce, Secretary Hoover Favors Arbitration—Press Release (Dec 28, 1925), Herbert Hoover Papers—Articles, Addresses, and Public Statements File—No 536, p 2 (Herbert Hoover Presidential Library), Cohen & Dayton, The New Federal Arbitration Law, 12 Va L Rev 265, 281 (1926), AAA, Year Book on Commercial Arbitration in the United States (1927) This last mentioned feature of the history—roughly equivalent bargaining power—suggests, if anything, that California's statute is consistent with, and indeed may help to further, the objectives that Congress had in mind

Regardless, if neither the history nor present practice suggests that class arbitration is fundamentally incompatible with arbitration itself, then on what basis can the majority hold California's law pre-empted?

For another thing, the majority's argument that the *Discover Bank* rule will discourage arbitration rests critically upon the wrong comparison The majority compares the complexity of class arbitration with that of bilateral arbitration See *ante,* at 14 And it finds the former more complex See *ibid* But, if incentives are at issue, the *relevant* comparison is not "arbitration with arbitration" but a comparison between class arbitration and judicial class actions After all, in respect to the relevant set of contracts, the *Discover Bank* rule similarly and equally sets aside clauses that forbid class procedures—whether arbitration procedures or ordinary judicial procedures are at issue

Why would a typical defendant (say, a business) prefer a judicial class action to class arbitration? AAA statistics "suggest that class arbitration proceedings take more time than the average commercial arbitration, but may take *less time* than the average class action in court " AAA *Amicus* Brief 24 (emphasis added) Data from California courts confirm that class arbitrations can take considerably less time than in-court proceedings in which class certification is sought Compare *ante,* at 14 (providing statistics for class arbitration), with Judicial Council of California, Administrative Office of the Courts, Class Certification in California Second Interim Report from the Study of California Class Action Litigation 18 (2010) (providing statistics for class-action litigation in Cal-

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ifornia courts) And a single class proceeding is surely more efficient than thousands of separate proceedings for identical claims Thus, if speedy resolution of disputes were all that mattered, then the *Discover Bank* rule would reinforce,***1760** not obstruct, that objective of the Act

The majority's related claim that the *Discover Bank* rule will discourage the use of arbitration because "[a]rbitration is poorly suited to higher stakes" lacks empirical support *Ante,* at 16 Indeed, the majority provides no convincing reason to believe that parties are unwilling to submit high-stake disputes to arbitration And there are numerous counterexamples Loftus, Rivals Resolve Dispute Over Drug, Wall Street Journal, Apr 16, 2011, p B2 (discussing $500 million settlement in dispute submitted to arbitration), Ziobro, Kraft Seeks Arbitration In Fight With Starbucks Over Distribution, Wall Street Journal, Nov 30, 2010, p B10 (describing initiation of an arbitration in which the payout "could be higher" than $1 5 billion), Markoff, Software Arbitration Ruling Gives I B M $833 Million From Fujitsu, N Y Times, Nov 30, 1988, p A1 (describing both companies as "pleased with the ruling" resolving a licensing dispute)

Further, even though contract defenses, *e g*, duress and unconscionability, slow down the dispute resolution process, federal arbitration law normally leaves such matters to the States *Rent-A-Center, West Inc v Jackson,* 561 U S ——, ——, 130 S Ct 2772, 2775 (2010) (arbitration agreements "may be invalidated by 'generally applicable contract defenses' " (quoting *Doctor's Associates, Inc v Casarotto* 517 U S 681, 687, 116 S Ct 1652, 134 L Ed 2d 902 (1996))) A provision in a contract of adhesion (for example, requiring a consumer to decide very quickly whether to pursue a claim) might increase the speed and efficiency of arbitrating a dispute, but the State can forbid it See, *e g*, *Hayes v Oakridge Home,* 122 Ohio St 3d 63, 67, 2009–Ohio–2054, ¶ 19, 908 N E 2d 408, 412 ("Unconscionability is a ground for revocation of an arbitration agreement"), *In re Poly America, L P*, 262 S W 3d 337, 348 (Tex 2008) ("Unconscionable contracts, however—whether relating to arbitration or not—are unenforceable under Texas law") The *Discover Bank* rule amounts to a variation on this theme California is free to define unconscionability as it sees fit, and its common law is of no federal concern so long as the State does not adopt a special rule that disfavors arbitration Cf *Doctor's Associates, supra,* at 687 See also *ante,* at 4, n (THOMAS, J , concurring) (suggesting that, under certain circumstances, California might remain free to apply its unconscionability doctrine)

Because California applies the same legal principles to address the unconscionability of class arbitration waivers as it does to address the unconscionability of any other contractual provision, the merits of class proceedings should not factor into our decision If California had applied its law of duress to void an arbitration agreement, would it matter if the procedures in the coerced agreement were efficient?

Regardless, the majority highlights the disadvantages of class arbitrations, as it sees them See *ante,* at 15–16 (referring to the "greatly increase[d] risks to defendants", the "chance of a devastating loss" pressuring defendants "into settling questionable claims") But class proceedings have countervailing advantages In general agreements that forbid the consolidation of claims can lead small-dollar claimants to abandon their claims rather than to litigate I suspect that it is true even here, for as the Court of Appeals recognized, AT & T can avoid the $7,500 payout (the payout that supposedly makes the Concepcions' arbitration worthwhile) simply by paying the claim's face value, such that "the maximum gain to a customer for the hassle of arbitrating a $30 22 dispute is still just $30 22 " ***1761***Laster v AT & T Mobility LLC,* 584 F 3d 849, 855, 856 (C A 9 2009)

What rational lawyer would have signed on to represent the Concepcions in litigation for the possibility of fees stemming from a $30 22 claim? See, *e g*, *Carnegie v Household Int'l, Inc* 376 F 3d 656, 661 (C A 7 2004) ("The *realistic* alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30") In California's perfectly rational view, nonclass arbitration over such sums will also sometimes have the effect of depriving claimants of their claims (say, for example, where claiming the $30 22 were to involve filling out many forms that require technical legal knowledge or waiting at great length while a call is placed on hold) *Discover Bank* sets forth circumstances in which the California courts believe that the terms of consumer contracts can be manipulated to insulate an agreement's author from liability for its own frauds by "deliberately cheat[ing] large numbers

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of consumers out of individually small sums of money " 36 Cal 4th, at 162–163, 30 Cal Rptr 3d 76, 113 P 3d, at 1110 Why is this kind of decision—weighing the pros and cons of all class proceedings alike—not California's to make?

Finally, the majority can find no meaningful support for its views in this Court's precedent The federal Act has been in force for nearly a century We have decided dozens of cases about its requirements We have reached results that authorize complex arbitration procedures *E g*, *Mitsubishi Motors*, 473 U S , at 629, 105 S Ct 3346 (antitrust claims arising in international transaction are arbitrable) We have upheld nondiscriminatory state laws that slow down arbitration proceedings *E g*, *Volt Information Sciences*, 489 U S , at 477–479, 109 S Ct 1248 (California law staying arbitration proceedings until completion of related litigation is not pre-empted) But we have not, to my knowledge, applied the Act to strike down a state statute that treats arbitrations on par with judicial and administrative proceedings Cf *Preston*, 552 U S , at 355–356, 128 S Ct 978 (Act pre-empts state law that vests primary jurisdiction in state administrative board)

At the same time, we have repeatedly referred to the Act's basic objective as assuring that courts treat arbitration agreements "like all other contracts " *Buckeye Check Cashing, Inc v Cardegna* 546 U S 440, 447, 126 S Ct 1204, 163 L Ed 2d 1038 (2006) See also, *e g*, *Vaden v Discover Bank* 556 U S ——, ——, 129 S Ct 1262, 1273–1274, 173 L Ed 2d 206 (2009)., *Doctor's Associates, supra*, at 687, 116 S Ct 1652, *Allied Bruce Terminix Cos v Dobson*, 513 U S 265, 281, 115 S Ct 834, 130 L Ed 2d 753 (1995), *Rodriguez de Quijas v Shearson/American Express, Inc* 490 U S 477, 483–484, 109 S Ct 1917, 104 L Ed 2d 526 (1989), *Perry v Thomas*, 482 U S 483, 492–493, n 9, 107 S Ct 2520, 96 L Ed 2d 426 (1987), *Mitsubishi Motors, supra* at 627, 105 S Ct 3346 And we have recognized that "[t]o immunize an arbitration agreement from judicial challenge" on grounds applicable to all other contracts "would be to elevate it over other forms of contract " *Prima Paint Corp v Flood & Conklin Mfg Co* , 388 U S 395, 404, n 12, 87 S Ct 1801, 18 L Ed 2d 1270 (1967), see also *Marchant v Mead–Morrison Mfg Co* , 252 N Y 284, 299, 169 N E 386, 391 (1929) (Cardozo, C J) ("Courts are not at liberty to shirk the process of [contractual] construction under the empire of a belief that arbitration is beneficent any more than they may shirk it if their belief happens to be the contrary"), Cohen & Dayton, 12 Va L Rev , at 276 (the Act "is no infringement upon the right of each State to decide for itself what ***1762** contracts shall or shall not exist under its laws")

These cases do not concern the merits and demerits of class actions, they concern equal treatment of arbitration contracts and other contracts Since it is the latter question that is at issue here, I am not surprised that the majority can find no meaningful precedent supporting its decision

IV

By using the words "save upon such grounds as exist at law or in equity for the revocation of any contract," Congress retained for the States an important role incident to agreements to arbitrate 9 U S C § 2 Through those words Congress reiterated a basic federal idea that has long informed the nature of this Nation's laws We have often expressed this idea in opinions that set forth presumptions See, *e g*, *Medtronic Inc v Lohr*, 518 U S 470, 485, 116 S Ct 2240, 135 L Ed 2d 700 (1996) ("[B]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action") But federalism is as much a question of deeds as words It often takes the form of a concrete decision by this Court that respects the legitimacy of a State's action in an individual case Here, recognition of that federalist ideal, embodied in specific language in this particular statute, should lead us to uphold California's law, not to strike it down We do not honor federalist principles in their breach

With respect, I dissent

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AT&T Mobility LLC v Concepcion
131 S Ct 1740, 79 USLW 4279, 11 Cal Daily Op Serv 4842, 2011 Daily Journal D A R 5846

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1

UNITED STATES, petitioner, v. EASTERN SHAWNEE TRIBE OF OKLAHOMA.

No. 09–1521.

May 2, 2011

Case below, 582 F 3d 1306

On petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit Petition for writ of certiorari granted. Judgment vacated, and case remanded to the United States Court of Appeals for the Federal Circuit for further consideration in light of *United States v Tohono O'odham Nation*, 563 U S ——, 131 S Ct 1723, 179 L Ed 2d 723 (2011)

Justice KAGAN took no part in the consideration or decision of this petition

2

SONIC AUTOMOTIVE, INC., dba Century BMW, petitioner, v. Christine WATTS, et al.

No. 10–315.

May 2, 2011.

Case below, 387 S C. 525, 693 S E.2d 394

On petition for writ of certiorari to the Supreme Court of South Carolina Petition for writ of certiorari granted Judgment vacated, and case remanded to the Supreme Court of South Carolina for further consideration in light of *AT & T Mobility LLC v Concepcion*, 563 U S ——, 131 S Ct 1740, 179 L Ed 2d 742 (2011)

3

CELLCO PARTNERSHIP, dba Verizon Wireless, petitioner, v. Keith LITMAN, et al.

No. 10–398.

May 2, 2011

Case below, 381 Fed Appx 140.

On petition for writ of certiorari to the United States Court of Appeals for the Third Circuit Petition for writ of certiorari granted Judgment vacated, and case remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *AT & T Mobility LLC v Concepcion*, 563 U S ——, 131 S Ct 1740, 179 L Ed 2d 742 (2011)

4

John SIEFERT, Judge, Circuit Court of Wisconsin, Milwaukee County, First Judicial Administrative District, petitioner, v. James C. ALEXANDER, et al.

No. 10–405.

May 2, 2011.

Case below, 608 F 3d 974

Motion of Center for Constitutional Jurisprudence for leave to file a brief as *amicus curiae* granted. Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied

5

Torrey BAUER, et al., petitioners, v. Randall T. SHEPARD, et al.

No. 10–425.

May 2, 2011.

Case below, 620 F 3d 704

Westlaw

719 S E 2d 640
395 S C 461, 719 S E 2d 640
(Cite as: 395 S.C. 461, 719 S.E.2d 640)

Supreme Court of South Carolina

Heather HERRON, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease and Michael Watts, Individually and for the Benefit of All Car Buyers Whom Paid "Administrative Fees" as Described below to Defendants, Respondents,

v

CENTURY BMW a/k/a Sonic Automotive, Dick Dyer & Associates, Inc , Galeana Chrysler Plymouth, Inc , a/k/a Galeana Chrysler Jeep, Inc , J L H Investments LP, a/k/a Hendrick Honda, Overland, Inc , d/b/a Land Rover of Columbia, Taylor Toyota, a/k/a Taylor Investments, and Toyota of Greenville, Inc , et al , Defendants of whom Century BMW a/k/a Sonic Automotive is the Appellant

No 26805
Reheard Nov 1, 2011
Refiled Dec 19, 2011
Certiorari Denied May 21, 2012

Background: Buyers of automobiles brought class-action lawsuit against dealership and other dealers, alleging that defendants had charged illegal administrative fees in violation of Regulation of Manufacturers, Distributors, and Dealers Act The Circuit Court, Aiken County, Doyet A Early III, J , denied dealership's motion to compel arbitration Dealership appealed, and Supreme Court granted certification The Supreme Court, 387 S C 525, 693 S E 2d 394, affirmed Dealership petitioned for writ of certiorari, which was granted The United State Supreme Court, —— U S ——, 131 S Ct 2872 179 L Ed 2d 1184 vacated judgment and remanded

Holding: On remand, the Supreme Court, Kittredge , J , held that dealership failed to preserve issue of federal preemption for appellate review

Affirmed

West Headnotes

[1] Appeal and Error 30 ⇐169

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k169 k Necessity of presentation in general Most Cited Cases
Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the Supreme Court with a platform for meaningful appellate review

[2] Appeal and Error 30 ⇐169

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k169 k Necessity of presentation in general Most Cited Cases
At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge

[3] Appeal and Error 30 ⇐169

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k169 k Necessity of presentation in general Most Cited Cases
An issue cannot be raised for the first time on appeal

[4] Appeal and Error 30 ⇐169

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k169 k Necessity of presentation in

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general Most Cited Cases
Issue preservation rules are meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments

[5] Appeal and Error 30 ⇐170(2)

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k170 Nature or Subject-Matter of Issues or Questions
30k170(2) k Constitutional questions Most Cited Cases
Constitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal

[6] Appeal and Error 30 ⇐179(1)

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k179 Sufficiency of Presentation of Questions
30k179(1) k In general Most Cited Cases
A party is not required to use the exact name of a legal doctrine in order to preserve an issue

[7] Appeal and Error 30 ⇐179(1)

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k179 Sufficiency of Presentation of Questions
30k179(1) k In general Most Cited Cases
In order to be preserved, an issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge

[8] Appeal and Error 30 ⇐758.1

30 Appeal and Error
30XII Briefs
30k758 Specification of Errors
30k758 1 k In general Most Cited Cases
When an issue is not specifically set out in the statements of issues, an appellate court may nevertheless consider the issue if it is reasonably clear from an appellant's arguments Appellate Court Rule 208(b)(1)(B)

[9] Appeal and Error 30 ⇐758.3(1)

30 Appeal and Error
30XII Briefs
30k758 Specification of Errors
30k758 3 Requisites and Sufficiency
30k758 3(1) k In general Most Cited Cases
Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to "grope in the dark" to ascertain the precise point at issue Appellate Court Rule 208(b)(1)(B)

[10] Appeal and Error 30 ⇐832(1)

30 Appeal and Error
30XV Hearing
30XV(B) Rehearing
30k829 Rehearing
30k832 Grounds
30k832(1) k In general Most Cited Cases
The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time Appellate Court Rule 221(a)

[11] Appeal and Error 30 ⇐173(1)

30 Appeal and Error
30V Presentation and Reservation in Lower

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Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k173 Grounds of Defense or Opposition
30k173(1) k In general, asserting new defense or grounds of opposition Most Cited Cases

Automobile dealership failed to preserve for appellate review its assertion that Federal Arbitration Act (FAA) preempted state law invalidating a prohibition on class arbitration contained in an arbitration agreement for purposes of dispute between consumers and dealership, where in all of the submissions, memoranda, and hearings before the trial court, not once was there a single mention of federal preemption, and dealership agreed that state law was to govern the underlying dispute

[12] Appeal and Error 30 ⇐169

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k169 k Necessity of presentation in general Most Cited Cases

Issue preservation rules prevent a party from keeping an ace card up his sleeve, intentionally or by chance, in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case

****641** Dennis M Black, and Ryan L VanGrack, of Williams & Connolly, of Washington, Steven W Hamm and C JoAnne Wessinger-Hill, of Richardson, Plowden & Robinson, of Columbia, for Appellant

A Camden Lewis and Ariail E King, of Columbia, Richard A Harpootlian, of Columbia, Edwin Grey Wicker and Michael E Spears, both of Spartanburg, and Gedney M Howe III, of Charleston, for Respondents

Justice KITTREDGE

***463** This case returns to us on remand from the United States Supreme Court to reconsider our opinion in *Herron v Century BMW*[FN1] in light of its decision in *AT&T Mobility LLC v Concepcion*.[FN2] Because the issue of preemption was not preserved for review in the South Carolina proceedings, we reinstate our initial opinion

FN1 387 S C 525, 693 S E 2d 394 (2010)

FN2 — U S — 131 S Ct 1740, 179 L Ed 2d 742 (2011)

I.

The underlying action originally came before this Court on appeal of the trial court's denial of Appellant Century BMW's ***464** motion to compel arbitration We affirmed in result the trial court's denial of the motion to compel [FN3]

FN3 A detailed summary of the underlying facts and the Court's reasoning for that decision can be found in our original opinion

Following our decision, Appellant filed a petition for rehearing, contending this Court's opinion was "inconsistent with the United States Supreme Court's recent decision in *Stolt-Nielsen S.A. v AnimalFeeds International Corp.*" [FN4] Appellant stated that pursuant to *Stolt-Nielsen*, "[t]he [Federal Arbitration Act] clearly preempts South Carolina law, as this Court construed it" and '[i]f a party cannot be compelled to class arbitration absent an agreement to arbitrate as a class, a fortiori the FAA preempts any public policy requiring class arbitration even where the parties agreed not to arbitrate as a class." In our order denying rehearing, we emphasized that our opinion was "wholly based on state law grounds, namely a provision in a contract banning class action suits is invalid pursuant to the Dealers Act [FN5] and the public policy of this State." We further admonished Appellant for attempting to reframe the issues and miscast our holding as "disingenuous to the opinion and a holding we never made."

FN4 — U S — 130 S Ct 1758, 176

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L Ed 2d 605 (2010)

FN5 The full title of the Act is the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act, S C Code Ann § 56–15 10 *et seq* (2007)

Thereafter, Appellant petitioned the United States Supreme Court for a writ of certiorari Although the issue was not raised to ****642** the trial court or this Court, Appellant presented the following question in its certiorari petition

> Whether the Federal Arbitration Act preempts a state law invalidating a prohibition on class arbitration contained in an arbitration agreement

This Court's opinion was vacated by the United States Supreme Court and remanded for consideration in light of its decision in *AT&T Mobility LLC v Concepcion* Respondents argue that the matter of preemption was not preserved in the South Carolina proceedings We agree and therefore adhere to our initial opinion

***465 II.**

A.

Appellant contends that the issue of whether the FAA preempted state law, which it raised to the United States Supreme Court, was sufficiently preserved in the state court proceedings because Appellant referenced the state and federal policies favoring arbitration in its filings [FN6] We disagree

FN6 At oral argument on rehearing, counsel for Appellant went beyond its brief and claimed it had made the argument to the effect that "federal law controls," and that such argument was sufficient to preserve the preemption argument We would agree that the argument was preserved if Appellant had ever made that argument in any manner related to the issue of preemption, but it did not Just as the word "preemption" appears nowhere in the briefs filed with this Court, neither does the argument that the "federal law controls" In short, Appellant presented no argument (prior to its rehearing petition) that could reasonably be construed to embrace the matter of preemption

[1][2][3][4] "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review" *Queen's Grant II Horizontal Prop Regime v Greenwood Dev Corp*, 368 S C 342, 373 628 S E 2d 902, 919 (Ct App 2006) At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge *Wilder Corp v Wilke*, 330 S C 71, 76 497 S E 2d 731 733 (1998) It is "axiomatic that an issue cannot be raised for the first time on appeal" *Id* Imposing such a requirement on the appellant "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments" *I On L I C v Town of Mt Pleasant*, 338 S C 406, 422 526 S E 2d 716, 724 (2000)

[5] Constitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal *Glover v County of Charleston*, 361 S C 634 606 S E 2d 773 (2004) *overruled on other grounds by Byrd v City of Hartsville*, 365 S C 650, 620 S E 2d 76 (2005), *see also Grant v S C Coastal Council*, 319 S C 348, 461 S E 2d 388 (1995) (holding that a due process claim raised for the first time on appeal was not preserved) ***466** *Merriman v Minter*, 298 S C 110 378 S E 2d 441 (1989) (refusing to consider an equal protection challenge to a statute on appeal where it was not raised to the trial court)

[6][7] Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue *See State v Russell*, 345 S C 128, 546 S E 2d 202 (Ct App 2001) (finding issue was preserved even though defendant did not use exact words "corpus delicti" in his request for a directed verdict) Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the al-

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leged error so that it can be reasonably understood by the judge *Wilder Corp* 330 S C at 76, 497 S E 2d at 733 *see also S C Dep't of Transp v First Carolina Corp of S C* 372 S C 295, 641 S E 2d 903 (2007) (finding that although SCDOT did not phrase objection in the exact terms used in the issues on appeal, the objection was sufficiently specific to allow the trial court to rule on the issue)

[8][9][10] Our appellate rules also offer guidance "Ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal" Rule 208(b)(1)(B) SCACR When an issue is not specifically set out in the statements of issues, the appellate court may nevertheless consider the issue if it is *reasonably clear* from an appellant's arguments *See* ****643***Eubank v Eubank* 347 S C 367 555 S E 2d 413 (Ct App 2001) (finding the statement of issue, when read in conjunction with the argument, sufficiently raised the issue to the court) However, "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue" *Jones v Lott* 387 S C 339 346, 692 S E 2d 900, 903 (2010) (internal citation omitted) Similarly, a petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court" Rule 221(a), SCACR "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time" *Kennedy v S C Retirement Sys* 349 S C 531, 532 564 S E 2d 322 322 (2001) (quoting Jean H Toal, *Appellate Practice in South Carolina* 309 (1999))

***467 B.**

South Carolina is not alone in its issue preservation requirements The United States Supreme Court has "consistently refused to decide federal constitutional issues raised [to it] for the first time on review of state court decisions" *Cardinale v Louisiana* 394 U S 437, 438 89 S Ct 1161, 22 L Ed 2d 398 (1969), *see also Webb v Webb*, 451 U S 493, 101 S Ct 1889, 68 L Ed 2d 392 (1981) (holding where the Georgia Supreme Court failed to rule on federal issue, the United States Supreme Court was without jurisdiction in the case). *Hill v California* 401 U S 797, 91 S Ct 1106 28 L Ed 2d 484 (1971) (refusing to reach a Fifth Amendment question when the issue was not raised, briefed, or argued at any level of state court) [FN7]

> FN7 Appellant contends that because the United States Supreme Court granted certiorari, Respondents are precluded from arguing that the preemption issue is not preserved We disagree The Supreme Court has previously granted certiorari based on assertions in petitions and later refused to rule on the issue because it realized the issue was never raised to the state court *See Cardinale,* 394 U S at 438, 89 S Ct 1161 (stating that "[a]lthough certiorari was granted to consider this question, the fact emerged in oral argument that the sole federal question argued here had never been raised, preserved, or passed upon in the state courts below'), *see also Webb* 451 U S at 494–95 101 S Ct 1889 (stating that because the Court disfavors the filing of the state court record, "[the Court] [is] largely dependent on assertions made by the parties as to what that record will demonstrate concerning the manner in which a federal question was raised below)

Moreover, the Supreme Court has stated "[w]hen the highest state court is silent on a federal question before us, we assume that the issue was not properly presented, and the aggrieved party bears the burden of defeating this assumption by demonstrating that the state court had a fair opportunity to address the federal question that is sought

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to be presented here" *Adams v Robertson,* 520 U S 83 86–87, 117 S Ct 1028, 137 L Ed 2d 203 (1997) (internal citations omitted) [FN8] The Supreme Court has explained its reasoning for such policies

> FN8 The Rules of the Supreme Court also require a party to demonstrate the state court addressed the issue presented to it Rule 14 states in relevant part
>
> > If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed on by those courts, and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e g*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari
>
> Sup Ct R 14(1)(g)(i)

[I]n a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their ***468** constitutionality Or the issue may be blocked by an adequate state ground Even though States are not free to avoid constitutional issues on inadequate state grounds, they should ****644** be given the first opportunity to consider them
Cardinale 394 U S at 439 89 S Ct 1161

C.

[11] We have carefully re-examined the record In all of the submissions, memoranda, and hearings before the trial court, not once was there a single mention of federal preemption as it relates to the issue before us Certainly, Appellant cites to both the federal and state policy favoring arbitration, and no party or court has ever disputed the obvious—both the federal and state policies do favor arbitration However, a general acknowledgment of a policy favoring arbitration is a far cry from a specifically articulated preemption argument [FN9]

> FN9 We also note that Appellant cites a provision of the FAA, 9 U S C § 2 (2006), in its trial court motions for the proposition that the FAA applies to the arbitration agreement at hand Both the trial court and this Court agreed with Appellant Yet Appellant never cited section 2 of the FAA in any fashion that can be construed as anything akin to the preemption argument it presented to the United States Supreme Court

Tellingly, the trial court's order denying Appellant's motion to compel states "[t]he Plaintiff and Defendant agree that *Simpson v MSA of Myrtle Beach Inc* 373 S C 14, 644 S E 2d 663 (2007) [FN10] is the *controlling authority* of this motion" (emphasis added) In our opinion, this opening sentence to the legal analysis section of the trial court's order demonstrates Appellant and Respondents' mutual agreement that ***469** the case was to be decided by reference to state law That finding was never challenged until the petition for rehearing

> FN10 In *Simpson* this Court denied a motion to compel arbitration, finding an arbitration clause in a vehicle trade-in contract was unconscionable and, therefore, unenforceable due to a multitude of one-sided terms Notably, the *Simpson* decision, however, in no way dealt with federal preemption The word "preemption" appears in the *Simpson* opinion, only to note that preemption was not involved

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Moreover, it is clear preemption was neither a novel nor an unknown argument to Appellant Significantly, Appellant did raise the issue of preemption to the trial court, albeit in a different context Respondents initially challenged the arbitration agreement on the basis that it lacked certain formatting requirements under the South Carolina Arbitration Act However, Appellant successfully defeated that state law challenge based on preemption, specifically arguing that the FAA preempted state law due to the presence of interstate commerce The voluminous record is otherwise silent as to *any* claim of preemption, until the petition for rehearing filed with this Court

Simply stated, the question Appellant presented to the United States Supreme Court, namely whether the FAA preempted our state's legislative policy as set forth in the Dealers Act, was raised neither to the trial court nor to our Court And although the issue of preemption was raised in Appellant's rehearing petition. such an attempt was untimely and improper as a party may not raise an issue for the first time in a petition for rehearing *See Kennedy* 349 S C at 532, 564 S E 2d at 322 (The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time ") Unquestionably, our opinion in *Herron* did not address federal preemption Rather, it quite naturally resolved the matter solely on the basis of state law, just as the parties presented it to us *See State v Austin* 306 S C 9 19 409 S E 2d 811 817 (Ct App 1991) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked ") However, the absence of a preemption discussion is not attributable to this Court's failure to recognize or understand the arguments presented Rather, Appellants failed to present the issue to us, as evidenced by our ***470** detailed order denying Appellant's petition for rehearing which rejected Appellant's attempt to recast the issues that were presented to us

[12] We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner Yet, because Appellant can point to no instance where preemption was properly ****645** raised or ruled upon, to disregard our issue preservation rules under these circumstances would render them meaningless As this Court observed, issue preservation rules "prevent[ ] a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case " *I'On,* 338 S C at 406 526 S E 2d at 724 Here, intentionally or by chance, Appellant kept the ace card of preemption up its sleeve until after this Court filed its opinion Under even the most liberal approach to issue preservation principles, we could not treat Appellant's preemption argument as preserved in our courts as a matter of state law

Because the matter of preemption was not raised to and ruled upon in any of the South Carolina proceedings, we find the issue of preemption is procedurally barred as matter of state law and further consideration in light of *AT&T Mobility LLC v Concepcion* is unwarranted We reinstate our original opinion and decline to revisit it

ORIGINAL OPINION REINSTATED.

TOAL, C J , BEATTY, HEARN, JJ , and Acting Justice JAMES E MOORE, concur

S C ,2011
Herron v Century BMW
395 S C 461, 719 S E 2d 640

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132 S Ct 2436, 182 L Ed 2d 1063, 80 USLW 3564, 80 USLW 3644, 80 USLW 3646
(Cite as: 132 S.Ct. 2436)

H

Supreme Court of the United States
SONIC AUTOMOTIVE, INC , dba Century BMW,
petitioner,
v
Christine WATTS, et al

No 11–1151
May 21, 2012

Case below, 395 S C 461, 719 S E 2d 640

Petition for writ of certiorari to the Supreme Court of South Carolina denied

U S ,2012
Sonic Automotive, Inc v Watts
132 S Ct 2436, 182 L Ed 2d 1063, 80 USLW 3564,
80 USLW 3644, 80 USLW 3646

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP- 23-07156

CLERK OF COURT
GREENVILLE CO S C
PAUL B WICKENSIMER
2013 JAN -8 P 1:12

Christine Watts

PLAINTIFF(S)

Sonic Automotive 2752 Laurens Road, Greenville, Inc.

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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

☐ **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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

M A Early III
Circuit Court Judge

0136
Judge Code

12/21/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of Jan 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Jan 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

Brady Ryan Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FILED-CLERK OF COURT
GREENVILLE CO S C
PAUL B WICKENSIMER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE 2013 JAN -8 P 1:12) Case No. 2012-CP-23-07156
)
Christine Watts)
)
Plaintiff,)
) Order
vs.)
)
Sonic Automotive 2752 Laurens Road, Greenville, Inc.)
)
Defendants.)
_____)

The issue is whether Defendant Century BMW's Motion for Judgment on the Pleadings for Failure to Join an Indispensable Party or, In the Alternative, to Compel Arbitration should be granted or denied For reasons described herein, I hereby DENY Defendant Century BMW's motion.

PROCEDURAL HISTORY

This action was initiated on August 29, 2006 Ms Watts alleges that Century BMW was charging illegal closing fees in violation of S.C. Code Ann § 37-2-307 and § 56-15-10, *et seq.* and did engage in one or more of the following illegal acts:

a. Failed to register with the Dept of Consumer Affairs;
b. Failed to individually register annually with the Dept of Consumer Affairs;
c Charged illegal "administrative fees" in excess of the amount for which it registered;
d. Failed to disclose the illegal "administrative fees" on sales contracts,
e. Charged illegal "administrative fees" in excess of their costs;
f. Failed to display the charging of illegal "administrative fees" in a conspicuous location in the dealership;
g. Advertised deceptively and illegally by failing to include the "administrative fees" in the advertiwsed price; and
h Created a closing procedure to illegally add "administrative fees".

Ms. Watts contends that the conduct of Century BMW violates the South Carolina Dealer's Act (S C. Code Ann § 56-15-10).

Century BMW filed a motion to compel arbitration, claiming arbitration was required by an agreement under which Ms. Watts waived the right to bring or participate in any class action or multi-

plaintiff or claimant action in court or through arbitration. This motion was denied by this Court in an order dated March 10, 2008. The order concluded that *Simpson v MSA of Myrtle Beach, Inc.*, 644 S E.2d 663 (S.C. 2007) was "the controlling authority" for the motion

On March 12, 2008, Century BMW filed a notice of appeal to the South Carolina Court of Appeals. On July 6, 2009, before the South Carolina Court of Appeals ruled, the South Carolina Supreme Court took the appeal. On April 19, 2010, the South Carolina Supreme Court issued an order holding that the provision of the arbitration agreement relied upon by Century BMW was invalid, unenforceable, and in violation of the public policy of South Carolina, specifically South Carolina Code § 56-15-110 The decision in pertinent part is as follows

> The purpose of the Dealers Act is consumer protection Damages are typically small in individual consumer cases, thereby discouraging plaintiffs from bringing individual actions
>
> Our Legislature recognized this and expressly provided plaintiffs with the right to bring class action lawsuits for violations of the Dealers Act:
>
> > When such action is one of common or general interest to many person or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief
>
> Section 56-15-110(2). The Dealers Act provides "Any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against the public policy and shall be void and unenforceable." Section 56-15-130.
>
> Stated succinctly, the Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring class action suits fro violation of the Dealer Act and that any contract prohibiting a class action suit, violates our State's public policy and is void and unenforceable. . . We are guided by our state law, and the unmistakable statutory language contained in the Dealers Act indicating our Legislature intended for this to be a non-waivable right We therefore hold this provision is unenforceable on public policy grounds. *See Carolina Care Plan, Inc v United HealthCare Servs , Inc.*, 606 S.E 2d 752, 758 (S.C 2004) (holding the general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution)

Herron v Century BMW, 387 S C 525, 535-536, 693 S E.2d 394, 399-400 (S C 2010)

Following the South Carolina Supreme Court's refusal to enforce the arbitration agreement, Century BMW filed a Petition for Rehearing By order dated June 9, 2010, the South Carolina Supreme Court denied the same.

On August 31, 2010, Century BMW petitioned the United States Supreme Court for a writ of certiorari While that petition was pending, the U.S Supreme Court issued its decision in *AT&T Mobility, LLC v Concepcion*, 131 S Ct. 1740 (April 27, 2011) The Court then remanded this case to the South Carolina Supreme Court for further consideration, in light of *AT&T*.

After supplemental briefing and oral argument centering on preemption, the South Carolina Supreme Court issued its opinion, dated December 19, 2011 In its opinion, the South Carolina Supreme Court found, as a matter of state law, ***preemption was not timely raised*** and "is procedurally barred as a matter of state law" *Herron v Century BMW*, 395 S C 461, 469-470, 719 S E.2d 640, 644-645 (2011) ("*Herron II*")

Century BMW then filed a petition for a Writ of Certiorari in the U S Supreme Court, arguing that the S C. Supreme Court's ruling that Century BMW has "forfeited" the preemption argument by failing to raise it to any prior court was unfair because it would "deprive [Century BMW] of a 'reasonable opportunity' to assert its federal rights." See Petition for a Writ of Certiorari

On May 21, 2012, the U.S. Supreme Court denied certiorari Thus, the controlling opinion in this case is the S.C Supreme Court holding that, in Century BMW's words, Century BMW "forfeited its preemption argument." This is the law of the case

PREEMPTION

First, I DENY Defendant Century BMW's Motion (in the alternative) to Compel Arbitration. The S.C. Supreme Court's opinion in *Herron II* held, Century BMW could not continue to re-litigate the enforceability of the arbitration agreement by raising arguments it chose not to argue, when the motion to compel arbitration was first argued. The S C Supreme Court's opinion in *Herron II* provides in part:

> [I]t is clear preemption was neither a novel nor an unknown argument to [Century BMW] Significantly, [Century BMW] did raise the issue of preemption to the trial court, albeit in a different context. [Plaintiff] initially challenged the arbitration agreement on the basis that it lacked certain formatting requirements under the South Carolina Arbitration Act However, Appellant successfully defeated the state law challenge based on preemption, specifically arguing that the FAA preempted state law due to the presence of interstate commerce. The voluminous record is otherwise silent as to any claim of preemption, until the petition for rehearing filed with this Court.

Herron v Century BMW, 395 S C 461, 469, 719 S E 2d 640, 644 (S C 2011)

> As this Court observed, issue preservation rules "prevent[] a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case " *I'On, L L.C v Town of Mt. Pleasant*, 338 S C 406, 406, 522 S.E.2d 716, 724 (S.C. 2000) Here, intentionally or by chance, [Century BMW] kept the ace card of preemption up its sleeve until after this Court filed its opinion. Under even the most liberal approach to issue preservation principles, we could not treat [Century BMW's] preemption argument as preserved in our ***courts*** as a matter of state law
>
> Because the matter of preemption was not raised to and ruled upon in any of the South Carolina proceedings, we find the issue of preemption is procedurally barred as matter of state law and further consideration in light of *AT&T Mobility, LLC v. Concepcion* is unwarranted We reinstate our original opinion and decline to revisit it.

Herron v Century BMW, 395 S.C. 461, 470, 719 S E 2d 640, 645 (S C 2011) (emphasis added)

It is significant that the S C. Supreme Court used the word "courts", plural, thereby signifying its opinion's applicability to <u>all</u> state courts and not solely the South Carolina Supreme Court. Furthermore, in light of the S C. Supreme Court's holding in *Herron II*, this issue is "procedurally barred as a matter of state law and further consideration in light of *AT&T Mobility, LLC v. Concepcion* is unwarranted." *Herron v. Century BMW*, 395 S C 461, 470, 719 S E 2d 640, 645 (S.C. 2011) (emphasis added).

Second, Century BMW admitted in its briefing to the United State Supreme Court that the South Carolina Supreme Court's ruling means that Century BMW forfeited the ability to raise preemption. Defendant Century BMW's brief provides as follows

> In its most recent order, the South Carolina Supreme Court determined that petitioner had forfeited that argument by failing to raise it earlier.

Petition for Writ of Certiorari 13.

> The South Carolina Supreme Court's determination that petitioner had forfeited its preemption argument has no foundation in South Carolina law on the preservation arguments

Petition for Writ of Certiorari 14

> [The forfeiture rule] is inequitable because it would deprive [Century BMW] of a "reasonable opportunity" to assert its federal rights.

Petition for Writ of Certiorari. 15

> Similarly, Century BMW's Reply Brief to the United States Supreme Court said:
>
> In the decision below, the South Carolina Supreme Court determined that petitioner had forfeited its contention that the Federal Arbitration Act (FAA) preempts a state-law rule invalidating a provision of an arbitration agreement precluding the availability of class arbitration

Petition for Writ of Certiorari 13

> In the decision below, the South Carolina Supreme Court determined that petitioner had forfeited its contention that the Federal Arbitration Act (FAA) preempts a state-law rule invalidating a provision of an arbitration agreement precluding the availability of class arbitration.

Century BMW's Reply Brief to U S Supreme Court 1

> [T]here is no valid justification for the South Carolina Supreme Court's subsequent forfeiture determination—a determination that unjustly deprived [Century BMW] of a "reasonable opportunity" to assert its federal rights

Century BMW's Reply Brief to U S Supreme Court. 2.

Century BMW was correct; the South Carolina Supreme Court ruled that the Century BMW forfeited the ability to raise preemption, a position echoed by this Court.

INDISPENSABLE PARTY

Finally, I DENY Defendant's motion for judgment on the pleadings pursuant to Rules 12(b)(7) ("failure to join a party under Rule 19"), 12(c), and 12(h) SCRCP Michael Watts is not an indispensable party because judgment rendered in Michael Watts's absence would not prejudice him, nor those who are already parties. Moreover, Mr. Watts executed an assignment of any rights he may have had in this action, to his daughter, Christine Watts, the named plaintiff. Therefore, he has no rights adverse to his daughter, nor will he be prejudiced by a ruling in this case. For the same reason, there is no risk of a subsequent

duplicative claim by Mr Watts. Furthermore, this is not "the very rare" case where a person's absence warrants dismissal of the entire case *See* SCRCP 19(a) Note (Noting that "the number of cases in which there is truly an "indispensable party" in whose absence the court should not proceed are very rare.").

CONCLUSION

For the foregoing reasons, Defendant Century BMW's Motion for Judgment on the Pleadings for Failure to Join an Indispensable Party or, In the Alternative, to Compel Arbitration is DENIED

IT IS SO ORDERED!

Bamberg, SC
Dec 31, 2012

The Honorable Doyet A Early, III
Circuit Judge

Complex

STATE OF SOUTH CAROLINA
COUNTY OF ~~Aiken~~ GREENVILLE
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 -CP- 23-07156

Christine Watts
PLAINTIFF(S)

Sonic Automotive 2752 Laurens Rd , Greenville, Inc , d/b/a Century BMW
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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 _____

☐ **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

FILED-CLERK OF COUR
GREENVILLE CO S C
2013 MAR 11 P 1:
PAUL B WICKENSIMER

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court After consideration, I hereby deny this motion to reconsider.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case
Additional Information for the Clerk .

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

0136
Judge Code

Jan 24, 2013
Date

SCRCP Form 4C (12/2011)

Scanned

ENTERED COMPUTER

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of March, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of March, 2012 to attorneys of record or to parties (when appearing pro se) as follows

Brady Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

'F SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
ı OF AIKEN	)	
Heather Herron, Natalie Armstrong, and Alison Dannert individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants,	)	CIVIL ACTION COVERSHEET
vs.	)	06-CP-02-1230
CarMax Auto Superstores, Inc , et al Defendant(s)	)	

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10:10 Am
AIKEN COUNTY
CLERK OF COURT

(Please Print)
Submitted By: Brady R Thomas SC Bar #: 68304
Address: LEWIS & BABCOCK, LLP Telephone #: (803)771-8000
Post Office Box 11208 Fax #: (803)733-3534
Columbia, South Carolina 29211 Other
E-mail.BRT@lewisbabcock com

NOTE The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law This form is required for the use of the Clerk of Court for the purpose of docketing It must be filled out completely signed, and dated A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

[X] **JURY TRIAL** demanded in complaint [ ] NON-JURY TRIAL demanded in complaint
[ ] This case is subject to **ARBITRATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules
[X] This case is subject to **MEDIATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules
[ ] This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts
[ ] Construction (100)
[ ] Debt Collection (110)
[ ] Employment (120)
[ ] General (130)
[ ] Wrongful Breach (140)
[ ] Other (199)

Torts - Professional Malpractice
[ ] Dental Malpractice (200)
[ ] Legal Malpractice (210)
[ ] Medical Malpractice (220)
[ ] Other Malpractice (299)

Torts - Personal Injury
[ ] Assault/Slander Libel (300)
[ ] Conversion (310)
[ ] Motor Vehicle Accident (320)
[ ] Premises Liability (330)
[ ] Products Liability (340)
[ ] Other (399)

Real Property
[ ] Claim & Delivery (400)
[ ] Condemnation (410)
[ ] Foreclosure (420)
[ ] Mechanic's Lien (430)
[ ] Partition (440)
[ ] Possession (450)
[ ] Building Code Violation (460)
[ ] Other (499)

Inmate Petitions
[ ] PCR (500)
[ ] Sexual Predator (510)
[ ] Mandamus (520)
[ ] Habeas Corpus (530)
[ ] Other (599)

Judgments/Settlements
[ ] Death Settlement (700)
[ ] Foreign Judgment (710)
[ ] Magistrate's Judgment (720)
[ ] Minor Settlement (730)
[ ] Transcript Judgment (740)
[ ] Lis Pendens (750)
[ ] Other (799)

Administrative Law/Relief
[ ] Reinstate Driver License (800)
[ ] Judicial Review (810)
[ ] Relief (820)
[ ] Permanent Injunction (830)
[ ] Forfeiture (840)
[ ] Other (899)

Appeals
[ ] Arbitration (900)
[ ] Magistrate-Civil (910)
[ ] Magistrate-Criminal (920)
[ ] Municipal (930)
[ ] Probate Court (940)
[ ] SCDOT (950)
[ ] Worker's Comp (960)
[ ] Zoning Board (970)
[ ] Administrative Law Judge (980)
[ ] Public Service Commission (990)
[ ] Employment Security Comm (991)
[ ] Other (999)

Special/Complex/Other
[ ] Environmental (600)
[ ] Automobile Arb (610)
[ ] Medical (620)
[ ] Pharmaceuticals (630)
[ ] Unfair Trade Practices (640)
[ ] Out-of-State Depositions (650)
[X] Other (699) Declaratory Judgment

Submitting Party Signature: _____ Date: August 28, 2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S C Code Ann § 15-36-10 et seq

*FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**
** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT

You are required to take the following action(s):

1 The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list

2 The initial ADR conference must be held within 300 days after the filing of the action

3 Cases are exempt from ADR only upon the following grounds

- a Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
- b Cases which are appellate in nature such as appeals or writs of certiorari,
- c Post Conviction relief matters,
- d Contempt of Court proceedings,
- e Forfeiture proceedings brought by the State,
- f Cases involving mortgage foreclosures, and
- g Cases that have been submitted to mediation with a certified mediator prior to the filing of this action

4 Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded

Please Note: **You must comply with the Supreme Court Rules regarding ADR.**
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	
)	
)	Civil Action No · 06-CP-02-1230
Heather Herron, Natalie Armstrong,)	
Alison Dannert, Michael Ritz individually)	
and for the benefit of all car buyers whom)	
paid "administrative fees" as described)	
below to Defendants)	
)	
Plaintiffs,)	
v)	
)	
Defendant CarMax Auto Superstores, Inc ,)	
Defendant Dick Dyer & Associates, Inc ,)	
Defendant Dick Smith Motors, Inc ,)	
Defendant Galeana Chrysler-Jeep, Inc ,)	
Defendant Galeana Chrysler-Plymouth, Inc.,)	SUMMONS
Defendant Pulliam Motor Co., Defendant)	
Ben Satcher Motors, Inc , Defendant Dick)	(Jury Trial Demanded)
Smith Infiniti, Inc , Defendant Dick Smith)	
Nissan of Lexington, Inc , Defendant Dick)	
Smith Nissan, Inc , Defendant Land Rover)	
of Columbia, Defendant Toyota Center,)	
LLC, Defendant Stokes Automotive, Inc ,)	
Defendant Stokes Motors, Inc , Defendant)	
Stokes-Craven Automotive, Inc.,)	
Defendant Stokes Mazda, Inc , Defendant)	COPY
Palmetto Chevrolet Company, Inc.,)	ORIGINAL FILED
Defendant Palmetto Nissan, Inc ,)	
Defendant Palmetto Ford, Inc ,)	AUG 2 9 2006
Defendant Jones Ford, Inc , Defendant)	10:10 Am
Harold Arnold's Sentry Buick, Inc ,)	AIKEN COUNTY
Defendant J L Investments, LP,)	CLERK OF COURT
Defendant Rick Hendrick Chevrolet,)	
LP, Defendant Oak Tree, Inc , Defendant)	
Gene Reed Imports, Inc, Defendant)	
Hoover Jeep Chrysler, Inc , Defendant)	
Hoover Motors, Inc , Defendant)	
Hoover Chrysler-Dodge, Inc., Defendant)	
Strom Altman Dodge, Inc , Defendant)	
Baker Motor Company of Charleston, Inc ,)	

Defendant Miller Cadillac, Inc , Defendant)
Benson Chrysler-Plymouth, Inc. Defendant)
Benson Ford Mercury, Inc , Defendant)
Benson Cadillac-Nissan, Inc , Defendant)
Big "O" Dodge of Greenville, Inc.,)
Defendant Bradshaw Automotive Group, Inc.)
, Defendant Bradshaw Ford, LLC, Defendant)
Spartanburg Chrysler Jeep, Inc., Defendant)
Kia of Anderson, LLC, Defendant Toyota)
of Greenville, Inc., Defendant Toyota of)
Easley, Inc , Defendant Woodruff Chevrolet,)
Inc , Defendant Farrell Automotive, Inc.,)
Defendant Fairway Ford, Inc , Defendant)
Carlton Motorcars, Inc , Defendant Saturn)
of Greenville, Inc , Defendant Steve White)
Motors of South Carolina, Inc , Defendant)
D&D Motors, Inc , Defendant Burns)
Chrysler Dodge Jeep, LLC, Defendant)
Burns Chevrolet-Cadillac, Inc ,)
Defendant John Finger Motors, Inc)
and all motor vehicle dealers as defined in)
S C Code Ann. §56-15-10(h))
)
Defendants)
)

TO THE DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina, 29211, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint

(Signature Block on Next Page)

MICHAEL SPEARS, PA
Michael E Spears
Post Office 5806
Spartanburg, SC 29304
(864)583-3235

GEDNEY M HOWE, III, PA
Gedney M Howe, III
Post Office Box 1034
Charleston, SC 29402
(843)722-8048

RICHARD A. HARPOOTLIAN, PA
Richard A. Harpootlian
P O Box 1090
Columbia, SC 29202
(803)252-4848

LEWIS & BABCOCK, L L P
A Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
(803)771-8000

By _____
Attorneys for the Plaintiffs

August 28, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
)
Heather Herron, Natalie Armstrong,)
Alison Dannert, Michael Ritz individually)
and for the benefit of all car buyers whom)
paid "administrative fees" as described)
below to Defendants.)
)
Plaintiffs,)
v)
)
Defendant CarMax Auto Superstores, Inc ,)
Defendant Dick Dyer & Associates, Inc ,)
Defendant Dick Smith Motors, Inc.,)
Defendant Galeana Chrysler-Jeep, Inc ,)
Defendant Galeana Chrysler-Plymouth, Inc ,)
Defendant Pulliam Motor Co , Defendant)
Ben Satcher Motors, Inc , Defendant Dick)
Smith Infiniti, Inc , Defendant Dick Smith)
Nissan of Lexington, Inc , Defendant Dick)
Smith Nissan, Inc , Defendant Land Rover)
of Columbia, Defendant Toyota Center,)
LLC. Defendant Stokes Automotive, Inc ,)
Defendant Stokes Motors, Inc , Defendant)
Stokes-Craven Automotive, Inc ,)
Defendant Stokes Mazda, Inc , Defendant)
Palmetto Chevrolet Company, Inc.,)
Defendant Palmetto Nissan, Inc.,)
Defendant Palmetto Ford, Inc.,)
Defendant Jones Ford, Inc , Defendant)
Harold Arnold's Sentry Buick, Inc ,)
Defendant J L Investments, LP,)
Defendant Rick Hendrick Chevrolet,)
LP, Defendant Oak Tree, Inc , Defendant)
Gene Reed Imports, Inc, Defendant)
Hoover Jeep Chrysler, Inc , Defendant)
Hoover Motors, Inc , Defendant)
Hoover Chrysler-Dodge, Inc , Defendant)
Strom Altman Dodge, Inc , Defendant)
Baker Motor Company of Charleston, Inc ,)

IN THE COURT OF COMMON PLEAS

Civil Action No . 06-CP-02-1230

COMPLAINT

(Jury Trial Demanded)

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AIKEN COUNTY
CLERK OF COURT

Defendant Miller Cadillac, Inc , Defendant)
Benson Chrysler-Plymouth, Inc Defendant)
Benson Ford Mercury, Inc , Defendant)
Benson Cadillac-Nissan, Inc , Defendant)
Big "O" Dodge of Greenville, Inc ,)
Defendant Bradshaw Automotive Group, Inc)
, Defendant Bradshaw Ford, LLC, Defendant)
Spartanburg Chrysler Jeep, Inc , Defendant)
Kia of Anderson, LLC, Defendant Toyota)
of Greenville, Inc , Defendant Toyota of)
Easley, Inc , Defendant Woodruff Chevrolet,)
Inc , Defendant Farrell Automotive, Inc ,)
Defendant Fairway Ford, Inc , Defendant)
Carlton Motorcars, Inc , Defendant Saturn)
of Greenville, Inc , Defendant Steve White)
Motors of South Carolina, Inc , Defendant)
D&D Motors, Inc , Defendant Burns)
Chrysler Dodge Jeep, LLC, Defendant)
Burns Chevrolet-Cadillac, Inc ,)
Defendant John Finger Motors, Inc)
and all motor vehicle dealers as defined in)
S.C Code Ann §56-15-10(h))
)
Defendants)
)

Plaintiffs Heather Herron, Natalie Armstrong, Alison Dannert and Michael Ritz individually and pursuant to S C Code Ann §56-5-110 for the benefit of all others whom paid "administrative fees" (often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees")) to Defendants hereby complaining of Defendant CarMax Auto Superstores, Inc , Defendant Dick Dyer & Associates, Inc , Defendant Dick Smith Motors, Inc , Defendant Galeana Chrysler-Jeep, Inc , Defendant Galeana Chrysler-Plymouth, Inc , Defendant Pulliam Motor Co , Defendant Ben Satcher Motors, Inc , Defendant Dick Smith Infiniti, Inc , Defendant Dick Smith Nissan of Lexington, Inc , Defendant Dick Smith Nissan, Inc , Defendant Land Rover of Columbia,

Defendant Toyota Center, LLC, Defendant Stokes Automotive, Inc , Defendant Stokes Motors, Inc , Defendant Stokes-Craven Automotive, Inc , Defendant Stokes Mazda, Inc , Defendant Palmetto Chevrolet Company, Inc., Defendant Palmetto Nissan, Inc., Defendant Palmetto Ford, Inc , Defendant Jones Ford, Inc , Defendant Harold Arnold's Sentry Buick, Inc , Defendant J L Investments, LP, Defendant Rick Hendrick Chevrolet, LP, Defendant Oak Tree, Inc , Defendant Gene Reed Imports, Inc, Defendant Hoover Jeep Chrysler, Inc , Defendant Hoover Motors, Inc , Defendant Hoover Chrysler-Dodge, Inc , Defendant Strom Altman Dodge, Inc , Defendant Baker Motor Company of Charleston, Inc , Defendant Miller Cadillac, Inc Defendant Benson Chrysler-Plymouth, Inc. Defendant Benson Ford Mercury, Inc , Defendant Benson Cadillac-Nissan, Inc , Defendant Big "O" Dodge of Greenville, Inc , Defendant Bradshaw Automotive Group, Inc., Defendant Bradshaw Ford, LLC, Defendant Spartanburg Chrysler Jeep, Inc , Defendant Kia of Anderson, LLC, Defendant Toyota of Greenville, Inc , Defendant Toyota of Easley, Inc , Defendant Woodruff Chevrolet, Inc , Defendant Farrell Automotive, Inc , Defendant Fairway Ford, Inc , Defendant Carlton Motorcars, Inc., Defendant Saturn of Greenville, Inc , Defendant Steve White Motors of South Carolina, Inc , Defendant D&D Motors, Inc , Defendant Burns Chrysler Dodge Jeep, LLC, Defendant Burns Chevrolet-Cadillac, Inc , Defendant John Finger Motors, Inc (collectively "Defendants"), would respectfully show that:

PARTIES

1 Plaintiff Heather Herron is a citizen and resident of Richland County, South Carolina

2 Plaintiff Natalie Armstrong is a citizen and resident of Richland County, South Carolina

3 Plaintiff Alison Dannert is a citizen and resident of Spartanburg County, South Carolina.

4 Plaintiff Michael Ritz is a citizen and resident of Aiken County, South Carolina

5. Defendant CarMax Auto Superstores, Inc is a licensed motor vehicle dealer and corporation organized and existing under the laws of the State of Virginia with places of business in Richland County and Greenville County, South Carolina Defendant CarMax Auto Superstores, Inc

6. Defendant Dick Dyer & Associates, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina

7 Defendant Dick Smith Motors, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina

8 Defendant Galeana Chrysler-Jeep, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina

9 Defendant Galeana Chrysler-Plymouth, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

10 Defendant Pulliam Motor Co is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina

11 Defendant Ben Satcher Motors, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina

12. Defendant Dick Smith Infiniti, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina

13 Defendant Dick Smith Nissan of Lexington, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina

14 Defendant Dick Smith Nissan, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina

15 Defendant Land Rover of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina

16 Defendant Toyota Center, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina W. Columbia

17 Defendant Stokes Automotive, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

18 Defendant Stokes Motors, Inc is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

19 Defendant Stokes-Craven Automotive, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina

20 Defendant Stokes Mazda, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina

21 Defendant Palmetto Chevrolet Company, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina

22 Defendant Palmetto Nissan, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

23. Defendant Palmetto Ford, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

24 Defendant Jones Ford, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

25 Defendant Harold Arnold's Sentry Buick, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina

with its principal place of business in Charleston County, South Carolina

26 Defendant J L Investments, LP of Charleston is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

27 Defendant Rick Hendrick Chevrolet, LP is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

28 Defendant Oak Tree, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

29 Defendant Gene Reed Imports, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

30 Defendant Hoover Jeep Chrysler, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina

31 Defendant Hoover Motors, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina

32 Defendant Hoover Chrysler-Dodge, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina

33 Defendant Strom Altman Dodge, Inc is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

34 Defendant Baker Motor Company of Charleston, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

35. Defendant Miller Cadillac, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

36 Defendant Taylor Investments, Inc (d/b/a Taylor Toyota, Inc) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

37 Defendant Benson Chrysler-Plymouth, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

38 Defendant Benson Ford Mercury, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

39 Defendant Benson Cadillac-Nissan, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina

40 Defendant Big "O" Dodge of Greenville, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

41. Defendant Bradshaw Automotive Group, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

42 Defendant Bradshaw Ford, LLC is a licensed motor vehicle dealer and a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

43 Defendant Spartanburg Chrysler Jeep, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

44 Defendant Kia of Anderson, LLC is a licensed motor vehicle dealer and a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina

45 Defendant Toyota of Greenville, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

46 Defendant Toyota of Easley, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina

47 Defendant Woodruff Chevrolet, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina

48 Defendant Farrell Automotive, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Spartanburg County, South Carolina.

49 Defendant Fairway Ford, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

50 Defendant Carlton Motorcars, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

51 Defendant Saturn of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

52 Defendant Steve White Motors of South Carolina, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

53 Defendant D&D Motors, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina

54 Defendant Burns Chrysler Dodge Jeep, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina

55 Defendant Burns Chevrolet-Cadillac, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina

56 Defendant John Finger Motors, Inc is a licensed motor vehicle dealer and

a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

FACTS

57 Defendants have conspired together in a common scheme designed to deceive all car buyers (the term "car" as used herein includes new and used cars, trucks, sport utility vehicles and automobiles of all kinds) These actions amount to concerted consumer fraud

58 Each individual Defendant's conduct vis-a-vis' all consumers was the product of unfair and unconscionable business practices

59 The Defendants have resorted to deceptive practices in order to maintain the revenue streams of years past

60 Defendants have all engaged in a common practice of presenting car prices in a manner designed to mislead Defendants advertise and set a sticker price for cars but are deceptively adding a second fee (often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees")) in an effort to mislead car buyers This practice is a deceptive way to secretly artificially raise the sticker price

61 Defendants conduct is not unlike that found to be an unfair trade practice by an Ohio Court in *Motzer Dodge Jeep Eagle, Inc v Ohio Attorney General*, 642 N E 2d 20 (Oh Ct App 1994)

62 Defendants' placement of the "administrative fee" is deceptive in that it implies that the fee is separate and distinct from the general overhead that car buyers expect to be included within the sticker price for a car and the set fee is mandatory

63 The "administrative fees" are not separate and distinct from Defendants' general

overhead expected to be included in the overhead and are tricky and deceptive add-ons.

64 The "administrative fees" are presented to car buyers in an effort designed to mislead car buyers into believing the administrative fees are mandatory fees required to be paid on every car such as taxes and license fees.

65 The "administrative fees" are also charged in addition to advertised and/or list prices for cars.

66 The "administrative fees" are deliberately placed as separate line items on Defendants' invoices along with mandatory fees such as taxes, tags, and title. This implies that the "administrative fees" like the payment of taxes, fees for tags and fees for obtaining title are separate set fees and that there is no option but to pay this fee with every car purchase

67 Consequently, car buyers purchase cars based on the total sticker price and are misled into believing that any discount received is off the sticker price and that additional fees are a special mandatory fee

68 If a customer inquires about the fee, Defendants' sales people say that the "administrative fee" is a standard fee that has to be included on every vehicle

69 Plaintiff Heather Herron purchased a 2003 Land Rover SUV from Land Rover of Columbia.

70 Plaintiff Herron's sales invoice includes a separate line item for "Recording & Processing Fees " The "Recording & Processing Fees" line item is pre-printed and deceptively placed with fees for SC Sales Tax, Title, and License This Recording & Processing Fees is an "administrative fee" as described above

71 Plaintiff Alison Dannert purchased a Nissan Murano from Defendant CarMax Auto Superstores, Inc in Greenville, South Carolina

72. Plaintiff Alison Dannert's sales invoice includes a separate line item for Dealer Documentation/ Processing Fee This fee is pre-printed and deceptively placed with fees for tax, title and license. This Dealer Documentation/ Processing Fee is an "administrative fee" as described above.

73 Plaintiff Natalie Armstrong purchased a 2002 Jeep Liberty from Galeana Chrysler-Jeep, Inc

74 Defendant Galeana Chrysler-Jeep, Inc 's sales invoice includes a separate line item for Admin Fee This Admin. Fee is an "administrative fee" as described above

75 Plaintiff Michael Ritz purchased a Tacoma pickup truck from Defendant Taylor Investments, Inc (d/b/a Taylor Toyota, Inc)

76. Defendant Taylor Investments Inc 's sales invoice includes a separate line item for Administrative Serves Fee This Administrative Services Fee is an "administrative fee" as described above

77 Upon information and belief, Defendants each annually illegally make several hundred thousand dollars off the deceptive use and placement of the "administrative fee" line item and said illegal fees should be disgourged

FOR A FIRST CAUSE OF ACTION
(Violations of S.C Code Ann §56-15-10 *et seq*)

78 The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim

79 Defendants are motor vehicle dealers subject to Title 56 of the S C Code.

80 The Defendants deceptive use of "administrative fees" is arbitrary, in bad faith and unconscionable and in violation of S C Code Ann §56-15-40

81. The Defendants use and presentation of the administrative fees is designed to deceive and/or mislead car buyers

82 The Defendants conspired together to all apply similar administrative fees in an effort to cause damage to South Carolina car buyers

83. This suit is brought pursuant to S C Code Ann §56-15-110(2) for the benefit of the whole because the action is one of common or general interest to many persons and the parties are numerous and it is impracticable to bring them all before the Court

84 Accordingly, Plaintiffs are suing for the benefit of all South Carolina car buyers whom paid administrative fees to Defendants and against all motor vehicle dealers as defined in S C Code Ann §56-15-10(h)

85 Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants in the past four years have been injured by Defendants deceptive acts as described above.

86 As a result of the aforementioned conduct of Defendants, Plaintiffs are entitled to double actual damages, the cost of the suit and a reasonable attorney's fee pursuant to S C. Code Ann. §56-15-110(1).

87 Furthermore, the aforementioned conduct of Defendants was malicious Thus, Plaintiffs are entitled to punitive damages in the amount of three times the actual damages pursuant to S C. Code Ann §56-15-110(3)

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

88. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim

89 This cause of action seeks a declaratory judgment for the purposes of determining a question of actual controversy between all parties

90 Plaintiffs seek a determination of their rights and legal relations with the Defendants under S C Code Ann §56-15-10 *et seq*

91 Plaintiffs seek a determination of the following questions: Does Defendants charging of "administrative fees," and further acts as described above, violate S C Code Ann §56-15-10 *et seq.*

92 Plaintiffs seek a declaratory judgment from this Court that:

a A permanent injunction issue preventing Defendants from deceptively charging future customers with the administrative fees;

b Defendants be ordered to disgorge all fees collected from Plaintiffs and all car buyers whom paid administrative fees to Defendants,

WHEREFORE, Plaintiffs prays for judgment against all of the Defendants for actual and compensatory damages, for two times actual damages pursuant to Plaintiffs' first cause of action, for three times actual damages for punitive damages pursuant to Plaintiffs' first cause of action, for disgorgement of all administrative fees collected by Defendants pursuant to Plaintiffs' second cause of action, for a permanent injunction pursuant to Plaintiffs' second cause of action, together with attorneys' fees, prejudgment interest and the costs of this action, and for such other and further relief as this Court may deem just and proper

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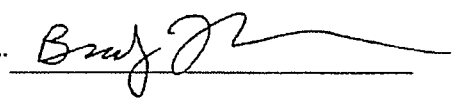
By: 

Attorneys for the Plaintiffs

August 28, 2006

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Heather Herron, Natalie Armstrong, and Alison Dannert individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants.

vs.

CarMax Auto Superstores, Inc . et al
Defendant(s)

CIVIL ACTION COVERSHEET

2006-CP-02-1230

COPY
ORIGINAL FILED
OCT 3 1 2006
8 30 Am
AIKEN COUNTY
CLERK OF COURT

(Please Print)
Submitted By: Brady R. Thomas
Address: LEWIS & BABCOCK, LLP
Post Office Box 11208
Columbia, South Carolina 29211

SC Bar #: 68304
Telephone #: (803)771-8000
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NOTE The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law This form is required for the use of the Clerk of Court for the purpose of docketing It must be filled out completely signed and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

If Action is Judgment/Settlement do not complete

[X] JURY TRIAL demanded in complaint. [ ] NON-JURY TRIAL demanded in complaint.
[ ] This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
[X] This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
[ ] This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts
[ ] Construction (100)
[ ] Debt Collection (110)
[ ] Employment (120)
[ ] General (130)
[ ] Wrongful Breach (140)
[ ] Other (199)

Torts - Professional Malpractice
[ ] Dental Malpractice (200)
[ ] Legal Malpractice (210)
[ ] Medical Malpractice (220)
[ ] Other Malpractice (299)

Torts - Personal Injury
[ ] Assault/Slander/Libel (300)
[ ] Conversion (310)
[ ] Motor Vehicle Accident (320)
[ ] Premises Liability (330)
[ ] Products Liability (340)
[ ] Other (399)

Real Property
[ ] Claim & Delivery (400)
[ ] Condemnation (410)
[ ] Foreclosure (420)
[ ] Mechanic's Lien (430)
[ ] Partition (440)
[ ] Possession (450)
[ ] Building Code Violation (460)
[ ] Other (499)

Inmate Petitions
[ ] PCR (500)
[ ] Sexual Predator (510)
[ ] Mandamus (520)
[ ] Habeas Corpus (530)
[ ] Other (599)

Judgments/Settlements
[ ] Death Settlement (700)
[ ] Foreign Judgment (710)
[ ] Magistrate's Judgment (720)
[ ] Minor Settlement (730)
[ ] Transcript Judgment (740)
[ ] Lis Pendens (750)
[ ] Other (799)

Administrative Law/Relief
[ ] Reinstate Driver License (800)
[ ] Judicial Review (810)
[ ] Relief (820)
[ ] Permanent Injunction (830)
[ ] Forfeiture (840)
[ ] Other (899)

Appeals
[ ] Arbitration (900)
[ ] Magistrate-Civil (910)
[ ] Magistrate-Criminal (920)
[ ] Municipal (930)
[ ] Probate Court (940)
[ ] SCDOT (950)
[ ] Worker's Comp (960)
[ ] Zoning Board (970)
[ ] Administrative Law Judge (980)
[ ] Public Service Commission (990)
[ ] Employment Security Comm (991)
[ ] Other (999)

Special/Complex/Other
[ ] Environmental (600)
[ ] Automobile Arb. (610)
[ ] Medical (620)
[ ] Other (699)
[ ] Pharmaceuticals (630)
[ ] Unfair Trade Practices (640)
[ ] Out-of-State Depositions (650)

Submitting Party Signature: Brady R. Thomas **Date:** 10/28/06

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S C Code Ann. 15-36-10 et seq

***FOR MANDATED ADR COUNTIES ONLY**

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**
** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action

3 Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Cases which are appellate in nature such as appeals or writs of certiorari;

   c Post Conviction relief matters,

   d. Contempt of Court proceedings;

   e Forfeiture proceedings brought by the State:

   f. Cases involving mortgage foreclosures; and

   g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
HEATHER HERRON, NATALIE ARMSTRONG, ALISON DANNERT, MICHAEL RITZ, JULIE FREEMAN, CHRISTINE WATTS, MICHAEL BLEASE, MICHAEL WATTS, INDIVIDUALLY AND FOR THE BENEFIT OF ALL CAR BUYERS WHOM PAID "ADMINISTRATIVE FEES" AS DESCRIBED BELOW TO DEFENDANTS.	)	CIVIL ACTION NO.: 06-CP-02-1230
Plaintiffs,	)	
CARMAX AUTO SUPERSTORES, INC.; DICK DYER & ASSOCIATES, INC., DICK SMITH MOTORS, INC.; GALEANA CHRYSLER-JEEP, INC.; GALEANA CHRYSLER PLYMOUTH, INC.; PULLIAM MOTOR CO.; DICK SMITH INFINITI, INC.; DICK SMITH NISSAN OF LEXINGTON, INC.; DICK SMITH NISSAN, INC ;OVERLAND, INC. D/B/A LAND ROVER OF COLUMBIA; TOYOTA CENTER, LLC, STOKES AUTOMOTIVE, INC.; STOKES MOTORS, INC.; STOKES-CRAVEN AUTOMOTIVE, INC.; STOKES MAZDA, INC.; PALMETTO CHEVROLET COMPANY, INC.; PALMETTO NISSAN, INC.; PALMETTO FORD, INC.; JONES FORD, INC., HAROLD ARNOLD'S SENTRY BUICK, INC.; J. L. H. INVESTMENTS, LP; RICK HENDRICK CHEVROLET, LP; RICK HENDRICK HONDA CARS, CO.; RICK HENDRICK, JEEP EAGLE, L P.; OAK TREE, INC. D/B/A WEST ASHLEY TOYOTA, INC.; GENE	)	SUMMONS (Jury Trial Demanded)

REED IMPORTS, INC., GENE REED TOYOTA, INC., HOOVER JEEP CHRYSLER, INC.; HOOVER MOTORS, INC.; HOOVER CHRYSLER-DODGE, INC.; STROM ALTMAN DODGE, INC.; BAKER MOTOR COMPANY OF CHARLESTON, INC.; MILLER CADILLAC, INC.; TAYLOR INVESTMENTS, INC. D/B/A TAYLOR TOYOTA; BENSON CHRYSLER-PLYMOUTH, INC.; BENSON FORD MERCURY, INC ; BENSON CADILLAC-NISSAN, INC ; BIG "O" DODGE OF GREENVILLE, INC.; BRADSHAW AUTOMOTIVE GROUP, INC.; SPARTANBURG CHRYSLER JEEP, INC.; KIA OF ANDERSON, LLC; TOYOTA OF GREENVILLE, INC., TOYOTA OF EASLEY, INC., FARRELL AUTOMOTIVE, INC.; FAIRWAY FORD, INC., SATURN OF GREENVILLE INC.; STEVE WHITE MOTORS OF SOUTH CAROLINA. INC.;D&D MOTORS, INC., BURNS CHRYSLER DODGE JEEP, LLC; JOHN FINGER MOTORS, INC.; SONIC AUTOMOTIVE, INC. D/B/A CENTURY BMW; BOB RICHARDS NISSAN; DICK SMITH CHRYSLER-JEEP; GOODMAN CHEVROLET, INC.; HENNA CHEVROLET-OLDS-CADILLAC, LLC; HONDA CARS OF AIKEN; JOHNSON MOTOR COMPANY OF SC; SATCHER FORD-LINCOLN-MERCURY; SANDERS TRUCK SALES; CAROLINA FORD; CAROLINA INTERNATIONAL TRUCKS OF ANDERSON; CLINKSCALES CHEVROLET INC.; FAIRWAY FORD-MAZDA; PIEDMONT CHRYSLER-JEEP; PIEDMONT HONDA; PLANET FORD; RALPH HAYES TOYOTA, INC. ; TOM HUNTER PONTIAC-BUICK-GMC, LLC; UPSTATE AUTOMOTIVE (CHEVROLET-CADILLAC); UPSTATE AUTOMOTIVE (ISUZU-KIA); UPSTATE AUTOMOTIVE (MITSUBISHI);

UPSTATE AUTOMOTIVE (NISSAN);)
GIBBES FORD, INC.; ZEIGLER)
CHEVROLET, INC.; B & B FORD, INC.;)
WHITTLE MOTOR COMPANY, INC.;)
BUTLER CHRYSLER-DODGE-JEEP;)
CAROLINA VOLVO; HILTON HEAD)
AUTOMOTIVE LLC; HILTON HEAD)
HONDA; LAND ROVER HILTON HEAD;)
MODERN CLASSIC MOTORS; O. C.)
WELCH FORD-LINCOLN-MERCURY;)
PARKS AUTOMOTIVE GROUP; PARKS)
CADILLAC; STOKES HONDA CARS OF)
BEAUFORT, INC.; STOKES MITSUBISHI,)
STOKES-BROWN TOYOTA; DICK SMITH)
CHEVROLET, INC.; HOOVER)
JEEP-CHRYSLER, INC.; HOOVER)
MOTORS, INC.; MCELVEEN)
PONTIAC-BUICK-GMC, INC.; ALTMAN)
LINCOLN-MERCURY-HYUNDAI;)
CAROLINA INTERNATIONAL)
TRUCKS-CHARLESTON; CHARLESTON)
MITSUBISHI; HENDRICK HONDA OF)
CHARLESTON; HOOVER)
CHRYSLER-JEEP, INC.; HUGHES)
MOTORS, INC.; KIA COUNTRY; LEXUS OF)
CHARLESTON; LOW COUNTRY MAZDA;)
LOW COUNTRY VOLKSWAGEN;)
MARATHON CHEVROLET OF N)
CHARLESTON; MARCHANT)
CHEVROLET, INC.; MCDANIELS ACURA)
OF CHARLESTON ; MCELVEEN)
CHEVROLET, LLC; MORRIS NISSAN;)
NORTHSIDE NISSAN; RAVENEL FORD;)
INC.; RICK HENDRICK DODGE, RICK)
HENDRICK'S IMPORT SHOWPLACE;)
SATURN OF CHARLESTON; STOKES)
HONDA NORTH CHARLESTON; STOKES)
ISUZU-KIA-SUBARU; STOKES)
VOLKSWAGEN; VICTORY HYUNDAI OF)
CHARLESTON, BURNS)
CHEVROLET-CHRYSLER-DODGE-JEEP,)
INC.; JOE GIBSON SUZUKI; ROGER)
SHIFLETT FORD, INC.; WALLACE WHITE)

NOURSE CHESTER AUTOMOTIVE;)
NOURSE MOTORS OF CHESTER LLC;)
BENNETT MOTOR CO., INC.; JOHN)
DONOGHUE FORD, INC.; LAWRENCE)
CHEVROLET-PONTIAC; PROTHRO)
CHEVROLET-BUICK-PONTIAC-GMC)
TRUCK; STOKES-CRAVEN)
CHRYSLER-JEEP-DODGE;)
STOKES-CRAVEN FORD; PETERS)
PONTIAC BUICK-GMC; RIZER)
CHEVROLET CO , INC ; WALTERBORO)
MOTOR SALES CO ; ACTION)
FORD-MERCURY, INC ; JOHN NEWSOME,)
INC.; RACEWAY)
CHRYSLER-JEEP-DODGE, INC.;)
RACEWAY FORD; CAROLINA)
INTERNATIONAL TRUCKS LLC;)
MARATHON CHEVROLET;)
SUMMERVILLE FORD-MERCURY, INC.;)
HERLONG PONTIAC-CHEVROLET-BUICK,)
INC.; JIM SATCHER, INC.; YONCE)
FORD-MERCURY, INC.; WILSON)
CHEVROLET-OLDSMOBILE, INC.;)
WILSON CHRYSLER-DODGE-JEEP, INC.;)
AUDDIE BROWN MITSUBISHI; CALE)
YARBOROUGH HONDA, INC ; CAROLINA)
INTERNATIONAL TRUCKS; EFIRD)
CHRYSLER-JEEP-DODGE, INC.;)
FLORENCE MACK, INC.; FLORENCE)
TOYOTA; FLOYD MOTOR CO , INC.;)
HORNE FORD, INC.; KIA OF FLORENCE;)
KING CADILLAC-BUICK-PONTIAC-GMC)
TRUCK, INC.; LAKE CITY)
FORD-MERCURY, LLC; PETERBILT OF)
FLORENCE; RACEWAY)
CHEVROLET-PONTIAC-BUICK-GMC,)
SATURN OF FLORENCE; SERVICE)
MOTOR COMPANY, INC.; COASTAL)
NISSAN-CHEVROLET-CADILLAC;)
HEMINGWAY MOTOR CO., INC.;)
PARRISH MOTOR CO., INC.; TIDELANDS)
CHRYSLER DODGE; TIDELANDS)
)

FORD-LINCOLN-MERCURY; BMS, INC.)
D/B/A BREAKAWAY HONDA;)
BRADSHAW ACURA, BROCKMAN)
AUTOMOTIVE; CAROLINA)
INTERNATIONAL TRUCKS-GREENVILLE;)
CHEROKEE KENWORTH, INC ;)
CHRISTOPHER TRUCKS, INC.; CROWN)
JEEP-CHRYSLER; CROWN NISSAN)
GREENVILLE; DICK SMITH MITSUBISHI;)
FAIRWAY FORD, INC.; FAIRWAY)
MOTORCARS LLC; GEORGE COLEMAN)
FORD, INC.; TRAVELERS REST;)
HERITAGE LINCOLN-MERCURY; JOHN)
FINGER MAZDA; KEVIN WHITAKER)
CHEVROLET-CADILLAC; KEVIN)
WHITAKER CHEVROLET, INC.;)
SIMPSONVILLE CHEVROLET, INC.;)
SITTON BUICK-PONTIAC-GMC TRUCK,)
INC.; STEVE WHITE MOTORS OF SC, INC.,)
STOKES-TRAINOR FORD; C. THOMPSON)
AUTOMOTIVE; GARY RUSS)
CHEVROLET-CADILLAC, INC ; GEORGE)
BALLENTINE FORD-LINCOLN-)
MERCURY; QUALITY CHRYSLER CITY;)
BRUNSON AUTOMOBILE SALES, INC.;)
TISON MOTOR CO , INC ; ADDY'S)
HARBOR DODGE; ATLANTIC)
CHRYSLER-JEEP-DODGE; ATLANTIC)
FORD, INC.; BEACH)
FORD-LINCOLN-MERCURY-VOLVO, INC.;)
BELL & BELL PONTIAC-GMC, INC.;)
CONWAY CHRYSLER-DODGE-JEEP, INC.;)
CONWAY FORD, INC.; DIAMOND)
AUTOMOTIVE GROUP, INC.; EAST)
COAST HONDA; EAST COAST)
VOLKSWAGEN; FOWLER MOTORS;)
GRAND STRAND NISSAN, INC.;)
HADWIN-WHITE)
PONTIAC-BUICK-GMC-SUBARU; HYATT)
BUICK-GMC TRUCKS; JUD KUHN)
CHEVROLET; KIA OF MYRTLE BEACH;)
LAY-FISHER CHEVROLET, INC.; MYRTLE)
BEACH CHEVROLET, INC.; MYRTLE)
BEACH CHRYSLER-JEEP, INC ; MYRTLE)

HYUNDAI-ISUZU; MYRTLE BEACH)
SUZUKI; SPARKS TOYOTA, INC., SUN)
COAST MAZDA-MITSUBISHI; SUZUKI)
OUTLET OF MYRTLE BEACH SC; HILTON)
HEAD CHRYSLER JEEP DODGE; HILTON)
HEAD HYUNDAI; KEY INFINITI LLC; KEY)
MAZDA; KEY NISSAN, LLC; PORSCHE OF)
HILTON HEAD; PRESTIGE MOTORCARS;)
LLC DBA HILTON HEAD JAGUAR; DICK)
SMITH)
PONTIAC-CHRYSLER-DODGE-GMC-JEEP;)
HERITAGE CHEVROLET-BUICK, INC.;)
JAMES ERVIN TOYOTA; REDFEARN)
MOTOR CO., INC.; BURNS)
FORD-MERCURY, INC.; ELROD)
PONTIAC-BUICK-GMC, INC.; H & H)
CHEVROLET, INC.; LANCASTER)
DODGE-CHRYSLER-JEEP; LANCASTER)
MOTOR CO.; BALDWIN)
PONTIAC-BUICK-GMC , INC.; COOPER)
FORD, INC.; FIRMIN FORD, INC.; JOHN)
FOSTER MOTORS, INC.; LYNN COOPER,)
INC. ; SMITH CHEVROLET-CADILLAC,)
INC. ; ADDY DODGE, INC.; CHEROKEE)
KENWORTH; HAMPTON AUTOMOTIVE,)
INC.; MIDLANDS HONDA; SATURN OF)
COLUMBIA, INC.; STIVERS)
CHRYSLER-JEEP, INC.; TWIN CITY)
MOTOR CO., INC.; MULLINS MOTORS,)
INC.; PEE DEE FORD LINCOLN MERCURY)
INC.; GRIFFIN-FLYTHE CHEVROLET,)
INC.; MEGGS)
FORD-CHRYSLER-DODGE-JEEP;)
CROMLEY'S INC.; JEFFREY DEAN)
CHRYSLER DODGE JEEP GMC, KIRBY)
SCHRADER; STOKES-TRAINOR)
CHEVROLET-OLD-PONTIAC-CADILLAC-B)
UICK; BOBBY WOOD)
CHEVROLET-PONTIAC; EDWARDS AUTO)
SALES, INC.; LAKE KEOWEE)
CHRYSLER-DODGE LLC; LEADER FORD;)
PERFORMANCE)
CHEVROLET-BUICK-GMC; BOB)

RICHARDS AUTOMOTIVE, LLC; FAIREY)
CHEVROLET-CADILLAC; ORANGEBURG)
CHRYSLER-DODGE-NISSAN, INC.;)
ORANGEBURG FORD, SUPERIOR)
HONDA, SUPERIOR MOTORS, INC.;)
BENSON FORD-MERCURY, INC.; CRANE)
CHEVROLET-CADILLAC, INC.; EASLEY)
MITSUBISHI; EASLEY)
PONTIAC-BUICK-GMC TRUCK, INC.;)
HENDRICK HONDA; NORRIS FORD, INC.;)
TINSLEY CHEVROLET CO , INC.; BOB)
BENNETT FORD, INC.; CAPITOL)
CHEVROLET, CAPITOL HYUNDAI,)
CAROLINA INTERNATIONAL)
TRUCKS-COLA, COLUMBIA)
FREIGHTLINER, LLC; DODGELAND OF)
COLUMBIA, HANCOCK MOTOR CO.;)
HANCOCK VOLKSWAGEN; HONDA CARS)
OF COLUMBIA, JIM MOORE CADILLAC,)
INC.; MCDANIELS ACURA-PORSCHE;)
SHEALY'S TRUCK CENTER-COLA;)
STIVERS LINCOLN-MERCURY; WRAY)
AUTOMOTIVE, INC.; CROMLEY'S INC.;)
SALUDA MOTOR SALES, INC.; DAVE)
EDWARDS TOYOTA, DICK BROOKS)
HONDA, FOOTHILLS FORD OF CHESNE;)
JOE GIBSON MITSUBISHI; KIA OF GREER;)
SATURN OF SPARTANBURG; SHEALY'S)
TRUCK CENTER; SPARTANBURG)
DODGE, INC.; VIC BAILEY FORD, INC.;)
VIC BAILEY HONDA; VIC BAILEY)
LINCOLN-MERCURY, INC.; VIC BAILEY)
VOLKSWAGEN; WAKEFIELD)
BUICK-PONTIAC-GMC, INC.; BOYLE)
MOTOR COMPANY; BOYLE TOYOTA,)
INC.; GOODWIN BUICK-JEEP; GOODWIN)
HONDA-MITSUBISHI-VW; JONES)
CHEVROLET CO.; JONES NISSAN, INC.;)
JONES PONTIAC-GMC TRUCK, INC.;)
MCLAUGHLIN MOTORS, INC.; SUMTER)
CHRYSLER-PLYMOUTH-DODGE;)
)
)

UNION CHRYSLER-DODGE-JEEP, INC.; BIG COUNTRY CHEVROLET, INC ; HASELDEN BROTHERS, INC ; LONGSTREET CHEVROLET-BUICK-CADILLAC-GMC; CAROLINA MAZDA; CLINTON FAMILY FORD-LINCOLN-MERCURY; DICKERSON MOTOR CO., INC ; DUNLAP-JOHNSON CHEVROLET CO., INC., FORT MILL FORD, INC.; FRED CALDWELL'S CLOVER CHEVROLET; GOOD MOTOR COMPANY; GRIFFIN MITSUBISHI; GRIFFIN PONTIAC-BUICK-GMC; HARRELSON NISSAN, HARRELSON TOYOTA; HONDA CARS OF ROCK HILL; RICK FORD, INC.; STATELINE CHRYSLER JEEP DODGE INC.; AND AGAINST ALL MOTOR VEHICLE DEALERS OWNED OR CONTROLLED BY DEFENDANTS AS DEFINED IN S.C. CODE ANN. §56-15-10(H).	)

TO: THE NEW NAMED DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina, 29211, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

(Signature Block on Next Page)

MICHAEL SPEARS, PA
Michael E. Spears
Post Office 5806
Spartanburg, SC 29304
(864)583-3235

GEDNEY M HOWE, III, PA
Gedney M. Howe, III
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LEWIS & BABCOCK, L.L.P.
A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
(803)771-8000

By: _____
Attorneys for the Plaintiffs

October 28, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
HEATHER HERRON, NATALIE ARMSTRONG, ALISON DANNERT, MICHAEL RITZ, JULIE FREEMAN, CHRISTINE WATTS, MICHAEL BLEASE, MICHAEL WATTS, INDIVIDUALLY AND FOR THE BENEFIT OF ALL CAR BUYERS WHOM PAID "ADMINISTRATIVE FEES" AS DESCRIBED BELOW TO DEFENDANTS.	)	CIVIL ACTION NO.: 06-CP-02-1230
Plaintiffs,	)	
CARMAX AUTO SUPERSTORES, INC.; DICK DYER & ASSOCIATES, INC., DICK SMITH MOTORS, INC.; GALEANA CHRYSLER-JEEP, INC.; GALEANA CHRYSLER PLYMOUTH, INC.; PULLIAM MOTOR CO.; DICK SMITH INFINITI, INC.; DICK SMITH NISSAN OF LEXINGTON, INC.; DICK SMITH NISSAN, INC.;OVERLAND, INC. D/B/A LAND ROVER OF COLUMBIA; TOYOTA CENTER, LLC; STOKES AUTOMOTIVE, INC.; STOKES MOTORS, INC.; STOKES-CRAVEN AUTOMOTIVE, INC.; STOKES MAZDA, INC.; PALMETTO CHEVROLET COMPANY, INC.; PALMETTO NISSAN, INC.; PALMETTO FORD, INC.; JONES FORD, INC., HAROLD ARNOLD'S SENTRY BUICK, INC.; J. L. H. INVESTMENTS, LP; RICK HENDRICK CHEVROLET, LP; RICK HENDRICK HONDA CARS, CO.; RICK HENDRICK, JEEP EAGLE, L.P.; OAK TREE, INC. D/B/A WEST ASHLEY TOYOTA, INC.; GENE	)	**FIRST AMENDED COMPLAINT** (Jury Trial Demanded)

REED IMPORTS, INC.; GENE REED)
TOYOTA, INC., HOOVER JEEP)
CHRYSLER, INC ; HOOVER MOTORS,)
INC.; HOOVER CHRYSLER-DODGE, INC.;)
STROM ALTMAN DODGE, INC.; BAKER)
MOTOR COMPANY OF CHARLESTON,)
INC.; MILLER CADILLAC, INC., TAYLOR)
INVESTMENTS, INC. D/B/A TAYLOR)
TOYOTA; BENSON CHRYSLER-)
PLYMOUTH, INC.; BENSON FORD)
MERCURY, INC.; BENSON CADILLAC-)
NISSAN, INC.; BIG "O" DODGE OF)
GREENVILLE, INC.; BRADSHAW)
AUTOMOTIVE GROUP, INC.;)
SPARTANBURG CHRYSLER JEEP, INC.;)
KIA OF ANDERSON, LLC; TOYOTA OF)
GREENVILLE, INC., TOYOTA OF EASLEY,)
INC., FARRELL AUTOMOTIVE, INC.;)
FAIRWAY FORD, INC.; SATURN OF)
GREENVILLE INC.; STEVE WHITE)
MOTORS OF SOUTH CAROLINA,)
INC.;D&D MOTORS, INC.; BURNS)
CHRYSLER DODGE JEEP, LLC; JOHN)
FINGER MOTORS, INC., SONIC)
AUTOMOTIVE, INC. D/B/A CENTURY)
BMW; BOB RICHARDS NISSAN; DICK)
SMITH CHRYSLER-JEEP; GOODMAN)
CHEVROLET, INC.; HENNA)
CHEVROLET-OLDS-CADILLAC, LLC;)
HONDA CARS OF AIKEN; JOHNSON)
MOTOR COMPANY OF SC; SANDERS)
TRUCK SALES; CAROLINA FORD;)
CAROLINA INTERNATIONAL TRUCKS OF)
ANDERSON; CLINKSCALES CHEVROLET)
INC.; FAIRWAY FORD-MAZDA;)
PIEDMONT CHRYSLER-JEEP; PIEDMONT)
HONDA; PLANET FORD; RALPH HAYES)
TOYOTA, INC. ; TOM HUNTER)
PONTIAC-BUICK-GMC, LLC; UPSTATE)
AUTOMOTIVE (CHEVROLET-CADILLAC);)
UPSTATE AUTOMOTIVE (ISUZU-KIA);)
UPSTATE AUTOMOTIVE (MITSUBISHI);

UPSTATE AUTOMOTIVE (NISSAN); GIBBES FORD, INC.; ZEIGLER CHEVROLET, INC.; B & B FORD, INC.; WHITTLE MOTOR COMPANY, INC., BUTLER CHRYSLER-DODGE-JEEP; CAROLINA VOLVO; HILTON HEAD AUTOMOTIVE LLC; HILTON HEAD HONDA; LAND ROVER HILTON HEAD; MODERN CLASSIC MOTORS; O. C. WELCH FORD-LINCOLN-MERCURY; PARKS AUTOMOTIVE GROUP; PARKS CADILLAC; STOKES HONDA CARS OF BEAUFORT, INC.; STOKES MITSUBISHI; STOKES-BROWN TOYOTA; DICK SMITH CHEVROLET, INC.; HOOVER JEEP-CHRYSLER, INC.; HOOVER MOTORS, INC.; MCELVEEN PONTIAC-BUICK-GMC, INC., ALTMAN LINCOLN-MERCURY-HYUNDAI; CAROLINA INTERNATIONAL TRUCKS-CHARLESTON; CHARLESTON MITSUBISHI; HENDRICK HONDA OF CHARLESTON; HOOVER CHRYSLER-JEEP, INC.; HUGHES MOTORS, INC.; KIA COUNTRY; LEXUS OF CHARLESTON; LOW COUNTRY MAZDA; LOW COUNTRY VOLKSWAGEN; MARATHON CHEVROLET OF N CHARLESTON; MARCHANT CHEVROLET, INC.; MCDANIELS ACURA OF CHARLESTON ; MCELVEEN CHEVROLET, LLC; MORRIS NISSAN; NORTHSIDE NISSAN; RAVENEL FORD; INC.; RICK HENDRICK DODGE; RICK HENDRICK'S IMPORT SHOWPLACE; SATURN OF CHARLESTON; STOKES HONDA NORTH CHARLESTON; STOKES ISUZU-KIA-SUBARU; STOKES VOLKSWAGEN; VICTORY HYUNDAI OF CHARLESTON; BURNS CHEVROLET-CHRYSLER-DODGE-JEEP, INC.; JOE GIBSON SUZUKI; ROGER SHIFLETT FORD, INC.; WALLACE WHITE	)))

PONTIAC-BUICK-GMC; NOURSE)
CHESTER AUTOMOTIVE; NOURSE)
MOTORS OF CHESTER LLC; BENNETT)
MOTOR CO., INC.; JOHN DONOGHUE)
FORD, INC.; LAWRENCE)
CHEVROLET-PONTIAC; PROTHRO)
CHEVROLET-BUICK-PONTIAC-GMC)
TRUCK; STOKES-CRAVEN)
CHRYSLER-JEEP-DODGE;)
STOKES-CRAVEN FORD; PETERS)
PONTIAC BUICK-GMC; RIZER)
CHEVROLET CO., INC.; WALTERBORO)
MOTOR SALES CO.; ACTION)
FORD-MERCURY, INC.; JOHN NEWSOME,)
INC.; RACEWAY)
CHRYSLER-JEEP-DODGE, INC.;)
RACEWAY FORD; CAROLINA)
INTERNATIONAL TRUCKS LLC;)
MARATHON CHEVROLET;)
SUMMERVILLE FORD-MERCURY, INC.;)
HERLONG PONTIAC-CHEVROLET-BUICK,)
INC.; JIM SATCHER, INC.; YONCE)
FORD-MERCURY, INC ; WILSON)
CHEVROLET-OLDSMOBILE, INC.;)
WILSON CHRYSLER-DODGE-JEEP, INC.;)
AUDDIE BROWN MITSUBISHI; CALE)
YARBOROUGH HONDA, INC.; CAROLINA)
INTERNATIONAL TRUCKS FLORENCE;)
EFIRD CHRYSLER-JEEP-DODGE, INC.;)
FLORENCE MACK, INC.; FLORENCE)
TOYOTA; FLOYD MOTOR CO., INC.;)
HORNE FORD, INC.; KIA OF FLORENCE;)
KING CADILLAC-BUICK-PONTIAC-GMC)
TRUCK, INC.; LAKE CITY)
FORD-MERCURY, LLC; PETERBILT OF)
FLORENCE; RACEWAY)
CHEVROLET-PONTIAC-BUICK-GMC;)
SATURN OF FLORENCE; SERVICE)
MOTOR COMPANY, INC.; COASTAL)
NISSAN-CHEVROLET-CADILLAC;)
HEMINGWAY MOTOR CO., INC.;)
PARRISH MOTOR CO., INC.; TIDELANDS)
CHRYSLER DODGE; TIDELANDS)

FORD-LINCOLN-MERCURY; BMS, INC.)
D/B/A BREAKAWAY HONDA;)
BRADSHAW ACURA; BROCKMAN)
AUTOMOTIVE; CAROLINA)
INTERNATIONAL TRUCKS-GREENVILLE;)
CHEROKEE KENWORTH, INC.;)
CHRISTOPHER TRUCKS, INC.; CROWN)
JEEP-CHRYSLER; CROWN NISSAN)
GREENVILLE; DICK SMITH MITSUBISHI;)
FAIRWAY FORD, INC ; FAIRWAY)
MOTORCARS LLC; GEORGE COLEMAN)
FORD, INC.; HERITAGE)
LINCOLN-MERCURY; JOHN FINGER)
MAZDA; KEVIN WHITAKER)
CHEVROLET-CADILLAC; KEVIN)
WHITAKER CHEVROLET, INC.;)
SIMPSONVILLE CHEVROLET, INC.;)
SITTON BUICK-PONTIAC-GMC TRUCK,)
INC.; STOKES-TRAINOR FORD; C.)
THOMPSON AUTOMOTIVE; GARY RUSS)
CHEVROLET-CADILLAC, INC.; GEORGE)
BALLENTINE FORD-LINCOLN-)
MERCURY; QUALITY CHRYSLER CITY;)
BRUNSON AUTOMOBILE SALES, INC.;)
TISON MOTOR CO., INC.; ADDY'S)
HARBOR DODGE; ATLANTIC)
CHRYSLER-JEEP-DODGE; ATLANTIC)
FORD, INC ; BEACH)
FORD-LINCOLN-MERCURY-VOLVO, INC.;)
BELL & BELL PONTIAC-GMC, INC.;)
CONWAY CHRYSLER-DODGE-JEEP, INC.;)
CONWAY FORD, INC.; DIAMOND)
AUTOMOTIVE GROUP, INC.; EAST)
COAST HONDA; EAST COAST)
VOLKSWAGEN; FOWLER MOTORS;)
GRAND STRAND NISSAN, INC.;)
HADWIN-WHITE)
PONTIAC-BUICK-GMC-SUBARU; HYATT)
BUICK-GMC TRUCKS; JUD KUHN)
CHEVROLET; KIA OF MYRTLE BEACH;)
LAY-FISHER CHEVROLET, INC.; MYRTLE)
BEACH CHEVROLET, INC.; MYRTLE)
BEACH CHRYSLER-JEEP, INC.; MYRTLE)
BEACH)

HYUNDAI-ISUZU; MYRTLE BEACH)
SUZUKI; SPARKS TOYOTA, INC.; SUN)
COAST MAZDA-MITSUBISHI; SUZUKI)
OUTLET OF MYRTLE BEACH SC; HILTON)
HEAD CHRYSLER JEEP DODGE; HILTON)
HEAD HYUNDAI; KEY INFINITI LLC; KEY)
MAZDA; KEY NISSAN, LLC; PORSCHE OF)
HILTON HEAD; PRESTIGE MOTORCARS;)
LLC DBA HILTON HEAD JAGUAR; DICK)
SMITH)
PONTIAC-CHRYSLER-DODGE-GMC-JEEP;)
HERITAGE CHEVROLET-BUICK, INC.;)
JAMES ERVIN TOYOTA; REDFEARN)
MOTOR CO., INC.; BURNS)
FORD-MERCURY, INC ; ELROD)
PONTIAC-BUICK-GMC, INC.; H & H)
CHEVROLET, INC.; LANCASTER)
DODGE-CHRYSLER-JEEP; LANCASTER)
MOTOR CO.; BALDWIN)
PONTIAC-BUICK-GMC , INC.; COOPER)
FORD, INC.; FIRMIN FORD, INC.; JOHN)
FOSTER MOTORS, INC.; LYNN COOPER,)
INC. ; SMITH CHEVROLET-CADILLAC,)
INC. ; ADDY DODGE, INC.; CHEROKEE)
KENWORTH; HAMPTON AUTOMOTIVE,)
INC.; MIDLANDS HONDA; SATURN OF)
COLUMBIA, INC.; STIVERS)
CHRYSLER-JEEP, INC.; TWIN CITY)
MOTOR CO., INC.; MULLINS MOTORS,)
INC.; PEE DEE FORD LINCOLN MERCURY)
INC.; GRIFFIN-FLYTHE CHEVROLET,)
INC.; MEGGS)
FORD-CHRYSLER-DODGE-JEEP;)
CROMLEY'S INC.; JEFFREY DEAN)
CHRYSLER DODGE JEEP GMC; KIRBY)
SCHRADER; STOKES-TRAINOR)
CHEVROLET-OLD-PONTIAC-CADILLAC-B)
UICK; BOBBY WOOD)
CHEVROLET-PONTIAC; EDWARDS AUTO)
SALES, INC.; LAKE KEOWEE)
CHRYSLER-DODGE LLC; LEADER FORD;)
PERFORMANCE)
CHEVROLET-BUICK-GMC; BOB)

RICHARDS AUTOMOTIVE, LLC; FAIREY CHEVROLET-CADILLAC; ORANGEBURG CHRYSLER-DODGE-NISSAN, INC.; ORANGEBURG FORD; SUPERIOR HONDA; SUPERIOR MOTORS, INC.; BENSON FORD-MERCURY, INC.; CRANE CHEVROLET-CADILLAC, INC.; EASLEY MITSUBISHI; EASLEY PONTIAC-BUICK-GMC TRUCK, INC.; HENDRICK HONDA; NORRIS FORD, INC.; TINSLEY CHEVROLET CO., INC.; BOB BENNETT FORD, INC.; CAPITOL CHEVROLET; CAPITOL HYUNDAI; CAROLINA INTERNATIONAL TRUCKS-COLA, COLUMBIA FREIGHTLINER, LLC; DODGELAND OF COLUMBIA; HANCOCK MOTOR CO., HANCOCK VOLKSWAGEN; HONDA CARS OF COLUMBIA; JIM MOORE CADILLAC, INC.; MCDANIELS ACURA-PORSCHE; SHEALY'S TRUCK CENTER-COLA; STIVERS LINCOLN-MERCURY; WRAY AUTOMOTIVE, INC.; CROMLEY'S INC.; SALUDA MOTOR SALES, INC.; DAVE EDWARDS TOYOTA; DICK BROOKS HONDA; FOOTHILLS FORD OF CHESNE; JOE GIBSON MITSUBISHI; KIA OF GREER; SATURN OF SPARTANBURG; SHEALY'S TRUCK CENTER; SPARTANBURG DODGE, INC.; VIC BAILEY FORD, INC.; VIC BAILEY HONDA; VIC BAILEY LINCOLN-MERCURY, INC.; VIC BAILEY VOLKSWAGEN; WAKEFIELD BUICK-PONTIAC-GMC, INC., BOYLE MOTOR COMPANY; BOYLE TOYOTA, INC.; GOODWIN BUICK-JEEP; GOODWIN HONDA-MITSUBISHI-VW; JONES CHEVROLET CO.; JONES NISSAN, INC ; JONES PONTIAC-GMC TRUCK, INC.; MCLAUGHLIN MOTORS, INC.; SUMTER CHRYSLER-PLYMOUTH-DODGE;

UNION CHRYSLER-DODGE-JEEP, INC.; BIG COUNTRY CHEVROLET, INC.; HASELDEN BROTHERS, INC.; LONGSTREET CHEVROLET-BUICK-CADILLAC-GMC; CAROLINA MAZDA; CLINTON FAMILY FORD-LINCOLN-MERCURY; DICKERSON MOTOR CO., INC.; DUNLAP-JOHNSON CHEVROLET CO., INC.; FORT MILL FORD, INC.; FRED CALDWELL'S CLOVER CHEVROLET; GOOD MOTOR COMPANY; GRIFFIN MITSUBISHI; GRIFFIN PONTIAC-BUICK-GMC; HARRELSON NISSAN; HARRELSON TOYOTA; HONDA CARS OF ROCK HILL; RICK FORD, INC.; STATELINE CHRYSLER JEEP DODGE INC.; AND AGAINST ALL MOTOR VEHICLE DEALERS OWNED OR CONTROLLED BY DEFENDANTS AS DEFINED IN S.C. CODE ANN. §56-15-10(H).	)

Plaintiffs Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease, and Micheal Watts individually and pursuant to S.C. Code Ann. §56-5-110 for the benefit of all others whom paid "administrative fees" (often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees")) to Defendants hereby complaining of CarMax Auto Superstores, Inc., Defendant Dick Dyer & Associates, Inc., Dick Smith Motors, Inc., Galeana Chrysler-Jeep, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc , Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP,

Rick Hendrick Chevrolet, LP, Rick Hendrick Honda Cars Co., Rick Hendrick Jeep Eagle, L.P , Oak Tree, Inc. d/b/a West Ashely Toyota, Inc., Gene Reed Imports, Inc, Gene Reed Toyota, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Taylor Investments, Inc. d/b/a Taylor To Defendant Benson Chrysler-Plymouth, Inc. Defendant Benson Ford Mercury, Inc., Benson Cadillac-Nissan, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc , Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Greenville, Inc., Toyota of Easley, Inc , Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Sonic Automotive, Inc. d/b/a Century BMW, Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc. , Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury, Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston,

Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet, Inc., McDaniels Acura of Charleston , McElveen Chevrolet, LLC, Morris Nissan, Northside Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Burns Chevrolet Cadillac, Inc., Joe Gibson Suzuki, Roger Shiflett Ford, Inc , Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc., Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co., Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher, Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina International Trucks, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota, Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tidelands Chrysler Dodge, Tidelands Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick

Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc , Steve White Motors of SC, Inc., Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc , Conway Ford, Inc., Diamond Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc , Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota, Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin Pontiac-Buick-GMC , Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc. , Smith Chevrolet-Cadillac, Inc. , Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge

Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc , McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc. (collectively "Defendants"), would respectfully show

that:

PARTIES

1. Plaintiff Heather Herron is a citizen and resident of Richland County, South Carolina.

2 Plaintiff Natalie Armstrong is a citizen and resident of Richland County, South Carolina.

3. Plaintiff Alison Dannert is a citizen and resident of Spartanburg County, South Carolina.

4. Plaintiff Michael Ritz is a citizen and resident of Aiken County, South Carolina.

5. Plaintiff Julie Freeman is a citizen and resident of Greenville County, South Carolina.

6. Plaintiff Christine Watts is a citizen and resident of Greenville County, South Carolina.

7. Plaintiff Michael Watts is a citizen and resident of Greenville County, South Carolina.

8. Plaintiff Michael Blease is a citizen and resident of Horry County, South Carolina.

9. Defendant CarMax Auto Superstores, Inc. is a licensed motor vehicle dealer and corporation organized and existing under the laws of the State of Virginia with places of business in Richland County and Greenville County, South Carolina.

10. Defendant Dick Dyer & Associates, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

11. Defendant Dick Smith Motors, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

12. Defendant Galeana Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

13. Defendant Pulliam Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

14. Defendant Dick Smith Infiniti, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

15. Defendant Dick Smith Nissan of Lexington, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

16. Defendant Dick Smith Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

17. Defendant Overland, Inc. doing business as Land Rover of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

18. Defendant Toyota Center, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina. W. Columbia.

19. Defendant Stokes Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

20. Defendant Stokes Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

21. Defendant Stokes-Craven Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

22. Defendant Stokes Mazda, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

23. Defendant Palmetto Chevrolet Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

24. Defendant Palmetto Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

25. Defendant Palmetto Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina

26. Defendant Jones Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Charleston County, South Carolina.

27. Defendant Harold Arnold's Sentry Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

28. Defendant J L. Investments, LP of Charleston is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

29. Defendant Rick Hendrick Chevrolet, LP is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

30. Defendant Rick Hendrick Honda Cars, Co. is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

31. Defendant Rick Hendrick Jeep Eagle, L.P. is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

32. Defendant Oak Tree, Inc. d/b/a West Ashely Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

33. Defendant Gene Reed Imports, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

34. Defendant Gene Reed Toyota, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

35. Defendant Hoover Jeep Chrysler, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

36. Defendant Hoover Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

37. Defendant Hoover Chrysler-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

38. Defendant Strom Altman Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

39. Defendant Baker Motor Company of Charleston, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

40. Defendant Miller Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

41. Defendant Taylor Investments, Inc. (d/b/a Taylor Toyota, Inc.) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

42. Defendant Benson Chrysler-Plymouth, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

43. Defendant Benson Ford Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

44. Defendant Benson Cadillac-Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

45. Defendant Big "O" Dodge of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

46 Defendant Bradshaw Automotive Group, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

47. Defendant Spartanburg Chrysler Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

48. Defendant Kia of Anderson, LLC is a licensed motor vehicle dealer and a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

49. Defendant Toyota of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Greenville County, South Carolina.

50. Defendant Toyota of Easley, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

51. Defendant Farrell Automotive, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

52. Defendant Fairway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina..

53. Defendant Saturn of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

54. Defendant Steve White Motors of South Carolina, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

55. Defendant D&D Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

56. Defendant Burns Chrysler Dodge Jeep, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

57. Defendant John Finger Motors, Inc. is a licensed motor vehicle dealer and

a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

58. Defendant Sonic Automotive, Inc. d/b/a Century BMW is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

59. Bob Richards Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

60. Dick Smith Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

61. Goodman Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

62. Henna Chevrolet-Olds-Cadillac, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

63. Honda Cars of Aiken is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

64. Johnson Motor Company of SC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

65. Sanders Truck Sales is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Allendale County, South Carolina.

67. Carolina Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

68. Carolina International Trucks of Anderson is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

69. Clinkscales Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

70 Fairway Ford-Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

71. Piedmont Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

72. Piedmont Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

73. Planet Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

Anderson County, South Carolina.

74. Ralph Hayes Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

75. Tom Hunter Pontiac-Buick-GMC, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

76. Upstate Automotive (Chevrolet-Cadillac) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

77. Upstate Automotive (Isuzu-Kia) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

78. Upstate Automotive (Mitsubishi) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

79. Upstate Automotive (Nissan) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

80. Gibbes Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Bamberg County, South Carolina.

81. Zeigler Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Bamberg County, South Carolina.

82. B & B Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Barnwell County, South Carolina.

83. Whittle Motor Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Barnwell County, South Carolina.

84. Butler Chrysler-Dodge-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

85 Carolina Volvo is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

86. Hilton Head Automotive LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

87. Hilton Head Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

88. Land Rover Hilton Head is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

89. Modern Classic Motors is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

90. O. C. Welch Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

91. Parks Automotive Group is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

92. Parks Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

93. Stokes Honda Cars of Beaufort, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

94. Stokes Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

95. Stokes-Brown Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

96. Dick Smith Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Berkley County, South Carolina.

97. Hoover Jeep-Chrysler, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

98. Hoover Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

99. McElveen Pontiac-Buick-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

100. Altman Lincoln-Mercury-Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina. .

101. Carolina International Trucks-Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

102. Charleston Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

103. Hendrick Honda of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

104. Hoover Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

105. Hughes Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

106. Kia Country is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

107. Lexus of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

108. Low Country Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

109. .Low Country Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

110. Marathon Chevrolet of N Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

111. Marchant Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

112. McDaniels Acura of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

113. McElveen Chevrolet, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

114. Morris Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

115. Northside Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

116. Ravenel Ford, Inc is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

117. Rick Hendrick Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

118. Rick Hendrick's Import Showplace is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

119. Saturn of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Charleston County, South Carolina.

120. Stokes Honda North Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

121. Stokes Isuzu-Kia-Subaru is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

122. Stokes Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

123. Victory Hyundai of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

124. Burns Chevrolet-Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

125. Burns Chevrolet Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

126. Joe Gibson Suzuki is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

127. Roger Shiflett Ford, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

128. Wallace White Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

129. Nourse Chester Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

130. Nourse Motors of Chester LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

131. Bennett Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

132. John Donoghue Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

133. Lawrence Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

134. Prothro Chevrolet-Buick-Pontiac-GMC Truck is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

135. Stokes-Craven Chrysler-Jeep-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

136. Stokes-Craven Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

137. Peters Pontiac Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

138. Rizer Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

139. Walterboro Motor Sales Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

140. Action Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

141. John Newsome, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

142. Raceway Chrysler-Jeep-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Darlington County, South Carolina.

143 Raceway Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

144. Carolina International Trucks LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

145. Marathon Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

146. Summerville Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

147. Herlong Pontiac-Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

148. Jim Satcher, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

149. Yonce Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

150. Wilson Chevrolet-Oldsmobile, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Fairfield County, South Carolina.

151. Wilson Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Fairfield County, South Carolina.

152. Auddie Brown Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

153. Cale Yarborough Honda, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

154. Carolina International Trucks is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

155. Efird Chrysler-Jeep-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

156. Florence Mack, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

157. Florence Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

158. Floyd Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

159. Horne Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

160. Kia of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

161. King Cadillac-Buick-Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

162. .Lake City Ford-Mercury, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

163. Peterbilt of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

164. Raceway Chevrolet-Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

165. Saturn of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

Florence County, South Carolina.

166 Service Motor Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

167. Coastal Nissan-Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

168. Hemingway Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Parrish Motor Co , Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Tidelands Chrysler Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

170. Tidelands Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

171. BMS, Inc. d/b/a Breakaway Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

172. Bradshaw Acura is a licensed motor vehicle dealer and a corporation organized

and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

173. Brockman Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

174. Carolina International Trucks-Greenville is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

175. Cherokee Kenworth, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

176. Christopher Trucks, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

177. Crown Jeep-Chrysler is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

178. Crown Nissan Greenville is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

179. Dick Smith Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

180. Fairway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

181. Fairway Motorcars LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

182. George Coleman Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

183. Heritage Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

184. John Finger Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

185. Kevin Whitaker Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

186. Kevin Whitaker Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

187. Simpsonville Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Greenville County, South Carolina.

188. Sitton Buick-Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

189. Stokes-Trainor Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

190. C. Thompson Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

191. Gary Russ Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

192. George Ballentine Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

193. Quality Chrysler City is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina

194. Brunson Automobile Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Hampton County, South Carolina.

195. Tison Motor Co., Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Hampton County, South Carolina

196. Addy's Harbor Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

197. Atlantic Chrysler-Jeep-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

198. Atlantic Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

199. Beach Ford-Lincoln-Mercury-Volvo, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

200. Bell & Bell Pontiac-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

201. Conway Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

202. Conway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

203. Diamond Automotive Group, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

204. East Coast Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

205. East Coast Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

206. Fowler Motors is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

207. Grand Strand Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

208. Hadwin-White Pontiac-Buick-GMC-Subaru is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

209. Hyatt Buick-GMC Trucks is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

210. Jud Kuhn Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Horry County, South Carolina.

211. Kia of Myrtle Beach is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

212. Lay-Fisher Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

213. Myrtle Beach Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

214. Myrtle Beach Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

215. Myrtle Beach Hyundai-Isuzu is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

216. Myrtle Beach Suzuki is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

217. Sparks Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

218. Sun Coast Mazda-Mitsubishi is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

219. Suzuki Outlet of Myrtle Beach SC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

220. Hilton Head Chrysler Jeep Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

221. Hilton Head Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

222. Key Infiniti LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

223. Key Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

224. Key Nissan, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

225. Porsche of Hilton Head is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

226. Prestige Motorcars, LLC dba Hilton Head Jaguar is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

227. Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

228. Heritage Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

229. James Ervin Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

230. Redfearn Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

231. Burns Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

232. Elrod Pontiac-Buick-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

233. H & H Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Lancaster County, South Carolina.

234. Lancaster Dodge-Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

235. Lancaster Motor Co is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

236. Baldwin Pontiac-Buick-GMC , Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

237. Cooper Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

238. Firmin Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

239. John Foster Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

240. Lynn Cooper, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

241. Smith Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina

242. Addy Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

243. Cherokee Kenworth is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

244. Hampton Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

245. Midlands Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

246. Saturn of Columbia, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

247. Stivers Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

248. Twin City Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

249. Mullins Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marion County, South Carolina.

250. Pee Dee Ford Lincoln Mercury Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marion County, South Carolina.

251. Griffin-Flythe Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marlboro County, South Carolina.

252. Meggs Ford-Chrysler-Dodge-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marlboro County, South Carolina.

253. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

254. Jeffrey Dean Chrysler Dodge Jeep GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

255. Kirby Schrader is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

256. Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina

with its principal place of business in Newberry County, South Carolina.

257. Bobby Wood Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina

258. Edwards Auto Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

259. Lake Keowee Chrysler-Dodge LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

260. Leader Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

261. Performance Chevrolet-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

262. Bob Richards Automotive, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

263. Fairey Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

264. Orangeburg Chrysler-Dodge-Nissan, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

265. Orangeburg Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

266 Superior Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

267. Superior Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

268. Benson Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

269. Crane Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

270. Easley Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

271. Easley Pontiac-Buick-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

272. Hendrick Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

273. Norris Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

274. Tinsley Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

275. Bob Bennett Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

276. Capitol Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

277. Capitol Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

278. Carolina International Trucks-Cola is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

279. Columbia Freightliner, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Richland County, South Carolina.

280. Dodgeland of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

281. Hancock Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

282. Hancock Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

283. Honda Cars of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

284. Jim Moore Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

285. McDaniels Acura-Porsche is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

286. Shealy's Truck Center-Cola is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

287. Stivers Lincoln-Mercury is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

288. Wray Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

289. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Saluda County, South Carolina.

290. Saluda Motor Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Saluda County, South Carolina.

291. Dave Edwards Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

292. Dick Brooks Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

293. Foothills Ford of Chesne is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

294. Joe Gibson Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

295. Kia of Greer is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

296. Saturn of Spartanburg is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

297. Shealy's Truck Center is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

298. Spartanburg Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

299. Toyota of Greer is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

300. Vic Bailey Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

301. Vic Bailey Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

302. Vic Bailey Lincoln-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Spartanburg County, South Carolina.

303. Vic Bailey Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

304. Wakefield Buick-Pontiac-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

305. Boyle Motor Company is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

306. Boyle Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

307. Goodwin Buick-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

308. Goodwin Honda-Mitsubishi-VW is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

309. Jones Chevrolet Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

310. Jones Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized

and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

311. Jones Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

312. McLaughlin Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

313. Sumter Chrysler-Plymouth-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

314 Union Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Union County, South Carolina.

315. Big Country Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

316. Haselden Brothers, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

317 Longstreet Chevrolet-Buick-Cadillac-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

318. Carolina Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

319. Clinton Family Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

320. Dickerson Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

321. Dunlap-Johnson Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

322. Fort Mill Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

323. Fred Caldwell's Clover Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

324. Good Motor Company is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

325. Griffin Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

York County, South Carolina.

326. Griffin Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

327. Harrelson Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

328. Harrelson Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

329. Honda Cars of Rock Hill is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

330. Rick Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

331. Stateline Chrysler Jeep Dodge Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

VENUE

332. Venue is proper in Aiken County because Defendant Taylor Investments, Inc. d/b/a Taylor Toyota maintains an office and agent for the transaction of business in Aiken County and/or maintains its principal place of business in Aiken County.

FACTS

333. Defendants have conspired together in a common scheme designed to deceive all car buyers (the term "car" as used herein includes new and used cars, trucks, sport utility vehicles and automobiles of all kinds). These actions amount to concerted consumer fraud.

334. Each individual Defendant's conduct vis-a-vis' all consumers was the product of unfair, misleading and/or unconscionable business practices.

335. Defendants have all engaged in a common practice of presenting/advertising car prices in a misleading manner. Defendants set and advertise a sticker price for cars and then in addition charge a second fee often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees"). Defendants present and advertise the "administrative fees" in a misleading manner and/or in an effort to mislead car buyers. This practice is a deceptive way to secretly artificially raise the sticker price.

336. Defendants conduct is not unlike that found to be an unfair trade practice by an Ohio Court in *Motzer Dodge Jeep Eagle, Inc. v. Ohio Attorney General*, 642 N.E.2d 20 (Oh.Ct.App. 1994).

337. Defendants' advertising is misleading because it fails to include / adequately disclose the fact that Defendants will be charging "administrative fees" that are in addition to the advertised price of the car.

338. Defendants' placement of the "administrative fee" on the dealer invoice is deceptive in that it implies that the fee is separate and distinct from the general overhead that car buyers expect to be included within the sticker price for a car and that the set fee is mandatory.

339. The "administrative fees" are not separate and distinct from Defendants' general

overhead expected to be included in the overhead and advertised price. Instead, the "administrative fees" are tricky and deceptive add-ons

340. The "administrative fees" are presented to car buyers in a misleading manner because car buyers are mislead into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees.

341. The "administrative fees" are charged in addition to advertised and/or list prices for cars.

342. The "administrative fees" are deliberately placed as separate line items on Defendants' invoices along with mandatory fees such as taxes, tags, and title. This implies that the "administrative fees" like the payment of taxes, fees for tags and fees for obtaining title are separate set fees and that there is no option but to pay this fee with every car purchase.

343. Consequently, car buyers purchase cars based on the total sticker price and are misled into believing that any discount received is off the sticker price and that additional fees are a special mandatory fee.

344. If a customer inquires about the fee, Defendants' sales people say that the "administrative fee" is a standard fee that has to be included on every vehicle.

345. In 2000, the General Assembly enacted a very narrow exception for charging these illegal "administrative fees."

346. S.C. Code Ann. §37-2-307 allows a dealership to do what would otherwise be illegal, charge "administrative fees,"only if the dealership follows strict rules.

347. S.C. Code Ann. §37-2-307 requires that "administrative fees" be included in the advertised price, disclosed on the sales contract, and conspicuously displayed at the dealership.

348. In order to charge administrative fees, Defendants are also required to annually

register with the Department of Consumer Affairs.

349. Defendants have not availed themselves of the limited exception in S.C. Code Ann. §37-2-307.

350. Even if Defendants had complied with S.C. Code Ann. §37-2-307, Defendants actions are in violation of S.C. Code Ann. §56-15-10 *et. seq.*

351. In 2004, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

352. In 2003, 2004, 2005, and 2006, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to separately register for each location in the State with the Department of Consumer Affairs Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

353. In 2005, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

354. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

355. In 2003 and 2004, Defendant Pulliam Motor Co. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

356. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Infiniti, Inc. charged "administrative fees." In 2005, Defendant Dick Smith Infiniti, Inc. failed to register with the

Department of Consumer Affairs as required by S C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

357. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Nissan of Lexington, Inc. charged "administrative fees " In 2005, Defendant Dick Smith Nissan of Lexington, Inc. failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

358. In 2003, 2004, 2005, and 2006, Dick Smith Nissan, Inc. charged "administrative fees." In 2005, Dick Smith Nissan, Inc failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006

359. In 2003 and 2004, Defendant Overland Inc. d/b/a Land Rover of Columbia charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

360. In 2003, 2004, 2005 and 2006, Defendant Toyota Center, LLC charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

361 In 2003, 2004, 2005 and 2006, Defendant Stokes Motors, Inc. charged "administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

362. In 2003, 2004, 2005 and 2006, Defendant Stokes-Craven Automotive Group, Inc. charged "administrative fees" and failed to file a registration with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

363. In 2003, 2004, 2005 and 2006, Defendant Stokes Mazda, Inc. charged

"administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

364. In 2003, 2004, 2005, and 2006, Defendant Palmetto Chevrolet Company, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

365. In 2003, Defendant Palmetto Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

366. In 2003, 2004, 2005, and 2006, Defendant Jones Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S C. Code Ann. §37-2-307.

367. In 2006, Defendant Rick Hendrick Chevrolet, LP charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307

368. In 2003, 2004, 2005, and 2006, Defendant Hoover Chrysler-Dodge, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

369. In 2003, 2004, 2005, and 2006, Defendant Baker Motor Company of Charleston charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

370. In 2003, 2004, and 2005, Defendant Big "O" Dodge of Greenville, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

371. In 2003, 2004, 2005, and 2006, Defendant Spartanburg Chrysler Jeep, Inc.

charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

372. In 2003, 2004, and 2005, Defendant Kia of Anderson, LLC charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

373. In 2003, Defendant Farrell Automotive, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann §37-2-307.

374. Plaintiff Heather Herron purchased a 2003 Land Rover SUV from Land Rover of Columbia

375. Plaintiff Herron's sales invoice includes a separate line item for "Recording & Processing Fees." The "Recording & Processing Fees" line item is pre-printed and deceptively placed with fees for SC Sales Tax, Title, and License. This Recording & Processing Fees is an "administrative fee" as described above.

376. Plaintiff Alison Dannert purchased a Nissan Murano from Defendant CarMax Auto Superstores, Inc. in Greenville, South Carolina

377. Plaintiff Alison Dannert's sales invoice includes a separate line item for Dealer Documentation/ Processing Fee. This fee is pre-printed and deceptively placed with fees for tax, title and license. This Dealer Documentation/ Processing Fee is an "administrative fee" as described above.

378. Plaintiff Natalie Armstrong purchased a 2002 Jeep Liberty from Galeana Chrysler-Jeep, Inc.

379. Defendant Galeana Chrysler-Jeep, Inc.'s sales invoice includes a separate line

item for Admin. Fee. This Admin. Fee is an "administrative fee" as described above.

380 Plaintiff Michael Ritz purchased a Tacoma pickup truck from Defendant Taylor Investments, Inc. (d/b/a Taylor Toyota, Inc.).

381. Defendant Taylor Investments Inc.'s sales invoice includes a separate line item for Administrative Serves Fee. This Administrative Services Fee is an "administrative fee" as described above.

382. Plaintiff Julie Freeman purchased a 1999 Mazda from Defendant Rick Hendrick Honda Cars Co.

383. Defendant Rick Hendrick Honda Cars Co.'s sales invoice includes a separate line item for Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

384. Plaintiff Christine Watts purchases a 2004 BMW from Defendant Sonic Automotive, Inc. d/b/a Century BMW.

385. Defendant Sonic Automotive, Inc. d/b/a Century BMW's Retail Buyer's Order includes a separate line item for Recording & Processing Fees. This Recording & Processing Fee is an "administrative fee" as described above.

386. Plaintiff Michael Blease purchased a 2002 Volvo from Defendant Dick Dyer & Associates, Inc.

387. Defendant Dick Dyer & Associates, Inc.'s Buyer's Order and Invoice includes a separate line item for Processing Fee. This Processing Fee is an "administrative fee" as described above.

388. Plaintiff Michael Watts purchased a Toyota from Defendant Toyota of Greenville, Inc.

389. Defendant Toyota of Greenville, Inc.'s purchase order includes a separate line

item for a Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

390. Upon information and belief, Defendants each annually illegally make several hundred thousand dollars off the deceptive use and placement of the "administrative fee" line item and said illegal fees should be disgourged.

FOR A FIRST CAUSE OF ACTION
(Violations of S.C. Code Ann. §56-15-10 *et. seq*)

391. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

392. Defendants are motor vehicle dealers subject to Title 56 of the S.C Code.

393. Defendants deceptive use of "administrative fees" is arbitrary, in bad faith and unconscionable and in violation of statute

394. Defendants' use and presentation of the administrative fees is designed to deceive and/or mislead car buyers and is thus is arbitrary, in bad faith and unconscionable and in violation of statute.

395. Defendants failure to adequately disclose and/or include "administrative fees" in the advertised price of cars constitutes misleading advertising in violation of statute.

396. Defendants conspired together to all apply similar administrative fees in an effort to cause damage to South Carolina car buyers. This conspiracy in and of itself is a violation of statute.

397. This suit is brought pursuant to S.C. Code Ann. §56-15-110(2) for the benefit of the whole because the action is one of common or general interest to many persons and the parties are numerous and it is impracticable to bring them all before the Court

398. Accordingly, Plaintiffs are suing for the benefit of all South Carolina car buyers

whom paid administrative fees to Defendants and against all motor vehicle dealers owned or controlled by Defendants as defined in S.C. Code Ann. §56-15-10(h).

399. Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants in the past four years have been injured by Defendants deceptive acts as described above.

400. As a result of the aforementioned conduct of Defendants, Plaintiffs are entitled to double actual damages, the cost of the suit and a reasonable attorney's fee pursuant to S.C. Code Ann. §56-15-110(1).

401. Furthermore, the aforementioned conduct of Defendants was malicious. Thus, Plaintiffs are entitled to punitive damages in the amount of three times the actual damages pursuant to S.C. Code Ann. §56-15-110(3).

FOR A SECOND CAUSE OF ACTION

(Civil Conspiracy as to Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc. , Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury,

Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston, Hoover Chrysler-Jeep, Inc , Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet, Inc., McDaniels Acura of Charleston , McElveen Chevrolet, LLC, Morris Nissan, Northside Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Joe Gibson Suzuki, Roger Shiflett Ford, Inc , Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc , Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co , Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher, Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina International Trucks, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota, Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tidelands Chrysler Dodge, Tidelands Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc., Steve White Motors of SC, Inc., Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc , Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc., Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota, Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin

Pontiac-Buick-GMC , Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc. , Smith Chevrolet-Cadillac, Inc. , Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc , Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc.)

402. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

403. Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc , Jones Ford, Inc , Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely

Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc , Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc , Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc. , Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C Welch Ford-Lincoln-Mercury, Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston, Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet, Inc., McDaniels Acura of Charleston , McElveen Chevrolet, LLC, Morris Nissan, Northside

Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc , Joe Gibson Suzuki, Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc., Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co., Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher, Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina International Trucks Florence, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota, Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tidelands Chrysler Dodge, Tidelands Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc.,

Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc , Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond Automotive Group, Inc , East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc., Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota, Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc , H & H Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin Pontiac-Buick-GMC , Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc. , Smith Chevrolet-Cadillac, Inc. , Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey

Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc , Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc , Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc , Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc., and the South Carolina Automobile Dealers Association have combined together for the purposes of injuring Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants.

404. Defendants have conspired together in a common scheme designed to deceive all

car buyers by all engaging in a common practice of presenting/advertising car prices in a misleading manner by charging "administrative fees."

405. Plaintiffs have suffered special damages as a result of Defendants conspiracy.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

406. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

407. This cause of action seeks a declaratory judgment for the purposes of determining a question of actual controversy between all parties.

408. Plaintiffs seek a determination of their rights and legal relations with the Defendants under S.C. Code Ann. §56-15-10 *et. seq.* and/or §37-2-307.

409. The issues raised by Defendants' common practice of charging administrative fees are of such wide concern and public interest that this declaratory judgment action should be decided for future guidance to insure that the public is protected

410. Plaintiffs seek a determination of the following questions:

a. Does Defendants charging of "administrative fees," and further acts as described above, violate S.C. Code Ann. §56-15-10 *et. seq.*

b. Does Defendants charging of "administrative fees" and further acts as described above, violate S.C. Code Ann. §37-2-307.

c. Are Defendants actions as described above outside the scope of S.C. Code Ann. §37-2-307.

411. Plaintiffs seek a declaratory judgment from this Court that:

a. A permanent injunction issue preventing Defendants from advertising/ charging future customers with administrative fees in a manner which violates S.C. Code Ann. §56-15-10 *et. seq.*;

b. A permanent injunction issue preventing Defendants from advertising/

charging future customers with administrative fees in a manner which violates S.C. Code Ann. §37-2-307;

c. Defendants be ordered to disgorge all fees collected from Plaintiffs and all car buyers whom paid administrative fees to Defendants;

WHEREFORE, Plaintiffs prays for judgment against all of the Defendants for actual and compensatory damages, for two times actual damages pursuant to Plaintiffs' first cause of action, for three times actual damages for punitive damages pursuant to Plaintiffs' first cause of action, for disgorgement of all administrative fees collected by Defendants pursuant to Plaintiffs' second cause of action, for a permanent injunction pursuant to Plaintiffs' second cause of action, together with attorneys' fees, prejudgment interest and the costs of this action, and for such other and further relief as this Court may deem just and proper.

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(803)771-8000

By: _____

Attorneys for the Plaintiffs

October 28, 2006

Columbia, South Carolina

STATE OF SOUTH CAROLIN

COUNTY OF AIKEN

HEATHER HERRON ET AL
☐ Plaintiff

v.

Carmax Et Al,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2006-CP-02-1230

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
A. Camden Lewis; Brady R. Thomas, Bar No. Address: PO Box 11208, Columbia, sC 29211 phone: fax: e-mail: other:	Steven W. Hamm ; C. Jo Anne Wessinger Hill, David A. Anderson, Bar No. 2634; etc Address: PO Drawer 7788, Columbia, SC 29202 phone: 803 771 4400 fax: 803 779 0016 e-mail: shamm@rpcrlaw.com; jwessingerhill @rpcrlaw.com; danderson@rpcrlaw.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

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AIKEN COUNTY
CLERK OF COURT

SCCA/233 (11-03)

SECTION I: Hearing Information

Nature of Motion: NOTICE OF MOTION AND MOTION OF DEFENDANT CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW TO DISMISS THE AMENDED COMPLAINT AND THIS ACTION, FOR CHANGE OF VENUE, TO SEVER, TO STRIKE, TO COMPEL ARBITRATION, FOR A PROTECTIVE ORDER, AND FOR COSTS AND FEES

Estimated Time Needed:30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

December 29, 2006
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status
- ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

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GREENVILLE COUNTY
CLERK OF COURT

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SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	CIVIL ACTION NO.: 06-CP-02-1230
Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants, PLAINTIFFS, v. CarMax Auto Superstores, Inc., et. al DEFENDANTS.	**NOTICE OF MOTION AND MOTION OF DEFENDANT CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW TO DISMISS THE AMENDED COMPLAINT AND THIS ACTION, FOR CHANGE OF VENUE, TO SEVER, TO STRIKE, TO COMPEL ARBITRATION, FOR A PROTECTIVE ORDER, AND FOR COSTS AND FEES**

PLEASE TAKE NOTICE that Defendant Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), will ten (10) days from the service of this motion, or as soon thereafter as counsel may be heard, move before the presiding judge of the Court of Common Pleas for the Second Judicial Circuit to dismiss, to change venue, to compel arbitration, and for a protective order pursuant to Rules 12(b)(2), 12(b)(3), 12(b)(4), 12(b)(5), 12(b)(6), 12(f), 18, 20, 21, 23, and 26(c), SCRCP Further, Defendant Century BMW respectfully moves this Honorable Court to award costs and attorney fees in responding to this action pursuant to S.C. Code Ann. § 15-36-10, *et seq* (2005). The Defendant Century BMW hereby moves as follows:

1) Pursuant to Rule 12(b)(6), SCRCP, Defendant Century BMW moves to have this action dismissed because it fails to state facts that would support any cause of action against the Defendant. Plaintiffs' First Amended Complaint and Complaint (including Corrigenda) are predicated on Defendant's use of closing fees on motor vehicle sales contracts, which is

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CLERK OF COURT

specifically authorized under S.C Code Ann. § 37-2-307 (2005) and regulated by the South Carolina Department of Consumer Affairs. Because Defendant's allegedly offending conduct is authorized by the State of South Carolina, Plaintiffs fail to state facts sufficient to constitute a cause of action upon which relief may be granted.

2) Pursuant to Rules 18, 20, and 21, SCRCP, Defendant Century BMW moves to dismiss this action on the ground that Defendant has been improperly joined in this case. Because Plaintiffs' claims and causes of action against the various Defendants do not arise out of the same transaction, occurrence or series of transactions or occurrences, and do not involve common questions of law or fact, the Defendants are improperly joined. In the alternative, Defendant Century BMW moves for an order to sever this matter into separate actions due to Plaintiffs' improper joinder. The Defendant requests severance so that the parties and claims may proceed separately in the county where venue is proper pursuant to S C. Code Ann. § 15-7-30 (2005).

3) Pursuant to Rule 12(b)(3), SCRCP, Defendant Century BMW moves to dismiss for improper venue because the allegations do no establish venue in Aiken County with respect to Defendant Century BMW. In the alternative, Defendant moves for a change of venue pursuant to S.C. Code Ann. §§ 15-7-30 & 15-7-100(A)(1) (2005), on the ground that the action must be tried in the county where the allegedly improper transaction occurred or where Defendant Century BMW has its principal place of business, or a change of venue pursuant to S.C Code Ann. § 15-7-100(A)(3) (2005), from Aiken County to Greenville County, on the grounds that the convenience of witnesses and the ends of justice would be promoted by the change.

4) Pursuant to Rule 12(b)(6), SCRCP, Defendant Century BMW moves to dismiss the second cause of action (Civil Conspiracy), to the extent alleged against it, because "all car

buyers" are not proper parties to this action (First Amended Complaint ¶ 404), the allegedly conspiratorial conduct (charging closing fees) is authorized under state law, and it fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

5) Pursuant to Rules 12(b)(6) and 12(f), SCRCP, Defendant Century BMW further moves to dismiss or, in the alternative strike, the third cause of action in the Plaintiffs' First Amended Complaint (declaratory relief), to the extent alleged against it, on the grounds that it calls for an advisory opinion, fails to state facts sufficient to constitute a cause of action upon which relief may be granted, and ignores adequate and/or other more appropriate remedies under South Carolina law.

6) Pursuant to Rule 12(b)(6), SCRCP, Defendant Century BMW moves to dismiss this action on behalf of all unnamed Plaintiffs on the grounds that this action fails to allege that Plaintiffs have met the requirements of S.C Code Ann. § 56-15-110(2) (2005) and of Rule 23, SCRCP. The Plaintiffs may not rely solely on S.C. Code Ann. § 56-15-110 in bringing a purported class action; instead, they are required to allege and meet the requirements of Rule 23. Since Plaintiffs have not alleged that they meet the requirements, Plaintiffs' First Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted for unnamed Plaintiffs. In the alternative, the Defendant moves for an order from the Court requiring that Plaintiffs allege and meet the requirements of Rule 23, SCRCP.

7) Pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5), SCRCP, Defendant Century BMW moves to dismiss this action against the defendants referred to as "all motor vehicle dealers as defined in S.C. Code Ann. §56-15-10(h) owned or controlled by the named Defendants," on the grounds that the Plaintiffs' process and service of process are insufficient and, as a result, the Court lacks personal jurisdiction over such defendants.

8) Pursuant to Rule 12(f), SCRCP, Defendant Century BMW moves to strike the language in the Plaintiffs' First Amended Complaint, Complaint, and Corrigenda referring to "all motor dealers as defined in S.C. Code Ann. §56-15-10(h)" on the ground that the Plaintiffs' process and service of process are insufficient and, additionally, that this is an improper method of joinder.

9) Pursuant to the Administrative Order of the South Carolina Supreme Court, dated July 26, 2006, Defendant Century BMW joins in the Motion to Establish Complex Case Designation for Pretrial Purposes Only filed by Defendants Galeana Chrysler-Jeep, Inc. and Galeana Chrysler-Plymouth, Inc., which seeks an order designating this case as complex. The Defendant further reserves the right to move in the future for an order requiring separate trials pursuant to Rule 42, SCRCP.

10) Pursuant to the Federal Arbitration Act, 9 U S.C. § 1 *et seq.*, the South Carolina Uniform Arbitration Act, S C. Code Ann. § 15-48-10, *et seq.*, and the Arbitration Agreement signed by Plaintiffs Christine Watts and Michael Watts, Defendant Century BMW respectfully moves this Court to compel arbitration of Plaintiffs' claims and to stay this action until the completion of arbitration.

11) Pursuant to Rule 26(c), SCRCP, Defendant Century BMW further moves for a protective order that the discovery propounded by the Plaintiffs be held in abeyance and stayed until the Court rules upon the above-referenced motions. This motion for a protective order is also made on the grounds that the Plaintiffs' discovery requests are unduly burdensome, overly broad, expensive, not reasonably calculated to lead to the discovery of admissible evidence, and seek the discovery of confidential consumer information.

12) Defendant Century BMW believes that a reasonable person once advised of the Consumer Protection Statute specifically authorizing the charging of closing fees would not continue the present action and would find that the allegations as pleaded are not warranted under existing South Carolina law. Therefore, Defendant Century BMW respectfully seeks reimbursement of reasonable costs and attorney fees in responding to the First Amended Complaint and this action pursuant to S.C. Code Ann. § 15-36-10, *et seq.*

These Motions are based on this Notice of Motion and Motion, the filed pleadings, Memorandum of Law to be filed under separate cover, and the law of this jurisdiction.

In accordance with the South Carolina Rules of Civil Procedure, there is no duty to consult with opposing counsel before filing a Motion to Dismiss. SCRCP Rule 11(a) Furthermore, with regard to the other motions herein, the undersigned certifies that consultation with opposing counsel regarding this motion would serve no useful purpose or could not be timely held.

Respectfully submitted,

Steven W. Hamm
David A. Anderson
C. Jo Anne Wessinger Hill
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& ROBINSON, P.A.
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ATTORNEYS FOR DEFENDANT CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW

December 29, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	C.A. No.: 06 CP 02-1230
Heather Herron, et al.,	)	
	)	
Plaintiffs,	)	
	)	**MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION**
vs.	)	
	)	
CarMax Auto Superstores, Inc , et al.,	)	
	)	
Defendants.	)	
	)	

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MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS

Pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and the Arbitration Agreement that Plaintiff Christine Watts executed, Defendant Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW") respectfully moves this Court to compel arbitration of Plaintiff Christine Watts's claims and to dismiss this action. The Arbitration Agreement is plainly enforceable, and Ms. Watts's claims fall squarely within its scope. Ms. Watts is the only named Plaintiff who alleges he or she purchased a vehicle from Century BMW. See Amended Complaint ¶¶ 374–88. As a result, no other named Plaintiff has standing to sue Century BMW based on his or her purchase from a separate dealership[1] and Century BMW joins the other Defendants in the joint motion and memorandum filed separately moving to dismiss all claims of other named Plaintiffs.

[1] Plaintiff Michael Watts does not allege he purchased a vehicle from Century BMW, see Amended Complaint ¶ 388 (alleging only a purchase from Toyota of Greenville), and lacks standing to assert any claims from that purchase against Century BMW. Mr. Watts co-signed for Ms. Watts's purchase from Century BMW and also signed the same Arbitration Agreement as Ms. Watts in connection with that purchase. See Exhibit A (Arbitration Agreement signed by Christine and Michael Watts). To the extent Mr. Watts seeks to pursue any claims against Century BMW for Ms. Watts's purchase, Century BMW also moves to compel arbitration of his claims.

BACKGROUND

Ms. Watts alleges that in connection with her purchase of a vehicle, Century BMW charged her an administrative fee. See Amended Complaint ¶¶ 384-85.[2] She acknowledges that S.C. Code Ann. § 37-2-307 authorizes dealerships to charge such a fee, see Amended Complaint ¶¶ 345-48, but alleges that Century BMW did not follow certain statutory requirements without identifying what requirements were not followed , see id. ¶¶ 337-44, 349. She further alleges that even if Century BMW fully complied with § 37-2-307, its charging of a closing fee still violates S.C. Code Ann. § 56-15-10 et. seq. See id. ¶ 350. Based on these allegations, Ms. Watts brings one count for violation of S.C. Code Ann. § 56-15-10 and another count for a declaratory judgment with respect to S.C. Code Ann. § 56-15-10 et. seq. and/or § 37-2-307.[3]

In connection with her purchase of a vehicle from Century BMW, Ms. Watts and Century BMW entered into an "Arbitration Agreement." See Exhibit A. This Agreement provides that at the request of a party, "any and all Claim(s) shall be decided in binding

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[2] Century BMW references the allegations in the Complaint because they are relevant to this Court's determination of the arbitrability of Ms. Watts's claims. See Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., ___ S.C. ___, 588 S.E.2d 136, 141 (Ct. App. 2003) (deciding motion to compel arbitration by comparing allegations in complaint with subject matter of contract containing contract-specific arbitration clause). Reference to these allegations should not be taken as agreement with them—indeed Defendants dispute many of Plaintiff's allegations and deny liability.

[3] Ms. Watts also brings a count for civil conspiracy against other defendants but did not name Century BMW in this count. See Amended Complaint ¶ 403. Even had Ms. Watts named Century BMW, she has failed to state any claim for civil conspiracy, as demonstrated in Defendants' joint motion to dismiss; moreover such a claim would plainly be arbitrable as it is a claim "relating to the vehicle," with respect to the "terms of and enforceability of the sale, lease or financing of the Vehicle," "fraud, or unfair and deceptive trade practices," or "a violation of [a] state or federal statute or regulation." See Exhibit A.

arbitration before the American Arbitration Association." Id. The Agreement defines the "Claim(s)" that the parties agreed to arbitrate as including:

> any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair.

Id. The Agreement also provides that "once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration." Id.

ARGUMENT

I. PURSUANT TO THE FEDERAL ARBITRATION ACT THIS COURT SHOULD COMPEL ARBITRATION OF PLAINTIFF'S CLAIMS.

Ms. Watts's claims fall squarely within the scope of the Arbitration Agreement. This Agreement is unremarkable and of the type that numerous courts have upheld time and again. Accordingly, pursuant to the Federal Arbitration Act and applicable federal and South Carolina law, this Court should dismiss Plaintiff's claims and compel arbitration.

A. The Federal Arbitration Act Applies Here.

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., applies to "contract[s] evidencing a transaction involving commerce," 9 U.S.C. § 2. A contract to purchase a vehicle clearly is a contract evidencing a transaction involving commerce. Thornton v. Trident Med.

Ctr., L.L.C., 592 S.E.2d 50, 52 (S.C. Ct. App. 2003); see also MS Dealer Service Corp. v. Franklin, 177 F.3d 942 (11th Cir. 1999) (FAA applies to consumer's purchase of automobile); Stout v. Byrider, 50 F. Supp. 2d 733, 735 (N.D. Ohio 1999) (FAA governs in action by used car buyers against seller because "case concerns arbitration agreements involving transactions in interstate commerce"), aff'd, 228 F.3d 709 (6th Cir. 2000); Wolff Motor Co. v. White, 869 So.2d 1129, 1134 (Ala. 2003) ("[m]otor vehicles are 'the quintessential instrumentalities of modern interstate commerce'" and "a transaction involving the sale of an instrumentality of commerce . . . satisfies the FAA's 'involving commerce' test" (quoting United States v. Bishop, 66 F.3d 569, 588-90 (3d Cir. 1995))). Accordingly, The FAA governs the enforceability of the Arbitration Agreement and all questions concerning its scope.

The FAA embodies "the strong federal policy in favor of enforcing arbitration agreements." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985). Keeping with this "liberal federal policy favoring arbitration agreements," the Supreme Court has mandated that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). Indeed, "the parties' intentions 'are generously construed as to issues of arbitrability,' and any 'ambiguities as to the scope of the arbitration clause itself' must be 'resolved in favor of arbitration.'" Washington Square Secs., Inc. v. Aune, 385 F.3d 432, 436 (4th Cir. 2004) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614, 626 (1985) and Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 476 (1989)).[4]

[4] Like the FAA, South Carolina law strongly favors arbitration, and "unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." Zabinski v. Bright Acres Assocs., 553 S.E.2d 110, 118 (S.C. 2001) (citing S.C. Pub. Serv. Auth. v. Great W. Coal, 437 S.E.2d 22, 25 (S.C. 1993)); see also South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq.

B. **Ms. Watts's Allegations Fall Within the Scope of the Arbitration Agreement.**

"To decide whether an arbitration agreement covers a particular dispute, the court must determine whether the factual allegations underlying the claim fall within the scope of the agreement, irrespective of the label given to the cause of action." Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., 588 S.E.2d 136, 207 (S.C. Ct. App. 2003) (citing Zabinski, 553 S.E.2d at 597). Applying these principles, all of Ms. Watts's claims fall within the scope of the Arbitration Agreement.

Ms. Watts alleges that Century BMW engaged in the "practice of presenting / advertising car prices in a misleading manner" because it allegedly "fails to include / adequately disclose the fact that [it] will be charging 'administrative fees' that are in addition to the advertised price of the car" and misleads buyers "into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees." Amended Complaint ¶¶ 335, 337, 340. Ms. Watts acknowledges that such fees are specifically authorized by S.C. Code Ann. § 37-2-307, see Amended Complaint ¶¶ 345-48, but she alleges that Century BMW did not comply with the statute, although she does not say how, see id. ¶¶ 337-34, 349. She further alleges that even if Century BMW did fully comply with the South Carolina statute authorizing such fees, it would still be in violation of S.C. Code Ann. § 56-15-10 et seq. See id. ¶ 350.

Each of these allegations clearly falls under the claims that Ms. Watts and Century BMW agreed to arbitrate. The Arbitration Agreement provides that "any and all disputes, claims or controversies between the Parties relating to the Vehicle," including the "terms of and enforceability of the sale, lease or financing of the Vehicle," "breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices," and "a violation of any state or federal statute or regulation" are covered under the Agreement. See

Exhibit A. The Agreement expressly encompasses all subjects relating to Ms. Watts's allegations.

C. **The Arbitration Clauses are Unremarkable and Not Subject to Challenge.**

The Arbitration Agreement signed by Ms. Watts and Century BMW is unremarkable and of a type countless courts have upheld.

1. **Allegations Against Other Defendants Do Not Prevent Arbitration.**

Ms. Watts cannot avoid arbitration by naming other dealerships, with whom she has no connection, as defendants. As is fully briefed in Defendants' joint motion to dismiss, Ms. Watts lacks standing to bring claims against other defendants with whom she never transacted. Even if Ms. Watts had standing against other Defendants, which she does not, she must arbitrate her dispute with Century BMW pursuant to the Arbitration Agreement. See S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., ___ S.C. ___, 437 S.E.2d 22, 24 (1993) ("[A] party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint . . . because this would nullify the rule requiring arbitration.").

2. **Putative Class Claims Are Not Subject to Arbitration.**

Although Ms. Watts does not allege that she brings her case as a class action pursuant to Rule 23, SCRCP, she purports to represent a class of consumers under S.C. Code Ann. § 56-15-110(2). See, e.g., Amended Complaint ¶¶ 397-99. As shown above, Ms. Watts's individual claims are subject to arbitration. Pursuant to the terms of the Arbitration Agreement, she may not litigate supposed "class" claims because the Arbitration Agreement unequivocally prohibits class arbitrations. It states: "By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff

or claimant action in court or through arbitration." See Exhibit A (emphasis added) [5] Under the plain text of this provision, Ms. Watts cannot arbitrate her claims on behalf of a class and cannot arbitrate the claims of any purported class. Thus, the Order compelling arbitration of Plaintiff's individual claim should specify that the arbitration should proceed on an individual, and not a class, basis.[6]

Many courts have found that class arbitration waivers contribute to the "simplicity, informality, and expedition" of arbitration, helping make it "an attractive vehicle for the resolution of low-value claims."[7] Iberia Credit Bureau v. Cingular Wireless LLC, 379 F.3d 159, 174 (5th Cir. 2004); accord Caley v. Gulfstream Aerospace Corp., 428 F.3d 1359, 1378 (11th Cir. 2005) (holding that a ban on class arbitrations is "consistent" with the goals of

[5] The Arbitration Agreement further states: "If a dispute is arbitrated, you will give up your right to participate as a class representative or a class member on any claim you may have against us, including any right to class arbitration or any consolidation of individual arbitrations." See Exhibit A.

[6] In Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 452-53 (2003) (plurality op.), the Supreme Court held that where a contract is silent as to whether class action arbitration is permitted, it is for the arbitrator rather than a court to decide whether it is permissible. But "where a particular statutory or procedural right is clearly prohibited by an arbitration agreement, the Court need not send the case to arbitration for an arbitrator to determine that question." In re Cotton Yarn Antitrust Litig., 406 F. Supp. 2d 585, 594 (M.D.N.C. 2005). This case is similar to Gipson v. Cross Country Bank, 354 F. Supp. 2d 1278, 1286 (M.D. Ala. 2005), where the court confronted a clear prohibition on class arbitrations. The court held that the "arbitrator need not interpret the contract's class action waiver clause, because the contract expressly prohibits class arbitration." The court explained that "[t]here is no need for anyone to decide whether the contract[] forbid[s] class arbitration. It expressly and unequivocally does." Id. Likewise, here, there is no need to refer the issue of class arbitrations to an arbitrator.

[7] Despite the modest value of her claim, Ms. Watts and her counsel still have amble ability and incentive to pursue the action in arbitration because should Ms. Watts prevail on her claims she could recover "double actual damages, the cost of the suit and a reasonable attorney's fee pursuant to S.C. Code Ann. §56-15-110." Am. Compl ¶ 400; see also Exhibit A (The Arbitration Agreement provides that the "arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law.").

arbitration as articulated in Gilmer), cert. denied 126 S. Ct. 2020 (2006). Courts have expressly rejected the notion that class arbitration waivers somehow prevent plaintiffs from enforcing statutory rights. See, e.g., Snowden v. Checkpoint Check Cashing, 290 F.3d 631, 638 (4th Cir. 2002) (rejecting the argument that the class arbitration waiver would render the plaintiff "unable to maintain her legal representation" given statutory availability of attorneys' fees).[8]

II. THE COURT SHOULD DISMISS ALL JUDICIAL PROCEEDINGS AGAINST CENTURY BMW.

Pursuant to Section 3 of the FAA, any court of the United States must, at a minimum, stay judicial proceedings involving claims, like those here, that fall within the arbitration provisions of written agreements. See 9 U.S.C. § 3; see also Moses H. Cone, 460 U.S. at 26 ("[S]tate courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the Arbitration Act."). "Notwithstanding the terms of § 3, however, dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable." Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, 252 F.3d 707, 709-710 (4th Cir. 2001); see also Alford v. Dean Witter Reynolds, 975 F.2d 1161, 1164 (5th Cir. 1992) ("The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to

[8] Indeed, a litany of appellate courts nationwide have upheld class arbitration waivers. See, e.g., Tillman v. Commercial Credit Loans, Inc., 629 S.E.2d 865, 873 (N.C. App. 2006) (holding that the "great majority of federal and state courts that have examined and ruled upon" class action waivers have found them enforceable); Jenkins v. First American Cash Advance of Georgia, LLC, 400 F.3d 868, 878 (11th Cir. 2005), cert. denied 126 S. Ct. 1457 (2006), (holding that an arbitration agreement containing a class waiver "permit[s] [the plaintiff] and other consumers to vindicate all of their substantive rights in arbitration"); Iberia Credit Bureau, 379 F.3d at 175 (5th Cir.)(noting that a class arbitration waiver "does not leave the plaintiffs without remedies"); Johnson v. W. Suburban Bank, 225 F.3d 366, 374 (3d Cir. 2000) (plaintiff cannot argue that a class action waiver prevented "vindication" of his statutory rights "in the arbitral forum"); Champ v. Siegel Trading Co., 55 F.3d 269, 277 (7th Cir. 1995) ("We are thus obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis."); Rains v. Found. Health Sys. Life & Health, 23 P.3d 1249, 1253 (Colo. Ct. App. 2001) ("[A]rbitration clauses are not unenforceable simply because they might render a class action unavailable.").

arbitration."); Payton v. Nordstrom, Inc., 462 F.Supp.2d 706, 708 (M.D.N.C. 2006) ("[T]he Fourth Circuit has held that, despite the language of the FAA regarding a stay of arbitration, when all of the claims in a lawsuit are required to be arbitrated, dismissal, rather than a stay, is a proper remedy."). Because all of Plaintiff's claims against Century BMW must be resolved through arbitration, the Court should dismiss her action against Century BMW in this Court.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Ms. Watts's claims against it and, accordingly, dismiss those claims currently pending in this Court.

Respectfully submitted,

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FEBRUARY ___, 2007
COLUMBIA, SOUTH CAROLINA.

ATTORNEYS FOR CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW

Exhibit A

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05 VIN: 4US8T33554L550759

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to $1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of $1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law law, the Parties shall be responsible for the payment of their own attorney's(') fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § *1 et seq.*) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding, except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, unless otherwise provided by law.

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer: _____ Dealer: _____

Customer: _____ Its: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
HEATHER HERRON, ET. AL.	)	
Plaintiffs,	)	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTIONS TO DISMISS**
vs.	)	
CARMAX AUTO SUPERSTORES, INC., ET. AL.	)	
Defendants.	)	

Plaintiffs Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease, Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" ("Plaintiffs") submit this Memorandum in Opposition to Motions to Dismiss. Plaintiffs' memorandum addresses all motions to dismiss on the following grounds:

1. Lack of standing;
2. Rule 23, SCRCP;
3. Failure to adequately plead civil conspiracy;
4. Improper joinder;
5. Improper venue[1];
6. Failure to adequately plead Title 56 ("Dealers Act");
7. S.C. Code Ann. § 37-2-307 as a defense to the action; and
8. Arbitration agreements.[2]

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[1] At the January 12, 2007 status conference, the parties agreed to delay discovery until after a hearing on all pending motions to dismiss. In February, Defendants' Coordinating Counsel Steven Hamm recognized this agreement and requested that Plaintiffs agree to delay a hearing on motions as to improper venue. Plaintiffs refused. Despite Plaintiffs refusal, Defendants in their brief attempted to "defer" the motions as to venue. *See* Defendants Joint Memorandum, fn. 3. ("Defendants respectfully request that the Court defer the motion on venue until the other motions raised in this brief have been decided."). This attempt to further delay the case should be rejected and the venue motions should be heard at the April 4, 2007 hearing.

[2] Plaintiffs have requested and the Defendants have refused to provide copies of all allegedly applicable arbitration agreements. The only arbitration agreement provided was as to Plaintiff Christine Watts. Accordingly, Plaintiffs do not have sufficient information to properly respond to Defendants Supplemental Memorandum in Support of Their Motions to Dismiss

All pending Motions to Dismiss should be denied for the following reasons.

BACKGROUND

This case arises from Defendants' conspiracy to illegally charge administrative fees (often referred to as an "administrative fee," "recording and processing fee," "closing fee," or "dealer documentation and closing fees" (collectively "Administrative Fees")). *See* Exhibit A, Amended Complaint, ¶ 333 and ¶ 396. The Defendants charging of administrative fees can only fool the public if it is an industry wide scheme. Any individual Defendant's attempt to charge such a fee is dependant on the other car dealers committing the same offense so that all may "hide in the pack," and take on the appearances of legitimacy.

Administrative fees are an artificial add on that are charged in a manner designed to deceive car buyers and in an effort to artificially raise the sticker price for cars in a manner that appears mandatory. *See* Exhibit A, Amended Complaint, ¶¶ 333 - 335. Defendants' conduct is not unlike that found to be an unfair trade practice by an Ohio Court in Motzer Dodge Jeep Eagle, Inc. v. Ohio Attorney General, 642 N.E.2d 20 (Oh Ct. App. 1994). *See* Exhibit A, Amended Complaint, ¶ 336.

Except for a very narrow and stringent exception, the charging of administrative fees is illegal in South Carolina. *See* Exhibit A, Amended Complaint, ¶ 345. The Defendants' conduct here illustrates why administrative fees are illegal. Defendants present pre-printed administrative fees on dealer invoices as a separate line item that gives the fees the false appearance that they are

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dated February 12, 2007 or Defendant James Ervin Toyota's Supplemental Memorandum in Support of Motion to Dismiss dated February 12, 2007. Plaintiffs' Counsel has written Mr. Hamm and requested the applicable arbitration agreements and Plaintiffs' Counsel has called B. Rush Smith, III and requested copies of Defendant James Ervin Toyota's arbitration agreements. Motions related to arbitration with the exception of Century BMW, Inc. should not be heard at the April 4, 2007 hearing because Defendants refusal to provide copies of arbitration agreements has prejudiced Plaintiffs ability to fairly respond.

mandatory fees required to be paid on every car, similar to taxes, tag and title. *See* Exhibit A, Amended Complaint, ¶ 340 and ¶ 342. The placement of administrative fees as a pre-printed separate line item gives the false appearance that administrative fees are separate and distinct from the Defendants' general overhead expected to be included in the sticker price. *See* Exhibit A, Amended Complaint, ¶ 338 and ¶ 339. The placement of administrative fees as a pre-printed separate line item also gives the false impression that the fees are non-negotiable and that car purchasers have no option but to pay this fee with every car purchase. *See* Exhibit A, Amended Complaint, ¶ 342.

In 2000, the General Assembly enacted a very narrow an stringent exception for charging these illegal administrative fees. *See* Exhibit A, Amended Complaint, ¶ 335. The Consumer Protection Code in S.C. Code Ann, § 37-2-307[3] requires that car dealerships take certain affirmative steps in order to charge administrative fees. *See* Exhibit A, Amended Complaint, ¶ 346. These steps include *inter alia* including the administrative fee in the advertised price; disclosing the administrative fee on the sales contract; paying a fee and registering annually with the department of consumer affairs; and conspicuously displaying signs at the dealership disclosing the fact that the dealership charges administrative fees. *See* Exhibit A, Amended Complaint, ¶¶ 347 and 351.

The Defendants in this case have not availed themselves of the limited exception S.C. Code Ann. § 37-2-307. *See* Exhibit A, Amended Complaint, ¶ 349. Many of the Defendants have failed

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[3]S.C. Code Ann. § 37-2-307 provides: "Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership."

to pay a fee and register annually with the Department of Consumer Affairs. *See* Exhibit A, Amended Complaint, ¶¶ 351-373.

Similarly, many of the Defendants have failed to include administrative fees in the advertised price for cars. This advertising is misleading and a *per se* violation of S.C. Code Ann. § 56-15-40 and S.C. Code Ann. § 37-2-307. *See* Exhibit A, Amended Complaint, ¶ 337, ¶ 395 and ¶349. Furthermore, the Defendants have violated S.C. Code Ann. § 37-2-307 by charging administrative fees solely for profit, not to offset costs.[4] *See* Exhibit A, Amended Complaint, ¶ 349.

Plaintiffs are South Carolina consumers whom paid illegal administrative fees to certain Defendants. *See* Exhibit A, Amended Complaint, ¶ 374-389. All Plaintiffs were harmed by all Defendants illegal conspiracy to charge the illegal fees. *See* Exhibit A, Amended Complaint, ¶ 405.

On October 28, 2006, Plaintiffs filed an Amended Complaint which alleges three causes of action:

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[4]The form prescribed by the Department of Consumer Affairs makes clear that car dealers can only charge administrative fees as a means for reimbursing overhead costs. The form, which many Defendants post in their dealerships, provides: "This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation.".

1. Violation of S.C. Code Ann. § 56-15-110 *et. seq.* ("Dealers Act")[5];
2. Civil Conspiracy; and
3. Declaratory Judgement to determine rights and legal relations under S.C. Code Ann. § 56-15-10 and/or S.C. Code Ann. § 37-2-307 ("Consumer Protection Code").

Plaintiffs are bringing this action both individually and pursuant to S.C. Code Ann. § 56-5-110 for the benefit of all others who paid "administrative fees" to Defendants. The South Carolina General Assembly has expressly provided that Plaintiffs can bring this action on behalf of all persons who paid an administrative fee. S.C. Code Ann. §56-5-110 (2) provides: "When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief."

As of the January 12, 2007 status conference, there were 183 pending motions to dismiss. The standard governing these motions is the same:

> [I]n deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint and a 12(b)(6) motion should not be granted if 'facts alleged and influences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. **The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint state any valid claim for relief.** Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. (where there is cause for doubt, or it is clear that the ends of justice may well be promoted by a trial on the merits, a demurrer should be denied where novel issues are present or are involved);

Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999)(internal citation omitted)(emphasis added).

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[5]Plaintiffs have alleged that Defendants violated S.C. Code Ann. § 56-15-40(1) which provides: "It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or 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."

Plaintiffs also allege that Defendants have violated S.C. Code Ann. §56-15-40(4)(c) which provides: "It shall be deemed a violation of paragraph (a) of § 56-15-30 for a motor vehicle dealer: (c) to resort to or use any false or misleading advertisement in connection with his business as such motos vehicle dealer."

THE ISSUES

1. Plaintiffs have standing.

2. This is not a Rule 23 Class Action.

3. Plaintiffs pled all elements of the cause of action for civil conspiracy.

4. Joinder in this case is proper.

5. Venue in this case is proper.

6. Plaintiff adequately pled a violation of the Dealers Act.

7. The presence of S.C. Code Ann. § 37-2-307 is not a ground for dismissal.

8. Defendants with arbitration agreements should not be dismissed.

1. PLAINTIFFS HAVE STANDING

Defendants' motion to dismiss for lack of standing should be denied because:

A. The South Carolina General Assembly has expressly provided that Plaintiffs can bring this suit for the benefit of the whole which necessarily requires as Defendant dealerships that are charging the illegal administrative fees;

B. Plaintiffs have direct standing as each have been harmed by each individual Defendants' tortious conduct; and

C. This matter is of such wide public concerns that Plaintiffs have public interest standing.

A. Plaintiffs Have Standing Under the Dealers Act.

The South Carolina General Assembly specifically provided that Plaintiffs can bring these claims on behalf of a group in S.C. Ann. § 56-15-110. This statute provides:

S.C. Code Ann. § 56-15-110 Suits for Damages.

(1) In addition to temporary or permanent injunctive relief as provided in § 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damage by him sustained, and the cost of suit, including a reasonable attorney's fee.

(2) **When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.**

(3) In an action for money damages, if the jury finds that the Defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.

(4) A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, or under this chapter shall constitute prima facie evidence against such person subject to the conditions of the United States Antitrust Law (15 U.S.C.16).

S.C. Code Ann. §56-15-110 (emphasis added). This statute creates substantive rights in favor of those affected by violations of the Dealers Act. This statute is a remedial statute that should be construed liberally. "This action is based not on a common law tort or on contract but is a creature of statute. The legislature obviously enacted the Dealers Act because consumers' remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose." Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002).

The plain language of this statute provides that Plaintiffs can bring this lawsuit in the manner in which they have done. "Where the terms of the relevant statute are clear, there is no room for construction." Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995).

Under this statute, one may sue for the benefit of the whole in two scenarios:

1. If the "action is one of common or general interest to many persons"; or

2. The "parties are numerous and it is impracticable to bring them all before the court."

S.C. Cod Ann. § 56-15-110(2). This lawsuit is proper under either scenario.

First, the lawsuit is of common or general interest to may persons because of the widespread charging of illegal administrative fees to consumers across the State. Second, the parties are numerous and it would be impractical to bring before this court every single South Carolina consumer who paid an illegally charged administrative fee to the Defendants in the past four years. As such, this lawsuit is expressly authorized by the General Assembly and proper under either scenario.

Accordingly, under the plain language of this statute Plaintiffs have standing to bing the present lawsuit. *See* Saint Andrews Public Service District v. City of Charleston, 294 S.C. 92, 362 S.E..2d 877 (1987)("annexation statue grants standing to any resident of an area to challenge proposed annexation"); Tanner v. Town Council, 880 A.2d 784 (R.I. 2005)("[a] party acquires standing either by suffering an injury in fact or as the beneficiary of express statutory authority granting standing."); Daimler Chrysler Corp. v. Inman, 121 S.W.3d 862, 869-70 (Tex.App.2003); ("Thus, state courts have held that standing may be predicted on either common-law standing by applying Article III principles or statutory standing, where the statute serves as the proper framework of analysis.");Press-Enter, Inc. v. Benton Area School District, 604 A.2d 1221, 1223 (Pa.Comm.Ct.1992)("Standing may be predicated upon the statutory grant of such standing by the legislator"). Therefore, Plaintiffs have standing under the Dealer's Act to proceed with this action.

B. Plaintiffs Have Direct Standing

The allegations in the Complaint are sufficient to establish standing as to all Defendants on this motion to dismiss. "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint state any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999)(internal citation omitted). When the pleadings in this case are construed in the light most favorable to the Plaintiffs, it is clear that Plaintiffs have made sufficient allegations as to establish direct standing as to all Defendants.

Standing via Each Defendants' Violation of the Dealers Act

Plaintiffs have standing as a result of the harm caused by Defendants' violation of the Dealers Act. A Party seeking to establish standing must prove three elements (1) the plaintiff must have suffered an injury in fact; (2) the injury and the conduct complained of must be casually connected; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. Commander Health Care Facilities, Inc. v. SCDHEC, 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct.App.,2006).

Plaintiffs pleadings are sufficient to establish standing under the cause of action for violation of the Dealers Act. Plaintiffs allege that each Defendant, by charging administrative fees, violated the Dealers Act. See Exhibit A, Amended Complaint, ¶¶ 392-395. Additionally, Plaintiffs alleged that each Defendant conspired with other dealers in a concerted effort to violate statutes which is also a violation the Dealers Act. Exhibit A, Amended Complaint, ¶396. Plaintiffs alleged that each Defendant's violation of the Dealers Act damaged the Plaintiffs. Exhibit A, Amended Complaint, ¶399. These allegations are sufficient to establish direct

standing against each Defendant for harm caused by the Defendants' violation of the Dealers Act. Consequently, Plaintiffs have direct standing to proceed with this action.

Standing via Each Defendants' Role in a Civil Conspiracy

Plaintiffs also have direct standing via the cause of action for civil conspiracy. Plaintiffs have alleged that the Defendants and the South Carolina Automobile Dealers Association "combined together for the purposes of injuring Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants." *See* Exhibit A, Amended Complaint, ¶ 403. Plaintiffs also allege that they suffered special damages as a result of the Defendants' conspiracy. *See* Exhibit A, Amended Complaint ¶ 405. These allegations are sufficient to establish standing. *See* Lee v. Chesterfield General Hospital, Inc. 289 S.C. 6, 14, 344 S.E.2d 379, 384 (Ct.App.,1986)(holding Plaintiff had standing via cause of action for civil conspiracy)("The complaints of Newsom and the professional association in effect allege that the conspiracy against Lee has caused them pecuniary loss by restricting the services Lee can perform for his employer. This is a sufficient allegation of financial interest in the controversy to give Newsom and the professional association standing to sue.").

Standing via Cause of Action Seeking Declaratory Judgment

Plaintiffs also have direct standing via the cause of action requesting a declaratory judgment to determine rights and relations under the Dealers Act and the Consumer Protection Code. The declaratory judgment cause of action is remedial and seeks to afford relief from uncertainty and insecurity with respect to rights, statute and other legal relations. It is to be liberally construed and administered. The South Carolina Supreme Court has stated:

> The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights. The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, **without awaiting a violation of the rights** or a disturbance of the relationship.

Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423424, 593 S.E.2d 462, 466 (2004)(emphasis added). No injury (violation or breach of rights) is even needed to bring a declaratory judgment cause of action; only unsettled legal rights and relationships.

The South Carolina Supreme Court has stated time and time again that lawsuits like the instant one are proper for declaratory judgments. In Ott v. Tindal, the South Carolina Supreme Court stated:

> **Such actions are especially appropriate where, as here, the meaning of the statute is in question** ... whether a declaratory judgment shall be granted is a matter which rests in the sound discretion of the trial court. Absent a clear showing of an abuse of discretion, the lower court's decision to grant declaratory relief will not be disturbed.

297 S.C. 395, 397-398, 377 S.E.2d 303, 304-305 (1989) (emphasis added). In Foster v. Foster, 226, S.C. 130, 83 S.E.2d 752 (1954) the South Carolina Supreme Court stated:

> "The test of sufficiency of such a complaint is not whether it shows that the plaintiff is entitled to a declaration of rights in accordance with his theory, but whether he is entitled to a declaration of rights at all. Even though the plaintiff is on the wrong side of the controversy, if he states the existence of a controversy which should be settled by the court under the Declaratory Judgment Law, he has stated a cause of suit."

citing Cabell v. City of Cottage Grove, 170 Or. 256, 130 P.2d 1013, 1015, 144 A.L.R. 286.

The pleading in this case are sufficient to establish standing under the Declaratory Judgment Act. Plaintiffs seek a declaration of rights under two different statutes: (1) the Dealers Act; and (2) Consumer Protection Code, S.C. Code Ann. § 37-2-307. The meaning of both of these statutes are at issue. Furthermore, Plaintiffs have alleged a justiciable controversy because

Plaintiffs have alleged that each of the Defendants conduct harmed each Plaintiff. Thus, Plaintiffs allegations are sufficient to establish direct standing under the Declaratory Judgment Act.

C. Plaintiffs Have Public Interest Standing

Plaintiffs also have public interest standing to bring this action. The issues raised by Defendants' common practice of charging administrative fees are of such wide concern and public importance that this action should be decided for future guidance to insure that the public is protected. *See* Sloan v. Department of Transportation 365 S.C. 299, 304, 618 S.E.2d 876, 878-879 (2005) ("[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance...Sloan had standing because the "issues involved 'are of such wide concern' that this declaratory judgement action should be decided for future guidance"). *See also* Sloan v. Hardee, ____ S.C. ___, ___S.E.2d __ (2007) (holding Greenville County resident and public interest group have public interest standing to pursue declaratory judgement action challenging appointment of DOT commissioners from congressional districts outside of Greenville County).

The issues in the present suit are of wide concern and public importance. Significantly, **all Defendants are illegally charging administrative fees to customers all across the state.** The fact that this issue is of wide concern and public importance is further evidenced by the General Assembly's enactment of S.C. Code Ann. § 37-2-307 in the Consumer Protection Code. This statute is very narrow and strict and conclusively demonstrates that the charging of administrative fees is otherwise illegal. S.C. Code Ann. §37-2-307 requires affirmative steps and disclosures from the dealership to ensure that the public is protected from these otherwise illegal

fees (pay fee and register with the Department of Consumer Affairs, conspicuously disclose on contract, conspicuously display in dealership, and only charge for reimbursement).

A finding of public interest standing in this case promotes judicial economy. These issues should be determined in one action. Any other finding would lead to hundreds of similar suits in state courts across this state all seeking to determine the same issues– that is whether the administrative fees are being charged in violation of statutes. Clearly, judicial economy is served by having these issues determined in one suit.

Because of the widespread nature of Defendants illegal practices, this matter should be decided for future guidance and to ensure that the public is protected. Accordingly, Plaintiffs have public interest standing to bring the claims at issue.

2. THIS IS NOT A RULE 23 CLASS ACTION

This action is brought pursuant to express statutory authority in S. C. Code Ann. § 56-15-110(2). Significantly, this is not a Rule 23, SCRCP class action. Simply put, arguments to the contrary are wrong. The Dealers Act provides a substantive right to bring a group suit.

The Dealers Act provides a statutory right to a specific group of consumers different than the procedural avenue provided in Rule 23, SCRCP. Under the Dealers Act, a plaintiff needs to only show one of two things in order to be able to bring the suit on behalf of a group. S.C. Cod Ann. § 56-15-110(2) provides:

> When such action is one of common or general interest to many persons or when the parties are numerous ans it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.

S.C. Cod Ann. § 56-15-110(2). Under the statute, Plaintiffs may bring the suit on behalf of a group if: (1) the suit is of common or general interest of many persons; or (2)the parties are

numerous and it is impractical to bring them before the Court. In comparison, Rule 23, SCRCP has five elements that must be met in order to have a class action under Court rules. The five elements under Rule 23, SCRCP are: (1) numerosity; (2) commonality; (3) typicality; (4) adequately protect the interests of class; and (5) the amount in controversy exceeds $100.00.

As can be shown by comparing the requirements of both, the Dealers Act gives a statutory right as compared to a court rule. This is consistent with the purposes behind the Dealers Act. *See* Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002)("The legislature obviously enacted the Dealers Act because consumers' remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose.").

The Defendants argument that §56-15-110(2) only allows the bringing of Rule 23, SCRCP class actions should be rejected. "Such an interpretation violates the rule that we should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless." Hinton v. South Carolina Dept. of Probation, Parole and Pardon Services 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct.App. 2004). A violation of the Dealers Act just like any other cause of action is always susceptible to being brought as a class action if under court rule. However, the Dealers Act eliminates the necessity of a court rule to bring a group action and instead provides such by a statutory right without the bonds of court rules. Thus, an interpretation that §56-15-110(2) only allows a Rule 23, SCRCP class action would render this section meaningless. §56-15-110 (2) must allow a group lawsuit if the plain language of this section is to be given meaning.

S.C. Code Ann. §56-15-110(2) Was Not Repealed

Similarly, Defendants argument that S.C. Code Ann. § 56-15-110(2) was impliedly repealed by the enactment of the Rules of Civil Procedure should be rejected. Defendants argue that because S.C. Code Ann. § 56-15-110(2) contains similar language to that contained in an old statute, S. C. Code Ann. §15-5-50 (repealed 1985), that the occurrence of similar language means that S.C. Code Ann. § 56-15-110(2) was also repealed.

Defendants rely on section three of 1985 Act 100, which provides:

> In the event of conflict between any provision of the South Carolina Rules of Civil Procedure and any other statutory provisions as to practice and procedure not repealed in this act, the provision of the rules shall control. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.

The 1985 Act states that it does not apply to statutes that create substantive rights. 1985 Act 100 ("neither the promulgation of the rules nor this act may be construed to affect the **substantive legal rights of any party** to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.")(emphasis added). S. C. Code Ann. § 56-15-110 provides substantive rights. S.C. Code Ann. § 56-15-110 creates a cause of action in favor of people harmed by violations of the Dealers Act and provides that the cause of action may be brought on behalf of a group. By comparison, The 1985 Act specifically repealed S. C. Code Ann. § 15-5-50 because it only dealt with a procedural issue. Accordingly, the 1985 Act did not repeal S.C. Code Ann. § 56-15-110.

Furthermore, the fact that both statutes existed independently is further support for the proposition that the statutes are alternative avenues for group suits are the intent of the legislator.

After the repeal of the S. C. Code An. § 15-5-50 (repealed 1985), the General Assembly chose not to specifically repeal subsection two of S. C. Code Ann. §56-15-110. The fact that this statute was not specifically repealed supports a finding that the General Assembly intended to provide those harmed by violations of the Dealers Act a broader protection than that protection provided at the common law.

Furthermore, the 1985 Act did not impliedly repeal S.C. Code Ann. § 56-15-110.

> Under Section 3 of the of the 1985 Act, the Legislature provided that in the event of conflict, the Rules replace existing procedural statutes. However, **repeal by implication is disfavored and requires a showing of conflict between the two competing statutes, incapable of reasonable reconciliation.** Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.

Blyth v. Marcus, 322 S.C. 150, 153, 470 S.E.2d 389, 391 (Ct.App. 1996)(emphasis added). Rule 23, SCRCP is not clearly in conflict with S. C. Code Ann. § 56-15-110(2). "Courts should be slow to hold that a statute has been repealed by implication and should avoid holding if it can be done on any reasonable hypothesis and can arrive at another result by any construction which is fair and reasonable." Lewis v. Gaddy, 254 S.C. 66, 76, 173 S.E. S.E.2d 376, 381 (S.C. 1970). "[T]he repugnancy must not only be plain, but the provisions of the two statutes must be incapable of any reasonable reconcilement; for if they can be construed so that both stand, the Court will so construe them." City of Rock Hill v. SCDHEC, 302 S.C. 161, 167-168, 394 S.E.2d 327, 331 (1990) *citing* Pearson v. Mills Manufacturing Co., 82 S.C. 506, 509, 64 S.E. 407 (1909). "[T]o effect an implied repeal of one statute by another, they must both relate to the same subject, and cover the same situations, since one statute is not repugnant to another unless there is such a relation." McCollum v. Snipes, et al., 213 S.C. 254, 268, 49 S.E.2d 12, 17-18 (1948). "It was is presumed that the Legislature [is] familiar with prior legislation, and that if it

intend[s] to repeal existing laws it would...expressly [do] so; hence, if by any fair or liberal construction two acts may be made to harmonize, no [c]ourt is justified in deciding that the last repealed the first." Justice v. Pantry, 330 S.C. 37, 43-44, 496 S.E.2d 871, 874 (Ct.App. 199); State v. Hood, et al., 181 S.C. 488, 491, 188 S.E. 134, 136 (1936).

There is no clear conflict or repugnancy between Rule 23, SCRCP and S. C. Code Ann. § 56-15-110(2). Rule 23, SCRCP and S. C. Code Ann. § 56-15-110(2) cover different situations and are reasonably reconcilable. Rule 23, SCRCP is a general procedural statute that can apply to a wide variety of cases– any case satisfying the elements of Rule 23, SCRCP. S.C. Code Ann. § 56-15-110(2) is a substantive right and only applies to specific lawsuits (a violation of the Dealers Act.) S.C. Code Ann. § 56-15-110(2) is a statutory mechanism. Rule 23, SCRCP and the Dealers Act are not in conflict and can be construed so that both provisions may stand. Accordingly, Defendants' argument that S.C. Code Ann. § 56-15-110(2) was impliedly repealed should be rejected.

Commonality and Typicality Are Not Elements of S. C. Code Ann. § 56-15-110(2)

Defendants Northside Nissan's and Oaktree, Inc. d/b/a West Ashley Toyota, Inc.'s argues that the Plaintiff claims are not common or typical all members of the group. This is the wrong test. Plaintiffs have alleged that Defendant car dealers are charging illegal administrative fees and that Plaintiffs and all members of the group were harmed because they paid illegal administrative fees. The test to determine whether Plaintiffs can bring these claims on behalf of a group is set forth in §56-15-110(2). The test is whether the "action is of common or general interest to many persons" or whether "the parties are numerous it is impracticable to bring them

all before the court." S.C. Code Ann. § 56-15-110(2). As already set forth, Plaintiffs claims here satisfy the test set forth in S.C. Code Ann. §56-15-110(2).

As pointed out by Defendants' Coordinating Counsel for these motions, Steve Hamm, in his Affidavit of March 12, 1992 filed in Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 472 S.E.2d 242 (1996), the charging of administrative fees to consumers is a violation of the law. Mr. Hamm's affidavit provides in part:

> In September, 1987, the Department [South Carolina Department of Consumer Affairs] sent to all members of the South Carolina Automobile and Truck Dealers Association a letter outlining several advertising practices that the Department believed violated the law. (A copy of the letter is attached here to as Exhibit A). Item number 1 of that letter specifically addresses additional closing fees, variously called documentary fees, procurement fees, administrative fees, closing costs, as well as other names, and indicates that attempts to treat such fees as an additional cost to the advertised price could be considered as a violation of the law.
>
> Exhibit B, Hamm Affidavit, ¶7.
>
> Between October, 1988 and July 1989, the Department began discussing additional closing fees and determined, during June, 1989 or early July, 1989, that such fees within themselves were a violation of the law.
>
> Exhibit B, Hamm Affidavit, ¶12.
>
> Consistently, since July, 1989, the Department has taken the position that additional closing fees are a violation of the law.
>
> Exhibit B, Hamm Affidavit, ¶15.

Plaintiffs agree with Mr. Hamm that administrative and closing fees are illegal and of common or general interest. In that regard, there are no individualized issues; the same type of illegal fee is charged to every Plaintiff and the many persons Defendants also charged.

Plaintiffs have alleged causes of action for violation of the Dealers Act, a cause of action for civil conspiracy, and a cause of action seeking a declaratory judgment. It is obvious that this

"action is of common or general interest to many persons" and "the parties are numerous it is impracticable to bring them all before the court." S.C. Code Ann. § 56-15-110(2). As such, Plaintiffs are allowed to bring these claims on behalf of a group.

Defendants Northside Nissan's and and Oaktree, Inc. d/b/a West Ashley Toyota, Inc.'s arguments that Plaintiffs are attempting to bring a fraud class action are wrong. A simple reading of Plaintiffs' Amended Complaint shows that this is not a Rule 23, SCRCP class action and that Plaintiffs have not alleged a cause of action for fraud. Accordingly, Defendants Northside Nissan's and and Oaktree, Inc. d/b/a West Ashley Toyota, Inc.'s motion to dismiss should be denied.

Defendants' Arguments as to the Juridical Links Doctrine are Inapplicable

Defendants arguments that Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003) prevents Plaintiffs from bringing this action are wrong. Defendants cite Gardner for the proposition that "a plaintiff may not sue a defendant unless the plaintiff has suffered an injury at the hands of the defendant." Gardner, 353 S.C. at n.14, 577 S.E.2d at n.14. Gardner is inapplicable for two reasons.

First and foremost, the Amended Complaint in this case alleges that each Plaintiff suffered an injury at the hands of each Defendant. Accordingly, Gardner does not apply.

Second, Gardner involves a Defendant class under Rule 23, SCRCP class action. Plaintiffs in this case are not bringing a Defendant class action under Rule 23, SCRCP. All of the Defendants in this case have been named and Plaintiffs have alleged that each Defendant's actions harmed each Plaintiff. Thus, the findings in Gardner are not applicable to this case.

3. PLAINTIFFS ADEQUATELY PLED A CAUSE OF ACTION FOR CIVIL CONSPIRACY

The Defendants' arguments regarding the sufficiency of Plaintiffs' civil conspiracy cause of action allegation should be rejected. Defendants argue that Plaintiffs are prohibited from bringing a cause of action for civil conspiracy because the pleadings are based on the same fact as allegations plead in other causes of action. This is not a sufficient ground for a Rule 12(b)(6), SCRCP motion to dismiss.

Plaintiffs have properly pled civil conspiracy as an alternative cause of action. "A party may also state as many separate causes of action or defenses as he has regardless of consistency and whether based on legal or an equitable grounds or on both." Rule 8 (e)(2), SCRCP.

> When the facts entitle a party to alternative remedies, those remedies are not considered inconsistence, and he may plead and prove his entitlement to both...This rule rests on the principle that the plaintiff should have a full opportunity to prove his claim to some form of relief, but he should not receive a double recovery.

Harper v. Etherridge, 290 S.C. 112348 S.C.2d 374 (Ct.App.1986)(internal citations omitted).

This is a motion to dismiss which addresses the sufficiency of the pleadings. In this case, Plaintiffs assert that they have a viable stand alone cause of action for civil conspiracy and/or viable stand alone causes of action for violation of the Dealers Act and one for declaratory judgment. The fact that Plaintiffs may at later stages in this case be forced to elect between causes of action does not mean that Plaintiffs are not entitled to plead alternative causes at the beginning stages of the case. *See eg.* Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.1987) ("And finally, where a plaintiff seeking recovery in an action for conspiracy fails to prove a conspiracy or concerted design, he may still recover damages against a defendant proven to be guilty of a tort alleged to be the object of the conspiracy; the

allegations of the conspiracy are considered as mere surplusage."). As clearly shown by Island Car Wash, Plaintiffs are allowed to plead and attempt to prove a cause of action for civil conspiracy as an alternative cause. The Rules of Civil Procedure simply do not require that the Plaintiffs elect between alternative theories of recovery at the pleadings stage of the case. Accordingly, the motions to dismiss based on this ground should be denied.[6]

For these same reasons, Defendants arguments with regard to special damages also fail. Defendant car dealers rely on civil conspiracy cases that hold that special damages in the context of a civil conspiracy claim are damages that are separate and distinct and those damages sought in the other causes of action. *See eg.* Vaught v. Waites, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App. 1989). These cases stem from the simple proposition that a Plaintiff can not recover for the same damages twice. However, as discussed above, nothing prohibits a Plaintiff from pleading causes of action in the alternative. The only limitation is that Plaintiffs can not recover twice for the same harm. Plaintiff recognize this limitation and will duly elect between remedies at the appropriate stage.

The Defendants reliance on Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981) for the proposition that a civil conspiracy cause of action that involves the same facts as other causes of action is subject dismissal under Rule 12(b)(6), SCRCP is misplaced. *See* Defendants Joint Memorandum, p. 14. Todd v. S.C. Farm Bureau was prior to the enactment of the Rules of Civil Procedure and involved a demurrer.

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[6]The right of later election is especially appropriate in this case. This is so because Plaintiff have brought a cause of action under a novel statute. ("[A] demurrer should be denied where novel issues are present or are involved") Springfield v. Williams Plumbing Supply Co., 249 S.C. 130, 153 S.E.2d 184 (1967).

Significantly, under code pleading, if a party pled in the alternative the pleading was demurrable. *See Lightsey, M. Harry, South Carolina Code Pleading*, 1976, pp. 70-71 *discussing* Daniels, et. al. v. Berry, et. al., 148 S.C. 446, 146 S.E. 420 (1927)("The *Daniels* case has been cited as authority for the proposition that where alternatives are pleaded, each must be legally sufficient or the pleading is demurrable....By comparison, the Federal Rules clearly provide for alternative pleading and avoid, by express terms, the harsh results found in *Daniels.*"). Unlike code pleading, the Rules of Civil Procedure allow parties the opportunity to plead and prove alternative causes of action. *See* Rule 8 (e)(2), SCRCP; *See also* Harper v. Etherridge, 290 S.C. 112348 S.C.2d 374 (Ct.App.1986)("When the facts entitle a party to alternative remedies, those remedies are not considered inconsistence, and he may plead and prove his entitlement to both..."). Thus, to the extent that Defendants rely on Todd v. S.C. Farm Bureau for the proposition that Plaintiffs cannot plead a cause of action for civil conspiracy in the alternative the Defendants' argument should be rejected.

More importantly, Plaintiffs have alleged damages as a direct result of the civil conspiracy. This pleading is sufficient to allege a civil conspiracy.

> In a conspiracy action, what is required is proof of the fact of damages, not certainty of amount...**The elements which go to make up such damages must depend on the nature of the act and the injury**...Appellants' own literature, which claims to have damages respondent by causing a dramatic drop in the number of abortions performed at the clinic, is itself evidence of damages.

Gynecology Clinic, Inc. v. Cloer 334 S.C. 555, 556-557, 514 S.E.2d 592, 592-593 (1999) (emphasis added). Allen v. Columbia Financial Management, Ltd., 297 S.C. 481, 489, 377 S.E.2d 352, 357 (Ct.App.,1988)(holding loss of investment in case involving abusive tax shelter are recoverable civil conspiracy damages): LaMotte v. Punch Line of Columbia, Inc. 296 S.C.

66, 70, 370 S.E.2d 711, 713(1988)(holding sufficient civil conspiracy damages where "Appellants allege that respondents combined forces to injure them by preventing the opening of their restaurant, and thereby caused appellants to suffer special damages."); Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719 (1942)(holding sufficient civil conspiracy damages where plaintiff was forced out of partnership and lost half of the expected profits from partnership contract). The damages alleged in this case are no different in kind from those found to be sufficient in the above listed cases. Accordingly, Plaintiffs have alleged sufficient damages to survive a motion to dismiss.[7]

4. JOINDER IS PROPER

Defendants' motions to dismiss for improper joinder should be denied. A motion to dismiss for improper joinder is not permitted under the South Carolina Rules of Civil Procedure: "Misjoinder of parties is not ground for dismissal of an action." Rule 21, SCRCP. Accordingly, Defendants' motions to dismiss for improper joinder should be denied.

Regardless, joinder is proper in this case. Rule 20(a), SCRCP which governs joinder provides:

> All persons may join in one action as Plaintiff if they assert any right to relief jointly, severally, or in the alternative respect of or arising out of the same transaction, occurrence, or series of transaction or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transaction or occurrences and if any questions of law or fact common to all defendants will arise in the action.

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[7]If Defendants' argument is that Plaintiffs should plead with more specificity, the appropriate remedy is an order directing the Plaintiffs to plead with more particularity, not an order to dismiss.

Rule 20(a), SCRCP rule is to be liberally construed. *See* Notes to Rules 20, SCRCP ("This Rule 20 (a) is substantially the same as the Federal Rule. This rule liberalizes joinder in State Practice.").

> Rule 20(a) permits 'the broadest possible scope of action consistent with fairness to the parties [and] joinder of claims, parties and remedies is strongly encouraged.' " *King v. Ralston Purina Co.*, 97 F.R.D. 477, 479 (W.D.N.C.1983) (citing *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966); *cf. Rumbaugh v. Winifrede R.R. Co.*, 331 F.2d 530, 537 (4th Cir.1964) (stating the foundation of *Rule* 20(a) lies in "avoiding a multiplicity of suits and expediting the final determination of litigation"). The court notes "the transaction and common question requirements prescribed by Rule 20(a)are to be liberally construed in the interest of convenience and judicial economy.

Jonas v. Conrath, 149 F.R.D. 520, 523 (S.D.W.Va.,1993) Rule 20(a), SCRCP should also be construed in light of Rule 1, SCRCP's requirement that the rules be "construed to secure the just, speedy, and inexpensive termination of every action."

Joinder is proper in this case. The claims at issue in this case all arise from the same "transaction, occurrence, or series of transaction or occurrences." Plaintiffs have alleged that the Defendants conspired together in order to charge illegal administrative fees to South Carolina consumers including the Plaintiffs. *See* Exhibit A, Amended Complaint, ¶ 333, ¶¶ 402-405, and ¶ 396. This action arises from one occurrence– the Defendants' conspiracy. Similarly, the action arises from a series of transaction (the individual sales charging illegal administrative fees).

Additionally, questions of law and fact common to all Defendants exist in this action. Plaintiffs have alleged that all Defendants are violating the Dealers Act and S.C. Code Ann. § 37-2-307. Clearly, whether each Defendant is in compliance with each of these statutes involves common questions of law and fact. Additionally, the question of whether each

Defendant participated in an illegal conspiracy is a common question of fact. Therefore, the requirements in Rule 20(a), SCRCP have been satisfied and joinder is proper.

5. VENUE IS PROPER

Defendants' motions to dismiss for improper venue should be denied. "If...there is more than one defendant, the action may be tried in any county where one or more defendants reside." Ellis by Ellis v. Oliver, 307 S.C. 365, 367, 415 S.E..2d 400, 401 (1992). Defendant Taylor Investments d/b/a Taylor Toyota is located in Aiken County. Exhibit A, Amended Complaint, ¶ 332. Accordingly, this action is properly brought in Aiken County and Defendants' motions to dismiss for improper venue should be denied.

Even if venue were improper in Aiken County, which it is not, a dismissal of this action would not be warranted. *See* Rule 82(b), SCRCP ("When an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer it to any proper county or court in which it could have been brought.").

6. PLAINTIFF SUFFICIENTLY PLEAD A VIOLATION OF THE DEALERS ACT[8]

Plaintiffs have pled sufficient facts to state a cause of action under the Dealers Act. Plaintiffs sufficiently alleged that Defendants violated S.C. Code Ann. §56-15-40(1). This section provides:

> It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or 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.

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[8]Although Defendants did not address this issue in their briefs, this issue was raised in multiple motions to dismiss that are to be heard at the April 4, 2007 hearing. Accordingly, Plaintiffs address this issue here.

S.C. Code Ann. § 56-15-40(1). Bad faith under the Act means: "[t]he opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another or a neglect or refusal to pay fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive." deBondt v. Carlton Motor Cars, Inc., 342 S.C. 254 (Ct.App.2000). "Arbitrary conduct is readily definable and includes acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone." Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992).

Plaintiffs' sufficiently allege a violation of S.C. Code Ann. §56-15-40(1). Plaintiffs alleged that Defendants are charging administrative fees in a manner that is arbitrary, in bad faith, and unconscionable. *See* Exhibit A, Amended Complaint, ¶ 393. Plaintiffs alleged that Defendants are presenting administrative fees in a manner that is designed to deceive or mislead and is arbitrary, in bad faith, and unconscionable. *See* Exhibit A, Amended Complaint, ¶ 394. Additionally, Plaintiffs alleged that Defendants conspired together to charge administrative fees and that the conspiracy in an of itself as a violation of the statute. *See* Exhibit A, Amended Complaint, ¶ 396. Plaintiff also alleged that they were injured as a result of Defendants' actions. *See* Exhibit A, Amended Complaint, ¶ 399.

Similarly, Plaintiffs sufficiently pled that Defendants violated S.C. Code Ann. §56-15-40(c). This statute provides: "It shall be deemed a violation of paragraph (a) of § 56-15-30 for a motor vehicle dealer: (c) to resort to or use any false or misleading advertisement in connection with his business as such motos vehicle dealer." Plaintiffs alleged that Defendants failed to

adequately disclose or include administrative fees in the advertised price or cars which constitutes misleading advertising. *See* Exhibit A, Amended Complaint, ¶ 395.

These pleadings are sufficient to state a cause of action against all Defendants for a violation of Title 56. *See* Gaskins v. Southern Farm Bureau, Cas. Ins. Co., 343 S.C. 666, 541, S.C.2d 269 (Ct.App.2000) ("To ensure substantially justice to the parties, the pleadings must be liberally construed.").

Furthermore, Plaintiffs made sufficient pleadings to allow this claim to be brought on behalf of a group. S.C. Code Ann. §56-15-110(2) provides:

> When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

Plaintiffs' pleadings are sufficient to invoke this statute. The Amended Complaint provides in part:

> This suit is brought pursuant to S.C. Code Ann. §56-15-110(2) for the benefit of the whole because the action is one of common or general interest to many persons and the parties are numerous and it is impracticable to bring them all before the Court.

Exhibit A, Amended Complaint, ¶ 397.

> Accordingly, Plaintiffs are suing for the benefit of all South Carolina car buyers whom paid administrative fees to Defendants and against all motor vehicle dealers owned or controlled by Defendants as defined in S.C. Code Ann. §56-15-10(h).

Exhibit A, Amended Complaint, ¶ 398. These pleadings are sufficient to allow the suit on behalf of many persons as authorized under S. C. Code Ann. § 56-15-110(2).

7. S. C. CODE ANN. § 37-2-307 IS NOT A DEFENSE TO THIS ACTION[9]

Defendants argument that this action is prohibited because the charging of administrative fees is "regulated" under S. C. Code Ann. § 37-2-307 should also be rejected. S.C. Code Ann. §37-2-307 is not a legal defense shielding Defendants from liability.

Defendants' argument is analogous to the line of cases involving the regulated industry exception to the Unfair Trade Practices Statute. *See* Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310 (1991). The Unfair Trade Practices Act contains an express exception excepting actions that are administered by a regulatory body. *See* S.C. Code Ann. § 39-5-40(a) (excepting from the Unfair Trade Practices statutes "[a]ctions or transaction permitted under laws administered by any regulatory body or office acting statutory authority of this State or the United States or actions or transaction permitted by any other South Carolina state law."). Importantly, the Dealers Act, unlike the Unfair Trade Practices Act, does not contain a similar exception. Therefore, there is no similar defense to this action.

Even if such an exception did exist under the Dealers Act, which it does not, there is no protections from suit merely because a business's complained of action is subject to some type of regulation. There simply are no protections where the complained of actions, as here, are not allowed or authorized actions under a statute or regulation. *See* Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310 (1991) (holding that mere fact of regulation did not prevent a cause of action for unfair trade practices).

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[9]Although Defendants did not address this issue in their briefs, this issue was raised in multiple motions to dismiss that are to be heard at the April 4, 2007 hearing. Accordingly, Plaintiffs address this issue here.

Defendants are not in compliance with S. C. Code Ann. § 37-2-307. *See* Exhibit A, Amended Complaint, ¶ 349. Defendant car dealers failed to register with the Department of Consumer Affairs. *See* Exhibit A, Amended Complaint, ¶¶ 351-373. Defendant car dealers failed to include the administrative fee in the advertised price of the vehicle. *See* Exhibit A, Amended Complaint, ¶ 337, ¶ 395 and ¶349. Defendant car dealers charged administrative fees for profit, not to reimburse for cost. *See* Exhibit A, Amended Complaint, ¶ 349. Therefore, Defendant car dealers are not in compliance with S.C. Code Ann. § 37-2-307. Accordingly, Defendants cannot use S. C. Code Ann. § 37-2-307 as an absolute defense to this action and Defendants' motion to dismiss on the bases of S.C. Code Ann. § 37-2-307 should be denied.

8. **MOTIONS TO DISMISS BASED THE PRESENCE ARBITRATION AGREEMENTS SHOULD BE DENIED**

Defendants have made motions to dismiss based on the presence of arbitration agreements. The majority of these motions should not and cannot be heard at this time. Plaintiffs' Counsel have contacted Defendants and specifically requested all applicable arbitration agreements. Defendants have refused to provide the arbitration agreements. Because there is a four year statute of limitations under the Dealers Act, in order to be able to fairly respond to the motions, Plaintiffs must be able to review the arbitration agreements used by the Defendants for the past four years. Plaintiff can not fairly respond to this motion to dismiss without the arbitration agreements. Therefore, these motions are not proper at this time.

PLAINTIFF CHRISTINE WATTS' CLAIMS SHOULD NOT BE SENT TO ARBITRATION

Defendant Century BMW d/b/a Sonic Automotive, Inc. ("Century BMW") filed a separate memorandum arguing that Plaintiff Christine Watts's should be dismissed as a Plaintiff

on the ground that Plaintiff Christine Watts entered into an arbitration agreement Defendant Century BMW also claims that this is a grounds for dismissing Century BMW as a Defendant from this action. These arguments should be rejected.

Plaintiff Christine Watts's claim against Century BMW should not be referred to arbitration. Tellingly, Century BMW did not include Plaintiff Christine Watts' buyer's order (contract) in either their motion or memorandum seeking to compel arbitration. Exhibit C, Buyer's Order. This is so because Plaintiff Christine Watts' buyer's order does not contain an arbitration clause. It is therefore undisputed that the contract itself does not comply with South Carolina law because the first page of the retail buyer's order does not contain in bold letters or in a stamp a notice that the agreement subject to arbitration.

Defendant Century BMW instead has presented a separate one-page document which purports to waive Plaintiff Christine Watts's rights to "participate in any class action or multi plaintiff or claimant action in court or through arbitration." This agreement is in less than size six font and was not negotiated between the parties.

The South Carolina Supreme Court has stated that it will not enforce this type of arbitration agreement. "[P]reclusion of class-wide or consolidated arbitration in an adhesion contract, even if explicit, undermines principles favoring expeditious and equitable case disposition absent demonstrated prejudice to the drafter of the adhesion contract." Bazzle v. Green Tree Financial Corporation, 351 S.C. 244, 569, S.E.2d 349 (2002) (*R'vd on other grounds*).

The document relied upon by Century BMW is a classic adhesion contract:

> [A] contract of adhesion is generally thought of as standard form contract offered on a 'take-it-or-leave-it' basis. The terms of the contract of adhesion are not negotiable. An offeree faced with such a contract has two choices: complete adherence or outright rejection." Wingard v. Exxon Co., 819 F.Supp. 497, 503 (D.S.C.1992) (citing E. Allen Farnsworth, *Contracts* § 4.26 at 295 (1982)). *See* 1 *Corbin on Contracts* § 1.4 (rev. ed. 1993) (recognizing adhesion contracts as agreements in which one party has virtually no voice in the formulation of their terms and language).

Lackey v. Green Tree Financial Corporation, 330 S.C. 388, 498 S.E.2d 898 (Ct.App.1998) *cited with approval in* Munoz v. Green Tree Financial Corporation, 343, S.C. 531, 541, 542 S.E.2d 360, 365 (2001)("Generally, an adhesion contract 'take-it-or-leave-it' basis with terms that are not negotiable.").

The Century BMW adhesion contract is a standard form contract that was presented on a "take-it-or-leave-it" basis. Plaintiff Christine Watts did not contribute to its drafting. Plaintiff Christine Watts obviously did not possess the same bargaining power as Century BMW. There is no doubt that had Plaintiff Christine Watts not signed, she would not have received the car. *Cf.* Lackey, 330, S.C., 394, 498 S.E.2d 901. The Century BMW adhesion contract is even worse than the contract frowned upon by the Supreme Court in Bazzle v. Green Tree. Century BMW is attempting to use an adhesion contract to eliminate a statutory right.

Statutory claims that cannot be effectively vindicated in arbitration are not enforceable. "Claims arising under a statute designed to further important social policies may be arbitrated...**so long as the perspective litigant effectively may vindicate [his/her] statutory cause of action in the arbitral forum.**" Green Tree Financial Corporation v. Randolph, 531 U.S. 79, 121 S.Ct.513, 521 (2000)(emphasis added).

Plaintiff Christine Watts's claims against Century BMW under the Dealers Act cannot be effectively vindicated in arbitration and therefore are not arbitrable. The Dealers Act

provides substantive rights to those harmed by violations. S.C. Code Ann. §56-15-110(c) provides:

> (2) When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.

S.C. Code Ann. §56-15-110(2) provides statutory rights to Plaintiffs including the right to seek injunctive relief and the right to bring a claim on behalf of a group. The statute was "Obviously enacted...because consumers' remedies at common law were deemed inadequate." *See* Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002).

Plaintiff Christine Watts's right, as one harmed Plaintiff, to seek injunctive relief when an action is of common or general interest to many persons cannot be effectively vindicated in an arbitration. S.C. Code Ann. §56-15-110(2) is designed so that one person can stop a car dealers from perpetrating wrongdoing against many car purchasers. This right to injunctive relief was given by the General Assembly to prevent car dealerships from perpetrating mass wrongdoing on the public. This is a significant right that cannot be vindicated in arbitration.

Similarly, Century BMW adhesion's contracts attempted prohibition of group suits prevents Plaintiff Christine Watts from vindicating her statutory rights in arbitration. The right to bring a claim on behalf of a group under S.C. Code Ann. §56-15-110(2) is significant. This protection provided by the General Assembly is necessary because otherwise parties with nominal individual claims, but significant collective claims, would be left with limited avenues for relief and the drafting party with little checks on its abuses of the law. S.C. Code Ann. § 56-15-110 makes it economical for a car purchaser who has been harmed by violation of the statute to bring claims against a car dealer. Otherwise, car dealers could continually rip off customers

for small amounts with no check on their abuses. The Dealers Act's provision of the right to bring a group suit is a substantive statutory right that cannot be effectively vindicated in the arbitration that Century BMW seeks.

Century BMW cannot via an un-bargained for adhesion contract take away Plaintiff Christine Watts's statutory rights. The Century BMW adhesion contract is inherently inconsistent with the Dealers Act because it effectively prevents injunctive relief and attempts to prohibit multi-plaintiff actions. Therefore, Plaintiff Christine Watts' cannot "effectively may vindicate [her] statutory cause of action in the arbitral forum" and the arbitration agreement is unenforceable. Green Tree Financial Corporation v. Randolph, 531 U.S. 79, 121 S.Ct.513, 521 (2000).

If this Court were to find that Plaintiff Christine Watts' claims should be arbitrated, Plaintiffs agree with Defendant Century BMW that this Court should determine whether the claims may be brought on behalf of a group.

Plaintiff Christine Watts should be allowed to bring her claims on behalf of a group. The South Carolina Supreme Court has made it that clear adhesion contracts like the one at issue that attempt to prohibit class-wide or consolidated arbitration, are not enforceable under South Carolina law. "[P]reclusion of class-wide or consolidated arbitration in an adhesion contract, even if explicit, undermines principles favoring expeditious and equitable case disposition absent demonstrated prejudice to the drafter of the adhesion contract." Bazzle v. Green Tree Financial Corporation, 351 S.C. 244, 569, S.E.2d 349 (2002) (*R'vd on other grounds*). Defendant Century BMW is attempting to do something even worse than that what

the South Carolina Supreme Court said was impermissible. Century BMW is attempting to use an adhesion contract to take a away a statutory right to bring the claims on behalf of a group. The South Carolina Supreme Court clearly spelled out that such use of adhesion contracts are not permissible. Accordingly, Defendant Century BMW's request that this Court rule that no group action can be maintained in an arbitration against Century BMW for violations of the Dealers Act should be rejected.

If Plaintiff Christine Watts' claims against Century BMW were referred to arbitration, the proper remedy in that situation would be to exclude from the case those persons who have enforceable arbitration agreements. *See* Cutler v. Orkin Exterminating Co., 770 So.2d 67, 69 (Ala. 2000)(affirming trial court's dismissal of class members whose contracts contain arbitration clauses only not the entire case against the defendant). Defendant Century BMW should not be dismissed from this action. Defendant Century BMW is a co-conspirator and all Plaintiffs have alleged causes of action against Century BMW arising from its role as a co-conspirator. *See* Exhibit A, Amended Complaint, cause of action for Civil Conspiracy and causes of action for Violation of Dealers Act (¶ 396). A co-conspirator as to a conspiracy harming a group may have an arbitration agreement as to one member of the group but such does relieve him of suit by the other members of the suit harmed by the conspiracy. Defendant Century BMW does not have arbitration agreements with all of the Plaintiffs. Accordingly, irrespective of the arbitration agreement with Plaintiff Christine Watts, Defendant Century BMW should not be dismissed from this action because the remaining plaintiffs have claims against Defendant Century BMW.

Similarly, Plaintiff Christine Watts should not be dismissed from this action. Plaintiff Christine Watts has also asserted causes of action against all Defendants in addition to the causes of action asserted against Century BMW. These cases of action include a cause of action for civil conspiracy and a cause of action for violation of Title 56 as a result of the Defendants' illegal conspiracy.

CONCLUSION

For the above reasons, Defendants motions to dismiss should be denied.

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By: _____

Attorneys for the Plaintiffs

March 9, 2007
Columbia, South Carolina

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Heather Herron, Natalie Armstrong, and Alison Dannert individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants,

vs.

CarMax Auto Superstores, Inc., et al
Defendant(s).

CIVIL ACTION COVERSHEET

2006-CP-02-1230

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AIKEN COUNTY
CLERK OF COURT

(Please Print)
Submitted By: Brady R. Thomas
Address: LEWIS & BABCOCK, LLP
Post Office Box 11208
Columbia, South Carolina 29211

SC Bar #: 68304
Telephone #: (803)771-8000
Fax #: (803)733-3534
Other.
E-mail:BRT@lewisbabcock.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

If Action is Judgment/Settlement do not complete

[X] JURY TRIAL demanded in complaint. [ ] NON-JURY TRIAL demanded in complaint.
[ ] This case is subject to **ARBITRATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
[X] This case is subject to **MEDIATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules
[ ] This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts
[ ] Construction (100)
[ ] Debt Collection (110)
[ ] Employment (120)
[ ] General (130)
[ ] Wrongful Breach (140)
[ ] Other (199)

Torts - Professional Malpractice
[ ] Dental Malpractice (200)
[ ] Legal Malpractice (210)
[ ] Medical Malpractice (220)
[ ] Other Malpractice (299)

Torts - Personal Injury
[ ] Assault/Slander/Libel (300)
[ ] Conversion (310)
[ ] Motor Vehicle Accident (320)
[ ] Premises Liability (330)
[ ] Products Liability (340)
[ ] Other (399)

Real Property
[ ] Claim & Delivery (400)
[ ] Condemnation (410)
[ ] Foreclosure (420)
[ ] Mechanic's Lien (430)
[ ] Partition (440)
[ ] Possession (450)
[ ] Building Code Violation (460)
[ ] Other (499)

Inmate Petitions
[ ] PCR (500)
[ ] Sexual Predator (510)
[ ] Mandamus (520)
[ ] Habeas Corpus (530)
[ ] Other (599)

Judgments/Settlements
[ ] Death Settlement (700)
[ ] Foreign Judgment (710)
[ ] Magistrate's Judgment (720)
[ ] Minor Settlement (730)
[ ] Transcript Judgment (740)
[ ] Lis Pendens (750)
[ ] Other (799)

Administrative Law/Relief
[ ] Reinstate Driver License (800)
[ ] Judicial Review (810)
[ ] Relief (820)
[ ] Permanent Injunction (830)
[ ] Forfeiture (840)
[ ] Other (899)

Appeals
[ ] Arbitration (900)
[ ] Magistrate-Civil (910)
[ ] Magistrate-Criminal (920)
[ ] Municipal (930)
[ ] Probate Court (940)
[ ] SCDOT (950)
[ ] Worker's Comp (960)
[ ] Zoning Board (970)
[ ] Administrative Law Judge (980)
[ ] Public Service Commission (990)
[ ] Employment Security Comm (991)
[ ] Other (999)

Special/Complex/Other
[ ] Environmental (600)
[ ] Automobile Arb. (610)
[ ] Medical (620)
[ ] Other (699)
[ ] Pharmaceuticals (630)
[ ] Unfair Trade Practices (640)
[ ] Out-of-State Depositions (650)

Submitting Party Signature: Brady R. Thomas **Date:** 10/28/06

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

***FOR MANDATED ADR COUNTIES ONLY**

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**
** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Cases which are appellate in nature such as appeals or writs of certiorari;

   c. Post Conviction relief matters;

   d. Contempt of Court proceedings;

   e. Forfeiture proceedings brought by the State;

   f. Cases involving mortgage foreclosures; and

   g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
HEATHER HERRON, NATALIE ARMSTRONG, ALISON DANNERT, MICHAEL RITZ. JULIE FREEMAN, CHRISTINE WATTS, MICHAEL BLEASE, MICHAEL WATTS, INDIVIDUALLY AND FOR THE BENEFIT OF ALL CAR BUYERS WHOM PAID "ADMINISTRATIVE FEES" AS DESCRIBED BELOW TO DEFENDANTS.	)	CIVIL ACTION NO.: 06-CP-02-1230
Plaintiffs,	)	
CARMAX AUTO SUPERSTORES. INC.; DICK DYER & ASSOCIATES, INC., DICK SMITH MOTORS, INC.; GALEANA CHRYSLER-JEEP, INC.; GALEANA CHRYSLER PLYMOUTH, INC.: PULLIAM MOTOR CO ; DICK SMITH INFINITI, INC.; DICK SMITH NISSAN OF LEXINGTON, INC.; DICK SMITH NISSAN, INC.;OVERLAND. INC. D/B/A LAND ROVER OF COLUMBIA; TOYOTA CENTER, LLC; STOKES AUTOMOTIVE, INC.; STOKES MOTORS, INC.; STOKES-CRAVEN AUTOMOTIVE, INC.; STOKES MAZDA, INC.; PALMETTO CHEVROLET COMPANY, INC.; PALMETTO NISSAN, INC.; PALMETTO FORD, INC.; JONES FORD, INC., HAROLD ARNOLD'S SENTRY BUICK, INC.; J. L. H. INVESTMENTS, LP; RICK HENDRICK CHEVROLET, LP; RICK HENDRICK HONDA CARS, CO.; RICK HENDRICK, JEEP EAGLE, L.P.; OAK TREE, INC. D/B/A WEST ASHLEY TOYOTA, INC.; GENE	)	SUMMONS (Jury Trial Demanded)

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REED IMPORTS, INC.: GENE REED)
TOYOTA, INC., HOOVER JEEP)
CHRYSLER, INC.; HOOVER MOTORS,)
INC.; HOOVER CHRYSLER-DODGE, INC.;)
STROM ALTMAN DODGE, INC.; BAKER)
MOTOR COMPANY OF CHARLESTON,)
INC.; MILLER CADILLAC, INC.; TAYLOR)
INVESTMENTS, INC. D/B/A TAYLOR)
TOYOTA; BENSON CHRYSLER-)
PLYMOUTH, INC.; BENSON FORD)
MERCURY, INC.; BENSON CADILLAC-)
NISSAN, INC.; BIG "O" DODGE OF)
GREENVILLE, INC.; BRADSHAW)
AUTOMOTIVE GROUP. INC.;)
SPARTANBURG CHRYSLER JEEP, INC.;)
KIA OF ANDERSON, LLC; TOYOTA OF)
GREENVILLE, INC., TOYOTA OF EASLEY,)
INC., FARRELL AUTOMOTIVE. INC.;)
FAIRWAY FORD, INC.; SATURN OF)
GREENVILLE INC.; STEVE WHITE)
MOTORS OF SOUTH CAROLINA,)
INC.;D&D MOTORS, INC.; BURNS)
CHRYSLER DODGE JEEP, LLC; JOHN)
FINGER MOTORS, INC.; SONIC)
AUTOMOTIVE, INC. D/B/A CENTURY)
BMW; BOB RICHARDS NISSAN; DICK)
SMITH CHRYSLER-JEEP; GOODMAN)
CHEVROLET, INC.; HENNA)
CHEVROLET-OLDS-CADILLAC, LLC;)
HONDA CARS OF AIKEN; JOHNSON)
MOTOR COMPANY OF SC; SATCHER)
FORD-LINCOLN-MERCURY; SANDERS)
TRUCK SALES; CAROLINA FORD;)
CAROLINA INTERNATIONAL TRUCKS OF)
ANDERSON; CLINKSCALES CHEVROLET)
INC.; FAIRWAY FORD-MAZDA;)
PIEDMONT CHRYSLER-JEEP; PIEDMONT)
HONDA; PLANET FORD; RALPH HAYES)
TOYOTA, INC. ; TOM HUNTER)
PONTIAC-BUICK-GMC, LLC; UPSTATE)
AUTOMOTIVE (CHEVROLET-CADILLAC);)
UPSTATE AUTOMOTIVE (ISUZU-KIA);
UPSTATE AUTOMOTIVE (MITSUBISHI);

UPSTATE AUTOMOTIVE (NISSAN);)
GIBBES FORD, INC.; ZEIGLER)
CHEVROLET, INC.; B & B FORD, INC.;)
WHITTLE MOTOR COMPANY, INC.;)
BUTLER CHRYSLER-DODGE-JEEP;)
CAROLINA VOLVO; HILTON HEAD)
AUTOMOTIVE LLC; HILTON HEAD)
HONDA; LAND ROVER HILTON HEAD;)
MODERN CLASSIC MOTORS; O. C.)
WELCH FORD-LINCOLN-MERCURY;)
PARKS AUTOMOTIVE GROUP; PARKS)
CADILLAC; STOKES HONDA CARS OF)
BEAUFORT, INC.; STOKES MITSUBISHI;)
STOKES-BROWN TOYOTA; DICK SMITH)
CHEVROLET, INC.; HOOVER)
JEEP-CHRYSLER, INC.; HOOVER)
MOTORS, INC.; MCELVEEN)
PONTIAC-BUICK-GMC, INC.; ALTMAN)
LINCOLN-MERCURY-HYUNDAI;)
CAROLINA INTERNATIONAL)
TRUCKS-CHARLESTON; CHARLESTON)
MITSUBISHI; HENDRICK HONDA OF)
CHARLESTON; HOOVER)
CHRYSLER-JEEP, INC.; HUGHES)
MOTORS, INC.; KIA COUNTRY; LEXUS OF)
CHARLESTON; LOW COUNTRY MAZDA;)
LOW COUNTRY VOLKSWAGEN;)
MARATHON CHEVROLET OF N)
CHARLESTON; MARCHANT)
CHEVROLET, INC.; MCDANIELS ACURA)
OF CHARLESTON ; MCELVEEN)
CHEVROLET, LLC; MORRIS NISSAN;)
NORTHSIDE NISSAN; RAVENEL FORD;)
INC.; RICK HENDRICK DODGE; RICK)
HENDRICK'S IMPORT SHOWPLACE;)
SATURN OF CHARLESTON; STOKES)
HONDA NORTH CHARLESTON; STOKES)
ISUZU-KIA-SUBARU; STOKES)
VOLKSWAGEN; VICTORY HYUNDAI OF)
CHARLESTON; BURNS)
CHEVROLET-CHRYSLER-DODGE-JEEP,)
INC.; JOE GIBSON SUZUKI; ROGER)
SHIFLETT FORD, INC.; WALLACE WHITE)

NOURSE CHESTER AUTOMOTIVE;)
NOURSE MOTORS OF CHESTER LLC;)
BENNETT MOTOR CO., INC.; JOHN)
DONOGHUE FORD, INC.; LAWRENCE)
CHEVROLET-PONTIAC; PROTHRO)
CHEVROLET-BUICK-PONTIAC-GMC)
TRUCK; STOKES-CRAVEN)
CHRYSLER-JEEP-DODGE;)
STOKES-CRAVEN FORD; PETERS)
PONTIAC BUICK-GMC; RIZER)
CHEVROLET CO., INC.; WALTERBORO)
MOTOR SALES CO.; ACTION)
FORD-MERCURY, INC.; JOHN NEWSOME,)
INC.; RACEWAY)
CHRYSLER-JEEP-DODGE, INC.;)
RACEWAY FORD; CAROLINA)
INTERNATIONAL TRUCKS LLC;)
MARATHON CHEVROLET;)
SUMMERVILLE FORD-MERCURY. INC.;)
HERLONG PONTIAC-CHEVROLET-BUICK,)
INC.; JIM SATCHER, INC.; YONCE)
FORD-MERCURY, INC.; WILSON)
CHEVROLET-OLDSMOBILE, INC.;)
WILSON CHRYSLER-DODGE-JEEP, INC.;)
AUDDIE BROWN MITSUBISHI, CALE)
YARBOROUGH HONDA, INC.; CAROLINA)
INTERNATIONAL TRUCKS; EFIRD)
CHRYSLER-JEEP-DODGE, INC.;)
FLORENCE MACK, INC.; FLORENCE)
TOYOTA; FLOYD MOTOR CO., INC.;)
HORNE FORD, INC.; KIA OF FLORENCE;)
KING CADILLAC-BUICK-PONTIAC-GMC)
TRUCK, INC.; LAKE CITY)
FORD-MERCURY, LLC; PETERBILT OF)
FLORENCE; RACEWAY)
CHEVROLET-PONTIAC-BUICK-GMC;)
SATURN OF FLORENCE; SERVICE)
MOTOR COMPANY, INC.; COASTAL)
NISSAN-CHEVROLET-CADILLAC;)
HEMINGWAY MOTOR CO., INC.;)
PARRISH MOTOR CO., INC.; TIDELANDS)
CHRYSLER DODGE; TIDELANDS)
)

FORD-LINCOLN-MERCURY; BMS, INC.)
D/B/A BREAKAWAY HONDA;)
BRADSHAW ACURA; BROCKMAN)
AUTOMOTIVE; CAROLINA)
INTERNATIONAL TRUCKS-GREENVILLE;)
CHEROKEE KENWORTH, INC ;)
CHRISTOPHER TRUCKS, INC.; CROWN)
JEEP-CHRYSLER; CROWN NISSAN)
GREENVILLE; DICK SMITH MITSUBISHI;)
FAIRWAY FORD, INC.; FAIRWAY)
MOTORCARS LLC; GEORGE COLEMAN)
FORD, INC.; TRAVELERS REST;)
HERITAGE LINCOLN-MERCURY; JOHN)
FINGER MAZDA; KEVIN WHITAKER)
CHEVROLET-CADILLAC; KEVIN)
WHITAKER CHEVROLET, INC.;)
SIMPSONVILLE CHEVROLET, INC.;)
SITTON BUICK-PONTIAC-GMC TRUCK,)
INC.; STEVE WHITE MOTORS OF SC, INC.;)
STOKES-TRAINOR FORD; C. THOMPSON)
AUTOMOTIVE; GARY RUSS)
CHEVROLET-CADILLAC, INC.; GEORGE)
BALLENTINE FORD-LINCOLN-)
MERCURY; QUALITY CHRYSLER CITY;)
BRUNSON AUTOMOBILE SALES, INC.;)
TISON MOTOR CO , INC.; ADDY'S)
HARBOR DODGE; ATLANTIC)
CHRYSLER-JEEP-DODGE; ATLANTIC)
FORD, INC.; BEACH)
FORD-LINCOLN-MERCURY-VOLVO, INC.;)
BELL & BELL PONTIAC-GMC, INC.;)
CONWAY CHRYSLER-DODGE-JEEP, INC.;)
CONWAY FORD, INC.; DIAMOND)
AUTOMOTIVE GROUP, INC.; EAST)
COAST HONDA; EAST COAST)
VOLKSWAGEN; FOWLER MOTORS;)
GRAND STRAND NISSAN, INC.;)
HADWIN-WHITE)
PONTIAC-BUICK-GMC-SUBARU; HYATT)
BUICK-GMC TRUCKS; JUD KUHN)
CHEVROLET; KIA OF MYRTLE BEACH;)
LAY-FISHER CHEVROLET, INC ; MYRTLE)
BEACH CHEVROLET, INC.; MYRTLE)
BEACH CHRYSLER-JEEP, INC.; MYRTLE)

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HYUNDAI-ISUZU; MYRTLE BEACH)
SUZUKI; SPARKS TOYOTA, INC.; SUN)
COAST MAZDA-MITSUBISHI; SUZUKI)
OUTLET OF MYRTLE BEACH SC; HILTON)
HEAD CHRYSLER JEEP DODGE; HILTON)
HEAD HYUNDAI; KEY INFINITI LLC; KEY)
MAZDA; KEY NISSAN, LLC; PORSCHE OF)
HILTON HEAD; PRESTIGE MOTORCARS;)
LLC DBA HILTON HEAD JAGUAR; DICK)
SMITH)
PONTIAC-CHRYSLER-DODGE-GMC-JEEP;)
HERITAGE CHEVROLET-BUICK, INC :)
JAMES ERVIN TOYOTA: REDFEARN)
MOTOR CO.. INC., BURNS)
FORD-MERCURY, INC.; ELROD)
PONTIAC-BUICK-GMC, INC.; H & H)
CHEVROLET, INC.; LANCASTER)
DODGE-CHRYSLER-JEEP; LANCASTER)
MOTOR CO.; BALDWIN)
PONTIAC-BUICK-GMC , INC.; COOPER)
FORD, INC.; FIRMIN FORD, INC.; JOHN)
FOSTER MOTORS, INC.; LYNN COOPER,)
INC. ; SMITH CHEVROLET-CADILLAC,)
INC. ; ADDY DODGE, INC.; CHEROKEE)
KENWORTH; HAMPTON AUTOMOTIVE,)
INC.; MIDLANDS HONDA; SATURN OF)
COLUMBIA, INC.; STIVERS)
CHRYSLER-JEEP, INC.; TWIN CITY)
MOTOR CO., INC.; MULLINS MOTORS,)
INC.; PEE DEE FORD LINCOLN MERCURY)
INC.; GRIFFIN-FLYTHE CHEVROLET,)
INC.; MEGGS)
FORD-CHRYSLER-DODGE-JEEP;)
CROMLEY'S INC.; JEFFREY DEAN)
CHRYSLER DODGE JEEP GMC; KIRBY)
SCHRADER; STOKES-TRAINOR)
CHEVROLET-OLD-PONTIAC-CADILLAC-B)
UICK; BOBBY WOOD)
CHEVROLET-PONTIAC; EDWARDS AUTO)
SALES, INC.; LAKE KEOWEE)
CHRYSLER-DODGE LLC; LEADER FORD;)
PERFORMANCE)
CHEVROLET-BUICK-GMC; BOB)

RICHARDS AUTOMOTIVE, LLC; FAIREY CHEVROLET-CADILLAC; ORANGEBURG CHRYSLER-DODGE-NISSAN, INC.; ORANGEBURG FORD; SUPERIOR HONDA; SUPERIOR MOTORS, INC.; BENSON FORD-MERCURY, INC.; CRANE CHEVROLET-CADILLAC, INC.; EASLEY MITSUBISHI; EASLEY PONTIAC-BUICK-GMC TRUCK, INC.; HENDRICK HONDA; NORRIS FORD, INC.; TINSLEY CHEVROLET CO., INC.; BOB BENNETT FORD, INC.; CAPITOL CHEVROLET; CAPITOL HYUNDAI; CAROLINA INTERNATIONAL TRUCKS-COLA; COLUMBIA FREIGHTLINER, LLC; DODGELAND OF COLUMBIA; HANCOCK MOTOR CO.: HANCOCK VOLKSWAGEN; HONDA CARS OF COLUMBIA; JIM MOORE CADILLAC, INC.; MCDANIELS ACURA-PORSCHE; SHEALY'S TRUCK CENTER-COLA; STIVERS LINCOLN-MERCURY; WRAY AUTOMOTIVE, INC.; CROMLEY'S INC.; SALUDA MOTOR SALES. INC.; DAVE EDWARDS TOYOTA; DICK BROOKS HONDA; FOOTHILLS FORD OF CHESNE; JOE GIBSON MITSUBISHI; KIA OF GREER; SATURN OF SPARTANBURG; SHEALY'S TRUCK CENTER; SPARTANBURG DODGE, INC ; VIC BAILEY FORD, INC.; VIC BAILEY HONDA; VIC BAILEY LINCOLN-MERCURY, INC.; VIC BAILEY VOLKSWAGEN; WAKEFIELD BUICK-PONTIAC-GMC, INC.; BOYLE MOTOR COMPANY; BOYLE TOYOTA, INC.; GOODWIN BUICK-JEEP; GOODWIN HONDA-MITSUBISHI-VW; JONES CHEVROLET CO.; JONES NISSAN, INC.; JONES PONTIAC-GMC TRUCK, INC.; MCLAUGHLIN MOTORS, INC.; SUMTER CHRYSLER-PLYMOUTH-DODGE;

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UNION CHRYSLER-DODGE-JEEP, INC.;)
BIG COUNTRY CHEVROLET, INC.;)
HASELDEN BROTHERS, INC ;)
LONGSTREET)
CHEVROLET-BUICK-CADILLAC-GMC;)
CAROLINA MAZDA; CLINTON FAMILY)
FORD-LINCOLN-MERCURY; DICKERSON)
MOTOR CO., INC.; DUNLAP-JOHNSON)
CHEVROLET CO., INC.; FORT MILL FORD,)
INC.; FRED CALDWELL'S CLOVER)
CHEVROLET; GOOD MOTOR COMPANY;)
GRIFFIN MITSUBISHI; GRIFFIN)
PONTIAC-BUICK-GMC; HARRELSON)
NISSAN; HARRELSON TOYOTA; HONDA)
CARS OF ROCK HILL: RICK FORD. INC :)
STATELINE CHRYSLER JEEP DODGE)
INC.; AND AGAINST ALL MOTOR)
VEHICLE DEALERS OWNED OR)
CONTROLLED BY DEFENDANTS AS)
DEFINED IN S.C. CODE ANN. §56-15-10(H).)

TO: THE NEW NAMED DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina, 29211, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

(Signature Block on Next Page)

MICHAEL SPEARS, PA
Michael E. Spears
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Spartanburg, SC 29304
(864)583-3235

GEDNEY M. HOWE, III, PA
Gedney M. Howe, III
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Charleston, SC 29402
(843)722-8048

RICHARD A. HARPOOTLIAN, PA
Richard A. Harpootlian
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(803)252-4848

LEWIS & BABCOCK, L.L.P.
A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
(803)771-8000

By: _____
Attorneys for the Plaintiffs

October 28, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
HEATHER HERRON, NATALIE ARMSTRONG, ALISON DANNERT, MICHAEL RITZ, JULIE FREEMAN, CHRISTINE WATTS, MICHAEL BLEASE, MICHAEL WATTS, INDIVIDUALLY AND FOR THE BENEFIT OF ALL CAR BUYERS WHOM PAID "ADMINISTRATIVE FEES" AS DESCRIBED BELOW TO DEFENDANTS.	)	CIVIL ACTION NO.: 06-CP-02-1230
Plaintiffs,	)	
CARMAX AUTO SUPERSTORES, INC.; DICK DYER & ASSOCIATES, INC., DICK SMITH MOTORS, INC.; GALEANA CHRYSLER-JEEP, INC.; GALEANA CHRYSLER PLYMOUTH, INC.; PULLIAM MOTOR CO.; DICK SMITH INFINITI, INC.; DICK SMITH NISSAN OF LEXINGTON, INC.; DICK SMITH NISSAN, INC.;OVERLAND, INC. D/B/A LAND ROVER OF COLUMBIA; TOYOTA CENTER, LLC; STOKES AUTOMOTIVE, INC.; STOKES MOTORS, INC.; STOKES-CRAVEN AUTOMOTIVE, INC.; STOKES MAZDA, INC.; PALMETTO CHEVROLET COMPANY, INC.; PALMETTO NISSAN, INC.; PALMETTO FORD, INC.; JONES FORD, INC., HAROLD ARNOLD'S SENTRY BUICK, INC.; J. L. H. INVESTMENTS, LP; RICK HENDRICK CHEVROLET, LP; RICK HENDRICK HONDA CARS, CO.; RICK HENDRICK, JEEP EAGLE, L.P.; OAK TREE, INC. D/B/A WEST ASHLEY TOYOTA, INC.; GENE	)	**FIRST AMENDED COMPLAINT** (Jury Trial Demanded)

COPY
ORIGINAL FILED
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8:30 Am
AIKEN COUNTY
CLERK OF COURT

REED IMPORTS, INC.; GENE REED TOYOTA, INC., HOOVER JEEP CHRYSLER, INC.; HOOVER MOTORS, INC.; HOOVER CHRYSLER-DODGE, INC.; STROM ALTMAN DODGE, INC.; BAKER MOTOR COMPANY OF CHARLESTON, INC.; MILLER CADILLAC, INC.; TAYLOR INVESTMENTS, INC. D/B/A TAYLOR TOYOTA; BENSON CHRYSLER-PLYMOUTH, INC ; BENSON FORD MERCURY, INC.; BENSON CADILLAC-NISSAN, INC.; BIG "O" DODGE OF GREENVILLE, INC.; BRADSHAW AUTOMOTIVE GROUP, INC.; SPARTANBURG CHRYSLER JEEP, INC.; KIA OF ANDERSON, LLC; TOYOTA OF GREENVILLE, INC., TOYOTA OF EASLEY, INC., FARRELL AUTOMOTIVE, INC.; FAIRWAY FORD, INC.; SATURN OF GREENVILLE INC.; STEVE WHITE MOTORS OF SOUTH CAROLINA, INC.;D&D MOTORS, INC.; BURNS CHRYSLER DODGE JEEP, LLC; JOHN FINGER MOTORS, INC.; SONIC AUTOMOTIVE, INC. D/B/A CENTURY BMW; BOB RICHARDS NISSAN; DICK SMITH CHRYSLER-JEEP; GOODMAN CHEVROLET, INC.; HENNA CHEVROLET-OLDS-CADILLAC, LLC; HONDA CARS OF AIKEN; JOHNSON MOTOR COMPANY OF SC; SANDERS TRUCK SALES; CAROLINA FORD; CAROLINA INTERNATIONAL TRUCKS OF ANDERSON; CLINKSCALES CHEVROLET INC.; FAIRWAY FORD-MAZDA; PIEDMONT CHRYSLER-JEEP; PIEDMONT HONDA; PLANET FORD; RALPH HAYES TOYOTA, INC. ; TOM HUNTER PONTIAC-BUICK-GMC, LLC; UPSTATE AUTOMOTIVE (CHEVROLET-CADILLAC); UPSTATE AUTOMOTIVE (ISUZU-KIA); UPSTATE AUTOMOTIVE (MITSUBISHI);

UPSTATE AUTOMOTIVE (NISSAN);)
GIBBES FORD, INC.; ZEIGLER)
CHEVROLET, INC.; B & B FORD, INC.;)
WHITTLE MOTOR COMPANY, INC.;)
BUTLER CHRYSLER-DODGE-JEEP;)
CAROLINA VOLVO; HILTON HEAD)
AUTOMOTIVE LLC; HILTON HEAD)
HONDA; LAND ROVER HILTON HEAD;)
MODERN CLASSIC MOTORS; O. C.)
WELCH FORD-LINCOLN-MERCURY;)
PARKS AUTOMOTIVE GROUP; PARKS)
CADILLAC; STOKES HONDA CARS OF)
BEAUFORT, INC.; STOKES MITSUBISHI;)
STOKES-BROWN TOYOTA; DICK SMITH)
CHEVROLET, INC.; HOOVER)
JEEP-CHRYSLER, INC.; HOOVER)
MOTORS, INC.; MCELVEEN)
PONTIAC-BUICK-GMC, INC.; ALTMAN)
LINCOLN-MERCURY-HYUNDAI;)
CAROLINA INTERNATIONAL)
TRUCKS-CHARLESTON; CHARLESTON)
MITSUBISHI; HENDRICK HONDA OF)
CHARLESTON; HOOVER)
CHRYSLER-JEEP, INC.; HUGHES)
MOTORS, INC.; KIA COUNTRY, LEXUS OF)
CHARLESTON; LOW COUNTRY MAZDA;)
LOW COUNTRY VOLKSWAGEN;)
MARATHON CHEVROLET OF N)
CHARLESTON; MARCHANT)
CHEVROLET, INC.; MCDANIELS ACURA)
OF CHARLESTON ; MCELVEEN)
CHEVROLET, LLC; MORRIS NISSAN;)
NORTHSIDE NISSAN; RAVENEL FORD;)
INC.; RICK HENDRICK DODGE; RICK)
HENDRICK'S IMPORT SHOWPLACE;)
SATURN OF CHARLESTON; STOKES)
HONDA NORTH CHARLESTON; STOKES)
ISUZU-KIA-SUBARU; STOKES)
VOLKSWAGEN; VICTORY HYUNDAI OF)
CHARLESTON; BURNS)
CHEVROLET-CHRYSLER-DODGE-JEEP,)
INC.; JOE GIBSON SUZUKI; ROGER)
SHIFLETT FORD, INC.; WALLACE WHITE)

PONTIAC-BUICK-GMC; NOURSE)
CHESTER AUTOMOTIVE; NOURSE)
MOTORS OF CHESTER LLC; BENNETT)
MOTOR CO., INC.; JOHN DONOGHUE)
FORD, INC.; LAWRENCE)
CHEVROLET-PONTIAC; PROTHRO)
CHEVROLET-BUICK-PONTIAC-GMC)
TRUCK; STOKES-CRAVEN)
CHRYSLER-JEEP-DODGE;)
STOKES-CRAVEN FORD; PETERS)
PONTIAC BUICK-GMC; RIZER)
CHEVROLET CO., INC.; WALTERBORO)
MOTOR SALES CO.; ACTION)
FORD-MERCURY, INC.; JOHN NEWSOME,)
INC.; RACEWAY)
CHRYSLER-JEEP-DODGE, INC.;)
RACEWAY FORD; CAROLINA)
INTERNATIONAL TRUCKS LLC;)
MARATHON CHEVROLET;)
SUMMERVILLE FORD-MERCURY, INC.;)
HERLONG PONTIAC-CHEVROLET-BUICK,)
INC.; JIM SATCHER, INC.; YONCE)
FORD-MERCURY, INC.; WILSON)
CHEVROLET-OLDSMOBILE, INC.;)
WILSON CHRYSLER-DODGE-JEEP, INC.;)
AUDDIE BROWN MITSUBISHI; CALE)
YARBOROUGH HONDA, INC.; CAROLINA)
INTERNATIONAL TRUCKS FLORENCE;)
EFIRD CHRYSLER-JEEP-DODGE, INC.;)
FLORENCE MACK, INC.; FLORENCE)
TOYOTA; FLOYD MOTOR CO., INC.;)
HORNE FORD, INC.; KIA OF FLORENCE;)
KING CADILLAC-BUICK-PONTIAC-GMC)
TRUCK, INC.; LAKE CITY)
FORD-MERCURY, LLC; PETERBILT OF)
FLORENCE; RACEWAY)
CHEVROLET-PONTIAC-BUICK-GMC;)
SATURN OF FLORENCE; SERVICE)
MOTOR COMPANY, INC.; COASTAL)
NISSAN-CHEVROLET-CADILLAC;)
HEMINGWAY MOTOR CO., INC.;)
PARRISH MOTOR CO., INC.; TIDELANDS)
CHRYSLER DODGE; TIDELANDS)

FORD-LINCOLN-MERCURY; BMS, INC. D/B/A BREAKAWAY HONDA; BRADSHAW ACURA; BROCKMAN AUTOMOTIVE; CAROLINA INTERNATIONAL TRUCKS-GREENVILLE; CHEROKEE KENWORTH, INC.; CHRISTOPHER TRUCKS, INC.; CROWN JEEP-CHRYSLER; CROWN NISSAN GREENVILLE; DICK SMITH MITSUBISHI; FAIRWAY FORD, INC.; FAIRWAY MOTORCARS LLC; GEORGE COLEMAN FORD, INC.; HERITAGE LINCOLN-MERCURY, JOHN FINGER MAZDA; KEVIN WHITAKER CHEVROLET-CADILLAC; KEVIN WHITAKER CHEVROLET, INC.; SIMPSONVILLE CHEVROLET, INC.; SITTON BUICK-PONTIAC-GMC TRUCK, INC.; STOKES-TRAINOR FORD; C. THOMPSON AUTOMOTIVE; GARY RUSS CHEVROLET-CADILLAC, INC.; GEORGE BALLENTINE FORD-LINCOLN-MERCURY; QUALITY CHRYSLER CITY; BRUNSON AUTOMOBILE SALES, INC.; TISON MOTOR CO., INC.; ADDY'S HARBOR DODGE; ATLANTIC CHRYSLER-JEEP-DODGE; ATLANTIC FORD, INC.; BEACH FORD-LINCOLN-MERCURY-VOLVO, INC.; BELL & BELL PONTIAC-GMC, INC.; CONWAY CHRYSLER-DODGE-JEEP, INC.; CONWAY FORD, INC.; DIAMOND AUTOMOTIVE GROUP, INC.; EAST COAST HONDA; EAST COAST VOLKSWAGEN; FOWLER MOTORS; GRAND STRAND NISSAN, INC.; HADWIN-WHITE PONTIAC-BUICK-GMC-SUBARU; HYATT BUICK-GMC TRUCKS; JUD KUHN CHEVROLET; KIA OF MYRTLE BEACH; LAY-FISHER CHEVROLET, INC.; MYRTLE BEACH CHEVROLET, INC.; MYRTLE BEACH CHRYSLER-JEEP, INC.; MYRTLE BEACH

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HYUNDAI-ISUZU; MYRTLE BEACH)
SUZUKI; SPARKS TOYOTA, INC.; SUN)
COAST MAZDA-MITSUBISHI; SUZUKI)
OUTLET OF MYRTLE BEACH SC; HILTON)
HEAD CHRYSLER JEEP DODGE; HILTON)
HEAD HYUNDAI; KEY INFINITI LLC; KEY)
MAZDA; KEY NISSAN, LLC; PORSCHE OF)
HILTON HEAD; PRESTIGE MOTORCARS;)
LLC DBA HILTON HEAD JAGUAR; DICK)
SMITH)
PONTIAC-CHRYSLER-DODGE-GMC-JEEP;)
HERITAGE CHEVROLET-BUICK, INC.;)
JAMES ERVIN TOYOTA; REDFEARN)
MOTOR CO., INC.; BURNS)
FORD-MERCURY, INC.; ELROD)
PONTIAC-BUICK-GMC, INC ; H & H)
CHEVROLET, INC.; LANCASTER)
DODGE-CHRYSLER-JEEP; LANCASTER)
MOTOR CO.; BALDWIN)
PONTIAC-BUICK-GMC , INC.; COOPER)
FORD, INC.; FIRMIN FORD, INC.; JOHN)
FOSTER MOTORS, INC.; LYNN COOPER,)
INC. ; SMITH CHEVROLET-CADILLAC,)
INC. ; ADDY DODGE, INC.; CHEROKEE)
KENWORTH; HAMPTON AUTOMOTIVE,)
INC.; MIDLANDS HONDA; SATURN OF)
COLUMBIA, INC.; STIVERS)
CHRYSLER-JEEP, INC.; TWIN CITY)
MOTOR CO., INC.; MULLINS MOTORS,)
INC.; PEE DEE FORD LINCOLN MERCURY)
INC.; GRIFFIN-FLYTHE CHEVROLET,)
INC.; MEGGS)
FORD-CHRYSLER-DODGE-JEEP;)
CROMLEY'S INC.; JEFFREY DEAN)
CHRYSLER DODGE JEEP GMC; KIRBY)
SCHRADER; STOKES-TRAINOR)
CHEVROLET-OLD-PONTIAC-CADILLAC-B)
UICK; BOBBY WOOD)
CHEVROLET-PONTIAC; EDWARDS AUTO)
SALES, INC.; LAKE KEOWEE)
CHRYSLER-DODGE LLC; LEADER FORD;)
PERFORMANCE)
CHEVROLET-BUICK-GMC; BOB)

RICHARDS AUTOMOTIVE, LLC; FAIREY)
CHEVROLET-CADILLAC; ORANGEBURG)
CHRYSLER-DODGE-NISSAN, INC.;)
ORANGEBURG FORD; SUPERIOR)
HONDA; SUPERIOR MOTORS, INC.;)
BENSON FORD-MERCURY, INC ; CRANE)
CHEVROLET-CADILLAC, INC.; EASLEY)
MITSUBISHI; EASLEY)
PONTIAC-BUICK-GMC TRUCK, INC.;)
HENDRICK HONDA; NORRIS FORD, INC.;)
TINSLEY CHEVROLET CO., INC.; BOB)
BENNETT FORD, INC.; CAPITOL)
CHEVROLET; CAPITOL HYUNDAI;)
CAROLINA INTERNATIONAL)
TRUCKS-COLA; COLUMBIA)
FREIGHTLINER, LLC; DODGELAND OF)
COLUMBIA; HANCOCK MOTOR CO.;)
HANCOCK VOLKSWAGEN; HONDA CARS)
OF COLUMBIA; JIM MOORE CADILLAC,)
INC.; MCDANIELS ACURA-PORSCHE;)
SHEALY'S TRUCK CENTER-COLA;)
STIVERS LINCOLN-MERCURY; WRAY)
AUTOMOTIVE, INC ; CROMLEY'S INC.;)
SALUDA MOTOR SALES, INC.; DAVE)
EDWARDS TOYOTA; DICK BROOKS)
HONDA; FOOTHILLS FORD OF CHESNE;)
JOE GIBSON MITSUBISHI; KIA OF GREER;)
SATURN OF SPARTANBURG; SHEALY'S)
TRUCK CENTER; SPARTANBURG)
DODGE, INC.; VIC BAILEY FORD, INC.;)
VIC BAILEY HONDA; VIC BAILEY)
LINCOLN-MERCURY, INC.; VIC BAILEY)
VOLKSWAGEN; WAKEFIELD)
BUICK-PONTIAC-GMC, INC.; BOYLE)
MOTOR COMPANY; BOYLE TOYOTA,)
INC.; GOODWIN BUICK-JEEP; GOODWIN)
HONDA-MITSUBISHI-VW; JONES)
CHEVROLET CO.; JONES NISSAN, INC.;)
JONES PONTIAC-GMC TRUCK, INC.;)
MCLAUGHLIN MOTORS, INC.; SUMTER)
CHRYSLER-PLYMOUTH-DODGE;)
)
)
)

UNION CHRYSLER-DODGE-JEEP, INC.; BIG COUNTRY CHEVROLET, INC.; HASELDEN BROTHERS, INC.; LONGSTREET CHEVROLET-BUICK-CADILLAC-GMC; CAROLINA MAZDA; CLINTON FAMILY FORD-LINCOLN-MERCURY; DICKERSON MOTOR CO., INC.; DUNLAP-JOHNSON CHEVROLET CO., INC.; FORT MILL FORD, INC.; FRED CALDWELL'S CLOVER CHEVROLET; GOOD MOTOR COMPANY; GRIFFIN MITSUBISHI; GRIFFIN PONTIAC-BUICK-GMC; HARRELSON NISSAN; HARRELSON TOYOTA; HONDA CARS OF ROCK HILL; RICK FORD, INC.; STATELINE CHRYSLER JEEP DODGE INC.; AND AGAINST ALL MOTOR VEHICLE DEALERS OWNED OR CONTROLLED BY DEFENDANTS AS DEFINED IN S.C. CODE ANN. §56-15-10(H).	)

Plaintiffs Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease, and Micheal Watts individually and pursuant to S.C. Code Ann. §56-5-110 for the benefit of all others whom paid "administrative fees" (often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees")) to Defendants hereby complaining of CarMax Auto Superstores, Inc., Defendant Dick Dyer & Associates, Inc., Dick Smith Motors, Inc., Galeana Chrysler-Jeep, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP,

Rick Hendrick Chevrolet, LP, Rick Hendrick Honda Cars Co., Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely Toyota, Inc., Gene Reed Imports, Inc, Gene Reed Toyota, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Taylor Investments, Inc. d/b/a Taylor To Defendant Benson Chrysler-Plymouth, Inc. Defendant Benson Ford Mercury, Inc., Benson Cadillac-Nissan, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc , Kia of Anderson, LLC, Toyota of Greenville, Inc., Toyota of Easley, Inc , Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Sonic Automotive, Inc. d/b/a Century BMW, Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc. , Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury, Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc , Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston,

Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet, Inc., McDaniels Acura of Charleston , McElveen Chevrolet, LLC, Morris Nissan, Northside Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Burns Chevrolet Cadillac, Inc., Joe Gibson Suzuki, Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc., Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co., Inc , Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher, Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina International Trucks, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota, Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tidelands Chrysler Dodge, Tidelands Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick

Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc., Steve White Motors of SC, Inc., Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc , Bell & Bell Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc., Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota, Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin Pontiac-Buick-GMC , Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc. , Smith Chevrolet-Cadillac, Inc. , Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge

Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc. (collectively "Defendants"), would respectfully show

that:

PARTIES

1. Plaintiff Heather Herron is a citizen and resident of Richland County, South Carolina.

2. Plaintiff Natalie Armstrong is a citizen and resident of Richland County, South Carolina.

3. Plaintiff Alison Dannert is a citizen and resident of Spartanburg County, South Carolina.

4. Plaintiff Michael Ritz is a citizen and resident of Aiken County, South Carolina.

5. Plaintiff Julie Freeman is a citizen and resident of Greenville County, South Carolina.

6. Plaintiff Christine Watts is a citizen and resident of Greenville County, South Carolina.

7. Plaintiff Michael Watts is a citizen and resident of Greenville County, South Carolina.

8. Plaintiff Michael Blease is a citizen and resident of Horry County, South Carolina.

9. Defendant CarMax Auto Superstores, Inc. is a licensed motor vehicle dealer and corporation organized and existing under the laws of the State of Virginia with places of business in Richland County and Greenville County, South Carolina.

10. Defendant Dick Dyer & Associates, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

11. Defendant Dick Smith Motors, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

12. Defendant Galeana Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

13. Defendant Pulliam Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

14. Defendant Dick Smith Infiniti, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

15. Defendant Dick Smith Nissan of Lexington, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

16. Defendant Dick Smith Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

17. Defendant Overland, Inc. doing business as Land Rover of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

18. Defendant Toyota Center, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina. W. Columbia.

19. Defendant Stokes Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

20. Defendant Stokes Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

21. Defendant Stokes-Craven Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

22. Defendant Stokes Mazda, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

23. Defendant Palmetto Chevrolet Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

24. Defendant Palmetto Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

25. Defendant Palmetto Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

26. Defendant Jones Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Charleston County, South Carolina.

27. Defendant Harold Arnold's Sentry Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

28. Defendant J. L. Investments, LP of Charleston is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

29. Defendant Rick Hendrick Chevrolet, LP is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

30. Defendant Rick Hendrick Honda Cars, Co. is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

31. Defendant Rick Hendrick Jeep Eagle, L.P. is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

32. Defendant Oak Tree, Inc. d/b/a West Ashely Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

33. Defendant Gene Reed Imports, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

34. Defendant Gene Reed Toyota, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

35. Defendant Hoover Jeep Chrysler, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

36. Defendant Hoover Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

37. Defendant Hoover Chrysler-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

38. Defendant Strom Altman Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

39. Defendant Baker Motor Company of Charleston, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

40. Defendant Miller Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

41. Defendant Taylor Investments, Inc. (d/b/a Taylor Toyota, Inc.) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

42. Defendant Benson Chrysler-Plymouth, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

43. Defendant Benson Ford Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

44. Defendant Benson Cadillac-Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

45. Defendant Big "O" Dodge of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

46. Defendant Bradshaw Automotive Group, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

47. Defendant Spartanburg Chrysler Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

48. Defendant Kia of Anderson, LLC is a licensed motor vehicle dealer and a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

49. Defendant Toyota of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Greenville County, South Carolina.

50. Defendant Toyota of Easley, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

51. Defendant Farrell Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

52. Defendant Fairway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina..

53. Defendant Saturn of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

54. Defendant Steve White Motors of South Carolina, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

55. Defendant D&D Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

56. Defendant Burns Chrysler Dodge Jeep, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

57. Defendant John Finger Motors, Inc. is a licensed motor vehicle dealer and

a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

58. Defendant Sonic Automotive, Inc. d/b/a Century BMW is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

59. Bob Richards Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

60. Dick Smith Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

61. Goodman Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

62. Henna Chevrolet-Olds-Cadillac, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

63. Honda Cars of Aiken is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

64. Johnson Motor Company of SC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

65. Sanders Truck Sales is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Allendale County, South Carolina.

67. Carolina Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

68. Carolina International Trucks of Anderson is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

69. Clinkscales Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

70. Fairway Ford-Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

71. Piedmont Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

72. Piedmont Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

73. Planet Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

Anderson County, South Carolina.

74. Ralph Hayes Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

75. Tom Hunter Pontiac-Buick-GMC, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

76. Upstate Automotive (Chevrolet-Cadillac) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

77. Upstate Automotive (Isuzu-Kia) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

78. Upstate Automotive (Mitsubishi) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

79. Upstate Automotive (Nissan) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

80. Gibbes Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Bamberg County, South Carolina.

81. Zeigler Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Bamberg County, South Carolina.

82. B & B Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Barnwell County, South Carolina.

83. Whittle Motor Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Barnwell County, South Carolina.

84. Butler Chrysler-Dodge-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

85. Carolina Volvo is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

86. Hilton Head Automotive LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

87. Hilton Head Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

88. Land Rover Hilton Head is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

89. Modern Classic Motors is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

90. O. C. Welch Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

91. Parks Automotive Group is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

92. Parks Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

93. Stokes Honda Cars of Beaufort, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

94. Stokes Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

95. Stokes-Brown Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

96. Dick Smith Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Berkley County, South Carolina.

97. Hoover Jeep-Chrysler, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

98. Hoover Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

99. McElveen Pontiac-Buick-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

100. Altman Lincoln-Mercury-Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina. .

101. Carolina International Trucks-Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

102. Charleston Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

103. Hendrick Honda of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

104. Hoover Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

105. Hughes Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

106. Kia Country is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

107. Lexus of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

108. Low Country Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

109. .Low Country Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

110. Marathon Chevrolet of N Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

111. Marchant Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

112. McDaniels Acura of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

113. McElveen Chevrolet, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

114. Morris Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

115. Northside Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

116. Ravenel Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

117. Rick Hendrick Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

118. Rick Hendrick's Import Showplace is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

119. Saturn of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Charleston County, South Carolina.

120. Stokes Honda North Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

121. Stokes Isuzu-Kia-Subaru is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

122. Stokes Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

123. Victory Hyundai of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

124. Burns Chevrolet-Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

125. Burns Chevrolet Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

126. Joe Gibson Suzuki is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

127. Roger Shiflett Ford, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

128. Wallace White Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

129. Nourse Chester Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

130. Nourse Motors of Chester LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

131. Bennett Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

132. John Donoghue Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

133. Lawrence Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

134. Prothro Chevrolet-Buick-Pontiac-GMC Truck is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

135. Stokes-Craven Chrysler-Jeep-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

136. Stokes-Craven Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

137. Peters Pontiac Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

138. Rizer Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

139. Walterboro Motor Sales Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

140. Action Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

141. John Newsome, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

142. Raceway Chrysler-Jeep-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Darlington County, South Carolina.

143. Raceway Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

144. Carolina International Trucks LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

145. Marathon Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

146. Summerville Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

147. Herlong Pontiac-Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

148. Jim Satcher, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

149. Yonce Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

150. Wilson Chevrolet-Oldsmobile, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Fairfield County, South Carolina.

151. Wilson Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Fairfield County, South Carolina.

152. Auddie Brown Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

153. Cale Yarborough Honda, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

154. Carolina International Trucks is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

155. Efird Chrysler-Jeep-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

156. Florence Mack, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

157. Florence Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

158. Floyd Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

159. Horne Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

160. Kia of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

161. King Cadillac-Buick-Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

162. .Lake City Ford-Mercury, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

163. Peterbilt of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

164. Raceway Chevrolet-Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

165. Saturn of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

Florence County, South Carolina.

166. Service Motor Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

167. Coastal Nissan-Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

168. Hemingway Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Parrish Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Tidelands Chrysler Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

170. Tidelands Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

171. BMS, Inc. d/b/a Breakaway Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

172. Bradshaw Acura is a licensed motor vehicle dealer and a corporation organized

and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

173. Brockman Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

174. Carolina International Trucks-Greenville is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

175. Cherokee Kenworth, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

176. Christopher Trucks, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

177. Crown Jeep-Chrysler is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

178. Crown Nissan Greenville is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

179. Dick Smith Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

180. Fairway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

181. Fairway Motorcars LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

182. George Coleman Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

183. Heritage Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

184. John Finger Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

185. Kevin Whitaker Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

186. Kevin Whitaker Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

187. Simpsonville Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Greenville County, South Carolina.

188. Sitton Buick-Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

189. Stokes-Trainor Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

190 C. Thompson Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

191. Gary Russ Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

192. George Ballentine Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

193. Quality Chrysler City is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

194. Brunson Automobile Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Hampton County, South Carolina.

195. Tison Motor Co., Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Hampton County, South Carolina.

196. Addy's Harbor Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

197. Atlantic Chrysler-Jeep-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

198. Atlantic Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

199. Beach Ford-Lincoln-Mercury-Volvo, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

200. Bell & Bell Pontiac-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

201. Conway Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

202. Conway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

203. Diamond Automotive Group, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

204. East Coast Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

205. East Coast Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

206. Fowler Motors is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

207. Grand Strand Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

208. Hadwin-White Pontiac-Buick-GMC-Subaru is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

209. Hyatt Buick-GMC Trucks is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

210. Jud Kuhn Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Horry County, South Carolina.

211. Kia of Myrtle Beach is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

212. Lay-Fisher Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

213. Myrtle Beach Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

214. Myrtle Beach Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

215. Myrtle Beach Hyundai-Isuzu is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

216. Myrtle Beach Suzuki is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

217. Sparks Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

218. Sun Coast Mazda-Mitsubishi is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

219. Suzuki Outlet of Myrtle Beach SC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

220. Hilton Head Chrysler Jeep Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

221. Hilton Head Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

222. Key Infiniti LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

223. Key Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

224. Key Nissan, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

225. Porsche of Hilton Head is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

226. Prestige Motorcars, LLC dba Hilton Head Jaguar is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

227. Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

228. Heritage Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

229. James Ervin Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

230. Redfearn Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

231. Burns Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

232. Elrod Pontiac-Buick-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

233. H & H Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Lancaster County, South Carolina.

234. Lancaster Dodge-Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

235. Lancaster Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

236. Baldwin Pontiac-Buick-GMC , Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

237. Cooper Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

238. Firmin Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

239. John Foster Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

240. Lynn Cooper, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

241. Smith Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

242. Addy Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

243. Cherokee Kenworth is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

244. Hampton Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

245. Midlands Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

246. Saturn of Columbia, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

247. Stivers Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

248. Twin City Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

249. Mullins Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marion County, South Carolina.

250. Pee Dee Ford Lincoln Mercury Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marion County, South Carolina.

251. Griffin-Flythe Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marlboro County, South Carolina.

252. Meggs Ford-Chrysler-Dodge-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marlboro County, South Carolina.

253. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

254. Jeffrey Dean Chrysler Dodge Jeep GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

255. Kirby Schrader is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

256. Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina

with its principal place of business in Newberry County, South Carolina.

257. Bobby Wood Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

258. Edwards Auto Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

259. Lake Keowee Chrysler-Dodge LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

260. Leader Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

261. Performance Chevrolet-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

262. Bob Richards Automotive, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

263. Fairey Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

264. Orangeburg Chrysler-Dodge-Nissan, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

265. Orangeburg Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

266 Superior Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

267. Superior Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

268. Benson Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

269. Crane Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

270. Easley Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

271. Easley Pontiac-Buick-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

272. Hendrick Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

273. Norris Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

274. Tinsley Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

275. Bob Bennett Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

276. Capitol Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

277. Capitol Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

278. Carolina International Trucks-Cola is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

279. Columbia Freightliner, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Richland County, South Carolina.

280. Dodgeland of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

281. Hancock Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

282. Hancock Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

283. Honda Cars of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

284. Jim Moore Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

285. McDaniels Acura-Porsche is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

286. Shealy's Truck Center-Cola is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

287. Stivers Lincoln-Mercury is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

288. Wray Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

289. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Saluda County, South Carolina.

290. Saluda Motor Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Saluda County, South Carolina.

291. Dave Edwards Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

292. Dick Brooks Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

293. Foothills Ford of Chesne is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

294. Joe Gibson Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

295. Kia of Greer is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

296. Saturn of Spartanburg is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

297. Shealy's Truck Center is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

298. Spartanburg Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

299. Toyota of Greer is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

300. Vic Bailey Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

301. Vic Bailey Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

302. Vic Bailey Lincoln-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Spartanburg County, South Carolina.

303. Vic Bailey Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

304. Wakefield Buick-Pontiac-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

305. Boyle Motor Company is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

306. Boyle Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

307. Goodwin Buick-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

308. Goodwin Honda-Mitsubishi-VW is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

309. Jones Chevrolet Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

310. Jones Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized

and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

311. Jones Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

312. McLaughlin Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

313. Sumter Chrysler-Plymouth-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

314. Union Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Union County, South Carolina.

315. Big Country Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

316. Haselden Brothers, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

317. Longstreet Chevrolet-Buick-Cadillac-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

318. Carolina Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

319. Clinton Family Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

320. Dickerson Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

321. Dunlap-Johnson Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

322. Fort Mill Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

323. Fred Caldwell's Clover Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

324. Good Motor Company is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

325. Griffin Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

York County, South Carolina.

326. Griffin Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

327. Harrelson Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

328. Harrelson Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

329. Honda Cars of Rock Hill is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

330. Rick Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

331. Stateline Chrysler Jeep Dodge Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

VENUE

332. Venue is proper in Aiken County because Defendant Taylor Investments, Inc. d/b/a Taylor Toyota maintains an office and agent for the transaction of business in Aiken County and/or maintains its principal place of business in Aiken County.

FACTS

333. Defendants have conspired together in a common scheme designed to deceive all car buyers (the term "car" as used herein includes new and used cars, trucks, sport utility vehicles and automobiles of all kinds). These actions amount to concerted consumer fraud.

334. Each individual Defendant's conduct vis-a-vis' all consumers was the product of unfair, misleading and/or unconscionable business practices.

335. Defendants have all engaged in a common practice of presenting/advertising car prices in a misleading manner. Defendants set and advertise a sticker price for cars and then in addition charge a second fee often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees"). Defendants present and advertise the "administrative fees" in a misleading manner and/or in an effort to mislead car buyers. This practice is a deceptive way to secretly artificially raise the sticker price.

336. Defendants conduct is not unlike that found to be an unfair trade practice by an Ohio Court in *Motzer Dodge Jeep Eagle, Inc. v. Ohio Attorney General*, 642 N.E.2d 20 (Oh.Ct.App. 1994).

337. Defendants' advertising is misleading because it fails to include / adequately disclose the fact that Defendants will be charging "administrative fees" that are in addition to the advertised price of the car.

338. Defendants' placement of the "administrative fee" on the dealer invoice is deceptive in that it implies that the fee is separate and distinct from the general overhead that car buyers expect to be included within the sticker price for a car and that the set fee is mandatory.

339. The "administrative fees" are not separate and distinct from Defendants' general

overhead expected to be included in the overhead and advertised price. Instead, the "administrative fees" are tricky and deceptive add-ons.

340. The "administrative fees" are presented to car buyers in a misleading manner because car buyers are mislead into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees.

341. The "administrative fees" are charged in addition to advertised and/or list prices for cars.

342. The "administrative fees" are deliberately placed as separate line items on Defendants' invoices along with mandatory fees such as taxes, tags, and title. This implies that the "administrative fees" like the payment of taxes, fees for tags and fees for obtaining title are separate set fees and that there is no option but to pay this fee with every car purchase.

343. Consequently, car buyers purchase cars based on the total sticker price and are misled into believing that any discount received is off the sticker price and that additional fees are a special mandatory fee.

344. If a customer inquires about the fee, Defendants' sales people say that the "administrative fee" is a standard fee that has to be included on every vehicle.

345. In 2000, the General Assembly enacted a very narrow exception for charging these illegal "administrative fees."

346. S.C. Code Ann. §37-2-307 allows a dealership to do what would otherwise be illegal, charge "administrative fees,"only if the dealership follows strict rules.

347. S.C. Code Ann. §37-2-307 requires that "administrative fees" be included in the advertised price, disclosed on the sales contract, and conspicuously displayed at the dealership.

348. In order to charge administrative fees, Defendants are also required to annually

register with the Department of Consumer Affairs.

349. Defendants have not availed themselves of the limited exception in S.C. Code Ann. §37-2-307.

350. Even if Defendants had complied with S.C. Code Ann. §37-2-307, Defendants actions are in violation of S.C. Code Ann. §56-15-10 *et. seq.*

351. In 2004, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

352. In 2003, 2004, 2005, and 2006, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to separately register for each location in the State with the Department of Consumer Affairs Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

353. In 2005, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

354. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

355. In 2003 and 2004, Defendant Pulliam Motor Co. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

356. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Infiniti, Inc. charged "administrative fees." In 2005, Defendant Dick Smith Infiniti, Inc. failed to register with the

Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

357. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Nissan of Lexington, Inc. charged "administrative fees." In 2005, Defendant Dick Smith Nissan of Lexington, Inc. failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

358. In 2003, 2004, 2005, and 2006, Dick Smith Nissan, Inc. charged "administrative fees." In 2005, Dick Smith Nissan, Inc. failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

359. In 2003 and 2004, Defendant Overland Inc. d/b/a Land Rover of Columbia charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

360. In 2003, 2004, 2005 and 2006, Defendant Toyota Center, LLC charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

361. In 2003, 2004, 2005 and 2006, Defendant Stokes Motors, Inc. charged "administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

362. In 2003, 2004, 2005 and 2006, Defendant Stokes-Craven Automotive Group, Inc. charged "administrative fees" and failed to file a registration with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

363. In 2003, 2004, 2005 and 2006, Defendant Stokes Mazda, Inc. charged

"administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

364. In 2003, 2004, 2005, and 2006, Defendant Palmetto Chevrolet Company, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

365. In 2003, Defendant Palmetto Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

366. In 2003, 2004, 2005, and 2006, Defendant Jones Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

367. In 2006, Defendant Rick Hendrick Chevrolet, LP charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

368. In 2003, 2004, 2005, and 2006, Defendant Hoover Chrysler-Dodge, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

369. In 2003, 2004, 2005, and 2006, Defendant Baker Motor Company of Charleston charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

370. In 2003, 2004, and 2005, Defendant Big "O" Dodge of Greenville, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

371. In 2003, 2004, 2005, and 2006, Defendant Spartanburg Chrysler Jeep, Inc.

charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

372. In 2003, 2004, and 2005, Defendant Kia of Anderson, LLC charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

373. In 2003, Defendant Farrell Automotive, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

374. Plaintiff Heather Herron purchased a 2003 Land Rover SUV from Land Rover of Columbia.

375. Plaintiff Herron's sales invoice includes a separate line item for "Recording & Processing Fees." The "Recording & Processing Fees" line item is pre-printed and deceptively placed with fees for SC Sales Tax, Title, and License. This Recording & Processing Fees is an "administrative fee" as described above.

376. Plaintiff Alison Dannert purchased a Nissan Murano from Defendant CarMax Auto Superstores, Inc. in Greenville, South Carolina

377. Plaintiff Alison Dannert's sales invoice includes a separate line item for Dealer Documentation/ Processing Fee. This fee is pre-printed and deceptively placed with fees for tax, title and license. This Dealer Documentation/ Processing Fee is an "administrative fee" as described above.

378. Plaintiff Natalie Armstrong purchased a 2002 Jeep Liberty from Galeana Chrysler-Jeep, Inc.

379. Defendant Galeana Chrysler-Jeep, Inc.'s sales invoice includes a separate line

item for Admin. Fee. This Admin. Fee is an "administrative fee" as described above.

380. Plaintiff Michael Ritz purchased a Tacoma pickup truck from Defendant Taylor Investments, Inc. (d/b/a Taylor Toyota, Inc.).

381. Defendant Taylor Investments Inc.'s sales invoice includes a separate line item for Administrative Serves Fee. This Administrative Services Fee is an "administrative fee" as described above.

382. Plaintiff Julie Freeman purchased a 1999 Mazda from Defendant Rick Hendrick Honda Cars Co.

383. Defendant Rick Hendrick Honda Cars Co.'s sales invoice includes a separate line item for Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

384. Plaintiff Christine Watts purchases a 2004 BMW from Defendant Sonic Automotive, Inc. d/b/a Century BMW.

385. Defendant Sonic Automotive, Inc. d/b/a Century BMW's Retail Buyer's Order includes a separate line item for Recording & Processing Fees. This Recording & Processing Fee is an "administrative fee" as described above.

386. Plaintiff Michael Blease purchased a 2002 Volvo from Defendant Dick Dyer & Associates, Inc.

387. Defendant Dick Dyer & Associates, Inc.'s Buyer's Order and Invoice includes a separate line item for Processing Fee. This Processing Fee is an "administrative fee" as described above.

388. Plaintiff Michael Watts purchased a Toyota from Defendant Toyota of Greenville, Inc.

389. Defendant Toyota of Greenville, Inc.'s purchase order includes a separate line

item for a Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

390. Upon information and belief, Defendants each annually illegally make several hundred thousand dollars off the deceptive use and placement of the "administrative fee" line item and said illegal fees should be disgourged.

FOR A FIRST CAUSE OF ACTION
(Violations of S.C. Code Ann. §56-15-10 *et. seq.*)

391. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

392. Defendants are motor vehicle dealers subject to Title 56 of the S.C. Code.

393. Defendants deceptive use of "administrative fees" is arbitrary, in bad faith and unconscionable and in violation of statute.

394. Defendants' use and presentation of the administrative fees is designed to deceive and/or mislead car buyers and is thus is arbitrary, in bad faith and unconscionable and in violation of statute.

395. Defendants failure to adequately disclose and/or include "administrative fees" in the advertised price of cars constitutes misleading advertising in violation of statute.

396. Defendants conspired together to all apply similar administrative fees in an effort to cause damage to South Carolina car buyers. This conspiracy in and of itself is a violation of statute.

397. This suit is brought pursuant to S.C. Code Ann. §56-15-110(2) for the benefit of the whole because the action is one of common or general interest to many persons and the parties are numerous and it is impracticable to bring them all before the Court

398. Accordingly, Plaintiffs are suing for the benefit of all South Carolina car buyers

whom paid administrative fees to Defendants and against all motor vehicle dealers owned or controlled by Defendants as defined in S.C. Code Ann. §56-15-10(h).

399. Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants in the past four years have been injured by Defendants deceptive acts as described above.

400. As a result of the aforementioned conduct of Defendants, Plaintiffs are entitled to double actual damages, the cost of the suit and a reasonable attorney's fee pursuant to S.C. Code Ann. §56-15-110(1).

401. Furthermore, the aforementioned conduct of Defendants was malicious. Thus, Plaintiffs are entitled to punitive damages in the amount of three times the actual damages pursuant to S.C. Code Ann. §56-15-110(3).

FOR A SECOND CAUSE OF ACTION

(Civil Conspiracy as to Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc. , Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury,

Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston, Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet, Inc., McDaniels Acura of Charleston , McElveen Chevrolet, LLC, Morris Nissan, Northside Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Joe Gibson Suzuki, Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc., Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co., Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher, Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina International Trucks, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota, Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tidelands Chrysler Dodge, Tidelands Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc., Steve White Motors of SC, Inc., Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc., Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota, Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin

Pontiac-Buick-GMC , Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc. , Smith Chevrolet-Cadillac, Inc. , Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc.)

402. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

403. Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely

Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc. , Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury, Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston, Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet, Inc., McDaniels Acura of Charleston , McElveen Chevrolet, LLC, Morris Nissan, Northside

Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Joe Gibson Suzuki, Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc., Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co., Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher, Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina International Trucks Florence, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota, Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tidelands Chrysler Dodge, Tidelands Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc.,

Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc., Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota, Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin Pontiac-Buick-GMC , Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc. , Smith Chevrolet-Cadillac, Inc. , Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey

Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc., and the South Carolina Automobile Dealers Association have combined together for the purposes of injuring Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants.

404. Defendants have conspired together in a common scheme designed to deceive all

car buyers by all engaging in a common practice of presenting/advertising car prices in a misleading manner by charging "administrative fees."

405. Plaintiffs have suffered special damages as a result of Defendants conspiracy.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

406. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

407. This cause of action seeks a declaratory judgment for the purposes of determining a question of actual controversy between all parties.

408. Plaintiffs seek a determination of their rights and legal relations with the Defendants under S.C. Code Ann. §56-15-10 *et. seq.* and/or §37-2-307.

409. The issues raised by Defendants' common practice of charging administrative fees are of such wide concern and public interest that this declaratory judgment action should be decided for future guidance to insure that the public is protected.

410. Plaintiffs seek a determination of the following questions:

a. Does Defendants charging of "administrative fees," and further acts as described above, violate S.C. Code Ann. §56-15-10 *et. seq.*

b. Does Defendants charging of "administrative fees" and further acts as described above, violate S.C. Code Ann. §37-2-307.

c. Are Defendants actions as described above outside the scope of S.C. Code Ann. §37-2-307.

411. Plaintiffs seek a declaratory judgment from this Court that:

a. A permanent injunction issue preventing Defendants from advertising/ charging future customers with administrative fees in a manner which violates S.C. Code Ann. §56-15-10 *et. seq.*;

b. A permanent injunction issue preventing Defendants from advertising/

charging future customers with administrative fees in a manner which violates S.C. Code Ann. §37-2-307;

c. Defendants be ordered to disgorge all fees collected from Plaintiffs and all car buyers whom paid administrative fees to Defendants;

WHEREFORE, Plaintiffs prays for judgment against all of the Defendants for actual and compensatory damages, for two times actual damages pursuant to Plaintiffs' first cause of action, for three times actual damages for punitive damages pursuant to Plaintiffs' first cause of action, for disgorgement of all administrative fees collected by Defendants pursuant to Plaintiffs' second cause of action, for a permanent injunction pursuant to Plaintiffs' second cause of action, together with attorneys' fees, prejudgment interest and the costs of this action, and for such other and further relief as this Court may deem just and proper.

MICHAEL SPEARS, PA
Michael E. Spears
Post Office 5806
Spartanburg, SC 29304
(864)583-3235

GEDNEY M. HOWE, III, PA
Gedney M. Howe, III
Post Office Box 1034
Charleston, SC 29402
(843)722-8048

RICHARD A. HARPOOTLIAN, PA
Richard A. Harpootlian
P.O. Box 1090
Columbia, SC 29202
(803)252-4848

LEWIS & BABCOCK, L.L.P.
A. Camden Lewis
Brady R. Thomas
1513 Hampton Street

Post Office Box 11208
Columbia, SC 29211
(803)771-8000

By: _____

Attorneys for the Plaintiffs

October 28, 2006

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Melanie B. Blease, Paralegal for the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served a copy of **Plaintiffs' Amended Complaint** upon opposing counsel and/or their registered agents, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said parties at the following address:

ATTORNEY FOR BAKER MOTOR COMPANY OF CHARLESTON, INC., AND HAROLD ARNOLDS SENTRY BUICK, INC.
Capers G. Barr, III, Esquire
William S. Barr, Esquire
Barr, Unger & McIntosh, L.L.C.
11 Broad Street
Charleston, South Carolina 29401

ATTORNEY FOR JONES FORD, INC.
James D. Myrick, Esquire
Buist Moore Smythe McGee, P.A.
5 Exchange Street
Charleston, South Carolina 29401-2593

John T. Lay, Jr., Esquire
Ellis, Lawhorne & Sims, PA
PO Box 2285
Columbia, South Carolina 29202

ATTORNEY FOR DEFENDANTS BURNS CHYRSLER-DODGE-JEEP, LLC AND BURNS CHEVROLET CADILLAC, INC.
Tracy T. Vann, Esquire
Hamilton Martens Ballour & Sipe, LLC
130 East Main Street, Suite 201
Post Office Box 10940
Rock Hill South Carolina 29731

ATTORNEY FOR DICK SMITH MOTORS, INC., DICK DYER & ASSOCIATES, INC., DICK SMITH INFINITI, INC., DICK SMITH NISSAN, INC., AND DICK SMITH NISSAN OF LEXINGTON
J. Gregory Studemeyer, Esquire
Post Office Box 12201
Columbia, South Carolina 29211

ATTORNEY FOR SPARTANBURG CHRYSLER JEEP, INC.
Charles J. Hodge, Esquire
Hodge Law, P.C.
P.O. Box 2765
Spartanburg, South Carolina 29304

ATTORNEY FOR GENE REED IMPORTS, INC.
Susan Rosen, Esquire
Rosen Law Firm
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ATTORNEY FOR CARMAX AUTO SUPERSTORE, INC.
Ronald J. Tyron, Esquire
Parker Poe Admams & Bernstein, L.L.P.
1201 Main Street, Suite 1450
Columbia, South Carolina 29202

ATTORNEY FOR GALEANA CHRYSLER-JEEP,INC.; GALEANA CHRYSLER-PLYMOUTH, INC.; J.L.H INVESTMENTS D/B/A HENDRICK'S HONDA; AND RICK HENDRICK CHEVROLET, LP
James Y. Becker, Esquire
Haynesworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201

ATTORNEY FOR FAIRWAY FORD, INC. AND TOYOTA OF GREENVILLE
Harvey G. Sanders, Jr., Esquire
Leatherwood Walker Todd & Mann, PC
The Leatherwood Plaza
300 East McBee Avenue, Suite 500
Greenville, South Carolina 29601

ATTORNEY FOR BENSON CADILLAC NISSAN, INC.; BENSON CHRYSLER PLYMOUTH, INC.; BENSON FORD MERCURY; BRADSHAW AUTOMOTIVE GROUP; BRADSHAW FORD; D&D MOTORS; FARRELL AUTOMOTIVE; SATURN OF GREENVILLE; STEVE WHITE MOTORS; BAKER MOTOR COMPANY OF CHARLESTON; BEN SATCHER MOTORS; BURNS CHEVROLET CADILLAC; BURNS CHRYSLER DODGE JEEP; HOOVER DODGE; HOOVER JEEP CHRYSLER; HOOVER MOTORS; PULLIAM MOTOR COMPANY; STOKES MOTORS, INC.; AND JOHN FINGER MOTORS
Bradford Martin, Esquire
Bradford, Neal, Martin & Associates
75 Beattie Place, Suite 910
Greenville, South Carolina 29601

ATTORNEY FOR PALMETTO NISSAN
Matthew N. Tyler, Esquire
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.
Post Office Drawer 1931
Florence, South Carolina 29503

ATTORNEY FOR STROM ALTMAN DODGE; TOYOTA OF EASLEY; BIG "O" DODGE OF GREENVILLE, INC., PALMETTO FORD, INC.; AND KIA OF ANDERSON
Steve W. Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
Richardson, Plowden, Carpenter & Robinson, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202

REGISTERED AGENT
CT Corporation System
c/o West Ashley Toyota
75 Beattie Place
Two Shelter Centre
Greenville, South Carolina 29601

Melanie B. Blease

October 28, 2006
Columbia, South Carolina

EXHIBIT "B"

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

FLOSSIE MAE FANNING AND NATHANIEL FANNING, SR., Individually and as Representatives of All Persons Similarly Situated, Collectively Designated as JOHN DOE and JANE DOE,

Plaintiffs,

vs.

FRITZ'S PONTIAC-CADILLAC-BUICK, INC.; VOYAGER LIFE INSURANCE COMPANY; WESTERN SURETY COMPANY and CITIZENS & SOUTHERN NATIONAL BANK;

Defendants.

AFFIDAVIT OF STEVEN W. HAMM

PERSONALLY appeared before me Steven W. Hamm, who being duly sworn, deposes and says that:

1. I am the Administrator of the South Carolina Department of Consumer Affairs, having been duly appointed pursuant to Section 37-6-506 of the Code of Laws of South Carolina.

2. I also hold the position of Consumer Advocate for the State of South Carolina pursuant to Section 37-6-602 of the Code of Laws of South Carolina.

3. As Administrator of the Department of Consumer Affairs my duties and responsibilities include administering and enforcing the South Carolina Consumer Protection Code (S.C. Code Ann. §§37-1-101 et seq.), including credit related advertising.

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4. I have reviewed the records of the South Carolina Department of Consumer Affairs kept as a part of its official responsibilities, together with those kept in the ordinary course of its business, and I base my testimony of the information contained in these records, as well information within my personal knowledge.

5. Section 37-2-202 of the Code of Laws of South Carolina sets forth permissible additional charges which may be charged in addition to finance charges on consumer credit sales within South Carolina, including additional permissible charges that may be adopted by rule of the Administrator of the Department of Consumer Affairs.

6. In 1987, the Department began to take a more active role in obtaining compliance with the advertising laws under the Truth in Lending Act and the Unfair Trade Practices Act, pursuant to its authority in §§37-2-301 and 37-2-304 of the Code of Laws of South Carolina.

7. In September, 1987, the Department sent to all members of the South Carolina Automobile and Truck Dealers Association a letter outlining several advertising practices that the Department believed violated the law. (A copy of the letter is attached hereto as Exhibit A). Item number 1 of that letter specifically addresses additional closing fees, variously called documentary fees, procurement fees, administrative fees, closing costs, as well as other names, and indicates that attempts to treat such fees as an additional cost to the advertised price would be considered as a violation of the law.

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8. On July 25, 1988, the Department held a public meeting concerning automobile advertising. At this meeting certain materials were handed out to those attending. Item number 4 of the first page of these hand-out materials specifically addresses additional closing fees and states that advertising such costs as an additional charge to the advertised price would violate the law.

9. In November, 1988, the Department mailed to all members of the South Carolina Automobile and Truck Drivers Association a copy of the South Carolina Department of Consumer Affairs Advertising Guidelines & Standards. (A copy of the Advertising Guidelines & Standards is attached hereto as Exhibit B). The Guidelines & Standards were developed as a result of the 1987 letter and the public meeting in July, 1988, and they were derived primarily from standards prepared by the Association. Item number 6 of the 1988 Guidelines & Standards also specifically addresses additional closing fees and states that advertising such costs as an additional charge to the advertised price would violate the law.

10. In October, 1988, the Department sent a letter to an attorney in Charleston concerning the legality of additional closing fees. (A copy of this letter is attached hereto as Exhibit C). This letter was one of the Department's first attempts to address the fees within themselves, unconnected with advertising. This letter questioned the legality of such fees because they were not specifically permitted under §37-2-202 of the Code of Laws of South Carolina.

11. In January, 1989, the Department entered into an Assurance of Discontinuance, pursuant to §37-6-109 of the Code of Laws of South Carolina, with one South Carolina automobile dealer, whereby the dealer agreed to forego the use of add-on fees to sales contracts other than for options and protection packages. (A copy of this Assurance is attached hereto as Exhibit D).

12. Between October, 1988 and July, 1989, the Department began discussing additional closing fees and determined, during June, 1989 or early July, 1989, that such fees within themselves were a violation of the law.

13. On July 12, 1989, the Department sent a letter to a different automobile dealer in South Carolina responding to his question concerning the legality of additional closing fees. (A copy of this letter is attached hereto as Exhibit E). The letter sets forth the Department's position that such fees are a violation of the law.

14. On July 15, 1989, the Department filed suit against the same automobile dealer who had signed the Assurance of Discontinuance for violations of the S.C. Consumer Protection Code, including charging additional closing fees in violation of the Assurance of Discontinuance. This action was ended by settlement between the parties.

15. Consistently, since July, 1989, the Department has taken the position that additional closing fees are a violation of the law.

16. I have reviewed the bill of sale and work sheet in the subject action regarding a consumer credit sale by defendant Fritz's Pontiac-Cadillac-Buick, Inc., to the named plaintiffs of an automobile whereby a charge listed as a "procurement, delivery, filing fee" is set forth in the amount of $87.00.

17. This charge is the same type of additional closing fee that is mentioned above, and it is not one of the specifically permitted additional charges set forth in §37-2-202 of the Code of Laws of South Carolina. Further, this charge has never been approved by me, as Administrator of the Department of Consumer Affairs, pursuant to §37-2-202(e).

18. On June 5, 1989, the Department mailed to the Defendant Fritz's Pontiac-Cadillac-Buick, Inc., a notice that the use of add-ons, such as documentary, administrative or closing fees, was a violation of the law and that further violations would be treated as intentional violations. (A copy of this letter is attached hereto as Exhibit F).

19. On June 27, 1989, several employees of the Department met with this defendant's owner, Fritz Waidner, at his request to discuss advertising and other matters. (A copy of his letter requesting the meeting is attached hereto as Exhibit G). At this meeting the Department advised Mr. Waidner that any type of closing costs were illegal excess charges unless the charges were specifically permitted by §37-2-202. (A copy of a memorandum of this meeting is attached hereto as Exhibit H).

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20. On July 26, 1990, the Department again mailed to this defendant a notice that use of add-on charges was a violation of the law. (A copy of this letter is attached hereto as Exhibit I).

Steven W. Hamm, Administrator
South Carolina Department of
Consumer Affairs

SWORN to before me this
12th day of March, 1992

Danny R. Collins (L.S.)
Notary Public for South Carolina

My Commission Expires: 8/11/92

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STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

COMMISSIONERS
EMIL W. WALD
CHAIRMAN
ROCK HILL
LEHMAN A. MOSELEY, JR.
VICE CHAIRMAN
GREENVILLE
NELL W. STEWART
GREENVILLE
LONNIE RANDOLPH, JR.
COLUMBIA
JOHN T. CAMPBELL
COLUMBIA
BOBBY T. JONES
CAMDEN
THOMAS L. MOORE
CLEARWATER
W. LEWIS BURKE
COLUMBIA
RICHARD C. MOORE
GREENVILLE
TIMOTHY F. ROGERS
COLUMBIA

September 9, 1987

Dear South Carolina Automobile Dealer:

The Department of Consumer Affairs and the South Carolina Automobile and Truck Dealer's Association have worked together for sometime to obtain voluntary compliance with reasonable and lawful standards in automobile advertising. I would like to express my appreciation for the cooperation and assistance that my office has received from dealers all across South Carolina. However, problems still exist that cannot be ignored.

In order to maintain an open line of communication, I am providing you with a list of advertising and dealer practices that exist in South Carolina that constitute violations of state and federal law. Those practices include, but are not limited to the following:

(1) Advertisement of prices which are below the price at which the automobile can actually be purchased. (Use of add-ons such as freight, protection packages, documentary fees, factory and dealer installed options in addition to the advertised price);

(2) Advertisement of automobiles not actually available on the dealer's lot;

(3) Use of asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer;

(4) Failure to comply with Truth-in-Lending disclosures;

(5) Advertisements that appear to state that automobiles can be purchased for one-half of sticker price;

(6) Continued use of the term "free" when a purchase is required to obtain the "free" item;

(7) Statements by sales people to customers that dealers are <u>required</u> by manufacturers to charge for additional dealer preparation charges;

(8) Claims that automobiles are being sold at "factory invoice" when they are actually sold at full M.S.R.P;

ADMINISTRATION 734-9458
PUBLIC INFORMATION 734-9462
CONSUMER COMPLAINTS 734-9452
WATS 1-800 922-1594
NOTIFICATION 734-9461
CONSUMER ADVOCACY 734-9464
EQUAL OPPORTUNITY EMPLO
TELEPHONES (AREA CODE 803)

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(9) Advertisements that fail to clearly identify lease and sale programs and prices.

Further advertising problems brought to the attention of the Department of Consumer Affairs will not be treated as mere oversights, but as intentional violations. In addition, we will begin a regular program of identifying dealerships to the public that continue to ignore the guidelines adopted by your association. Any dealers who have questions about the legality of certain types of advertising are welcome to call the Department for clarification.

Sincerely,

Steven W. Hamm
Administrator

bp

cc: Mr. Patrick L. Watson
Executive Vice President
S. C. Automobile Dealer's Association
1517 Laurel Street
Columbia, South Carolina 29201

EXHIBIT B

REV. 11/28/88

SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
ADVERTISING GUIDELINES & STANDARDS

Below is a list of advertising and dealer practices that constitute violations of state and federal law. These practices include, but are not limited to the following:

(1) Discounts, Savings - Any discounts or savings indicated in an advertisement must be those that are deducted from the MSRP. Any discounts, incentives, or savings by the manufacturer that are indicated on the Monroney sticker and used to compute the MSRP may not be claimed by the dealer in their advertisements as savings or discounts from the dealer.

(2) Rebates - If a rebate is indicated as being part of an advertised price, the amount of the rebate must be shown in the main body of the advertisement (close to the advertised price).

(3) A dealer may not advertise in any manner that is false, deceptive, or misleading or that misrepresents any vehicle offered for sale.

(4) Advertisements for the sale of new and used vehicles shall clearly and conspicuously identify the dealership by the same trade name as shown on the application for dealer's license, provided that the title or designation is not misleading. A trade or corporate name that falsely states or implies that the dealer has a special relationship or connection with a manufacturer that other dealers do not have is misleading.

(5) When the price of a vehicle is quoted, the advertisement shall clearly identify the vehicle as to make, year, model, special equipment, etc. All terms or claims, including statements about trade-in allowance, shall be factual and presented clearly and conspicuously.

(6) The advertised price shall be the full delivered cash price which the customer shall pay, except for taxes and tag fees. Dealer shall not advertise prices which are below the price at which the automobile can actually be purchased (use of add-ons such as freight, protection packages, documentary fees, administration fees, closing fees, factory and dealer installed options in addition to the advertised price). The amount of the factory rebate, if any, must be indicated in the advertisement.

(7) The term "wholesale" may not be used in retail advertising. The term "factory sale" or "liquidation

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sale" may not be used in retail advertising if they imply that the dealer is selling vehicles in a manner other than through normal retail channels.

(8) The use of layout, headlines, illustrations, style, sound, length of time, lighting, color, or type size of an advertisement, or all of the above, may not obscure or make misleading any material fact in any advertisement or sales presentation.

(9) All advertising shall comply with Regulation Z and Regulation M of the Federal Truth in Lending Act.

(10) Advertisements which offer special annual percentage rate financing shall disclose any special conditions, terms, or selling prices which shall be met before the annual percentage rate applies.

(11) Unsupported selling claims or other statements, not in the public interest, may not be used. This includes statements such as: "We guarantee to sell for less"; "Highest trade-in allowance"; "Make your own deal"; "Name your own price"; and "Guaranteed minimum trade-in allowance.

(12) An advertisement for a motor vehicle lease should not be presented in a manner that a reasonable person would interpret as being an advertisement for the sale of a motor vehicle. Likewise, an advertisement for the sale of a motor vehicle should not be presented in a manner that a reasonable person would interpret as being an advertisement for a motor vehicle lease. Advertisements must clearly identify lease and sale programs and prices.

(13) Dealers shall not advertise automobiles that are not actually available on the dealer's lot.

(14) Dealers shall not use asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer. Graduated payment schedules must be presented in a clear and conspicuous manner so as not to mislead the consumer.

(15) Dealers shall not use the term "free" when a purchase or other consideration is required to obtain the "free" item.

(16) Sales people shall not make statements to customers that dealers are required by manufacturers to charge for additional preparation charges. Likewise, sales people should not represent to customers that any charges are required by State or Federal governments.

(17) Dealers shall not make claims that automobiles are being sold at "factory invoice" or "dealer invoice" when they are actually sold at full M.S.R.P. "Dealer invoice" and "factory invoice" are the manufacturer's initial invoice amount to the dealer. They are higher than the dealer's final cost because dealers often receive rebates, allowances, discounts, and holdbacks. The "dealer invoice" and "factory invoice" price include freight (destination and delivery charge) and national advertising. "Factory invoice" and "dealer invoice" mean the invoice amount at the bottom of the invoice. "Dealer cost" is the actual vehicle cost. This amount excludes the addition of holdback, freight, and national advertising.

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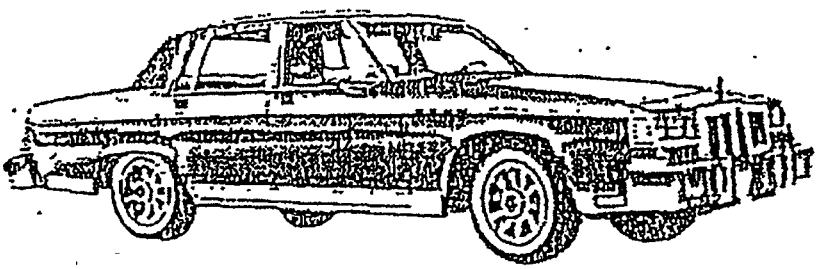
REBATES

EXAMPLE: Wrong Way to Advertise

THIS WEEK ONLY

$9999.00

(includes rebate)



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC
0074

02002

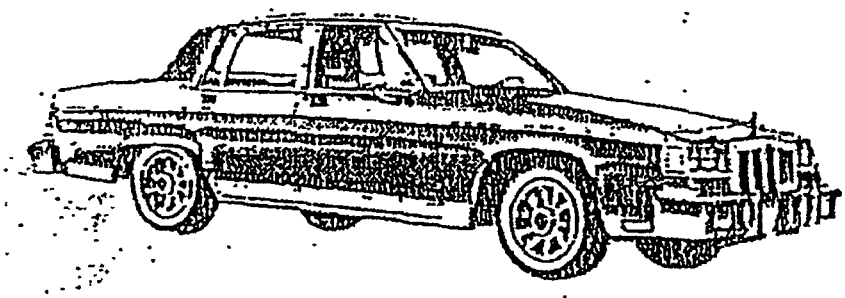
REBATES

EXAMPLE: Right Way to Advertise

THIS WEEK ONLY

$9999.00

(includes $500.00 rebate)



1989 Oldsmobile
Stk. #1989

0075

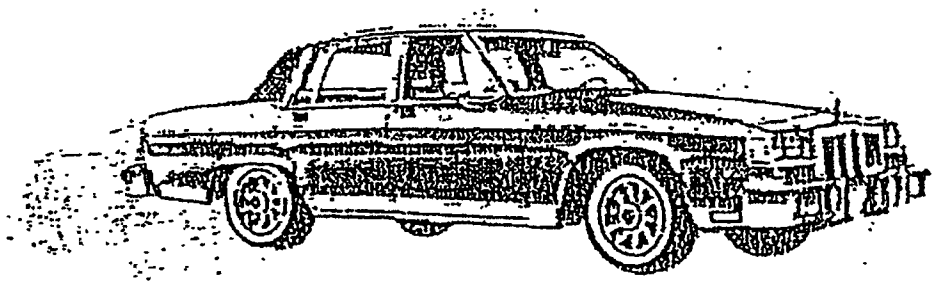
ABC MOTORS, INC. 02003

Factory Savings/Discount

EXAMPLE: Wrong Way to Advertise

THIS WEEK ONLY

Options Package Savings	$ 500.00
Factory Rebate	$ 500.00
Dealer Discount	$ 500.00
TOTAL [redacted] Savings	$1500.00



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC

02004

0076

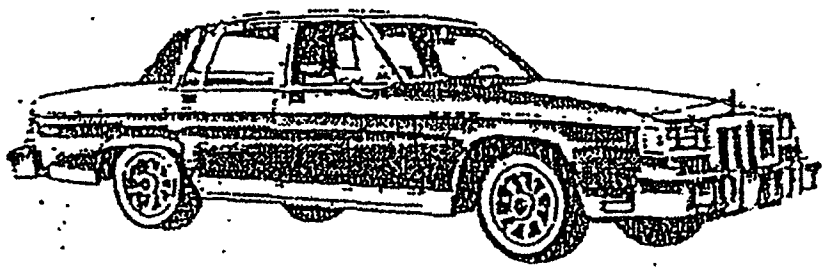
Factory Savings/Discount

EXAMPLE: Right Way to Advertise

THIS WEEK ONLY

Factory Rebate	$ 500.00
Dealer Discount	$ 500.00
TOTAL [redacted] Savings	$1000.00

Window sticker reflects a FACTORY OPTIONS SAVINGS of $500.00.



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC

0077

02005

Closed-End Credit Disclosures

Triggering Terms

If an advertisement promoting "closed-end credit" (defined on page 4 of this manual) contains any of the following triggering terms, three specific disclosures must also be included in the advertisement. The *triggering* terms are:

1. *the amount of the downpayment* (expressed either as a percentage or as a dollar amount).
   Examples: "10% down"
   "$25 down"
   "90% financing"
2. *the amount of any payment* (expressed either as a percentage or as a dollar amount)
   Examples: "Monthly payments less than $67"
   "Pay 5% each month"
   "$9 per month"
3. *the number of payments.*
   Examples: "36 small payments are all you make"
   "48 monthly payments and you're all paid up"
4. *the period of repayment* (the total time required to repay).
   Examples: "Five years to pay"
   "36 months to pay"
   "4 year loans available"
5. *the amount of any finance charge.*
   Examples. "Financing costs less than $100"
   "Less than $100 interest"
   "$100 financing"

The following are examples of terms which do *not* trigger the required disclosures:

"No downpayment"
"18% Annual Percentage Rate loans available here"
"Easy monthly payments"
"Loans available at 5% below our standard annual percentage rate"
"Low downpayment accepted"
"Pay weekly"
"Terms to fit your budget"
"Financing available"

Required Disclosures

If any triggering term is used in a closed-end credit advertisement, then the following three *disclosures* must also be included in that advertisement:

(1) the amount or percentage of the downpayment;
(2) *the terms of repayment*; and
(3) the "annual percentage rate," using that term spelled out in full. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must be disclosed.

Sample Disclosures (General)

The following example, which promotes the credit sale of a $1,000 car, illustrates the required disclosures for a closed-end consumer credit advertisement which would comply with the Truth in Lending Act *if printed clearly and conspicuously*

0078 02006

"No downpayment. 12 monthly payments of $100 each; annual percentage rate: 35%"

In displaying the downpayment, the word "downpayment" need not be used. For example, "10% cash required from buyer" or "credit terms require minimum $100 trade-in" would suffice.

Repayment terms may be expressed in a variety of ways in addition to the exact repayment schedule. For example, a creditor who offers loans might use unit cost to disclose repayment terms: "48 monthly payments of $25 per $1,000 borrowed."

Rate Disclosures

If the finance charge in a closed-end credit advertisement is expressed as a rate, it must be stated as an "annual percentage rate," using that term. If the annual percentage rate may increase after consummation of the credit transaction, that fact must be stated. If a component of that finance charge is interest computed at a simple annual rate, that rate *may* also be included. However, it must not be displayed more conspicuously than the annual percentage rate. For example, an advertisement for mortgage credit may include the contract rate of interest[5] together with the annual percentage rate.

If the finance charge is computed by applying a periodic rate to the unpaid balance, the periodic rate may also be stated along with the annual percentage rate. As with the simple annual rate, the periodic rate may not be stated more conspicuously than the annual percentage rate.

Except as noted above, no closed-end consumer credit advertisement may include any rate of finance charge other than the "annual percentage rate." An advertiser may *never* include an "add-on" rate (for example, "$6 per $100 per year") or a discount rate in an advertisement. These rates are misleading since they are significantly lower than the corresponding annual percentage rate, and their use violates the Truth in Lending Act.

Real Estate Advertisements

Real estate advertisements which also promote consumer credit must comply with the advertising provisions of the Truth in Lending Act.

1. Rate Disclosure Examples

As with other advertisements of closed-end consumer credit, if only the annual percentage rate is disclosed, additional disclosures are not required. An advertisement may simply state, "Assume 12% annual percentage rate mortgage" or "14% annual percentage rate mortgages available."

[5] The annual percentage rate may include finance charges, discounts and points which may not be included in the contract rate. For further information on the finance charge and annual percentage rate see

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Consumer Lease Disclosures

Consumer Leases in General

The Truth in Lending Act regulates consumer leases because they represent an alternative to buying on credit. Also, unless certain information is provided, a consumer might easily confuse leasing with purchasing on credit.

Triggering Terms

If an advertisement promoting a "consumer lease" (defined on page 4 of this manual) contains any of the following triggering terms, then five specific disclosures must also be included in the advertisement. The *triggering* terms are:

1. *the amount of any payment.*
   Example: "Pay a mere $128 per month"
2. *the number of required payments.*
   Examples: "$133 per month...36 month lease"
   "Low monthly payments on our four-year auto leases"
3. *a statement that any or no down-payment, or other payment, is required at the beginning of the lease.*
   Examples: "Lease now and make no payments for three months"
   "Only a small down-payment"
   "Leave your pocketbook behind and return home in your leased '63 Chevy"

The following are examples of terms which do *not* trigger the required disclosures:

"Low Monthly Payments"
"Lease for Less than It Costs to Buy"
"We Lease to Anyone"

Required Disclosures

If any triggering term is used in a consumer lease advertisement, then the following five *disclosures* must also be included in that advertisement:

(1) a statement that the transaction advertised is a lease;
(2) the total amount of any payment (such as security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required;
(3) the number, amounts, due dates, or periods of scheduled payments, and the total of such payments under the lease;
(4) a statement of whether the customer has the option to purchase the leased property and at what time and price (the method of determining the price may be substituted for disclosure of the price); and
(5) a statement of the amount (or method of determining the amount) of any liabilities the lease imposes upon the customer at the

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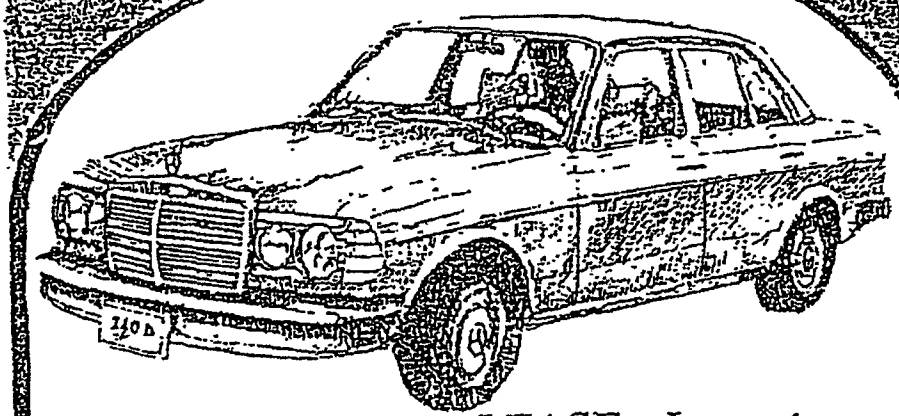
LEASE



You can now LEASE a Luxurious Mercedes-Benz 240 Diesel for Less . . .

only . . . $283.18 per month

WITH AIR CONDITIONING, AM/FM RADIO, CENTER ARM REST, 4 SPEED TRANSMISSION

SALES TAX & TAGS NOT INCLUDED

36 PAYMENTS AT $283 PER MO.

Oldsmobile • Datsun • Mercedes-Benz

Triggerin terms

Requires disclosu needed

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end of the term; and, if the customer has such liability, a statement that the customer shall be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term.

Sample Disclosures

The following is an example of the required disclosures for a consumer lease advertisement which would comply with the Truth in Lending Act *if printed clearly and conspicuously*:

"36 month lease. No payments at the beginning of the lease, 36 monthly payments of $128 totaling $4,608. Customer has no option to purchase at the end of the lease. Customer will have no further liability unless auto has depreciated to less than 40% of its new car price. If so, customer is liable for that additional depreciation."

Catalog and Multi-Page Advertisements

Consumer lease advertisements which appear in catalogs or other multi-page advertisements are subject to the special provisions described on page 16 of this manual.

Merchandise Tags and Multiple Item Leases

If a merchandise tag for an item normally included in a multiple item lease contains any triggering term, it must either (a) include all required disclosures or (b) *clearly and conspicuously* refer to a sign or display prominently posted in the lessor's showroom which includes all required disclosures.

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02010

EXHIBIT C

The State of South Carolina
Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

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BOBBY T. JONES
CAMDEN
THOMAS L. MOORE
CLEARWATER
W. LEWIS BURKE
COLUMBIA
RICHARD C. MOORE
GREENVILLE
TIMOTHY F. ROGERS
COLUMBIA

October 20, 1988

fax 734-9365

Daniel F. Norfleet, Esquire
Waldman & Associates
Remount Square
1861 Remount Road, Suite 204
PO Box 90466
North Charleston, SC 29410-1466

RE: Closing Fees

Dear Mr. Norfleet:

Administrator Steven W. Hamm has referred your letter of August 11, 1988 to me for reply. Please excuse this tardy response.

This Department has consistently taken the position both with regard to consumer credit sales and consumer loans, that if the additional charge provisions of S.C. Code Ann. §§37-2-202 and 37-3-202 (1976 as amended) do not allow for a fee or charge to be assessed as a permissible additional charge, that fee or charge must be considered part of the finance charge (or credit service charge) unless it is specifically prohibited.

While I cannot comment on nor identify any dealership presently under investigation, I can comment in general terms. We have received some information that such fees are being charged ostensibly as additional charges for the service of document preparation, notary fees, "follow-up" calls and the like.

There are two problems with the charging of such fees in connection with consumer credit sales of automobiles. First, there is no provision for them in §37-2-202. We are not certain whether they are charged on cash and credit contracts alike. Even so, certain "closing costs" fees are specifically allowed by §37-2-202 (1)(d) for real estate secured transactions. By negative implication, they are not allowed for non-real estate secured transactions. In addition, I am aware of no provision for such fees as part of the amount financed under the federal Truth in Lending Act [15 U.S.C. §1601 et seq.].

Furthermore, it would appear that certain dealerships are advertising cash prices of automobiles in full page advertisements without including the so called closing fee in the cash price. Because the fee is an easily ascertainable element of the overall

0083

CONSUMER COMPLAINTS NOTIFICAT 02011

price of the vehicle, it should be included in the cash price the same as elements such as "destination charges." A copy of Mr. Hamm's advertising guidelines are included for your information. So is a copy of the recent opinion of the Maryland Attorney General's office based on substantially the same grounds.

I hope this is sufficiently responsive to your inquiry.

Sincerely,

Philip S. Porter
Counsel to Administrator

psp:dfneb

Steve Hamm

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EXHIBIT D

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
S.C. DEPARTMENT OF CONSUMER AFFAIRS, Petitioner, vs. ACTION CHEVROLET, INC. Respondent.	ASSURANCE OF DISCONTINUANCE

In accordance with provisions of the South Carolina Consumer Protection Code § 37-1-101 et seq., S.C. Code Ann. § 37-i-101 et seq. (amended 1976), Petitioner and Respondent hereby agree to the provisions of this Assurance of Discontinuance as set forth below. In entering this Assurance, Respondent makes no admission of unlawful or wrongful conduct. Respondent recognizes and understands, however, that any violation of the provisions herein shall constitute a prima facie violation of the South Carolina Consumer Protection Code and shall subject Respondent to the penalties as set forth therein.

In order to resolve this matter Respondent consents to this Assurance.

WHEREFORE, the Respondent does freely, voluntarily and knowingly give and assure the S.C. Department of Consumer Affairs, that

1. Respondent will not engage in any activity, conduct or practice designed to mislead or deceive the public as to the price, quality or guarantee applicable to any product for sale by

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Respondent.

2. Respondent will not advertise, print, display, publish, distribute, broadcast, or cause to be advertised, printed, displayed, published, distributed, or broadcast in any manner any statement of representation that is false, misleading, or deceptive to the consumer.

3. All advertisements by Respondent will accurately reflect the manner in which the product is sold.

4. The advertised price in an advertisement for a vehicle shall be the delivered cash price which the customer shall pay, except for taxes and tag fees. The Respondent will not use add-ons in the advertisement such as freight, protection packages, documentary fees, or dealer options in addition to the advertised price. However, the actual sales transaction may include add-ons such as protection package and options, in addition to the advertised price if the consumer requests them. The Respondent will not add "fees" to the buyer's contract.

5. The Respondent will not use asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer.

6. All advertising shall comply with Regulation Z of the Federal Truth in Lending Act and Federal Trade Commission Act.

7. Factory rebates on cars purchased from Respondent must be accounted for and disclosed in the buyer's contract. The buyer's contract must be a true and clear accounting of the sales transaction between the Respondent and the consumer.

8. The Respondent may not use advertising that implies

the Respondent is selling vehicles in a manner other than through normal retail channels.

9. Any automobile the Respondent advertises for sale at dealer invoice must be sold at dealer invoice. The dealer invoice price includes freight and national advertising. Dealer invoice is the manufacturer's initial invoice amount to the dealer. It is indicated as the invoice amount at the bottom of the invoice. No other charges may be added to this price except taxes and tags.

10. The Respondent agrees to pay the sum of ten thousand dollars ($10,000) to the Department as a complete settlement of the matters contained in this Assurance of Discontinuance.

11. The Respondent and the Department agree that this Assurance is an Assurance of Discontinuance made pursuant to S.C. Code Ann. §37-6-109 (1976 as amended).

In consideration of the foregoing, the Petitioner agrees to forego further proceedings in this matter. However, it is specifically understood that the Administrator, Steven W. Hamm may reopen this matter if Action Chevrolet should engage in any of the conduct noted in this Assurance.

ACTION CHEVROLET, INC.

By: _____

Date: 1/4/89

S.C. DEPARTMENT OF CONSUMER AFFAIRS

By: _____
Steven W. Hamm, Administrator

Date: 1-11-89

0087

02015

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

July 12, 1989

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COLUMBIA
HARRY WALKER
COLUMBIA
A. CLARK JENKINS
JOHNS ISLAND
GENE McCASKILL
CAMDEN

Robert F. Williams
3136 North Pleasantburg Dr.
Greenville, SC 29609

RE: Additional Costs or Fees in Auto Sales

Dear Mr. Williams:

Recently you have asked how to treat a fee that you call a procurement fee. As I understand it this fee is to cover the costs of closing the sale, doing the paperwork, and transporting or sending the documents to the Highway Department. If this fee serves a different purpose, please let me know because it may change what I say.

The Department's position is that such charges may not be charged or advertised. They may not be put on the buyer's order, the retail sales contract, or the window sticker. The Department feels strongly enough about this position that we have filed a lawsuit against one dealer, and this type of charge is the basis for one of the causes of action. This does not mean that you cannot take your expenses into consideration when pricing an auto or negotiating a sale. These expenses are part of the expense associated with the operation of an auto dealership and are to be treated the same as any other type of overhead expense. That is, you must determine how low you can go when you are negotiating the price and still make a profit. If you want to recoup an additional $89.00, then you should not reduce the price as much during negotiations.

For at least two years, this Department has been informing dealers of the problem with using such a fee in connection with the advertising of the purchase price of an auto. The problem, as it relates to advertising, arises when an auto is advertised at a cash price and then when the deal has been reached this additional charge is added to the price. The amount of this charge is predetermined or can be determined easily. It appears that the only purpose for not including the fee in the advertised price is to make the consumer think he is getting a better deal than he actually is getting. Therefore, if an auto is advertised for a cash price and the fee is added later, the price advertisement is deceptive and misleading.

Not only is the fee not permitted in advertisements, but also the fee is improper in any financed consumer transaction, unless the charge is specifically permitted by the South Carolina Consumer

Protection Code. The legal basis for this position can be seen by evaluating those provisions of the Code that set forth the permissible charges on a financed transaction. These provisions are found in Part 2 of Chapter 2 of the Code (§§37-2-201 through 210) in the case of credit sales, and in Part 2 of Chapter 3 (§§37-3-200 through 210) in the case of consumer loans. Since the present context is auto sales, I will confine my evaluation to credit sales.

Very briefly, Part 2 of Chapter 2 provides for various types of additional charges. The type of charges that are authorized are as follows:

§37-2-201 -- finance charges
§37-2-202 -- permissible additional charges
§37-2-203 -- delinquency charges
§37-2-204 -- deferral charges
§37-2-205 -- service charge on refinancing
§37-2-206 -- service charge on consolidation
§37-2-207 -- service charge for revolving charge accounts
§37-2-208 -- advances to perform covenants of the buyer

The only other sections of Part 2 do not permit any type of charges. In fact, the remaining sections give certain rights to the buyers.

§37-2-209 -- gives the buyer the right to prepay the debt
§37-2-210 -- provides for the rebate due to the buyer upon prepayment

Of these possible charges it would seem that only two may apply. Those two are §§37-2-201 and 37-2-202. Section 37-2-201 provides that a seller making a consumer credit sale may properly contract for and receive a finance charge as permitted in the provisions of §37-2-201. As I understand it, you do not want this fee to be considered a finance charge. If my understanding is incorrect, please let me know.

Section 37-2-202 provides for certain additional charges that may properly be made. I am attaching a copy of this code section for your convenience. This section is divided into three parts. The first part, §37-2-202(1), provides for five specified types of charges. The second part, §37-2-202(2), provides for the permissible insurance charges. The third part, §37-2-202(3), provides for permissible additional charges when the buyer assumes an existing obligation. Neither the second nor the third part of this code section apply to the procurement fee. Therefore, unless one of the specified additional charges in the first part authorizes the procurement fee it is not permitted. These permissible charges are:

(a) Official fees and taxes;
(b) Charges for insurance as described in subsection (2);
(c) Annual charges for the privilege of using a credit card, when the card and the charges meet the conditions set forth;

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(d) Closing costs when the debt is to be secured by an interest in land if the costs are bona fide and paid to third parties;
(e) Charges for other benefits conferred on the buyer if these charges meet the criteria set forth in this subsection.

The first three types of charges do not apply to the procurement fee. Official fees and taxes are charges made by and paid to the government. There is no question that the procurement fee is not a government fee. Therefore, this part does not make the fee permissible. Also, there is no question that the procurement fee is not for insurance, so the insurance provision does not authorize the procurement fee. Finally, there is no question that the fee does not relate to a charge for the privilege of using a credit card, and, as a result, that this part does not authorize the fee. Therefore, only the fourth or fifth parts of the subsection could possible authorize the fee.

Part four is for closing costs. Many of the dealers that want to charge what you call a procurement fee call the fee a closing fee. Part four does not authorize such a fee in the sale of an automobile because the fee is permitted only when the debt is secured by an interest in land. This paragraph, §37-2-202(1)(d), lists five types of closing costs that may be made when the debt is secured by an interest in land. The first of these charges is for title examinations and title insurance. Due to the nature of establishing title to real estate, a title examination is essential. The second type of closing cost that is permitted is a fee for the preparation of the deed and other documents. This fee is permissible only if the fee is paid to a third party who is not related to the creditor. The third type of closing cost is escrows for future payment of taxes, insurance and such like. The fourth type of closing cost is fees for notarizing deeds and other documents. This type of fee is permitted only if the fee is paid to a third party who is not related to the creditor. The fifth type of closing cost is fees for real estate appraisals when the real estate is the property that is the subject of the sale. This type of cost is permitted only if the fee is paid to a third party who is not related to the creditor. While some of these type costs may appear to be similar to the purpose of your procurement fee, they are quite different in some cases, and they are not permitted if paid to the creditor in the cases that would be similar. Since the procurement fee is paid directly to the dealer, these closing costs would not authorize the fee as a permissible closing cost even when their use is for purposes similar to the purpose of the procurement fee.

The only remaining possibility is the fifth specified permissible additional charge. This charge is for other benefits conferred on the buyer. To be permissible the charge and the benefits must meet several requirements. I do not believe the fee meets the requirements, but I will identify each of them a give a brief discussion of the reasons why I do not believe the fee is authorized under this part of the Code section.

The first of these requirements is that there must be a benefit conferred on the buyer. It is very doubtful that a procurement fee

confers any benefit on the buyer. In fact, it would seem that the real benefit of the fee is conferred upon the seller. The second requirement is that the benefit must be of value to the buyer. It is even more doubtful that the procurement fee is of any value to the buyer. The third requirement is that the charge must bear a reasonable relation to the benefit to the buyer. I do not believe that a charge of $89.00, much less one of $199.00 as some dealers charge, has any reasonable relation to the benefit that a buyer may receive. The fourth requirement is that such a charge must not be of a type that is for credit. If the charge is of a type that is for credit, then the charge is a finance charge and must be treated as one. The fifth requirement is that the charge must be authorized as permissible by a rule adopted by the Administrator. As of now there are no rules authorizing any additional charges as permissible.

The only permissible charges are those set forth in the Consumer Protection Code, and the procurement fee, regardless of the name actually given to the fee, is not authorized by the Code. Therefore, the fee is an illegal excess charge and cannot be charged.

I have tried to state our position and the basis for it as clearly as I can. If you have questions or want to discuss this matter further, please let us know. We would be happy to try to arrange a meeting with you, the Dealers' Association, and your attorneys if you desire.

With best regards, I am

Sincerely,

s/
Danny R. Collins
Staff Counsel

cc: Patrick E. Watson,
Executive Vice-President of
the South Carolina Automobile
and Truck Dealers' Association

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

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HARRY WALKER
COLUMBIA
A. CLARK JENKINS
JOHNS ISLAND
GENE McCASKILL
CAMDEN

June 5, 1989

Fritz Waidner
Fritz Pontiac-Cadillac-Buick, Inc.
P. O. Box 878
Newberry, SC 29108

RE: Auto Advertising Standards and Guidelines

Dear Mr. Waidner:

As you are aware the S.C. Department of Consumer Affairs has worked with South Carolina auto dealers to obtain voluntary compliance with reasonable and lawful standards in automobile advertising. We have endeavored to maintain an open line of communication in order to be available to assist dealers who may have questions about the legality of certain types of advertising. We appreciate the cooperation and assistance that our Department has received from dealers all across South Carolina.

Enclosed is a copy of the S.C. Department of Consumer Affairs auto advertising standards and guidelines.

In your recent television advertisement, the use of fees in addition to the advertised price is a violation of state and federal law.

A dealer may not use add-ons such as documentary fees, administration fees, closing fees, or any fees in addition to the advertised price.

Your cooperation and assistance in voluntary compliance with lawful advertising standards is appreciated. Further advertising problems brought to the attention of the Department of Consumer Affairs will not be treated as oversights, but as intentional violations.

I would appreciate your written acknowledgement within ten (10) days of the date of this letter indicating your understanding of

0092

ADMINISTRATION
734 9458
PUBLIC INFORMATION
734 9462
CONSUMER COMPLAINTS
734-9452
WATS 1-800 922 1594
NOTIFICATION
734-9461
CONSUMER ADVOCACY
734 9464
EQUAL OPPORTUNITY EMPLOYER
TELEPHONES (AREA CODE 803)

02020

and voluntary compliance with the law as set forth in this letter. If you have any questions about this letter, please feel free to call the Department at (803) 734-9460.

Sincerely,

Steven W. Hamm
Administrator

SWH/cam

enclosures

0093

02021

PONTIAC
Cadillac
BUICK

FRITZ'S
Pontiac-Cadillac-Buick, Inc.
"WE'RE HERE TO SERVE YOU"
4010 College Street Extn.
Newberry, South Carolina 29108
(803) 276-8970 (Newberry)
(803) 254-5131 (Columbia)
1-800-426-7433

RECEIVED
JUN 20 1989
DEPARTMENT OF
CONSUMER AFFAIRS

June 17, 1989

Dear Steve,

Thank you for your letter of June 5th. This area of advertising, guidelines, etc. is somewhat unclear to us and I would like to meet with you at your office when its convenient to you to discuss the situation.

Thanks,
Fritz Dasher

P.S.
Home # 345-2777
Business # 254-5131
1-276-8970

We got a meeting with Lanny Collins June 27th so you don't have to reply to this letter.

0094

02022

M E M O R A N D U M

TO: File

FROM: Danny Collins

RE: Meeting with Fritz Waidner

DATE: June 28, 1989

On June 27, 1989, several members of the Staff met with Fritz Waidner to discuss various matters. Those attending were Danny Collins, Helen Fennell, Annette Murphy and Karen Yongue, as well as Fritz Waidner. Three primary issues were discussed at the meeting: closing costs (documentary fees, procurement fees or administrative fees), secondary financing and an active complaint filed against the dealership.

Closing Costs

After some discussion, I think Mr. Waidner understood our position on closing costs as an excess, unpermitted additional charge. We gave him a copy of §37-2-202, and explained that if a charge was not specifically permitted by that section, it would be considered an excess charge. Mr. Waidner wanted to know why the bank could make him a loan and add different types of charges. We explained that certain additional charges are specifically permitted in loans secured by real property. Mr. Waidner countered that the loan was not secured by realty but by equipment. We explained that that was a commercial transaction (business to business) and was not governed by the Consumer Protection Code. Mr. Waidner once again countered that he was personally liable on the loan. We explained that the purpose of the loan was still a business purpose and was not governed by the Code.

Secondary Financing

After our discussion of the method of secondary financing used by Mr. Waidner, it appears that he has no hidden finance problems. We asked Mr. Waidner to describe the operation of the high-risk financing he uses. He told us that when a person was turned down by the primary source of financing, then the credit application would be given to another company. The negotiated terms would remain the same, except for the changes made necessary by a higher finance charge. The higher finance charge is disclosed and there is no extra fee that is charged to accept the high risk customer. We explained to Mr. Waidner that if that is how they operated, then there was probably no problem with respect to additional charges or hidden finance charges.

0095 02023

After discussing the first two matters, we briefly discussed the complaint filed by Dennis and Charlotte Hunter. Mr. Waidner confirmed that he was aware of the problem, and he added that this particular matter was one that he felt strongly enough about to hold his ground, even when it meant that he would be kicked out of Autocap. We informed Mr. Waidner that we felt this complaint had to be resolved. This is one of the few times where a dealer, instead of the consumer, would be bound by a contract he wanted to break, and our position was the same as it would be if the consumer wanted out of the contract -- i.e. the contract is binding and must be performed. Mr. Waidner relies on a clause in the agreement that attempts to make the contract binding only if the financing is approved. The contract form provides a signature line immediately below this condition precedent, but the consumer never signed the line. After some discussion, Mr. Waidner agreed that he would try to resolve this complaint. If he is unable to reach a resolution, we agreed to offer a proposal that may help resolve the matter.

0096

02024

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

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JOHNS ISLAND
GENE McCASKILL
CAMDEN

July 26, 1990

Fritz Waidner
Fritz Pontiac-Cadillac-Buick, Inc.
P. O. Box 878
Newberry, SC 29108

RE: Auto Advertising Standards and Guidelines

Dear Mr. Waidner:

As you are aware, the S.C. Department of Consumer Affairs has worked with South Carolina auto dealers to obtain voluntary compliance with reasonable and lawful standards in automobile advertising.

If a rebate is indicated as being part of an advertised price, the amount of the rebate must be shown in the main body of the advertisement (close to the advertised price). Enclosed is a copy of one of your ads not in compliance with this rebate advertising guideline.

Please note a dealer may not use add-ons such as documentary fees, administration fees, closing fees, or any fees in addition to the purchase price. Enclosed is a copy of the S.C. Department of Consumer Affairs Automobile Advertising Guidelines and Standards. Your cooperation and assistance in voluntary compliance with lawful advertising standards is appreciated. I would appreciate your written acknowledgement within ten (10) days of the date of this letter indicating your understanding of and voluntary compliance with the law as set forth in this letter. If you have any questions about this letter, please feel free to call the Department at (803)734-9460.

Sincerely,

Danny R. Collins

Danny R. Collins
Counsel/Enforcement Unit

DRC/cam

enclosures

0097

EXHIBIT "C"

CENTURY BMW
CENTURY MINI

2750 LAURENS ROAD • GREENVILLE, SC 29607
PHONE (864) 234-6437
www.century-bmw.com • www.centurymini.com

RETAIL BUYER'S ORDER

Name: Michael M Watts or Christine M. Watts Spouse
Street: 810 Providence Sq. Phone: 864-213-8498
City: Greenville State: SC Zip: 29615 County:
Employer: Phone: 864-270-7396
E-mail Address:

Date: 6-25-05 Stock No.: 15514
Salesperson: Elizabeth Courtney

PURCHASE

☐ NEW ☐ DEMO ☐ PRE-OWNED ☐ FACTORY CAR

Year: 04 Make: BMW Body Type: Series: 24

Cylinders: Serial No.: 4USBT33554LS50759 COLOR: Exterior / Interior

OPTIONS:
☐ PREMIUM PACKAGE
☐ SPORTS PREMIUM PACKAGE
☐ SPORTS PACKAGE
☐ COLD WEATHER PACKAGE
☐ ACTIVITY PACKAGE
☐ CONVENIENCE PACKAGE
☐ MOON ROOF
☐ LEATHER UPHOLS.
☐ PREMIUM SOUND
☐ IN DASH CD
☐ CD CHANGER
☐ ON BOARD COMPUTER
☐ ALLOY WHEELS
☐ CRUISE CONTROL
ENGINE: ☐
TRANSMISSION:
☐ AUTOMATIC
☐ MANUAL

Mileage: 15514

TRADE

Year: Make: Body Type: Series:
Cylinders: Serial No.: COLOR: Exterior / Interior
Mileage: Options:

BALANCE OWED TO: Name & Address:
LIEN: Name & Address:
Phone: Contact:
Account #:
Effective Dates:
INSURANCE INFORMATION: Company Name:
Policy #: Effective Dates:
Agent: Phone:
Driver License #:
Remarks:

PRICE: (Including Transportation & Service Charges)	32,980
Additional Options:	$1,604.50
TOTAL:	34,375.50
Allowance on Trade-In	
Cash Difference	
SC Sales Tax	300
Balance Owed on Trade-In	
Title and License ☐ New ☑ Trans ☐ Trans	25
Recording & Processing Fees	$299.50
TOTAL:	32,000
Service Agreement	
Insurance	
TOTAL:	
Cash on Delivery	
BALANCE DUE:	

READ CAREFULLY: Century BMW / Century Mini agrees to sell and the Buyer(s) agrees to purchase the vehicle as above described at the price set forth. The Buyer shall remit full payment of the entire balance due on or before _____. This Buyer's Order constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the party to be charged.

CENTURY BMW CENTURY MINI

X _____ X _____
Buyer Co-Buyer Must be accepted by an Officer of the Company

☐ **USED CAR CONTRACTUAL DISCLOSURE STATEMENT:** - "The information you see on the window form (Buyer's Guide) for this vehicle is part of the contract. Information on the window form overrides any contrary provisions in the contract of sale."

☐ **NEW VEHICLE**

Purchaser's Signature X _____

DISCLAIMER OF WARRANTIES: - I have read, understand and accept all provisions of the Manufacturer's Warranty Statement covering this new vehicle that I am purchasing. Furthermore, I understand that all warranties on the vehicle are those of the manufacturer. The seller, Century BMW / Century Mini, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Century BMW / Century Mini, neither assumes nor authorizes any person to assume for it any liability in connection with the sale of this vehicle. This disclaimer in no way affects the provisions of the manufacturer's warranties.

Purchaser's Signature X _____

This agreement between the undersigned buyer(s) and dealer is incorporated by reference into and is made a part of any separate retail installment or credit sale agreement between the undersigned buyer(s) and dealer ("Retail Financing Agreement"). Notwithstanding anything to the contrary in any other document, if there is a Retail Financing Agreement the undersigned buyer(s) understand and agree that the transaction evidenced by this agreement and the Retail Financing Agreement is contingent upon credit approval by, and assignment of the Retail Financing Agreement to, a third-party financial institution. If the Retail Financing Agreement is not accepted by a third-party financial institution, you must immediately return the vehicle referred to in this agreement, and the entire transaction evidenced by this agreement and the Retail Financing Agreement and this agreement shall be null and void.

Signed _____ (Buyer) Signed _____ (Dealer)

Signed _____ (Buyer)

02027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C.A. No.: 06 CP 02-1230
Heather Herron, et al., Plaintiffs, vs. CarMax Auto Superstores, Inc., et al., Defendants.	)	**REPLY MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION**

COPY
ORIGINAL FILED
MAR 28 2007 8:30 am
AIKEN COUNTY
CLERK OF COURT

REPLY MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS

Plaintiff Christine Watts's Response to Defendant Century BMW's Motion to Compel Arbitration argues that the Arbitration Agreement she signed should not be enforced because it violates South Carolina law and because it is an adhesion contract. South Carolina courts have already *rejected* both arguments. Accordingly, the Court should enforce the Arbitration Agreement according to it terms.

A. The Federal Arbitration Act Compels Arbitration of Plaintiff's Claims.

Plaintiff does not contest that: 1) she executed the Arbitration Agreement, 2) the Federal Arbitration Act ("FAA") applies to that agreement, and 3) her claims fall within the scope of the agreement.[1] Consequently, pursuant to the FAA, the Arbitration Agreement is valid and

[1] Plaintiff also does not dispute the strong South Carolina policy favoring arbitration. *See Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 550 (2004). South Carolina courts give "due regard . . . to the federal policy favoring arbitration," *id.*, and "unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 118 (S.C. 2001) (internal citation omitted). Accordingly, any doubts concerning enforceability "should be resolved in favor of arbitration." *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 397 (S.C. Ct. App. 1998) (internal citation omitted).

enforceable, and Plaintiff's claims must be arbitrated. 9 U.S.C. § 1 *et seq*; *see Green Tree Fin. Corp. – Al. v. Randolph*, 531 U.S. 79 (2000).

B. The FAA Preempts South Carolina's Alleged Notice Requirement.

Without citing the statute, Plaintiff Watts claims the Arbitration Agreement runs afoul of a South Carolina law purportedly requiring a buyer's order to "contain in bold letters or in a stamp a notice that the agreement subject [*sic*] to arbitration."[2] Pls.' Mem. in Opp'n to Mot. to Dismiss at 30. Both federal and South Carolina precedent foreclose Plaintiff's claim that the Arbitration Agreement is unenforceable for this reason. Although state laws that regulate "contracts generally" can usually be applied to arbitration agreements, a state law that "places arbitration clauses on an unequal footing with contracts generally . . . is preempted if the FAA applies." *Munoz*, 343 S.C. at 539; *see also Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996). Thus, courts may not "invalidate arbitration agreements under state laws applicable *only* to arbitration provisions." *Munoz*, 343 S.C. at 539 (by enacting the FAA, "Congress precluded States from singling out arbitration provisions for suspect status").

In *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996), the Supreme Court of the United States rejected a similar attempt to invalidate an arbitration agreement where a state statute required special notice of arbitration clauses on the first page of a contract and no such notice was provided. The Court held that the statute "directly conflicts" with the FAA because the "law conditions the enforceability of arbitration agreements on compliance with a special notice requirement not applicable to contracts generally." *Doctor's Assocs.*, 517 U.S. at 687

Thus, in *Soil Remediation Co. v. Nu-Way Environmental, Inc.*, 323 S.C. 454 (1996), the South Carolina Supreme Court, applying *Doctor's Associates*, held that the "FAA preempts"

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[2] Plaintiff is apparently relying upon S.C. Code Ann. § 15-48-10 (notice of arbitration clause must be "in underlined capital letters, or rubber-stamped, . . . on the first page of the contract").

South Carolina's notice requirement for arbitration agreements (S.C. Code Ann. § 15-48-10) – the same statute upon which Plaintiff apparently relies. 323 S.C. at 458, 461 (because the notice requirement "single[d] out arbitration agreements," it "directly conflict[ed]" with and was preempted by the FAA.); *see also Munoz*, 343 S.C. at 539 n.2. Here, Plaintiff's argument mirrors the unsuccessful claims in *Soil Remediation* and *Doctor's Associates*, and the Court should similarly reject it.

C. Plaintiff Has Neither Alleged in the Complaint Nor Established That the Arbitration Agreement is a Contract of Adhesion.

Plaintiff's argument that the Arbitration Agreement is an unenforceable contract of adhesion fails from the start because she does not establish that the Arbitration Agreement is an adhesion contact. An adhesion contract is "a standard form contract offered on a 'take-it-or-leave-it' basis," with non-negotiable terms. *Lackey*, 330 S.C. at 394. To establish that a contact is one of adhesion, a party must demonstrate both that the terms are non-negotiable and that the contracting party is unwilling to waive enforcement in order to deal. *See Wingard v. Exxon Co.*, 819 F. Supp. 497, 503 (D.S.C. 1992); *see also Lackey*, 330 S.C. at 394. Here, Plaintiff offers no evidence that the terms of the Agreement were non-negotiable, and no evidence that she would have been unable to purchase the vehicle had she refused to sign the Agreement.

D. The Arbitration Agreement is Enforceable, Even if it is a Contract of Adhesion.

Even if the Arbitration Agreement were an adhesion contract, it is still enforceable.[3] Notably, the cases cited in *Plaintiff's* memorandum uniformly hold that an arbitration agreement

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[3] Plaintiff's vilification of contracts of adhesion contradicts federal and South Carolina law, which recognize both the utility and the ubiquity of such contracts. *See Lackey*, 330 S.C. at 902 ("Form contracts serve a very useful purpose in commerce. . . . The contract of adhesion is a part of the fabric of our society. . . . [S]tandardization of forms for contracts is a rational and economically efficient response to the rapidity of market transaction and the high costs of negotiations." (internal citation omitted)); *Am. Gen. Life and Acc. Ins. Co. v. Wood*, 429 F.3d 83,

is not per se invalid because it is an adhesion contract. Pls.' Mem. in Opp'n to Mot. to Dismiss at 31 (citing *Munoz*, 343 S.C. at 541 (enforcing arbitration clause in adhesion contract) and *Lackey*, 330 S.C. at 394-96 (enforcing arbitration clause in adhesion contract and noting that "the conclusion that the agreements . . . are adhesion contracts does not render them unenforceable.")). Instead, such contracts are enforced, unless a party can demonstrate that the terms of the agreement are unconscionable. *See Munoz*, 343 S.C. at 541; *Lackey*, 330 S.C. at 394-96; *see also Cherry v. Wertheim Schroder & Co., Inc.*, 868 F. Supp. 830, 836 (D.S.C. 1994); *Wingard* 819 F. Supp. at 503.[4] Plaintiff has neither alleged nor demonstrated that the Arbitration Agreement is unconscionable, and the Court should enforce the Agreement.

E. Plaintiff's Putative Class Claims Are Not Arbitrable.

Plaintiff does not dispute that the Arbitration Agreement requires resolution of her claims on an individual – and not class – basis. Moreover, Plaintiff provides no legal authority supporting the notion that such a requirement is invalid.[5] Instead, Plaintiff argues that a collective suit is necessary "because otherwise parties with nominal individual claims . . . would be left with limited avenues for relief." Pls.' Mem. in Opp'n to Mot. to Dismiss at 32.

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88 (4th Cir. 2005) ("Since the bulk of contracts signed in this country, if not every major Western nation, are adhesion contracts, a rule automatically invalidating adhesion contracts would be completely unworkable." (internal citation omitted)).

[4] *See also Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422 (1993) (enforcing arbitration clause in standard form contract between customer and contractor); *Blanton v. Stathos*, 351 S.C. 354 (S.C. Ct. App. 2002) (enforcing arbitration provision in standard form contract between customer and architect).

[5] Plaintiff's sole legal citation for her argument is a footnote in a case that was reversed by the Supreme Court of the United States. *See* Pls.' Mem. in Opp'n to Mot. to Dismiss at 30 (quoting *Bazzle v. Green Tree Fin. Corp.*, 351 S.C. 244 (2002), *vacated*, 539 U.S. 444 (2003)). Furthermore, the South Carolina Supreme Court did not find class action waivers invalid, *see Bazzle* 351 S.C. at 244, and, in any event, the issue is one of federal law. *See Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (upholding the validity of arbitration agreement requiring individual – and not class – determinations under the FAA).

Generalized arguments against the relief provided in arbitration, however, cannot invalidate an arbitration agreement. *Randolph*, 531 U.S. at 89-90 ("We have likewise rejected generalized attacks on arbitration that rest on suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complainants." (internal quotation omitted)). Additionally, Plaintiff bears the burden of demonstrating that the arbitral forum would provide her with inadequate relief. *See id.* Yet Plaintiff makes no such showing. To the contrary, the Arbitration Agreement does not limit Plaintiff's substantive remedies; it authorizes all "relief allowed by [the] governing law," including "injunctive or equitable relief," as well as attorneys' fees and costs "in accordance with applicable law." Ex. A. to Century BMW's Mem. in Support of Mot. to Compel Arbitration; *cf. Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (statutory availability of attorneys' fees supported validity of class action waiver). As Plaintiff can obtain full relief in arbitration, her attempt to circumvent the terms of the agreement fails.

Courts nationwide have repeatedly upheld arbitration agreements requiring claims to be treated on an individual basis. The Supreme Court of the United States has implicitly acknowledged that such provisions are enforceable. In *Green Tree Financial Corp. v Bazzle*, 539 U.S. 444 (2003), the Court held that it was for an arbitrator to determine whether the arbitration clause at issue precluded class-wide arbitration. *Id.* at 454. By permitting that arbitrator to decide whether the clause prevented class-wide arbitration, the Supreme Court implicitly recognized that such class preclusion was permissible; after all, if class preclusion were per se invalid, then what would be left for the arbitrator to decide?[6]

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[6] In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991), the Court explained that "the fact that certain litigation devices may not be available in an arbitration is part and parcel of arbitration's ability to offer 'simplicity, informality, and expedition,' [–] characteristics that

Appellate courts nationwide – including the United States Court of Appeals for the Fourth Circuit – have expressly upheld such provisions. *See, e.g., Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (rejecting the argument that precluding class actions in arbitration would render the plaintiff "unable to maintain her legal representation" given statutory availability of attorneys' fees); *Tillman v. Commercial Credit Loans, Inc.*, 629 S.E.2d 865, 873 (N.C. Ct. App. 2006) (holding that the "great majority of federal and state courts that have examined and ruled upon" arbitration provisions precluding class arbitration have found them enforceable).[7] As a result, the Court should enforce the Arbitration Agreement according to its terms.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Ms. Watts's claims against it in accordance with the terms of the Arbitration Agreement and, accordingly, dismiss those claims currently pending in this Court.

Respectfully submitted,

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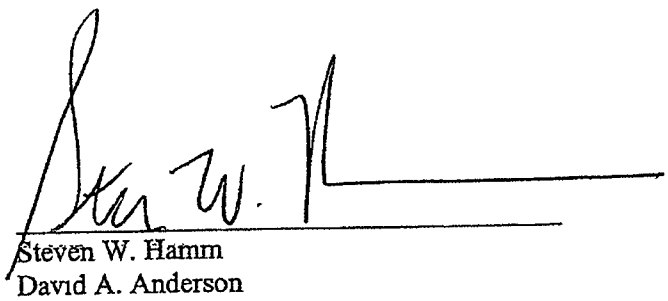
generally make arbitration an attractive vehicle for the resolution of low-value claims." *Iberia Credit Bureau v. Cingular Wireless LLC*, 379 F.3d 159, 175 (5th Cir. 2004) (quoting *Gilmer*, 500 U.S. at 31).

[7] *See also Jenkins v. First Am. Cash Advance of Ga., LLC*, 400 F.3d 868, 878 (11th Cir. 2005), *cert. denied* 126 S. Ct. 1457 (2006), (an arbitration agreement requiring individualized determinations "permit[s] [the plaintiff] and other consumers to vindicate all of their substantive rights in arbitration"); *Iberia Credit Bureau*, 379 F.3d 159, 175 (5th Cir. 2004)(precluding class arbitration "does not leave the plaintiffs without remedies"); *Livingston v. Assocs. Fin., Inc.*, 339 F.3d 553, 559 (7th Cir. 2003); *Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir. 2000) (precluding class arbitration did not prevent "vindication" of plaintiff's statutory rights "in the arbitral forum"); *Champ v. Siegel Trading Co.*, 55 F.3d 269, 277 (7th Cir. 1995) ("We are thus obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis."); *Edwards v. Blockbuster, Inc.*, 400 F. Supp. 2d 1305, 1309 (E.D. Okla. 2005)("Such provisions are a common feature of consumer arbitration agreements, and numerous courts have recognized that they are valid and fully enforceable."); *Rains v. Found. Health Sys. Life & Health*, 23 P.3d 1249, 1253 (Colo. Ct. App. 2001) ("[A]rbitration clauses are not unenforceable simply because they might render a class action unavailable.").



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Attorneys for Century BMW

March 26, 2007
Columbia, South Carolina

COPY
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NOV 28 2007
10:15 AM
AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	
)	C.A. No.: 06 CP 02-1230
Heather Herron, et al.,)	
)	
Plaintiffs,)	
)	**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION**
vs.)	
)	
CarMax Auto Superstores, Inc., et al.,)	
)	
Defendants.)	
)	

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS

Both parties previously submitted memoranda regarding Defendant Century BMW's Motion to Compel Arbitration. *See* Def.'s Mem. & Reply Mem. in Support of Mot. to Compel Arb. (Exs. A and B); Pls.' Mem. in Opp'n to Mot. to Dismiss at 29-35. This Court postponed ruling on the motion in light of the South Carolina Supreme Court's intervening decision in *Simpson v. Myrtle Beach, Inc.*, 373 S.C. 14 (2007), which addressed an arbitration clause in the context of a vehicle transaction. This supplemental memorandum focuses on *Simpson*'s impact, if any, on the pending Motion to Compel Arbitration. The arbitration clause in *Simpson* is readily distinguishable from Ms. Watts's Arbitration Agreement. Indeed, *Simpson* underscores the validity of Ms. Watts's agreement, and this Court should dismiss her claims and grant Century BMW's Motion to Compel Arbitration.

A. The Federal Arbitration Act Compels Arbitration of Ms. Watts's Claims.

Ms. Watts does not contest that: (1) she executed the Arbitration Agreement, (2) the Federal Arbitration Act ("FAA") applies to that agreement, and (3) her claims fall within the scope of the agreement. Consequently, pursuant to the FAA, the Arbitration Agreement is valid

and enforceable, and Ms. Watts's claims must be arbitrated. 9 U.S.C. § 1 *et seq*; *see Green Tree Fin. Corp. – Al. v. Randolph*, 531 U.S. 79 (2000).

Ms. Watts also does not dispute the strong South Carolina policy favoring arbitration. *See Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 550 (2004). South Carolina courts give "due regard . . . to the federal policy favoring arbitration," *id.*, and "unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 118 (S.C. 2001) (internal citation omitted). Accordingly, any doubts concerning enforceability "should be resolved in favor of arbitration." *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 397 (S.C. Ct. App. 1998) (internal citation omitted).

B. The Facts in *Simpson* are Readily Distinguishable From the Circumstances Surrounding Ms. Watts's Arbitration Agreement.

The *Simpson* Court predicated its decision not to enforce the arbitration clause in that case on its finding that the clause contained several unconscionable provisions. 373 S.C. at 25, 34-36. To determine if a contract provision is unconscionable, a court must find both an "absence of meaningful choice on the part of one party due to the one-sided contact provisions" *and* "terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Lackey*, 330 S.C. at 395 (quoting *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399 (1996)); *Munoz v. Green Tree Finan. Inc.*, 343 S.C. 531, 541 (2001). The *Simpson* Court emphasized "the importance of a case-by-base analysis" when evaluating an arbitration provision for unconscionability to address the unique circumstances and facts inherent in each consumer transaction. 373 S.C. at 36.

1. Ms. Watts did not lack a meaningful choice.

The circumstances surrounding Ms. Watts's transaction differ substantially from the facts in *Simpson*. In *Simpson*, the court found that the plaintiff lacked a meaningful choice in agreeing to arbitrate. 373 S.C. at 25. The court noted five circumstances that, when considered as a whole, demonstrated Simpson had no meaningful choice. First, it found that neither party disputed that the contact was an adhesion contract. *Id.* at 26-27.[1] Second, it observed that the contract between Simpson and the dealer involved a vehicle intended for use as Simpson's "primary transportation." *Simpson*, 373 S.C. at 27. Third, it found that Simpson did "not possess the business judgment necessary to make her aware of the implications of the arbitration agreement." *Id.* Fourth, it noted that the contract "was 'hastily' presented for her signature." *Id.* Finally, it found the arbitration clause "inconspicuous," noting that the clause was written entirely in "small print," on the back of the contract, and was "embedded in paragraph ten (10) of sixteen (16) total paragraphs." *Id.*

Ms. Watts's transaction shares none of the five circumstances found to constitute a lack of meaningful choice in *Simpson*. First, unlike the parties in *Simpson*, Century BMW expressly denies that the Arbitration Agreement is an adhesion contract. An adhesion contract is "a standard form contract offered on a 'take-it-or-leave-it' basis," with non-negotiable terms. *Lackey*, 330 S.C. at 394. To establish that a contact is one of adhesion, a party must demonstrate

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[1] It noted, however, that adhesion contracts are not per se unconscionable. *Simpson*, 373 S.C. at 27 (citing *Lackey*, 330 S.C. at 395). South Carolina courts recognize that such contracts are "part of the fabric of our society" and "obviously serve a very useful purpose in commerce" as "a rational and economically efficient response to the rapidity of market transactions and the high costs of negotiations." *Lackey*, 330 S.C. at 395-96 (internal citation omitted); *see also Am. Gen. Life & Acc. Ins. Co. v. Wood*, 429 F.3d 83, 88 (4th Cir. 2005) ("Since the bulk of contracts signed in this country, if not every major Western nation, are adhesion contracts, a rule automatically invalidating adhesion contracts would be completely unworkable.") (internal citation omitted)).

both that the terms are non-negotiable *and* that the contracting party is unwilling to waive enforcement in order to deal. *See Wingard v. Exxon Co.*, 819 F. Supp. 497, 503 (D.S.C. 1992); *see also Lackey*, 330 S.C. at 394. Here, Ms. Watts offers no evidence that the terms of the Agreement were non-negotiable, and no evidence that she would have been unable to purchase the vehicle had she refused to sign the Agreement. Indeed, as the Court is no doubt aware, car purchases are probably the most highly negotiated type of consumer transaction, with haggling and horse-trading being the rule rather than the exception.

Second, Ms. Watts has not established that the vehicle is her primary form of transportation. To the contrary, the record demonstrates that Michael Watts co-signed for the vehicle and that he had recently purchased a vehicle from Toyota of Greenville. *See* Ex. C; Am. Compl. § 388.[2] Third, Ms. Watts has not established that she lacked the business judgment necessary to make her aware of the implications of the Arbitration Agreement. Instead, the record shows that she was assisted in her purchase by Michael Watts, who had prior experience purchasing vehicles. *See* Am. Compl. § 388. Fourth, she does not allege or present any evidence that the agreement was "hastily" presented for her signature, or that she was pressured or subject to any duress in signing the agreement.

Finally, Ms. Watts's Arbitration Agreement could not be more conspicuous—in sharp contrast to the *Simpson* Court's finding with respect to the clause there. Simpson agreed to arbitration by signing a buyer's order that included a single-paragraph arbitration *clause* on the back of the form (embedded within sixteen other clauses), which she was not required to agree independently to or sign. Here, Ms. Watts signed a stand-alone *agreement*, conspicuously

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[2] Even if the vehicle was her primary form of transportation, that alone cannot support a ruling that she lacked a meaningful choice.

entitled "Arbitration Agreement." Ex. C. The full-page agreement required her signature independent of any other document or contract she signed. Moreover, the agreement includes several lines in all capital letters, which highlight the purpose of the document to which she agreed: "IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY." *Id.* The final sentence of the agreement, which is in bold and all capital letters, states: "**BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT.**" *Id.* Because she signed a stand-alone arbitration agreement, which included unmistakable notice both of what she was signing and the consequences of her signature, Ms. Watts cannot plausibly claim—unlike Simpson—that the Arbitration Agreement was inconspicuous.

Ms. Watts has not established *any* of the five requirements cited in *Simpson* that are necessary to demonstrate a lack of meaningful choice. Because Ms. Watts (1) has not established that the agreement was a contract of adhesion, (2) has not established that the vehicle purchased was her primary transportation, (3) was assisted by Michael Watts in purchasing the vehicle, (4) has neither alleged nor offered evidence she was pressured or forced to sign the agreement, and (5) signed a conspicuous, stand-alone, explicit agreement to arbitrate, her circumstances differ dramatically from those the court found in *Simpson* and fail to establish that she lacked a meaningful choice.

2. Ms. Watts's Arbitration Agreement lacks any of the oppressive terms that the *Simpson* Court found unconscionable.

Even were this Court to find somehow that Ms. Watts lacked a meaningful choice, she must also establish that the agreement is riddled with oppressive terms that no reasonable person

would make or accept. The Arbitration Agreement, however, lacks any of what the Supreme Court labeled oppressive terms in the *Simpson* arbitration clause.

The *Simpson* Court found three provisions in the arbitration clause oppressive, and therefore, unconscionable. First, the arbitration clause limited the statutory remedies available in arbitration, providing that in "no event shall the arbitrator be authorized to award punitive, exemplary, double, or treble damages." *Simpson*, 373 S.C. at 28. This provision precluded the precise remedies in the two statutes at issue—the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act")[3] and the South Carolina Uniform Trade Practices Act ("SCUTPA")—which require the court to award double and treble damages respectively in a case where the plaintiff prevails. The court found this limitation on statutory remedies to be an unconscionable waiver of statutory rights, which—in light of the lack of meaningful choice—the Court found unenforceable.

By contrast, Ms. Watts's Arbitration Agreement lacks any prohibition or limit on double, treble or punitive damages, or any other statutory remedy. Under the agreement, an arbitrator is free to authorize *any* damages or remedies that the applicable law permits: "The arbitrator shall . . . award only those damages or other relief allowed by such governing law . . . [and] shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law." Ex. C.

Second, the *Simpson* clause included a provision that lacked mutuality of remedy and superseded the customer's arbitral remedies. Specifically, the provision provided for an exception to the requirement that all claims between dealer and customer were to be settled in binding arbitration:

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[3] S.C. Code Ann. § 56-15-110 (2006).

> Nothing in this contract shall require the Dealer to submit to arbitration any claims by Dealer against Customer for claim and delivery, repossession, injunctive relief, or monies owed by Consumer in connection with the purchase or lease of any vehicle and *any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration.*

Simpson, 373 S.C. at 31 (emphasis added). The court first noted that this provision lacked mutuality of remedy, as the Dealer was not required to submit certain claims to arbitration, even though the clause mandated arbitration of all customer claims. It found the italicized portion most egregious, however, because it permitted the dealer's judicial remedies to supersede the customer's arbitral remedies—the dealer could bring a judicial proceeding that completely disregarded any pending customer claims requiring arbitration, and could get a court award even if the customer's arbitration proceeding had not concluded. The court found this later provision oppressive and, in light of what it found to be a lack of meaningful choice, unconscionable.

Ms. Watts's Arbitration Agreement lacks any such provision and provides for complete mutuality of remedy, while not allowing the dealer to supersede the customer's arbitral remedies. Under the agreement, both parties may request arbitration and no special, or any other, remedies are reserved for the dealer: "[O]nce one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving *any and all* Claims." Ex. C (emphasis added). Moreover, all remedies are stayed pending the outcome of arbitration.

Finally, the *Simpson* Court found that the arbitration clause violated the Magnuson-Moss Warranty Act ("MMWA") because the clause applied to "any and all disputes" including automobile warranties, and specified that such matters were to be resolved only by "binding arbitration." 373 S.C. at 32-33. Although Simpson did not allege any violation of the MMWA, the court found that provisions in the arbitration clause implicated the MMWA, and to the extent such provisions violated the MMWA, they were unenforceable. The court noted that rules

promulgated by the Federal Trade Commission ("FTC") state that informal dispute resolution procedures set forth in written warranties under the MMWA are not legally binding. *Simpson*, 373 S.C. at 33. It then concluded, relying on *Boyd v. Homes of Legend, Inc* , 981 F. Supp. 1423, 1437-38 (M.D. Ala. 1997), that the federal government had "made it clear that parties may not agree to arbitrate" an MMWA claim dealing with a written warranty.[4] *Id.* Because the *Simpson* clause required binding arbitration for disputes involving written warranties, the court held it violated the MMWA, and therefore, was unconscionable and unenforceable.

The *Simpson* Court's ruling is inapplicable to Ms. Watts's agreement. Ms. Watts does not allege that she agreed to any written warranties in her lease transaction. Thus, any references to warranties in her Arbitration Agreement only pertain to *oral* or *implied* warranties she may have received during the course of the transaction. Under the FTC rules and *Boyd*, oral or implied warranties can be subject to binding arbitration; therefore, Ms. Watts's agreement does not violate the MMWA. *See Boyd*, 981 F. Supp. at 1438. Moreover, the Eleventh Circuit has expressly abrogated *Boyd*'s holding that written warranties cannot be subject to binding arbitration. *Davis v. Southern Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002). In *Davis*, the Eleventh Circuit overruled the lower court's decision in *Boyd,* holding that the MMWA permits the enforcement of binding arbitration agreements within written warranties. *Id.* at 1278-80. Thus, not only does the *Boyd* ruling on written warranties not apply, it is no longer valid law. Either way, the inclusion of warranties in the Arbitration Agreement does not violate the MMWA, and therefore, is not unconscionable.[5]

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[4] It also concluded, however, that the MMWA does *not* preclude binding arbitration of oral or implied warranty claims. *Boyd*, 981 F. Supp. at 1438.

[5] Even if the court were to find the agreement's requirement to arbitrate any dispute on an oral or implied warranty somehow violated the MMWA and was unconscionable (in contravention of both *Boyd* and *Davis*), the agreement contains a severability clause to remove any unenforceable

C. *Simpson* Affirms the Enforceability of the Arbitration Agreement's Provision Requiring Individual Treatment of Claims.

Both the *Simpson* arbitration clause and Ms. Watts's Arbitration Agreement contain a provision requiring individual treatment of claims either party has against the other. Just as the *Simpson* Court refused to identify the provision as unconscionable, this Court should find the provision enforceable.

Following courts nationwide, the *Simpson* Court upheld the provision requiring claims to be treated on an individual basis. The last sentence of the arbitration clause in *Simpson* included a provision requiring the individual treatment of claims: "no claims against Dealer shall be consolidated with other claims in the nature of a class action." 373 S.C. at 20-21. The South Carolina Supreme Court did not find this provision unconscionable, noting that the arbitration clause "contained a total of three unconscionable provisions," none of which was the requirement for individual treatment. *Id.* at 35 n.9. The *Simpson* Court stressed throughout its decision that it would not enforce any provision that "is violative of policy, statutory law, or provisions of the Constitution." *Id.* at 33. It went so far as to invalidate the provision pertaining to written warranties, even though Simpson did not bring a claim under the MMWA, merely because the MMWA was implicated in the scope of the arbitration clause. Thus, if the provision precluding the consolidation of claims violated statutory law (including the Dealers Act), the court would have found it unconscionable. Having not done so, the Court implicitly confirmed that such provisions are enforceable. Moreover, because the South Carolina Supreme Court did not find that the provision violated the Dealers Act—the statutory basis for Ms. Watts's claims

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provision: "If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable." Ex. C.

against Century BMW—she cannot now plausibly allege that the provision requiring individual treatment is unconscionable.

The South Carolina Supreme Court's decision is entirely consistent with courts nationwide, which have repeatedly upheld arbitration agreements requiring claims to be treated on an individual basis. The Supreme Court of the United States has implicitly acknowledged that such provisions are enforceable. In *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003), the Court held that it was for an arbitrator to determine whether the arbitration clause at issue precluded class-wide arbitration. *Id.* at 454. By permitting that arbitrator to decide whether the clause prevented class-wide arbitration, the Supreme Court implicitly recognized that such class preclusion was permissible; after all, if class preclusion were per se invalid, then what would be left for the arbitrator to decide?[6]

Appellate courts nationwide—including the United States Court of Appeals for the Fourth Circuit—have expressly upheld such provisions. *See, e.g*, *Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (rejecting the argument that precluding class actions in arbitration would render the plaintiff "unable to maintain her legal representation" given the statutory availability of attorneys' fees); *Tillman v. Commercial Credit Loans, Inc.*, 629 S.E.2d 865, 873 (N.C. Ct. App. 2006) (holding that the "great majority of federal and state courts that

[6] In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991), the Court explained that "the fact that certain litigation devices may not be available in an arbitration is part and parcel of arbitration's ability to offer 'simplicity, informality, and expedition,' [–] characteristics that generally make arbitration an attractive vehicle for the resolution of low-value claims." *Iberia Credit Bureau v. Cingular Wireless LLC*, 379 F.3d 159, 175 (5th Cir. 2004) (quoting *Gilmer*, 500 U.S. at 31).

have examined and ruled upon" arbitration provisions precluding class arbitration have found them enforceable).[7]

Because Ms. Watts's Arbitration Agreement lacks any of the unenforceable provisions from *Simpson*, and the South Carolina Supreme Court has never found any of the agreement's provisions unconscionable, this Court should enforce the Arbitration Agreement according to its terms.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Ms. Watts's claims against it in accordance with the terms of the Arbitration Agreement and, accordingly, dismiss those claims currently pending in this Court.

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[7] *See also Jenkins v. First Am. Cash Advance of Ga., LLC*, 400 F.3d 868, 878 (11th Cir. 2005), *cert. denied* 126 S. Ct. 1457 (2006), (an arbitration agreement requiring individualized determinations "permit[s] [the plaintiff] and other consumers to vindicate all of their substantive rights in arbitration"); *Iberia Credit Bureau*, 379 F.3d 159, 175 (5th Cir. 2004) (precluding class arbitration "does not leave the plaintiffs without remedies"); *Livingston v. Assocs. Fin., Inc.*, 339 F.3d 553, 559 (7th Cir. 2003); *Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir. 2000) (precluding class arbitration did not prevent "vindication" of plaintiff's statutory rights "in the arbitral forum"); *Champ v. Siegel Trading Co.*, 55 F.3d 269, 277 (7th Cir. 1995) ("We are thus obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis."); *Edwards v. Blockbuster, Inc.*, 400 F. Supp. 2d 1305, 1309 (E.D. Okla. 2005) ("Such provisions are a common feature of consumer arbitration agreements, and numerous courts have recognized that they are valid and fully enforceable."); *Rains v. Found. Health Sys. Life & Health*, 23 P.3d 1249, 1253 (Colo. Ct. App. 2001) ("[A]rbitration clauses are not unenforceable simply because they might render a class action unavailable.").

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW

November 27, 2007
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	C.A. No.: 06 CP 02-1230
Heather Herron, et al.,	)	
	)	
Plaintiffs,	)	
	)	**MEMORANDUM IN SUPPORT OF**
vs.	)	**DEFENDANT CENTURY BMW'S**
	)	**MOTION TO COMPEL ARBITRATION**
CarMax Auto Superstores, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF CENTURY BMW'S
MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS

Pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and the Arbitration Agreement that Plaintiff Christine Watts executed, Defendant Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW") respectfully moves this Court to compel arbitration of Plaintiff Christine Watts's claims and to dismiss this action. The Arbitration Agreement is plainly enforceable, and Ms. Watts's claims fall squarely within its scope. Ms. Watts is the only named Plaintiff who alleges he or she purchased a vehicle from Century BMW. See Amended Complaint ¶¶ 374–88. As a result, no other named Plaintiff has standing to sue Century BMW based on his or her purchase from a separate dealership[1] and Century BMW joins the other Defendants in the joint motion and memorandum filed separately moving to dismiss all claims of other named Plaintiffs.

[1] Plaintiff Michael Watts does not allege he purchased a vehicle from Century BMW, see Amended Complaint ¶ 388 (alleging only a purchase from Toyota of Greenville), and lacks standing to assert any claims from that purchase against Century BMW. Mr. Watts co-signed for Ms. Watts's purchase from Century BMW and also signed the same Arbitration Agreement as Ms. Watts in connection with that purchase. See Exhibit A (Arbitration Agreement signed by Christine and Michael Watts). To the extent Mr. Watts seeks to pursue any claims against Century BMW for Ms. Watts's purchase, Century BMW also moves to compel arbitration of his claims.

BACKGROUND

Ms. Watts alleges that in connection with her purchase of a vehicle, Century BMW charged her an administrative fee. See Amended Complaint ¶¶ 384-85.[2] She acknowledges that S.C. Code Ann. § 37-2-307 authorizes dealerships to charge such a fee, see Amended Complaint ¶¶ 345-48, but alleges that Century BMW did not follow certain statutory requirements without identifying what requirements were not followed , see id. ¶¶ 337-44, 349. She further alleges that even if Century BMW fully complied with § 37-2-307, its charging of a closing fee still violates S.C. Code Ann. § 56-15-10 et. seq. See id. ¶ 350. Based on these allegations, Ms. Watts brings one count for violation of S.C. Code Ann. § 56-15-10 and another count for a declaratory judgment with respect to S.C. Code Ann. § 56-15-10 et. seq. and/or § 37-2-307.[3]

In connection with her purchase of a vehicle from Century BMW, Ms. Watts and Century BMW entered into an "Arbitration Agreement." See Exhibit A. This Agreement provides that at the request of a party, "any and all Claim(s) shall be decided in binding

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[2] Century BMW references the allegations in the Complaint because they are relevant to this Court's determination of the arbitrability of Ms. Watts's claims. See Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., ___ S.C. ___, 588 S.E.2d 136, 141 (Ct. App. 2003) (deciding motion to compel arbitration by comparing allegations in complaint with subject matter of contract containing contract-specific arbitration clause). Reference to these allegations should not be taken as agreement with them—indeed Defendants dispute many of Plaintiff's allegations and deny liability.

[3] Ms. Watts also brings a count for civil conspiracy against other defendants but did not name Century BMW in this count. See Amended Complaint ¶ 403. Even had Ms. Watts named Century BMW, she has failed to state any claim for civil conspiracy, as demonstrated in Defendants' joint motion to dismiss; moreover such a claim would plainly be arbitrable as it is a claim "relating to the vehicle," with respect to the "terms of and enforceability of the sale, lease or financing of the Vehicle," "fraud, or unfair and deceptive trade practices," or "a violation of [a] state or federal statute or regulation." See Exhibit A.

arbitration before the American Arbitration Association." Id. The Agreement defines the "Claim(s)" that the parties agreed to arbitrate as including:

> any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair.

Id. The Agreement also provides that "once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration." Id.

ARGUMENT

I. PURSUANT TO THE FEDERAL ARBITRATION ACT THIS COURT SHOULD COMPEL ARBITRATION OF PLAINTIFF'S CLAIMS.

Ms. Watts's claims fall squarely within the scope of the Arbitration Agreement. This Agreement is unremarkable and of the type that numerous courts have upheld time and again. Accordingly, pursuant to the Federal Arbitration Act and applicable federal and South Carolina law, this Court should dismiss Plaintiff's claims and compel arbitration.

A. The Federal Arbitration Act Applies Here.

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., applies to "contract[s] evidencing a transaction involving commerce," 9 U.S.C. § 2. A contract to purchase a vehicle clearly is a contract evidencing a transaction involving commerce. Thornton v. Trident Med.

Ctr., L.L.C., 592 S.E.2d 50, 52 (S.C. Ct. App. 2003); see also MS Dealer Service Corp. v. Franklin, 177 F.3d 942 (11th Cir. 1999) (FAA applies to consumer's purchase of automobile); Stout v. Byrider, 50 F. Supp. 2d 733, 735 (N.D. Ohio 1999) (FAA governs in action by used car buyers against seller because "case concerns arbitration agreements involving transactions in interstate commerce"), aff'd, 228 F.3d 709 (6th Cir. 2000); Wolff Motor Co. v. White, 869 So.2d 1129, 1134 (Ala. 2003) ("[m]otor vehicles are 'the quintessential instrumentalities of modern interstate commerce'" and "a transaction involving the sale of an instrumentality of commerce . . . satisfies the FAA's 'involving commerce' test" (quoting United States v. Bishop, 66 F.3d 569, 588-90 (3d Cir. 1995))). Accordingly, The FAA governs the enforceability of the Arbitration Agreement and all questions concerning its scope.

The FAA embodies "the strong federal policy in favor of enforcing arbitration agreements." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985). Keeping with this "liberal federal policy favoring arbitration agreements," the Supreme Court has mandated that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). Indeed, "the parties' intentions 'are generously construed as to issues of arbitrability,' and any 'ambiguities as to the scope of the arbitration clause itself' must be 'resolved in favor of arbitration.'" Washington Square Secs., Inc. v. Aune, 385 F.3d 432, 436 (4th Cir. 2004) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614, 626 (1985) and Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 476 (1989)).[4]

[4] Like the FAA, South Carolina law strongly favors arbitration, and "unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." Zabinski v. Bright Acres Assocs., 553 S.E.2d 110, 118 (S.C. 2001) (citing S.C. Pub. Serv. Auth. v. Great W. Coal, 437 S.E.2d 22, 25 (S.C. 1993)); see also South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq.

B. **Ms. Watts's Allegations Fall Within the Scope of the Arbitration Agreement.**

"To decide whether an arbitration agreement covers a particular dispute, the court must determine whether the factual allegations underlying the claim fall within the scope of the agreement, irrespective of the label given to the cause of action." Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., 588 S.E.2d 136, 207 (S.C. Ct. App. 2003) (citing Zabinski, 553 S.E.2d at 597). Applying these principles, all of Ms. Watts's claims fall within the scope of the Arbitration Agreement.

Ms. Watts alleges that Century BMW engaged in the "practice of presenting / advertising car prices in a misleading manner" because it allegedly "fails to include / adequately disclose the fact that [it] will be charging 'administrative fees' that are in addition to the advertised price of the car" and misleads buyers "into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees." Amended Complaint ¶¶ 335, 337, 340. Ms. Watts acknowledges that such fees are specifically authorized by S.C. Code Ann. § 37-2-307, see Amended Complaint ¶¶ 345-48, but she alleges that Century BMW did not comply with the statute, although she does not say how, see id. ¶¶ 337-34, 349. She further alleges that even if Century BMW did fully comply with the South Carolina statute authorizing such fees, it would still be in violation of S.C. Code Ann. § 56-15-10 et seq. See id. ¶ 350.

Each of these allegations clearly falls under the claims that Ms. Watts and Century BMW agreed to arbitrate. The Arbitration Agreement provides that "any and all disputes, claims or controversies between the Parties relating to the Vehicle," including the "terms of and enforceability of the sale, lease or financing of the Vehicle," "breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices," and "a violation of any state or federal statute or regulation" are covered under the Agreement. See

Exhibit A. The Agreement expressly encompasses all subjects relating to Ms. Watts's allegations.

C. **The Arbitration Clauses are Unremarkable and Not Subject to Challenge.**

The Arbitration Agreement signed by Ms. Watts and Century BMW is unremarkable and of a type countless courts have upheld.

1. **Allegations Against Other Defendants Do Not Prevent Arbitration.**

Ms. Watts cannot avoid arbitration by naming other dealerships, with whom she has no connection, as defendants. As is fully briefed in Defendants' joint motion to dismiss, Ms. Watts lacks standing to bring claims against other defendants with whom she never transacted. Even if Ms. Watts had standing against other Defendants, which she does not, she must arbitrate her dispute with Century BMW pursuant to the Arbitration Agreement. See S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., ___ S.C. ___, 437 S.E.2d 22, 24 (1993) ("[A] party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint . . . because this would nullify the rule requiring arbitration.").

2. **Putative Class Claims Are Not Subject to Arbitration.**

Although Ms. Watts does not allege that she brings her case as a class action pursuant to Rule 23, SCRCP, she purports to represent a class of consumers under S.C. Code Ann. § 56-15-110(2). See, e.g., Amended Complaint ¶¶ 397-99. As shown above, Ms. Watts's individual claims are subject to arbitration. Pursuant to the terms of the Arbitration Agreement, she may not litigate supposed "class" claims because the Arbitration Agreement unequivocally prohibits class arbitrations. It states: "By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff

or claimant action in court or through arbitration." See Exhibit A (emphasis added).[5] Under the plain text of this provision, Ms. Watts cannot arbitrate her claims on behalf of a class and cannot arbitrate the claims of any purported class. Thus, the Order compelling arbitration of Plaintiff's individual claim should specify that the arbitration should proceed on an individual, and not a class, basis.[6]

Many courts have found that class arbitration waivers contribute to the "simplicity, informality, and expedition" of arbitration, helping make it "an attractive vehicle for the resolution of low-value claims."[7] Iberia Credit Bureau v. Cingular Wireless LLC, 379 F.3d 159, 174 (5th Cir. 2004); accord Caley v. Gulfstream Aerospace Corp., 428 F.3d 1359, 1378 (11th Cir. 2005) (holding that a ban on class arbitrations is "consistent" with the goals of

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[5] The Arbitration Agreement further states: "If a dispute is arbitrated, you will give up your right to participate as a class representative or a class member on any claim you may have against us, including any right to class arbitration or any consolidation of individual arbitrations." See Exhibit A.

[6] In Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 452-53 (2003) (plurality op.), the Supreme Court held that where a contract is silent as to whether class action arbitration is permitted, it is for the arbitrator rather than a court to decide whether it is permissible. But "where a particular statutory or procedural right is clearly prohibited by an arbitration agreement, the Court need not send the case to arbitration for an arbitrator to determine that question." In re Cotton Yarn Antitrust Litig., 406 F. Supp. 2d 585, 594 (M.D.N.C. 2005). This case is similar to Gipson v. Cross Country Bank, 354 F. Supp. 2d 1278, 1286 (M.D. Ala. 2005), where the court confronted a clear prohibition on class arbitrations. The court held that the "arbitrator need not interpret the contract's class action waiver clause, because the contract expressly prohibits class arbitration." The court explained that "[t]here is no need for anyone to decide whether the contract[] forbid[s] class arbitration. It expressly and unequivocally does." Id. Likewise, here, there is no need to refer the issue of class arbitrations to an arbitrator.

[7] Despite the modest value of her claim, Ms. Watts and her counsel still have amble ability and incentive to pursue the action in arbitration because should Ms. Watts prevail on her claims she could recover "double actual damages, the cost of the suit and a reasonable attorney's fee pursuant to S.C. Code Ann. §56-15-110." Am. Compl ¶ 400; see also Exhibit A (The Arbitration Agreement provides that the "arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law.").

arbitration as articulated in Gilmer), cert. denied 126 S. Ct. 2020 (2006). Courts have expressly rejected the notion that class arbitration waivers somehow prevent plaintiffs from enforcing statutory rights. See, e.g., Snowden v. Checkpoint Check Cashing, 290 F.3d 631, 638 (4th Cir. 2002) (rejecting the argument that the class arbitration waiver would render the plaintiff "unable to maintain her legal representation" given statutory availability of attorneys' fees).[8]

II. THE COURT SHOULD DISMISS ALL JUDICIAL PROCEEDINGS AGAINST CENTURY BMW.

Pursuant to Section 3 of the FAA, any court of the United States must, at a minimum, stay judicial proceedings involving claims, like those here, that fall within the arbitration provisions of written agreements. See 9 U.S.C. § 3; see also Moses H. Cone, 460 U.S. at 26 ("[S]tate courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the Arbitration Act."). "Notwithstanding the terms of § 3, however, dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable." Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, 252 F.3d 707, 709-710 (4th Cir. 2001); see also Alford v. Dean Witter Reynolds, 975 F.2d 1161, 1164 (5th Cir. 1992) ("The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to

[8] Indeed, a litany of appellate courts nationwide have upheld class arbitration waivers. See, e.g., Tillman v. Commercial Credit Loans, Inc., 629 S.E.2d 865, 873 (N.C. App. 2006) (holding that the "great majority of federal and state courts that have examined and ruled upon" class action waivers have found them enforceable); Jenkins v. First American Cash Advance of Georgia, LLC, 400 F.3d 868, 878 (11th Cir. 2005), cert. denied 126 S. Ct. 1457 (2006), (holding that an arbitration agreement containing a class waiver "permit[s] [the plaintiff] and other consumers to vindicate all of their substantive rights in arbitration"); Iberia Credit Bureau, 379 F.3d at 175 (5th Cir.)(noting that a class arbitration waiver "does not leave the plaintiffs without remedies"); Johnson v. W. Suburban Bank, 225 F.3d 366, 374 (3d Cir. 2000) (plaintiff cannot argue that a class action waiver prevented "vindication" of his statutory rights "in the arbitral forum"); Champ v. Siegel Trading Co., 55 F.3d 269, 277 (7th Cir. 1995) ("We are thus obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis."); Rains v. Found. Health Sys. Life & Health, 23 P.3d 1249, 1253 (Colo. Ct. App. 2001) ("[A]rbitration clauses are not unenforceable simply because they might render a class action unavailable.").

arbitration."); Payton v. Nordstrom, Inc., 462 F.Supp.2d 706, 708 (M.D.N.C. 2006) ("[T]he Fourth Circuit has held that, despite the language of the FAA regarding a stay of arbitration, when all of the claims in a lawsuit are required to be arbitrated, dismissal, rather than a stay, is a proper remedy."). Because all of Plaintiff's claims against Century BMW must be resolved through arbitration, the Court should dismiss her action against Century BMW in this Court.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Ms. Watts's claims against it and, accordingly, dismiss those claims currently pending in this Court.

Respectfully submitted,

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ATTORNEYS FOR CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW

FEBRUARY ___, 2007
COLUMBIA, SOUTH CAROLINA.

Exhibit A

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05 VIN: 4U58T33554L552759

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to $1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of $1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law law, the Parties shall be responsible for the payment of their own attorney's(') fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding, except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, unless otherwise provided by law.

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer: _____ Dealer: _____

Customer: _____ Its: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
	)	
Heather Herron, et al	)	
	)	
PLAINTIFFS,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
CarMax Auto Superstores, Inc., et al	)	
	)	
DEFENDANTS.	)	

I, the undersigned, an attorney at the firm of Richardson, Plowden, Carpenter and Robinson, P. A., who are attorneys for Gene Reed Imports, Inc. along with the Rosen Law Firm, do hereby certify that I have served the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION** on Plaintiffs by causing it to be deposited in a United States Postal Service mailbox a copy of the same, postage prepaid, return address clearly indicated, addressed to the following on February 12, 2007:

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ATTORNEYS FOR CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW

February 12, 2007
COLUMBIA, SOUTH CAROLINA.

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	C.A. No.: 06 CP 02-1230
Heather Herron, et al.,	)	
	)	
Plaintiffs,	)	
	)	**REPLY MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION**
vs.	)	
	)	
CarMax Auto Superstores, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

COPY
ORIGINAL FILED
MAR 2 8 2007 8:30 am
AIKEN COUNTY
CLERK OF COURT

REPLY MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS

Plaintiff Christine Watts's Response to Defendant Century BMW's Motion to Compel Arbitration argues that the Arbitration Agreement she signed should not be enforced because it violates South Carolina law and because it is an adhesion contract. South Carolina courts have already *rejected* both arguments. Accordingly, the Court should enforce the Arbitration Agreement according to it terms.

A. The Federal Arbitration Act Compels Arbitration of Plaintiff's Claims.

Plaintiff does not contest that: 1) she executed the Arbitration Agreement, 2) the Federal Arbitration Act ("FAA") applies to that agreement, and 3) her claims fall within the scope of the agreement.[1] Consequently, pursuant to the FAA, the Arbitration Agreement is valid and

[1] Plaintiff also does not dispute the strong South Carolina policy favoring arbitration. *See Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 550 (2004). South Carolina courts give "due regard . . . to the federal policy favoring arbitration," *id.*, and "unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 118 (S.C. 2001) (internal citation omitted). Accordingly, any doubts concerning enforceability "should be resolved in favor of arbitration." *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 397 (S.C. Ct. App. 1998) (internal citation omitted).

enforceable, and Plaintiff's claims must be arbitrated. 9 U.S.C. § 1 *et seq*; *see Green Tree Fin. Corp. – Al. v. Randolph*, 531 U.S. 79 (2000).

B. The FAA Preempts South Carolina's Alleged Notice Requirement.

Without citing the statute, Plaintiff Watts claims the Arbitration Agreement runs afoul of a South Carolina law purportedly requiring a buyer's order to "contain in bold letters or in a stamp a notice that the agreement subject [*sic*] to arbitration."[2] Pls.' Mem. in Opp'n to Mot. to Dismiss at 30. Both federal and South Carolina precedent foreclose Plaintiff's claim that the Arbitration Agreement is unenforceable for this reason. Although state laws that regulate "contracts generally" can usually be applied to arbitration agreements, a state law that "places arbitration clauses on an unequal footing with contracts generally . . . is preempted if the FAA applies." *Munoz*, 343 S.C. at 539; *see also Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996). Thus, courts may not "invalidate arbitration agreements under state laws applicable *only* to arbitration provisions." *Munoz*, 343 S.C. at 539 (by enacting the FAA, "Congress precluded States from singling out arbitration provisions for suspect status").

In *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996), the Supreme Court of the United States rejected a similar attempt to invalidate an arbitration agreement where a state statute required special notice of arbitration clauses on the first page of a contract and no such notice was provided. The Court held that the statute "directly conflicts" with the FAA because the "law conditions the enforceability of arbitration agreements on compliance with a special notice requirement not applicable to contracts generally." *Doctor's Assocs.*, 517 U.S. at 687.

Thus, in *Soil Remediation Co. v. Nu-Way Environmental, Inc* , 323 S.C. 454 (1996), the South Carolina Supreme Court, applying *Doctor's Associates*, held that the "FAA preempts"

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[2] Plaintiff is apparently relying upon S.C. Code Ann. § 15-48-10 (notice of arbitration clause must be "in underlined capital letters, or rubber-stamped, . . . on the first page of the contract").

South Carolina's notice requirement for arbitration agreements (S.C. Code Ann. § 15-48-10) – the same statute upon which Plaintiff apparently relies. 323 S.C. at 458, 461 (because the notice requirement "single[d] out arbitration agreements," it "directly conflict[ed]" with and was preempted by the FAA.); *see also Munoz*, 343 S.C. at 539 n.2. Here, Plaintiff's argument mirrors the unsuccessful claims in *Soil Remediation* and *Doctor's Associates*, and the Court should similarly reject it.

C. Plaintiff Has Neither Alleged in the Complaint Nor Established That the Arbitration Agreement is a Contract of Adhesion.

Plaintiff's argument that the Arbitration Agreement is an unenforceable contract of adhesion fails from the start because she does not establish that the Arbitration Agreement is an adhesion contact. An adhesion contract is "a standard form contract offered on a 'take-it-or-leave-it' basis," with non-negotiable terms. *Lackey*, 330 S.C. at 394. To establish that a contact is one of adhesion, a party must demonstrate both that the terms are non-negotiable and that the contracting party is unwilling to waive enforcement in order to deal. *See Wingard v. Exxon Co.*, 819 F. Supp. 497, 503 (D.S.C. 1992); *see also Lackey*, 330 S C. at 394. Here, Plaintiff offers no evidence that the terms of the Agreement were non-negotiable, and no evidence that she would have been unable to purchase the vehicle had she refused to sign the Agreement.

D. The Arbitration Agreement is Enforceable, Even if it is a Contract of Adhesion.

Even if the Arbitration Agreement were an adhesion contract, it is still enforceable.[3] Notably, the cases cited in *Plaintiff's* memorandum uniformly hold that an arbitration agreement

[3] Plaintiff's vilification of contracts of adhesion contradicts federal and South Carolina law, which recognize both the utility and the ubiquity of such contracts. *See Lackey*, 330 S.C. at 902 ("Form contracts serve a very useful purpose in commerce. . . . The contract of adhesion is a part of the fabric of our society. . . . [S]tandardization of forms for contracts is a rational and economically efficient response to the rapidity of market transaction and the high costs of negotiations." (internal citation omitted)); *Am. Gen Life and Acc. Ins. Co. v. Wood*, 429 F.3d 83,

is not per se invalid because it is an adhesion contract. Pls.' Mem. in Opp'n to Mot. to Dismiss at 31 (citing *Munoz*, 343 S.C. at 541 (enforcing arbitration clause in adhesion contract) and *Lackey*, 330 S.C. at 394-96 (enforcing arbitration clause in adhesion contract and noting that "the conclusion that the agreements . . . are adhesion contracts does not render them unenforceable.")). Instead, such contracts are enforced, unless a party can demonstrate that the terms of the agreement are unconscionable. *See Munoz*, 343 S.C. at 541; *Lackey*, 330 S.C. at 394-96; *see also Cherry v. Wertheim Schroder & Co., Inc* , 868 F. Supp. 830, 836 (D.S.C. 1994); *Wingard* 819 F. Supp. at 503.[4] Plaintiff has neither alleged nor demonstrated that the Arbitration Agreement is unconscionable, and the Court should enforce the Agreement.

E. Plaintiff's Putative Class Claims Are Not Arbitrable.

Plaintiff does not dispute that the Arbitration Agreement requires resolution of her claims on an individual – and not class – basis. Moreover, Plaintiff provides no legal authority supporting the notion that such a requirement is invalid.[5] Instead, Plaintiff argues that a collective suit is necessary "because otherwise parties with nominal individual claims . . . would be left with limited avenues for relief." Pls.' Mem. in Opp'n to Mot. to Dismiss at 32.

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88 (4th Cir. 2005) ("Since the bulk of contracts signed in this country, if not every major Western nation, are adhesion contracts, a rule automatically invalidating adhesion contracts would be completely unworkable." (internal citation omitted)).

[4] *See also Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422 (1993) (enforcing arbitration clause in standard form contract between customer and contractor); *Blanton v. Stathos*, 351 S.C. 354 (S.C. Ct. App. 2002) (enforcing arbitration provision in standard form contract between customer and architect).

[5] Plaintiff's sole legal citation for her argument is a footnote in a case that was reversed by the Supreme Court of the United States. *See* Pls.' Mem. in Opp'n to Mot. to Dismiss at 30 (quoting *Bazzle v. Green Tree Fin. Corp.*, 351 S.C. 244 (2002), *vacated*, 539 U.S. 444 (2003)). Furthermore, the South Carolina Supreme Court did not find class action waivers invalid, *see Bazzle* 351 S.C. at 244, and, in any event, the issue is one of federal law. *See Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (upholding the validity of arbitration agreement requiring individual – and not class – determinations under the FAA).

Generalized arguments against the relief provided in arbitration, however, cannot invalidate an arbitration agreement. *Randolph*, 531 U.S. at 89-90 ("We have likewise rejected generalized attacks on arbitration that rest on suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complainants." (internal quotation omitted)). Additionally, Plaintiff bears the burden of demonstrating that the arbitral forum would provide her with inadequate relief. *See id.* Yet Plaintiff makes no such showing. To the contrary, the Arbitration Agreement does not limit Plaintiff's substantive remedies; it authorizes all "relief allowed by [the] governing law," including "injunctive or equitable relief," as well as attorneys' fees and costs "in accordance with applicable law." Ex. A. to Century BMW's Mem. in Support of Mot. to Compel Arbitration; *cf. Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (statutory availability of attorneys' fees supported validity of class action waiver). As Plaintiff can obtain full relief in arbitration, her attempt to circumvent the terms of the agreement fails.

Courts nationwide have repeatedly upheld arbitration agreements requiring claims to be treated on an individual basis. The Supreme Court of the United States has implicitly acknowledged that such provisions are enforceable. In *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003), the Court held that it was for an arbitrator to determine whether the arbitration clause at issue precluded class-wide arbitration. *Id.* at 454. By permitting that arbitrator to decide whether the clause prevented class-wide arbitration, the Supreme Court implicitly recognized that such class preclusion was permissible; after all, if class preclusion were per se invalid, then what would be left for the arbitrator to decide?[6]

[6] In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991), the Court explained that "the fact that certain litigation devices may not be available in an arbitration is part and parcel of arbitration's ability to offer 'simplicity, informality, and expedition,' [–] characteristics that

Appellate courts nationwide – including the United States Court of Appeals for the Fourth Circuit – have expressly upheld such provisions. *See, e g., Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002) (rejecting the argument that precluding class actions in arbitration would render the plaintiff "unable to maintain her legal representation" given statutory availability of attorneys' fees); *Tillman v. Commercial Credit Loans, Inc.*, 629 S.E.2d 865, 873 (N.C. Ct. App. 2006) (holding that the "great majority of federal and state courts that have examined and ruled upon" arbitration provisions precluding class arbitration have found them enforceable).[7] As a result, the Court should enforce the Arbitration Agreement according to its terms.

CONCLUSION

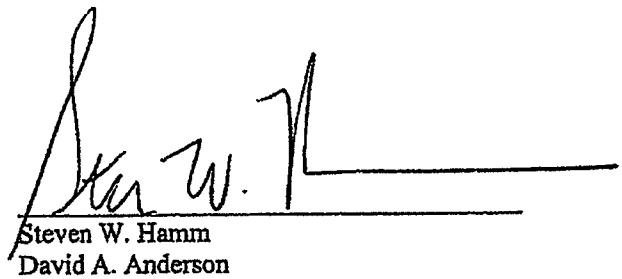
For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Ms. Watts's claims against it in accordance with the terms of the Arbitration Agreement and, accordingly, dismiss those claims currently pending in this Court.

Respectfully submitted,

---

generally make arbitration an attractive vehicle for the resolution of low-value claims." *Iberia Credit Bureau v. Cingular Wireless LLC*, 379 F.3d 159, 175 (5th Cir. 2004) (quoting *Gilmer*, 500 U S. at 31).

[7] *See also Jenkins v. First Am. Cash Advance of Ga., LLC*, 400 F.3d 868, 878 (11th Cir. 2005), *cert. denied* 126 S. Ct. 1457 (2006), (an arbitration agreement requiring individualized determinations "permit[s] [the plaintiff] and other consumers to vindicate all of their substantive rights in arbitration"); *Iberia Credit Bureau*, 379 F.3d 159, 175 (5th Cir. 2004)(precluding class arbitration "does not leave the plaintiffs without remedies"); *Livingston v. Assocs. Fin., Inc.*, 339 F.3d 553, 559 (7th Cir. 2003); *Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir. 2000) (precluding class arbitration did not prevent "vindication" of plaintiff's statutory rights "in the arbitral forum"); *Champ v. Siegel Trading Co.*, 55 F.3d 269, 277 (7th Cir. 1995) ("We are thus obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis."); *Edwards v. Blockbuster, Inc.*, 400 F. Supp. 2d 1305, 1309 (E.D. Okla. 2005)("Such provisions are a common feature of consumer arbitration agreements, and numerous courts have recognized that they are valid and fully enforceable."); *Rains v. Found. Health Sys. Life & Health*, 23 P.3d 1249, 1253 (Colo. Ct. App. 2001) ("[A]rbitration clauses are not unenforceable simply because they might render a class action unavailable.").



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March 26, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
	)	
Heather Herron, et al	)	
	)	
PLAINTIFFS,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
CarMax Auto Superstores, Inc., et al	)	
	)	
DEFENDANTS.	)	

COPY
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MAR 28 2007 8:30am
AIKEN COUNTY
CLERK OF COURT

I, the undersigned, an attorney at the firm of Richardson, Plowden, Carpenter and Robinson, P. A., who are attorneys for Century BMW, along with the Williams & Connolly LLP law firm, do hereby certify that I have served the foregoing **REPLY MEMORANDUM IN SUPPORT OF CENTURY BM'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS** on Plaintiffs by causing it to be deposited in a United States Postal Service mailbox a copy of the same, postage prepaid, return address clearly indicated, addressed to the following:

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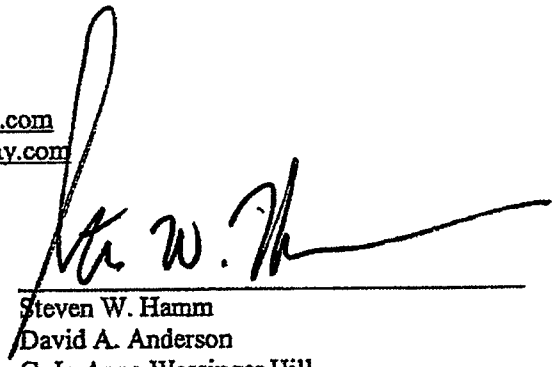

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March 26, 2007
Charleston, South Carolina

ATTORNEYS FOR DEFENDANTS AS LISTED IN BRIEF

EXHIBIT C

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05 VIN: 4U5BT33554LS50759

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to. (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to $1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of $1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law law, the Parties shall be responsible for the payment of their own attorney's(') fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding, except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, unless otherwise provided by law.

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer: _____ Dealer: _____

Customer: _____ Its: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
	)	
Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease, Michael Watts, Individually and for the Benefit of All Car Buyers Whom Paid "Administrative Fees" as Described below to Defendants	)	
Plaintiffs,	)	**PLAINTIFF CHRISTINE WATTS'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO CENTURY BMW'S MOTION TO COMPEL ARBITRATION**
vs.	)	
Century BMW a/k/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.; J.L.H. Investments, LP a/k/a Hendricks Honda; Overland, Inc. d/b/a Land Rover of Columbia; Taylor Toyota a/k/a Taylor Investments; and Toyota of Greenville, Inc , et. al.	)	
Defendants.	)	

Plaintiff Christine Watts submits this Supplemental Memorandum in Opposition to Century BMW a/k/a Sonic Automotive's ("Century BMW") Motion to Compel Arbitration. Defendant Century BMW's Motion to Compel Arbitration should be denied because the arbitration agreement at issue is unconscionable and unenforceable.

BACKGROUND

On June 25, 2005, Plaintiff Christine Watts purchased a 2004 BMW from Defendant Century BMW. Exhibit 1, Affidavit of Christine Watts, ¶ 2. Defendant Century BMW charged Plaintiff Watts an illegal "recording & processing fee" in the amount of $299.50. Exhibit 1, Exhibit A, Retail Buyers Order. The 2004 BMW was purchased to be Plaintiff Watts's primary source of transportation. Exhibit 1, ¶ 3.

At the time of her purchase, Century BMW required Plaintiff Watts to sign other paperwork including an arbitration agreement. Exhibit 1, ¶ 4. The arbitration agreement was not discussed or explained to Plaintiff Watts and was given to her on a "take-it-or-leave-it" basis. Exhibit 1, ¶ 5. Plaintiff Watts did not participate in the drafting of the arbitration agreement and had no voice in the formulation of its terms. Exhibit 1, ¶ 6.

Plaintiff Watts did not understand the implications of arbitration or possess the experience necessary to make her aware of the implication for arbitration. Exhibit 1, ¶ 7. Additionally, Plaintiff Watts did not have a lawyer present to provide her assistance in the execution of the paperwork required by Century BMW to be completed in connection with the purchase. Exhibit 1, ¶ 8.

The arbitration agreement that Century BMW required Plaintiff Watts to sign provides in part.

> Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association. . . .
>
> The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. **By entering into this Agreement, the Parties are waiving their right to a jury trial and their right to bring or participate in any** class action or **multi-Plaintiff or claimant action in court or through arbitration**. . . .
>
> IF A DISPUTE US ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHTS TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

Exhibit 1, Exhibit B(emphasis added)

On October 31, 2006, Plaintiff Watts initiated this current action against Defendant Century BMW. This case arises from Defendant Century BMW's charging of illegal administrative fees. In the Amended Complaint, Plaintiff Watts alleged causes of action for

declaratory judgment requesting injunctive relief and disgorgement, civil conspiracy, and violation of the Motor Vehicle Dealers Act.

Plaintiff Watts brought this action on behalf of a group pursuant to S.C. Ann. § 56-15-110. This statute provides:

> (1) In addition to temporary or permanent injunctive relief as provided in § 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damage by him sustained, and the cost of suit, including a reasonable attorney's fee.
> (2) **When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.**
> (3) In an action for money damages, if the jury finds that the Defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.
> (4) A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, or under this chapter shall constitute prima facie evidence against such person subject to the conditions of the United States Antitrust Law (15 U.S C.16).

S.C Code Ann. §56-15-110 (emphasis added). This statute creates substantive rights in favor of those affected by violations of the Dealers Act including the right to bring a claim on behalf of a group and the right to obtain injunctive relief on behalf of a group.[1] The statute was "Obviously enacted...because consumers' remedies at common law were deemed inadequate." Kucharski v Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002).

On December 29, 2006, Defendant Century BMW filed a motion to compel arbitration. In its memorandum in support of the motion Defendant Century BMW requested that the Court render a ruling on the propriety of the arbitration agreement's prohibition of multi-plaintiff or

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[1]This Court by Order dated July 31, 2007 found that this provision creates substantive rights in favor of those harmed by a violation of the Motor Vehicle Dealers Act.

class action litigation. Exhibit 2, Defendant Century BMW's Memorandum in Support of Arbitration, fn. 6, p. 7 ("[T]here is no need to refer the issue of class arbitrations to an arbitrator.").

Plaintiff Watts briefed these issues as a part of Plaintiffs' Memorandum in Opposition to Motions to Dismiss dated March 9, 2007. Defendant Century BMW submitted further briefing on this issue on March 26, 2007.

Importantly, on March 26, 2007, the South Carolina Supreme Court in Simpson v. MSA of Myrtle Beach, Inc. issued an opinion that directly affects the issues in this motion. Simpson v. MSA of Myrtle Beach, Inc., 373, S.C. 14, 644, S.E.2d 663 (2007).[2]

Plaintiff Watts hereby submits his supplemental brief to address the Simpson case and its applicability here.

DISCUSSION

I. The Century BMW Arbitration Agreement is Unconscionable and Unenforceable.

This case is just like Simpson v. MSA of Myrtle Beach, Inc. The Simpson Court held that where a car dealer attempts in a form contract to prevent a consumer from prosecuting statutory rights in an arbitration that such contracts are unconscionable and unenforceable. Simpson, 644 S.E.2d at 668-671. The Simpson Court provided the following test for determining whether an arbitration agreement is unconscionable:

> In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.

Id.

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[2]The United States Supreme Court denied certiorari on this decision – S.Ct. – 2007 WL 2383424 (U S.S C.).

Application of the Simpson test here shows that the Century BMW arbitration agreement is unconscionable and unenforceable.

A. Absence of Meaningful Choice.

Plaintiff Watts had no meaningful choice in agreeing to arbitrate and waiver her right to participate in a multi-plaintiff action The Simpson case describes absence of meaningful choice as follows:

> Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. In determining whether a contract was "tainted by an absence of meaningful choice," courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power, the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.

Simpson v. MSA of Myrtle Beach, Inc. 644 S.E 2d at 669(internal citations omitted).

The Century BMW arbitration agreement is an adhesion contract tainted with the absence of meaningful choice. "[A]n adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable " Simpson, 644 S.E 2d at 669. Adhesion contracts "are standard in the automobile retail industry " Id. Century BMW's arbitration agreement is clearly an adhesion contract The contract is a standard form contract. The contract has blanks that can be filled in depending on the date of the transaction, the VIN number of the vehicle, the name of the customer, and the name of the dealer. Exhibit 1, Exhibit B. Additionally, the arbitration agreement was not discussed or explained to Plaintiff Watts and was given to her on a take-it-or-leave-it basis. Exhibit 1, ¶ 5 Plaintiff Watts did not participate in the drafting of the agreement and had no voice in the formulation of its terms Exhibit 1, ¶ 6

The Century BMW arbitration agreement is clearly an adhesion contract.[3]

In determining whether there was an absence of meaningful choice on behalf of Plaintiff Watts, this Court should view the Century BMW contract with "considerable skepticism." Simpson, 644 S.E.2d at 670(adopting rationale of Ohio Courts in analyzing arbitration agreements by automobile retailers and stating "We ..proceed to analyze this contract between a consumer and automobile retailer with 'considerable skepticism'."). Furthermore, because an automobile is a "necessity" in everyday life this factor should be considered in determining "whether a consumer had a meaningful choice in negotiating the arbitration agreement." Simpson, 644 S.E.2d at 669

Applying this analysis, the Simpson Court provided as follows:

> [T]he contract between Simpson and Addy involved a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society. Applying the factors considered by the Fourth Circuit in analyzing arbitration clauses, we also acknowledge Simpson's claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter. *But see Munoz,* 343 S.C. 531, 542 S E.2d 360 (failing to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender). Similarly, we note Simpson's allegation that the contract was "hastily" presented for her signature.

Simpson, 644 S.E 2d at 670. Based on this analysis, the Simpson Court found an absence of meaningful choice in that transaction.

The facts in this case mirror those in Simpson. Plaintiff Watts purchased a vehicle to be her primary source of transportation. Exhibit 1, ¶ 3. Plaintiff Watts did not understand the implications of arbitration nor possess the experience necessary to make her aware of the implications of arbitration. Exhibit 1, ¶ 7. Plaintiff Watts did not have a lawyer present to

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[3]In its earlier briefs, Century BMW did not contest the fact that its arbitration agreement is an adhesion contract.

provide her assistance in the execution of the paperwork required to purchase the BMW. Exhibit 1, ¶ 8. Additionally, the arbitration agreement was hastily presented to Plaintiff Watts for her signature. Exhibit 1, ¶ 4. These factors, just as they did in Simpson, warrant a finding by the Court that Plaintiff Watts had an absence of meaningful choice when she entered into the arbitration agreement.

Furthermore, the circumstances surrounding Plaintiff Watts's execution of the paperwork associated with her car purchase further support that Plaintiff Watts had absence of meaningful choice. The arbitration agreement was given to Plaintiff Watts along with other paperwork which Century BMW required her to sign. Exhibit 1, ¶ 4. The arbitration agreement was never discussed or explained Exhibit 1, ¶ 5 The arbitration agreement contains hard to read single-spaced size seven font. There was no negotiation related to the arbitration agreement and this is not a contract between sophisticated business interests in an arms' length transaction.[4] Essentially, Century BMW snuck a hard to read document which purports to waive important rights in with other paperwork and took advantage of a consumer. In summary, Plaintiff Watts, like the Plaintiff in Simpson, had no meaningful choice in agreeing to arbitrate any claims with Century BMW.

B. Oppressive and One-Sided Terms.

The Century BMW arbitration agreement contains oppressive and one-sided terms. In analyzing this factor, the Simpson Court stated:

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[4]Instead, the transaction is between a twenty-three year old girl and a multi-million dollar corporation.

> The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. *Carolina Care Plan,* 361 S.C. at 555, 606 S.E.2d at 758. In our opinion, this rule has two applications in the present case. First, this arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled in her underlying SCUTPA and Dealers Act claims. Second, unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest. Therefore, under the general rule, this provision in the arbitration clause is unenforceable.

Simpson, 644 S.E.2d at 671(citing the "strong public policy notions behind the enactment of the...Dealers Act."). The Simpson case reasoning is equally applicable here.

Oppressive Terms

The arbitration agreement contains Oppressive terms that violate public policy and statutory law. The Century BMW arbitration agreement here, like the arbitration agreement in Simpson impermissibly attempts to take away Plaintiff Watts's statutory rights. The Dealers Act provides substantive rights to those harmed by violations. S.C. Code Ann. §56-15-110(c) provides:

> (2) When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.

S.C Code Ann. §56-15-110(2) provides statutory rights to Plaintiffs including the right to seek right to bring a claim on behalf of a group and injunctive relief on behalf of a group. The statute was "Obviously enacted...because consumers' remedies at common law were deemed inadequate." *See* Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002). As stated by the Supreme Court in Simpson, the purpose behind the Dealers Act is to "punish[ ] acts that adversely affect the public interest " Simpson, 644 S E.2d at 671. The

Century BMW arbitration agreement's purported waiver of the right to bring an action on behalf of a group undermines the Dealers Act's ability to punish wrongdoers by taking away the ability to prosecute claims collectively (which produces an economic disincentive for bad conduct) and taking away the ability to obtain injunctive relief on behalf of a group (which would stop further bad acts from occurring).

Century BMW arbitration agreement's attempted prohibition of group suits prevents Plaintiff Christine Watts from vindicating her statutory rights in arbitration. The right to bring a claim on behalf of a group under S C. Code Ann. §56-15-110(2) is significant. This protection provided by the General Assembly is necessary because otherwise parties with nominal individual claims, but significant collective claims, would be left with limited avenues for relief and a wrongdoer car dealer with little checks on its abuses of the law. S.C. Code Ann. § 56-15-110 makes it economical for a car purchaser who has been harmed by violation of the statute to bring claims against a car dealer. Otherwise, car dealers could continually rip off customers for small amounts with no check on their abuses.

Similarly, Plaintiff Christine Watts's statutory right, as one harmed Plaintiff, to seek injunctive relief when an action is of common or general interest to many persons cannot be effectively vindicated under the Century BMW arbitration agreement. S.C. Code Ann. §56-15-110(2) is designed so that one person can stop a car dealers from perpetrating wrongdoing against many car purchasers. This right to injunctive relief was given by the General Assembly to prevent car dealerships from perpetrating mass wrongdoing on the public. This is a significant right that cannot be vindicated in the Century BMW arbitration

Courts in other jurisdictions have found similar provisions unconscionable and unenforceable. *See* Cooper v. QC Financial Services, Inc., 503 F.Supp.2d 1266, 1290 (D. Ariz ,

2007); Eagle v. Fred Martin Motor Co., 809 NE2d 1161 (Ohio App. 2004)(concluding provision preventing right to proceed through a class action or as a private attorney general were both against public policy and the underlying purpose of the Consumer Sales Practices Act and thus were unenforceable). Lozada v. Dale Baker Oldsmobile, Inc., 91 F.Supp 2d 1087 (W.D Mich. 2000)(arbitration clause involving the sale of automobiles providing for waiver by buyer's or right to proceed by way of a class action was substantially unreasonable and unconscionable); State Ex Rel. Dunlap v. Berger, 567 SE2d 265 (W.Va.2002); Leonard v. Terminex Intern Co., L.P., (Ala. 2002); Powertel v. Bexley, 743 SE2d 570, 576 (Fla. Dist. Ct. App. 1998).

Similarly, the South Carolina Supreme Court has stated that it will not enforce this type of arbitration agreement. "[P]reclusion of class-wide or consolidated arbitration in an adhesion contract, even if explicit, undermines principles favoring expeditious and equitable case disposition absent demonstrated prejudice to the drafter of the adhesion contract." Bazzle v. Green Tree Financial Corporation, 351 S.C. 244, 569, S.E.2d 349 (2002) (*R'vd on other grounds*) Such agreements are unconscionable because they insulate Defendants from significant exposure brought about when otherwise small claims are grouped together.[5]

In effect, the class action waiver is a device that is designed to allow Century BMW to rip-off customers for small amounts of money (like charging a $299.50 illegal administrative fee) without any real recourse. The multi-plaintiff class action waiver makes it economically

[5]Enforcement of this type of clause severely erodes consumer rights. As one Court noted: "[T]he pervasive use of arbitration agreements in consumer contracts could have the effect of eliminating class actions as an option available to aggrieved consumers. If class actions are no longer an option, the vast majority of consumer claims involving relatively small sums of money on an individual basis will be left without a remedy." In re Knepp, 229 B.R. 821, *842 (Bkrtcy.N.D Ala ,1999)

impracticable for a consumer to bring an action against Century BMW.[6] Plaintiff Watts was charged a $299.50 recording and processing fee Even with the specter of five times the actual damages, this amounts to $1,497.50. As alleged in the Amended Complaint, Century BMW makes several hundred thousand dollars a year from this one line item. Thus, the economic benefit to Century BMW from charging illegal administrative fees substantially outweighs the risk of a consumer bringing a claim for approximately $1,500.00 and spending time and money in going through the AAA arbitration process. This is contrary to the "strong public policy reasons" behind the enactment of the Dealers Act and contrary to the Dealers Act's purpose of "punishing acts that adversely affect the public's interest." Simpson, 644 S.E.2d at 671.

One-Sided Terms

The prohibition of multi-plaintiff and class actions in the Century BMW arbitration agreement is manifestly one-sided. Although styled as a mutual prohibition on representative or class actions, it is difficult to envision the circumstances on which the provision might negatively impact Century BMW, because car dealers typically do not sue their customers in class action

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[6]Other Courts have recognized that similar arbitration clauses are intentionally designed to limit liability and are unconscionable. The California Court of Appeals's reasoning in Szetela for finding a similar clause unconscionable is equally persuasive here. The Szetela Court stated: "This provision is clearly meant to prevent customers, such as Szetela and those he seeks to represent, from seeking redress for relatively small amounts of money, such as the $29 sought by Szetela. Fully aware that few customers will go to the time and trouble of suing in small claims court, Discover has instead sought to create for itself virtual immunity from class or representative actions despite their potential merit, while suffering no similar detriment to its own rights. [¶] ... The clause is not only harsh and unfair to Discover customers who might be owed a relatively small sum of money, but it also serves as a disincentive for Discover to avoid the type of conduct that might lead to class action litigation in the first place. By imposing this clause on its customers, Discover has essentially granted itself a license to push the boundaries of good business practices to their furthest limits, fully aware that relatively few, if any, customers will seek legal remedies, and that any remedies obtained will only pertain to that single customer without collateral estoppel effect. The potential for millions of customers to be overcharged small amounts without an effective method of redress cannot be ignored. Therefore, the provision violates fundamental notions of fairness. [¶] ... This is not only substantively unconscionable, it violates public policy by granting Discover a 'get out of jail free' card while compromising important consumer rights." Szetela v. Discover Bank, 97 Cal.App. 4th 1094 (2002).

lawsuit. Such a one-sided contract in a contract of adhesion is unconscionable. *See* Kinkel v. Cingular Wireless, LLC, 828 NE2d 812, 820-821 (Ill.App. 5 Dist.,2005)("cellular telephone service providers typically do not sue their customers in class action lawsuits. Thus, Cingular's provision barring class arbitrations is a one-sided limitation on its customers' ability to seek relief. .such a one-sided limitation that could effectively deny plaintiffs their day in court is substantively unconscionable."). *See also* Szetela v. Discover Bank, 97 Cal.App. 4th 1094 (2002)(holding a similar clause unconscionable and one-sided because "credit card companies typically do not sue their customers in class action lawsuits.").

Quite simply, the Dealers Act is designed to protect the public and the right to bring a group action and obtain group injunctive relief is an important statutory right. Century BMW should not be permitted to circumvent these statutory rights by sneaking them in an arbitration agreement in the form of an adhesion contract and to do so would be against public policy.

II. In Any Event, the Multi-Plaintiff/Class Action Waiver is Unconscionable.

This Court should not compel arbitration that does not allow class action arbitration because to do so is contrary to S.C. Code Section 56-15-110 (C)(2) and the basis for the enactment of Section 56-15-110(C)(2) and because there is an inherent conflict between arbitration on an individual basis only and the underlying purposes of Section 56-15-10 (C)(2).

CONCLUSION

For the foregoing reasons, Plaintiff Watts respectfully requests that the Court find the arbitration clause unconscionable and unenforceable in its entirety.

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ATTORNEYS FOR THE PLAINTIFFS

November 28, 2007

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
HEATHER HERRON, ET. AL.	)	
Plaintiffs,	)	**AFFIDAVIT OF CHRISTINE WATTS**
vs.	)	
CARMAX AUTO SUPERSTORES, INC., ET. AL.	)	
Defendants.	)	

PERSONALLY APPEARED before me, Christine Watts, being duly sworn, deposes and states that:

1. I am a named Plaintiff in this action and am competent to testify to the matters stated herein.
2. On June 25, 2005 I purchased a 2004 BMW from Defendant Sonic Automotive, Inc. d/b/a Century BMW. A copy of my Retail Buyer's Order is attached as Exhibit A.
3. The 2004 BMW was purchased to be and is my primary source of transportation.
4. I was hastily given other paperwork which the dealership required me to sign. This paperwork included the "Arbitration Agreement" that is attached as Exhibit B.
5. The "Arbitration Agreement" was not discussed or explained to me and was given to me on a "take it or leave it" basis.
6. I did not participate in the drafting of the "Arbitration Agreement" and had no

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voice in the formulation of its terms.

7. At the time of my purchase I did not understand the implications of arbitration or possess the experience necessary to make me aware of the implications of arbitration.

8. I did not have a lawyer present to provide me assistance in the execution of the paperwork required to purchase the 2004 BMW.

Further affiant sayeth not.

SWORN TO AND SUBSCRIBED BEFORE ME)
)
this ___ day of April 3, 2007)
)
Cynthia J Speed)
Notary Public for the State of South Carolina)
My Commission Expires: 12.5.15)

Christine Watts
Christine Watts

EXHIBIT A

02030

CENTURY BMW
CENTURY MINI

2750 LAURENS ROAD • GREENVILLE, SC 29607
PHONE (864) 234-6437
www.century-bmw.com • www.centurymini.com

RETAIL BUYER'S ORDER

Name: Michael M Watts or Christine M. Watts — Spouse
Street: 210 Providence Sq. — Phone: 864-213-8498
City: Greenville — State: SC — Zip: 29615 — County:
Date: 6-25-05 — Stock No.: 15514
Employer — Phone: 864-270-7396
Salesperson: Elizabeth Courtney
E-mail Address

PURCHASE

☐ NEW ☐ DEMO ☐ PRE-OWNED ☐ FACTORY CAR — Year: 04 — Make: BMW — Body Type — Series: 24
Cylinders — Serial No.: 4USBT33554LS50759 — COLOR: Exterior / Interior

OPTIONS:
☐ PREMIUM PACKAGE ☐ SPORTS PREMIUM PACKAGE ☐ SPORTS PACKAGE ☐ COLD WEATHER PACKAGE
☐ ACTIVITY PACKAGE ☐ CONVENIENCE PACKAGE ☐ MOON ROOF ☐ LEATHER UPHOLS.
☐ PREMIUM SOUND ☐ IN DASH CD ☐ CD CHANGER ☐ HEATED SEATS
☐ ON BOARD COMPUTER ☐ ALLOY WHEELS ☐ CRUISE CONTROL
ENGINE: ☐ _____
TRANSMISSION: ☐ AUTOMATIC ☐ MANUAL

Mileage: 15514

TRADE

Year — Make — Body Type — Series
Cylinders — Serial No. — COLOR: Exterior / Interior
Mileage — Options

PRICE: (Including Transportation & Service Charges)	32980
Additional Options:	$1,604.50
TOTAL:	31,375.50
Allowance on Trade-In	
Cash Difference	
SC Sales Tax	300
Balance Owed on Trade-In	
Title and License ☐ New ☑ Trans ☐ Trans	25
Recording & Processing Fees	$299.50
TOTAL:	32,000
Service Agreement	
Insurance	
TOTAL:	
Cash on Delivery	
BALANCE DUE:	

BALANCE OWED TO: Name & Address:
LIEN: Name & Address:
Phone — Contact
Account #
Effective Dates
INSURANCE INFORMATION — Company Name
Policy # — Effective Dates
Agent — Phone
Driver's License #
Remarks

READ CAREFULLY: Century BMW / Century Mini agrees to sell and the Buyer(s) agrees to purchase the vehicle as above described at the price set forth. The Buyer shall remit full payment of the entire balance due on or before _____. This Buyer's Order constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the party to be charged.

CENTURY BMW CENTURY MINI

X _____ Buyer — X _____ Co-Buyer — Must be accepted by an officer of the Company

☐ **USED CAR CONTRACTUAL DISCLOSURE STATEMENT:** - "The information you see on the window form (Buyer's Guide) for this vehicle is part of the contract. Information on the window form overrides any contrary provisions in the contract of sale."

Purchaser's Signature X _____

☐ **NEW VEHICLE DISCLAIMER OF WARRANTIES:** - I have read, understand and accept all provisions of the Manufacturer's Warranty Statement covering this new vehicle that I am purchasing. Furthermore, I understand that all warranties on this vehicle are those of the manufacturers. The seller, Century BMW / Century Mini, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Century BMW / Century Mini, neither assumes nor authorizes any person to assume for it any liability in connection with the sale of this vehicle. This disclaimer in no way affects the provisions of the manufacturer's warranties.

Purchaser's Signature X _____

This agreement between the undersigned buyer(s) and dealer is incorporated by reference into and is made a part of any separate retail installment or credit sale agreement between the undersigned buyer(s) and dealer ("Retail Financing Agreement"). Notwithstanding anything to the contrary in any other document, if there is a Retail Financing Agreement the undersigned buyer(s) understand and agree that the transaction evidenced by this agreement and the Retail Financing Agreement is contingent upon credit approval by, and assignment of the Retail Financing Agreement to a third-party financial institution. If the Retail Financing Agreement is not accepted by a third-party financial institution, you must immediately return the vehicle referred to in this agreement, and the entire transaction evidenced by this agreement and the Retail Financing Agreement and this agreement shall be null and void.

Signed _____ (Buyer) Signed _____ (Dealer)

Signed _____ (Buyer)

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EXHIBIT B

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05 VIN: 4USBT33554LS50759

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to $1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of $1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law law, the Parties shall be responsible for the payment of their own attorney's(') fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration *Act* (9 U.S.C. § 1 *et seq.*) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding, except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, unless otherwise provided by law

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer: _____ Dealer: _____

Customer: _____ Its: _____

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EXHIBIT 2

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Heather Herron, et al., Plaintiffs, vs. CarMax Auto Superstores, Inc., et al., Defendants.	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT C.A. No.: 06 CP 02-1230 **MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION**

MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS

Pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and the Arbitration Agreement that Plaintiff Christine Watts executed, Defendant Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW") respectfully moves this Court to compel arbitration of Plaintiff Christine Watts's claims and to dismiss this action. The Arbitration Agreement is plainly enforceable, and Ms. Watts's claims fall squarely within its scope. Ms. Watts is the only named Plaintiff who alleges he or she purchased a vehicle from Century BMW. See Amended Complaint ¶¶ 374–88. As a result, no other named Plaintiff has standing to sue Century BMW based on his or her purchase from a separate dealership[1] and Century BMW joins the other Defendants in the joint motion and memorandum filed separately moving to dismiss all claims of other named Plaintiffs.

[1] Plaintiff Michael Watts does not allege he purchased a vehicle from Century BMW, see Amended Complaint ¶ 388 (alleging only a purchase from Toyota of Greenville), and lacks standing to assert any claims from that purchase against Century BMW. Mr. Watts co-signed for Ms. Watts's purchase from Century BMW and also signed the same Arbitration Agreement as Ms. Watts in connection with that purchase. See Exhibit A (Arbitration Agreement signed by Christine and Michael Watts). To the extent Mr. Watts seeks to pursue any claims against Century BMW for Ms. Watts's purchase, Century BMW also moves to compel arbitration of his claims.

RECEIVED

BACKGROUND

Ms. Watts alleges that in connection with her purchase of a vehicle, Century BMW charged her an administrative fee. See Amended Complaint ¶¶ 384-85.[2] She acknowledges that S.C. Code Ann. § 37-2-307 authorizes dealerships to charge such a fee, see Amended Complaint ¶¶ 345-48, but alleges that Century BMW did not follow certain statutory requirements without identifying what requirements were not followed , see id. ¶¶ 337-44, 349. She further alleges that even if Century BMW fully complied with § 37-2-307, its charging of a closing fee still violates S.C. Code Ann. § 56-15-10 et. seq. See id. ¶ 350. Based on these allegations, Ms. Watts brings one count for violation of S.C. Code Ann. § 56-15-10 and another count for a declaratory judgment with respect to S.C. Code Ann. § 56-15-10 et. seq. and/or § 37-2-307.[3]

In connection with her purchase of a vehicle from Century BMW, Ms. Watts and Century BMW entered into an "Arbitration Agreement." See Exhibit A. This Agreement provides that at the request of a party, "any and all Claim(s) shall be decided in binding

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[2] Century BMW references the allegations in the Complaint because they are relevant to this Court's determination of the arbitrability of Ms. Watts's claims. See Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., ___ S.C. ___, 588 S.E.2d 136, 141 (Ct. App. 2003) (deciding motion to compel arbitration by comparing allegations in complaint with subject matter of contract containing contract-specific arbitration clause). Reference to these allegations should not be taken as agreement with them—indeed Defendants dispute many of Plaintiff's allegations and deny liability.

[3] Ms. Watts also brings a count for civil conspiracy against other defendants but did not name Century BMW in this count. See Amended Complaint ¶ 403. Even had Ms. Watts named Century BMW, she has failed to state any claim for civil conspiracy, as demonstrated in Defendants' joint motion to dismiss; moreover such a claim would plainly be arbitrable as it is a claim "relating to the vehicle," with respect to the "terms of and enforceability of the sale, lease or financing of the Vehicle," "fraud, or unfair and deceptive trade practices," or "a violation of [a] state or federal statute or regulation." See Exhibit A.

arbitration before the American Arbitration Association." Id. The Agreement defines the "Claim(s)" that the parties agreed to arbitrate as including:

> any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair.

Id. The Agreement also provides that "once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration." Id.

ARGUMENT

I. PURSUANT TO THE FEDERAL ARBITRATION ACT THIS COURT SHOULD COMPEL ARBITRATION OF PLAINTIFF'S CLAIMS.

Ms. Watts's claims fall squarely within the scope of the Arbitration Agreement. This Agreement is unremarkable and of the type that numerous courts have upheld time and again. Accordingly, pursuant to the Federal Arbitration Act and applicable federal and South Carolina law, this Court should dismiss Plaintiff's claims and compel arbitration.

A. The Federal Arbitration Act Applies Here.

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., applies to "contract[s] evidencing a transaction involving commerce," 9 U.S C. § 2. A contract to purchase a vehicle clearly is a contract evidencing a transaction involving commerce. Thornton v. Trident Med.

Ctr., L.L.C., 592 S.E.2d 50, 52 (S.C Ct. App. 2003); see also MS Dealer Service Corp. v. Franklin, 177 F.3d 942 (11th Cir. 1999) (FAA applies to consumer's purchase of automobile); Stout v. Byrider, 50 F. Supp. 2d 733, 735 (N.D. Ohio 1999) (FAA governs in action by used car buyers against seller because "case concerns arbitration agreements involving transactions in interstate commerce"), aff'd, 228 F.3d 709 (6th Cir. 2000); Wolff Motor Co. v. White, 869 So.2d 1129, 1134 (Ala. 2003) ("[m]otor vehicles are 'the quintessential instrumentalities of modern interstate commerce'" and "a transaction involving the sale of an instrumentality of commerce . . . satisfies the FAA's 'involving commerce' test" (quoting United States v. Bishop, 66 F.3d 569, 588-90 (3d Cir. 1995))). Accordingly, The FAA governs the enforceability of the Arbitration Agreement and all questions concerning its scope.

The FAA embodies "the strong federal policy in favor of enforcing arbitration agreements." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985). Keeping with this "liberal federal policy favoring arbitration agreements," the Supreme Court has mandated that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). Indeed, "the parties' intentions 'are generously construed as to issues of arbitrability,' and any 'ambiguities as to the scope of the arbitration clause itself' must be 'resolved in favor of arbitration.'" Washington Square Secs., Inc. v. Aune, 385 F.3d 432, 436 (4th Cir. 2004) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614, 626 (1985) and Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 476 (1989)).[4]

[4] Like the FAA, South Carolina law strongly favors arbitration, and "unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." Zabinski v. Bright Acres Assocs., 553 S.E.2d 110, 118 (S.C. 2001) (citing S.C. Pub. Serv. Auth. v. Great W. Coal, 437 S.E.2d 22, 25 (S.C. 1993)); see also South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq.

B. **Ms. Watts's Allegations Fall Within the Scope of the Arbitration Agreement.**

"To decide whether an arbitration agreement covers a particular dispute, the court must determine whether the factual allegations underlying the claim fall within the scope of the agreement, irrespective of the label given to the cause of action." Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., 588 S.E.2d 136, 207 (S.C. Ct. App. 2003) (citing Zabinski, 553 S.E.2d at 597). Applying these principles, all of Ms. Watts's claims fall within the scope of the Arbitration Agreement.

Ms. Watts alleges that Century BMW engaged in the "practice of presenting / advertising car prices in a misleading manner" because it allegedly "fails to include / adequately disclose the fact that [it] will be charging 'administrative fees' that are in addition to the advertised price of the car" and misleads buyers "into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees." Amended Complaint ¶¶ 335, 337, 340. Ms. Watts acknowledges that such fees are specifically authorized by S.C. Code Ann. § 37-2-307, see Amended Complaint ¶¶ 345-48, but she alleges that Century BMW did not comply with the statute, although she does not say how, see id. ¶¶ 337-34, 349. She further alleges that even if Century BMW did fully comply with the South Carolina statute authorizing such fees, it would still be in violation of S.C. Code Ann. § 56-15-10 et seq. See id. ¶ 350.

Each of these allegations clearly falls under the claims that Ms. Watts and Century BMW agreed to arbitrate. The Arbitration Agreement provides that "any and all disputes, claims or controversies between the Parties relating to the Vehicle," including the "terms of and enforceability of the sale, lease or financing of the Vehicle," "breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices," and "a violation of any state or federal statute or regulation" are covered under the Agreement. See

Exhibit A. The Agreement expressly encompasses all subjects relating to Ms. Watts's allegations.

C. **The Arbitration Clauses are Unremarkable and Not Subject to Challenge.**

The Arbitration Agreement signed by Ms. Watts and Century BMW is unremarkable and of a type countless courts have upheld.

1. Allegations Against Other Defendants Do Not Prevent Arbitration.

Ms. Watts cannot avoid arbitration by naming other dealerships, with whom she has no connection, as defendants. As is fully briefed in Defendants' joint motion to dismiss, Ms. Watts lacks standing to bring claims against other defendants with whom she never transacted. Even if Ms. Watts had standing against other Defendants, which she does not, she must arbitrate her dispute with Century BMW pursuant to the Arbitration Agreement. See S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., ___ S.C. ___, 437 S.E.2d 22, 24 (1993) ("[A] party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint . . . because this would nullify the rule requiring arbitration.").

2. Putative Class Claims Are Not Subject to Arbitration.

Although Ms. Watts does not allege that she brings her case as a class action pursuant to Rule 23, SCRCP, she purports to represent a class of consumers under S.C. Code Ann. § 56-15-110(2). See, e.g., Amended Complaint ¶¶ 397-99. As shown above, Ms. Watts's individual claims are subject to arbitration. Pursuant to the terms of the Arbitration Agreement, she may not litigate supposed "class" claims because the Arbitration Agreement unequivocally prohibits class arbitrations. It states: "By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff

or claimant action in court or through arbitration." See Exhibit A (emphasis added).[5] Under the plain text of this provision, Ms. Watts cannot arbitrate her claims on behalf of a class and cannot arbitrate the claims of any purported class. Thus, the Order compelling arbitration of Plaintiff's individual claim should specify that the arbitration should proceed on an individual, and not a class, basis.[6]

Many courts have found that class arbitration waivers contribute to the "simplicity, informality, and expedition" of arbitration, helping make it "an attractive vehicle for the resolution of low-value claims."[7] Iberia Credit Bureau v. Cingular Wireless LLC, 379 F.3d 159, 174 (5th Cir. 2004); accord Caley v. Gulfstream Aerospace Corp., 428 F.3d 1359, 1378 (11th Cir. 2005) (holding that a ban on class arbitrations is "consistent" with the goals of

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[5] The Arbitration Agreement further states: "If a dispute is arbitrated, you will give up your right to participate as a class representative or a class member on any claim you may have against us, including any right to class arbitration or any consolidation of individual arbitrations." See Exhibit A.

[6] In Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 452-53 (2003) (plurality op.), the Supreme Court held that where a contract is silent as to whether class action arbitration is permitted, it is for the arbitrator rather than a court to decide whether it is permissible. But "where a particular statutory or procedural right is clearly prohibited by an arbitration agreement, the Court need not send the case to arbitration for an arbitrator to determine that question." In re Cotton Yarn Antitrust Litig., 406 F. Supp. 2d 585, 594 (M.D.N.C. 2005). This case is similar to Gipson v. Cross-Country Bank, 354 F. Supp. 2d 1278, 1286 (M.D. Ala. 2005), where the court confronted a clear prohibition on class arbitrations. The court held that the "arbitrator need not interpret the contract's class action waiver clause, because the contract expressly prohibits class arbitration." The court explained that "[t]here is no need for anyone to decide whether the contract[] forbid[s] class arbitration. It expressly and unequivocally does." Id. Likewise, here, there is no need to refer the issue of class arbitrations to an arbitrator.

[7] Despite the modest value of her claim, Ms. Watts and her counsel still have amble ability and incentive to pursue the action in arbitration because should Ms. Watts prevail on her claims she could recover "double actual damages, the cost of the suit and a reasonable attorney's fee pursuant to S.C. Code Ann. §56-15-110." Am. Compl ¶ 400; see also Exhibit A (The Arbitration Agreement provides that the "arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law.").

arbitration as articulated in Gilmer), cert. denied 126 S. Ct. 2020 (2006). Courts have expressly rejected the notion that class arbitration waivers somehow prevent plaintiffs from enforcing statutory rights. See, e.g., Snowden v. Checkpoint Check Cashing, 290 F.3d 631, 638 (4th Cir. 2002) (rejecting the argument that the class arbitration waiver would render the plaintiff "unable to maintain her legal representation" given statutory availability of attorneys' fees).[8]

II. THE COURT SHOULD DISMISS ALL JUDICIAL PROCEEDINGS AGAINST CENTURY BMW.

Pursuant to Section 3 of the FAA, any court of the United States must, at a minimum, stay judicial proceedings involving claims, like those here, that fall within the arbitration provisions of written agreements. See 9 U.S.C. § 3; see also Moses H. Cone, 460 U.S. at 26 ("[S]tate courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the Arbitration Act."). "Notwithstanding the terms of § 3, however, dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable." Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, 252 F.3d 707, 709-710 (4th Cir. 2001); see also Alford v. Dean Witter Reynolds, 975 F.2d 1161, 1164 (5th Cir. 1992) ("The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to

[8] Indeed, a litany of appellate courts nationwide have upheld class arbitration waivers. See, e.g., Tillman v. Commercial Credit Loans, Inc., 629 S.E.2d 865, 873 (N.C. App. 2006) (holding that the "great majority of federal and state courts that have examined and ruled upon" class action waivers have found them enforceable); Jenkins v. First American Cash Advance of Georgia, LLC, 400 F.3d 868, 878 (11th Cir. 2005), cert. denied 126 S. Ct. 1457 (2006), (holding that an arbitration agreement containing a class waiver "permit[s] [the plaintiff] and other consumers to vindicate all of their substantive rights in arbitration"); Iberia Credit Bureau, 379 F.3d at 175 (5th Cir.)(noting that a class arbitration waiver "does not leave the plaintiffs without remedies"); Johnson v. W. Suburban Bank, 225 F.3d 366, 374 (3d Cir. 2000) (plaintiff cannot argue that a class action waiver prevented "vindication" of his statutory rights "in the arbitral forum"); Champ v. Siegel Trading Co., 55 F.3d 269, 277 (7th Cir. 1995) ("We are thus obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis."); Rains v. Found. Health Sys. Life & Health, 23 P.3d 1249, 1253 (Colo. Ct. App. 2001) ("[A]rbitration clauses are not unenforceable simply because they might render a class action unavailable.").

arbitration."); Payton v. Nordstrom, Inc., 462 F.Supp.2d 706, 708 (M.D.N.C. 2006) ("[T]he Fourth Circuit has held that, despite the language of the FAA regarding a stay of arbitration, when all of the claims in a lawsuit are required to be arbitrated, dismissal, rather than a stay, is a proper remedy."). Because all of Plaintiff's claims against Century BMW must be resolved through arbitration, the Court should dismiss her action against Century BMW in this Court.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Ms. Watts's claims against it and, accordingly, dismiss those claims currently pending in this Court.

Respectfully submitted,

Steven W. Hamm
David A. Anderson
C. Jo Anne Wessinger Hill
RICHARDSON, PLOWDEN, CARPENTER & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
(803) 779-0016 facsimile

Dennis M. Black (*pro hac vice*)
Nathan P. Sutton (*pro hac vice*)
Ryan L. VanGrack (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth St., N.W.
Washington, DC 20005
(202) 434-5000
(202) 434-5029 (facsimile)

ATTORNEYS FOR CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW

FEBRUARY ___, 2007
COLUMBIA, SOUTH CAROLINA.

Exhibit A

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05 VIN: 4USBT33554LS50859

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to $1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of $1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law law, the Parties shall be responsible for the payment of their own attorney's(') fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding, except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, unless otherwise provided by law

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer: _____ Dealer: _____

Customer: _____ Its: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
	)	
Heather Herron, et al	)	
	)	
PLAINTIFFS,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
CarMax Auto Superstores, Inc., et al	)	
	)	
DEFENDANTS.	)	

I, the undersigned, an attorney at the firm of Richardson, Plowden, Carpenter and Robinson, P. A., who are attorneys for Gene Reed Imports, Inc. along with the Rosen Law Firm, do hereby certify that I have served the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION** on Plaintiffs by causing it to be deposited in a United States Postal Service mailbox a copy of the same, postage prepaid, return address clearly indicated, addressed to the following on February 12, 2007:

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February 12, 2007
COLUMBIA, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	C.A. No.: 06 CP 02-1230
Heather Herron, et al.,	)	
	)	
Plaintiffs,	)	
	)	**SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANT CENTURY BMW'S MOTION TO COMPEL ARBITRATION**
vs.	)	
	)	
Dick Dyer & Associates, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

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CLERK OF COURT

SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS

Both parties previously submitted multiple memoranda regarding Defendant Century BMW's Motion to Compel Arbitration and the Court heard oral argument on the motion on November 30, 2007. In light of Plaintiff's submission of Christine Watts's affidavit, the Court permitted three depositions—of Christine Watts, Michael Watts, and a Century BMW 30(b)(6) witness—before ruling on the motion This limited discovery has concluded, and Century BMW now submits this second supplemental memorandum addressing the facts and circumstances the depositions revealed.

I. Michael and Christine Watts Are Sophisticated Consumers and Were Not Required to Sign the Arbitration Agreement.

Michael and Christine Watts brought a great deal of intelligence, experience, and sophistication to their transaction with Century BMW. Michael, Christine's father, is a fifty-two-year-old sales manager with extensive experience purchasing vehicles; in fact, he has purchased a dozen cars from dealerships in his lifetime. Michael Watts Dep. 16:1-21:2, Jan. 29, 2008 (Attached as Exhibit A). From this experience, he knows that he can negotiate the price of any vehicle, that there are many places from which he can purchase a vehicle, that he does not

have to buy additional product enhancements from the dealership, and that he can obtain financing from sources other than the dealership. *Id.* at 20, 22, 24, 32, 44.

Christine Watts is a twenty-six-year-old auditor with a bachelor's and master's degree in accounting. Christine Watts Dep. 9:10-14:2, Jan. 29, 2008 (Attached as Exhibit B). At the time of the transaction, Christine had interned at the renowned accounting firm of PricewaterhouseCoopers ("PWC")—where she was set to work upon graduation—and was on the verge of completing her master's degree. *Id.* at 11:4-13:4 As an auditor, Christine spends much of her time examining documents and working with numbers, and has been trained to review documents carefully. *Id.* at 60:11-61:7.

In the spring of 2005, Michael and Christine were looking for a car for Christine as a graduation present. *Id.* at 20:22-24. Although Christine was driving a fully operable Mitsubishi Montero, she wanted a luxury convertible. *Id.* at 60:1-10; Michael Dep. 24:4. Before visiting Century BMW, they researched vehicles for two months and unsuccessfully made an offer for a Ford Mustang at a different dealership. Christine Dep. 21:9-23:21; Michael Dep. 25:13-26:16.

This was not their first visit to Century BMW. Six months earlier, Christine test-drove a BMW 3 Series but left without making a purchase. Michael Dep. 28:11-29 10. They returned this second time to search for Christine's graduation gift and test-drove a BMW Z4 convertible. *Id.* at 29.11-31:19. Satisfied with the car, they left the dealership to deliberate on the Z4 purchase and check on financing with Michael's credit union. *Id.* at 31:20-24.

Michael's broad experience negotiating with dealerships then came into play. First, he obtained outside financing from his credit union. *Id.* at 38:6-18. Then, from the comfort of his home, he telephoned the saleswoman to engage in price negotiations; Christine did not participate in the negotiations. Michael Dep. 33:18-36:7; Christine Dep. 27:23-24, 30:25-31:2.

Michael had multiple phone calls with the saleswoman, hoping to pay no more than $32,000, which he had established as their bottom-line. Michael Dep. 36:10-38:5; Christine Dep. 30:25-32:19. In conducting these negotiations, Michael knew he could walk away at anytime, as he had done in the past, if any of the terms and conditions the dealership offered were not to his liking. Michael Dep. 36:19-24. Ultimately, they agreed on a bottom-line price of $32,000 that included any taxes, fees, and additional charges. Christine Dep. 33:10-12.

A few days later, Michael and Christine returned to Century BMW to go through the paperwork with an F&I manager. Michael Dep. 40:11-18; Christine Dep. 34:1-38:13.[1] As with the price negotiations, Michael did all of the talking while Christine served as a detached observer. Christine Dep. 39:10-14. Michael and Christine knew they could negotiate with the F&I manager and refused to purchase any of the additional products the manager offered. Michael Dep. 50:15-17.

The F&I manager did not overload Michael and Christine with many documents to sign. Michael testified that he recalled signing five or six documents, while Christine signed six documents. Michael Dep. 50:18-24; Christine Dep. 46:15-17. Moreover, there were only fourteen different documents handed to Michael and Christine during their meeting with the F&I manager. Bobby Bishop Dep. 65:14-15, 67:18-20, 68:3-4, 82:13-86:3, Jan. 30, 2008 (Attached as Exhibit C).

Nor did the F&I manager place any duress on Michael or Christine. The F&I manager did not prevent Michael and Christine from reading the documents and did not otherwise pressure them to sign anything. Michael Dep. 50:13-51:17, Christine Dep. 44:17-19. To the extent anyone was in a rush, it was Michael and Christine. Both explained they were "eager" to

[1] Phyllis Watts—Michael's wife and Christine's mother—accompanied them but was not present during the signing of documents. Christine Dep. 34:13-25.

leave the dealership and tried to keep the meeting as short as possible. Michael Dep. 50:1-14, 53:13-18; Christine Dep. 40:19-23, 46:18-22. Neither objected to, complained about, or questioned any of the documents given to them. Christine Dep. 46:18-47:7; Michael Dep. 54:13-55:4. Christine was particularly disassociated with the process, admitting she was eager to leave and did not object to signing the documents because she "just wanted the car." Christine Dep. 40:19-21, 46:18-47:7. She claims to have not read *any* of the six documents she signed and did not participate in the meeting with the F&I manager. *Id* at 43:16-22, 44.14-19.

As to the arbitration agreement, Michael and Christine agree that **no one ever stated that they were required to sign the arbitration agreement in order to purchase the car.** Christine Dep. 47:12-19; Michael Dep. 54:6-9. Nor did anyone prevent them from reading the arbitration agreement. Michael Dep. 53:21-55:4; Christine Dep. 44:17-19. Nevertheless, in their haste to leave the dealership, they did not ask questions about it, did not object to it, and allegedly failed to read it. Michael Dep. 53:15-55:4.

Indeed, they were fully capable of reading and understanding the arbitration agreement. Michael admits that the caption "ARBITRATION AGREEMENT" is easy to read, that the bullet points—highlighting certain provisions in all capital letters—are perfectly readable, and that the agreement itself is not difficult to read. *Id.* at 51:14-52:21. Nevertheless, despite their ability and opportunity to read the arbitration agreement, neither did so because they "wanted to get in and out as quickly as possible." *Id.* at 50:5-7.

II. The Testimony From the Depositions Contradicts Christine Watts's Supplemental Memorandum and Affidavit.

Christine Watts's supplemental memorandum opposing Century BMW's motion to compel arbitration, and her accompanying affidavit, misrepresent the facts surrounding the transaction and directly contradict the testimony from the three depositions.

In her memorandum, Christine self-servingly describes her $32,000 BMW Z4 convertible as a "necessity" because it is her primary source of transportation.[2] Her testimony, however, reveals that she was driving a perfectly operable Mitsubishi Montero before upgrading to the BMW. She admits that she could have continued driving the Montero and did not need to buy a luxury convertible. Christine Dep. 59:24-60:10. Both she and Michael admit there was no "necessity" to buy a two-seater German luxury convertible, with leather seats, rain sensor and auto headlight, heated front seats, and a hi-fi sound system. *See* Ex. D (Vehicle History Report listing features).

The memorandum's claims that Christine lacked the "experience necessary to make her aware of the implication for arbitration" and that the transaction was "between a twenty-three year old girl and a multi-million dollar corporation" are also misleading. Pl.'s Supp. Memo. at 6, 7 n.4. Both the memorandum and Christine's affidavit entirely omit Michael's integral presence during the transaction. In fact, Christine's level of sophistication is irrelevant because Michael conducted all of the price negotiations for the vehicle, obtained the financing for the vehicle, and led all of the discussions during the meeting with the F&I manager.

Moreover, Michael and Christine were hardly the uneducated, unsophisticated consumers unable to review and understand the arbitration agreement; Michael has a long history purchasing vehicles and Christine is a highly educated auditor. Indeed, Michael and Christine did nearly everything a leading consumer's group recommends that car buyers do when making a vehicle purchase, including (1) researching a variety of models, (2) test driving the vehicle, (3) negotiating by phone, (4) negotiating below the sticker price, (5) obtaining outside financing, (6)

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[2] Plaintiff Christine Watts's Supplemental Memo. in Opp'n to Century BMW's Mot. to Compel Arbitration ("Pl.'s Supp Memo.") at 6.

refusing to purchase additional features, and (7) selling the prior vehicle (Montero Mitsubishi) to an independent buyer rather than trading it in, Michael Dep. 57:5-9.[3]

Additionally, Christine's memorandum and affidavit are entirely misleading in their description of the circumstances surrounding the arbitration agreement. The memorandum contends that the arbitration agreement is difficult to read, Pl.'s Supp. Memo. at 7, but Michael admits that the heading—"**ARBITRATION AGREEMENT**"—and the agreement are perfectly readable. Michael Dep. 51:14-52:21. Moreover, neither says that they could not have understood the agreement had they read it.

In fact, any failure to comprehend the arbitration agreement is solely attributable to their own inattention. The F&I manager did nothing to prevent them from reading the agreement and put no undue pressure on them to sign it. Rather, Michael and Christine were in a hurry to leave and decided not to read the documents they signed.

Their testimony also contradicts Christine's memorandum and affidavit regarding the presentation of the arbitration agreement. Throughout her memorandum and affidavit, Christine alleges she was "required" to sign the arbitration agreement. Pl.'s Supp. Memo at 2, 7; Christine Watts Affid. at ¶ 4. She also claims the agreement was "hastily" presented and given on a "take it or leave it" basis. Pl.'s Supp. Memo. at 7; Christine Watts Affid. at ¶¶ 4-5. At their depositions, however, Michael and Christine acknowledged that the F&I manager never stated they were required to sign the arbitration agreement. Christine Dep. 47:16-19; Michael Dep. 54:6-9. And **Century BMW's policy is, and was, that if someone refuses to sign an arbitration agreement, the dealership still sells them the vehicle**. Bishop Dep. 22:24-23:10,

[3] *See generally* ConsumerReports.org on Yahoo! Autos, *10 common car-buying mistakes*, http.//autos.yahoo.com/consumerreports/article/common_car_buying_mistakes.html (last visited Feb. 14, 2008). Century BMW disagrees with some of what the article says, but notes that Michael seems to have followed most of the article's suggestions.

86:4-88:5. Additionally, neither Michael nor Christine testified that the F&I manager hastily presented the agreement to them since any rush to sign the paperwork was entirely self-imposed. Michael Dep. 50:1-14, 53:13-18; Christine Dep. 40:19-23, 46:18-22. Christine also decries in the memorandum that she had no voice in the formulation of the agreement, Pl.'s Supp. Memo. at 2, but she admits that she failed to examine *any* of the documents presented that day, including the arbitration agreement. Christine Dep. 43:20-22, 46:18-47:15.

Far from feeling pressure to sign additional documents, Michael and Christine exhibited no hesitation to decline many agreements offered by the F&I Manager. They refused at least ten different agreements, including rejecting any service contracts and any dealership financing. Michael Dep. 41:3-45:9; *See* Ex. E (Menu of Investment Enhancements). In fact, if they really thought the arbitration agreement was non-negotiable, then it would appear to be the only aspect of the entire transaction they viewed in that way because they negotiated nearly everything else.

Furthermore, Christine's testimony lacks credibility. Her statements often contradicted those of her father and the corporate representative, and occasionally defied common sense. To start, she conveniently forgot about not discussing the depositions with her father the Sunday night before the depositions (a conversation less than 48 hours prior to her deposition). *Compare* Michael Dep. 9:1-10:17 *with* Christine Dep. 7.19-23. As to the documents, Christine's testimony was filled with exaggerations and contradictions. She claims to have spent ten to fifteen minutes signing her name to documents and estimates it takes her an implausible *thirty seconds* to sign her name. Christine Dep. 43:11-25. Based on those exaggerated estimates, Christine would have signed between twenty and thirty documents. *Id.* at 44:3-12. She later confirmed, however, that she only signed six different documents while at the dealership, which

could not possibly have taken "ten to fifteen minutes" since she says she read none of them. *Id.* at 46:15-17, 43:20-22.

Her description of her interaction with the F&I manager is also dubious. She claims to have received a big packet full of documents that had little flags denoting where to sign. *Id.* at 51:13, 24-25. That claim directly contradicts her father, the corporate representative, and the record. Unlike Christine, Michael did not receive a large stack of documents. Michael Dep. 51:4-6. The corporate representative confirmed that the documents were presented one at a time—not in a large stack—and that the documents were not flagged. Bishop Dep. 11.9-17. He also confirmed that Christine and Michael received only fourteen different documents during their transaction. Bishop Dep. 82-86. Tellingly, under leading questioning from her attorney, Christine claims that she did not want to sign the transfer of title document, only signing it because she "thought [she] had to to get the car." Christine Dep. 49:2-3. Would she prefer that title to the vehicle had remained with Century BMW?

III. Unlike *Simpson*, Michael and Christine Did Not Lack a Meaningful Choice in Agreeing to Arbitrate.

The testimony from all three depositions confirms that Michael and Christine did not lack a meaningful choice when signing the arbitration agreement. To find a contract provision unconscionable, a court must first find an "absence of meaningful choice on the part of one party." *Simpson v. Myrtle Beach*, 373 S.C. 14, 25 (2007).[4] In *Simpson*, the court noted five circumstances that, when considered as a whole, demonstrated Simpson had no meaningful choice. First, it found that neither party disputed that the contact was an adhesion contract. *Id.* at

[4] Christine must also establish that the terms in the agreement are oppressive *Simpson v. Myrtle Beach*, 373 S.C. 14, 25 (2007). As explained in Century BMW's initial supplemental brief—and at oral argument—the Arbitration Agreement lacks any of what the South Carolina Supreme Court labeled oppressive terms in the *Simpson* arbitration clause. Century BMW Supp. Memo. at 6.

25-27. Second, it observed that the contract between Simpson and the dealer involved a necessity. *Id*, at 27. Third, it found that Simpson did "not possess the business judgment necessary to make her aware of the implications of the arbitration agreement." *Id.* Fourth, it noted that the contract "was 'hastily' presented for her signature." *Id.* Finally, it found the arbitration clause "inconspicuous," noting it was written entirely in "small print," on the back of the contract, and was "embedded in paragraph ten (10) of sixteen (16) total paragraphs." *Id.*

The testimony from the depositions confirms that the Watts transaction shares *none* of the five circumstances. First, all three depositions establish that the arbitration agreement was not an adhesion contract. An adhesion contract is "a standard form contract offered on a 'take-it-or-leave-it' basis," with non-negotiable terms. *Lackey v. Green Tree Fin. Corp*, 330 S.C. 388, 394 (S.C. Ct. App. 1998). To establish that a contact is one of adhesion, a party must demonstrate both that the terms are non-negotiable *and* that the contracting party is unwilling to waive enforcement in order to deal. *See Wingard v. Exxon Co.*, 819 F. Supp. 497, 503 (D.S.C. 1992); *see also Lackey*, 330 S.C. at 394.

Here, Michael and Christine have not established, and cannot establish, that the arbitration agreement was an adhesion contract. The Watts transaction was thoroughly negotiated as Michael and Christine declined multiple agreements with the dealership, haggled extensively over price, and obtained outside financing. Moreover, the arbitration agreement was *not* presented on a "take it or leave it basis." An offeree faced with an adhesion contract has two choices: "complete adherence or outright rejection." *Lackey*, 330 S.C. at 394. Here, Michael and Christine never faced such a choice. Despite Christine's affidavit to the contrary, all three depositions establish that the arbitration agreement was not required to complete the deal. Both Christine and Michael admit that no one ever told them they were required to sign the arbitration

agreement Furthermore, they point to no affirmative action whatsoever demonstrating that their signatures were required or establishing that Century BMW was unwilling to waive enforcement. Indeed, the corporate representative confirmed that Century BMW's policy is not to insist on the arbitration agreement if a customer refuses to sign it and that the dealership has in fact had customers not sign the arbitration agreement and still purchase a vehicle. Bishop Dep. 22:24-23:18, 86:4-88:5.

Second, the purchase of the Z4 BMW convertible was not a necessity. Christine had a working vehicle and did not need to buy a luxury convertible to get to and from work. Moreover, Christine and Michael were well aware that they had other options in purchasing a vehicle, having visited other dealerships in their search for this graduation gift.

Third, Michael and Christine are well-educated, savvy consumers with sufficient business judgment to be aware of the implications of the arbitration agreement. Despite plaintiffs' counsel's attempt to portray otherwise, the record demonstrates that Christine was not alone during her transaction but accompanied by her father, who had purchased nearly a dozen vehicles from other dealerships. Yet Michael's presence was not necessary because Christine is a highly educated auditor with a master's degree in accounting and a career founded upon the careful examination of documents. Still, Michael was no shrinking violet during the transaction, negotiating below the sticker price, refusing all additional product enhancements, and obtaining outside financing.

Fourth, both Michael and Christine admit that any haste in signing the documents came from them alone. They were in a rush to get out of the dealership "as quickly as possible" and the F&I manager put no pressure on them to sign the documents. Michael Dep. 50:2-14. To the

extent Michael and Christine were unaware of the implications of the arbitration agreement, they have solely themselves to blame; nothing prevented them from reading the agreement.

Finally, as Christine's supplemental memorandum does not contest,[5] the arbitration agreement is conspicuous. It is an easily identifiable, easy-to-read, free-standing document that contains portions bolded, underlined, and in all capital letters. Michael admits that the document is easily identifiable as an arbitration agreement, that the bullet points highlighting that "YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US" are clear, and that it would not have been difficult to read the entire agreement. *Id* at 51:14-52:21. Thus, had Michael and Christine taken the time to read the agreement, they would have been aware of its consequences.

The practical consequences of invalidating this arbitration agreement are particularly troubling. Allowing Michael and Christine to avoid enforcement of the agreement because they decided not to read it would create the perverse incentive to be inattentive when signing a contract. A party who claims to have not read an agreement he signed could later choose not to enforce it under the guise of being naïve, while a party who read the agreement would be bound by it. What other aspects of the transaction could Michael and Christine contest under this theory—the purchase of the vehicle itself? After all, Christine claims to have not read *any* of the documents she signed. Christine Dep. 43:20-22. Parties should not be allowed to pick and choose after the fact what provisions they like and do not like simply because they chose not to read what they signed. Moreover, their position directly contradicts long-standing South Carolina precedent, which recognizes that every contracting party has a duty to read a contract

[5] *See* Pl 's Supp. Memo.

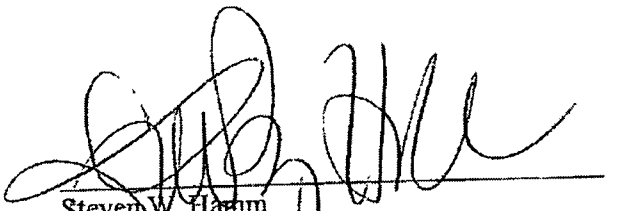
and learn its contents before signing it. *See, e.g., Burwell v. S.C. Nat'l Bank*, 288 S.C. 34 (1986), *Stanley Smith & Sons v. D.M.R. Inc.*, 307 S.C. 413 (S.C. Ct. App. 1992).

This bedrock principle of contract law is no less valid in the context of arbitration agreements. In *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531 (2001), the South Carolina Supreme Court found an arbitration clause was not unconscionable. The plaintiffs based their claim, in part, on the fact that they were not advised that the clause was included in the contract. *Id.* at 541. The court rejected plaintiffs' argument, holding that "a person who can read is bound to read an agreement before signing it." *Id.* The court further noted that, consistent with federal law, arbitration agreements "will not be set aside on the ground the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it." *Id.* at 541 n.6. Thus, Christine's argument—that the arbitration agreement is unenforceable because the dealership supposedly never discussed or explained it—is precluded by South Carolina precedent. Because Michael and Christine were not prevented from reading the arbitration agreement—and were fully capable of reading it—they are deemed to know, and are bound by, its terms

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Christine Watts's claims against it in accordance with the terms of the arbitration agreement and, accordingly, dismiss those claims currently pending in this Court.

Respectfully submitted,



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Attorneys for Century BMW

February 18, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
	)	
Heather Herron et al	)	**CERTIFICATE OF SERVICE**
PLAINTIFFS,	)	
	)	
v.	)	
	)	
Dick Dyer & Associates, et al,	)	
	)	
DEFENDANTS.	)	

I, the undersigned, an attorney at the firm of Richardson, Plowden, Carpenter and Robinson, P. A., attorneys for DEFENDANT CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW ("Century BMW"), do hereby certify that I have served the foregoing SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS on Plaintiffs by causing it to be deposited in a United States Postal Service mailbox a copy of the same, postage prepaid, return address clearly indicated, addressed to the following:

COPY
ORIGINAL FILED
FEB 2 1 2008
8:30 Am
AIKEN COUNTY
CLERK OF COURT

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February 18, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Plaintiffs,

Case No.
2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC , et al,

Defendants.

DEPOSITION OF: MICHAEL WATTS

DATE: January 29, 2008

TIME: 9:08 a.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

REPORTED BY: KATHY P. TAYLOR,
Registered Professional Reporter

Computer-Aided Transcription By.

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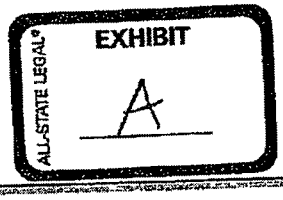

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ALSO PRESENT,
MELANIE BLEASE, Paralegal

(Index at rear of transcript)

STIPULATION

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * *

MICHAEL WATTS,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BLACK:

Q. Good morning, Mr. Watts. Could you state your name and address for the record.

A. Michael M. Watts. 210 Providence Square, Greenville, South Carolina 29615.

Q. And, Mr. Watts, my name is Dennis Black. I'm from a law firm called Williams & Connolly. And do you understand I represent Century BMW in this case?

A. Correct.

Q. Okay. The other counsel at the table, just so you know, also represent others, either Century

BMW or other defendants in the case. And you have your counsel here?

A. Yes.

Q. Okay. Have you ever had your deposition taken before?

A. One time.

Q. And when was that?

A. About 20 years ago.

Q. And was that in a business dispute, a personal dispute?

A. It was a workers' comp dispute.

Q. Just to give you a little refresher course after 20 years, I'll be asking a series of questions today. Hopefully you'll be answering them. If you can try to answer the questions aloud and with words, because the court reporter can't take down nods and shakes and shrugs.

A. Okay.

Q. Is that acceptable?

A. It's -- yes.

Q. And try to avoid saying uh-huh or huh-uh in response to my questions, because they look very similar on the transcript, and it will be hard to decipher later. Is that --

A. Yes, sir.

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Q. If you don't understand any of my questions, please ask me to clarify or explain any problem you have with the question. And if you have a problem or need clarification, please direct your request for clarification to me and not to your counsel.
A. Yes, sir.
Q. Is that okay?
A. (Witness nods head.)
Q. And under the rules, just so you know, you're not allowed to talk to your counsel about this deposition or the case from now until when we conclude the deposition, even if we take a break. Is that acceptable?
A. Yes, sir.
Q. And if -- this isn't an endurance contest, so if at any time you need to take a break for any reason, feel free to ask, and we'll take a break.
A. Yes, sir.
Q. Okay. What did you do to prepare for your deposition today?
A. I met with counsel on Sunday night. I got the time and place where we were going to meet, and we briefly looked at the paperwork.
Q. And what -- when you say the paperwork,

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what paperwork was that?
A. The sale paperwork. The information for the bill of sale when we bought the car.
Q. How many documents would you say you looked at?
A. 20 Approximately 20.
Q. And without getting into the substance of what was said, did you have a chance to discuss those documents with your counsel?
A. Briefly.
Q. Had you seen all the documents you were shown before?
A. No, sir.
Q. Did it include -- I sent over last week to your counsel a -- the dealership's file on the transaction. Were those the documents you reviewed?
A. Yes, sir.
Q. Okay. And did you review any of them outside the presence of your counsel?
A. No, sir.
Q. Okay. So to the extent you had discussions about the documents, it was only with your counsel?
A. Yes, sir.
Q. How long was your meeting on Sunday night with your counsel?

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A. Approximately 30, 35 minutes.
Q. And where did it take place?
A. Took place at my wife's office. Land America.
Q. And there's Christine Watts that's also a plaintiff in this case. Is that your daughter?
A. Yes, sir.
Q. And have you talked with her about the case or your transaction in preparation for the deposition?
A. Yes, sir.
Q. Uh-huh. And when was that?
A. Sunday night when we met.
Q. Okay. Was -- was she present for your meeting with counsel?
A. Yes, sir.
Q. Was anyone else present?
A. Melanie Blease.
Q. And is that the young lady sitting over here?
A. Yes, sir.
Q. Is she also a plaintiff in the case --
A. No, sir.
Q. -- do you know? No? The -- anyone else?
A No, sir.

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Q. Did you have any discussions with your daughter, Christine Watts, outside the presence of your counsel about the transaction or this case?
A. Yes, sir.
Q. Oh, okay. And when was that?
A. Sunday night, on the way home.
Q. All right. And what did you discuss with her on the way home?
A. We discussed primarily the taking of a deposition, what it involved and, you know, you would be asking me questions. And I was trying to rehash the deposition process.
Q. Uh-huh.
A. And --
Q. And has Christine had her deposition taken before?
A. No, sir.
Q. Did you dis- -- rehash any of the details of the negotiation of the car deal or the transaction at Century BMW in this conversation outside the presence of your counsel?
A. Yes, sir.
Q. And tell me about that. What was said on that subject?
A. We discussed -- I could not remember what

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we bought the car for, the purchase of the car, because it was primarily for her as a graduation present. And all the steps.
Q. And by all the steps, you mean all the steps --
A. All the steps in the process, trying to review the purchase of the car.
Q. And did the two of you refresh each other's recollections as to what went on?
A. She told me how much money we paid for the car. We were talk- -- I couldn't even remember the purchase price.
Q. Uh-huh. Did she refresh your recollection about any other details of the transaction?
A. No. It was pretty much the conversation was towards the purchase price and how we financed the car.
Q. Was there anything that she didn't remember that you were able to refresh her recollection about?
A. I'm thinking of the conversation, because it was brief. She just mentioned that on the last page, the -- the commission statement on the car, you know, how much profit was made on the car.
Q. And I take it that was something you didn't

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know until --
A. I had no idea. That's not my business.
Q. And the dealership didn't provide you with that information at the time of the transaction?
A. No, sir.
Q. Okay. And what did she have to say on that subject?
A. That was -- they did pretty good.
Q. Did you have any other discussions about the transaction or the case in this ride home with your daughter on Sunday night?
A. The only other thing that I can remember was that I told her I couldn't remember some of the paperwork that we had looked at.
Q. And that was some of the paperwork you had had the opportunity to discuss with counsel earlier in the evening?
A. Yes, sir.
Q. Okay. And since that drive home Sunday night, have you talked to her any further about the case or the transaction?
A. The only thing that we talked about was last night, that we both were nervous about the deposition.
Q No need to be nervous.

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A. Yeah.
Q. Okay. And prior to Sunday night, within the last couple of months, have you had any discussions with your daughter about the case or the deposition?
A. We have not really talked about it.
Q. Does she live at the same address as you?
A. No, sir.
Q. I'd like to talk a little about your educational background. Could you describe any education you've had since high school?
A. I graduated the University of South Carolina with a major in journalism.
Q. And what year did you graduate?
A. '78.
Q. And that's the University of South Carolina in Columbia?
A. Columbia.
Q. And was that a bachelor's degree?
A. Yes, sir.
Q. And since getting your bachelor's degree in 1978, have you done any further education?
A. No, sir.
Q. Could you -- starting with when you graduated from University of South Carolina, could

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you just -- what was your first job after college?
A. First job was working for Wallace Business Forms as a salesman. Oh, I worked for J.M. Fields as an appliance manager prior to Wallace Business Forms, while I was looking for a full-time job.
Q. Okay. And J.M. Fields is what type of business?
A. It was a retail store, similar to like a Sears. They're out of business now.
Q. Okay. And your job was with respect to appliances?
A. I was selling appliances.
Q. Okay. And was that selling appliances to consumers rather than businesses?
A. Consumers
Q. Did you also sell like extended warranties and the like?
A. No, sir.
Q. And then you went to work for Wallace Business Forms?
A. Correct.
Q. And what was your position there?
A. Sales rep.
Q. And what was the business of Wallace Business Forms?

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A. They designed and sold computer forms to companies.
Q. And by computer forms, that would be what type of forms?
A. Continuous custom-made business forms, such as invoices.
Q. And how long did you remain in the position as a sales rep for them?
A. Approximately two years.
Q. So up to about 1980?
A. Yes, sir
Q. And what was your next job position?
A I worked for Spartan Express. They're a transportation company. As a sales rep.
Q. And what would you have been selling?
A. Transportation services.
Q. Is that like trucking or --
A. Trucking.
Q. And how long did you remain in that position?
A. Approximately two, two and a half years.
Q. So we're up to about 1983ish?
A. Give or take, yes, sir.
Q. And what was your next job position?
A. I went to work for AAA Cooper

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Transportation, trucking company, sales rep.
Q. And were you again selling trucking services?
A. Yes, sir.
Q. And how long were you in that position?
A. I was in that position for four to five years
Q. So we're up to 1988ish?
A. Yeah.
Q. And then what did you do?
A I moved to Columbia with AAA Cooper. I was still working for AAA Cooper.
Q. Oh, okay. And when you moved to Columbia, did you take on a different position?
A. I was primarily in sales for the first year. It was a new territory.
Q And you said for the first year. Did you -- did you change positions after a year?
A. They opened a terminal, and I became terminal manager.
Q. And that was about 1989?
A. Yes, sir. Approximately, you know.
Q. What were your job responsibilities as terminal manager?
A. To hire employees.

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Q. Did you also manage them --
A. I man- --
Q. -- once you hired them?
A. I managed the employees. I was responsible for the entire operation.
Q. And how many employees were you responsible for at the terminal?
A. 45.
Q. And how long did you remain in the position as terminal manager?
A. Until nineteen-ninety- -- 1999. Approximately.
Q. And what did you -- what position did you take on in 1999?
A. Sales manager for environmental accessories.
Q. And what type of environmental accessories are you referring to?
A. Environmental accessories, we sold -- we were a broker, and we sold services to industry for handling their non-haz and hazardous materials.
Q. And how long were you in that position?
A. To 2004. Approximately.
Q. Okay. And what was your next position?
A. I went to work for W.W. Grainger.

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Q. And what business are they in?
A. Industrial sales.
Q. And what was your position with W.W. Grainger?
A. Government sales.
Q. And what would you have been selling?
A. Nuts, bolts. Industrial maintenance supplies.
Q. And I thought I had heard you say before that you still work for AAA Cooper today.
A. No, sir.
Q. Okay. I misheard. How long were you with -- or are you still with W.W. Grainger?
A. No, sir
Q. Okay. What was your next position?
A. Next position, I left W.W. Grainger, and I presently work for Bilt Rite Corporation.
Q. Bilt Rite?
A. Bilt Rite. Yeah.
Q. And how do you spell Bilt Rite?
A. B-I-L-T, R-I-T-E.
Q. Two words?
A. Two words.
Q. And what was your first position with Bilt Rite?

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A. I'm a sales rep, and manager in Greenville.
Q. And what is the business of Bilt Rite?
A. I call on contractors and sell garage doors.
Q. And is that garage doors for residential?
A. Residential.
Q. And that's your position today?
A. Correct.
Q. Aside from working for Bilt Rite, do you do any other work?
A. I teach fly fishing
Q. And where do you teach that?
A. Clemson University.
Q. And how long have you done that?
A. Two weeks.
Q. Aside from your recent two-week stint teaching fly fishing, have you ever taught any courses before?
A. Not besides fly fishing.
Q. Okay But you've taught fly fishing before?
A. I've taught fly fishing classes
Q. And what department is fly fishing in at Clemson?
A. Leisure Skills.

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Q. And I think you said you're married?
A. Yes, sir.
Q. And your wife's name is Phyllis?
A. Correct.
Q. And is she employed?
A. She is employed with Land America.
Q And what does she do?
A. She's a branch manager.
Q. And what business is Land America in?
A. Title insurance.
Q. How did you first come to meet the lawyers who are representing you in this case?
A. Melanie Blease was my daughter's roommate at the College of Charleston.
Q. And Ms. Blease is, I understand, a paralegal for the Plaintiff's law firm?
A. Yes, sir.
Q. So did your introduction to the lawyers come through your daughter?
A. Yes, sir.
Q. And as you understand it, your daughter's introduction to the lawyers came through Ms. Blease?
A. Correct.
Q. When was the first time you purchased an automobile?

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A. In high school.
Q. And how many automobiles have you purchased in your life?
A. Approximately 10, 12.
Q. And have those all been from automobile dealerships?
A. Yes.
Q. And in this 10 to 12 car purchases you've made in your life, did you negotiate the price in each of them?
A. Yes, sir.
Q. And did you always realize when you were buying the car that, you know, the price is negotiable at a car dealership?
A. I try to make it negotiable.
Q. Have you ever been -- have you ever had an automobile transaction which the dealership refused to negotiate on the price?
A. They refused up to a point.
Q. In other words, the negotiations reached a point where they said, we won't take a penny less.
A. Correct.
Q. But up to that point, they negotiated.
A. Correct
Q. And then you had the choice as to whether

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you were going to buy the car or not.
A. Yes, sir.
Q. In connection with -- putting aside your transaction at Century BMW, is the transaction that brings us here today the only time you've ever had a deal with Century BMW?
A Yes, sir.
Q. Okay. Prior to Century BMW, had you ever signed an arbitration agreement in connection with a car purchase?
A. I do not remember.
Q. Did you, also, in the relatively recent past, buy a car at Toyota of Greenville?
A. Yes, sir
Q. And do you know if there was an arbitration agreement included with that transaction?
A. No, sir.
Q. You don't know or --
A. I don't remember. I --
Q. Okay. Prior to your transaction at Century BMW, had you ever signed an arbitration agreement in any context?
A. I don't believe I have
Q. Have any of your employers ever asked you to sign an arbitration agreement?

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A. I don't remember. I don't think so.
Q. Okay. When you were the terminal manager for -- was it AAA Cooper?
A. Yes, sir.
Q. -- did they have arbitration agreements with their employees; do you know?
A. No, sir.
Q. In any of your various sales representative jobs -- where I assume you entered into contracts with people to sell them products; is that --
A. Not -- there were very few contracts. It was more on a purchase order basis.
Q. Were there ever arbitration agreements involved in those deals, to your knowledge?
A. No, sir.
Q. Have you ever been asked to sign an arbitration agreement and refused to do so?
A. No, sir.
Q. Do you have an understanding of what arbitration is?
A. No, sir.
Q. Do you understand it's another way of resolving a dispute other than going to court?
A. I've kind of got -- I've got that idea, yes, sir.

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Q. But beyond that very basic idea, you don't know the details of it?
A. I've never been involved, no, sir.
Q. So I take it you have no either good or bad impressions of the process
A. No, sir.
Q. I think you just answered this, but have you ever participated in an arbitration, either as a witness or a party?
A. No, sir.
Q. I think you testified the vehicle you purchased at Century BMW was a graduation present for your daughter?
A. Yes, sir.
Q. To the extent there was a search for a vehicle to purchase for your daughter, who conducted it primarily; was it you or her?
A. She did.
Q. And what, briefly, do you understand she did in that process?
A. Looked on the internet, told her friends, asked her friends, and just looked at body styles in the internet.
Q. Were you specifically looking for a used vehicle?

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A. No, sir.
Q. Were you specifically looking in a certain price range?
A. She wanted a convertible.
Q. And did you pretty much leave the search for the convertible to her?
A. Yes, sir.
Q. Okay. And did you understand in the market for used vehicles, there are a number of different places you can buy a used vehicle from?
A. Yes, sir.
Q. You understand that you don't even have to go to a car dealership; you can buy it from a private individual?
A. Correct.
Q. And there are ads in the newspaper you can look to for vehicles?
A. Yes, sir.
Q. There are internet sites, like Craig's List and others, that -- where people post cars they're selling?
A. Yes, sir
Q. Specialized publications like -- in D.C., it's called Auto Trader, but where they have nothing but car ads in them?

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A. Yes, sir.
Q. You can also go to new car dealerships.
A. Yes, sir.
Q. And I take it there are a number of new car dealerships in the Greenville area?
A. Yes, sir.
Q. So you weren't limited to going to Century BMW by any --
A. No, sir.
Q. Also, are you familiar with used car dealerships like CarMax?
A. Yes, sir.
Q. And do you know where -- did you go to any other dealerships in the search for a graduation present?
A. Reluctantly.
Q. Okay. How many dealerships did you visit?
A. Two.
Q. And is that two in addition to Century BMW or two --
A. Yes.
Q. Okay. What were the other two?
A. Fairway Ford and CarMax.
Q. And did you do anything other than look at cars at either of those dealerships?

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A. We made an offer.
Q. At both?
A. No, sir. At Fairway Ford.
Q. And is Fairway Ford here in the Greenville area?
A. Yes, sir
Q. And do you remember what type of vehicle you made an offer on?
A. Ford Mustang.
Q. I take it that it was a convertible?
A. It was a convertible.
Q. And did you engage in price negotiation back and forth?
A. Yes, sir.
Q. And I take it you didn't buy the car.
A. No, sir.
Q. And why was that?
A. We had -- I'm going -- we had -- I had talked to a gentleman at a Greenwood Ford dealership first on a car, told him what my daughter was looking for. And I do not remember how I engaged in conversation with him. And he found one, and he was negot- -- we were negotiating price. And my daughter had gone by Fairway Ford and driven the car. And they came up with a less -- a cheaper

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price, the dealership in Greenwood, than we could have bought it at Fairway Ford. And then when they found out my daughter had driven the car, they wouldn't sell it to me, so I walked.
Q. They said --
A. It --
Q Okay. You engaged in price negotiations with the Greenwood dealership?
A. Yes, sir.
Q. And when they found out you had test driven a car at a different dealership, they wouldn't sell you a vehicle at their dealership; is that --
A. Pretty much, in a nutshell.
Q. Did they give you a reason for that?
A. Pretty -- they were trying to protect the other dealership, Fairway Ford.
Q. Did they co-own or --
A. I don't know. I -- you know, I walked.
Q. Okay
A. I didn't get into any of the specifics. I just -- I left.
Q. And did you -- had you engaged in any price negotiations at Fairway Ford?
A. I hadn't. I --
Q. So how did you know the deal was cheaper at

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the Greenwood dealership?
A. I went on the internet and was just looking at cars. And naturally, I got tagged from the dealership in Greenwood when -- in my search.
Q. Okay. So you gave like contact information, and they called you?
A. Yes, sir.
Q. How long did you spend doing research on the internet?
A. Very little.
Q. Had you ever been to Century BMW before you bought the car?
A. We had test driven a car there.
Q. And was that in connection with the same search, or was it a prior vehicle?
A. No, sir, it was a prior vehicle.
Q. Okay. And when was that?
A. Six months or a year prior to buying the vehicle.
Q. So was that in connection with the search for the car you ended up buying at Toyota of Greenville?
A. No, sir.
Q. For whom were you looking for a car when you test drove the car at Century BMW six months

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ago?
A. Nobody. My daughter wanted to test drive the four-door convertible, so we did.
Q. Did you engage in any price negotiations the six months earlier?
A. No, sir.
Q. And was that a new or used vehicle she --
A. It was --
Q. -- wanted to test drive?
A. It was new.
Q. When you came to Century BMW in connection with the purchase of the 2004 Z4, had your daughter already been there?
A. No, sir.
Q. Did you come together?
A. Yes, sir.
Q. Okay. And when you came, did you already have a car in mind?
A. No, sir.
Q. Once you got to the dealership, did you walk around the lot and look at a lot of different cars?
A. Yes, sir.
Q. Okay. Tell me about that. How many cars did you look at?

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A. I don't remember. We didn't test drive -- I don't remember if we test drove any besides the Z4.
Q. And did you walk around the lot on your own, or were you accompanied by someone else other than your daughter?
A. We were accompanied by a salesperson.
Q. Okay. Was that a male or a female?
A. Female.
Q. Do you remember her name?
A. No, sir.
Q. And did she describe the various cars to you?
A. Yes, sir.
Q. Did you like her?
A. She was nice.
Q. Okay So I take it she didn't put undue pressure on you as you were touring the lot?
A. No, sir.
Q. Okay. How did you come to -- I think you said you test drove the Z4.
A. Correct.
Q. Did you test drive it, or your daughter, or both?
A. We both test drove it.

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Q. And did the salesperson accompany you?
A. I think she -- if I -- I think she accompanied my daughter, and I think my daughter and I drove it.
Q. After test driving the vehicle, did you determine you wanted to buy it?
A. I let my daughter make the decision.
Q. Okay. Did she express an interest in purchasing the car?
A. Yes, sir.
Q. Okay. Did she like the car?
A. Yes, sir.
Q. And at that point, did you engage in any price negotiations with anyone at the dealership?
A. Not right then. We went back and talked about it.
Q. Okay. So you test drove the car and decided you liked it, and left.
A. Correct.
Q. Okay. And why did you leave rather than stick around and negotiate the purchase right then?
A. We wanted to think about it, talk about it, and I wanted to call the credit union and check on financing.
Q. And how long after you test drove the car

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was it before you returned to negotiate the deal?
A. Probably -- I think -- I can't remember. It was within a day.
Q. Were you aware that the dealership would likely offer you financing on the vehicle?
A. Yes, sir.
Q. But you preferred to finance it elsewhere?
A. Yes, sir.
Q. So I take it you understood you didn't have to enter into a financing agreement with the car dealership in order to purchase the car.
A. Yes, sir.
Q. Is it your general practice to finance car purchases through your own credit union --
A. Yes, sir.
Q. -- rather than the dealership?
A. Yes, sir.
Q. Have you ever financed the terms of a -- have you ever financed a car through the car dealership?
A. Yes, sir.
Q. And did you engage in negotiations on the terms of the financing?
A. No, sir.
Q. You realized you were free to ask for a

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lower interest rate than what they offered you, I take it.
A. I figured they would offer me the lowest. I didn't know that their finance rate would be negotiable.
Q. But in any event, you determined you were going to get financing away from Century BMW for this transaction.
A. Right.
Q. When you came back to the dealership to negotiate the purchase, who did you meet with?
A. The saleslady.
Q. And was it the same saleslady you dealt with previously?
A. Yes, sir.
Q. And when you came back, did you come back alone or with your daughter?
A. We negotiated via telephone.
Q. Okay. So you didn't come into the dealership?
A. I did not come -- I called, and we negotiated over the telephone.
Q. Okay.
A. And then once the price was agreed upon, we went from there.

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Q. And is the reason you dealt with them by phone, was it because you felt more comfortable being at home rather than being at the dealership with the employees?
A. You know, I don't know why we did it from the house.
Q. Who was on the phone when you were negotiating the price?
A. The saleslady and I.
Q. Okay Was Christine on an extension, or was it just you and the salesperson?
A. It was just me and the salesperson.
Q. Okay. Who called --
A. Christine was in the room.
Q. Okay. So she may have overheard -- I take it the salesperson wasn't on a speakerphone in your house.
A. No, sir.
Q. Okay. So Christine may have overheard your side of the conversation, but she wouldn't have heard the other side?
A. Correct.
Q. Okay. Who initiated the phone call?
A. I did.
Q. Okay. And did you ask to speak to the

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saleslady?
A. Yes, sir.
Q. And did -- when you called, did you tell her you were interested in getting the Z4?
A. Yes, sir.
Q. And did you make an offer on the vehicle?
A. Yes, sir.
Q. Had there been a -- any sort of price on the car?
A. Yes. sir. I don't remember what it was.
Q. Okay. Do you remember how it was posted on the car? Was it written in shoe polish, or was it on some sort of sticker?
A. I don't remember.
Q. Okay. And had you discussed that price at all with the salesperson when you were back at the dealership?
A. No, sir.
Q. So you called -- I think her name is Elizabeth Courtney; does that ring a bell?
A. Sounds familiar.
Q. Well, whoever it was, you called --
A. Yes.
Q. -- the salesperson, and you made an initial offer.

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A. Correct.
Q. And what did she say? Do you remember what your initial offer was?
A. No, sir.
Q. Was it, I take it, less than you ended up paying?
A. More than likely.
Q. But you don't recall?
A. I do not remember.
Q. Okay. And did you have -- when you made the call, did you have a bottom-line figure in mind that you wouldn't pay more than?
A. Yes, sir.
Q. Do you remember what that was?
A. I'm feeling my brain. 30 -- it was 31, 32, somewhere right in there.
Q. Okay.
A. I do not remember exactly.
Q. And you knew -- you knew that if the dealership, for whatever reason, didn't offer terms that you were comfortable with, you could hang up the phone, and you weren't under any obligation to purchase the vehicle from them; is that fair?
A. That's fair.
Q. Okay. And that would include terms other

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than the price, such as if they refused to offer you a warranty on the car, you could hang up the phone and not have to deal with them; is that fair?
A. Yes, sir.
Q. Okay. Do you recall what Ms. Courtney's response was to your offer?
A. There was negotiation. I don't remember the interaction.
Q. Was it all in one phone call or multiple phone calls?
A. No, sir, there were multiple phone calls.
Q. Okay. After you made your offer, did she say, I'll have to get back with you and call you back?
A. All I remember is there were multiple phone calls back and forth.
Q. Okay. And did all of this take place in one day?
A. Yes, sir.
Q. Okay. Do you generally recall over what time period, how many hours or --
A. It was late afternoon.
Q. Was it a weekend?
A. It was a Friday afternoon.
Q. And did you talk with anyone other than

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Ms. Courtney?
A. No, sir.
Q. And eventually in this back and forth phone calls, did you reach an agreement on price?
A. Yes, sir.
Q. And then did you come into the dealership to finalize the paperwork?
A. After I did my credit ap and got my financing in order.
Q. From the credit union?
A. Correct.
Q. So did you come into the dealership with a cashier's check from the credit union?
A. I came in with some paperwork that they needed to fill out, and the credit union verified the funds would be sent to them.
Q. The credit union --
A. Verified the funds would be sent.
Q. So you didn't have a check?
A. I did not have a check.
Q. And I assume you signed a promissory note or financing agreement with the credit union?
A. Yes, sir.
Q. Do you maintain -- still have a copy of that?

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A. Probably so.
Q. Are you still making payments on it?
A. She is, yes, sir.
Q. So your daughter is making the payments?
A. Yes, sir.
Q. Who was the -- were you the borrower on the financing agreement, or were both of you, or how was that arranged?
A. She co-signed with me.
Q. Okay. Do you recall whether -- did you enter into any other agreements with the credit union? Did they offer you any sort of service agreement on the car or anything like that?
A. No, sir.
Q. Did the financing agreement that you signed with the credit union contain any arbitration clause?
A. I do not know.
Q. Did you check with the dealership as to whether they could give you a better interest rate than the credit union was giving you?
A. I like my credit union, and past experience, their rates have always been very, very competitive.
Q. When you came into the dealership with your

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paperwork from the credit union, did you engage in any further negotiations with Ms. Courtney, or had that been resolved at that point?
A. It had been resolved, to the best of my knowledge.
Q. And was your daughter with you?
A. Yes, sir.
Q. And was this -- how many days after the back and forth on the phone was this, or was it the same day?
A. I think we came in like Monday, Tuesday of the following week. I can't remember exactly.
Q. And do you recall whether -- how many dealership employees did you deal with when you came into the dealership on the following Monday or Tuesday; do you recall?
A. One. There was the finance and insurance guy.
Q. Okay. Did you -- was Ms. Courtney there?
A. I don't remember.
Q. Okay. So you -- as best you recall, the -- you went back and dealt with the F and I manager?
A. Yes, sir.
Q. And was that a male or a female?
A. Male.

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Q. Do you remember his name?
A. No, sir.
Q. Did that gentleman attempt to sell you any further products beyond the car?
A. Yes, sir.
Q. Did he attempt to sell you a number of products beyond the car?
A. I think so.
Q. Let me show you a document I'll have marked as Michael Watts Exhibit 1. It's actually a collection of documents.
(Defendant's Exhibit 1, Dealership transaction documents, was marked for identification.)
BY MR. BLACK:
Q. And Watts Exhibit 1 is Bates Numbered CBM 501 through 45. And if you could thumb through that exhibit, Mr. Watts, can you confirm that those are the documents you were shown Sunday night?
A. Yes, sir.
Q. If you could turn to the second page of the Exhibit, which is CBM-00002. Five 0's. Do you see -- and this is a document entitled Century BMW Menu of Investment Enhancements. Do you see that?
A. Yes.

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Q. And is that your signature down at the bottom right-hand corner?
A. Yes, sir.
Q. And were you shown this document by the F and I manager?
A. Yes, sir.
Q. Does the name Corey James ring a bell as to the name of the F and I manager?
A. I don't remember, sir.
Q. And did Mr. James go through this document with you?
A. I don't remember.
Q Do you -- you said you recalled him trying to sell you some products. Do you recall him trying to sell you a service contract/extended warranty?
A. We wanted that, yes, sir.
Q. You wanted an extended warranty?
A. Yes, sir.
Q. Did you purchase one?
A. Yes, sir.
Q. Did you purchase it from the dealership?
A. Yes, sir.
Q. Okay. You sure?
A. I thought we did.
Q. If you turn to the next page, you see the

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car was still covered by the BMW warranty?
A. We bought -- excuse me. We bought the extended warranty after the car was -- came out of warranty. I knew we had an extended warranty.
Q. Okay.
A. I apologize there.
Q. So in the -- when Mr. James or the F and I manager went through the products with you, you didn't buy an extended warranty on the day you purchased the car?
A. Correct.
Q. But you did buy an extended warranty sometime thereafter.
A. Yes, sir
Q. And from -- did you buy it from the dealership?
A. Yes, sir.
Q. Okay. But at the time of your sale, you turned him down on buying it.
A. Yes, sir.
Q. Okay. So I take it you knew it wasn't a requirement of purchasing a vehicle at Century BMW that you enter into a service agreement with the dealership.
A. Correct.

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Q. Did he also try and sell you this tire and wheel guaranty that's referenced on the form?
A. That's the one I remember.
Q. Okay.
A. Yes, sir.
Q. And you didn't purchase that?
A. No.
Q. Okay. Did he try and sell you this upgraded maintenance agreement referenced here in the middle column, the top?
A. I don't think -- the upgraded maintenance agreement, he discussed it, and it's the one we came back and bought later.
Q. Okay. And I notice here that someone has scratched through the 1695 and written 1395 by hand. Do you see that?
A. Yes, sir.
Q. And in trying to convince you to purchase this item, did he offer to lower the price from what was on the menu?
A. He must have.
Q. So I take it you understood that these various items, the price was negotiable on them?
A. No, sir, not really.
Q. But you did understand that it wasn't a

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requirement of purchasing a vehicle that you enter into any of these agreements referenced on the form
A. Yes, sir.
Q. And down at the bottom of the page, is that your handwriting that says, declined coverage, or is that the F and I manager's?
A. That's the F and I manager.
Q. And you signed next to that?
A. Yes, sir.
Q. Do you recall how long after you purchased the car you came in to buy the service agreement?
A. It was before the 50,000-mile warranty ran out.
Q. So it was some number of months after you purchased the car?
A. A good number of months, yes, sir.
Q. How long do you recall him pitching these products to you for?
A. I can't remember how long.
MR. BLACK: Can we take a break?
MR. THOMAS: Yeah, I was about to ask.
(A recess transpired.)
BY MR. BLACK:
Q. You mentioned that your daughter was roommates with Ms. Blease. That was in college?

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A. Yes, sir.
Q. And did your daughter graduate from college in 2005?
A. Christy graduated in 2004, I believe.
Q. Okay. So it was the year -- it was a year after she graduated that you purchased the car?
A. She graduated -- she finished -- she stayed down there and finished her master's, so maybe it was 2005.
Q. Okay. And had she been rooming with Ms. Blease up until she got her master's degree?
A. Yes, sir.
Q. Was she --
A. Up to a point. She -- I don't exactly remember. I think her last year, she lived by herself.
Q. So as you understood it, she had been a roommate of Ms. Blease up to sometime in -- when did she stop being Ms. Blease's roommate, as you understand it?
A. Christy had roommates, and the biggest thing I remember is having to move her all the time. Okay? I think Christy roomed with Melanie Blease 2003, 2002, somewhere like that.
Q. And did they remain friends after they

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stopped being roommates?
A. Yes.
Q. And are they still friends?
A. As far as I know, yes.
Q. And do you know if Ms. Blease -- do you know when she graduated, if she's graduated?
A. No, sir.
Q. Okay. Do you know, while she was at school with your daughter, was she working for the law firm at the same time?
A I don't think so. I know Melanie has always held jobs, but I don't know where she was working.
Q. Okay. So she may have been working for the law firm; you don't know one way or the other?
A. I don't know.
Q. Okay You said you purchased the service agreement after you purchased the car.
A. Right.
Q. And I think you said you purchased it before the car hit the 50,000-mile mark?
A. Correct
Q. At the time you purchased it, was the car approaching the 50,000-mile mark?
A. Yes, sir.

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Q. If you turn to Page 000005, do you see that's an Affidavit and Notification of Sale of Motor Vehicle?
A. Yes, sir.
Q. And do you see that there's a certification that the odometer, at the time you purchased the vehicle, read 15,514?
A. Yes, sir.
Q. So I take it if the car was approaching 50,000 miles at time you bought the service agreement, it was a significant period of time after you purchased the car.
A. Yes, sir.
Q. And someone had put approaching 30,000 miles on the car in the interim?
A. Yes, sir.
Q. So I take it it was over a year after you bought the car?
A. Yes, sir.
Q. So it was after this litigation was filed.
A. Before the litigation was filed.
Q. Well, you bought the car in June of '05; is that right?
A. Yeah.
Q. And this litigation was filed in August of

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'06?
A. Okay. It had to have been. I'm not good on dates. I apologize. I don't -- I am not good on dates, trying to time line everything.
Q Okay. It -- but would you agree that it's likely you bought the service agreement after you -- after the litigation was filed?
A. Yes, sir.
Q. When you met with the F and I manager, where in the dealership did you meet with him?
A. In his office.
Q. And was that a cubicle-type office off the showroom floor?
A. Yes, sir.
Q. And did you meet with him alone, or was Christine with you?
A. Christine was with me.
Q. And was she there the whole time?
A. With the F and I manager?
Q. Yes.
A. Yes, sir
Q. And do you recall how much time elapsed from the moment you walked into the F and I office until you left?
A. I do not remember.

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Q. Was it over an hour?
A. I tried to keep it as short as possible.
Q. Okay.
A. So I don't -- I don't remember.
Q. You wanted to get in and out as quickly as possible?
A. Correct. Yes, sir.
Q. So was it likely less than an hour?
A. Yes, sir.
Q. And what was your impression of the F and I manager? Was he a nice guy?
A. He seemed like an all right guy.
Q. He didn't put any undue pressure on you?
A. No, sir.
Q. And to the extent he tried to sell you things, you didn't buy them, at least at the time.
A. Correct.
Q. Did you sign some documents while you were in the F and I office?
A. Yes, sir.
Q. Do you know how many?
A. No, sir.
Q. Do you have an estimate of how many?
A. Five, six.
Q. So it wasn't some huge stack of documents

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you had to sign; it was just a handful.
A. There were copies and stuff. That's all I can remember.
Q. Okay. But you don't remember having to traipse through some enormous stack of documents?
A. Not a huge stack of documents.
Q. And were the documents such things as transferring title to the vehicle and the like?
A. Yes, sir.
Q. And those documents, you understood, were required by law?
A. Yeah, they were all -- all the documents were right there together.
Q. And the documents you were given to sign, did Mr. James do anything to prevent you from reading them?
A. No, sir.
Q. And if you'd turn to Page -- the page that ends in 14. And do you see that that's a document that is titled, in all caps and bold print at the top, Arbitration Agreement?
A. Yes, sir.
Q. And would you agree with me that the heading of the document is easy to read?
A. Yes, sir.

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Q. And the -- at the bottom of the page, have you signed the document?
A. Yes, sir.
Q. And right -- right above you, where your signature is, do you see in bold, all caps, it says: By signing below, the parties acknowledge that they have read and agreed to the terms of this arbitration agreement?
A. Yes, sir.
Q. And do you agree with me that that's easy to read?
A. Correct.
Q. And immediately above that, there are a number of bullet points that are also in all caps?
A. Yes, sir.
Q. And that's in perfectly readable type?
A. Yes, sir.
Q. And, in fact, the entire document, while the other type on the page may be somewhat smaller, none of it is difficult to read if one wanted to?
A. Correct.
Q. I think we said that's your signature in the bottom left-hand corner in the top signature line?
A. Yes, sir.

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Q. And is that your daughter's signature below that?
A. Yes, sir.
Q. And that's the -- Mr James' signature to your right?
A. I would assume so, yes, sir.
Q. And this document was presented to you at the dealership when you were meeting with Mr. James?
A. Yes, sir.
Q. What, if anything, did Mr. James say to you when he presented you with this document?
A. I don't remember if he said anything.
Q. Did you see, when he handed you this, that it said arbitration agreement at the top?
A. I did not really pay it any attention, because they weren't doing any financing for me. We were eager to get the car.
Q. So you were here to just get out of there.
A. Yes, sir. All the papers were together, and he handed me all the papers.
Q. Okay. But he didn't do anything to prevent you from reading what he handed to you.
A. No, sir.
Q. Do you recall one way or another whether you did read it?

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A. I did not read it, no, sir.
Q. Did you glance your way down and at least read the things in all caps?
A. I don't even remember signing it. Because all the papers were together.
Q. So I take it you don't remember him telling you that you had to sign this document in order to purchase the vehicle?
A. No, sir.
Q. And I take it, from what you've said, you didn't object to signing the document at the time.
A. I didn't know I didn't have to.
Q. But you didn't say, I don't want to sign this, to Mr. James; is that fair?
A. No, I did not say that.
Q. Okay.
A. No, sir.
Q. And you didn't raise any complaint about the document at the time?
A. No, sir.
Q. And you didn't ask any questions about whether it was required that you sign the document?
A. No, sir.
Q. And I take it the same -- all of those questions, same is true of your daughter?

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A. Yes, sir.
Q. Okay. She didn't ask any questions about the document?
A. No, sir. She wanted the keys.
Q. Okay. The credit union you financed the transaction through, what was the name of the credit union?
A. Carolina Collegiate Federal Credit Union.
Q. Did you finance the purchase at Toyota of Greenville through the same credit union?
A. Yes, sir.
MR. BLACK: Can we take a break?
MR. THOMAS: Yeah.
(A recess transpired.)
BY MR. BLACK:
Q. At the time of your purchase from Century BMW, how many cars did you and your wife and your daughter collectively own?
A. We owned -- we bought this car. We owned two.
Q. Two in addition to this car?
A. Yes, sir.
Q. Okay. And what cars are those?
A. One was a Honda.
Q. And who primarily drove the Honda?

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A. My wife.
Q. And what other car was there?
A. I'm trying to think what I was driving. Because I've had so many company cars over the years, and they change those out so much that --
Q. Who drove the vehicle you purchased at Toyota of Greenville?
A. I did.
Q. Okay.
A. I'm trying to remember the dates, if I had that car or not at that particular time, or if I had a company car. I think I had the Toyota.
Q. Okay. Was Christine driving a car prior to the --
A. Christy had a Montero Sport.
Q. That's a Mitsubishi?
A. Correct.
Q. And how long had she been driving that car?
A. Three years. Four years.
Q. And was that car still in working order at the time of the Century BMW --
A. Yes, sir.
Q. -- transaction?
A. Yes, sir.
Q. Okay. So aside from wanting a nice -- I

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realize it's a used vehicle, but a nice new vehicle, she wasn't under any pressure to replace her car because she didn't have a working car at the time.
A. Correct.
Q. And you didn't trade that car in.
A. No, sir.
Q. What did -- what did you do with that Montero Sport?
A. Sold it to an individual.
Q. Okay. And you did that through the internet or something?
A. Through a little car lot.
Q. And would you agree that if all that you needed was transportation around town, while that might be necessary here in South Carolina, there's no necessity of buying a luxury BMW automobile?
A. For just transportation, I agree.
MR. BLACK: That's all I have.
THE WITNESS. Okay.
MR. THOMAS: I don't have anything.
MR. BLACK: Okay.
(The deposition was concluded at 10:36 a.m.)

SIGNATURE OF DEPONENT

I, the undersigned, MICHAEL WATTS, hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

_____

MICHAEL WATTS DATE

CERTIFICATE OF REPORTER

I, Kathy P. Taylor, Registered Professional Reporter and Notary Public for the State of South Carolina at large, do hereby certify that the foregoing transcript is a true, accurate and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto affixed my official seal this 31st day of January, 2008, at Greenville County, South Carolina.

_____

KATHY P. TAYLOR
REGISTERED PROFESSIONAL REPORTER
MY COMMISSION EXPIRES
JUNE 13, 2017

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al ,

Plaintiffs,

Case No.
2006-CP-02-1230,

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: CHRISTINE WATTS

DATE: January 29, 2008

TIME: 5.15 p.m.

LOCATION. LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

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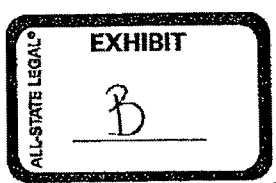

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ALSO PRESENT:
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ALISON DANNERT, Paralegal

STIPULATION

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30, that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial, and that the deponent does not waive reading and signing of this deposition

* * * * * * * * * *

CHRISTINE WATTS,

being first duly sworn, testified as follows.

EXAMINATION

BY MR. BLACK.

Q Good evening, Ms Watts. Could you state your name and your address for the record, please.

A. Christine Watts And my address is 3729 Harwick, H-A-R-W-I-C-K, Place, Charlotte, North Carolina 28211.

Q. And we haven't met before, but my name is Dennis Black I'm an attorney from a law firm called Williams & Connolly And you understand I represent Century BMW and some other car dealerships in this dispute?

A. Okay. Yes, I do.

Q. Okay. And the other people sitting here also represent -- at least on this side of the table -- also represent Century BMW, until you get to the guy at the end, who represents some other dealerships. And I take it you know your own counsel.

A. Yes, sir

Q (Pointing) And he represents some car dealerships, too

A. Okay

Q. So just so you know who everyone is.

Have you ever had your deposition taken before?

A I have not

Q. Okay. Let me give you a couple of ground rules. I'll be asking a bunch of questions Hopefully you'll be answering them. Try to answer them aloud and with words.

A. Okay.

Q. Because the court reporter here is trying to take everything down, and she can't take down gestures and nods and shakes and shrugs. Is that acceptable?

A Yes.

Q. And if you say -- if you nod or shake you

head, one of us may say, is that a yes or is that a no.
A. Okay.
Q We're not trying to be rude; we're just trying to keep a clear record.
(Ms. Chapman entered the deposition.)
BY MR. BLACK:
Q The -- also try and avoid uh-huh and huh-uh, because they look garbled on the transcript
A Yes.
Q If you could try and let me finish my questions before you jump in with your answers, that will help keep a clean record, also, and I'll try and give you the same courtesy of letting you finish your answers before I jump in with another question Is that acceptable?
A Yes
Q. If I ask any garbled questions, as I'm prone to do from time to time, please, if you don't understand it, ask me to rephrase the question or tell me that you don't understand it. And the rules here in South Carolina require you to direct any requests for clarification to me and not to your own counsel. Is that acceptable?
A Yes, I understand

Q And the rules also require that you not talk with your counsel about the deposition or the case while we're going on with the deposition. Is that acceptable?
A I understand.
Q. Okay. What, if anything, did you do to prepare for your deposition?
A. I had a meeting with my lawyers
Q Okay. And who was present for that meeting?
A. Melanie and Brady
Q Anyone else?
A My father, Mike Watts.
Q. Was that Friday -- Sunday night?
A. Yes.
Q And how long approximately did the meeting last?
A Maybe an hour
Q. The -- and then as you were driving home from the meeting, did you have a chance to have a further discussion with your father about the deposition?
A We did not talk about that on the way home.
Q. Since you -- since Sunday night, have you talked to anyone else in preparation for your

deposition?
A. I talked to Melanie and Brady before I came today.
Q. Okay. Did you have a chance to talk to your father after he was finished with his deposition today?
A. Yes.
Q. And when was that?
A. Maybe lunchtime.
Q. Okay. And was it in person or on the phone?
A It was just on the phone.
Q. Okay. And who called who?
A. I called my father to ask him how long it would take
Q All right. And what did he tell you?
A Two hours
Q. Okay. Hopefully, since we got some information from him this morning, we won't have to repeat it with you, and we'll be even quicker. Did he tell you anything about the questions that were asked at the deposition?
A. No, he did not.
Q Aside from the length of the deposition, did you have any other discussions about the

deposition with him?
A No.
Q. Other than Melanie and your father today, did you -- have you talked to anyone else in preparation for your deposition?
A. Just my boss, that I had to go to the deposition.
Q. Okay Could you describe for us your educational background since high school?
A. I have a bachelor's and a master's degree in accounting.
Q And what year did you get your bachelor's?
A '03, 2003
Q. And from what school?
A. College of Charleston.
Q. And from what school did you get your master's?
A College of Charleston.
Q And what year was that?
A. 2005
Q And you said that was in accounting?
A Accounting.
Q. And any subspecialty or -- in accounting?
A. No.
Q Since getting your master's in 2005, have

you pursued any other studies?
A Please rephrase
Q. Since -- have you done any further schooling since 2005, when you got your master's?
A Only accounting-related
Q. So you're continuing to study accounting?
A Yes, sir
Q. Okay Are you going for a Ph D. or --
A. No, I -- you have to do it for -- to get a CPA.
Q. Okay And have you received -- do you have a CPA?
A No.
Q. What's the stages in getting a CPA?
A. I can sit for the CPA, but I have to have a certain number of hours before -- accounting experience before I can actually get my license.
Q. Okay. And how far along in that process are you?
A Getting pretty close
Q Okay. So have you scheduled to take the exam?
A. I have not I filled out the application
Q. The -- where have you - did you work at all when you were at the College of Charleston?

A. I did not work at College of Charleston
Q Okay And is that true through your master's degree?
A Between my undergraduate and graduate, I had an internship with PriceWaterhouseCoopers.
Q And where was that?
A In Spartanburg, South Carolina
Q. And what was involved in the internship?
A. Audit work.
Q So that would have been in 2003?
A 2004.
Q. And then while you were -- how long did it take to get a master's degree?
A Just one year.
Q Okay And were you working while you were studying for your master's?
A I was not
Q. Okay. The -- we learned from your father this morning that -- I'm sorry, I forget Melanie's last name -- you're Melanie's former roommate?
A Yes, I am.
Q. And what is Melanie's last name?
A Blease
Q. What?
A. Blease.

Q Blease. And when were you Melanie's roommate?
A Undergraduate, 2002 and -3
Q. And not thereafter?
A Not thereafter.
Q. Okay. Have you remained friends with Melanie thereafter?
A. Yes, I have
Q Up until today?
A. Yes.
Q. Since you got your -- what month did you get your master's in 2005?
A. August
Q. August. And since you got your master's, have you become employed?
A Yes. I worked for PriceWaterhouseCoopers until June of this year.
Q. June of last year?
A. This -- yeah, last year.
Q And so when did you start with PriceWaterhouseCoopers?
A 2005.
Q. Immediately upon graduating in August?
A. In -- September 1st
Q. And what position did you take?

A. Audit associate
Q And what were your job responsibilities?
A Handling client relationships, performing audits of all types of nature
Q Were you focused in any particular industry or business?
A. Manufacturing
Q And were you an audit associate throughout your tenure at PriceWaterhouseCoopers?
A I was.
Q. Okay. And you -- you left in June of 2007?
A. Yes.
Q. And did you take another position in June of 2007?
A I started July 1st with Dixon Hughes.
Q. And what is Dixon Hughes?
A It is a regional accounting firm
Q. And is that in Charlotte, North Carolina?
A Yes, sir.
Q. And what position did you take in July of 2007 with Dixon Hughes?
A. Audit associate
Q. And do you focus on any type of business o. industry?
A. Manufacturing and non-profit.

Q. And do you remain an audit associate today?
A I do
Q. Does PriceWaterhouseCoopers have its employees sign arbitration agreements when they become employed?
A. Not to my knowledge, no.
Q. Do you know if you signed an arbitration agreement with PriceWaterhouseCoopers?
A. Not that I'm aware of, no.
Q Same question for Dixon Hughes; do they have you sign an arbitration agreement?
A. No
Q. Your father told us this morning you were introduced to the lawyers that are now representing you through your friend, Melanie
A. That is correct.
Q. Do you recall when you first talked to Melanie about this case?
A. I do not remember
Q. Do you know how long it was in advance of the case being filed?
A. I do not know.
Q. In your discussions with Melanie prior to your retaining counsel, did the subject of your having signed an arbitration agreement with Century

BMW come up?
A. No.
Q. In your conversations with anyone other than counsel and their staff prior to your -- the lawsuit being filed, did you discuss the fact that you had signed an arbitration agreement with Century BMW?
A. No.
Q How many vehicles have you been the primary driver of in your life?
A. Four
Q And what was the first one?
A. Ford Ranger.
Q. And when did you become the primary driver of that vehicle?
A When I was 15
Q. So that would be what, approximately what year?
A '95.
Q And did your family own that vehicle before you became the primary driver of it?
A Yes.
Q Okay. Were you present when the vehicle was purchased?
A No.

Q. Prior to owning that -- driving that vehicle, had you ever been present when anyone purchased a car from a car dealership?
A No.
Q. After the Ford Ranger, what was the next vehicle you were the primary driver of?
A Toyota Celica
Q. And how many years later was that?
A One year.
Q And did your family own that car before you became the primary driver?
A No.
Q. Was it purchased for you?
A. Yes.
Q Was it a new or used vehicle?
A. Used.
Q. Used Who paid for it?
A. My parents, Mike and Phyllis Watts
Q. Were you involved in choosing it?
A. Yes
Q. Was it purchased at a car dealership?
A. Yes.
Q Do you remember which one?
A No.
Q Were you present when the car was

purchased?
A. No
Q. Did your -- who was -- who was primarily involved in the back and forth with the dealership on the purchase?
A. My father, Mike Watts.
Q. And did he negotiate the price of the vehicle?
A. I have no idea.
Q. Okay. So you weren't there at all
A. No, sir
Q Okay. What was the next vehicle that you became the --
A Ford Mustang.
Q. And when was that?
A A year after the Celica.
Q So now you're 17?
A. Uh-huh.
Q. Okay. And did you own that -- was that vehicle owned by your family prior to you becoming primary driver?
A No
Q. What happened to the Celica?
A. I just didn't like it
Q Okay. So it was -- so the Ford Mustang w

purchased from a car dealership?
A. Yes.
Q. And were you present when it was purchased?
A Yes
Q And did you take part in any negotiations?
A No.
Q. Did your father?
A. Yes.
Q And did he -- were you present when he negotiated the price of the vehicle?
A. Yes
Q. Okay. How long -- how long did that take, if you recall?
A. I don't remember
Q. Were you a co-owner of any of the vehicles we've discussed so far --
A. No
Q -- the Ranger, the Celica, or the Mustang? So they were all in your father's name, and mother's, maybe?
A Yes.
Q. So I take it you didn't sign any paperwork associated with those vehicles?
A. No
Q. How long did you -- were you the primary

driver of the Mustang?
A. Three years.
Q And is that when you got the Montero?
A. Yes.
Q. The -- was the Montero purchased at a car dealership?
A No.
Q. Okay. Where was the Montero purchased from?
A A family friend
Q. And who purchased it?
A Mike Watts
Q. And what did you do with the Mustang?
A. Sold it.
Q. Just in a private sale?
A Private sale
Q. And you were the primary driver of the Montero up until you got the Z-4?
A Yes.
Q. Aside from the transaction at Century BMW when you purchased the Z-4, had you ever signed an arbitration agreement before?
A. No.
Q. Had you ever before been requested to sign an arbitration agreement and refused for whatever

reason?
A No.
Q At the time you were in Century BMW buying the Z-4, did you have an understanding what arbitration is?
A. No.
Q. So I take it at the time, you didn't have a view whether it was a good thing or a bad thing.
A. No.
Q. No, I'm -- no, I'm wrong, or no, you didn't have a view?
A No, I didn't have a view of -- I didn't really know what it was, so no, I didn't have a view of it.
Q. Okay. Up until today, have you ever participated in arbitration in any capacity, as a witness or a party or anything like that?
A. No
Q. So I take it you've had no bad experiences with arbitration
A No
Q As I understand it, the Z-4 was a graduation present of sorts for you
A. Yes.
Q And you were the person that primarily did

the research in looking for a car before you purchased it; is that true?
A That's correct.
Q Can you describe for us what types of things you did -- how long did the process of looking for a car take from beginning to end?
A. Can you rephrase? Like truly looking, or just kind of researching?
Q Well, when did you first start researching?
A Two months beforehand.
Q And about six months before you had come into Century BMW and test driven a car?
A Yes
Q Were you looking to buy a car at the time?
A. No, not really.
Q So was it more in the -- and I don't mean this disparagingly, but was it more in the nature of a joyride test drive than as part of a serious looking for a car?
A. Well, I knew I would eventually, once I graduated, so I guess it was a joyride.
Q. Okay.
A. Just kind of checking out things.
Q What type of car did you test drive?
A. 3 Series

Q. And you said you started researching a couple of months before the actual purchase. What did you do to start researching?
A I looked at safety, insurance rates, what I think the taxes would be. That's all.
Q. Did you start looking at different types of models and makes of cars?
A. I did
Q And in what way did you do that?
A. Internet
Q And were there any particular sites you looked at at the -- on the internet?
A. Probably Kelley Blue Book Probably the individual car websites, like manufacturer websites type things.
Q Did you look at all at purchasing a car from a private individual as opposed to a car dealership?
A. No.
Q. You knew from at least your own past experience that one option was you didn't have to go to a car dealership at all, you could just buy it from some individual that was looking to sell their car, is that --
A. Yes

Q. How much before you purchased the Z-4 did you actually go into a car dealership to look at cars for the first time during this particular search?
A Maybe a month or two Maybe a month or two.
Q. And do you recall how many different car dealerships you visited in the month or two prior to coming into Century BMW?
A. Two
Q And what were they?
A. Ford in Greenville I don't know --
Q. Is that Fairway Ford?
A. You might be correct.
Q. Over on Laurens Road?
A Yes, sir
Q Okay. And did you test drive a Mustang there?
A. Yes.
Q And was that a new Mustang?
A Yes, it was
Q And what other dealership did you go into?
A. Century BMW
Q So only one dealership other than Century BMW?

A. Yes.
Q. Did you visit a Ford dealership in Greenwood?
A. Greenwood? Not that I remember.
Q Were you aware of your father visiting another Ford dealership about buying a -- possibly buying a Mustang for you?
A. I don t remember
Q. Had you -- prior to coming into the Century BMW, had you talked to any other car dealerships by phone or e-mailed back and forth with them or anything?
A No, I had not.
Q. Putting aside the test drive of whatever -- do you remember what car you test drove six months before?
A. 3 Series.
Q. Oh, that's right I already asked you that How long before you actually purchased the car at Century BMW did you come into the dealership during your search for a vehicle?
A. Can you please rephrase that question?
Q Yes. Your father said that you -- your first visit to Century BMW in connection with your search was not the day you purchased the vehicle; is

that right?
A. That is correct
Q. Okay. How many days or weeks before you actually purchased the vehicle did you first come into Century BMW in connection with this search?
A. Can I just -- are you saying when I went and test drove the one that I bought, how long before I went in and purchased?
Q Yes.
A Three or four days
Q And on your first visit to the dealership did you go alone, or were you accompanied by anyon
A My father was with me, Mike Watts
Q. And anyone else?
A. No.
Q. And when you got to the dealership, did y know what car you wanted -- were interested in whe you first got there, or did you look around and compare the various vehicles?
A When I test drove or when I bought?
Q. When you came in three or four days befo you bought.
A. I was just looking around.
Q Okay And did you and your father look around on your own, or were you accompanied by

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anyone from the dealership, or a little of both?
A. I don't -- I really don't remember.
Q. Okay. Do you remember at all having any interactions with a salesperson that day?
A. No, I don't remember.
Q Okay. Did you -- have you heard of a woman called Elizabeth Courtney?
A. Yes.
Q. And who is Elizabeth Courtney?
A. She's the one we actually -- the day we purchased it, we talked to.
Q. Okay. Do you recall whether you had any conversations with her on the -- when you visited three or four days before you purchased it?
A. I think we did, yes.
Q. Okay And what, if anything, do you recall about your conversations with her three or four days before you purchased the car?
A. I don't remember.
Q. Who primarily interacted with her in that visit, was it you or your father?
A. My father.
Q. And did you overhear whatever they were saying, or were you off looking at cars while they were talking?

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A. I was looking at cars.
Q. Did you test drive one or more vehicles during that visit?
A. I test drove the vehicle I bought
Q. Okay. So -- and no other?
A. No other.
Q. When you test drove the vehicle, was anyone with you in the car?
A My father.
Q. Was the salesperson in the car?
A. It's a two-seater, so no.
Q. Did your father test drive the car?
A. I don't remember
Q. Do you recall one way or the other whether there was any pricing information about the vehicle on the vehicle?
A. Yes.
Q. And what do you recall about that?
A. I remember it was around 31 -- about 32,000.
Q. And how was that displayed? Was that displayed somewhere on or in the vehicle?
A. It was 34. Sorry. Yes, it had a big sticker
Q. Okay. And your recollection is the number

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34,000-something was on there?
A. Something like that.
Q. Was it also written in the windshield or anything like that?
A. Not that I remember.
Q. While you were at the dealership that day, did you have any discussions with Ms. Courtney or any other Century BMW employee about how much you could buy the vehicle for?
A. No. That was later on the telephone.
Q. Okay. Did you understand when you were in the dealership that the price was negotiable?
A. Yes.
Q. So you knew whatever that 34 figure was was not a take-it-or-leave-it number?
A. Yes.
Q. Do you recall any discussions you had with anyone from Century BMW during that visit that day?
A. No, I do not.
Q. Okay. Do you know whether your father had any such discussions about pricing that day?
A. I do not know.
Q. And you left the dealership that day without purchasing the car, right?
A. That is correct.

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Q. Why?
A. We wanted to -- I needed to look at my budget and talk to our -- the finance people that we work with and see what rate I could get and how much I could get from them for the loan.
Q. Were you aware that Century BMW would normally offer you financing for a purchase of a vehicle there?
A. Yes.
Q. But you knew you didn't have to take Century BMW's financing if you didn't want to; is that fair?
A. That is correct.
Q. So you understood it wasn't a requirement buying a vehicle at Century BMW that you enter into a financing agreement with them.
A. That is correct.
Q. Did you ever ask, at any time, anyone from Century BMW whether they could give you a better rate than you were getting from your credit union?
A. No.
Q. You said you -- did you always intend to finance with the credit union from the moment you got to the dealership?
A. That is correct.

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Q. Did you personally have any discussions with the credit union about the terms of financing, or did your father do that?
A. That would be my father.
Q. And was that done by phone?
A. That is correct.
Q. Were you present?
A. No, I was not.
Q. Did you sign any paperwork with the credit union before coming back to Century BMW?
A. I did not. No.
Q. Do you know if your father did?
A. I have no idea
Q. Did you visit the credit union in person before coming back to Century BMW?
A. No, I did not.
Q. Do you know if your father did?
A. I have no idea.
Q. Okay. Before you came back to Century BMW, had you already agreed on a bottom-line price for the vehicle with Century BMW?
A. Yes.
Q. And how did that occur?
A. Via telephone.
Q. Okay. And who was it that dealt with

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Century BMW by telephone?
A. My father, Mike Watts.
Q. And who -- who initiated the telephone calls; did your father call them first?
A. That is correct.
Q. And had you had a -- prior to your father calling Century BMW, had you discussed with your father what your goal was in terms of a price for the vehicle?
A. Yes.
Q. And do you recall what your goal was?
A. 31,000.
Q. 31,000?
A. That's correct.
Q. And was that after all taxes and whatever else, or was it --
A. That's correct.
Q. Had you discussed with your father what your worst-case scenario was so far as the cost of the vehicle?
A. Yes, I did.
Q. And was that different than what your goal was?
A. That is correct.
Q. Okay. And what was -- do you recall what

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your bottom-line break point was?
A. 32,000, and it had to include the maintenance warranty.
Q. Did you know one way or the other whether the vehicle was still covered by the BMW warranty that covers a new car?
A. I do not remember.
Q. The car was a 2004?
A. That is correct.
Q. And you were buying it in 2005; is that right?
A. That's correct.
Q. The -- were you present when your father was having telephone calls with someone at Century BMW to discuss pricing?
A. Yes, I was.
Q. Do you -- was there one call or a number of calls?
A. A number of calls.
Q. Do you recall how many approximately?
A. At least two.
Q. Do you know -- do you know one way or the other who he was talking to?
A. Elizabeth Courtney.
Q. And do you know who made the first offer?

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A. My father.
Q. And do you remember what it was?
A. No, I do not.
Q. Do you remember what the dealership's response was?
A. No, I do not.
Q. Do you remember anything other than what the final agreed figure was?
A. No, that's all I remember.
Q. Okay. And what was the final agreed figure?
A. 32,000.
Q. And do you recall what day that was that -- was it the day after you were in the dealership or the day before you came back to the dealership, or can you place in time where it was?
A. I don't remember I know that it was over a weekend, and the credit union was closed, like a Sunday. So there was some lapse of time. I don't remember exactly.
Q. And after your father reached an agreement on the price with Ms. Courtney -- do you know if he talked to anyone else in the process?
A. On the telephone? Not that -- I do not know.

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Q. After he agreed upon the price, did you then return to Century BMW in person?
A. That's correct.
Q. And did you know if anyone visited the credit union in between those two events?
A. I do not know.
Q. Okay. Did you bring any paperwork to the credit union from Century BMW?
A. I do not know.
Q And what day of the week did you purchase the vehicle; do you recall?
A. I do not know.
Q. When you went back to Century BMW, did you go back alone or with anyone else?
A. With my father and mother.
Q. Okay.
A. Phyllis and Mike Watts.
Q. Okay. And your mother is Phyllis Watts?
A. That's correct.
Q. So this time, all three of you were present?
A. That's correct.
Q. And did you all three pretty much stay together during the time you were there?
A. No. My mother looked at cars.

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Q. Okay. So your -- you and your father dealt with the transaction, and your mother --
A. That's correct.
Q. -- went to see if you could purchase yet another vehicle?
A. That is correct.
Q. When you -- do you remember who you -- what Century BMW employee you first dealt with on your return visit to the dealership?
A. Elizabeth Courtney.
Q. Okay. And when you came in, did she come and greet you?
A. That's correct.
Q. And did y'all have a discussion with Ms. Courtney?
A. That's correct.
Q. And what do you recall about that?
A. We briefly discussed how excited I was about the car, and that was about -- finished looking at seeing the price, and that was about it.
Q. Did -- do you recall whether Ms. Courtney had you sign any document or documents?
A. We may have signed the price with her, and then we ended up talking to a different guy for the rest of it

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Q. Do you recall that there was a handwritten document that you -- a pre-printed, with numbers written in by hand, that you signed?
A. Pre-printed?
Q. A pre-printed buyer's order, but whereas the final contract would have all the numbers typewritten, this was a handwritten?
A. Can you tell me what -- did it say anything particular other than the price?
MR. BLACK: Can you put in front of her the Exhibit 1 that was marked this morning?
A. (Viewing document.) I don't remember signing this.
BY MR. BLACK:
Q. Okay. Exhibit 1 is a collection of documents. I'll represent to you it's the dealership's file on your transaction.
A. Okay.
Q. If you turn to the page -- you see there are little numbers that have been printed in the bottom right-hand corner If you could turn to Page CBM-0000025.
A. 00, what did you say?
Q. 25.
MR. THOMAS: Have you got an extra copy?

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MR. BLACK: Yeah. I'm sure the answer is yes. I have one more.
MR. THOMAS: That's for my illustrious co-counsel there. Thank you
A. Retail Buyer's Order?
BY MR. BLACK:
Q. Yes.
A. Okay.
Q. And you see that the information in all the boxes has been filled out by hand on that form.
A. I see that, yes.
Q. And it totals out to the price you testified before, about 32,000?
A. Yes.
Q. And do you know if -- who -- is that your signature at the bottom of the page where it says, co-buyer?
A. Yes.
Q. And do you recall who gave you this document to sign?
A. I do not remember.
Q. Did -- was there any further discussion with Ms. Courtney about the terms of the sale, any terms of the sale?
A. Not that I remember.

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Q. Okay. And she then introduced you to another person at the dealership?
A. That is correct.
Q. And do you recall what his name was?
A. Corey, maybe. I know he's the finance -- he was the finance guy.
Q. And Ms. -- Ms. Courtney, was she always professional in her dealings with you?
A. Yes, she was.
Q. Always nice?
A. Very much so.
Q. Didn't put any undue pressure on you?
A. No.
Q. The same for Corey?
A. He was -- what do you mean?
Q. Did he -- was he a nice person to you, behaved professionally?
A. He did.
Q. Okay. Did he -- didn't put any undue pressure on you?
A. About the warranty a little bit, yes.
Q. Okay. So he tried to sell you a warranty?
A. That's correct.
Q. Okay. We'll get to that. The -- and what did you understand Corey's position was at the

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dealership?
A. I didn't understand his position.
Q. Okay. Where did you meet with Corey?
A. In his office.
Q. And was that in a little cubicle-like office off the dealer showroom?
A. That's correct.
Q. And who was present?
A. Him, me, and my father.
Q. And as between you and your father, who did most of the talking with Corey?
A. My father.
Q. Okay Did you do any talking?
A. No.
Q. The -- I think you told us Corey tried to sell you a warranty.
A. That's correct.
Q. And did he also try to sell you a number of other products?
A. Yes, that's correct.
Q. And let me ask you to turn to Page CBM, five zeros, and then a 2, so the second page of the document. Do you see that's a document entitled Century BMW Menu of Investment Enhancements?
A. Uh-huh.

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Q. Is that a yes?
A. That's -- yes.
Q. And your father's signature appears at the bottom of that page in the right?
A. That's correct.
Q. And do you recall Corey going through this menu with you, trying to sell you the various products listed?
A. Yes.
Q. And how long did that process take, if you recall?
A. Maybe 30 minutes.
Q. Okay. And that's 30 minutes of him trying to sell you products as opposed to 30 minutes being in the office altogether?
A. I think so.
Q. Okay.
A. Yes.
Q. And were you eager to get out of the office?
A. Yes.
Q. You wanted to go drive your car?
A. That's correct.
Q. The -- notwithstanding whatever aggressive sales techniques Corey used, you declined to buy any

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of these agreements, is that fair?
A. That is not correct. We did buy one of the maintenance agreements.
Q. Did you buy it while you were buying the car?
A. Yes.
Q. Okay. So if your father testified that you didn't buy it until the car was approaching 50,000 miles, would he be incorrect?
A. No, that was correct. It was included -- I'm sorry -- in the initial -- we upgraded it after 50,000 miles.
Q. Okay. Do you remember when that was?
A. April, May of this year.
Q. Okay. So about eight months after you sued the dealership?
A. That's correct.
Q. And you bought it --
A. I guess
Q. And you bought it from the dealership?
A. That's correct.
Q. And the warranty you're referring to, if you turn to the next page, the third page of the document, do you see that it indicates that it's still under the factory warranty?

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A. Yes.
Q. So it was when that -- when the factory warranty was about to expire is when you, what you said, upgraded to the extended service plan.
A. That's correct.
Q. Okay. But at the time you were in the dealership after hearing the 30-minute pitch from Corey, you declined to purchase any of the things he tried to sell you; is that right?
A That's correct.
Q. So you knew that it wasn't a requirement of buying the vehicle at Century BMW that you enter into any of these agreements?
A. That's correct.
Q. Okay. And none of them were offered on a take-it-or-leave-it basis, that you can't get the car unless you get this.
A. That's correct
Q. Once Corey got done trying to sell you investment enhancements, what was the next thing that happened? Was that the first thing you did when you came back to the -- his office?
A. He did that while we were signing our papers.
Q. Okay. So he did what while you were

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signing your papers?
A. Was selling us the warranties while we were signing all our documents.
Q. Okay. How many documents do you recall signing?
A. I have no idea
Q. More than 30?
A. I have -- I do not remember.
Q. 20?
A. I have no idea.
Q. How long did it take to sign -- sign your names as many times as you signed it?
A. Me? Probably ten minutes.
Q. Ten minutes, so you were --
A. Ten, 15 minutes.
Q. So it's your testimony for ten or 15 minutes, you were signing your name over and over again to documents?
A. That's correct.
Q. And were you reading the documents as you signed them?
A. No.
Q. How long does it take you to sign your name?
A. Maybe half a minute.

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Q. It takes you 30 seconds to sign your name?
A. Sometimes.
Q. So if you spent ten minutes signing your name and it took you 30 seconds a time, you must have signed your name about 20 times.
A. That may be correct.
Q. What?
A. That could be correct.
Q. Okay. And if it was 15 minutes, then it could be about -- it could be, if it took you 30 seconds a time, 30 times you signed your name.
A. That could be correct.
Q. Okay. Did you -- I forget what you answered. Did you review the documents you were being asked to sign?
A. Nothing but the price.
Q. Okay. Did Mr. -- did Corey do anything to prevent you from reviewing the documents?
A No.
MR. BLACK: I'm going to take a break.
THE WITNESS: Okay.
(A recess transpired.)
BY MR. BLACK:
Q. Ms. Watts, could you get Exhibit 1 back in front of you. And could I ask you to thumb through

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the entire exhibit and identify for me each of the pages in the exhibit in which your signature appears?
A. Would you like me to do it along and along, or --
Q. Yeah. How about, what's the first page on which your signature appears?
A. Number 1.
Q. Okay. What's the next page on which your signature appears?
A. 5.
Q. Okay. What's the next page on which your signature appears?
A. 14.
Q. Okay. We're up to three. What's the next page on which your signature appears?
A. Technically, 21.
Q. 21 is --
A. That's my driver's license.
Q. -- was your driver's license. You didn't sign that at the dealership, right?
A. No.
Q. Okay. So why don't we ignore 21. And what is the next page on which your signature appears?
A. 25.

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Q. We're up to four. And what's the next page after 25 on which your signature appears?
A. 31.
Q. And the next page? We're up to five.
A 42
Q. Up to six. Is there any other page on which your signature appears?
A. No.
Q. So if these are the documents from the transaction file, you signed your name six times?
A. Some of them I signed more than once.
Q. Okay. So six -- how many -- did you count how many you signed more than once?
A. No, I did not.
Q. Okay So you signed six separate documents.
A. Uh-huh.
Q. Okay. Did you object to signing any of the documents that you were given to sign while you were in the dealership?
A Of course not. I just wanted the car, so --
Q Okay. But you -- whether or not you wanted the car, did you voice any objection to signing any of the documents you were given?

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A. No.
Q. Okay. Did you ask any questions about any of the documents you were given?
A. No.
Q. Did you voice any complaints about any of the documents you were given?
A. No.
Q. Am I correct that the -- as you were thumbing through the documents you signed, one of them was an arbitration agreement?
A. That's correct.
Q And am I correct that to your recollection, nothing at all was said orally about that arbitration agreement in the office with Corey?
A. That is correct.
Q. Okay. So no one said to you that you were required to sign that document in order to get the vehicle; is that fair to say?
A. That's correct.
MR. BLACK: That's all I have
MR. THOMAS: Can we take a quick break?
(A recess transpired.)
EXAMINATION
BY MR. SPEARS:
Q. Christine, I'm Mike Spears. When is the

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first time you and I have met?
A. Today, before I got here.
Q. Okay. Did we talk about the case at all that you recall?
A. No.
Q. Okay. Let me show you a copy of Plaintiff's (sic) Exhibit 1, which is allegedly the dealer's file with the documents from your transaction. Do you remember which documents were gone over during your deposition by Mr. Black when he asked you which documents you signed and what was told to you about it? I'm not asking you every document you signed. But he asked you which documents you thought you had to sign.
MR. BLACK: Objection. I didn't ask that.
MR. SPEARS: Okay.
BY MR. SPEARS:
Q. Which documents do you -- you certainly signed the document of CBM-5; did you not?
A. That is correct.
Q. Okay. As we sit here today, do you know what it is?
A. No.
Q. Do you -- did you know what it was when you bought the car?

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A. No.
Q. Okay. Why did you sign it?
A. I thought I had to to get the car.
Q. Okay. Do you publish your personal information on Facebook on the internet?
A. On Facebook? No, I do not.
Q. Okay. Are you in the habit of giving out personal information willie-nillie to anybody?
A. No.
Q. Have you ever been cautioned by anyone not to do that for whatever reason?
A. Yes, I have.
Q. Okay Look at CBM-1 Did you sign that?
A. Yes
Q. Okay. Did you know what it was when you signed it?
A. No.
Q. Okay. Did you realize by signing CBM-1, that you were being given notice to tell you how they were going to use your non-public -- personal information about you, and that they could release it to market service providers amongst affiliates of BMW Century -- and to other third parties, we may share all private information about you as a consumer, customer, or former customer with other

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non-affiliated parties as permitted by law. Did you see that?
A. No, I did not I did not read it.
Q. Okay. Did you know you were doing that when you signed it?
A. No, I did not.
Q. Okay. Is it your habit to release personal information to anyone?
A. Not usually.
Q. Okay. Let's go to Number 14. Okay? Was CBM-14 passed to you?
A. I'm sure that it was in the packet.
Q. Okay. Is that your signature?
A. That is correct.
Q. Did you know what you were signing?
A. No, I did not.
Q. Why did you sign it?
A. I thought I had to to buy the car.
Q. Okay. In what way was any implication given or any mood left with you that it was a document necessary for you to buy the car?
MR. BLACK: Object to the form of the question.
BY MR. SPEARS:
Q. Go ahead.

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A. Can you please repeat it?
Q. Certainly. Why did you think you had to sign any or all of these documents in order to get the car?
A. The way it was presented, I just thought I had to sign everything.
Q. Okay. Now, were you in a small little cubicle with Corey and your dad and yourself?
A. That is correct.
Q. All right. Was there a machine in there that printed out these documents, and one by one they were passed across the table to you?
A. I just remember a big packet
Q. A big packet. Okay. Were the documents removed from the packet by someone in the room, or were they just clipped together like we kind of have them clipped together right now?
A. That is how I remember it.
Q. Okay. What were you told about the packet? Was it passed to you?
A. It was passed to me.
Q. Okay. And were you merely to look at it, or were you told to do anything with the packet?
A. To basically sign. They had the little flags.

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Q. All right. That's my point. How did you know which pages to turn to to sign them?
A. Flags.
Q. I've got a little sticky, a little red sticky, on this particular page. Were there little flags similar to this?
A. That is correct.
Q. And were you told that you needed to sign on every page with the flags?
A. Yes.
Q. Did you turn to that page and sign it?
A. That is correct.
Q. Did you read it before you signed it?
A. No.
Q. Okay. And did you know what any or all of those pages meant as you signed them?
A. No.
Q. Okay. Now, let me ask you if you would look with me at CBM-25. And CBM-25 has a purchase price of what written in hand?
A. '32,980.
Q. Did you agree to that? Is that what you -- was that your breaking -- your break point, 32,980?
A. I --
MR. BLACK: Object to the form of the

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question.
BY MR. SPEARS:
Q. Go ahead.
A. I agreed to 32.
Q Okay. Is that number higher than 32?
A. That's correct.
Q. Did you in any way agree to pay that number?
A. No.
Q. Okay. The next says: Additional options And it has $1604.50. Now, what can --
MR. BLACK: I apologize. What page are you on?
MR. SPEARS: CBM-25.
BY MR. SPEARS:
Q. $1,604.50. Does that appear, as you look at it, to be a -- is there a minus in front of that?
A. No, there's not.
Q. Does that -- does that appear -- I mean, you're an accounting master's graduate. Does that appear to be in addition to 32,980, without looking at the numbers below it?
A. It appears to be.
MR. BLACK: Object to the form of the question.

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BY MR. SPEARS:
Q. Okay. Does it in any way appear to be something that's going to be subtracted from that as an additional option?
A. No, it doesn't.
Q. Okay. Can you buy an option that you're famuliar with from a car company where it will depreciate the cost of the car?
A. No, I do not.
Q. Okay. Yet does the total number show that 1604.50 has been subtracted from 32,980?
A. That's correct.
Q. Did you know what in the world that's for?
A. No, I do not.
Q. Did you know then?
A. No, I did not.
Q. Okay. Then sales tax is put down in the amount of what?
A. 300.
Q. And then a transfer of license is put down in the amount of what?
A. 25.
Q. And then pre-printed on here is a charge, and what's that for?
A. I have no idea.

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Q. What does it say?
MR. BLACK: Let me just object that this has extended beyond what the scope of what the Court allowed this deposition for. And it's your client, so you can ask whatever you want, but the --
MR. SPEARS: It's for arbitration. I'm getting to --
MR. BLACK: I don't think it is for arbitration, but go on.
BY MR. SPEARS:
Q. What does it say it's for?
A. Recording and processing fees.
Q. Okay. And what did the total end up being?
A. 32,000.
Q. So somehow or another it ended up being exactly what your break point was?
A. That's correct.
Q. Okay. Did you sign that document?
A. Yes, I did.
Q. Okay. Did you think 1604 was being added to or subtracted from your car, or did you have any idea about that number?
A. I didn't have --
MR. BLACK: Object to the form.
A. I didn't have any idea what that number was.

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BY MR. SPEARS:
Q. Okay. If I went through the rest of these documents where your sig- -- signature appears on 31 and 42, did you have any idea what you were signing?
A. No, I did not.
Q. Okay. On Page 42, CBM-42, okay, what's the total price shown there?
A. 32,000.
Q. Okay. Did you know what this is?
A. No, I did not.
Q. Okay. As you read it today, what does it say?
A. Retail Buyer's Order.
Q. Okay. Do you see anywhere on here -- have you read it, by the way, word for word?
A. No, I have not.
Q. Okay. Have you -- do you see or did you see -- well, if you've never read it, you wouldn't know whether the Retail Buyer's Order references any other document or not, would you?
MR. THOMAS: Object to the form of the question.
A. I would not.
BY MR. SPEARS:

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Q. Okay. Okay. Now, you were not required to sign it in any regard, but do you have any idea what CBM-45 concerns?
A. Just a checklist.
Q. Okay.
A. Everything we had to sign.
Q. It's a check --
MR. BLACK: Excuse me. Could you -- could you read back that answer?
THE COURT REPORTER: I missed that last part where he interrupted.
MR. BLACK: Did you get the checklist of --
THE COURT REPORTER: Just a checklist
MR. BLACK: And did you get what she said after that?
THE COURT REPORTER: I did not. That's what I missed
A. -- of everything we had to sign.
BY MR. SPEARS:
Q. Okay. Now, you didn't sign this checklist, did you?
A. No.
Q. Okay. And have you looked over it since the time that the lawsuit was brought?
A. Yes.

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Q. Okay. Are there things here that are not checked off with checks?
A. Yes.
Q. Okay. Did you finance the car through BMW?
A. No.
Q. Okay. Okay. Were you of the opinion you had to buy -- that you had to sign the documents where presented with the flags in order to get the car, or not?
MR. BLACK: Object to the form of the question.
A. Yes.
BY MR. SPEARS:
Q. Okay. Any doubt in your mind about that?
MR. BLACK: Object to the form of the question.
A. No.
BY MR. SPEARS:
Q. As to that being your opinion at the time?
A. There's no doubt in my mind.
Q. Okay. And how far in your education process had you gone when you bought this car?
A. I had not completed my master's degree.
Q. Okay.
A. I was within a month or two.

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Q. So would it be fair to say you had a baccalaureate and were at the end of your master's?
A. That's correct.
Q. Okay. And you had been the primary driver of four previous vehicles?
A. That's correct.
MR. SPEARS: Okay. Give us a second.
(A discussion was had off the record and out of the hearing of the court reporter.)
BY MR. SPEARS:
Q. Why did you need this car? What were you going to utilize it for?
A. Work purposes.
Q. Okay. Did you need a way to and from work?
A. I did
Q. Was this going to be your primary source of transportation?
A. It was
Q. Okay. Did you need the car?
A. I needed a car.
MR. SPEARS: Okay. That's all I have.
EXAMINATION
BY MR. BLACK:
Q You were driving a Mitsubishi Montero at the time?

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A. That's correct.
Q. It was in fine working order?
A. Yes.
Q. So you could have continued to drive that car to work; would that be fair to say?
A. Yes. It just had a lot of mileage.
Q. Okay. You didn't need to buy a convertible BMW Z-4 luxury automobile to get to and from work, fair?
A. Fair.
Q. Your job is an auditor?
A. That's correct.
Q. And as an auditor, you spend a lot of time reviewing documents; is that fair to say?
A. Yes.
Q. And you spend a lot of time with numbers; is that fair to say?
A. That's correct.
Q. And it's important when you're reviewing documents as an auditor that you do so carefully, right?
A. Yes.
Q. And you're trained in reviewing documents carefully as an auditor.
A. Yes.

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Q. And at the time you purchased this automobile, you were a couple of months from a master's degree in accounting; is that fair?
A. That's correct.
Q. So you have some facility with numbers; is that fair to say?
A. Yes.
Q. Okay. Look at CBM-000001, which was one of the documents that Mr. Spears discussed with you. Do you recall that?
A. I do.
Q. And he read you some language about sharing private information with other third-party affiliates and the like; do you recall that?
A. Yes.
Q. Would you agree with me that as he read the language, there was nothing unclear about the language?
A. That is correct.
Q. You understood what the language meant when he read it to you?
A. Yes.
Q And had you read it at the dealership on that day, you would have understood it then?
A. Yes.

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Q. A number of the documents in Exhibit 1 were never shown to you while you were at Century BMW, true?
A. That's correct.
Q. For example, there are documents in the stack that include the commission vouchers for the salesperson?
A. That's correct.
Q. And so it would not be accurate to say that this stack of documents was presented to you in the F and I office at Century BMW, true?
A. That is correct.
Q. And, in fact, a stack of documents that actually contained your signature would be a stack six documents high, right?
A. That is correct.
Q. Let me ask you to turn to Page CBM-0025 Mr. Spears called your attention to the 32,980 number at the top. Do you see that?
A. Yes.
Q. Can you subtract in your head for me 1604.50 from 32,980?
A. Yes, I can.
Q. Does it come to $31,375.50?
A. Yes.

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Q. So, in fact, the 1604 50 is being subtracted from the 32,980 on this form, fair?
A. That's correct.
Q. And the numbers then total out to add up to the bottom-line figure you agreed to, 32,000, right?
A. That is correct.
Q. Let me ask you to turn to Page 45. Is it fair to say the checklist on Page 45 includes many more documents than you actually signed?
A. That is correct.
MR. BLACK: I have nothing further.
EXAMINATION
BY MR. SPEARS:
Q. Okay. Just to follow up on the questions that you were asked you in reply, on CBM-1, you were asked whether or not if you had read it at the time, you would be able to understand it?
A. That's correct.
Q. You indicated that you could if you had read it?
A. Uh-huh.
Q. If you had read it and understood it and knew that you didn't have to sign it in order to get the car, would you have signed it?
A. No.

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Q. Okay. If you thought you had to get it -- had to sign it in order to get the car, would you have signed it?
MR. BLACK: Object to the form of the question.
A. Yes.
BY MR. SPEARS:
Q. Okay. Would the same be true of the other documents you signed?
A. That is correct.
Q. Okay. Now, out of the packet that was presented to you, were there documents in the packet that your father signed that you did not sign?
A. That is correct.
Q. But they were in the packet, though?
A. That's correct.
Q. Okay. Were there documents in the packet that you didn't have to sign at all?
A. Yes.
Q. Okay. So can we say that the packet itself merely had six documents in them, all requiring your signature, or did it have more than that?
A. It had more than that.
MR. SPEARS: All right. That's all I have.
MR. BLACK: Do you have the transcript up

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on the page?
THE COURT REPORTER: Uh-huh. What are you looking for?
MR. BLACK: Go on back a few questions.
(Viewing transcript on the computer screen.)
MR. BLACK: Oh, I remember. I have no questions. Thank you. Can we stipulate that the exhibit is the same as this morning?
MR. THOMAS: Yes. Not a problem.
(Defendant's Exhibit Number 1, Dealership transaction documents, was previously marked for identification.)
(The deposition was concluded at 6:44 p.m.)

SIGNATURE OF DEPONENT

I, the undersigned, CHRISTINE WATTS, hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

_____

CHRISTINE WATTS DATE

CERTIFICATE OF REPORTER

I, Kathy P. Taylor, Registered Professional Reporter and Notary Public for the State of South Carolina at large, do hereby certify that the foregoing transcript is a true, accurate and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto affixed my official seal this 31st day of January, 2008, at Greenville County, South Carolina.

_____

KATHY P. TAYLOR
REGISTERED PROFESSIONAL REPORTER
MY COMMISSION EXPIRES
JUNE 13, 2017

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Plaintiffs,

Case No.
2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: JOHN ROBERT BISHOP

DATE: January 30, 2008

TIME: 10:07 a.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

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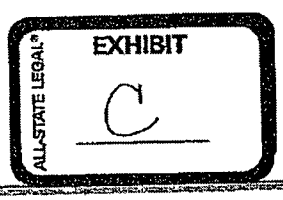

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ALISON DANNERT, Paralegal

(Index at rear of transcript)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * *

JOHN ROBERT BISHOP,
Being first duly sworn, testified as follows:

EXAMINATION

BY MR. LEWIS:

Q. And you're Mr. Bishop, they tell me.
A. Yes, sir.
Q. Well, I'm required to tell you a couple of things. Have you had your deposition taken before?
A. No, sir.
Q. Okay. Well, then, listen up. So when you give an answer, they're going to write it down, and so you've got to make sure you understand my question.
A. Yes.
Q. So if you don't understand it, you ask me

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to explain it or whatever, and I will try to make sure that it's an understandable question. Is that fair?
A. Yes, sir.
Q. Now, if I cut you off, because I get excited, you say, I'm not finished, and I will let you finish. Or if I'm -- if I'm making you mad, you say, I'm making you -- you're making me mad, and I'll try to change the way I'm doing things so I don't make you mad. Does that make sense?
A. Yes, sir.
Q. Now, you're going to give answers to questions that I give, and she's going to take them down. You don't get to ask me questions, thank goodness. So just understand that.
Now, have you been explained about reading and signing your deposition?
A. No, sir.
Q. Okay. You have the right to read your deposition and make corrections to it, like the spelling of your name or the spelling of somebody else's name. You don't get to change yeses to nos, but, you know, so you can read and sign it to make sure that it's what you think you said. But that's up to you whether you want to do that, and you can

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ask your lawyer if he would like you to do that. And you need to tell her at the end of the deposition so she can get you the deposition copy and you make whatever corrections you want.
MR. BLACK: He will read and sign, but I object to your instructions to the extent it misstates the law and what changes he can make, but go ahead.
MR. LEWIS: You ob- -- I'm sorry. You were talking --
MR. BLACK: Object to what you instructed the witness.
MR. LEWIS: You were talking to the table. If you'll talk to me, I'll be able to hear you
MR BLACK: I said I object to your instruction to the witness to the extent it misstates the law as to what changes you can make in your deposition.
MR. LEWIS: That's fine. I just don't think you can change yeses to nos; but if you think so, that's fine with me. If you want to do that, that's okay with me, too.
Now, you ready?
THE WITNESS: Ready.
BY MR. LEWIS:

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Q. And what's your full name?
A. My name is Bobby Bishop. Bobby is a nickname. John Robert Bishop is my legal name.
Q. And where do you live?
A. I live in Simpsonville, South Carolina.
Q. Do you know a Mr. Hawkins that lives in that town?
A. Don Hawkins?
Q. Bill Hawkins.
A. No, sir.
Q. Okay. Now, what do you do?
A. I'm the general manager at Century BMW.
Q. General manager. Okay. Have you -- you know you've been designated as the person that's most knowledgeable about certain items that we asked that the Century BMW produce; do you understand that?
A. Yes, sir.
Q. And I'm going to show you Exhibit Number 1, which is our Notice.
(Plaintiff's Exhibit Number 1, Notice of Deposition, was marked for identification.)
BY MR. LEWIS:
Q. And this is the Notice. If you would turn to Page 2, you will see the areas that we're

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interested in. Do you see the person or persons most knowledgeable regarding A, B, C, and D?
A. Yes, sir.
Q. Which one are you -- have you been identified to address?
A. A, B, C, and D.
Q. So you're the only one that's here.
A. Yes, sir.
Q. So you've been designated for all of them.
A. Yes, sir.
Q. Had you seen those I- -- topics before?
A. Yes, sir.
Q. Who is the person second-most knowledgeable for each of those items?
MR. BLACK: Object to the form. You can answer
THE WITNESS: I'm sorry?
MR. BLACK: I said objection to form. You can answer.
THE WITNESS: Oh.
BY MR. LEWIS:
Q. He'll say that a lot, object to the form, but that just means that you get to answer, and he's just putting it on the record.
A. Okay.

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Q. It doesn't allow you not to do it or anything.
A. Corey James.
Q. Corey James? And he would be the same -- he would be for all of them, like you?
A. Yes, sir.
Q. Okay. Now, have you talked to anybody about each of these topics?
A. Yes, sir.
Q. Who?
A. Corey James and Elizabeth Courtney.
Q. And why did you talk to Elizabeth Courtney?
A. She was the salesperson.
Q. And when you talked to Corey James and Eliz- -- Corey James, did you talk to him with any documents, or was it just talking to him?
A. Just talking.
Q. And what did you talk about?
A. I asked him if he remembered this deal, the Watts deal.
Q. And did he remember?
A. Specifically, he did not.
Q. And so did you then stop talking?
A. I mean, if he didn't remember the deal, I asked him what his procedures were at that time.

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Q. And what did he tell you his procedures were at that time?
A. You -- I'm talking about the way he rolls off the paper. Which is a car term; you know that.
Q. What?
A. Rolls off the paper. He presents the paper.
Q. Yeah. How does he roll off the paper?
A. He presents it one piece at a time to the customer.
Q. That's what he said?
A. Yes, sir.
Q. And did he tell you that he presented them in a stack with little flags on them?
A. No, sir.
Q. Does he ever mention he put flags on them?
A. He said he did not put flags on them.
Q. Oh. So we have a difference of opinion between the buyer and the seller.
MR. BLACK: Object to the form of the question.
A. Apparently.
BY MR. LEWIS:
Q. Apparently?
A. Apparently.

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Q. You know that now, don't you?
A. Yes, sir.
Q. Because someone -- were you at the deposition yesterday?
A. No, sir.
Q. So someone talked to you about the deposition.
A. Yes, sir.
Q. And they told you that the buyer said that there was a stack and that there were flags on them.
A. Yes, sir.
Q And then when you went to Corey James, was that before or after you had that -- knew that yesterday they talked to -- they said that there was flags on the documents? Did you talk to Corey James about his procedure before or after?
A. I talked to him before --
Q. Yeah.
A. -- and after.
Q. Okay. When did you bring up the flags to him?
A. This morning.
Q. And you asked him if that was true?
A. Yes, sir.
Q. And he said no?

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A. Yes, sir.
Q. Before that, you didn't ask him?
A. No, sir.
Q. No, sir, you -- that's a hard answer. Before that you did not ask him; is that correct?
A. I did not ask him before.
Q. Okay. Did he tell you he ever used flags?
A. He stated that he never used flags.
Q. Never used flags. Okay. With any customer?
A. That's what he stated, sir.
Q. All right. Good. All right. Now, did you -- what else -- okay. Before yesterday, before yesterday, what else did Mr. Corey James say?
A. Basically he stated he didn't remember this deal at all.
Q. Okay. What did he say about his procedures --
A. I --
Q. -- other than he presented them, what did you say, a document at a time?
A. Yes, sir, that's exactly what he said.
Q. Anything else?
A. No, sir.
Q. Did he say what he said to the -- to the

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people?
A. He doesn't remember them, sir.
Q. Does he say what he generally -- is there some procedure where they have a specific spiel, you know, like -- you've heard spiels before. You know that.
A. He would -- his procedure was to present each piece of paper and put his finger where they needed to be signed --
Q. Okay.
A. -- individually.
Q. All right. And did he say anything about the pages, or just point to them?
A. He would explain the pages and point to the signature.
Q. Did he say he explained the pages?
A. Yes, sir.
Q. Did he say that before yesterday or after yesterday?
A. He said that before yesterday.
Q. Okay Anything else did he say besides pointing where to sign and explained the paper?
A. No, sir.
Q. Anything else?
A. No, sir.

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Q. Okay. Now, we'll get to the --
MR. LEWIS: Where's the arbitration agreement?
(Plaintiff's Exhibit Number 2, Arbitration Agreement, was marked for identification.)
BY MR. LEWIS:
Q. You understand that Exhibit Number 2 is the arbitration agreement that -- in this deal, as you call it.
A. Yes, sir.
Q. And it's -- and this is one of the pieces of paper that had been rolled out?
A. Yes, sir.
Q. And this is one of the papers, according to Mr. James, that he would have pointed at and told them where to -- that they should sign that.
A. Yes, sir.
Q. And what did Mr. James say he explained about this document, Exhibit Number 2?
A. I did not ask him what he explained with the documents.
Q You didn't?
A. No, sir.
Q. So you don't know?
A. No, sir.

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Q. And there's no procedure that you tell them what to explain?
A. We practice full disclosure.
Q. Well, what do you disclose? What do you tell them to disclose about this?
A. We tell them to go over the form and tell them exactly what it contains.
Q. Well, what? What does this form contain? Can you sit here and tell me what this form contains?
A. I'm not an expert, but I can tell you that this is a document providing remedy for the customer without having to go to court.
Q. Is that what you tell them when you explain --
A. Yes, sir.
Q. If you were to explain it, that's what you would say?
A. Yes, sir.
Q. Is there anything else you'd tell them, other than it's a remedy for the customer and you don't have to go to court?
MR. BLACK: Object to the form. You can answer.
A. No, sir, I would tell them nothing else.

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BY MR. LEWIS:
Q. Okay. And is that what you expect your employees to tell the -- the people?
A. They're more informed than I.
Q. Well, is that what you expect them to tell them, at least that?
A. At least that.
Q. Okay. Is there anything else you expect to tell -- them to tell them?
A. No, sir.
Q. All right. Anything else you talked to Mr. -- did we cover everything you talked to Mr. James about?
A. Yes, sir.
Q. Now, what did you talk to Ms. Courtney about?
A. I talked to her about the deal itself.
Q. Did she remember the deal?
A. She did not.
Q. What did she say about the papers that were rolled out?
A. We talked about the arbitration and the -- I mean, she -- she basically doesn't handle any of that paperwork as far as the arbitration and stuff would go, so she had no knowledge of what the Watts

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said in the office, the F and I office, or nothing.
Q. Well, what is she? She -- I thought she was the salesman.
A. Yes, sir, she is the salesperson, but all these transactions are conducted in the F and I office.
Q. So the salesperson doesn't do any of the roll out of papers.
A. No, sir.
Q. So she just tries to sell the car; and then when she says okay, there's a point in the sales process, I got to get them into the guy that rolls out the paper.
A. Yes, sir, exactly right.
Q. And when is it you get to go -- you have to go in to roll out the paper? How long and where in the process does that happen?
A. At the very end.
MR. BLACK: Object to the form
BY MR. LEWIS:
Q. Huh?
A. At the very end of the process.
Q. So you've already negotiated a price at that time?
A. Yes, sir.

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Q. And then you roll -- you go in, and they roll out the paper.
A. Yes, sir.
Q. And all -- Ms. Courtney doesn't explain any of the papers to the people; that would be in Mr. James' area.
A. Correct.
Q. Is Mr. James the one that explains it to all the customers, or are there more people that work for or under Mr. James?
A. At that time, Corey was our only F and I manager.
Q. The what?
A. He was the only F and I manager, so he --
Q. F and I?
A. Yes, sir, finance and income manager.
Q. Okay. And so he was the one that rolled out the paper.
A. Yes, sir.
Q. And -- and you talked to Elizabeth Courtney, and did you talk to her both before and after yesterday?
A. I have no reason to talk to her this morning.
Q. Okay. And so you talked to her before, and

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she doesn't remember this deal, and she doesn't do any of the paper.
A. Yes, sir.
Q. So she has nothing to do with this arbitration at all.
A. No, sir.
Q. Does she know what an arbitration agreement is? Is she ever schooled on it?
MR. BLACK: Object to the form.
A. As far as general knowledge, she does know about it.
BY MR. LEWIS:
Q. Well, does she mention it, or do you tell her that she's supposed to tell the customer?
A. She's not supposed to tell the customer. She has no reason to tell the customer.
Q So she is specifically not to tell the customer about the arbitration?
A. Not specifically not. She has no reason to discuss it.
Q. So you don't tell her to bring it up?
A. No, sir.
Q. Okay. When Mr. Courtney James has that piece of paper, the arbitration agreement, and he -- you say he presents it to the customer.

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MR. BLACK: It's Corey James.
MR. LEWIS: What?
MR. BLACK: It's Corey James. Courtney is the last name of the salesperson
MR. LEWIS: Corey?
MR. BLACK: Corey.
MR. LEWIS: Okay. Every time I said Courtney, I meant Corey.
MR. BLACK: I think you said Corey every time except that last time
MR. LEWIS: Well, I appreciate you helping me out there.
MR. BLACK: No problem.
BY MR. LEWIS:
Q. Okay. Mr. James. How about that? Mr. James, when he does the papers -- we've already talked about that. He does the arbitration paper. Does he tell them that they don't have to sign it?
A. No, sir.
Q. Does he -- when he points and tells them to sign here, does he say, this is where you have to sign?
A. No, sir.
Q. What does he say?
A. To my knowledge, he says nothing.

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Q. So he just -- he says what we said he said about the agreement, and then he puts his little finger down there, and that's supposed to indicate that they sign, and he doesn't say anything.
MR. BLACK: Object to the form.
BY MR. LEWIS:
Q Is that right?
A. I don't understand exactly what you're asking me here.
Q. Well, we told -- we already went over what he told -- what the minimum was he had to tell people, what you said.
A. Correct.
Q. All right. And you said that he points to where they sign.
A. Yes, sir.
Q. I want to know what he says when he points to where they're -- he -- they sign. Does he say, you have to sign here, sign here, or you don't have to sign, but we want you to sign? What does he say?
A. I don't know his exact verbiage.
Q. Well, what did you all tell him to say?
A. Sign here.
Q. Okay. But he doesn't tell them they don't have to sign.

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A. No, sir.
Q. What if they won't sign?
A Then we still sell them the car.
Q. But you don't tell them?
A. No, sir.
Q. Now, how many people have refused to sign the arbitration agreement?
A. I can't tell you an exact number.
Q. Have there been any?
A. Yes, sir.
Q Do you keep a count of them?
A. No, sir.
Q. Do you flag the deal differently?
A. No, sir.
Q. You just go right on through, and if it's signed, it's okay, and if it's not signed, it's okay.
A. Yes, sir.
Q. Why do you want them to sign it?
A. I think it's good for the customer.
Q. You do? Why do you think it's good for the customer?
A. It's just, to me, a better way of settling differences.
Q. Than what, court?

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A. Yes, sir. Faster.
Q. It's faster, you say?
A. Yes, sir.
Q. And it's secret. Did you know that?
A. No, sir.
Q. You didn't know that?
A. No, sir.
Q. Do you know what the rules of the arbitration agreement are?
A. As pertaining to --
Q. How -- the process.
A. Vaguely.
Q. How you do it. Vaguely?
A. Yes, sir.
Q. Well, what are your vague understanding? Now, what's your job; you're the general manager?
A. Yes, sir.
Q. Okay. Does Mr. Courtney James know anymore about how arbitration works than you, or would you say you're better?
MR. BLACK: It's Corey James.
MR. LEWIS: Corey James. Mr. James.
A. I would say neither one of us would be involved in the process or actually been through the process.

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BY MR. LEWIS:
Q. Or know anything about it?
A. Not much.
Q. Or what the rules are or what you have to do; do you know any of that?
A. No, sir.
Q. Do you know who has to pay for arbitration?
A. I understand that we pay a large percentage of it going in.
Q. Who -- who told you that?
A. It's in here.
Q. Did you know that before yesterday?
A. Yes, sir.
Q. Did you know it before a week ago?
A. Yes, sir.
Q. You just -- did you always tell the customer that?
A. No, sir.
Q. Now, you say a large percentage; what's the percentage difference you pay?
A. I think we pay up to $1500 to start it out, and then at some point we'll assume a lot more responsibility.
Q. Does the customer have to pay any?
A. I can't answer that.

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Q. You don't know?
A. No.
Q. Do you know how you choose an arbitrator?
A. No, sir.
Q. Did you talk to anybody other than Mr. James and Ms. -- Elizabeth about the deposition other than the lawyer?
A. No, sir.
Q. We -- that agreement, Exhibit Number -- that's before you, it's Exhibit Number 2, how long has that been the arbitration agreement for your company?
A. That actual version, I cannot answer to that.
Q. Okay. Was it -- how -- is it the same version that it is now?
A. From 2005 until now?
Q. Uh-huh
A. I would -- I couldn't tell you.
Q. Well, and how far back from 6/25/05 was this agreement being used?
A. That actual agreement, I don't know. It has evolved over the years.
Q. Well, who would know?
A. Sonic Automotive.

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Q. Sonic Automotive?
A. Yes, sir.
Q. It's hard to talk to Sonic Automotive. Is there somebody in particular?
A. Richard O'Connor.
Q. Richard O'Connor?
A. Yes, sir
Q. Who is Richard O'Connor?
A. The national F and I director.
Q. The F and I director?
A. Yes, sir, national.
Q. Well, we have a national F and I director, and that's who Mr. James would be under.
A. Yes, sir.
Q. Does it come -- is he under you, or is he under this -- what's his name?
MR. BLACK: I assume you're -- I don't mean to -- I assume you're asking back in 2005?
MR LEWIS: Well, I'll ask -- if you want me to, I'll ask in 2005.
A. In 2005, Corey would have worked directly for me, and he also would have worked for Richard O'Connor indirectly.
BY MR. LEWIS.
Q. Is that different now?

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A. No, sir.
MR. BLACK: Mr. James doesn't work at the dealership anymore, which is why I made the objection, but --
BY MR. LEWIS:
Q. Where is Mr. James?
A. I understand yesterday he left the company, so I have no idea where he is now.
Q. He left the company yesterday?
A. Or I heard it yesterday that he left the company.
Q. Where does -- where do you work?
A. I work for Century BMW in Greenville.
Q. And where does this Corey -- this guy named Mr. James work?
A. His last position was in a Sonic store in Charlotte, North Carolina.
Q. And when it -- when -- in 6/25/05, he was in your store?
A. Yes, sir.
Q. And he was moved from your store up to someplace in Charlotte?
A. Yes, sir.
Q. And he left Charlotte yesterday?
A. I heard that he left Charlotte yesterday.

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I don't know exactly what day he left.
Q. I thought you talked to him after the deposition.
A. I didn't ask him.
Q. Wait a minute. I got to understand this. You called him after the deposition, right?
A. Yes, sir.
Q. And -- but you didn't ask him where he worked?
A. No, sir.
Q. Did you know at the time he didn't work for Sonic?
A. Yes, sir. This morning.
Q. And -- but you called him. Where did you call him?
A. I called him on his cell phone.
Q. And you didn't say, hey, where are you working now or what are you doing?
A. No, sir.
Q. Why wouldn't you -- that's just befuddling to me. That's just -- you just didn't care.
A. No, sir.
Q. You didn't care.
A. No, sir.
Q. You don't like that guy?

A. I like him, but I don't care where he's working.
Q. Huh. Where is his cell phone number?
A. It's in my car.
Q. Your car?
A. Yes, sir.
Q Would you mind giving us that?
A. (704)577 -- wait a minute.
MR. BLACK: Let me consult with co-counsel.
A. I may. I may.
(A discussion was had off the record and out of the hearing of the court reporter.)
MR. BLACK: Go ahead.
BY MR. LEWIS:
Q. 705 what?
A. 704.
Q. Oh, okay.
A. (704)577-5935.
Q. Okay. How many cars per year does BMW sell?
A. Approximately --
MR BLACK: BMW?
BY MR. LEWIS.
Q. Century.
A. Approximately 1200.

Q. And since 2005 or -- 5, since this agreement here, how many of those cars did anybody refuse to sign an arbitration agreement on?
A. I don't know that number, sir.
Q. Do you know of one?
A. Yes, sir
Q. You do?
A. Yes, sir.
Q. Who was that?
A. Brad Martin
Q. And who is Brad Martin?
A. Our attorney.
Q. Oh. Okay. Now, give me one more.
A. I cannot give you another name.
Q. Okay. Thank you Is it -- the fact that you use arbitration agreements is something that Sonic, above you, makes that decision; it's not the decision of your store?
A. That's correct.
Q. Huh?
A. That's correct.
Q. So there's some higher-up, this -- what was his name, Mr. --
A. O'Connor.
Q. Yeah, Richard O'Connor. And his -- now,

does he send down a -- is there some kind of booklet that they send down or a manual that they send down telling everybody how to go through the rolling of paper, how you do it, what you do, what they're for, is there some I could go get it?
A. No, sir, it's all done in training classes.
Q. In training classes where?
A. Various places. Atlanta, Charlotte.
Q. Is all the training the same?
A. Yes, sir.
Q. So you would think, then, just logically, that there is somewhere there is a training manual.
A. I don't have one in my possession.
Q. I know you don't, but --
A. I don't know of one.
Q. Well, how -- when they go up there, do they have little -- you know, this is the age of PowerPoint. Do you have little PowerPoints and they show a form and they tell about it? Have you ever been to these --
A. I've never been to a session for F and I.
Q. You never have?
A. No, sir.
Q. So I guess the person that would know that would be Mr. O'Connor?

A. Yes, sir.
Q. And where is he located?
A. Charlotte, North Carolina.
Q. Where?
A. It's Sonic headquarters. 6415 Idlewild is the address.
Q. You're pretty good on this stuff, remembering stuff. How old are you?
A. Do I have to answer that? 51.
Q. Pretty good for 51. So Sonic -- Sonic, this -- what do you call the headquarters, Sonic?
A. Yes, sir.
Q. Okay. Sonic, they make the decision to use the arbitration agreement.
A. Yes, sir.
Q. And you don't know why they made that decision.
A. No, sir.
Q. And you don't know what was the considerations in that.
A. No, sir.
Q And as far as you know, there is nothing in your dealership that says that or gives an explanation or tells Mr. James how to conduct his rolling of paper.

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MR. BLACK: Object to the form.
A. You're talking about a written document that explains it?
BY MR. LEWIS:
Q. Uh-huh.
A. No, sir.
Q. Or -- or any kind of guidelines for him, how does he do it.
A. No, sir.
Q. How does he know -- there's a packet of documents, isn't there?
A. Yes, sir.
Q. And for every -- say, oh, this is what we call it, a packet, or you roll out this packet. Right?
A. Yes, sir.
Q. And the packets are the same for all sales.
A. No, sir.
Q. What's the difference?
A. Well, there's different kinds of contracts for different kinds of deals, lease versus retail.
Q. All right.
A. The basic paperwork would be the same.
Q. Okay.
A. But there would be different retail and

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lease contracts.
Q. Other than the retail versus lease, would the rest of it be the same?
A. Yes, sir.
Q. Would the arbitration agreement be the same?
A. Yes, sir.
Q. Now, so we know that there is a packet for a lease or a sale. Let's suppose it's a sale. This packet, do you keep the little packets together, like he grabs a packet, or does he have to go through and grab every one of them? How does it work?
A. Each individual. They're not stored as a packet.
Q. They're not. So he pulls them, each one of them, as individually.
A. Yes, sir.
Q. And then he goes and he sits down with the customer.
A. Yes, sir.
Q. And according to your testimony, he shows it to them individually, and he points and does not use flags.
A. Yes, sir.

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Q. And you don't know what he says or what explanations he makes.
A. No, sir.
Q. But you gave me the one that you would make and what you would expect to be the minimum.
A. Yes, sir.
Q. So if I ask you about the agreement, who made the decision to do something like the class-action waiver, you wouldn't know anything about that, would you?
A. No, sir.
Q. You don't even know what a class-action waiver is.
A. Yes, sir.
Q. What is it?
A. You agree not to file a class-action lawsuit.
Q. Well, do you think that's to the customer's advantage? You said you thought this was to his advantage. Is that -- is that one to the advantage of the customer?
A. I really don't know, sir.
Q. Well, isn't it to the advantage of you?
A. No, sir.
Q. It's not to the advantage of the company?

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A. I wouldn't think so.
Q. Well, why is it in there?
A. I have no idea.
Q. Have you talked to anybody about Exhibit Number 2?
A. No, sir.
Q. I take it that it's a form contract, the arbitration. I mean, it's a form document.
A. Yes, sir.
Q. And you all drafted the form, right?
A. Sonic Automotive drafted the form.
Q. Oh, the high-ups sent it down to you and said, use this.
A. Yes, sir.
Q. Do you know anything about the negotiations for buying this particular deal or going through with this deal?
A. No, sir
Q. Do you know how it happened?
A. No, sir.
Q. Do you know if it was -- if there was any telephone conversations or it was all in store, how many visits there were; do you know anything about it?
A. No, sir.

Q. If I show you this, would you know this was the packet for this deal?
A. Yes, sir.
MR. LEWIS: Would you mark it? That's pretty good.
(Plaintiff's Exhibit Number 3, Dealership transaction documents, was marked for identification.)
BY MR. LEWIS:
Q. So if I look at Exhibit Number 3, that's the packet for this deal, which was a sale of the car, that would be the same packet that any sale would have.
MR. BLACK: Object to the form. You can answer.
A. Yes, sir.
BY MR. LEWIS:
Q. Turn to the last page there. It has the number on it of 04039. Do you see that down at the -- at the --
A. Oh, yes, sir.
Q. I want to make sure we're looking at -- we were looking at Exhibit Number 3.
MR. HAMM: Mr. Lewis, repeat the number you just referenced.

MR. LEWIS: 4039.
MR. BLACK: It appears they added a number to the document in addition to our number. Page CBM-0000045.
MR. HAMM: Okay. Thank you.
BY MR. LEWIS:
Q. You see that packet?
A. Yes, sir.
Q. Just out of curiosity, turn to the front page. Did Brad Martin sign that front page?
A. No, sir.
Q. Huh?
A. No, sir.
Q. And did -- did Brad Martin agree to pay the document fee?
MR. BLACK: Object to the form of the question. I'll instruct him not to answer. That goes beyond the --
MR. LEWIS: Not to answer. Okay. That's fine.
BY MR. LEWIS:
Q. Did -- did -- he didn't sign that. Is there any other places he didn't sign?
A. When you're referring to Brad Martin, are -- we're talking about the Watts, correct?

Because I don't have the Martin deal in front of me. I can't --
Q. You said Mr. Martin didn't sign an arbitration agreement. You told me that.
A. Yes, sir.
Q. And I'm asking did he sign the front page, the privacy notice, the front page, did he sign that page of his packet?
A. I can't tell you that. I'm sorry. I misunderstood. I cannot tell you.
Q. You remember the arbitration, but you don't remember this.
A. Yes, sir.
Q. But we could pull his packet and find out what he did, right?
A. Yes, sir.
Q. Okay. Because you have his packet somewhere.
A. Yes, sir.
Q. What does it say on arbitration -- the arbitration agreement in his packet, or is it just blank? You don't know.
A. (Witness shakes head.)
Q. Is that right?
A. I don't know.

Q. All right. Let's look at that last page. It's got the All Cars Checklist. Right?
A. Yes, sir.
Q. And down there it says, Arbitration Agreement.
A. Yes, sir.
Q. That's on every deal.
A. Yes, sir.
Q. And it's a check. Either you check it or you don't, right?
A. Yes, sir.
Q Is this just a reminder to Mr. James, or where does this -- this document go after it's completed?
A. This -- this document here is something we haven't used in a while. This is a checklist for the F and I manager, Corey James, to make sure that he's got everything in this package so it will go upstairs to the accounting department.
Q. Okay. Where -- so this form, this one, 04039, isn't used anymore.
A. Not this version, no, sir.
Q. Is there another version?
A. On the back of the deal jacket.
Q. On the back of the deal jacket.